

REPORT  
AND  
OFFICIAL OPINIONS

OF THE  
ATTORNEY GENERAL

OF  
PENNSYLVANIA

FOR THE  
  
Two Years Ending December 31, 1906.

---

HAMPTON L. CARSON,  
*Attorney General.*

---

HARRISBURG, PA.:  
HARRISBURG PUBLISHING CO., STATE PRINTER.  
1907.

# REPORT

## OF THE

# Attorney General of Pennsylvania.

OFFICE OF THE ATTORNEY GENERAL,  
HARRISBURG, PA., *January 15, 1907.*

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

I herewith submit my official report of the business transacted by my Department during the two years ending on the 31st of December, 1906.

In my official report submitted January 1, 1905, I expressed the opinion that the salaries paid in my Department were inadequate, and I recommended that the salary of the Deputy Attorney General be made \$5,000 per annum; that the salaries of the chief clerk and law clerk be made \$2,500 per annum, and that the salary of the private secretary be made \$1,800. I also expressed the opinion that the compensation of the Attorney General ought not to consist in large part of fees, but that the fees should be abolished, and that a certain salary, of at least \$12,000 a year, should be substituted, and that all fees should be paid into the State Treasury for the use of the Commonwealth; and further, that these changes should not go into effect until the 21st of January, 1907.

These suggestions were acted upon by the Legislature of 1905, and by the act of May 4, 1905, P. L. 386, the Department has been placed upon a proper basis.

Four years of experience in the office has satisfied me that the Department is imperfectly equipped. The official staff is inadequate to the demands upon it. At times the officers and employes are much overworked, and nothing but the willingness of the staff to labor many times at night and sometimes in holiday seasons has enabled me to transact without serious delay the growing business of the State. The creation of new departments, the State Highway

Department, the Mining Department, the Department of Health, the State Constabulary, and the constant increase in the business of the older departments and bureaus has thrown upon the Attorney General a burden which calls for relief. This view is emphasized by the sad accident to the Deputy Attorney General, the Honorable Frederic W. Fleitz, which wholly deprived me of his ever ready and valuable assistance from the latter part of September continuously until the end of my official term. There was no provision in the law which met the case, and apart from the personal loss so keenly felt by me in the deprivation of the services of one so experienced and capable, I am convinced that the interests of the State ought not to be exposed to the risk of illness on the part of the Attorney General, while his Deputy lies upon a bed of pain. The clerks and the private secretary, though ready to meet the increased strain, are not authorized by law to transact the business of the Department.

I recommend the passage of an act of Assembly providing for an assistant Deputy Attorney General. I also recommend an increase in the stenographic force, and an increase in the pay of the messenger, who at the present time is paid less than any other messenger on the Hill.

I desire to record publicly my appreciation of the cheerful and zealous manner in which the members of my staff met numerous exigencies without complaint and without abatement of energy. I part from them all with sincere regret, and I extend, so far as it is proper in a public document to do so, my profound sympathy to the sufferer who was when in health always at my right hand.

In my former report I classified the duties of the office, and dwelt upon the character of each class. It is unnecessary to repeat what was there said, but as the classification proved to be convenient, I readopt it.

### 1. ADVISORY DUTIES.

The following table shows the number of opinions requested by State officers, and to whom they were rendered in writing.

Opinions rendered by the Attorney General from January 1, 1905, to January 15, 1907:

Governor, .....	10
Secretary of the Commonwealth, .....	4
Auditor General, .....	26
State Treasurer, .....	4
Adjutant General, .....	2
Insurance Commissioner, .....	8
Banking Commissioner, .....	7
Secretary of Agriculture, .....	7

Forestry Commissioner, .....	1
Factory Inspector, .....	1
Superintendent of Public Instruction, .....	5
Chief of Department of Mines, .....	2
Commissioner of Health, .....	6
State Commissioner of Highways, .....	17
Commissioner of Fisheries, .....	11
Board of Public Grounds and Buildings, .....	6
Superintendent of Public Printing and Binding, .....	2
Dairy and Food Commissioner, .....	7
State Veterinarian, .....	3
Game Commissioner, .....	2
Miscellaneous opinions, .....	51
Total, .....	182

The opinions themselves will be found under the title "Opinions of the Attorney General," immediately following this report. An examination of them will show that they embrace practically the administration of the government in matters thought by the heads of departments to require examination and advice.

The chief topics dwelt on are the granting of charters, amendments to charters, extension of railway routes, railway mergers and consolidations, water companies and other classifications, corporate powers and limitations, foreign corporations, requisitions, commissions of justices of the peace and other public officers, public printing, powers of State Commissioners, bridges, corporate names, filing of papers, power of State officers, duties of Auditor General, Revenue Commissioners, the health officer, judicial mileage, compulsory education, vaccination, salaries of deceased members of the House, powers of prison inspectors, Harbor Master, the Medical Council, Poor Directors, the State Constabulary, the powers of the Speaker in accepting resignations in recess, practice in quo warranto proceedings, fees, and kindred subjects.

## II. QUASI JUDICIAL PROCEEDINGS.

Of these a detail is given in Schedule A, Appendix II.

## III. FORENSIC DUTIES.

Of tax appeals in the Court of Common Pleas of Dauphin there have been during the past two years 882.

The detail will be found in Schedules D and E, Appendix III.

There have been eight cases argued in the Supreme Court, and two in the Superior Court; the details will be found in Schedule C, Appendix III.



## SPECIAL CASES.

---

### The Enterprise National Bank.

In the early fall of 1905, the Enterprise National Bank of Pittsburgh failed for a large amount, owing the Commonwealth moneys on deposit, to the credit of the Sinking Fund Commissioners, as well as on general account with the State Treasurer. The bonds given to secure the Commonwealth were promptly entered, but the directors and sureties contested their liability, taking exception to the language of the bonds, as covering withdrawals and deposits, and employing counsel of distinction to wage the litigation. As the forms of the bonds used had been originally prepared by Attorney General McCormick, and redrafted by myself, and were common to all cases of State deposits, I deemed the matter of such importance as to call for personal participation in the argument, in Court of Common Pleas, No. 2, of Allegheny county. I was ably assisted by Hon. Thomas M. Marshall, Esq., of the Pittsburgh bar, and by Hon. Lyman D. Gilbert, of Harrisburg. The decision was in favor of the Commonwealth, and the obligations of sureties in such cases were fully and learnedly dealt with in an able opinion of President Judge Frazer, reported in 15 District Reports, 946, 63 Legal Intelligencer, 566.

### Commonwealth ex. rel. vs. Rowe.

The agitation in the matter of vaccination brought into view some practical difficulties in the enforcement of the compulsory school law, and many requests were made of the Attorney General for instructions, all of which appear among the official opinions attached hereto. The above case, which was that of mandamus, arose in Franklin county, and is reported in 33rd County Court Reports, p. 1, and awaits argument in the Supreme Court.

### Commonwealth ex. rel. vs. Collier.

This case involved a consideration of the imposition of non-judicial duties upon the lower courts, and pointed out most sharply that while the Supreme Court, under the Constitution, was exempt, the lower courts were subject to legislative will in the assignment of duties which could not be called in strictness judicial. The case is reported in Commonwealth vs. Collier, 213 Penna. St., 138.

## Commonwealth ex. rel. v. D. L. &amp; W. R. R. Co.

This case involved an interesting question as to the extent to which a railroad company, in occupying a public road, was bound to reconstruct a new road of the same width as that taken, and incidentally proved the means of preserving the scenery of the Delaware Water Gap by the removal of an unsightly stone crusher. The case is reported in 215 Pa. St., 149.

## Tax Cases.

Commonwealth v. Cover, 215 Pa. St., 556, involved the question of mercantile taxes upon leather manufactured elsewhere, but brought into Pennsylvania to be cut into strips before sale. Commonwealth v. The Provident Life and Trust Company, after having been before the Supreme Court in Provident Trust Company v. Durham, 212 Pa. St., 68, is again before the Courts upon a question of the liability of the Trust Company to the Commonwealth for the five mills capital stock tax, and is still pending in the Dauphin County Court. Commonwealth vs. Klemmer is also before the Dauphin County Court upon the amount of the fees properly allowable to the Register of Wills of Philadelphia county, and also Commonwealth vs. The Norfolk and Western Railroad Company, involving the value of cars in transit through the Commonwealth. Both cases have been argued, but are undecided.

## Commonwealth ex. rel. v. Warren.

The above case involved the title to the office of the Dairy and Food Commissioner, and the writ of quo warranto was asked for by the Attorney General in order that the question might be fairly raised, but the Attorney General felt himself officially bound to take the other side of the argument in defense of a State officer. This position, as well as the title to the office, has been sustained by a recent decision of the Supreme Court, not yet reported.

## Commonwealth ex. rel. vs. McCall Ferry Power Company.

In this case an effort was made to preserve the rights of the Commonwealth in the navigation of the Susquehanna river. An elaborate bill was filed, in the Dauphin County Court, and, without argument, a decree was obtained by consent, and duly entered of record, securing all that was deemed essential to the preservation of the future navigation of the river and the preservation of fish.

## Commonwealth v. The Pennsylvania Railroad Company et. al.

For some years the trunk line roads had made a practice of selling a traveling mileage book, good for 1,000 miles of travel, for the price of \$20, but exacted a deposit of \$10 at the time of purchase in

addition to the price, and required travelers on each successive division to sign their names to slips which were taken up by the conductors. Difficulties and delays attended the return of the deposit, and practically travelers upon these books were subjected to a charge of three cents per mile. Through proceedings instituted before the Secretary of Internal Affairs, the matter was brought to the attention of the Attorney General. A bill was filed in the Court of Common Pleas of Dauphin county against the leading railroads in the State; answers were also filed, and several demurrers, but before argument was had the objectionable features of the tickets were removed by the voluntary action of the railroads.

#### Commonwealth v. The Rapid Transit Company of Philadelphia.

A bill filed by the Thirteenth and Fifteenth Street Passenger Railway Companies against the Rapid Transit Company of Philadelphia was, upon the intervention of the Attorney General, so amended as to amount to a bill in the nature of a quo warranto to test the right of the railway company to lay and maintain its tracks upon Broad street in the city of Philadelphia. Argument was had, and a decision rendered by Court of Common Pleas, No. 1, of Philadelphia county, in favor of the contentions of the Commonwealth against the right. The case has been appealed to the Supreme Court, and awaits argument by my successor in office.

#### Commonwealth v. Luper et. al.

This case arose out of the legislative investigation made into the affairs of the Insurance Department, and turns upon the ownership of certain fees claimed for many years as belonging to the actuaries. The case has been argued, and awaits decision in the Dauphin County Court.

---

### CAPITOL INQUIRY.

---

Charges having been made during the fall of 1906 of irregularities and fraud in the making and execution of contracts relating to the furnishing and equipment of the Capitol, the Attorney General, suo sponte, instituted an inquiry, so far as it could be made by correspondence, and the results are embodied in a special report which constitutes a part of this official publication. The correspondence is attached thereto.

#### IV. DUTIES AS A MEMBER OF VARIOUS BOARDS.

---

It is unnecessary to repeat what was said in my report of two years ago as to the character of these duties, and the same remark may be predicated of the Attorney General's miscellaneous duties. The detail is exhibited in the following summary, and in the appendices and schedules attached to this report.

I annex a summary of the business transacted during the period covered by this report.

---

#### SUMMARY OF BUSINESS IN THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1905, TO DECEMBER 31, 1906, INCLUSIVE.

---

Quo warranto proceedings in Common Pleas of Dauphin county, .....	22
(11 applications refused, 7 abandoned, 2 pending.)	
Injunction proceedings in Common Pleas of Dauphin county, ..	2
Equity proceedings in Common Pleas of Dauphin county, ....	7
Actions in assumpsit instituted in Common Pleas of Dauphin county, .....	16
Orders to show cause, etc., against insolvent insurance companies and others, .....	18
Mandamus proceedings in Common Pleas of Dauphin county, ..	26
Cases argued in Supreme Court of Pennsylvania, .....	8
Cases argued in Superior Court of Pennsylvania, .....	2
Tax appeals in Common Pleas of Dauphin county, .....	882
Bridge proceedings under the acts of 1895 and 1903, .....	3
Hearings before the Attorney General, .....	68
(Quo warranto, 45; under the act of June 9, 1891, 1; under the act of May 2, 1905, 1; under the act of April 26, 1855, 1; use of the name of the Commonwealth, 16; mandamus, 4.)	
Insurance company charters approved by Attorney General, ..	35
Bank charters, etc., approved by Attorney General, .....	13
Formal opinions rendered in writing, .....	182
Cases now pending in Supreme Court of Pennsylvania, .....	1
Cases now pending in Superior Court of Pennsylvania, .....	2
Cases now pending in Supreme Court of the United States, ..	1

## COLLECTIONS.

For 1905, .....	\$199,202 74	
For 1906, .....	317,429 42	
	<hr/>	\$516,632 16

## COMMISSIONS.

For 1905, .....	\$10,035 01	
For 1906, .....	10,086 21	
	<hr/>	20,121 22
		<hr/>
Total, .....		\$536,753 38

All of which is respectfully submitted.

HAMPTON L. CARSON,  
Attorney General.

---

OFFICIAL OPINIONS

OF

The Attorney General

FOR THE

TWO YEARS ENDING DECEMBER 31st, 1906.

HAMPTON L. CARSON,

ATTORNEY GENERAL.

---

---

---

OPINIONS GIVEN TO THE  
GOVERNOR.

---

---

## OFFICIAL OPINIONS OF THE ATTORNEY GENERAL.

---

CORPORATIONS—APPLICATION FOR CHARTER OF SAMUEL W. BLACK COMPANY.

A charter may be granted for carrying on the general business of real estate agents. Attorney General's opinion in W. B. Urling Company's application for charter distinguished.

It is advised that the application for charter be amended on account of a defective statement of purpose.

Office of the Attorney General,  
Harrisburg, Pa., March 9, 1905.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth of  
Pennsylvania:

Sir: I herewith return the application of the Samuel W. Black Company for a charter "for the purpose of carrying on the general business of real estate agents, including the buying and selling of real estate as agents, renting and managing real estate and placing of insurance on real and personal property, with the right to sell, lease and re-lease real estate by vote of its directors, without the consent of its stockholders."

I also return the brief of counsel in support of the application.

In my judgment, this application is not governed by the opinion given at your request under date of July 20, 1904, in re W. B. Urling Company, which was an application for the incorporation of stock brokers.

However arbitrary the reason, the fact is that the Legislature, while extending all of the provisions of the act of 27th of May, 1841 (P. L. 396), relating to stock, exchange and bill brokers, to real estate brokers (see 18th section of act of 10th April, 1849, P. L. 573, followed by the acts of May 15, 1850, P. L. 2, and 16th of May, 1861, P. L. 708), subsequently by the act of 27th of June, A. D. 1895 (P. L. 396), excluded real estate brokers from their statutory association with stock, bill and exchange brokers and private banks, and confirmed the exclusion by the act of 13th of June, 1901 (P. L. 559), the last act being an amendment of the act of 16th of May, 1861, *ut supra*.



Hence the acts which formed the basis of my conclusion in the Urling case are inapplicable to the present applicant.

I see no objection to granting a charter for the purpose of carrying on the general business of real estate agents. The words which follow in the statement of the purpose of the Samuel W. Black Company appear to me to be unnecessary, and may be disregarded as surplusage, for the general business of a real estate agent would fairly include the buying and selling of real estate as agents as well as renting and managing real estate and placing of insurance on real estate. I am not clear as to the inclusion of insurance on real and personal property. That phrase, unless limited in its application, would lead to a general fire insurance business.

I cannot see the propriety of inserting in a statement of the corporate purpose the words "with the right to sell, lease and release real estate by vote of its directors, without the consent of its stockholders." This is a matter which ought not to be included in the charter. It should be regulated by a proper provision in the by-laws. It is for the stockholders and not for the State to say what powers shall be conferred upon the directors or what powers the stockholders shall part with. In my judgment section 3 of the act of April 29, 1874 (P. L. 101), under which the practice hitherto prevailing is sought to be justified, relates only to mechanical, mining, quarrying, manufacturing, and such other corporations as are provided for in clause 18 of the second class in section 2 of the act of April 29, 1874. The purpose of the present applicant for a charter does not fall within any such statement of a purpose as is covered by the 29th section of the general corporation act of April 29, 1874. In my opinion the application should be returned for amendment in the particulars herein dwelt upon.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

---

IN RE AMENDMENT TO CHARTER OF COAL AND TIMBER PUBLISHING COMPANY—CORPORATIONS—CHANGE OF NAME—ACTS OF JUNE 13, 1883 AND APRIL 22, 1903.

Proceedings to change the name of a corporation are regulated by the act of April 22, 1903, P. L. 251, and not by the act of June 13, 1883, P. L. 122.

In so far as it relates to changes in the names of corporations, the act of June 13, 1883, is superseded by the act of April 22, 1903.

The evident purpose of the legislature, in passing the act of April 22, 1903, and in entitling it "An act regulating the change of corporate titles," was to provide a new, uniform and exclusive method for the amendment of charters in the matter of the names of corporations of the second class.

A corporation cannot, by an amendment to its charter, introduce a new and distinct business purpose.

The original purpose of a corporation was "The printing and publishing of a periodical trade journal known as Coal and Timber," An amendment, submitted to the Governor under the act of June 13, 1883, changed the purpose to "The printing and publishing of a periodical trade journal known as Coal, and engaging in a general printing, advertising and publishing business." Held that the word "advertising" introduced a new and distinct business purpose and that the amendment should not be allowed.

Under the act of June 13, 1883, as amended by the act of March 31, 1905, P. L. 93, a proposed amendment to the charter of a corporation must be accompanied by a certificate, under the corporate seal, setting forth that all reports required by the Auditor General have been filed and that all taxes due the Commonwealth have been paid.

When the name of a corporation is changed, under the act of June 13, 1883, as amended by the act of March 31, 1905, the new name should be such as will indicate the nature of the business to be conducted and not be simply the name of an individual in partnership form.

Office of the Attorney General,  
Harrisburg, Pa., March 15, 1905.

Hon. Samuel W. Pennypacker, Governor:

Sir: In reply to your request for an opinion whether or not the amendments to the charter of The Coal and Timber Publishing Company, for which an application has been made to you, should be granted, I answer that the papers submitted are defective in several particulars, and that the application cannot be allowed.

The main objection is as follows:

A change is sought to be made in the corporate title, by changing the name of the corporation from "Coal and Timber Publishing Company" to "C. W. Smith Company," and the amendment is presented to you under the provisions of the corporation amendment act of 1883, P. L. 122. An application for a change of name should be made, not to you as Governor, but by filing a certificate in the office of the Secretary of the Commonwealth in accordance with the terms of the act of 22d day of April, 1903, P. L. 251. This act provides a specific method of changing corporate titles. This is its sole purpose, as evinced by the title of the act itself, which is: "An act regulating the change of corporate titles." It is general in its terms, applying to all corporations created before or since the act of 1874. The second section contains a distinct repeal of all general and special acts inconsistent therewith. The act of June 13, 1883, P. L. 122, applied to corporations created under the act of April 29, 1874, and applications for change of title came before the Governor. Since the passage of the act of 1903 the certificate to be filed is filed in the office of the Secretary of the Commonwealth, is recorded there, and the Secretary issues to the corporation a certificate granting the use of a new corporate title, provided he finds

that the name desired does not conflict with the name of any corporation appearing upon such records. In this function the Governor has no part, and this feature alone constitutes a material difference between the two acts, and indicates a legislative purpose to relieve the Governor entirely in the matter of change of name: The change of name is to be certified to the Auditor General, directly by the Secretary of the Commonwealth, and the matter in no way comes before the Governor. It is clear that the entire purpose of the act of 22d April, 1903, was to substitute a new method which should entirely supersede the old, so far as change of name is concerned.

It has been contended by counsel on behalf of the applicant that, inasmuch as the name of a corporation is a part of its charter, and the act of 1883 permitted amendments, alterations or improvements to be made in the charter, the application might as well be made under the former act as under the latter, and that the applicant had the choice of proceeding under the former if he saw fit. This position is untenable.

The principle involved is distinctly stated in the opinion of Chief Justice Sterrett in *Building and Loan Association, Appellant v. Building and Loan Association*, 159 P. S. 308. In speaking of a similar change in the method of procedure in securing a change of corporate name, the Chief Justice, quoting from an opinion of Mr. Justice Mitchell in *Newbold v. Pennock*, 154 P. S. 591, said that the two acts could not stand together, without establishing two methods of practice for reaching precisely the same result, nor without making a mongrel method, which is not the one prescribed by either statute. After pointing out that the power to change the name of corporations, conferred by two acts, being then the same but held by different but co-ordinate authorities, he asks how shall it be exercised? He replies:

“This question is answered by the principle that a subsequent statute, revising the whole subject matter of the former, and evidently intended as a substitute for it, although it contains no express words to that effect, must, in accordance with principles of law, as in reason and common sense, operate to repeal the former: *Rhoads v. Building and Loan Association*, 82 P. S., 180.”

The history of legislation in regard to the method of obtaining a change of name is of interest. Originally the matter was covered by the act of April 20, 1869. This was followed by the act of 13th of June, 1883, and the Supreme Court, in reviewing the matter, declared that the act of 1883 was evidently intended as a substitute for the former act so far as it related to corporations of the second class. A new system was devised, and in it a tribunal was created for the amendment of charters, and the act of 1869 was thereby

rendered useless. In the same way the act of the 22d of April, 1903, P. L. 251, supersedes, so far as a change of corporate name is concerned, the act of 1883. Acts which grant a right, conditioned on different things, are clearly inconsistent. The Legislature certainly never contemplated, in passing the act of 1903, that the Secretary of the Commonwealth and the Governor should act jointly. That function, which belonged to the Governor under the act of 1883, was clearly taken away by the subsequent act and lodged in the Secretary of the Commonwealth, and the reasons for the legislative change are apparent in the act itself.

This was precisely the situation dealt with by the court in passing upon the act of 1883, as superseding the act of 1869. It was there pointed out that, while the act of 1869 conferred the jurisdiction upon the courts, and the act of 1883 conferred the jurisdiction upon the Governor, the Legislature never could have contemplated, in the passage of the act of 1883, that the courts of common pleas and the Governor should act jointly. If independently, under which act should proceedings be had? And would a change of name, made under one, satisfy the other; if refused by one could a change be granted by the other? Assuming the act of 1883 as still in force, so far as a change of corporate name was concerned, these and other embarrassing questions, which might be suggested, would give rise to doubt, confusion and endless litigation. There is no apparent reason why this condition of affairs should exist. The methods provided by the two acts look to precisely the same result; they cannot be harmonized; and the act of 22d of April, 1903, would be useless and vain unless it was intended to provide a substitute for the act of 1883. The evident purpose of the Legislature, in passing the act of 22d of April, 1903, and in entitling it "An act regulating the change of corporate titles," was to provide a new, uniform and exclusive method for the amendment of charters in the matter of the names of corporations of the second class.

The application for a change of name in this regard must be rejected as having been improperly presented to you.

I find in the same application a change sought in the purpose for which said company was formed. Originally the purpose, as stated in the charter granted January 20, 1905, was "printing and publishing a periodical trade journal known as Coal and Timber." This it is sought to alter, enlarge and amend so as to read as follows: "The printing and publishing of a periodical trade journal known as Coal, and engaging in a general printing, advertising and publishing business."

I am of opinion that the insertion of the word "advertising" is improper. It introduces a new and distinct business from that of a general printing and publishing business. The purposes for which

corporations for profit can be created under the act of April 29, 1874 contained in item XII "the transaction of a printing and publishing business." If so stated it would constitute a recognized and statutory business purpose. It would carry with it, by necessary implication, and inclusion, the right to publish a trade journal, no matter what name the journal might take, and would also carry with it the right to publish the ordinary business advertisements in the columns of the journal. The insertion of the word "advertising" would therefore be unnecessary in stating the purpose of publishing a journal.

A general advertising business is a separate and distinct thing from a general printing and publishing business. There are several advertising companies or agencies which do not engage in the printing or publishing business, but which act simply as agents for advertisers, and they carry on their lists of newspapers the names of journals, periodicals, weeklies and dailies throughout the entire United States. For this a distinct charge is made to the customer, and, in my judgment, it constitutes a substantially different business from that of printing and publishing. Why should the Commonwealth, when called on to grant such a franchise, lose its bonus as she would do if the word "advertising" were permissible in an amendment of the character sought? The word "advertising" could have no place in an application made under item XII of the second clause of section two of the act of April 29, 1874, because it would embrace a duality of objects, which, under the practice of the department of State and the opinions of the Attorneys General, is improper.

I need go no farther than to cite the opinion of Attorney General Kirkpatrick, given to the Secretary of the Commonwealth under date of January 13, 1888 (see appendix to the report of the Attorney General for 1887-8, page 32), where he states that "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 for dual or incongruous purposes." While the business of advertising may not be strictly incongruous with the business of printing and publishing, yet it can be clearly made so, and if it be a distinct and substantive feature of the purpose for which the corporation is created, it becomes a dual purpose. For this reason I think the application cannot be acted upon favorably by you.

The papers are also defective because the amendment of the act of 13th of June, 1883, as contained in the act of 31st day of March, 1905, P. L. 93, has been overlooked. There is no certificate under the corporate seal that all reports required by the Auditor

General of the Commonwealth have been filed, and that all taxes due the Commonwealth of Pennsylvania have been paid.

I have another and final objection. It is sought to change the name from "The Coal and Timber Publishing Company," which was a descriptive title, to "The C. W. Smith Company," which is entirely colorless. There would be nothing in the new name to indicate that the company was in the printing and publishing business.

The papers are herewith returned to you with these objections, which I think conclusive. If an application is to be made for a *change of name*, it should be in a separate paper filed with the Secretary of the Commonwealth under the act of 22d of April, 1903, P. L. 251. Such a change of name should be sought as would indicate the corporate title, the character of the business to be conducted and not simply the name of an individual in partnership form.

If a *change* in the *purpose* of the corporation is sought to be made by way of enlargement, improvement, alteration or amendment of the original purpose, it should be in a separate paper, with the word "advertising" stricken out, and then, as thus corrected, should be presented to you under the act of 13th of June, 1883, as amended by the act of 21st of March, 1905.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

APPROPRIATION TO THE EASTERN PENITENTIARY—CONSTITUTIONAL LAW—TITLE OF ACT—ACT OF MAY 11, 1905.

That portion of the appropriation act of May 11, 1905, which provides that eight hours shall constitute a day's labor for employes of the Eastern Penitentiary, violates section 3 of article III of the Constitution of Pennsylvania, and is void. The remainder of the act is unaffected by the unconstitutionality of this proviso.

Office of the Attorney General,  
Harrisburg, Pa., June 10, 1905.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth of Pennsylvania, Harrisburg, Pa.

Sir: I have duly considered the communications of William G. Huey and Charles D. Hart, respectively the president and secretary of the board of inspectors of the Eastern State Penitentiary, which were forwarded to me by you with a request for my official opinion.

By an act approved the 11th day of May, 1905, entitled "An act making appropriations to the Eastern State Penitentiary," there was provided for the two fiscal years beginning June 1, 1905, the

sum of \$137,360.00 for salaries of officers, "provided that eight hours should constitute a day's labor and any deficiency in salaries caused by this proviso may be paid out of the contingent fund of said penitentiary." You approved this item in the sum of \$130,000.00 and withheld your approval of the remainder of said item. The board of inspectors have inquired whether your action extended to the proviso that eight hours should constitute a day's labor and while you have expressed an individual opinion, that nothing in the paragraph is affected by withholding the approval except the amount of the item, you have referred the entire correspondence to me with a request for my opinion.

In my judgment the proviso that eight hours should constitute a day's labor, is unaffected by your action in approving the item for a less amount than that named in the act. The question then arises whether the proviso—that eight hours shall constitute a day's labor—is to be read as a condition, performance of which is necessary to the receipt by the Eastern State Penitentiary of the item appropriated, reduced by the extent of your disapproval. The matter is one of consequence to the institution. I am informed that if the eight hour law should become operative, a very much larger sum than that appropriated would be necessary, and there is no contingent fund with which to meet it; and that, under existing circumstances, it would revolutionize the present administrative management of the institution. I have no difficulty in reaching the conclusion that the proviso as to the eight hour law has no place in a special appropriation bill, and that it may be disregarded by the inspectors upon the simple ground that this portion of the act is unconstitutional. The act is entitled "An act making appropriations to the Eastern State Penitentiary;" there is nothing in the title to disclose the legislative intention to introduce into the management or discipline of the institution the eight hour rule. The result is to render so much of the act as the title gives no notice of, unconstitutional. The balance of the act is entirely unaffected. This has been distinctly ruled in the well considered cases of the Union Passenger Railway Company's Appeal, 81 Pa. State Reports, 91, Allegheny County Homes' Appeal, 77 Pa., page 77, and Carother's Appeal, 118 Pa. St., page 488. The provisions of section 3 of article III of the Constitution of Pennsylvania have been entirely ignored. The Constitution provides "that no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title." It is beyond the reach of dispute that the act in question is not a general appropriation bill, and that if it was the purpose of the Legislature to introduce the eight hour rule into the Eastern State Penitentiary, such a purpose ought to be made the subject of a definite bill and its purpose should be clearly expressed

in the title. This has not been done. A covert attempt has been made to introduce the eight hour regulation into the management of the institution by injecting it into an appropriation bill in the shape of a proviso: and there is nothing in the title to put the legislators or the public upon notice as to the contents of the bill. Even had the purpose been expressed in the title, the act would have been unconstitutional on the ground of embracing more than a single purpose; but inasmuch as the act relates to an appropriation and the title refers exclusively to such purpose, it follows that the portion of the act which is not disclosed in its title and which introduces a definite, substantive and independent proviso, may be rejected under the authorities quoted, leaving the appropriation to stand, so far as this item is concerned, affected only to the extent of your withholding of approval in the sum of \$7,360.00.

I am of opinion, therefore, that the inspectors can claim the amount appropriated by this act, as reduced by your act, without being required to introduce into the management of the institution, the eight hour rule.

I have the honor to remain,

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

---

IN RE APPLICATION OF LEHIGH VALLEY PASS. RY. CO. ET AL.—CORPORATIONS—STREET RAILWAYS—MERGER—CONSOLIDATION—ACTS OF FEB. 9, 1901, AND MAY 29, 1901.

A doubt as to whether the agreement of consolidation filed by consolidating street railways with the Secretary of the Commonwealth in accordance with the requirements of the act of May 29, 1901, P. L. 349, does not confer upon the consolidated company greater powers as regards the mode of conveyance of passengers than were enjoyed by the constituent companies under their respective charters, because of a limitation of the motive power to electricity therein, may be removed by a paper subsequently filed, duly signed by their presidents, attested under their corporate seals and properly acknowledged before a notary public, disclaiming any enlargement of the corporate powers of the constituent companies.

The act of Feb. 9, 1901, P. L. 5, entitled "An act to provide for increasing the capital stock and indebtedness of corporations," does not relate to mergers and consolidations.

The act of May 29, 1901, P. L. 349, and the amending act of March 31, 1905, P. L. 95, permit an increase in the capital stock of the consolidated company over the constituent companies in the process of consolidation.

The facts in the case at bar, held, to show that there was in point of fact no increase in the capital stock or indebtedness of the consolidated company over that of the constituent companies.



Office of the Attorney General,  
Harrisburg, Pa., November 2, 1905.

Hon. Samuel W. Pennypacker, Governor:

Sir: I have examined, at your request, the agreement of consolidation and merger made under date of August 16, 1905, between the Philadelphia and Lehigh Valley Passenger Railway Company, the Lehigh Valley Passenger Railway Company, the Allentown and Slatington Passenger Railway Company, and the Coplay, Egypt and Ironton Street Railway Company.

Four objections were raised to this agreement:

1. That it was unaccompanied by certificates of the Auditor General as to the filing of reports and payment of taxes. This objection has since been removed by the payment of the taxes and the filing of the reports.

2. That the charters of the constituent companies determined the business and rights of the new company, and that these should not be stated in the agreement.

Paragraph 7 of the agreement, as presented for your approval, sets forth that "the business of said consolidated company shall be the construction, maintenance and operation of a street railway for public use in the conveyance of passengers by power other than locomotive in and along the routes heretofore occupied by it, and with all the rights, privileges and franchises heretofore vested in each of the consolidating companies, parties hereto, under their respective charters, together with the right of extensions therein and elsewhere as may be conferred by law. The length of the road and lines of the consolidated company are approximately 150 miles."

A doubt arose as to whether or not the said clause, by its terms, provided for larger powers on the part of the consolidated company, as regards the mode of conveyance of passengers, than were enjoyed by the consolidating companies under their respective charters because of a limitation of the motor to electricity. To meet this doubt a paper has been presented, to be considered by you as forming a part of the agreement of consolidation and merger, by which it is declared, in consideration of the premises, that, for the purpose of more effectually complying with the provisions of the act of Assembly approved May 29, 1901, entitled "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874," it is agreed between and understood by the said consolidating companies that the powers in said seventh clause aforesaid, as regards the mode of conveyance of passengers, are and shall be construed to be only such, and no more, as have been heretofore possessed and enjoyed by said consolidating companies under their respective charters, anything

in said clause to the contrary notwithstanding. This paper has been duly signed by the president of each one of the consolidating companies and attested under the corporate seal, and the proper acknowledgments before a notary have in each instance been attached.

While this paper does not in terms disclaim the use or intended use of any other motive power than that of electricity, yet, inasmuch as it provides, upon a fair construction of it, that there shall be no enlargement of the corporate powers of the constituent companies, and that the powers of the consolidated company shall be only such, as regards the mode of conveyance of passengers, as were theretofore possessed and enjoyed by the consolidating companies under their respective charters, and inasmuch as the State could not deprive these companies or the consolidated company of any chartered powers which said companies theretofore possessed, there being no judgment of ouster either on the ground of misuser or non-user, I am of opinion that the paper satisfactorily meets the objection raised. From another point of view, the clause as explained by the supplementary paper, amounts to mere surplusage.

3. The third objection was to the effect that there was an increase of capital stock in the sum of \$2,000,000 without complying with the provisions of the act of February 9, 1901, and, further, that the provisions as to preferred stock should be eliminated, as they were matters of internal regulation with which the State was not concerned.

To avoid repetition in the discussion of this objection, I shall also consider therewith the fourth objection raised to paragraphs 11 and 12, by which it is asserted that there appears to be the creation of a bonded indebtedness without complying with the provisions of the act of February 9, 1901, P. L. 5.

An examination of the papers has satisfied me that the act of February 9, 1901, is inapplicable to the facts of this case. The consolidation is sought to be made entirely under the provisions of the act of May 29, 1901, P. L. 349, and the ground on which the conclusion rests is that the applicability of the act of February 9, 1901, P. L. 5, turns upon the determination as to whether or not there is, as the result of the merger, any actual increase of the capital stock and indebtedness of the corporations merged and consolidated.

The act of February 9, 1901, is entitled "An act to provide for increasing the capital stock and indebtedness of corporations," and it was intended to carry out the provisions of the Constitution in section 7 of article XVI, which declares 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."

An examination of the act of February 9, 1901, satisfies me that

the increase of capital stock and indebtedness of corporations therein referred to related to an increase in stock or debt of corporations acting singly and entirely separate and apart from the thought of merger or consolidation. There is not a single section or line of any section in the act which looks towards merger or consolidation.

The act of May 29, 1901, P. L. 349, does relate in specific terms to merger and consolidation. Its title is "An act supplementary to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, providing for the merger and consolidation of certain corporations." The provisions of the act are in harmony with the thought of merger and consolidation, the first section distinctly declaring that it shall be lawful for any corporation, organized under or accepting the provisions of the general corporation act of April 29, 1874, or any of its supplements, or any other act of Assembly authorizing the formation of corporations, to buy and own the capital stock of, and to merge its corporate rights, powers and privileges with and into those of any other corporation so that, by virtue of this act, such corporations may be consolidated, and so that all the property rights, franchises and privileges then by law vested in either of such corporations so merged shall be transferred to and vested in the corporation into which such merger shall be made.

Section 2 provides that the directors of each corporation may enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporation, which agreement shall prescribe the terms and conditions thereof, the mode of carrying the same into effect, together with the name of the new corporation, and a statement of the number and names of the officers, directors and others who shall be the first directors and officers of the new company. The agreement must also specify the number of shares of capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, with such details as shall be deemed necessary to perfect the said consolidation and merger, but the agreement is not to be effective unless the same shall be approved by the stockholders of said corporations in the manner thereafter provided.

It is further provided that the agreement of consolidation shall be submitted to the stockholders of each of said corporations at separate and special meetings, of the time, place and object of which due notice shall be given by publication once a week for two successive weeks before said respective meetings, in at least one newspaper in the county, or each of the counties in which the principal offices of said respective corporations shall be situate, and at said meetings the agreement of the directors shall be considered, and a vote of the

stockholders in person or by proxy shall be taken by ballot for the adoption or rejection of the same, and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger or consolidation, then that fact shall be certified by the secretary of each corporation, under the seal thereof, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, whereupon the said agreement shall be deemed and taken to be the act of consolidation of said corporations.

Section 3 provides that, upon the filing of said certificates and agreement, or copy of agreement, in the office of the Secretary of the Commonwealth, the merger shall be deemed to have taken place, and the corporations are to be one corporation under the name adopted in and by said agreement, possessing all the rights, privileges and franchises theretofore vested in each of them, and all of the estate and property, real and personal, and rights of action of each of said corporations shall be deemed to be transferred to and vested in the said new corporation without any further act or deed. This is accompanied by a proviso which saves to creditors all rights and liens upon the property of each of said corporations, so that they shall continue unimpaired, and, to give effect to this provision, preserves the existence of the respective constituent corporations for that purpose, and all debts, duties and liabilities of each of said constituent corporations are thenceforth to attach to the new corporation, to be enforced against it to the same extent and by the same process as if said debts, duties and liabilities had been contracted by it.

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

The remaining provisions of the act are immaterial to this discussion.

This act was amended by the act of March 31, 1905, P. L. 95, by adding a proviso that new letters-patent of such consolidated corporations shall not be issued by the Governor of the Commonwealth until there shall have been filed with the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of

the Commonwealth have been duly filed and that all taxes due the Commonwealth of Pennsylvania have been paid.

It is under the act of May 29, 1901, and the amending act of March 31, 1905, that this consolidation is sought to be made. I have already pointed out that the act of February 9, 1901, does not relate to mergers or consolidations. It can be applicable only in the event of its appearing that there is, in point of fact, an increase in the stock and debt of the consolidated company over and above the stock and debts of the constituent companies. If no such increase in either or both should appear, then, in my judgment, the act of February 9, 1901, is inapplicable, not only in terms, but in substance; and I am further of opinion that the act of May 29, 1901, is a general law within the meaning of section 7 of article XVI of the Constitution of Pennsylvania, and that if, in point of fact, it authorizes an increase of stock in a manner somewhat different from the act of February 9, 1901, it must be taken to be a modification or repeal pro tanto of the earlier act. That the act of May 29, 1901, as amended by the act of March 31, 1905, contemplates the possibility of an increase in capital stock as the result of the consolidation appears from the language occurring in both acts, which prescribe, as a prerequisite to the effectiveness and completion of the merger and consolidation, that there shall be paid to the State Treasurer a bonus of one-third of one per centum on all its corporate stock in excess of the amount of the capital stock of the several corporations so consolidated, upon which the bonus required by law has been theretofore paid.

This provision, so far as I can see, cannot be construed in any other way than as permitting an increase of stock in the process of consolidation. It cannot be interpreted to mean an increase by the consolidated company after the merger, because it provides that the merger itself shall not be complete until the bonus is paid; nor can it be interpreted to mean that the constituent companies must increase their stock before consolidating, because it is the stock of the consolidated company, and not of the constituent companies, upon which the act of March 31, 1905, amending the third section of the act of May 29, 1901, requires the bonus to be paid.

I do not feel called upon to discuss the question whether these words are sufficient in themselves to constitute the right to increase capital stock in a manner different from that prescribed by the act of February 9, 1901, because an analysis of the present plan has convinced me that there is, in point of fact, no increase of stock or indebtedness of the consolidated company to an amount in excess of the stock and debts of the constituent companies; and it follows that, if there be no increase of debt or of capital stock as the result of carrying out the plan of merger and consolidation, the act of February 9, 1901, is inapplicable.

What has been done, or rather what is sought to be done, under the plan now submitted to your approval, is a shifting about and a readjustment of the capital stock and bonded debts and other obligations of the old company in such a manner as to effect a change of securities, and a change in the status of creditors of the corporation in a manner mutually agreeable and satisfactory to all, so as to result in a final creation of a new debt of the consolidated company less in amount than the debt of the constituent companies; and moreover, it appears that whatever increase there is in the capital stock is the result of an exchange of the positions of certain creditors of the old companies, so that, by surrendering their claims, they become stockholders in the new corporation, and thus give full value therefor.

The aggregate capital stock of the constituent companies amounted to six millions of dollars. The aggregate debts of the constituent companies amounted to \$8,900,000. By following out the details of the plan stated in the agreement of consolidation and merger, it becomes clear that, while the stock of the new company is fixed at eight millions of dollars—of which three millions is common stock and five millions preferred stock—yet two millions of this new stock is represented by a corresponding amount of claims against the old companies, surrendered in such a manner as to convert the position of creditor into that of stockholder to the extent of the claims surrendered. In this way the indebtedness of the company is diminished while the stock of the company is increased, but the conversion of the creditor into stockholder, so far as the position of the stockholder is concerned, is somewhat the worse, while the position of the company is improved.

It also appears that of the consolidated mortgage bonds of the two issues of 4 and 5 per cent., amounting in the aggregate to \$7,500,000, five millions are reserved for the express purpose of retiring five millions of first mortgage bonds thereinbefore provided for. Hence, this five million dollars of bonds is not to be regarded as an increase of debt, but simply a change of form in the debt itself, without adding to its amount. The plan seeks to make exchanges in such a manner as to get out all the different kinds of stocks and bonds required by the plan, the increase in amount above the aggregate of the bonded stocks and indebtedness of the reorganized companies being no more than sufficient to cover, in addition thereto, the costs and expenses of the foreclosure proceedings, and the whole issue of every kind being less in amount than the stocks and indebtedness of the old companies.

On final analysis, therefore, I am satisfied that there is no substantial increase in either stock or bonds unrepresented by value. The value is clearly there. Creditors have surrendered their claims

for stocks, and consolidated bonds are created for the purpose of retiring old obligations. This feature of the case distinguishes this agreement from the one presented to your consideration in the Bellevue and Perrysville Street Railway Company and the Howard and East Street Railway Company (Opinions of the Attorney General, 1903-04, page 42).

I am of opinion, further, that the mere statement that the stock proposed to be issued shall consist of three millions of common stock and five millions of preferred stock is not objectionable. True, it is a detail of corporate management, but these details would seem proper to be set forth under the directions prescribed as features of the joint agreement by section 2 of the act of May 29, 1901, which expressly requires that there shall be set forth in the agreement of merger and consolidation the terms and conditions thereof, the mode of carrying the same into effect, and the number of shares of the capital stock, the amount or par value of each, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation. Besides this, it would seem important to advise the public, by a statement contained in a paper, which, when approved by you, practically acts as a new charter, of the exact number of shares of common stock which are authorized, and of the number of shares of preferred stock which are also authorized. Certainly no harm can come from such a notice, and great possible advantage might result.

On the whole, therefore, I am of opinion that the articles are in proper form and should meet with your approval.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### INSANE PRISONERS.

The court which convicted a prisoner of murder has power to direct the removal of that prisoner (who is insane) from the Eastern State Penitentiary to an insane asylum, where he may receive proper treatment, notwithstanding the fact the Board of Pardons had commuted his death sentence to life imprisonment.

Office of the Attorney General,  
Harrisburg, Pa., January 11, 1906.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth of  
Pennsylvania:

Sir: Sometime ago you referred to me a letter addressed to you by the secretary of the Board of Inspectors of the Eastern State Penitentiary in the case of a convict, James H. Jacobs, under sentence

imposed in Lancaster county, and reported to be insane. It stated that repeated efforts were made to have Judge John B. Livingston, of that county, direct the prisoner's removal to an asylum because the Board of Inspectors had no adequate means of treating him properly; that the prisoner should have every chance, however slight, of recovering his reason, but that his frequent attacks of violent mania occasioned distress to other prisoners, and that, although the prisoner has been pronounced insane by regularly appointed commissions, no action has ever been taken by the Lancaster county court. The letter states further that Judge Landis, at present holding office as successor to Judge Livingston, is unable to act, although willing to do so, because the matter has been taken out of his jurisdiction through the action of the pardoning power in commuting Jacobs' sentence from capital punishment to life imprisonment. The letter concludes by asking that you should interpose in the matter.

The act of 14th of May, 1874 (P. L. 160), entitled "An act to provide for the custody of insane persons charged with and acquitted or convicted of crime," does not in terms cover the facts of this case because there is no express provision for the removal of an insane prisoner to an asylum whose death sentence has been commuted to life imprisonment. I find no other act of Assembly remotely bearing upon the point, nor the decision of any court directly touching the question. The case of *Commonwealth v. Briggs*, 16 Philadelphia. 438, decides that the act of 1874 did not apply to a prisoner under sentence of death. It will be observed, however, that in this case Jacobs is not under sentence of death, said sentence having been commuted to life imprisonment. It was held by Judge Pierce in that case that a prisoner, convicted of murder and under sentence of death, was remitted by authority of law to the control of the Executive, either for execution of the sentence, commutation or pardon, but as this prisoner is now serving a term of life imprisonment, I am unable to see why, upon application made to the court of Lancaster county, which pronounced sentence, a commission should not be regularly appointed and an inquiry made into the mental condition of Jacobs, and upon said commission finding that he has become insane, it would seem that the Lancaster county court could act in the premises in the same manner as though he were confined under a sentence regularly imposed by said court. I suggest that the matter be again brought to the attention of Judge Landis, and that this view of the case be communicated to him.

I herewith return the letter.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.



IN RE PITTSBURGH, YOUNGSTOWN AND ASHTABULA RAILWAY CO.  
--RAILROADS--MERGER AND CONSOLIDATION--ACTS OF MARCH 24,  
1865, APRIL 4, 1868, JUNE 4, 1883, MAY 13, 1889, FEB. 9, 1901, AND MAY 29,  
1901.

The acts of March 24, 1865, P. L. 49, April 4, 1868, P. L. 62, June 4, 1883, P. L. 67, and May 13, 1889, P. L. 205, relating to the merger and consolidation of railroad companies, are not repealed, either expressly or by implication, by the acts of Feb. 9, 1901, P. L. 5, and May 29, 1901, P. L. 249, but are in full force, and provide a method of consolidation and merger which stands separate and apart from the later acts. Aside from this, the act of Feb. 9, 1901, P. L. 5, is inapplicable to cases of consolidation and merger.

Under the act of May 13, 1889, P. L. 205, the amount of the capital stock and bonds of the consolidated company can be in excess of the authorized and outstanding issues of the consolidating companies when necessary to equalize the interests of the parties to the consolidation or otherwise, but must not be in excess of the actual value of their corporate property and franchises, which latter fact must be verified by the affidavit of the president and principal engineer, nor must they exceed the sum of \$150,000 of stock and \$150,000 of bonds per mile. There must also be an acceptance in writing of the provisions of the Constitution of 1874.

Two railroad companies agreed to consolidate. The original capital stock of one was \$3,000,000 and of the other \$700,000. There had been put into the property of the first out of income about \$6,100,000, and into the second enough to make the stock worth \$2,000,000, in addition to paying off a bonded debt of \$250,000. The earnings of the second company represented the same rate of per cent. of earnings as that made by the first company. The consolidation provided for an issue of \$15,000,000 of stock for the consolidated company, whose total mileage was 140 miles, and authorized, but did not actually issue, a bonded indebtedness of \$15,000,000. Part of this latter was to be reserved to pay the mortgage indebtedness of one of the constituent companies. Held, that the consolidation did not violate section 7 of art. xvi of the Constitution of Pennsylvania, providing that "no corporation shall issue stocks or bonds except for money, labor done or money or property actually received."

Office of the Attorney General,  
Harrisburg, Pa., January 31, 1906.

Hon. Samuel W. Pennypacker, Governor:

Sir: I have before me, under your reference, the papers embodying the agreements relating to the consolidation and merger of the Pittsburgh, Youngstown and Ashtabula Railroad Company and the New Castle and Beaver Valley Railroad Company into the Pittsburgh, Youngstown and Ashtabula Railway Company. Two objections have been raised by the State Department:

1. That paragraph 4 of the agreement shows an increase in the capital stock of \$11,000,000, which the act of 1901, relating to the consolidation of corporations, does not authorize.

2. That paragraph 8 shows an increase in the bonded indebtedness of nearly \$12,000,000, which does not represent any property owned by the corporation.

There is a note appended to the first objection that the increase of the capital stock, does from the evidence, seem to represent property owned by the corporation.

In your letter referring the matter to me, you state that, after reading my opinion in the case of the Bellevue and Perrysville Street Railway Company and the Howard and East Street Railway Company for letters-patent (see Opinions of the Attorney General, 1903-4, page 42), and likewise my opinion In re the Application of the Lehigh Valley Passenger Railway Company, et al., 15 District Reps. —, you are in grave doubt whether the application can be granted.

I reply that, in my judgment, neither of these opinions is applicable to the case in hand. The features present in the first case and found to be objectionable are absent from the one now under discussion, and the second case is inapplicable because the consolidation and merger therein made was confessedly under the act of May 29, 1901, P. L. 349.

The present consolidation is made under the acts of March 24, 1865, P. L. 49, and May 13, 1889, P. L. 205, and incidentally under the acts of April 4, 1868, P. L. 62, and June 4, 1883, P. L. 67, and is not attempted to be made under the act of February 9, or of May 29, 1901. The earlier acts are in full force and are not repealed, either expressly or by implication, by the later acts. The act of February 9, 1901, it is true, contained a repealing clause in the 4th section of all acts or parts of acts inconsistent therewith, but it was shown by the Supreme Court, in the case of *Com. v. Railroad Co.*, 207 Pa. 154, that the act of June 4, 1883, P. L. 67, which was a supplement to the act of April 4, 1868, was not repealed because of inconsistency with the act of February 9, 1901, and that the two acts clearly stood together, the distinctions between them being specifically dwelt upon by Mr. Justice Brown. But, apart from any consideration of this decision, I am satisfied that the act of February 9, 1901, is inapplicable to cases of merger and consolidation. There is not a word in the entire act which glances in that direction. The act, when read attentively, discloses the thought that it refers to cases where an increase in stock or debt is the sole purpose sought, and that it does not contemplate cases of an increase as incidental to consolidation.

So far as the act of May 29, 1901, P. L. 349, is concerned, there is no repealing clause whatever; nor is there any such repugnancy in its provisions with earlier acts as to suggest a repeal by implication. It is true that the act does in terms relate to merger and consolidation, and though the title does not disclose its reference to railroads, yet its text sustains the conclusion that it was meant to include them. But the act, while prescribing a method of procedure to be followed in cases of consolidation, contains no repealing

clause, and I cannot discover any intention to supplant the system long in existence, under the acts invoked in this case, so clearly expressed as to force upon the mind the thought of a repeal by implication. The act itself is a supplementary and not a repealing statute. Hence, I conclude that the acts under which the present consolidation and merger is attempted are in full force, and that they provide a method of consolidation and merger which stands separate and apart from the later acts.

The question, therefore, arises: Are the papers submitted within the terms of the acts applicable to the precise situation; or, to put it in another way, have the two constituent companies the right to provide in their agreement of consolidation into the Pittsburg, Youngstown and Ashtabula Railway Company that the new company shall have an authorized capital stock of \$15,000,000 and an authorized indebtedness of \$15,000,000? The answer to this question depends upon the aggregate amount of mileage of the two roads consolidated, and also upon the legal limit fixed by the statutes as to the capitalization and indebtedness based upon such mileage.

The facts are that the Pittsburg, Youngstown and Ashtabula Railroad Company was incorporated in Pennsylvania in 1887. It had an authorized capital stock of \$4,000,000, of which about \$3,300,000 had been issued, and an authorized bonded indebtedness of \$4,000,000, of which \$3,062,000 was outstanding. Its mileage was 125 miles.

The New Castle and Beaver Valley Railroad Company was incorporated in Pennsylvania in 1862, with an authorized capital stock of \$700,000, all of which had been issued, and an authorized bonded indebtedness of \$250,000, which has long since been paid off. The mileage of this road was 15 miles. The aggregate mileage of the two roads is 140 miles.

The act of March 24, 1865, P. L. 49, was a supplement to an act regulating railroad companies, approved February 19, 1849. It expressly authorized a railroad operating under the laws of this Commonwealth, either wholly within or partly within this State, under the authority of this and any adjoining state whose laws authorize a like consolidation, to merge and consolidate its capital stock, franchises and property with any other railroad company or companies organized and operated under the laws of this or any other state, whenever the two or more railroads or the companies or corporations so to be consolidated should form a continuous line of railroad with each other or by means of any intervening railroad, and the consolidation was to be made under the conditions, provisions and restrictions of the act, which prescribed, *inter alia*, the terms and conditions of such consolidation, the number of shares of the capital stock, the amount of par value of each share, the manner of con-

verting the capital stock of each of said companies into that of the new corporation, and such other details as were necessary to perfect the new organization and the consolidation of such companies or railroads.

Under the act of May 13, 1889, P. L. 205, which was an act prescribing the amount of stocks and bonds which may be issued by railroad companies heretofore or hereafter consolidated and merged, it was specifically provided that, whenever any merger and consolidation of the corporate rights and franchises between two or more railroad companies shall be made under the laws of the Commonwealth, such railroads being neither parallel nor competing lines, it shall and may be lawful for the companies to specify, in the joint agreement for such consolidation and merger, what amount of capital stock and bonds of the consolidated company shall be issued to the stock and bondholders, or either, of any one or more of said several railroad corporations, parties to the agreement, in lieu and exchange for the stock and bonds held by them in the consolidating companies. The amount of stock or bonds, or either of them, so issued or to be issued by the consolidated company to the stock and bondholders, or either, of any one or more of said constituent companies, may, when necessary to equalize the interests of the parties to the said joint agreement or otherwise, be in excess of the amount of the authorized and outstanding issues of such company or companies, but shall not be in excess of the actual value of the corporate property and franchises of such constituent company or companies vested in the consolidated corporation pursuant to such merger and consolidation, nor shall the aggregate amount issued by said consolidated company exceed the sum of \$150,000 of stock and \$150,000 of bonds per mile of the railroad, so that the sum total of stock and bonds of such company shall not exceed \$300,000 per mile.

These features of the act of 1889, strongly similar to those of the act of 1883, are present in the case under consideration, and the statutory limit as to the amount of stock or bonds has not been exceeded. It is clear that, at the rate of \$150,000 per mile, the amount of capital stock which the consolidated company of 140 miles might lawfully be authorized to issue would be \$21,000,000, and a like sum would mark the legal limit of the bonded debt. The proposed issue of stock, however, is \$15,000,000, and the authorized issue of bonds is also the sum of \$15,000,000. Both amounts, therefore, are clearly within the statutory limit.

There is also a proviso in the act of May 13, 1889, that where the amount of stock and bonds, or either, to be issued by the consolidated company to the stock and bondholders, or either, of any one or more of such constituent companies shall be in excess of the aggregate amount of authorized and outstanding stock and bonds, or

either, of such company or companies, the agreement shall be accompanied by the affidavit of the president and principal engineer of such constituent company or companies that the actual cash value of the property of such constituent company or companies is equal to the amount of stocks and bonds, or either, to be issued to its or their stock or bondholders, or either. There is also a specific provision that, whenever any merger or consolidation of two or more railroad companies shall have heretofore been made, the consolidated company so formed shall have the same power to increase from time to time its capital stock and indebtedness, not in excess of the actual value of its property and franchises, upon filing with the returns of the increase of said capital stock or indebtedness, the affidavits prescribed in the 1st section of the act; and there is a further provision that no company or companies shall have the benefits conferred by the provisions of this act unless they accept in writing the provisions of the Constitution of 1874.

It is clear to me that the two constituent companies had the right and privilege to prescribe, in their agreement of consolidation, inter alia, the terms and conditions thereof, the number of shares of the capital stock and the amount of par value of each share. This they did under the act of March 24, 1865, P. L. 49. They had also, under the act of May 13, 1889, P. L. 205, the further right and privilege in said agreement to prescribe the amount of capital stock and bonds to be issued at an amount "in excess of the authorized and outstanding issues of such companies," either, first, "when necessary to equalize the interests of the parties to said joint agreement," or, second, "or otherwise," with, however, two, and but two, limitations: First, that the amount "shall not be in excess of the actual value of the corporate property and franchises of such constituent companies vested in the consolidated company;" and second, that the aggregate amount issued shall not exceed \$150,000 worth of stock and \$150,000 worth of bonds per mile of railroad.

In other words, I find that the right of the consolidated company to issue stock and bonds is not limited solely to the amount necessary to take up or provide for the obligations or stock of the constituent companies, but that, while this may be, and in most cases is, a necessary feature of a consolidation, yet there remains, over and above this, a distinct right in the new company, resulting from the legal fact of consolidation, to authorize an issue of stock and of bonds at some future time under such restrictions as the directors or stockholders may see fit to impose, provided the statutory limit be not exceeded. In other words, the consolidation agreement must be read as the charter of the new company, specifically fixing the amount of its stock and the amount of its authorized bonded debt. The uses to which a part of either stock or bonds may be put

in providing for the issues of the old company do not exhaust the power to fix the amount of either capital in the shape of stock or bonds, but simply indicate that, so far as the stock is concerned, which is used in the exchange, it is full paid stock, and that, so far as the bonds not yet issued are concerned, there is simply an authorization of indebtedness, such authorization to be acted upon at a later time when the bonds are actually issued.

It is also clear to me that the new company, after consolidation, undoubtedly had the same right as either of its constituent companies to increase its capital stock under the act of 1868, as amended by the act of 1883, to the extent and by the method therein prescribed. Upon this point the case of *Com. v. Railroad Co.*, 207 Pa. 154, is an express authority. It was there held that railroad companies organized under the act of April 4, 1868, P. L. 62, may, under the authority of the act of June 4, 1883, P. L. 67, increase their capital stock up to \$150,000 per mile without the payment of any bonus, and that the act of June 4, 1883, P. L. 67, was not inconsistent with, nor was it repealed by the act of February 9, 1901. I may add that I see no authority for holding that it was repealed by the act of May 29, 1901, P. L. 349. It is to be observed that this decision was rendered in the year 1903, two years after the passage of the acts of February 9, 1901, and May 29, 1901.

I also am clear that, although the new railway company would have had the undoubted right to increase its capital stock under the later acts of February 9, 1901, or May 29, 1901, yet the right to proceed under the prior acts was not affected by the later legislation. Confusion may be guarded against by attention to the fact that the consolidation and merger results in the creation of a new corporation, and that the specification in the consolidation agreement of the amount of capital and bonded debt is not really to be treated as an increase, even though it may exceed numerically in amount the stock and bonded debt of the constituent companies.

It must be observed that the Pittsburgh, Youngstown and Ashtabula Railway Company, formed by the consolidation agreement, is an entirely new corporation created by the consolidation agreement of the constituent companies, and by the action of the State in approving, accepting and filing such agreement. Such a result is in accordance with the language of the acts of Assembly and with the general principles of corporation law, by which it is well established that where two companies agree together to consolidate their stock, issue new certificates, take a new name, elect a new board of directors, and the constituent companies are to cease their functions, a new corporation is formed thereby, subject to existing laws. There are many cases upon the subject, but it is sufficient to refer

to Yazoo and Mississippi Valley Ry. Co. v. Adams, 180 U. S. 1, the opinion being delivered by Mr. Justice Brown.

It is also to be observed that the old Pittsburg, Youngstown and Ashtabula Railroad Company did not by this agreement increase its capital stock, nor did the New Castle and Beaver Valley Railroad Company increase its capital stock. The result of the consolidation agreement is that a new company, the Pittsburg, Youngstown and Ashtabula Railway Company, was born, and the agreement of consolidation specifies, within the limitations imposed by the statute, the number of shares of capital stock and the amount and par value of each share, and also the amount of the authorized indebtedness, the limitations imposed by the act of 1883 and 1889 being carefully observed. That which the Legislature saw fit to provide by these acts as to the extent of such issues, whether of capital stock or of bonds, was that in no case should they exceed the sum of \$150,000 per mile respectively.

The only remaining question is as to whether the constitutional limitation prescribed by section 7 of article XVI, that "no corporation shall issue stocks or bonds except for money, labor done, or money or property actually received," has been observed, and as to this, upon analysis of the agreement of consolidation, I note that the consolidation is to be effected upon the stipulation that for two shares of the common or preferred stock of the Pittsburg, Youngstown and Ashtabula Railroad Company, of the par value of \$50, there shall be issued by the new company three shares, of the par value of \$100, of its 7 per cent. non-cumulative preferred stock, and that for two shares of the stock of the New Castle and Beaver Valley Railroad Company, of the par value of \$50, there shall be issued by the new company three shares, of the par value of \$100, of its common stock.

It is observable that the amount of stocks and bonds to be issued by the consolidated company is in excess of the aggregate amount of authorized and outstanding stock and bonds of either of such companies so consolidating, but that this is not forbidden by the statute, but is expressly authorized, is clear from a reading of the act of May 13, 1889, P. L. 205, which prescribes the character of the papers which shall effect the consolidation agreement, and which shall be under the oath of the president and principal engineer of the constituent companies. This requirement has been met by the filing of the affidavit of James McCrea, president, and of Thomas Rodd, principal engineer.

I have had furnished to me, in addition, a statement of Mr. McCrea, the president, which I personally took from his own lips, and which makes it clear, sustained as it is by the other papers in the case, that the actual value of the stock of the consolidating com

panies is not fairly represented by their par value. It appears that the original capitalization, both of stock and bonds, was very small, the roads having been built at a time when everything was cheap, and there was but little business to make them valuable, but that the growth of the iron business made them exceedingly remunerative, and, as a result, in the case of the New Castle and Beaver Valley Railroad Company, the original bonded indebtedness was paid off out of its income, and that likewise a third mortgage of the Pittsburgh, Youngstown and Ashtabula Railroad Company was similarly paid off, and that all capital expenditures were paid for out of income; and that, as a result, the Pittsburgh, Youngstown and Ashtabula Railroad Company, has put into its property out of its income an amount equivalent to the increase in its stock, and that the same can be said of the New Castle and Beaver Valley Railroad Company, which has not a dollar's worth of indebtedness, and has earned for several years past between 50 and 55 per cent. on its capitalization of \$700,000. So far as the Pittsburgh, Youngstown and Ashtabula Railroad Company was concerned, the new capital is fixed on the following basis: The original stock was about \$3,000,000. There had been put into the property out of the income about \$6,100,000, which was twice as much as the original capital, and therefore equivalent to a stock dividend of 200 per cent. Therefore, the capital of the new company represents money actually put into the property.

In the case of the New Castle and Beaver Valley Railroad Company, the original stock was \$700,000, the bonded debt \$250,000, the bonded debt being paid off out of income, and about \$500,000 were expended in double tracking out of the income, and other betterments had been made so as to make the stock worth at least \$2,000,000. As the earnings of the property for the last five years have represented the same rate of per cent. of earnings as that made by the Pittsburgh, Youngstown and Ashtabula Railroad Company, it seemed but fair to the officers that the same proportionate increase should be made as was done in the case of the Pittsburgh, Youngstown and Ashtabula Railroad Company. That which has been done appears to be entirely within the terms of statutory authority prescribed by the act of May 13, 1889, that whenever it is necessary to equalize the interests of the parties to the joint agreement, stock or bonds may be issued by the consolidated company to the stock and bondholders of the consolidating companies, and that, while the amount so allotted may be in excess of the amount of the authorized and outstanding issues of such company or companies, yet the excess is not prohibited, the only limitation being that the excess shall not be in excess of the actual value of the corporate property and franchises of such constituent company or companies,



In view of the market value of these securities, which, I am also advised by Mr. McCrea, amounts, as a minimum for the stock of the new Pittsburgh, Youngstown and Ashtabula Railway Company, to \$150 for the preferred stock and \$200 for the common stock, I cannot conclude that the proposed \$15,000,000 of stock is in excess of its actual value, and I take it that the note of the State Department, appended to its objection, is an admission that, so far as the stock is concerned, the requisite value exists. It is clear that the features of lack of value, animadverted upon in the case of the Bellevue and Perryville Street Railway Company and the Howard and East Street Railway Company, are not present in this case.

As to the proposed bonded indebtedness, I do not find that there is an actual issue of bonds to the extent of \$15,000,000, or that the stockholders are to receive any of these bonds as a part of the transaction. It is simply a proposition that the bonded debt shall be authorized in the amount of \$15,000,000, and that as to this there is reserved to pay the first mortgage of the Pittsburgh, Youngstown and Ashtabula Railroad Company, due August 1, 1908, the sum of \$1,500,000, and there is reserved to pay the first consolidated mortgage debt of the Pittsburgh, Youngstown and Ashtabula Railroad Company, due November 1, 1927, \$1,562,000, making a total amount reserved, to be applied to indebtedness as above described, of \$3,062,000. The balance, consisting of \$11,938,000, is to be issued from time to time as authorized by the directors for improvement of the company's property, the purchase and construction of additional railways and for other lawful purposes.

The question as to the bonds, therefore, is reduced to the simple inquiry, can the company authorize the creation of this debt in the consolidation agreement? For, inasmuch as part of the bonds are to be used to retire existing indebtedness, and the remainder of the bonds are not yet issued, the question of their being issued without consideration drops out of the case.

I find in the acts of Assembly hereinbefore referred to, and particularly the acts of 1883 and 1889, the necessary authority. The act of 1889 expressly speaks of the amount of bonds issued or to be issued, and the proviso repeats the expression, the only limitation being that, where the bonds so to be issued, shall be in excess of the aggregate amount of the outstanding bonds of the constituent companies, the actual cash value of the property of such constituent company or companies must be equal to the amount of bonds to be issued; and that the same shall be verified by an affidavit of the president and principal engineer. This has been done, and in fixing the amount of the proposed bonded indebtedness it is shown that the following conditions governed:

1. That a custom in consolidation was followed because it was

desired that the stockholders of the companies that were being combined should understand the result of the consolidation.

2. That, while there is but \$3,062,000 of existing debt, the growth of the district and the probability that within the comparatively near future it would be necessary to provide funds for further extensions and enlargement of facilities, made it wise that any mortgage that should be made to secure bonds subsequently to be issued should be large enough to provide for such extensions and improvements, because, if not so made, any other funds that would have to be raised would be a second lien on the property instead of a first as contemplated in the mortgage.

3. That the act of consolidation did not of itself create the mortgage, because the stockholders of the new company will have to be convened in order to approve of the mortgage, and thus it is clear that the bonded debt cannot, in point of fact, be created or the bonds actually issued without the further action of the stockholders and directors. The authorization of a debt is distinct from its creation.

For these reasons I recommend that the papers shall be directed to be filed in the Department of the Secretary of the Commonwealth.

I observe that the papers are accompanied by the certificate of the Auditor General that all reports due to the Auditor General's Department up to January 1, 1906, have been made, and that all taxes due from the constituent companies to the Commonwealth of Pennsylvania have been fully paid into the State Treasury.

I consider it necessary, however, before the papers take final effect, that there shall be an acceptance in writing of the provisions of the Constitution of 1874, filed in the office of the Secretary of the Commonwealth, as required by the 2d section of the act of May 13, 1889.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

---

ACTUARIAL FEES—INSURANCE—INSURANCE DEPARTMENT—FEES OF ACTUARY—RIGHT TO—CLAIM OF COMMONWEALTH—DUTY OF ATTORNEY GENERAL—STATUS OF ACTUARY—CHARACTER OF PAYMENT TO ACTUARY—PAYMENT OF FEES INTO STATE TREASURY—CRIMINAL PROCEEDINGS—PROCEDURE FOR COLLECTION OF ACTUARIAL FEES—RESPONSIBILITY OF INSURANCE COMMISSIONER—MISFEASANCE—DISCOVERY AND ACCOUNTING—ACTS OF 1873, 1876, 1883, 1885, 1887 AND 1895.

The substantive features of the statutes, relating to the Insurance Department reviewed.

The fees collected by the Insurance Commissioner and by him paid into the State Treasury fall into two classes, denominated State and personal fees respectively.

The State fees collected by the Insurance Commissioner arise under the original act of April 4, 1873, and the supplementary act of May 1, 1876.

The personal fees are claimed by the Insurance Commissioners under the act of June 5, 1883, and the amendment of June 3, 1887, under the act of April 26, 1887, and the act of June 25, 1895. Not until the year 1891 was any such claim made by the Commissioner. There is a manifest and substantial difference between the theory and conduct of the first Commissioner and the later Commissioners.

The decree of the Dauphin county court, to No. 286, March term, 1842, awarding a peremptory mandamus in a case stated, thereby sustaining the claim of Commissioner Luper to personal fees (\$90 for "special licenses," "amended charter" and "license to company"), is unsatisfactory, inasmuch as the grounds of the decision were never reduced to writing (no opinion filed). That proceeding, however, judicially established the right to the moneys received at that time.

The fundamental question is to whom does the compensation, paid by the insurance companies to the actuary for the valuation of policies, belong? That is a new phase of the question which has never been judicially decided.

The claim of the Commonwealth cannot be defeated by the nominal interposition of an unqualified man between the State Treasurer and the man who actually did the work under the arrangement by which the work was done for a very insignificant part of the moneys actually paid.

It is sufficient for the Attorney General to ascertain whether there is a fair question for judicial determination.

Doubted, whether the actuary comes within the terms of the act of June 3, 1885, P. L. 60, as he was not a salaried officer and was not paid by the warrant of the Auditor General.

The actuary may be an employe of a State officer, compellable to pay into the State Treasury all fees received, even though such fees might be subsequently checked out as belonging to the officer making payment. The question arises on the 6th and 7th sections of the act of 1873 particularly, as well upon a purview of the entire act taken in connection with the act of May 1, 1876.

The compensation of the actuary might well be regarded as a fee. A fee is a payment for services rendered by a public officer as compensation for particular acts or services rendered in the line of duty, to be paid by the party obtaining the benefit of the services. The compensation of the actuary is not salary nor is it a gift.

There is no overwhelming reason for treating the receipts of the actuary as different in legal character from the other receipts of the Insurance Department.

The act of 1885 may be entirely disregarded and the duty of report and payment by the officer receiving the fees rests solely on the language of the act of 1873 creating the Insurance Department. The purpose of the act was to create a fund to maintain the department.

Moneys having been collected under a claim of right not yet determined to be a mistaken one, and the practice having been so long persisted in and by so many individuals acting entirely without concert, criminal proceedings should not be instituted. Nor is there any statute on which to base an indictment.

The actuary fees received by the Insurance Commissioners and their employe should be accounted for on the theory that they were moneys had and received for the use of the State and not yet accounted for. This can be done by bills in equity. The head of the department is also responsible for moneys paid to persons not properly on the pay roll and who rendered no service.

Discovery and an accounting should also be had in the matter of moneys paid by the companies to the actuary for official examinations,

Misfeasance is not equivalent to crime, and where the Commissioners, of whose acts complaint is made, are out of office, a proceeding to obtain judgment of ouster would be futile.

Office of the Attorney General,  
Harrisburg, Pa., February 23, 1906.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth of  
Pennsylvania:

Sir: I have read with care the testimony taken by the legislative commission to examine into the conduct of the Insurance Department and am now prepared to state my conclusions.

The matter is of grave importance. It concerns the conduct of a Department which has produced revenues for the State of upwards of \$72,000 per annum, eliminating entirely the question of disputed fees. The present Insurance Commissioner is not involved in it, as the testimony shows that he has made no collections of money nor of fees, except those conceded to be his own, and has never shared nor attempted to share in the actuary's fees. The men whose salaries were found to be irregular were all dropped from the roll after his entrance into office, and the inquiry, as conducted by the legislative commission, relates entirely to the past.

Much of the testimony was elicited for the purpose of enabling the Legislature to prepare a more perfect law to govern the Department, and to guard against what has been amply shown to have been a dangerous laxity in the past. With this function I have no official concern. I shall deal only with those portions which bear upon possible claims of the Commonwealth against former insurance commissioners, employes and other individuals for a pecuniary accounting in large amounts, and whose conduct provokes the inquiry whether criminal proceedings shall be instituted by the proper district attorney or those looking towards accountability for malfeasance in office.

Before attempting an interpretation of any of the acts of Assembly bearing upon the matter in hand, I shall first state the substantive features of the statutes.

The Insurance Department was established by the act of April 4, 1873, P. L. 20, with a chief officer denominated the Insurance Commissioner, under a bond of \$10,000 conditioned for the faithful discharge of the duties of his office, whose term was limited to three years, and whose salary was fixed at the annual sum of \$3,000. He was authorized to employ, with the approval of the Governor, a deputy who was to receive an annual salary of \$1,800, and three clerks to be paid at the same rate and in the same manner as clerks in the office of the Secretary of the Commonwealth. The

clerks were to perform such duties as were assigned to them. An office was to be provided for him by the Commissioners of Public Buildings and Grounds, and with the approval of these Commissioners he was, from time to time, to procure furniture, stationery and other conveniences for the transaction of his business, the expense of which was to be paid on his certificate and the warrant of the Auditor General. His duties were to see that all laws of the State respecting insurance companies and their agents were executed faithfully; to license agents; to file charters and furnish copies; to calculate or cause to be calculated the net value of policies in force in life companies upon the basis of the American experience tables of mortality, and four and one-half per cent. interest per annum, with an express proviso as to how the reserve of certain companies was to be computed and how the net value of a policy was to be taken; to calculate the re-insurance reserve for unexpired risks in fire companies and in marine and inland insurance. He was clothed with visitorial powers, with a view of guarding against corporate insolvency and was enjoined to take certain proceedings in the event of certain conditions. He was empowered, either in person or by one or more examiners by him commissioned in writing, to require access to the books and papers of any insurance company or agent, to visit offices, to revoke certificates and to institute suits for violations of the act. He was also empowered to employ an actuary, to make the valuation of life policies, at the compensation of not exceeding 3 cents for each \$1,000 of insurance, to be paid by the company for which the valuation was made. Towards defraying the expenses of enforcing the act there was to be paid by every company to which the act applied certain specified fees. Thus, for filing certified copy of charter, \$25.00; for filing the annual statement or certificate in lieu thereof, \$20.00; for each certificate of authority and certified copy thereof, \$2.50; for each copy of any paper filed in the Department the sum of twenty cents per folio, and for affixing the official seal to such copy and certifying the same, \$1.00; for official examinations of companies under the act, the actual expenses incurred.

The Commissioner was required, on or before the tenth day of each month, to make a report to the Auditor General showing the entire amount of fees received by him during the month preceding, and pay over the same to the State Treasurer. In case the necessary expenses of the Department exceeded the fees collected under the act, exclusive of the tax or premiums, such excess was to be assessed upon the companies, to be collected by the Commissioner, and paid over into the State Treasury, while all necessary expenses of the Commissioner in the execution of the act were to be paid by the

State Treasurer upon the Commissioner's certificate and the warrant of the Auditor General, out of the fund thus created.

Such, in brief, are the provisions of sections 1 to 7 inclusive of the act, and they constitute the backbone of the system. None of the foregoing provisions were affected by the general corporation act of April 29, 1874.

On May 1, 1876, P. L. 53, an elaborate supplement was enacted, providing for the incorporation and regulation of insurance companies, relating to insurance agents and brokers and to foreign insurance companies. None of the provisions of the act of 1873 as above stated were affected, but the following features, as contained in sections 36, 38, 42, 44, 45 and 53 of the supplementary act, are important as bearing upon the duties and powers of the Commissioner and the exaction and application of fees; all insurance companies, with a trivial exception, were expressly subjected to the provisions of the act of 1873; every soliciting agent of life insurance on the assessment plan was required to pay an annual license fee of \$5.00, to be collected by the companies and paid to the State Treasurer annually; every company was required to file with the Insurance Commissioner a certified copy of its charter, and was to be subject to the provisions of the original act; no person should act as an insurance broker until he had secured a certificate of authority from the Insurance Commissioner, to continue in force for one year and to be annually renewed, and for each certificate so granted and for each renewal thereof the person receiving the same was to pay a fee of \$10.00, which was to be paid into the State Treasury as provided in the original act; the Insurance Commissioner was to cause a valuation to be made of the policies of life companies transacting business in other states, according to any standard in use in any state in which the company was transacting business or proposed to transact business, furnishing said company with a certificate of said valuation upon payment of the cost thereof as prescribed by the original act; and in case any foreign Insurance Commissioner should refuse to accept the valuation so made our Insurance Commissioner was required to value the policies of companies chartered by states refusing to reciprocate, and whenever, by the laws of any state, greater fees were charged the insurance companies of this State for authority to do business in said state than were required by the law of this State to be paid by the companies of other states authorized to do business herein, the Insurance Commissioner was to exact from the companies of said state the same amount of fees for similar services which are exacted from the insurance companies of Pennsylvania by the laws of the state aforesaid.

On June 5, 1883, P. L. 80, a second supplementary act was ap-

proved, relating chiefly to the incorporation of mutual assessment companies and the licensing of foreign assessment companies, but adding to the list of fees by providing that for every foreign license there shall be paid to the Commissioner a fee of \$25.00 annually, and that for every annual statement of its financial character and condition, there shall be paid, upon filing, the sum of \$20.00.

An amendment and enlargement of this act was approved June 3, 1887, P. L. 335, by which the fees of \$20.00, upon the filing of the annual statement of companies upon the assessment plan for insurances of life or against accident, was to be paid to the Commissioner. The list of fees was also added to by an act of April 26, 1887, P. L. 61, which authorized the Commissioner to license an excess line of insurance, expiring at the expiration of three months from the date of issue, and for every license so issued the Insurance Commissioner was to charge and collect a fee of \$5.00.

In the meantime the act of June 3, 1885, P. L. 60, was enacted, providing for the payment into the State Treasury of all fees collected by the officers, agents and employes of the State and binding on all those who then or thereafter should be entitled by law to receive, for their own use, any fees, emoluments and perquisites whatsoever not included in their salaries fixed by law and paid by warrant of the Auditor General; it was made the duty of every State officer, agent and employe receiving fees, emoluments or perquisites as aforesaid, or fees for the use of the State, to make a certified quarterly report to the Auditor General; the Auditor General was to pass to the salary account of each officer, agent or employe the amount of fees due him, and to pass to the public fee account the amount of fees due the State; all fees collected during the quarter whether for his own use or for the use of the State, were to be paid over by the officer, agent or employe to the State Treasurer within ten days after the filing of the report with the Auditor General; the State Treasurer was to receive the same and give a proper receipt to the proper officer, agent or employe, distinguishing between personal and State fees, and upon the presentation of the Treasurer's receipt for personal fees the Auditor General was to draw his warrant upon the State Treasurer for so much as had been received for in favor of the officer so presenting the receipt.

The foregoing acts, together with that of June 25, 1895, P. L. 281, imposing a fee of \$3.00 for service of process in the case of fraternal societies, constitute all the statutory provisions pertinent to this inquiry. I have examined many other acts relating to insurance, but they are not relevant to the specific matter in hand. The legislative commission found—and I think that their finding is entirely accurate,—that the fees collected by the Insurance Commissioner,

and by him paid into the State Treasury, fall into two classes, denominated State and personal fees respectively.

The State fees arise under the original act of April 4, 1873, and the supplementary act of May 1, 1876. The personal fees are claimed under the act of June 5, 1883, and the amendment of June 3, 1887, under the act of April 26, 1887, and the act of June 25, 1895.

It was not until the year 1891, however, that any claim was made by the Commissioner to personal fees. Mr. Forster, who held the office from 1873 to 1891, did not regard the act of 1883, even as amended by the act of 1887, nor the other act of 1887, as giving him any claim. The claim was made by Mr. Luper, and his rights were sustained by a decree in mandamus. No opinion was filed and I cannot find that the grounds of the decision were ever reduced to writing. I am unable, therefore, to ascertain what view the court took of the act of June 5, 1885, in its bearing upon the language of the acts later than those of 1873 and 1876, or whether it was determined that a mere statement that the fee should be paid to the Commissioner was deemed sufficient to constitute a statutory gift of the fees mentioned as additional to and exclusive of the salary of the Commissioner. Notwithstanding this unsatisfactory condition, I consider this portion of the subject closed, no matter how large the sums involved, which increased from year to year with the growth of the fees of the Department. It would be idle to contemplate any proceedings, either civil or criminal, where the moneys were received under a claim of right judicially established.

With regard to the sums of money received by the actuary, shared by him with Messrs. Luper, Lambert and Durham and Captain Erb, I am of opinion that a very serious question arises. That phase of the matter is new and unanticipated and has never been judicially decided. There is a manifest and substantial difference between the theory and conduct of the first Commissioner and the later Commissioners. Mr. Forster's theory, however mistaken, was that the compensation paid by the companies to the actuary for the valuation of policies belonged to him and could not be claimed in whole or in part by the Commissioner. He collected the moneys paid by the companies for the work of the actuary, but endorsed the checks over to the actuary, the amounts being moderate, and no more than he thought the services were worth. For eighteen years he acted in conformity with this theory, and hence, while collecting and paying into the State Treasury all other fees, he never made a return to the Auditor General of these actuarial fees and never made payment of them to the State Treasurer, nor did he require his subordinate, the actuary, to make such a return or payment. All of the succeeding Commissioners, however, while maintaining this theory, did share in the actuary's fees to a greater or less extent.



Mr. Luper's counsel contends that his client received a portion of them as a voluntary surrender or gift by the actuary, and not as an exaction on his part. I do not perceive that this makes any difference, for the question still remains, had the actuary the right to give them away? If they belonged to the State, as all other fees did under the acts of 1873 and 1876—and there are no other acts applicable to this question—he could not give them away in whole or in part. This question is fundamental and underlies the entire situation from the foundation of the Department. Mr. Lambert consulted Attorney General McCormick, but, as I read his accounts of the oral opinion given to him, I cannot but conclude that the Attorney General negatived the theory that they belonged to the actuary. Mr. Lambert says that he was advised that he, as Commissioner, could collect but not retain the actuary's compensation and that he did not retain his share in toto but gave it to his son-in-law. It is clear that if he had a right to collect his subordinate's compensation, the theory on which the right to collect must rest is not in harmony with the ownership of the subordinate, for the thought that the chief of a Department should act as collecting agent for his own employe and be accountable to him is not expressed in the statute. Mr. Lambert may have misunderstood the advice given him, or its legal import, and I see no grounds for challenging his good faith in the matter, but his good faith or his mistake cannot change the law and I cannot see how so accomplished a lawyer as Attorney General McCormick undoubtedly was, could advise him that he had a right to exercise the power of collecting that which belonged to another man, for the right to collect would mean necessarily the right to collect against the will of the actuary should he object. Besides this the very purport of the question put to the Attorney General necessarily implied, if answered affirmatively, that the Commissioner had a right to control the conduct of the actuary in the matter of the receipt of this compensation. And if he had the right to control, then the right of ownership on the part of the actuary falls *ex necessitate*.

It is clear, too, that the actuary himself never stood on his claim of exclusive right, but was willing to work for a fraction of the amount actually received, a very small fraction under his arrangement with Captain Erb. It is clear that the conduct of the parties, from Mr. Luper's time down, is not in conformity with Mr. Forster's theory of ownership on the part of the actuary, and gives emphasis to the question, to whom does the actuary's compensation, paid by the companies, belong? The matter is still further complicated in Mr. Erb's case, who claims that he was nominally the actuary, although frankly admitting that he was not so actually. Mr. McCulloch, the Deputy Insurance Commissioner, did not know him

even as nominal actuary. The companies did not know him as such, and never paid him a dollar; all of the collections were by Mr. Forster, the younger. The written evidence of Mr. Erb's authority does not satisfy me that he was appointed actuary. The only paper he produced as evidence of his authority is addressed to Fire and Marine Insurance Companies, and, while calling him actuary and examiner, is not addressed to the life insurance companies and does not directly commission him as actuary, but contains in express terms authority and instruction to examine books and accounts. It does not relate to the valuation of policies of any kind. The act of 1873, in authorizing the employment of an actuary, certainly meant the employment of a man who answered the technical description, the position requiring special skill and knowledge. But even if Mr. Erb were the actuary, the question still recurs, to whom does the compensation paid by the companies for the work of valuation of policies belong? The money never was paid to him by the companies, and he never valued the policies. If the State has a claim to the money, its claim cannot be defeated by the nominal interposition of an unqualified man between the State Treasurer and the man actually qualified and who actually did the work under an arrangement by which the work was done for a very insignificant part of the moneys actually paid. If Mr. Erb was not in truth the actuary, he could not claim as such, and if Mr. Forster was the actuary he could not give to Mr. Erb more than he could give to Messrs. Durham, Lambert or Luper.

I am driven then to a consideration of the act of Assembly. I am not obliged to decide the question, nor could I properly do so even if I would, nor am I obliged to even argue it at this stage. It is sufficient to ascertain whether there is a fair question for judicial determination, the point never having been raised and therefore never having been decided. The question arises entirely outside of the act of June 3, 1885, P. L. 60. It may be fairly doubted whether the actuary comes within the terms of that act, as he was not a salaried officer, and was not to be paid by the warrant of the Auditor General, although I can see an argument which would include him as an employe of a State officer and bring him within the spirit if not the letter of a statute clearly intended to compel the payment into the State Treasury of all fees received, even though such fees might be subsequently checked out as belonging to the officer making payment. The question arises upon sections 6 and 7 of the act of 1873, particularly, as well as upon a purview of the entire act taken in connection with the act of May 1, 1876.

It is conceded, both in theory and practice, that every fee mentioned in the act of 1873 belonged to the State. Why, then, should there be a difference in the matter of the compensation of the act-

uary? How does that compensation differ from a fee in substance? A salary is pay or wages, usually fixed in amount or time of payment. A fee is a payment for services rendered by a public officer as compensation for particular acts or services rendered in the line of duty, to be paid by the party obtaining the benefit of the services, or a fee may be distinguished from wages as being applied to the payment of skilled professional men, while wages would seem to refer to labor, either manual or mechanical. Under this view the compensation of the actuary might well be regarded as a fee. Why, then, should there be a different ownership in this one instance from all other items detailed in the section? There is no direct gift to the actuary of the compensation paid by the companies. No partition or classification of fees is attempted. Such a gift cannot be inferred from the fact that the amount is uncertain, for the rate, while fixed so as not to exceed a certain maximum, is left entirely within the control of the Commissioner, and, in point of fact, has always been prescribed by him and followed by the actuary. Nor is the amount any more uncertain than the expenses of official examinations of companies, which are charged for as actually incurred, and as to this there is no gift of the moneys to the examiners. Nor can the gift be inferred from the fact that the compensation is to be paid by the companies instead of by the State, for the same is true of all the other fees specified. Section 6, as read in its entirety, would seem to justify the contention that it must be read as a unit, and that all that is paid by the companies for the various services rendered should be regarded as a means of defraying the expenses of enforcing the provisions of the act, of which the employment of an actuary is an indispensable item of cost. There is nothing in the section to exclude the right of the Commissioner to collect the compensation of the actuary, as advised by Attorney General McCormick, and as the actuaries have always submitted the amount of their actual receipts to the control of the Commissioner in fixing the rate, and in later times in stipulating for a method and percentage of division, I can see no overwhelming reason for treating the receipts of the actuary as different in legal character from the other receipts of the Department.

It is clear, too, that section 6 must be read in connection with section 7, and this in express terms requires the Commissioner to report to the Auditor General "the entire amount of fees received by him during the month preceding and pay over the same to the State Treasurer." It is clear, therefore, that the act of 1885 may be entirely disregarded in the discussion, and that the duty of report and payment by the officer receiving the same may be rested solely upon the language of the act creating the Insurance Department. Moreover, it is further provided in section 7 that in case "the neces-

sary expense of said Department exceed the amount of fees collected under this act, exclusive of the tax upon premiums, the excess of such expense shall be annually assessed by the Commissioner in just proportion upon all the insurance companies doing business in the State, and the Commissioner is empowered to collect such assessment and pay the same into the State Treasury." Here is an additional expression of anxiety on the part of the Legislature in the creation of the Department that the expenses of maintaining the Department shall be imposed upon the insurance companies, but that the duty of collecting those expenses and of making payment of the same into the State Treasury is directly imposed upon the Insurance Commissioner, and then follows the final provision, "and all the necessary expenses of the Commissioner in the execution of this act shall be paid by the State Treasurer upon his certificate and the warrant of the Auditor General out of the fund thus created." Clearly the purpose of the act was to create a fund to maintain the Department. One of the most prolific sources of the means of maintenance would necessarily be the fees or compensation paid to the actuary for that which constituted a most important feature of the work of the Department, without the proper performance of which the Department would fall short in extending to the public adequate protection by determining the value of policies and the amount of reserve fund necessary to insure their payment at maturity. I cannot break away from the thought that the suggestion that the compensation of the actuary should be segregated from all other receipts of the office and that no accounting whatever for them should take place, that they never should pass through the books of the Commissioner or through the books of the Auditor General or State Treasurer, but that the same should remain a secret fund, unaccounted for, uncertain in amount, uncertain as to the time of their receipt, is doing violence to the spirit which breathes through the act, which by dwelling time and time again upon the necessity of making a report to the Auditor General, followed by payment into the State Treasury, exhibits a legislative anxiety to place upon the books of the accounting officers of the Commonwealth a proper statement of the business of the Insurance Department, irrespective of the ultimate destination of the fees. I do not think this question an unimportant one or in any sense unsubstantial. It has never been raised, and in my judgment it is a proper one to raise for judicial determination.

I do not think that any criminal proceedings should be instituted against any one, for it is clear, under the testimony taken, as well as under a review of the statutes, that the moneys collected were collected under a claim of right not yet determined to be a mistaken one, and that the practice has been so long persisted in, and by so

many individuals, acting entirely without concert, so far as successive administrations were concerned, as to preclude the idea of a criminal conspiracy. Moreover, an examination of the various sections of the criminal code do not reveal any statute which could be made the basis of an indictment. I therefore report that, in my judgment, there is nothing for any district attorney of any county in the State to consider in this connection.

I am of opinion, however, that the very large sums of money received by Commissioners Luper, Lambert and Durham, and by Mr. Erb, as Mr. Durham's employe, should be accounted for upon the theory that they were moneys had and received for the use of the State and not yet accounted for. This can be done by bills in equity, properly setting forth the facts and asking for an accounting and a proper settlement. Although no statute of limitations runs against the Commonwealth, yet it appears to me that, so far as the administration of Commissioner Forster is concerned, it would be idle to file such a bill for an account, inasmuch as the laches of the Commonwealth might be urged, and moreover the amount of actuary's fees received during that time were no more than a fair compensation to the actuary for the work performed.

I am further of the opinion that the moneys paid out to Messrs. Reed, Grey, Stone and others, who were not properly upon the pay roll of the Department and who could not, under the statutes, be properly placed upon the pay roll of the Department and who, under the testimony, appear to have rendered no services for the pay received by them, which could be paid by salary, but did service, with the exception of Stone, who did nothing for which payment could have been made only by certificates of actual expenses as examiners, should be also accounted for, and that the responsibility for this must fall upon the head of the Department under whose orders such payments were made. Of course this does not preclude a defense, but the courts should decide on the propriety of the transactions.

I do not perceive any ground for proceeding for alleged misfeasance in office. Misfeasance is not equivalent to crime. It is variously defined as the improper doing of an act which a person might lawfully do, or a default in not doing a lawful act in a proper manner, or omitting to do it as it should be done, or again, the performance of an act, which might lawfully be done, in a manner which is improper, from which injury results, or which is the wrongful and injurious exercise of lawful authority or the doing of the lawful act in an unlawful manner. It may involve to some extent the idea of not doing, as where an agent, while engaged in the performance of his undertaking does not do something which it is his duty, under the circumstances, to do, as, for instance, when he

does not exercise that care which a due regard to the rights of the public requires. It is distinguished from nonfeasance, the latter being a total omission to do an act, and the former being a culpable negligence in the execution of the act. Inasmuch as the punishment of misfeasance would be a judgment of ouster from office, and inasmuch as all the Commissoiners of whose acts complaint is made are out of office, it would be futile to pursue the matter further.

I conclude that the only remedy is to file bills in equity for an accounting in the manner hereinbefore indicated, and that the determination of this question should also involve the duty of the present actuary to account to the State for the fees or compensation now in his hands and an equitable adjustment of the matter upon a basis fair and just to him as well as to the Commonwealth. Discovery and an accounting should also be had in the matter of moneys paid by the companies for official examinations.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

USE OF STEAMSHIPS OF THE UNITED STATES BY THE STATE OF PENNSYLVANIA.

The use by the State of Pennsylvania of the United States steamships "Shearwater" and "Keystone State," and the signing of an agreement of bailment therefor by the Governor is a matter of business expediency, and if the terms of the bailment are satisfactory, the Governor should execute the same.

Office of the Attorney General,  
Harrisburg, Pa., May 18, 1906.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth:

Sir: I have examined the enclosed agreements between the Secretary of the Navy, party of the first part, and yourself as Governor of the Commonwealth, party of the second part, in relation to the use temporarily by the State of Pennsylvania of the United States Steamship Shearwater, and the United States Steamship Keystone State.

After a conversation with the Adjutant General I understand the facts to be that these steamships have been bailed by the United States to the State of Pennsylvania for sometime past without the imposition of any conditions, and that these agreements tendered to you for signature amount practically to a statement of the terms upon which the United States is willing to continue the bailment, and without which she would withdraw the ships from further use by the Commonwealth. I further understand that the conditions are

considered reasonable by the Adjutant General, and that they really impose nothing further than what would be required as a due exaction by a prudent owner of one using his property.

If such be the case then it is simply a question, not of law, but of business, resolving itself into this proposition: Is it to the business advantage of the Naval Service of the State to use the ships of the United States upon the terms prescribed? If not, then the ships should be returned. If, on the other hand, the terms are not satisfactory, then it is for you to exercise your judgment as Commander-in-Chief of the Army and Navy of the State to say whether or not you will enter into a negotiation for better terms or execute the agreements as presented. I do not perceive any question of power, nor do I, after consideration of the circumstances stated by the Adjutant General, perceive that the matter is beyond your authority as Commander-in-Chief.

I herewith return the papers consisting of the agreements, and a letter under date of May 5, 1906, from the Acting Secretary of the Navy, and letter addressed to the Adjutant General by C. W. Ruschenberger, Commander, commanding Naval Force of Pennsylvania; copy of a letter under date of May 1, 1906, from the Adjutant General to the Assistant Secretary of the Navy; copy of a letter, under same date, from the Adjutant General to C. W. Ruschenberger, Commander; letter of your Private Secretary, under date of April 12th, addressed to the Adjutant General; letter under date of April 3, 1906, from the Assistant Secretary of the Navy, addressed to yourself, and four agreements, with the blanks filled, and one blank agreement.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

IN RE PENNSYLVANIA STAVE COMPANY—CORPORATIONS—AMENDMENTS TO CHARTER—SALE OF REAL ESTATE—ACTS OF JUNE 13, 1883 AND MARCH 31, 1905.

A manufacturing corporation, incorporated under the act of April 29, 1874, P. L. 73, can amend its charter under the act of June 13, 1883, P. L. 122, as amended by the act of March 31, 1905, P. L. 93, by the addition of a clause which shall give the directors the power to sell and release real estate without the consent of a majority of the stock before making the sale or lease.

Office of the Attorney General,  
Harrisburg, Pa., March 15, 1906.

To Hon. Samuel W. Pennypacker, Governor:

Sir: I find on my table an application of The Pennsylvania Stave Company for an amendment to its charter, which was referred to me

by you for my official opinion, and which has remained for some time undisposed of owing to the pressure of other work.

The company was chartered under the act of April 29, 1874, P. L. 73, for the purpose of the "manufacture of staves, heads, hoops, barrels and casks and of any article of commerce from metal or wood or both, and the sale of such articles so manufactured by it." It now applies for an improvement, amendment and alteration of its charter by adding thereto a new paragraph to read as follows:

"The directors of the company shall have power to sell or release the real estate of said company without the consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same."

The papers presented show that a stockholders' meeting to act on the proposed amendment was properly convened upon a waiver of notice duly signed by all of the stockholders; that the amendment was unanimously adopted, and that the return of the judges of election is in proper form. It also appears that all reports required by the Auditor General have been filed, and that all taxes have been paid to the Commonwealth, and that the proper notices of the application were duly published.

The sole question is, should the amendment be approved by you?

The application is made under the act of June 13, 1885, P. L. 122, as amended by the act of March 31, 1905, P. L. 93. It appears affirmatively on the face of the papers that all of the formal requirements of the statutes have been complied with. All that is required of you, if you find the application to be in proper form, that the proper report has been filed, and that all taxes due the Commonwealth have been paid, is to be satisfied that the improvement, amendment or alteration is or "will be lawful and beneficial and not injurious to the community, and is in accord with the purposes of the charter."

An objection was raised by the State Department that the act of 1883 does not contemplate including in the charter a new article or condition or one not already there; and further, that the case falls within my opinions rendered *In re Victor Coal Co.* (Opinions of the Attorney General, 1903-4, page 29), and in *Duquesne Brewing Co.* (Opinions of the Attorney General, 1903-4, page 42).

After a careful consideration of the matter, I am convinced that the objections cannot prevail. It must be borne in mind that, under clause 12 of section 39 of the act of April 29, 1874, P. L. 103, under which the company was chartered, relating to mechanical, mining, manufacturing and other corporations, "any such corporation may, from time to time, acquire and dispose of real estate, and may construct, have or otherwise dispose of dwellings and other buildings; but no power to sell or release the real estate of such corporation



shall be exercised by the directors thereof, unless such powers be expressly given in the certificates originally filed, without a consent of the majority of the stock in value consenting and agreeing to such sale or lease before making the same," etc. Hence, the power to sell or release real estate already belongs to the corporation. The amendment does not seek to confer it, but as the charter did not confer this power, as it might have done, upon the directors, the application for the amendment is for the addition of a clause to the charter which shall give to the directors the power to sell and release real estate without the consent of a majority of the stock before making the sale. Its purpose is to remove the existing restriction as to a particular method of selling. The new method does not in any way enlarge corporate power, but simply changes the manner of its exercise. I cannot see that there is any change in the purposes of the corporation or in the powers thereof. The method sought by the amendment is one recognized by the act and might have been had at the outstart. Why should it be denied in the face of the act of 1883, which expressly provides for amendments, alterations and improvements of a charter, now that experience has shown that the old method was inconvenient? The case is plainly within the purview of the act of 1883, and the amendment may be properly allowed without harm to the interests of the public.

The case of the Victor-Coal Company is readily distinguished from the present one. There the application was for an enlargement of the corporate existence and corporate powers. Neither is the case of the Duquesne Brewing Company in point, for a brewing company has not the powers expressly conferred on a manufacturing company in this respect. Indeed, a comparison of section 2, paragraph 2, clause 18, with clause 12 of section 39 of the act of April 29, 1874, shows that brewing companies are expressly excluded from the manufacturing class designated by the latter clause of the act, which is the source of the corporate power existing in the present case.

In my judgment, the amendment should be allowed.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

## MERGER OF FIRE INSURANCE COMPANIES.

The act of 21st of May, 1901, is sufficiently broad to include any corporation organized under "any other act of Assembly authorizing the formation of corporations," and is not restricted by its title to corporations organized under the act of April 29, 1874, and its supplements.

The merger of the Armenia Insurance Company of Pittsburgh and the Conestoga Fire Insurance Company of Pennsylvania into the Guardian Fire Insurance Company of Pennsylvania approved.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

Hon. Samuel W. Pennypacker, Governor of the Commonwealth of  
Pennsylvania:

Sir: I have examined the papers of consolidation and merger of The Armenia Insurance Company of Pittsburg into and with the Conestoga Fire Insurance Company of Pennsylvania so as to form a corporation to be known as the Guardian Fire Insurance Company of Pennsylvania. I herewith return them to you.

The proceedings are avowedly under the terms of the act of 29th of May, 1901 (P. L. 349), and the amendment of 31st of March, 1905 (P. L. 95). The papers are well drawn, and all of the steps required by the foregoing acts have been taken in due succession; the directors and stockholders of each company have acted, public notice by advertisement has been given, special elections have been held, judges were appointed who have certified to their returns, and the various papers have been duly executed and attested under the corporate seals. The new title has been approved by the Insurance Department and I have added my own approval as is usual in the grant of insurance charters.

The sole doubt suggested as to these papers arises from the fact that it is the first instance of consolidation or merger of insurance companies attempted since the organization of the Insurance Department, and the thought that the act of 21st of May, 1901, is restricted by its title to cases of corporations organized under the act of April 29, 1874, and its supplements.

I have twice considered this question, and I adhere to the views heretofore expressed. The terms of the act, in sections 1 and 5, are sufficiently broad to include any corporation organized under "any other act of Assembly authorizing the formation of corporations." I need not repeat what I have already said in the Bellevue and Perysville Street Railway Company (Opinions of the Attorney General, 1903-4, pages 43 and 44), and in Philadelphia and Lehigh Valley Passenger Railway Company et al ante p. 13.

It is not necessary to produce to you a certificate of payment to

the State Treasurer for the bonus, because there is no excess of capital stock of the corporations consolidating; in fact the amount of capital of the new company is less than the aggregate of the capital of the two merged companies, resulting in a surplus.

The papers are accompanied by certificates from the Auditor General that all reports required by him have been duly filed and that all taxes due the Commonwealth have been paid, as required by the act of 31st of March, 1905 (P. L. 95).

In my judgment the papers may be approved by you and letters patent issued, if such a step be thought necessary, although it may be that these papers themselves may constitute a sufficient charter for the new company, as is usual in railroad consolidations.

I am, very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

---

**OPINIONS TO THE SECRETARY  
OF THE COMMONWEALTH.**

---

---

## OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

## BOARD OF REVENUE COMMISSIONERS.

This board consisting of the Auditor General, State Treasurer and Secretary of the Commonwealth by the act of 15th of June, 1897 (P. L. 157), must approve the sureties on the bonds given the State Treasurer to protect the deposits of State monies in banking institutions. If such action has not been taken in any case, the board can act nunc pro tunc, and if the sureties are not satisfactory to the present board, satisfactory security can be exacted.

The board also approves the selection of State depositories made by the State Treasurer, and if such approval has not hitherto been had, the board can act "de novo."

The board shall also approve the selection by the State Treasurer of the five active banks in which to deposit sufficient daily receipts to transact the current business of the Commonwealth.

Office of the Attorney General,  
September 27, 1905.

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

Sir: I have your favor of the 21st inst. stating that by virtue of your official position as Secretary of the Commonwealth, you are a member of the Board of Revenue Commissioners, provided for by the act of June 15, 1897, P. L. 157, and requesting my official opinion as to the powers and duties of the said Board, with respect to the approval or disapproval of the sureties of such bonds as may be presented for consideration, and also with respect to the approval or disapproval of the selections made by the State Treasurer of the banks in which the State funds are to be deposited, as well as to such other duties and obligations imposed by said act upon said Board for the safe-guarding of the funds of the State.

The Board of Revenue Commissioners was constituted by the act of 24th of May, A. D. 1878, P. L. 126, and its members are the Auditor General, the State Treasurer and the Secretary of the Commonwealth.

"They shall meet at Harrisburg at such times as they or a majority of them shall agree, at least once in three years, or as much oftener as they may deem necessary."

It is their duty to keep a journal of their proceedings and to make report after each triennial meeting to the Legislature of the State.

It is not pertinent to the matter now under consideration to consider their powers and duties as Revenue Commissioners in the matter of the adjustment and equalization of taxes, and I turn now to the duties imposed and the powers conferred by the act of 15th of June, 1897, P. L. 157.

That act is entitled "An act regulating the deposit of moneys belonging to the State in the banking institutions thereof, and providing for the collection of interest thereon."

The first section makes it the duty of the State Treasurer to require and collect from each bank, banking institution or trust company in which funds of the State are deposited, interest on the amount of said deposit at the rate of two per centum per annum. With this duty and its performance your Board has nothing whatever to do.

The remaining features of the act do concern you most directly and substantially, and your powers as a Board are full and specific.

Before the State Treasurer can make deposits of State funds, he is required to exact from each bank, banking institution or trust company a good and sufficient bond containing a warrant to confess judgment in favor of the Commonwealth in double the amount of the contemplated deposit, and no deposit shall at any time be greater than one-half of the amount of the bond furnished by said depository. The sureties upon this bond must be approved by the Board of Revenue Commissioners of the Commonwealth of Pennsylvania.

If in any case such action of the Board has not been taken, I am of opinion that the Board can act *nunc pro tunc*, and if the sureties are not satisfactory to the present Board, satisfactory security should be exacted or the deposit withdrawn if such sureties are not supplied.

Moreover, the bond or bonds so given must include a special obligation to settle with and pay to the State Treasurer for the use of the Commonwealth, the amount of interest as it shall become due semi-annually.

Section three, while making it the duty of the State Treasurer to select the banks, banking institutions or trust companies in which the State moneys shall be deposited, in terms subjects such selection to the approval of the Board of Revenue Commissioners, and I am of opinion that if such approval has not hitherto been had, the Board can act upon the matter *de novo*.

The foregoing provision of the law is accompanied by the very proper proviso that nothing in the act shall be held to prevent the State Treasurer from withdrawing any or all of the funds so deposited for the purpose of paying the appropriations and obligations of the Commonwealth.

Section four, while making it the duty of the State Treasurer to keep a correct and accurate account of all moneys received for the use of the Commonwealth, and pay out the same only on authority of law, makes it his further duty to select the depositories in which said funds may be deposited subject to the approval of the Board of Revenue Commissioners as thereinbefore provided. I am of opinion that if such approval of selected depositories has not been had, this duty of the Board of Revenue Commissioners can be exercised nunc pro tunc.

These are the only sections of the act which appear pertinent to the present inquiry.

I am satisfied that the powers of approval of the action of the State Treasurer in selecting depositories of State funds and in securing said deposits by bonds accompanied by sureties as conferred upon the Board of Revenue Commissioners are ample and specific, and inasmuch as the first section of the act of 24th of May, 1878, under which the Board was constituted, empowers a meeting of the Board as often as may be deemed necessary by a majority of its members, that it is perfectly competent for the present Board or a majority of its members to ascertain the present status in regard to all the State banks and other institutions which are depositories of the State funds, supply any omissions of approval which appear to be lacking (if such be the case) or act de novo where such action appears necessary because of present deposits or because of running open accounts which are being from time to time augmented as funds are withdrawn or deposited, and it may therefore be deemed an active account.

I am of opinion that the action of the State Treasurer in designating the bank in Dauphin county, two banks in Philadelphia county, and two banks in Allegheny county, to be known as active banks in which shall be deposited a sufficient amount of the daily receipts to transact the current business of the Commonwealth, is equally subject to the approval of the Board of Revenue Commissioners as in the selection of any other depository of State funds.

I do not read section six as a limitation of the power conferred upon the Board of Revenue Commissioners by the second, third and fourth sections of said act, or as an enlargement of the choice by the State Treasurer of State depositories, but simply as a description as well as a designation of the location of such depositories as were to serve as sources of supply for the current needs of the Commonwealth.

I have the honor to be

Respectfully yours,  
HAMPTON L. CARSON,  
Attorney General.

## CORRUPT PRACTICES ACT.

The expenses and compensation of delegates to a county convention being paid by the chairman of a political party out of a fund to which the candidates had contributed equally and proportionately does not constitute a violation of the corrupt practices act.

Office of the Attorney General,  
Harrisburg Pa., April 12, 1906.

Honorable Robert McAfee, Secretary of the Commonwealth:

Sir: I am in receipt of your letter of the 10th instant, enclosing two letters from the Honorable Charles C. Evans, of Berwick, asking for an interpretation of clause 3, fourth section of the act of 5th of March, 1906 (P. L. 78), known as the "Corrupt Practices Act." The precise question submitted by Judge Evans is whether it would be legal for the chairman of the Republican party, of Columbia county, to pay the cost of car fare and dinners, as well as a day's pay, to the delegates attending the convention of that party.

A careful investigation of the language of the act leads me to the conclusion that its purpose is to prevent the corrupt use of money in the interest of any candidate or ticket. Any action running contrary to this prohibition is therefore clearly illegal. If the expenses and compensation of the delegates for their dinners at the convention are paid by the county chairman out of a fund created for that purpose by the party, or contributed equally and proportionately by the candidates themselves, so that no undue and improper advantage shall accrue to any particular candidate, by reason of such payment, then such action does not fall within the class of things prohibited by the act.

This position would be strengthened by the fact that it had been the custom to reimburse the delegates in the manner above stated, or if there be a party rule providing for such reimbursement.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## CERTIFYING NOMINATIONS.

The Secretary of the Commonwealth in certifying nominations for Senatorial Districts, where the provisions of the apportionment act of 1906 (P. L. 35), are inconsistent with the act of 1874, should follow the later act.

He cannot certify under the old act, but is bound to assume the constitutionality of the act of 1906.

Office of the Attorney General,  
Harrisburg, Pa., October 10, 1906.

Hon. Robert McAfee, Secretary of the Commonwealth:

Sir: In replying to your request for an opinion as to your duties in certifying nominations in Senatorial districts, where the pro-



visions of the apportionment act of 17th of February, 1906 (P. L. 35), are inconsistent with the act of 1874 or any previous act, I answer that the latest act must govern and that your certificates must be in accordance therewith.

The new designation by numbers, followed by the enumeration in the act of 1906 of the counties composing the respective districts as numbered therein, should be your guide, and any transfer of counties from former districts to new ones must be observed.

You are not at liberty to give a judicial consideration to the matter as you lack the power, and you are bound to assume the constitutionality of an act of Assembly.

You cannot certify under the old law. I advise you to communicate this intended action of yours, so that any electors, or body of electors, if they think themselves aggrieved, may have notice in time to raise the question for judicial consideration.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### FORM OF BLANKS FOR CANDIDATES' STATEMENT OF EXPENSES.

The Secretary of the Commonwealth is instructed as to the form of blank to be used in the statement of expenses required from candidates under the act of March 5, 1906.

Office of the Attorney General,  
Harrisburg, October 11, 1906.

George D. Thorn, Esq., Chief Clerk, Harrisburg, Pa.:

My Dear Mr. Thorn: I have thought much about the form of blank upon which you require a statement from candidates of receipts, contributions and expenses, under the Act of March 5, 1906. I see no authority in the act which justifies the insertion of the words contained in the fourth line of the opening paragraph "except for my own personal expenses." In my judgment these words should be stricken out. I therefore communicate to you my withdrawal of approval of any blank containing these words, and I do this in pursuance of the requirements of the act that the blanks shall meet with my official approval. Being of opinion that their insertion would negative the useful character of the act and would be too readily availed of by candidates, I am satisfied that it would be error to continue their use.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

**OPINIONS TO THE AUDITOR  
GENERAL.**

---

---

## OPINIONS TO THE AUDITOR GENERAL.

## JUDICIAL COMPENSATION FOR SERVICES RENDERED BY JUDGES OUTSIDE OF THEIR DISTRICTS.

The judicial salary act of 1903, applies to all judges in the State and compensation paid any of these judges since the passage of the act for per diem services rendered in Judicial Districts other than their own, was erroneously paid and should be deducted by the Auditor General in drawing warrants for the back pay of the said judges.

Office of the Attorney General,  
Harrisburg, Pa., January 4, 1905.

Hon. W. P. Snyder, Auditor General:

Dear Sir: I have before me your letter of the 2nd inst., in which you state that during the period from January 1st to November 30, 1904, your Department paid all claims made by members of the Judiciary of Pennsylvania for services rendered in judicial districts other than their own at the per diem rate allowed under the provisions of the act of May 2, 1871 (P. L. 247), and the act of March 24, 1887 (P. L. 14), pending the decision of the Supreme Court of Pennsylvania as to the effect of the act of May 14, 1903 (P. L. 175), regulating the salaries of the said Judiciary upon such judges as were already in commission at the time of its passage.

This action on the part of your department was based upon the assumption that the act of 1903 did not apply to judges in commission at the time of its passage, and that, therefore, they did not fall within the scope of section 7, which reads as follows:

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

No claims for services rendered in the judicial districts other than their own have been made by the judges who have been commissioned since the passage of this act and who have been enjoying the increase of salary provided by it.

Now that the Supreme Court has decided that the act applies to all of the judges in the State, those who were in commission at the time of its passage as well as those who have been commissioned

since, it necessarily follows that the extra compensation allowed the former class for services rendered outside a judicial district under the authority of the acts of 1871 and 1887, was erroneously paid, and should be deducted from the warrants for back pay which will now be properly issued to the judges entitled thereto.

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMPENSATION OF CHAPLAINS OF THE SENATE AND HOUSE OF REPRESENTATIVES.

The terms of service of the Rev. Wm. McNally, Chaplain of the House of Representatives, and the Rev. J. Wesley Sullivan, Chaplain of the Senate, for the session of 1903, had expired by the adjournment of the Legislature before the act of April 27, 1903 (P. L. 320), went into effect through the signature of the Governor. The Chaplains were therefore not entitled to the increase of pay provided for by the said act.

The act of 11th of May, 1874 (P. L. 129), and the act of May 10, 1901 (P. L. 151), do not include Chaplains among those officers who shall return in order to perform the preliminary work of organizing the next Legislature.

Office of the Attorney General,  
Harrisburg, Pa., January 10, 1905.

Hon. W. P. Snyder, Auditor General:

Sir: I am in receipt of your letter of recent date, asking for an official construction of the act of 27th day of April, 1903 (P. L. 320), which reads as follows:

"That from and after the passage of this act, the compensation of the chaplains of the Senate and House of Representatives shall be six dollars per diem."

Prior to the passage of this act the officers in question were entitled by law to receive three dollars a day during the time that the Legislature was in session.

It appears that the Rev. William McNally, who was appointed Chaplain of the House of Representatives for the session of 1903, and the Rev. J. Wesley Sullivan, who held a like position in the Senate for the same session, have made a request upon you for a construction of this act for the purpose of ascertaining whether or not they fall within its terms and are entitled to the increase in compensation provided by it.

It is unnecessary for the purposes of this inquiry to decide whether or not the two chaplains are public officers within the meaning of and therefore included in the inhibition contained in Section 13 of Article III of the Constitution, which reads:

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

for the reason that the Legislature, with which they were officially connected, had adjourned and their labors had ceased before the act became a law by receiving the signature of the Governor. Had it been approved and gone into effect before the adjournment of the Legislature it might be necessary for us to rule upon that question; but as the terms of service for which they could legally claim compensation expired prior to the time when the act became a law, it can by no possible construction be made applicable to their cases. It is true that their terms of office, technically speaking, extend until their successors shall be appointed and shall qualify, but the act of 11th of May, 1874 (P. L. 129), and the act of 10th of May, 1901 (P. L. 151), do not include the chaplains among those officers who shall return in order to perform the preliminary work of organizing the next Legislature. It therefore follows that the two clergymen in question, having rendered no official service to the State since the adjournment of the last Legislature, which occurred prior to the date when the act under consideration went into effect, cannot claim the increase provided by it. To hold otherwise would be to give it a retroactive effect not warranted by the decisions or the well-settled rules of construction of statutes.

I am therefore of opinion and advise you that the act in question does not apply to the Rev. William McNally, Chaplain of the House of Representatives, or to Rev. J. Wesley Sullivan, Chaplain of the Senate, for services which they rendered to the State in their respective positions during the session of the Legislature of 1903.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### JUDICIAL SALARIES.

The fifth section of the judicial salary act of April 14, 1903 (P. L. 175), provides that the Auditor General shall pay the different judges of the State monthly by warrants drawn on the State Treasurer.

The amount due each judge is specifically fixed and it is unnecessary for the State Treasurer to join with the Auditor General in the making of a formal settlement for the payment of the salary.

Office of the Attorney General,  
Harrisburg, Pa., January 19, 1905.

Hon. W. P. Snyder, Auditor General:

Sir: Replying to your letter of the 18th inst., asking me to advise you if the provisions of the act of Assembly entitled “An act to

fix the salaries of the judges of the Supreme Court, the judges of the Superior Court, the judges of the courts of common pleas, and the judges of the orphans' courts," approved April 14, 1903 (P. L. 175), require the State Treasurer to join with the Auditor General in approval of all settlements before a warrant is issued, I answer that the joinder of the State Treasurer is unnecessary. The matter is specifically provided for in the fifth section of the act above referred to, which reads as follows: "Such annual salary shall be paid monthly, by warrants drawn by the Auditor General on the State Treasurer." Inasmuch as the amount due to each judge is specifically fixed, and there can be no dispute as to the amount, a formal settlement in which the State Treasurer should join with you is entirely unnecessary.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### LEGISLATIVE RECORD.

The Auditor General may accept orders or vouchers from the clerk of the House of Representatives on the State Treasurer for the expense of sending out the Legislative Record.

Office of the Attorney General,  
Harrisburg, Pa., February 1, 1906.

Hon. W. P. Snyder, Auditor General:

Dear Sir: I herewith return the letter of Mr. Stackpole, addressed to you under date of January 25th, relating to postage to be used in mailing The Legislative Record.

As the law imposes upon the Clerk of the House the duty of seeing that The Legislative Record is sent out, I do not perceive the propriety of any technical obstacle standing in the way of his compliance with his sworn duty. I therefore advise you that there can be no objection to you, as Auditor General, accepting orders or vouchers on the State Treasurer from the clerk for this purpose.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## BOARD OF REVENUE COMMISSIONERS—FEES OF COUNTY TREASURERS OF PHILADELPHIA AND ALLEGHENY COUNTIES.

In computing the amount of personal property tax to be returned by the State to Allegheny and Philadelphia counties, twenty-five per cent. of the total tax collected, from which the county treasurer's commission has not been deducted, should be retained by the State. The courts have decided that this commission or compensation does not belong to the county treasurer, but to the counties, hence any other distribution than this would give Allegheny and Philadelphia counties a larger percentage of personal property tax returned than is received by the other counties of the State.

Office of the Attorney General,  
Harrisburg, Pa., March 1, 1905.

Hon. W. P. Snyder, Auditor General:

Dear Sir: I herewith return the letter of Henry D. Shoch, City Treasurer of the county of Philadelphia and of George H. Calvert, of Pittsburg, under date of January 12, in accordance with your request.

The conclusion reached by the Board of Revenue Commissioners, as stated in your letter of January 17th, appears to me as entirely correct being in accordance with the decision in *Philadelphia v. McMichael*, 208 P. S., 297, and the various acts of Assembly, including the act of June 8, 1891 (P. L. 229). Moreover, your course as adopted seems eminently fair, inasmuch as the county treasurer is not permitted to retain this compensation for collecting the personal property tax of the county, but must return it to the State Treasurer. It is also fair that the State should derive a benefit from it. To charge the county with the gross amount of the tax due and then return to it 75 per cent. of the gross amount results in giving to the county 75 per cent. of the commissions formerly paid to the county treasurer, the courts having decided that these commissions do not belong to that official. The remaining 25 per cent. ought certainly to be retained by the State. You will note that the contention of the authorities in Philadelphia and Pittsburg is that the local treasurers have the right to deduct from the tax the treasurer's commission of one per cent. and return only the net amount to the Commonwealth, of which amount 75 per cent. is then returned to the counties. If this contention of the local authorities be correct, the law ought to be amended in such a way as to prevent the ensuing injustice. It is not fair to the Commonwealth nor to the other counties in the State, where the county treasurer is permitted by law to retain the one per cent. commission, and it would result in the largest and wealthiest counties receiving more money from the personal property tax assessed and collected in those counties than smaller and poorer counties receive

from the same source. The question involved is undoubtedly a close one, but, after careful consideration, I believe that the doubt ought to be resolved in favor of the State Treasurer and the equities of the case.

I therefore approve of your course.

I am

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

---

#### TAXATION.

Under section 3, of the act of April 6, 1830 (P. L. 273), the Auditor General should receive from the prothonotaries of the State taxes upon "Cases stated, quo warrantos, alternative mandamuses, and appeals from the judgments of magistrates or justices of the peace."

Office of the Attorney General,  
Harrisburg, Pa., March 9, 1905.

Hon. Sam Matt. Fridy, Deputy Auditor General:

Sir: I am of opinion that a tax is properly chargeable upon cases stated, quo warrantos, bail pieces, alternative mandamuses and appeals from the judgments of magistrates or justices of the peace, the warrant for collecting the tax being found in section 3 of the act of April 6, 1830 (acts of 1829-30, p. 273). Under this act I understand that the practice sprang up in the Auditor General's Department to claim such taxes from the prothonotaries of the various courts of common pleas throughout the State, and that my predecessors have invariably instructed the Auditor General to insist upon the payment of these taxes, the rule never being deviated from. In my judgment "cases stated" are "amicable actions" in the sense of the act. "Quo warrantos" and "alternative mandamuses" are "original writs." I am not clear that the Commonwealth would be entitled to a tax on a bail piece. The act unquestionably provides for the payment of the tax "on every transcript of a judgment of a justice of the peace or alderman." Appeals from the judgments of magistrates are not included in the act referred to directly, but your Department is justified in holding the language of the act to be broad enough to cover appeals from magistrates, and I so advise you in the absence of any judicial determination to the contrary. I may say that I have given instructions to this effect to the prothonotary of the court of common pleas of Philadelphia county, to whom you addressed a letter under date of January 27, 1905.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.



## CLAIM AGAINST THE STATE.

Where one rendered services for the State in 1878, 1879 and 1880 and died in 1886 without having made claim for compensation during his life time, and neither his widow, nor any one representing his estate as its duly accredited legal representative has ever presented the claim, and the claim being finally presented by a sister-in-law who received the same by assignment from the widow—it is a stale claim and should not be paid.

The act of 17th of April, 1861 (P. L. 471), does not authorize payment of such a claim.

Office of the Attorney General,  
Harrisburg, Pa., April 21, 1905.

Hon. Sam Matt. Fridy, Deputy Auditor General:

Sir: I have considered with care the statement contained in your letter of March 20th of the features of the claim presented by Nannie R. Schell, of Bedford, Pa., assignee of Caroline H. Schell, widow of Frank R. Schell, who died in the year 1886 without presenting any claim to the Auditor General in his lifetime for services arising under a contract of employment dating back as far as the year 1878.

It appears that Mr. Frank R. Schell was employed with Charles W. Wells, of Pottsville, and William P. Schell, Jr., to prepare and file lists of delinquent corporations with the Auditor General, and that for some three years they were engaged in the work for which they were appointed. The work consisted chiefly in ascertaining the names of corporations delinquent for many years in the payment of taxes on capital stock, and a test case was made in the case of the Standard Oil Company, of Cleveland, O., which subsequently reached the Supreme Court in the year 1883, and is reported in 101 P. S., page 119. It was held by the court that a penalty could not be added to the tax due from a delinquent corporation unless a previous demand had been made for the tax and payment refused. This decision ended the collection of penalties from delinquent corporations and payment therefor of attorneys for services rendered in discovering and reporting them.

A claim for compensation for his share of the services rendered was made on behalf of Charles W. Wells in the year 1887, and an allowance was made to him by the Auditor General of the sum of \$1,500 by way of compromise under the act of April 16, 1861 (P. L. 371), entitled "An act to facilitate the collection of debts due the Commonwealth." A similar claim was presented to the Auditor General on behalf of William P. Schell, Jr., in the years 1896 and 1898, and an allowance of \$2,000 was made in 1896 and of \$5,000 in the year 1898. Frank R. Schell died in the year 1886 without having made or presented any claim. By his will he gave and bequeathed

all his property, claims and demands to his wife, Caroline H. Schell, who has assigned to her sister-in-law, Nannie R. Schell, the claim of her husband, or any allowance that may be made thereon, for reporting and prosecuting delinquent corporations. This claim has been recently presented to the Auditor General for his consideration, and your Department requests me to express my official opinion as to whether there is an equity that would justify the Auditor General in considering the claim and making an allowance thereon under the act of April 16, 1861, by way of compromise, if satisfactory services were rendered as stated.

Whatever merit may have existed originally has now disappeared through lapse of time. The services were rendered during the years 1878, 1879 and 1880. Mr. Frank R. Schell, although living until 1886, presented no claim in his lifetime, and neither his widow nor anyone representing his estate as its duly accredited legal representative has ever presented such a claim upon the Commonwealth.

It is what is known to the law as "a stale claim." A stale claim is not susceptible of a precise definition of uniform application. It is predicable of the particular circumstances of a particular case. It does not operate to discharge the debt but to deny to the creditor the enforcement of some security or form of liability which the law holds him to have lost by laches. Simple forbearance does not constitute it; but the reason on which it rests is that the creditor has unreasonably delayed the collection of his debt, so that some special equity or interest would be injuriously affected by the allowance of his claim. The Governor of Pennsylvania has recently vetoed a legislative appropriation on the ground that it was meant to meet a stale claim, and expressly stated that the proper mode of relief would have been the passage of an act of Assembly granting to the claimant the right to sue the State.

I have examined the acts which have been recently passed at the request of sundry claimants asking permission to sue the State, and I find that an invariable feature of them is that they shall be subject to the same rules of pleading and of evidence as is usual in cases of contract. In such a case the plea of the statute of limitations would undoubtedly operate as a complete bar to the plaintiff's recovery. I perceive no special equity in the case which would call for any comment. Whatever rights originally existed have been entirely lost through unexplained delay.

In my judgment, the act of 17th of April, 1861 (P. L. 471) does not authorize any such settlement. That act simply empowers the Auditor General or Attorney General, whenever in their opinion the interests of the Commonwealth require it, to employ the services of resident attorneys to assist in the prosecution and trial of causes and the prosecution of claims, for which services such reasonable

compensation shall be allowed as the circumstances will justify or as may have been agreed upon. The compensation for employment under this act must necessarily be demanded within a reasonable time or the claim of the attorney, like the claim of any other creditor, will be barred, and particularly is this the case where the character of the service rendered is so exceedingly indefinite as to be incapable of accurate statement or specification.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### AUDITING OF ACCOUNTS OF STATE OFFICERS.

It is not incumbent upon the Auditor General in auditing the accounts of the various State officers to go to their offices in person or by deputy, and make an examination of their books, papers or accounts.

History of the various acts referring to this subject related.

Office of the Attorney General,  
Harrisburg, Pa., April 25, 1906.

Hon. William P. Snyder, Auditor General:

Sir: You have asked me to advise you whether the act of June 20th, 1893 (P. L. 473), makes it mandatory upon you as Auditor General to audit the accounts of the various State officers, agents and employes, by going to their offices and there making an examination of their books, papers and vouchers, if you are otherwise satisfied that the accounts rendered by them to you are in proper form, accompanied by vouchers filed in your Department, in the absence of information of irregularity or fraud; and further, if the act above named does not make it mandatory upon you to audit in the manner just described, whether there is any act of Assembly or decision of a court which makes such character of audit your duty.

I reply that the act of 20th of June, 1893, contains no direction that the Auditor General shall visit the offices of the various State departments or undertake, either in person, by deputy, or other duly authorized agent, the examination of the books, papers and accounts of each State officer in loco. The act simply requires you to settle the accounts of State officers, agents or employes whose terms have expired, and prescribes a method as to how such settlements shall be made, by charging such persons with all fees received by them for the use of the Commonwealth, and crediting them with the salaries, fees and emoluments appropriated to them by law, and which fees and emoluments shall have been paid by them into the State Treasury during their term in office. It is further made your

duty to furnish to each person and his sureties a certified copy of such settlement; in case a balance should appear to be due the Commonwealth, the settlements are to be placed in the hands of the Attorney General for collection; and, in case a balance shall appear to be due to any person, theretofore an officer, agent or employe of the State, then the Auditor General shall draw his warrant upon the State Treasurer in favor of such creditor of the State for the amount so appearing to be due; provided that no credit shall be allowed for fees or emoluments which shall not have been paid into the State Treasury, nor until the Auditor General has been furnished with an itemized statement of the several monthly or quarterly payments, as the case may be, made to the State Treasurer during the term of office, which statements and all other reports, notwithstanding the fact that the term of office may have expired, shall have the like effect as if made during the term.

The plain purpose of the act of 1893 is to give extended force and effect to the act of 3rd of June, 1885 (P. L. 60), to which it is in terms a supplement. The main act provided for the payment into the State Treasury of all fees collected by the officers, agents and employes of the State government, prescribed a uniform method of keeping official accounts, and provided for the payment by warrant of the Auditor General to the State officers, agents and employes of the several amounts of the fees to which they were respectively entitled. The supplementary act was to cover a *casus omissus*, for the main act in terms did not cover the case of accounts of public officers, agents or employes whose terms expired after the passage of the act, or whose terms might expire thereafter before the settlement of such accounts. Hence the two acts taken together prescribe the manner in which State officers shall account to the State for fees, emoluments and perquisites, even when received for their own use, and the manner in which the same shall be passed through the books of the accounting officers of the State, displaying each item of debit and credit.

Neither the act of 1893 nor the act of 1885 was intended to establish a new system or modify the existing one so far as the method of auditing accounts is concerned, and neither of them in terms contains directions that the Auditor General shall visit the various Departments in order to make settlement of official accounts. They bring within the sweep of accountability State officers compensated by fees or compensated partly by salary and partly by fees, and correct a looseness of practice that theretofore prevailed, and extended the subject matter embraced by your jurisdiction, without modifying the method of conducting the audit.

The unbroken practice of your Department has been to require all debtors to the Commonwealth, whether corporations, limited part-

nerships, State officers, agents or employes to file in your Department permanent vouchers, showing the various items of expense incurred, and, since the act of 1885, in the case of officers or heads of Departments receiving fees, to require an accounting of these.

I have been at some pains to trace the history of the existing system, which has its roots in the distant past.

There were many special acts passed during the Colonial days, all of which were superseded by the act of 13th of April, 1782, entitled "An act for methodizing the Department of Accounts of this Commonwealth, and for the more effectual settlement of the same." (2nd Smith's Laws, p. 19.) After reciting that experience had shown that the methods theretofore practiced for the settlement of the accounts of the State had been found not to answer the good purposes intended, for a remedy thereof, it was enacted that an office should be instituted for auditing, liquidating and adjusting all the accounts of the Commonwealth, and that the same should be established and kept at the place where the General Assembly of the State should hold its sessions, to be styled the "Comptroller General's Office." This act is of importance because it distinctly provides that all accounts between the State and any officer of the same should be rendered into the office of the comptroller in the first instance, where they shall without delay be liquidated, adjusted and settled. This fixed the place of adjustment and settlement. The principle, that accounting officers of the State should seek the Comptroller or Auditor rather than that he should seek them, has never been departed from.

The act of 1782 was followed by very many other acts incident to the transformation of the colony into a State, and to meet numerous exigencies arising under the Constitution of 1790, and covering many items growing out of the period of the Revolution, all of which are reviewed in a most interesting fashion in a learned note by Charles Smith, (2nd Smith's Laws, pp. 25 to 42 inclusive), and in the case of *Daniel Smith v. John Nicholson*, 4 Yeates, p. 6.

It is unnecessary to trace these in detail, however, for in the year 1811, the Legislature, by act of 30th of March (P. L. 145-159 inclusive) swept away all previous acts upon the subject and passed an act "to amend and consolidate the several acts relating to the settlement of the public accounts, and the payment of the public moneys, and for other purposes." This act constitutes the basis of the present system, and nothing in later times has modified the methods then established.

It was provided that all accounts between the Commonwealth and others were to be adjusted by the Auditor General, who took the place of the Comptroller General, and the second section provided that, to enable the Auditor General to examine and adjust the

public accounts, he was invested with power to compel all persons in the receipt or possession of public moneys to render to him their accounts, and to enforce the attendance at his office of such persons whether party or witnesses whom he might deem necessary to examine in the investigation of any public account, and to this end he was to administer all necessary oaths or affirmations, and was also invested with power to compel the exhibition or delivery to him, by any person possessing the same, of all official or public books, accounts, documents or papers, in relation to or in connection with any public account which he might deem necessary in the investigation and adjustment of the same.

The proviso to the second section emphasizes the thought that the audit and accounting should take place at the office of the Auditor General by preserving the provision that if, by reason of the distance of residence from the seat of government, or from any sufficient cause, it was found impracticable or difficult to procure the attendance of such person at the office of the Auditor General for the purpose of giving information respecting any public account, it was thereupon made the duty of the Auditor General to procure the testimony of such person or persons to be taken before any judge of a court of common pleas with interrogatories annexed, issued under the hand and seal of the office of the Auditor General.

The fourth section reiterates this thought, by providing that, if any person attending at the office of the Auditor General, on his summons should refuse to exhibit his account, or to answer such questions touching the same as might be put to him by the Auditor General, unless such answer should have a tendency to incriminate such person, the Auditor General should have power to commit such person to the common jail of the county wherein the seat of government should then be held, until such person complied with the act or was otherwise discharged by due process of law.

The remaining sections of the act point in the same direction, and, after prescribing a method of appeal and subjecting various officers to the terms of the act, provides, in section 31, that persons should be summoned to appear at the Auditor General's office upon a writ issued by the Auditor General, addressed to the sheriff or coroner of the county, requiring them to summon or cause the attendance at the office of the Auditor General of such person or persons and arming the Auditor General with the power to issue a writ of attachment for contempt.

The 32d section relates to the mode of compelling the production of books and papers at the office of the Auditor General and arms that officer with compulsory powers to enforce its provisions.

There is no suggestion in this act—which is still in force—that the Auditor General should personally absent himself and visit

either in person or by deputy the places where such other State officers, employes or agents might be found. They are required to present their accounts to the Auditor General. It is his office that is specified as the place of return, both in matters of accounting and in matters of hearing, as well as the return of process intended to enforce his authority. The act localizes in theory and in terms the performance of duty on the part of the Auditor General, and of officers and debtors accountable to him. His absence from the place of official performance is not hinted, and no provision is made in the composition of his staff for the performance of duty elsewhere.

A review of the sources whence the revenues of the Commonwealth are derived emphasizes the same thought. These sources may be classified according to the methods by which the revenues are collected, viz:

1. Taxes paid directly or through other State officers to the State Treasurer.

2. Taxes collected by county officers and by them paid to the State Treasurer.

The taxes paid directly to the State Treasurer are bonus on charters; tax on capital stock of corporations, or invested in limited partnerships and joint stock associations; tax on corporate, county and municipal loans; tax on gross receipts of transportation, transmission and electric light companies; tax on the stock of banks; tax on the gross premiums of domestic insurance companies having capital stock, and on the premiums of foreign insurance companies; tax on net earnings or income of brokers, private bankers and unincorporated banks and savings institutions; tax on the matured stock of building and loan associations; excise tax on receipts of express companies, escheats and certain miscellaneous taxes.

The taxes collected by county officers and by them paid to the State Treasurer are as follows: State tax on personal property, collateral inheritance tax, direct inheritance tax, licenses, tax on fees of public officers, tax on writs, deeds, etc., as to all of which there is the usual statutory provision relating to all officers collecting taxes for the use of the Commonwealth.

It is clear that it would be impracticable for you, in auditing the returns made to the State Treasurer, to absent yourself from your office, or, with your present force, to send an expert accountant into all the counties of the State to settle in loco the returns to be made by prothonotaries, sheriffs, registers of wills, mercantile appraisers, county treasurers, and officers the scene of whose activity is remote from the capital. Nor could you exercise a personal supervision over the conduct of the officers of the various State Departments located at the State Capitol by visiting their Departments

and scrutinizing the records of their respective offices. So long as the duty is imposed by statute upon all officers, agents and employes of the State of making their returns to you, accompanied by vouchers certified to by them as true and correct, you are entitled to rely upon the returns in the absence of information as to fraud or mistake, inasmuch as all these officers are sworn to obey the law, upon the principle announced by the Supreme Court in the case of *Philadelphia v. Commonwealth*, 52 P. S., 451, where Chief Justice Woodward said: "The submission of all necessary vouchers and all due examination and deliberation are to be presumed. It was a public duty performed by officers of State, and the maxim applies *Omnia praesumuntur rite acta*."

You have a right to rely upon the presumption that all State officers, sworn to perform their duty and to render their accounts to you properly vouched, are performing their duties exactly in accordance with law, when they furnish to you an account specifically stated, accompanied by vouchers, which vouchers are duly certified that the bills for which they are exhibited are true and correct, and that the service, expense or material therein charged for were rendered and incurred or furnished for the use of the particular Department.

I think it is wise to require the proper signature of each officer to these accounts and certificates, and not to accept a stamped signature, or one by a subordinate unless such subordinate clearly has the powers of a deputy acting in the absence of the principal. You are, of course, obliged to see that the accounts as rendered are in proper form; that the debit items are regularly stated; that the sources whence they are derived are clearly stated; and that the credits claimed are properly vouched for by the filing of the proper certificates or vouchers; and that these credits are clearly within the legal authority of the Department making the expenditure. Should you be informed of any irregularity in a department, you can either require, under the act of 1811, the production at your Department of all original books and papers relating to the questionable account, or you can in your discretion, without notice, visit the Department and call for the papers.

In conclusion I have no hesitation in advising you that you are not required to visit the Departments in the manner suggested by your inquiry.

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.



## STATE NORMAL SCHOOL AT MANSFIELD, TIOGA COUNTY.

Provisions and stores or a shower bath may not be sold to a State Normal School by the trustees or managers thereof.

Renting of pasture land by a trustee to the school is not within the meaning of the act, and is permissible.

A charge made for exchange on checks of the students by a trustee is not prohibited by law.

Acting as agent for fire insurance companies which insure the school buildings by a trustee is not prohibited.

The furnishing of electric light to the school by a corporation in which the trustees are interested is permissible, but should be closely watched.

Office of the Attorney General,  
Harrisburg, Pa., May 3, 1906.

Honorable W. P. Snyder, Auditor General:

Sir: I am in receipt of your communication of recent date, submitting certain charges filed in your Department by Colonel E. R. Chambers, Traveling Auditor, against some of the trustees of the State Normal School situated at Mansfield, Tioga county, together with other papers and letters in connection therewith, and asking for an official opinion upon the same.

From information contained in the letters and documents you enclose, together with that obtained at a hearing given by me, wherein the said Mansfield Normal School was represented by Charles S. Ross, President of the Board of Trustees, I find that the charges submitted by Colonel Chambers and corroborated by the facts are these:

1. Pitts and Judge, proprietors of a general store, and both trustees of the Normal School, have been selling goods and supplies to the institution.

2. Charles S. Ross, President of the Board of Trustees, has been renting pasture land to the institution and also charging it a nominal fee for exchange in handling the checks of students.

3. J. A. Elliott, one of the trustees of said institution, acted as agent in selling a shower-bath to the school.

4. Joseph S. Hoard, a trustee of the institution, is acting as agent for the various companies which carry the insurance on the buildings.

5. The Mansfield Electric Company, a corporation in which several of the trustees of the institution are stockholders, is supplying the buildings with electric light.

You ask to be officially advised whether any or all of these charges constitute violations of the act of Assembly of 23d of April, 1903 (P. L. 283), the material part of which reads as follows:

"That it shall not hereafter be lawful for any officers or member of the Board of Managers of an institution

at a time when said institution is receiving State moneys from legislative appropriations to furnish supplies to such institution either by direct sale or sale through an agent or firm or to act as an agent for another in any way in so furnishing supplies."

The rule of construction applicable to all penal statutes is that they must be strictly construed, and, therefore, in order to determine whether these transactions are legal or otherwise, we will first consider what is meant by the word "supplies."

The Century Dictionary defines the word "supply" as "that which is supplied; means of provision or relief; sufficiency for use or need; a quantity of something supplied or on hand; a stock; a store," and the definition of the plural is "necessaries collected and held for distribution and use; stores." But we are not obliged to rely entirely upon the definitions of the lexicographers, as the term has been judicially defined in the courts of this as well as of other states.

In *re Hazle Township*, 6 Kulp, 491, it was held that the word "supplies," as used in the act prohibiting any officer or agent of any corporation or municipality to be interested in the sale or furnishing of any supplies or materials to the organization or body which he represents, or of which he is a member (act of March 31, 1860, section 56), means that township supervisors are not permitted to employ their own teams or minor children upon the township roads.

In *Gleason v. Dalton*, 51 N. Y. (Sup), 337, 23 Appellate Division, 555, it was held that the word "supplies," used in reference to a city, in its broad etymological sense, embraces everything which is furnished to a city or its inhabitants, but, as used in section 419 of the Greater New York Charter, requiring competitive bids for supplies, it has no application to contracts for furnishing water to the inhabitants of New York.

So in the case of the *Farmers' Loan and Trust Company v. The City of New York*, 14 N. Y. Sup. Ct., 80, it was held that, while the word "supplies" comprises anything afforded to meet a demand, yet the use of a pier hired by a city for the purpose of removing garbage is not a supply furnished.

From these definitions and decisions it is clear that anything in the line of provisions, books, material or stores falls within the prohibition of the act and may not be legally furnished, directly or indirectly, by the trustees or managers of an institution receiving State aid. The intention of the Legislature was to prevent the trustees or managers from using the money of the State to their own advantage in purchasing from themselves, for the use of the institution, the materials or stores of which it may be in need. And what

they may not do personally cannot be done by an agent or other acting in their behalf. It is not necessary to call attention to the wisdom of this legislation. It was designed to prevent the subjection of trustees and others to the temptations of using public moneys for their personal benefit, and it must be enforced fairly and rigorously.

It is too clear for argument that the first charge, which includes the provisions and stores purchased from Pitts & Judge, falls squarely within the terms of the act, thus constituting a misdemeanor and must, therefore, be discontinued.

This conclusion applies equally to the third charge, wherein J. A. Elliott acted as agent in selling a shower-bath to the school.

The charge made by Colonel Chambers against Charles S. Ross is somewhat more complicated. Under the authority of *Gleason v. Dalton*, supra, I am of opinion that the renting of the pasture land is not within the meaning of the act, and therefore may be continued.

The charge made for exchange upon checks of students clearly does not come within the meaning of the word "supplies," and is not therefore prohibited by the terms of the act.

As to the fourth charge, that Joseph S. Hoard is acting as agent for the companies which carry the insurance upon the buildings, I am satisfied that this is in no way a violation of the law, as Mr. Hoard is acting merely as the agent of the insurance companies and receives no pay from the school for his services in connection with writing the insurance. The rates which the institution pays to the companies for protection against fire, as fixed by the Underwriters' Association, can in no way be varied or changed because Mr. Hoard acts as the agent. I therefore decide that this is permissible.

The fifth charge—that against the Mansfield Electric Light Company—is the most difficult of all to determine and is in no wise free from doubt. While electric light is clearly a supply, under the definitions above given, it is not clear from the language of the act that it applies to corporations in which some or all of the trustees are stockholders. A careful examination of the facts connected with this company shows that Mansfield is a small town, and, without the patronage of the school, it is doubtful if the Electric Light Company could exist. Neither can the institution afford to maintain its own separate plant for supplying electric light. The rate charged by the Mansfield Electric Light Company to the school is a very low one, and to reach an adverse decision on this point and order this service discontinued, would work a manifest hardship to the school as well as to the Electric Light Company. Instances of this kind must be determined by the facts surrounding them, and if an investigation shows that a corporation was created or conducted for the purpose of evading the terms of this act by the

trustees or managers of any institution receiving State aid, I am of the opinion that it would be the duty of your Department to put the machinery of the law in motion in order that a judicial determination of this precise point might be obtained, but I am of the opinion that under all the circumstances of this case it may be allowed to continue under careful supervision.

As J. A. Elliott and Pitts & Judge have filed statemnets denying any intention of evading the provisions of the law and have promised not to sell, either directly or indirectly, any supplies whatsoever to the school in the future, and as the trustees all claim to have acted in good faith, and are men of high personal standing and integrity in the community, I am of the opinion that your full duty in the matter has been discharged, and that there is no reason why the appropriation made by the Legislature to the Mansfield State Normal School should be withheld or any further action taken by your Department, except to exert the utmost vigilance to prevent recurrence of violations in future.

Very respectfully,  
FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### EAST STROUDSBURG NORMAL SCHOOL.

The investigation by the Auditor General of the condition of the East Stroudsburg Normal School showed the school on the educational side to be ably and conscientiously conducted. While the evidence given in the investigation showed a violation of the act of April 23, 1903, by two of the directors, the act is a penal statute and the question of the guilt or innocence of the two directors should be determined by the courts of Monroe county.

The Auditor General should send a travelling auditor to the school, and if the methods complained of have been changed, the school should receive the money appropriated to it by the Legislature.

Office of the Attorney General,  
Harrisburg, Pa., May 11, 1905.

Hon. W. P. Snyder, Auditor General:

Sir: I have your letter of recent date, enclosing the painstaking report of the Hon. Robert K. Young, who, at the request of the trustees of the institution, was appointed by you to investigate the charges made against the management of the East Stroudsburg Normal School. I have gone carefully over this report and the accompanying report and exhibits prepared and submitted by Vollum, Fernley & Vollum, certified public accountants, who accompanied Mr. Young and assisted him in his work.

You ask me to advise you as to your duty in the premises, particularly with reference to the issuing of warrants for the appropriation due the East Stroudsburg Normal School for the past two quarters, which have been delayed by you pending the conclusion of this investigation.

From an examination of the evidence I find that the school, on the educational side, is ably and conscientiously conducted, and is doing a good work in that section of the State. Under the direction of Prof. Bible, and, later, Prof. Kemp, it has become one of the most successful institutions of its kind in the State. It would be a manifest hardship to permit the censurable acts of some of the trustees to undo this work, and operate to the detriment or possible destruction of the institution. The evidence shows a specific violation of the provisions of the act of April 23, 1903, on the part of at least two directors, but, inasmuch as the act in question is a penal statute, the question of the guilt or the innocence of these directors is one for the proper legal authorities of Monroe county to determine. Your duty practically ended with an ascertainment of the facts and the publication of the report. The entire record will be transmitted by this Department to the district attorney of Monroe county, with a suggestion that he give the matter his attention, and if, in his judgment, the evidence warrants it, the proper steps be taken to punish the guilty parties, if there be any. It is not your duty, nor is it the practice of this Department to institute criminal proceedings of any kind, as that duty may well be left to those upon whom the law places it.

I am of opinion and advise you that you should send a traveling auditor of your Department to make a careful examination and inquiry into the affairs of the school, and if the methods complained of have been changed, the school should receive the money appropriated to it by the Legislature, to the end that its work in the educational field may not be curtailed or hampered.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

## STATE NORMAL SCHOOLS.

A trustee of a State Normal School may not sell supplies to the institution and this prohibition covers the item of printing.

Where the trustees own stock in a water company which supplies the school with water and for the company not to sell the water to the school would work hardship—held that the transaction is permissible.

Office of the Attorney General,  
Harrisburg, Pa., May 17, 1906.

Hon. W. P. Snyder, Auditor General:

Dear Sir: Your letter of recent date, enclosing report of Colonel E. R. Chambers, traveling auditor of your Department, setting forth facts which he considers violations of the act of Assembly of April 23, 1903 (P. L. 285), by several of the trustees of the Bloomsburg State Normal School, and asking for official instructions as to the proper action of your Department therein, received.

The specific charges made by Colonel Chambers are as follows:

1. That the books of the institution show that the sum of \$26.80 was paid to Paul E. Wirt for supplies and that the said Paul E. Wirt is a trustee of the school.

This, of course, is a direct violation of the spirit as well as the precise language of the act, and it will be the duty of your Department to refer the whole matter to the district attorney of Columbia county if this conduct is persisted in, but as Mr. Wirt has filed in your Department a letter in which he sets forth that this business was not solicited by him and that the fountain pens which he supplied were billed to the school at wholesale prices; coupled with the promise absolutely to refuse to furnish any more pens or supplies of any kind to the school, leads me to the conclusion that you should consider this incident as closed, and I so advise you.

It appears that the records of the school also show that a bill of \$350.10 was paid to J. C. Brown for printing. The fact that Mr. Brown has been a trustee for a great many years is not disputed.

It is also alleged that a bill for \$330.92 was paid to George E. Elwell for printing and that Mr. Elwell is likewise a trustee.

I have given these two items very careful consideration and have taken into account the peculiar circumstances surrounding them. Messrs. Elwell and Brown are both men of the highest personal integrity and standing in the community, and both have been for many years members of the board of trustees, and have rendered faithful service in behalf of the institution. It appears from their own statements and the statement of Dr. J. P. Welsh, principal of the school, that neither of these gentlemen has ever solicited the work of the school, but that the printing of the institution has gone to

them because they are the owners and proprietors of the only printing establishments in Bloomsburg, and that unless the work is done at one or the other of these two places it must be sent out of town and in many instances this course would be most inconvenient.

For all of these reasons I should be very glad, if the statute allowed any such discretion, to permit this practice to continue, but unfortunately there is no way in which this can be done under the law as it now stands, and in the future the school must have its printing done elsewhere or these gentlemen must resign from the board.

The fourth item or charge which Colonel Chambers makes in his report relates to a bill of the Bloomsburg Water Company of \$873.13, being the amount paid by the school to this corporation for the water furnished it during the past year. It appears from the statement furnished by Mr. A. Z. Schoch, president of the board of trustees, as well as the report of C. W. McKelvey, secretary of The Bloomsburg Water Company, that the corporation had gone to a very heavy expense in order to supply this school with water under a sufficient pressure to provide for proper sanitation and fire protection. This was done at the earnest request of the trustees after the institution had been considerably damaged by a fire which could not be extinguished because of the insufficient pressure of the old system.

It further appears from the very full and complete report made by these gentlemen that the members of the board of trustees of the Bloomsburg State Normal School own about 2,656 shares of stock out of the 18,000 shares issued.

Under all the circumstances of this case I am satisfied that it would work a grievous hardship to the school and no public good could result from your insisting upon a discontinuance of this service. I therefore advise you that there is nothing in this particular transaction, which will warrant you in taking any further course in connection therewith except to exercise close supervision with reference to the reasonableness of the charges made by the water company for the service it renders the school.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## QUAY STATUE.

The contract for the making of a sketch model of the Quay statue, entered into prior to January 15, 1906, by the Commission appointed by the Governor under the terms of the act of 11th May, 1905 (P. L. 450), is a valid one—and a warrant should be drawn by the Auditor General to pay for the work done thereunder.

Whether the Commission exists “de-facto” after the failure of the Senate of the special session of 1906 to confirm their appointments and the question of the proper location of the statue, not decided.

Office of the Attorney General,  
Harrisburg, Pa., May 18, 1906.

Hon. W. P. Snyder, Auditor General:

Sir: I am informed by you that the treasurer of the Commission for the erection of a statue to the late Honorable M. S. Quay on the Capitol grounds at Harrisburg, Pa., as created and appointed under the terms of the act of 11th of May, 1905 (P. L. 450), has made requisition upon your Department for the issuing of a warrant for \$2,920.50, as part payment under the contract made with Karl Bitter, the sculptor. You further state that information has reached you that the statue is to be erected within the Capitol building and not “upon the Capitol grounds,” as provided in the act. You desire my official opinion whether this rumored change interferes with the intention of the act. You desire also to ascertain the legal status of this Commission, the same not having been submitted to or confirmed by the Senate at the extraordinary session of the Legislature of 1906. You request my official opinion as to issuing the warrant under the circumstances above stated.

Before proceeding to express my views I notice an informality in the papers and I herewith return them to you so that they may be corrected. The act requires that the money appropriated shall be drawn upon warrant of the Auditor General upon request of the president and treasurer of the Commission. The requisition is signed by the treasurer alone and lacks the signature of the president. The copy of the contract entered into between Karl Bitter, the sculptor, and the Commission is not dated. I should be glad to have this informality corrected, and you are entitled to know the exact date of the execution of the contract.

I am of opinion that the first question submitted need not be considered at the present time. It is prematurely raised. The act expressly provides that the Commission created under its terms, together with the Commission of Public Grounds and Buildings, shall determine the proper point of erection of said statue “on said Capitol grounds.” Until the statue is ready for erection, and until the Commission and the Commissioners of Public Grounds and Build-



ings have acted in determining the location of the statue, it cannot be inquired into, in advance, whether they have abused their discretion or exceeded their powers.

The second question suggests several points of law, only one of which is pertinent under the facts. The facts are these: The Legislature, by an act duly approved by the Governor on the 11th of May, 1905 (P. L. 450), appropriated the sum of twenty thousand dollars, or so much thereof as may be necessary, for the purpose of erecting a statue of the late Honorable M. S. Quay on the Capitol grounds at Harrisburg, at a point to be selected as stated.

The money appropriated under the act was to be drawn as already stated, and it was further provided that "immediately upon the approval of this bill, the Governor shall appoint the members of the Commission, and call a meeting of the persons so appointed, constituting the Commission, who shall at their first meeting elect a president and treasurer and proceed at once to the discharge of the duties imposed upon them by the act."

On the 7th of July, 1905, the Governor appointed J. Donald Cameron, Samuel Moody and David H. Lane as Commissioners, and commissions were issued to be operative "until the end of the next session of the Senate, unless sooner lawfully determined or annulled."

This fixing of a term to the appointment was not called for by the language of the act itself, but its inclusion in the Commission has led you to inquire, in view of the fact that an extra session of the Legislature was held in January and February of 1906 under a special proclamation of the Governor, whether the fact that the appointments thus made were not confirmed by the Senate invalidates the present acts of the Commission.

I do not feel called upon to consider this question as to whether the Commission is now in existence *de jure*, or whether it has expired by virtue of the limitation of time disclosed in any of the commissions of the various members constituting the body. I am satisfied that the present state of facts—with which alone I am called on to deal—must be determined by a very plain and well-settled principle of law, and one of which renders further discussion unnecessary.

If, after the return of the papers to you corrected, as suggested by me, it appears that the date of the contract made with Karl Bitter is prior to the 15th day of January, 1906, then his claim to payment under the terms of that contract cannot be affected by the doubt arising as to whether or not the Commission is still legally in existence. One of the clauses of the contract expressly stipulates for the payment of fifteen per cent. of the contract price upon completion of the sketch model of the statue and pedestal. The papers

submitted show a certificate from the architects, Messrs. Furness, Evans & Co., that the first instalment of the contract price is due under date of May 3, 1906. If it appears from the date of the contract that Mr. Bitter entered into the same prior to the 15th of January, 1906, then he was dealing with a Commission existing *de facto* as well as *de jure*. I say "*de jure*" because the terms of the act expressly provide that the Governor should appoint the members of the Commission immediately upon the approval of the bill, and the three citizens so appointed were, by act of the Legislature, constituted a Commission for the purpose specified.

The Legislature adjourned before the appointment of the Commissioners, the delay in the Governor's action being caused by the necessity of his dealing with a large number of bills left upon his table after adjournment within the limit of thirty days, and therefore no opportunity could have arisen for the presentation of the names of the appointees to the Senate for confirmation, even assuming such confirmation to be necessary until the next session of the Senate. On the other hand, should confirmation be necessary, and should the lapse on the part of the Senate at the special session to deal with the matter of confirmation in any manner affect the existence of the Commission *de jure*, it cannot be doubted that the Commission still exists *de facto*. Mr. Bitter's rights cannot be affected. It is a well established principle, applicable to such a case as his, which holds valid the acts done by persons exercising official functions by virtue of legislative authority, even if the legislative authority for such acts should be subsequently declared void.

In the case of *Clark v. Commonwealth*, 29 P. S., 129, a person had been convicted of murder in the first degree, and had pleaded to the jurisdiction of the court that tried and sentenced him, alleging that the presiding judge had not been lawfully elected under the provisions of the Constitution, but it was held that the title of the judge to his office could not be called in question by a private suitor, but only by the Commonwealth; that he was a judge *de facto* and, as against all parties but the Commonwealth, a judge *de jure* also. It was said by Mr. Justice Woodward in delivering the opinion that "the notion that the functions of a public officer, or of a corporation existing by authority of law, can be drawn in question (I do not mean as to the mode of their exercise but as to their right of existence), except at the pleasure of the sovereign, is a mistake that springs from the too prevalent misconception that it is the duty of everybody to attend to public affairs."

In a later case, that of *Campbell v. The Commonwealth*, 96 P. S., 344, where the title of officers was disputed and the validity of their official acts challenged, Mr. Justice Mercur said:

"Under due forms of law they hold their offices by title regular on its face. They are performing the duties thereby imposed on them, and enjoying the profits and emoluments thereof. Thus they are judges *de facto*, and as against all parties but the Commonwealth are judges *de jure*. Having at least a colorable title to these offices, their right thereto cannot be questioned in any other form than by a *quo warranto* at the suit of the Commonwealth."

In the case of *Keyser v. McKissan*, 2 Rawle, 139, Judge Rogers said:

"The rule which governs the case is, that the commissioners who appointed the treasurer were officers *de facto*, since they came into their office by color of title. It is a well settled principle of law that the acts of such persons are valid when they concern the public, or the rights of third persons who have an interest in the act done."

Citing *People v. Collins*, 7 Johnson's Reports, 554; *King v. Lisle*, Andrews' Reports, 163, he goes on to say:

"And this rule has been adopted to prevent a failure of justice. The reason given for the rule is most satisfactory. That the act of an officer *de facto* where it is for his own benefit is void, because he shall not take advantage of his want of title, which he must be cognizant of; but where it is for the benefit of strangers or the public who are presumed to be ignorant of such defect of title, it is good."

In *Riddle v. The County of Bedford*, 7 S. & R., 386, the Supreme Court, through Duncan, J., said:

"There are many acts done by an officer *de facto* which are valid. They are good as to strangers and all those persons who are not bound to look further than that the person is in the actual exercise of the office, without investigating his title."

These principles were affirmed by the Supreme Court in an opinion rendered by Mr. Justice Green in the case of *King v. Philadelphia Co.*, Appellant, 154 P. S., 160.

The foregoing principles are conclusive in favor of Mr. Bitter's right to be paid. He entered into a contract with a Commission duly constituted under authority of law. No matter what view may be taken as to the effect of the language used in the commissions of the members and the failure of the Senate to confirm, it is clear that the Commission still exists *de facto*; that Mr. Bitter is a third party whose rights are affected; and that he cannot be bound by any possible defect of title in the officers with whom he dealt. He has

done his work, has stipuated for and is entitled, under the law and upon principles of honesty and fair dealing, to be paid.

I therefore advise you that, upon the correction of the papers in accordance with the suggestions made, you are justified in drawing a warrant in his favor in the sum of \$2,655.00, and in favor of the architects, Furness, Evans & Co., for their commission in the sum of \$265.50.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

SUPREME COURT—SALARY OF DEPUTY PROTHONOTARY AND  
CLERK FOR THE EASTERN DISTRICT.

The act of May 4, 1905, takes effect from the date of its approval. It is the duty of the Auditor General to draw the warrants for the increased salary of the deputy prothonotary and clerk provided for in this act, notwithstanding the failure of the Legislature to make an appropriation therefor. The State Treasurer is forbidden to pay the warrant under the constitutional provision which forbids the paying out of money except upon appropriations made by law.

Office of the Attorney General,  
Harrisburg, Pa., May 27, 1905.

Hon. W. P. Snyder, Auditor General, Harrisburg, Pa.:

Sir: Yours of the 22d inst., received, enclosing requisitions made by the prothonotary of the Supreme Court of Pennsylvania for the proportional amounts of salaries due to the deputy prothonotary and clerk in the Eastern district, under the terms of the act of May 4, 1905.

The act of the 24th of April, 1905, referred to in your letter, has no bearing because it relates to criers and tipstaves. You ask whether you shall draw your warrant for the amount asked for in the requisition, namely, \$202.95. I reply that in my judgment, the act of 4th of May, 1905, takes effect from the date of its approval and that it entitles the deputy prothonotary and the clerk to the proportional increased amount of salary. The act specifically provides "that the salaries created by this act shall be paid quarterly by warrant drawn by the Auditor General on the State Treasurer for the said amounts."

The general appropriation act fails to carry with it an appropriation for the payment of these salaries during the next two years, the same having been omitted through inadvertence. The services of the deputy prothonotary and the clerk are indispensable to the proper performance of duty in the office of the prothonotary; the

amounts of the salaries are fixed and the direction as to the drawing of the warrant by you as Auditor General, is in my judgment, specific and clear.

The question arises whether these warrants should be drawn, in view of the failure of the Legislature to make an appropriation, and particularly in view of the provision in the Constitution of Pennsylvania contained in section 16 of article 3 which reads as follows: "No money shall be paid out of the Treasury, except upon appropriations made by law, and on warrants drawn by a proper officer in pursuance thereof." I am clear that there is nothing in this constitutional provision which prevents your drawing the warrants in accordance with the requisition, inasmuch as it is made your duty by the act of Assembly to draw the warrants for the salaries as fixed by the act of May 4, 1905, and a proper reading of the constitutional provision does not prohibit the drawing of the warrant, but relates simply to the matter of the payment by the State Treasurer. The word "thereof" relates to the word "law" and not to the word "appropriation." As there is a statute directing the drawing of a warrant, there is a "law" which justifies the drawing of the warrant.

I am of opinion that while the State Treasurer cannot make payment of the warrants as drawn, yet there is nothing to restrain you from drawing the warrants in accordance with the requisition.

I have sent a copy of this letter to the State Treasurer. I herewith enclose requisition together with the bills relating thereto. The requisition for the sum of \$212.90 for clerk is under the old act and is in proper form and as to this there can be no objection made to its payment by the State Treasurer as it does not come within the terms of the act of May 4, 1905.

I remain,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## AUDITOR GENERAL'S DEPARTMENT.

The act of 17th of April, 1905, imposing upon the recorder of deeds of each county the duty of certifying to the Auditor General a list of mortgages entered and satisfied each day contains no provision to enable the Auditor General to compare, tabulate and make use of the returns required by the act.

It is a well settled principle of construction that where the Legislature imposes additional burdens upon officials, there should be adequate compensation provided—and where as in this case, this is not done, the act should be held in abeyance until suitable provisions are enacted for putting the law in effect.

Office of the Attorney General,  
Harrisburg, Pa., June 6, 1905.

Hon. W. P. Snyder, Auditor General:

Sir: I have before me your letter of even date herewith, enclosing a copy of an act of the recent Legislature, numbered 134, approved the 17th day of April, 1905, and asking for an official opinion as to whether or not it is your duty to attempt to put the provisions of the same into effect.

The purpose of the act in question is concisely and clearly expressed in its title, which is as follows:

“An act amending the fifth, seventh and eighth sections of 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, which further supplement was approved the first day of June, one thousand eight hundred and eighty-nine; authorizing and requiring the Auditor General of the Commonwealth to make a return for personal property taxes for defaulting persons, partnerships, unincorporated associations, limited partnerships, joint stock associations or corporations, wherein there has been a refusal or failure of the aforesaid to make returns properly verified, and upon the failure or refusal of the assessors and board of revision of taxes or county commissioners to make proper return for said personal property taxes; also authorizing and requiring the Auditor General of the Commonwealth to collect the taxes in accordance with the returns made by him, and requiring the recorder of deeds and prothonotaries of the various counties to file daily records in the Auditor General's office, as they are required to file in the commissioner's office or with the board of revision of taxes; also requiring the county commissioners or board of revision of taxes to file with the Auditor General copies of all returns made for personal property taxes, and requiring the record of the county commissioners or board of revision of taxes to be opened to the inspection and use of the Auditor General.”

It imposes upon the Recorder of Deeds in each of the counties of the Commonwealth the duty of certifying to you a list of the mortgages entered and satisfied in his office each day. It also directs that the prothonotary of each county shall certify a similar list to you of the judgments entered of record or satisfied in his office each day, and, in addition to this, it is made the duty of the Commissioners of each county to certify to your Department a correct copy of the return of each individual taxable for personal property subject to taxation for State purposes.

You set forth in your letter that there was no provision made to enable your Department to tabulate, compare and make use of the returns required by the act; that the Legislature also failed to make any appropriation to pay for the greatly increased clerical force which would be necessary for you to put the provisions of the act into effect; neither was there any provision made for the payment of the various county officials for the increased labors imposed upon them by its terms.

The intention of the act apparently was to increase the facilities for ascertaining the amount of personal property tax due from taxables, in the first instance, to the State, but, in the last analysis and primarily, to the counties, for the reason that, under the present law, three-fourths of the amount of money so raised is returned by the State Treasurer to the counties for their local needs. Under the provisions of the law in force prior to the adoption of this act, the county commissioners of the various counties made the personal property tax assessment and forwarded the aggregate amount so assessed to the Board of Revenue Commissioners of the Commonwealth. When the tax so levied and collected has been paid through the medium of the county treasurer to the State Treasurer, one-fourth of the total amount is deducted for the use of the State, the other three-fourths being returned to the treasurer of the county for use in local purposes. The percentage retained by the State is so small as to afford, in many instances, only a meagre compensation to the officials who are required to do the work. The imposition of this additional burden upon State officers, the primary object of which will be to increase the amount of taxes paid and inuring largely to the benefit of the counties, without proper provision for the increased expense to the State, is conclusive evidence that this legislation was not well considered. It is a well settled principle of construction that, where the Legislature imposes additional burdens upon officials, there should be adequate compensation provided, and when, as in this case, no provision is made for the increased expense of collecting data, and where, in fact, there is no adequate force provided to carry the law into effect, nor appropriation made to secure it, it is my opinion that the whole matter should be held in

abeyance and not put into effect until such time as the Legislature shall make a suitable appropriation and provision for the proper machinery necessary to carry out its terms.

I therefore advise that you correspond at once with the various county officials affected by the act and inform them that you have neither the means, the force, nor the room to perform the duties which it seeks to lay upon your Department, and that they will not be required to furnish the reports specified until such time as a subsequent Legislature shall make it possible for your Department to do the work which it is sought to impose upon you by this piece of legislation.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

HARBOR MASTER'S SALARY—CONSTITUTIONAL LAW—SALARIES—  
INCREASE OF—GOVERNOR'S APPOINTEES—SECTION 13, ART. III, CON-  
STITUTION OF PENNSYLVANIA.

The provisions of Sec. 13, Art. III, of the Constitution of Pennsylvania are twofold; that there shall be no extension of a term when fixed by an act of assembly, and that there shall be no increase of salary during a term to which an officer is elected, or after his appointment where he is appointed. It relates only to executive officers.

The word "appointed," being unlimited by the context, must relate to cases where the appointment is at will, as well as to cases where there is an appointment to an office with a fixed term.

All officials holding commissions under appointment from the governor fall within that list of public officers whose salaries cannot be increased during the time in which they are exercising the powers and duties of the office under an executive appointment, whether for a term or at will. The harbor master of the port of Philadelphia is such an official.

Not decided that clerks, stenographers, messengers and other employes come within Sec. 13, Art. III.

Office of the Attorney General,  
Harrisburg, Pa., June 20, 1905.

Hon. W. P. Snyder Auditor General, Harrisburg, Pa.:

Sir: You have asked me to advise you officially what position you should take about paying the harbor master of the port of Philadelphia the increase of salary provided by the last legislature, under the act of May 11, 1905, which appropriates for the payment of the salary of the harbor master, for two years, the sum of \$10,000, an increase over the amount theretofore fixed by law.

The office of harbor master was created by the act of March 20, 1803, 4 Smith's Laws, 472, which provided that the governor should



appoint and commission a person to be harbor master of the port of Philadelphia, subject to removal by him at will. There is no later act of assembly which fixes a definite term, and the present incumbent was appointed and commissioned by the Governor, to hold at his will. I am of opinion that the provisions of the Constitution of Pennsylvania, as contained in section 13 of Art. III, apply to this case, and that a salary cannot be increased during the incumbency of the occupant of an office of an executive character where, as in this case, the office is one to be filled by appointment, and the appointee is in service under that appointment at the time the increase in salary is made. This construction harmonizes with all of the provisions of the Constitution, and puts each department of the government on an independent basis. The legislature is regulated by Art. II, and the compensation of its members is provided for by section 8, and the provisions of this section have no relation to any other branch of the government. In the same way the judiciary department is regulated by Art. V, and the compensation of the judges is controlled by sections 18 and 26 of said article, and these provisions have no relation to any other branch of the government. In the same way the executive department is regulated by Art. III, and its provisions have no relation to any other branch of the government. The decision of the Supreme Court in the case of *Com. ex. rel. v. Mathues* does not apply to the present inquiry. That decision relates entirely to the judiciary department, which, under the Constitution, stands upon a distinct footing, and is entitled to the benefit of special provisions in the Constitution which were held to be unaffected by those of section 13 of Art. III. That section, in my judgment, relates to executive officers, and prohibits an increase of salary during an existing term where the officer is elected, or during the time of his service under an appointment where he is appointed. The exact language is, "No law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment." It would be too strict a construction to hold that because there is no term fixed for the office of harbor master the provision does not apply. That would be to make the word "term" the controlling one in the section, whereas it is clear that the provisions of the section are two fold, that there shall be no extension of a term when fixed by an act of assembly, and that there shall be no increase of salary during a term to which an officer is elected, or after his appointment where he is appointed. The word "appointment," being unlimited by the context; must relate to cases where the appointment is at will, as well as to cases where there is an appointment to an office with a fixed term.

I do not now decide, as the point is not raised, that clerks, stenographers, messengers and other employes come within the terms

of the Constitution as recited in this section and article, but as to all officials holding commissions under appointment from the Governor I am satisfied that they fall within the list of public officers whose salaries cannot be increased during the time in which they are exercising the powers and duties of the office under an executive appointment, whether for a term or at will. I advise you, therefore, that the harbor master at present in office can receive no portion of the increase of salary, but is limited to that already fixed by law.

Yours truly,

HAMPTON L. CARSON,  
Attorney General.

---

#### AUDITOR GENERAL.

Expenses of Committee on Appropriations in investigating institutions supported in whole or in part by the State, act of May 11, 1905.

Under the provisions of the act of 11th of May, 1905, the Auditor General should pay by warrant drawn in favor of the chairman of the Appropriation Committee the expenses of the committee and the necessary clerical assistance in making the investigation provided for by the act, of the schools, reformatories, prisons, asylums, hospitals and other institutions supported in whole or in part by the State. No compensation for the extra services should be allowed the members of the committee.

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1905.

Hon. W. P. Snyder, Auditor General:

Dear Sir: Your letter of today, asking for an interpretation of the law as expressed in a clause in the General Appropriation bill passed at the recent session of the Legislature, and approved by the Governor on the 11th day of May, 1905, has been received.

The clause in question reads as follows:

“For the payment of the expenses of the Committee on Appropriations of the House of Representatives in investigating schools, reformatories, prisons, asylums, hospitals and other institutions supported in whole or in part from the treasury of the Commonwealth, and for necessary clerical assistance, the sum of ten thousand dollars, to be paid on the warrant of the Auditor General drawn in favor of J. Lee Plummer, chairman of said committee, on the presentation of the proper vouchers.”

You ask to be officially advised as to what will constitute proper items to be allowed on account of such expenses.

The persons constituting the Committee on Appropriations are members of the General Assembly, appointed to that position by

the Speaker of the House, and, while engaged in the duties incumbent upon that position, are acting in the capacity of legislators, and are, of course, entitled to no extra compensation for the work they perform in this connection. It is of great importance to the State that the work of this committee be done thoroughly and conscientiously, and this entails a great deal of extra labor and expense on those members of the Legislature constituting this committee. There is a settled practice and custom, entirely proper, that the necessary expenses incurred by these members in visiting the different educational, penal and charitable institutions of the State in order to obtain accurate and reliable information regarding the needs and necessities of the same should be paid by the State; also, that the clerical services necessary to be rendered in the performance of the arduous and exacting duties of the Committee should be likewise paid for by the State. The language of the clause under discussion fixes very clearly the intention of the Legislature that the money appropriated shall be used, so far as necessary "for the payment of the expenses \* \* \* and for necessary clerical assistance \* \* \* to be paid on the warrant of the Auditor General drawn in favor of J. Lee Plummer, Chairman of the said Committee, on the presentation of proper vouchers."

It is obvious that the Legislature intended that all expenses necessarily incurred and clerical assistance necessarily employed by the committee should be paid from this fund, and that these amounts should be ascertained by properly certified vouchers filed in your Department. The warrants are to be drawn in favor of the chairman of the committee, upon the theory or supposition that he has personally obligated himself for the payment of these bills, and that he shall have prepared proper vouchers showing the amounts of said payments.

I therefore advise you that any legitimate expenses incurred by any member of the committee under the authority and direction of its chairman in the prosecution of the business of the State, when properly present by voucher, should be paid by warrant drawn by you to the order of the chairman. So also should payment be made for any clerical assistance rendered the committee by any person properly employed by the chairman thereof. There is no warrant of law for allowing any member of that committee or the chairman thereof any compensation for the time or labor given to the work of the committee. The law contemplates only the reimbursement to the chairman of the committee and the members thereof of any sums of money expended by them legitimately for the payment of expenses necessarily attendant upon their work, and such claims should be paid promptly.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

## AUDITOR GENERAL—GETTYSBURG BATTLEFIELD MEMORIAL COMMISSION.

The money appropriated by the act of July 18, 1901 (P. L. 755), is available for use by the Gettysburg Battlefield Memorial Commission for the purposes named in the act.

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1905.

Hon. W. P. Snyder, Auditor General, Harrisburg, Pa.:

Dear Sir: I have before me your letter of recent date, asking for official advice as to whether or not the money appropriated by the act of July 18, 1901 (P. L. 755), entitled "An act making an appropriation for the erection of a monument or memorial structure on the battlefield of Gettysburg, in memory of the volunteer soldiers, sailors and marines from Pennsylvania, who participated in the late Civil War, one thousand eight hundred and sixty-one to one thousand eight hundred and sixty-five," is now available, if the commission provided for in the act should desire to carry out the work proposed by said act at this time.

This act provides that immediately after its passage the Governor of the Commonwealth shall appoint nine citizens of Pennsylvania, at least seven of whom shall have served in the Union Army in the War of the Rebellion, who shall constitute a commission to be known as "The Gettysburg Battlefield Memorial Commission." It provides further that the said commission shall serve without compensation other than their actual and necessary expenses, and that they shall select a suitable site on the Gettysburg Battlefield for the erection of a monument or such memorial structure as the commission shall determine, in memory of the gallant services of the soldiers of Pennsylvania in that battle. They are also given authority to select and decide upon the design for the said monument or memorial structure and the material of which it shall be constructed, and to make contracts for its construction, but they are limited by the terms of the law to make no contracts in excess of the appropriation made and the total cost of the monument was not to exceed the sum of \$250,000. Of this sum not more than \$50,000 was made available during the two fiscal years beginning June 1, 1901, and not more than \$50,000 to be available during the two fiscal years beginning June 1, 1903. The balance of the appropriation, namely, \$150,000, or so much thereof as may be necessary, was to be paid during the two fiscal years beginning June 1, 1905. The appropriations in question to be paid by the State Treasurer upon warrants drawn by the Auditor General from time to time as the work progressed, upon specifically itemized vouchers approved by the proper officers of the said commission.

When this bill came before the Governor for his action, he approved it in the sum of \$150,000 only, and withheld from it his approval of the item appropriating \$50,000 for the two fiscal years beginning June 1st, 1901, and from the item appropriating \$50,000 for the two fiscal years beginning June 1st, 1903, thus reducing the appropriation to the sum of \$150,000, which amount should not be available until June 1st, 1905. I understand he also appointed the commission provided for in the bill, and that the persons so appointed have accepted the trust reposed in them and are now ready and willing to go on with the work if it shall be determined that the amount appropriated by the act is now available.

After a careful consideration of all the facts in the case, together with the act itself, I am clearly of the opinion, and advise you, that if the commission is now ready to organize and go ahead with the work provided for in the act, they are entitled to receive from the State Treasurer the amount of money appropriated by its terms, to-wit: \$150,000.

Very respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

IN RE COATESVILLE HOSPITAL—STATE APPROPRIATIONS—QUARTERLY PAYMENT.

By the act of May 13, 1903, P. L. 372, the legislature appropriated the sum of \$10,000 for the maintenance of the Coatesville Hospital for two years. Payment for the first quarter was refused because the hospital was not opened. At the end of the two years the hospital had a deficit considerably in excess of the retained quarterly sum, and renewed its application for it. Held, the act did not divide the fiscal years into quarters and the money should be paid.

Office of the Attorney General,  
Harrisburg, Pa., October 19, 1905.

Hon. W. P. Snyder, Auditor General:

Sir: You call my attention to the act of 13th of May, 1903 (P. L. 372), by which there was appropriated to the Coatesville Hospital, adjoining the borough of Coatesville, in Chester county, Pennsylvania, for the two fiscal years beginning June 1, 1903, the sum of ten thousand dollars, or so much thereof as may be necessary, for the purpose of maintenance, and you state that, through some inadvertence, the treasurer of the institution wrote a letter to your Department during the administration of your predecessor, stating that, for the first quarter of the fiscal year, commencing June 1, 1903, the hospital was not open to receive patients, and for this reason the appropriation for that quarter was not allowed them; that they have since presented the facts to you, showing that the

hospital was open for a very short time before the end of that quarter, and that considerable expense had been incurred in making preparation for the maintenance of the patients, and for the opening during that quarter; that they have made application for the sum which was not allowed them at the time, to wit: the sum of \$1,250; and that, at the end of the fiscal year, to wit: May 31, 1905, they found that for the first two years, ending at that time, they have a deficit considerably in excess of the amount that was not allowed them for that quarter; and that they have renewed their application for the amount.

I am satisfied that the institution ought to receive the balance due it on its appropriation for the two years. It needs but an inspection of the act of Assembly making the appropriation to show that the lump sum of ten thousand dollars, if so much shall be necessary, is appropriated to the hospital for the two fiscal years for the purpose of maintenance. Nothing in the act specifies that the fiscal years shall be divided into quarters. A practice has grown up, which is entirely proper, for the Auditor General to distribute the amounts of appropriation over the entire period. This, however, is for the convenience of book-keeping, and in order that there may be a proper watch kept upon State appropriations. The very fact, however, that, at the end of the last fiscal year, May 31, 1905, their maintenance account shows a deficit much greater than the amount which they claim to be entitled to, establishes the justice of their claim and the propriety of its allowance. I therefore advise you to draw a warrant in favor of the Coatesville Hospital in the sum of \$1,250.00, and charge the same to the appropriation made under the act referred to.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

AUDITOR GENERAL—FREE KINDERGARTEN AND NURSERY ASSOCIATION OF HARRISBURG.

An appropriation by the Legislature for maintenance to the Free Kindergarten and Nursery Association may be paid by the Auditor General by warrant to that institution, although prior to the appropriation the name of the institution had been changed to the Nursery Home of Harrisburg.

There is no doubt as to the identity of the corporation, and the Free Kindergarten and Nursery Association may endorse the warrant over to the Nursery Home of Harrisburg.

Office of the Attorney General,  
Harrisburg, Pa., November 17, 1905.

Hon. William P. Snyder, Auditor General:

My dear sir: The Legislature by the act of 15th of May, 1903 (P. L. 433) appropriated to the Free Kindergarten and Nursery Asso-

ciation at Harrisburg the sum of one thousand dollars for maintenance, provided that the institution would so amend its charter as to eliminate from its purposes the maintenance of a free kindergarten and a free day nursery, and make a similar change in its name. This was done by proper proceedings in the court of common pleas of Dauphin county on the 20th of July, 1903.

The Legislature by act of 11th of May, 1905 (P. L. 553) appropriated the sum of two thousand dollars to the Free Kindergarten and Nursery Association at Harrisburg, for the purpose of maintenance, the appropriation to be paid in accordance with the provisions of an act of Assembly approved March 15, 1891. This appropriation was cut down to the sum of fifteen hundred dollars by the Governor, for the reason that the condition of the State revenues did not justify a larger expenditure at that time.

I cannot find any act of March 15, 1891, after a careful search, and am therefore unable to state what is meant by this reference. As the act cannot be found the reference may be treated as illusory.

On the foregoing state of facts you ask me whether you would be justified in making a payment of the money to the corporation now known as The Nursery Home of Harrisburg.

In answer that, upon the filing with you of an affidavit of the President of the Nursery Home of Harrisburg, setting forth that it is the institution formerly known as The Free Kindergarten and Nursery Association, and upon the filing with you of a certified copy of the proceedings in the common pleas of Dauphin county, docketed to No. 88 September term, 1903, which proceedings will fully disclose the identity of the corporation, you will be justified in making payment of the moneys appropriated by the Legislature of 1905.

There can be no doubt about the identity of the corporation, and the authorities are abundant to the effect that, although the name of a corporation may be changed, the identity of the corporation itself is not affected; that the identity of the company may be established by the ordinary methods of proof, and that, while in pleading the corporate name must be strictly used, yet in the case of devises or bequests or grants in aid of charity to a corporation, great latitude is allowed in the case of a misnomer.

In the present instance the name of the corporation was changed by the proceedings in the common pleas of Dauphin county to that of The Nursery Home of Harrisburg and the feature of a free kindergarten was eliminated.

In the case of *Clement v. City of Lathrop*, 5 American and English Corporation Cases, 563, it was held that a misnomer of a corporation will not prevent a recovery either by or against the corporation in its true name, provided its identity with that intended by the parties to the instrument be assured in the pleadings and apparent in the proof.

In *Mayor of Colchester v. Scales*, 3 Boroughs, 1866, it was held that, if the name of the corporation has been changed, it must use its new name on its old contracts, the identity of the corporation being shown by proof.

To the same effect are the decisions in the cases of *Delaware & Atlantic R. R. Co. v. Wuick*, 3 Zabriskie (N. J. Reports) 321; *Episcopal Charitable Society v. Episcopal Church*, 1 Pickering (Mass.). 372, and the *Trustees of Northwestern College v. Schwagler*, 37 Iowa, 577.

In the case of *Commonwealth ex. rel. Reinboth v. Councils of Pittsburg*, 41 P. S., 288, Mr. Justice Strong disposed of an objection made to a stock subscription because of a change of name of the corporation. He said: "This was a mistake. The name was changed by the Legislature but the identity was not lost."

These cases are in line with the text books on the subject. Thus Chancellor Kent in his *Commentaries*, 2nd Volume, 292, declared "A misnomer in a grant by statute, or by devise, to a corporation, does not void the grant, though the right name of the corporation be not used, provided the corporation really intended it to be made apparent. So an immaterial variation in the name of the corporation does not void its grant \* \* \* The general rule to be collected from the cases is, that a variation from the precise name of the corporation, when the true name is necessarily to be collected from the instrument, or is shown by proper averments, will not invalidate a grant by or to a corporation, or a contract with it; and the modern cases show an increased liberality on this subject."

This passage from Chancellor Kent is quoted with approval by Thompson in his *Commentaries on The Law of Corporations*—a very recent work—and Judge Dillon, in his work on *Municipal Corporations*, Section 179, 3rd Edition (an authority of the highest character), says:

"A misnomer or variation from the precise name of a corporation in a grant or obligation by or to it is not material, if the identity of the corporation is unmistakable, either from the face of the instrument or from the averments and proof." .

It is also well established that a misnomer in a devise or bequest, intended to be made to a corporation, will not make the gift void, but parole evidence may be resorted to to show what corporation was intended.

I am of opinion that, reading the two acts together, and observing that a change of name was exacted by the Legislature as the condition of its gift, and that this was followed by compliance on the part of the Association by taking the proper proceedings in court, which clearly established the identity of the institution, and that



the later act makes an appropriation to exactly the same institution receiving an appropriation under the act of 1903, but, through an inadvertence on the part of the Legislature, the appropriation was made under the old name, that these circumstances, sustained as they are by the record of the court proceedings, establish the identity of the object of legislative bounty beyond all peradventure, and that it would be not only inequitable but would defeat the entire purpose of the Legislature if a gift, made by it to a worthy institution, were permitted to fall solely because of a legislative mistake in the designation of the object of the charity. The geographical location of the institution is clearly designated in both acts; on examining the parole evidence which has been submitted, I cannot for a moment question the identity of the institution. I therefore advise you that the moneys appropriated by the Legislature can be paid upon the filing of the papers hereinbefore referred to.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

P. S.—In order to keep your records straight it would be well to have the warrant issued to the Association under its old name, as specified in the act of 1905. The treasurer of the company can endorse the warrant to the association under its new name, and it can be deposited and collected in that way.

---

#### CAPITOL COMMISSION.

The Capitol Commission cannot exist after January 1, 1906 and can make no new contracts, yet it must wind up and liquidate its affairs thereafter. The Auditor General should accept the vouchers of the treasurer of the Commission drawn to pay for contracts maturing after January 1, 1906.

Office of the Attorney General,  
Harrisburg, Pa., December 21, 1905.

Hon. William P. Snyder, Auditor General:

Sir: You have submitted a letter of Edward Bailey, Treasurer of the Capitol Building Commission, addressed to yourself, stating that it is possible that the work of the commission will not be fully closed by January 1, 1906, and that before paying out any moneys for salaries or for expenses of the members of the commission after January 1, 1906, he would like to be advised whether you will accept from him, as treasurer of the commission, such vouchers. You ask me to advise you what action you shall take if such vouchers are presented to you in settlement of the accounts of the commis-

sion, and further that if I decide that you can accept such vouchers whether you can draw warrants from time to time to the treasurer of the commission after January 1, 1906.

I have also before me a letter from the Hon. William A. Stone, President of the Commission, stating that the building is almost completed, and that but comparatively little is left to be done beyond settling with the contractors and with Miss Oakley and Messrs. Barnard and Abbey upon the completion of their work according to their respective contracts, and suggesting that, if warrants are drawn by the Auditor General and delivered to the commission before the first of January, 1906, for the balance of the appropriation, the disbursement can be made on the contracts as the moneys become due.

The act of 18th July, 1901 (P. L. 713) created a commission "until the first day of January, one thousand nine hundred and six, when said commission shall cease to exist; which commission is hereby authorized and empowered to construct, build and complete the State Capitol building at Harrisburg, including a power, light and heat plant of sufficient capacity to satisfactorily supply the needs of said building or buildings." The act also provides that "said building shall be completed in all its parts, ready for occupation, on or before the first day of January, one thousand nine hundred and six.

I am of opinion that the commission cannot exist as such beyond the date fixed in the act. It can perform no function and can enter into no new contractual relations with anyone, whether for service, labor or materials. It cannot, however, terminate, rescind or abrogate contracts already entered into and now on the verge of completion. These are necessarily binding and must be met. The contractors themselves cannot withdraw, nor can the artists refuse to complete their work. The obligations are mutual. Hence, while the commission can do no new act nor enter into any new obligation, and cannot continue to pay salaries or expenses for services rendered after January 1, 1906, yet it must ex necessitate wind up and liquidate its affairs just as a partnership may close up its business after the expiration of the term for which it was formed.

The commission is authorized by the act to "construct, build and complete" the State Capitol building. The word "complete," in connection with building contracts, has a fixed meaning judicially determined. Thus, in *Russell v. Barry*, 115 Mass, 300, it was held that "when the house is completed" means "when the house is substantially finished;" and in *Catlin v. Douglas*, 33 Federal Reporter, 569, "completion" was defined to mean "a final cessation by the contractor of work on the building." So, too, in *Schwartz v. Knight*, 74 Cal., 432 "completion" was said to mean "the finishing of the

building." Thus there is imposed in the very words of the act a continuing duty, and that duty, which is paramount, can only be discharged by winding up the business of the commission in a manner just to the contractors and artists and faithful to the end in view, which contemplates a finished and completed building. Although the statute enjoins that the building shall be completed in all its parts, ready for occupation on or before January 1, 1906, yet it is clear that a mere legislative fiat cannot put materials or decorations in place by a day certain. This clause in the statute, while drawing sharply a time limit, cannot be permitted to work havoc with contracts entered into in good faith and carried out to the verge of completion. Nor do I think that the commission can be said to be transcending its power or acting in contravention of the statute if its acts, performed after the first of January 1906, are scrupulously limited to those absolutely necessary to permit it to retire with honor. There is no provision in the statute for any succession in power, nor for any successor. There are no vacancies to be filled, and no authority by which any such attempted appointment could be justified. No fitter body could be found to complete the work than those already familiar with it, and it is a fact, creditable to all concerned, that a work of such magnitude and splendor should have been carried so far towards actual completion within the time prescribed.

The case must rest upon its own peculiarities and be bottomed upon the necessity of the situation. The commission must act, though dead after January 1, 1906, as its own business administrator. The act of making payment for the work when completed is substantially an act of administration or liquidation. It is necessary to the fulfillment of the obligations of the commission. Limited as it must be to those contracts already entered into, it cannot be regarded as new business. It does not obviate the difficulty to draw out of the State Treasury at the present time the balance of the appropriation and place it in the hands of the treasurer of the commission, for the office of treasurer falls with the commission itself, and any act of disbursement by the treasurer would be a final administrative act. As the statute prescribes specifically that "said payments shall be made by the State Treasurer upon warrants drawn by the Auditor General from time to time, upon the presentation to him of specifically itemized vouchers, approved by the proper officers of the commission, and this practice has been adhered to, it would be unwise to depart from it. To take the moneys out of the treasury in order to lodge them in the hands of one who, after the date fixed, would be but a mere individual, and who would act as a disbursing agent for a non-existing body, would be to deceive ones self by the thought that some sub-

stantial difference had been secured. On analysis it would clearly appear that he was still accounting as treasurer of the commission, and that he had obtained the moneys in an irregular way, and that the statutory method of payment had not been complied with. His powers to disburse the moneys in his hands would not be enlarged by the fact that he had already obtained the money prior to January 1, 1906, while the fact that he had done so in a manner not authorized by the statute, and at a time when the moneys were not due, might subject the commission to criticism.

Hence I am of opinion and so advise you that you can accept the vouchers of Edward Bailey as treasurer of the commission after January 1, 1906, and that you can draw warrants from time to time after that date, upon the presentation of vouchers specifically itemized and approved by the proper officers of the commission, certified by them as necessary to close up their accounts. Any unexpended balance will, of course, remain in the Treasury.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### APPROVAL OF VOUCHERS.

The Auditor General should not approve a voucher for hotel expenses at Harrisburg of a State official.

The original receipted bills should be filed with the Auditor General as vouchers.

The certificate on the back of vouchers should be signed by the State officer in person and not by a facsimile signature.

There is no authority for an officer retaining interest which has been paid on State monies in his hands. It should be turned into the treasury.

The charge "Petty expenses" is not sufficiently in detail to be used in vouchers.

Office of the Attorney General,  
Harrisburg, Pa., July 20th, 1906.

Hon. W. P. Snyder, Auditor General, Harrisburg, Pa.:

Sir: I have carefully considered the questions submitted by you in your letter of June 26th, 1906.

In regard to your approval of vouchers consisting of hotel expenses at Harrisburg by a State official, I am of opinion that the act No. 218 of the laws of 1905 does not introduce such an exception to the practice universally adhered to by all other State officers of paying their hotel expenses in Harrisburg out of their own pockets, as to justify you in approving such vouchers.

The law does not furnish a residence at Harrisburg or elsewhere to the officer. His acceptance of the position implies his presence

at the State Capital at his own expense, and the only expense which can be fairly considered chargeable to the State is that incurred by him when absent from the State Capital in the discharge of official duty.

I am also of opinion that the original receipted bills should be filed in your Department, as vouchers, and that the practice hitherto obtaining should not be departed from without legislative direction.

I am also of opinion that the certificate on the back of vouchers should be signed by the State officer in person, and that a fac simile signature is insufficient.

I am also of opinion that the interest received by a State officer on a deposit of State moneys in his hands should be credited by the officer to the State, and be turned into the State Treasury. I am not aware of any act of Assembly which permits an officer of the Commonwealth to have credit on the money of the State, with the exception of the State Treasurer. The amount of money available to each State officer is fixed by the amount of legislative appropriation, and anything realized by large balances in the hands of the State officer in the way of interest should be turned into the State Treasury.

I am also of opinion that the subject of charge described as "petty expenses" requires some additional detail, sufficient to designate the character of the expense and the occasion of its expenditure. It can be readily seen that, if petty expenses amount in any one month to the extent of a hundred dollars that, at the end of the year, there is a sum of twelve hundred dollars charged to the Commonwealth, without any further description than the inadequate one already deemed objectionable.

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

STATE HOSPITAL FOR THE INSANE.

Contracts referring to State Hospitals for the insane of which the Auditor General must take cognizance should be reduced to writing and a copy filed with the Auditor General.

Office of the Attorney General,  
Harrisburg, Pa., July 20, 1906.

Hon. W. P. Snyder, Auditor General, Harrisburg, Pa.:

Sir: Replying to your letter of June 26th, in relation to the letter written by you under date of May 22, 1906, to Mr. John L. West, I advise you that you are right in requiring a statement, in writing,

signed by the parties to the contract, and that if the contract originated in a verbal agreement, the terms of it ought to be reduced to writing, signed by the parties thereto, in order to comply with your custom of requiring copies of contracts to be lodged with you in all cases.

You have no evidence in your hands at the present time of what the contract was, or who the parties to said contract were, and if any dispute as to the terms should arise you would be in an awkward position.

I herewith return to you letter addressed to you by John L. West, steward of the State Hospital for the Insane, and also letter under date of June 23d, addressed to you by Philip H. Johnson, also letter under date of June 12th, addressed to you by John Booth.

I also return to you the duplicate bill of P. H. Johnson, to the board of trustees of the State Hospital for the Insane. The bill is defective, inasmuch as it does not specify the contract under which the services were rendered, nor does it give the date of the services, nor does it state with whom the plans and specifications are lodged, or that copies are lodged with you, nor does it contain any approval by the board of trustees of the State Hospital for the Insane at Norristown.

Kindly acknowledge the receipt of all these papers.

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

#### STATE NORMAL SCHOOLS.

There is no authority of law for the Auditor General to deduct from the quarterly appropriation due the normal schools the amount of vouchers which have been paid trustees for supplies sold by them.

Office of the Attorney General,  
Harrisburg, Pa., September 14, 1906.

Hon. William P. Snyder, Auditor General:

Dear Sir: Replying to your request, under date of September 12th, for an official opinion as to whether you shall deduct from the \$2,500 due the normal schools each quarter the amount of the vouchers which have been paid to the trustees by the board for supplies in the previous quarter, when such supplies were furnished by the trustees themselves, I answer that the act of April 23, 1903, (P. L. 285), which renders it unlawful for a manager or trustee of a State Normal School to sell any supplies, either directly or through an agent, to the institution, of which the seller is a mana-

ger, does not contain any provision which would justify you in withholding from the institution itself any portion of the State appropriation. Punishment for the act of making sale is imposed entirely upon the guilty party, who, when convicted of a misdemeanor, shall be punished by a fine not exceeding \$500 or imprisonment not exceeding one year, or both fine and imprisonment at the discretion of the court, but I find nothing in the act which punishes the institution by the withholding of a portion of its moneys appropriated by the State for its maintenance and support.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### CAPITOL COMMISSION.

The salaries of the secretary, solicitor, superintendent and expert engineer of the Capitol Commission for services rendered after the expiration of the term of the Commission but before the completion of their labors should be paid.

Office of the Attorney General,  
Harrisburg, Pa., September 25, 1906.

Hon. W. P. Snyder, Auditor General:

My Dear Sir: In reply to your letter of September 19th, stating that the services of the secretary, solicitor, superintendent and expert engineer of the State Capitol Commission have been performed since that date the same as prior to January 1, 1906, and asking to be advised officially whether the salaries are to be paid since that date, I answer that I have nothing to add to my previous opinion upon this point, expressed to you under date of December 21, 1905, and affirmed in a letter addressed to Hon. William A. Stone, president of the Capitol Commission. I can perceive no difference between a contract made with the secretary, solicitor, superintendent and expert engineer and a contract made with material men, artists or furniture men. The basis of my letter to Governor Stone is clearly stated in his own words, and unless there be some fact to vary the statement therein contained, I adhere to my former opinion.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## LOST WARRANT.

When a warrant sent to the city of Philadelphia is lost in the mail, the Auditor General should issue a duplicate warrant and should not require a bond in twice the amount of the warrant, as is the usual custom.

Office of the Attorney General,  
Harrisburg, Pa., September 25, 1906.

Hon. W. P. Snyder, Auditor General:

Sir: I have your letter, stating that on March 29, 1906, Warrant No. 12,958, for \$35,029.29, was mailed to the Department of Public Health and Charities of the city of Philadelphia, and that the warrant was lost in transit and has not to this day been heard of or presented to the Treasury Department for payment. I understand further that the request has been made upon you to issue a duplicate warrant and you state that the Auditor General's Department has always required a surety bond to be given for double the amount of the warrant lost, to protect the Commonwealth, before a duplicate warrant would be issued.

The letter which you enclose from the city solicitor of Philadelphia states the difficulties of giving such a bond. The city solicitor is of opinion that no department or bureau of the city of Philadelphia has any authority to give such a bond, and that it can be given only by special ordinance of councils authorizing it; that the city of Philadelphia, in all court proceedings in damage cases and in road cases, is not required by law to give a surety bond; and that, inasmuch as the city is in this case acting as an agent of the State Government in the disbursement of the moneys which are for the care and maintenance of the indigent insane for the quarter ending February 28, 1906, the application of the rule of your Department might be waived in this instance.

I am of opinion that the point is well taken. The warrant appears to have been lost in the mail, or at least in transit, and has never come to the Director of the Department of Public Health and Charities. It was not lost, therefore, through any negligence on the part of the department in whose favor it was drawn. The loss seems chargeable to the mail, which was the agent selected by the State Government for transmission to the payee. Treating it as a question of agency, it would seem harsh to impose upon one not in fault the expense, trouble or difficulty of furnishing security because of an act performed by a stranger. This is a view entirely aside from the question of the government of the city of Philadelphia being a part of the State Government in the matter of the receipt and expenditure of the moneys appropriated for the care and maintenance of the indigent insane.



I advise you that you will be entirely safe if you cancel the outstanding warrant and notify the State Treasurer of the fact of such loss and cancellation so as to guard against any possibility of payment to someone thereafter presenting the warrant. The warrant given in substitution can be marked "duplicate warrant," and the State Treasurer can be advised of the reasons as to why the warrant is marked "duplicate," and a copy of the entire correspondence, including this opinion, can be lodged with the State Treasurer. I can scarcely imagine that the State Treasurer would undertake the responsibility of paying a warrant, more than a year old, drawn in favor of the Department of Public Health and Charities, when the books of the Treasury Department would show that a duplicate warrant had been issued and that the duplicate had been paid. Under the circumstances I advise you that it will be proper for you to draw a duplicate warrant, without requiring a surety bond.

I herewith return the letter of the city solicitor.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### AUDITOR GENERAL.

The Auditor General should issue warrants for bills of John H. Sanderson and Joseph M. Huston, the same having been approved by a majority of the Board of Public Grounds and Buildings.

It is not necessary to have the State Treasurer join in a settlement certificate before the issuance of the warrant.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 29, 1906.

Hon. Wm. P. Snyder, Auditor General:

Dear Sir: I have your letter submitting bills of John H. Sanderson as therein detailed, also bill of Joseph M. Huston, Architect, and observe that you point out that these bills are properly itemized and that the amounts and quantities are according to the schedules and plans approved by the Board of Public Grounds and Buildings and are approved also by James M. Shumaker, Superintendent of Public Grounds and Buildings, and have also been approved for payment by the Governor and yourself, as members of the Board of Commissioners, and that the remaining member of the Board, the State Treasurer, declined to approve the same for payment. You state, further, that after a majority of the Board had approved these bills for payment, you signed the settlement and tendered the

same to the State Treasurer for his approval, which he declined to give.

You ask to be officially advised if the approval of the State Treasurer to the settlement of the bills is necessary before a warrant can be issued by you for the payment of the same, and if I find that the State Treasurer's approval is not required by law shall you issue the warrants.

I reply that the bills, having been approved by a majority of the Board of Public Grounds and Buildings, carry with them the official sanction of the Board. The sole question before me is whether a settlement certificate, as it is called, and participated in by the State Treasurer, is a prerequisite to the drawing of the warrants. This question is answered by the 11th section of the act of 26th of March, 1895 (P. L. 27), which reads as follows:

"All bills on account of contracts entered into under the provisions of this act shall be examined by the Superintendent, and if found correct, he shall certify that the materials have been furnished or that the work or labor has been performed in accordance with the contract, and after having been so certified to by him shall be presented to the Board of Public Grounds and Buildings for their examination and approval, and when so approved shall be paid by warrant drawn by the Auditor General on the State Treasurer in the usual form."

I am aware that in dealing with the prior bills of Messrs. Sander-son and Huston the practice has been to have a settlement certificate, joined in by the State Treasurer, precede the drawing of the warrants, but as the question has never before been raised as to whether this was necessary, the practice is not conclusive. Such settlements are necessary where the fiscal officers of the State are required by their joint action to determine the amount of claims due to creditors of the Commonwealth under the act of 30th of March 1811, 5 Smith's Laws, 228, but where the responsibility for the approval of bills is clearly cast by a statute upon other officers and their approval is so far conclusive as to be subject to no review of the fiscal officers of the State and there is an expressed direction that the bills so approved shall be paid by warrant, there is no room for the settlement certificate.

To clothe the fiscal officers of the State with the practical power of rendering futile the action of the Board of Public Grounds and Buildings, would be to disregard the statute. I must take the statutes as I find them and am not at liberty to introduce an element of confusion into the operations of the government where the Legislature has not seen fit to arm one or more of the fiscal agents of

the State with a practical veto upon the action of the Board, upon whom the responsibility of approval has been expressly placed.

I instruct you that it is your duty to issue the warrants. If there be a defense to their payment the matter can be judicially determined in mandamus proceedings against the Treasurer.

I herewith return you the papers which you sent me.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

---

---

OPINIONS TO THE STATE  
TREASURER.

---

---

## OPINIONS TO THE STATE TREASURER.

## STATE TREASURER.

A surety company cannot destroy its liability on a bond it has given the State Treasurer to cover the deposit in a bank by a letter or demand to the State Treasurer that the money be withdrawn from the bank and the bond surrendered.

Office of the Attorney General,  
Harrisburg, Pa., November 2, 1905.

Hon. W. L. Mathues, State Treasurer:

Sir: Mr. Dewey, of your office, has exhibited to me a letter addressed to you under date of November 1, 1905, signed W. K. Jennings, as attorney for the National Surety Company of New York, and written from Pittsburg, setting forth that The National Surety Company of New York is surety upon a depository bond given by the Cosmopolitan National Bank of Pittsburg, to secure the repayment of \$25,000 deposited by you as State Treasurer in said bank; that the company has requested the bank to refund the sum of \$25,000 to the State Treasurer and to secure the release of the surety, but it has not done so to the knowledge of the writer; that, in conversation over the telephone with Mr. Dewey, the assistant cashier, a request was made by Mr. Jennings of Mr. Dewey to immediately draw out the sum of \$25,000 from The Cosmopolitan National Bank of Pittsburg, or The National Surety Company would no longer be responsible, adding that this was the form required by the act of May 14, 1874 (P. L. 157); that the writer, therefore, sought to confirm by letter his telephone message, and in the name of The National Surety Company thereby respectfully notified and requested you, as State Treasurer, to draw out the sum of \$25,000 from your deposit in The Cosmopolitan National Bank of Pittsburg, otherwise the Surety Company above named will hold itself discharged from its liability on said bond. This was accompanied by a request for notification by wire or telephone when you had done as requested.

Mr. Dewey requests me to advise you as to your duty in the premises. I reply that you should immediately answer this letter by a letter acknowledging the receipt of the telephone message of yesterday, as well as the receipt of the letter of November 1, 1905, quoting it in extenso.

I further advise you that you should reply as follows:

"I am advised by the Attorney General that The National Surety Company of New York cannot terminate its liability upon such a notice, either telephonic or written. Neither can it demand that the State Treasurer shall perform an act which is entirely within his own discretion. Neither can it inject a condition which is not in the agreement of suretyship; neither can the Surety Company insist that non-compliance with his request by you shall operate as a discharge of its liability as surety.

"The company bound itself and became surety to the Commonwealth of Pennsylvania for the faithful performance by The Cosmopolitan National Bank of Pittsburg of the conditions of the bond according to its terms. In case of a breach of any of the conditions of the bond the Surety Company is bound as principal for any debts arising thereunder, and distinctly agreed to answer for the same without regard to, and independently of, any action taken against the said bank, and whether the said bank be first pursued or not.

"The substance of the condition of the bond is that the bank shall faithfully and honestly keep and account for the proceeds of the funds of the Commonwealth on deposit with it, and pay over and deliver the same to the State Treasurer on demand. For any breach of this condition the Surety Company is liable to the full extent of its undertaking. It cannot vary the terms of the contract or destroy its liability by the letter or the message sent. The act of May 14, 1874 (P. L. 157), does not create any right in a surety to discharge itself from liability. It simply provides that any notice which it may give, seeking to discharge itself, shall be in writing, but it does not enlarge this notice so as to work a discharge. That is a question which must depend upon the terms of the written contract of suretyship.

I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

SPECIAL SESSION OF LEGISLATURE—SALARIES OF MEMBERS AND SENATORS—STATE TREASURER—PAYMENT OF SALARIES BEFORE APPROPRIATION.

The State Treasurer has no authority to pay any salaries or portion of salaries to Members and Senators in attendance at the special session of the Legislature, without an appropriation being first made therefor.

The Legislature, convened in special session, has the right to make an appropriation for the payment of the salaries of the Members and Senators in attendance, although the making of such appropriation was not embodied in the Governor's call.

Office of the Attorney General,  
Harrisburg, Pa., January 16, 1906.

Hon. William L. Mathues, State Treasurer:

Sir: You ask whether the State Treasurer is authorized to pay the present members and senators without an appropriation being first made therefor and you state that, while the Constitution provides for the payment of the salaries of members and senators, yet at the regular sessions of the Legislature there is always an appropriation made for the same. You state also that the Constitution provides for their salaries in case of an extra session, but the payment of the same, not being embodied in the call of the Governor, you ask whether the State Treasurer is authorized to pay the said salaries until the appropriation is made, and whether the Legislature has the right, under the call, to make an appropriation for the same.

I answer that you, as State Treasurer, are not authorized to make payment of any salaries, or portions of salaries, to the present members and senators attending the extra session without an appropriation being first made therefor. The action of the regular session in making appropriations is in entire conformity with the constitutional provision, equally applicable to special or extra sessions, contained in section 16 of article iii of the Constitution, which reads as follows:

"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."

I, am also of opinion that it is entirely within the power, as well as within the bounds of propriety, for the present Legislature, convened in special session, to make an appropriation for the payment of the salaries fixed by the acts of 1st of July, 1885, P. L. 264, amending the act of 11th of May, 1874, P. L. 129, 5th of March, 1895, P. L. 4, 8th of April, 1903, P. L. 59, 21st of March, 1895, P. L. 22, and 27th of April, 1895, P. L. 322. Such action is necessarily incident to the proper holding of the session, and it cannot be considered as falling

within the provisions of section 25 of article iii, declaring that at a special session there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session. In no shape of the case can the passage of an appropriation be called "the consideration of a subject" within the meaning of this clause of the Constitution. The amount of the appropriation is unchangeably fixed, so far as this session is concerned, by the statutes already in existence and hereinbefore referred to, and the action of the two bodies in providing for the necessary expenses of the session is as natural and ordinary an incident as the convening of the two houses and the appointment of committees.

Reading all of the provisions of the Constitution together, beginning with section 8 of article iii, which declares that the members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and giving effect to the acts of Assembly passed in pursuance of this constitutional provision, following that with the provisions of section 16 of article iii, I reach without hesitation the conclusion that the Legislature has the right to make an appropriation for the purposes of salaries, but that, until such an appropriation is made, you are not authorized to make any payments whatever on account thereof.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

STATE TREASURER.

Where a bond is given the State Treasurer covering a State deposit, an old bond protecting the same deposit may be returned to its makers.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 7, 1906.

Mr. B. F. Measey, Cashier of the State Treasury:

Dear Sir: In reply to yours of the 28th ult., asking whether, in the case of the acceptance of a new bond to secure a deposit of State funds, the old bond may be returned; that is, a bond previously given by an institution holding a deposit and executing a new bond, I reply unhesitatingly that there is no objection whatever to the return of the old bond. The surety on the new bond has nothing whatever to do with the responsibility of the obligors and their sureties upon the old bond, unless he himself has stipulated that his own liability is limited in the sense of being made auxiliary to that already existing, but where a new bond which, on its face, specifically provides for the liability of the principal obligor, and



mentions the amount of the deposit, and there is no reference to former security of any kind, the new sureties cannot object to the discharge of the old sureties. The two contracts are distinct and unrelated to each other.

The point which may have raised some doubt in your mind was the reverse of this. The sureties on the bonds given to secure the State deposit in the Enterprise Bank took the position that they were discharged by the taking of new bonds—a position which I successfully contested, because the mere fact that new security is taken does not release the sureties upon former bonds. Nothing can do that except a return of the bond, a discharge of the principal parties, or a written withdrawal by the sureties themselves, with notice under the Act of 1874.

You are at entire liberty, therefore, wherever the Revenue Commissioners and the Banking Commissioner, under the Act of 17th of February, 1906, are satisfied that a new bond is ample of itself, with its own proper surety, to protect the State deposit, to rid yourself of the former bond by returning it to the proper party.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### STATE TREASURER.

Members of the General Assembly should not be paid their salaries in advance of the performance of their duties. But inasmuch as their term of service begins on December first next after their election, the State Treasurer will be allowed to pay each member \$300 upon request, after the organization of each House in the following January.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 28, 1906.

Hon. William H. Berry, State Treasurer:

Sir: I have been interrogated by Mr. Measey, Cashier of the Treasury, in your behalf, as to your duty in case of the presentation of the usual requests from members of the Legislature, who have been sworn in as members of the Senate and House, for an advance of moneys on account of their compensation as such members, shortly after the opening of the coming session of the Legislature; and further as to your duties in case of further requests of a similar nature.

It has been the custom in the past for State Treasurers to make such advances, and inquiry develops the fact that such requests are based upon the idea that, after a member of the Legislature has been sworn, he becomes not only a de facto but a de jure mem-

ber, and is therefore entitled to his compensation for the entire session, irrespective of the question as to whether he dies, resigns or is disabled from service, or absents himself.

I am of opinion that this is a radically wrong idea. I had occasion to make a careful examination of the law affecting the claim of the estate of a deceased member who died before being sworn in as a member of the House, and who, though duly elected and returned as elected, had never taken his seat, in an opinion rendered on the 21st of March, 1905, to Hon. J. Lee Plummer, Chairman of the Committee on Appropriations of the House of Representatives. I instructed Mr. Plummer that the claim could not be allowed. I am aware of the distinction in law between a *de facto* and a *de jure* member of the Legislature, and, while the case of Mr. Ward R. Bliss, was of the former class, yet I am of opinion that the same principles of law substantially cover the cases of *de jure* members of the Legislature.

It is well settled that an office is not property, nor are the prospective fees thereof the property of the incumbent. In the case of *People v. Barrett*, 203 Ill., 99, and reported as a leading case in the 96th Volume of *American State Reports*, page 296, it is said, in a well-considered opinion by Chief Justice Hand, that

"It is well settled in the United States that an office is not the property of the office-holder, but is a public trust or agency; that it is not held by contract or grant; that the officer has no vested right therein; and that, subject to constitutional restrictions, the office may be vacated or abolished, the duties thereof changed and the term and compensation increased or diminished. The fact that the constitution may forbid the Legislature to abolish a public office or diminish the salary thereof during the term of the incumbent, does not change the character of the office nor make it property. True, the restrictions limit the power of the Legislature to deal with the office, but even such restrictions may be removed by constitutional amendment."

The same view is taken in *State ex rel v. Wadhams*, 64 Minn., 324, and in the case of *Smith v. The Mayor, etc., of New York*, the Court of Appeals of New York (37 N. Y. Appeals, page 518), by Chief Justice Hunt, said:

"An office in this country is not property, nor are the prospective fees of an office the property of the incumbent. (*Connor v. Mayor*, 1 Seldon, 285). The incumbent cannot sell his office, or purchase it, or encumber it. It will not pass by assignment of all his property, nor will such assignment affect his right to prospective fees. The Legislature may diminish or abolish the fees at pleasure, or may render it a salaried office. . . . The same authority holds, and it is conceded by the appell-

ants here, that the right to fees or compensation does not grow out of any contract between the government and the officer, but arises from the rendition of the services. (*Dartmouth College v. Woodward*, 4 Wheaton, 624; *People v. Warner*, 7 Hill, 8; S. C., 2 Denio, 272). An office is simply an appointment or authority on behalf of the government to perform certain duties, usually at and for a certain compensation. Both the office itself and the compensation, upon general principles of law, are entirely within the control of the government to diminish, increase or abolish. So it may at any moment be given up by the incumbent. There can be neither property nor contract in such a subject. It is but a deputation for the benefit and advantage of the government."

In *Mason v. The State*, 58 Ohio, 30, it was held that a public office is a trust held for the benefit of the public. The incumbent, if he performs the duties, may be entitled to the emoluments, but he cannot have any property in the office itself.

It is well settled in Pennsylvania that the relation between a public officer and the government does not rest upon the theory of contract, but arises from the rendition of services. This has been established since the decision of the Supreme Court in the case of *Commonwealth v. Bacon*, 6 Sergeant & Rawle, 322, affirmed in *Barker v. The City of Pittsburgh*, 4 P. S., 49, *McCormick v. Fayette County*, 150 P. S., 192, and confirmed by the views of the Supreme Court of the United States in *Butler et al. v. Pennsylvania*, 10 Howard, 417. Even if there were the elements of a contractual nature—which there is not—it must be observed, under the law of contracts, that a contract for the performance of services to be rendered in futuro is of an executory nature on both sides, and one of the parties to the contract cannot be called upon to perform his part by making payment while the party of the other part has still to perform his side of the contract.

Applying these principles to the case in hand, the 8th section of Article II of the Constitution of Pennsylvania provides:

"The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise. No member of either House shall, during the term for which he may have been elected, receive any increase of salary or mileage under any law passed during such term."

The Act of 5th of July, 1885 (P. L. 264), section 1, provides:

"The compensation of Members of the General Assembly shall be fifteen hundred dollars for the regular biennial session and mileage to and from their homes,

at the rate of twenty cents per mile, to be computed by the ordinary mail route between their homes and the capital of the State, and five hundred dollars and mileage aforesaid for each special or extraordinary session."

It is plain, under the foregoing authorities and under the Constitution of our State, as well as the Act of Assembly passed for the purpose of giving effect to the constitutional provision, that there is nothing whatever in the nature of property in the office of a member of the Legislature, and that the prospective compensation to be received by the member is not to be regarded as a property right which can be reduced to possession, pledged or assigned.

It is also clear that, while the Legislature is prohibited from increasing the salaries of its members during their terms, there is nothing to prohibit the diminution or the abolition of such salaries.

It is also clear that the compensation, spoken of in the Constitution, and in the Act of Assembly, is for services rendered, and it would follow that, if a member of either House died before the rendition of such services, or resigned, or became incapacitated, or for any cause was removed, he could not claim, nor could his estate claim, payment for services not rendered.

This view of the case is not at all affected from a legal point of view, by the practice sometimes met with of a vote of both Houses to pay to the estate of a deceased member the salary or compensation for the full term. Such a vote implies necessarily a gift—a gift, it is true, which the representatives of the people have authority to make, but which is none the less a gift because of the vote required to sustain it.

Hence I am of opinion that members of both Houses, like all other public officers, whether clerks or heads of departments, do not stand upon a contractual basis with their government, but are in the position of being required to earn by actual service that which they receive from the public treasury.

I conclude, therefore, that requests for advances of compensation not yet earned cannot be made by members of either House with any greater propriety or right than claims for advances of salaries made by other State officials in advance of the performance of their duties.

I am aware, however, that the view thus taken may be regarded as novel in practice, although it certainly is not novel in principle, and that a certain amount of hardship may attach to a sudden or drastic application of the principle. Inasmuch as, under the Constitution (Section 2 of Article II), the term of service of members of the General Assembly shall begin on the first day of December

next after their election, and as this may be regarded as fixing the beginning of the term of service running through the statutory period, and as the same equality of treatment should be accorded to all members of the Senate, I am of opinion that you may, with propriety, pay upon request, on or after the organization of both Houses in January next, a reasonable sum—say, \$300.00—to each member so requesting, but that thereafter you should put the members of both Houses, Senate and House, upon notice that advances will not be continued to be made, but that services, when rendered, can be compensated pro tanto. Absence because of sickness, or if permitted by vote of the body, should not affect the application of this principle.

I am

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO THE ADJUTANT  
GENERAL.

---

---

## OPINIONS TO THE ADJUTANT GENERAL.

---

ARMORY BOARD.

Interest paid on daily balances of the account of the Armory Board should not be used by the board, but should be turned into the State Treasury.

Office of the Attorney General,  
Harrisburg, Pa., July 20, 1906.

Mr. Benj. W. Demming, Sec. of the Armory Board, of the State of  
Penna., Harrisburg:

Sir: Replying to your request for an opinion as to whether the Armory Board can expend the money received as interest on daily balances credited by the bank of deposit to the treasury of your account, or whether the amount so received as interest on daily balances should be turned into the State Treasury, I am of opinion that the only amount which can be properly expended by your Board is the amount of the Legislative appropriation of two hundred and fifty thousand dollars, and that any increase of this fund resulting from interest must be paid into the State Treasury.

Yours very truly,  
HAMPTON L. CARSON,  
Attorney General.

---

## ARMORY BOARD.

The insurance upon the armories built by the State should be paid out of the fund appropriated to the Armory Board and not by the Board of Public Grounds and Buildings.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 28, 1906.

Mr. Benjamin W. Demming, Secretary of the Armory Board of the  
State of Pennsylvania, Harrisburg, Pa.:

Sir: I have your request for my opinion upon the matter of the insurance to be placed upon the State armories erected under the Act of Assembly of May 11, 1905 (P. L. 442), and inquiring whether the insurance to be placed upon the armory recently constructed by your Board at Mt. Pleasant, Pa., should be paid from the appropriation made under this Act or whether the same is payable from the

amount appropriated for insurance to the Board of Public Grounds and Buildings.

An examination of the Act of Assembly creating the Armory Board discloses the fact that Section 2 imposes the duty upon the Armory Board of erecting and providing armories in which "shall be stored and safely kept all property of the United States or of the Commonwealth," issued to the National Guard of Pennsylvania for military purposes; while Section 5 provides "that the Armory Board hereby appointed shall also constitute a Board for the general management and care of said armories when established, and shall have the power to adopt and prescribe rules and regulations for their management and government, and frame such rules for the guidance of the organizations occupying them as may be necessary and desirable."

Section 11 of the said act further provides that "for the purpose of carrying into effect the provisions of the aforesaid act, the sum of two hundred and fifty thousand dollars is hereby specifically appropriated out of any moneys in the Treasury not otherwise appropriated, which shall be paid by the State Treasurer upon the warrant of the Auditor General upon properly authorized voucher from said Board.

A fair construction of this act leads me to the conclusion that the Legislature intended to create a Board which should, among other things "provide, manage and care for armories for the use of the National Guard" of Pennsylvania; that it made a specific appropriation to carry the act into effect; and that it was the manifest purpose of the Legislature that all expenses incurred for such management and care shall be paid for out of the said specific appropriation. I can find nothing which would impose either the responsibility of the cost for insurance upon armories upon the Board of Public Grounds and Buildings, whose duties, under the Act of July 21, 1905, must be regarded as modified, *pro hac vice*, by the more recent act.

Under this view I advise you that the amount necessary to be paid for the insurance of the armories erected by your Board should be paid out of your appropriation and not from the insurance fund of the Board of Public Grounds and Buildings.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



---

---

OPINIONS TO THE INSURANCE  
COMMISSIONER.

---

---

## OPINIONS TO THE INSURANCE COMMISSIONER.

## INSURANCE COMMISSIONER—THE PENN COMPANY.

An Insurance and Improvement Trust Company incorporated under the act of May 19, 1871 (P. L. 964), having amended the charter in 1872 and 1873 so that very large powers were conferred upon the company was sold by the sheriff and a reorganization effected so that a new corporation was formed succeeding to the rights of the former company.

The Insurance Commissioner is advised to ascertain whether the new corporation designs to transact all of the lines of insurance named in its charter and whether the business will be conducted on the stock or the mutual principle, so that a determination may be made as to the amount of capital to be required. If the company combines the stock and mutual plan and all the lines of insurance, the amount of the capital required will be the aggregate of the amounts required by the act of May 1, 1876 (P. L. 53), in each particular class of business as conducted upon the stock or mutual principle.

Office of the Attorney General,  
Harrisburg, Pa., July 25, 1905.

Hon. David Martin, Insurance Commissioner:

Sir: Your predecessor in office requested my official opinion as to the right of The Penn Company to transact a life, accident and health insurance business under an old charter of the year 1871, granted to a company of another name, but to the rights of which it is contended that The Penn Company had succeeded, and asking specifically whether it was a valid and subsisting franchise and could be exercised for the business indicated, and further asking to be instructed as to the minimum amount of capital required before a company under the new name could commence business, the capital at the date of reorganization having been reduced to ten thousand dollars.

I have taken time to examine into this matter, which is intricate and involved, covering an examination of old matters, the records of which were in confusion, although I have been able, by the exercise of care, to reach definite results.

The facts appear briefly as follows:

The Modern Life Insurance and Improvement Trust Company of Pittsburg, was incorporated by act of May 19, 1871 (P. L. 964). Subsequently amendments to the charter were granted under acts approved February 7, 1872 (P. L. 95), and April 9, 1873. These

amendments conferred upon the company, among other powers, the right to engage in the business of insurance, with all of the rights, powers and authority granted by an act of Assembly approved April 13, 1868 (P. L. 966), entitled "An act to incorporate The United Security Life Insurance and Trust Company of Pennsylvania." The grant was most improvident, embracing, as it did, a multitude of inconsistent and varied powers which could never be exercised by the same company under the present state of the statutory law. Most of the powers were never exercised, but no attempt to forfeit them on the ground of misuser was ever made by the Commonwealth, and therefore the grant, liberal and reckless as it was, remained outstanding. An organization was effected under the charter and business of a real estate character conducted.

Without going into detail so as to trace the history of the company minutely, it is sufficient to say that the corporate rights and charter of this company were taken in execution by the sheriff of Allegheny county by virtue of a writ of special fieri facias as of January Term, 1897, No. 10, at the suit of Jane Boyd, Administratrix, etc. v. The Modern Life Insurance and Improvement Trust Company, and on October 17, 1898, they were sold at public sale in Pittsburgh to one George I. Whitney. On November 12, 1898, Mr. Whitney, with some associates, reorganized the company under the new name of The Penn Company, and a certificate of reorganization was duly filed in the office of the Secretary of the Commonwealth on the 16th of November, 1898, and at the same time there was also filed an acceptance of article XVI of the new Constitution. I have before me a duly certified copy of these proceedings under the seal of the Secretary of the Commonwealth. They are in regular form and are sufficient to preserve the corporate existence of the company so that the title to the franchises of the old company has duly passed to the new.

You are not to be embarrassed by any consideration of the exercise of franchises other than those relating to the insurance business, as they do not come within the purview of your Department, and, moreover, your duties in this matter are definitely limited by the application of the new company or its representatives to you for permission to start *de novo* in the insurance business.

The third section of the act of 13th of April, 1868, the act incorporating the United Security Life Insurance and Trust Company of Pennsylvania, specifically declares that the corporation so to be created, although a stock company, may embrace the mutual system, thus combining the benefits of both a stock and mutual insurance company, and that it shall be empowered to insure respectively the lives and health of its members and others, and to make all and every insurance appertaining to life risks of whatever kind

or nature; and to cause themselves and others to be insured against any loss or risk in the course of their business, and generally to do and perform all other matters and things connected with and proper to promote their business.. I have confined this statement of the powers of the company to the insurance features, and I expressly exclude from this opinion any expression of thought upon the validity of other powers associated in the act with the grant of insurance powers; first, because they are not involved in the present application to you, and, second, because I do not conceive this to be the proper occasion to indicate my views regarding them.

You will observe, therefore, that this company may transact a life insurance business, a health insurance business, an accident insurance business, as well as insurance against loss or risk in the course of business, an association of franchises which could not at present exist were the company incorporated under statutes passed since the general corporation law of April 29, 1874, and the insurance act of April 4, 1873 (P. L. 20), supplemented by the act of May 1, 1876 (P. L. 53). These are important considerations in determining the amount of capital to be required before you sanction the transaction of business.

I instruct you to specially interrogate the company, first, as to whether it is its design to transact all of the lines of insurance business which have been named, and, second, whether it intends to conduct that business upon the stock or the mutual principle. Upon the receipt of its answer you can determine what amount of capital is required, as, in each case, the minimum amount is specifically set forth in the act of May 1, 1876 (P. L. 53). Should it combine both the stock and the mutual principle and all the foregoing purposes, then it is clear that the amount of capital required will be the aggregate of the amounts required by the act of May 1, 1876, in each particular class of business as conducted upon the stock or mutual principle.

Should you require further instruction I will be happy to give it upon request.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## INSURANCE COMMISSIONER.

The special renewal contract referred to in the executive agents' application of the Mutual Reserve Life Insurance Company, violates the act of May 7, 1889, as amended by the act of July 2, 1895 (P. L. 430), in that it extends certain benefits and favors to a special class of policy holders not enjoyed by the policy holders at large.

Office of the Attorney General,  
Harrisburg, Pa., October 19, 1905.

Hon. David Martin, Insurance Commissioner:

Sir: I have examined the form of executive agents application to Mutual Reserve Life Insurance Company, and also the special renewal contract which constitutes a part of the application, inasmuch as it is expressly referred to in the first paper in such a manner as to incorporate its provisions therewith.

I am of opinion that these papers differ in no material respect from the yearly renewal contract passed upon by me in my opinion addressed to the Hon. Israel W. Durham, Insurance Commissioner, under date of December 11, 1902, and published in the volume of Official Opinions of the Attorney General, 1903-4, page 192. In that opinion I held that such contracts were in violation of the act of May 7, 1889 (P. L. 116), and its amendment by act of July 2, 1895 (P. L. 430), because they discriminate in favor of individuals.

It is noticeable that in article III of the special renewal contract of The Mutual Reserve Life Insurance Company there is a provision which makes the feature of assurance on the life of the agent a vital one, and it is this feature which stamps the matter as containing more than a mere agent's contract, and converts it into an effort to secure business by extending certain benefits and favors to a special class of policy holders which are not enjoyed by policy holders at large. These features are vicious and illegal, and vitiate the contract. It is not necessary for me to add anything to the reasons which I set forth in the opinion to which I have referred.

I am,

Very respectfully yours,  
HAMPTON L. CARSON,  
Attorney General.

IN RE AMERICAN GUARANTY COMPANY OF CHICAGO—FOREIGN  
CORPORATIONS—CONSTRUCTION OF CHARTER—STATEMENT OF PUR-  
POSE.

The American Guaranty Company of Chicago, a foreign corporation organized for the purpose of compiling and furnishing information in regard to the standing of individuals, firms and corporations, is not authorized under its charter, nor under the statement of its purpose, as filed in the office of the Secretary of the Commonwealth of Pennsylvania, to sell endowment bonds and guarantee to pay insurance premiums.

Office of the Attorney General,  
Harrisburg, Pa., November 3, 1905.

Hon. J. A. Berkey, Commissioner of Banking, and Hon. David Mar-  
tin, Commissioner of Insurance:

Sirs: My attention has been called to the fact that the American Guaranty Company, of Chicago, with an office at Fourth and Wood streets, Pittsburg, is engaged in selling endowment bonds and also guaranteeing to pay insurance premiums. This company registered on the 21st day of December, 1904, in the office of the Secretary of the Commonwealth, and the paper filed shows that it declares itself to be engaged in transacting the business of agent for firms, individuals and corporations entering into contracts with firms, individuals and corporations, acting as receiving and disbursing agent. The Attorney General of Illinois states that the object of the corporation, as set forth in the papers filed in the office of the Secretary of State, is "to compile and furnish information in regard to the standing of individuals, firms or corporations." He adds that in his judgment they have no legal power to sell endowment bonds and guarantee to pay insurance premiums.

I have been furnished with a copy of the bond issued by it and of the coupons attached thereto. The bond in substance sets forth that the company covenants and guarantees to pay to the borrower, or if registered, to the registered owner thereof, on the 5th day of ———, 190 , and upon due surrender of this indenture at its general office in the city of Chicago, Illinois, U. S. A., \$1,000 in gold coin of the United States of America, and the said company further promises to pay interest upon the said sum in like gold coin, at the rate of five per centum per annum, at its office in the city of Chicago, on the 1st day of each and every ———, until the maturity of this bond and upon presentation and surrender of the respective interest coupons thereto attached, as they severally become due.

In Witness Whereof, the American Guaranty Company, of Chicago, has caused this instrument to be executed in its name by its

President and Secretary, and at its general office at Chicago, this  
 \_\_\_\_\_ day of \_\_\_\_\_ 19 .

Secretary.

President.

It is observed that this instrument is not under seal and is therefore not properly a bond.

The form of coupon attached is as follows:

THE AMERICAN GUARANTY COMPANY,  
 of Chicago,

On the Fifth day of \_\_\_\_\_, 19 , •

Will pay to the bearer at its General Office in the City of Chicago, Illinois, FIFTY DOLLARS, being one year's interest on its Bond.

James L. Bigelow,

No.

Treasurer.

\$50.00.

I have also been furnished with copies of papers which read as follows:

United States of America: .

No. 22504

AMERICAN GUARANTY COMPANY  
 of Chicago.

KNOW ALL MEN BY THESE PRESENTS, that whereas

hereafter styled, Nominator, has paid to the American Guaranty Company of Chicago, Five hundred dollars in advance and agrees to pay a like sum on the fifth day of \_\_\_\_\_ hereafter until instalments for \_\_\_\_\_ years have been made.

Now therefore the said American Guaranty Company hereby covenants and guarantees that on the fifth day of \_\_\_\_\_, Nineteen Hundred and \_\_\_\_\_, upon the surrender of this indenture, provided it is then in force, to pay unto \_\_\_\_\_, hereafter styled Nominee, the sum of \_\_\_\_\_ Dollars in Gold Coin of the United States of America, less the amount of any loans made thereon, or in lieu thereof, and at the option of the holder to deliver at its home office ten year five per cent. Coupon Gold Bonds of equal value on due surrender of this Contract, said Bonds to be in the form of the Specimen Bond herewith. The application herefor and the privileges and conditions on the third page hereof, form a part of this Contract.

IN WITNESS WHEREOF, The American Guaranty Company of Chicago, has caused this instrument to be executed in its name and by its proper officers and at its General Offices at Chicago, Ill., this  
 \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Secretary.

President.

## PRIVILEGES AND CONDITIONS.

1. As security for the redemption of this Indenture, the American Guaranty Company covenants and agrees that it will have and keep assigned, transferred and delivered in trust, sundry moneys, or other securities such as banks and trust companies are authorized to invest in, first mortgages on real estate, or bonds issued by the United States of America or municipalities thereof to such an amount as shall equal in the aggregate seventy-five per cent. of the reserve value of this obligation.

2. The Nominator may, after two full years' instalments have been made, surrender this Indenture, and upon such surrender, duly made, receive a paid-up Certificate for the amount shown in the schedule endorsed hereon, the maturity date of said paid-up Certificate to be coincident with the maturity date of this Indenture; said paid-up Certificate, at its maturity, is payable in gold coin or in ten-year five per cent. interest bearing bonds of equal value, at the option of the holder. Or upon surrender of this Indenture the Company will pay in cash therefor, at its general office, a sum not less than the full reserve as shown in the schedule hereon, less the amount of any loans remaining unpaid.

3. The Nominee, executors, administrators, legal representatives or assigns may renew this Indenture to full maturity upon the same terms and conditions as the Nominator. Or they may surrender this Indenture and when duly surrendered receive either the paid-up Certificate or the reserve value as shown in the schedule hereon.

4. This Indenture is issued with the express understanding that the Nominator may at any time during its continuance substitute any other person or persons as Nominee by giving written notice accompanied by this Indenture, such change to be duly endorsed hereon.

5. Should default be made at any time hereafter in the payment of any instalment due under this Contract the Company will waive such default and accept payment of said instalment, provided the amount thereof, with interest thereon at five per cent. per annum from date of default be tendered to it within sixty days after such default.

6. All payments provided in this obligation to be made either by or to the owner hereof are due and payable at the general offices of the American Guaranty Company in the City of Chicago, Illinois, and such payments due the Company may be made elsewhere only when exchanged for its receipt, signed by its President, Vice-President, Secretary, Treasurer or Cashier.



## LOANS.

7. The American Guaranty Company will loan the owner or legal holder hereof a sum not less than the full reserve as shown in the schedule accepting said Indenture as collateral security for said loan.

## SCHEDULE.

Amount of paid up certificate to which the holder hereof shall be entitled after instalments for 2 years shall have been paid.	Reserve value or amount that the company will loan the holder hereof after it has been in force 2 years.	Amount of paid up certificate to which the holder hereof shall be entitled after instalments for 2 years shall have been paid.	Reserve value or amount that the company will loan the holder hereof after it has been in force 2 years.
At end of	At end of	At end of	At the end of
1st year, ....	1st year, ....	11th year, .....	11th year, ... \$6,400
2nd year, .... \$2,000	2nd year, .... \$560	12th year, .....	12th year, ... 6,800
3rd year, .... 3,000	3rd year, .... 960	13th year, .....	13th year, ... 7,200
4th year, .... 4,000	4th year, .... 1,440	14th year, .....	14th year, ... 7,600
5th year, .... 5,000	5th year, .... 2,000	15th year, .....	15th year, ... 8,000
6th year, .... 6,000	6th year, .... 2,640	16th year, .....	16th year, ... 8,400
7th year, .... 7,000	7th year, .... 3,360	17th year, ..	17th year, ... 8,800
8th year, .... 8,000	8th year, .... 4,160	18th year, ..	18th year, ... 9,200
9th year, .... 9,000	9th year, .... 5,040	19th year, ..	19th year, ... 9,600
10th year, .... 10,000	10th year, .... 6,000	20th year, ..	20th year, ... 10,000

8. No agent has the right or power to modify this Indenture or bind the Company by any promise or representation, information or statement not contained herein.

L. W. PITCHER,  
Secretary.

This Contract at  
Maturity is convertible  
into 5 per cent. Ten Year  
Gold Bonds  
at the  
General Offices of the  
American Guaranty Com-  
pany in the City of  
Chicago.  
Illinois, U. S. A.

## CONVERTIBLE CONTRACT.

No. 22504  
of the  
American Guaranty  
Company of Chicago.  
Period 10-20 Years.  
Amount  
\$10,000.  
First payment \$500.  
Nominator

Residence.

\$ \_\_\_\_\_, 190 .

Received from the AMERICAN GUARANTY COMPANY OF CHICAGO, \_\_\_\_\_ Dollars in full for all claims under the within Contract terminated by \_\_\_\_\_

Witness \_\_\_\_\_

I call your attention to this matter, as in my judgment the Company is not authorized under its charter, nor under the statement

of its purpose, as appearing by the paper on file in the office of the Secretary of the Commonwealth of Pennsylvania, to transact any such business as is embodied in these papers. Any information that you have concerning the Company you will oblige me by communicating as early as practicable.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

LIFE INSURANCE—RIGHT OF INDIVIDUALS TO CONDUCT BUSINESS—  
LICENSE.

In the absence of any judicial determination upon the subject, the Insurance Commissioner should refuse a license to an individual, partnership or unincorporated association to conduct the business of life insurance.

Acts of April 4, 1873, P. L. 20, and June 23, 1885, P. L. 134, considered.

Office of the Attorney General,  
Harrisburg, Pa., December 7, 1905.

Hon. David Martin, Insurance Commissioner:

Sir: I have your request for an opinion as to whether individuals can be permitted to engage in the business of issuing life insurance policies without a charter of incorporation given according to law, and if so, under what rules and restrictions can they be permitted to transact such business.

You also enclose a letter from counsel for gentlemen desiring to engage in the business of life insurance and issue policies; carrying on the business as a partnership, and desiring to be advised whether or not they may lawfully do so, as your Department may decide, by reason of the provision of section 9 of the act of April 4, 1873, P. L. 20, reading as follows: "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, or pretend to effect the same, or to receive and transmit any offer or offers of insurance, or receive or deliver a policy or policies of insurance, or in any manner to aid in the transaction of the business of insurance, without complying fully with the provisions of this act."

It is pointed out that section 5 of the above mentioned act defines the duties of the Commissioner of Insurance, and that by this section his duty appears to be confined to insurance companies and his authority only to extend over companies and not individuals.

Through some oversight, the provisions of section 12 of the act of April 4, 1873, as amended by act of June 23, 1885, P. L. 134, have been ignored. It is there substantially provided that "every insur-

ance company, including individuals, partnerships, joint stock associations and corporations, conducting any branch of insurance business in this State, must transmit to the Insurance Commissioner a statement of its condition and business for the year ending on the preceding 31st day of December, which statement shall be rendered on the 1st day of January following, or within sixty days thereafter," except that foreign companies shall transmit their statement of business, other than that done in the United States, prior to July 1 following, or within sixty days thereafter.

It is clear that sections 9 and 12 of the act of 1873, and that the amending act of 1885, refer in specific terms to individuals and partnerships as well as to joint stock associations and corporations, while the remaining sections of the act refer in terms only to corporations. The act of February 4, 1870, P. L. 14, prohibits any person, partnership or association from issuing any policy or making a contract of indemnity against loss by fire, without authority expressly conferred by a charter of incorporation. The constitutionality of this act, as a valid exercise of the police power, was sustained in the case of *Com. v. Vrooman*, 164 Pa. 306. I cannot find, however, any similar act prohibiting the conducting of life insurance by individuals, and the question is therefore left entirely open, whether the writing of life insurance in Pennsylvania by an individual or a partnership is illegal.

This is a question on which lawyers and courts might well differ upon grounds of public policy, and there is no decision which squarely covers the case. The common law right of an individual to make a contract of insurance of every kind seems to be undisputed, but many states, and our own in particular, have seen fit in all kinds of insurance, life, accident, fire, marine and health, to subject the business to control and regulation in the interests of the public, and sections 9 and 12 of the act of 1873, and the amending act of 1885, before referred to, are steps in this direction, so far as life insurance business is concerned.

There are other provisions relating to life insurance, specific in their terms, but which do not, so far as I can perceive, relate directly to life insurance business as conducted by an individual. In short, an examination of our statutes fails to disclose a direct prohibition against the issuing of a life policy by an individual, as in the case of fire. In addition to the case of *Com. v. Vrooman*, 164 Pa. 306, I have examined the cases *Com. v. Reinoehl*, 163 Pa. 287; *Arrott v. Walker*, 118 Pa. 249; *Weed v. Cumming*, 198 Pa. 442; 1 *Tiedeman on State and Federal Control*, 574; and 1 *Cooley's Briefs on the Law of Insur.*, 39, and the authorities therein cited.

It is clear that, aside from the language of the statutes, the reasons cited by the courts in sustaining the act of February 4, 1870,

P. L. 14, as a valid exercise of the police power, would apply a fortiori to the case of life insurance. The length of time over which a life policy may extend, the uncertainty of the date at which death may occur, the calamity to the family in case a policy cannot be collected, the risk of the death of the insurer before the death of the insured, the doubt as to whether executors or heirs could be justly or securely bound by such a contract, the comparative freedom of the individual insurer from effective statutory or departmental control, outside of sections 9 and 12 of the act of 1873, and the amending act of 1885, the uncertainty as to the financial stability of individuals acting as insurers, the difficulty of obtaining reliable information as to how the funds arising from the payment of premiums are invested, the form of the application, the form of the policy—these and kindred matters, which, while well covered by legislation affecting corporations, are entirely uncovered as to individuals, place such contracts in a position exposed to peculiar dangers.

I see no reason why you, as a State officer, should undertake to issue a license to an unincorporated partnership to conduct the business of life insurance, in view of the serious public and individual risks involved. I am not a judicial officer and can bind no individual citizen by my opinion. He would still have his legal right to take the matter to the courts and have it there determined. I advise you to act in such a manner that the legal right may be passed on judicially. I advise you to refuse the license. The party, if dissatisfied, can petition the courts for a mandamus against you, and I can then argue the case on your side of the question upon the merits of your answer to the petition. This I am ready to do in case of need.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

LIFE INSURANCE—GENERAL INVESTIGATION BY COMMISSIONER OF INSURANCE.

The Insurance Commissioner is powerless to institute a general investigation into the methods of conducting the life insurance business within the Commonwealth.

LIFE INSURANCE—REBATES—ACTS OF MAY 7, 1889, AND JULY 2, 1895.

The act of July 2, 1895, P. L. 430, amending the act of May 7, 1889, P. L. 116, which makes it a misdemeanor either to allow or accept a rebate in life insurance, is incapable of enforcement, as neither party to the transaction can be compelled to incriminate himself.

LIFE INSURANCE—REBATES—AGREEMENT BETWEEN COMMISSIONER AND COMPANIES.

In view of the inability of the Insurance Commissioner to prevent rebates and discrimination by insurance companies, either by general investigation or enforcement of the criminal statutes forbidding the same, it would be proper for him to require all life insurance companies doing business in Pennsylvania to lodge with him a written agreement to abolish the practice of rebating, to pledge themselves to the enforcement of a prohibition against it, to dismiss any agent who violates the rule, and to agree not to employ any agent dismissed for rebating within a period of three years from the date of such dismissal.

Office of the Attorney General,  
Harrisburg, Pa., December 7, 1905.

Hon. David Martin, Insurance Commissioner:

Sir: I have considered your request for an official opinion covering your power to institute a general inquiry into the methods of conducting the business of life insurance in this State, particularly in regard to the matter of rebates.

You will observe that this refers to a totally different kind of investigation from that now being conducted by a legislative committee in the state of New York. There is no statutory provision giving you the power or authority to institute an investigation in cases of this kind, and the evident conclusion is that the Legislature reserved that right to itself, and that, if the condition of insurance business in this State should require such an investigation, it is properly a legislative function.

After a careful search I can find no statutory authority for your making such an inquiry. You are not empowered to issue subpoenas or call for the production of books and papers, and any inquiry which you might institute, if resisted, would perish because of the lack of power to make the investigation effective and thorough. The powers given by section 5, clause 10, of the act of 1873, P. L. 20, relate to examinations of a different character, being those which affect the pecuniary standing of the companies examined, and

are not broad enough to cover the kind of investigation contemplated by your inquiry.

The act of May 7, 1889, P. L. 116, in section 1, provided against discrimination or distinctions in favor of individuals between insurants of the same class and equal expectation of life, in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes. It also provided that no life insurance company, or agent thereof, should make any contract of insurance or agreement as to such contract other than is plainly expressed in the policy issued thereon; nor should any such company or agent allow, or offer to pay or allow, as inducements to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit accruing thereunder, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance.

The 2d section made a violation of this act by any life insurance company, its agent or agents, a misdemeanor, and subjected the offender or offenders, on conviction, to the payment of a fine of \$500 on each and every violation, where the amount of insurance was \$25,000 or less, and for every additional \$25,000 of insurance or less there was to be an additional penalty of \$500.

It will be observed that this act, so far as its penal features were concerned, was aimed solely at the insurance companies or their agents. The act of July 2, 1895, P. L. 430, amended both of the sections of the act of May 7, 1889, by including in the first section a prohibition against the receipt, direct or indirect, by the insurant, as an inducement to insurance, of any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefit accruing thereon, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance, and the penal provisions of the act of July 2, 1895, were made to include the insurants as well as the companies or their agents. The result of this amending act is to make both parties to the transaction, the insurers and insured, alike guilty of a misdemeanor, and subject to the enlarged sentence in the latter act upon conviction.

This feature of the law renders it incapable of enforcement, because neither party to the transaction can be compelled to incriminate himself. It would be impracticable, therefore, for you to undertake an investigation or prosecution where you would be unable to obtain a witness to the transaction who could be interrogated as to its character or terms, without a violation of the provision contained in section 9, article I, of the Constitution of Pennsylvania.

nia, which declares that in criminal prosecutions the accused cannot be compelled to give evidence against himself. There is no provision, either in the act of May 7, 1889, nor in the act of July 2, 1895, which makes it your duty to institute any such prosecutions, the provision being that the fine or fines shall be collected as fines are now by law collectible; one-half to be paid to the informer and one-half to the county treasurer for the benefit of the common school fund in the county where the offence was committed. It is quite clear that, inasmuch as the disposition of the fines is local, and that the payment of one-half of the fund therefrom arising is to be made to the county treasurer of the county where the offence was committed, this does not subject you, as a State officer, to the duty of instituting these proceedings, and that they must be left, as in all other violations of criminal statutes, to the conduct of the district attorney of the respective county.

Inasmuch as you are powerless to institute a general investigation and are also powerless in the matter of obtaining testimony from either of the parties to the transaction, and inasmuch as the duty under the statute is clearly imposed on local officers, if imposed at all, any attempt on your part to conduct such an investigation or institute such a prosecution would be outside of your duties and your province. In view of the very general feeling against the illegality, impropriety and injustice of rebates, and the adoption of such practical measures as would effectually put a stop to such practices for the future, allow me to suggest that it would be entirely proper for you to exact from each one of the life insurance companies doing business in this Commonwealth, whether under charters obtained from our own State or charters obtained elsewhere, to lodge with you a written agreement to abolish the practice of rebating, to pledge themselves to the enforcement of a prohibition of rebating, and to a dismissal of any agent who violates said rule, and also agreeing not to employ any agent dismissed for rebating within a period of three years from the date of such dismissal. In this manner you can accomplish for the protection of the business in future, throughout the bounds of the Commonwealth, all that this unfortunately ineffective statute of 1895 has failed to do.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

## LIFE INSURANCE.

The complaints of S. M. Roedelheim against the Canada Life Assurance Company for violations of the anti-rebate law are defective because sufficient details are not given. The duty of prosecuting such offenses is not under the law with the Insurance Commissioner.

Office of the Attorney General,  
Harrisburg, Pa., January 31, 1906.

Hon. David Martin, Insurance Commissioner:

Sir: I have carefully examined the correspondence addressed to you by S. M. Roedelheim, of 4162 Leidy avenue, Philadelphia, under the dates of January 4th, 6th and 10th, accompanied by a list of policies upon which he states rebates were allowed by the Canada Life Assurance Company of Toronto, Canada.

I have also had referred to me three letters addressed by the same correspondent to the Governor, under the dates of January 9th, 11th and 16th, and I have also been the recipient of a letter from the same correspondent, addressed to myself, under the date of January 24th.

The substance of this correspondence is to inform you of alleged violations of the anti-rebate premium act of the 2nd of July, A. D. 1895 (P. L. 431), and to request you to proceed. This is accompanied by the further request that the matter be delayed no longer and that the "parties at issue be advised of the information I furnish you herewith." This extraordinary request that you should advise the parties charged with the crime of the fact that information had been lodged with you, coupled with the unusual interest on the part of the informer, leading him to write letters to the Governor, one of which he retracts because it contains language which the Governor refused to receive because of an implied threat, coupled also with his zeal in writing to me, calling me up on the telephone for a conference which I refused to hold over the 'phone, has made me doubt most seriously the unselfishness of his motives. He claims that he is acting within his rights as a citizen and a taxpayer. So far as his rights as a citizen are concerned, he has none. No citizen can be interested in a criminal prosecution and his duty as a citizen is fully performed when he lodges his information with the proper officer. The responsibility is then upon the officer and the citizen is relieved. So far as his rights as a tax payer are concerned he has none. That matter does not add to or subtract from his burden in this regard to the extent of a farthing.

The information he supplies is defective because he does not give the dates of the transaction and it cannot be ascertained whether they are barred by the statute of limitations. Nor does he state in



what counties the rebates were allowed, and hence the proper jurisdiction cannot be ascertained.

Assuming that these defects could be supplied, the question still remains as to your duties in the premises. As to this I refer you to the seventh paragraph of my opinion rendered to you under date of December 7, 1905. The duty of prosecution is not imposed upon you by the statute and I pointed out to you that in a criminal prosecution, where both parties to the transaction were equally guilty, you could not secure testimony because of the Constitutional provision which declares that in criminal prosecutions the accused cannot be compelled to give evidence against himself. Aside from this I have carefully analyzed the information which he furnished. I find that he states the number of the policy, the name of the insured, the amount of the policy, the amount of the premium and the amount of the rebate allowed in no less than forty-four instances. The total amount of the face value of the policies is \$142,440. The total amount of premiums due is \$5,994.98. The average amount of rebate allowed is 59 per cent., which would make rebates somewhat in excess of the sum of \$3,500, making the net amount actually paid about \$2,500. The statute referred to, being the act of 2nd of July, 1895 (P. L. 430), in providing that violations of the act shall constitute a misdemeanor, subjects the life insurance company, its agent or agents, and any person violating section 1 of the act to the guilt of a misdemeanor, meaning thereby clearly the recipient of the rebate, as well as the company and the company's agent. The penalty prescribed is a fine of \$500 on each and every violation where the amount of insurance is \$25,000 or less. All of the policies being for less than \$25,000 would be subjected to fines which, if collectible from each one of the parties involved, would amount to the sum of \$1,500 fine upon each policy, or the sum of \$66,000 in all. It is provided that the fine or fines shall be collected as fines are now by law collected, one-half to be paid to the informer and one-half to the county treasurer for the benefit of the common school fund in the county where the offences are committed. Assuming for the sake of argument that the informer was himself one of the guilty parties to the transaction, most probably the agent of the company itself, it is clear that his interest in this transaction, there being no feature of imprisonment involved, would be the pecuniary gain in the amount of one-half of the fines, in this instance \$33,000 that his portion of it would be fully paid, and that there would go into his own pocket the net surplus of \$11,000, and that the money would be wrung to the extent of double this amount from the pockets of those who had been enticed by him into the transaction. It is impossible to believe that forty-four repeated violations of a statute could be persisted in, several of them with the same individual, not less than

nine times repeated, where the insured had nothing whatever to gain in the way of a commission or a share in the fine, but where the whole benefit of the transaction would inure to the advantage of the most guilty and active agent concerned in the violation of the law, unless accounted for by the inference that pecuniary greed of a personal nature, rather than an unselfish motive of informing a public officer of a violation of the statute gives the true clue to the reasons underlying this information. I am satisfied that if prosecutions were brought, and a fund of this character and magnitude, realized from the collection of fines were in court for distribution, no judge would permit an active participant in the crime to share in the distribution of the fund under the guise or plea of being an informer. It is a wise maxim of the law that no man can take advantage of his own wrong, and it would, in my judgment, be monstrous to permit the powers of your office to be used for any such unworthy end:

Very truly yours,

HAMPTON L. CARSON,\*

Attorney General.

---

#### EMPLOYEES' BENEFICIAL ASSOCIATIONS—NECESSITY OF INCORPORATION.

The law plainly recognizes the existence of beneficial societies as distinct from insurance companies, and provides for their incorporation as such.

There is no legal objection to the organization of a beneficial association for the protection of employees of firms and corporations against the distresses of sickness, accident or death, so long as the articles of association are strictly confined to business of a purely beneficial character.

A corporation or partnership should not become a party to such an agreement, first, because it is not within the chartered powers of a business corporation to enter, qua corporation, into an association of this character; nor is it within the purview of a business partnership to extend its partnership business to membership in such an association.

There is nothing, however, to prevent the officers and stockholders of a corporation, or the members of a large business house, from associating themselves as individuals in a beneficial association and in limiting the benefits to be derived from such association to their own employees.

For this it is not necessary to have a charter, except, of course, that the business of an association is always better conducted when there is a distinct form of association adopted.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

Hon. David Martin, Insurance Commissioner:

Sir: You have asked me whether a number of corporations, manufacturer or employers of labor can associate together to provide for and pay sick and accident benefits to their employees without a char-

ter of incorporation, and that you are not clear whether a combination of firms and corporations can organize to do this without letters patent given according to law.

I answer that the distinction between the business of an insurance company and of a beneficial association is plainly stated in the case of *Commonwealth v. Equitable Beneficial Association* 137 P. S., 412. There the court states:

"The great underlying purpose of the beneficial association is not to indemnify or secure against loss; its design is to accumulate a fund from the contribution of its members for beneficial or protective purposes to be used in their own aid or relief in the misfortunes of sickness, injury or death. The benefits, although secured by contract, and for that reason to a limited extent assimilated to the proceeds of insurance, are not so considered."

In the same case it was pointed out that a contract of insurance was purely a business adventure, not founded on any philanthropic, benevolent or charitable principle, and that the design and purpose of an insurance company, and the dominant and characteristic feature of its contract, was the granting of indemnity or security against loss for a stipulated consideration. The law plainly recognizes the existence of beneficial societies as distinct from insurance companies, and provides for their incorporation as such.

This decision was in line with the conclusion reached by the Supreme Court in the case of *Commonwealth v. National Mutual Aid Association of the State of Ohio* (94 P. S., 481), which was held not to be a foreign insurance company within the meaning of the act of April 4, 1873, and was therefore not liable to the penalties imposed on foreign insurance companies for transacting business within the State without authority of law.

I see no legal objection to the organization of a beneficial association for the protection of employes of firms and corporations against the distresses of sickness, accident or death, so long as the articles of association are strictly confined to the business of a purely beneficial character. I do not think, however, that a corporation or partnership should become a party to such an agreement, first, because I do not think it within the chartered powers of a business corporation to enter qua corporation into an association of this character; nor do I think it within the purview of a business partnership to extend its partnership business to membership in such association. There is nothing, however, to prevent the officers and stockholders of a corporation, or the members of a large business house, from associating themselves as individuals in a beneficial association, and in limiting the benefits to be derived from such association to their own employes. There is nothing to prevent the asso-

ciation of any number of individuals combining for mutually beneficial purposes, and of course the method of collecting dues is a matter of arrangement among themselves. For this it is not necessary to have a charter, except, of course, that the business of an association is always better conducted when there is a distinct form of association adopted. That, however, is a matter for the parties themselves.

To the distinct question which you ask, whether a beneficial and relief association may be formed by firms and corporations to pay sick and accident benefits to their employes without being incorporated, I answer, no; because firms and corporations ought not, as such, to engage in business outside of the charter limits or the strict business of the partnership, but so far as an association may be formed for beneficial and relief purposes by individuals who happen to be either officers or stockholders of a corporation, or members of a partnership, I can see no greater objection than the association of individuals for mutually beneficial purpose entirely unrelated in business to each other; in other words, if salesmen, lumbermen, manufacturers, blacksmiths and confectioners may associate for mutually beneficial purposes without a charter, but simply under articles of personal association, there can be no objection to the association of the members of corporations or members of a partnership associating themselves as individuals and not as officers and stockholders with their employes and working out such a plan for the collection of dues and the payment of benefits as may seem to be reasonable and practicable under the circumstances.

I am,

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

---

#### AMENDMENT OF CHARTER.

An amendment of the charter of a fire insurance company containing an extension of the power originally granted the company cannot be allowed.

Office of the Attorney General,  
Harrisburg, Pa., August 15, 1906.

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

Sir: I have before me the proposed amendment of charter in re Tanners' Mutual Fire Insurance Company of Pennsylvania.

A careful examination of this proposed amendment has satisfied me that the application cannot be allowed. I perceive a very material extension of the power originally granted to the company under

its charter dated January 14th, 1874, and amended February 10th, 1888, and enro'led in the office of the Secretary of the Commonwealth in Charter Book No. 24, page 70. The first section of the charter declared the purpose of the corporation to be the insuring of the "tannery buildings, bark, hides, leather and engines, steam boilers and machinery, tools and other property against loss or damage by fire," the generality of the purpose being limited by the insertion of the possessive pronoun "their." So that the purpose of the corporation, as expressed in its charter, was the specific insurance of the property of the Tanners' Mutual Fire Insurance Company of Pennsylvania.

The amendment sought to be secured enlarges this purpose by adding thereto the insurance of "all property connected with the business of sole leather tanners, harness leather tanners, Morocco tanners, all kinds of kid leather tanners, and all other kinds of tanners, including that of glove leather tanners and manufacturers of gloves, belting manufacturers, hide dealers, leather stores, finding stores, harness manufacturers, harness and saddlery dealers, tannin extract factories, harness and collar manufacturers and dealers in supplies incidental thereto, and glue factories and abattoirs, against loss or damage by fire."

This is manifestly an enlargement of the original purpose of the corporation, and is in violation of a proper construction of the 31st section of the act of May 1st, 1876 (P. L. 64). It amounts to the creation of a general fire insurance company of property of a particular kind, instead of the insurance of property belonging to a single company. If the real purpose be to enlarge the scope and business of the corporation in such a manner as is indicated by the amendment, then it is clear that it ought to appear whether the company is to be organized upon the stock or mutual principle and the provisions of the statutes with regard to stock authorized and stock subscriptions paid, or with regard to guaranty capital of mutual companies, have not been complied with, as nothing in the papers submitted to me indicate the manner of organization or the amount of capital secured for the purpose. I therefore return the paper to you without my approval.

It may be that there are other papers on file which you have not submitted to me. If so, I should be glad to examine them.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO THE COMMIS-  
SIONER OF BANKING.

---

---

## OPINIONS TO THE COMMISSIONER OF BANKING.

BUILDING AND LOAN ASSOCIATIONS—POWERS—ULTRA VIRES ACTS  
—ACTS OF APRIL 29, 1874, AND JUNE 25, 1895.

The following acts by building and loan associations are ultra vires and should be stopped by the Commissioner of Banking:

1. The establishment and maintenance of branch offices in various places in the Commonwealth.

2. The making of permanent investments in office buildings or lands and other buildings, disregarding and far in excess of the provisions of the act of 29th of April, 1874, which only permits the purchase of real estate in which the association has a mortgage, judgment or other creditor interest; or real estate purchased for the purpose of sale to its shareholders, to be exercised within ten years.

3. The making of collateral loans, without limiting such loans to the cases contemplated by the act of April 10, 1879.

4. Increasing the expense of managing the association to an extent not warranted by the amount of business done and paying salaries to officials, grossly disproportionate to the value of the service rendered.

5. Charging an admission or withdrawal fee, ordinarily of a dollar a share, which is not looked upon as a liability of the association and is not so carried on its books, but deducted at once from the common fund and put into an expense account for the purpose of paying these increased salaries and expenses.

6. Discriminating in the rate of interest paid to various classes of shareholders.

7. Adopting what is called the "double mortgage" feature, i. e., issuing two bonds, each for one-half the amount of the money loaned, one of which is assigned or sold to outside parties to secure money loaned the association which guarantees the payment of the bonds and retains possession of the mortgage.

8. The issuing of policies of insurance or contracting with certain of its members to insure their lives, and in the event of death the policy is made payable to the association, and the shares of stock are matured, the association getting the benefit of the difference between the face of the policy and the amount of money still owed by the shareholder upon his stock.

The law has drawn, in its wisdom, distinctions between building associations, banks, trust companies, real estate companies and insurance companies, and established as to each a statutory system of its own. Confusion of these, or usurpation on the part of one class of the rights and powers of others is wholly unauthorized.

Although a strict application of the foregoing principles may work hardships in particular instances, there is a sufficient discretion vested in the Department of Banking to enable it to deal with particular cases upon the state of facts arising therein in such a manner as to avoid harshness or resulting hardships to the particular association affected.

Office of the Attorney General,  
Harrisburg, Pa., January 5, 1905.

Hon. Robert McAfee, Commissioner of Banking:

Sir: Replying to your recent requests for opinions upon various points touching the powers, practices and management of building associations, I state my views in the form of a single communication.

The evident purpose of the Legislature in enacting broad and liberal laws for the organization, control and government of these corporations was to serve a public necessity by creating co-operative associations, by means of which poor people, or those in moderate circumstances, could borrow money to build homes which might be paid for on the instalment plan. They were intended to be a benefit to the small borrower, and also to serve as a safe and profitable investment to the small investor; and for this reason they were exempted from the operation of the laws relating to usury and the other limitations and restrictions imposed upon corporations for profit alone; the wisdom of this action and this legislation has been abundantly shown throughout the Commonwealth by the excellent results and benefits accruing to the shareholders of the many institutions which have been running for years along the old legitimate lines.

In recent times, however, the sharp competition in business, the low rate of interest and the springing up of savings banks have narrowed and restricted the legitimate purposes of these associations, and this condition has given rise to many questionable expedients and policies on the part of the officials in charge of many of them. Most, if not all, of these innovations were clearly not contemplated by the Legislature at the time of the passage of the various acts regulating these corporations, and nearly all of them are encroachments upon the legitimate domain of other corporations, as well as of doubtful advantage to the welfare of the shareholders in building and loan associations.

The original building and loan association was essentially a local institution, drawing its entire membership from a town or a section of a town, and was usually composed of men in the same walk of life and actuated by a common purpose. The officers were usually willing to serve without any, or at least, with very small compensation and the total expenses were kept at the lowest possible point. The funds which accumulated monthly were loaned promptly to shareholders for the building of homes and, in the event of their being no demands for loans, by the system of forcing withdrawals investing members were obliged to take their money and cancel their stock. The apparently large rate of interest derived from the premiums bid, as well as the interest paid on the part of the bor-



rowers sanctioned by law, inured to the benefit of the borrower as well as to the investor in the early maturity of the stock. The large profits made by the investing members were only incidental to the business itself, the chief purpose of which was making loans to the men desiring to build homes for themselves and their families.

But these large profits attracted the attention and excited the cupidity of persons who sought to modify the system, by engrafting features of dangerous character and questionable legality and this resulted in the formation of many associations conducted on what is known as "The National Plan," having for their main purpose the benefit of the investor and the officers of the company, rather than the commendable purpose of building homes for those in the poorer walks of life. These men were not content with the simple and inexpensive methods of the originators, but carried on their operations and managed their associations on lines clearly not in the contemplation of the Legislature and not within the spirit or letter of the law. Aided by clever agents and alluring literature, these operations soon reached a magnitude and importance which challenged investigation and the result was that most of them eventually became bankrupt, entailing great loss and hardship upon the deluded shareholders.

The Legislature of this State, by the act of 11th day of May, 1901, P. L. 153, provided that all foreign companies of this character should be required to make a deposit of \$200,000 with the Commissioner of Banking to protect the local shareholders, and this action, supplemented by the earnest and efficient service of the State Department having these matters in charge, practically put a stop to the operation of foreign corporations. There are, however, quite a large number of domestic corporations of this character still in existence, the conduct and management of which are open to the same objections which applied to those driven beyond our borders. Briefly they are as follows:

1. The establishment and maintenance of branch offices in various places in the Commonwealth.
2. The making of permanent investments in office buildings or lands and other buildings, disregarding and far in excess of the provisions of the act of 29th of April, 1874, which only permits the purchase of real estate in which the association has a mortgage, judgment or other creditor interest; or real estate purchased for the purpose of sale to its shareholders, to be exercised within ten years.
3. The making of collateral loans, without limiting such loans to the cases contemplated by the act of April 10, 1879.
4. Increasing the expense of managing the association to an extent not warranted by the amount of business done and paying

salaries to officials, grossly disproportionate to the value of the service rendered.

5. Charging an admission or withdrawal fee, ordinarily of a dollar a share, which is not looked upon as a liability of the association and is not so carried on its books, but deducted at once from the common fund and put into an expense account for the purpose of paying these increased salaries and expenses.

6. Discriminating in the rate of interest paid to various classes of shareholders.

7. Adopting what is called the "double mortgage" feature, i. e. issuing two bonds, each for one-half the amount of the money loaned, one of which is assigned or sold to outside parties to secure money loaned the association which guarantees the payment of the bonds and retains possession of the mortgage.

8. The issuing of policies of insurance or contracting with certain of its members to insure their lives, and in the event of death the policy is made payable to the association, and the shares of stock are matured, the association getting the benefit of the difference between the face of the policy and the amount of money still owed by the shareholder upon his stock.

It is my deliberate conclusion that each and all of these acts are ultra vires and without warrant of law, and should be stopped at once by your Department. It is a well-settled principle that a corporation can do nothing without direct authority of law. To justify its acts it must be able to point to the specific language of a statute by which it is permitted. Viewed in this light, each one of the above features is illegal.

1. There is no law permitting the establishment of branch offices.

2. It is contrary to the purpose for which these associations were organized for them to make permanent investments in any kind of property, although they may take such property as the result of procedure or foreclosure upon bonds or mortgages, or under the authority of the act of April 29, 1874, in clause 9 of section 37.

3. Making collateral loans on other than their own stock or real estate of the borrowing stockholder is essentially a prerogative and power of banking institutions and in no wise appertains to the building and loan association business.

4. The extraordinary expenses made necessary by the elaborate offices and the high salaried officials of building and loan associations, conducted on the national plan, are contrary to the letter and the spirit of the law establishing and regulating these institutions.

5. The courts have decided that the directors of building and loan associations stand in the relation of trustees to the shareholders and have no right to deduct any part of the money paid in by the latter for the expenses of the management of the concern, but that

such expense must be paid out of the earnings or profits of the association.

6. It is clear that any discrimination in the rate of interest paid to the various classes of shareholders is illegal, but that each is entitled to his pro rata share in the earnings as each must stand his pro rata share of any losses which occur. The objection to the issuing of prepaid or full paid stock which bears a fixed rate of interest, paid at stated intervals, arises from this fact. No shareholder is legally entitled to receive more than his pro rata share of the earnings, and if interest is paid in excess of these earnings to any class of shareholders, it works an injustice to the holders of non-interest bearing stock.

7. These associations have no right to borrow money except for the temporary purposes contemplated by the act of June 25, 1895, P. L. 303, or to sell bonds, as such transactions are foreign to the purpose for which these institutions were incorporated, and are encroachments upon the prerogatives and rights of banking companies.

8. The issuing of policies of insurance upon the lives of certain of the shareholders is not within the purpose for which these associations were incorporated and is a discrimination against the shareholders not so insured, and is also open to the objection of conflicting with the laws governing the writing of insurance under licenses granted by the Insurance Commissioner upon the lives of persons within this Commonwealth, and no report of the same is made to the Insurance Department.

Under the laws of the Commonwealth an agent of a life insurance company must procure a license from the Insurance Commissioner of the Commonwealth and make a report of the amount of business done annually to that Department. There are certain other regulations and restrictions provided by law which are not complied with by the agents of building and loan associations writing this class of business.

Again, the practice of taking out insurance policies on the lives of shareholders and borrowers alike, which policies are assigned to the association, is also objectionable for the reason that, in the case of the shareholder, the association has no insurable interest in his life which could be collected if the claim were disputed by the insurance company, and even in the case of a borrowing member, after a certain time the amount of the policy is largely in excess of the insurable interest which the association might legally have by reason of its being a creditor.

The law has drawn, in its wisdom, distinctions between building associations, banks, trust companies, real estate companies, and insurance companies, and established as to each a statutory system

of its own. Confusion of these, or usurpation on the part of one class of the rights and powers of others, is wholly unauthorized.

I am not unmindful of the fact that, in dealing with this subject in a general way, a strict adherence to the principles laid down may work a hardship and possibly an injustice in particular cases, but there is sufficient discretion vested by law in your Department to deal with particular cases upon the state of facts arising therein in such manner as to avoid harshness or resulting hardships to the particular association affected.

In conclusion, permit me to add a word or two to guard against a possible misconstruction of my views on the subject of an over-issue of stock, as stated in my opinion of February 5, 1904. I adhere to my view there expressed, but I do not mean that new shares in various series of stock cannot be issued in place of shares that may have been matured and retired or canceled. This would be admissible under the act of April 29, 1874, section 37, which provides that "new shares may be issued in lieu of the shares withdrawn or forfeited," the limitation being that "at no time" shall the capital stock aggregate more than one million dollars—assuming that to be represented by the par value of all shares properly outstanding, in successive series.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

---

COMMISSIONER OF BANKING.

The Attorney General declines to advise the Banking Commissioner upon the question whether the act of May 11, 1874 (P. L. 145), fixing the liability of stockholders of banks and banking companies applies to shareholders in all trust companies incorporated since 1874, for the reason that the right of trust companies to do a banking business has been generally denied and for the further reason that the question is purely academic, no case is pending to demand such an opinion.

Office of the Attorney General,  
Harrisburg, Pa., May 11, 1905.

Hon. Robert McAfee, Commissioner of Banking:

Sir: You have asked me to advise you whether or not the act of May 11, 1874 (P. L. 145), entitled "An act fixing the liability of stockholders of banks and banking companies and other banking institutions in this Commonwealth," applies to shareholders in all trust companies incorporated since 1874 under the general corporation act of April 29, 1874, and its supplements.

I have carefully considered this question and have reached the definite conclusion that I ought not to give an official opinion there-

on. The act of 11th of May, 1874, by its title, expressly limits its effect to banks, banking companies and other banking institutions in this Commonwealth. It is true that saving fund institutions and trust companies are mentioned in the body of the act, but these words are preceded by the words "banks, banking companies," and are followed by the words "and all other incorporated companies doing the business of banks or loaning and discounting moneys as such in this Commonwealth." Trust companies are organized under an entirely different act of Assembly from that relating to banks, and in the various amendments to this act, notably in the act of May 9, 1889 (P. L. 159), there is an express provision that nothing contained in the law should enable or authorize these companies to do a banking business. The Banking Department has uniformly, as I understand it, denied the right to these institutions to do a banking business or to receive deposits, or to discount paper. If it should be held that the language of the act under consideration applied to trust companies, such a determination would carry with it the inference that they are permitted to do precisely what other parts of the law deny them the right to do, and would directly conflict with the position taken by the Banking Department.

Moreover, there has never been an attempt on the part of the creditors of the State to enforce this double liability against the stockholders of insolvent trust companies. An opinion upon the question would be purely academic, as there is no case now pending, demanding such an opinion, and, inasmuch as the question has never arisen in court or been decided by any court, I advise that the subject be left in its present position until it properly arises in some actual case. After a careful investigation of all the acts of Assembly bearing upon this point I am unable to reach any other conclusion.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

COMMISSIONER OF BANKING.

Building and loan associations may not use their mortgages and judgments as collateral for borrowed money.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

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

Sir: You have asked me for an official opinion as to whether building and loan associations can use their mortgages as collateral for borrowed money, and whether or not the act of June 25, 1895 (P. L. 303) has an effect upon the act of June 2, 1891 (P. L. 174).

After reading these acts, I am of opinion that the later one is exactly what it purports to be, and as stated in its title—an amendment to the earlier act. The act of June 2, 1891, is a supplement to the general corporation act of 29th April, 1874, in so far as it relates to section 37, and, in addition to the corporate powers conferred on building and loan associations by the 37th section of the general corporation act, empowers such associations “when applications for loans by the stockholders thereof shall exceed accumulations in the treasury, to make temporary loans of such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any time fifteen thousand dollars, at a less rate of interest than six per cent., and secure the payment of the same by note, bond or assignment of its judgments and mortgages as collateral; said loans to be repaid out of the accumulations in the treasury as soon as sufficient is paid in, and there is no demand therefor by borrowing stockholders.”

The act of 25th June, 1895 (P. L. 303) is an act amending the act just quoted, and the material features of change are as follows: The right to make such temporary loans—by which, I take it, is meant borrowing money—is extended by the amending act to a case “whenever a series of stock has matured,” in addition to the case of applications for loans by the stockholders in excess of the accumulations in the treasury, and the limit placed upon the amount which the building association can borrow is stated to be “such sum or sums of money to meet such demands, not exceeding in the aggregate of such loan at any one time twenty-five per centum of the withdrawal value of the stock issued by said association at a rate of interest less than six per centum.” The final material change appears in the provision for the security of the payment of the loan secured by the building association, and it is stated in these words: “and secure the payment of the same by interest-bearing order, note or bond as collateral; said loans to be paid out of the accumulations in the treasury as soon as sufficient is paid in and there is no demand therefor by borrowing stockholders.”

Thus it appears, upon comparison of both acts, that the act of June 2d, 1891, omits all reference to judgments and mortgages as collateral, and expressly defines, as the legal and proper collateral security for temporary loans, “interest-bearing order, note or bond.” I regard this as a legislative abrogation of the former provision with reference to judgments and mortgages as collateral. The word “bond” occurs in both acts, likewise the word “note.” It is clear, therefore, that the Legislature intended to secure some substantial end by the omission of the words “judgments and mortgages,” and I am of opinion, therefore, that the practice of your

Department in ruling that the mortgage and judgments of building and loan associations cannot be used as collateral for borrowed money is sound.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

IN RE BANKING INSTITUTIONS—CORPORATIONS—BANKS—LOANS  
SECURED ON THEIR OWN CAPITAL STOCK—CORPORATION ORGAN-  
IZED BEFORE CONSTITUTION OF 1874—SUBSEQUENT LEGISLATION.

By special act, prior to the Constitution of 1874, a corporation was organized for the purpose of a savings bank and loan company. Its business was to receive deposits, to transact a banking business, and to become a depository of trust funds. The payment of deposits was carefully regulated, and the capital was expressly referred to as being raised "for the security of the depositors of the said corporation," and also as security for the performance of its duties as trustees, etc. The 4th section of its charter provided that "the said corporation shall have authority to invest its funds in the purchase of stock." Held, that a loan by the corporation upon the security of its own capital stock was not permissible under its charter.

A corporation incorporated by special act before the Constitution of 1874 for a period of twenty years, at the expiration of which time its charter was renewed for another twenty years, under the act of June 30, 1885, P. L. 201, is subject to the provisions of the act of February 11, 1895, P. L. 4, and June 14, 1901, P. L. 561, is under the supervision of the State Banking Department, and is prohibited from taking as security for any loan any part of its capital stock.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

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

Sir: I have your letter of recent date, stating that a certain corporation under the supervision of your Department has been loaning money upon its own stock as collateral security for the loans, claiming that, as its charter antedates the new Constitution, it does not come within the prohibition of the act of June 14, 1901 (P. L. 561), and claiming particularly that it is acting strictly within its charter powers in making such loans, because the 4th section of its charter provides that "the said corporation shall have authority to invest its funds in the purchase of the stock of this Commonwealth, or of the United States, or other stocks and bonds, or real or personal securities, or in such other manner as may be deemed appropriate and safe."

This conclusion is unsound; and if the corporation has been so advised, I instruct you to ignore it, and to proceed in such a manner

as to enforce compliance with the act of 1901. I have examined the charter, which is by special act of Assembly prior to the Constitution of 1874.

The purpose is stated to be that of a savings bank and loan company; its business was to receive on deposit any sum offered not less than a dollar, and to transact any other business transacted by banks in this Commonwealth, and to receive and become the depository of all trusts and such other funds as might be paid into or be under the control of the courts of the State and the laws of the same within the county of —————. The payment of deposits was carefully regulated and the capital is expressly referred to in the 3rd section of the charter as being raised "for the security of the depositors of the said corporation." This thought is enlarged by a provision in the supplement to the charter: "That the capital stock of said bank shall be taken and considered as the security required by law for the faithful performance of its duties as such executor, administrator, trustee, or receiver, and shall be liable in case of default."

It is manifest that these provisions are intended to secure for the depositors, as well as for trust estates, the protection of the capital, and this protection would be seriously impaired by any such pledging of its shares. A loan by a corporation upon the security of its capital stock may well be regarded as an impairment of its capital, for it is tantamount to a return pro tanto to the stockholders of the money originally paid in either by himself or by some prior holder in the chain of title.

The provisions of the charter above referred to are not and cannot be controlled by the 4th section, which does not apply to loans, but in express terms applies to investments. A fair reading of the clause does not embrace even a purchase of its own stock, much less a loan. Upon a fair construction of the charter itself and its supplement, the right to make such loans does not exist.

The contention that the new Constitution and subsequent legislation do not govern is also without foundation. The charter was to continue for but twenty years, and the legislature expressly reserved the right to alter, revoke or annul the same at any time when it shall be deemed necessary for the public good. The twenty years expired in 1888 and the institution was re-chartered, or, to speak more correctly, its charter was renewed for another twenty years, under the provisions of the act of June 30, 1885, P. L. 201, the only act then applicable. This act expressly subjected the charter to the new Constitution, and that instrument, in Article XVI, section 6, provides that "No corporation shall engage in any business other than that expressly authorized by its charter." The charter does not



and did not in express terms confer any such power, but, as has been seen, impliedly excludes the power to make such loans.

The corporation, under its renewed charter, came under the terms of the act of February 11, 1895 (P. L. 4), creating a Banking Department, and is subject to your supervision, particularly if it acts in a manner to impair capital. The act of June 14, 1901 (P. L. 561), expressly prohibits any banking institution, trust company or savings institution, having a capital stock theretofore or thereafter incorporated, from taking as security for any loan or discount a lien on any part of its capital stock, but the same surety (sic.), both in kind and amount, shall be required of persons, shareholders and not shareholders; nor shall it become the purchaser or holder of any of its capital except under conditions not necessary to be considered in this connection.

The corporation in question is sinning against the law and should be checked. The charter does not confer, in express terms, or even by implication, any special power denied by the act of 1901, but even if it did, such power would fall under the circumstances detailed in the history of the renewal.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

---

BANKS—AUTHORITY OF BANKS TO ACT AS TRUSTEE UNDER MORTGAGE—ACTS OF MAY 13, 1876, APRIL 14, 1901, AND MAY 21, 1901.

A bank of discount and deposit cannot act as trustee under a mortgage, executed to secure an issue of bonds of a corporation of the first class under the act of April 29, 1874, and its supplements.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

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

Sir: You have submitted to me for an official opinion the question as to whether a bank of discount and deposit, incorporated under the act of May 13, 1876, can act as trustee under a mortgage made to it as trustee, the facts being as follows:

The O. A. of the H. F., at E——, A—— county, Pa., an institution duly chartered by the court of common pleas of the county under the act of April 29, 1874, and its supplements, for the purpose of the establishment and maintenance of an asylum for destitute orphan children, is indebted to various parties for money loaned, for the purpose of purchasing and building an asylum, now built, at E——, Pa. The G. S. and D. Bank holds a note of the asylum in a small amount, fully secured by good endorsements. The asylum

is about to issue a first mortgage on its property in a large sum to a trustee to secure the payment of an issue of coupon bonds, which mortgage and bonds will be in the form usual in such bond issues, with the interest payable semi-annually, and is desirous of having the savings and deposit bank act as trustee in the said mortgage and bond issue. The object of the issue of bonds is to raise money by the sale of such bonds to pay off outstanding obligations, and to substitute bonds for the present outstanding evidences of indebtedness, wherever the creditors will consent. The savings and deposit bank has signified its willingness to accept some of these bonds in settlement of its existing claim, and is further willing to act as trustee under the mortgage to secure the bond issue above referred to, it being expressly stipulated in the said mortgage and bonds that the trustee assumes no liability therefor, and makes no representations as to the security of the same.

I reply that it is clear that the savings and deposit bank is a bank of discount and deposit, incorporated under the act of May 13, 1876 (P. L. 161). The corporate powers of banks are set forth in sections 6 and 7 of the act above stated. The acts of April 19, 1901 (P. L. 79), and 21st of May, 1901 (P. L. 288), also refer to the same subject.

I am unable, after a careful reading of these acts, to discover in them any authority for an institution of this kind to act as trustee under a mortgage, that being one of the functions of a trust company. There is not only an entire absence of express authority for a bank of discount and deposit to act as such trustee, but I am of opinion that such a power cannot be fairly implied from the authority conferred upon the bank by law. To permit such action in this case would be to establish a dangerous innovation; to refuse it will check a dangerous usurpation by banks of powers conferred upon trust companies.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

LIMITED PARTNERSHIPS—SUPERVISION OF STATE BANKING DEPARTMENT—ACT OF FEBRUARY 11, 1895.

Limited partnerships, formed under the act of June 2, 1874, conducting a banking business, are not within the supervision of the State Banking Department, established by the act of February 11, 1895.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

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

Sir: You have asked me for an opinion whether a limited partnership formed under the act of June 2, 1874, entitled "An act authorizing

the formation of partnership associations in which the capital subscribed shall alone be responsible for the debts of the associations except under certain circumstances," and doing a banking business, would come under the supervision of your Department.

I reply that the act of February 11, 1895 (P. L. 4), establishing the State Banking Department, enumerates in section 1 the institutions under the supervision and control of your Department as follows:

"Banks and banking companies, co-operative banking associations, trust, safe deposit, real estate mortgage, title insurance, guarantee, surety and indemnity companies, and all other companies of a similar character, savings institutions, savings banks, provident institutions and every other corporation having power and receiving money on deposit, and to mutual savings funds, building and loan associations and bond and investment companies incorporated, or which may hereafter become incorporated, under the laws of this State, or incorporated under the laws of any foreign state, and authorized under the laws of this State to transact business herein."

In section 3 of the same act it is provided:

"Every corporation, in all its departments, business and affairs, together with all its property, assets and resources included within the supervision of the Commissioner of Banking or his Department, as set forth in the first section of this act, shall be subject to inspection and examination by the Commissioner of Banking or his deputy, or any qualified examiner of the said Department, when such examiner is authorized, in writing, under the official seal of said Commissioner or of his deputy, to make such examination of any said corporation."

There is no mention in this act or any other act of limited partnerships formed under the act of June 2, 1874, and doing a banking business. Aside from the fact that limited partnerships are not included in the list of institutions under the supervision and control of your Department, and therefore outside of the terms of the statute, I am informed that your Department has never examined private banks or limited partnerships doing a banking business. Long continued practice constitutes in law a strong contemporaneous exposition of a statute by a department whose duty it is to enforce it. As was said by Attorney General Moody in his argument before Judge Humphrey of the United States District Court for the Northern District of Illinois in the case of *United States v. Armor & Company*:

"It is no light thing to overthrow a contemporaneous and long\* continued construction of an act by those whose duty it is to administer it, and courts, realizing the gravity of doing so, have always regarded with respect a long continued and contemporaneous executive interpretation of an act."

Of course such construction is not necessarily final, and in a clear case a court would not permit an erroneous executive interpretation to interfere with or to control a final judicial interpretation of the law under which the department was operated, but in a case like the present, where the statute specifically enumerates certain classes of corporations and fails to enumerate others, and the practice of the Department shows that no jurisdiction outside of the express terms of the act has ever been attempted, a strong ground is presented for the conclusion that any attempt at the present time to extend your supervisory power would be in excess of your authority.

I am led to the same conclusion by another line of reasoning. A limited partnership is not like a corporation, inasmuch as it has never secured a grant of franchises from the State in the form of a charter. Hence, owing nothing to the State, but depending entirely for the association of its members upon the terms of their private agreement, and seeking immunity from individual liability in excess of the amount of the capital subscribed under the terms of the act of Assembly authorizing such a limited liability, it is quite clear that such a limited association can in no true sense be likened to a corporation enjoying a gift from the State of sovereign power. To extend governmental supervision over the affairs of private citizens, whether acting separately as individuals or jointly as partners, even though the partnership liability be limited, would, in my judgment, be an unauthorized assumption of power on the part of the government.

I advise you that such limited partnerships, formed under the act of June 2, 1874, do not come under the supervision of your Department.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## REAL ESTATE TRUST COMPANY OF PHILADELPHIA.

The Banking Commissioner is advised that he should send to the district attorney of Philadelphia, who is investigating the affairs of the Real Estate Trust Company of Philadelphia with a view of determining whether criminal prosecutions should be brought against any of its officers, the copies of reports made by the officers of the said company to the Banking Commissioner.

Office of the Attorney General,  
Harrisburg, Pa., September 4, 1906.

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

My Dear Sir: I am in receipt of a letter, under date of September 4th, from the Honorable John C. Bell, district attorney of Philadelphia county, stating that he is making an examination of the financial condition and business methods of the Real Estate Trust Company of Philadelphia, with a view of determining whether there has been any criminal conduct on the part of any one connected with that institution, and that it would aid him very much in his investigation if I can procure for him the reports of the condition of the company that have been made to the Commissioner of Banking during the years 1903-04-05 and the current year, pursuant to the statute in such case made and provided.

This is a reasonable request, and in my judgment should be complied with.

The district attorney is charged with the prosecution of crimes, and must necessarily make a preliminary investigation into the facts, with a view of ascertaining whether evidence of crime exists, so that he may permit no guilty man to escape, and so that no innocent man may suffer from suspicion or be improperly or impulsively proceeded against. In theory, and on occasions of emergency, the district attorney is a Deputy Attorney General, and has a right to appeal to the Attorney General for aid.

I have considered the meaning of section 16 of the act of 11th of February, 1895, P. L. 8, which prohibits, under the pains and penalties of a misdemeanor, the wilful exhibition, publication, or divulging and making known the contents of the reports made to your Department. I am of opinion that the communication to the district attorney, upon his official request to me, of the contents of the reports filed with you, would not and could not be interpreted as a "wilful" exhibition, publication, divulgment or making known of these reports within the meaning of the statute. An act in aid of a public officer in the discharge of duty, under the advice of the Attorney General, cannot be said to be a "wilful" act. A communication made by one public officer to another public officer, under the confidence of official communications, cannot be regarded as a "pub-

lication," and the officer receiving it in response to his official request, is not at liberty to make it public. Should he do so, the act of publication would be his, not yours, and the responsibility and the consequences would be his.

The plain purport of the section is to guard against the wilfully making known to the public, by the Banking Commissioner, his deputy or employes, the contents of reports, save in the manner specified by the statute, so as to guard the business of banks and similar institutions under the control and supervision of your Department against the damages and injuries which might result from general publicity, giving rise to rumors which might prove ill founded and ruinous, or furnishing opportunities for assault upon corporate and private credit. Without this protection of secrecy and confidence, it would be impossible for you to carry out the provisions of the statute with regard to impairment of capital, etc. These conditions, however, do not, in my judgment, apply to a case where an institution has closed its doors, has openly and notoriously suspended business, and is in the hands of a court of competent jurisdiction through a receivership. It is manifestly proper, under such circumstances, that the district attorney should inquire into the character of these reports, for the act of 3d of April, 1840, P. L. 176, makes the wilful and deliberate false swearing, by any officer or agent of any bank, or any person to or in relation to any statement or statements required by law to be made, or other duty enjoined by law, an act of perjury.

There are other statutes which the district attorney must consider, and it would paralyze the administration of justice if no access could be had to the reports filed with you, and if these papers could not be examined complete irresponsibility for their character would ensue.

Hence I advise you to allow the district attorney of Philadelphia county, or one of his duly authorized assistants, to examine the papers referred to, and to make copies of them, if so desired. You should not part with the originals, nor are you obliged, with your limited force, to have copies made at the expense of your Department. The furnishing of blanks upon which copies could be made would be but a reasonable courtesy.

I am

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO THE SECRETARY  
OF AGRICULTURE.

---

## OPINIONS TO THE SECRETARY OF AGRICULTURE.

RESPONSIBILITY OF PUBLIC OFFICERS—COMMERCIAL FERTILIZERS  
—ACT OF MARCH 25, 1901—SECRETARY OF AGRICULTURE—LIABILITY  
FOR DAMAGES.

The act of March 25, 1901, P. L. 57, imposes upon the Secretary of Agriculture the duty, *inter alia*, of publishing analyses of commercial fertilizers, and to make prosecutions of manufacturers or importers of the same where they do not comply with the terms of the act. The Secretary of Agriculture is a ministerial officer, and when acting within his authority and with due care he is not liable to any person who may be injured by his acts.

Office of the Attorney General,  
Harrisburg, Pa., October 19, 1905.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: You desire to be officially advised whether the manufacturer or importer of commercial fertilizers can recover damages from the Secretary of Agriculture in the event of injury resulting to the business of the manufacturer or importer because of the publication by the Secretary of the results of his analyses of samples of commercial fertilizers, or because of prosecutions instituted by the Secretary to enforce the provisions of the act of March 25, 1901, P. L. 57.

I answer unhesitatingly that no such damages can be recovered. The act in question is entitled "An act to regulate the manufacture and sale of commercial fertilizers, providing for its enforcement, and prescribing penalties for its violation." The 1st section provides that every package of commercial fertilizer sold, offered or exposed for sale for manurial purposes within the Commonwealth, shall have plainly stamped thereon the name of the manufacturer, the place of manufacture, the net weight of its contents, and an analysis stating the percentage contained of nitrogen in an available form, of potash soluble in water, or soluble and reverted phosphoric acid, and of insoluble phosphoric acid, with a proviso that any commercial fertilizer which shall contain none of the above named constituents shall be exempt from the provisions of the act.

The act further provides for affidavits on the part of every manufacturer or importer of the amount of sales made by each within the Commonwealth during the last preceding year, upon which certain sums become payable to the State Treasurer, and every manufac-



turer is enjoined at the same time to file with the Secretary of Agriculture a copy of the analysis required by the 1st section of the act.

The 3d section empowers the Secretary of Agriculture to collect samples of commercial fertilizers, either in person or by his duly qualified agents or representatives, to have them analyzed, and to publish the results for the information of the public.

For the purpose of enabling this duty to be properly performed, the 4th section of the act authorizes the Secretary of Agriculture and his assistants, agents, experts, chemists, detectives and counsel to obtain access, ingress and egress to all places of business, factories, farms, buildings, carriages, cars and vessels used in the manufacture, transportation or sale of any commercial fertilizer. You and your subordinates are also clothed with power to open any package or vessel containing, or supposed to contain, any commercial fertilizer, and to take therefrom samples for analysis upon tendering the value of said samples.

The 5th section makes it a misdemeanor for any person to sell, offer or expose for sale any commercial fertilizer without the analysis required by the 1st section of the act, or "with an analysis stating that it contains a larger percentage of any one or more of the above named constituents than is contained therein, or for the sale of which all the provisions of the 2d section have been complied with." The same section further provides that, upon conviction, the offending party shall forfeit a sum not less than \$25 and not exceeding \$100 for the first offence, and not less than \$200 for each subsequent offence. The section closes with the mandatory words: "It shall be the duty of the Secretary of Agriculture to enforce the provisions of this act, and all penalties, costs and fines recovered shall be paid to him or his duly authorized agent, and by him be immediately paid into the State Treasury to constitute a special fund to be used in accordance with the provisions of section 6 of this act."

The 6th section creates a special fund, from which the cost of selecting samples and making analyses and other expenses incident to the carrying into effect of the provisions of the act shall be paid.

The 7th section contains a definition of the term "commercial fertilizer."

This statute imposes upon you a specific duty, and clothes you with ample authority to discharge that duty. You are the public officer designated by statute to enforce this particular branch of the law. It has been well said that "an officer is a part of the personal force by which the State acts, thinks, determines, administers and makes its constitution and laws operative and effective. He is an

arm of the State, and always on its side:" *People v. Koler*, 59 N. E. 716; 166 N. Y. 1; 52 *Lawyers' Reports Annotated*, 814; and *American State Reports*, 605.

Again, it has been said "public officers are the agents of the community which they represent, but a public officer is not the agent of each individual member of the community:" *Bayha v. Carter*, 26 S. W. 137; and in the case of the *Board of Worcester County School Commissioners v. Goldsboro*, 90 Md. 193, it was said, when considering the definition of the term "public officer," that "the nature of the duties, the particular method in which they are to be performed, the end to be attained, the depository of the power conferred, and the whole surroundings, must be all considered."

The duty imposed by law upon a State officer should and must be performed without fear of action for damages by persons supposed to be aggrieved. The general principle is well established that a ministerial officer, acting within his authority and with due care is not liable to any person who may be injured by his acts: *Mecham* on "Public Officers, section 661; 19. *Am. & Eng. Ency. of Law*, title "Public Officers," 490.

It is abundantly clear that the Legislature, by the act of March 25, 1901, P. L. 57, has provided two methods of enforcing compliance on the part of a manufacturer or importer with the provisions of the 1st and 2d sections: First, by authorizing the publication by the Secretary of Agriculture of the result of his analysis of samples taken by him for purposes of analysis, and, second, by bringing prosecution. These acts, therefore, are clearly within the limits of your power, and all that you are required to do is to exercise due care in the selection of agents, experts and chemists, so that the result arrived at may be determined scientifically and under circumstances securing, as far as practicable, an orderly investigation and a careful ascertainment of the facts.

You do not, however, stand as an insurer of results. A mistake even, if one be made, if an honest one, is what the law terms *damnum absque injuria*, which means a loss without an injury. It is a phrase used to describe a loss arising from acts or conditions which do not create a ground of legal redress: *Marbury v. Madison*, 5 U. S. (1 Cranch) 137; *Pennsylvania R. R. Co. v. Lippincott*, 116 Pa. 472; 2 *American State Reports*, 618.

It may be that a business injury may result to the manufacturer either from the publication of the results of the analysis or from a prosecution, as provided for in section 5, but it is quite clear that the injury does not result from the prosecution but from the violation of the terms of the law on the part of the manufacturer, and it is the very dread of these results which was contemplated by the Legislature as a corrective of the action of an otherwise reckless

manufacturer or importer. As the publication is one of the means of enforcing the act, and as a prosecution is another means of enforcing the act, it follows that whatever results may happen cannot be laid personally to the charge of the Secretary of Agriculture, even though damages might result to some one who has been caught in a violation of the law. The whole policy of the enforcement of laws rests upon the theory that the State, as a part of its police power, has the right to control the action of its citizens. It can act only through the agency of State officers, and these officers are held to be entirely free from responsibility for their acts, if the acts are within the limits of the power bestowed by the law, and the prosecution or the publication has been made in good faith.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### SECRETARY OF AGRICULTURE.

The act of March 31, 1905, providing for the protection of trees, shrubs, vines and plants against destructive insects and diseases repeals the act of like purpose of June 10, 1901 (P. L. 548), and takes its place.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1905.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: You asked to be advised whether the act "To provide for the protection of trees, shrubs, vines and plants against destructive insects and diseases; providing for the enforcement of this act, the expenses connected therewith, and fixing penalties for its violation," approved the 31st day of March, 1905, repeals the act of like purpose, approved 10th of June, 1901 (P. L. 548).

I have no difficulty in reaching a conclusion. The later act is clearly intended to take the place of the earlier one, and in my judgment, operates as a repeal.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## SECRETARY OF AGRICULTURE.

The legal limit of bulletins to be printed for the Department of Agriculture is twenty-five thousand.

Office of the Attorney General,  
Harrisburg, Pa., January 5, 1906.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: I am of opinion that the legal limit of the number of copies of bulletins of information published by your Department cannot exceed twenty-five thousand. Your authority to publish these bulletins is conferred by the second section of the act of 13th of March, 1895 (P. L. 18). The limit mentioned in that act was five thousand copies of any one bulletin. This number was increased by the act of April 22, 1903 (P. L. 253), to twenty-five thousand. I find no other act which increases this limit, and I do not read section 10 of the act of 7th of February, 1905 (P. L. 3), entitled "An act to create the Department of Public Printing and Binding, to carry out the provisions of section twelve of article three of the Constitution in relation to the public printing and binding, and the supply of paper and other materials therefor" as any justification for publishing any larger number of bulletins. Nor do I understand the Governor's veto No. 77 (Veto Messages of 1905) as reaching a conclusion that section 10 of the act of February 7, 1905, confers unlimited power upon the Secretary of Agriculture to publish such number of copies as he sees fit. Section 10 of the act of February 7, 1905, is largely a re-enactment of section 7 of the act of May 1, 1876 (P. L. 68). The provision in the later act, that, in case any order or orders received from the heads of departments or from commissions shall appear to the Superintendent of Public Printing and Binding as unnecessary or unreasonable, he shall refer it or them to the Governor for approval or disapproval, cannot be read as a gift of unlimited discretion to the head of a department to order as many copies as he pleases of a work such as the bulletin published by your Department. It must be observed that section 10 of the recent act relates simply to orders for blanks, blank books and miscellaneous printing. These words were already familiar to the law and in existence at the time of the passage of the act creating your Department and authorizing you to publish bulletins. I am obliged, therefore, to read the three acts together. The later act, in my judgment, does not repeal the act of April 22, 1903; nor can I find any authority in the statute for the publication by your Department of a second edition of any bulletin, nor any authority for a revised edition.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## PUBLIC PRINTING.

The Secretary of Agriculture has authority to employ an expert to prepare a bulletin upon the subject of fruit growing and to publish the same.

Office of the Attorney General,  
Harrisburg, Pa., May 10, 1906.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: I have your letter of to-day, in which you state that, in response to many requests from all parts of the State for instruction concerning the most approved methods of fruit growing, you have engaged Dr. J. H. Funk, of Boyertown, one of the most successful fruit growers of the State, to prepare a bulletin which shall go very thoroughly into the whole subject, including location of fruit orchards, preparation of soil, planting, cultivating, pruning, etc., together with the latest and most approved methods of harvesting and storing the fruit and getting it to market, and you ask for an official opinion as to the authority vested in you by law to have such a bulletin prepared at the cost of the State.

The act of 13th of March, 1895 (P. L. 17), which establishes your Department and defines your duties, provides, in section 6, as follows:

"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 expenditures are provided by law, but no more than five thousand dollars shall be so expended in any one year."

Section 2 of the same act provides that it shall be a part of your duty to "publish from time to time such bulletins of information" as you may deem useful and advisable. Inasmuch as it has been the practice and custom of the Department, under your own administration and those of your predecessors, to secure the services of experts along the various agricultural lines in the preparation of bulletins which have been published from time to time under the authority of this act, and as it is therefore not a new question, I assume that the particular point about which you are in doubt is as to what constitutes a "bulletin."

So far as I can learn by examination, there has been no judicial definition of this term, but, in the sense in which it is used in this act, "bulletins of information" constitute all reports printed in pamphlet form and issued by your Department containing information for the benefit of the public, the expense of which is kept within a reasonable amount. Bulletin No. 75, published by the State under the direction of your Department in 1901, on "Tuberculosis of Cattle," contains 262 pages, while Bulletin No. 86, published in

the same year on the subject of Licenses, etc., under the authority of the Dairy and Food Division, contains 421 pages.

You state in your letter that the bulletin in question will contain approximately 250 pages; that the amount to be paid to Dr. Funk for his work in investigating the subject and preparing the copy will be approximately one thousand dollars; and that you are advised by the Department of Public Printing that the cost to the State of publishing the bulletin in pamphlet form will be about \$175.

It is impossible for this Department, in an official opinion, to lay down a hard and fast rule which shall apply to the size of all bulletins, irrespective of the importance of their contents. You would, of course, not be justified by the language of the act of 1895 in publishing a report in book form at a large expense to the State on the various subjects which come properly within the province of your Department. Under all the circumstances of the case, however, I am of the opinion and advise you that there is abundant legal authority, under the various acts of Assembly, to justify you in having the bulletin on Fruit Raising prepared and printed in the manner indicated in your letter at the cost of the State.

Very truly yours,

FREDERIC W. FLEITZ,

Deputy Attorney General.

---

#### NURSERY INSPECTION.

By the act of March 31, 1905 (P. L. 82), the Secretary of Agriculture shall send an inspector to each nursery of the State to make an examination, and if satisfactory, to give a certificate that the stock is free from insects or disease.

It is optional with the Secretary whether he shall send an inspector to examine stock which has been shipped from this State to another state and from thence returned as diseased.

Office of the Attorney General,  
Harrisburg, Pa., May 20, 1906.

Hon. N. B. Critchfield, Secretary of Agriculture:

Dear Sir: In reply to your letter of recent date, asking for information concerning the construction of the act of March 31, 1905 (P. L. 82), entitled "An act to provide for the protection of trees, shrubs, vines and plants against destructive insects and diseases," etc., I have the honor to submit the following opinion:

The second section of the act in question reads as follows:

"It shall be the duty of the Secretary of Agriculture, through the Economic Zoologist, or such other agent as he may select, to cause an examination to be made, at least once each year, of each and every nursery in this State, where trees, shrubs, vines or plants are grown;

and he may also, by himself or agent, make inspection of any orchard, or other grounds or place, in this State, for the purpose of ascertaining whether the trees, shrubs, vines or plants therein kept are infested with San Jose Scale or other insect pests, or diseases destructive of such trees, shrubs, vines or plants. If, after such examination of any nursery, it be found that the said trees, shrubs, vines or other plants, so examined, are apparently free in all respects from any such dangerously injurious insects or diseases, the Secretary of Agriculture or his duly authorized agent, or other person designated to make such examination, shall thereupon issue to the owner or proprietor of the said stock, thus examined, a certificate setting forth the fact of the examination, and that the stock or trees so examined are apparently free from any and all such destructive insects and diseases"

The third section provides that if any nurseryman, etc., shall send out or "deliver within the State" any "trees, vines, shrubs, plants, buds or cuttings," without having first secured a copy of the said certificate, he shall be guilty of a misdemeanor and punished in accordance with the terms of the act.

You desire to be informed whether, under the provisions of this or any other act of similar character now in force, it is your duty to send, at the expense of the Commonwealth, a nursery inspector to any point within the State to examine nursery stock which has been sent from this State into another state, and after having been condemned by the legally constituted authorities of such other state has been returned to the shipper.

Whether or not you should do this depends entirely upon circumstances. Any nurseryman of this State may grow and ship nursery stock outside the state without having this inspection made and without coming under the provisions of the act. If, however, he sells or ships any of his stock to parties residing in this State, or if by any means such stock be returned to this State and sold without such inspection having previously been made, the nurseryman in question will make himself liable to the penalty imposed by the act. It is clearly your duty to send an inspector to any nursery in the State which requires the same in order to grant the certificate of immunity from disease, without which the stock cannot be sold in the State; but after this has been done and the certificate issued, your duty, so far as the inspection is concerned, is at an end, and you have a perfect right to use your own discretion in regard to sending inspectors the second time to a nursery. If the object of the request for the inspector to examine the stock is for the purpose of securing testimony to be used in an action at law for the recovery of money alleged to be due upon the sale of the nursery

stock in question, my reply is that you are not required to send such an inspector, and I doubt very much the propriety and wisdom of your doing so.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### PROTECTION OF TREES.

The Secretary of Agriculture through the Economic Zoologist is empowered by law to purchase the materials and supplies necessary to prevent the spread or secure the extermination of insects or diseases injurious to trees.

Office of the Attorney General,  
Harrisburg, Pa., May 31, 1906.

Honorable N. B. Critchfield, Secretary of Agriculture, Harrisburg,  
Penna.

Dear Sir: In your letter of recent date you ask for an official construction of certain parts of the act of Assembly of March 31, 1905 (P. L. 82), entitled "An act to provide for the protection of trees," etc. Section 6 of the act in question provides as follows:

"If after examination or upon information given in writing to the Secretary of Agriculture it is found that any nursery stock, trees or shrubs, either in a nursery or elsewhere, or sent forth to deliver in this State, are found to be infested with San José Scale, or other destructive insects or diseases it shall be the duty of the Secretary of Agriculture, by himself or his duly authorized representative or agent to take means to control, prevent the spread of, or secure the extermination of such insects or diseases."

Section 8 of the same act contains the following language:

"All necessary expenses under the provisions of this act shall, after approval in writing by the Secretary of Agriculture and Auditor General be paid by the State Treasurer upon warrant of the Auditor General in the manner now provided by law: Provided, that not more than thirty thousand dollars shall be so expended for this purpose in any one year."

You state that the Economic Zoologist of your Department, to whom you have assigned the control of the work under this act, is, and has been, since its passage, busily engaged in studying the San José Scale and other insects injurious to fruit trees which have become so prevalent in this State as to threaten the destruction of the fruit growing interests, and that while he is familiar with



the life history of many of these insects and has determined upon a course of treatment which will prevent their increase and eventually exterminate them, he finds, as the work progresses, that his researches disclose many new insect enemies to fruit and other trees, the habits and character of which need to be studied and experiments made so that inexpensive and effectual remedies for their destruction may be applied.

In order that this investigation may be successfully conducted, you are advised by the Economic Zoologist that a number of scientific works and periodical publications are necessary and that it is also important to acquire a small portable building, the cost of which may not exceed one hundred dollars, so constructed as to enable him to systematically carry on the investigations required. He likewise states that it is important to secure pen drawings of certain insects as they appear in the several stages of their existence, from which illustrations may be prepared for publication in the periodical bulletins issued by his division for the information of fruit growers, whereby they may learn to distinguish insects that are injurious to their industry from those that are harmless.

You desire to be officially advised as to whether or not you have the legal right, acting through the Economic Zoologist, who is your representative or agent in charge of this work, to secure and pay out of the \$30,000 appropriated by the act for these articles and services above enumerated. After a careful consideration of the act in question, I am of the opinion that if the articles, material and services aforesaid are in your judgment necessary to "prevent the spread or secure the extermination of such insects or diseases," you have the legal right to purchase them and pay for them out of the fund referred to.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### TAXES ON STATE LIVE STOCK AND SANITARY BOARD FARM.

Taxes levied and assessed upon a farm purchased by the State Live Stock and Sanitary Board before its purchase should be paid by the State.

Office of the Attorney General,  
Harrisburg, Pa., July 18, 1906.

Hon. N. B. Critchfield, Treasurer State Live Stock and Sanitary Board:

Dear Sir: I have before me your letter of recent date, in which you ask to be advised whether or not your Board is liable for the payment of taxes levied and assessed by the local authorities of Dela-

ware county against the property of the State, used and occupied for the purpose of carrying out the provisions of the act of Assembly of May 21, 1895 (P. L. 91), creating the State Live Stock and Sanitary Board.

It appears from the statement of fact which you submit that, under the terms of the act of May 11, 1905 (P. L. 516), "making an appropriation to the State Live Stock Sanitary Board for the purchase of a suitable site—for conducting research work with relation to the diseases of animals," a farm was purchased in Delaware county, the title vesting in the Commonwealth on October 9, 1905. At the time of the purchase of the property the local taxes for the year in question, amounting to \$159.18, had been levied and assessed and when the legal transfer was made to the State, this amount for the part of the year already elapsed was approximated at \$86.40, which was deducted from the purchase price and retained by the Board to pay over to the collector when demand should be made. The collector, however, refuses to accept anything less than the full amount assessed for the entire year, and your Board has hitherto refused to pay the balance of the claim for the reason that the property is now owned by the State and is therefore not subject to the payment of local taxes.

In this view I cannot concur. The tax was levied and assessed prior to the sale and conveyance to the Commonwealth, and the entire amount was due and payable at the time of said conveyance, and the whole amount should have been deducted from the purchase price in paying the grantors. At the time the tax was levied and assessed this real estate was owned by private parties and not in any way exempt, and the taxes constitute a lien upon such realty in accordance with the provisions of the act of May 4, 1889 (P. L. 79). A proceeding for their collection would not be a proceeding against the Commonwealth but a proceeding in rem.

I am therefore of the opinion and advise you that the Board should pay the entire amount of taxes assessed against the property prior to the conveyance to the Commonwealth.

You ask also to be advised whether any further taxes can be levied or assessed against the real estate subsequent to its becoming the property of the State.

This question I answer in the negative. There is no law authorizing the local authorities to levy, assess or demand payment of taxes from the Commonwealth upon any of the property owned by it.

Very respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

---

**OPINIONS TO THE FORESTRY  
COMMISSIONER.**

---

---

## OPINIONS TO THE FORESTRY COMMISSIONER.

## FORESTRY COMMISSIONER—REBATE OF TAXES UPON FORESTED LANDS.

The act of 8th April, 1905, providing for rebate of taxes upon forested lands, repeals the acts of May 25, 1897 (P. L. 88), and the act of April 11, 1901 (P. L. 77.)

The act becomes operative at once, and rebates for the year 1905 should be allowed notwithstanding the commissioners of Bradford county had issued duplicates for that year.

Office of the Attorney General,  
Harrisburg, Pa., July 20, 1905.

Hon. Robert S. Conklin, Commissioner of Forestry:

Sir: I have your letter, enclosing a communication from the Commissioners of Bradford county relating to the rebate of taxes levied upon forested lands, and calling my attention to the provisions of an act, approved the 8th day of April, 1905, entitled "An act to encourage the preservation of forests by providing for a rebate of taxes levied upon forested land." You ask whether in a case where the assessors of a county have made up and compiled their returns before the passage of the act of April 8, 1905, it will be necessary for the assessors to make a re-assessment of forested land in the manner provided by the new act. The commissioners of Bradford county raise the objection that they cannot comply with the new act for this year, as the duplicates were out when the act was approved, and the assessors do not make return until December 31, 1905, and they therefore contend that action for this year should be taken under the old act.

The objection, in my judgment, is without force and cannot prevail. Section 3 of the act of 8th of April, 1905, expressly repeals the act of May 25, 1897 (P. L. 88), and the act of April 11, 1901 (P. L. 77). The operation of the new act cannot be defeated by the mere fact that duplicates were out. The duplicates will have to be recalled and the assessors act under the new law. Inasmuch as the statement is made that ordinarily the assessors make no return until December 31, 1905, it is quite clear that it is practicable for all of them to comply with the new statute; in fact, it is imperative that they should do so. There is no legal or physical impossibility in the way of their so doing.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO THE FACTORY  
INSPECTOR.

---

---

## OPINIONS TO THE FACTORY INSPECTOR.

## CHILD LABOR.

An employment by a newspaper of boys to distribute newspapers does not violate the act of 2nd May, 1905.

Office of the Attorney General,  
Harrisburg, Pa., July 21, 1905.

Hon. John C. Delaney, Factory Inspector:

Sir: I have your letter, enclosing communication from the Hon. Henry D. Green, General Manager of the Reading Telegraph Publishing Company, and submitting for my consideration a request for an opinion as to whether the act of 2nd of May, 1905, entitled "An act to regulate the employment in all kinds of industrial establishments of women and children employed at wages or salary, by regulating the age at which minors can be employed and the mode of certifying the same, and by fixing the hours of labor for women and minors," forbids the employment of newsboys under the conditions stated in Mr. Green's communication. I understand that you neither affirm nor deny the statement of the conditions affecting the newspaper publishers and the boys employed by them, but, inasmuch as you submit for my consideration the statement of facts as given by Mr. Green, I assume its accuracy for the purpose of this opinion.

The facts are that The Reading Telegram, an evening daily paper published in the city of Reading, employs for the distribution of its last edition circulated in the city of Reading, about thirty boys, ranging in age from eleven to fifteen years. All of these boys attend the public schools. After they are dismissed from school they go to the newspaper office, obtain a bunch of papers which are distributed by them on their routes to subscribers, and the boys do not report until after school the next day. They are paid for this service a weekly stipend averaging \$1.25. They are not employed in or about the building. The time taken to distribute the route is about an hour a day. The parents' consent to this employment is always obtained, and whenever unable to attend, a substitute is furnished, if possible.

In my judgment, an employment by a newspaper, under the conditions above stated, does not violate either the terms or the spirit

of the act in question. A reading of sections 1, 2 and 3 has satisfied me that the employment prohibited is in an establishment defined to be a place "where men, women or children are engaged and paid a salary of wages by any person, firm or corporation, and where such men, women or children are employes in the general acceptance of the term." This definition, contained, as it is in section 1, is made clearer by the special features dwelt upon in sections 2 and 3, the first prohibiting the employment of a child under the age of fourteen years in any establishment, and the second regulating the hours of employment, so that the maximum shall not exceed sixty hours in any one week or twelve hours in any one day. The proviso in section 3 points specifically to manufacturing establishments, and the exception is allowed for employment after nine o'clock P. M. in order to prevent waste or destruction of material, and night work and extra working shifts are also provided for in view of the necessities of each case. So, too, retail mercantile establishments are exempted from the provisions of the section on Saturdays of each week, and during a period of twenty days beginning with the fifth day of December and ending with the twenty-fourth day of the same month, provided that during the said twenty days preceding the 24th of December the working hours shall not exceed ten hours per day or sixty hours per week.

These sections and those which follow have convinced me that the employment sought to be regulated is employment in or about an establishment where the attendance of the employes and the receipt of wages by them constitutes a continuous daily employment and the main means of support. This consideration is further emphasized by the subsequent provisions in the statute, which, after fixing the hours of labor for women and minors, provides for the safety of all employes in industrial establishments, and of men, women and children in school houses, academies, seminaries, colleges, hotels, hospitals, storehouses, office buildings, public halls and places of amusement in which proper fire escapes, exits and extinguishers are required. All these look to employment within a building or an establishment which constitutes the scene of the physical or mental activity of the employe. The remaining sections of the statute provide for the health of such employes by securing proper sanitary appliances subject to the inspection of yourself and your deputies, and these provisions are still further enforced by a reconstruction of your Department with clerks and deputy inspectors, constituting the Department of Factory Inspection.

I do not see how the facts as stated, and constituting the basis of this opinion, fall within the terms of the act. It is manifest that the boys are not really employed in any building or establishment, and that the employment is not of a kind which confines or restrains

them as employes are confined or restrained in a manufactory or kindred establishment. They are not subjected to any unsanitary conditions or to any dangerous conditions resulting from confinement in a crowded building. Their attendance upon the public schools is in no way interfered with, nor are their opportunities for education limited by this employment.

The advantages to the boys, to the customers of the paper and to the newspaper company itself, which have been dwelt upon in the argument, do not touch the legal aspects of the case, and therefore need not be considered. I see nothing in the facts which leads me to conclude that the terms of the statute are violated by the employment herein described. Of course you understand that this opinion is confined entirely to the facts of this special case, and that I am not dealing with general propositions of the employment of minors under the age of fourteen. Should any other cases arise for my consideration I will deal with them when properly presented.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



---

---

OPINIONS TO THE SUPERIN-  
TENDENT OF PUBLIC IN-  
STRUCTION.

---

---

## OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

### IN RE ELECTION OF SUPERINTENDENTS OF PUBLIC SCHOOLS—COMMON SCHOOLS—CITY, COUNTY AND BOROUGH SUPERINTENDENTS—ACT OF APRIL 9, 1867.

Under section 13 of the act of April 9, 1867, P. L. 51, it is not necessary that a person elected to the office of city, county or borough superintendent of public schools, should have taught in the common schools of the State, within three years of the time of his election.

Office of the Attorney General,  
Harrisburg, Pa., May 31, 1905.

Hon. Nathan C. Scheaffer, State Superintendent of Public Instruction:

Sir: I have before me your letter of recent date, enclosing the certificate of election of James N. Muir as Superintendent of public schools of the city of Johnstown, as well as a petition signed by a number of school directors of said city, protesting against the issuing of a commission by you to the said James N. Muir, and alleging that he is ineligible under the law for the reason that he has not taught in the public schools of the State within the past three years. It appears, however, from the papers in the case that Mr. Muir has taught successfully at Lafayette College, situated at Easton, and the University of Pennsylvania at Philadelphia during this time.

In response to your request for an official opinion as to whether or not you can legally issue a commission to Mr. Muir as the duly elected superintendent of schools in Johnstown, I beg to submit the following:

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, a professional certificate from a county, city or borough superintendent of good standing.\* \* \* Nor shall any such person be eligible unless he has a sound moral character, and has had successful experience in teaching within three years of the time of his election.”

There is nothing in your communication or the papers before me to show that the election of Mr. Muir was not due and legal in every respect. The certificate of election, signed by the president and secretary of the board, complies with the requirements of the law in every particular, and it is to be presumed, in the absence of proof to the contrary, that the full measure of the legal requirements has been fulfilled. The language of the act above quoted by no means bears out the contention that the teaching required during the three years prior to election should be done in the public or common schools of the State; indeed, it would be a manifest absurdity to insist that a person qualified to teach successfully in the higher institutions of learning should be excluded from holding the position of superintendent of public schools while a teacher in the common schools would be eligible. The intent of the act was clearly to provide that only persons of experience in teaching should be eligible to superintend those engaged therein. There is nothing whatever in this case which would indicate that, even technically, Mr. Muir is not entitled to his commission.

I therefore advise and instruct you that, upon the facts submitted to me, it is your duty to issue this commission.

Respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

SCHOOL LAW—ELECTION OF SUPERINTENDENT—REFUSAL TO CERTIFY—JUDGMENT OF COURT—DISCRETION OF THE STATE SUPERINTENDENT.

The school board of Franklin, composed of six members, at a meeting duly held, gave two votes for K. and four votes for L. for superintendent. The president and secretary, who had voted for K., refused to certify the election of L. Thereupon, on petition, the court granted a mandamus. The Superintendent of Public Instruction raised the question whether under the circumstances a commission should issue to L. Held, that it should issue.

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1905.

Hon. N. C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: Your communication of recent date, together with papers relating to the election of a superintendent of public schools of the city of Franklin, received.

It appears from the evidence submitted to me that, at a meeting of the school board of the city of Franklin, held on Tuesday, April 25, 1905, at which four members were present, it was suggested that,

inasmuch as the term of the superintendent would expire on the first Monday of June, a meeting of the board be held on Tuesday, May 2, 1905, for the purpose of holding an election to fill the vacancy so caused, and that said meeting of April 25, 1905, was adjourned with a motion to meet on the date mentioned, to-wit: the first Tuesday in May, being the second day thereof, for the purpose of electing a superintendent and transacting any other business that might properly come before the board.

At the meeting held on May 2, 1905, which meeting was attended by all the members of the board, the minutes of the preceding meeting were read and approved, and the matter of the compensation to be received by the superintendent for the ensuing year was taken up and the salary fixed at \$1,800, which was the amount paid that official during the previous year. Some other business was regularly attended to, and then the board proceeded to the election of a superintendent. The president, William J. Bleakley, presented the name of N. P. Kinsley for re-election. Director Bell presented the name of C. E. Lord. There being no other names presented, the president directed the secretary to call the name of each director, which was done, and the result of the ballot disclosed the fact that two directors, Bleakley and Bensinger, had voted for Professor Kinsley, and four directors, Mitchell, Doolittle, Fleming and Bell, had voted for C. E. Lord. After the meeting had adjourned the president, Bleakley, and the secretary, Bensinger, both of whom had voted for Kinsley, the defeated candidate, refused to certify the election of Lord to your department as required by law, and mandamus proceedings were instituted in the court of common pleas of Venango county to compel them to make such certification.

On June 13, 1905, the president judge of that judicial district disposed of the case by handing down an opinion directing the president and secretary of the school board of the city of Franklin to certify to you the proceedings of the school board at the meetings above referred to, following the usual form so far as the facts in the case would warrant, and directing that a copy of the minutes of the meetings of the board be attached to the certification. Bleakley and Bensinger contended that the action of the board in electing Professor Lord as superintendent was illegal because all of the preliminary steps provided for by the act of April 9, 1867 (P. L. 53), had not been taken, and that the meeting of the board of directors had not been legally called nor regularly organized.

An inspection of the minutes of the proceedings and an examination of the law does not sustain this contention. The calling of the meeting of May 2 and the election of a superintendent *viva voce* by a majority of the whole number of directors present were in strict compliance with the letter of the act of Assembly, as was also the

fixing of the compensation to be paid to the superintendent so elected for the ensuing year. The point raised that proper notice had not been given loses its force when taken in connection with the fact that every member of the board was present, and that no objection was made at that time by anyone to the manner in which the meeting had been called or the form of organization under which it proceeded to transact the business of the election of a superintendent. I am unable to find anything in the proceedings which conflicts with the law in any particular, and the same general principle governing elections of all kinds applies here. This principle is well stated in the American and English Encyclopaedia of Law, 1st Edition, Vol. VI, page 344, section 18, as follows:

“The general principles drawn from the authorities are that honest mistakes or mere omissions on the part of the election officers, or irregularities in directing matters, even though gross, if not fraudulent, will not void an election unless they affect the result or at least render it uncertain.”

Such conditions do not arise in this case. The meeting was held on the day fixed by law for that purpose. It was attended by every person entitled to vote thereat. The business before the meeting was definitely and specifically stated, and proceeded with without objection, every member present participating therein, Professor Kinsley receiving two votes and Professor Lord receiving four votes. Under the facts it is clear that the officers of that meeting have no valid or legal ground upon which to contest this action of the board. The final determination of this question, under the law, rests with you, and it is your duty to consider the objections made to the legality of this election, and to decide whether or not the commission shall issue to the person returned as having been elected to the office of superintendent.

It may be urged by the protestants that more than thirty days have passed since the election was held, and that, because the certificate required by law to be filed with you within that time has not been received, therefore your jurisdiction has lapsed. This objection has no controlling force, for the reason that the present condition exists through the failure on the part of the officers of the meeting to comply with the act, and, inasmuch as they are the protestants, they are not in a position to take advantage of the delay which their failure to perform their duty has brought about.

I am of the opinion and advise you that under all the circumstances of this case, a commission as superintendent of the common schools of the city of Franklin should be issued to C. E. Lord, who has been legally elected to that position.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## COMPULSORY VACCINATION LAW.

School children not having a certificate of vaccination or of having had the small-pox, should be refused admittance to the schools.

Parents or guardians of children not attending school because of lack of vaccination cannot be fined under the compulsory education law.

There is no legal authority for a teacher accepting a doctor's certificate that a child should not be vaccinated.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

Hon. Nathan C. Schaeffer, State Superintendent of Public Instruction:

Sir: I have your letter, stating that you are in receipt of many inquiries asking whether, under the compulsory school law, it is possible to impose a fine upon parents or guardians for the non-attendance of pupils who have been excluded from the public schools on the ground that they do not present a certificate of successful vaccination, and asking me to interpret the law so that my opinion may be transmitted to the various school districts of Pennsylvania.

I am also in receipt of a very large number of communications, written to me at the instance of the health commissioner by parents, teachers, school directors and district superintendents, all bearing upon the same subject, and indicating by their number and variety the serious difficulty arising from a supposed conflict between the compulsory education law, and the provisions of the law relating to vaccination.

These communications may be classified according to the points of view which they express. Some parents take the ground that they are opposed to vaccination; others that they are too poor to pay for the vaccination of several children; others that they ought not to be fined for neglecting to send their children to school, when admission has been refused because of the absence of a doctor's certificate. Teachers are puzzled as to their rights and duties; they wish to enforce attendance upon the schools, and they also desire to obey the law as to vaccination, and they ask whether they shall seek to fine the parents for contumaciously refusing to have their children vaccinated; others desire to know which law has precedence; others complain of their schools being broken up; others again ask whether they are justified in accepting certificates from reputable physicians that children should not be vaccinated. A superintendent writes that five hundred and eleven pupils having been dismissed in a single district by the teachers for non-compliance with the vaccination law because of the action of the local board of health, they are now in a quandry as to the re-admission of the pupils, without compliance

with the law, because of the rescission of the action of the health board owing to some informality in its original action.

I have given the subject careful consideration, and shall endeavor to make plain the right and duties of all parties to this controversy.

In the first place it should be distinctly understood by everybody that there is at present but one law relating to Compulsory Education. It is the act of 11th of July, 1901 (P. L. 658). The act of May 16th, 1895 (P. L. 72), and the amending act of July 12th, 1897 (P. L. 248) were both expressly repealed by the act of July 11, 1901. My predecessor, Attorney General Elkin, pointed this out in an opinion given at the request of the Deputy Superintendent of Public Instruction on the 11th of September, 1901, published in the 25th Volume of The Pennsylvania County Court Reports, p. 503. I call attention to this because the letters of the teachers, in many instances, refer to the earlier acts and ignore the existing law.

In the second place it should be distinctly understood by everybody that the only compulsory vaccination act is that of the 20th of April, 1905 (P. L. 228), and that this act relates only to cities of the first class, requiring that the Departments of Health of such cities shall make rules and regulations covering and including the admission and attendance of persons at public or private schools, hospitals and asylums, or any other public or private educational or charitable institutions, and the compulsory vaccination or re-vaccination of inmates thereof, and of persons attending the same, or employed therein as physicians, teachers, nurses, or in any other capacity. The making of such rules is obligatory. The act is constitutional within the ruling of the Supreme Court in *Field, Appellant v. Robinson*, 198 Pa. State Reports, 638.

In the third place it should be understood by everybody that the Advisory Board of Health, acting in conjunction with the Commissioner of Health, under the act of 27th of April, 1905 (P. L. 312), may draw up such reasonable orders and regulations as are deemed by said Board necessary for the prevention of disease and for the protection of the lives and health of the people of the State, and that these rules and regulations shall be promulgated by sending printed copies to all local boards of health, school boards, and clerks of councils, cities and boroughs.

In the fourth place it should be understood by everybody that the Supreme Court, in the case of *Duffield, Appellant v. School District*, 162 Pa. State Reports, 476, sustained an ordinance that "no pupil shall be permitted to attend any public or private school without a certificate of a practicing physician that such pupil has been subjected to the process of vaccination."

In the fifth place it should be understood by everybody that the act of 11th of June, 1895 (P. L. 202), entitled "An act to provide

for the more effectual protection of the public health in the several municipalities of this Commonwealth," is, so far as is necessary to be considered in this connection, in full force, and that its constitutionality has been sustained by the Supreme Court in *Field v. Robinson*, 198 Pa. State Reports, 638. The 12th section of this act provides that "all principals or other persons in charge of schools as aforesaid (i. e. public, private, parochial, Sunday or other schools) are hereby required to refuse the admission of any child to the schools under their charge or supervision, except upon a certificate signed by a physician, setting forth that such child has been successfully vaccinated or that it has previously had small-pox."

Bearing these essential facts in mind, I now proceed to a review of the cases which have arisen in the county courts.

The earliest case is that of *Nissley v. Hummelstown Borough School Directors*, 9 District Reports, 732, also reported in 18 Pa. County Court Reports, 481, arising in 1896. The important features of this case are twofold: first, that the right of any citizen to have his children attend the public schools is not complete until there has been a compliance with the legislative requirements of a doctor's certificate of successful vaccination or that the children have already had the small-pox; second, that the act of 18th June, 1895 (P. L. 203), is not mandatory as to vaccination. In other words, compliance with the legislative provisions as to vaccination is a condition precedent to the right to attend school but outside of this there is nothing which compels the parent to have his child vaccinated. Judge McPherson declares that the Legislature has the undoubted right to require vaccination as a condition precedent to admission into the public schools. He says:

"The public schools are maintained out of the public funds raised by taxation—a very large contribution being made directly out of the State Treasury—and it is clearly within the power of the Legislature, as representing the Commonwealth, to declare upon what terms the public bounty is to be enjoyed. \* \* \* The act does not undertake to compel vaccination, and therefore the questions which have been considered elsewhere concerning the power of the Legislature over the human body do not now arise. The right of the plaintiffs' children to attend the schools is not complete until they have complied with the conditions which the Legislature has seen fit to impose. Without the certificate of a physician as required by the statute they cannot be admitted."

The meat of this decision is that if the children are to attend school they must be vaccinated, or else have had the small-pox, but the statute does not say they must be vaccinated. An unvaccinated



child has its school rights suspended until there is compliance with the statute. There is a distinction between a teacher's saying "before you can attend school you must be vaccinated," and saying "go out and be vaccinated." The first he must say; the latter he cannot dictate.

The next case in order of date is that of *Sprague v. J. E. Baldwin* and others, 18 Pa. County Court Reports, 568. Here, as in the former, there was an effort made by a parent to compel by mandamus the admission of a unvaccinated child. The school board of the township resisted, on the ground that a physician's certificate must be produced. It was held in an opinion by Judge Morrison that the act of June 18, 1895, requiring those in charge of schools to refuse admission in the absence of a certificate of vaccination applied to township school districts as well as to cities and boroughs; that a township was a municipal corporation and that the act was constitutional. He distinctly agreed with Judge McPherson.

This was followed by the case of *Commonwealth v. Smith*, 9 District Reports, 625, and also reported in 24 County Court Reports, 129. Judge Fanning, after reviewing Judge McPherson's opinion, declares that the teachers were right in refusing to admit the child without a certificate, but that there was nothing mandatory in the statute compelling vaccination.

Judge Craig, in the case of *Gerhard v. Parker Township School District*, 24 Pa. County Court Reports, 339, in a very elaborate opinion, reaches the same result, and, quoting from a Connecticut case (*Bisch v. Davidson*, 65 Conn, 183), says:

"It (the statute) does not authorize or compel compulsory vaccination. It simply requires vaccination as one of the conditions of the privilege of attending public schools."

The late Judge Arnold of Philadelphia, in the case of *Tyndall v. The Board of Public Education*, 10 District Reports, 665, showed that the duties and rights of teachers and pupils were reciprocal. He said:

"As local directors may in the exercise of a sound discretion exclude school pupils who have not been vaccinated, as held by the Supreme Court in *Duffield v. Williamsport School District*, 162 Pa. St., 476, so may they exclude teachers and other employes for a like reason. The protection which vaccination is believed to afford must be reciprocal; teachers and pupils are alike entitled to protection against contagious disease. Whether vaccination is a preventive of small-pox this court has no power to investigate and decide. The Legislature has authorized and the Supreme Court has sustained regulations requiring vaccination, and there-

fore a court of first instance is prohibited from inquiring into the efficiency of vaccination as a preventive of small-pox. *Field v. Robinson*, 198 Pa. St., 638. The opinion of the plaintiff that vaccination is not a preventive, and that it would be dangerous to her health, is not a sufficient reason to exempt her from obedience to the order of the Board of Education requiring vaccination. \* \* \* She has set up her own opinion against that of the Board of Education.\* \* \* She has refused to comply with a lawful regulation of the Board; therefore she is subject to suspension and dismissal."

The latest case is that of *Cousins v. Borgie et al.*, 13 Dist. Reports, 368, in which Judge Lindsay sustained a mandamus to compel the admission of a child who held a physician's certificate. He held, that while the school directors had the right to determine whether the certificate was genuine or fraudulent, yet they had no power to go behind the certificate; it was not for the board to determine whether the child had or had not been successfully vaccinated, or whether it has had the small-pox: "when the certificate of a physician is produced to either fact, that fact is determined for the purposes of the act."

These authorities, harmonious in all respects and illustrating different phases of the question, establish conclusively the right and the duty of teachers and all other school officers of whatever grade to refuse admission to the schools of pupils who do not produce the necessary certificate. Controversy upon that point is idle.

I now proceed to a consideration of the supposed conflict between the compulsory Education act and the 12th Section of the act of 1895, directing the exclusion of an unvaccinated pupil, or rather, a pupil unsupplied with the requisite physician's certificate. In my judgment there is no necessary conflict—the acts can and must be read together as parts of the same system. Sanitary provisions are not destructive, and it is reasonable that health regulations shall prevail. It is idle to attempt to educate children at the peril of their lives, or to open school in a place or under conditions of danger. The expenditures of the State might be largely lost if the safety of pupils and teachers were not first secured. A cold business view of the matter, as well as a legal and politic one, unite in this conclusion.

Judge McPherson, in the case first reviewed, touches upon this feature, while not deciding it. He said: "If the acts conflict, the health act must prevail as later in date." (He was speaking of a time when the education act of May 16, 1895, was in force) and then adds:

"So also the Compulsory Education Act provides that children may be excused if the school board receives satisfactory evidence that attendance is prevented by

mental, physical or other urgent reason; that it might be held that a child not vaccinated and therefore refused was prevented by a physical reason; if the parent should thus be enabled to evade the Compulsory Education Law by refusing to vaccinate his children, and the evasion becomes extensive, the Legislature would probably be forced to provide compulsory vaccination."

Judge Morrison, while noticing Judge McPherson's reason as to the prevalence of the statute later in date, said:

"We incline to the opinion that both these acts must be sustained by the courts unless some constitutional or other controlling legal reason require that one of them shall give way. \* \* \* Statutes enacted at the same session of the Legislature are within the reason of the rule governing the construction of statutes in *pari materia*, and should, if possible, receive a construction which will give effect to each."

Judge Craig took the view that the several statutes form part of the laws relating to our common school system and declared that evidently the Legislature did not intend that the act of 12th July, 1897, amending the act of 16th May, 1895, should repeal the act of June 18th, 1895. He says:

"Evidently the Legislature did not intend that the one act should operate as a repeal of the other. Then, can they be construed together and effect be given to both? This is required of us, if possible, especially when statutes in *pari materia*, are enacted at the same session of the Legislature. \* \* \* Reading the statutes together under this rule, we have no difficulty, for the purposes of this case, with the question presented. Then the vaccination act of June 18, 1895, is not repealed, but it must be read into the act or amendment of July 12, 1897. The conflict, if there be any, by operation of law, between these acts, is not real, but they may be harmonized as a whole. \* \* \* Repeals by implication are not favored and will not be decreed unless it is manifest that the Legislature so intended: Osborne v. Everett, 103 Pa., 421. Hence it is said: 'Every effort must be made to make all acts stand, and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier.'"

The principles thus clearly stated are applicable to the case in hand. The act of 11th July, 1901 (P. L. 658), while it repeals the act of May 16th, 1895 (P. L. 72), and the amending act of July 12th, 1897 (P. L. 248), in express terms, does not in my judgment repeal by implication the act of 19th June, 1895 (P. L. 203). This act is still alive and must be read into the act of 11th July, 1901, just as it had been previously read into the act of July 12th, 1897.

I am now prepared to answer the question propounded in your letter. You cannot, under the compulsory education law, impose a fine upon parents or guardians for the non-attendance of pupils who have been excluded from the public schools on the ground that they do not present a certificate of successful vaccination. The point is squarely ruled by the case of *Commonwealth v. Smith*, 9 District Reports, 625, 24 County Court Reports, 129. In that case the parent was fined by a justice of the peace for not sending his child to school with a physician's certificate. Judge Fanning, after reviewing the McPherson opinion and sustaining it to the full effect of declaring that the teachers were right in refusing to admit a child without a doctor's certificate, held that as there was nothing mandatory in the statute which compelled vaccination—the only effect of the law being to deprive the child of school privileges until the law was complied with—a matter of choice with the parent, there being nothing obligatory as to vaccination, and as there was nothing in the statute which made it the duty of the parent to obtain, or the child to present, a certificate, and these words or their equivalent could not be read into a penal statute, the judgment of a justice of the peace for the amount of a fine and costs could not be sustained. The judge said in effect: The parent discharged all his duties by sending the child to school; another statute required the teacher to refuse admission in default of the certificate; the discharge of that duty by the teacher added nothing to the duties of the parent prescribed by statute. The compulsory education act by its terms did not make it obligatory on the parent to obtain a certificate. His sole duty was to send his child to school. He did this. The teacher refused admission because of the absence of a certificate. The statute does not make vaccination compulsory, nor does it require the child to produce the certificate. The question of the extent of the police power of the State did not arise.

This is the only decision on this express point, but it is in harmony with the other cases reviewed, and indicates that the situation anticipated by Judge McPherson as calling for legislative interposition is close at hand if not already existing.

The Legislature has taken a decided step forward in cities of the first class by requiring the Department of Health in such cities to make and promulgate rules covering compulsory vaccination in certain institutions, named in the act of 20th April, 1905 (P. L. 228), but this, as must be observed, is apart from the act governing your Department and is limited to cities of the first class. The act of 27th April, 1905 (P. L. 312), does not authorize in terms compulsory vaccination, but does admit of a rule or regulation in the protection of health. Care would have to be observed so that the rule should not transcend the powers of the Advisory Board of Health.

I perceive no legal authority for the acceptance by any teacher of a certificate of a doctor that a child should not be vaccinated. This would nullify the law requiring such a certificate.

The powers of school directors of the townships to exercise the powers of a board of health in each township, under the act of 11th April, 1899 (P. L. 38) were dealt with by the courts in Coyle township school district, 29 Pa. County Court Reports, 93, and Taylor v. Canton Township School District, 28 Pa. County Court Reports, 273. How far this act is affected by the act of April 27th, 1905 (P. L. 312), I am not now called on to consider.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### SUPERINTENDENT OF PUBLIC INSTRUCTION.

The county superintendent of schools is a county officer and under section 3, article XIV of the Constitution, must have been a citizen and inhabitant of the county one year before his appointment.

Office of the Attorney General,  
Harrisburg, Pa., January 6, 1906.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction:

Sir: You ask whether section 3 of Article XIV of the Constitution of Pennsylvania applies to the office of county superintendent, and you state that the point has been raised in connection with the filling of a vacancy in the county superintendency of Bucks county.

The Constitution expressly says, in the section and article above referred to that "No person shall be appointed to any office within any county who shall not have been a citizen and an inhabitant therein one year next before his appointment." There can be no doubt of the fact that the office of county superintendent is a county office. The act of 8th of May, 1854, in the 37th section (P. L. 628), provides that there shall be chosen, in the manner thereafter directed, an officer for each county, to be called the county superintendent; and it is further provided that it shall be his duty to visit, as often as practicable, the several schools of his county and to note the course and method of instruction and branches taught, and to give such directions in the art of teaching and the method thereof in each school as to him, together with the directors or comptrollers, shall be deemed expedient and necessary.

It is clear from this definition of the duties imposed upon such county superintendent that his functions are to be performed within the county for which he is chosen, and no thought of extra-territo-

rial duty can be inferred. The 39th section of the act of 8th of May, 1854, provides for the triennial convention of school directors of the several counties for the purpose of selecting a person to act as county superintendent. The provisions of the act must be read in connection with the provision of the State constitution, and, inasmuch as the uniform practice has been, ever since the adoption of the Constitution, in harmony with the language of the act, I see no legal justification for departing from it. Hence I instruct you that no person is eligible for the position of county superintendent who has not been a citizen and an inhabitant of the county for a space of one year before his selection.

I attach no legal importance to the variation in the phrases "appointment" and "selection." In my judgment a legislative determination of the method of selecting a county superintendent by the school directors of the counties is substantially an appointment within the meaning of the Constitution.

I am not convinced by the argument made under Article XIV that, because of the designation of county officers in section 1, the county superintendent not being included in the list, therefore the county superintendent was excluded. The provision is that county officers shall consist, not only of the enumerated officers, but of such others as may from time to time be established by law, and inasmuch as the act making the office in question a county office was in full force and was not disturbed by the Constitution, I see no reason for concluding that the Constitution in effect destroyed the existing system of the State, which has remained unchallenged for more than half a century.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### PUBLIC PRINTING.

The general printing law of April 17, 1905, P. L. 178, repeals the act of June 14, 1897, P. L. 154, and the act of April 29, 1897 P. L. 34.

Office of the Attorney General,  
Harrisburg, Pa., February 1, 1906.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction:

Sir: You have asked me whether the act of April 29th, 1897 (P. L. 34), and the act of June 14, 1897 (P. L. 154) are still in force or whether they were repealed by the act of April 17th, 1905 (P. L. 178).

I reply that the act of April 17th, 1905, is entitled "An act to regulate the publication, binding and distribution of the public documents of this Commonwealth." This act is a general act, applying

to all the Departments of the State Government, and contains a general repealing clause. Section 10 of the act, at page 179, has special reference to the Department of Public Instruction. I have no doubt that this act was intended to repeal all other printing acts and actually does repeal such acts, and therefore the acts to which you refer, and which previously regulated the printing and distribution of school laws, have no longer any force and effect. The act of 1905 covers the same subject and supplants the former acts.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO CHIEF OF DE-  
PARTMENT OF MINES.

---

---



## OPINIONS TO CHIEF OF DEPARTMENT OF MINES.

## DEPARTMENT OF MINES.

The Chief of the Department of Mines is not empowered by law to purchase two typewriters for the use of the mine inspectors. These should be obtained through the Superintendent of Public Grounds and Buildings.

Office of the Attorney General,  
Harrisburg, Pa., October 5, 1906.

Hon. James E. Roderick, Chief of the Department of Mines:

My Dear Sir: I have read the correspondence between yourself and the Auditor General relating to your request that he should approve the vouchers in the shape of bills rendered by Mine Inspectors for two Oliver Typewriters at \$110 each. I herewith return the correspondence in accordance with your request.

I am of opinion that it is not within your power to purchase in this manner the typewriters, and that no proper construction of section 8 of article X of the bituminous mine law of May 18, 1893 (P. L. 70), nor of section 7 of article XI of the anthracite mine law of 2d of June, 1891, nor of section 6 of the same act (P. L. 178), will authorize their purchase. In my judgment, the instruments and appliances therein referred to are not such as may designated "furnishings, stationery, supplies, etc," which it is the duty of the head of a department to notify the Superintendent of the Board of Public Grounds and Buildings to furnish in accordance with the terms of section 5 of the act of 26th of March, 1895 (P. L. 24). The question is not, as your letters would seem to indicate, a matter of judgment to be exercised by you as to whether it is cheaper in the end to purchase typewriters for the use of the Mine Inspectors. The real question is, how shall the supplies needed by the departments be furnished and upon what officer does the law impose the responsibility and the duty of furnishing necessary supplies. That question is answered by the act of 1895, creating the office of Superintendent of Public Grounds and Buildings and making it the duty of the head of each department to make requisition upon him. The heads of departments are not at liberty to make purchases on their own accounts in a manner not sanctioned by the law. It would be stretching the definition of "instruments," as limited by the text of section 8 of article X of the act of May 15, 1893, to make it

include by any possibility a typewriter, which cannot be said to be an instrument necessary to the performance of mine inspection, as such.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

DEPARTMENT OF MINES:

The act of June 1, 1883, provides that the mine cars in coal mines where coal is mined by measurement must be branded. There is no such provision where coal is mined by weight.

Office of the Attorney General,  
Harrisburg, Pa., November 8, 1905.

Hon. James E. Roderick, Chief of the Department of Mines:

Sir: I have your request for an opinion in regard to the branding of mine cars. You state that the point at issue between the miner and the operators seems to be the branding of each car with its own weight, in a mine where the coal is mined by weight. You state further that the branding of cars is done under the act of June 1, 1883, section 2 of which reads as follows:

"That at every bituminous coal mine in this Commonwealth, where coal is mined by measurement, all cars, filled by miners or their laborers, shall be uniform in capacity at each mine; no unbranded car or cars shall enter the mine for a longer period than three months, without being branded by the mine inspector of the district wherein the mine is situate."

You ask whether, under this section, it is obligatory upon the operators or the inspectors to brand cars in mines where the coal is mined by weight.

Confining my answer to the exact question, I reply that the matter is so simple as to call for no opinion. The language of the act is plain. The branding of cars is enjoined where the coal is mined by measurement. If there be a technical and substantial difference known to miners and operators between coal mined by measurement and coal mined by weight, I perceive no authority for inserting the word "weight" in the section by construction, or for extending its terms beyond the plain letter of the law.

I am,

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

OPINIONS TO THE COMMIS-  
SIONER OF HEALTH.

---

## OPINIONS TO COMMISSIONER OF HEALTH.

## DEPARTMENT OF HEALTH.

Under the act of 13th June, 1836 (P. L. 541), and its supplements, it is the duty of the poor directors of the district, or the county commissioners in counties where there are no poor directors, to provide sustenance for all indigent persons, residing within their respective districts, who are afflicted with disease or who are confined by a quarantine established by the Department of Health to prevent an epidemic.

Office of the Attorney General,  
Harrisburg, Pa., October 3, 1905.

Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.:

Sir: I have before me your letter of recent date, asking for an official opinion upon the duties and responsibilities of poor directors or of the county commissioners in counties having no poor directors, to provide sustenance for indigent persons afflicted with disease or who are kept from their regular employment by reason of the establishment of quarantine by your Department in case of epidemics.

I have made a careful examination of the various acts of Assembly and the judicial interpretations thereof upon this question, and am of the opinion, and advise you, that, under the provisions of the act of 13th of June, 1836 (P. L. 541), and subsequent legislation, it is the duty of the poor directors of the district, or the county commissioners in counties where there are no poor directors, to provide sustenance for all indigent persons residing within their respective districts, who are afflicted with disease or who are kept from their regular employment by reason of any quarantine established by your Department under authority of law in cases of epidemic within the Commonwealth.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

PAYMENT OF EXPENSES OF VACCINATING CHILDREN OF INDIGENT PARENTS—DEPARTMENT OF HEALTH—VACCINATION OF CHILDREN OF INDIGENT PARENTS—ACTS OF MAY 11, 1893, APRIL 27, 1905, P. L. 312 AND APRIL 27, 1905, P. L. 317.

Under the act of May 11, 1893, P. L. 44, if it should be shown as a fact that a borough had received funds from fines and penalties which had not been appropriated to the support of the health board, and if it should be further shown that the health board had submitted an annual estimate of its probable receipts and expenditures, then it would become the duty of the council to make an appropriation, or at least show reasonable cause for not doing so for the payment of expenses incident to the vaccination of the children of indigent parents.

The borough council cannot arbitrarily refuse to make an appropriation or successfully shield itself behind the plea that the matter is entirely within its uncontrolled discretion. The duty of making an appropriation is quite clearly stated in the act, provided the reasonable means of information for the intelligent exercise of judgment have been previously supplied.

The question can be raised by mandamus issued at the instance of the borough board of health through its solicitor or, if there be no regular solicitor, a solicitor specially authorized to act in this instance.

The matter could also be tested in an action of assumpsit by the doctor against the borough to recover the sum of money due him for services rendered at the instance of the board of health of the borough.

If the Commissioner of Health can certify, from his knowledge of the facts, that the expense incident to the vaccination of school children, was a necessary expense under the provisions of the act of April 27, 1905, P. L. 312, the local physician may be paid under the provisions of that act.

The conditions contemplated by the act of April 27, 1905, P. L. 317, are those of such extraordinary danger to public health as to be beyond the ability of local authorities to check or relieve. Unless the conditions contemplated by this act were made manifest in the manner indicated by it, expenses for the prevention of disease cannot be paid out of the fund which it provides.

Office of the Attorney General,  
Harrisburg, Pa., April 4, 1906.

Samuel G. Dixon, Health Commissioner:

Sir: I am in receipt of your letter of the 24th ult., referring to this Department a communication from J. K. L. Mackey, health officer of the borough of Shippensburg, requesting an opinion as to the liability of the borough for payment of certain expenses incurred by the local board of health in employing a physician to vaccinate school children whose parents were too poor to pay, for which expenses the council of said borough refuses to make appropriation.

You ask me the question: Who is legally responsible for the payment of bills contracted by local boards of health for the protection of the health of the community, when the council of the borough refuses to pay such bills or to allow the board a sufficient

appropriation to meet the obligations incurred? The facts relating to the communication of Mr. Mackey raise a question which is narrower than the one put in your letter of transmittal. Mr. Mackey's case is that of school children of poor parents, vaccinated by the physician of the health board of the borough by direction of the board. Your question would involve expenses of all kinds incurred in the protection of the public health, of which vaccination might be but a single item. It is necessary to discriminate between the action of local boards and the action of your Department.

The act of May 11, 1893 (P. L. 44), relates to the organization of boards of health in boroughs, and in sections 2 and 3 prescribes the duties and powers of such boards. Substantially they are the same, *mutatis mutandis*, as those of boards of health in cities of the third class, under act of May 23, 1889 (P. L. 306). It is provided that all fees, which shall be collected or received by the board or any officer thereof in his official capacity, shall be paid over into the borough treasury monthly, together with all penalties which shall be recovered for the violation of any regulation of the board. Section 4 of the act of 1893 defines the powers and duties of such boards with regard to infectious diseases, and, *inter alia*, empowers them "to enforce vaccination." The context leads me to the belief that these words do not mean compulsory vaccination in a general sense, but only under conditions of infection and contagion which render such enforcement necessary. Section 7 of the same act provides that "it shall be the duty of the board of health to submit annually to the council before the commencement of the fiscal year an estimate of the probable receipts and expenditures of the board during the ensuing year, and the council shall then proceed to make such appropriation therefor as they shall deem necessary."

Under the provisions of this act it is within the discretion of the borough council to fix the amount of an appropriation of funds to meet the estimated annual expense account submitted by the board of health or make provision for payment of bills already contracted by said board. I am unable to find any other act of Assembly which defines the extent of the discretionary power of council with regard to expenses contracted by boards of health, nor can I find any decision of the courts under this act. Neither do I find any act of Assembly which in terms renders the borough liable for the expense of vaccinating school children whose parents are in indigent circumstances and unable to pay for the same, where the borough council neglects or refuses to appropriate the necessary funds to meet such expense.

In my judgment, if it should be shown as a fact that a borough had received funds from fines and penalties which had not been appropriated to the support of the health board, and if it should be

further shown that the health board had submitted an annual estimate of its probable receipts and expenditures, then it would become the duty of the councils to make an appropriation or at least show reasonable cause for not doing so. I do not believe that the borough council can arbitrarily refuse to make an appropriation or successfully shield itself behind the plea that the matter is entirely within its uncontrolled discretion. The duty of making an appropriation is quite clearly stated in the act, provided the reasonable means of information for the intelligent exercise of judgment have been previously supplied.

The question can be raised by mandamus issued at the instance of the borough board of health through its solicitor, or if there be no regular solicitor, a solicitor specially authorized to act in this instance.

Besides this, the matter could also be tested in an action of assumpsit by the doctor against the borough to recover the sum of money due him for services rendered at the instance of the board of health of the borough, relying upon the authority of the following cases: *Allegheny County v. Watt*, 3 P. S., 462; *Commonwealth v. Harman*, 4 P. S. 269; *County of Northampton v. Innes*, 26 P. S., 156; *County of Allegheny v. Shaw*, 34 P. S., 301.

I am not advised how far the action of the health board in the borough of Shippensburg was caused by any action of yours, or whether you took any official action in the premises. The act of April 27, 1905 (P. L. 312), "creating a Department of Health and defining its powers and duties," in section 8 provides that "it shall be the duty of the Commissioner of Health to protect the health of the people of the State and to determine and employ the most efficient means for the prevention and suppression of disease, etc. In section 17 of the same act it is provided that "all necessary expenses under the provisions of this act, shall, after approval in writing by the Governor and the Commissioner of Health, be paid into the State Treasury upon the warrant of the Auditor General in the manner now provided by law." If, from your knowledge of the facts, you can certify that the expense of vaccinating these school children in Shippensburg was a necessary expense under the provisions of the act just quoted, the local physician to whom the debt is due, can be paid without resorting to mandamus proceedings, but it will be unnecessary for me to point out to you the danger of allowing expenses, which ought to be borne locally, to be paid out of the funds of the State.

The Governor of this Commonwealth, on April 27, 1905, approved an act (P. L. 317), "to establish an emergency fund to be used as occasion may require in the suppression of epidemics, prevention of disease, and protection of human life in times of epidemic diseases

or of threatening disease, and making an appropriation therefor." It is quite clear that the conditions contemplated by this act were those of such extraordinary danger to public health as to be beyond the ability of the local authorities to check or relieve. Unless the conditions contemplated by this act existed and were made manifest in the manner indicated in the act, I cannot advise you that the expenses of vaccination contracted by the board of health in the borough of Shippensburg, or in any other borough, are payable out of the emergency fund appropriated by the act of April 27, 1905.

Under the act of April 27, 1905 (P. L. 312), creating your Department, and defining its powers, it is clear that the rules and regulations of your Department may be promulgated by sending printed copies to all local boards of health, school boards, and clerks of councils of cities and boroughs, and the rules and regulations shall be printed in circular form and given to anyone who demands them. The 16th section of this act provides that every person who violates any order or regulation of the Department of Health, or who resists or interferes with any officer or agent thereof in the performance of his duties, in accordance with the regulations and orders of the Department of Health, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment not exceeding one month or both at the discretion of the court.

I have the honor to be,

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### ATTENDANCE OF WITNESSES AT COURT.

The principle laid down in Hartranft's appeal (85 P. S. 433), applies to the subordinates and agents of the Governor when acting in their official capacity as well as to the Governor.

The State Commissioner of Health may not be compelled to appear in court as a witness at a time when the public exigencies demand his presence elsewhere.

Office of the Attorney General,  
Harrisburg, Pa., May 17, 1906.

Samuel G. Dixon, M. D., State Commissioner of Health:

Sir: I am satisfied that the principles of the appeal of Hartranft et al. (85 P. S. 433), cover the case of your exemption from the process of courts whenever engaged in any duty pertaining to your office, it having been there decided that the Governor is exempt and his immunity extends to his subordinates and agents when act-



ing in their official capacity. The case is well reasoned and the principle clearly established that the public interest might suffer if public officers were to be detached from their duties or embarrassed in the performance of them by being compelled to appear in courts of justice to testify at a time when the public exigencies require their presence elsewhere. I think this principle particularly true in a case where the subpoena is issued at the instance of a private individual prosecuting a suit of his own.

At the same time I advise you in case of the service of a subpoena upon you to address a note to the judge whose name may be attached to the process, advising him of the fact that your duties compel your presence elsewhere and that you have been advised by the Attorney General that the case is governed by the principles already indicated, and that you disclaim any personal contempt of process; further, that if the judge should be called upon by the parties to the suit to issue an attachment for contempt you should be given an opportunity to be heard by counsel before such attachment should be issued.

I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### EPIDEMIC OF SMALL-POX.

The Commissioner of Health is authorized by the act of 27th of April, 1905 (P. L. 312) to employ and pay for guards to prevent the spread of an epidemic of small-pox in the borough of Marietta.

Office of the Attorney General,  
Harrisburg, Pa., October 16, 1906.

Hon. Samuel G. Dixon, Commissioner of Health:

Sir: I am informed that in 1905 an epidemic of small-pox prevailed in the borough of Marietta, Lancaster county, of such gravity that the Department of Health insisted upon the employment of guards for the protection of the inhabitants and to prevent the spread of the disease. A bill has been presented to your Department, amounting to \$996.01, the total amount paid by the borough for the services of the guards so employed under the direction of your Department. You state it has been your practice to pay similar bills in rural districts outside of boroughs and cities, and you asked to be advised whether the Department is responsible for the expense of guards within borough limits.

I answer that the act of 27th of April, 1905 (P. L. 312), creating the Department of Health and defining its powers and duties, in

the eighth section, makes it the duty of the Commissioner of Health to protect the health of the people of the State, and to determine and employ the most efficient and practical means for the prevention and suppression of disease. By the 9th section you are empowered to enforce quarantine regulations, and by the 17th section all necessary expenses under the provisions of the act shall, after approval in writing by the Governor and the Commissioner of Health, be paid by the State Treasurer upon the warrant of the Auditor General in the manner now provided by law.

I make no reference to the act of 27th of April, 1905 (P. L. 317), because you do not certify to me that the occasion of your action fell within the circumstances defined in that act as an emergency beyond the ability of the local authorities to check or relieve. Looking, therefore, at the act creating the Department of Health alone, I perceive no distinction made therein between boroughs and townships or imposing upon the former or upon cities with local health boards expenses, to the payment of which rural districts would be clearly entitled. If, in the judgment of your Department, the payment of the guards was necessary and, in point of fact, guards were so employed in Marietta, I am of opinion that the expense of such service can be properly embraced within the terms of the 17th section of the act first quoted, and that you can properly invite the Governor to approve of such bill as a necessary preliminary to the payment by the State Treasurer upon the warrant of the Auditor General.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

COMMISSIONER OF HEALTH.

While the Act of April 22, 1905 (P. L. 260), does not in terms prohibit the construction of a sewer without a permit first being granted, yet it forbids its use without such permit.

The Governor, Attorney General and Commissioner of Health, under this act, are competent to become parties plaintiff in a bill in equity to restrain the construction of a sewer for which a permit cannot be given.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 28, 1906.

Hon. Samuel G. Dixon, Commissioner of Health:

Sir: You call attention to an interpretation by some municipalities in this Commonwealth upon the act entitled "An act to preserve the purity of the waters of the State, for the protection of the public health," (P. L. 1905, 260), under which it is contended that, while

the Governor, Attorney General and Commissioner of Health have power to prevent sewage from flowing into streams, yet they cannot restrain the building of a sewer, from which it is plain that the moment the sewer is put into use it will result in a discharge of sewage into such streams.

You also call my attention to the fact that sewers are now being built in different parts of the State, which the officers above mentioned will not be able to approve, and that hence the disastrous condition will result of the expenditure by the municipalities of large sums of money for insanitary sewerage systems, and you ask the question whether the municipalities can be restrained by the State officers from building such sewers until they first obtain a permit. And you call my attention to a bill, filed by a taxpayer in the county of Blair, against the borough of Holidaysburg, in which equitable relief is sought against the construction of such a sewer on the ground that the moneys of the taxpayers were being im-providently expended.

The Act of 22 April, 1905 (P. L. 260), by sections 4 and 5, distinctly prohibits any municipality from discharging sewage into any of the waters of the State unless a permit shall have been issued for such sewage system. While the act does not in terms prohibit the construction of a sewer without a permit first being granted, yet it forbids its use without such permit. Inasmuch as the construction of a sewer, which, in case of use, will constitute a source of defilement of the waters of the State to the danger of health, is a distinct menace, it appears to me to fall within the well-settled jurisdiction of a court of equity to restrain that which will manifestly be prejudicial to the public health, and this aside entirely from the question of the expenditure of the taxpayers' money. The officers charged under the Act of Assembly with the duty of inspecting and granting permits for the use of sewerage systems seem to me to be the most proper officers to be parties plaintiff in a bill to restrain such a structure, whether in the course of erection or after completion, but upon the eve of a threatened use to the detriment of the public health.

Hence I reply that, in my judgment, it is perfectly competent for the Governor, Attorney General and Commissioner of Health, acting under the authority of the act referred to in the opening of this opinion, to become parties plaintiff in such a bill. I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## COMMISSIONER OF HEALTH.

The Commissioner of Health has authority under section 6 of the Act of April 22, 1905 (P. L. 260) to require the Pottstown borough authorities to submit a report and plans of the sewerage system or sewers of the borough.

Office of the Attorney General.

Harrisburg, Pa., Jan. 15, 1907.

Hon. Samuel G. Dixon, Commissioner of Health:

Sir: In reply to your inquiry whether, in view of the conditions existing in the borough of Pottstown, you can, under the act of April 22, 1905 (P. L. 260), require the borough authorities of Pottstown to submit a report and plans of a sewerage system or of sewers in the borough, I answer that your inquiry arises under an act intended to preserve the purity of waters of the State for the protection of the public health. Section 6 provides:

"It shall be the duty of the public authorities having by law charge of the sewer system of any municipality of the State, from which sewerage is being discharged into any of the waters of the State at the time of the passage of this act, to file with the Commissioner of Health within four months after the passage of this act, a report of such sewer system, which shall comprise such facts and information as the Commissioner of Health may require. No sewer system shall be exempted from the provisions of this act against the discharge of sewerage into waters of the State, for which a satisfactory report shall not be filed with the Commissioner of Health in accordance with this section."

I assume that no report has been received from Pottstown or that none has been heretofore asked for by you as Commissioner of Health. While there does not appear to be a general system of sewerage in Pottstown, nevertheless the borough authorities have authorized the construction by private individuals of sewer pipes which have been laid in the public streets, and are to-day discharging into the natural water courses. In some instances these water courses have been arched over as common sewers by the borough authorities and the abutting property owners. In my judgment, the situation calls for your investigation. The facts clearly fall within the provisions of the sixth section, and impose upon the public authorities of that borough the duty of furnishing a report of such sewer system, if such a term can be applied to this dangerous condition of affairs.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO STATE COMMIS-  
SIONER OF HIGHWAYS.

---

---

## OPINIONS TO STATE COMMISSIONER OF HIGHWAYS.

## STATE HIGHWAY DEPARTMENT.

The damages sustained by abutting property owners in the rebuilding, relocation, or changing of the grade of any highway under the act of April 15, 1903 (P. L. 188) when legally ascertained and paid by the respective counties, should be included in the total cost of the improvement, and the proper proportion thereof be paid by the State.

Office of the Attorney General,  
Harrisburg, Pa., January 19, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I have before me your communication, asking for an official opinion upon the question whether or not the State is liable to pay any part of the damages sustained by abutting property owners in the rebuilding, relocation or changing of the grade of any highway in accordance with the provisions of the act of April 15, 1903 (P. L. 188).

Having made a careful investigation of the act which is the subject of your inquiry, I submit the following:

Section three, after dealing with the preliminary steps necessary to be taken before any improvements shall be made in a highway, provides that "the cost of the same, including all the necessary surveys, grading, material, construction, relocation, changes of grade, and expenses in connection with the improvement of said highway, to be borne in sixty-six and two-thirds per centum by the State, sixteen and two-thirds per centum by the county, and sixteen and two-thirds per centum by the township or townships in which the portions of said highway, improved as herein provided, may lie." The matter is further dealt with and additional light is thrown upon it by this sentence in section seven:

"Upon the completion of any highway, rebuilt or improved under the provisions of this act, the State Highway Commissioner shall immediately ascertain the total expense of the same, and apportion the said total expense between the State, the county and the township, or townships, in the proportion hereinbefore provided."

From the foregoing extracts it would seem that the Legislature contemplated the division of the entire expenses, including all items

of whatever description, in the manner provided in section 3 and in that proportion. The only difficulty with this conclusion is found in the sentence of section 20, which reads as follows:

“The Commonwealth of Pennsylvania shall not be liable to any person or corporation for damages arising from the rebuilding or improvement of any highway under this act.”

But, upon inspection, it will be found that this language does not conflict with any which has preceded it. The Legislature very wisely saw fit to express clearly the well-established legal principle that no individual or corporation can maintain an action against the Commonwealth. There is nothing in the language last above quoted which indicates that the Legislature intended that the State should not contribute its proportion toward the payment of such damages as might be legally ascertained, but its whole thought seems to have been to express clearly that the State assumed no legal liability for such damages. And this construction is in harmony with the following language contained in the same section, to wit:

“In case any person or persons or corporations shall sustain damage by any change in grade or by the taking of land to alter the location of any highway which may be improved under this act, and the county commissioners and the parties so injured cannot agree on the amount of damages sustained, such persons or corporations may present their petition to the court of quarter sessions for the appointment of viewers to ascertain and assess such damage; the proceedings upon which said petition and by the viewers shall be governed by the laws relating to the assessment of damages for opening public highways, and such damages, when ascertained, shall be paid by the respective counties and afterwards apportioned by the Commissioner of Highways according to the provisions of section seven.”

The legislative intent is here clearly stated. It provides a legal method of ascertaining the measure of damages sustained and specifies the parties thereto. Among these parties the State is not included, presumably for the reason that the matter is a local one, and therefore is to be dealt with by the local authorities; but when such damages have been legally ascertained and paid by the respective counties, which alone are liable for them, it is the duty of the Commissioner of Highways to include such damages in the total cost of the improvement, and upon the completion of the road to apportion the total expenses as provided in section seven.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## HIGHWAY IMPROVEMENT—ACT OF APRIL 15, 1903.

Under the act of April 15, 1903, P. L. 188, the State cannot advance the portion of the cost of improving a public road which is to be paid by the county or township through which the road passes.

Office of the Attorney General,  
Harrisburg, Pa., January 24, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I am in receipt of your letter of recent date, in which you ask for an official opinion upon the following question, arising under the provisions of the act of 15th of April, 1903, P. L. 188.

Should the contractors for reconstructing township roads with State aid be paid in full by the State Highway Department before the Department receives the respective shares of the county and township due on the contract; in other words, should the State pay the entire bill of the contractors for performing a certain piece of work before receiving any or all of the moneys due from the county and township on said work?

I understand that, in some instances, there is considerable delay on the part of the county and township authorities in paying their proportionate share of the expense of highway improvements under the provisions of this act, and that the contractors doing the work are much hampered thereby. Unfortunately the framers of the bill did not take into account the contingency of this condition arising, and have not provided specifically for its relief.

Section eight provides:

“The State’s share of the expense of highway improvement or maintenance, under the provisions of this act, shall be paid by the State Treasurer upon the warrant of the State Highway Commissioner, attested by the chief clerk of the State Highway Department, out of any specific appropriations made by the Legislature to carry out the provisions of this act; and the share of the county in which said highway improvement, as herein provided, has been made, shall be a charge upon the funds of said county, and shall be paid by the county treasurer upon the order of the county commissioners. The share of the township or townships in which the said highway improvement, as herein provided, has been made, shall be paid by the township supervisors or commissioners, as other debts of said township, or townships, are paid. The State Highway Department, the county commissioners of the county, and the supervisors or commissioners of the township, or townships, in which any highway is being improved under the provisions of this act, may, with the approval of the State Highway Commissioner, make partial pay-



ments to the contractor or contractors performing the work, as the same progresses, but not more than two-thirds of their proportionate shares of the contract price for the work shall be paid, in advance of the full completion of the same, by either the State Highway Department, the county, and the township or townships, so that at least one-third of the full contract price shall be withheld until the work is satisfactorily completed and accepted, and the exact proportions of the cost thereof apportioned to the State, county and township, or townships: Provided, That a cash road tax be levied by each township, where such road improvement is being made, to meet the cost of such permanent road improvement as is provided in this act."

From this language it is clear that the respective shares of the State, county and township may be paid by the authorities of each to the contractors from time to time as the work progressed. While the contract is entered into between the contractor and the State Highway Commissioner, in behalf of the Commonwealth, the method of payment, as pointed out in section eight, is that the State shall pay its proportion in a certain way, and that the proportion of the county shall be paid by the county treasurer upon the order of the county commissioners and be a charge upon the funds of said county, and the proportion due from the township shall be paid as other debts of said township are paid. It also provides for partial payments to the contractor or contractors, with the approval of the State Highway Commissioner by the State, county and township authorities. As the warrant of law upon which you must rely for your official acts limits the payments to be made by you to the State's share of the expense, I can see no way in which this difficulty can be overcome, except by amending the act. It will be readily perceived that if the county and township authorities do not properly pay their shares of expense, the work of construction will be greatly hampered, and reputable and responsible contractors will be loath to undertake the work. Lamentable as this result is the act leaves you no discretion in the matter. It must be obeyed as it now is, and I, therefore, advise you that you will not be justified in paying more than the State's proportion of the expense to the contractor upon the completion of his work. He must then look to the county and the township authorities for the remainder due him under his contract. In this he is not without remedy.

As a condition precedent to the signing of the contract by the State Highway Commissioner on behalf of the State, section nine provides:

"No contract for any highway improvement shall be let by the State Highway Department, nor shall any work be authorized under the provisions of this act,

until the written agreements of the county commissioners of the county and the supervisors or commissioners of the township or townships, in which said proposed improvement is to be made, agreeing to assume their respective shares of the cost thereof, as hereinbefore provided, shall be on file in the office of the State Highway Department, and shall have been approved as to form and legality by the Attorney General or the Deputy Attorney General."

This is a covenant entered into by the local authorities with the State, agreeing to bear their proportions of the expense, and can be enforced by legal proceedings, but these proceedings must be brought by the contractor.

Very respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

STATE ROAD ACT OF 1905—ROAD LAW—APPORTIONMENT OF STATE AID—CONTRACTS PRIOR TO ACT OF 1905—BOROUGH ROADS—APPROPRIATION OF 1903—INCREASED SALARIES.

The act of May 1, 1905, P. L. 318, stands in place of and supplants absolutely the act of April 12, 1903, P. L. 188, and should be taken as a guide on all matters of doubt without reference to any conflicting or ambiguous language in the act of 1903. The whole law relating to the State Highway Department and to the building of public roads under State supervision is to be found in the act of 1905.

The entire amount of State aid apportioned for the year ending June 1, 1905, should be apportioned, under section 9 of the act of 1905, to the counties which had in that year applications requiring the expenditure of a sum greater than the amount of the apportionment allotted to them.

The money apportioned June 1, 1904, reverts back to be redistributed May 1, 1905.

Section 18 of the act of 1905 is the sole guide in making payment to contractors during the progress of the work of road-building, both as to those whose contracts antedate and postdate the approval of the act of 1905.

If an improved road is constructed either in a township or in an adjoining borough to the line of the borough making application, the said application falls within the purview of the act of 1905.

The clear intent, that the act of 1905 should carry with it as an appropriation only the unexpended balance of the \$6,500,000 provided by the act of 1903, should control.

The new schedule of salaries created by the act of 1905 technically goes into effect upon the signing of the act by the Governor, but as the appropriation made by the legislature to meet the increased salaries does not become operative until the end of the fiscal year (May 31), that part of the law should be ignored, and the new salaries take effect when the appropriation is sufficient to meet them (June 1.)

Office of the Attorney General,  
Harrisburg, Pa., June 1, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I have before me your letter of recent date, asking for an official construction of the act of May 1, 1905, relating to the establishment of your Department, and governing and regulating the building of public roads by the State under your supervision. The questions you submit are as follows:

1. At what date does money apportioned June 1, 1903, and not applied for by a given county, revert back to be redistributed?

2. At what date does money apportioned June 1, 1904, revert back to be redistributed?

3. Do the provisions of the act of 1905 as to payments to contractors during progress of the work apply to those whose contracts antedate the Governor's approval of the act of 1905?

4. Must an approved road have been constructed or applied for on both sides of the borough, in which lies a section of road for which State aid is asked, or can an application be approved for a section of a State road lying in a borough, to the line of which on one side only an improved road has been constructed?

5. When the act of 1905 was drafted the sum of \$143,767.53 had been expended under the act of 1903, which appropriated \$6,500,000 for the public roads, thus leaving an unexpended balance of said fund amounting to \$6,356,232.47. This unexpended balance is the amount of the appropriation carried by the act of 1905. After the latter act had been prepared, but before it received the Governor's approval, it was found necessary to make further payments on account of outstanding contracts. Said payments aggregate \$1,929.01, leaving an unexpended balance of \$6,355,203.47, which is understood to have been repealed by the act of 1905. The sum appropriated by the act of 1905 to replace this unexpended balance is, therefore, \$1,029.01 greater than the balance remaining unexpended on May 1, when the act of 1905 was approved. Should this difference be apportioned to all the counties in the State? If so, should it be considered as a part of the apportionment of 1903, or the apportionment of 1904? Or, to avoid the annoyance of such a step, could it be ignored, and the intent of the act of 1905 be accepted, said intent being to continue in force exactly the same appropriation as was made by the act of 1903?

6. At what date does the new schedule of salaries take effect, May 1, when the act became operative, or June 1, the end of the fiscal year?

I will take up these questions seriatim, and dispose of each in its proper turn, without reciting the questions, but I desire to

premise my specific answers with the general statement that the act of May 1, 1905, was intended to take the place in every particular of the act of April 15, 1903, P. L. 188, and to supply the same. In other words, the whole law relating to your Department and to the building of public roads under State supervision and by State assistance, is to be found in the act of 1905. Therefore, wherever there is an apparent conflict between the two acts, the former one is to be ignored altogether and the latter is to control.

1. A part of section 9 of the act of 1905 provides "that aid shall be apportioned among the several counties of the Commonwealth according to the mileage of township or county roads in said counties, but the said amount shall remain in the State Treasury until applied for under the provisions of this act. Provided, that if the appropriation, so apportioned by the State, shall not be so applied for before May 1 in each year, the amount so apportioned and set aside for that county, or the amount thereof not applied for, shall be apportioned as herein provided for, to the counties which had, in that year, applications requiring the expenditure of a sum greater than the amount of their apportionment." As this became the law by the signature of the Governor on May 1, the former method of apportioning money is superseded, and the entire amount apportioned by the State for the year ending June 1, 1905, shall be apportioned under the foregoing authority to the counties that had in that year applications requiring the expenditure of a sum greater than the amount of the apportionment allotted to them.

2. The money apportioned June 1, 1904, under the foregoing rule of construction, will revert back to be redistributed on May 1, 1905.

3. As the act of 1905 is the only law on the subject at present, its provisions regarding payment to contractors during the progress of the work apply as well to those whose contracts antedate the approval of the act of 1905 as to those made subsequently to that date. You are at present to be guided entirely by the provision of section 18 of the act of 1905 in making such payments.

4. There is nothing in the language of section 17 of the act of 1905 to indicate that it was the intent of the Legislature to require an improved road to have been constructed or applied for on both sides of a borough or boroughs in which a section of a public road may lie, for which State aid is asked, the only requirement being that "an improved road shall have been previously constructed in an adjoining township or borough to the line of the borough making the application." I am, therefore, of the opinion and advise you that, if an improved road is constructed either in a township or an adjoining borough to the line of the borough making application,

the said application falls within the purview of the act and should be considered.

5. It was the clear intent of the Legislature that the act of 1905 should carry with it as an appropriation only the unexpended balance of the \$6,500,000 provided by the law of 1903, and that intent should control. Technically, the recital of the unexpended balance in the act of 1905 might be held to carry that amount in full, but, as payments had been made out of the fund subsequently to the preparation of the new bill and prior to its becoming a law, good faith, as well as the duty enjoined upon all public officers to carry out the intention of the Legislature, as expressed in acts governing the various State Departments, require that the amount paid out, to wit: \$1,029.01, shall be left out of the apportionment, and only the actual unexpended balance of the original appropriation be used.

6. The new schedule of salaries created by the act of 1905, technically, goes into effect upon the signing of the act by the Governor, but, as the appropriation made by the Legislature to meet the increased salaries does not become operative until the end of the fiscal year, May 31, I am of the opinion that this part of the law should be ignored and the new salaries take effect when the appropriation made will be sufficient to meet them; that is to say, on June 1, 1905.

In conclusion, I desire to reiterate what I said at the beginning of this opinion: That the new act of 1905 to-day stands in place of and supplants absolutely the act of April 12, 1903, and should be taken as a guide on all matters of doubt, without reference to any conflicting or ambiguous language in the act of 1903. The act of 1905 was most carefully prepared to meet the exigencies not provided for by the former act, and which were disclosed by the experiences of the two years' operations under that act. It was designed and made a law in order that your Department might be strengthened for the splendid work that it is doing in improving the public highways for the benefit of the people of the Commonwealth.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

IN RE CREDIT ON ROAD TAX BY USING WIDE TIRED WAGONS—ROAD  
LAW—WIDE TIRES—CREDIT ON ROAD TAX—ACT OF APRIL 24, 1901.

It is the duty of the supervisors of all the townships of the Commonwealth to allow the credit given by the act of April 24, 1901, P. L. 99, to persons using draught wagons with tires not less than four inches in width, not only on the work tax levied for road purposes but on the money tax levied also.

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I am in receipt of your communication of recent date, enclosing a letter from Mr. John McConnell, of Waterford, Pa., and asking for an official opinion upon the question which he submits therein.

The point in controversy arises over the construction of the act of the 24th of April, A. D., 1901, P. L. 99, entitled "An act to encourage the use of wide tires upon wagons upon public highways of this Commonwealth, and providing penalties for its violation," the 1st section of which reads as follows:

"Section 1. Be it enacted, etc., That every person who shall subscribe to an affidavit that he has owned and used or used exclusively during the preceding year, in hauling loads of two thousand pounds weight and over on the public roads of this Commonwealth, draught wagons with tires not less than four inches in width, shall, for each year after the passage of this act, be credited by the supervisor of highways of the respective district in which such tax is levied and assessed with one-fourth of the road tax assessed and levied on the property of such person. And when any tenant shall by contract be or become liable for road taxes assessed against the premises leased to him, he may secure the benefits of this act upon making affidavit hereinbefore specified, as to the exclusive use by him of such wagons as are hereinbefore designated. Provided, however, such credit shall not exceed in any one year to any one person, five days labor on the highways, or its equivalent in cash. And every supervisor of roads is hereby authorized and empowered to administer the oath hereinbefore mentioned."

Mr. McConnell states that the supervisors or commissioners in his township are willing to credit one-fourth of the road tax assessed and levied on the property of a person complying with the terms of this act in so far as the work tax is concerned, but are not willing to allow a similar rebate on the money tax assessed and levied. There is absolutely no warrant of law for this discrimination. The intention of the legislature, as evidenced by this plain and explicit language, was to encourage the use of wide tires on wagons in order

that the public roads might be improved and the credit provided for by law applies unquestionably to both work tax and money tax. In many townships of the Commonwealth the work tax has been very wisely abolished and all road taxes are now paid in cash in those localities. It would work a peculiar hardship, and one not contemplated by the Legislature, to the residents of such townships where so earnest a disposition to improve the public roads is manifested, if the credit conferred by this beneficial act should be denied them. The State is spending large sums of money annually under the direction of your department for the purpose of building and improving the public highways and every encouragement to keep these roads in proper condition should be carried out in a broad spirit.

I am therefore of the opinion, and advise you, that it is the plain duty of the supervisors in all the townships of the Commonwealth, to allow the credit given by the above act to those persons complying with its terms, not on the work tax alone, but on the money tax assessed and levied as well.

Very respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

IN RE CUMBERLAND ROAD—CUMBERLAND ROAD—DISPOSITION OF  
PROCEEDS OF SALE OF BUILDINGS BELONGING TO THE STATE AND  
USED IN CONNECTION WITH SAID ROAD.

The proceeds of the sale of the buildings belonging to the State and formerly used in connection with the old Cumberland road may be used by the State Highway Commissioner in the improvement of said road, under the provisions of the act of April 10, 1905.

Office of the Attorney General,  
Harrisburg, Pa., October 17, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I have before me your letter of recent date, asking for an official construction of the act of 10th of April, 1905 (P. L. 129), entitled "An act relating to the management, care and maintenance of the National, or Cumberland, road, and freeing the same from tolls, and making an appropriation therefor."

This act provides in terms that the portion of the old National road lying within the State of Pennsylvania shall hereafter be under the care and management of your Department, and shall be maintained and kept in repair by you at the cost of the State. It repeals the former acts under which the road was managed by officers ap-

pointed by the Governor and maintained out of revenues received from the collection of tolls.

This historic old highway, originally constructed by the National Government and afterwards by it legally transferred to the Commonwealth of Pennsylvania, had fallen into a generally dilapidated condition, and the revenues derived from the collection of tolls were wholly inadequate to maintain it in a safe condition for the traveling public. The bridges were falling down and the entire road was in an unsafe and dangerous condition. The act under discussion provides an appropriation of one hundred thousand dollars, whereof an amount not exceeding fifty thousand dollars shall be available during the first year following the passage of the act, and the remainder to be expended in the following year.

It also provides that "the several officers now in charge of portions of the said road, under existing laws, shall hand over to the State Commissioner of Highways the custody and control thereof, and deliver to him any property belonging to the State in their hands and charge, and shall pay to the said commission such moneys as shall be found to be in their hands, respectively, upon settlement of their accounts according to existing laws."

It is further provided that the collection of tolls from the traveling public shall cease, and all buildings belonging to the State in connection with the road may be either leased by you or, in your judgment, sold after advertisement to the highest responsible bidder.

In carrying out the provisions of this act above quoted, a certain sum of money has accrued in your hands, and you desire to be specifically advised as to what disposition shall be made of this fund, as the act itself is silent upon this point.

In the absence of specific directions contained in the law itself, and inasmuch as this fund was created by its terms, I am of the opinion, and advise you, that it may be used under your authority and in your discretion in carrying out the provisions of section 3 of the act, by putting the road in good condition and making such permanent repairs as may be necessary in connection with the specific appropriation made by the Legislature for that purpose.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.



## MOTOR VEHICLES—ACTS OF APRIL 23, 1903, AND APRIL 19 1905.

The act of April 19, 1905, P. L. 217, repeals and supersedes the act of April 23, 1903, P. L. 268, and is the State law regulating the operation of automobiles and motor vehicles.

Office of the Attorney General,  
Harrisburg, Pa., November 9, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I am in receipt of your letter of recent date, asking for an official interpretation of the act of 19th of April, 1905 (P. L. 217), entitled:

“An act relating to automobiles, or motor-vehicles; regulating the speed limit upon the streets and public highways of the Commonwealth; providing for the licensing of the operators thereof by the State Highway Department, and fixing the amount of said license; regulating the service of process and of proceedings of actions in damages arising therefrom; and prescribing the penalties for the violations of the provisions of the same.”

Among other questions you ask whether this act is supplementary to or repeals the act of 1903 (P. L. 268), entitled:

“An act relating to automobiles, or motor-vehicles; providing for the registration thereof; regulating the speed limit upon the public highways within this Commonwealth; providing for the licensing of the operators thereof, and fixing the amount of the license; regulating the service of process and of proceedings in actions of damages arising therefrom; and prescribing the penalties for the violation of the provisions of the same.”

In order to arrive at a correct understanding of the meaning, purpose and scope of the act of 1905, it is necessary to carefully study both the above mentioned acts and the conditions which existed at the time of their passage, and which were intended to be remedied or relieved.

The popular use of automobiles, or motor-vehicles is of recent origin and growth, and until the passage of the act of 1903 there was no special law applying to them, affecting or controlling their operation, but the Legislature in that year, recognizing the possibilities of danger to the traveling public because of the reckless and unskillful manipulation of these machines, placed upon the statute books this act, which, at the time, was considered broad and comprehensive enough to correct any existing abuses, and to provide ample protection for the public. As indicated by its title, it provided for the registration of motor-vehicles and the licensing of the owners or operators thereof, for the purpose of ascertaining the identity of the machine and fixing the responsibility of the person liable for any

damage which might be done by it in the course of its operation. It further provided for regulation of speed and the conduct of the operators toward the traveling public, and the penalties to be imposed for any violation of its terms.

In the two years which elapsed between the Legislature of 1903 and that of 1905 controversies arose regarding the operation of the act, and the court of Erie county, in an opinion handed down by Judge Walling, declared that the Sixth section, requiring the owners of automobiles to take out a license, was inoperative, because at variance with the language of the title. This left the registration of the machine as the only means of identifying the owner or the person in whose charge it might happen to be at the time of an accident. It was also found that in several minor particulars the law failed to meet the requirements demanded by the greatly increased number of these machines upon the streets and highways of the Commonwealth.

For these reasons, the same member of the Legislature, who introduced the act of 1903, presented the act of 1905, and from all the information I am able to obtain, as well as the similarity of the titles and the context of both acts, I am satisfied that the latter was intended to supersede and repeal the former, and to constitute the entire law of the State upon the subject to which it relates.

It provides, as did the former act, a general method of regulation and supervision by seeking to identify and control, not the machine, but the operator, who is required to secure, from your department, a license, paying the fee therefor, before he may legally operate a motor-vehicle of any kind upon the streets and highways of the Commonwealth. At the time of the issuing of a license to the applicant, your department is required to furnish the licensee with two tags, bearing a number, not less than five inches in height, which tags are to be placed upon the front and the rear of the machine, and no other license number or tags may be legally exposed on said machine while the same is operated in Pennsylvania.

Section 5 fixes the maximum rate of speed at which motor-vehicles may be operated within the corporate limits of any of the cities or boroughs of the State, at not greater than a mile in six minutes, and outside the corporate limits of these municipalities the lawful rate of speed shall not exceed one mile in three minutes, with the proviso that, in townships of the first class, the commissioners, under certain conditions, may fix by ordinance a speed rate of not less than one mile in six minutes in the sections of the township where they consider such rate necessary for public safety; and it is provided further that, notwithstanding the maximum speed above stated, no person shall drive an automobile at a greater speed than is reasonable under the circumstances obtaining at any time or at any place.

Section 6 provides that each motor-vehicle shall carry "during the period from one hour after sunset to one hour before sunrise at least one fixed lighted lamp" in front, and one red light behind, and shall also be equipped with a good and sufficient brake and a proper signal device. This section further regulates the operation of motor-vehicles and the attitude and conduct of those in charge thereof toward the traveling public.

Section 7 provides that any person operating a motor-vehicle in this State must carry the license issued by your department, and be able to show the same upon the request of any officer.

Section 9 contains specific directions to constables and police officers of the Commonwealth as to their duties in carrying out the provisions of the act.

Section 10 provides that any person violating the act shall be subject to a fine or penalty of not less than ten dollars nor more than twenty-five dollars for an original offense, and a fine of not less than twenty-five dollars nor more than one hundred dollars for the commission of a second offense. It also provides that the second conviction shall be followed by the revocation of the license held by the person so offending.

Section 12 was apparently transferred bodily from the former act to the one under discussion, without consideration on the part of those having the bill in charge as to what its effect would be. It is inconsistent with the remainder of the act, and, so far as the exemption from its provisions of "any motor-vehicle which any manufacturer or vendor of automobiles may have in stock, and not for hire or for his private use" is concerned, it is inoperative and futile, for the reason that none of the provisions referred to apply to motor-vehicles or automobiles at all, but only to the persons engaged in operating them.

After a careful consideration of the whole matter I am of the opinion and advise you that the act of 1905 was intended to and does supersede and repeal the former act, and constitutes the law of the State upon this subject.

That all tags, bearing license numbers, with the exception of the two furnished by your department, must be removed from motor-vehicles while the same are being operated within the limits of this Commonwealth.

No city, borough or other municipality may legally fix a maximum speed limit within its boundaries less than the speed limits provided for in section 5 of the act.

No motor-vehicle, whether automobile or bicycle driven by a motor, may be lawfully driven, ridden or operated upon the streets and highways of the State after the first day of January, 1906, unless the

operator thereof shall have first obtained from your department a license for that purpose, and shall have further complied with all of the regulations and requirements imposed by this act.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

STATE HIGHWAY COMMISSIONER.

The act of 12th April, 1905 (P. L. 142) providing for the election and appointment of road supervisors in townships of the second class does not repeal the Uwchlan township law of 1865 so far as it applies to Hanover township, Washington county.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: Your letter of recent date, asking for an official opinion upon the question raised by the enclosed communication from J. J. McLarn, of Hanover township, Washington county, as to whether or not the act of 12th of April, 1905 (P. L. 142), entitled:

“An act providing for the election and appointment of road supervisors in the several townships of the second class of this Commonwealth; defining their duties; authorizing them to make, repair and maintain roads and bridges, let contracts for the same, levy and collect taxes, employ labor, divide townships into districts, appoint road masters and treasurer, purchase road making implements and machines; prescribing penalties for violation of this act; and requiring the road supervisors to report to township auditors and to the State Highway Commissioner, from time to time, and for the payment of a percentage of road tax to townships that abolish the work tax; and for the repeal of all laws, general, local or special, inconsistent herewith or supplied hereby.”

repeals the special road law relating to the said Hanover township.

This special act is known as the “Uwchlan Township Law,” and is to be found on page 336, Pamphlet Laws of 1865. Originally this act applied only to Uwchlan township, Chester county, and East Bethlehem and East Pike Run township, Washington county. It was afterwards extended by subsequent acts to various townships in different counties, among others, to Hanover township, Washington county, by act of April 14, 1868 (P. L. 1119). The original act was specially repealed by various acts of Assembly, so far as it refers to Uwchlan township, East Pike Run township and East

Bethlehem township, but I am unable to find that it was ever repealed so far as it applied to Hanover township, Washington county. The question submitted, therefore, resolves itself into this: In the absence of a special repealing act, does the clause of the act of 12th of April, 1905 (P. L. 142), which reads as follows: "All acts or parts of acts, general, special or local, inconsistent herewith, or supplied hereby, be and the same are hereby repealed," operate to repeal this local and special legislation?

There is a long line of decisions by the courts of the Commonwealth to the effect that a local or special statute of this kind cannot be repealed by a general repealing clause such as is above recited, and I am of the opinion, and advise you, that the Uwchlan township law is in full force and effect in Hanover township, Washington county, and such other townships of the Commonwealth to which it has been extended at various times, and where the same has not been specifically repealed.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### STATE HIGHWAY COMMISSIONER

Where there are more applications for State roads from a county than the appropriation allotted for that year will build, the Commissioner may let the contract for the building of the roads with the understanding that the State will pay for the same when the money becomes available, provided that the whole amount of contracts shall not exceed the lump sum appropriated.

Office of the Attorney General,  
Harrisburg, Pa., December 13, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I am in receipt of your letter of recent date, informing me that contracts have now been made for the construction of township roads in many counties of the State, which absorb the entire amount of money apportioned to the said counties for the present year, under the authority of the act of May 1, 1905 (P. L. 318), entitled:

"An act providing for the establishment of a State Highway Department, by the appointment of a State Highway Commissioner and staff of assistants, and defining the powers and duties thereof; authorizing the State Highway Department to co-operate with the several counties and townships, and with boroughs in certain instances, in the improvement of the public highways and the maintenance of improved highways; pro-

viding for the application of counties and townships for State aid in highway improvement and maintenance; providing for the payment of the cost of highway improvements, made under the provisions of this act, by the State, the counties and the townships, and making an appropriation for this purpose, and providing a penalty for maliciously destroying improved roads."

You further state that in many of these counties the people are so anxious to have the work of improving the roads proceeded with that they have become very urgent and insist on having additional contracts made and the work of reconstruction continued, and you desire to be informed whether or not you have the legal right, under the provisions of the above-mentioned act to make contracts for the reconstruction of township roads in excess of the amount apportioned to the county for any one year.

It must be very gratifying to your department to know that public sentiment has reached the degree of enthusiasm which this demand indicates, and I have taken up the consideration of this question with a desire to ascertain from the context of the act what the intention of the Legislature was on this particular point.

Section 26 of the act provides as follows:

"The sum of six millions three hundred and fifty-six thousand two hundred and thirty-two dollars and forty-seven cents is hereby appropriated to carry out the provisions of this act. Of this sum, eight hundred and fifty-six thousand two hundred and thirty-two dollars and forty-seven cents shall be available in the fiscal year, ending on the thirty-first day of May, one thousand nine hundred and five; one million two hundred and fifty thousand dollars in each of the two years next following; and one million five hundred thousand dollars in each of the two years next following."

It will be observed that this appropriation is a lump sum, and when the act was approved by the Governor that amount of money was specifically appropriated for the purpose of carrying on the work of road-building and improvement, to be available and paid out in the manner prescribed. The same act fixed your term of office at four years, which exactly coincides with the time limit covered by the appropriation, thus making the two appropriations and your tenure of office co-extensive.

It is impossible to reach a proper conclusion in this matter without taking into account the result which an adverse official interpretation of this legislation would have upon its general purpose and plan. To hold that a separate contract would have to be made for each year's appropriation as it is apportioned to each county would delay the work greatly and handicap your department in the

discharge of its duties, as it would be much more cumbersome and expensive to let many contracts for small pieces of road than fewer contracts for much longer and continuous stretches. In pursuance of your well-defined plan of reconstructing, so far as possible, the roads so as to form a general system of trunk lines between centers of population, it is highly important that contracts for as much as possible be let at one time. There is no reason why the portion of the expense to be borne by the local authorities should not be paid in as the work progresses, and in order to carry out, in the broadest possible spirit, the intent of the Legislature, and to give to the traveling public the benefit of improved highways at the earliest possible moment, I am of opinion and advise you that you have the legal right, under the provisions of the said act, to make contracts for the re-construction of roads in excess of the amount apportioned to any county for one year, but not to an amount in excess of the sum to which that county is entitled out of the entire appropriation, said contracts to be made with the explicit understanding, expressed therein, that payment of the State's share of the expense necessary for carrying out the said contracts shall not be paid until there is money available to meet such payments out of the apportionments of the fund to which the county will be entitled in the succeeding years.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

HIGHWAYS—TOWNSHIPS OF SECOND CLASS—SUPERVISORS—ACTS  
OF APRIL 12, 1905.

The act of April 12, 1905, P. L. 142, which provides for the election and appointment of road supervisors in townships of the second class and defines their powers and duties, creates a uniform system for the control of public highways in such townships and repeals all local or special laws applicable thereto. Sections 1, 3, 7 and 12 of the act discussed.

Office of the Attorney General,  
Harrisburg, Pa., December 15, 1905.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: You have written a letter to this department, asking for official advice upon several questions which have arisen relative to the act of Assembly of April 12, 1905, P. L. 142, entitled "An act providing for the election and appointment of road supervisors in the several townships of the second class of this Commonwealth; defining their duties; authorizing them to make, repair and maintain roads and bridges, let contracts for the same, levy and collect taxes,

employ labor, divide townships into districts, appoint roadmasters and treasurers, purchase road-making implements and machines; prescribing penalties for violation of this act, and requiring the road supervisors to report to township auditors and to the State Highway Commissioner from time to time, and for the payment of a percentage of road tax to townships that abolish the work tax, and for the repeal of all laws, general, local or special, inconsistent herewith or supplied hereby."

This law is general in its terms and was intended to provide a uniform method of electing township supervisors in townships of the second class throughout the Commonwealth, and marks a decidedly forward step in the movement for securing better roads for the public. The spirit and aim of the law must be given full force and effect in construing it, in order that the legislative intention may be carried out. With a fixed purpose to do this, and at the same time keep within the letter of the statute, I proceed to answer your questions seriatim, as follows:

1. As the statute is silent on the question of compensation, I am forced to the conclusion that the Legislature did not intend that the supervisors elected in accordance with the provisions of this act should receive any compensation whatever for their services, and the words "necessary expenses," in section 7, line 4, cannot be construed to mean anything more than the return of such sums of money as are necessarily expended by the supervisors in carrying out the duties of their office. This would properly include traveling expenses, cost of meals, horse feed, and such other like items, but would exclude any compensation of any kind for the time spent by the supervisors in the discharge of their duties.

2. Notwithstanding the stringent provisions of section 12, I am of the opinion and advise you that a supervisor may work out his road tax under the work tax system, for the reason that, while he cannot receive compensation for his official services, it would be unfair to put him in a worse position than any of his neighbors, simply because he holds the office. Though he cannot profit by his official position, he ought not to lose any of his rights as a taxpayer by reason thereof.

3. If a township abolishes a work tax by a vote at the February election of 1906, it will be entitled to receive the 15 per centum of the amount of the road tax collected in said township for that year. This 15 per centum cannot be paid, however, by the State Highway Commissioner until he has received the necessary report provided for in section 10 of the act, which cannot be furnished him before the succeeding year, because the law contemplates that the commissioner of highways shall have at hand the report so provided for before he shall draw his warrant, but the preparatory step must be taken



at the February election in 1906 to entitle the township to the State aid for that year.

4. No member of the board of supervisors should act or be employed as roadmaster for any district under the authority of section 3, for the reason that the compensation would be fixed by himself and his colleagues on the board, and this would be a direct violation of the spirit if not the exact letter of the law, and in case he should insist upon doing this work, he is not entitled to compensation for the same.

5. It does not seem possible that the voters of any township will see fit to ignore the plain and mandatory terms of the act and refuse to elect supervisors in the manner provided by its terms. If this should occur, and the attention of the proper authorities were called to the situation, legal steps will be promptly taken to compel compliance with the act.

6. By reason of the proviso at the end of section 1, no township which now has three supervisors, elected under existing laws, need hold an election at the municipal elections in February for the purpose of complying with the requirements of this act, except as the terms of the said supervisors or road officers now in commission in such township shall expire.

7. It appears that there are some townships working under special laws that now elect supervisors in the same manner as provided for by the act under discussion, and these supervisors receive compensation, and there are also townships working under other special and local laws, among them the act known as the "Uwchlan Township Law" (P. L. 1865, page 336), and the supplements, which extend its provisions to townships other than those originally named therein. The question whether or not these local and special laws are repealed by the act under discussion is an interesting one, and I shall proceed to discuss it at somewhat greater length than I have the preceding questions.

The general rule of statutory construction adopted by the courts of the Commonwealth is that a general statute cannot repeal a local statute whose provisions are in conflict with it, unless there are words of express repeal contained in the general statute, and even in some cases where there are words of express repeal, the courts have denied their application to a local law; but a careful investigation of the numerous decisions in both classes of cases leads me to the conclusion that these rules of interpretation are simply intended to be helps in a search after the legislative meaning, and we will, therefore, consider the question in the light of that conclusion.

The act of April 12, 1905, is a general statute, covering "every township of the second class in this Commonwealth," and provides a complete method so far as the township control of the public high-

ways is concerned, and is the latest expression of the legislative mind upon this most important subject.

These special acts, on the other hand, are the product of legislatures of a much earlier date, before the development of the road-making sentiment, and the methods provided by them are necessarily antiquated and obsolete. It is also apparent from the language of the repealing clause of the act of 1905 that the legislative intent was to repeal all local or special acts inconsistent with the terms of the general law, and provide a uniform law upon this subject throughout the Commonwealth. The very nature and purpose of the latter act seems to have been to eliminate all antiquated and obsolete legislation upon this subject, and therefore it ought to be construed, if possible, in such a manner as to fulfill that purpose. In this case it seems to me that I can do no better than to adopt the reasoning of Mr. Justice Williams in *Com. v. Macfarron*, 152 Pa. 244: "If a law relating to cities of any given class could be held to exclude or to be inoperative in one or more members of the class, it must, under the Constitution, be inoperative in all, and fall altogether. There can be no law for a class that does not embrace the whole class. There can be no law regulating the affairs of one city in a class that does not apply to every city in the class. Whenever, therefore, any law regulating the municipal affairs of cities of a given class shall be found to conflict with a previous local statute applicable to any member of the class relating to the same subject, the latter must give way by reason of the nature and purpose of class legislation. In this manner existing diversities will gradually disappear, and uniformity throughout the class will be finally secured."

The principle in that case applies squarely to this, and I am of opinion and advise you that the act of April 12, 1905, repeals all local or special laws applying to any second class townships in this Commonwealth.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### NATIONAL ROAD.

The State of Pennsylvania owns absolutely that part of the National road within her borders, and a charter should not be granted a street railway company over any part of this road without a public necessity therefor, and without an agreement between the applicants for the charter and the State Highway Commissioner protecting the interests of the State in the road.

Office of the Attorney General,  
Harrisburg, Pa., March 22, 1906.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I am in receipt of your letter of recent date, in which you state that an application has been made to the Governor for a

charter to construct and operate a trolley line on the National road for a distance of two miles, beginning at a point opposite the Hillsboro public school in the township of West Bethlehem, Washington county, by a proposed corporation, to be known as "The Coal Center Electric Railway Company." Also that another charter for the same purpose is being sought by a proposed corporation called "The Washington and Brownville Street Railway Company," the route of which is over the National road through the borough of West Brownville, westward to the borough of Centreville, a distance of about two miles. You further state that you have filed objections to the granting of these charters on the ground that the interests of the Commonwealth were not sufficiently protected, and that you have asked the proper officials to delay the granting of the same until you have secured the opinion of this department in the matter.

The Legislature, by the act of April 10, 1905, (P. L. 129), entitled "An act relating to the management, care and maintenance of the National, or Cumberland road, and freeing the same from tolls, and making an appropriation therefor," provided that so much of the National, or Cumberland road as lies within the State of Pennsylvania shall be under the care and management of your Department, and maintained and kept in repair by you at the cost of the State. This act, in express terms, places upon your department the maintenance and control of the National road, and, for the purpose of repairing the same and keeping it in good condition, the sum of one hundred thousand dollars is appropriated. This historic road is the property of the State, and does not fall within the purview of the act of 1st of May, 1905 (P. L. 318), and is not subject to the proviso to section 20 of that act, which reads as follows:

"Provided, That no street railway shall hereafter be constructed upon any portion of a highway which has been or may be hereafter improved under the provisions of this act, except under such conditions and regulations as may be prescribed by the State Highway Commissioner."

It is therefore important, before these charters shall be granted, that a public necessity for them shall be established to the satisfaction of the Governor and Secretary of the Commonwealth, and that a stipulation shall be entered into by the persons asking for the said charters and the Commonwealth, represented by yourself, with respect to the rights which the proposed companies shall have or exercise in the manner of laying their tracks and fixing their grades over the said Road. Unless satisfactory arrangements can be made along these lines, the charters ought not to be granted, as this road occupies a unique position quite different from that of any other highway in the Commonwealth, and as it belongs to the

State absolutely, the township authorities have no jurisdiction over it, nor the power to place any restriction upon the trolley companies before granting them the right to lay their tracks upon it. The fact that the State is expending a large sum of money for the improvement of the road and bridges, and is engaged now in recovering possession of its full width, which has been greatly reduced by encroachments at various times, only emphasizes the necessity for careful consideration and extreme caution in issuing charters to trolley companies desirous of occupying it with their tracks.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

HIGHWAY COMMISSIONER—STATE AID IN RECONSTRUCTION OF  
ABANDONED TURNPIKE—ACTS OF APRIL 20, 1905, AND MAY 1, 1905.

The State Highway Commissioner, under the act of May 1, 1905, P. L. 318, has authority to extend State aid in the reconstruction of a turnpike abandoned under the act of April 20, 1905, P. L. 237.

Office of the Attorney General,  
Harrisburg, Pa., March 22, 1906.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: I have before me your recent communication, asking if you have authority, under the act of May 1, 1905 (P. L. 318), to extend State aid in the reconstruction of a turnpike abandoned under the terms of the act of April 20, 1905 (P. L. 237), which reads as follows:

"An act to provide for the repair and maintenance or improvement, by the proper county, city or borough, of turnpikes heretofore or hereafter appropriated or condemned, or any part thereof, for public use, free of tolls.

"Section 1. Be it enacted, &c., That when any turnpike, or part thereof, has been, or may hereafter be, appropriated or condemned for public use, free of tolls, under existing laws, and the assessment of damages therefor shall have been paid by the proper county, such turnpike, or part thereof, shall be properly repaired and maintained at the expense of the county, city or borough in which the said turnpike, or part thereof, lies, or the same may be improved under any existing laws by the said county, city or borough.

"Section 2. All acts or parts of acts inconsistent herewith are hereby repealed."

The correspondence you submit raises the question whether this action can be taken by you, in the light of the fact that the act above

quoted provides that any such turnpike so abandoned shall be repaired and maintained at the expense of the county, city or borough, or improved "under any existing laws by the said county, city or borough." The omission of the word "township" must be taken to indicate that there is no responsibility resting upon that municipality, so far as the repair or maintenance of such roads is concerned.

After careful consideration, I have reached the conclusion that, if the necessary legal proceedings are followed, there is no reason why these roads should not be considered the same as other highways within the meaning of the act of May 1, 1905 (P. L. 318). The preliminary step toward the securing of State aid in the improvement of highways under this act must be taken by the supervisors or commissioners of the township in which the said road lies. If there are inconsistencies between the acts of April 20 and May 1, they are repealed by the 27th section of the latter act, but a careful inspection of the two acts leads me to the conclusion that no such inconsistencies exist. The language of the 3rd section of the act of May 1 is to the effect that the supervisors or commissioners of any townships of the Commonwealth may petition for State aid in the reconstruction or permanent improvement of any principal highway within the said township, or any section thereof which is much used as a thoroughfare by the people of said township.

In all cases where this is done and the supervisors have agreed by resolution to pay the township's share of the expense of said improvement, and subsequently enter into a contract with the county and the State, the township is, of course, bound by this contract, and cannot avoid the payment of its share of the cost. Any other determination of this question would work a grave hardship upon the traveling public in all instances where turnpikes were abandoned under the provisions of the act of April 20, as they are usually important and much-traveled highways.

I am therefore of opinion and advise you that you have the legal right, under the Act of May 1, in all cases where State aid is asked for the reconstruction of turnpikes abandoned under the act of April 20, to proceed precisely as in the case of any other roads and extend the State aid in the work of reconstruction.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## NATIONAL OR CUMBERLAND ROAD.

A part of the National Road in Somerset county having been condemned and become a county road, it is impossible for the State Highway Commissioner to take possession of it or improve it unless the condemnation proceedings can be rescinded and the road restored to the possession of the State.

Office of the Attorney General,  
Harrisburg, Pa., May 3, 1906.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg,  
Pa.:

Dear Sir: I have before me your letter of recent date, enclosing letter of Honorable J. A. Berkey, asking for an official opinion upon the matter which Mr. Berkey submits.

It appears that the residents of Somerset county, who live upon or adjacent to the National or Cumberland road, which passes through the extreme southwestern portion of that county for a distance of about seven miles, are anxious that you should take charge of that portion of the road under the act of April 10, 1905 (P. L. 129), entitled "An act relating to the management, care and maintenance of the National, or Cumberland road, and freeing the same from tolls, and making an appropriation therefor." Mr. Berkey's letter indicates that he is of the opinion that the title of the act is broad enough to cover all portions of this road lying within the State of Pennsylvania, and that that is sufficient warrant for you to take charge of and improve that portion lying in Somerset county.

The first section of the act of 1905 reads as follows:

"That so much of the Cumberland road, lying within the State of Pennsylvania, as is now maintained, by officers appointed for that purpose, under existing laws, out of revenues received from the collection of tolls thereon, shall hereafter be under the care and management of the State Highway Department, and shall be maintained and kept in repair by the State Highway Commissioner, at the cost of the State."

The language of this section indicates that it was the intention of the Legislature to limit your authority to take and improve the road to that portion which, at the time of the passage of the act, was maintained by officers appointed for that purpose under existing laws. Investigation discloses the fact that at December Sessions, 1887, condemnation proceedings, under the act of June 2, 1887 (P. L. 306), were begun in the court of quarter sessions of Somerset county on the petition of citizens of Addison township to condemn and make free a portion, if not all, of the National road lying within the territorial limits of Somerset county. It does not appear anywhere upon the record that any notice of these proceedings was

served upon the Attorney General or any other State officer, although that portion of the National, or Cumberland road lying within the State had been turned over to the Commonwealth by the National Government many years before, and was, at the time these proceedings were begun, the property of the State. The condemnation proceedings, however, were pursued, and on October 4, 1888, the report of the master and viewers was confirmed absolutely, and since that time the road had been maintained by the county of Somerset, and not by "officers appointed for that purpose under existing laws out of revenues received from the collection of tolls thereon." If it is to be improved by your Department, such improvement must be made under and by virtue of the authority of the act of 1st of May, 1905 (P. L. 318). It is unfortunate that condemnation proceedings were instituted in this case, for the reason that every portion of this historic roadway ought to remain permanently in the possession of the State, subject to its care and maintenance, but, unfortunately, as the record now stands, through no fault of the State this portion of it, lying in Somerset county, is not in a position to be improved and maintained under the act of April 10, 1905. I doubt whether it is in the power of the Legislature to afford a remedy in this case, so long as the condemnation proceedings remain a part of the record of Somerset county. If this action could be legally rescinded and the road restored to the possession of the State it might be possible to take the necessary legislative steps to include it among the other portions now under your care.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

TOWN CLERK.

The office of town clerk was not abolished by the act of April 12, 1905 (P. L. 142.)

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1906.

Hon. Joseph W. Hunter, State Highway Commissioner:

Dear Sir: I am in receipt of your letter of recent date, asking whether the office of town clerk was abolished by the act of April 12, 1905 (P. L. 142).

A careful examination of the statutes of April 15, 1834, and June 12th, 1893, as well as that of April 12, 1905, discloses the fact that, while the duties to be performed under the former acts by the town clerk are largely, if not entirely, superseded by the duties to be per-

formed by the secretary of the board of supervisors created by the latter act, there are no express words of repeal of the former law, nor is there a specific abolition of the office, and I am therefore of the opinion and advise you that the office is still in existence and may legally be held and the emoluments thereof collected by the person holding it.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### STATE ROADS.

In a dispute between a contractor and sub-contractor of a State road, the Highway Commissioner may pay the contractor in full for his work and take adequate security therefor, provided there is no doubt as to what the amount of the balance is. If there is such doubt it is wise for the Highway Commissioner to pay the amount conceded to be due into court.

Office of the Attorney General,  
Harrisburg, Pa., July 18, 1906.

Hon. Joseph W. Hunter, State Highway Commissioner:

Dear Sir: I am in receipt of your letter of recent date, enclosing communication from William H. Keller, Esq., of Lancaster county, relative to a controversy which has arisen in that county between John L. Hanna, Jr., contractor for a State road in Providence township, and Clarence D. Stoner, a sub-contractor, who has filed a claim in the nature of a mechanic's lien against Mr. Hanna. The question raised by the communications you enclose is entirely one of procedure under the act of June 4, 1901 (P. L. 431), and must be determined in accordance with the provisions of section 6 of the said act, which reads as follows:

"Where labor or materials are furnished for any structure or other improvement for purely public park purposes, in lieu of the lien given by this act any sub-contractor, who has furnished labor or materials thereto, may give a written and duly sworn notice to the Commonwealth, or any division or subdivision thereof, or any purely public agency thereunder, being the owner of the structure or other improvement, setting forth the facts which would have entitled him to a lien as against the structure or other improvement of a private owner; whereupon, unless such claim be paid by the contractor, or adequate security be given or have been given to protect all such claimants, the Commonwealth, or the division or sub-division thereof, or purely public agency thereunder, shall pay the balance actually due the contractor into the court of common pleas of the county in



which the structure or other improvement, or the part thereof, is situate, for distribution to such parties as would be entitled thereto were it paid into court in the case of a private owner; and the Commonwealth hereby does, and any division or sub-division thereof, or any purely public agency thereunder, may require that any contract for public work shall, as a condition precedent to its award, provide for approved security to be entered by the contractor to protect all such parties. If a dispute arise as to the balance actually due, the amount admitted shall be paid into court, and a suit brought to recover the disputed part, in the name of the contractor to the use of the parties interested, and any amount recovered shall be distributed as above set forth."

If Hanna, the contractor, shall give "adequate security" to the Commonwealth, you will be entirely justified in paying over to him the balance due on the contract, provided there is no dispute as to what the amount of this balance is. If there is a dispute between yourself and the contractor as to the amount he is entitled to, then it would be wise for you to pay into court the amount conceded to be due and let the parties in interest establish their respective claims to the fund, otherwise you should accept the security of the contractor, Hanna, and pay the money over to him.

I return herewith the papers in the case.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

STATE HIGHWAY COMMISSIONER.

If under the practice of the State Highway Department a township is permitted to make direct expenditure of its road tax money, the lighting of a dangerous section of a road is a proper expenditure.

Office of the Attorney General.

December 5th, 1905.

Hon. Joseph W. Hunter, State Highway Department, Harrisburg:

Sir: I herewith return the letter of Mr. Berstler of Coatesville, Pa., and am of opinion that, if under the practice of your Department you permit the direct expenditure by a township of any portion of its road tax money upon the maintenance of a road without requiring the same to pass through your hands, the lighting of a dangerous section of the road is a proper expenditure and may be sanctioned.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## STATE HIGHWAY COMMISSIONER.

The Attorney General refuses an opinion upon a local matter in which the State has no concern.

Office of the Attorney General.  
Harrisburg, Pa., Dec. 28, 1906.

Mr. R. D. Beman, Chief Clerk, Department of Highways:

Sir: I acknowledge the receipt of copies of letters received by your Department from Ellis Haines, Esq., of Williamsport, and a copy of the record in the case referred to by him, in which he asks for an opinion which it would please him to obtain from me through you at my earliest convenience.

An examination of this correspondence discloses the fact that there is an alleged vacancy in the office of Supervisor in Muncy township, Lycoming county. Such being the case, I am at a loss to understand why your Department or this Department should be asked to determine whether or not such vacancy exists. The question is one which concerns a purely local matter, with which the State has no concern. I advise you that it is not within the province of your Department nor mine to comply with the request. I am

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

STATE HIGHWAY COMMISSIONER.

The Act of May 1, 1905 (P. L. 318), creating the State Highway Department, does not apply to the incorporated town of Bloomsburg.

The word "Borough" in the act is restrictive and is not broad enough to cover "incorporated towns."

Office of the Attorney General.  
Harrisburg, Pa., Dec. 29, 1906.

Hon. R. D. Beman, Assistant Highway Commissioner:

Sir: You ask whether or not the act of May 1, 1905 (P. L. 318), providing for the establishment of a State Highway Department can be held to apply to the incorporated town of Bloomsburg, and you advise me in this connection that Bloomsburg was incorporated as a town by special act of the Legislature of March 4, 1870 (P. L. 343).

The act under which your Department is organized is one providing for the establishment of a State Highway Department. The preamble expressly declares that the public highways should be systematically improved and that the several counties and townships

should have the aid and encouragement of the State in the building and maintenance of improved highways. The various sections of the law are intended, as far as practicable, to give effect to this important and beneficent purpose.

The 17th section expressly relates to a condition of affairs likely to be encountered, that where a portion of an important main highway, traversing one or more townships, and for the improvement of which, according to the provisions of the act, application has been made by said township or townships which lie within the limits or traverse any borough or boroughs, and where the failure of said borough or boroughs to improve the said highway would leave a beak or unimproved section in a continuously improved highway, it shall be lawful for the County Commissioners of the county in which said highway is located to enter into an agreement with said borough or boroughs to bear a portion of the expenses of said improvement of the highway within the borough limits, in the same manner as is within provided for co-operation between the counties and townships. The remaining provisions of the section are familiar to you and do not call for specific quotation.

I am of opinion that the meaning and purpose of the act, as well as the letter of this 17th section, are not broad enough to include the incorporated town of Bloomsburg, and that the mere use of the word "boroughs" is sufficiently restrictive to exclude the town of Bloomsburg from the provisions of the law. In fact, although in common usage the words "town" and "borough" are sometimes synonymous, yet legally, so far as their government and organization are concerned, they are distinct, and I do not perceive in the act an intention on the part of the Legislature to fasten upon the State the expense of contributing to the construction or improvements of the streets of incorporated towns. If the Legislature so intended to apply the public funds in relief of incorporated towns, the intention should be plainly expressed.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General

---

---

OPINIONS TO THE COMMIS-  
SIONER OF FISHERIES.

---

---

## OPINIONS TO THE COMMISSIONER OF FISHERIES.

## CONSTRUCTION AND MAINTENANCE OF FISH WAYS—FISH LAW.

A dam constructed by a corporation during the spring and summer of 1901, is subject to the provisions of the act of May 29, 1901, requiring the construction and maintenance of fish ways.

Office of the Attorney General,  
Harrisburg, Pa., May 31, 1905.

W. E. Meehan, Commissioner of Fisheries:

Dear Sir: I have before me your communication of recent date, enclosing a letter from the secretary and treasurer of the Pennsylvania Power Company, in which he makes certain statements in reference to the construction of a dam owned and operated by that corporation. From these statements it appears that the dam in question was constructed during the spring and summer of 1901. You ask for an official opinion as to whether or not, this being the fact, the corporation is subject to the provisions of section 13 of the act of May 29, 1901, P. L. 307, which reads as follows:

"That from and after the passage of this act, any person, company or corporation, owning or maintaining a dam or dams, or who may hereafter erect or maintain a dam or dams, in any waters in this Commonwealth, shall immediately, on a written order from the Fish Commissioners, erect therein such chutes, slopes, fishways or gates as the commissioners may decide necessary, to enable fish to ascend or descend the rivers at all seasons of the year; and any person, company or corporation refusing or neglecting to comply with the provisions of this section, shall forfeit and pay the sum of fifty dollars for every month he or they so neglect, which sum or sums shall be recovered by civil suit and process, in the name of the Commonwealth, and when collected shall be paid into the treasury of the State for the use of the Fish Commissioners. If, after the lapse of three calendar months, the person, company or corporation owning or maintaining said dam or dams, shall neglect or refuse to erect or place the appliances as directed by the Fish Commissioners, the Board of Fish Commissioners are empowered to enter upon such dam or dams, and erect such slopes, chutes or fishways or gates as they may decide necessary; and the cost thereof shall

be charged against the person, company or corporation owning or maintaining such dam or dams, to be recovered by the Board of Fish Commissioners by civil suit and process, in the name of the Commonwealth: Provided, that where, by reason of any dam or dams having been constructed prior to the requirement by law of the placing of chutes, slopes or fishways therein, or for any other reason, the owner or owners of, or person or persons maintaining such dam or dams cannot be compelled by law to pay the cost of erecting slopes, chutes or fishways as provided in this section, the cost of erecting such slopes, chutes and fishways by the Fish Commissioners, as provided in this section, shall be paid by the Commonwealth of Pennsylvania, out of the funds not otherwise appropriated, upon warrants drawn by the Auditor General upon the State Treasurer. The Auditor General to be furnished by said Fish Commissioners with an itemized statement of the cost of such construction, which must be approved by him before he shall draw a warrant for the payment of the same."

I am clearly of the opinion that the said corporation is subject to the foregoing provisions. In an official construction of the act in question to H. C. Demuth, Esq., treasurer of the Board of Fish Commissioners, on January 23, 1902, a copy of which communication I enclose herewith, I set forth at length my views upon the effect of this act under circumstances somewhat similar to those in the case now before your Department, and have no reason to depart from the conclusions which I reached therein.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

THE OHIO FISHERIES—FISH LAW—USE OF SEINES IN THE OHIO RIVER—REQUIREMENTS FOR NETTING CARP—SEIZURE OF NETS—ACT OF 1905, P. L. 310.

It is the duty of the fish wardens, in cases where they have knowledge of seines being used from or kept upon house boats in the Ohio river or streams contiguous thereto, to demand the production of the permit issued by the authorities allowing the owners of the seine to use the same for the capture of carp, and upon the failure of the proper parties to produce the bond provided for by the act of 1905, P. L. 310, to seize and confiscate any illegal nets so found.

It is unlawful to use a seine for any purpose whatever in the Ohio river and contiguous streams for the reason that these rivers do not contain any fish which may lawfully be caught with a seine at any time of the year, unless it be carp, which under the act of 1905, P. L. 310, may be taken with a four-inch mesh seine after bond filed.

Office of the Attorney General,  
Harrisburg, Pa., June 7, 1905.

Hon. W. E. Meehan, Commissioner of Fisheries:

Sir: Your letter of recent date, asking for an official opinion relative to the authority and duty of your wardens to seize and confiscate any nets or seines carried on house boats in the Ohio river or its branches within this Commonwealth, received.

After a thorough examination of the acts of Assembly upon this subject I am satisfied that it is unlawful to use a seine for any purpose whatever in the Ohio river and contiguous streams, for the reason that these rivers do not contain any fish which may lawfully be caught with a seine at any time of the year, unless it be carp, which, under the act of April 26, 1905, may be taken by a seine having a mesh of four inches between September 1 and June 20. The law provides that before a seine can be used for the capture of carp, a bond must be given by the person so using the same, which bond must be approved by the court of the county in which the owner of the seine resides.

Section 37 of the act of May 29, 1901, distinctly provides that "the possession of nets \* \* \* or other devices prohibited or not permitted by law, shall be prima facie evidence of the violation of the act."

It is therefore the duty of your wardens, in cases where they have knowledge of seines being used from or kept upon house boats in the Ohio river or streams contiguous thereto, to demand the production of the receipt or permit issued by the authorities, allowing the owners of the seine to use the same for the capture and destruction of carp, and upon the failure or inability of the proper parties to produce said bond, to seize and confiscate any illegal net or nets so found.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## FISH BASKETS—LICENSE TO MAINTAIN FOR THE PURPOSE OF TAKING EELS—ACT OF APRIL 27, 1903.

Under the act of April 27, 1903, P. L. 319, a license to operate a fish basket with wing walls for the purpose of taking eels confers that privilege only on the person named in the license, and that person alone has the right and authority to operate a fish basket constructed in accordance with the law.

The discretionary power of the Commissioner of Fisheries in matters of this kind is broad enough to permit him to deviate from the strict letter of the law in individual cases where such a construction would work a manifest hardship to an honest holder of a license, who might, for some unforeseen reason, such as a temporary physical disability, find it necessary to have assistance in fishing the basket, or to have work done temporarily by some one else under his direction and authority, but in all such cases the written permission of the department should first be applied for and obtained.

Office of the Attorney General,  
Harrisburg, Pa., September 27, 1905.

Hon. W. E. Meehan, Commissioner of Fisheries:

Dear Sir: I have before me your letter of recent date, in which you ask to be officially advised whether the license to operate a fish basket with wing walls for the purpose of taking eels, under the provisions of the act of April 27, 1903 (P. L. 319), is to be considered as a privilege granted to a particular person or a permit issued for the use of a specific apparatus; in other words whether it is the person or the thing to be operated which is licensed by the State.

In order to arrive at a proper conclusion, it is necessary for us to consider the language of the act so that the intention of the Legislature may be understood. The law distinctly provides that the license is to be issued to a person who must be a citizen of this Commonwealth; that the written application made to the Department for the granting of the license must bear "the name and place of residence of such applicant and his description as near as may be;" and that the said certificate or license when issued, "shall authorize the owner thereof to take eels from the waters of this Commonwealth as provided in the first section of this act. Said certificate or license shall not be transferable, and shall be exposed for examination upon demand."

In the light of this language it is perfectly clear that the intention of the Legislature was to permit eels to be taken in this manner by certain persons duly licensed by the Department, under certain restrictions and regulations named in the act. It is equally clear, and I therefore advise you, that the right granted by the license can be enjoyed only by the person named therein, and that this person alone has the right and authority to operate a fish basket constructed in accordance with the law.



I desire, however, to advise you further that your discretionary power in matters of this kind is broad enough to permit you to deviate from the strict letter of the law in individual cases where such a construction would work a manifest hardship to an honest holder of a license, who might, for some unforeseen reason such as a temporary physical disability, find it necessary to have assistance in fishing the basket, or to have work done temporarily by some one else under his direction and authority, but in all such cases the written permission of your Department should first be applied for and obtained.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMMISSIONER OF FISHERIES.

There is no conflict between sections 12 and 16 of the act of April 2, 1905, classifying the species of fish in the lakes of the Commonwealth.

Nets and similar devices may be used in taking fish in the boundary lakes between the fifteenth day of November and the fifteenth day of March of the succeeding year and at no other time.

Office of the Attorney General,  
Harrisburg, Pa., October 10, 1905.

Hon. William E. Meehan, Commissioner of Fisheries:

Sir: Your letter of yesterday, pointing out an apparent conflict in terms between sections 12 and 16 of the act of April 12, 1905, entitled "An act to classify the species of fish in such parts of boundary lakes, etc.," and asking for an official opinion relative to the same, is before me.

The first part of section 12 provides:

"That it shall be unlawful to fish with any nets, or other devices of any description, excepting a rod and line having not more than three hooks, or a hand-line having not more than three hooks, or with a trolling-line with spoon-hooks attached, in any waters of any part of any lakes described in this act, over which this Commonwealth has jurisdiction, from the fifteenth day of November of any year to the fifteenth day of March of the succeeding year."

The section also provides severe penalties for the violation thereof, including fine, imprisonment, confiscation of all boats, nets or other appliances used by the offenders. This language is plain and direct, and no doubt can possibly exist as to the intention of the Legislature in enacting the same.

Section 16 of the act, however, provides that any person or persons, company or corporation may apply to the Department of Fisheries for a license to operate any boats, nets or other device in any of the waters where they may be used legally under the provisions of this act, and upon payment of certain specified fees the Department is authorized and directed to issue such license, which license shall hold good from the time it is issued until the close of the calendar year in which it is issued.

It appears that some persons holding such licenses contend that, because the licenses are made for one year, they have the right to fish with nets and other devices, under the authority of the license, in contravention of the express terms of section 14. In this conclusion I cannot agree. It is entirely clear that there is no conflict between the two sections. Section 16 merely fixes the time when the license shall expire, to wit: The close of the calendar year, and must be read in *pari materia* with section 14, which fixes the time within which such nets or devices may be legally used. I therefore advise you that the licenses in question confer no right upon the holders thereof to fish with the nets or other devices between the fifteenth day of November of any year and the fifteenth day of March of the succeeding year.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMMISSIONER OF FISHERIES.

The act of Assembly conferring the right on the Commissioner of Fisheries to confer authority upon any person or persons to take carp, suckers and mullets with seine nets from September 1st to June 20th is broad in its terms and leaves the matter of detail largely to the discretion of the Commissioner.

The authority may be extended to one person or a dozen, but their names should be mentioned in the permit and also in the bond accompanying the same. The persons so authorized may employ others to assist them in working the seine, but are responsible for any illegal acts committed by them.

Office of the Attorney General,  
Harrisburg, Pa., October 10, 1905.

Hon. William E. Meehan, Commissioner of Fisheries:

Sir: I am in receipt of your communication of yesterday, asking whether the authority granted by your Department to any person or persons to take carp, suckers and mullets from the waters of the Commonwealth with seine-nets from September 1st until June 20th inclusive is a personal privilege which can be enjoyed by persons other than those named in the bond.

In reply I desire to say that the act in question is very broad in its terms and leaves the matter of detail very largely within your discretion. Under its terms you can extend this authority to one person or to a dozen. Their names, however, should be mentioned in the permit and also in the bond accompanying the same, which is filed in your Department. The persons authorized by the permit and named in the bond may employ others to assist them in working the seine, but are, of course, responsible for any illegal acts committed by the persons so employed.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMMISSIONER OF FISHERIES.

The Fish Commissioner has the power to seize and confiscate any nets set in the water of Lake Erie within the jurisdiction of Pennsylvania during the closed season from November 15th to March 15th, whether the owners are apprehended or not.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

Hon. W. E. Meehan, Commissioner of Fisheries:

Sir: I am in receipt of your letter of recent date, relative to the act of April 2, 1905, entitled "An act to classify the species of fish in such parts of boundary lakes," etc. You quote the language of section 7 and section 12 of the act and ask whether, under the wording of the said sections your Department has the right, in case its officers find any nets set in the water of Lake Erie, within the jurisdiction of Pennsylvania, between the fifteenth day of November in any year and the fifteenth day of March of the succeeding year, which time is made by the said act a closed time for the use of such devices, to seize and confiscate the said nets or devices, even though the persons operating said nets are not captured and no arrests can be made and the Department has no knowledge of the ownership of said nets.

In reply I advise and instruct you that, as the confiscation of the nets and devices is merely an additional penalty imposed upon the persons guilty of violating the law, you have the power and authority to seize and confiscate the nets in all cases where the owners cannot be found or apprehended, as well as where this is done.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## COMMISSIONER OF FISHERIES.

The snapping turtle cannot be classed as "terrapin."

Office of the Attorney General,  
Harrisburg, Pa., May 29, 1906.

Honorable W. E. Meehan, Commissioner of Fisheries, Harrisburg,  
Penna.

Dear Sir: I have your letter of the 24th instant and I note what you say about desiring an official ruling on the act of April 6, 1905 (P. L. 155).

The act in question makes it unlawful to "catch, take or kill \* \* \* terrapin save only from the first day of November until the fifteenth day of March in each year," and you desire to be informed whether or not the snapping turtle comes under the head of terrapin.

This is hardly a legal question, but I have given it consideration, and taking the Century Dictionary definition, "one of several different fresh water or tide water tortoises of the family Emididae, specifically in the United States the diamond-back," I am inclined to believe that the red leg terrapin comes under the same ruling, but cannot see how the snapping turtle can possibly be classed under the prohibitive head.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

WING WALLS.

The Department of Fisheries has no concern with the question whether its licensee to take eels by means of an eel pot upon wing walls in a public stream acquires property rights to the wing walls such as to prevent the use of the same spot by a licensee of the county treasurer.

Office of the Attorney General,  
Harrisburg, Pa., July 18, 1906.

Hon. W. E. Meehan, Commissioner of Fisheries, Harrisburg, Pa.:

Dear Sir: Your letter of even date is before me. In it you ask to be advised whether or not a person building wing walls in a public stream, and securing a license authorizing him to take eels by means of an eel pot, thereby acquires a property right in said wing walls which would preclude the county treasurer from issuing a license to another party for the same spot.

This is a matter with which your Department has absolutely no concern. Under the law as it now stands, any party applying for a

license in the manner specified by the act is entitled to receive the same upon payment of the regular fee, and the question of the conflicting right of licensees must be settled by themselves in another forum.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### EEL BASKETS.

The eel baskets required under the act of April 27, 1903, must have the entire bottoms removable, and the slats thereon must at all times be one-half inch apart.

Office of the Attorney General,  
Harrisburg, Pa., September 27, 1905.

Hon. W. E. Meehan, Commissioner of Fisheries:

Dear Sir: I have before me your communication of the 20th inst., asking for an official opinion upon several question which have arisen in regard to the proper legal construction to be placed upon the language of the first section of the act of April 27, 1903 (P. L. 319), which reads as follows:

"That from and after the passage of this act, it shall be lawful to catch eels in the waters of this Commonwealth, by use of fish baskets with wing-walls: Provided, that every basket so used shall be made of slats not less than one-half inch apart, with a movable bottom, which shall be taken out of each basket, so used, at sunrise, and be kept out until sunset; and no basket shall be used or operated for the taking or catching of eels, excepting from the twenty-fifth day of August to the first day of December in each year: Provided, that the penalty for using said basket at any other time, or in any other manner, than is authorized by this act, and for catching and taking any other fish than eels from the streams or waters of this Commonwealth by the use of such baskets, shall remain as heretofore."

You asked to be advised on these two points:

1. Whether the words "with a movable bottom, which shall be taken out of each basket so used" mean that the entire bottom of the falls must be taken out or only a portion thereof.
2. Whether the words "that every basket so used shall be made of slats not less than one-half inch apart" mean that this space shall be determined at the time the basket is constructed or after it has been placed in position to be fished, and after the wood is swollen by contact with the water.

In reply to the first question I beg to say that, giving the words used by the Legislature their proper meaning, it is obvious that the word "bottom" means the entire bottom and not a portion thereof. I therefore advise you that, to comply with the letter and the spirit of the act, the entire bottom of the fall must be removable and taken out, in accordance with the provision of the law, at sunrise and kept out until sunset.

In regard to your second question, the evident intention of the Legislature was to provide for a space of not less than one-half inch between the slats in the basket while the same was being fished, in order that the small fish drawn into the basket should have proper means of escape. It therefore follows that the space provided by the act, to wit: One-half inch between the slats, must be preserved at all times without regard to the space between the slats at the time the basket was constructed; otherwise, any person charged with a violation of the law in this regard might set up the plea that, at the time the basket was constructed a sufficient space was left to comply with the requirements, but that by continued exposure to the water the wood had become swollen and the space correspondingly decreased. I am therefore of the opinion, and advise you, that the half inch space between the slats provided for by the act must exist at all times. Any deviation therefrom constitutes an offense which should be properly and promptly punished.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMMISSIONER OF FISHERIES.

The owner of a dam in which are chutes or fishways, as provided by law, must keep the same in repair.

Office of the Attorney General.  
Harrisburg, Pa., Dec. 28, 1906.

Hon. W. E. Meehan, Commissioner of Fisheries:

Sir: You call my attention to section 13 of the act of May 29, 1901 (P. L. 302), which provides that under certain circumstances therein detailed the owners of dams must build fish-ways therein of types approved by the Fish Commissioner, and you ask in cases where such fish-ways are built by the owners which subsequently need repairing, at whose cost the repairs must be made—whether at the cost of the owners or of the Commonwealth?

Section 13 of the act to which you refer, quoted in full, is as follows:

\*“That from and after the passage of this act any person, company or corporation, owning or maintaining a dam or dams, or who may hereafter erect or maintain a dam or dams, in any waters in this Commonwealth, shall immediately, on a written order from the Fish Commissioners, erect therein such chutes, slopes, fishways or gates as the Commissioners may decide necessary, to enable fish to ascend the rivers at all seasons of the year; and any person, company or corporation refusing or neglecting to comply with the provisions of this section, shall forfeit and pay the sum of fifty dollars for every month he or they so neglect, which sum or sums shall be recovered by civil suit and process, in the name of the Commonwealth, and when collected shall be paid into the Treasury of the State for the use of the Fish Commissioners. If, after the lapse of three calendar months, the person, company or corporation owning or maintaining said dam or dams, still neglect or refuse to erect or place the appliances as directed by the Fish Commissioners, the Board of Fish Commissioners are empowered to enter upon such dam or dams and erect such slopes, chutes or fishways or gates as they may decide necessary; and the cost thereof shall be charged against the person, company or corporation owning or maintaining such dam or dams, to be recovered by the Board of Fish Commissioners by civil suit and process, in the name of the Commonwealth. Provided, that where, by reason of any dam or dams having been constructed prior to the requirement by law of the placing of chutes, slopes or fishways therein, or for any other reason, the owner or owners of, or person or persons maintaining such dam or dams cannot be compelled by law to pay the cost of erecting slopes, chutes or fishways, as provided in this section, the cost of erecting such slopes, chutes and fishways by the Fish Commissioners, as provided in this section, shall be paid by the Commonwealth of Pennsylvania, out of the funds not otherwise appropriated, upon warrants drawn by the Auditor General upon the State Treasurer. The Auditor General to be furnished by said Fish Commissioners with an itemized statement of the cost of such construction, which must be approved by him before he shall draw a warrant for the payment of same.”

I have observed that your inquiry refers to that portion of the foregoing section which requires the owner to build, and not to that part which provides for a building at the expense of the Commonwealth. The plain question intended, I take it, to be answered by me is this: When repairs become necessary to chutes or fishways built by the owner, is the owner or the Commonwealth to be put to the cost of making such repairs? Upon a careful consideration of the whole act, taking the section in its entirety, it is clear to me that the owner of the dam should make the necessary repairs at his

own cost, so that the purpose of the act and all its provisions may be carried into complete effect. The act itself makes no provision with reference to such repairs, nor does it impose upon anyone the duty of keeping chutes and fishways in repair but this silence on the part of the Legislature should not be permitted to negative the useful and effective provisions of the law. It is clear to me that the requirements of the law with reference to the erection of such chutes or fishways carry with them the further requirement to keep the same under repair so as to make effective at all times the provisions of the act.

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

COMMISSIONER OF FISHERIES.

The owners of a dam destroyed by freshet since the date of the Act of 29th of May, 1901 (P. L. 302), where the dam has been rebuilt, must place in the dam the chutes, slopes or fishways provided for in the act.

Office of the Attorney General.  
Harrisburg, Pa., Dec. 28, 1906.

Hon. W. E. Meehan, Fish Commissioner:

Sir: I have your letter of yesterday, in which, after quoting section 13 of the act of May 29, 1901 (P. L. 302), you asked for an opinion upon the following facts:

You state that a dam was built across a certain stream many years ago and has been rebuilt or repaired from time to time. Two years ago a large portion of the dam was torn out by an ice freshet, and when the owner was about rebuilding he was notified to place a fishway therein at his expense. He failed to do so, and through an oversight the matter passed until a few months ago, when the order was renewed. Since the dam was rebuilt or repaired the ownership has changed hands. You ask whether, under section 13 of the foregoing act, you can compel the present owner to erect a fishway therein at his cost, or whether the rebuilding or repairing of the dam brings the owner within the first part of the provision of section 13, or whether the cost of building a fishway must be paid by the State, if such fishway be built.

I need not quote the language of section 13, as I have already quoted it in extenso in a letter sent to you of this date. Under the facts as stated, I am of opinion that the rebuilding and maintenance of a dam destroyed by a freshet since the date of the act of 29th of May, 1901, brings the case clearly within the terms of the first por-



tion of the section, and that the proviso in the latter part of the section which imposes the cost upon the State, is not applicable to the facts in hand but can only apply to a case where it is clear that the dam lacking the fishway had been constructed prior to the requirement by law of the placing of chutes, slopes, or fishways therein. The total destruction of a dam by an act of nature since the passage of the act of 1901 involving its rebuilding, or a partial destruction of such a dam after the passage of the act of 1901, but involving for its maintenance extensive repairs by the owner who neglects to provide the fishway required by you, cannot in any sense of the term, place the dam so rebuilt upon the footing of a dam undoubtedly constructed without a fishway prior to the operation and effectiveness of the act of 1901. In my judgment, you have the power to require the present owner of the dam acquiring title subsequent to your notice to place the fishway therein at his own expense, or failing therein, you can resort to the other provisions of the law in order to secure this result. I am,

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

---

---

OPINIONS TO BOARD OF PUBLIC  
GROUNDS AND BUILDINGS.

---

---

## OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

STATE BRIDGES—ACTS OF JUNE 3, 1895 (P. L. 130) AND APRIL 21, 1903 (P. L. 230).

The proceedings for the erection of a bridge by the State over the Susquehanna river at Berwick, having been legally and orderly complied with, and a decree of the court of common pleas of Dauphin county having been made that the bridge shall be erected at a point differing slightly from the location of the old bridge, the Board of Public Grounds and Buildings has authority to erect the new bridge at the point recommended by the viewers.

The Board of Public Grounds and Buildings has power to reject any and all bids for the construction of the bridge and may readvertise for bids. It also has control of the engineer appointed by it. Plans and specifications for a bridge to cost \$295,000 are at variance with a report of viewers recommending a bridge to cost \$175,000.

Office of the Attorney General,  
Harrisburg, Pa., February 28, 1905.

To the Board of Public Grounds and Buildings, Harrisburg, Pennsylvania:

Gentlemen: In compliance with your request for an official opinion as to the duties and powers enjoined and conferred upon your Board, by the act of June 3, 1895 (P. L. 130), as amended by the act of April 21, 1903 (P. L. 230), providing that, under certain circumstances, the State shall rebuild or replace bridges carried away or destroyed by flood or wind storm, in relation to the special facts existing in the case of the proposed new bridge across the Susquehanna river, between the towns of Berwick and Nescopeck, I have the honor of submitting the following:

The act, as amended, provides a method for the rebuilding or replacing at the expense of the Commonwealth, of certain county bridges which have been destroyed or swept away by flood or wind storm. In the event of any county bridge across a navigable river, or a stream declared to be a public highway, by act of Assembly, being carried away or destroyed by flood or wind storm, the county commissioners, of the county in which such bridge is located, may apply, by petition, to the court of common pleas of Dauphin county, setting forth in the petition:

First. The location of the bridge.

Second. The time when the bridge was first erected in the same location.

Third. The time when the bridge was carried away by flood or destroyed by wind storm.

Fourth. The character of the bridge so carried away or destroyed.

Fifth. The probable cost of replacing the same.

Whereupon it shall be the duty of the court to appoint five viewers, one of whom shall be a civil engineer, and not more than two of whom shall be residents of the county wherein such bridge is proposed to be built. These viewers, after having been duly qualified, shall proceed "to view the location of the proposed bridge, and make report at such time as the court may direct; which report shall contain an accurate statement of the kind and character of the bridge carried away or destroyed, which it is proposed to replace, the length of time since the first bridge was built on the proposed location, the length of the bridge, together with a recommendation of the viewers as to the kind of bridge needed, and the probable cost thereof, and it shall be the duty of the said viewers to inquire whether the accommodation of the traveling public in the locality demands the rebuilding of said bridge."

It is also provided that the Attorney General shall have due notice of the time of filing the petition and the application for viewers, and it shall be his duty to appear for and defend the interests of the Commonwealth in all said proceedings.

Upon the filing of the report of the viewers, both the county and the Commonwealth shall have the right to file exceptions thereto, and it shall be the duty of the court, after full hearing, by depositions or otherwise, as the said court may direct, to determine all questions raised by the petition or exceptions, and to the final order or decree of the court both the county and the Commonwealth shall have the right of an appeal to the Supreme Court, at any time within thirty days.

After the report of the viewers, or a majority of them, in favor of the erection of the bridge, has been confirmed by the court, the court shall order and decree such rebuilding, and thereupon it shall be the duty of the Board of Public Grounds and Buildings immediately to proceed, and have prepared "in conformity with the report of the viewers" such plans and specifications of the proposed bridge as may be necessary, and appoint a superintendent of construction, and fix his compensation for said services, and, after advertising for bids, in the manner specified in the act, proceed to let the contract for the rebuilding of such bridge to the lowest and best bidder.

The act then proceeds: "In case they shall not conclude to reject all bids submitted, which they are hereby expressly authorized to do, and thereupon to readvertise in the manner aforesaid for bids, and upon acceptance of the lowest and best bidder, the Board of

Public Grounds and Buildings, on behalf of the Commonwealth, shall enter into a contract for the same with such bidder, under the advice and direction of the Attorney General." Such are the provisions of the law.

I understand that the bridge between Berwick and Nescopee was swept away by flood, about a year ago. The petition was duly presented to the court of common pleas of Dauphin county, by the proper officials, viewers were appointed, and a report made, providing for the rebuilding of the bridge at a distance of many feet below the location of the old bridge, and also in such manner as to avoid a crossing at grade of a railroad, instead of a crossing at grade as formerly. Exceptions were filed to the report on these two points. The location was then examined by the Deputy Attorney General, and a report submitted by Oscar E. Thomson, the engineer for the bridge, which stated that, in his judgment, the proposed (new) location was the only one where the State could, with propriety, build a bridge; that the overhead crossing should be constructed; that the cost of the same would be approximately fifteen thousand dollars (\$15,000), of which amount the Delaware, Lackawanna and Western Railroad Company were willing to contribute the sum of ten thousand dollars (\$10,000). Thereupon the exceptions were withdrawn, and the report was confirmed finally by the court. The report of the viewers estimated the cost of the proposed new bridge at one hundred and seventy-five thousand dollars (\$175,000). I understand further that the Board now has before it the plans and specifications submitted by Mr. Thomson, the engineer appointed by the Board, and that an estimate of cost has been made amounting to two hundred and ninety-five thousand dollars (\$295,000).

Upon these facts, the question arises whether the Board has authority to contract for a bridge at the new location, and whether the Board has power to contract at a cost so largely in excess of the estimate made by the report of the viewers.

Upon the first point, I reply that, while a close reading of the language of the second section of the amended act would seem to confine the building of the proposed bridge to the location originally occupied by the bridge destroyed—a conclusion deducible from the language that the viewers shall proceed "to view the location of the proposed bridge, and in their report state the length of time since the first bridge was built on the proposed location,"—yet on a further reading it appears that the viewers are empowered to include in their report a recommendation "as to the kind of bridge needed and the probable cost thereof, and that it is their duty to inquire whether the accommodation of the traveling public in the locality demands the rebuilding of said bridge."

I can well understand, from the language of the act, that the viewers are empowered to take a broad view of the needs of the traveling public, and that they are specially empowered to consider what kind of a bridge is needed, and that they shall pass upon the question of the cost of such needed bridge. The act, therefore, does not contemplate simply a reconstruction of a bridge, exactly similar in character, in length, or in kind, to the bridge destroyed, but allows a variation in these particulars. It seems to me that a consideration of the situation might well suggest the elevation of the new bridge above the point occupied by the old one, so as to remove the possibility of a destruction by a flood in the future, for it would be idle, in view of the continuing liability on the part of the Commonwealth, to rebuild bridges time and again when swept away—an obligation which is apparent in the amended act, requiring successive rebuildings by the Commonwealth—unless the possibility of disaster in the future were taken into consideration and guarded against. If such a prudent provision against future disaster, involving the elevation of the new bridge, is admissible, then clearly it would be something more than simply replacing the old one. And if, in connection with the location of the old bridge, a danger to the traveling public, such as a grade crossing, confronted the viewers, it would appear to be within their powers to depart somewhat from the strict location of the bridge destroyed. And if, in addition to this, there are special considerations, such as I am informed exist in the present case, as to the grades of the road upon the river bank, which constitutes the only approach to the town of Berwick, it would seem to be equally clear that the exigencies of the situation had entered into the consideration of the viewers, as well as of the engineer who aided in their deliberations.

However this may be, the matter has been reported upon by the viewers, and that report has been confirmed by the court, and I perceive no authority, in the Board of Public Grounds and Buildings, for disregarding the terms of that report or of practically overruling the action of the court. Hence, practically, I conclude that the objection to a lack of authority in the Board to erect a bridge in a new position from the old requires no further consideration at your hands. The point is covered by the report as judicially confirmed.

As to the second point, the cost of the bridge, I cannot advise you that an estimate of two hundred and ninety-five thousand dollars (\$295,000), is in conformity with a report presenting an estimate of one hundred and seventy-five thousand dollars (\$175,000). The duty of the Board, as stated in the third section of the amended act, is to proceed and have prepared "in conformity with the report of the viewers," such plans and specifications of the proposed bridge as may be necessary. And it is after advertising for bids, in the

manner specified in the act, that the Board shall proceed to let the contract, for the rebuilding of such bridge, to the lowest and best bidder.

In my judgment, the engineer appointed by your Board to prepare the plans and specifications, is your agent and subject to your control. If, in your judgment, such plans and specifications are not in substantial compliance with the report of the viewers, it is entirely within your power to direct the necessary changes to be made. The estimate of the probable cost made by the viewers, and the estimate made by your engineer, may not be the same, and it is not necessary, under the law, that they should be. They are at best matters of opinion, upon which even experts may disagree. But there should be at least but a reasonable difference between the figures, and the actual cost of the bridge will be the figure at which you are able to let the contract to a responsible bidder. This matter is within your own discretion and control, as the law gives you the power to reject any and all bids submitted, and to readvertise for new bids.

I am, therefore, of the opinion, and so advise you, that inasmuch as all the preliminary steps have been taken, in compliance with the statute, and the report of the viewers has been confirmed finally by the court, it is now the duty of your Board to rebuild the bridge in substantial compliance with the report of the viewers, in such a manner as best to accommodate the traveling public, and to protect the interests of the Commonwealth.

I am,

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

BOARDS OF PUBLIC GROUNDS AND BUILDINGS—FIRE INSURANCE  
FOR THE CAPITOL.

By the provisions of the contract for the building of the Capitol, the contractor must insure his interest in the Capitol from time to time, but is relieved from insuring those portions of the building occupied by the Commonwealth before the completion of the building.

The Capitol Commission not having sufficient funds to pay for such insurance, it is the duty of the Board of Public Grounds and Buildings to insure the portions of the building occupied and under the control of the State.

Office of the Attorney General,  
Harrisburg, Pa., May 25, 1905.

Mr. John E. Stott, Secretary Board of Public Buildings and Grounds:

Sir: I have examined the correspondence passing between your Board and the Capitol Building Commission in relation to the matter

of placing fire insurance on the Capitol Building for the protection of the interest of the State.

The 8th section of the contract made by the Capitol Building Commission with the contractor reads as follows:

"The contractor will insure the works to cover his interests in the same from time to time, and for any loss to the contractor by fire, the owner will not, under any circumstances, be answerable, accountable or liable; but the owner shall protect itself by insurance to cover its interest in the property."

The specifications accompanying the contract, in the clause relating to insurance protection, provide that:

"The contractor shall obtain at his own expense all necessary policies of insurance on the work and materials supplied by him, and the same will be at his risk until the final completion, inspection and acceptance of the building, but the contractor will be relieved of any risk of that portion of the building occupied by the Commonwealth before the entire completion of his contract."

The provisions are clear and specific, distributing the legal risk, and impose upon the State, as owner, the duty of protecting its interest in the property so far as that interest exists, the contractor's liability being limited to the protection of his interest in the work from time to time, and the contractor is, of course, relieved pro tanto to the extent of the diminution of his own personal risk by withdrawal from him of such portions of the building as are occupied by the Commonwealth before the completion of his contract.

This is the legal aspect of the case, but the extent and value of the interests of the State in the portions of the building occupied by the Commonwealth before the entire completion of the contract present a pure business question which I am unable to determine. I do not know to what extent the Commonwealth is in occupation of portions of the building, or what relative proportion these occupations bear to the entire structure not yet occupied.

I observe in the letter of the Capitol Building Commission, addressed to your Board, it is stated that the contractors now have \$300,000 of fire insurance upon the building. This, of course, covers only the contractor's interest in the building, and gives to the contractor a protection against loss by fire occurring to those portions of the building still under the contractor's control, without the right on the part of the contractor to call upon the State for any contribution whatever, but it is clear that, under section 8 of the contract, the State must protect its interest in the proper way by insurance, and that, if it fails to do so, the contractor is relieved



of any risk on that portion of the building occupied by the Commonwealth before the entire completion of the contract.

As the Capitol Building Commission has advised your Board that it has not sufficient funds available to add to the fire insurance now on the Capitol Building, or to renew the insurance already placed as it may expire, the question arises whether it is the duty of your Board to protect said building by such additional insurance while the same is in the course of construction, in the hands of the contractor. I am advised that the Board of Public Buildings and Grounds has, as a matter of fact, entered into the possession and control of a portion of the building, and that the Department of Public Instruction is also in possession. To this extent the building has passed into the possession of the Commonwealth, and the insurance ought to be adequate. If the portion so occupied is under the control of your Commission, the requisite insurance ought to be furnished at your expense.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### BOARD OF PUBLIC GROUNDS AND BUILDINGS.

A contract is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of the other or others.

The five necessary elements to a contract are a distinct offer, and acceptance thereof, a consideration, complete capacity to make a contract, a genuine consent to be bound and a legal object in view.

There was no contract between the Commonwealth and George F. Payne & Company for the building of approaches and improvements to Capitol Park, because the work was not embraced within the terms of the proposal, because no definite plans had been finally agreed upon, and because there was lacking to the award to Payne & Company the indispensable prerequisite of approval by the Governor, the Auditor General and the State Treasurer.

Office of the Attorney General,  
Harrisburg, Pa., September 27, 1905.

To the Board of Commissioners of Public Grounds and Buildings,  
Harrisburg, Pa.:

Gentlemen: I herewith submit my official opinion in accordance with your request upon the claim of George F. Payne & Company, as represented by Alexander & Magill.

It is claimed that a contract exists between your Board and George F. Payne & Company for the construction of approaches and improvements to Capitol Park, and particularly to furnish granite

as per specifications accompanying Item No. 22 under General Repair Schedule, the price bid being five per cent. below the maximum price fixed by your Board.

The counsel for Messrs. George F. Payne & Company have advised their clients that in their judgment they have a valid and binding contract with your Board for furnishing materials and performing labor required and provided by the plans and specifications under which their bid was made; that as the matter now stands they may be required to perform their contract within the time specified and that if they are correct in this it must follow that your Board is equally bound to perform its part of the contract.

A contract, under the careful analysis of Sir William Anson (probably the best analytical writer upon the principles of the law of contract), is the result of the two ideas of agreement and obligation. An agreement is the expression by two or more persons of a common intention to affect their legal relations, while obligation consists of a definite relation between the alleged contracting parties, and the liabilities of obligation must relate to definite acts or forbearances.

Hence, a contract may be defined to be "an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearances on the part of the other or others."

Or, as Mr. Justice Washington in *Dartmouth College v. Woodward*, 4th Wheaton, U. S. 518, says: "It may be defined to be a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquire a right to whatever is promised by the other."

It follows that to make an agreement enforceable at law, the agreement must consist of five necessary elements:

First, there must be a distinct offer and acceptance of the offer, either by words or by conduct, and there must be no obscurity in the terms or the subject matter itself; that is to say, there must be a definite and distinct communication by the parties to one another of their intention; second, there must be consideration; third, there must be complete capacity between the parties to make a valid contract; fourth, there must be a genuine consent to be bound expressed in the offer and acceptance, or in the acts or conduct which amount to such offer and acceptance, and lastly, there must be a legal object in view.

If upon an analysis of the facts in this case, any of these elements which are essential, are lacking, it will follow necessarily that no contract exists.

I have taken the pains to inquire into all the features and the facts relating to this matter, and my analysis differs in several

material particulars from the analysis presented by the able counsel representing the claimants.

The chief differences are these: I go back to an earlier period than the counsel in ascertaining the relations of the parties, and I also dwell upon certain features of the case which seem to have escaped his attention.

The facts as my study of the subject reveals them are as follows: (I shall observe a strictly chronological order in stating them so that their natural sequence may be borne in mind.)

A contract was entered into between the Commonwealth of Pennsylvania, acting by Commissioners appointed under the authority of the act of the General Assembly, approved the 18th day of July, A. D. 1901, such Commissioners being known as the Capitol Commission, and Joseph M. Huston, architect.

One of the subjects of that contract as included in the seventh clause, was, *inter alia*, the construction of the approaches in connection with the buildings necessary to complete said building or buildings.

It was found, on obtaining estimates of the cost of a building large enough to supply the needs of the several departments, and the sculpture and the mural painting, and the power, light and heat plants, that there was not sufficient money left to construct the approaches, so that this part of the work was not contracted for by the Capitol Building Commission. The matter was then taken up with the Board of Commissioners of Public Grounds and Buildings, and the architect explained to the Board his ideas on these approaches and other repairs and improvements to Capitol Park, with the result that he was employed by them on April 5, 1904, as architect for these approaches and improvements to Capitol Park, as per resolution standing upon your minutes.

The relations of your Board to the matter under discussion originate, therefore, in this resolution.

There was presented by the architect to the consideration of your Board a plan entitled "The drawings of wall, ground plan, A, approaches and improvements to Capitol Park." This is endorsed, "Approved April 5, 1904, J. M. Shumaker, Superintendent." It also has stamped upon it the words "Architect's date, 3-15-04." The drawing presents a wall and clock tower, with a scale of 1-50 inch—1 foot. This apparently would make the wall 13 feet 5.16 inches high, exclusive of balustrade, and a balustrade of the height of 3 feet 6 inches.

The next step was the advertisement of your Board under the provisions of the act of March 26, 1895, for sealed proposals for "stationery, fuel, and other supplies for several departments of the State Government, also the furnishing of the new Capitol Build-

ing with carpets, furniture, electric light fixtures, etc., etc., and for making repairs in the several departments, for the distribution of the public documents, for the year ending the first Tuesday of June, A. D. 1905."

It was distinctly announced that separate proposals would be received and separate contracts awarded as announced in the schedules. Each proposal was to be accompanied by a bond with at least two sureties, or one surety company approved by a judge of the county in which the person or persons making the proposal may be residing, conditioned for the faithful performance of the contract, and addressed and delivered to the Board of Commissioners of Public Grounds and Buildings before twelve o'clock M. Tuesday, the 7th day of June, 1904, at which time "proposals will be opened and published in the reception room of the Executive Department at Harrisburg, and contracts awarded, as soon thereafter as practicable."

Blank bonds and schedules containing all necessary information were obtainable at the Department.

I pause here to note the fact that there is no reference in the advertisement for proposals for work specifically designated as approaches or improvements to Capitol Park. The specific reference is to supplies for the several departments of the State Government and the furnishing of the new Capitol Buildings with carpets, furniture, electric light fixtures, etc., and for making repairs in the several departments and for the distribution of the public documents.

The subject matter, therefore, of the contract alleged to exist between your Board and George F. Payne & Co. is not included in the advertisement for proposals in terms. It is contended, however, that it is embraced under the general repair schedule. An examination of the general repair schedule shows that the contractor was "to furnish immediately on call of Superintendent of Public Grounds and Buildings any mechanics, helpers or laborers, and all tools and appliances that may be required for repairs and alterations in or on the public grounds and buildings, including the several departments, Senate, House of Representatives, Executive mansion, conservatory and State arsenal, during the contract year, at the maximum prices enumerated below, the Superintendent reserving the privilege of rejecting any mechanics, helpers or laborers who in his estimation are not competent to do the work properly, and if not substituted immediately by the contractor with competent workmen, the Superintendent will provide mechanics, helpers and laborers from the open market, and any difference in cost will be at the expense of the contractor.

"Any material required to be furnished by the contractor, not enumerated in the schedule, shall be fur-

nished at the wholesale market price, first, however, samples of material and process to be submitted to the Superintendent for his approval before purchase is made, and an affidavit filed with the statement stating that prices are actual, amount paid, and material as per selection of Superintendent. It is the preference of the Board to award this contract to the lowest average bidder: Provided, however, that he is a reliable contractor. No bids will be entertained from any except a general contractor who is at all times ready to perform work promptly, the Board reserving the right to reject any bid."

Attached to the general repair schedule was a description of articles, consisting of twenty-two items, none of which items in terms related to work upon the approaches or improvements to the Capitol grounds. The twenty-second item read as follows:

"Furnish granite, per specifications, per cubic foot, maximum price \$10.00."

The certified schedule in the possession of the Superintendent of Public Grounds and Buildings shows on page 67 that George F. Payne & Co. was a bidder upon items one to twenty-two inclusive. Payne's bid was five per cent. off. The bid reads as follows:

"To Board of Public Grounds and Buildings:

"We, George F. Payne & Co., hereby propose and agree to furnish carpenters, bricklayers, materials, etc., for general repairs for the use of the several Departments for the year ending the first Monday of June, 1905, as per advertisement and schedule therein referred to, at the rate marked on schedule per centum below maximum prices fixed in said schedule for the several articles named therein, subject to the terms and conditions named in said schedule.

GEORGE F. PAYNE & Co.

Philadelphia, Pa., June 7, 1904."

Attached to this formal proposal is a printed copy of the general repair schedule as appears upon page 67 of Superintendent's book; item twenty-two shows that Payne & Co. bid five per cent. off.

Attached to the bid or proposal was a bond executed by George F. Payne and Charles G. Wetter, trading as George F. Payne & Co., and the United States Fidelity and Guarantee Co., of Baltimore, Md., in the sum of five thousand dollars, conditioned for the performance and fulfillment concerning all furnishing of carpenter work, mechanics, material, etc., under heading of general repair schedule.

An examination of the certified schedule in possession of the Superintendent of Public Grounds and Buildings immediately fol

lowing page 68, shows "Contracts awarded June 14, 1904, as follows: General repair schedule, George F. Payne & Co., items one to twenty, inclusive.

SAMUEL W. PENNYPACKER,  
Governor.

W. P. SNYDER,  
Auditor General.

W. L. MATHUES,  
State Treasurer.

Approved,  
J. M. SHUMAKER,  
Superintendent Public Grounds and Buildings."

Following this approval is the following certificate:

"To Honorable W. P. Snyder, Auditor General:

"I do certify that the contract for furnishing general repair schedule for the use of the several Departments of the State Government for the year ending the first Monday of June, 1905, was awarded to George F. Payne & Co. and W. Scott Stroh at the percentage below the maximum prices for the several items as designated in the schedule hereto attached.

J. M. SHUMAKER,  
Superintendent."

I pause here to observe that no contract was awarded to George F. Payne & Co. for item No. twenty-two.

Turning now to the minute book of your Board under the date of June 7, 1904, it appears that all the members of the Board were present for the purpose of opening and reading the bids for the general and special schedule of furniture, carpets, gas and electrical fixtures, supplies, stationery, etc., for the year ending June first, 1905. After opening and reading the same, the Board on motion adjourned to the Executive Chamber to examine said bids and the list of the bidders was submitted.

On the 14th of June, 1904, a letter was addressed by the Superintendent to the Board, stating that, "in compliance with law and the directions of the Board, proposals for the various State departments for the current year were opened on Tuesday, June 7, 1904, and having tabulated the respective bids, I herewith submit them for your consideration and action, together with such notes thereon as my experience justified and the best interests of the Commonwealth require."

The only reference in this letter to general repairs relates to the general repairs and furniture schedule. In short, there is no reference in this letter to the matter under discussion.

An examination of the schedule of bids in the possession of the

Superintendent shows that on June 14th contracts were awarded to George F. Payne & Co, under the head of general repairs only from items one to twenty, inclusive.

Up to this point I find no meeting of the minds of the alleged contracting parties upon the subject matter in question, and therefore I conclude that no such contract existed. Apart from the absence of any specific reference, either in the advertisement for proposals, or in the proposals themselves, or in the schedule attached to the proposals, to the subject matter of approaches and improvements to the Capitol grounds, I am in grave doubt, a doubt which amounts almost to conviction, that the character of the work required for the carrying out of the plan "A" approved by the Board on the fifth of April, 1904, and, as judged by that plan, consisting of a wall with a clock tower, could not fairly be embraced by construction or interpretation within the term "general repairs." True it is that it involves the tearing out of the existing wall, but it can scarcely be spoken of as a repair of the old wall inasmuch as it is distinctly a new structure of great magnitude and of considerable expense, as will hereafter appear.

However that may be, inasmuch as the award of the contract to George F. Payne & Co., upon their bid was specifically limited to items one to twenty, inclusive, it is clear up to this point that item twenty-two is excluded from the consideration of the parties.

An examination of the certified schedule in the possession of the Superintendent of Public Grounds and Buildings shows no award of item twenty-two signed by the Governor, the Auditor General and the State Treasurer, as required by law.

In my judgment it is clear that no contract existed between your Board and George F. Payne & Co. upon the basis of the proposals advertised for and the bid made by George F. Payne & Co. in response to said advertisement, for the plain reason that the proposals did not contemplate the subject matter of the alleged contract, and even if they did, that the action of your Board as appearing by its certified schedules, establishes the fact that its acceptance of the bid was confined in terms to items numbers one to twenty upon the general repair schedule.

The minds of the parties having failed to meet upon the subject matter of the alleged contract, it is clear that no contract exists.

I come now to the second branch of the contention. In my judgment it is important to separate this from what has gone before, inasmuch as it is the confusion of these matters which has led to misunderstanding as to the exact relative position of the alleged contracting parties.

It is contended, however, that the following state of facts constitute a contract:

It appears by the minutes of your Board that on the fourteenth of June, Mr. Huston, the architect, appeared before the Board with the plans for the ornamentation of the public grounds, as approved by the Superintendent of Public Grounds and Buildings on April 5, 1904 (this being the plan hereinbefore described and referred to, marked "A," and embracing the wall and clock tower) and proposed specifications for the cut stone work in accordance therewith, stating that in his opinion the cost of the cut stone and labor for the entire work of ornamentation would cost between five and six hundred thousand dollars. On motion, duly seconded, it was agreed that the award made to George F. Payne & Co. for the granite be reconsidered and postponed for the present, and on motion, duly seconded, it was agreed that the Superintendent of Public Grounds and Buildings be instructed to award the schedule of contracts to the lowest responsible bidders, with the exception of those noted.

It is clear, then, that on this day the subject matter of the granite in its relation to the proposed wall was withdrawn from action. It also appeared by the minutes that Mr. Payne of the firm of Payne & Co., who had bid upon the contract for the general repairs for the public grounds and buildings, appeared before the Board and stated that he would be unable to give any opinion in reference to the granite work before Thursday next, the 16th inst.

On the 16th of June a special meeting of your Board was held and a letter from the architect was read, addressed to one of its members, which was as follows:

"In answer to your inquiry regarding the price of granite for the improvements of grounds, I have taken up this matter earnestly with George F. Payne & Co. with the idea of making them reduce their price for this work to my former idea of it, but I have been unsuccessful. After going over the matter with them and examining their estimates, I am inclined to believe, from the evidence which they have shown me, that the schedule price is a fair price for monumental work of this character.

Very respectfully,

JOS. M. HUSTON,  
Architect."

It appears also that Mr. Payne appeared before the Board and was heard, and after considering the letter of the architect and hearing Mr. Payne, the following resolution was adopted:

"Whereas, There is but one bid upon item twenty-three (doubtless item twenty-two was meant) page 68 upon the general repair schedule 'to furnish granite per specifications per cubic foot,' which bid was five per cent. below the maximum price of ten dollars; and



"Whereas, Prior to and at the time this bid was made complete plans for the granite work were in the hands of the architect and open to the inspection of all bidders; and

"Whereas, An effort has been made to have the contractor accept a lower price, with the statement upon his part that it would be impossible for him to accept a lower rate, since the bid is not more than a fair market price; and

"Whereas, The architect upon request has gone into a careful examination of the specifications and made an estimate of prices and has reported to us that in his opinion 'the schedule price is a fair price for monumental work of this character'; therefore, be it

"Resolved, That the bid of George F. Payne & Co. for the work as shown upon the plans of the architect, approved April 5, 1904, by the Superintendent of Public Grounds and Buildings, and the detailed plans and specifications approved by the Superintendent June 16, 1904, be accepted upon condition that the ground be not disturbed during the next session of the Legislature, and that the work be completed on or before April 1, 1906."

At the time the above resolution was adopted, in addition to the plan therein referred to as having been approved April 5, 1904, there was presented by the architect further detailed plans and specifications marked respectively, "B, section of semi-circular wall, architect's date, 5-18-04, approved June 16, 1904, J. M. Shumaker;" also "C, typical section, architect's date 5-16-04, approved June 16, 1904, J. M. Shumaker."

An examination of the minutes of the Board and an examination of the certified schedules and other records of your Board shows that nothing else was approved or marked, but simply these architect's drawings. No bid was presented upon these drawings and no contract or award was made.

Outside of the records of your Board, however, it appears that on the 16th of June, 1904, after the meeting of the Board, Payne & Co. were verbally notified by two of the members of the Board of the contents of the foregoing resolution, and a copy of the resolution stated as being an extract from the minutes, was furnished by the secretary of your Board to George F. Payne & Co. - Thereupon, on June 17, 1904, Payne & Co. sent to the secretary of the Board a letter in the following terms:

"Mr. John E. Stott, Secretary, Public Grounds and Buildings, Harrisburg, Pa.:

Dear Sir: We are in receipt of your order of the 16th inst. to proceed with work on grounds of State Capitol Building, in accordance with plans and specifications

of Mr. Joseph M. Huston, architect, and beg leave to thank you for the same.

We will place order for this work without delay so as to enable us to complete same in the time stated.

Very respectfully,  
GEORGE F. PAYNE & CO."

It appears also outside of the records of your Board that on June 17, 1904, Payne & Co received from Joseph M. Huston, architect, a letter of which the following is a copy:

"Messrs. George F. Payne & Co.,  
401 S. Juniper Street, Philadelphia:

Gentlemen: Under a resolution passed June 16, 1904, by the Board of Commissioners of Public Grounds and Buildings, a copy of which is hereto attached, you will proceed with the building of the approaches to the Capitol of the Commonwealth of Pennsylvania at once, according to the approved plans and specifications. As the time for completion named in the resolution is very short, you will therefore use the utmost dispatch in getting your granite work out, that there will be no delay.

Very truly yours,  
J. M. HUSTON,  
Architect."

It also appears outside of the records of your Board that there is a paper now in possession of the architect, entitled "Specifications for cut stone work required in the improvements to Capitol Park at Harrisburg, Pa., for the Commonwealth of Pennsylvania, in accordance with the drawings under the supervision of Joseph M. Huston, architect."

This paper is marked "Approved June 16, 1904, J. M. Shumaker, Supt. P. G. & B." It also appears to the left and somewhat below the signature, that it is marked in parenthesis with the word "Signed." I am unable to determine whether this is an original paper or a copy, or whether the signature "J. M. Shumaker" is an original signature. The paper produced to me was furnished to me by the architect.

The further history of the matter is traceable through the minutes of your Board as follows:

On the fifth of July, 1904, a special meeting was held, and there was present a committee of citizens and architect, and drawings for the proposed coping of the wall were produced. A meeting of the Board was also held on July 12, 1904. The architect appeared before the Board with his completed and detailed plans for the Capitol grounds, numbers 4, 5, 6, 7, 8 and 9. After examining the said plans, the Board decided before taking any action to notify

the committee who were appointed by the citizens of Harrisburg, and who were present on July 5th to meet with the Board Thursday, July 14th.

On Thursday, July 14th, there was present a committee of citizens. The architect presented revised plans calling for a balustrade three and one-half feet high all around the Capitol Park, and made specific statements of the dimensions of the wall of the various streets. After the committee of citizens had retired and after giving the matter due consideration, the Board decided to take no action, and directed that Payne & Co and J. M. Huston, architect, be requested to meet the Board on Tuesday, July 19th, at two P. M.

On July 19th, a special meeting of the Board was held in accordance with the time set, for the purpose of hearing the citizens' committee on the Park wall. The question as to whether the Board had authority to award the contract for such extensive improvements under the schedule advertised for general repairs was discussed in the presence of the Attorney General. The letter received by the secretary of your Board from George F. Payne & Co., under date of June 17, 1904 (which has been previously quoted) was then considered. On motion, duly seconded, the following letter was directed to be sent to George F. Payne & Co., and the same was directed to be spread upon the minutes:

"July 19, 1904.

Geo. F. Payne & Co., Philadelphia, Pa.:

Gentlemen: Your letter of June 17, 1904, addressed to John E. Stott, Secretary of the Board of Commissioners of Public Grounds and Buildings, was submitted by the Secretary to the Board at its meeting on July 14th. You are in error in stating, as you did in your letter, that you received an order on the 16th, to proceed with the work on the grounds of the State Capitol Building in accordance with the plans and specifications of Mr. Huston, architect.

You are hereby notified that no order has been given by the Board upon any contract relating to work upon the Capitol grounds, approved by the Governor, Auditor General and State Treasurer as required by the act of Assembly approved March 26, 1905.

Very respectfully,

JOHN E. STOTT,  
Secretary."

The architect was then further examined and a question put to him as to the probable cost of the contemplated improvements, which he had fixed at four hundred thousand dollars, including a clock tower at one hundred thousand dollars, and a balustrade at one hundred thousand dollars. No further action was taken.

So far as the subsequent minutes of the Board are concerned, they do not disclose any fixed plans for the wall around the ground and no adoption of any definite plan. It is clear that the plan approved April 5, 1904, and that the subsequent drawings approved June 16, 1904, herein referred to as "A," "B" and "C" respectively, were, in view of the action of the citizens of Harrisburg in discussing the character of the proposed wall, practically withdrawn, and withdrawn with the knowledge of George F. Payne & Co. The feature of the clock tower appears to have been entirely eliminated; the cost of the work was undetermined, and I cannot find any subsequent definition of what plans, if any, were substituted for those spoken of as approved April 5, 1904, and June 16, 1904.

It appears outside of your minutes, which fail to disclose any definite action, but which do establish the fact that the matter was under discussion with the participation of the firm of George F. Payne & Co., that on the 16th of August, 1904, Messrs. Payne & Co. received from the architect the following letter:

"August 16, 1904.

Messrs. George F. Payne & Co., Philadelphia, Pa.:

Gentlemen: Since you submitted your estimate on the annual schedule for furnishing granite for the repairs and improvements to Capitol Park, I have modified the plans somewhat. Will you please make a thorough examination of the modified plans and advise me whether or not your price submitted on the schedule will be altered in any way? You will note that there is no change in the terms of the specifications which were exhibited at my office at time of bid.

Very truly yours,

J. M. HUSTON."

To this letter George F. Payne & Co. replied on the 20th of August, 1904, as follows:

"Mr. Jos. M. Huston, Architect, Philadelphia, Pa.:

Dear Sir: We are in receipt of your letter of August 16, 1904, and in answer thereto, we would state that we have examined your modified plans, and are prepared to proceed with this work at the price named by us June 7th last; also if there are any further modifications to be made we will do same on an agreement and at prices satisfactory to the Board of Public Grounds and Buildings and ourselves.

Trusting this will meet with your approval, we are

Very respectfully,

GEORGE F. PAYNE & CO."

This statement of facts appears to be complete, with this single addition, that on August second, 1904, Payne & Co. wrote your

Board, taking the ground that the furnishing of the copy of the resolution of June 16th, accompanied by their acceptance of June 17th, and the receipt by them of the order from Mr. Huston, architect, under date of June 17th, constitute a binding contract upon which they acted to their prejudice.

After a careful consideration of all the foregoing facts, I am unable to conclude that a contract exists enforceable in law, for the following reasons:

First, because I do not consider that the furnishing of a copy of a resolution adopted by your Board, such copy being furnished by your secretary, who was not instructed by the Board to deliver it, binds the Board as an official act. It was necessary under the law for the Board to take definite action and award the contract over the signatures of the Governor, the Auditor General and the State Treasurer, as required by law. The act of March 26th, 1895 (P. L. 22), in its second section, specifically provides:

“And all such contracts so awarded shall severally be void, unless first approved by the Governor, Auditor General and State Treasurer.”

This language is unmistakable in its meaning, and although it is true that the Board of Commissioners of Public Grounds and Buildings by the first section of the act, is constituted of the Governor, Auditor General and State Treasurer, yet the specific provision that all such contracts so awarded shall severally be void unless first approved by the Governor, Auditor General and State Treasurer, leads me irresistibly to the conclusion that each and all of these officers in their official capacity as such must approve of the action of the Board in making an award, and that the action of the Board is not of itself equivalent to the joint action of these three officers.

Second. Because I do not find any necessary connection, or even a persuasive connection, between item twenty-two in the general repair schedule for which alone the proposal of George F. Payne & Co. was made in answer to the advertisement of your Board, published in May, 1904, and work described by the architect as “monumental,” whose probable cost was first fixed at six hundred thousand dollars, and afterwards fixed at four hundred thousand dollars.

I cannot conceive that repairs to an existing wall can be regarded as synonymous with a new structure involving such a cost and based upon such elaborate designs as have been presented and approved.

Third, because, even assuming that I am in error in the second reason, I do not find that these plans as approved were adhered to by the parties. They have been subject to discussion both public and private as the result of the opposition of the citizens of Harrisburg to the building of a wall around the Capitol, a discussion which

led to a modification of the original plans and an acquiescence, as the correspondence between the architect and the contractor clearly shows, by the contractor.

I can not find in the foregoing facts a definite agreement upon any set of plans, and hence, as the minds of the parties have failed to unite, the essential features of a contract are lacking.

To sum up the result of this examination, I conclude that there is no contract.

1st. Because not embraced within the terms of the proposal.

2nd. Because no definite plans have been finally agreed upon, and

3rd. Because there is lacking to the award to Payne & Co. the indispensable pre-requisite of approval by the Governor, the Auditor General and the State Treasurer.

That George F. Payne & Co. are entitled to an equitable consideration is clear under the circumstances, and I can only hope that some method of adjustment satisfactory to your Board and to the contractor may be reached upon plans and specifications removed from doubt, definitely marked, definitely and authoritatively approved. Until such action, however, is taken, the matter must remain in abeyance, however regrettable the delay. I am further of opinion that proposals for such definite work should be advertised for in terms properly descriptive, and not under a schedule of repairs.

I herewith return to you letter of Alexander & Magill, addressed to your Board under date of May 20th, 1905. Please acknowledge receipt of enclosure.

I have the honor to be,

Yours respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

**BOARD OF PUBLIC GROUNDS AND BUILDINGS—MIFFLINVILLE BRIDGE.**

Under the act of 17th of April, 1905 (P. L. 192) authorizing the rebuilding by the State of uncompleted county bridges over any river not less than one thousand feet in width which had been destroyed by flood prior to final completion, a report of viewers, confirmed by the court, recommending a new bridge much larger and more expensive than the one destroyed, is not in accordance with the terms of the act, and does not impose a liability upon the Board to build the bridge as recommended. The liability is to replace the bridge destroyed.

Office of the Attorney General,  
Harrisburg, Pa., November 17, 1905.

To the Board of Public Grounds and Buildings, Harrisburg, Pa.:

Gentlemen: I have your request for an official opinion in the matter of the reconstruction of the Mifflinville bridge at Mifflinville, in

the townships of Mifflin and Centre, county of Columbia, and State of Pennsylvania. From an examination of the papers submitted I ascertain the facts to be as follows:

That on the 4th of February, 1901, a report of viewers appointed by the court of quarter sessions for the county of Columbia, was duly filed in favor of a county bridge across the Susquehanna river at the village of Mifflinville, in the township of Mifflin and Centre, which report was duly confirmed and approved by the grand jury of Columbia county, and subsequently said report was confirmed absolutely by the Columbia county court, and on the same day the commissioners of Columbia county approved the same and entered it as a county bridge. That on the 29th of July, 1902, the Board of Commissioners of Columbia county entered into a contract for the erection and construction of a bridge across the Susquehanna river, which is a navigable stream, and at the location of this bridge is more than one thousand feet in width, that the contract price was \$93,585, and that the contractor by and with the consent of the county commissioners, sublet the superstructure thereof, on the 12th of August, 1902, to the King Bridge Company, of Cleveland, Ohio. That the contractors furnished all the material for the erection and construction of the bridge and the sub-structure thereof had been completed and three of the six spans required for the superstructure had been completed and placed in position, when, on the 9th of February, 1904, and before the final completion of the bridge, the portion already constructed and completed was destroyed and carried away by an ice flood. That the Commissioners of Columbia county had expended upon the bridge at the time of its destruction the sum of \$91,585, leaving but \$2,000 more of the contract price to be expended.

On the 17th of April, 1905, an act of Assembly (P. L. 192), was approved by the Governor, authorizing the Commonwealth to rebuild uncompleted county bridges over any river not less than one thousand feet in width, whenever the portions of said bridges already erected had been destroyed by floods before the final completion thereof, and where it appears that over fifty per centum of the contract price had already been expended before such destruction. Following this act, and undoubtedly in the effort to comply with its provisions, the county commissioners petitioned the court of common pleas of Dauphin county for the rebuilding of said bridge, setting forth in said petition the fact that there had been a report of viewers in favor of a county bridge over a river not less than one thousand feet in width; that the report had been confirmed and approved by the court, the grand jury and county commissioners of the county in which the same was situate, and that the county commissioners had expended fifty per centum of the contract price therefor in the actual erection and construction of the bridge.

and that before the final completion thereof the portion so already erected had been destroyed or carried away by flood, and asking the court to appoint five viewers. These viewers filed a report, locating the proposed bridge, reporting the location and length of the bridge reported by the county viewers at the time the report was confirmed by the court of quarter sessions, the length of the bridge as contracted for by the county commissioners, the contract price for the same, the amount of money expended before the destruction, the time when the bridge was destroyed, together with a recommendation as to the kind and character of the bridge needed and the possible cost thereof.

This report was confirmed by the court and the bridge directed to be rebuilt by the Commonwealth in accordance with the recommendation of the viewers.

The matter now being before your Board, it appears from the report of your engineer appointed to make plans and specifications for the reconstruction of the bridge so destroyed, that the recommendations of the viewers as to the kind and character of the bridge needed were not in accordance with the act under which said reconstruction was authorized, inasmuch as the report of the viewers added 125 feet to the length of the former bridge, elevated the new bridge above the tracks of the Pennsylvania Railroad, and also provided the bridge with a solid floor, and departed in some other particulars from the plan and character of the bridge destroyed.

I am of opinion that the discretion which was allowable to you under my opinion of February 28, 1905, in the matter of the bridge between the towns of Berwick and Nescopee, under the act of June 3, 1895 (P. L. 130), as amended by the act of April 21, 1903 (P. L. 230), cannot properly be exercised in this case. The building of the Mifflinville bridge is sought to be made, not under the acts just referred to, but under the act of 17th of April, 1905, no doubt because of the special circumstances which make this act applicable to the facts under consideration. A careful reading of the first section of the latest act, however, satisfies me that the duty imposed upon the Commonwealth is to rebuild the bridge destroyed, and that there is no room for discretion in substituting another or a different bridge. The language of section 1 is as follows: "The Commonwealth of Pennsylvania shall rebuild such bridge, in the same manner as if it had been a completed bridge, owned and controlled and maintained by such county." The bridge in this case was so near completion that but \$2,000 remained to be expended on the original cost. It is true that much of the material swept away was recovered and due allowance has been made to the extent of \$45,000, but I cannot find in the act any authority for the lengthening of the bridge, or its greater elevation. There is a decided vari-



ance between the report of the viewers in favor of the new bridge and the report of the viewers in favor of the county bridge destroyed the character of which had been established beyond question, and the location and length of which had been also established. This precludes the possibility of your awarding a contract under the circumstances. It is noticeable, in comparing the act of 3d of June, 1895 (P. L. 130), as amended by the act of 21st of April, 1903 (P. L. 230), with the act of 17th of April, 1905 (P. L. 192), that the two former acts, while speaking in several places of re-building, also speak, notably in section 2 of the first act, and in section 2 of the amended act, of replacing the bridge destroyed. In the latest act the word exclusively used is "rebuild." This word is coupled with the provision in section 1 that the bridge shall be rebuilt "in the same manner as if it had been a completed bridge." This would seem to confine it to the character of the bridge destroyed on the eve of completion. There is no thought of replacing a bridge as indicated in the two former acts. There is a distinction between the words "rebuild" and "replace." Rebuild is to build up again; build or construct after having been demolished; reconstruct or reconstitute: Century Dictionary; and in the act under consideration this thought is emphasized by the provision that the county "shall contribute toward the erection and reconstruction of said bridge, the balance of the original contract price remaining unexpended at the time of said destruction." The word "replace" carries with it the thought "to substitute something competent in the place of, as of something lost or destroyed; to fill or take the place of; supersede; be a substitute for; fulfil the end or office of." Century Dictionary. This is a broader thought than that conveyed by the word "rebuild," as limited by the intent of the act in question. Hence I conclude, and so advise you, that you are not called upon to award a contract in accordance with the report of the viewers, and that you can reject a bid upon a basis which departs, in the particulars certified to by your engineer, from the character and plan of the bridge destroyed. To avoid a conflict with the decree of the court confirming the report of the new viewers, it might be well to file exceptions, nunc pro tunc, on the ground of the departure described by your engineer.

I remain,

Respectfully yours,

HAMPTON L. CARSON,

Attorney General.

LIGHTING OF CAPITOL DURING EXTRA SESSION OF LEGISLATURE—  
CONTRACTS—MUTUAL MISTAKE.

On the 16th of January, 1905, George F. Payne & Company, in writing, proposed to operate the new electric light plant in the capitol building, and to furnish all the extra light and motive power required for the building not included in the contract of the Harrisburg Electric Light, Heat and Power Co., as well as other lighting of the building, and furnishing all electric light bulbs, arc lamps and care of the same included in the above company's contract for the sum of four hundred and fifty dollars per month, they to receive thirty days notice of discontinuance of service. This offer was accepted by the Board at the meeting in February, 1905.

Payne & Company afterwards demanded an additional sum of \$1,000 for extra light and heat furnished during the extra session of 1906. Held, that the extraordinary session of the legislature was not in contemplation of the parties when the contract was made, and that the additional sum demanded, if reasonable, should be paid.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

Hon. J. M. Shumaker, Superintendent of Public Grounds and Buildings:

Sir: You desire my official opinion as to whether or not the Commissioners of Public Grounds and Buildings are liable to George F. Payne & Company in the sum of five hundred dollars for heating and lighting furnished for the House of Representatives and adjoining rooms at the State Capitol from January 15th to January 31st, 1906, and in the sum of five hundred dollars for the same service from February 1st to February 15, 1906.

I find that on the 16th of January, 1905, George F. Payne & Company, in writing, proposed to operate the new electric light plant in the Capitol Building, to furnish all the extra electric light and motive power required for the building not included in the contract of the Harrisburg Electric Light, Heat and Power Co., as well as all other lighting of the building, and furnishing all electric light bulbs, arc lamps and care of the same included in the above company's contract for the sum of four hundred and fifty dollars per month, they to receive thirty days' notice of discontinuance of service.

This offer was accepted by the Board at the meeting in February, 1905. Demand has been made upon you for payment for the service indicated in the first paragraph on the ground that George F. Payne & Company, at the time of the proposal which was accepted, did not contemplate nor calculate, at the time of the estimate submitted, upon the use by the Senate and House of Representatives in extra session of their chambers or of the adjoining rooms, and that they were compelled to furnish the extra power and labor necessary to heat the rooms for the special session.

I am clear that at the time the contract was made there was no thought in the mind of either party that there would be an unusual or extraordinary use of the building which would double the amount of extra light required; hence I conclude that the words "extra lighting," as used in the offer, did not contemplate the lighting properly incident to the extra session. The case falls within the principle stated by Sir Frederick Pollock in his work on Contracts, 450, where he says:

"But sometimes, even when the thing which is the subject matter of an agreement is specifically ascertained, the agreement may be avoided by material error as to some attribute of the thing, for some attribute which the thing in truth has not may be a material part of the description by which the thing was contracted for. If this is so, the thing as it really is, viz: without that quality, is not that to which the common intention of the parties was directed, and the agreement is void. An error of this kind will not suffice to make the transaction void, unless, first, it is such that, according to the ordinary course of dealing and use of language, the difference made by the absence of the quality wrongly supposed to exist amounts to a difference in kind; second, and the error is also common to both parties."

Clark in his work on Contracts, which is a standard work, says on page 299:

"If there is a difference or misapprehension as to the substance of the thing bargained for and intended to be sold, then there is no contract; but if it be only a difference in some quality or accident, even though the mistake may have been the actuating motive to the purchaser or seller, or both of them, yet the contract remains binding. 'The difficulty in every case is to determine whether the mistake or apprehension is as to the substance of the whole contract, going, as it were, to the root of the matter, or only to some point, even though a material point, an error as to which does not affect the substance of the whole consideration.' *Kennedy v. Panama, Etc., Mail Co.*, Law Reports, 2 Queen's Bench, 580, 587."

The principle has been applied in the leading case of *Sherwood v. Walker*, 66 Michigan, 568, where a contract was made relating to the sale of a blooded cow. The owner and the purchaser believed that she was barren, in which case she would be worth only the small sum for which she was sold, but before she was delivered it was discovered that she was with calf, and therefore worth a larger sum for breeding purposes. It was held that the mistake voided the sale. The court said the mistake was not of the mere quality of the animal,

but went to the very nature of the thing. A barren cow was substantially a different creature from a breeding one. There was as much difference between them, for all purposes of use, as there was between an ox and a cow that is capable of breeding and giving milk. She was not, in fact, the animal or the kind of animal the defendant intended to sell or the plaintiff to buy. She was not a barren cow, and if this fact had been known there would have been no contract. Therefore, the thing bought and sold had, in fact, no existence.

It is true that Messrs. Payne & Company's offer related to extra lighting, and that, so far as this is concerned, there was no mistake in the character of the thing sold or proposed to be sold, but the case partakes rather of a mistake as to quantity.

There is a class of cases in which a mistake is made as to the quantity of the subject-matter, and this may prevent any contract from being formed, or it may go only to the performance according to its character. Since the minds of the parties to the contract must meet in one and the same intention, no contract is formed where, for instance, one of them intends to sell a certain quantity of an article, and the other intends to buy a different quantity. The acceptance in such a case varies from the terms of the offer. *Henkle v. Pope*, Law Reports, 6 Exchequer, 7.

In the case of *Miles v. Stevens*, 3 P. S., 37, Judge Rogers says:

"It is a general rule that when an act is done or a contract made under a mistake or ignorance of a material fact, it is voidable and relievable in equity, and the rule applies not only to cases where there has been studied suppression or concealment of facts by the one side, which would amount to fraud, but also to many cases of innocent ignorance and mistake on both sides."

Inasmuch as the extra session was not called by the Governor until the latter part of the year 1905, and had not been thought of as early as January and February, 1905, it is clear to my mind that neither the offeror nor the acceptor had in mind the possibility of such an amount of extra lighting as proved necessary to the proper discharge of its functions by the Legislature in holding night sessions in the Capitol Building. Hence I conclude that neither the terms of the offer nor the terms of the acceptance embraced the service for which this charge is made, and that the sole question for your Board to consider is the reasonableness of the charge made for the service rendered. If you are satisfied upon this point, I advise you that the bill may be properly paid.

I return herewith the papers sent me, consisting of letter of George F. Payne & Company to James M. Shumaker, Superintendent, under date of December 31, 1905; summary of cost, signed

George F. Payne & Company, under same date; offer of George F. Payne & Company, under date of January 16, 1905; letter to James M. Shumaker, signed by George F. Payne & Company, under date of April 30, 1906; letter addressed by George F. Payne & Company to the Board of Public Grounds and Buildings, under date of May 9, 1906, and two bills in the sum of five hundred dollars, under the respective dates of January 31 and February 15, 1906.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### BOARD OF PUBLIC GROUNDS AND BUILDINGS.

Section 16 of the Act of 26th March, 1895 (P. L. 22) authorizes the Board of Public Grounds and Buildings to purchase supplies and materials for the State Departments not on the regular schedule, without advertising the contract and securing competitive bidding.

Office of the Attorney General.  
Harrisburg, Pa., Dec. 29, 1906.

Hon. James M. Shumaker, Superintendent of Public Grounds and Buildings:

Sir: You state that it often happens that the various State Departments make requisition upon you for supplies, which are not placed on the original lists and included in the schedule, their needs not having been foreseen, and that, therefore, there are no contracts made by the Board of Public Grounds and Buildings for supplying these particular items, although the Board has a contractual relation with dealers in the respective lines of business, furnishing supplies of a similar nature under yearly contracts based upon the annual schedule.

You state further that the Board is disposed to furnish each Department with what it absolutely needs, and hence has been in the habit of approving requisitions containing the items referred to, for which there is no outstanding contract.

You state further that it has been customary for a number of years past to give the orders for furnishing these extra items to the contractors who are engaged in the particular line of business to which the extra items belong, and that the charges for the same are included in and paid with other bills for regular contract items furnished, all payments being made out of the general appropriation to the Board for furnishing supplies, etc.

You ask to be advised whether this is a correct and legal practice and permissible under the circumstances, or whether it is necessary

for you to ask estimates from dealers who have no contracts with the Board; and you submit the form of an order, addressed to the International Manufacturing and Supply Company for the furnishing of certain items called for by the Department of Health consisting of items required by the head of the Department of Health and specifically called for by him.

I answer that the act of 26th of March, 1895 (P. L. 22), which constituted the Board of Commissioners of Public Grounds and Buildings, and which defines their powers, clearly contemplates just such an exigency. The provisions of the second, third and fourth sections relate to the proper method of securing contracts through public advertisement for supplies to be used by the several departments of the government, for which bids are invited upon the basis of what is known in practice and designated in the act as the "Schedule."

The fifth section covers very fully the manner in which the schedule shall be prepared, and the information which shall be furnished by the heads of the various Departments to enable the schedule to be prepared intelligently and as fully as practicable.

The 16th section, however, clearly contemplates the possibility—which practice has shown to be an unavoidable certainty—of there being needed from time to time certain articles of furniture, furnishings, stationery, supplies, fuel "or any other matters or things . . . the want of which may not have been anticipated at the time of the issue of the annual schedule, and which do not appear in the same, and for which requisition is made on the Superintendent." This provision is accompanied by the establishment of a fund, to be known as the Board's "General Fund," and is accompanied by the proviso "that no expenditure of said amount shall be made by the Superintendent without first receiving authority from the Board so to do."

Inasmuch as the Legislature did not repeat the provisions relating to advertising and competitive bidding, so carefully prescribed as the method of obtaining in the matter of the schedule, I am clear that this 16th section was intended to cover cases of emergency, and cases of natural and unavoidable want on the part of a State officer, unanticipated at the time of the preparation of the schedule, and calling for immediate action in order to relieve departmental wants. To embarrass the Board with the necessity of pursuing the detail prescribed in connection with the schedule would be to defeat practically the purpose of the 16th section.

I am of opinion that if the Superintendent first receives authority from the Board to make purchase of any articles of furniture, furnishings stationery, supplies, fuel or any other matters or things as required by the head of a department, within the scope

and meaning of section 16, he is perfectly within the exercise of his legitimate powers, if he pursues the course which any ordinarily prudent purchaser would do in securing the articles thus needed. A private individual seeking to purchase goods could very properly call upon a reputable dealer in that line without going from store to store in order to secure comparative estimates, and certainly would not be required to advertise his wants or invite bids, and an ordinary purchaser would not be abusing a business discretion if his choice of a seller fell upon one who was a well known dealer in the line of goods wanted, and whose general business reputation sustained the selection on the ground of business integrity; and the individual would be still further justified in selecting such a seller if, by reason of previous dealings with such seller, he was satisfied that honorable and fair treatment of the purchaser had always been accorded.

It follows, therefore, that if you, as Superintendent, have previously secured the authority of the Board to make the purchases of articles required by the head of a Department as emergency articles, and if you have been satisfied in the past that those dealers who have contracts with the Board, based upon the annual schedule, have so far displayed good faith towards the State in making their deliveries, and who are already under bond to comply with the contracts which they have made, you are not in any sense committing either a business or an official imprudence in turning to them as proper parties to whom orders for such emergency articles may be delivered.

I therefore advise you that, having previously obtained the authority of the Board to make the purchases in question, you are not required to advertise for competitive bids, nor are you required to invite various estimates, care being taken to exercise in this case the ordinary business prudence which you would exercise as an individual in purchasing such supplies.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO SUPERINTENDENT  
OF PUBLIC PRINTING AND  
BINDING.

---

---



## OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

### PUBLIC PRINTING.

The Chief Clerks of the Senate and House of Representatives are empowered by law to order public printing. The Superintendent of Public Printing if in doubt as to the propriety of the order can refer the matter to the Governor, but this should only be done in extraordinary cases.

Office of the Attorney General,  
Harrisburg, Pa., January 6, 1906.

Hon. A Nevin Pomeroy, Superintendent Public Printing:

Sir: The act of February 7, 1905 (P. L. 3), section 26, is made to embrace the chief clerks of the Senate and House of Representatives. I am of opinion that an order given by such clerk, containing a particular description of the work and material required, can be safely relied upon by you. The responsibility of giving such an order must rest on the clerk. It is only where such an order seems to you unnecessary or unreasonable that you are authorized to refer it to the Governor for approval or disapproval. To enable you to judge of its necessity or unreasonableness, you might interrogate the clerk as to its purpose, but it would take an extraordinary case to justify you in doing so, for it must be presumed that the chief clerks, in ordering printing, will bear in mind the provisions of the act of 12th of June, 1879 (P. L. 172). The seventh section of that act imposes specific duties upon the clerks as to the stationery, while the ninth section of the same act, by providing that no stationery or printed matter used as stationery, shall be furnished to the members of the Legislature by the clerks or any other officer thereof, at the expense of the State, imposes the duty of obedience to this law upon the clerks. I do not see that you stand as sponsor for their acts, except under circumstances which might appear to you as indicating an unusual or unreasonable demand. I find nothing in the statute which operates as a repeal of the act of 12th of June, 1879. The act of 26th of March, 1895 (P. L. 28), cannot operate as a repeal, for such a conclusion is excluded by the express provisions of the 19th section, that nothing in said act shall be construed to interfere with the contracts for State printing or supplies for the State printing.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## PUBLIC PRINTING.

The contractor for the public printing should be paid for "trimming and delivery" of public documents at a rate fixed by the Superintendent of Public Printing and Binding.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding:

Sir: I have considered the correspondence had with you by the Harrisburg Publishing Company, the contractor for the State printing and binding. It appears that there is some misapprehension as to the right of the contractor to receive pay for trimming and delivering public documents under the act of 7th of February, 1905. The duties of the contractor, as prescribed in section 34, relate to folding, collating, stitching, trimming, binding and delivering to the proper Departments of the government the laws, journals, reports, messages, bills and other papers and documents as shall be required to be printed, folded together, collated, stitched, trimmed and bound for which the contractor shall be paid at the rate fixed in the schedule appended to the act.

The 39th section provides that the Auditor General shall draw his warrant on the State Treasurer for the amount due the contractor for printing, folding, stitching, trimming, binding and delivering, his account having first been audited upon certificates of the Superintendent of Public Printing and Binding. It appears that the schedule does not fix a price for trimming and delivering documents. It does fix a price for delivering legislative bills, and also for folding, gathering, stitching, collating and delivering sheets in the folding and binding work. It is clear that the schedule is not coextensive with the duty imposed upon the contractor, and you are asked to fix rates for the trimming of public documents and the delivery of the same to the proper departments. You state that, in view of the fact that there is no schedule price for the work of trimming and delivery in the instances above referred to, you have taken the position that none should be allowed for trimming, inasmuch as the folding and binding can only be complete when the book is properly trimmed, and that remuneration for trimming is included in the folding and binding, but, inasmuch as the contractors have presented to you the question whether a special or net price should not be determined upon by you for trimming and delivering, you ask me for my opinion as to what you term an evident conflict between sections 10 and 34 of the act.

I reply that, inasmuch as there is imposed upon the contractor,

under section 34, the duty of trimming and making delivery of the papers and documents therein mentioned, as well as folding, collating, stitching and binding, and, inasmuch as the section in question measures the full duty of the contractor, and is tantamount to a statement of the terms of his contract, and, inasmuch as the same distinction between trimming and delivery and printing, folding and binding is made by section 39, relating to the manner of payment, and inasmuch as there is in the trade a technical distinction between trimming and delivery, I cannot conclude that the service of trimming and delivery can be properly included in the words "folding and binding."

I am of opinion that "trimming and delivery" constitute distinct items, a service for which the contractor should be paid, and I am further of the opinion that the rates of compensation can be properly fixed by you under section 30 of the act. That section provides in express terms that "any work required to be done by the contractor or contractors for the Commonwealth, or any department or officer thereof, the price or value of which may not be fixed by, or otherwise ascertainable under, this act, shall be paid for at rates determined upon by the Superintendent of Public Printing and Binding," not to exceed the rates mentioned in the remainder of the section.

This portion of the statute clearly meets the condition arising from the circumstance that the schedule fails to fix rates for trimming and delivery, and leaves it open for your official action to fix the price or value of the items of work done for the Commonwealth or any department or officer thereof, not ascertainable under the act or fixed by the act.

I therefore instruct you that you are authorized to fix rates for the trimming of public documents and the delivery of the same to the proper department, not exceeding the lowest rate or rates at which the same work could be obtained elsewhere by the Superintendent; and if the contractor should decline to furnish trimming or make delivery at such reasonable rates, it will then be lawful for you to procure the same to be done elsewhere, and certify the account to the Auditor General for settlement, which account shall be subject to examination and revision by that officer as in other cases, and the Auditor General is empowered to issue a warrant on the State Treasurer in favor of the person or persons from whom such work has been procured for the amount found to be due him or them. I perceive no conflict in the law, but the interpretation I have put upon it harmonizes all of its provisions.

I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

**OPINIONS TO DAIRY AND FOOD  
COMMISSIONER.**

---

---

## OPINIONS TO DAIRY AND FOOD COMMISSIONER.

## DAIRY AND FOOD COMMISSIONER—COLORING OF BUTTER.

The addition of coloring matter to butter, if it makes the butter appear of greater value than it really is, is a violation of section 6 of the act June 26, 1895, known as the Pure Food Act.

Office of the Attorney General,  
Harrisburg, Pa., January 28, 1905.

O. D. Schock, Assistant Dairy and Food Commissioner:

Sir: You have asked me whether the language of the act of June 26, 1895, commonly known as "The Pure Food Act," defining certain forms of adulteration in the following words: "6. If it is colored, coated, polished or powdered, whereby damage or inferiority is concealed, or if by any means it is made to appear better or of greater value than it really is," would prevent the "legal coloring of butter."

I do not understand what is meant by the words "legal coloring of butter." I discover nothing in the act which would define such a condition.

I am aware that it is the custom of the dairymen of the State to use coloring matter in the manufacture of butter so as to make the output of a uniform color. I am aware also that it claimed that this coloring matter is without damage or injury to the butter and contains no impurity of any kind; that butter made from the milk of different breeds of cows will vary in color, and the color will also depend somewhat on the season of the year in which the butter is made; and that the general purpose of the addition of coloring matter is to make the butter the same color at all times.

Upon the fact and the intention I pass no judgment. It is clear, however, that butter of a pure yellow color will command a higher price than white butter, even though the white butter be equally as good as the yellow butter, and there is nothing whatever in the act which allows the coloring of butter. Therefore, taking the language of the law exactly as it is written, I am of opinion that, if the adding of coloring matter to the white butter makes it appear of greater value than it really is, it is contrary to the terms of the act and comes within the definition quoted, expressed in the words

"if by any means it is made to appear better or of greater value than it really is." These are the words of the statute and I cannot ignore them.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### REPAYMENT OF FINES UNDER UNCONSTITUTIONAL LAW—COSTS.

There is no provision in the law that authorizes the repayment of fines collected, prior to the decision in *Commonwealth vs. Kebort*, 212 Pa. 289, from persons convicted under the act of June 26, 1895, of selling adulterated liquors.

The Commonwealth is not liable for costs on her own prosecutions, whether civil or criminal.

Office of the Attorney General,  
Harrisburg, Pa., June 10, 1905.

Hon. B. H. Warren, Dairy and Food Commissioner:

Sir: You have asked for an official opinion with regard to the repayment of fines collected by the Commonwealth in pure food prosecutions. I assume that what is meant is a prosecution under the act of June 26, 1895, for the sale of adulterated liquors, and that inasmuch as the portion of the act declared unconstitutional by the chief justice in the case of *Commonwealth v. Kebort*, 212 Pa. 289, is limited solely to the adulterations of liquor, the question which you put must be restated so as to embrace solely the matter of repayment of fines collected by the Commonwealth in prosecutions hitherto brought for the adulterations of liquor, and I take it that the word liquor must be read in the narrow sense of an intoxicant, because in my judgment the decision of the court does not relate to prosecutions brought by you for the adulteration of milk or other liquids which are recognized as food.

With the question thus limited, I answer that there is no provision in the law which would authorize the repayment by the Commonwealth or by you, as the Commonwealth's officer, of fines already collected. At the time the prosecutions were brought and the money was received through the payment of fines, you were acting within the terms of an act of Assembly presumed to be constitutional, and sustained by a decision of the Superior Court which had not been reversed. Section 5 of this act distinctly provided that all penalties and costs for the violation of its provisions should be paid to the Dairy and Food Commissioner or his agent, and by him paid into the State Treasury to be kept as a fund separate and apart for the use of the Department of Agriculture for the enforcement of the act, and to be drawn out upon warrant signed by the Secretary of Agri-

culture and the Auditor General. The moneys must therefore be treated as State moneys and in the Treasury of the State, and whether actually paid to the State Treasurer or still in your hands awaiting payment makes no difference because it is your duty to pay the same into the State Treasury. There is no statute which would authorize your drawing a warrant or having a warrant drawn by the Secretary of Agriculture to be joined in by the Auditor General upon the State Treasurer for the reimbursement or repayment of these fines, and the moneys being in the State Treasury, cannot be drawn out without specific appropriation, section 16 of article III of the Constitution providing expressly 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." Inasmuch as the Legislature has not authorized the Secretary of Agriculture or yourself to draw warrants for any such purpose, and there is no such appropriation of the fund now in the State Treasury arising from the source indicated, there can be no such return made.

Aside from this it is a general principle of law that the Commonwealth is not liable for costs. We have followed a fixed and certain principle prevailing in England, that at the common law the king neither receives nor pays cost in any case, unless especially directed by act of parliament or assembly. In the case of *Irwin v. Commissioners of Northumberland County*, 1 S. & R., 505, and also *McKeehan v. The Commonwealth*, 3 Penna. State, 153, it was held that the Commonwealth stands in the place of the king. The subject is further discussed in *Commonwealth v. Johnson*, 5 S. & R., 194, and *Lyon v. Adams*, 4 S. & R., 443. In the case of *Commonwealth v. Philadelphia County*, 8 S. & R., 151, the court, in speaking of a kindred subject, said: "The recognizance is not granted to the county; the county is not the assignee of the State; it can neither release the action, nor mitigate nor remit the forfeiture. The Commonwealth is not liable for costs on her own prosecutions, whether civil or criminal. This exemption, whether it be called prerogative or privilege, is founded on the sovereign character of the State, amenable to no judicial tribunal, subject to no process." *Wadlinger on the law of costs in Pennsylvania* (p. 163). See also *American and English Encyclopedia of Law*, vol. 4, page 316, where it is said: "The general terms of an act giving costs do not include the State or National governments; and, in the absence of express provisions, costs are not awarded in favor or against them, and in actions of a public nature, conducted in good faith for the public benefit, costs are rarely awarded against public officers."

I am of opinion, therefore, that you cannot make repayment of fines. This general answer is sufficient to cover the matter of costs

referred to as growing out of the liquor prosecutions pending, but not yet disposed of, which you will now be called upon to deal with in view of the decision of the Supreme Court. With the responsibility or legal liability of the county or counties you have nothing whatever to do. Your standpoint is that of a Commonwealth's officer and you should act accordingly, leaving to the course of events and to such steps as counsel for the parties defendant may see fit to employ, the determination of the proper method of raising the legal question.

I herewith return you the letters accompanying the request for my opinion.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

DAIRY AND FOOD COMMISSIONER.

Judge Shafer's opinion in the court of common pleas of Allegheny county makes clear the law regarding the allowance of three per cent. commissions to the sheriff and the instructions to be given the agents and attorneys of the Dairy and Food Commissioner.

Office of the Attorney General,  
Harrisburg, Pa., June 16, 1905.

Mr. O. D. Schock, Assistant Dairy and Food Commissioner, Harrisburg, Pa.:

Sir: In relation to the allowance of three per cent. commissions to sheriffs and the instructions to be given by your Department to your agents and attorneys, permit me to say that in my judgment Judge Shafer's opinion in the court of quarter sessions of Allegheny county appears to me to cover the entire matter, and you will be fully justified in carrying out the law as thus judicially interpreted.

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.



PURE FOOD LAWS—PROSECUTIONS FOR SELLING ADULTERATED LIQUORS—ACTS OF JUNE 26, 1895, MAY 27, 1897 AND APRIL 27, 1905.

The decision of the Supreme Court in *Commonwealth vs. Kebort*, 212 Pa. 289, declaring unconstitutional the act of June 26, 1895, so far as it was assumed to apply to drink, does not affect the act in its application to the adulteration of food. The decision does not cover such liquids as milk, cream or buttermilk, because such liquids are foods.

So far as the adulteration of food is concerned, the powers of the Dairy and Food Commissioners remain as before the decision in *Commonwealth vs. Kebort*, but he cannot under the act of June 26, 1895, prosecute violators of its terms in the matter of drink.

The Department of Health cannot punish such offenders under the Act of April 27, 1905.

Under the act of May 25, 1897, P. L. 85, the State Pharmaceutical Examining Board cannot prosecute the ordinary liquor seller, even through the liquor be adulterated.

Office of the Attorney General,  
Harrisburg, Pa., June 22, 1905.

Hon. B. H. Warren, Dairy and Food Commissioner:

Sir: I have examined the papers sent me by Mr. Schock, consisting of Professor Cochran's special report on analyses of liquor, certain chemist's reports, the opinion of the Superior Court in the case of the *Commonwealth v. Kebort*, 212 Pa. 289, and the opinion of Chief Justice Mitchell in the same case, and read them in the light of certain memoranda submitted by you.

The opinion of the chief justice in effect declares the act of June 26, 1895, P. L. 317, unconstitutional so far as it was assumed to apply to drink. The decision, however, does not change the effect of the act in as far as it applies to the adulterations of food. I do not read the decision of the Supreme Court as covering such liquids as milk, cream or buttermilk, because such liquids are regarded as food. So far, therefore, as the matter of adulterations of food are concerned, your powers and duties continue as formerly, but you cannot prosecute, under this act, violators of its terms in the matter of drink. You ask whether or not the Department of Health can prosecute such offenders under the terms of the act creating a Department of Health, approved the 27th of April, 1905. Sections 5, 7, 8, 9 and 14 are the only ones from which such a power could be inferentially derived. A careful examination of them satisfies me that they are not specific enough to justify criminal prosecutions for such acts as you have hitherto been in the habit of prosecuting, nor is there anything in the title of the act creating a Department of Health and defining its powers and duties which would give notice to legislators or citizens that violations of the law in the matter of adulterations of drink could be prosecuted by the Department of Health or its officers. In other words, the very objection which proved con-

clusive in the opinion of the chief justice when dealing with the defects of the title to the act of June 26, 1895, could be urged against the act creating a Department of Health were it stretched to the point of covering prosecutions. Nowhere in the act creating a Department of Health is it made the duty of the Commissioner of Health to institute such prosecutions, and a careful examination of it leads me to believe that the protection of the health of the people of the State, and the determination and employment of the most efficient and practical means for the prevention and suppression of diseases do not contemplate the prosecution of individuals selling adulterated liquor. It would be unwise to attempt to stretch that statute in that direction or to cover such offences. This is but a general view. If there be any specific action contemplated in a specific class of cases, I prefer to be specifically interrogated, for it may be that some regulation of the Department of Health could be devised to correct or restrain the sale of adulterated liquors by anyone on the ground of danger to the public health. This, however, presents a different question from that before me.

I am of opinion that the State Pharmaceutical Examining Board can prosecute offenders who manufacture for sale, offer for sale, or sell adulterated drugs and medicinal preparations. The powers of that Board are defined by the act of 25th of May, 1897, P. L. 85, but their powers are not bestowed upon the Department of Health and cannot be exercised by that Department; nor do I think that the State Pharmaceutical Examining Board could prosecute the ordinary sellers of liquor, even though the liquor be adulterated. My reading of the statute confines its provisions to the sale of drugs and medicinal preparations.

There is a part of our general criminal code which may be of interest. Let me call your attention to section 1 of the act of 14th of April, 1863, P. L. 389, which declares that "It shall be unlawful for any person or persons to make use of any active poison, or other deleterious drugs, in any quantity or quantities, in the manufacture or preparation, by process of rectifying or otherwise, of any intoxicating malt or alcoholic liquors, or for any person or persons to knowingly sell such poisoned or drugged liquors in any quantity or quantities, and any person or persons so offending shall be deemed guilty of a misdemeanor." Section 5 of the same act provides that on conviction the convict shall be sentenced to pay a fine not exceeding \$500.00, and to undergo an imprisonment not exceeding twelve months or both or either in the discretion of the court. The second section provides that manufacturers shall brand their names on barrels and also the words "containing no deleterious drugs or added poison," and shall also certify the same fact or facts to the purchaser over his, her or their own proper signature.

The third section provides that possession of drugged liquor shall be deemed prima facie evidence of a violation of the provisions of the act, and the fourth section provides that any suspected article or specimen of intoxicating malt or alcoholic liquor shall be subjected to analysis by some competent person to perform the same under the direction of the court before which the case is tried, and such analysis duly certified under oath shall be deemed legal evidence in any court in the State.

The duty of enforcing this act of April 14, 1863, is imposed under the law upon the district attorney. I herewith return the papers which you sent me.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### DAIRY AND FOOD COMMISSIONER.

The general appropriation act provides that any unexpended sums of money received by the Dairy and Food Commissioner arising from licenses, fines and all other sources whatsoever on the first day of June, 1905, and monthly thereafter shall be paid into the State Treasury for the use of the Commonwealth.

Under this provision any bills properly contracted for prior to May, 1905, can be met out of the funds on hand on the last day of that month.

Office of the Attorney General,  
Harrisburg, Pa., July 18, 1905.

O. D. Schock, Assistant Dairy and Food Commissioner:

Sir: In replying to the request of the Hon. N. B. Critchfield, Secretary of Agriculture, presented to me through you, for an opinion as to the payments which should be lawfully made for services, material, etc., performed or delivered in May, 1905, out of the unexpended surplus remaining to the credit of the account of the Dairy and Food Division, I answer that the matter is entirely covered by the proviso to the general appropriation act, which reads as follows:

“Provided, That all sums of money remaining on hand to the credit of the Dairy and Food Division of the Department of Agriculture on the first day of June, 1905, and all sums of money which may be thereafter received by said Division arising from licenses, fines and all other sources whatsoever, except this appropriation, shall, on the first of each and every month, be paid into the State Treasury for the use of the Commonwealth.”

In my judgment no payments can be made except for such items as are included in the regular vouchers representing services, material,

etc., performed or delivered during the month of May, 1905. The line must be drawn here and cannot be extended. The duty of turning over the balances attaches immediately after the first of June, 1905, but I am of opinion that any bills properly contracted by your Department prior to that date can be, and should be, met out of the moneys on hand up to and including the last day of May, 1905. Should any balance remain after making such payments, of course such balance should be turned over, but the balance existing on the last day of May is certainly a proper fund out of which payments can properly be made for items of service or material arising out of contracts, either express or implied, which were made prior to that date. The act is explicit upon this point, and the matter needs no further discussion.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

PURE FOOD LAWS—WITNESS FEES AND MILEAGE OF SPECIAL AGENTS.

The special agents of the Dairy and Food Division of the Department of Agriculture are entitled to witness fees and mileage in cases under the pure food laws in which they testify. But as the State has made an appropriation for the payment of the expenses of these special agents, they should account to the Dairy and Food Commissioner for the costs taxed to them, in all cases in which they have already received from the Department money to cover their expenses.

Office of the Attorney General,  
Harrisburg, Pa., October 19, 1905.

O. D. Schock, Esq., Assistant Dairy and Food Commissioner:

Sir: Your letter addressed to the Governor has been by him referred to me.

You state that, in connection with the enforcement of the dairy and food laws of this Commonwealth, the Commissioner employs a number of duly sworn special agents. Upon receiving the analytical reports, prosecutions are ordered through such agents when violations of the law are discovered. You ask whether, in settling such cases, it would be legal for a special agent to add his mileage or witness fee to the fine and analytical fee, and retain the mileage so collected for his personal use, it being understood that his actual and necessary expenses incurred in the performance of such official duties are invariably included in his monthly account and paid by the Commissioner from the appropriation provided for the payment of such expenses. You say that Commissioner Warren has directed

you to write upon this subject, believing that one or more of the special agents have adopted the course indicated; that a private investigation is in progress; and that you need hardly add that the Commissioner would not knowingly sanction any conduct or transaction on the part of his official force that is not entirely legal and legitimate. The Governor has requested me to instruct you in regard to your duties in this matter.

I have examined Wadlinger on Costs, the acts of Assembly relating to the Dairy and Food Department, and the acts relating to the payment of mileage and witness fees in criminal cases. I am unable to discover any reason, in law, why the special agents of the Dairy and Food Department should not have taxed as costs their mileage and witness fees, notwithstanding the fact that their expenses are provided for biennially in the appropriation for the expenses of the Dairy and Food Department.

The general appropriation act of May 11, 1905, P. L. 581, appropriates twenty thousand dollars "for the payment of the traveling and other necessary expenses of the special agents of the Dairy and Food Division of the Agricultural Department." Provision is thus made for the traveling expenses of these special agents. The act of July 3, 1885, P. L. 256, is entitled "An act to establish uniform compensation to be allowed witnesses in civil and criminal cases before justices of the peace and aldermen in the several counties of this Commonwealth," and provides *inter alia*, "that from and after the passage of this act all witnesses in civil and criminal cases before justices of the peace and aldermen, shall be entitled to compensation as follows:

This act is general in its scope and there is no limitation whereby the special agents of the Dairy and Food Department are excluded from the benefits therein provided. The act of May 19, 1887, P. L. 134, relating to costs and the manner of computing mileage is also general in its character and applies to all witnesses. These special agents are not expressly excepted from the provisions of these general acts, nor can they be excepted by implication; and, while it may be objectionable for special agents, when serving as witnesses in criminal cases, to tax up witness fees and mileage as part of the costs of a case, when their necessary expenses for traveling, etc., have been provided for by a general appropriation made to the Dairy and Food Commissioner for the purpose, yet they cannot be legally deprived of their witness fees and mileage.

This is a strictly legal view of the case. I am of opinion, however, that the appropriation made by the act of May 11, 1905, was for the purpose of putting the Department into the possession of a fund on which it could draw without hesitation for the payment of the traveling expenses of its special agents engaged in the prosecu-

tion of its work, without requiring those agents either to prepay their own expenses or await reimbursement by collecting them out of the party against whom the costs are taxed. Of course the allowance of expenses to a witness for traveling, as well as his per diem allowance, is in the nature of compensation to the witness for the inconvenience and loss of time occasioned to him by being called away from his own proper business and giving testimony for the benefit of the public or the private litigant in support of interests entirely foreign, in a personal sense, to those of the witness himself, and in this sense the moneys so taxed and so collected are the property of the witness, of which he cannot be deprived.

I am of opinion, however, that this view cannot be taken of it so far as your own special agents are concerned. They are not called away from private business of their own; they are engaged in the prosecution of their duty in aiding you to enforce the laws relating to your Department. Hence, in no sense do they undergo a personal loss for which they should be reimbursed; and I suggest, therefore, that it would be proper for you to make an order upon your special agents that, wherever witness fees and mileage in criminal prosecutions, brought at the instance of your Department, wherein such agents appear as witnesses, are taxed, and they have already received from your Department moneys for the purpose, they shall account to you for the costs so taxed and so received, and shall not apply them to their own individual use.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

DAIRY AND FOOD COMMISSIONER.

The representatives or employes of the Dairy and Food Commissioner may not deduct their accounts for salary, travelling expenses or chemists' services from the mileage, witness fees and analytical fees which they have collected.

Office of the Attorney General,  
Harrisburg, Pa., December 8, 1905.

Hon. B. H. Warren, Dairy and Food Commissioner:

Sir: I have your communication of the 6th inst., inquiring whether mileage, witness and analytical fees, under the present legislative enactments relating to your Department, can legally be collected and receipted for by your representatives or employes, and, instead of turning such funds into your office for the use of the Commonwealth, deduct the amounts from their respective accounts for salary, traveling expenses or chemists' services.

I cannot advise you to adopt the plan suggested, nor should you sanction any such adjustment of accounts on the part of your representatives. The appropriation act of May 11, 1905 (P. L. 580 et seq.), specifically appropriates various sums of money to definite ends, and provides that all sums of money remaining on hand to the credit of the Department on the first of June, 1905, "and all sums of money which may be thereafter received by said Division, arising from licenses, fines and all other sources whatsoever, except this appropriation, shall, on the first day of each and every month, be paid into the State Treasury for the use of the Commonwealth."

My opinion of October 19, 1905, is before you, and I need not quote it. Your agents must account to you for all moneys received by them from you and expended by them. They should also return to you any balance of moneys unexpended by them. They must also account to you for all moneys received by them from collections made from any source. They cannot pay themselves salaries, traveling expenses or chemists' fees out of witness fees or fines collected. These collections are not made upon any such account. To permit the agents to adjust their accounts in this manner would confuse their relations to the Department, confuse the book-keeping—in many instances lead to no book-keeping at all, and result in danger to yourself and to your agents.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

OPINIONS TO STATE VETERI-  
NARIAN.

---

---



## OPINIONS TO THE STATE VETERINARIAN.

## STATE LIVE STOCK SANITARY BOARD—DESTRUCTION OF DISEASED CATTLE—ACT OF MAY 21, 1895.

The State Live Stock Sanitary Board has no authority to recommend or make payment of the value of animals destroyed in an effort to prevent the spread of dangerous, contagious or infectious diseases, except in instances where a member of the board or one of its duly authorized agents has first made a careful investigation and examination of the suspected cattle, and after finding them diseased, shall either agree with the owner as to their value or, failing in this, have an appraisalment made under the provisions of the law, prior to the destruction of the animals.

There is no law on the statute books of this State which authorizes a veterinary surgeon, not acting under the direction of the board, to condemn and kill cattle or to direct that the same shall be done. Neither is there any implied or express responsibility resting upon the Commonwealth to pay for the cattle so killed.

Office of the Attorney General,  
Harrisburg, Pa., May 4, 1905.

Dr. Leonard Pearson, Secretary of Live Stock Sanitary Board:

Dear Sir: I have before me your letter of recent date, enclosing an application to your Board for the payment of the loss sustained by the killing, under the instruction of a veterinary surgeon, of a cow alleged to be afflicted with tuberculosis. You state in your communication that it has not been the practice of your Board to allow compensation where the animal killed has not been inspected and appraised, prior to said destruction, by one of your duly authorized agents, nor until the said inspection has disclosed a condition which made it necessary to condemn and kill the animal to prevent the further spread of the disease with which it was afflicted, and you ask for an official opinion as to whether the course you have been pursuing is correct, or if your Board is warranted or justified in paying for cattle killed on account of being afflicted with tuberculosis or other contagious diseases, upon the advice of a veterinary surgeon not acting under your direction.

The act of May 21, 1895 (P. L. 91), establishing the State Live Stock Sanitary Board of Pennsylvania authorizes and empowers your Board to condemn cattle, and destroy them after inspection, if the result shows that it is necessary, and provides

clearly the method of ascertaining the value and making payment for the same, in section 3 of said act, which reads as follows:

"Section 3. That when it shall be deemed necessary to condemn and kill any animal or animals to prevent the further spread of disease, and an agreement cannot be made with the owners for the value thereof, three appraisers shall be appointed, one by the owner, one by the Commission or its authorized agent, and the third by the two so appointed, who shall, under oath or affirmation, appraise the animal or animals, taking into consideration their actual value and condition at the time of appraisal, and such appraised price shall be paid in the same manner as other expenses under this act are provided for: Provided, That under such appraisal not more than twenty-five dollars shall be paid for any infected animal of grade or common stock, and not more than fifty dollars for any infected animal of registered stock, nor more than forty dollars for any horse or mule of common or grade stock and not to exceed fifty per cent. of the appraised value of any standard bred, registered or imported horses."

Other sections of this act invest your Board and its agents with very broad discretionary powers, and place upon it the important duty of providing for the control and supervision of dangerous, contagious or infectious diseases of domestic animals throughout the Commonwealth. This power of taking and destroying private property for the public good is one which can be conveyed only by the explicit terms of the law, and should be entrusted only to safe, intelligent and conservative hands. The law very properly provides that where your Board finds it necessary to take so radical a step, suitable compensation shall be made to the person sustaining the loss of his property, and it points out how the value of the animal or animals to be so destroyed shall be ascertained. These steps are all necessarily precedent to the destruction of the animals, and to deviate from the method pointed out by the act, either by permitting investigation and compulsory destruction of live stock by unauthorized persons or in allowing compensation to the owners after such unauthorized step, would be a serious departure from the letter and spirit of the act.

I therefore advise you that your Board has no authority to recommend or make payment to persons of the value of animals destroyed in an effort to prevent the spread of dangerous, contagious or infectious diseases, except in instances where a member of your Board or one of its duly authorized agents has first made a careful investigation and examination of the suspected cattle, and, after finding them diseased, shall either agree with the owner as to their value, or, failing in this, to have an appraisal made under the

provisions of the law prior to the destruction of the animals. There is no law on the statute books of this State which authorizes a veterinary surgeon, not acting under the direction of your Board, to condemn and kill cattle or to direct that the same shall be done. Neither is there any implied or express responsibility resting upon the Commonwealth to pay for the cattle so killed.

Respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

DESTRUCTION OF DISEASED ANIMALS—ACTS OF MAY 21, 1895, AND  
MARCH 30, 1905.

Diseased animals, condemned by the State Live Stock Sanitary Board, should be appraised under the provisions of the act of May 21, 1895, P. L. 91, as limited by the act of March 30, 1905, P. L. 78.

There is no method by which the owner of a condemned animal can be compelled to appoint an appraiser, under the act of May 21, 1895, but the act confers ample powers upon the State Live Stock Sanitary Board to destroy such animals and if its officers are resisted the person so resisting should be dealt with under section 5 of the act.

Office of the Attorney General,  
Harrisburg, Pa., March 15, 1906.

Leonard Pearson, M. D., State Veterinarian, Harrisburg, Pa.:

Sir: You have asked my advice as to the authority of the State Live Stock Sanitary Board to condemn and order the destruction of a horse afflicted with glanders, the owner of which refuses to enter into any agreement as to the value of the animal or to designate an appraiser to represent him.

I answer that the acts of May 21, 1895 (P. L. 91), and March 30, 1905 (P. L. 78), both relate to the prevention and suppression of dangerous, contagious and infectious diseases among domestic animals. The first act provides for the establishment of a State Live Stock Sanitary Board. The second act defines the duties and powers of the Board, providing in section 5 certain limits of appraisement with respect to animals that the Board deems it necessary to destroy in order to prevent the spread of disease, but this section does not modify the procedure with reference to appraisement.

I am of opinion that the appraisement should be made under the first named act, observing the limits set up by the second. If the owner of the animal condemned to death refuses to appoint an appraiser under the sanction of the act of 1895, and otherwise obstructs the Board in carrying out the provisions of the acts referred to, he can be prosecuted under section 5 of the act of 1895. I can find no way pointed out by which he can be compelled to designate an appraiser, but as section 2 of the act of 1895 confers abundant power

upon your Board to order the destruction of the horse in question, provided it is deemed necessary for the suppression of dangerous, contagious or infectious diseases among domestic animals, I do not hesitate to advise you that you are authorized to employ the most efficient and practical means for the prevention, suppression, control or eradication of danger, contagion or infection, and that, if you are satisfied that the horse is incurably diseased; that glanders is a highly infectious disease easily transmissible to horses and mules and also to men; and that the horse now in quarantine constitutes a menace to the health of horses and mules, and, in a less degree, to persons in the neighborhood, you have the power to take and kill the horse. If you are resisted, the person so resisting should be dealt with under section 5 of the act of 1895. You are, of course, authorized to employ such force as is necessary to enable you to execute fully your duty.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

---

STATE LIVE STOCK SANITARY BOARD—FORM OF DEED FOR FARM  
PURCHASED FOR USE OF BOARD.

The deed for a farm purchased by the State Live Stock Sanitary Board, for the purpose of conducting research work, should convey the title from the grantor to the State Live Stock Sanitary Board, for the use of the Commonwealth of Pennsylvania.

Office of the Attorney General,

Harrisburg, Pa., July 19, 1905.

Dr. Leonard Pearson, Secretary of State Live Stock Sanitary Board,  
Harrisburg, Pa.:

Dear Sir: I am in receipt of your letter of recent date, in which you state that it is proposed by the State Live Stock Sanitary Board to purchase a farm for its use under the authority conferred by the act of Assembly, approved the 11th day of May, 1905, P. L. 516, for the purpose of conducting research work of the disease of animals, and asking for an official opinion as to the form of the deed that should be used in this transaction.

I have given the matter special consideration and in view of the fact that the State Live Stock Sanitary Board is composed entirely of State officers who hold their positions on this Board by reason of their official capacity in various other Departments of the State government, I am of opinion and advise you, that the deed for the said farm should convey the title from the grantor to "The State Live Stock Sanitary Board for the use of the Commonwealth of Pennsylvania."

Very respectfully yours,

FREDERIC W. FLEITZ,

Deputy Attorney General.

---

---

OPINIONS. TO GAME COMMIS-  
SIONER.

---

---

## OPINIONS TO GAME COMMISSION.

## GAME LAW—SPENDING PENALTY MONEY FOR EXPENSES—POWER OF GAME COMMISSION—ACTS OF 1895 AND 1901.

Under the act of May 21, 1901, P. L. 266, Section 5, the Game Commission can pay its expenses from the funds arising from the fines and penalties collected by game protectors, but such expenses should be restricted to include only such items as are necessary in the performance of official duties.

Office of the Attorney General,  
Harrisburg, Pa., July 19, 1905.

Hon. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.:

Dear Sir: I am in receipt of your letter of yesterday, in which you ask for an official opinion on your legal right to pay the actual expenses incurred in the performance of their official duties by members of the Board of Game Commissioners, out of funds in your hands other than those appropriated by the Legislature for other specific purposes. I understand that you have a fund arising from penalties collected by game protectors appointed by your Board, which may be expended by you for the use of the Game Commission.

I have made a careful examination of the acts of Assembly covering this matter, and find that the act of June 25, 1895, entitled "An act to provide for the appointment of Game Commissioners for the Commonwealth of Pennsylvania, defining their duties and empowering them to appoint game protectors," contains the following language in the latter part of section 4: "Provided, that no Commissioner, protector or other officer authorized by this act, shall claim or receive any compensation for his services or for expenses incurred in the discharge of his duties." This, standing alone and unmodified in any way by subsequent legislation, could bear no other construction than that no part of any money coming into your hands, either by appropriation made by the Legislature or otherwise, could be used for the purposes therein set forth.

I find, however, that on May 21, 1901, Governor Stone approved an act, entitled "A supplement to an act, entitled 'An act to provide for the appointment of Game Commissioners of the Commonwealth of Pennsylvania, defining their duties and empowering them to appoint game protectors,' approved June 25, 1895; extending the

powers of said protectors, making disposition of fines received by them, and regulating their pay." Section 5 of said supplement reads as follows: "That the game protectors, so appointed, shall receive salary or pay per day, as may be agreed upon by the Game Commission, with expenses not to exceed \$2 per day outside of traveling expenses, said expense account to be itemized and presented under oath. All moneys coming to any game protector as his part of any fine or penalty, under existing law, wherein he is the prosecutor, shall belong to the Game Commission, and shall be surrendered by said protector to the secretary of the said Commission for its use. Provided, that the combined expense account of the Game Commission shall not exceed the amount set apart by law to their use."

It is clear from this language that the Legislature intended by this supplement to the act of 1895 to provide for the pay of the game protectors and to create a fund from the fines or penalties collected which should belong to the Game Commission, and to be used in its discretion for the payment of expenses and generally carrying the law into effect. I am therefore of the opinion and advise you that, under the authority conferred by the act of May 21, 1901, you have a right to pay the expenses of the Game Commission from this fund so collected and turned over to you by the several game protectors of the Commonwealth. These expenses should be restricted, however, so as to include only such items as were made necessary in the performance of their official duties as members of the Game Commission.

Very respectfully yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### GAME COMMISSION—RECORD COSTS.

The term record costs as used in the act of 16th of April, 1903 (P. L. 213) fixing the liability for record costs in prosecutions brought by Game Commission officers, means any costs which appear by the record to have been taxed or allowed as costs and includes officers' fees and witness costs, to the party entitled thereto.

Office of the Attorney General,  
Harrisburg, Pa., September 21, 1905.

Joseph Kalbfus, Esq., Secretary Game Commission:

Sir: I have yours of the 6th inst., asking me to define the meaning of the words "record costs," as used in the act of 16th of April, 1903 (P. L. 213), entitled "An act fixing the liability for record costs in cases where officers, whose duty it is to enforce the game laws of

this Commonwealth, fail for any legal cause to receive the same from the defendant."

The act in question specifically provides:

"That whenever any officer of this Commonwealth, whose duty it is by the laws of this State to protect our game, our song, or our insectivorous birds, shall, in good faith, bring suit for violation of any of the laws relative to these subjects, and for any legal cause shall fail to recover the costs of record, the same shall be a charge upon the proper county, and shall be audited and paid as are costs of like character in said county."

Record costs properly mean anything which appears by the record to have been taxed or allowed as costs, and in Pennsylvania the costs which are properly taxable on the record include officers' fees and likewise the charges of the party entitled to costs for his witnesses who have been legally called and examined. It is usual to file a witness bill, setting forth the name of the witness, the days upon which he attended, and the amount due him, and if there be an objection raised to the amount of the bill as filed, notice having been given to the parties sought to be charged, the fee bill or witness bill should then be taxed or authenticated, as prescribed by the rules of court or the practice prevailing in the county where the cause is brought, and when so authenticated, or, technically speaking, when such witness bill of costs is properly taxed, it becomes a part of the record costs. Your legal representative in each county is, of course, the safest authority to consult as to the manner of making said witness bill a part of the record.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



---

---

## MISCELLANEOUS OPINIONS.

---

---

## MISCELLANEOUS OPINIONS.

SUPERVISORS—REBATE ON TAXES ON ACCOUNT OF TREES PLANTED ALONG PUBLIC ROADS—RECORDS OF ABATEMENTS—ACT OF JUNE 2, 1901.

Under the act of June 2, 1901, P. L. 610, it is the duty of the supervisors of a township to allow a rebate on road taxes for trees planted along public roads, in accordance with the terms of the act, and to keep a permanent record of all trees upon which such rebate is allowed. If the supervisors refuse to perform these duties they should be compelled to do so by mandamus.

Office of the Attorney General,  
Harrisburg, Pa., January 4, 1905.

Dr. H. A. Surface, Economic Zoologist:

Sir: I am in receipt of your communication of recent date, enclosing a letter of D. J. Santmeier, of White Haven, asking for certain information relative to the act of June 2, 1901 (P. L. 610).

The act in question provides that:

“Any person liable to road tax, who shall transplant to the side of the public highway on his own premises any fruit, shade or forest trees of suitable size, shall be allowed by the supervisor of roads, or boards of supervisors of roads, where roads run through or adjoin cultivated lands, in abatement of his road tax, one dollar for every two trees set out.”

It imposes certain conditions and restrictions in regard to the manner in which the trees shall be set out and maintained, and, in section 4, it is provided that “No person shall be allowed an abatement, as aforesaid, of more than one-quarter of his said annual road tax.”

Section 7 of the act contains the following:

“It shall be the duty of the supervisor of roads, or the boards of supervisors of roads, to keep a permanent record in a book especially prepared for that purpose, and which book shall be the property of the township, of all trees upon which the said abatement, as hereinbefore mentioned, has been granted, and when any tree or trees have been removed, with or without the consent of the supervisor of roads, or boards of supervisors of roads, the date thereof shall be distinctly entered in said book.”

This act is a part of the general purpose of the recently adopted and wise system of legislation to encourage the planting and preservation of trees throughout the Commonwealth, and should be rigidly enforced.

It appears that the road supervisor of the township in which Mr. Santmeier resides refuses to observe the plain mandate of this act and allow the rebate claimed under its terms. He also refuses to comply with his oath of office and procure and keep a permanent record of all the trees in the township upon which an abatement is allowed in a book especially prepared for that purpose.

This offense is too grave to be overlooked or condoned. Public officials cannot be permitted to deliberately ignore or treat with contempt the laws defining their duties, and I am of opinion and advise you that, in this case and in similar ones brought to your attention, a peremptory demand should be made upon the supervisors to comply with the plain and mandatory requirements of this salutary law, and if they still refuse an action in mandamus should be instituted in the local courts to compel them to carry out its provisions.

Very respectfully,  
FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### FEES OF SECRETARY OF THE COMMONWEALTH—JUDGES COMMISSIONS.

The act of April 27, 1871 (P. L. 241) in section one, prescribes the fee of the Secretary of the Commonwealth as five dollars in issuing the commission "of any other State officer who draws salary."

Judges are State officers and subject to this fee. The fee is not a tax, and does not diminish judicial salaries. It must be paid before the salaries are earned.

Office of the Attorney General,  
Harrisburg, Pa., January 19, 1905.

Hon. William B. Hanna, Philadelphia, Pa.:

Sir: You have informed me that the State Department in sending the judges' commissions to the recorder of deeds for delivery to the judges, makes a charge against each judge of five dollars as a tax or fee, payable under the act of April 27, 1871, Sec. 1 (P. L. 241). You further say that if the judge does not pay this, the recorder must, otherwise he appears delinquent in the books of the Commonwealth. If, on the other hand, the judge pays, the principle that the Legislature should not have the power to reduce the salary of the judges by taxation or otherwise, is impaired.

You ask for my views upon the subject. I reply that the authority

for the charge is to be found in the act above referred to. The act is entitled: "An act prescribing the fees of the office of the Secretary of the Commonwealth," and specifically enacts that the fees of the Secretary for the use of the State shall be (inter alia) as follows: "Commission for Auditor General, Surveyor General or any other State officers who receive a salary, five dollars." No other part of the act in my judgment is applicable, and hence, no other part calls for consideration.

I see no ground for contending that the words "any other State officer who receives salary" do not apply to judges. Judges are State officers and receive salaries. The Constitution treats them as State officers. They are vested with a portion of the judicial power of the Commonwealth and many judicial districts embrace more than one county. They have never been regarded as county officers. They are elected at State elections, and are paid out of the State Treasury, salaries which are fixed by statute. They have no relation to a county except through the accident of territorial boundaries to their jurisdiction, which may be identical, geographically, with the limits of a county but which in a vast majority of instances are not co-terminous. In case of a vacancy the Governor appoints and issues a commission to his appointees and also issues commissions to those duly elected for a fixed term. The term is fixed by the Constitution and all process of the courts is in the name of the Commonwealth. There is nothing in the words used in the clause quoted which would limit the State officers therein designated to executive officers.

Nor do I consider the fee as a tax. The word "tax" nowhere occurs in the statute. It is a fee charged for a service rendered by the Secretary of the Commonwealth; a reward fixed by law for service performed by him, as a public officer. It is a reward or wage given as a recompense for labor and trouble in the execution of his office. It is not a tax upon a judicial salary, nor does it diminish the amount of salary. It precedes the performance of duties by a judge, and is necessary to his qualification. It is not pretended that the fee is imposed under a legislative assertion of a power to diminish salaries, nor has it any necessary relation thereto. It is due and payable before any salary is earned, and is not deducted from the salary if not paid; nor is it imposed in terms upon such salary. I do not regard the independence of the judiciary as being in any way connected with the matter. The question was mooted during the secretaryship of Hon. Charles W. Stone, and determined by him, and the then Attorney General, Hon. William S. Kirkpatrick, in favor of the existing practice which has prevailed until to-day.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

## STATE HIGHWAY DEPARTMENT—HAMILTON ROAD BILL.

The act of 1897 (P. L. 194), known as the Hamilton Road Bill is inoperative because of the fact that the sum of one million dollars necessary to give effect to the act under the provisions of section 21, has not been appropriated or has not been received in the State Treasury from taxes for road purposes.

No part of the moneys appropriated by the act of 15th of April, 1903 (P. L. 188) can be used for the purpose of putting the act of 1897 into effect.

Office of the Attorney General,  
Harrisburg, Pa., February 8, 1905.

Hon. William Wayne, Secretary of the Committee on Public Roads,  
House of Representatives:

Sir: I have before me the resolution adopted by your committee, asking for an official opinion on the question "Whether the act of 1903, containing an appropriation for the improvement of public roads, does not make operative the act of 1897, commonly known as the Hamilton road bill," and in response thereto submit the following:

Section 21 of the act of 1897 (P. L. 194), reads as follows:

"The provisions of this act shall not go into effect until the sum of one million dollars has been appropriated by act of Assembly, or shall have been received in the State Treasury from taxes for road purposes, the same to be distributed under direction of the Department of Agriculture among the several townships of the State in proportion to the number of miles of public road in each township."

The previous sections of the act provide a complete method for improving the public roads of the Commonwealth under the direction of the township supervisors. The act of 15th of April, 1903 (P. L. 188), establishes a State Highway Department, and authorizes that Department to co-operate with the several counties and townships, and with boroughs in certain instances, in the improvement of public highways and the maintenance of improved highways, and makes an appropriation for the purposes named in the act. Section 24 of the later act of 1903 reads as follows: "The sum of six million five hundred thousand dollars is hereby appropriated to carry out the provisions of this act during the next six years." This is an appropriation of money for a specific purpose outlined and defined by the plain language of the act. This method differs widely from the method provided by the act of 1897, and the money appropriated by the latter act, for the purpose of carrying out its provisions, cannot be diverted from the purposes named therein or be distributed except in accordance with its terms. To make the act of 1897 operative necessitates the appropriation by the Legislature of at

least one million dollars for that specific purpose. This has not been done and I am therefore of the opinion and advise you that no part of the money appropriated by the act of 1903 can be used for the purpose of putting the act of 1897 into effect, nor can such money be distributed under its provisions.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### JUSTICE OF THE PEACE.

Disability by reason of age of a justice of the peace does not of itself create a vacancy in the office.

Where a justice of the peace has been found by a commission de lunatico inquiring to be insane and the report of the commissioner joined in by the jury has been affirmed by the court, a vacancy exists in the office.

Office of the Attorney General,  
Harrisburg, Pa., February 17, 1905.

Mr. G. H. Getty, Cashier New Wilmington Bank, New Wilmington,  
Penna.:

Sir: I have your letter, but it relates to a matter in which the Governor of this State cannot act until a vacancy exists. Steps will have to be taken in your locality to properly satisfy the Governor that a vacancy or vacancies exist in the office of justice of the peace.

With regard to the case of the justice disabled on account of age, would it not be possible to obtain his written resignation, and have the same certified to the Governor?

In regard to the justice alleged to be insane, it has been ruled by one of my predecessors, Attorney General McCormick, that the physical or mental disability of an alderman does not create a vacancy, for he may be able to resume his duties. (Opinions of the Attorney General, Report for 1895-96, page 43). I observe, however, a distinction between the facts upon which Attorney General McCormick based his opinion, and those stated in your letter. In the case ruled on by my predecessor there was a mere written statement of a petitioner seeking appointment to the vacant position that the incumbent had become insane and was confined in an insane asylum. There was no judicial finding of insanity. In the case to which you refer, as I read your letter, there has been an adjudication of insanity by a commission appointed by the court. I am not clear exactly what you mean by an adjudication. Do you mean that a writ de lunatico inquirendo was duly issued by the commissioner summon-

ing a jury, and that there was an inquest found, joined in by the jury and the commissioner and duly affirmed by the court? If so, then there has been a judicial determination of the fact of insanity, which establishes the disability beyond peradventure, and nothing but a finding that the man has been restored to reason would overcome the legal effect of this inquest found. If such be the case, I advise that you forward to the Governor for his consideration a copy of all the proceedings in lunacy, certified under the seal of the court, and accompanied by a petition for the appointment of someone to fill the vacancy.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### GENERAL APPROPRIATION BILL—LIVE STOCK SANITARY BOARD.

Items appropriating sums for the expenses of investigations for the treatment and prevention of diseases of domestic animals, and for the purchase of a suitable site and equipment for such work cannot be included in the general appropriation bill.

These items do not constitute any part of "the ordinary expense of the Executive, Legislative and Judicial Departments," for which under Section 15, Art. III of the Constitution, the general appropriation bill may provide.

Office of the Attorney General,  
Harrisburg, Pa., February 17, 1905.

Hon. J. Lee Plummer, Chairman Committee on Appropriations,  
House of Representatives:

Sir: I am in receipt of your letter of the 16th inst., enclosing a memorandum of two items submitted to you by Dr. Pearson, State Veterinarian, who requests that they be included in the general appropriation bill. You state that you called the doctor's attention to the fact that the first item had been covered during the session of 1903 by a special bill (P. L. 1903, p. 41) but that the doctor made the claim that the items asked for were proper subjects for allowance in the general appropriation bill, citing as his authority the act of May 21, 1895 (P. L. 91), creating the Live Stock Sanitary Board and referring to section 7 of said act. You ask for my official opinion.

In my judgment the 7th section of the act provides simply for a method of payment and not for a method of appropriation. The matter really must be governed by the Constitution, which, in section 15 of article III, provides 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 act of 21st of May, 1895 (P. L. 91), established a State Live Stock Sanitary Board and provided for the control and suppression of dangerous, contagious and infectious diseases of domestic animals, section 7 providing that all necessary expenses, under the provisions of the act, should, after approval in writing by the Governor and the Secretary of Agriculture, be paid by the State Treasurer upon the warrant of the Auditor General in the manner now provided by law. It is quite clear that this simply provides a method or manner of payment, but does not relate to a question of legislative appropriation of moneys.

The items asked for by the State Veterinarian are stated in the following language:

"For the payment of the expenses of investigations concerning causes, treatment and prevention of the diseases of domestic animals for the purpose of ascertaining the most efficient, economical and practical means for preventing and suppressing such diseases, for two years, the sum of thirty thousand dollars, or so much thereof as may be necessary."

"For the purchase of a suitable site and equipment and for providing special facilities for conducting research work in relation to the nature and prevention of the infectious and contagious diseases of domestic animals, twenty thousand dollars, or so much thereof as may be necessary."

These items do not constitute any part of the "ordinary expenses of the Executive, Legislative and Judicial Departments of the Commonwealth," as stated in section 15 of article III of the Constitution. They cannot, therefore, be included in the general appropriation bill.

The decision of the Supreme Court in *Commonwealth ex rel Green Appellant v. Gregg et al*, 161 P. S., 582, clearly shows what is meant by "ordinary expenses" of a department of the government and what kind of expense may be included in the general appropriation act.

Guided by that case and by the language of the Constitution, I am of opinion that both of these items must be provided for by a special bill. Perhaps it would be safer to make it two special bills, as the purpose of the first item is to provide for the expenses of investigation and the purpose of the second item is to provide for the purchase of a suitable site and equipment, the first being temporary in character, the second permanent.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.



## MEMBER OF HOUSE OF REPRESENTATIVES.

Where one is elected a member of the House of Representatives for the ensuing session, but dies before he has taken the oath of office, his heirs are not entitled to the salary of a Member of the House for such session. Such a one is a *de facto*, but not a *de jure* member—the official oath is an indispensable prerequisite to the discharge of duty. A salary is “a sum of money paid for services rendered,” and no services having been rendered, the salary cannot be paid.

Office of the Attorney General,  
Harrisburg, Pa., March 21, 1905.

Hon. J. Lee Plummer, Chairman of the Committee on Appropriations, House of Representatives:

Sir: I have your request for an official opinion as to whether the administrators of the estate of the late Hon. Ward R. Bliss are entitled to claim the amount of his salary for the present session.

Mr. Bliss was elected a member of the House of Representatives at the last November election, and, under section 2 of article II of the Constitution, his term of service began on the first day of December next after his election. There was no extra session called during December last and the General Assembly met, as required by section 4 of article II of the Constitution, on the first Tuesday of January, 1905. Mr. Bliss died in January, 1905, without having taken the oath of office. This made him but a *de facto* member and not one *de jure*.

The official oath is an indispensable prerequisite to the discharge of duty. Article VII of the Constitution expressly requires that Senators and Representatives “shall, before entering on the duties of their respective offices, take and subscribe” the oath or affirmation in the prescribed form to be “administered by one of the judges of the Supreme Court, or of a court of common pleas, learned in the law, in the hall of the House to which the members shall be elected.” The same article of the Constitution provides that “Any person refusing to take said oath or affirmation shall forfeit his office, and any person who shall be convicted of having sworn or affirmed falsely, or of having violated said oath or affirmation, shall be guilty of perjury and be forever disqualified from holding any place of trust or profit within the Commonwealth.”

These provisions clearly show the constitutional intent to make the oath of office an indispensable feature of qualification before the performance of any act or service as a member of either Senate or House, and fall within the principle announced by Judge Duncan of the Supreme Court, who, in the case of *Riddle v. The County of Bedford*, 7 Sergeant & Rawle, 386, when considering the eighth arti-

cle of the Constitution of 1790, which provided that members of the General Assembly should be bound by oath or affirmation to support the Constitution of the Commonwealth, and to perform the duties of their respective offices with fidelity, declared that "this oath is a condition annexed to every public office, the taking of which is a prerequisite which cannot be dispensed with, even by a legislative act, much less abolished by a usage which is an abuse of the Constitution." The Judge, after a careful consideration of the nature of a public office, drew the distinction between officers *de facto* and those *de jure*, and reached the conclusion that no act of an officer *de facto*, done for his own benefit, was valid.

This distinction was again emphasized by Judge Rogers in the case of Benjamin, Keyser and Others, Commissioners of the County of Franklin v. William McKissan, 2 Rawle, 139. It was there said "A county treasurer is an officer within the eighth article of the Constitution and must take an oath of office, and he cannot sustain a suit to recover his fees, as such officer, when he has not taken the oath, and there is no acquiescence in the defendant." The reason given for the rule is that "The act of an officer *de facto*, where it is for his own benefit, is void; because he shall not take advantage of his own want of title, which he must be conscious of; but where it is for the benefit of strangers or the public, who are presumed to be ignorant of such defect of title, it is good," citing various authorities.

The same principle was enforced and illustrated in the case of Neale v. Overseers, 5 Watts, 538, where Judge Huston, on the authority of the cases just cited, rules that where a public officer seeks to enforce a legal right by action, he must be able to show that he has duly qualified himself to act; but when a stranger seeks to recover from a public officer, as such, it is only necessary for him to show that he was an officer *de facto*."

It is clear that the claim of the administrators of Mr. Bliss must be based upon the contention that they are entitled to claim the benefit for the estate which they are administering, and hence practically claiming the benefit for Mr. Bliss himself, and that, inasmuch as their decedent had not qualified himself under the Constitution, the claim falls within the principle just stated. The claim of administrators must necessarily be based upon the theory of representation of an owner, and there is no such thing as ownership in a public office on the part of the office-holder. While an officer is defined to be one lawfully invested with an office, and an office embraces the ideas of tenure, duration, emoluments and duties, and these ideas or elements cannot be separated and each considered abstractly, but all must be taken together, yet public office is intended for the public good and not for the particular gain of the

incumbent. It is a mere agency or trust. *Wilson v. City of New York*, 65 New York Supplement, 328, 329.

An office is not property nor are the prospective fees thereof the property of the incumbent. The incumbent cannot sell his office or purchase it or encumber it, and the Legislature, in the absence of constitutional prohibitions, may diminish or abolish the fees of office at pleasure. *Smith v. City of New York*, 37 N. Y., 518.

A public office is a trust held for the benefit of the public. The incumbent, if he performs the duties, may be entitled to the emoluments, but he cannot have any property in the office itself. *Mason v. State*, 58 Ohio, 30.

The duties to be performed are to be performed for the benefit of the public and in the public interest. It is not property, nor are the prospective fees of an office the property of its incumbent. *People v. Kipley*, 171 Ill., 44; *State v. Wadhams*, 64 Minn. 318; *People v. Barrett*, 96 American State Reports, 296.

Again, the relation between a public officer and the government does not rest upon the theory of contract, but arises from the rendition of services. This is well settled, particularly in Pennsylvania, since the decision of the Supreme Court in the case of *Commonwealth v. Bacon*, 6 Sergeant & Rawle, 322, affirmed in *Barker v. The City of Pittsburg*, 4 Pa. St., 49; *McCormick v. Fayette Co.*, 159 Pa. St., 192, and confirmed by the views of the Supreme Court of the United States in *Butler et al v. Pennsylvania*, 10 Howard, 417. Even if there were the element of a contractual nature—which there is not—it is well settled, under the law of contracts, that where a contract with a deceased person is of an executory nature and the personal representative cannot perform the duties or service which the dead party was chargeable with, death absolutely determines the contract.

Finally, the matter is conclusively disposed of by the case of *Commonwealth ex rel Wolfe v. Butler*, 99 Pa. St., 535. In that case the court considered the meaning of section 8 of article II of the Constitution, which provides that “the members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law, and no other compensation whatever, whether for service upon committee or otherwise,” and also the provisions of the act of May 11, 1874 (P. L. 129), providing that “the compensation of members of the General Assembly shall be one thousand dollars for each regular and each adjourned annual session not exceeding one hundred days, and ten dollars per diem for time necessarily spent after the expiration of the one hundred days: Provided, however, that such time shall not exceed fifty days at any one session.” The court, in an opinion delivered by Chief Justice Sharswood, defined the word “salary,” as used in the constitutional pro-

vision just quoted, as meaning "a sum of money periodically paid for services rendered." As it is undoubted that Mr. Bliss performed no services, and, because of his death, could perform none, and as it is equally clear that his administrators cannot perform the service for him, upon all the foregoing grounds I am of opinion that the claim is without authority of law and cannot be sustained.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### CONSOLIDATED STOCK EXCHANGE—QUO WARRANTO.

When a corporation has obtained an existence de facto, under color of law, the validity of its formation can be attacked only in proceedings to which the State is a party.

While the writ of scire facias to repeal letters-patent is probably still available, yet the writ of quo warranto is a concurrent remedy, where the question concerns a corporate franchise, even though the attack may be made because of matters preceding the grant of letters.

The proceeding by quo warranto at the suit of the Attorney General is an appropriate remedy for alleged violations of law on the part of a corporation of the first class. The proceedings are not necessarily at the instance of the district attorney of the county in which the court sat when granting the charter.

The rights of district attorneys appear to be confined to cases instituted to test the title to county and township offices and officers not commissioned by the Governor.

Where the charge is that a corporation chartered by a court is usurping the franchises of a corporation chartered by the Governor, the proceeding should be instituted by the Attorney General.

The court which granted such charter cannot, suo motu, enter a rule to show cause why the decree granting such charter should not be annulled.

The writ of quo warranto should issue against the corporation and not against the individual claiming the right to exercise the franchise.

The writ of quo warranto is an appropriate remedy for violations of law alleged to have been committed before the granting of letters-patent.

There is a distinction between engaging in trade and commerce or conducting operations of trade and commerce and the establishment of an association for the purpose of protecting trade and commerce.

Office of the Attorney General,  
Harrisburg, Pa., May 5, 1905.

In re Petition of A. Perrenod et al for a Writ of Quo Warranto  
against The Consolidated Stock Exchange of Philadelphia.

This is an application for a writ of quo warranto against a corporation chartered by a court as a corporation of the first class, but charged, inter alia, with usurping and exercising the franchises of a corporation of the second class. It is not usual for the At-

torney General to express an opinion upon any matters involved in an application for a writ of quo warranto, nor do I intend to start a new practice, but as the present application involves novel features, I deem it proper to discuss briefly the questions involved. These are four in number:

1. Whether the proceeding by quo warranto at the suit of the Attorney General is an appropriate remedy for alleged violations of law on the part of a corporation of the first class, or whether the proceeding should be at the instance of the district attorney of the county in which the charter by a court was granted; or whether the court can at its own instance enter a rule to show cause why the decree granting the said charter should not be annulled.

2. Whether, if the proceeding at the suit of the Attorney General be proper, the writ should issue against the corporation or against the individuals claiming the right to exercise the franchise.

3. Whether the writ of quo warranto is an appropriate remedy for violations of law alleged to have been committed before the granting of letters patent.

4. Whether, the writ being appropriately applied for, there is sufficient to justify a judicial investigation.

Dealing with these questions in their order, I am of opinion:

1. That the writ of quo warranto is an appropriate remedy, and that it can be set in motion by the Attorney General. I rely upon the language of the act of 14th June, 1836 (P. L. 622), relating to writs of quo warranto and mandamus, and upon the decision of Judge McPherson in the case of *Commonwealth ex rel Attorney General v. The Gray's Mineral Fountain Company*, 46 Legal Intelligencer, 118. In that case it was clearly shown, after an interesting historical review of the English cases and our own precedents, that, while the writ of scire facias to repeal letters patent is probably still available, yet the writ of quo warranto is a concurrent remedy where the question concerns a corporate franchise, even though the attack may be made because of matters preceding the grant of letters patent. It is true that the case was one of a corporation of the second class, but I am clearly of opinion that the language of clause 5 of section 2 of the act of 1836, as well as the language of the third section of the same act, is not limited by the distinctions between corporations of the first and second classes under the act of April 29, 1874 (P. L. 73). That act, by the third section, prescribed the mode in which charters of both classes should be granted, but, when once chartered, whether by the courts or by the Governor, the associates and their successors become a corporation at least de facto, and are entitled to the general powers conferred upon both classes alike by the first section. When a corporation has obtained an existence de facto, under color of law, the validity of its forma-

tion can be attacked only in proceedings to which the State is a party. *Turnpike Road Company v. McConaby*, 16 *Sergeant & Rawle*, 140; *Commonwealth v. Allegheny Bridge Company*, 20 P. S., 185; *Hinchman, Appellant, v. Turnpike Company*, 160 P. S., 150.

I am also of the opinion that the proceedings are not necessarily at the instance of the district attorney of the county in which the court sat when granting the charter. It is true that the act of 3d of May, 1850 (P. L. 654), provided that a district attorney should "conduct all criminal or other prosecutions in the name of the Commonwealth, or when the State is a party, which arises in the county for which he is elected, and perform all the duties which now by law are to be performed by Deputy Attorney Generals;" yet in the case of *Commonwealth v. The Commercial Bank*, 28 P. S., 395, it was distinctly held that the act did not take away the authority of the Attorney General to institute the proceeding.

In *Christ's Church Charter*, 8 Pa. County Court Reports, 28, it was held by Judge McPherson, in a case where a court had granted the charter, that, after proceedings and decree regular in form, an alleged substantial defect may only be set up by quo warranto at the suit of the Attorney General. See also remarks of McMichael, J., in the case of *Travaglini et al v. Societa Italiana et al*, 5 Pa. District Reports, 441.

The rights of district attorneys appear to be confined to cases instituted to test the title to county or township offices and officers not commissioned by the Governor. (*Pepper & Lewis' Digest*, 29017.) Without expressing a definite opinion upon this point, and without committing myself or my successors to interference in local cases, I prefer in the present case, where the charge is that a corporation chartered by a court is usurping the franchises of a corporation chartered by the Governor, to exercise the power which I have, and which, were it the case of a corporation chartered by the Governor, belongs exclusively to me or to the Deputy Attorney General.

I am also of opinion that the court which granted the charter cannot, suo motu, under the circumstances of the present case, enter a rule to show cause why the decree granting the said charter should not be annulled. This point was ruled by the court of common pleas of Lancaster county in the matter of the charter of the Independent Associated German Reformed and German Lutheran Muddy Creek Church of East Cocalico Township, Vol. V, *Lancaster Bar*, No. 36, under date of January 31, 1874. The ruling was made upon the language of the act of 13th October, 1840, section 13, which was closely similar in its terms to the language of the act of April 29, 1874 (P. L. 73). This was followed by the decision of the Supreme Court in *National Endowment Company*, 142 P. S., 450, where it was

held that, when a court of common pleas, in the exercise of the powers conferred upon it by the act of April 29, 1874, and its supplements, had granted a certificate of incorporation to an association within the purview of these acts, the charter could be annulled only by means of a writ of quo warranto. The power which was exercised by Judge Morrison in the court below in the foregoing case was justified because no act of Assembly had authorized the incorporation of the company whose charter was revoked. Its charter was absolutely void and conferred no rights, and therefore the court below was justified in revoking the order which gave it an apparent validity. In the present case, however, the granting of the charter is based upon the decision of Judge Ewing, *In re Application of the Pittsburg Stock Exchange*, 43 Pittsburg Legal Journal, 308, and hence it cannot be said that the charter was void ab initio. The circumstances of the two cases differ so materially that, in my judgment, The Consolidated Stock Exchange has obtained a de facto existence, and, having obtained it, it is beyond the reach of a rule to show cause, and its franchises can be challenged only by proceeding by a writ of quo warranto.

2. Having determined that a proceeding at the suit of the Attorney General is proper under the circumstances, I am of opinion that the writ should issue against the corporation and not against the individuals claiming the right to exercise the franchise. The point is squarely ruled by Judge McPherson in *Commonwealth ex rel. Attorney General v. The Gray's Mineral Fountain Company*, 46 Legal Intelligencer, 118, in which he clearly demonstrates the impossibility of bringing in all stockholders, and plants his ruling upon the strong ground of public policy to avoid insuperable inconvenience.

3. I am of opinion that the writ of quo warranto is an appropriate remedy for violations of law alleged to have been committed before the granting of the letters patent. The case just quoted is express authority upon this point. The facts disclosed upon the hearing indicated that, while the learned judge who granted the charter relied upon the case *In Re Application of The Pittsburg Stock Exchange*, 43 Pittsburg Legal Journal, 308, yet it is not clear that he considered the action of Judge Ewing in ruling that before a charter such as the present one could be granted by the court it was necessary to make the constitution and by-laws of the society a part of its application for a charter, so as to enable the court to pass intelligently on the question whether the purposes were lawful and not injurious to the community.

The ruling of Judge Ewing was based upon an application for charter of The Braddock Club, 37 Pittsburg Legal Journal, 163, and it was held that, until the application was accompanied by an exhibition to the court of the constitution and by-laws, setting forth how

its members were to be admitted, how membership was to be lost, either voluntarily or by act of the corporation, what methods were to be adopted for the assessment and collection of dues for the support of the corporation, the application would be refused with leave to counsel to ask to withdraw the application for amendment.

A similar ruling was made by Paxson, J., *In Re the Charter of The Philadelphia Artisans' Institute*, 8 Phila. Reports, 229, in which the learned judge dwelt particularly upon the requisites of court charters of incorporation. These features are also discussed by Chief Justice Lowrie in the case of the National Literary Association, 30 P. S., 150.

There is room for difference of opinion as to whether or not the purpose of "establishing and maintaining an exchange or sales room in which the members may meet to conduct the business of buying and selling bonds, stocks and commercial securities of all descriptions" was within the purview of the statute declaring as a lawful purpose "the protection of trade and commerce." Judge Ewing in the *Pittsburg* case before referred to admitted that it was a close question, but came to the conclusion that the business of buying and selling stocks was trade and commerce within the meaning of the statute. It appears to me that there is a distinction between engaging in trade and commerce or conducting operations of trade and commerce and the establishment of an association for the purpose of protecting trade and commerce. However this may be, it is quite clear that the features dwelt upon by Judge Paxson and Chief Justice Lowrie, and considered necessary by Judge Ewing before he would grant a charter to *The Pittsburg Exchange*, were not present at the time of the application for a decree granting a charter to *The Consolidated Stock Exchange of Philadelphia*. I am of opinion that the court cannot of itself institute a rule to show cause why the decree thus obtained should not be annulled, and that it is proper to grant the application in order that a judicial inquiry may be instituted.

4. Having determined that the writ of quo warranto has been appropriately applied for and should be allowed, I refrain from expressing any judgment upon the facts developed before me, but certify that, in my judgment, there is sufficient to justify a judicial investigation.

For these reasons the prayer of the petition for a writ of quo warranto is granted.

HAMPTON L. CARSON,  
Attorney General.



## EAST STROUDSBURG NORMAL SCHOOL.

The Attorney General transmits to Cicero Gearhart, district attorney of Monroe county, the report of the investigation by the Auditor General of the condition of the East Stroudsburg Normal School for the district attorney to determine whether there has been a violation of the penal statute of April 23, 1903 (P. L. 285).

Office of the Attorney General,  
Harrisburg, Pa., May 11, 1905.

Cicero Gearhart, Esq., District Attorney, Stroudsburg, Pa.:

Dear Sir: I have the honor to transmit herewith the report of the Hon. Robert K. Young, who, at the request of the trustees of the State Normal School, was appointed by Hon. William P. Snyder, Auditor General of the State, to examine into the management and affairs of that institution. I enclose also the report and exhibits made by Vollum, Fernley and Vollum, certified accountants, who assisted Mr. Young in his work.

The question whether or not any of the facts found by Mr. Young and his associates constitute a violation of the act of Assembly of April 23, 1903 (P. L. 285), by any of the trustees of the institution, is for you and the proper legal authorities of Monroe county to determine. It is not the practice of the Attorney General's Department to institute criminal proceedings of any kind. If such a step is deemed advisable it is your province to take the initiative, and I therefore transmit for your information and guidance the papers above noted.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

APPOINTMENT OF SPECIAL DISTRICT ATTORNEY BY THE ATTORNEY GENERAL—ACT OF MAY 2, 1905.

L. T. Hoyt is appointed attorney to represent the Commonwealth in several criminal proceedings pending in Potter county and is directed to supercede the district attorney of Potter county for that purpose.

The oath of office taken by district attorneys must first be taken by the appointee and thereafter he is clothed for the purpose of his appointment with all the powers and subject to all the liabilities imposed upon district attorneys.

Office of the Attorney General,  
Harrisburg, May 17, 1905.

Hon. L. T. Hoyt, Athens, Bradford County, Pa.:

Sir: Under the authority vested in me by the act of Assembly of May 2, A. D. 1905, and in accordance with its provisions, I hereby

appoint you as attorney to represent the Commonwealth in several criminal proceedings now pending in the court of quarter sessions of Potter county, a schedule of which is hereto annexed and made a part hereof. You are authorized and directed to supercede the District Attorney of Potter county, and to investigate, prepare and bring to trial the cases hereby assigned to you. Before proceeding to discharge the duties of your appointment, you are directed to take the oath of office required by law to be taken by District Attorneys, and when this is done you are clothed, for the purposes of this appointment, with all the powers conferred and subject to all the liabilities imposed upon District Attorneys of the Commonwealth. I enclose herewith a copy of the act and a copy of the request in writing, made by the President Judge of the Fifty-fifth Judicial District, that I make this appointment, and setting forth that in his judgment the case is a proper one for my intervention.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### STATE ASYLUM FOR THE CHRONIC INSANE.

The purchase of a small hand chemical engine for protection against fire can properly be charged to the maintenance account of the State Asylum for the Chronic Insane.

Office of the Attorney General,  
Harrisburg, Pa., May 18, 1905.

Henry M. Dechert, Esq., President Board of Trustees, State Asylum for the Chronic Insane of Pennsylvania, 1201 Chestnut Street, Philadelphia, Pa.:

Sir: I have yours of yesterday, enclosing a letter from J. B. Kremer to yourself, a copy of your letter to Cadwalader Biddle, Esq., Secretary of the State Board of Charities, a letter of Mr. Biddle to yourself, and a letter from Dr. S. S. Hill to yourself, relating to the purchase of a small hand chemical engine, which, in your judgment, is necessary to the protection of the building and the safety of the patients in the institution of which you are the president. I observe that you are of opinion that the expenditure for this engine is properly chargeable to maintenance, and that Mr. Biddle doubts the propriety of a payment for the engine out of an appropriation for maintenance.

I send you a copy of an opinion given to Mr. Biddle under date of April 26th, 1904, relating to the building of a fireproof wall; also copy of an opinion to George M. Stiles, under date of September 17,

1903, relating to the building of a stack. In my judgment, the reasoning of these opinions fully covers the case in hand, and I advise you that the payment for the chemical fire engine may be properly made out of the appropriation for maintenance. It is clear to me that the protection of the buildings and of their inmates against fire may fairly be viewed as maintenance.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

HAIGHT AND FREESE—INJUNCTION—USE OF NAME OF COMMONWEALTH—FOREIGN CORPORATIONS.

A foreign corporation registered and doing business in Pennsylvania, but doing this business in an illegal manner should be proceeded against by quo warranto, and should be ousted from the exercise of the franchises abused in this State.

The Commonwealth should not proceed by an application for an injunction and for the appointment of a receiver. The Commonwealth is not a creditor and should not act as collector of the claims of creditors.

Office of the Attorney General,  
Harrisburg, Pa., May 20, 1905.

This is an application for leave to use the name of the Commonwealth in an information in equity to be filed at the relation of the Attorney General against Haight & Freese, a corporation chartered under the laws of the state of New York, but registered and carrying on business in the State of Pennsylvania, asking for an injunction to restrain said corporation from continuing its business which it is alleged to be conducting in an illegal manner, also asking for the appointment of a receiver to take charge of its assets and hold the same for the security of the informant and other creditors of said corporation pending the further order of the court.

It must be borne in mind that this is the case of a foreign corporation and so far as I am advised no steps have been taken in the State of its origin by the Attorney General of New York to vacate its charter.

The Commonwealth of Pennsylvania can not strike down its charter, as such charter was not granted by her. I am satisfied, however, that the manner in which it is alleged that the business of the company is being conducted calls for a judicial investigation and that this should be had upon an application to the court by an information in the nature of a quo warranto proceeding, so that if it should be judicially determined that the company is abusing the powers conferred by its charter by pursuing illegal methods, it may be

ousted from the exercise of the franchises abused in this State. Leave is granted to counsel to properly shape such an application.

I am also satisfied that there is no authority to maintain the position that an application under the circumstances of this case can be made to the court for an injunction and a receiver in the name of the Commonwealth. The Commonwealth is not a creditor, as was the case in *Commonwealth vs. Bank of Pennsylvania*, 3rd Watts & Sergeant, 184, nor can she undertake to act as a collector of the claims of creditors. She is not their personal representative or trustee. She is not legally interested in the collection of the assets or their distribution. That is a matter of purely private and individual concern. The remedy asked for looks to the protection of individual claims—whether one or many—and is concerned with the pecuniary aspect of the question. This does not charge the Commonwealth with a duty, either legal or equitable.

The mischief sought to be remedied in a quo warranto proceeding affects the entire community, which is not the case in an application for an injunction and a receiver.

The case of *Stewart vs. Parnell*, 147 Pa. St. 523, and *Commonwealth vs. Order of Vesta*, 156 Pa. 531, are adverse to the application.

HAMPTON L. CARSON,  
Attorney General.

---

#### USE OF THE NAME OF THE COMMONWEALTH IN APPLICATION FOR AN INJUNCTION.

To obtain the use of the name of the Commonwealth, a petition should be presented to the Attorney General, setting forth the facts, and should be served on the defendant by copy. Whereupon the Attorney General will fix a day for the hearing.

The Commonwealth has nothing to do with graveyards, which are private property and will only intervene in public matters in which the State at large is concerned.

Office of the Attorney General,  
Harrisburg, Pa., June 16th, 1905.

Thomas Robinson, Esq., Butler, Pa.:

Sir: You are in error as to the method of procedure. The Attorney General does not give praecipes for the issuing of writs of injunction. The proper way is for you to present a petition addressed to me asking for the use of the name of the Commonwealth, and setting forth the facts upon which you rely to sustain your application, giving a copy of the petition to the defendant, and notifying them that you expect to apply to me at Harrisburg for such a process.

I will be in Harrisburg on Tuesday, June 20th, and Wednesday, June 21st, and your affidavit must show service of a copy of the petition upon the school board in question. Before, however, you go to this length, permit me to ask you to carefully consider whether the Commonwealth has anything to do with the matter. The Commonwealth has no ownership in graveyards, and can not undertake to protect private property. You would have to convince me that it was a public matter in which the State at large was concerned. Purely private property rights are not under my jurisdiction or protection.

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

---

#### QUO WARRANTO.

In hearings upon applications for a writ of quo warranto before the Attorney General, the Attorney General has no power to compel the attendance of witnesses nor the production of books and papers.

The testimony in such hearings can be by affidavit or by witnesses not under oath.

Office of the Attorney General,  
Harrisburg, Pa., June 16, 1905.

Alfred E. Jones, Esq., Uniontown, Pa.:

Sir: The Attorney General has no power to compel the attendance of witnesses by subpoena in the hearing of any application for a quo warranto, nor can he compel the production of books and papers. You will find the rules governing applications of this sort stated in Smull's Hand Book under the title "Attorney General's Department." The affidavits which are usually produced are those voluntarily secured by counsel, sworn to before a notary or a magistrate in the jurisdiction where the witness resides, or, if you bring people to Harrisburg to make statements of fact, those statements are taken without administering an oath. Of course, the affidavit should show, or if a statement be made personally by witness, his statement should show, that he has competent personal knowledge of the facts.

I shall sit in Harrisburg to hear this case on June twenty-first immediately after the adjournment of the Pardon Board.

Yours very truly,

HAMPTON L. CARSON,  
Attorney General.

## COMMONWEALTH LIENS.

There is no statutory authority permitting the Attorney General to release land covered by a lien of the Commonwealth from such lien.

Office of the Attorney General,  
Harrisburg, Pa., June 16, 1905.

H. LaBarre Jayne, Esq., 505 Chestnut St., Philadelphia:

Sir: I know of no common law or statutory authority which would permit the attorney General to release on the part of the Commonwealth land from the lien of a judgment, assuming that the Commonwealth has a lien upon the land in question. I ought to say that there is no record in my department of any action instituted in the name of the Commonwealth, in court of common pleas No. 2, June term, 1902, No. 1192. If such a judgment was entered, it must have been prior to my incumbency, and my predecessor has no knowledge of the fact, nor does the record of the office disclose it. It would appear that it could not be a proceeding in which the Attorney General acted. The information which you give me is hardly sufficient to enable me to ascertain by whom the judgment was entered. Believe me I would gladly serve you, but I am not aware of any authority which would enable me to do so. Did the City Solicitor or the District Attorney attempt to use the name of the Commonwealth? I can not understand their authority for doing so, if they did. Perhaps your only remedy is by an application to the court in which the judgment was entered.

Very sincerely yours,

HAMPTON L. CARSON,  
Attorney General.

---

APPROPRIATIONS—DEVIATION FROM REQUIREMENTS OF ACTS—ACT  
OF MAY 11, 1905.

When an act of Assembly making an appropriation for the construction of temporary wards to relieve the overcrowded condition of an insane hospital requires the construction of the buildings in accordance with plans and specifications mentioned in the act, and it afterwards develops that the buildings cannot be constructed in accordance with said plans and specifications within the appropriation made in the act, the trustees of the hospital may modify the plans to an extent sufficient to bring the cost of the building within the amount of the appropriation, if the buildings constructed in accordance with the modified plans substantially comply with the requirements of the act.

Only the gravity of the situation and the imperative necessity for the new buildings justified a deviation from the language of the act making the appropriation.

Office of the Attorney General,  
Harrisburg, Pa., July 21, 1905.

Messrs. Evans & Dettra, Norristown, Pa.:

Gentlemen: I have your letter written in behalf of the trustees of the State Hospital for the Southeastern District of Pennsylvania at Norristown. You call my attention to the recent act of the legislature, approved May 11, 1905, making an appropriation in the following language:

“For the purpose of erecting, completing and furnishing with all necessary equipment four temporary ward buildings, for the accommodation of the patients, in said hospital, now confined in corridors and other unsuitable quarters in the present hospital buildings; said temporary wards to be fire-proof, one story in height, well lighted, properly heated and ventilated, with all modern sanitary appliances and arrangements, and according to plans and specifications now on file in the office of the Auditor General, the sum of \$70,000, or so much thereof as may be necessary, said sum to include all costs and expenses incident thereto; and that, in order that the needed relief may be available for the patients in said hospital in the shortest possible time, it is hereby directed that the contract for the above-mentioned temporary wards shall be let within thirty days after the approval of this act.”

You state that in pursuance of this act the trustees advertised for bids for the construction of the buildings according to the plans mentioned in the statute; that those plans and specifications provided for a fireproof building constructed of corrugated iron; that eight bids were received from responsible bidders, and all of them exceeded the appropriation by more than \$10,000; and that the appropriation of \$70,000 related to the furnishings and equipment, as well as the buildings, while the bids received were for the buildings alone. You state further that, after the bids were opened, and it was discovered that a contract could not be awarded on the plans provided for in the act, the architect revised his plans, substituting wood for corrugated iron, and making various other changes whereby the bids had been brought within the amount authorized by the act of assembly, and that there would be insufficient margin to provide for the furnishing, if construction were made according to the revised plans. You state further that these plans departed widely from those that are referred to in the act of assembly, as on file in the auditor-general's office, and further that it is impossible to construct and equip the buildings for the amount appropriated if the plans specified in the act shall be followed.

You ask whether the trustees would be justified in adopting the changed plans, whereby the cost could be brought within the amount of the appropriation? and you ask further whether, if the trustees are not justified in so doing, they have any duties whatever to perform under the act because of the insufficiency of the appropriation for the purpose specified?

I reply that this is a delicate question, and only the gravity of the situation and the imperative necessity for new buildings would justify a deviation from the very explicit language of the act making the appropriation. A similar question has arisen at Danville, and in a conference with the trustees and the Auditor General, held at this Department last week, I suggested that the architect who drew the first plans, which are placed on file in the office of the Auditor General, should be consulted, and that if he could prepare new plans providing for a practically fireproof construction, consisting largely of concrete, and would certify that the amount of wood necessarily involved in said construction would not interfere with the fire-proof character of the buildings, practically considered, then it would seem to me that the requirements of the act were substantially complied with. It must be borne in mind that the chief object sought to be remedied by this legislation is the scandalously crowded condition of these hospitals, and it would be sticking in the bark to deny relief to the unfortunate inmates because the appropriation made for this purpose proved to be inadequate to cover the expense of the building as originally planned. It must be observed that there is nothing whatever in the act which requires the buildings to be of corrugated iron. The main requirements are that the temporary wards shall be fireproof, one story in height, well lighted, properly heated and ventilated, with all modern sanitary appliances and arrangements.

It is true that the further statement is made "according to plans and specifications now on file in the office of the Auditor General," but to give a controlling operation to this portion of the statute would be to defeat the main purpose of the law. The statute must control the plan and not the plan the statute. The statute cannot be changed, the plan can be changed. The law certainly does not require the performance of the impossible, and there is a long line of decisions that where, for any reason, it is physically impossible to comply strictly with the directory part of a statute, that portion may be ignored so long as the primary intention of the Legislature is carried out and a substantial compliance is practicable. Hence, in my opinion, the sensible and proper thing to do is to have the architect modify the plans, requiring him, however, to certify that, in his judgment, the new plan is of a practically fireproof construction. This being so, the duty remains upon the trustees to carry



out the terms of the statute so that its beneficent purpose may not be defeated.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

GRANT AND LIBERTY STREET RAILWAY COMPANY—QUO WARRANTO.

In an application for suggestion for a writ of quo warranto material allegations which are expressly denied, raise questions of fact which the Attorney General has no means of determining, as he lacks the power and machinery of a judicial tribunal—and such issues must be determined by the courts.

An allegation that the route of a railway company is physically impracticable and a financial impossibility, standing alone, does not present a legal question, but affects merely matters of business policy. The issue is allowed as possibly throwing light on the real purpose of the corporation.

Allegations that there is not a continuous route and that all the stock of the company is held by another corporation raise an issue for the court.

An allegation that there is a partnership of corporations refused as an issue.

An unsupported allegation that a franchise for use of streets of a municipality was obtained by corrupt solicitation, promises, payments and influence upon councilmen refused as an issue. This may not be tried by quo warranto, but may be by bill in equity to restrain a purpresture.

The allegation that a railway company with a route of one and one-quarter miles in length, before building its main line, or showing that it can be built, has attempted to build extensions or branches many miles in length, and that said branches or extensions are in reality the main line or route presents a judicial question which should be inquired into by the court.

The disability of one of the judges of Allegheny county, by reason of his relationship to a member of councils and the general allegation of difficulty in securing an unbiased jury is not sufficient to impeach the administration of justice in Allegheny county. The suggestion is allowed to be filed in that court.

Office of the Attorney General,  
Harrisburg, Pa., September 19, 1905.

In re Application to the Attorney General for a writ of Quo Warranto against The Grant and Liberty Street Railway Company:

This application is similar in substance to one instituted by the District Attorney of Allegheny county to December term, 1904. The Attorney General was of the opinion that such an application was not within the powers of the District Attorney inasmuch as writs of quo warranto to test grants of sovereignty made by the State were entirely under the control of the Attorney General and not within the powers of a local officer. In this view he has been sustained by the courts, and the question of power may be considered at rest.

Because of its importance I have taken time to consider the application. In my judgment it should be allowed. The scope of the inquiry, however, should be much narrower than that suggested in the petition, and hence the issues call for definition.

1. It is alleged that a fraud was perpetrated upon the Commonwealth by the parties applying for and obtaining the charter of The Grant and Liberty Street Railway Company, in that the persons named as incorporators were not the parties actually interested in the proposed company; that the persons who acted as members of the Board of Directors were not the persons actually interested; that the persons named in said application were mere dummies and not bona fide subscribers to the stock; that two thousand dollars for every mile of said road were not in good faith paid in cash to the directors named in said application; that it was not intended in good faith by said applicants to construct, maintain and operate the road mentioned in said application; that said road is a physical and financial impossibility, and that said application was a mere device, a fraudulent scheme of the incorporators and the parties they represented to obtain a charter for the route of the street railway described in said charter, and to that route to attach, by means of extension, a street railway line over Grant Boulevard, for which no charter could be obtained.

All of these charges are specifically denied by the respondent company. Thus issues of fact are raised which the Attorney General has no means of determining, as he lacks the power and the machinery of a judicial tribunal.

Plainly these matters are proper subjects for a judicial inquiry, and in granting the application as to them I express no opinion whatever upon the merits.

The allegation as to the physical impracticability and the financial folly of the trunk line (facts which are denied), standing alone as a substantive matter of inquiry, does not in itself present a legal question, affecting, as it does, mainly matters of business policy, but, as relating to the inquiry whether the extended route was the object originally aimed at and sought to be obtained by indirection, it may be considered relevant by a court as throwing light on the real purpose; hence I allow it to stand.

2. It is alleged that The Grant and Liberty Street Railway Company adopted as part of its route Cherry alley, upon which it can neither construct its railway nor run its cars between Third and Fourth avenues, the same being occupied between Third and Fourth avenues by another street railway company, which has a franchise therefor from the Commonwealth, and an ordinance therefor from the city, and was occupied and in actual continuous use for the transportation of passengers by another street railway company at

the time of the application for a charter by said Grant and Liberty Street Railway Company, and said Grant and Liberty Street Railway Company has, therefore, no continuous route.

This charge is denied so far as its legal consequences are concerned, and new and additional facts are suggested and relied upon by the respondents, involving the consent of the railway company whose tracks were taken—all of which ought to be considered by a court, as issues of fact and of law are thus raised. I express no opinion upon them.

3. It is alleged that all of the capital stock of said Grant and Liberty Street Railway Company is now owned by The Philadelphia Company, a corporation which has no power or authority to own the same; and that the said corporation, the Grant and Liberty Street Railway Company, by reason of all of its capital stock being held by another corporation, has thereby become and is extinct, and its charter subject to forfeiture to the Commonwealth.

It is denied that such ownership of stock would, under the statutes as they now exist, work a forfeiture of the charter. This is a judicial question and should be determined by a court. I have no opinion to express upon it.

4. It is alleged that the relations between the Grant and Liberty Street Railway Company and The Philadelphia Company, and the relations of the Philadelphia Company to other street railway companies and corporations are such as to create a partnership of corporations, which is illegal and unauthorized by law, and subjects the charters of said companies to forfeiture to the Commonwealth.

This is denied as a proposition of law by the respondents. It is plain that this question does not relate to the manner of the grant of the charter of the Grant and Liberty Street Railway Company, and cannot be inquired into in this proceeding, nor can the rights of other companies, not parties to this proceeding, be inquired into collaterally. This issue is refused.

5. It is alleged that the ordinance of the city of Pittsburg of March 1, 1904, granting to the Grant and Liberty Street Railway Company the right to enter upon certain streets, including Grant Boulevard in said city, is void because its adoption was obtained by corrupt solicitation, promises, payments and influence made and exerted upon councilmen of said city by the parties interested in securing the passage of said ordinance.

No evidence whatever was submitted in support of this allegation. This issue is refused. Apart from the lack of evidence, I am of opinion that the matter alleged does not touch the grant of the franchise by the Commonwealth. None of the Commonwealth's officers are concerned in a matter arising subsequent to their action. Besides, it does not appear to me that an inquiry into the conduct of

a purely local municipal body can be made the subject of a quo warranto. The action of councils was in no sense a grant of sovereignty; that would be beyond its power. The regularity of its action as a condition precedent to the validity of a license to use the highways can possibly be raised, if necessary, upon a bill in equity to restrain a purpresture. Qu warranto is not the remedy.

6. It is alleged that the laws of this Commonwealth relating to extensions do not permit a street railway corporation, with a route of one and one-fourth miles in length, before building its main line or showing any intention of building the same, or that the same can be built, to acquire by extensions and branches a route many times in length its main or trunk line, and then attempt to first build said extension or branches, it being manifest, from the topographical conditions and situations, that said branches are in truth and in fact the main line or route, and the acquisition thereof the real purpose of the incorporation of the Grant and Liberty Street Railway Company.

These propositions are denied by the respondents. In my judgment they constitute the main issue, for, after conceding perfect good faith and regularity in the organization of the corporation, and in their freedom from the other objections raised, the question still remains whether an extension is valid where it has been made prior to the building of the trunk line, and where construction of the extension is attempted prior to the physical existence of the trunk line. This is clearly a judicial question and should be inquired into by a court. This issue is allowed.

It was suggested that because of the disability of one of the judges to sit, by reason of his relationship to a member of the councils and because of the difficulty of securing a jury to fairly try the issues, the Attorney General should send this case to another county than Allegheny. I see no reason whatever to justify such action on my part. The disability of a single judge—if such disability actually exists—cannot be permitted to disqualify a bench of judges, and the general allegation of difficulty in securing a jury is insufficient to impeach the administration of justice in Allegheny county. If cause for a change of venue should ever arise, it must be based upon proper evidence and be passed upon at the proper time by the proper tribunal. In my judgment the courts of the locality where a controversy such as this arises are the best judges of its merits. Their local knowledge, their knowledge of the parties, of the witnesses, and of the topography of the region, as well as the convenience of the parties themselves, their counsel and their witnesses, should not be disregarded except for grave cause. No such cause appearing, I select the courts of Allegheny county as the forum of trial.

HAMPTON L. CARSON,  
Attorney General.

## COMPANY STORE ACT.

There must be substantial and positive evidence to warrant action by the Attorney General under the company store act of 9th June, 1891 (P. L. 256.)

The evidence submitted to the Attorney General against the H. C. Frick Coke Company held insufficient.

Office of the Attorney General,  
Harrisburg, Pa., September 19, 1905.

In re Petition of Hantman et al for a writ of Quo Warranto against  
the H. C. Frick Coke Company.

This is an application for the interference of the Attorney General under the act of 9th of June, A. D. 1891 (P. L. 256). That act prohibits mining and manufacturing corporations from engaging in the business of carrying on stores known as "company stores" or general supply stores, and it is declared that it shall not be lawful for such a corporation or its officers or stockholders to carry on such stores, and that such corporation shall not lease or sell the right to maintain stores on property of the company; and that they shall not contract with the owner of the store whereby employes shall be obliged to trade with such store. It is further provided that for any violation of any of the provisions of the act such mining or manufacturing company, so offending, shall forfeit all charter rights granted to it under the laws of the Commonwealth, and it is declared to be the duty of the Attorney General to commence proceedings against the corporation or corporations complained against by a writ of Quo Warranto upon complaint of such violation of any of the provisions of the act by a petition signed and sworn to by two or more citizens residents of the county where the offense is sworn to have been committed.

It is clear that nothing but a plain prima facie case, based upon evidence which, in the judgment of the Attorney General, could be reasonably submitted to a court, would justify such a drastic proceeding. I have examined with care the evidence submitted, and in my judgment there is insufficient testimony to support the allegations that the H. C. Frick Coke Company, or that the men who own and operate the H. C. Frick Coke Company, are interested in, own and operate the Union Supply Company, which is a corporation for the purpose of conducting a general merchandise business, and which does operate stores. Nor is there, in my judgment, evidence that the employes of the H. C. Frick Coke Company are compelled to patronize the said Union Supply Company or be discharged by the Coke Company, or that the employes of the H. C. Frick Company are unlawfully coerced to patronize the stores of the said Union Supply Company. It is not sufficient to rest a case on mere inferences from acts capable of other interpretations, and which are

met by positive denials. There must be substantial and positive testimony in support of each averment in order to justify an interference. The discretion of the Attorney General must be exercised upon his own sense of official responsibility, and cannot be commanded as a pro forma matter upon the application merely of citizens. In the case of *Cheetham et al v. McCormick*, 178 P. S., 187, which defined the powers of the Attorney General in a somewhat similar proceeding under the act of May 7, 1887 (P. L. 94), it was held by the Supreme Court that the Attorney General had a right to exercise a discretion in the matter and was not a mere automaton.

Besides this, the remedy sought in this application is to redress individual and not public wrongs, for which there would appear to be adequate remedy. There is no interest of the Commonwealth involved.

For these reasons the application is refused.

HAMPTON L. CARSON,  
Attorney General.

---

#### VICKSBURG MONUMENTS.

The old soldiers employed by the United States Government at Washington, who vote in Pennsylvania under the provisions of Section 13, Article VIII of the Constitution, are residents of Pennsylvania and are entitled to the transportation to Vicksburg, Miss., provided for by act No. 294, session of 1905.

Office of the Attorney General,  
Harrisburg, Pa., September 21, 1905.

General Samuel K. Schwenk, Chairman of the Vicksburg Battlefield Commission, 143 Liberty St., New York, N. Y.:

Sir: I have yours of September 7th, calling my attention to section 3 of act No. 294, session of 1905, providing "that there shall be provided and furnished at the expense of the Commonwealth, to all worthy honorably discharged soldiers, resident in Pennsylvania at the date of the passage of this act, and whose names were borne upon the rolls of such Pennsylvania organizations in June and July, 1863, transportation \* \* \* to Vicksburg, Mississippi, and return \* \* \*". You state that the question has been raised whether such honorably discharged soldiers, who vote in Pennsylvania where they retain their legal residence, but are employed by the United States Government in the District of Columbia, for the purposes of this act, "resident in Pennsylvania," are entitled to transportation, and you request my official opinion thereon.

I reply that section 13 of Article VIII of the Constitution of Pennsylvania provides:

“For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States or on the high seas, nor while a student of any institution of learning, nor while kept in any poorhouse or other asylum at public expense, nor while confined in public prison.”

In my judgment, those honorably discharged soldiers who vote in Pennsylvania, but are employed by the United States Government in the District of Columbia, are residents of Pennsylvania within the terms and meaning of the act of 1905 (P. L. 467).

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### HOSPITALS—COMPENSATION FOR CARE OF INJURED INDIGENT PERSONS.

The State hospitals in the mining regions are maintained for the purpose of affording free treatment to persons injured in and about the mines who are too poor to pay for the proper and necessary medical attention.

Hospitals built and partially supported by voluntary contributions of charitable persons, even though they may receive appropriations from the legislature, are entitled to compensation for the care of injured indigent persons from the overseers and directors of the poor of the proper district, upon whom the act of June 13, 1836, P. L. 541, and its supplements, impose primary liability for their care and maintenance.

Office of the Attorney General,  
Harrisburg, Pa., October 4, 1905.

H. F. Yost, Solicitor of Board of Poor Directors, Somerset County:

Sir: Your letter of recent date to the Attorney General, asking for an opinion upon the following state of facts, received.

It appears that an indigent person injured in a mine at Boswell was sent to the Memorial Hospital at Johnstown, Pa., for treatment. The authorities of the hospital now submit to the poor directors of Somerset county a bill at the rate of a dollar a day for the maintenance and treatment of the patient while in that institution. You ask to be advised whether or not the hospital has a right to demand payment from your board for the treatment furnished under these conditions, inasmuch as it receives an appropriation for maintenance from the State.

In reply, I desire to say that, under the practice of this Department, we do not give official opinions except at the request of State

officials, who, under the law, have a right to be advised by the Attorney General upon all questions relating to the discharge of their duties. The question you submit, however, is so often referred to this Department, that I am constrained to relax the rule and to give you an opinion which may shed some light upon a matter fast becoming of widespread interest to the people of the Commonwealth. There are a number of State hospitals located at various points in the coal fields, constructed by the State and maintained wholly by appropriations made by the Legislature for that purpose. These hospitals were erected and are maintained for the purpose of affording free treatment to those persons injured in and about the mines who are too poor to pay for the proper and necessary medical attention. They are conducted or managed by boards of trustees appointed by the Governor, and are State institutions in every sense of the word. Any person applying for admission to these hospitals must satisfy the proper authorities that he is unable to pay for such treatment. Unless he can show that this is the fact, they should refuse to admit him at all, or if there be extenuating circumstances, he should be admitted only as a paying patient. It is, however, contrary to the policy of the State that those institutions should receive paid patients generally, and thus enter into competition with other worthy institutions under private ownership and management. It is likewise impossible many times for these State hospitals to accept all of the indigent patients who may apply for treatment, and in that event, preference must be given to that class for which the hospital was originally constructed, to wit, those injured in and about the mines. The trustees of these institutions have full power to act in accordance with the facts before them in each individual case, and it is their duty to protect the State against impositions upon its charity.

There is another class of hospitals doing splendid work for suffering humanity, built and partially supported by the voluntary contributions of charitable persons in the various cities and towns of the State, and to this class belongs the Memorial Hospital of Johnstown. They are controlled by boards of directors elected by the contributors, or in some instances appointed by the courts, the method of selecting depending entirely upon the charters and by-laws of the hospitals. The State has nothing to do with their management or control, although it makes, in many instances, liberal appropriations to assist in the maintenance of the unfortunates who apply to them for treatment. Before appropriations are made to these institutions, they are required to satisfy the appropriation committees of the Legislature and the Governor, that the work they are doing is a necessary and charitable one and that the money appropriated will be used for the benefit of the suffering indigent



of the State. How that aid shall be distributed, in what proportion, and to what patients, is entirely a question for the local management to determine. The State has not seen fit to impose restrictions or limitations upon the authority of the local management to select the objects of its charity, and until it does this by legislative enactment, bills of the kind presented to your board for the treatment of the indigent injured must be paid, because the act of June 13, 1836, P. L. 541, and its supplements, imposes upon the overseers and directors of the poor primarily the care and maintenance of this unfortunate class.

Respectfully yours,  
FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

COMMUTATION OF SENTENCES—EASTERN STATE PENITENTIARY.

A prisoner in the Eastern State Penitentiary who had been sentenced to serve two terms, one of two years and the second of ten years, and the term of two years had expired before the passage of the act of 11th May, 1901 (P. L. 166) is not entitled to receive a commutation upon the consolidated terms provided for by the act. At the time of the passage of the act he was serving but one term, viz of ten years.

Office of the Attorney General,  
Harrisburg, Pa., October 26, 1905.

Charles Carver, Esq., Acting Secretary Board of Inspectors, Eastern State Penitentiary, Stephen Girard Building, Philadelphia, Pa.:

Sir: I have examined the petition of a prisoner addressed to your board, which I herewith return, and I find the facts to be that he was committed to the Eastern Penitentiary to serve two terms, one of two years and one of ten years. The date of his first sentence was June 14, 1898, and six days later he was convicted of another offense and sentenced to ten years, the second sentence to take effect upon the expiration of the first. Extending to the prisoner the proper commutation attached for good conduct to the first sentence, it happened that at the expiration of twenty-two months after the 14th of June, 1898, the prisoner was taken, on the 14th of April, 1900, to the warden's office, and there, to use his own words, he "underwent the formality of discharge." In the presence of one of the inspectors, the warden and clerk, he was asked the usual questions addressed to prisoners about to be regularly discharged, and "was afterwards escorted to the inside gate of the prison by one of the overseers, who then walked me back again to the warden's office to go through the formality of being received as a new prisoner. I was formally received and given a new number." He was then held

in custody under the second sentence of ten years, which had been imposed upon the 20th of June, 1898.

During the running of this term the Legislature passed the commutation act of 11th of May, 1901 (P. L. 166), which specifically provides, in section 2, that when any convict in any State prison, penitentiary, work-house or county jail in this State is held under more than one conviction, the several terms of imprisonment imposed thereunder shall be construed as one continuing term for the purpose of estimating the amount of commutation to which he or she may be entitled under the provisions of the law. My predecessor, Attorney General Elkin, on the 12th of July, 1901 (Opinions of the Attorney General, 1901-02, page 9), handed down an official opinion, sustaining, as an interpretation of this act, the view that a prisoner who is serving different sentences at one time is entitled to have the sentences consolidated and the commutation allowed upon the consolidated sentence. He pointed out that in cases where a prisoner is serving different sentences at one time, it is proper to consolidate the terms which the prisoner is serving in the penitentiary, and treat them as one sentence; that the purpose of the act was manifestly humanitarian; and that a construction should be reached which would promote the meaning and spirit of the law.

It is beyond dispute that the first sentence served by this particular prisoner expired nearly fourteen months before the passage of this law, and that the second sentence began to take effect fourteen months prior to the passage of this law. The prisoner contends, however, with much ingenuity, that he was not legally discharged under the first sentence, and that, never having been legally discharged, he is entitled to the benefit of the commutation law of May 11, 1901. After describing the ceremony of his discharge, as already quoted, he goes on to say:

“Now during this performance I remained the same prisoner, retained the same suit, but never for one moment was I a free man, nor did I leave the institution. A very important question arises—what constitutes a legal discharge under the law?—and was I legally discharged in the meaning of the law? My friends submitted this case to several well known members of the Pennsylvania Bar, who agree that I was not legally discharged according to the law on the subject, and that the whole proceeding was decidedly irregular from a legal standpoint. In the opinion of many I should have been attired in citizen's dress, and properly discharged from the prison, and taken in charge at the gate by an officer from the Lebanon county court and brought in to the prison to serve the sentence of that court. If this had been done I would have been legally discharged and not entitled to the benefit of the new

commutation law of May 11, 1901. The new law provides for the consolidation of all sentences for the purpose of reckoning the amount of commutation to be deducted for good behavior or conduct. In this the new law differs from the old because the latter did not consolidate the sentences, but provided that each sentence be served separately and the commutation reckoned thereon—even though you had a dozen sentences. Now, then, if I was legally discharged I am only entitled to commutation due on the ten years sentence which I am serving; but if I was not legally discharged on April 14, 1900,—then the two sentences should be consolidated—making it twelve years—instead of two and ten years—as provided by the law of May 11, 1901. Then I would be entitled to the benefit of that law, as were all other prisoners at that time and since. My case is without a parallel in the history of this prison, and this accounts for this confusion and contention. The records of the institution have been searched in vain for a similar case.”

“In conclusion I will add that it must be plain to you, gentlemen, that I am entitled to the benefit of the provisions of the new law because I have never been outside of this prison since the day I entered it. It is obvious that had I begun to serve the ten years sentence first I would have been serving it when the new law went into effect and my two sentences would have been consolidated as were all others. My imprisonment began June 14, 1898; and it has been continuous—this fact leaves no doubt of the justice of my contention, and it is clear that my case comes under the new law and that my sentences should be consolidated, and receive the eight months over which this friendly contention has arisen.”

I have given careful consideration to this presentation of the prisoner's case, as it concerns a question of liberty. The fundamental idea in his mind is that his discharge was irregular, and that this irregularity had the effect of continuing or extending his original sentence so that it coalesced with the second sentence, and that upon the two sentences combined the act of 1901 ought to take effect so as to entitle him to the benefit of its provisions. The notion of irregularity in the discharge is doubtless based upon the 10th section of the act of 14th of April, 1835 (P. L. 236), which provides that “when a convict shall be discharged by the expiration of the term for which he or she was sentenced, or by pardon, the clothes belonging to the institution shall be taken off, and the clothing belonging to the convict restored, together with such property, if any, that was taken from him or her at the time of reception into the prison, which has not been otherwise disposed of; if he or she shall not possess suitable clothing, the inspectors shall

provide them with what may in their judgment be necessary; the inspectors and superintendent may furnish the discharged convict with a sum of money or clothing not exceeding five dollars in amount."

This was followed by the act of May 1, 1861, sections 4 and 8 (P. L. 462), providing that the inspectors shall have full power and authority to discharge said criminals whenever they shall have served out the term of their sentences, less the number of days to which they are entitled under the provisions of the act, and that the inspector shall direct the warden or superintendent to give to each prisoner, who may, in consequence of good conduct, be discharged at an earlier period than he would otherwise be entitled to a certificate thereof, stating therein the number of days that have been deducted from his original sentence for good behavior.

I cannot acquiesce in the soundness of the conclusion contended for by the prisoner. The facts undoubtedly are that his first sentence, whether earning a commutation for good conduct or not, expired more than a year prior to the passage of the commutation act of 11th of May, 1901, and that his second sentence took effect immediately upon the expiration of the first sentence; and that, therefore, he was a prisoner under a single sentence of imprisonment which could in no way be affected by an act passed more than a year later. It cannot be admitted that, had he begun to serve the ten year sentence first, he would, at the date of the passage of the new law, have been serving under two sentences which, under the terms of the act, ought to be consolidated, for the simple reason that the fact is he did not begin to serve the ten year sentence first. That sentence, while imposed six days later than the first sentence, was not to become operative until the expiration of the first sentence, and hence this portion of the prisoner's argument is based upon hypothesis and not upon fact. The fact is directly the reverse of what he contends for. Legal rights cannot be disposed of by conjecture; they must be dealt with on the basis of facts as they actually exist.

The second vice in the prisoner's argument is in assuming that any irregularity in his discharge, so far as the performance of the ceremonies attached thereto is concerned, would operate as an extension of his original sentence and preserve or keep alive that original sentence until a date subsequent to the passage of the new law. Granting, for the sake of argument, that the ceremony of discharge was necessary, mere non-performance of it could not operate to extend the term of the sentence imposed by the court. The ceremony does not create the right to discharge, nor does the omission to observe the ceremony deprive the prisoner of any rights which he

might otherwise have. That which fixed the term for which he was imprisoned was the sentence of the court for a time certain and definite, and on the expiration of that time the sentence expired of its own limitation and entitled the prisoner to a discharge. This right existed entirely independent of the ceremony. Ceremonies are simply symbolic. They are not creative of a right. Their performance may emphasize the existence of a right by calling attention to the fact and establishing it in the minds of the bystanders; and it was this principle which underlay the most ceremonious features of the law, such as the livery of seisin and homage or fealty, but behind the ceremony lay the abstract idea which constituted the substance of the right itself, and the mere omission to perform a ceremony in exact form would not in our modern law, when formalities have been largely dispensed with, defeat the right itself. Hence, if the prisoner had been, at the expiration of his first sentence, entitled to his discharge, the omission of the ceremony could not have deprived him of that right, and had he been detained, his liberty could have been secured upon a writ of habeas corpus.

The very language of the 10th section of the act of 14th of April, 1835, indicates that the ceremony—if it can be properly called a ceremony—is to take place “when a convict shall be discharged by the expiration of the term for which he or she was sentenced.” It is the expiration of the term which works the discharge. It is not the fact that at such a time the convict clothing is to be removed and the prisoner’s clothing restored. That is simply an incident, the reason for which is quite clear; that is to send the prisoner out into the world a free man, rid of his prison garb and badge of servitude. Surely it cannot be said that if the prisoner were turned loose into the street, still in his convict’s clothes, he could be retaken and reimprisoned because of that fact alone, or because he had not been presented with the small sum of money which the inspectors are authorized by the act to give.

On this ground alone I am satisfied that the mere failure to observe what is but an incident contemporaneous with the discharge itself should operate to work a change either to the advantage or the disadvantage of the prisoner. So far as the first sentence was concerned, the prisoner was a free man in the eye of the law at the very moment that his term expired. Nothing in this act can be construed to extend that term or impose upon him a longer term of detention than that imposed by the court.

Apart from this view, however, there is another and more radical view to be taken of the case which is destructive of the prisoner’s claim. In my judgment he was not entitled to his discharge at the expiration of his first term, because his second term went into effect immediately upon the expiration of the first. Between these

two there was no appreciable interval of time. Before he could have been rid of his convict's garb and clothed in his original clothing, or in a new suit furnished by the inspectors, and before he could have been led even to the prison door, his second sentence became operative and laid its hand upon him and operated as a legal detainer of his person in the jail. This effect took place nearly fourteen months prior to the time of the passage of the act of 1901, and at that time there were no two sentences in existence to be consolidated under the terms of that act.

Moreover, it is quite clear that when a prisoner is sentenced to undergo a term of imprisonment, and a part of that sentence is, by judicial direction, to become operative upon the expiration of a former sentence, it would be impossible to take him out of the prison walls and set him free. If his freedom were once acquired, no matter how short a time he enjoyed it, a necessity would exist for a re-arrest, and in the meantime the jailor, whose legal duty it would be to keep the prisoner in close and safe custody, would be subjected to the dangers of a rescue or escape. The law books are full of illustrations of the application of the doctrine that the duty of a jailer is to keep the prisoner in *arcta et salva custodia* and nothing but an overpowering *vis major* would operate as an excuse to the officer permitting an escape or tolerating a breach of prison. A prisoner sentenced to undergo confinement immediately upon the expiration of a prior sentence, cannot be entitled to any physical freedom, or to any legal freedom, in any proper sense of the term, because such a condition of freedom, even if it existed but a short time, would be destructive of the terms of the second sentence, or at least so far inconsistent with it as to defeat its purpose.

For these reasons I am of opinion that the prisoner must be considered as in custody under a single term of ten years at the time that the act of May 11, 1901, went into effect, and that the commutation to which he may be entitled is to be computed, not upon any consolidation of terms, but upon the single term of ten years. Terms cannot be consolidated unless more than one term exists, and, inasmuch as the first term had expired and the second term had fairly begun at the time that the act went into effect, there was but one term in existence, and therefore nothing for the act in question to operate upon.

I am,

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

## PUBLIC OFFICERS—STATE POLICE—SUPPLIES.

In the absence of any statutory requirement, the Department of State Police is not required to advertise for bids before awarding contracts for supplies.

Office of the Attorney General,  
Harrisburg, Pa., November 2, 1905.

Hon. John C. Groome, Superintendent of State Police:

Sir: I have your request for an official opinion as to whether you are required by law to advertise for bids for uniforms, arms, equipments and horses for the Department of State Police, under the act of 2d of May, 1905 (P. L. 361).

A careful examination of the statutes relating to advertising, fails to disclose any provision relating to your Department, and I find nothing in the act creating your Department which makes it obligatory upon you to advertise. The fourth section provides that it shall be the duty of the Superintendent of State Police to provide for the members of the police force suitable arms, uniforms, equipments, and where it is deemed necessary, horses, and to make such rules and regulations, subject to the approval of the Governor, as are necessary for the control and regulation of the force.

There are many acts of Assembly relating to cities and other State Departments and State Commissions which, in specific terms, impose the duty of advertising for bids before awarding contracts for supplies, but these are so specific in their application as to exclude the idea of applying generally to all contracts which may be made under the authority of the State, and as there is nothing in the statute particularly relating to your Department which requires it, I answer unhesitatingly that you are not obliged to advertise for these supplies.

The practice in the Adjutant General's Department is to purchase supplies or material out of which uniforms are made, without advertising. I am satisfied that if you pursue the ordinary course of a prudent business man, of obtaining from dealers in the goods required, samples and estimates of price, and then purchase in such a manner as satisfies your judgment that the interests of the State are protected by securing good and proper material at fair business prices, this is all that you can be reasonably required to do.

I am,

Respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

## INSTITUTION FOR THE FEEBLE MINDED AND EPILEPTIC.

The Pennsylvania Commission for the erection of an institution for the Feeble Minded and Epileptic are advised as to the proper form of the printed matter relating to the contract for said building.

Office of the Attorney General,  
Harrisburg, Pa., November 14, 1905.

Hon. John M. Scott, 625 Walnut Street, Philadelphia:

My Dear Senator: I herewith send you the galley slips of the printed matter relating to the proposed contract to be entered into with the Pennsylvania Commission to erect an Institution for Feeble Minded and Epileptic. I note that the proposals do not contemplate a finished building, but simply one consisting of foundations, walls and roof.

I assume that the recital of the fact in the second paragraph under the head "Notice to Bidders," that "a set of drawings and specifications for this work have been approved and signed by each member of the Commission at a regular meeting, etc.," will be an actual fact at the time that the proposals are opened. I am led to make this remark because I have observed that sometimes through inattention the actual plans and specifications have not been signed or have not been properly filed, and that there is subsequently great difficulty in identifying the drawings and specifications upon which the bids were actually made. It is important to have the facts exactly correspond with the recitals.

I also suggest that in the paragraph at the foot of the first galley, which relates to the delivery of a certified check for twenty-five thousand dollars, after the words "each proposal," there should be inserted these words, "accompanied by a written undertaking signed by the bidder under seal, setting forth distinctly that in consideration of the award, should there be a breach on the part of the contractor of his undertaking, either in whole or in part, to furnish the materials and do the work, that said check can be drawn by the Commission to cover the amount of the difference between the amount of his or their bid and the bid of him or those who shall actually furnish the materials and perform the said work, or so much thereof as may be necessary."

I suggest that after the word "bond" in the sixth paragraph from the top of the second galley, there be inserted the words "with approved security."

In paragraph number seven at the top of page three, I suggest the substitution of the word "satisfaction" for the word "approval," and suggest the addition of the words "which satisfaction shall be expressed in writing signed by the architect and members of the commission."



In paragraph eight, I suggest that in place of "he," there should be substituted "they," and in place of "his," there should be substituted "their" before the word "notification." This is for the purpose of preserving the uniformity of the thought that the architect and the commission must be joint actors in the matter.

I do not like the language of section twelve. The enumeration contained between the parentheses gives room for the possible construction that other changes may be admissible, and this would be in conflict with section three. Would it not be well to specify directly that no change, variation or deviation of any kind from the specifications shall be made except by order of the commission and architect in writing?

I am not sure that I know what the words "minor changes" refer to. The phrase is so indefinite as to be difficult of construction. Occurring as the words do, in connection with the subsequent phrase, "not coming within the above provision," would seem to justify the conclusion that any change could be made and deemed a minor change which did not diminish the structural strength of the buildings, involve a difference in cost of construction, diminish the value of work or material to be supplied, or which formed the basis of any claim for extra compensation. I do not think it well to leave the matter open. Would it not be better, if you adhere to the phrase "minor changes," to insert after the words "minor changes" these words: "to be approved by the commission or a majority thereof."

I am unable to pass upon the questions of engineering or of the sufficiency of the other articles describing the character and quality of material, as these are matters entirely outside of my experience and knowledge. Would it not be well to submit the paper to some experienced builder in whose judgment you have confidence, and ask him to give you an opinion as to whether the paper contains all of the provisions necessary to secure for the State a good, workman-like job, in accordance with the specifications, and would it not also be wise for you to have the drawings and specifications submitted in like manner, as the matter really turns upon the completeness of the drawings and specifications themselves?

Very sincerely yours,

HAMPTON I. CARSON,  
Attorney General.

## GETTYSBURG BATTLEFIELD MEMORIAL COMMISSION.

The commissions of the Gettysburg Battlefield Memorial Commission, issued October 15, 1901, not having been confirmed by the Senate, have expired and the Commission does not exist.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1905.

John M. Vanderslice, Esq., Stephen Girard Building, Philadelphia,  
Penna.:

Sir: I have your communication stating that at a recent meeting of the "Gettysburg Battlefield Memorial Commission," as appointed by His Excellency, William A. Stone, then Governor of the State, by virtue of the act of Assembly, dated July 18, 1901 (P. L. 755), you were instructed to ask my opinion as to the present status of the Commission, and as to its authority and powers.

I understand the facts to be that the gentlemen named as commissioners received commissions dated October 15, 1901, which read in part as follows:

"He is, therefore, to have and to hold the said office, together with all the rights, powers and privileges thereunto belonging, or by law in anywise appertaining, until the end of the next session of the Senate, unless sooner lawfully determined or annulled," and filed with the Secretary of the Commonwealth the necessary oaths accepting the trust. They were appointed after adjournment of the Legislature and their names were not sent to the Senate at its next session or at any later session, and they have not been confirmed.

By reason of the veto by Governor Stone of two items in the bill, there was no money available for the purposes of the act prior to June 1, 1905. Under date of June 28, 1905, the Deputy Attorney General, in an opinion to the Auditor General, advised "that if the commission is ready to organize and proceed with the work provided for in the act, they are entitled to receive from the State Treasurer the amount of money appropriated by its terms." The point was not raised or passed on as to whether the commission was actually in existence.

You state that the commission is ready to organize and anxious to proceed to the proper discharge of its duties and desires to incur no liability unless assured of the legality of its position in the expenditure of public money.

You request me to advise you whether, having filed your oaths and acceptances of the trust, you are authorized to act, or whether, not having been confirmed by the Senate, the commission has, by its terms, ceased to exist.

I am of opinion that your commissions have expired. The regular sessions—those of 1903 and 1905—have intervened, and there has

been no re-appointment, or no new appointments. There is no commission to organize, and hence there is nobody to enter upon the work, or to receive the moneys appropriated.

I am,

Very respectfully, .

HAMPTON L. CARSON,  
Attorney General.

---

IN RE RESIGNATION OF GEORGE W. MINTZER, MEMBER OF THE HOUSE OF REPRESENTATIVES FOR THE SESSION OF 1905-06, FROM THE FIRST DISTRICT OF PHILADELPHIA—PUBLIC OFFICERS—RESIGNATION OF—POWER TO RECALL—PROPER OFFICER TO RECEIVE.

In Alabama, California, Iowa, Nevada, New York, Virginia and in a circuit court of the United States, it has been held, in unqualified terms, that a public officer has the right to resign his office at any time at his own pleasure, without the assent of the appointing power, and that, in the absence of any statute to the contrary, an absolute and unconditional resignation vacates an office from the time the resignation reaches the proper authority, without any acceptance, express or implied, on the part of the latter.

The weight of authority, however, and the obvious dictates of public policy require that the right shall be declared in a much more restricted manner, because an office being regarded as a burden which it is the duty of the appointee to bear for the public benefit, it follows that a public officer can not resign his office without the consent of the appointing power, manifested either by an acceptance of his resignation or by the appointment of another in his place.

Where statutes prescribe to whom the resignation of a public officer is to be made, the legislative provision must be complied with; but, in the absence of such a provision, it is properly made to that officer or body that is by law authorized to act upon it, by appointing a successor or calling an election to fill the vacancy.

In Pennsylvania there is no statute which prescribes to whom the resignation of a member of the House of Representatives shall be tendered, but the case falls within the principle that a resignation is properly tendered to that officer or body that is by law authorized to act upon it, by appointing a successor or calling an election to fill the vacancy.

The Speaker of the House of Representatives is the proper officer to receive the resignation of a member of that body, during a recess of the legislature.

Where the resignation of a member of the House of Representatives was intended to take effect immediately, and was delivered with that purpose to the officer authorized to receive it, it cannot be withdrawn even with the consent of the latter.

Office of the Attorney General,  
Harrisburg, Pa., November 16, 1905.

Hon. Henry F. Walton, Speaker of the House of Representatives:

Sir: I herewith acknowledge receipt of a letter from you, couched in the following terms:

"On April 14, 1905, I received the following letter from Hon. George W. Mintzer, Sr., who at that time was a member of the House of Representatives for the session of 1905-'06, from the First district of Philadelphia:

"I respectfully tender my resignation as a member of the House of Representatives, session of 1905-'06, from the First district, to take effect immediately.'

"This letter was handed to me by Mr. Mintzer at my office, and at his request, on April 15, 1905, I sent the following letter to John M. Walton, city comptroller of Philadelphia:

"I beg leave to inform you that I have received this day the resignation of George W. Mintzer, Sr., as a member of the House of Representatives, session of 1905-'06, from the First District, to take effect immediately.'

"Upon November 14, 1905, I received the following from Mr. Mintzer:

"My resignation as a member of the Legislature not having been accepted, I hereby withdraw the same, and give you notice that it is my intention to perform the duties of the office until the expiration of the term for which I was elected.'

"Inasmuch as the Honorable Samuel W. Pennypacker, Governor of the Commonwealth, by his proclamation, has convened a session of the Legislature from January 15, 1906, I find that '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.'

"Will you kindly render me an opinion as to whether or not a resignation thus made to me, as Speaker of the House of Representatives, between a regular and special session such as I have designated, the resignation having been filed with me and accepted, is legal, and therefore cannot be withdrawn? If so, whether or not it is my duty, as Speaker of the House of Representatives to issue a writ for the special election to be held in said district to fill said vacancy?"

The point presented is a novel one in this State, and I reach my conclusion after a careful examination of such authorities as exist elsewhere. It must be observed that this is a claim on the part of one who was an active member of the House during the session of 1905 to recall his own resignation, presented after adjournment sine die, on the ground that it has not been accepted—a position depending upon two propositions: First, that an acceptance is legally necessary to make the resignation effective; and, second, that, in point of fact, there was no acceptance.

I shall deal with these propositions in their order. In Alabama, California, Iowa, Nebraska, Nevada, New York, Virginia, and in a circuit court of the United States, it has been held, in unqualified

terms, that a public officer has the right to resign his office at any time at his own pleasure without the assent of the appointing power, and that, in the absence of any statute to the contrary, an absolute and unconditional resignation vacates an office from the time the resignation reaches the proper authority, without any acceptance, express or implied, on the part of the latter. *State v. Fitts*, 49 Ala., 402; *People v. Porter*, 6 Cal., 26; *Gates v. Delaware County*, 12 Iowa, 405; *State v. Mayor*, 4 Neb., 260; *State v. Clarke*, 3 Nev., 566; *Gilbert v. Luce*, 11 Barbour (N. Y.), 91; *Olmsted v. Dennis* 77 N. Y., 378; *Bunting v. Willis*, 27 Grattan (Va), 144; *U. S. v. Wright*, 1 McLean (U. S.), 512.

The weight of authority, however, and the obvious dictates of public policy require that the right shall be declared in a much more restricted manner, because an office being regarded as a burden which it was the duty of the appointee to bear for the public benefit, it follows that a public officer cannot resign his office without the consent of the appointing power, manifested either by an acceptance of his resignation or by the appointment of another in his place. This is required in order that the public interests may suffer no inconvenience from the want of public servants to execute the laws. This is the substance of Mr. Justice Bradley's opinion in *Edwards v. United States*, 103 U. S., 471. The same principle is stated by Chief Justice Ruffin, of North Carolina, in the case of *Hoke v. Henderson*, 4 Dev. (N. C.) 1, and is sustained by a large number of cases cited with approval in *Throup's Public Officers*, Section 409; *Mechem on Public Officers*, Sections 409-414; 19 *American and English Encyclopedia of Law*—title, "Public Officers;" sub-title, "Resignation."

Conceding, then, the necessity of acceptance, the first consideration is: To whom is the resignation to be made? If an acceptance be necessary, it is clear that it must be by a party having the power to accept, and if the resignation be presented to the wrong person or body, acceptance as well as resignation would be futile. The authorities are agreed that, where statutes prescribe to whom the resignation of a public officer is to be made, the legislative provision must be complied with, but, in the absence of such a provision, it is properly made to that officer or body which is by law authorized to act upon it by appointing a successor or calling an election to fill the vacancy. *Mechem on Public Officers*, section 413; *Edwards v. United States*, 103 U. S., 471; *Pace v. People*, 50 Ill., 432; *McGee v. State*, 104 Ind., 444; *Gates v. Delaware County*, 12 Iowa, 405.

In this State there is no statute which prescribes to whom the resignation of a public officer is to be made in a case such as the one under consideration, but the case falls within the principle that a resignation is properly made if made to that officer or body

which is by law authorized to act upon it by appointing a successor or calling an election to fill the vacancy. Mr. Mintzer presented his resignation to you as the presiding officer of the House, of which he was a member, the House having adjourned sine die. The Constitution provides, in article 2, section 2, that "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." This provision for issuing writs to fill vacancies by the presiding officer of each House is substantially the same as the 19th section, article 1, of the Constitution of 1790. Buckalew on the Constitution, page 31. The acts of 2d July, 1839, P. L. 519, and of 16th of January, 1855, P. L. 1, were passed to give effect to the constitutional provision, and are still in force. Both of these acts imposed the duties of issuing writs to fill vacancies upon the speakers of the respective bodies in which the vacancies occur, such vacancy occurring during the recess.

I am of the opinion that you were the proper person to address in the matter of resignation under the foregoing authorities—first, because, the House not being in session, you were the only official representative of the House who could be reached; and, next, because the duty is specifically imposed upon you of issuing writs to fill vacancies occurring during recess, the Legislature having been required by the Governor to meet at a time previous to the next general election. The case is squarely within the language of the act of 16th of January, 1855, P. L. 1. It would be absurd to contend that a member, attempting to resign, should be required to address every member of an adjourned body, and it would be equally without reason to contend that a resignation could not be made during a recess. That vacancies can occur during a recess is manifest from the language of the Constitution as well as from the language of the statutes above referred to. To hold that no vacancy can arise until the resignation presented to the Speaker in recess is presented by him to the House at its next regular session, would be to destroy the legislative provisions as to the filling of vacancies occurring during a recess in a case where the Legislature is required by the Governor to meet at a time previous to the next general election, a case covered by the act of 1855, or else the word "vacancy" must be limited to the case of a vacancy occurring through death, a limitation of the use of the word for which I perceive no authority whatever. The word is used in a general sense in the Constitution and the statutes without qualification. A vacancy may arise from death, resignation or otherwise; but, however occurring, it is none the less a vacancy.

I am of opinion, therefore, that the resignation of Mr. Mintzer was properly presented to you, and that you had the power to accept

it. The only remaining question is whether you did accept it, and this presents the proposition as to whether there was an actual acceptance.

There is nothing in the law which prescribes any specific mode of acceptance. The acceptance may be manifested either by a formal declaration or by the appointment of a successor, or by any unequivocal circumstance showing an intention to act upon the resignation. Mechem on Public Officers, section 415, and cases cited; 19 American and English Encyclopedia of Law—title, "Public Officers," page 562T and 562U. In *Pace v. People*, 50 Ill., 432, and in *Gates v. Delaware County*, 12 Iowa, 405, it was held that acceptance of a resignation is presumed where the written resignation of an officer is received and filed in the proper office without objection. And in *Van Orsdall v. Hazard*, 3 Hill (N. Y.), 248, the court, by Mr. Justice Cowen, said:

"Where no particular mode of resignation is prescribed by law, and where the appointment is not by deed, it may be by parole; as, by the incumbent declaring to the appointing power that he resigns his office, or will continue to serve no longer, and requesting an acceptance of his resignation. Nor need the acceptance be in writing. It is enough that the office be treated as vacant; for instance, by appointing a successor."

There can be no doubt, upon the facts as detailed by you, of the intention of Mr. Mintzer to resign, and of your acceptance of his resignation. He presented his resignation to you as a member of the House of Representatives, session of 1905-'06, to take effect immediately. He handed the letter containing the resignation to you at your office, and, at his request, on the day subsequent to the date of his letter, you notified the city comptroller of Philadelphia that you had received the resignation of Mr. Mintzer as a member of the House of Representatives, session of 1905-'06, to take effect immediately.

These acts are unequivocal in their meaning. The language and conduct of Mr. Mintzer leaves no room for doubt as to his mental attitude, acquiesced in by him for more than six months thereafter, and your act in notifying another officer of the fact of resignation, particularly as that notification was given at the request of Mr. Mintzer himself, indicates an acceptance of his resignation. It was a public declaration by you of the fact, made at the request of Mr. Mintzer himself, and presumably for his benefit. Although it is not stated in your letter, it is clear that there was some reason for the notification to the city comptroller, and that such notice was necessary to enable him to perform some official act. If such

act inured to the benefit of Mr. Mintzer, it is clear that not only did he resign his place, but that he desired public announcement of the fact to be made by you to an officer whose action was of importance to himself. He has thus acted in such manner as to entirely negative the thought that his resignation was tentative, or that it depended upon some future action of the House, of which he had been a member. The very language of the resignation itself indicates that it was to take effect immediately, and bound you to immediate action. This, under the case as stated, you took without delay.

I am of opinion that a resignation so given cannot be withdrawn. The doctrine of the law on this point is well stated in *Biddle v. Willard*, 10 Ind., 62, and to the same effect are *State v. Boeker*, 56 Mo., 17; *Rodgers v. Slonaker*, 32 Kan., 192; *State v. Clark*, 3 Nev., 519. In the first case it was said:

“A prospective resignation may, in point of law, amount to a notice of the intention to resign at a future day, or a proposition to so resign, and for the reason that it is not accompanied by a giving up of the office—possession is still retained, and may not necessarily be surrendered till the expiration of the legal term of the office because the officer may recall his resignation—may withdraw his proposition to resign. He certainly can do this at any time before it is accepted; and after it is accepted he may make the withdrawal by the consent of the authority accepting, where no new rights have intervened.”

But, as was said in *State v. Hauss*, 43 Ind., 105, where the resignation was intended to take effect immediately, and has been delivered with that purpose to the officer authorized to receive it, it cannot be withdrawn even with the consent of the latter; and the same ruling has been made in other cases. *Yonks v. State*, 27 Ind., 236; *Queen v. Mayor*, 14 Queen's Bench Division, 908. The effect of the decision in *Pace v. People*, 50 Ill., 432; *Gates v. Delaware County*, 12 Iowa, 405; and *State v. Fitts*, 49 Ala., 402, is that an accepted resignation cannot be withdrawn.

It is clear from the language of Mr. Mintzer's resignation that he was not presenting a proposition to resign, but that he unequivocally tendered his resignation, to take effect immediately. Any other construction would be inadmissible.

I am of opinion, therefore, that a vacancy exists in this case, arising from a resignation properly presented to you and accepted by you, acquiesced in by Mr. Mintzer, and that it is not within his power to recall the same. New rights have intervened, the rights of a constituency to be represented by a member chosen to fill a vacancy arising during the recess of the Legislature from a cause,



not only contemplated, but covered by the terms of the act of January 16, 1855, which provides that the method of filling vacancies shall be as prescribed by the act of 2d July, 1839, section 35, P. L. 526, and particularly by section 37 of the last named act.

I reach the same conclusion from another point of view. Should you determine not to issue a writ in this case, it is tantamount to a decision that your previous act amounted to no acceptance, and that the attempted recall of the resignation is operative to save the rights of Mr. Mintzer as a member of the House. In this way it would be impossible to hold a special election with a view of filling the vacancy, and a wrong would be done to the constituency hitherto represented by Mr. Mintzer, for that constituency would be left without a representative during the special session of the Legislature, as called by the Governor, if the House, in judging of the qualifications of Mr. Mintzer as a member, should determine that he had resigned to you as the proper officer, and that your acceptance of his resignation was a valid acceptance. In this way the constituency of the First legislative district would be deprived of representation.

On the other hand, if a special election is held, Mr. Mintzer may either be re-elected, or, should he decline to stand as a candidate and maintain his present position, he could appear before the House and claim his right to the seat, challenging the right of the specially elected member to fill the vacancy, and in this way both parties would be heard and an opportunity given for the presentation of their respective claims, and the road thus be opened for a determination by the House, which, whichever way decided, would not result in depriving the district of a representative.

I therefore instruct you that it is your duty to issue a special writ for the filling of a vacancy in the First Legislative district of Pennsylvania.

Very respectfully,

HAMPTON L. CARSON,

Attorney General.

HOUSE OF REPRESENTATIVES—VACANCIES—SPECIAL ELECTIONS—  
DUTY OF SPEAKER.

Upon the calling of a special session of the legislature, it is the duty of the Speaker of the House of Representatives to issue writs for special elections to fill any vacancies that may exist in the membership of that body. The writs should be directed to the sheriff of the proper county, and should fix the date on which the election shall be held. The date fixed should not exceed thirty days from the issuing of the writ.

Office of the Attorney General,  
Harrisburg, Pa., November 16, 1905.

Hon. Henry F. Walton, Speaker of the House of Representatives:

Sir: Honorable Samuel W. Pennypacker, Governor of the Commonwealth of Pennsylvania, having issued a proclamation calling the members of the Legislature of this State to meet in special session on January 15, 1906, it becomes necessary to hold special elections in certain districts where vacancies exist in the membership of the lower House. As Speaker of the House of Representatives you have authority, and it is your duty, to issue writs, in pursuance of the Constitution of this Commonwealth, to supply said vacancies, which shall be directed to the sheriffs of the proper counties, and shall particularly fix the days on which the elections shall be held to supply such vacancies. I am of opinion, and advise you, that the time appointed by you in said writ for the holding of said special elections shall not exceed thirty days after the issuing of said writ. Section 38 of the act of 1839 (P. L. 519), provides:

“Every writ for holding a special election, as aforesaid, shall be delivered to the sheriff, to whom the same shall be directed, at least fifteen days before the day appointed for such election, who shall forthwith give due and public notice thereof throughout the county, at least ten days before such election, and shall send a copy thereof to at least one of the inspectors of each election district therein.”

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

P. S.—In making your computation of the time in which you have to act you should make allowance for the time necessarily required by the sheriff in complying with the provisions of the act quoted in the last paragraph of this letter.

## PENNSYLVANIA SOLDIERS' ORPHAN INDUSTRIAL SCHOOL—SOLDIERS' ORPHAN SCHOOLS—GRANDCHILDREN—ADOPTED CHILDREN.

Grandchildren or adopted children of soldiers or sailors are not entitled to be admitted to the Pennsylvania Soldiers' Orphan Industrial School or Soldiers' Orphan Schools, under the acts of May 27, 1893, P. L. 171, April 13, 1899, P. L. 46, or April 17, 1905, P. L. 195.

Office of the Attorney General,  
Harrisburg, Pa., November 29, 1906. (7)

Hon. Levi G. McCauley, Vice President Commission of Soldiers'  
Orphan Schools:

Sir: I have before me your recent letter, in which you request an official opinion upon the following question: Are the grandchildren of a soldier who served in the War of the Rebellion, Spanish-American or Philippine Wars legally entitled to be admitted to the schools of the Soldiers' Orphan Commission, if the grandfather has legally adopted said children?

The whole system of soldiers' orphan schools was done away with and the Pennsylvania Soldiers' Orphan Industrial School system substituted by the act of May 27, 1893 (P. L. 171). We must therefore find the law governing these schools and defining the persons entitled to admission therein either in that act or in its supplements.

Section 7 of the act, referring to the children who shall be eligible for admission to the schools, is as follows:

"Preference in admission shall be as follows: 1. Full orphans, the children of honorably discharged soldiers, sailors or marines who served in the war for the suppression of the rebellion, and were members of Pennsylvania commands, or having served in the commands of other states or of the United States, but residents of Pennsylvania at the time of enlistment. 2. Children of such honorably discharged soldiers, sailors or marines, as above, whose father may be deceased and whose mother living. 3. Children of such honorably discharged soldiers, sailors or marines, as above, whose parents may either or both be permanently disabled."

This act was amended April 13, 1899, to include "orphans of honorably discharged soldiers, sailors or marines of the Spanish-American War;" and, by the terms of the act of April 17, 1905, the Commission of Soldiers' Orphan Schools were authorized and required to admit to the Pennsylvania Soldiers' Orphan Industrial School or soldiers' orphan schools, "orphan or destitute children of honorably discharged soldiers, sailors and marines of the Philippine War."

There is nothing in any of the legislation on this subject to indicate that the benefits provided for the children of soldiers, sailors

and marines of the various wars could in any possible way apply to the grandchildren of such soldiers, sailors and marines. It follows that, if the children you mention are entitled to admission to the schools at all, it must be because of their legal adoption and not because of their relationship to their soldier ancestor. The question for determination, therefore, is whether adopted children of a soldier, sailor or marine can be legally admitted.

It was held in a New Jersey case, *Tepper v. Supreme Council of the Royal Arcanum*, 45 Atl. Repr. 111, that "orphans, as used in the Constitution and by-laws of a beneficial association, designating beneficiaries of the deceased persons, as widows, orphans and other dependents of the deceased person, means the children, in the proper sense of the word, of the deceased member, and children means offspring."

The same rule has been frequently stated in the decisions of the courts of our own State. In *Schafer v. Eneu*, 54 Pa. 304, it is said, in an opinion handed down by Mr. Justice Strong: "Adopted children are not children of the person by whom they have been adopted."

In *Com. v. Nancrede*, 32 Pa. 389, the same court, in an opinion delivered by Chief Justice Lowrie, holds that an adopted child is not exempt from the payment of collateral inheritance tax, and states the rule in the following language: "If the heirs or devisees are so in fact, they are exempt. All others are subject to the tax. Giving an adopted son a right to inherit does not make him a son in fact, and he is so regarded in law only to give the right to inherit, and not to change the collateral inheritance tax law. As against that law he has no higher merit than blood relations of the deceased, and is not at all to be regarded as a son in fact."

Therefore, giving the words their ordinary and legal meaning, an adopted child does not come within the provisions of the act of Assembly creating your Commission and designating the beneficiaries of the State's charity distributed by it. If the Legislature had intended those benefits to extend to children by adoption, it would have been easy to say so in plain and unambiguous terms. The failure to do so leave us no alternative but to accept the words used in their true legal meaning, and this is not broad enough to include such children. The State has been most generous and bountiful in its provision for the education and maintenance of the children of those who bore arms in defence of their country, but it has not seen fit to extend this charity to the children adopted by soldiers; possibly for the reason that such a course might open wide the door for a constantly increasing burden upon the treasury of the State in providing for the children of those who remained at home attending to their usual avocations, and whose only claim to such aid rests

upon the fact that they were fortunate enough to induce some soldier to take the legal steps necessary to adopt them.

I am therefore of the opinion and advise you that the various acts in question apply only to the children of the soldiers, sailors and marines of our various wars, and that, in this connection, the word "children" means offspring.

Very respectfully,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### PRACTICE OF MEDICINE IN PENNSYLVANIA.

A duly registered physician removing from one county to another should register as a physician in the prothonotary's office of the county to which he moves.

Office of the Attorney General,  
Harrisburg, Pa., January 15, 1906.

Henry Beates, Jr., M. D., President Board of Medical Examiners,  
1504 Walnut St., Philadelphia, Pa.:

Sir: You ask whether a physician who is legally registered to practice medicine in a certain county can remove from that county and open an office in another county without further registration.

It is well settled that a physician, duly registered before March 1, 1894, in one county under the provisions of the act of June 8, 1881 (P. L. 72), may practice medicine in any county without further registration, such practitioners being expressly exempted from the provisions of the act of May 18, 1893 (P. L. 94), by section 15 of said act. See *Commonwealth v. Townley*, 22 Pa. County Court Reports, 11; *Fishblate v. McCullough*, appellant, 9 Superior Court, 147.

I am unable to find any decision of any court determining whether or not a physician registered under the act of 1893 *ut supra*, subsequent to March 1, 1894, the date on which it became operative, is required to register a second time when removing from one county to another. Transient practice is regulated by the act of July 12, 1897 (P. L. 257). The law draws a distinction between the physician who removes from one county to another, thereby changing his permanent location, and a physician who is technically styled in the acts of Assembly a "sojourner."

There being no decision as to whether a second registration is necessary under the act of 1893, in case of an actual removal from one county to another subsequent to March 1, 1894, we are remitted to the interpretation of the act itself, applying the usual rules of

construction for that purpose. The 14th section of the act of 1893 provides that "no person shall enter upon the practice of medicine or surgery in the State of Pennsylvania unless he or she has complied with the provisions of this act and shall have exhibited to the prothonotary of the court of common pleas of the county in which he or she desires to practice medicine or surgery a license duly granted to him or her as hereinbefore provided, whereupon he or she shall be entitled, upon the payment of one dollar to be duly registered in the office of the prothonotary of the court of common pleas in the said county, and any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof in the court of quarter sessions of the county wherein the offense shall have been committed shall pay a fine of not more than five hundred dollars for each offense." Section 15 of said act expressly exempts certain persons from the provisions, and contains this proviso: "That such practitioner shall not open an office or appoint a place to meet patients or receive calls within the limits of Pennsylvania, or physicians duly registered in one county of this State called to attend cases in another county, but not residing or opening an office therein."

After a due consideration of the act of 1893 it seems to me that the intention of the Legislature was manifestly to confine the operation of the license to practice medicine to the county in which the practitioner resides and maintains an office for the conduct of his business, and that the legislative mind contemplated a second registration in case of a removal from one county to another, and the establishment of an office in the latter county for the conduct of professional business.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

PRACTICE OF MEDICINE IN PENNSYLVANIA—PHYSICIANS IN EMPLOY OF CORPORATIONS.

No one, whether acting for himself or under employment by a corporation, can practice medicine without a full compliance with all the requirements laid down by the acts of Assembly in force in this State.

If no local physician is willing to make information, and the local medical association refuses to act in the premises, the State Medical Council or the Department of Health should take immediate steps to prosecute offenders.

Office of the Attorney General,  
Harrisburg, Pa., January 15, 1906.

Henry Beates, Jr., M. D., President Board of Medical Examiners,  
Philadelphia, Pa.:

Sir: You ask me whether corporations have a right to have, either directly or indirectly, in their service physicians who have not quali-

fied under the act of Assembly; also whether companies have the right to sell preparations, which selling is based upon advising their use for various ailments, i. e., offering their services as a physician and virtually or in fact practicing medicine, and you enclose a letter from a Philadelphia physician touching this matter, which I herewith return.

I reply that the practice of medicine in Pennsylvania is regulated by the acts of March 24, 1877 (P. L. 4), June 8, 1881 (P. L. 72), May 18, 1893 (P. L. 94) and July 12, 1897 (P. L. 257). I am of opinion that no one, whether acting for himself or under employment by a corporation, can practice medicine without a full compliance with all the requirements laid down by the acts of Assembly above referred to. These acts contain penalties for violation of their provisions, which are styled "misdemeanors," and upon conviction thereof in the court of quarter sessions of the proper county, an exemplary fine may be imposed. The case put by you differs in no respect from the ordinary case of practicing medicine without a license, and if no local physician is willing to make the information against the offender, and the local medical association refuses to act in the premises, it seems to me that the State Medical Council or the Department of Health should take immediate steps to prosecute the offenders. I assume that the person complained of does not fall within the class exempted by section 15 of the act of 1893 (P. L. 94).

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### PRACTICE OF MEDICINE IN PENNSYLVANIA.

Holders of the degree of B. M. from an English Medical College are entitled to an examination by the Board of Medical Examiners of Pennsylvania, provided that the degree of B. M. entitles the holder to practice in England, and that it is conferred after four years of study of medicine.

Office of the Attorney General,  
Harrisburg, Pa., April 25, 1906.

Dr. Henry Beates, Jr., 1514 Walnut St., Philadelphia, Pa.:

Sir: I reply to your letter of April 16th, requesting me to advise the Board of Medical Examiners, whether the degree of B. M., conferred by the English Government, is such a degree as will entitle the holder to an examination for a license by your Board, to practice medicine in Pennsylvania, under the provisions of section 13 of the act of 18th May, 1903.

The said section directs, that any person who has received a diploma, conferring the degree of medicine from some 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, provided that such applicant has 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, shall be entitled to examination by your board for license to practice medicine in Pennsylvania.

The question therefore resolves itself into whether or not the degree of B. M., conferred by the English Government, confers the "full right to practice all the branches of medicine and surgery in some foreign country," and whether the holder of such degree had pursued the study of medicine for the period prescribed by our act before he received his degree.

This is a matter which must be determined by your Board upon the facts presented to it, and if necessary or advisable, you are empowered to require proof by affidavit. These facts should be easily obtained by you. If you find that the degree of B. M. entitles the holder to practice medicine in England; that the degree is only conferred after the necessary years of study prescribed by our act, and that all other requirements of the act of 1893 are fulfilled, then I instruct you to grant an examination to applicants holding the degree of B. M.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### BOARD OF MEDICAL EXAMINERS.

The medical practice act does not permit a physician, not a licentiate, to take charge of the practice of a legal practitioner during his absence.

Office of the Attorney General,  
Harrisburg, Pa., July 21, 1905.

Henry Beates, Jr., M. D., President Board of Medical Examiners,  
Philadelphia, Pa.:

Sir: You have requested my opinion as to the propriety of a physician not a licentiate, taking charge of the practice of a legal practitioner during the temporary absence of the latter.

In my judgment, this is not in accordance with the Medical Practice act, which prevents one from opening an office and regularly



establishing himself as a practitioner of medicine without having first qualified according to the statute. Duties of this character, requiring special qualifications and subject to governmental control as a part of the police power of the State, cannot be assigned to unqualified persons. The mere fact that the assignment may last but a brief period does not alter the legal aspect of the case. The maxim of the law is *qui facit per alium facit per se*, and the agent in a matter of this sort must have the qualifications of the principal. I see nothing whatever in the law to prevent one qualified practitioner from calling upon another qualified practitioner to take charge of his practice during his absence, but there is nothing whatever in the law which permits the substitution for a trained and duly qualified professional man of one who has not complied with the statute, and who, therefore, is not qualified to practice.

Respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

BOARD OF REVENUE COMMISSIONERS.

Upon request of several surety companies for the return of bonds they have given covering State deposits, the Board of Revenue Commissioners is advised not to return the bonds.

Office of the Attorney General,  
Harrisburg, Pa., December 8, 1905.

To the Board of Revenue Commissioners, Harrisburg, Pa.:

Gentlemen: I have examined the communications marked respectively A, B and C, and enclosed to me by the clerk of your Board by letter under date of November 22.

"A" consists of a letter addressed to Mr. Mathues, State Treasurer, under date of November 17, from W. K. Jennings, attorney-at-law, of Pittsburg, stating that he had mailed a letter from the cashier of the Cosmopolitan National Bank of Pittsburg, enclosing a New York draft for \$15,000, which, with the \$10,000 draft previously made upon the bank, made up the full sum of \$25,000, and requesting an appropriation of the same in payment of the depository bond upon which the National Surety Company of New York was surety. It also contained a statement of Mr. Scull, the attorney for the bank, made by an endorsement of the letter, asking that the bond be sent to Jennings & Jennings, of Pittsburg. This is accompanied by a request that the State Treasurer should either return the bond or certify that the bond is paid in full, and that the National Surety Company is discharged.

"B" consists of a letter from William J. Griffin, Vice President of the National Surety Company of New York, under date of November 16, 1905, stating that on the 8th inst., he had addressed a formal notice of withdrawal of suretyship by the National Surety Company from bond executed by the Allegheny Valley National Bank of Pittsburgh, as principal, covering deposits made by the State Treasurer in said bank. The letter contains a statement that the National Surety Company had been informed that the bank had filed a new bond in place of the National Surety Company's bond, and also contains a notice that, should the bank have failed to file a new bond and the State Treasurer does not withdraw from the bank the moneys requested in notice of Nov. 8th, such compulsory steps will be taken in equity against the bank to compel it to pay in to the State Treasurer's hands the amount necessary to obtain a release and discharge of the liability of the surety company, and for a decree that the bank shall pay into one of the depositories of the Federal Court the amount of money secured under the bond upon which the National Surety Company is surety, to be there held as security awaiting a determination of the action in equity; and closing with the expression of a hope that the State Treasurer may be able to state that the bank has filed a new bond, and that the National Surety Company is released from all liability on the bond.

Attached to this letter is a notice, under date of November 8th, given under the act of May 14, 1874 (P. L. 177), to the effect that the National Surety Company requests immediate withdrawal of the sum of \$12,500, or such greater or lesser sum as may have been deposited under the bond upon which the National Surety Company is surety for the Allegheny Valley National Bank of Pittsburgh, and that, in default of such withdrawal, the National Surety Company will no longer consider itself responsible in any manner for the safety of said money or funds, and will hold itself discharged from all liability on said bond. This is also accompanied by a notice from the National Surety Company, under date of November 8th, addressed to the State Treasurer, enclosing formal notice or request that the funds mentioned in the notice be withdrawn from the Allegheny Valley National Bank, and also requesting a certification from the State Treasurer that the National Surety Company is relieved from liability by reason of the filing of a new bond in place of the company's bond.

"C" consists of a request from the Secretary of the Tradesman's Trust Company of Philadelphia, that the State Treasurer draw from the deposit of this company \$30,000 of the State funds held on the general account, which will reduce the balance of the State with the Tradesman's Trust Company to the sum of \$100,000; and also requesting that there be returned to the Tradesman's Trust Company

the \$300,000 bond of the American Surety Company of New York, the \$60,000 bond of the American Fidelity Company of Montpelier, Vt., and stating that there has been some correspondence in reference to the former bond, and that the Tradesman's Trust Company is desirous of returning the same to the American Surety Company of New York for cancellation.

I herewith return all of these papers. My advice is that none of these bonds be returned to the sureties, and that the State Treasurer refrain from any certification or expression of opinion that the liability of the sureties has been in any way affected by the taking of new bonds or by the withdrawal of the deposits, if said deposits have been withdrawn.

I base this advice upon the following considerations:

Motions were made in the county of Allegheny to open the judgments entered in behalf of the Commonwealth upon the bonds of sureties in the case of the Enterprise National Bank, and some days ago I argued the questions, involving the meaning of the language of the condition in the surety's bond, and also the effect of taking a new or additional security. Until these questions have been judicially determined it would, in my judgment, be inadvisable for the State Treasurer to assume the responsibility of certifying that new bonds released the old, or that the withdrawal of a deposit operated as a payment pro tanto of the bond.

The question as to whether the bond is a limited liability or a continuing obligation is also involved in the Enterprise National Bank case. It is not fair to put upon the State Treasurer the responsibility of determining whether the sureties have complied with their obligations, or whether they are entitled to the surrender or cancellation of their bonds. That is a question which ought to be judicially determined. A surrender of the bonds would place the Commonwealth in the position of having parted with the evidence upon which to hold the sureties liable in case of need, and also deprive the Commonwealth of the warrant of attorney to confess judgment against the sureties attached to said bonds. In the event of a decision that the sureties were not so discharged, it would present an awkward predicament for the State Treasurer if the bonds had been surrendered with the warrants of attorney, or that he had certified that the bonds were discharged. On the other hand, no harm is done to the sureties by the retention of their bonds, for if under the facts it should be judicially determined that they were discharged, the Commonwealth would be unable to recover against them, even though in possession of the bonds; for if proceeded upon there would be a judgment in favor of the defendants. If, after the final judicial determination of a test case, covering all the points, it

should appear that the bonds should be returned or cancelled, it is time to deal with that question when it arises.

I may also add that, in relation to the notice of the National Surety Company, under date of November 8th, I find that the matter therein contained was similar to the communication addressed to the State Treasurer by Mr. Jennings in behalf of the National Surety Company under date of November 1, 1905, as to which I advised the State Treasurer, under date of November 2, 1905, as to the legal aspect of the matter, and I understand that the assistant cashier communicated with the counsel for the National Surety Company in accordance with the terms of a letter which I drafted for the use of the State Treasurer's Department.

The foregoing expression of views applies with equal propriety to the letter addressed to the State Treasurer by the Equitable Trust Company of Pittsburg under date of November 15, 1905.

I have the honor to be

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

---

#### FORM OF BONDS TO SECURE STATE DEPOSITS.

The Board of Revenue Commissioners is advised as to the proper form of bond to be required to secure deposit of State moneys.

Office of the Attorney General,  
Harrisburg, Pa., May 18, 1906.

C. W. Myers, Esq., Clerk to the Board of Revenue Commissioners:

Sir: You have informed me that at a meeting of the Board of Revenue Commissioners you were instructed to inquire whether, in my opinion, the act approved February 17, 1906 (P. L. 45), would require any change in the form of bonds now given to secure State deposits in banks, banking institutions or trust companies of this Commonwealth, and if, in the event I deem it necessary to change the present form of bond, I would indicate what changes, in my opinion, were necessary.

You state also that lately a number of the corporate sureties have obligated themselves for only the amount held in possession by the bank, while the bank has obligated itself for the penal sum, and you ask whether such an obligation by corporate surety is sufficient under the recent act of February 17, 1906. You enclose two blank forms of bonds given by the depositories having State funds in their possession, one of which is to be executed by corporate

surety, the other by individual, commonly known as "directors' security."

I herewith enclose to you three forms of bonds, respectively known as "Directors' National Bank Bond," "Trust Company Bond, with one corporate surety," and "Trust Company Bond, with two or more corporate sureties," and I have written in such changes as I deem necessary to be made so as to make the bond conform to the act of Assembly. Substantially these changes are as follows:

In the first line of each bond strike out the words "William L. Mathues, State Treasurer," and substitute "the Revenue Commissioners and the Banking Commissioner."

In the second printed line strike out the words "has with the approval of the Board of Revenue Commissioners" and substitute "or a majority of them in accordance with the provisions of the act of 17th of February, 1906."

In the third printed line insert, between the word "and" and the word "has," the words "the Treasurer of the Commonwealth."

In the eighth printed line after the word "deposit" insert the words "or deposits."

After the word "liable" insert the words "at all times."

After the word "draft" insert the words "or drafts by William H. Berry, State Treasurer, or his successor."

In the Trust Company bond with two or more corporate sureties, and in the Trust Company bond with one corporate surety, strike out the word "bank" and substitute the words "trust company" at the end of the sixteenth printed line.

In the condition of the bond strike out the name "William L. Mathues" wherever it accurs and substitute the name "William H. Berry."

In the warrant of attorney to confess judgment insert, in the second printed line thereof, at the top of the second page of the Trust Company bond, as well as the second page of the National Bank bond, before the word "principal," the words "the whole or part of the," and after the word "principal" insert the words "of said deposit or deposits."

In the fourth line, after the word "judgment" insert the words "in favor of the Commonwealth against the said obligor upon the filing of this instrument or a copy thereof, duly attested as correct by the said William H. Berry, State Treasurer, or his successor."

In the seventh line, after the sentence terminating "by virtue hereof," insert the words "and for the doing of these acts this instrument or an attested copy, as aforesaid, shall be a full warrant and authority."

The same changes have been made in the clause relating to the warrant of attorney given by the sureties, and in the paragraph

relating to collection fee I have stricken out the words "is hereby declared" and inserted "shall," and have stricken out the word "in" and inserted the word "to," so that the clause reads: "said collection fee shall be added to and constitute a part of said debt and judgment."

I have also, upon the back of the Trust Company bond with one corporate surety, stricken out the word "bank" and inserted the words "trust company." I have stricken out the word "approved" and substituted the word "made," and I have also added a line for the signature of the Banking Commissioner, followed by the words "Banking Commissioner," as designating his office. Changes are made upon the backs of the Trust Company bond with two or more sureties, and on the back of the Directors' National Bank bond.

The act of 17th of February, 1906, in section 5, requires that all depositaries of State moneys, when duly selected as prescribed in the act, shall furnish a bond to secure the payment of deposits and interest to the Commonwealth, with a proper warrant of attorney to confess judgment in favor of the Commonwealth, secured by a surety company or individual sureties to be approved by the Revenue Commissioners and Banking Commissioner, or a majority of them, in double the amount of the deposit to be made, and if corporate bonds are given no one company shall be approved in an aggregate amount in excess of five times its capital, surplus and reserve.

The sixth section provides that whenever individual sureties are presented for approval, they shall qualify in an aggregate over and above their individual liabilities to three times the amount of the deposit, and no one person shall qualify for more than one fourth of the total amount required.

These are the descriptive and restrictive features of the act. I am of the opinion that the bonds given by the depository must necessarily be in double the amount of the deposit, and the amount of that deposit is, of course, regulated by the provisions of section 4 of the act.

I am also of opinion that the sureties, who stand as security for the bond given by the principal debtor or obligor, should in the aggregate furnish security to equal the amount of the bonds; in other words, the bond being taken as the statute provides for double the amount of the deposit, the sureties should also in the aggregate furnish security in double the amount of the deposit, so that the obligation of the principal debtor and the obligations of the sureties should correspond.

It is familiar law that, while the judgment on a penal bond is technically rendered for the full amount of the penalty, the execution will be limited to the amount of the damages proved to have

been sustained by a breach of the bond. Anderson's Dictionary of Law, title "Penalty."

It is unnecessary, however, where there is corporate security, for the sureties to bind themselves in each instance for the full amount of the bond; in other words, it is perfectly competent for the sureties to bind themselves to a responsibility fixed at a definite sum, thus enabling surety companies or trust companies becoming sureties to distribute their risks among various banks, and not take more than a definitely determined risk in any one individual case, but the aggregate amount of the suretyship thus taken, although composed of several sureties, should in the aggregate equal double the amount of the deposit. By thus guarding the terms of the bond, the doubtful phrase used in your letter—the meaning of which I am at a loss to determine—as to corporate securities obligating themselves for only the amount held in possession, will be avoided.

You will observe that these three manuscripts, returned corrected in accordance with this opinion, are all upon blanks marked No. 4. I have examined Blanks Nos. 1, 2, 3, 5, 6 and 7, but unless some practical question arises upon them and I am interrogated concerning them, I do not feel called upon to express any opinion. I may venture to remark, however, that, as to the note which appears printed in red ink upon the last page of Nos. 1, 2, 3, 5 and 7, I am more than doubtful about the advisability of its use. That note reads as follows:

"If during the time for which this bond is given any of the bondsmen die or become non-residents of the Commonwealth, or for any reason their financial standing should become impaired, it is expected that the bank giving this bond will promptly notify the State Treasurer, and any failure on the part of said bank holding State funds to comply with the request will be deemed sufficient cause for the prompt withdrawal of said funds."

Inasmuch as there is no time specified in the bond the obligation is an unlimited one, both upon principal and surety, unless terminated by the surety by giving written notice in accordance with the terms of the act of 1874. Moreover, the death of a bondsman does not discharge his estate, nor would the removal of a bondsman from the Commonwealth operate as a discharge. Inasmuch as the change which I have suggested in the language of the bond itself, in the first recital, stipulates that the deposit or deposits shall be at all times liable to the draft of the State Treasurer, there is no need for stipulating that a failure on the part of the bank to give notice will be deemed sufficient cause for the prompt withdrawal of said funds. Should such information come to you from any other source, you can act upon it in accordance with your best judgment, or

should the notice be given you can equally act upon it according to your best judgment. In other words, the note is entirely unnecessary, and simply suggests to a surety a possible method of relieving himself or his estate from liability by permitting him to give a notice of withdrawal. I would prefer to have the Commonwealth maintain its hold upon the surety and his estate, unless he avails himself of the method of getting rid of his responsibility by pursuing the provisions of the act of 1874.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### INCOMPATIBILITY OF OFFICES.

The offices of State Senator and Oil Inspector are incompatible.

Office of the Attorney General,  
Harrisburg, Pa., January 5, 1906.

Brig. Gen. John A. Wiley, Franklin, Pa.:

My Dear General: You have informed me that you now hold the office of Oil Inspector under the act of Assembly, approved May 15, 1874 (P. L. 189), and you ask whether it would be contrary to constitutional requirements to be a State Senator and oil inspector at the same time.

The disqualifications of Senators and Representatives are stated in section 6, Article II, of the Constitution. Under the authority conferred by section 2 of Article XII of the Constitution, and to give force and effect to this constitutional provision, the Legislature, on the very same day on which it passed an act creating your present office of oil inspector, passed an act entitled "An act declaring what offices are incompatible. (Pamphlet Laws of 1874, p. 188). Section 15 reads as follows:

"No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth. \* \* \* They shall receive no other compensation, fees or perquisites of office for their services from any source, nor hold any office of profit under the United States, this State or any other State."

I am of opinion that the two offices are incompatible.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



## DAIRY AND FOOD COMMISSIONER'S OFFICE.

QUO WARRANTO—NATURE OF REMEDY—CONSTITUTIONAL LAW—LEGALITY OF OFFICE—DAIRY AND FOOD COMMISSIONER—POWER OF ATTORNEY GENERAL.

Whether the statute creating the office of Dairy and Food Commissioner was an exercise of the police power of the State, or whether the statute created an office of inspection of merchandise in violation of Art. III, Sec. 27, is a judicial question; the Attorney General is not a judicial officer and is without power or right to determine it.

The sole question for the Attorney General is whether the issue sought to be raised in the petition presented to him can be presented to a court and determined in quo warranto proceedings.

The ancient remedy of quo warranto in most cases did not affect the status of the office but only that of the incumbent. In America the use of the writ cannot be restricted to cases of title.

Under our written constitutions, where all acts of the legislature must be brought to the test of constitutionality, cases arise which, while presenting the features of a colorable legal grant, embrace the fundamental question: Was the grant of the franchise or the creation of the office constitutional?

There is no jurisdiction in quo warranto to oust an officer for an abuse of the powers of his office not amounting to a cause of forfeiture.

Whether there has been a constitutional grant of power in the creation of an office (e. g. that of Dairy and Food Commissioner), is a phase of the question of usurpation; all grants in violation of the Constitution are usurpations of the power of the people in that they annul the people's will.

A judicial inquiry into the Constitutional validity of acts of Assembly creating or affecting an office may be had in quo warranto proceedings.

Office of the Attorney General,  
Harrisburg, Pa., April 11, 1906.

WALTER S. BROWN et al

v.

B. H. Warren, Dairy and Food Commissioner.

---

OPINION OF THE ATTORNEY GENERAL

In the Application for a Writ of Quo Warranto against the Dairy and Food Commissioner.

---

The purpose of this petition is to test the constitutionality of the various acts of Assembly under which the respondent holds his office and exercises his powers. It is not an effort simply to test title to the office. The most material allegations of the petition as amended are: That under section 27, article III of the Constitution of Pennsylvania, declaring that "no State office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity," the office of the Dairy and Food

Commissioner is without warrant or color of law; that the respondent is exercising the authority of the said office illegally and in violation of the said Constitution, and that under color of the said office he is exercising the powers of a State officer for the inspection of merchandise, in violation of the Constitution, to the wrong and injury of the petitioners and other retail and wholesale dealers and manufacturers.

The prayer is that the Attorney General shall file an information in the nature of a writ of quo warranto, suggesting that process issue directed to the respondent requiring him to show by what authority he claims to possess and exercise the office of Dairy and Food Commissioner, and by what authority he exercises the powers of a State inspector of merchandise under color of said office.

By way of demurrer to the petition it was alleged in behalf of the respondent that the statute creating the office of Dairy and Food Commissioner was an exercise of the police powers of the State, which, under the Constitution, could not be abridged, and did not either in terms or substance create an office of inspection; that if any powers bestowed by later statutes and exercised by the incumbent were improper or illegal, their exercise could be restrained by injunction, or the propriety of their exercise could be challenged in an action of trespass, or upon the trial of prosecution; in short, that for the office itself there was full legal authority, and that so far as quo warranto proceedings were concerned, the title of the respondent to his office under the commission of the Governor, acting under the authority of a police statute, was indisputable.

These are judicial questions. As I am not a judicial officer, I am without power or right to determine them. The sole question for me is whether the issue sought to be raised can be presented to a court and determined in quo warranto proceedings. Quo warranto is an ancient remedy of the common law, and though the old writ has now given way to an information in the nature of quo warranto, yet the same principles apply.

*Commonwealth v. Burrell*, 7th Pa. St., 34.

It was a high prerogative writ in the nature of a writ of right for the crown against the usurper of an office or a franchise, whereby the authority of the usurper was inquired into and the right determined. It commanded the respondent to show by what right he exercised the office or franchise, not having a grant of it, or having forfeited the right by misuser or nonuser. In strictness, the judgment being one of ouster, operated rather upon the incumbent than upon the office. In most cases the status of the office was not affected, but only that of the incumbent. If the incumbent were ousted the office could still remain. It is clear, however, that in America the use of the writ can not be restricted to cases of title.

Under our written constitutions, where all acts of the Legislature must be brought to the test of constitutionality, cases arise which, while presenting the features of a colorable legal grant, embrace the fundamental question: Was the grant of the franchise or the creation of the office constitutional. There must be some method of determining this, and of determining it directly. No feature of forfeiture of office by user or misuser arises in this case, for none of the acts complained of as those of inspection have been declared by the Legislature to work a forfeiture of the office. It has been expressly held by the Supreme Court in *Cleaver et al v. The Commonwealth ex rel Porter et al*, 34th Pa. Sta., 283, that there is no jurisdiction in quo warranto to oust an officer for an abuse of the powers of his office not amounting to a cause of forfeiture. But the inquiry as to whether the office of Dairy and Food Commissioner is in law a State office of inspection within the meaning of the Constitution, or whether it is an agency of the police power, may be regarded as one phase of the question whether there has been a constitutional grant of power, and this is a phase of the question of usurpation, for all grants in violation of the Constitution are usurpations of the power of the people in that they annul the people's will. That a constitutional inquiry into the validity of acts of Assembly creating or affecting an office may be had in quo warranto proceedings has been determined in the case of *Commonwealth v. Denworth*, 145 Pa. St., 172. It was there held that a suggestion for a quo warranto averring that the defendant is using and exercising the office of city recorder "under color" of certain statutes "without warrant or lawful authority therefor," and the answer averring that by the terms of the statute the defendant became and was entitled to hold the office, sufficiently raises the constitutionality of the enactments. This is a decision directly in point and covers the case. It is important that the doubts raised as to the constitutionality of the office of the Dairy and Food Commissioner should be judicially disposed of. They impair the efficiency and usefulness of an important officer. If they are sound and legally substantial the Legislature can amend the system of protecting the public health. If they be groundless, the sooner it is so determined, the better for the public weal.

This application is allowed.

HAMPTON L. CARSON,  
Attorney General.

## EXPENSES WATER SUPPLY COMMISSION.

The expenses of the Water Supply Commission in visiting different sections of the State to examine the conditions surrounding the water supply, should be paid out of the fund appropriated for that purpose.

Office of the Attorney General,  
Harrisburg, Pa., March 14, 1906.

John F. Whitworth, Esq., Secretary Water Supply Commission of  
Pennsylvania, Harrisburg, Pa.:

Sir: I am in receipt of your letter of recent date, asking for an official opinion upon the question whether, under the act of May 4, 1905 (P. L. 385), the members of the Water Supply Commission of Pennsylvania, are entitled to their necessary traveling expenses incurred in the performance of their duties.

The act in question is entitled "An act creating the Water Supply Commission of Pennsylvania; defining its duties; fixing the scope of its authority and powers, and making an appropriation for the payment of the salaries and expenses connected therewith." The sixth section reads as follows:

"Each member of the Commission shall receive a salary of three thousand dollars per annum, which shall be paid quarterly, by a warrant drawn by the Auditor General upon the State Treasurer, out of moneys not otherwise appropriated, except the Commissioner of Forestry and the Commissioner of Health, who shall serve without salary, but shall be allowed necessary expenses."

If the proper discharge of their duties makes it necessary for the members of the Commission to visit certain sections of the State and personally examine into the conditions surrounding the water supply, it is clear to my mind that, under this act and the general practice governing State officials, this expense should be borne by the State and paid out of the fund appropriated by the Legislature for this purpose.

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

## PENNSYLVANIA REFORM SCHOOL AT MORGANZA.

The title to the lands occupied and used by the Pennsylvania Reform School at Morganza is in the Commonwealth of Pennsylvania.

The board of managers of the school has no authority to lease any portion of the land comprising the school property.

Office of the Attorney General,  
Harrisburg, Pa., April 11, 1906.

Mr. W. F. Penn, Superintendent Pennsylvania Reform School, Morganza, Pa.:

Sir: I am in receipt of your favor of the 28th ult., stating that the farm of The Pennsylvania Reform School contains 512 acres; that about the close of the year 1887, 250 acres, located at Morganza, were leased for oil and gas purposes; and that recently some good oil wells have been drilled "in adjacent to the unleased portion of the property." You do not state by whom they have been drilled, or whether they have been drilled upon the property of the State. You also inform me that the board of managers have several good propositions to lease and are inclined to do so, and that you are directed to ask for instructions, and to inquire what disposition, in my judgment, should be made of the money thus obtained. You also enclose me a copy of the minute of the special meeting held November 21, 1887, at which the matter of the original lease was discussed.

The powers of your institution and the devolution of title to the real estate is displayed in the following acts of Assembly:

The Pennsylvania Reform School at Morganza was incorporated by act of 22d of April, 1850 (P. L. 539), under the name of the "House of Refuge of Western Pennsylvania," "to establish, erect and manage a house of refuge in the counties of Allegheny or Westmoreland, and to make contracts relative to the same, to sue or be sued and by that name and title to be capable in law of purchasing, taking, holding and conveying any estate, real or personal, for the use of said corporation, and to establish by-laws and orders for the regulation of the institution and the preservation and application of the funds thereof, provided the same be not repugnant to the Constitution and the laws of the United States or of this Commonwealth."

This act of incorporation, after providing that every person who shall subscribe to the articles of such association and pay in the sum of fifty dollars or ten dollars annually for the term of six years, shall be a member for life, and every person paying the sum of two dollars annually shall be a member while he continues to contribute said sum, directs that the estate and concerns of the said corporation shall be conducted by a president, a vice president, a treasurer and a secretary and twelve managers, of whom five shall constitute a quorum. By this act the sum of twenty thousand dollars

are also appropriated for the building of said House of Refuge by the Commonwealth of Pennsylvania.

The act of March 18, 1851 (P. L. 199), supplementary to the above act, provided that the several counties embraced within the limits of the western judicial district of the Supreme Court of Pennsylvania, be authorized to subscribe, the county of Allegheny not exceeding twenty thousand dollars, and the several other counties not exceeding ten thousand dollars, to the erection of a House of Refuge of Western Pennsylvania, under the provisions of the act of which the said act was a supplement. By this act each of said counties subscribing to the House of Refuge was entitled to appoint, by its county commissioners, one manager for every twenty-five hundred dollars, which managers so appointed were to be in addition to the managers authorized under the provisions of the incorporating act.

The institution was opened for inmates on December 13, 1854, and on March 20, 1872, by act appearing in the Pamphlet Laws, page 27, the name was changed to "The Pennsylvania Reform School." This act also authorized the managers to sell the real estate and buildings occupied by it in the Ninth ward of the city of Allegheny, and to move the institution to such point in Western Pennsylvania, not exceeding fifty miles from Pittsburg, as the managers in their discretion might select. Under this act the Reform School was, on December 12, 1876, removed to Morganza, Washington county, Pa.

The act of May 5, 1876 (P. L. 126), after making an appropriation to the school, provides that the appropriation shall not be paid until the Board of Public Charities shall have certified that the charter of the Pennsylvania Reform School has been amended by the court or courts having jurisdiction in such manner as to vest in the Governor the power to appoint all the managers excepting such managers as were then appointed by the counties that had contributed to the institution. On October 3, 1878, the title of the institution was transferred to the Commonwealth of Pennsylvania.

By the act of May 1, 1879 (P. L. 43), it is provided:

"By an amendment to the charter of the Pennsylvania Reform School the absolute control of that institution has become vested in the Commonwealth by reason of the several counties which were vested with certain rights in said Pennsylvania Reform School, having released their rights to the State of Pennsylvania, which releases are hereby ratified and approved; now, therefore, be it enacted that the Pennsylvania Reform School by its president and secretary, under its corporate seal, be and is hereby authorized to execute and deliver a deed to the Commonwealth of Pennsylvania for all the real estate owned and occupied by said institution at Morganza, in Washington county, Pennsylvania."

It will be seen from the above recital of the various acts of Assembly relating to the matter that the title to the farm lands of the Reform School is now vested in the Commonwealth, deeds for the same having been given to the Commonwealth of Pennsylvania, and they are now in the possession of the Auditor General.

The question therefore resolves itself into whether or not the board of managers appointed by the Governor and by the several counties, which were the original incorporators of the school, have the right to lease the lands of the Commonwealth. I cannot find any decision of a court, nor any opinion of an Attorney General, which, even by implication, authorizes the board of managers of any of the different State institutions to part with the lands of the Commonwealth, either absolutely or for a term of years. There is no opinion of any Attorney General of this State to that effect. It is stated in the minutes of November 21, 1887, that Mr. Neeb, of the board of managers, reported verbally that the Attorney General of Pennsylvania had advised orally that a lease of oil and gas lands should be made and so drawn as to evade any personal liability on the part of the managers. If the board of managers have the right to make such lease, it must be implied from their general powers, for there is no statutory enactment authorizing such action on their part. In my judgment, such an implication cannot fairly be made.

This conclusion is in line with the opinion given by me under date of September 9, 1903 (Opinions of the Attorney General, 1903-4, page 219), wherein I held that the Forestry Commissioner was without authority to dispose of the property of the State, in whole or in part, except as specially authorized by act of Assembly.

If there is any outstanding lease at the present time, executed under a mistaken view of power, it is your duty to cancel it and take possession of the land for the State.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

## MANDAMUS—REVIEW OF JUDICIAL ACTION BY MANDAMUS—PETITION TO SUPREME COURT.

A petition was presented to the Attorney General praying that he permit the filing in the Supreme Court, in the name of the Commonwealth, a petition for a mandamus to be directed to one of the judges of the court of quarter sessions of Allegheny county, commanding him to appoint viewers under the provisions of the act of May 8, 1876, P. L. 131. The court had considered the matter upon petition and answer filed and in a written opinion had dismissed the petition on the ground that the facts disclosed in the petition did not show a case that authorized the appointment of viewers. Held, that the action of the court could not be reviewed by mandamus. Petition refused.

The Attorney General will refuse a petition asking that an application for a mandamus be filed in the Supreme Court, in the name of the Commonwealth, at the relation of the Attorney General, when he is convinced that the purpose of the action is to endeavor to compel a judge to act in a manner contrary to his judgment in a matter that had been heard before him.

Upon such a petition the Attorney General cannot determine whether an appeal would lie from the decree complained of, or whether an appeal would be an adequate remedy.

Whether a judge has decided correctly is a matter to be determined by proper appellate proceedings, and not by mandamus to compel the judge to alter his decree.

Office of the Attorney General,  
Harrisburg, Pa., May 23, 1906.

In re Petition for Permission to File in the Supreme Court a Petition for a Writ of Mandamus at the Suit of the Commonwealth v. Hon. John D. Shafer, Associate Judge Sitting by Detail as President Judge of the Court of Quarter Sessions in the County of Allegheny.

The record in this case, as exhibited to me, discloses a petition presented under the provisions of the act of May 8, 1876, and its supplements, by twenty or more residents and taxpayers of the county of Allegheny for the freeing of the Sixth street bridge over the Allegheny river from tolls, and praying the appointment of viewers as provided in the act; an answer alleging want of jurisdiction in the court to make the decree prayed for, and a written opinion by the court after a hearing upon petition and answer, resulting in a dismissal of the petition for the reason that the facts disclosed do not show a case which authorizes the appointment of viewers under the act of 1876 or its supplements.

The prayer of the petition addressed to me is that I shall permit the filing of a petition in the Supreme Court in the name of the Commonwealth, at my relation as Attorney General, for a writ of mandamus, to be addressed to the Hon. John D. Shafer, the judge who heard and decided the case, "in order that the most adequate and specific remedy may be obtained for the refusal of said court to appoint said viewers, and that the legal question involved in the said



proceeding, and raised by the petition and the answer in the respective cases, may be speedily and finally determined." The prayer of the petition for the mandamus, which I am asked to sign, is to the effect that the judge, to whom it is to be addressed, shall be compelled to forthwith appoint the viewers as prayed for in the petition.

It is perfectly clear to me that the application should be refused. It is manifest that the object sought it to compel the judge, who has heard and decided the cause, to act in a manner contrary to his judicial judgment of the case as it stands upon his record. He has decided that the petitioners have not complied with the terms of the act in that they have failed to perform the conditions necessarily precedent to the appointment of the viewers. The petitioners assert that they are not bound by these conditions because the repealing act of 10th of June, 1881 (P. L. 96), has relieved them of that necessity. The court has decided that they are mistaken in their view of the law, and that the act of 1881 does not apply to the facts as found in the case.

It cannot be doubted that this is a judicial judgment, and its exercise involved judicial discretion. It is idle to assert that the appointment of viewers is a purely ministerial act and that this bald assertion gets rid of the vital question that, before a purely ministerial duty arises, a judicial duty must be performed. Before the ministerial duty to appoint arises the judge must be satisfied that he has jurisdiction in the premises, for, if the legal conditions prescribed by the act as necessary to the establishment of the jurisdiction are not met, the appointment of viewers, even if made, would fall to the ground and the whole proceeding would be fruitless of results except annoyance, delay and expense. Before the appointment of viewers can be reached the question of jurisdiction must be determined. The question as to what is essential to the jurisdiction is a judicial question; it is not ministerial. It involves the construction of statutes. This is of the very essence of judicial power, which can mean nothing more nor less than the power which administers justice to the people according to the prescribed forms of law—according to their rights as fixed by law.

I am not concerned with the question as to whether or not the judge decided rightly. That is a question for an appellate court. But I am concerned with the question as to whether or not I shall use the powers of my office to seek to compel a judge to act in a manner contrary to his judgment. This would be intolerable and destructive of the independence of the judiciary. I am not willing to ask the Supreme Court to do that which they have time and time again decided cannot be done; nor am I willing to shirk my own responsibility by an endeavor to impose the burden elsewhere.

As far back as 1810 Chief Justice Tilghman, in the case of *Commonwealth v. Judges of Common Pleas*, 3 Binney, 275, said:

"In the case of the *United States v. Lawrence*, 3 Dallas, 42, it was determined by the Supreme Court of the United States, clearly and unanimously, that, although it might command an inferior judge to proceed to judgment, yet they had no power to compel him to decide according to the dictates of any judgment but his own. Upon this principle it would be improper for us to issue a mandamus because the court of common pleas have already decided according to the dictates of their own judgment."

In the case of *Drexel v. Mann*, 6 Watts & Sergeant, 397, Chief Justice Gibson, in speaking of the remedy by mandamus, said:

"It has never been supposed that it lies to compel performance of a judicial function in a particular way."

It is unnecessary to elaborate. The point is fundamental and cannot be shaken. Nor can a mandamus be used as a substitute for an appeal. In *Johnson's License*, 165 P. S., 324, Mr. Justice Williams said:

"This brings us to consider briefly the nature and object of a writ of mandamus. It is a command to some official or other officer to proceed to the discharge of some official duty. When that duty is deliberative or depends upon the exercise of official discretion, the purpose of the writ is to quicken the action of the officer and require him to proceed, to hear, to deliberate, to exercise his discretion. It does not lie to revise the decision of any person clothed with judicial, deliberative or discretionary powers: *Dechert v. Commonwealth*, 113 P. S. 229; *Raudenbusch's Petition*, 120 P. S., 328. If a judge declines to hear, or delays a hearing unreasonably, a mandamus is the appropriate remedy. It commands him to proceed to a hearing and decision, but it is not a substitute for an appeal, and it does not bring up for review the soundness of the discretion used or the correctness of the conclusion reached; *Newlin v. The County*, 23 Weekly Notes, 152; *Petition of Michael Collarn*, 134 P. S. 551. *Wolff's Petition*, 138 P. S., 316; *Coleman's Petition*, 138 P. S., 321."

As recently as 1904 Mr. Chief Justice Mitchell, in *Powell's Estate*, 209 P. S., 77, concisely said:

"There is no mandamus to a court what to decide. If a court is evading its duty by refusing or neglecting to proceed, this court may command it to hear and determine the case, but what the decision shall be cannot be commanded beforehand or reviewed afterwards by mandamus."

It is equally futile to urge upon me that it is doubtful whether an appeal would lie, or that it is an inadequate or tedious remedy. That is a question for the appellate court and I have no power to determine it. Chief Justice Tilghman, in the case in 3 Binney, above quoted, discusses the matter as to what constitutes a final judgment to which a writ of error would lie, and Chief Justice Gibson, in *Commonwealth v. Mitchell*, 2 Penrose & Watts, 518, says that "An early and salutary doubt seems to have been entertained of the propriety of substituting it for a remedy which merely happens to be more tedious," and he points out that the writ involves an exercise of extraordinary power, which fits it for use only in extraordinary cases where there would otherwise be a failure of justice. "Although demandable of common right, it is truly said to be grantable at discretion; for an indiscriminate use of it would certainly lead to its abolition."

The instances where it may be properly allowed are dwelt upon by Woodward J., in *Commonwealth v. Commissioners of Allegheny County*, 32 P. S., 223, and by Chief Justice Agnew in *Overseers of Porter v. Overseers of Jersey Shore*, 82 P. S., 279.

There is nothing which militates against the views above expressed in *Prospect Brewing Company's Petition*, 127 P. S., 525. In that case no issue was joined, and there was nothing on the record which required the exercise of judicial discretion. In the present case there was an answer filed and an issue of law raised, which, after argument, was decided judicially. The cases are dissimilar.

After an extended examination of the authorities, I have found a case which is nearly on all fours with the present one. In *State ex rel Commonwealth et al v. Lichtenberg*, Judge, 30 Pacific Reporter, 1056, the Supreme Court of the state of Washington held that, where there is an action upon an appeal from a judgment of dismissal for want of jurisdiction, the plaintiffs therein are not entitled to have the action of the court reviewed on an application for mandamus to compel the judge to set aside the dismissal and proceed with the trial of the case. It is true that in the case now before me there is no appeal pending, but in the Washington case the appellants offered to waive their appeal in order to prosecute the mandamus, and this waiver put the case in precisely the same position as the present one. Mr. Justice Hoyt used language singularly pertinent to the present case. He says:

"It appears from the petition that such action had been dismissed by the court for want of jurisdiction, and that judgment of dismissal had been entered thereon.

- It further appears therefrom that from such judgment petitioners have prosecuted an appeal to this court and in due form have perfected the same. Petitioners seek

by this proceeding (mandamus) to compel the said court to set aside such judgment of dismissal, to reinstate the cause, and proceed to try and determine the same."

I pause in my quotation to point out that this is exactly what is sought by the present proceeding, to compel the court to set aside its judgment of dismissal and to reinstate the cause in such a manner that the viewers may be appointed. Judge Hoyt continues:

"By this proceeding they seek to have this court declare that it is not such a final judgment, without first abandoning the position they have taken, that it is by a final dismissal of their appeal. It is true that they say in the application for the writ that they are willing to waive their appeal. But such offer of waiver in a proceeding in no way connected with the case on appeal, could have no effect thereon. Petitioners cannot place themselves in such an inconsistent position. To allow them to do so would be to give them the benefit of an advance opinion of this court as a foundation for their action as a party to incomplete litigation. If this court should enter upon the main question presented by the petition, the petitioners would be in a situation to take advantage of the decision of the court, whichever way it should decide said question. If the court should hold that the action of the lower court in refusing to take jurisdiction was erroneous, they would get the same benefits as if their appeal had been heard and determined in their favor. On the other hand, if it should be held that the action of the court was proper, it would, in effect, decide for the petitioners in this extraordinary proceeding, a case which they have voluntarily elected to bring here in the regular manner by appeal. In our opinion the court cannot consistently aid counsel as to their proper course by entering upon the investigation of the question of jurisdiction decided by the lower court. It follows that the application for the alternative writ of mandamus must be denied."

This case is conclusive of the question. The application is refused.

HAMPTON L. CARSON,  
Attorney General.

UNDERTAKERS—EMPLOYEES OF—WHO MUST BE LICENSED—SIGNS—ADVERTISEMENTS—ACT OF 1895, SECTION 7—CORPORATIONS ENGAGED IN UNDERTAKING—REPRESENTATIVES LICENSED—ACT OF 1905, SECTION 6—CRIMINAL LAW.

The proviso in Sec. 7, act of 1895, P. L. 169, simply authorizes the employment, by duly licensed or registered undertakers, of employes to act as clerks or bill collectors, or as managers to make arrangements for funerals, or to receive orders from executors and administrators for the necessary interments, or as pall bearers or layers-out or shrouders of the dead, or for the purpose of making necessary arrangements for actual interment at the cemetery, and whose duties or business extend no further, and who have no interest in the profits of the business of the duly licensed undertaker, but who are simply employes working upon a salary—such persons as these are not required to be licensed. Their names, however, should not appear in connection with the business, either in the form of signs or advertisements.

Section 6, act of 1905, P. L. 299 provides that any person or persons, whether acting as individuals or partnerships, should obtain a license before engaging in the business of undertaking; and that a person representing a corporation engaged in the business of undertaking must also qualify for the purpose by obtaining a license.

Every stockholder in such corporation need not be licensed; but should the stockholder or other person in any way undertake to represent the corporation or participate in the performance of its business functions, such person should obtain the necessary license.

If a licensed undertaker displays on his sign or in his advertisement the name of an unlicensed employe or agent, he is giving the impression to the public that the unlicensed employe is practicing the business of undertaking, and hence such display is illegal and constitutes a misdemeanor within the meaning of the act of 1895.

Office of the Attorney General,  
Harrisburg, Pa., May 24, 1906.

Bernard Gilpin, Esq., Attorney for State Board of Undertakers, 707 Witherspoon Building, 1319 Walnut St., Philadelphia, Pa.

Sir: You inform me that the State Board of Undertakers has directed you to ask for my official opinion upon the following questions arising under the act of June 7, 1895 (P. L. 167), and the amendment thereto of April 24, 1905 (P. L. 299):

1. Is it legal for licensed undertakers to display on their signs and in their advertisements the names of unlicensed employes as agents or employes, or is this a holding out of such persons as practicing the business of undertaking in violation of section 7 of the act of June 7, 1895?

2. Where the undertaking business is carried on by a corporation, is it necessary for the stockholders to take out licenses, or can its business be carried on by a licensed undertaker who represents the corporation?

You state for my information that the Board has already received from my predecessor, Attorney General Elkin, an opinion deciding

that every member of a firm engaged in the undertaking business must be licensed, and that this view has been enforced in all cases. You also state that some undertakers, in order to secure business in certain localities, have had persons who are well known locally to put up signs as agents for the licensed undertaker, and the Board, has heretofore considered this an unlawful holding out, but that your doubt arises upon the effect and meaning of the 7th section of the act of 1895 (P. L. 69), by providing "That nothing contained in the act shall be construed to apply to bona fide employes of a duly licensed or registered undertaker."

I reply that in my judgment it is clear from the language of section 7 of the act of June 7, 1895, that, if a licensed undertaker displays on his sign or in his advertisement the name of an unlicensed employe or agent, he is giving the impression to the public that the unlicensed employe is practicing the business of undertaking, and hence such display is illegal and constitutes a misdemeanor within the meaning of the act. The sole purpose of the sign is to make an announcement to the public, and the law governing partnerships, whether general, special or limited, would seem, coupled with business custom as to the use and meaning of signs, to indicate that the person whose name is thus presented to the public eye is engaged in the business. No matter how carefully guarded the language of the sign might be, the inference might well be drawn that the unlicensed employe, whose name is used avowedly for the purpose of securing business in certain localities, through the very fact that the name of the agent thus posted is well known, is engaged in the business of undertaking, thus constituting a holding out within the meaning of the law. The object of the proviso, as I read it, is simply to authorize the employment, by duly licensed or registered undertakers, of employes to act as clerks or bill collectors, or as managers to make arrangements for funerals, or to receive orders from executors and administrators for the necessary interments, or as pall bearers or layers-out or shrouders of the dead, or for the purpose of making necessary arrangements for actual interment at the cemetery, and whose duties or business extends no further, and who have no interest in the profits of the business of the duly licensed undertaker, but who are simply employes working upon a salary—such persons as these are not required to be licensed. Their names, however, should not appear in connection with the business, either in the form of signs or advertisements.

Your second question raises the point whether it is necessary for the stockholders of a corporation engaged in the undertaking business to take out licenses, or whether the business can be carried on by a licensed undertaker representing the corporation.

The 6th section of the act of 1905 (P. L. 301), answers this ques-

tion clearly. It provides that "before any person, persons or corporation shall hereafter engage in the business of undertaking, or the care, preparation, disposition and the burial of the bodies of deceased persons, in their own name or on their own account in this Commonwealth, and before any person, persons or corporations now so engaged in said business, who shall have failed to register with said Board in accordance with section 5 of this act, shall continue in said business, such person or persons, or person comprising or representing such corporations, shall apply to said Board for a license to practice the same," etc.

To me it is clear that it was the intention of the Legislature to provide that any person or persons, whether acting as individuals or as partnerships, should obtain a license before engaging in the business of undertaking, and that a person representing a corporation engaged in that business must also qualify for the purpose by obtaining a license, but I do not read the words as meaning that every stockholder in a corporation engaged in the business of undertaking, and not in any manner representing the corporation in the actual transaction of its business, should be a licensed undertaker. Should the stockholder in any way undertake to represent the corporation, or participate in the performance of its business functions, then I think such person, whether stockholder or not, should obtain the license.

I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### STATE HOSPITALS.

A trustee acting as agent of an insurance company which insures a hospital does not violate the act of April 23, 1903 (P. L. 285).

A president of the board of directors of a hospital who is the head of a manufacturing establishment which furnishes pipe and fixtures to the hospital violates the law.

A director of a hospital, who is the head of a partnership, joint stock company or corporation which furnishes a hospital with lighting violates the law.

Office of the Attorney General,  
Harrisburg, Pa., June 21, 1906.

Hon. Cadwalader Biddle, Secretary and Agent of the Board of Public Charities, Philadelphia, Pa.:

Sir: I herewith return you the letter of P. C. Boyle, inquiring whether Mr. Barr, insurance agent and a director in the Oil City Hospital, is violating the terms of the act of Assembly of April 23, 1903 (P. L. 285).

I answer that if Mr. Barr is acting merely as the agent of the insurance company and receives no pay whatever from the hospital for his services in connection with writing the insurance, he is not within the terms of the act. The rates which the institution pays to the companies for protection against fire, as fixed by the Underwriters' Association, can in no way be varied or changed because Mr. Barr is acting, as their agent. If, in point of fact, his commission is paid by the insurance company and not paid by the hospital, he is outside of the terms of the law and it has no application to him. If, on the contrary, he has received moneys from the hospital as a compensation for his service in placing the insurance, then he is being paid out of the State moneys and is using his position for his own advantage and is within the terms of the law. His case cannot be affected by the by-law of the hospital, for a by-law in conflict with an act of Assembly is void, and even if the by-law were adopted before the passage of the act, it would be superseded by the act.

I am clearly of the opinion that the president of the board of directors, being the head of a manufacturing establishment furnishing pipe and fixtures to the hospital, is transgressing the law, no matter how small the transactions may be.

Mr. Boyle does not state the facts with sufficient clearness with regard to the director who is said to be the head of a boiler plant and an electric light plant which furnishes the city and hospital with lighting. If the boiler plant and the electric light plant are a partnership or a joint stock company, or a corporation of which the director is an officer, then he is clearly acting as an agent in the furnishing of such supplies and is within the terms of the act.

You will understand that this is merely an official opinion and not a judicial decision.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

ELECTION EXPENSES—STATEMENT OF EXPENSES—ACT OF 5TH MARCH, 1906 (P. L. 78.)

Under the corrupt practices act a candidate for the Senate from a district containing two counties may delay filing his statement of expenses until he has been nominated by a conference of the counties.

The statement must contain every penny received or expended by the candidate on account of his candidacy.

Office of the Attorney General,  
Harrisburg, Pa., June 28, 1906.

A. H. Anderson, Esq., Frick Building, Pittsburg, Pa.:

Dear Sir: Your letter of sometime since to the Attorney General, stating that you are a candidate for the office of State Senator in the



46th district, comprising the counties of Washington and Greene, and asking for an official interpretation of the act of 5th of March, 1906 (P. L. 78), entitled "An act to regulate nomination and election expenses, and to require accounts of nomination and election expenses to be filed, and providing penalties for the violation of this act," has been referred to me.

In your letter you state that you have received the endorsement of Washington county, and that the final nomination for the district will be made at a conference to be held by you and the nominee for the same office by the Republicans of Greene county, which conference will finally determine the candidacy of the State Senator from that district. You desire to be informed whether the provision of the first part of section 5 of said act, which reads as follows: "Every candidate for nomination at any primary election, caucus, or convention, whether nominated thereat or not, shall, within fifteen days after the same was held," file a statement of election expenses, applies to the convention at Washington county, in which you were named as the candidate from that county for the office you seek, or whether you might wait until the action of the nominating powers of the two counties finally determines the nomination.

While the language of the act is not explicit upon this point, I am of the opinion that the general intent and purpose of the act will be carried out if you delay the filing of your account until the actual nomination is made, and then include therein a statement of all sums of money expended by you both in the preliminary campaign in your county and in the final campaign in the district.

You also asked to be advised as to what expenses it is necessary for you to file under the terms of the act.

On this particular point the language of the act is sufficiently plain to obviate the necessity of explanation: "Each and every sum of money contributed, received or disbursed by him for election expenses, the date of each contribution, receipt and disbursement, and the name of the person from whom received or to whom paid, and the object or purpose for which the same was disbursed." Section 4 sets forth succinctly and clearly all the items for which any candidate has a right to pay out money during a campaign.

My answer to your last inquiry, therefore, is that in the statement which you file you must set forth every penny received or disbursed by you on account of your candidacy, and to keep within the law you must not pay out any sum whatsoever for any expenses not covered clearly by the language of section 4.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

## DRUGS.

Under the act of 25th May, 1897 (P. L. 85) all drugs must conform to the recognized formulæ of the latest edition of the "National Formulary," or of the "Pharmacopæia of the United States," or the "American Homeopathic Dispensatory."

Office of the Attorney General,  
Harrisburg, Pa., July 11, 1906.

Dr. Charles T. George, Secretary State Pharmaceutical Examining  
Board:

Dear Sir: I am in receipt of your letter of recent date, asking for an official construction of the act of 25th of May, 1897 (P. L. 85) entitled "An act to prevent the adulteration, alteration and substitution of drugs and medicinal preparations, and providing penalties for the violation thereof." You desire an opinion upon the meaning and legal effect of certain words used in this act.

The first section provides as follows:

"The term drug used herein shall include any medicinal substance or any preparation authorized or known in the 'Pharmacopæia of the United States,' or the 'National Formulary,' or the American Homeopathic Pharmacopæia, or the American Homeopathic Dispensatory."

The fifth section provides as follows:

"If the drug shall be adulterated that the nature, quality, substance, commercial value or medicinal value of it will not correspond to the recognized formulæ or tests of the latest edition of the 'National Formulary,' or of the 'Pharmacopæia of the United States,' or the American Homeopathic Pharmacopæia, or the American Homeopathic Dispensatory, regarding quality or purity."

It appears that some question has arisen as to whether the standard to be applied to the quality of the drug was permanently fixed by the above act in accordance with the recognized and accepted standard at the time of the passage of the act or whether you must adopt the standard in vogue at the present time.

This question must be determined by the intent of the Legislature, as expressed in the language used in the act, and upon this point they have not left us in doubt by the use of ambiguous or equivocal terms, but have stated definitely that the drug must conform "to the recognized formulæ or tests of the latest edition" of the authorities above mentioned. This, then, must be your guide. You are to

determine the purity of all drugs inspected by you under the authority of the act by the standard tests contained in the latest edition of the authorities.

Very truly yours,

FREDERIC W. FLEITZ,  
Deputy Attorney General.

---

#### NOMINATION PAPERS.

Nomination papers valid on their face must be filed by the Secretary of the Commonwealth. Questions raised as to the erasure of words in a certificate must be decided by the court, not by the Secretary.

An affidavit made by a secretary of a convention is not such a paper as may be filed with the Secretary of the Commonwealth.

A certificate signed by a secretary of a convention but not by its president is not regular on its face and may not be filed with the Secretary of the Commonwealth.

Office of the Attorney General,  
Harrisburg, Pa., July 20th, 1906.

Hon. H. W. Palmer, Wilkes-Barre, Pa.:

Sir: After a careful consideration of the matter, and of the recent decision of the court of common pleas of Dauphin county, in Commonwealth ex. rel. Goyne, vs. McAfee, Secretary of the Commonwealth, 32 Pa. County Court Reports, 304, I am of opinion that it is the duty of the Secretary of the Commonwealth to receive and file the certificate of nomination signed by the presiding officer and secretary of the convention, leaving it to the court to determine the effect of the erasure of the word "made" and the substitution of the word "declared."

The Secretary of the Commonwealth cannot take upon himself to judicially determine this question, particularly as the word "made" is not mentioned as a part of the form of the certificate required by the act of 22nd of June, 1897, and it must be left to the Court to determine whether the erasure, as before stated, introduces any substantial difference in the form of the certificate required by the act of 22nd of June, 1897 (P. L. 179). The face of the paper discloses the fact that the certificate of nomination has been signed by the presiding officer and the secretary of the convention, and so far as the Secretary of the Commonwealth is concerned is regular upon its face.

I am also of opinion that the affidavit made by the secretary of the convention is not such a paper as the Secretary of the Commonwealth is called upon to file.

I am also of opinion that the certificate signed by the Secretary of the convention, without the joinder of the presiding officer, is irregular on its face and not within the terms of the act, because it lacks the signature of the president of the convention.

I have, therefore, instructed the Secretary of the Commonwealth to file the first paper, and to refuse to file the two last papers. The questions arising must be determined by the court, and the matter, of course, is open to such action as you and your counsel see fit to institute. If you feel called upon to make a motion to strike off the first paper, and to mandamus the Secretary of the Commonwealth to file the two latter papers, be kind enough to give me notice of such motions, and of the day fixed for hearing, so that I may properly represent the Secretary of the Commonwealth at such time.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

IN RE CLARION WATER COMPANY vs. CLARION GAS COMPANY, ET AL.

Application for joinder of name of Commonwealth in a bill in equity refused.

Office of the Attorney General,  
Harrisburg, Pa., August 18, 1906.

This is a petition that the Commonwealth should join as party plaintiff in a bill in equity already filed by the Water Company against several oil and gas companies, because of an alleged public interest. It was never shown by any affidavits or any proof that any citizen had complained of the lack of supply or of the impurity of the water supplied by the water company, and, even had such been the case, the statutory remedy expressly provided would have to be followed. Moreover, the bill itself shows that it is but a private controversy, with which, at the present time, at least, the Commonwealth has no concern. It would be manifestly unfair to weight the scales against the defendants, where no public grievance is shown. The application is refused.

HAMPTON L. CARSON,  
Attorney General.

## QUO WARRANTO.

Application for use of name of Commonwealth in proceedings by quo warranto against the United Traction Company of Reading refused.

A violation of the law by the traction company in issuing passes to councilmen of the city of Reading is punishable by fine. Quo warranto is not the proper proceeding.

Office of the Attorney General,  
Harrisburg, Pa., August 16, 1906.

In re Petition of Francis H. Brobst, President of the Taxpayers  
League, of Reading.

The prayer of the petition is for permission to use my name, as Attorney General of the Commonwealth, in proceedings for the issuing of a writ of quo warranto against the United Traction Company of Reading, for the obtaining of a decree from the courts that the said company has forfeited all and singular its charter, franchises and privileges, and has no longer power to exercise any corporate rights or privileges whatsoever.

It is plain that the prayer of the petition as stated cannot be granted. The Attorney General never grants to any citizen, corporation or party the right to use his name, nor will he surrender to others either the right or power to exercise his official authority. If a proper case be shown, he will, on his own official responsibility, appear as relator, or should he consent to the use of the name of the Commonwealth he does so with the distinct reservation of his right to control and direct the proceedings. Any other course would amount to a virtual abdication of his office.

Assuming that the prayer of the petition might be so amended as to amount to a request that upon the facts shown the Attorney General should inform a court thereof, and suggest that a writ of quo warranto should be proceeded in to a judgment of ouster, the question arises whether the facts disclosed by the evidence authorize such a proceeding. The gravamen of the offence is the issuing of free passes to councilmen of the city of Reading. If this has been done, it is a reprehensible practice, and in violation of the terms of the act of Assembly (P. L. 1874, page 289), entitled "An act to carry into effect section 8 of Article XVII of the Constitution in relation to granting either free passes or passes at a discount by railroad or other transportation companies." This act, after prohibiting railroads, railways and other transportation companies from granting free passes or passes at a discount to any person except an officer or employe of the company issuing the same, provides that any person signing or issuing any such free pass or pass at a discount, except to officers or employes as aforesaid, shall be subject to pay a fine to the Commonwealth not exceeding one hundred dollars.

This act was passed in pursuance of the direction contained in section 12 of Article XVII of the Constitution, which provides that the General Assembly shall enforce, by proper legislation, the provisions of the article. It is a legislative declaration of the method to be pursued in the enforcement of the Constitution. It is not open to citizens to question the wisdom of legislative remedies by ignoring them, or to substitute other methods. So long as the Legislature has seen fit to prescribe that method in pursuance of an express constitutional obligation to enforce the article, it amounts to a declaration on the part of the representatives of the people that the method chosen is the appropriate method to be pursued. There is no warrant or authority for a resort to quo warranto proceedings, and it is a fallacy to argue that the issuing of passes is the exercise by the corporation of a power, privilege or franchise not granted or appertaining to such corporation. There can be no power, privilege or franchise which is in violation of the law, and the misuser of corporate rights, privileges or franchises spoken of by the act of 14th of June, 1836, in paragraph five of section two, governing the issuing of writs of quo warranto, does not embrace a violation of the statute such as is complained of in the present case.

To deprive the citizens of Reading of the services of a public utility corporation, and strike the corporation out of existence and thereby compel a large population to walk because a few councilmen ride free, would be the application of a remedy so drastic as to involve a public inconvenience and mischief far exceeding the wrong sought to be repressed. The law supplies appropriate remedies for each and every violation, and there is no precedent in the books, either in this state or any other state, which would justify the forfeiture of a corporate charter for the violation of a statute prescribing a penalty which the petitioner has not seen fit to invoke. Violent and destructive remedies, in disregard of those prescribed by law, are not to be applied, and ought not to be asked for. They involve confusion in the lay as well as legal mind, and would result in civic disorder.

The application is refused.

HAMPTON L. CARSON,  
Attorney General.

## REAL ESTATE TRUST COMPANY OF PHILADELPHIA.

The district attorney of Philadelphia is advised that the Banking Commissioner will forward him for use in determining whether there was criminal conduct on the part of the officers of the Real Estate Trust Company of Philadelphia their reports to the Banking Commissioner for the years 1903-4-5.

Office of the Attorney General,  
Harrisburg, Pa., September 4, 1906.

Hon. John C. Bell, District Attorney, Philadelphia:

My Dear Sir: I am in receipt of yours of to-day, stating that you are engaged in making an examination of the financial condition and business methods of the Real Estate Trust Company of Philadelphia, with a view to determining whether there has been any criminal conduct on the part of any one connected with that institution, and that it would aid you very much in your investigation if I can procure for you the reports of the condition of the company that have been made to the Commissioner of Banking during the years 1903-04-05 and the current year, pursuant to the statute in such case made and provided.

In reply, I send you a copy of a letter which I have this day addressed to the Commissioner of Banking.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

SCHOOL LAW—VACCINATION—COMPULSORY ATTENDANCE—DUTY OF TEACHER—LIABILITY OF PARENTS.

If a child is not vaccinated or does not present a certificate of successful vaccination from a physician or a certificate that he or she has had the small-pox, the teacher is compelled to refuse the admission of such child to the public school.

If a child is sent home because it is not vaccinated, the parents cannot be fined for having their children out of school. The discharge of the teacher's duty adds nothing to the duty of the parents.

Parents cannot be compelled to get their children vaccinated. Their sole duty is to send their child to school. The compulsory school law does not make it obligatory on them to obtain a certificate of vaccination.

Office of the Attorney General,  
Harrisburg, Pa., September 12, 1906.

Mr. G. E. Walker, Parker's Landing, Pa.:

Sir: In answer to your questions, I reply, first, that if a child is not vaccinated, or does not present a certificate of success-

ful vaccination from a physician, or that he or she has had the small-pox, the teacher is compelled to refuse the admission of such child to the public school; second, if a child is sent home because it is not vaccinated, the parents cannot be fined for having their children out of school; third, the parents cannot be compelled to get their children vaccinated.

The substance of the statutes relating to compulsory education and to vaccination, when read together, is as follows: The teacher is compelled to exclude every child from school who does not present a certificate of successful vaccination from a reputable physician, or a certification that the child has had small-pox. This is a duty which the Supreme Court has recently sustained, and any teacher who disobeys the law can be mandamusd. On the other hand, inasmuch as a parent has discharged all his duties by sending the child to school, and another statute requires the teacher to refuse the child admission in default of a vaccination certificate, or a certificate that the child has had the small-pox, the teacher discharges his full duty by refusing to admit the child, but the discharge of the teacher's duty adds nothing to the duties of the parent prescribed by statute, and inasmuch as the compulsory education law by its terms does not make it obligatory upon the parent to obtain a certificate of vaccination, the parent's sole duty being to send his child to school, and the teacher refusing admission because of the absence of a certificate, and the State not making vaccination compulsory and not compelling the production of the certificate by the child, the parent cannot be fined and the parent cannot be compelled to have his child vaccinated.

In short, if a parent wishes his child to attend school, the child should be vaccinated, or should have previously had small-pox and certificate to that effect must be produced. If the parents' views on the subject of vaccination are such that he does not care to have his child vaccinated, he cannot be fined because he does not have his child vaccinated or because he does not send his child to school. But the duty still remains on the teacher to exclude the child from school unless he be vaccinated or produces a certificate from a doctor that the child has been vaccinated or has had the small-pox.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



## EASTERN STATE PENITENTIARY.

An appropriation of \$4,700 for a specific purpose, or any unexpended balance thereof, may not be used for any other purpose.

Office of the Attorney General,  
Harrisburg, Pa., September 14, 1906.

Dr. Charles D. Hart, Secretary Eastern State Penitentiary, Philadelphia, Pa.:

My Dear Doctor: Your letter of the 7th inst. has been duly received. After reading the clause in the appropriation act which specifically appropriates the sum of \$4,700, I am of the opinion that the designation of the purpose in the act of Assembly is so far specific that any unexpended balance cannot be used by you for any other purpose, and I am without authority to sanction the transfer of this balance to another purpose, however useful and serviceable to the institution that purpose might be. You would have to have the authority of an act of Assembly when the Legislature meets in January to justify it.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## VACCINATION OF SCHOOL CHILDREN.

The vaccination law applies to the children of a private school.

Office of the Attorney General,  
Harrisburg, Pa., September 15, 1906.

Richard M. Jones, LL. D., Head Master, William Penn Charter School, 8 S. 12th St., Philadelphia:

Sir: I have your note of the 13th instant, asking me whether I consider the private schools in exactly the same position in the matter of vaccination as the public schools.

I reply that section 12 of the act of 18th of June, A. D. 1895 (P. L. 203), reads as follows: "All principals or other persons in charge of schools as aforesaid are hereby required to refuse the admission of any child to the schools, under their charge or supervision, except upon a certificate signed by a physician, setting forth that such child has been successfully vaccinated, or that it has previously had small-pox."

The words "as aforesaid" relate to the description of schools contained in section 11, and that description in terms is: "Any public, private, parochial, Sunday or other school in such municipalities."

You will observe that the law gives a definite answer to your question, and is binding upon the teachers, principals and superintendents of all schools, public, private, parochial, Sunday, or other schools.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### HOURS OF SERVICE OF REGISTRARS.

The registrars of the city of Scranton must sit from 7 A. M. to 10 P. M. at the polling place of each division on the 9th Tuesday, 7th Tuesday and 4th Saturday preceding each election.

Office of the Attorney General,  
Harrisburg, Pa., October 11, 1906.

O. S. Ridgway, Esq., 1032 Paul Ave., Scranton, Pa.:

Sir: I have your letter enclosing copy of a communication from a committee asking for my opinion as to the requirements of the law in the matter of hours of service required of the registrars of the various election districts of the City of Scranton.

I am of the opinion that the matter is fully covered by section 6 of the act of 17th of February, 1906. The section is specific that the registrars of each division "shall meet at the polling-place thereof on the ninth Tuesday, seventh Tuesday, and fourth Saturday preceding every November election, and on the fourth Saturday preceding every municipal election, and shall remain in open session from seven ante meridian to ten post meridian of each registration day." This designated period of service cannot be cut down to eight hours, and this act is specific in its terms and would control any other act of previous date.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

## STATE HOSPITAL FOR THE INSANE AT DANVILLE "MAINTENANCE" DEFINED.

Expenditures by a State Hospital for the Insane for fittings, belting, hangers, tools and the like and for a green house should be classed as "maintenance."

The purchase of electric lights and lamps and fitting them to the old gas chandeliers should be classed as repairs, and therefore to be paid as maintenance. Likewise the purchase of wrought iron fittings, valves, etc., for the distribution of sewage on the farm.

The principle is that any expenditure indispensable to the maintenance of the institution should be classed as maintenance.

Office of the Attorney General,  
Harrisburg, Pa., November 13, 1906.

H. B. Meredith, M. D., Superintendent of the State Hospital for the Insane, Danville, Pa.:

Sir: I herewith express my official judgment upon the merits of the objections which have been raised to certain items of expenditure, or proposed expenditure, based upon the contention that they could not be properly viewed as "maintenance."

In regard to expenditures represented by Vouchers No. 988 and 1059, representing fittings, beltings, hangers, tools and the like, necessary in your engineer's department, the material being used in the customary and usual repairs about the buildings and ground, I am of opinion that no possible objection can be made as to these, as they unquestionably belong to your regular maintenance account.

I am equally clear as to Voucher No. 1067, representing repairs to the green house. I understand the facts to be that the structure had been built of wood as far back as the years 1877 or 1878, and had received no repairs. The sills were rotten and the building was entirely too low for the care and preservation of valuable palms, and the new structure is built on the old foundation, with the exception that it is made a trifle larger. The condition of the old building was such that repairs were essential to the care and protection of the plants. I understand further that the use of the building is beneficial in the treatment of patients; that it houses during the winter plants which are distributed among the lawns for summer decoration and for the decoration of halls where patients assemble on special occasions; and that it is used particularly in the winter by both male and female patients as a source of diversion, this being particularly necessary for the female wards, as, during the inclement weather, they have no such other place for recreation. I can well understand that it forms a part of the psychic treatment of mental disorders, and is indispensable to the improvement or cure of the patients.

In regard to Vouchers Nos. 1004 and 1066, I am informed that the sums therein specified were expended for the purchase of electric

fixtures and electric lamps for the main hospital and other buildings, and for necessary changes in the old apparatus by adapting gas fixtures to the use of electricity. These items of expenditure were not included in the general appropriation providing for the installation of electric power and its necessary apparatus, because it was considered that old chandeliers and gas apparatus could be more economically changed and fitted to the new condition. Hence I am of opinion that the expenditure was for repairs rather than for the purchase of new apparatus.

I understand the facts to be that the institution was originally lighted by gas; that the gas apparatus had been in use since 1872, and had become entirely too small and inadequate for the purpose, in parts being obstructed, and hence a sufficient amount of gas could not be furnished. It would have been entirely proper, under the usual interpretation of the word "maintenance," to tear out the old gas plant and replace it by a new one, provided it could have been done within the limit prescribed by the State. Inasmuch as electricity is considered a more sanitary and convenient method of lighting, and the substitution of electricity for gas is within the line of modern improvements, I am of opinion that the facts fall within the spirit, if not the letter, of the opinion I gave on the 26th of April, 1904, to the general agent and secretary of the Board of Public Charities (Opinions of the Attorney General, 1903-1904, page 302), in which I expressed the view that the substitution of a furnace or a steam heating plant for the antiquated method of heating by stoves, or the substitution of water closets and sanitary plumbing for the old-fashioned single chambers, or the laying of fire-proof floors as a substitute for wooden ones, and the erection of a fire-proof wall extending to the roof so as to secure the safety of the building and the protection of the lives of the inmates, while strictly to be viewed as improvements and changes, constitute in substance maintenance, so as to secure to an existing institution an actual condition in accordance with approved modern methods of safety and health.

In regard to Voucher No. 1037, I understand that it covers the purchase of wrought iron fittings, valves, etc., for the distribution of sewage upon the farm. A history of the conditions existing at the State Hospital for the Insane discloses that, prior to 1903, all sewage from the hospital was emptied into the North Branch of the Susquehanna river, the point of discharge of such sewage being in the neighborhood of three thousand feet above the intake of the water supply of the borough of Danville. By the act of Assembly, approved the 15th day of May, 1903 (P. L. 436), an appropriation was made for the purpose of installing a sewage disposal plant. The plan selected by the board of trustees was that of natural irrigation

upon the farm. This included the collection of sewage from the different points of the institution into a reservoir, whence it was pumped to another reservoir upon an eminence of the farm, thence being distributed by gravity through iron pipes, with controlling outlets, to various sections of the farm. The original tract, under the above act of Assembly, provided for the preparation of five acres of land for such irrigation, but is available for at least twenty acres. In the exigencies of farming, rotation of crops is imperative. The original tract is a hillside of loose porous soil, which, being subsequently plowed, the preparation of another point of distribution became necessary. Accordingly a series of pipe, fixtures and valves were purchased, placed in the ground and used during the following year for the disposal of sewage. The second tract will be ready for farming the coming season, and it now seems necessary to extend the system so as to cover a section that would be in sod and in a proper state for sewage irrigation. Accordingly, as I understand it, the amount of pipe for which the vouchers are presented was purchased and placed in position by your own workmen, the patients digging all trenches and refilling them, and your own engineers putting in the pipe.

I am informed that the disposal of sewage by irrigation requires a certain amount of rest for the land so as to prevent its becoming saturated with disease germs and being turned into a morass. It is therefore necessary, from a sanitary point of view as well as from an agricultural point of view, to prepare a new section of the farm, and without making purchase of new pipes and extending the plant, as has been done, the distribution of sewage could not have been effected and the material thus accumulated would, ex necessitate, be discharged into the Susquehanna river to the detriment of the health of the borough of Danville.

The mere statement of the facts is sufficient to indicate the real nature of the situation confronting you, but the objection raised that it is not maintenance in any proper sense, calls for some careful consideration. Upon reviewing the opinions of the Attorneys General, I find that Generals Hensel, McCormick and Elkin have taken successive steps in the line of a liberal and reasonable interpretation of the word.

General Hensel, in an opinion dated November 21, 1893 (Report of the Attorney General for that year, page 60), declared that "A fair and liberal construction of appropriation for maintenance would be to supply dilapidation, to arrest, prevent or remedy decay, to maintain or restore, to erect where destruction has taken place; for example: To paint buildings from time to time; to restore worn out furniture; to erect a fence where one has fallen down; to replace insecure or dilapidated walls, ceiling or foundation," etc.

General McCormick, in an opinion given to the general agent and secretary of the Board of Public Charities, under date of October 27, 1896 (Opinions of the Attorney General of that year, page 173), reached the conclusion that the word "maintenance," as occurring in an act making an appropriation for the care and treatment of the chronic insane, included the cost of the restoration, as nearly as might be, of buildings used for hospital purposes, and destroyed by fire, of the same general character and approximate value as the old. He even extended this to cover the cost of barn, cattle sheds and other out buildings which were entirely destroyed by fire, the buildings being necessary, as he assumed, in order that the crops might be properly saved and the horses, cattle and other live stock properly housed, they constituting a part of the hospital plant, so to speak, and their restoration being essentially important.

General Elkin, in an opinion dated December 20, 1901 (Opinions of the Attorney General for that year, page 130), and addressed to the secretary of the Board of Public Charities, took another step in the same direction, and expressed the view that the term "maintenance" was broad enough to include items of expense incurred for horses, cows, harness, wagons, carts, garden seeds, etc., which were necessary and useful in the cultivation of lands attached to institutions for the care of the chronic insane. He declared:

"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 to the cultivation of land. All such appliances wear out and have to be replaced. \* \* \* 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."

The principle common to all of these opinions clearly is that any expenditure which can fairly be claimed as indispensable to the maintenance of the institution charged with the care of inmates, unfortunately bereft of reason, and which is dictated by an enlightened sense of what is necessary to promote the physical as well as moral and intellectual health of these unfortunate beings, can, without any undue violence to the language of the statute, be so extended as to include expenditures for appliances or contrivances

unknown years ago. If it be proper to farm the lands adjacent to the institution so as to produce food for the support of the inmates; and if, in the system of farming, a rotation of crops must be observed and the lands be fertilized for that purpose; and if, in the protection of the health of the inmates, sanitary precautions should be adopted so as to prevent the open discharge of sewage upon the ground, which, if the tract be limited and the discharge be constant, would soon be unfit as a receptacle for further use; and if, in pursuance of an enlightened sense of duty to the health of the inhabitants of the town of Danville, whose drinking water is taken from the river at a point but a short distance below the buildings of the institution; and if, as a part of this distribution a tract of land sown with pipe, properly distributed so as to prevent the introduction into the river of poisonous and perhaps death-carrying germs, the plant so used becomes unfit for further use, there can be no criticism justly to be placed upon the action of the board of trustees in the exercise of a wise discretion, if they see fit to devote a new territory to the purposes of the old, the old having from excessive use and thorough saturation become unfit for the purpose.

Upon consideration of the whole case, I am of opinion that the objections are not maintainable and must be overruled.

I have sent a copy of this opinion to the Auditor General for his guidance, and advised him that you have authority to expend the moneys for the purposes above designated.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

#### STATE PHARMACEUTICAL EXAMINING BOARD.

The Pharmaceutical Examining Board under the Act of March 24, 1905, (P. L. 54), should require an applicant for a certificate, no matter in what State he is registered, to be a graduate of some reputable and properly chartered college of pharmacy.

Office of the Attorney General.

Harrisburg, Pa., Dec. 28, 1906.

W. L. Cliffe, Treasurer State Pharmaceutical Examining Board of Pennsylvania:

Sir: On behalf of your Board you have requested an official opinion upon the following question:

Would it be a violation of the act of March 24, 1905 (P. L. 54), for the State Pharmaceutical Examining Board, in obedience to its

duties under this act considered in its relation to the act of May 24, 1887 (P. L. 189), to admit and grant certificates to those successfully meeting the prescribed standards of examination, in the case of registered pharmacists of other States than Pennsylvania, who are not graduates of pharmaceutical colleges, and who at the time of the passage of the act of March 24, 1905, and previous thereto, were able to meet all the conditions imposed by the law and the rules of the Board in regard to examination and registration.

The act of May 24, 1887 (P. L. 189), is entitled "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulteration in drugs and medicinal preparations in the State of Pennsylvania." The act of March 24, 1905 (P. L. 53), is entitled "An act to amend section 5 of the act entitled . . . requiring that on and after January 1, 1906, all persons applying for certificates of registration as competent pharmacists under the provisions of section 5 of said act, shall be graduates of a reputable college of pharmacy." This amending act, it is provided by section 2, "shall become operative and in force on and after the 1st of January, 1906."

I can find no distinction in the acts between registered pharmacists of Pennsylvania and those of other States, prior to January, 1906, when the act of 1905 *ut supra* became operative, and graduation at a college of pharmacy was not a requisite to the granting of a certificate by the Board. Since January 1, 1906, "all persons applying for examination for certificates, etc., etc., . . . must produce satisfactory evidence of having had not less than four years' practical experience in the business of retailing, compounding, and dispensing of drugs . . . and of being a graduate of some reputable and properly chartered college of pharmacy."

As I read the act of 1905, it matters not whether the applicant for a certificate was registered in Pennsylvania or any other State. He must produce the evidence required by the act. He must now be and must have been since the 1st of last January, a "graduate of some reputable and properly chartered college of pharmacy." The language of the act is plain and it must be literally construed.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.



## DAMAGES CAUSED BY STATE POLICE IN MAKING AN ARREST.

The State Police under the stress of great and overwhelming necessity may blow up a house with dynamite in making an arrest.

Those seeking damages for the destruction of the property should have a bill pass the Legislature for permission to sue the State. Without such suit and an adjudication by the court there can be no compromise of the matter.

Office of the Attorney General.

Harrisburg, Pa., Dec. 28, 1906.

Jacob L. Fisher and Lex. N. Mitchell, Esqs., Attorneys-at-Law, Punxsutawney, Pa.:

Gentlemen: In reply to your letter, stating that you are counsel for Laborio Juerico and others in a claim for damages to property alleged to have been destroyed by the State Constabulary while quelling a disturbance at Florence, Jefferson county, during the month of September last, permit me to state that I have inquired into the facts and find them to be substantially as follows:

A sergeant of the State Constabulary went to quell a disturbance in the streets of Florence and arrested two Italians, one of whom broke loose and took refuge in a house near by, in which there were living about twenty of his countrymen. The sergeant went to the house after the escaped prisoner, and as he opened the door was shot at by some one in the interior. He then put his one prisoner into confinement, and summoned others of the State Constabulary to aid him in pursuing and arresting the fugitive. The police approached, and on attempting to enter the house in which the fugitive had sought refuge, were met by a volley which resulted in the killing of two of the police and the serious wounding of a third. The house was then surrounded and guarded all night. In the morning, the inmates still resisting arrest, dynamite was placed beneath the house and the structure was blown up. The house took fire and was destroyed. I am not informed as to what property belonging to Juerica and others was destroyed, although I am informed by the Department of State Police that no damages are claimed for the house, which belonged to the Buffalo, Rochester & Pittsburg R. R. Co., but solely for the property contained therein.

It is well settled that the State or municipal police, under the police powers, and under the stress of great and overwhelming necessity, may break into a house for the purpose of making an arrest, and, further, can even blow up buildings to prevent the spread of a conflagration. I do not find any decisions fastening any liability upon the State for damages caused by such breaking or destroying. There can be little distinction in principle between the spreading of a conflagration and the spreading of an insurrection.

However this may be, it is not for me to pass officially upon the question of liability, or either to recognize or reject the basis of such a claim. It is clear that such a question can be properly passed upon only by the courts: first, as to whether any liability exists at all, and, second, if so, what amount of damage was done and to whom did the property destroyed belong? Inasmuch as the State cannot be sued without legislative permission, it is quite clear that, before any case can be presented to the consideration of any court, the matter should be expressly sanctioned by an act of the Legislature. None such being in existence, I cannot entertain any proposition upon your part to settle the matter.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

DEPARTMENT OF STATE POLICE.

The members of the State Police are not entitled to the costs charged up in arrests made by them. They are paid by salary, which is in lieu of fees.

Office of the Attorney General.  
Harrisburg, Pa., Dec. 28, 1906.

J. C. Carnahan, Justice of the Peace, Creekside, Pa.:

Sir: I have your letter, in which you state that you are a Justice of the Peace in the vicinity of a post of the State Police, who have brought a number of persons before you; also served warrants and subpoenas, for which you have always allowed them the regular fees as to constables. They often have had to call in assistance, and sometimes it took two or three of them to bring in one man, for which costs were taxed and allowed. You state that at a recent hearing a Game Warden had made an arrest, accompanied by one or two of the State Constabulary. When the costs were taxed objection was made to the bill by the attorney, who contended that the 5th section of the Act of May 2, 1905, establishing a State Police Force, gave to said force the powers and prerogatives of a police or constable.

It was further contended that the constabulary or State Police were officers who were paid a salary, and that the act of 1897 (P. L. 266), applied to them, and that, therefore, the charges were unlawful. It was admitted by the State policemen or constabulary that they received a salary, but they contended that the money they collected went to the State.

You ask, if this be true, to whom should it be paid? You ask further what means the State Department has of knowing what

money or costs have been collected by the constabulary; and you ask my opinion whether the position taken by the Attorney for the objectors was correct, and whether the members of the State Police are to receive any fees from your office, except legal mileage allowed for travelling expenses. You further ask whether a three seated conveyance in which the prisoners and State witnesses are hauled to the justice's office is to be embraced under the head of legal travelling expenses.

I answer that the act of July 14, 1897 (P. L. 260), is entitled "An act to regulate the remuneration of policemen and constables employed as policemen throughout the Commonwealth of Pennsylvania, and prohibiting them from charging or accepting any fee or other compensation in addition to their salaries, except as public rewards and mileage for travelling expenses." Subsequently, on the 2nd of May, 1905 (P. L. 361), the Governor approved an act entitled "An act creating the Department of State Police, providing for the appointment of a Superintendent thereof, together with the officers and men who shall constitute the force, defining their powers and duties, and making an appropriation for the expenses connected therewith."

As I understand the contention of the counsel for the objectors, it is that members of the State Police Force, who are paid by salary, are not entitled to any fees except public rewards and the mileage provided by the act of 1897 *ut supra*.

The act of 1905 was approved nearly eight years after the act of 1897, and in section 7 contains a general repealing clause of all acts or parts of acts inconsistent with its provisions.

Section 5 (P. L. 362), provides "The various members of the police force are hereby authorized and empowered to make arrests without warrant for all violations of the law which they may witness, and to serve and execute warrants issued by the proper local authorities. They are also authorized and empowered to act as forest, fire, game and fish wardens, and, in general, to have the powers and prerogatives conferred by law upon members of the police force of cities of the first class or upon constables of the Commonwealth; and are intended as far as possible to take the place of the police now appointed at the request of the various corporations. The State Police Force shall, wherever possible, co-operate with the local authorities in detecting crime and apprehending criminals and preserving the law and order throughout the State."

By the provisions of this section of the act members of the State Police Force have in general all the powers and prerogatives conferred by law upon members of the police force of cities of the first class or upon constables of the Commonwealth. I do not find in this anything inconsistent with the act of 1897. Under the act of 1897 all municipalities employing policemen pay them a fixed salary,

and these policemen are not entitled to any additional compensation "except public rewards and the legal mileage allowed for travelling expenses."

It is clear to me that it was the intention of the Legislature, when it placed the members of the State Police Force upon a regular salary—a salary which is adequate—that this compensation should be in lieu of all fees and emoluments to which a local constable performing the same service would be entitled.

The legal mileage mentioned in the act of 1897, which is the same as that specified in the act of February 17, 1899 (P. L. 3), entitled "An act to fix, regulate and establish the fees to be charged and received by constables in this Commonwealth," is expressly allowed for travelling expenses. As the amount is fixed, it follows that the cost of procuring a three-seated conveyance, in which the prisoners and State witnesses are hauled to the office of the Justice, to the extent that it is in excess of legal mileage, is not such a charge as the Commonwealth should pay. Witnesses are entitled to their per diem and to mileage under the law. This allowance is in lieu of all other compensation, and is intended to cover transportation by rail or otherwise to the place of hearing of trial. I remain,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

---

# REPORT OF ATTORNEY GENERAL.

IN RE

## CAPITOL INVESTIGATION.

---

---

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

I have the honor to submit, in obedience to law and custom, as a part of my Report for the two years ending January 15, 1907, printed copies of the matter especially relating to what is popularly termed "The Capitol Investigation," consisting of correspondence as follows:

1. Letter of Hon. William H. Berry, State Treasurer, addressed to the Attorney General, under date of October 9, 1906.
2. Reply of Attorney General, under date of Oct. 10, 1906.
3. Letter of Attorney General, under date of Oct. 16, 1906, addressed to the Auditor General.
4. Letter of Attorney General, under date of Oct. 16, 1906, addressed to the Board of Public Grounds and Buildings.
5. Letter of Attorney General, under date of Oct. 16, 1906, addressed to Hon. William A. Stone, President of the Capitol Building Commission.
6. Letter of Attorney General, under date of Oct. 16, 1906, addressed to Hon. James M. Shumaker, Superintendent of Public Grounds and Buildings.
7. Reply of the Auditor General, under date of Oct. 24, 1906, to letter of Attorney General, under date of Oct. 16, 1906.
8. Letter of Hon. William H. Berry, State Treasurer, under date of Oct. 31, 1906, addressed to the Attorney General.
9. Reply of Attorney General, under date of Oct. 31, 1906.
10. Letter of Attorney General, under date of Nov. 1, 1906, addressed to John H. Sanderson.
11. Letter of Hon. William H. Berry, State Treasurer, to Attorney General, under date of Nov. 1, 1906.
12. Reply of Attorney General, under date of Nov. 2, 1906, addressed to State Treasurer.
13. Reply of John H. Sanderson, under date of Nov. 8, 1906, to the Attorney General, to his inquiry of Nov. 1, 1906.
14. Letter of Attorney General to John H. Sanderson, under date of Nov. 10, 1906, in reply to his letter of Nov. 8th, 1906.
15. Letter of Attorney General to Hon. William H. Berry, State Treasurer, under date of Nov. 11, 1906.
16. Letter of Attorney General to Joseph M. Huston, under date of Nov. 12, 1906.

17. Letter of Attorney General, under date of Nov. 13, 1906, addressed to Messrs. George F. Payne & Co.

18. Letter of Attorney General, under date of Nov. 14, 1906, to the Pennsylvania Construction Co.

19. Letter of Attorney General, under date of Nov. 14, 1906, addressed to Hon. William A. Stone, President of the Capitol Building Commission.

20. Reply of George F. Payne & Company, under date of Nov. 16, 1906, to Attorney General's letter of Nov. 13, 1906.

21. Reply of John H. Sanderson, under date of Nov. 17, 1906, to Attorney General's letter of Nov. 10, 1906.

22. Reply of Joseph M. Huston, under date of Nov. 19, 1906, to letter of Attorney General, dated Nov. 12 1906.

23. Reply of Hon. William A. Stone, President of the Capitol Building Commission, under date of Nov. 19, 1906, to letter of Attorney General, dated Nov. 14, 1906.

24. Reply of Hon. W. U. Hensel, Attorney for the Pennsylvania Construction Company, addressed to the Attorney General, under date of Nov. 24, 1906, to his letter of Nov. 14, 1906.

25. Letter of William H. Berry, State Treasurer, under date of Nov. 27, 1906, addressed to the Attorney General.

26. Letter of Attorney General, under date of Dec. 11, 1906, addressed to John H. Sanderson.

27. Letter of Attorney General, under date of Dec. 15, 1906, addressed to Joseph M. Huston.

28. Letter of William H. Berry, State Treasurer, under date of Dec. 17, 1906, addressed to the Attorney General.

29. Letter of Attorney General, under date of Dec. 17, 1906, addressed to Hon. Frank G. Harris.

30. Letter of Attorney General, under date of Dec. 17, 1906, addressed to Hon. E. B. Hardenbergh.

31. Letter of Attorney General, under date of Dec. 18, 1906, addressed to Hon. John C. Delaney, Factory Inspector.

32. Letter of Attorney General, under date of Dec. 18, 1906, addressed to Hon. James M. Shumaker, Superintendent of Public Grounds and Buildings.

33. Letter of Hon. William H. Berry, State Treasurer, under date of Dec. 19, 1906, addressed to the Attorney General.

34. Letter of Attorney General, under date of Dec. 18, 1906, addressed to Hon. T. Larry Eyre.

35. Reply of Hon. T. Larry Eyre, under date of Dec. 19, 1906.

36. Reply of Hon. E. B. Hardenbergh, under date of Dec. 21, 1906, to letter of Attorney General of 17th inst.

37. Reply of Hon. Frank G. Harris, under date of Dec. 22, 1906, to letter of Attorney General under date of Dec. 17, 1906.

38. Reply of Hon. John C. Delaney, under date of Dec. 22, 1906, to letter of Attorney General, under date of Dec. 18, 1906.

39. Letter of Attorney General, under date of Dec. 24, 1906, addressed to the Commissioners of Public Grounds and Buildings.

40. Reply of Superintendent of Public Grounds and Buildings, under date of Dec. 27, 1906, addressed to the Attorney General.

41. Reply of the Board of Commissioners of Public Grounds and Buildings, under date of Dec. 28, 1906, to letter of Attorney General, dated Dec. 24, 1906.

42. Letter of Attorney General, under date of Dec. 29, 1906, addressed to Hon. William H. Berry, State Treasurer.

43. Letter of Attorney General, under date of Dec. 29, 1906, addressed to Hon. Wm. P. Snyder, Auditor General.

44. Letter of Attorney General, under date of Dec. 29, 1906, addressed to Hon. W. L. Mathues.

45. Reply of John H. Sanderson, under date of Dec. 29, 1906, to letter of Attorney General, under date of Dec. 11, 1906.

46. Reply of Hon. W. L. Mathues, under date of Dec. 31 1906, to letter of Attorney General, dated Dec. 29, 1906.

47. Reply of Hon. William P. Snyder, Auditor General, under date of Jan. 2, 1907, to letter of Attorney General, under date of Dec. 29, 1906.

48. Reply of Joseph M. Huston, under date of Jan. 7, 1907, to letter of Attorney General, under date of Dec. 15, 1906.

The foregoing is a chronological statement of the letters and of the replies, stated in the order of dates under which they were written and under which the replies were dated. For convenience, these letters have been arranged in an Appendix to this Report, not in the order of dates, but in the relation of interrogatory and answer, so that the interrogatories and the replies may be collated as far as practicable.

The investigation by the Attorney General was instituted for the purpose of enabling him to ascertain, as the Law Officer of the State, whether such a condition of facts existed as to justify him in bringing an action against the contractors who had received the moneys of the State for the recovery of what might be termed "excessive payments, over-payments or duplications;" whether there was fraud or collusion in the inception, formation or performance of the contracts; whether an action of deceit would lie; whether there could be a rescission on the ground of fraud, or whether the contracts could be avoided on the ground of an exercise of powers in excess of statutory authority.

No oral or written testimony of witnesses, either as to facts or opinions, was submitted to the Attorney General by the State



Treasurer outside of the documents, vouchers and papers in the possession of the Auditor General and the Board of Public Grounds and Buildings, to which alone the Attorney General was referred by the State Treasurer, who himself had in his possession no papers or documents bearing upon the subject, and who, although several times requested to furnish the names of witnesses, whether expert or otherwise, has up to this time omitted to do so, with the single exception of one witness who visited the office of the Attorney General in company with the State Treasurer, and whose statement was taken by the Attorney General in person, relating to thermostats. The statement of this witness was incomplete, and he has not returned to complete it.

The burden of investigation fell upon the Attorney General to make an examination of all of the papers in the Auditor General's Department, and in the hands of the Superintendent and the Secretary of the Board of Public Grounds and Buildings, inclusive of the Minute Book, Plans, Blue Prints, Schedules and correspondence. Interrogatories were addressed to all of the State officers, both in and out of office, who had any connection, direct or indirect, with the subject matter of the contracts, or who, by virtue of their prior relations to the Board of Public Grounds and Buildings in former years, were thought to be able to throw light upon the subject. Interrogatories were also addressed to the Architect and to the contractors, and when their replies were found insufficient they were re-catechized. The Attorney General has now received replies to all of the interrogatories sent out, and there is no outstanding letter unanswered. It is this body of correspondence which is herewith respectfully submitted to your Honorable bodies for your information.

In view of the recommendation on the part of Governor Samuel W. Pennypacker, in his message addressed to you on the first of January, 1907, that you should institute a legislative investigation, and in view of the recommendation made by Governor Edwin S. Stuart that such a legislative investigation should be made, it is probable that an investigation will be instituted. Before the end is reached, you may be able to add to what I have been able to secure in the limited time belonging to me, and with my limited powers, particularly as you will have the advantage of having the witnesses before you under oath, and can pin them down to definite and specific answers if they are inclined to stray, and rigidly demand complete information upon each topic if the answers given are unsatisfactory, or evasive, argumentative or indefinite.

It is the province of the Attorney General to advise State officers either for or against Departmental action, or to institute or refrain from instituting legal proceedings, according to his best judgment,

rather than to express views which, by the unwary or the uninstructed, might be mistaken for quasi judicial opinions. It is proper, however, that I should so far indicate the substance of this correspondence as to aid you in your labors, and state, as concisely as I can, the legal position which it is clear that the Law Officer of the State must maintain towards it.

The Attorney General is in law bound to examine carefully into charges and sift the matter in advance before committing the Commonwealth to any legal proceedings of a definite character, whether of a criminal or a civil nature. It is a principle of our State jurisprudence, traceable to the earliest times, that no man should be charged with crime unless the law officer, responsible for the institution of criminal proceedings, is satisfied, under the responsibility of his official oath, that there is evidence proper to be submitted to a Grand Jury. As was said by Judge Sharswood, one of the leading jurists of the State, and for a time Chief Justice, in his essay on "Professional Ethics"—a book which is recognized everywhere as one of the touchstones of professional conduct:

"The office of the Attorney General is a public trust, which involves, in the discharge of it, the exertion of almost boundless discretion, by an officer who stands as impartial as a judge."

In his lectures introductory to the Study of the Law, the same eminent authority says:

"The law of the land is not a code of morals, and was never meant to be so. Apart from its provisions for the punishment of crime, it has little to do with motives which form the foundation of pure ethics. It judges only upon evidence. To it, what does not appear, does not exist."

The same high authority says:

"As well in the domain of public as of private law, the great fundamental principle for judge and counselor ought to be, that authority is sacred. There is no inconvenience so great, no private hardship so imperative, as to justify the application of a different rule to the resolution of the case, than the existing state of the law will warrant."

Governed by these principles, and looking to the highest authority in the State for a definition of the Attorney General's duty, I find that the Supreme Court of Pennsylvania, in the case of Cheetam et al v. McCormick, 178 Pa., 192, which was that of a mandamus against the then Attorney General to compel him to perform that which he considered would be a breach of his official oath, should

he institute a proceeding without first being satisfied of a substantial basis of evidence on which to rest it, Mr. Justice Williams used the following language:

"The Attorney General is the law officer of the Commonwealth, and represents her in all her litigation. In proceeding under the Act of 1887 he must use the name of the Commonwealth, and the costs, if he is unsuccessful, must fall on the Commonwealth. When a complaint reaches him, an inquiry into the facts may satisfy him that the complainants have been misled, or that they really have no information on the subject, but are acting from malicious motives or for stock jobbing purposes. He may see very clearly that to proceed under the act would be unwise, would invite certain defeat and fasten a bill of costs unnecessarily on the Commonwealth. Under such circumstances it is the duty of the Attorney General, under his official oath, to say to the complainants 'You have no case,' and it is his right to decline to ask for the complainants' relief if he is satisfied they have no right to it. If, then, the complainants have any proofs to submit in support of their complaint, they should submit them."

The rule thus laid down is applicable to the matter under consideration. No citizen or officer should be proceeded against, or struck down by the mailed hand of one in authority, unless there be warrant in the evidence against him; nor should the State embark in purely speculative litigation.

Upon the evidence thus far submitted—and speaking of that only—I do not hesitate to say that, in my Judgment, there is no trace of crime. No conspiracy is disclosed between State officers to share in the profits of the contracts; nor between Architect and the contractors; nor to secure the contracts for the contractors; nor to shape the schedules in such a way as to mislead bidders nor to deter bidders in order to stifle competition. The maximum prices upon which bids were asked were fixed by the Architect; the advertising for proposals was open and according to law; numerous persons procured copies of the Schedule; and numerous persons bid upon different parts of it. The special schedule for the furnishing of the Capitol was drawn, as to the items most in controversy, by the Architect, avowedly upon his own responsibility, he being the Agent of the State, and his explanation, together with the denial of the contractors that there was any collusion between themselves and the Architect, will stand unless contradicted. The burden of shaking these denials, or of flatly contradicting them by competent testimony is so plain as to call for no discussion. A fact supported by positive testimony of those whose statements cannot be overcome by the testimony are simply negative. I point out the necessity of

overcoming all this by positive proof to the contrary before an indictment against anybody could be thought of.

It should also be born in mind that the vouchers in the hands of the Auditor General show that every dollar paid upon the contract went into the hands of the contractors. The bills as rendered by the contractors correspond exactly in amount with the certificates given by the Architect; correspond exactly in amount with the bills certified to as correct by the Superintendent of Public Grounds and Buildings; correspond exactly in amount with the Settlement Certificates in favor of the Contractors given by the Auditor General and State Treasurer; and correspond exactly in amount with the warrants drawn upon the State Treasurer by the Auditor General; and the Treasury warrants show on their face that they were drawn in favor of the Contractors for the exact amount called for by the preceding documents, and they were endorsed by the contractors and deposited by them in banks and collected for their own accounts. There is not the slightest trace of a single farthing having been diverted to the pockets of any State officer.

In other words, the moneys paid by the State went directly into the hands of the contractors and every dollar represented by bills was received by the contractors alone. There is no evidence of any money being paid by any of the contractors to any State officer either before or after the making of the contracts or during the time of their performance nor since; nor is there any evidence of any promise or inducement or persuasion used or exercised by the contractors upon any State officers to secure the contract; nor any evidence of the contracts having been secured through the instrumentality, persuasion or friendly offices of anyone outside of the contractors. I point out these features in order that you may not be misled into any incautious conclusions from the mass of the testimony submitted or the intricacy of the figures and exhibits attached to the replies.

I simply indicate the necessity for a very searching examination if the thought of prosecution becomes uppermost, and I further point out that, though you may require a witness to answer all questions, however compromising, yet you cannot use the answers obtained on cross examination against the witness in any subsequent proceeding. Hence your proceedings cannot be used as an aid to criminal prosecutions except so far as you are able to secure outside independent proof—or proof aliunde.

So much for the criminal side of the matter.

As to civil proceedings instituted upon the basis of fraud, there is no oral or documentary evidence thus far submitted establishing any fact which could be fairly made the basis of a charge that there was fraud in the inducement or formation of the contract.

Fraud is not to be inferred from the mere fact that the contract was one of magnitude or difficult to be understood or difficult of execution. Without in the slightest degree attempting to influence your judgment, I point out that it has been judicially determined that the mere fact that a contract is an unwise or a foolish one does not establish the existence of fraud. *Equitable Loan & Security Co. v. Waring*, 117 Ga., 599; 97 American State Reports, 177; 62 Lawyers Reports, Annotated, 93; 44 Southeastern Reporter, 320. In that case Judge Cobb declared:

"The possibility or the probability of one being able to perform many of the contracts known to the commercial world is dependent upon so many considerations that it is only in an extreme case that the courts should hold that a given contract is of such a character that its performance is impossible or improbable, and that those who entered into it must have done so with a fraudulent intent. But all foolish contracts are not fraudulent, and it is not either the duty or within the power of the courts to relieve a person from a contract merely because it is in its terms unwise or even foolish."

This decision has been made the basis of the text of Page in his work on Contracts, Chapter VI, entitled "Fraud in the Inducement," Section 87, this being the most recent book upon the subject.

I must also call your attention to an undeniable feature of the case, which presents legal difficulties of an insuperable nature, which cannot be overcome, unless positive fraud in the making of the contracts or in their performance be established; established not by conjecture or inference, but by the evidence of facts; i. e. the contracts have been fully executed. The goods have been delivered and paid for. It is hornbook law that to rescind a contract whether informally or by formal decree in equity, the party who commits the fraud must be placed in statu quo by the party seeking relief. The cases upon this point are legion. So, too, a partial rescission of an entire contract cannot be had. The contract must be valid or void in toto, and this rule applies to informal rescission at law or repudiation of liability under the contract. While separate items in the Schedule as bid upon may be regarded as separate contracts, yet a bid upon a single item, such as Item No. 22, or Item No. 32, must be regarded as an entire and not as a divisible contract, even though a large number of articles of a different kind were called for and supplied under those items. Further discussion would lead me into the higher mathematics of the law of contracts—to layman unintelligible, to lawyers unnecessary. The impossibility of placing the contractors in this case in statu quo is apparent,

for the restoration to them of the goods or of the work delivered would be impossible.

There can be no doubt that the same principles of the law of contracts apply to contracts between an individual and the State as to contracts between individuals. In case of *People v. Stephens et al*, 71 N. Y. Reps., 527, it was held that the State in its contracts with individuals must be adjudged and abide by the same rules which govern in similar cases between individuals, and whenever such a contract comes before the court, the rights and obligations of the contracting parties be adjusted upon the same principles as if both contracting parties were private persons. In the absence of fraud or collusion the acts of public officers, acting on behalf of the State within the limits of the authority conferred upon them, and in the performance of their duties in dealing with third persons, are the acts of the State and cannot be repudiated by it. That was a case in which there was evidence of a conspiracy between prospective bidders upon canal contracts to prevent competitive bidding—a circumstance which, it is to be observed, is not present or even charged in the present case. Judge Allen, in delivering the opinion of the Court of Appeals, declared:

“There is not one law for the sovereign and another for the subject; but when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, although an action may not lie against the sovereign for a breach of the contract, whenever the contract in any form comes before the courts, the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor or suitor.

“The State is not, in tutelage, as one incapable of acting *sui juris*, but has capacity to act in all matters by its representatives and agents, and is bound by the acts and admissions of its duly appointed and recognized officers and representatives, acting within the general scope of their constitutional powers, whether ministerial or executive. In the absence of fraud or collusion, the acts of public officers, within the limits of the authority conferred upon them, and in the performance of the duties assigned them in dealing with third persons, are the acts of the State and cannot be repudiated. Neither can the State allege infancy, incompetency or disability to avoid the effects of the official acts of its agents. This is of necessity; for, as the State can only act by its duly constituted authorities, there would be no safety in dealing with the State if it were otherwise, and each succeeding official could repudiate the acts, avoid the contracts, rescind settle-

ments and reclaim payments made by his predecessor. The Legislature may and does regulate the power of its officers, and the power can only be exercised within the prescribed limits, but the Legislature does not negotiate contracts. Its powers are legislative and every other power is delegated to other branches of the government."

In the later case of *Danolds v. State of New York*, 89 N. Y. Reps., 36, the Court of Appeals held:

"Where a valid contract has been entered into on behalf of the State by its duly authorized agents for the construction of a public work, it cannot, in the absence of any stipulation authorizing it so to do, destroy or avoid the obligation of the contract. While it may refuse to perform and arrest performance on the part of the contractor, it is liable for the breach of the contract the same as an individual, and the contractor is entitled to claim prospective profits. The constitutional provision which denies to the State the power to pass laws impairing the obligations of contracts, applies as well to contracts made by the State as to those made by individuals."

And in the case of *Taylor v. Taylor*, 66 N. Y. Supplement, 561, Judge Houghton said:

"Where the agreement remains executory, and is sought to be enforced by either party, the objection as against public policy is good; but where the agreement has been executed the law will not interfere with what has been done, even though the agreement be an illegal one."

These cases are in conformity with the well established principles governing the general law of contracts, but I have turned to the State of New York for illustrations affecting public contracts because our own Supreme Court Reports fail to disclose any instances of public contracts of this character. I have examined *Pepper & Lewis Digest of Decisions* under the title "Public Officers," as well as under the title of "Contracts," without finding any decisions upon the point.

Nor can fraud be inferred from the fact that successful bidders possessed a business knowledge superior to that of business competitors. The leading case is that of *Laidlaw v. Organ*, decided by Chief Justice Marshall in the Supreme Court of the United States in February, 1817 (2 Wheaton, 178). Chief Justice Marshall delivered the opinion of the court in these words:

"The question in this case is whether the intelligence of extrinsic circumstances which might fix the price of the commodity, and which was exclusively in the knowl-

edge of the vendee, ought to have been communicated by him to the vendor? The court is of opinion that he was not bound to communicate it. It would be difficult to circumscribe the contrary doctrine within proper limits, when the means of intelligence are equally accessible to both parties, but, at the same time, each party must take care not to say or do anything tending to impose upon the other."

Of this point Chief Justice Sharswood said, in a lecture upon Commercial Integrity (Law Lectures, page 103):

"Chief Justice Marshall hit the nail precisely on the head when treating it merely as a matter of law. He said 'It would be difficult to circumscribe the contrary doctrine within proper limits when the means of intelligence are equally accessible to both parties.' Neither in law or in morals is a man bound to explain to the party with whom he is contracting the results of his own experience and knowledge in business. He is not required to surrender the superiority which these advantages give him."

Unless fraud can be plainly shown in the matter of the bids, no successful attempt could be made, in my judgment, in the courts to undo executed contracts merely on the ground that the successful bidders understood the meaning of items in the special schedule, unless it could be further shown that the bidders were the authors of the language of the items in the schedule, or have, by some collusive arrangement with the architect, so fixed them as to be unintelligible to other bidders. It must be observed that in the mass of testimony returned to you there is no such evidence. This point, which is a vital one, calls for the most heroic treatment. It must be observed that no one has complained or written to me that he did not understand the items or that he was prevented from bidding by their unintelligibility, and it would present a very grave question whether, even if people now appeared at this late day and so testified, it would avail anything in a court of law. In law, as in other matters, there is a time to speak, and a failure to do so at the right time carries with it the forfeiture of the right to complain.

In regard to the legal authority under which the contracts were made, inasmuch as the contracts have been executed and cannot be rescinded by putting the contractors in statu quo by the return of the property sold, it would appear to present an academic rather than a practical question as to whether or not the Board of Public Grounds and Buildings had exceeded its legal authority. It is not my province to determine this question. I am not armed with judicial authority, but, inasmuch as I cannot perceive any practical act to which a view of the question, either one way or the other,



might lead, I regard it, so far as the Attorney General is concerned, as entirely too late to raise the question. The answers of the Board of Public Grounds and Buildings disclose the fact that the Board claims to have acted under the authority of the act of 26th of March, 1895 (P. L. 22), asserting that a similar construction had been placed upon its powers by a preceding administration.

“It is well settled that a law which grants the power to a public officer is to be construed with reference to the object to be attained. If the subject-matter of the office is general, the wider will be the radius of the authority of the officer; if the object of the office is a special one, the narrower will be the scope of the authority of the officer. Viewed in this light, the implication of authority depends upon the facts found in each case.”

See Wyman's "Administrative Law" and cases cited in note. (Chapter IX, Section 80).

It could scarcely be successfully contended that the powers of the Board of Public Grounds and Buildings were simply ministerial and not largely discretionary, and this distinction is of importance, for, in the last analysis, as Wyman in his book on "Administrative Law," Section 83, points out:

“The question of the authority of the officer is reduced to the distinction between discretionary powers and ministerial duties. If an officer has discretion, he may do any act within that discretion and all that he does will be held to have been done by express authorization of law. On the other hand, if the duty of the officer is ministerial, only that very act which he had been directed to do can be held to have been done with authorization of law. Therefore, if he acts beyond this express authorization, his acts will be held to be void.”

Wyman says:

“Every method of administration of every sort that may be found may be reduced in the last analysis to this distinction between discretionary powers and ministerial duties. Whatever form this may take, it is all administration.”

I do not think it could be successfully contended that the powers of the Board of Public Grounds and Buildings were purely and strictly ministerial. To perform its duties under the act, there must necessarily have been a large amount of discretion required, for the statute arms the Board with power to make contracts, covering a very large field, and embracing expressly furnishing, re-furnishing, repairs, alterations and improvements to public buildings.

While there is doubtless large room for contending that the proviso attached to the tenth section of the General Appropriation Act operated in restraint of the powers of the Board so far as completing the Capitol was concerned, the proviso being stated in these words: "That expenditures allowed under this section shall not be so construed as to authorize the Commissioners of Public Grounds and Buildings to complete the present Capitol Building," yet, inasmuch as the act of 1895 stood in full force and unrepealed, the two acts must be read together, and view must be taken also of the fact that there was an outstanding act under which the Capitol Commission acted. Reading the three acts together, the construction put upon the proviso by the Board of Public Grounds and Buildings may be sound. It cannot be arbitrarily declared to be without warrant. The point is one of grave doubt, and more than debatable. However this may be, I am again confronted with the difficulty that the contract has been executed, and any examination of the decisions touching the question of the power of State officers to enter into contracts must be made with an eye directed to the decisions, in all of which it will be found that the contracts were executory, and that the State resisted performance in time to save the point.

It is well settled, in well-considered cases, that a distinction is to be drawn between cases of private and of public agency. In private agency, if there is an unauthorized contract made by an agent with a third person on behalf of the principal, if it be proved that the agent did not have authority to bind the principal, as he purported to do, the agent himself is liable to the third party, but such a rule does not extend to a public agent who is not held to warrant his authority as the private agent must. The point was thoroughly considered in the case of *Macbeath v. Haldimand*, 1 Term, Reports, 172. The Governor of the Province of Quebec had appointed one, Sinclair, to be Governor of the post, and directed him to procure supplies and to draw bills therefor upon the government as the practice was. Later the Treasury disavowed these requests. The question was then whether the Governor himself was liable. Justice Ashhurst said:

"In great questions of policy we cannot argue from the nature of private agreements, but even in these cases the question must be, What was the meaning of the parties at the time of entering into the contract? In the present case the government was made the debtor. Great inconvenience would result from considering the Governor as personally responsible in such cases as the present, for no person would accept of any office of trust under a government upon such conditions, and indeed it has been frequently determined that no indi-

vidual officer is answerable for any engagement which he enters into in behalf of the government."

This case has been recently followed in the case of *Dunn v. MacDonald*, 1 Q. B., 555, decided in the year 1897, where it was held that the public agent is not to be held to warrant his authority as in the case of a private agent. Lord Justice Lopes said:

"The liabilities of public agents on contracts made by them in their public capacity are on a different footing from the liabilities of ordinary agents on their contracts. In the former case, unless there is something special which would evidence an intention to be personally liable, an agent acting in behalf of the government is not liable for the breach of a contract made in his public capacity, even though he would, under the same circumstances of contract, be bound if it were an agency of a private nature. That is the short answer to the plaintiff's case."

The same doctrine prevails in the Supreme Court of the United States. Chief Justice Marshall, reviewing the case of *Macbeath v. Haldimand*, in the case of *Hodgson v. Dexter*, 1 Cranch, p. 345, declared:

"The government is incapable of acting otherwise than by its agents, and no prudent man would consent to become a public agent if he should be made personally responsible for contracts on the public account. This subject is very fully discussed in the case of *Macbeath v. Haldimand*, cited from First Term Reports, and this court construes the principles laid down in that case as consonant to policy, justice and law."

In conclusion let me suggest that, in view of the positive answers of the Auditor General that from the vouchers in his possession he can discover no duplication of payments—sustained as they are by the denials of the contractors that there were any duplications—the only sound method of verifying these answers or of overturning them, would be to place the contracts and the vouchers in the hands of an audit company, or experts well known, such as Meyer Goldsmith, L. N. Vollum or James E. Warrington, or men of their class—for examination.

As to fraud in the inception of the contracts, aside from the examination of State officers, contractors and architects, it would be well to look for outside and independent proof, for to rest a case on the mere hope of extracting something by way of cross examination, without independent testimony to contradict it if adverse, would be like charging a battery with empty hands in the wild hope that ammunition and weapons could be secured from the enemy.

In regard to overcharges or inferior material, or departures from specifications, it should be borne in mind that changes were authorized by the Capitol Building Commission, of which a full list appears in the matter submitted, and as to which there can be no doubt, for the testimony, oral and documentary, is harmonious.

As to the same charge in regard to the work done for the Board of Public Grounds and Buildings, it should not be forgotten that the contractor has declared that if such things be found he stands ready to make his contracts good. It would be unjust to him to ignore this. As to whether he has complied or not, the matter must rest on the testimony of really competent and acknowledged experts in the line of the work criticised, and not on that of men of small calibre, little experience or personal disappointments.

And lastly, in obtaining a view of whether an article was overcharged for or not, it must be observed that where the item in the schedule was bid upon as an entirety, it cannot be criticised in detail by cutting it into fragments, and treating each as though the contract were divisible. An average can only be secured by dealing with all the articles embraced in the items of the schedule—and this can only be done after the point has been definitely established that the contracts were conceived in fraud, or executed fraudulently. If this be not done—the contractor has the legal right to stand upon his contract—which was not that of a quantum meruit, but one for specific prices for the articles furnished under the architect's plans.

I have presented to you the legal features suggested to me by a study of this unusual case: features presenting insuperable difficulties in the way of any practical action by the Law Officer of the Government if the case rests where it is. Unless a very different case is developed by your investigation, unless fraud is shown and graft is established by positive proof, in my judgment the Attorney General will have no function to perform.

I submit these views for your candid consideration. To have withheld them would be trifling with a grave subject, and would have been an avoidance of an official responsibility which is plainly mine.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

## APPENDIX.

---

### TREASURY DEPARTMENT.

Harrisburg, Pa., October 9, 1906.

Hon. Hampton L. Carson, Attorney General of Pennsylvania, Harrisburg, Pa.:

Dear Sir: My attention has been called to the fact that Section 10 of the General Appropriation Act, authorizing the Board of Public Grounds and Buildings to furnish the Senate and House of Representatives, and the various Executive Departments in the new Capitol Building, expressly forbids them to use any of the public funds to complete the Capitol.

A careful examination of the specifications under which the capitol was built, and the items of expenditure made by the Board of Public Grounds and Buildings, convinces me that the Board has expended approximately \$2,500,000 for the work that was specified as a part of the building, either in duplication, or in addition to the work specified.

I am therefore of the opinion that this expenditure has been illegally made. In the ordinary course of business on warrants duly attested, and in ignorance of the real status of the case, I have paid approximately \$142,412 to George F. Payne & Co., for parquetry flooring, and I desire your official advice as to whether this payment, and others of similar character made by my predecessors are illegal, and if so, what steps, if any, can be taken to recover same.

As now advised, I shall decline to make further payments on that work.

I append a table of items herein referred to for your instruction.

Respectfully yours,

WM. H. BERRY,  
State Treasurer.

Specified in original contract.	Described in Contract as--	Paid by Board of Public Grounds and Buildings.
Page 53	Modeling and sculpture with patterns, .....	\$137,600 00
Page 56-74	Wainscoting (wood), .....	889,946 00
Page 61-62-63	Wainscoting (marble), .....	278,109 47
Page 58	Decorating (colors), (gold), (aluminum), .....	779,472 96
Page 59-60	Glass, mosiac, .....	28,759 20
Page 60	Fire places, .....	
Page 69-70	Floors (wood), ..... \$142,412 47	
	Floors (cement), ..... 26,117 77	
	Omitted, ..... \$7,100 00	160,430 00
Page 74	Mantels, .....	
Page 86	Bronze lamp standards, .....	436,850 40
Page 87	Vaults and safes, .....	66,000 00
Page 104	Drinking water plant (not in operation). Complete lighting system, .....	71,000 00
	Duplex telephone system, .....	17,666 00
Page 151	Thermostatic valves and ..... \$59,408 00	
	Thermostats, ..... 12,000 00	47,408 00
		omitted

Office of the Attorney General,  
Harrisburg, Pa., October 10, 1906.

Hon. William H. Berry, State Treasurer:

Dear Sir: I herewith acknowledge receipt of your letter of yesterday, which came during my absence in Pittsburg while arguing the case of the Dairy and Food Commissioner. It relates to a matter of grave importance. Before I can act intelligently in the matter it will be necessary for me to be more fully advised of the facts. The information you furnish is not sufficiently specific to sustain a legal opinion. I cannot judge of the actual or alleged existence of duplications and additions without being furnished with a copy of the original contract and without knowing from the architect exactly where, as a matter of fact, the work of the Capitol Commission ended and the work of the Commissioners of Public Grounds and Buildings began.

As an illustration, I observe that in the table of items you attach to your letter there is specified in the original contract: "Page 53, Modeling and Sculpture with Patterns, \$137,600.00" paid by the Board of Public Grounds and Buildings. I am unable from this to judge whether the "modeling or sculpture," as called for by the original contract, was paid for by the Board of Public Grounds and Buildings or whether the amount paid by the Board of Public Grounds and Buildings was included, in whole or in part, in the original contract, or whether the payments made by that Board relate

to "modeling and sculpture" entirely outside of and in addition to the original contract. I encounter the same difficulties with the other items which you have detailed.

It occurs to me that the exact way to arrive at a knowledge of the facts is to have a carefully tabulated statement prepared of what was actually embraced under the various heads in the original contract, what was furnished under that contract, and how much was paid by the Capitol Building Commission for the same. This, then, can be compared with a separate paper consisting of a list of items corresponding in character or substance with those in the original contract, but paid for by the Board of Public Grounds and Buildings, so as to see whether there was any overlapping, duplication or addition.

I should further like to be informed from the books of the Treasury when the various payments were made by the Board of Public Grounds and Buildings, the names of the parties to whom the warrants were issued, and the amounts of the various warrants.

I should also like to be informed in some way as to the payments made by you to George F. Payne and Company, whether for parquetry flooring, or some other items, and you will also oblige me by furnishing me with a list of the payments which you state were of a similar character and made by your predecessors. I should like information, also, so far as your knowledge or information extends, of the circumstances under which the payments were made, and I can the better judge and advise you whether or not the authority under which they were made was legal, and whether steps should be made to recover the same, if it should be found that the payments were irregular or that the money should be recoverable by law.

With regard to your declination to make further payments on the work, I should be glad to be advised as to whether or not warrants have been drawn and presented to you for payment, and, if so, what information you have as to what the warrants represent, and by whom they were presented, and what grounds exist for the refusal of payment.

If you are in the possession of any evidence whatever of fraud, dishonesty, graft, excessive charges, imperfect material, surreptitious substitution of inferior goods for that called for by the specifications, you will oblige me by communicating it to me at once, and I will take appropriate action.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

Office of the Attorney General,  
Harrisburg, Pa., Oct. 16, 1906.

Hon. William P. Snyder, Auditor General:

Sir: I enclose herewith copy of a letter addressed to me by the State Treasurer and a copy of my reply under the dates of Oct. 9th and 10th respectively.

If the records of your Department will aid in the determination of the facts it is necessary that I should obtain before I can reach any legal conclusion, you will oblige me by having such statements prepared from the vouchers and returned warrants or stubs of warrants issued as are pertinent to the subject matter, my main purpose being to ascertain exactly the line of demarcation between the work of the Capitol Commission and that of the Board of Commissioners of Public Grounds and Buildings, and what was done by your Department in each instance.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Commonwealth of Pennsylvania,  
Department of the Auditor General,  
Harrisburg, Oct. 24, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: Replying to your letter of October 16, 1906, asking information from the records of this Department of the facts which are necessary for you to obtain before you can reach a legal conclusion in reply to a letter received by you from the State Treasurer, a copy of which you inclosed, as received. I send herewith copy of letter from Joseph M. Huston, architect, under date of October 17, 1906, explanatory of the changes made by the Capitol Commission from their original printed specifications and answers by Mr. Huston to the objections made by Mr. Berry that certain articles, decorations, etc., should not have been paid for by the Board of Public Ground and Buildings, as they were included in the contract with the Capitol Commission; also copy of certificate given to William A. Stone, president of the Capitol Building Commission, under date of August 22, 1906, by Joseph M. Huston, architect, certifying that no part of the material furnished or labor performed under the contract between the Capitol Building Commission and George F. Payne & Company, above referred to, was paid for by the Board of Public Grounds and Buildings, except certain items omitted by the Capitol Building Commission and for which full credit was given them under the provisions of said contract; also schedule attached.



In the plans approved by the Board for furnishing, decorating and equipping the new Capitol building and also for metallic cases, each room was designated by a number, and I send you herewith a copy of bills paid by the Board of Public Grounds and Buildings, with quantities and prices according to schedule approved for the various rooms, in reply to Mr. Berry's letter, to wit:

Item 1, Modeling and sculpture, with patterns, .....	\$137,600 00
Item 2, Carvel panels, wainscoating, mantels and designed wood work, .....	889,940 00
Item 3, Marble wainscoating, mantels, bases, .....	278,109 47
Item 4, Raised ornamentation, gilding, decorating and painting, ..	779,472 96
Item 5, Designed glass mosaic, .....	28,759 20
Item 6, Fire places, .....	
Item 7, Floors, tile, none paid for by Board of Grounds and Buildings, .....	
Item 8, Cement flooring throughout the building to receive furnished parquetry flooring, .....	25,117 77
Item 9, Interlocking hardwood parquetry flooring, .....	142,412 47
Item 10, Mantels included in Item 3.	
Item 11, Bronze lamp standards..See resolution of Capitol Commission of September 3, 1903, quoted in architect's letter attached.	
Item 12, Vaults and safes, .....	66,000 00
Item 13, Drinking water plant, paid for by Capitol Commission.	
Item 14, Additions and alterations to electric lighting throughout the building, .....	71,833 00
Item 15, Installing wires for two telephone and two telegraph systems, .....	17,666 73
Item 16, Installation of thermostats and valves throughout building, special work in connection with heating and ventilating, also air compressors, .....	59,408 00

Each bill before being paid had the architect's certificate attached, certifying to the correctness of the same and was as follows:

Copy of Architect's Certificate No. 761.

Philadelphia, April 20, 1906.

"No 761

Office of J. M. Huston, Architect,  
Witherspoon Bldg.:

I certify that John H. Sanderson is entitled to the payment of one hundred and fifty-seven thousand, seven hundred and fifty-six and forty one-hundredth dollars, on account of contract with the Commonwealth of Pennsylvania for 8,424 ft. designed wood work, Series F, Item 22, at \$20.00, less 8 per cent., \$18.40 and 568 lbs. bronze work, Series F, Item 32, at \$5.00, less 3 per cent., \$4.85.

43d Order  
\$157,756.40.

J. M. HUSTON, Architect."

## Copy of Receipt.

"May 2, 1906.

Received of Auditor General's Department the sum of one hundred and fifty-seven thousand seven hundred and fifty-six and forty one-hundredth dollars, being the amount of the annexed order.

\$157,756.40.

JOHN H. SANDERSON."

Also certificate of James Shumaker, Superintendent of the Board of Public Grounds and Buildings, as follows:

"I hereby certify that the above or within bill is correct and true; that the quantities and prices are correct and according to contract and plans approved by the Board of Public Grounds and Buildings for the furnishing, etc., of the new Capitol building.

J. M. SHUMAKER,  
Supt. Public Grounds and Buildings."

The bills paid to John H. Sanderson and the Pennsylvania Construction Co. have affidavits swearing to the correctness of the same as to quantities and prices and that the goods were made according to plans and specifications approved by the Board of Public Grounds and Buildings. The same is true of nearly all the bills paid George F. Payne & Company so far as affidavits are concerned; all the Payne & Company bills have certificates of the architect and Superintendent of Grounds and Buildings. The payments made to the Capitol Commission on account of the \$4,000,000 appropriation were usually in lump sums sufficient to cover the amounts approved by the Capitol Commission at their meetings. These warrants were drawn to the Treasurer of the Capitol Commission.

Very respectfully,

W. P. SNYDER,  
Auditor General

---

JOSEPH M. HUSTON, ARCHITECT.

Witherspoon Building,  
Philadelphia, October 17, 1906.

Hon. Wm. P. Snyder, Auditor General:

Dear Sir: In answer to your letter of October 10, 1906, relative to doors in Forestry Department and list of charges by Mr. Berry, I beg leave to report as follows:

For doors in the Forestry Department and all other doors. See paragraph 10, page 75, of building specification for method.

"All doors (except white pine) shall be built up of white pine core strip, not over  $\frac{1}{8}$  inch by the thickness of the core, and veneered."

See resolution of Capitol Building Commission of June 9, 1904, for material.

"Resolved, that the contractor be permitted to substitute either mahogany or birch, the same as used by the Pullman Company in furnishing the interior of their sleeping cars, where oak is specified for finishing the interior of the building, except in the Executive Reception Room in the basement, provided this is done without additional cost of the Commission."

See paragraph 2 and 3, page 75.

Mexican mahogany and birch with mahogany panels constructed in conformity to the plans and specifications were furnished.

#### ANSWERS TO MR. BERRY'S STATEMENT.

"Page 53. Modeling and sculpture with patterns, \$137,600.00."

Ans. Paragraph 6, on the above page refers to the models for ornamental plaster work in certain specified places under the building contract in 3rd paragraph, p. 53, and did not have anything to do with the "modeling and sculpture with patterns," required for the standards, electric fixtures and furniture contracts, which were contracted for by the Board of Public Grounds and Buildings.

"Pages 56 and 74. Wainscoting (wood), \$889,940.00"

Ans. Paragraphs 2 and 6 on page 74 refers to the wainscotings in the Grand Executive Reception Room and Supreme Court, paragraph 10 on page 56 refers to the finishing of the wainscoting in the Executive Reception Room. These wainscotings were included in the contract of Messrs. Geo. F. Payne & Co., with the Capitol Building Commission, paid for by them and not by the Board of Public Grounds and Buildings.

"Pages 61, 62, 63. Wainscoting (marble), \$278,109.47."

Ans. Paragraph 7 on page 62 requires a 12 inch high marble base only on first floor corridor in rear portion of wing "B." This corridor was wainscoted to the cornice at ceiling by the Board of Public Grounds and Buildings. No marble wainscotings required by the Capitol Building Commission were paid for by the Board of Public Grounds and Buildings.

Page 58. Decorating. (Colors), (gold), (aluminum), \$779,472.96."

Ans. Heading paragraph page 57 reads as follows:

"Decoration and finish of plaster walls and ceilings in the Grand Executive Reception Room, House of Representatives, Senate, Supreme and Superior Court Room, and the grand rotunda and dome."

Paragraph 2 and 3 and 4 on page 58 describe the painting and

decoration of these rooms only and did not require any decoration in the other portions of the building.

The Board of Grounds and Buildings painted and decorated the entire other occupied portions of the building and placed additional applied ornamentation and gilding in the House, Senate and grand rotunda and dome.

"Pages 59 and 60. Glass mosaic. \$28,759.20."

Ans. The glass mosaic frieze for lettering around rotunda was omitted and an allowance made from the contract between the Capitol Building Commission and George F. Payne & Company. (See contract) and was put in and paid for by the Board of Public Grounds and Buildings.

"Page 60. Fireplaces."

The fireplaces required by the Capitol Building contract were built by Payne & Company. The fireplaces put in all the heads of the departments rooms were required by plans for furnishing and were put in and paid for by the Board of Grounds and Buildings.

"Page 61. Floors. (Tile)."

Ans. No tile work has been paid for by the Board of Public Grounds and Buildings.

"Page 69 and 70. Floors. (Wood), . \$142,412 47

Floors. (Cement), 25,117 77

---

Omitted, ..... \$7,100 00 \$160,430 00

Ans. Paragraph 12, page 69 calls for a yellow pine floor throughout, where not otherwise specified. This flooring was omitted by Geo. F. Payne & Co., an allowance made by them to the Capitol Building Commission. The Board of Public Grounds and Buildings furnished and laid an interlocking parquetry floor in its place, as it was more sanitary and saved the yearly carpet bills.

"Page 74. Mantels."

The mantels paid for by the Board of Grounds and Buildings were of marble and stone in the various heads of departments and other public rooms.

"Page-86. Bronze lamp standards. \$436,950.40."

Ans. Paragraph 7, page 86, states that "the contractor shall allow in his estimate the sum of thirty thousand dollars for all bronze doors, frames, standards, screens and grill over the same."

In resolution of the Capitol Building Commission of September 3, 1903. The standards were omitted, and bronze figure on top of dome substituted.

"Page 87. Vaults and safes. \$66,000.00."

The work put in by the Board of Grounds and Buildings Commis-

sion was for a complete fire proof vault and safe system in each department in addition to those called for on page 87.

"Page 104. Drinking water plant. (Not in operation.)"

Ans. This plant was satisfactorily tested at time building was accepted. I know of no reason why it should not be put in operation if desired.

"Complete lighting system. \$71,000.00."

Ans. Additions and alterations to the electric light system throughout the building made necessary by the increased number of lights and size of electric fixtures.

"Page 151. Thermostat valves and thermostats. \$59,408.00, \$12,000.00, \$47,408.00"

The paragraph on page 51 did not require specially designed thermostat covers like those required under the special schedule, and more were furnished for new departments and fifth floor than were called for in the specification.

Hoping the above is satisfactory to you, I am,

Very truly yours,

JOSEPH M. HUSTON.

---

JOSEPH M. HUSTON, ARCHITECT.

Witherspoon Building,  
Philadelphia, August 22, 1906.

Hon. W. A. Stone, Pres. Capitol Building Commission, Harrisburg,  
Pa.:

Sir: Whereas, on the 30th day of September, 1902, the Capitol Building Commission, acting for the Commonwealth of Pennsylvania, and George F. Payne & Company of No. 401 South Juniper St., Philadelphia, Pa., contractors, entered into a contract under the terms of which the said Capitol Building Commission were to pay \$3,505.656 to said George F. Payne & Company, for the erection and completion of the State Capitol Building at Harrisburg, Pa., in accordance with the terms and conditions of said contract and the plans and specifications made part thereof, and

Whereas, Under the terms of said contract, I, Joseph M. Huston, was designated and empowered as the architect of said Capitol Building Commission, and as acting, under the terms of said contract, as the agent of the said Commission;

Now, therefore, I certify that all of the work and undertaking incident to the erection and completion of the State Capitol Building in the city of Harrisburg, Pa., has been fully, well and sufficiently performed and finished in a thoroughly workmanlike man-

ner in accordance with and agreeable to the terms, covenants, conditions and requirements of the said contracts, in accordance with and agreeable to the drawings and specifications made part of the said contract, and to the dimensions and explanations thereon and therein contained, according to the true intent and meaning of said contract, drawings and specifications in all respects, saving and excepting the following alterations, additions to or omissions from the work contemplated by the original contract, a schedule of which is hereto attached, as authorized by the written order of the architect, approved by the Commission in accordance with the procedure in such case made and provided in paragraph "Second" of said contract.

And I further certify that no part of the materials furnished or labor performed under the contract between the Capitol Building Commission and George F. Payne & Company above referred to, was paid for by the Board of Public Grounds and Buildings excepting certain items omitted by the Capitol Building Commission and for which full credit was given them under the provisions of said contract above referred to.

Schedule of omissions recommended by the architect and approved by the Capitol Building Commission, and prices credited to the Capitol Building Commission:

Yellow pine flooring, .....	\$7,100 00
Two engines and dynamos, .....	8,000 00
Plaster coves, .....	750 00
Dust chutes, .....	300 00
Glass in dome, House of Representatives, Senate and corridors, .....	5,482 00
<hr/>	
Total, .....	\$21,632 00

Schedule of additions recommended by the architect and approved by the Capitol Building Commission and prices fixed for the same:

Complete additional system of telephone conduits, .....	\$3,828 00
Additional panel in switch board, .....	1,336 50
Rain conductors for dome, .....	2,943 51
Increased weight of grillage beams in column foundations, .....	1,549 32
Extra foundation work, .....	10,430 90
Extra telegraph conduit, .....	864 00
Additional foundation for main entrance steps, ...	503 50
Lowering beams on entresol floor, .....	1,726 39

Extension of granite platform, .....	1,800 00
Extra steel work, etc., in mechanical plant, .....	5,748 10
Closing diffusor sash over House, Senate, dome and elliptical sash in 1st floor corridors, .....	6,001 61
Bronze registers, etc., .....	1,882 29
Total, .....	<hr/> \$38,614 12

(Signed.)

Very respectfully,

J. M. HUSTON.

## ITEM 1. MODELING AND SCULPTURE WITH PATTERNS.

JOHN H. SANDERSON, PHILADELPHIA.

Oct. 17, 1904.

Sold to the Commonwealth of Pennsylvania, Harrisburg, Pa.

Sketch and working models for electrical fixtures as per architect's approval.	
Design No. 23, Chandeliers for Senate, 7 ft. 0 in. x 19 ft. 0 in., ....	133 ft. 0 in.
Design No. 24, Standards for outside of main entrance, 4 ft. 0 in. x 10 ft. 0 in., .....	40 ft. 0 in.
Design No. 25, Standards for Main Vestibule, 3 ft. 0 in. x 13 ft. 6 in., .....	40 ft. 6 in.
Design No. 27, Brackets for Senate caucus room, 2 ft. 0 in. x 3 ft. 0 in., .....	6 ft. 0 in.
Design No. 28, Chandeliers for Governor's Private Secretary, 3 ft. 0 in. x 7 ft. 0 in., .....	21 ft. 0 in.
Design No. 29, Brackets for Governor's Private Secretary, 1 ft. 0 in. x 1 ft. 6 in., .....	1 ft. 6 in.
Design No. 30, Chandeliers for Lieutenant Governor's reception room, 3 ft. 0 in. x 6 ft. 0 in., .....	18 ft. 0 in.
Design No. 31, Brackets for Lieutenant Governor's reception room, 1 ft. 6 in. x 1 ft. 8 in., .....	2 ft. 6 in.
Design No. 32, Standards for Senate, 4 ft. 0 in. x 11 ft. 0 in., ....	44 ft. 0 in.
Design No. 33, Brackets for House of Representatives, 2 ft. 0 in. x 7 ft. 0 in., .....	14 ft. 0 in.
Design No. 35, Brackets for House caucus room, 2 ft. 0 in. x 3 ft. 0 in., .....	6 ft. 0 in.
Design No. 36, Chandeliers for clerks, stenographers and commit- tee rooms, 3 ft. 0 in. x 6 ft. 0 in., .....	18 ft. 0 in.
Design No. 37, Brackets for clerks, stenographers and committee rooms, 1 ft. 6 in. x 2 ft. 0 in., .....	3 ft. 0 in.

Design No. 26, Standards for Senate, 2 ft. 0 in. x 3 ft. 0 in., .....	6 ft. 0 in.
Design No. 34, Standards for House of Representatives, 2 ft. 0 in. x 3 ft. 0 in., .....	6 ft. 0 in.
	<hr/> 359 ft. 6 in. <hr/>
Item No. 30, 359½ feet at \$100.00 net per foot, .....	<hr/> \$35,950 00 <hr/>

Approved,

J. M. HUSTON,

Architect.

Approved,

W. L. MATHUES.

State Treasurer.

W. P. SNYDER,

Auditor General.

JOHN H. SANDERSON, PHILADELPHIA.

Oct. 17, 1904.

Sold to Commonwealth of Pennsylvania, Harrisburg, Pa.

Sketch and working models for electrical fixtures as per architect's approval.

Design No. 10, Chandeliers for small corridors, 1 ft. 6 in. x 4 ft. 0 in., .....	6 ft. 0 in.
Design No. 11, Chandeliers for Supreme Court, 5 ft. 0 in x 11 ft. 0 in., .....	55 ft. 0 in.
Design No. 12, Chandeliers for heads of departments, 5 ft. 0 in. x 7 ft. 0 in., .....	35 ft. 0 in.
Design No. 13 Brackets for heads of departments, 1 ft. 0 in x 2 ft. 0 in., .....	2 ft. 0 in.
Design No. 14, Chandeliers for deputies and chief clerks, 3 ft. 0 in. x 6 ft. 0 in., .....	18 ft. 0 in.
Design No. 15, Brackets for deputies and chief clerks, 1 ft. 6 in x 2 ft. 0 in., .....	3 ft. 0 in.
Design No. 16, Standards for grand executive reception room, 3 ft. 0 in. x 9 ft. 0 in., .....	27 ft. 0 in.
Design No. 17, Chandeliers for grand executive reception room, 4 ft. 0 in. x 8 ft. 0 in., .....	32 ft. 0 in.
Design No. 18, Chandeliers for Senate caucus room, 4 ft. 0 in. x 7 ft. 0 in., .....	28 ft. 0 in.
Design No. 19, Chandeliers for House caucus room, 4 ft. 0 in. x 6 ft. 0 in., .....	24 ft. 0 in.
Design No. 20, Standards for Supreme Court, 4 ft. 0 in. x 12 ft. 0 in., .....	48 ft. 0 in.



Design No. 21, Chandeliers for ladies' and gentlemen's reception room, 4 ft. 0 in. x 6 ft. 0 in., .....	24 ft. 0 in.
	<hr/>
	302 ft. 0 in.
	<hr/>
Item No. 30, 302 feet at \$100.00 net per foot, .....	\$30,200 00
	<hr/>

Approved,  
J. M. HUSTON,  
Architect.

Approved,  
W. L. MATHUES,  
State Treasurer.  
W. P. SNYDER,  
Auditor General.

JOHN H. SANDERSON, PHILADELPHIA.

Oct. 17, 1904.

Sold to Commonwealth of Pennsylvania, Harrisburg, Pa.

Sketch and working models for electrical fixtures as per architect's approval.

Design No. 1, Standards for House of Representatives, 3 ft. 6 in. x 13 ft. 0 in., .....	45 ft. 6 in.
Design No. 4, Chandeliers for House of Representatives, 5 ft. 0 in. x 10 ft. 0 in., .....	50 ft. 0 in.
Design No. 5, Chandeliers for House of Representatives, 8 ft. 0 in. x 18 ft. 0 in., .....	144 ft. 0 in.
Design No. 6—A, Chandeliers for Governor's room, 4 ft. 0 in. x 7 ft. 0 in., .....	28 ft. 0 in.
Design No. 6—B, Brackets for Governor's room, 1 ft. 0 in. x 2 ft. 0 in., .....	2 ft. 0 in.
Design No. 7, Standards for grand rotunda on balcony, 4 ft. 0 in. x 11 ft. 0 in., .....	44 ft. 0 in.
Design No. 8, Standards for grand rotunda on stair landings, 3 ft. 0 in. x 10 ft. 0 in., .....	30 ft. 0 in.
Design No. 9, Chandeliers for main corridors, 2 ft. 0 in. x 5 ft. 0 in., .....	10 ft. 0 in.
	<hr/>
	353 ft. 6 in.
	<hr/>
Item No. 30, 353 feet 6 inches, at \$100.00 per foot net, .....	\$35,350 00
	<hr/>

Approved,  
J. M. HUSTON,  
Architect.

Approved,  
W. L. MATHUES,  
State Treasurer.  
W. P. SNYDER,  
Auditor General.

JOHN H. SANDERSON.

Philadelphia, Penna., March 15, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.  
For New Capitol.

Page No. 3, Sketch and working model for electrical fixtures, as  
per architect's approval:

Design No. 7, A main rotunda, standard, 10 ft. 0 in. x 3 ft. 0 in.	30 ft. 0 in.
Design No. 8, A grand hall standard, 12 ft. 0 in. x 3 ft. 0 in., ...	36 ft. 0 in.
Design No. 24, Outside lobby standard, 20 ft. 0 in x 2 ft. 3 in., ...	45 ft. 0 in.
Item No. 30, 111 ft. at \$100.00 net per foot, .....	<u>\$11,100 00</u>

JOHN H. SANDERSON.

Philadelphia, Penna., March 15, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.  
For New Capitol.

Page 153, Room No. 229, Modeling and sculptor decoration, Series  
"F":

Item No. 30, 250 feet, \$100.00 per ft. net, .....	<u>\$25,000 00</u>
--	--------------------

## ITEM 2. CARVED PANELS, WAINSCOTING, MANTELS AND DESIGNED WOOD WORK.

JOHN H. SANDERSON.

Philadelphia, Penna., April 23, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.  
For New Capitol.

Page 148, Room No. 225, Designed wood work series "F," Item No. 22, 1,054 ft. at \$20.00 less 8 per cent., \$18.40, .....	\$19,393 60
Page 149, Room No. 225 A, Designed wood work, series "F," Item No. 22, 1,656 ft. at \$20.00, less 8 per cent., \$18.40, .....	30,470 40
Page 151, Room No. 226, Designed wood work, series "F," Item No. 22, 1,078 ft. at \$20.00, less 8 per cent., \$18.40, .....	19,835 20
Page 154, Room No. 230, Designed wood work, series "F," Item No. 22, 1,256 ft. at \$20.00, less 8 per cent., \$18.40, .....	23,110 40

Page 157, Room No. 233, Designed wood work, series "F," Item No. 22, 143 ft. at \$20.00, less 8 per cent, \$18.40, .....	2,631 20
Page 182, Room No. 265, Designed wood work, series "F," 670 ft. at \$20.00, less 8 per cent., \$18.40, .....	12,328 09
Page 183, Room No. 266, Designed wood work, series "F," Item No. 22, 768 feet at \$20.00, less 8 per cent., \$18.40, .....	14,131 20
Page 190, Room No. 275, Designed wood work, series "F," Item No. 22, 296 ft. at \$20.00, less 8 per cent, \$18.40, .....	5,446 40
Page 191, Room 276, Designed wood work, series "F," Item No. 22, 411 ft. at \$20.00, less 8 per cent., \$18.40, .....	7,562 40
Page 94, Room No. 513, Designed wood work, series "F," Item No. 22, 223 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,103 20
Page 95, Room No. 514, Designed wood work, series "F," Item No. 22, 192 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,532 80
	<hr/>
	\$142,544 80
	<hr/>

JOHN H. SANDERSON.

Philadelphia, Penna., April 17, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

Page 8, Room 110, Designed wood work, series "F," Item No. 22, 196 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$3,606 40
Page 9, Room No. 111, Designed wood, series "F," Item No. 22, 253 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,655 20
Page 11, Room 113, Designed wood work, series "F," Item No. 22, 505 ft. at \$20.00, less 8 per cent., \$18.40, .....	9,292 00
Page 29, Room 137, Designed wood work, series "F," Item No. 22, 258 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,747 20
Page 30, Room 138, Designed wood work, series "F," Item No. 22, 359 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,605 60
Page 62, Room 171, Designed wood work, series "F," Item No. 22, 413 ft. at \$20.00, less 8 per cent., \$18.40, .....	7,599 20
Page 63, Room No. 172, Designed wood work, series "F," Item No. 22, 355 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,532 00
Page 64, Room No. 173, Designed wood work, series "F," Item No. 22, 301 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,538 40
Page 66, Room No. 175, Designed wood work, series "F," Item No. 22, 357 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,568 80
Page 67, Room 176, Designed wood work, series "F," Room 176, 235 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,324 00
Page 72, Room 183, Designed wood work, series "F," Item No. 22, 431 ft. at \$20.00, less 8 per cent., \$18.40, .....	7,930 40
Page 73, Room 184, Designed wood work, series "F," Item No. 22, 727 ft. at \$20.00, less 8 per cent., \$18.40, .....	13,376 80
	<hr/>
	\$80,776 00
	<hr/>

## JOHN H. SANDERSON.

Philadelphia, Penna., Feb. 19, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol.

Page 32, Room No. 139, Designed wood work, series "F," Item No. 22, 823 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$15,143 20
Page 50, Room No. 157, Designed wood work, series "F," Item No. 22, 1,118 ft. at \$20.00, less 8 per cent., \$18.40, .....	20,571 20
Page 126, Room No. 200, Designed wood work, series "F," Item No. 22, 775 ft. at \$20.00, less 8 per cent., \$18.40, .....	14,260 00
Page 129, Room No. 203, Designed wood work, series "F," Item No. 22, 201 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,538 40
Page 130, Room No. 205, Designed wood work, series "F," Item No. 22, 365 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,716 00
Page 131, Room No. 206, Designed wood work, series "F," Item No. 22, 263 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,839 20
Page 133, Rooms Nos. 210 and 211, Designed wood, series "F," Item No. 22, 878 ft. at \$20.00, less 8 per cent., \$18.40, .....	16,155 20
Page 135, Room No. 212, Designed wood work, series "F," Item No. 22, 1,174 ft. at \$20.00, less 8 per cent., \$18.40, .....	21,601 60
Pages 138-9, Rooms Nos. 215 and 216, Designed wood work, series "F," Item No. 22, 1,257 ft. at \$20.00, less 8 per cent., \$18.40, .....	23,128 80
Pages No. 173-4, Rooms Nos. 254 and 255, Designed wood work, series "F," Item No. 22, 380 ft. at \$20.00, less 8 per cent., \$18.40, ..	6,992 00
Page 175, Room No. 256, Designed wood work, series "F," Item No. 22, 945 ft. at \$20.00, less 8 per cent., \$18.40, .....	17,388 00
Page 178, Room No. 259, Designed wood work, series "F," Item No. 22, 404 ft. at \$20.00, less 8 per cent., \$18.40, .....	7,433 60
Page 179, Rooms Nos. 260 and 261, Designed wood work, series "F," Item No. 22, 1,667 ft. at \$20.00, less 8 per cent., \$18.40, .....	30 672 80
Page 206, Room No. 291, Designed wood work, series "F," Item No. 22, 1,336 ft. at \$20.00, less 8 per cent., \$18.40, .....	24,582 40
Page 320, Room No. 465, Designed wood work, series "F," Item No. 22, 821 ft. at \$20.00, less 8 per cent., \$18.40, .....	15,106 40
Page 117, Room No. 540, Designed wood work, series "F," Item No. 22, 889 ft. at \$20.00, less 8 per cent., \$18.40, .....	16,541 69
	<u>\$246,670 40</u>

JOHN H. SANDERSON.

Philadelphia, Penna., April 23, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania:

For New Capitol Building.

Page 2, Room No. 101, Designed wood work, series "F," Item No. 22, 1,153 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$21,215 20
Page 15, Room No. 103, Designed wood work, series "F," Item No. 22, 1,153 ft. at \$20.00, less 8 per cent., \$18.40, .....	21,215 20

Page 15, Room No. 118, Designed wood work, series "F," Item No. 22, 818 ft. at \$20.00, less 8 per cent., \$18.40, .....	15,051 20
Page 17, Room No. 121, Designed wood work, series "F," Item No. 22, 783 ft. at \$20.00, less 8 per cent., \$18.40, .....	14,407 20
Page 21, Room No. 126, Designed wood work, series "F," Item No. 22, 1,059 ft. at \$20.00, less 8 per cent., \$18.40, .....	19,485 60
Page 60, Room No. 169, Designed wood work, series "F," Item No. 22, 1,319 ft. at \$20.00, less 8 per cent., \$18.40, .....	24,269 60
Page 141, Room No. 218, Designed wood work, series "F," Item No. 22, 975 ft. at \$20.00, less 8 per cent., \$18.40, .....	17,940 00
Page 142, Room No. 219, Designed wood work, series "F," Item No. 22, 250 ft. at \$20.00, less 8 per cent., \$18.40, .....	10,120 00
Page 143, Room No. 220, Designed wood work, series "F," Item No. 22, 648, ft. at \$20.00, less 8 per cent., \$18.40, .....	11,923 20
Page 74, Room No. 185, Designed wood work, series "F," Item No. 22, 472 ft. at \$20.00, less 8 per cent., \$18.40, .....	8,684 30
Page 128, Room No. 202, Designed wood work, series "F," Item No. 22, 519 ft. at \$20.00, less 8 per cent., \$18.40, .....	9,549 60
Page 129, Room No. 203, Designed wood work, series "F," Item No. 22, 200 ft. at \$20.00, less 8 per cent., \$18.40, .....	3 680 00
Page 147, Room No. 224, Designed wood work, series "F," Item No. 22, 1,332 ft. at \$20.00, less 8 per cent., \$18.40, .....	24,508 80
Pages 217, Room No. 308, Designed wood work, series "F," Item No. 22, 309 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,685 80
Page 219, Room No. 310, Designed wood work, series "F," Item No. 22, 287 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,280 80
Page 273, Room No. 412, Designed wood work, series "F," Item No. 22, 206 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,790 40
Page 274, Room No. 413, Designed wood work, series "F," Item No. 22, 220 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,048 00
Page 283, Room No. 422, Designed wood work, series "F," Item No. 22, 211 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,882 40
Page 284, Room No. 423, Designed wood work, series "F," Item No. 22, 278 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,115 20
	<hr/>
	<b>\$155,001 60</b>

JOHN H. SANDERSON, PHILADELPHIA, PA.

Dec. 26, 1905.

Sold to the Commonwealth of Pennsylvania, Harrisburg, Pa.

Care J. M. Shumaker, Supt.

Page 249, Room No. 348, Designed wood work, series "F," Item No. 22, 985 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$18,124 00
Page 77, Room No. 186, Designed wood work, series "F," Item No. 22, 1,956 ft. at \$20.00, less 8 per cent., \$18.40, .....	35,990 40
Page 75, Room No. 186..A, Designed wood work, series "F," Item No. 22, 613 ft. at \$20.00, less 8 per cent., \$18.40, .....	11,279 20
Page 76, Room No. 186..B, Designed wood work, series "F," Item No. 22, 1,286 ft. at \$20.00, less 8 per cent., \$18.40, .....	23,662 40

Page 78, Room No. 187, Designed wood work, series "F," Item No. 22, 1,306 ft. at \$20.00, less 8 per cent., \$18.40, .....	24,030 40
Page 208, Room No. 294, Designed wood work, series "F," Item No. 22, 466 ft. at \$20.00, less 8 per cent., \$18.40, .....	8,574 40
Page 244, Room No. 341, Designed wood work, series "F," Item No. 22, 802 ft. at \$20.00, less 8 per cent., \$18.40, .....	14,756 80
Page 259, Room No. 357..A, Designed wood work, series "F," Item No. 22, 1,050 ft. at \$20.00, less 8 per cent., \$18.40, .....	19,320 60
Page 260, Room No. 359, Designed wood work, series "F," Item No. 22, 1,026 ft. at \$20.00, less 8 per cent., \$18.40, .....	18 878 40
Page 311, Room No. 455, Designed wood work, series "F," Item No. 22, 837 ft. at \$20.00, less 8 per cent., \$18.40, .....	16,480 00
	<hr/>
	\$190,096 00

### ITEM 3. MARBLE WAINSCOTING, MANTELS AND BASES.

#### THE PENNSYLVANIA CONSTRUCTION COMPANY.

March 17, 1906.

Marble bases on the following committee room wardrobes and combination cases.

Room.	Wardrobes.	Combination cases.	Lineal feet.
171, .....	1-2	59	47-21 1/4
153, .....	3-4	1	32-11 1/4
152, .....	5-6	2	32-11 1/4
150-151, .....	7-8	3	32-11 1/4
149, .....	9-10	4	32-11 1/4
147, .....	11-12-13	5	35-5
146, .....	14-15-16	6	35-5
145, .....	17-18	7	32-11 1/4
144, .....	19-20	8	32-11 1/4
136, .....	21-22	9	32-11 1/4
135, .....	23-24	10-11	32-11 1/4
184, .....	25-26	12	32-11 1/4
183, .....	27-28	13	32-11 1/4
283, .....	29-30	14	32-11 1/4
506, .....	31-32	15	32-11 1/4
505, .....	33-34	16	32-11 1/4
527, .....	35-36	17	32-11 1/4
526, .....	37-38	18	32-11 1/4
525, .....	39-40	19	32-11 1/4
524, .....	41-42	20	36-0 1/2
523, .....	43-44-45	21	36-0 1/2
522, .....	46-47-48	22	32-11 1/4
521, .....	49-50	23	32-11 1/4
520, .....	51-52	24	32-11 1/4
507, .....	53-54	25	32-11 1/4
508, .....	55-56	26	32-11 1/4
	57-58		

At \$4.74 per lineal foot, \$4,335.81.

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., March 17, 1906.

Marble bases on the following committee room wardrobes and combination cases.

Room.	Wardrobes.	Elevations, combination cases.	Lineal feet.
327, .....	59-60	27	32-11 $\frac{1}{4}$
328, .....	61-62	28	32-11 $\frac{1}{4}$
325, .....	63-64	29	32-11 $\frac{1}{4}$
324, .....	65-66	30	32-11 $\frac{1}{4}$
323, .....	67-68	31	31- 5 $\frac{7}{8}$
302, .....	69-70	32	32-11 $\frac{1}{4}$
301, .....	71-72	33	32-11 $\frac{1}{4}$
300, .....	73-74	34	31- 5 $\frac{7}{8}$
464, .....	75-76	35	32-11 $\frac{1}{4}$
462, .....	77-78	36	32-11 $\frac{1}{4}$
461, .....	79-80-81	37	44- 4 $\frac{7}{8}$
460, .....	82-83-84	38	44- 7 $\frac{7}{8}$
459, .....	85-86-87	39	44- 4 $\frac{7}{8}$
458, .....	88-89	40	32-11 $\frac{1}{4}$
457, .....	90-91	41	32-11 $\frac{1}{4}$
456, .....	92-93	42	32-11 $\frac{1}{4}$
455, .....	94-95	43	32-11 $\frac{1}{4}$
454, .....	96-97	44	32-11 $\frac{1}{4}$
453, .....	98-99-100	45	44- 4 $\frac{7}{8}$
447, .....	101-102	46	32-11 $\frac{1}{4}$
446, .....	103-104	47	32-11 $\frac{1}{4}$
449, .....	105-106	48	32-11 $\frac{1}{4}$
402, .....	107-108	49	30- 3 $\frac{1}{2}$
401, .....	109-110	50	32-11 $\frac{1}{4}$
400, .....	111-112-113	51	42-11
471, .....	114-115	52	32-11 $\frac{1}{4}$
470, .....	116-117	53	32-11 $\frac{1}{4}$
466, .....	118-119	54	32-11 $\frac{1}{4}$
465, .....	120-121	55	32-11 $\frac{1}{4}$
509, .....	122-123-124-125	56-57-58	75-10

At \$4.74 per lineal ft., \$5,123.94.

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., March 23, 1906.

Marble bases as per itemized bills, in the following departments:

House and Senate P. & F. rooms, 891 lineal feet at \$3.34 per foot,	\$2,975 34
House and Senate Library and Senate locker rooms, at \$4.74 per foot, .....	4,223 34
Committee room wardrobes and combination cases at \$4.74 per foot, .....	9,459 75

Total, ..... \$16,659 03

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., April 5, 1906.

To the State of Pennsylvania:

To Knoxville and black marble base in connection with the metallic furniture as per itemized bills hereto attached.

Bill No. 1, .....	\$5,814 94
Bill No. 2, .....	11,024 05
Bill No. 3, .....	8,316 33
Bill No. 4, .....	5,251 92
	<hr/>
	\$30,407 24
	<hr/>

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., April 5, 1906.

Itemized Bill No. 4.

To black marble base in connection with metallic furniture in the following rooms and departments of Capitol building:

Departments.	Room.	Lineal feet.
Public Instruction, .....	515	39
Public Instruction, .....	514	34
Public Instruction, .....	511	6
Public Instruction, .....	510	37
Public Instruction, .....	508	48
Public Instruction, .....	507	45
Factory Inspector, .....	463	47
Factory Inspector, .....	462	42
Factory Inspector, .....	461	66
Factory Inspector, .....	460	50
Banking Commissioner, .....	419	149
Banking Commissioner, .....	421	64
Insurance Department, .....	427A	45
Insurance Department, .....	427	64
Insurance Department, .....	426	47
Insurance Department, .....	424	8
Insurance Department, .....	425	12
Highway Department, .....	455	19
Highway Department, .....	454	18
Highway Department, .....	453	27
Highway Department, .....	644	44
Mines Department, .....	535	30
Mines Department, .....	538	10
Mines Department, .....	537	8
Mines Department, .....	349	40
Forestry Department, .....	346	17
Forestry Department, .....	345	82
	<hr/>	1,108

At \$4.74 per lineal ft., \$5,251.92.



## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., April 5, 1906.

## Itemized Bill No. 3:

To black marble base in connection with metallic furniture in the following rooms and departments of Capitol building:

Departments.	Room.	Lineal feet.
Adjutant General, .....	418	83
Adjutant General, .....	417	48
Adjutant General, .....	415	52
Adjutant General, .....	414	30
Adjutant General, .....	413	30
Adjutant General, .....	412	10.6
Adjutant General, .....	416	28
Agricultural Department, .....	366	123
Agricultural Department, .....	360	35
Agricultural Department, .....	357A	9
Agricultural Department, .....	356	17
Agricultural Department, .....	355	46
Agricultural Department, .....	354	33
Agricultural Department, .....	353	16
Agricultural Department, .....	352	45
Agricultural Department, .....	351	63
Agricultural Department, .....	350	31
Agricultural Department, .....	234	37
Attorney General's Department, .....	233	37
Attorney General's Department, .....	232	35
Attorney General's Department, .....	231	134
Attorney General's Department, .....	290	34
Internal Affairs, .....	288	29
Internal Affairs, .....	286	10
Internal Affairs, .....	285	68
Internal Affairs, .....	284	82
Internal Affairs, .....	283	21
Internal Affairs, .....	282	81
Internal Affairs, .....	281	19
Internal Affairs, .....	279	94
Internal Affairs, .....	280	37
Internal Affairs, .....	278	36
Internal Affairs, .....	543	46
Internal Affairs, .....	.....	300
	.....	1,754.6

At \$4.74 per lineal ft., \$8,316.33.

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

April 5, 1906.

## Itemized Bill No. 2:

To black marble base in connection with metallic furniture in the following rooms and departments of Capitol building:

Departments.	Room.	Lineal feet.
Supt. P. G. & B., 1st floor, .....	186	11
Supt. P. G. & B., 1st floor, .....	187	17
House resident clerk, .....	235	24.9
Senate Trans. room, .....	274	73.6
Senate Sergeant-at-Arms, .....	519	90
Speaker of House, .....	111	11.6
Treasurer office, .....	113	429
Treasurer office, .....	116	20
Treasurer office, .....	117	10
Auditor Gen. Dept., .....	131	575
Auditor Gen. Dept., .....	130	37
Auditor Gen. Dept., .....	128	60
Auditor Gen. Dept., .....	126	20
Auditor Gen. Dept., .....	123	31
Auditor Gen. Dept., .....	122	18
State Department, .....	315	249
State Department, .....	316	75
State Department, .....	314	63
State Department, .....	313	112
State Department, .....	312	59
State Department, .....	311	65
House Post Office, .....	309	45
Senate Post Office, .....	215	26
House Transcribing Room, .....	254	26
House Sergeant-at-Arms, .....	245	60
	519	124

At \$4.74 per lineal foot, \$11,024.05.

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., April 5, 1905.

## Itemized Bill No. 1:

To Knoxville marble bases in connection with metallic furniture in the following rooms and departments in basement of Capitol building:

Departments.	Room.	Lineal feet.
Supt. P. G. & Building, .....	55	173
Department of Agriculture, .....	49	101
Adjutant General, .....	23	25
Auditor General, .....	17	81
Auditor General, .....	18	100
Auditor General, .....	19	71
Auditor General, .....	20	104
Auditor General, .....	21	53
Auditor General, .....	8	64
Banking Commissioner, .....	47	83
Forestry Commissioner, .....	9	774
State Department, .....	16	48
Treasurer, .....	6	61
Insurance Commissioner, .....		
		1,741

At \$3.34 per lineal foot, \$5,814.94.

## THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., Dec. 27, 1905.

State of Pennsylvania:

To marble for second section of work for new Capitol building	
as per contract, .....	\$25,000 00

This work is incorporated in the Treasurer's public office, Room 113, House post office, Room 215, Senate post office, Room 254, and State Department public office, Room 315.

JOHN H. SANDERSON.

Philadelphia, Penna., Feb. 19, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

Page 15, Room No. 118, Designed marble, series "F," Item No.	
22, 341 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$6,274 40
Page 17, Room No. 121, Designed marble, series "F," Item No.	
22, 59 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,085 60
Page 154, Room No. 230, Designed marble, series "F," Item No.	
22, 178 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,275 20
Page 273, Room No. 412, Designed marble, series "F," Item No.	
22, 345 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,348 00
Page 274, Room No. 413, Designed marble, series "F," Item No.	
22, 345 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,348 00
Page 283, Room No. 422, Designed marble, series "F," Item No.	
22, 345 ft. at \$20.00, less 8 per cent., \$18.40, .....	6 348 00
Page 284, Room No. 423, Designed marble, series "F," Item No.	
22, 284 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,262 40
Page 320, Room No. 465, Designed marble, series "F," Item No.	
22, 92 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,692 80
Page 117, Room No. 540, Designed marble, series "F," Item No.	
22, 92 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,692 80
	<hr/>
	\$38,327 20
	<hr/>

JOHN H. SANDERSON.

Philadelphia, Penna., December 26, 1905.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For the New Capitol Building.

Fittings and Decorations.

Page 21, Room No. 126, Designed marble, series "F," Item No.	
22, 310 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$5,704 00
Page 206, Room No. 291, Designed marble, series "F," Item No.	
22, 167 ft. at \$20.00, less 8 per cent., \$18.40, .....	3 072 30

Page 217, Room No. 308, Designed marble, series "F," Item No. 22, 346 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,366 40
Page 219, Room No. 310, Designed marble, series "F," Item No. 22, 346 ft. at \$20.00, less 8 per cent., \$18.40, .....	6,366 40
Page 249, Room No. 348, Designed marble, series "F," Item No. 22, 310, ft. at \$20.00, less 8 per cent., \$18.40, .....	5,704 00
	<hr/>
	\$27,213 60
	<hr/>

## JOHN H. SANDERSON.

Philadelphia, Penna., March 15, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Page 66, Room No. 175, Designed marble, series "F," Item No. 22, 97 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$1,784 80
Page 72, Room No. 183, Designed marble, series "F," Item No. 22, 97 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,784 80
Page 126, Room No. 200, Designed marble, series "F," Item No. 22, 226 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,158 40
Page 143, Room No. 220, Designed marble, series "F," Item No. 22, 59 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,085 60
	<hr/>
	\$8,813 60
	<hr/>

## JOHN H. SANDERSON, PHILADELPHIA.

April 17, 1906.

Sold to Commonwealth of Pennsylvania, Harrisburg, Pa., care J. M. Shumaker, Supt.

For New Capitol Building.

Page 2, Room No. 101, Designed marble, series "F," Item No. 22, 254 ft. at \$20.00, less 8 per cent., \$18.40, .....	\$4,673 30
Page 4, Room No. 103, Designed marble, series "F," Item No. 22, 254 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,673 60
Page 60, Room No. 169, Designed marble, series "F," Item No. 22, 96 ft. at \$20.00, less 8 per cent., \$18.40, .....	1 776 40
Page 128, Room No. 202, Designed marble, series "F," Item No. 22, 198 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,643 20
Page 129, Room No. 203, Designed marble, series "F," Item No. 22, 165 ft. at \$20.00, less 8 per cent., \$18.40, .....	3 036 00
Page 147, Room No. 224, Designed marble, series "F," Item No. 22, 291 ft. at \$20.00, less 8 per cent., \$18.40, .....	5,354 40

Page 166, Room No. 246, Designed marble, series "F," Item No. 22, 59 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,085 60
Page 168, Room No. 248, Designed marble, series "F," Item No. 22, 59 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,085 60
Page 183, Room No. 266, Designed marble, series "F," Item No. 22, 196 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,606 40
Page 191, Room No. 276, Designed marble, series "F," Item No. 22, 198 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,643 20
Page 260, Room No. 359, Designed marble, series "F," Item No. 22, 234 ft. at \$20.00, less 8 per cent., \$18.40, .....	4,305 60
Page 41, Room No. 148, Designed marble, series "F," Item No. 22, 4,077 ft. at \$20.00, less 8 per cent., \$18.40, .....	75,016 80
Page 28, Room No. 136, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 00
Page 52, Room No. 159, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 00
Page 109, Room No. 529, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 00
Page 172, Room No. 253, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 00
Page 240, Room No. 336, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 30
Page 301, Room No. 443, 1 designed marble fountain, series "F," Item 22, 50 ft. at \$20.00, less 8 per cent., \$18.40, .....	920 00
Page 98, Room No. 517, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 109, Room No. 529, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 341, Room No. 32, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 344, Room No. 37, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 172, Room No. 253, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 163, Room No. 242, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 240, Room No. 336, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 228, Room No. 320, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 301, Room No. 443, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 290, Room No. 430, 1 designed marble base, series "F," Item No. 22, 23 ft. at \$20.00, less 8 per cent., \$18.40, .....	423 20
Page 131, Room No. 207, 9 designed marble columns, series "F," Item 22, 108 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,987 20
Page 296, Room No. 437, 4 designed marble bases, series "F," Item 22, 44 ft. at \$20.00, less 8 per cent., \$18.40, .....	809 60
Page 153, Room No. 229, 4 designed marble bases, series "F," Item 22, 44 ft. at \$20.00, less 8 per cent., \$18.40, .....	809 60
Page 131, Room No. 207, 8 designed marble bases, series "F," Item No. 22, 88 ft. at \$20.00, less 8 per cent., \$18.40, .....	1,619 20
Page 5, Room No. 105, 12 designed marble bases, series "F," Item No. 22, 196 ft. at \$20.00, less 8 per cent., \$18.40, .....	3,606 40

Page 28, Room No. 135, 2 designed marble bases, series "F," Item	
No. 22, 33 ft. at \$20.00, less 8 per cent., \$18.40, .....	607 20
Page 52, Room No. 160, 2 designed marble bases, series "F," Item	
No. 22, 33 ft. at \$20.00, less 8 per cent., \$18.40, .....	607 20
	<hr/>
	\$131,688 80
	<hr/>

#### ITEM 4. RAISED ORNAMENTATION, GILDING, DECORATING AND PAINTING.

JOHN H. SANDERSON.

Philadelphia, Dec. 26, 1905.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Decorating and Painting.

Page 131, Room No. 207, Decorating and painting, series "F,"	
Item No. 24, 47,350 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$119,322 00
Page 181, Room No. 264, Decorating and painting, series "F,"	
Item No. 24, 19,842 ft. at \$3.00, less 16 per cent., \$2.52, .....	50,001 84
Page 140, Room No. 217, Decorating and painting, series "F,"	
Item No. 24, 34,806 ft. at \$3.00, less 16 per cent., \$2.52, .....	87,711 12
	<hr/>
	\$257,034 96
	<hr/>

JOHN H. SANDERSON.

Philadelphia, Penna., Feb. 19, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

Page 11, Room No. 113, Painting and decorating, series "F," Item	
No. 24, 3,088 ft. at \$3.00, less 16 per cent. \$2.52, .....	\$7,781 76
Pages 173-4, Room No. 254, Painting and decorating, series "F,"	
Item No. 24, 752 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,895 04
Page 206, Room No. 291, Painting and decorating, series "F,"	
Item No. 24, 1,953 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,921 56
Page 208, Room No. 294, Painting and decorating, series "F,"	
Item No. 24, 392 ft. at \$3.00, less 16 per cent., \$2.52, .....	987 84
Page 117, Room No. 540, Painting and decorating, series "F,"	
Item No. 24, 544 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,396 08
	<hr/>
	\$16,982 28
	<hr/>

JOHN H. SANDERSON.

Philadelphia, Penna., March 9, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

Page 32, Room No. 139, Decorating and painting, series "F,"	
Item No. 24, 2,570 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$6,746 40
Page 75, Room No. 186-A, Decorating and painting, series "F,"	
Item No. 24, 166 ft. at \$3.00, less 16 per cent., \$2.52, .....	418 32
Page 76, Room No. 186-B, Decorating and painting, series "F,"	
Item No. 24, 322 ft. at \$3.00, less 16 per cent., \$2.52, .....	811 44
Page 77, Room No. 186, Decorating and painting, series "F,"	
Item No. 24, 1,428 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,598 56
Page 78, Room No. 187, Decorating and painting, series "F,"	
Item No. 24, 1,611 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,059 72
Page 126, Room No. 200, Decorating and painting, series "F,"	
Item No. 24, 2,186 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,508 72
Page 128, Room No. 202, Decorating and painting, series "F,"	
Item No. 24, 1,430 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,603 60
Page 147, Room No. 224, Decorating and painting, series "F,"	
Item No. 24, 1,276 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,215 52
Page 148, Room No. 225, Decorating and painting, series "F,"	
Item No. 24, 572 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,441 44
Page 149, Room 225-A, Decorating and painting, series "F,"	
Item No. 24, 771 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,942 32
Page 151, Room No. 226, Decorating and painting, series "F,"	
Item No. 24, 383 ft. at \$3.00, less 16 per cent., \$2.52, .....	962 54
Page 217, Room No. 308, Decorating and painting, series "F,"	
Item No. 24, 1,366 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,442 33
Page 219, Room No. 310, Decorating and painting, series "F,"	
Item No. 24, 1,150 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,898 00
Page 244, Room No. 341, Decorating and painting, series "F,"	
Item No. 24, 884 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,227 68
Page 249, Room No. 348, Decorating and painting, series "F,"	
Item No. 24, 391 ft. at \$3.00, less 16 per cent., \$2.52, .....	985 32
Page 259, Room No. 357, Decorating and painting, series "F,"	
Item No. 24, 924 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,328 48
Page 261, Room No. 360, Decorating and painting, series "F,"	
Item No. 24, 564 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,421 28
Page 273, Room No. 412, Decorating and painting, series "F,"	
Item No. 24, 619 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,559 24
Page 274, Room No. 413, Decorating and painting, series "F,"	
Item No. 24, 787 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,983 24
Page 283, Room No. 422, Decorating and painting, series "F,"	
Item No. 24, 1,342 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,381 84
Page 284, Room No. 423, Decorating and painting, series "F,"	
Item No. 24, 1,792 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,515 84
Page 311, Room No. 456, Decorating and painting, series "F,"	
Item No. 24, 301 ft. at \$3.00, less 16 per cent., \$2.52, .....	758 52
Page 320, Room No. 465, Decorating and painting, series "F,"	
Item No. 24, 475 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,197 00

Page 28, Room No. 135, Decorating and painting, series "F,"	
Item No. 24, 2,305 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,808 60
Page 52, Room No. 160, Decorating and painting, series "F,"	
Item No. 24, 2,305 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,808 60
	<hr/>
	\$70,355 83
	<hr/>

## JOHN H. SANDERSON.

Philadelphia, Penna., April 23, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Page 2, Room No. 101, Decorating and painting, series "F,"	
Item No. 24, 1,357 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$3,419 64
Page 4, Room No. 103, Decorating and painting, series "F,"	
Item No. 24, 1349 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,399 48
Page 8, Room No. 110, Decorating and painting, series "F,"	
Item No. 24, 989 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,492 28
Page 9, Room No. 111, Decorating and painting, series "F,"	
Item No. 24, 1,426 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,593 53
Page 15, Room No. 118, Decorating and painting, series "F,"	
Item No. 24, 2,175 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,481 00
Page 17, Room No. 121, Decorating and painting, series "F,"	
Item No. 24, 913 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,300 76
Page 21, Room No. 126, Decorating and painting, series "F,"	
Item No. 24, 1,087 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,739 24
Page 29, Room No. 137, Decorating and painting, series "F,"	
Item No. 24, 929 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,341 08
Page 30, Room No. 138, Decorating and painting, series "F,"	
Item No. 24, 1,227 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,092 04
Page 60, Room No. 169, Decorating and painting, series "F,"	
Item No. 24, 1,017 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,562 84
Page 62, Room No. 171, Decorating and painting, series "F,"	
Item No. 24, 2,156 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,433 12
Page 63, Room No. 172, Decorating and painting, series "F,"	
Item No. 24, 2,646 ft. at \$3.00, less 16 per cent., \$2.52, .....	6,667 92
Page 64, Room No. 173, Decorating and painting, series "F,"	
Item No. 24, 1,900 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,788 00
Page 66, Room No. 175, Decorating and painting, series "F,"	
Item No. 24, 825 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,079 00
Page 67, Room No. 176, Decorating and painting, series "F,"	
Item No. 24, 616 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,552 52
Page 72, Room No. 183, Decorating and painting, series "F,"	
Item No. 24, 1,756 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,425 12
Page 73, Room No. 184, Decorating and painting, series "F,"	
Item No. 24, 4,260 ft. at \$3.00, less 16 per cent., \$2.52, .....	10,735 20
Page 74, Room No. 185, Decorating and painting, series "F,"	
Item No. 24, 2,504 ft. at \$3.00, less 16 per cent., \$2.52, .....	6,310 08
Page 129, Room No. 203, Decorating and painting, series "F,"	
Item No. 24, 2,186 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,508 72



Page 130, Room No. 205, Decorating and painting, series "F,"	
Item No. 24, 230 ft. at \$3.00, less 16 per cent., \$2.52, .....	579 60
Page 131, Room No. 206, Decorating and painting, series "F,"	
Item No. 24, 203 ft. at \$3.00, less 16 per cent., \$2.52, .....	511 56
Page 134, Room No. 211, Decorating and painting, series "F,"	
Item No. 24, 524 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,320 48
Page 137, Room No. 214, Decorating and painting, series "F,"	
Item No. 24, 39 ft. at \$3.00, less 16 per cent., \$2.52, .....	98 28
Page 141, Room No. 218, Decorating and painting, series "F,"	
Item No. 24, 501 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,262 52
Page 142, Room No. 219, Decorating and painting, series "F,"	
Item No. 24, 501 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,262 52
Page 143, Room No. 220, Decorating and painting, series "F,"	
Item No. 24, 1,392 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,507 84
Page 152, Room No. 227, Decorating and painting, series "F,"	
Item No. 24, 500 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,260 00
Page 154, Room No. 230, Decorating and painting, series "F,"	
Item No. 24, 2,082 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,246 64
Page 176, Room No. 257, Decorating and painting, series "F,"	
Item No. 24, 39 ft. at \$3.00, less 16 per cent., \$2.52, .....	98 28
Page 177, Room No. 258, Decorating and painting, series "F,"	
Item No. 24, 187 ft. at \$3.00, less 16 per cent., \$2.52, .....	471 24
Page 178, Room No. 259, Decorating and painting, series "F,"	
Item No. 24, 190 ft. at \$3.00, less 16 per cent., \$2.52, .....	478 80
Page 182, Room No. 265, Decorating and painting, series "F,"	
Item No. 24, 754 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,900 08
Page 183, Room No. 266, Decorating and painting, series "F,"	
Item No. 24, 1,041 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,623 32
Page 189, Room No. 274, Decorating and painting, series "F,"	
Item No. 24, 1,430 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,663 60
Page 190, Room No. 275, Decorating and painting, series "F,"	
Item No. 24, 387 ft. at \$3.00, less 16 per cent., \$2.52, .....	975 24
Page 191, Room No. 276, Decorating and painting, series "F,"	
Item No. 24, 1,131 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,850 12
Page 94, Room No. 513, decorating and painting, series "F,"	
Item No. 24, 589 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,484 28
Page 95, Room No. 514, Decorating and painting, series "F,"	
Item No. 24, 471, ft. at \$3.00, less 16 per cent., \$2.52, .....	1,186 92
	<hr/>
	\$109.642 68
	<hr/>

JOHN H. SANDERSON.

Philadelphia, Penna., July 31, 1905.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

To decorating the corridors in the new Capitol building, Harrisburg, Penna., with plaster beams as follows:

Item No. 24, 8,109 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$20,434 68
--	-------------

---

Room 161, first floor, wing "A," 7½ beams, .....	273 feet
Room 148, first floor, wing "B," 29 beams, .....	624 feet
Room 134, first floor, wing "C," 5 beams, .....	381 feet
Room 533, first floor, Entresol floor, wing "A," 5, .....	725 feet
Room 530 first floor, Entresol floor, wing "B," 2-10 beams, .....	728 feet
Room 502, first floor, Entresol floor, wing "C," 8 beams, .....	634 feet
Room 297, second floor, wing "A," 8 beams, .....	659 feet
Room 247, second floor, wing "B," 9 beams, .....	727 feet
Room 239, second floor, wing "C," 5 beams, .....	402 feet
Room 340, third floor, wing "A," 7 beams, .....	446 feet
Room 328, third floor, wing "B," 2-7 beams, .....	579 feet
Room 319, third floor, wing "C," 5 beams, .....	317 feet
Room 451, fourth floor, wing "A," 14 beams, .....	885 feet
Room 408, fourth floor, wing "C," 7 beams, .....	439 feet
	<hr/>
	8,109 feet

## JOHN H. SANDERSON.

Philadelphia, Penna., Oct. 1, 1905.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

## Fittings and Decorations.

Room No. 140, Decorating and painting, series "F," Item No. 24, 3,750 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$9,450 00
Room No. 156, Decorating and painting, series "F," Item No. 24, 4,453 ft. at \$3.00, less 16 per cent., \$2.52, .....	11,222 56
Room No. 157, Decorating and painting, series "F," Item No. 24, 1,166 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,938 32
Rooms Nos. 210-11, Decorating and painting, series "F," Item No. 24, 284 ft. at \$3.00, less 16 per cent., \$2.52, .....	715 68
Room No. 212, Decorating and painting, series "F," Item No. 24, 528 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,330 56
Room No. 213, Decorating and painting, series "F," Item No. 24, 236 ft. at \$3.00, less 16 per cent., \$2.52, .....	594 72
Room No. 214, Decorating and painting, series "F," Item No. 24, 594 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,496 88
Rooms Nos. 215-216, Decorating and painting, series "F," Item No. 24, 386 ft. at \$3.00, less 16 per cent., \$2.52, .....	972 72
Room No. 257, Decorating and painting, series "F," Item No. 24, 594 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,496 88
Room No. 258, Decorating and painting, series "F," Item No. 24, 250 ft. at \$3.00, less 16 per cent., \$2.52, .....	630 00
Room No. 259, Decorating and painting, series "F," Item No. 24, 210 ft. at \$3.00, less 16 per cent., \$2.52, .....	529 20
Rooms Nos. 260-61, Decorating and painting, series "F," Item No. 24, 756 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,905 12
Room No. 274, Decorating and painting, series "F," Item No. 24, 503 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,267 56
Room No. 341, Decorating and painting, series "F," Item No. 24, 911 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,295 72

Room No. 256, Decorating and painting, series "F," Item No. 24, 528 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,330 56
Room No. 186, Decorating and painting, series "F," Item No. 24, 705 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,776 60
Room No. 186-A, Decorating and painting, series "F," Item No. 24, 257 ft. at \$3.00, less 16 per cent., \$2.52, .....	647 64
Room No. 186-B, Decorating and painting, series "F," Item No. 24, 466 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,174 32
Room No. 187, Decorating and painting, series "F," Item No. 24, 911 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,295 72
Room No. 348, Decorating and painting, series "F," Item No. 24, 769 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,937 88
Room No. 359, Decorating and painting, series "F," Item No. 24, 860 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,167 20
Room No. 456, Decorating and painting, series "F," Item No. 24, 720 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,814 40
Room No. 464, Decorating and painting, series "F," Item No. 24, 545 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,373 40
	<hr/>
	\$51,362 64
	<hr/>

JOHN H. SANDERSON.

Philadelphia, April 24, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Page 3, Room No. 102, Decorating and painting, series "F," Item No. 24, 74 ft. at \$3.00, less 16 per cent., \$2.52, .....	\$186 48
Page 5, Room No. 104, Decorating and painting, series "F," Item No. 24, 189 ft. at \$3.00, less 16 per cent., \$2.52, .....	476 28
Page 5, Room No. 105, Decorating and painting, series "F," Item No. 24, 1,350 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,402 00
Page 7, Room No. 109, Decorating and painting, series "F," Item No. 24, 71 ft. at \$3.00, less 16 per cent., \$2.52, .....	178 92
Page 12, Room No. 115, Decorating and painting, series "F," Item No. 24, 219 ft. at \$3.00, less 16 per cent., \$2.52, .....	551 58
Page 13, Room No. 116, Decorating and painting, series "F," Item No. 24, 292 ft. at \$3.00, less 16 per cent., \$2.52, .....	735 84
Page 14, Room No. 117, Decorating and painting, series "F," Item No. 24, 292 ft. at \$3.00, less 16 per cent., \$2.52, .....	735 84
Page 16, Room No. 119, Decorating and painting, series "F," Item No. 24, 594 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,496 88
Page 16, Room No. 120, Decorating and painting, series "F," Item No. 24, 333 ft. at \$3.00, less 16 per cent., \$2.52, .....	839 16
Page 18, Room No. 122, Decorating and painting, series "F," Item No. 24, 342 ft. at \$3.00, less 16 per cent., \$2.52, .....	861 84
Page 19, Room No. 123, Decorating and painting, series "F," Item No. 24, 275 ft. at \$3.00, less 16 per cent., \$2.52, .....	693 00

Page 20, Room No. 124, Decorating and painting, series "F,"	
Item No. 24, 311 ft. at \$3.00, less 16 per cent., \$2.52, .....	783 72
Page 23, Room No. 128, Decorating and painting, series "F,"	
Item No. 24, 413 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,040 76
Page 24, Room No. 129, Decorating and painting, series "F,"	
Item No. 24, 349 ft. at \$3.00, less 16 per cent., \$2.52, .....	879 48
Page 25, Room No. 130, Decorating and painting, series "F,"	
Item No. 24, 245 ft. at \$3.00, less 16 per cent., \$2.52, .....	617 40
Page 26, Room No. 131, Decorating and painting, series "F,"	
Item No. 24, 2,211 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,571 72
Page 27, Room No. 134, Decorating and painting, series "F,"	
Item No. 24, 817 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,058 84
Page 28, Room No. 136, Decorating and painting, series "F,"	
Item No. 24, 1,262 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,180 24
Page 34, Room No. 140-A, Decorating and painting, series "F,"	
Item No. 24, 103 ft. at \$3.00, less 16 per cent., \$2.52, .....	259 56
Page 35, Room No. 141, Decorating and painting, series "F,"	
Item No. 24, 705 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,776 60
Page 36, Room No. 143, Decorating and painting, series "F,"	
Item No. 24, 324 ft. at \$3.00, less 16 per cent., \$2.52, .....	816 48
Page 37, Room No. 144, Decorating and painting, series "F,"	
Item No. 24, 316 ft. at \$3.00, less 16 per cent., \$2.52, .....	796 32
Page 38, Room No. 145, Decorating and painting, series "F,"	
Item No. 24, 336 ft. at \$3.00, less 16 per cent., \$2.52, .....	846 72
Page 39, Room No. 146, Decorating and painting, series "F,"	
Item No. 24, 395 ft. at \$3.00, less 16 per cent., \$2.52, .....	995 40
Page 40, Room No. 147, Decorating and painting, series "F,"	
Item No. 24, 399 ft., at \$3.00, less 16 per cent., \$2.52, .....	1,005 48
Page 42, Room No. 149, Decorating and painting, series "F,"	
Item No. 24, 399 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,005 48
Page 43, Room No. 150, Decorating and painting, series "F,"	
Item No. 24, 382 ft. at \$3.00, less 16 per cent., \$2.52, .....	962 64
Page 44, Room No. 151, Decorating and painting, series "F,"	
Item No. 24, 336 ft. at \$3.00, less 16 per cent., \$2.52, .....	846 72
Page 45, Room No. 152, Decorating and painting, series "F,"	
Item No. 24, 315 ft. at \$3.00, less 16 per cent., \$2.52, .....	793 20
Page 46, Room No. 153, Decorating and painting, series "F,"	
Item No. 24, 298 ft. at \$3.00, less 16 per cent., \$2.52, .....	750 96
Page 47, Room No. 155, Decorating and painting, series "F,"	
Item No. 24, 706 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,779 12
Page 49, Room No. 156-B, Decorating and painting, series "F,"	
Item No. 24, 103 ft. at \$3.00, less 16 per cent., \$2.52, .....	259 56
Page 51, Room No. 158, Decorating and painting, series "F,"	
Item No. 24, 489 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,232 23
Page 52, Room No. 159, Decorating and painting, series "F,"	
Item No. 24, 1,262 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,180 24
Page 53, Room No. 161, Decorating and painting, series "F,"	
Item No. 24, 973 ft. at \$3.00 less 16 per cent., \$2.52, .....	2,451 96
Page 53, Room No. 161-A, Decorating and painting, series "F,"	
Item No. 24, 136 ft. at \$3.00, less 16 per cent., \$2.52, .....	342 72
Page 53, Room No. 162, Decorating and painting, series "F,"	
Item No. 24, 594 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,496 88
Page 54, Room No. 163, Decorating and painting, series "F,"	
Item No. 24, 281 ft. at \$3.00, less 16 per cent., \$2.52, .....	708 12

Page 55, Room No. 164, Decorating and painting, series "F,"	
Item No. 24, 295 ft. at \$3.00, less 16 per cent., \$2.52; .....	743 40
Page 57, Room No. 166, Decorating and painting, series "F,"	
Item No. 24, 336 ft. at \$3.00, less 16 per cent., \$2.52, .....	846 72
Page 58, Room No. 167, Decorating and painting, series "F,"	
Item No. 24, 532 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,340 64
Page 59, Room No. 168, Decorating and painting, series "F,"	
Item No. 24, 538 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,355 76
Page 61, Room No. 170, Decorating and painting, series "F,"	
Item No. 24, 525 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,323 00
Page 65, Room No. 174, Decorating and painting, series "F,"	
Item No. 24, 240 ft. at \$3.00, less 16 per cent., \$2.52, .....	604 80
Page 68, Room No. 177, Decorating and painting, series "F,"	
Item No. 24, 233 ft. at \$3.00, less 16 per cent., \$2.52, .....	587 16
Page 69, Room No. 178, Decorating and painting, series "F,"	
Item No. 24, 413 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,040 76
Page 70, Room No. 179, Decorating and painting, series "F,"	
Item No. 24, 128 ft. at \$3.00, less 16 per cent., \$2.52, .....	322 56
Page 71, Room No. 182, Decorating and painting, series "F,"	
Item No. 24, 382 ft. at \$3.00, less 16 per cent., \$2.52, .....	962 64
Page 79, Room No. 187-A, Decorating and painting, series "F,"	
Item No. 24, 209 ft., at \$3.00, less 16 per cent., \$2.52, .....	526 68
Page 79, Room No. 187-B, Decorating and painting, series "F,"	
Item No. 24, 103 ft. at \$3.00, less 16 per cent., \$2.52, .....	259 56
Page 80, Room No. 190, Decorating and painting, series "F,"	
Item No. 24, 211 ft. at \$3.00, less 16 per cent., \$2.52, .....	531 72
Page 81, Room No. 191, Decorating and painting, series "F,"	
Item No. 24, 353 ft. at \$3.00, less 16 per cent., \$2.52, .....	889 56
Page 82, Room No. 500, Decorating and painting, series "F,"	
Item No. 24, 162 ft. at \$3.00, less 16 per cent., \$2.52, .....	408 24
Page 82, Room No. 501, Decorating and painting, series "F,"	
Item No. 24, 203 ft. at \$3.00, less 16 per cent., \$2.52, .....	511 56
Page 83, Room No. 502, Decorating and painting, series "F,"	
Item No. 24, 919 ft. at \$3.00, less 16 per cent., \$2.52, .....	2 315 88
Page 84, Room No. 504, Decorating and painting, series "F,"	
Item No. 24, 165 ft. at \$3.00, less 16 per cent., \$2.52, .....	415 80
Page 85, Room No. 505, Decorating and painting, series "F,"	
Item No. 24, 395 ft. at \$3.00, less 16 per cent., \$2.52, .....	995 40
Page 86, Room No. 506, Decorating and painting, series "F,"	
Item No. 24, 510 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,285 20
Page 87, Room No. 507, Decorating and painting, series "F,"	
Item No. 24, 511 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,287 72
Page 88, Room No. 508, Decorating and painting, series "F,"	
Item No. 24, 395 ft. at \$3.00, less 16 per cent., \$2.52, .....	995 40
Page 89, Room No. 509, Decorating and painting, series "F,"	
Item No. 24, 684 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,723 68
Page 90, Room No. 510, Decorating and painting, series "F,"	
Item No. 24, 887 ft., at \$3.00, less 16 per cent., \$2.52, .....	2,235 24
Page 91, Room No. 511, Decorating and painting, series "F,"	
Item No. 24, 747 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,882 44
Page 92, Room No. 511-A, Decorating and painting, series "F,"	
Item No. 24, 302 ft. at \$3.00, less 16 per cent., \$2.52, .....	761 04
Page 93, Room No. 512, Decorating and painting, series "F,"	
Item No. 24, 185 ft. at \$3.00, less 16 per cent., \$2.52, .....	466 20

Page 96, Room No. 515, Decorating and painting, series "F,"	
Item No. 24, 329 ft. at \$3.00, less 16 per cent., \$2.52, .....	829 03
Page 98, Room No. 517, Decorating and painting, series "F,"	
Item No. 24, 508 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,280 16
Page 99, Room No. 519, Decorating and painting, series "F,"	
Item No. 24, 359 ft. at \$3.00, less 16 per cent., \$2.52, .....	904 68
Page 100, Room No. 520, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 101, Room No. 521, Decorating and painting, series "F,"	
Item No. 24, 338 ft. at \$3.00, less 16 per cent., \$2.52, .....	851 76
Page 102, Room No. 522, Decorating and painting, series "F,"	
Item No. 24, 360 ft. at \$3.00, less 16 per cent., \$2.52, .....	907 20
Page 103, Room No. 523, Decorating and painting, series "F,"	
Item No. 24, 378 ft. at \$3.00, less 16 per cent., \$2.52, .....	952 56
Page 104, Room No. 524, Decorating and painting, series "F,"	
Item No. 24, 378 ft. at \$3.00, less 16 per cent., \$2.52, .....	952 56
Page 105, Room No. 525, Decorating and painting, series "F,"	
Item No. 24, 363 ft. at \$3.00, less 16 per cent., \$2.52, .....	914 76
Page 106, Room No. 526, Decorating and painting, series "F,"	
Item No. 24, 340 ft. at \$3.00, less 16 per cent., \$2.52, .....	856 80
Page 107, Room No. 527, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 108, Room No. 528, Decorating and painting, series "F,"	
Item No. 24, 409 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,030 68
Page 109, Room No. 529, Decorating and painting, series "F,"	
Item No. 24, 508 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,280 16
Page 109, Room No. 530, Decorating and painting, series "F,"	
Item No. 24, 907 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,285 64
Page 110, Room No. 531, Decorating and painting, series "F,"	
Item No. 24, 162 ft. at \$3.00, less 16 per cent., \$2.52, .....	408 24
Page 110, Room No. 532, Decorating and painting, series "F,"	
Item No. 24, 203 ft. at \$3.00, less 16 per cent., \$2.52, .....	511 56
Page 111, Room No. 533, Decorating and painting, series "F,"	
Item No. 24, 896 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,257 92
Page 112, Room No. 535, Decorating and painting, series "F,"	
Item No. 24, 539 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,358 28
Page 113, Room No. 536, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 114, Room No. 537, Decorating and painting, series "F,"	
Item No. 24, 137 ft. at \$3.00, less 16 per cent., \$2.52, .....	345 24
Page 115, Room No. 538, Decorating and painting, series "F,"	
Item No. 24, 251 ft. at \$3.00, less 16 per cent., \$2.52, .....	632 52
Page 116, Room No. 539, Decorating and painting, series "F,"	
Item No. 24, 284 ft. at \$3.00, less 16 per cent., \$2.52, .....	715 68
Page 118, Room No. 541, Decorating and painting, series "F,"	
Item No. 24, 277 ft. at \$3.00 less 16 per cent., \$2 52, .....	698 04
Page 119, Room No. 542, Decorating and painting, series "F,"	
Item No. 24, 381 ft. at \$3.00, less 16 per cent., \$2.52, .....	960 12
Page 120, Room No. 543, Decorating and painting, series "F,"	
Item No. 24, 1,303 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,283 56
Page 121, Room No. 544, Decorating and painting, series "F,"	
Item No. 24, 378 ft. at \$3.00, less 16 per cent., \$2.52, .....	925 56

Page 122, Room No. 545, Decorating and painting, series "F,"	
Item No. 24, 492 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,239 84
Page 123, Room No. 546, Decorating and painting, series "F,"	
Item No. 24, 505 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,272 60
Page 124, Room No. 547, Decorating and painting, series "F,"	
Item No. 24, 387 ft. at \$3.00, less 16 per cent., \$2.52, .....	975 24
Page 132, Room No. 208, Decorating and painting, series "F,"	
Item No. 24, 225 ft. at \$3.00 less 16 per cent., \$2.52, .....	567 00
Page 139, Room No. 216, Decorating and painting, series "F,"	
Item No. 24, 363 ft. at \$3.00, less 16 per cent., \$2.52, .....	914 76
Page 144, Room No. 221, Decorating and painting, series "F,"	
Item No. 24, 473 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,191 95
Page 145, Room No. 222, Decorating and painting, series "F,"	
Item No. 24, 206 ft. at \$3.00, less 16 per cent., \$2.52, .....	519 12
Page 155, Room No. 231, Decorating and painting, series "F,"	
Item No. 24, 481 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,212 12
Page 156, Room No. 232, Decorating and painting, series "F,"	
Item No. 24, 733 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,847 16
Page 157, Room No. 233, Decorating and painting, series "F,"	
Item No. 24, 490 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,847 16
Page 158, Room No. 234, Decorating and painting, series "F,"	
Item No. 24, 418 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,053 36
Page 159, Room No. 235, Decorating and painting, series "F,"	
Item No. 24, 504 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,270 05
Page 160, Room No. 236, Decorating and painting, series "F,"	
Item No. 24, 544 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,370 88
Page 161, Room No. 238, Decorating and painting, series "F,"	
Item No. 24, 632 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,592 64
Page 162, Room No. 239, Decorating and painting, series "F,"	
Item No. 24, 756 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,905 12
Page 162, Room No. 240, Decorating and painting, series "F,"	
Item No. 24, 308 ft. at \$3.00, less 16 per cent., \$2.52, .....	776 16
Page 163, Room No. 241, Decorating and painting, series "F,"	
Item No. 24, 284 ft. at \$3.00, less 16 per cent., \$2.52, .....	715 68
Page 163, Room No. 242, Decorating and painting, series "F,"	
Item No. 24, 576 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,451 52
Page 164, Room No. 243, Decorating and painting, series "F,"	
Item No. 24, 686 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,728 72
Page 165, Room No. 245, Decorating and painting, series "F,"	
Item No. 24, 353 ft. at \$3.00, less 16 per cent., \$2.52, .....	889 56
Page 166, Room No. 246, Decorating and painting, series "F,"	
Item No. 24, 424 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,068 48
Page 167, Room No. 247, Decorating and painting, series "F,"	
Item No. 24, 781 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,968 12
Page 168, Room No. 248, Decorating and painting, series "F,"	
Item No. 24, 363 ft. at \$3.00, less 16 per cent., \$2.52, .....	914 76
Page 169, Room No. 249, Decorating and painting, series "F,"	
Item No. 24, 394 ft. at \$3.00, less 16 per cent., \$2.52, .....	992 88
Page 170, Room No. 250, Decorating and painting, series "F,"	
Item No. 24, 372 ft. at \$3.00, less 16 per cent., \$2.52, .....	937 44
Page 171, Room No. 252, Decorating and painting, series "F,"	
Item No. 24, 511 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,287 72
Page 172, Room No. 253, Decorating and painting, series "F,"	
Item No. 24, 574 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,446 48

Page 180, Room No. 263, Decorating and painting, series "F,"	
Item No. 24, 225 ft. at \$3.00, less 16 per cent., \$2.52, .....	567 00
Page 184, Room No. 267, Decorating and painting, series "F,"	
Item No. 24, 210 ft. at \$3.00, less 16 per cent., \$2.52, .....	529 20
Page 184, Room No. 267A, Decorating and painting, series "F,"	
Item No. 24, 99 ft. at \$3.00, less 16 per cent., \$2.52, .....	249 48
Page 185, Room No. 268, Decorating and painting, series "F,"	
Item No. 24, 297 ft. at \$3.00, less 16 per cent., \$2.52, .....	748 44
Page 185, Room No. 270, Decorating and painting, series "F,"	
Item No. 24, 315 ft. at \$3.00, less 16 per cent., \$2.52, .....	793 80
Page 186, Room No. 271, Decorating and painting, series "F,"	
Item No. 24, 272 ft. at \$3.00, less 16 per cent., \$2.52, .....	685 44
Page 187, Room No. 272, Decorating and painting, series "F,"	
Item No. 24, 119 ft. at \$3.00, less 16 per cent., \$2.52, .....	299 88
Page 188, Room No. 273, Decorating and painting, series "F,"	
Item No. 24, 146 ft. at \$3.00, less 16 per cent., \$2.52, .....	367 92
Page 193, Room No. 278, Decorating and painting, series "F,"	
Item No. 24, 588 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,481 76
Page 194, Room No. 279, Decorating and painting, series "F,"	
Item No. 24, 455 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,146 60
Page 195, Room No. 280, Decorating and painting, series "F,"	
Item No. 24, 420 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,058 40
Page 196, Room No. 281, Decorating and painting, series "F,"	
Item No. 24, 1,038 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,615 76
Page 197, Room No. 282, Decorating and painting, series "F,"	
Item No. 24, 403 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,015 56
Page 198, Room No. 283, Decorating and painting, series "F,"	
Item No. 24, 500 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,260 00
Page 199, Room No. 284, Decorating and painting, series "F,"	
Item No. 24, 488 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,229 76
Page 200, Room No. 285, Decorating and painting, series "F,"	
Item No. 24, 511 ft. at \$3.00 less 16 per cent., \$2.52, .....	1,287 72
Page 201, Room No. 286, Decorating and painting, series "F,"	
Item No. 24, 616 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,552 32
Page 202, Room No. 287, Decorating and painting, series "F,"	
Item No. 24, 428 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,078 56
Page 203, Room No. 288, Decorating and painting, series "F,"	
Item No. 24, 271 ft. at \$3.00, less 16 per cent., \$2.52, .....	682 92
Page 204, Room No. 289, Decorating and painting, series "F,"	
Item No. 24, 442 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,113 84
Page 205, Room No. 290, Decorating and painting, series "F,"	
Item No. 24, 308 ft. at \$3.00, less 16 per cent., \$2.52, .....	776 16
Page 205, Room No. 290A, Decorating and painting, series "F,"	
Item No. 24, 51 ft. at \$3.00, less 16 per cent., \$2.52, .....	128 52
Page 207, Room No. 291A, Decorating and painting, series "F,"	
Item No. 24, 51 ft. at \$3.00, less 16 per cent., \$2.52, .....	128 52
Page 207, Room No. 292, Decorating and painting, series "F,"	
Item No. 24, 392 ft. at \$3.00, less 16 per cent., \$2.52, .....	987 84
Page 209, Room No. 295, Decorating and painting, series "F,"	
Item No. 24, 266 ft. at \$3.00, less 16 per cent., \$2.52, .....	670 32
Page 209½, Room No. 297, Decorating and painting, series "F,"	
Item No. 24, 1,230 ft. at \$3.00, less 16 per cent., \$2.52, .....	3,099 60
Page 209½, Room No. 298, Decorating and painting, series "F,"	
Item No. 24, 279 ft. at \$3.00, less 16 per cent., \$2.52, .....	703 08



Page 209½, Room No. 299, Decorating and painting, series "F,"	
Item No. 24, 309 ft. at \$3.00, less 16 per cent., \$2.52, .....	778 63
Page 210, Room No. 300, Decorating and painting, series "F,"	
Item No. 24, 386 ft. at \$3.00, less 16 per cent., \$2.52, .....	972 72
Page 211, Room No. 301, Decorating and painting, series "F,"	
Item No. 24, 417 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,050 84
Page 212, Room No. 302, Decorating and painting, series "F,"	
Item No. 24, 386 ft. at \$3.00, less 16 per cent., \$2.52, .....	972 72
Page 213, Room No. 303, Decorating and painting, series "F,"	
Item No. 24, 858 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,162 16
Page 216, Room No. 306, Decorating and painting, series "F,"	
Item No. 24, 157 ft. at \$3.00, less 16 per cent., \$2.52, .....	395 64
Page 218, Room No. 309, Decorating and painting, series "F,"	
Item No. 24, 233 ft. at \$3.00, less 16 per cent., \$2.52, .....	587 16
Page 220, Room No. 311, Decorating and painting, series "F,"	
Item No. 24, 425 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,071 09
Page 221, Room No. 312, Decorating and painting, series "F,"	
Item No. 24, 496 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,249 92
Page 222, Room No. 313, Decorating and painting, series "F,"	
Item No. 24, 679 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,711 93
Page 223, Room No. 314, Decorating and painting, series "F,"	
Item No. 24, 389 ft. at \$3.00, less 16 per cent., \$2.52, .....	980 28
Page 224, Room No. 315, Decorating and painting, series "F,"	
Item No. 24, 1,148 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,892 96
Page 225, Room 315A, Decorating and painting, series "F,"	
Item No. 24, 265 ft. at \$3.00, less 16 per cent., \$2.52, .....	667 80
Page 226, Room No. 316, Decorating and painting, series "F,"	
Item No. 24, 405 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,020 60
Page 227, Room No. 317, Decorating and painting, series "F,"	
Item No. 24, 205 ft. at \$3.00, less 16 per cent., \$2.52, .....	516 60
Page 227, Room No. 318, Decorating and painting, series "F,"	
Item No. 24, 238 ft. at \$3.00, less 16 per cent., \$2.52, .....	599 73
Page 227, Room No. 319, Decorating and painting, series "F,"	
Item No. 24, 603 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,519 56
Page 228, Room No. 320, Decorating and painting, series "F,"	
Item No. 24, 655 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,650 60
Page 228, Room No. 322, Decorating and painting, series "F,"	
Item No. 24, 214 ft. at \$3.00, less 16 per cent., \$2.52, .....	539 28
Page 229, Room No. 323, Decorating and painting, series "F,"	
Item No. 24, 307 ft. at \$3.00, less 16 per cent., \$2.52, .....	773 64
Page 230, Room No. 324, Decorating and painting, series "F,"	
Item No. 24, 342 ft. at \$3.00, less 16 per cent., \$2.52, .....	861 84
Page 231, Room No. 325, Decorating and painting, series "F,"	
Item No. 24, 325 ft. at \$3.00, less 16 per cent., \$2.52, .....	819 00
Page 232, Room No. 326, Decorating and painting, series "F,"	
Item No. 24, 481 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,212 12
Page 233, Room No. 327, Decorating and painting, series "F,"	
Item No. 24, 412 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,038 24
Page 234, Room No. 328, Decorating and painting, series "F,"	
Item No. 24, 856 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,157 12
Page 234, Room No. 329, Decorating and painting, series "F,"	
Item No. 24, 724 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,824 48
Page 235, Room No. 330, Decorating and painting, series "F,"	
Item No. 24, 420 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,058 40

Page 236, Room No. 331, Decorating and painting, series "F,"	
Item No. 24, 334 ft. at \$3.00, less 16 per cent., \$2.52, .....	841 68
Page 237, Room No. 332, Decorating and painting, series "F,"	
Item No. 24, 291 ft. at \$3.00, less 16 per cent., \$2.52, .....	733 32
Page 238, Room No. 333, Decorating and painting, series "F,"	
Item No. 24, 283 ft. at \$3.00, less 16 per cent., \$2.52, .....	713 16
Page 239, Room No. 335, Decorating and painting, series "F,"	
Item No. 24, 157 ft. at \$3.00, less 16 per cent., \$2.52, .....	395 64
Page 240, Room No. 336, Decorating and painting, series "F,"	
Item No. 24, 655 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,650 60
Page 241, Room No. 337, Decorating and painting, series "F,"	
Item No. 24, 822 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,071 44
Page 242, Room No. 338, Decorating and painting, series "F,"	
Item No. 24, 196 ft. at \$3.00, less 16 per cent., \$2.52, .....	493 92
Page 242, Room No. 339, Decorating and painting, series "F,"	
Item No. 24, 232 ft. at \$3.00, less 16 per cent., \$2.52, .....	584 64
Page 243, Room No. 340, Decorating and painting, series "F,"	
Item No. 24, 871 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,194 92
Page 243, Room No. 340A, Decorating and painting, series "F,"	
Item No. 24, 92 ft. at \$3.00, less 16 per cent., \$2.52, .....	231 84
Page 245, Room No. 342, Decorating and painting, series "F,"	
Item No. 24, 61 ft. at \$3.00, less 16 per cent., \$2.52, .....	153 72
Page 245, Room No. 343, Decorating and painting, series "F,"	
Item No. 24, 90 ft. at \$3.00, less 16 per cent., \$2.52, .....	226 80
Page 246, Room No. 345, Decorating and painting, series "F,"	
Item No. 24, 426 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,073 52
Page 247, Room No. 346, Decorating and painting, series "F,"	
Item No. 24, 201 ft. at \$3.00, less 16 per cent., \$2.52, .....	506 52
Page 248, Room No. 347, Decorating and painting, series "F,"	
Item No. 24, 147 ft. at \$3.00, less 16 per cent., \$2.52, .....	370 44
Page 250, Room No. 349, Decorating and painting, series "F,"	
Item No. 24, 336 ft. at \$3.00, less 16 per cent., \$2.52, .....	846 72
Page 251, Room No. 350, Decorating and painting, series "F,"	
Item No. 24, 344 ft. at \$3.00, less 16 per cent., \$2.52, .....	866 93
Page 252, Room No. 351, Decorating and painting, series "F,"	
Item No. 24, 328 ft. at \$3.00, less 16 per cent., \$2.52, .....	826 56
Page 253, Room No. 352, Decorating and painting, series "F,"	
Item No. 24, 388 ft. at \$3.00, less 16 per cent., \$2.52, .....	977 76
Page 254, Room No. 353, Decorating and painting, series "F,"	
Item No. 24, 286 ft. at \$3.00, less 16 per cent., \$2.52, .....	720 72
Page 255, Room No. 354, Decorating and painting, series "F,"	
Item No. 24, 234 ft. at \$3.00, less 16 per cent., \$2.52, .....	589 68
Page 256, Room No. 355, Decorating and painting, series "F,"	
Item No. 24, 178 ft. at \$3.00, less 16 per cent., \$2.52, .....	448 56
Page 257, Room No. 356, Decorating and painting, series "F,"	
Item No. 24, 300 ft. at \$3.00, less 16 per cent., \$2.52, .....	756 00
Page 257, Room No. 356, Decorating and painting, series "F,"	
Item No. 24, 150 ft. at \$3.00, less 16 per cent., \$2.52, .....	378 00
Page 259, Room No. 358, Decorating and painting, series "F,"	
Item No. 24, 409 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,030 63
Page 262, Room No. 361, Decorating and painting, series "F,"	
Item No. 24, 138 ft. at \$3.00, less 16 per cent., \$2.52, .....	347 76
Page 264, Room No. 366, Decorating and painting, series "F,"	
Item No. 24, 393 ft. at \$3.00, less 16 per cent., \$2.52, .....	990 36

Page 265, Room No. 367, Decorating and painting, series "F,"	
Item No. 24, 853 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,162 16
Page 266, Room No. 400, Decorating and painting, series "F,"	
Item No. 24, 500 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,260 00
Page 267, Room No. 401, Decorating and painting, series "F,"	
Item No. 24, 519 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,307 88
Page 268, Room No. 402, Decorating and painting, series "F,"	
Item No. 24, 452 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,139 04
Page 269, Room No. 404A to E, Decorating and painting, series	
"B," Item No. 24, 2,350 ft. at \$3.00, less 16 per cent., \$2.52, .....	5,922 00
Page 270, Room No. 406, Decorating and painting, series "B,"	
Item No. 24, 198 ft. at \$3.00, less 16 per cent., \$2.52, .....	498 96
Page 270, Room No. 407, Decorating and painting, series "B,"	
Item No. 24, 231 ft. at \$3.00, less 16 per cent., \$2.52, .....	582 12
Page 271, Room No. 408, Decorating and painting, series "B,"	
Item No. 24, 839 ft. at \$3.00, less 16 per cent., \$2.52, .....	2,114 28
Page 271, Room No. 409, Decorating and painting, series "B,"	
Item No. 24, 108 ft. at \$3.00, less 16 per cent., \$2.52, .....	272 16
Page 275, Room No. 414, Decorating and painting, series "B,"	
Item No. 24, 220 ft. at \$3.00, less 16 per cent., \$2.52, .....	554 40
Page 276, Room No. 415, Decorating and painting, series "B,"	
Item No. 24, 400 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,008 00
Page 277, Room No. 416, Decorating and painting, series "F,"	
Item No. 24, 248 ft. at \$3.00, less 16 per cent., \$2.52, .....	624 96
Page 278, Room No. 417, Decorating and painting, series "B,"	
Item No. 24, 323 ft. at \$3.00, less 16 per cent., \$2.52, .....	813 96
Page 279, Room No. 418, Decorating and painting, series "B,"	
Item No. 24, 416 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,048 32
Page 280, Room No. 419, Decorating and painting, series "F,"	
Item No. 24, 626 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,577 52
Page 282, Room No. 421, Decorating and painting, series "F,"	
Item No. 24, 322 ft. at \$3.00, less 16 per cent., \$2.52, .....	811 44
Page 285, Room No. 424, Decorating and painting, series "F,"	
Item No. 24, 140 ft. at \$3.00, less 16 per cent., \$2.52, .....	352 80
Page 286, Room No. 425, Decorating and painting, series "F,"	
Item No. 24, 241 ft. at \$3.00, less 16 per cent., \$2.52, .....	607 32
Page 287, Room No. 426, Decorating and painting, series "F,"	
Item No. 24, 343 ft. at \$3.00 less 16 per cent., \$2.52, .....	864 36
Page 288, Room No. 427, Decorating and painting, series "F,"	
Item No. 24, 401 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,010 52
Page 289, Room No. 428, Decorating and painting, series "F,"	
Item No. 24, 192 ft. at \$3.00, less 16 per cent., \$2.52, .....	483 84
Page 290, Room No. 430, Decorating and painting, series "F,"	
Item No. 24, 679 ft. at \$3.00, less 16 per cent., \$2.25, .....	1 711 08
Page 291, Room No. 431, Decorating and painting, series "F,"	
Item No. 24, 110 ft. at \$3.00, less 16 per cent., \$2.52, .....	277 20
Page 292, Room No. 433, Decorating and painting, series "F,"	
Item No. 24, 257 ft. at \$3.00, less 16 per cent., \$2.52, .....	647 64
Page 293, Room No. 434, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 294, Room No. 435, Decorating and painting, series "F,"	
Item No. 24, 248 ft. at \$3.00, less 16 per cent., \$2.52, .....	624 36

Page 295, Room No. 436, Decorating and painting, series "F,"	
Item No. 24, 353 ft. at \$3.00, less 16 per cent., \$2.52, .....	902 16
Page 297, Room No. 438, Decorating and painting, series "F,"	
Item No. 24, 248 ft. at \$3.00, less 16 per cent., \$2.52, .....	624 96
Page 298, Room No. 439, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 299, Room No. 441, Decorating and painting, series "F,"	
Item No. 24, 110 ft. at \$3.00, less 16 per cent., \$2.52, .....	277 20
Page 300, Room No. 442, Decorating and painting, series "F,"	
Item No. 24, 257, ft. at \$3.00, less 16 per cent., \$2.52, .....	647 64
Page 301, Room No. 443, Decorating and painting, series "F,"	
Item No. 24, 679 ft. at \$3.00, less 16 per cent., \$2.52, .....	1,711 08
Page 303, Room No. 446, Decorating and painting, series "F,"	
Item No. 24, 313 ft. at \$3.00, less 16 per cent., \$2.52, .....	788 76
Page 304, Room No. 447, Decorating and painting, series "F,"	
Item No. 24, 190 ft. at \$3.00, less 16 per cent., \$2.52, .....	478 80
Page 305, Room No. 448, Decorating and painting, series "F,"	
Item No. 24, 207 ft. at \$3.00, less 16 per cent., \$2.52, .....	521 64
Page 306, Room No. 449, Decorating and painting, series "F,"	
Item No. 24, 332 ft. at \$3.00, less 16 per cent., \$2.52, .....	836 64
Page 307, Room No. 450, Decorating and painting, series "F,"	
Item No. 24, 191 ft. at \$3.00, less 16 per cent., \$2.52, .....	481 32
Page 307, Room No. 451, Decorating and painting, series "F,"	
Item No. 24, 1,700 ft. at \$3.00, less 16 per cent., \$2.52, .....	4,284 00
Page 309, Room No. 453, Decorating and painting, series "F,"	
Item No. 24, 357 ft. at \$3.00, less 16 per cent., \$2.52, .....	899 64
Page 310, Room No. 454, Decorating and painting, series "F,"	
Item No. 24, 298 ft. at \$3.00, less 16 per cent., \$2.52, .....	750 96
Page 312, Room No. 455, Decorating and painting, series "F,"	
Item No. 24, 332 ft. at \$3.00, less 16 per cent., \$2.52, .....	836 64
Page 313, Room No. 457, Decorating and painting, series "F,"	
Item No. 24, 303 ft. at \$3.00, less 16 per cent., \$2.52, .....	736 56
Page 314, Room No. 458, Decorating and painting, series "F,"	
Item No. 24, 360 ft. at \$3.00, less 16 per cent., \$2.52, .....	907 20
Page 315, Room No. 459, Decorating and painting, series "F,"	
Item No. 24, 387 ft. at \$3.00, less 16 per cent., \$2.52, .....	975 24
Page 316, Room No. 460, Decorating and painting, series "F,"	
Item No. 24, 350 ft. at \$3.00, less 16 per cent., \$2.52, .....	882 00
Page 317, Room No. 461, Decorating and painting, series "F,"	
Item No. 24, 388 ft. at \$3.00, less 16 per cent., \$2.52, .....	977 76
Page 318, Room No. 462, Decorating and painting, series "F,"	
Item No. 24, 284 ft. at \$3.00, less 16 per cent., \$2.52, .....	715 68
Page 319, Room No. 463, Decorating and painting, series "F,"	
Item No. 24, 235 ft. at \$3.00, less 16 per cent., \$2.52, .....	592 20
Page 322, Room No. 466, Decorating and painting, series "F,"	
Item No. 24, 332 ft. at \$3.00, less 16 per cent., \$2.52, .....	836 64
Page 323, Room No. 469, Decorating and painting, series "F,"	
Item No. 24, 225 ft. at \$3.00, less 16 per cent., \$2.52, .....	567 50
Page 324, Room No. 470, Decorating and painting, series "F,"	
Item No. 24, 211 ft. at \$3.00, less 16 per cent., \$2.52, .....	531 72

Page 325, Room No. 471, Decorating and painting, series "F,"

Item No. 24, 220 ft. at \$3.00, less 16 per cent., \$2.52, ..... 554 40

---

\$263,600 94

10,000 20

---

\$253,659 84

---

## ITEM 5. DESIGNED GLASS MOSAIC.

JOHN H. SANDERSON.

Philadelphia, Penna., March 15th, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Page 131, Room No. 207, Designed glass mosaic for dome, Item No.

22, 1,553 ft. at \$20.00, less 8 per cent., \$18.40, ..... \$28,759 20

---

## ITEM 8. CEMENT FLOORING THROUGHOUT THE BUILDING TO RECEIVE THE FINISHED PARQUETRY FLOORING.

GEORGE PAYNE & COMPANY.

Philadelphia, Penna., December 31st, 1904.

Board of Commissioners of Public Grounds and Buildings, Harris-  
burg, Penna.

Penna. State Capitol.

To, 9,493 ft. cement floor (basement), 8,791 ft. cement floor (1st  
floor), 14,717 ft. cement floor (entresol), 24,305 ft. cement floor  
(2nd floor), 14,130 ft. cement floor (3rd floor), 1,884 ft. cement  
floor (galleries), 7,706 ft. cement floor (4th floor), 81,025 sq. ft.  
cement flooring at 14½ cents, ..... \$11,748 63

## GEORGE PAYNE &amp; COMPANY.

Philadelphia, Penna., February 16th, 1905.

## Board of Commissioners of Public Grounds and Buildings.

To cement floors laid from December 31, 1904 to February 18, 1905.

1st floor, 17,690 sq. ft.; entresol floor, 9,532 sq. ft.; 2nd floor, 8,776 sq. ft.; 3rd floor, 10,799 sq. ft.; 46,797 sq. ft. at 14½c, ..... \$6,785 57

## CAPITOL BUILDING.

## 1st Floor.

Room	Sq. Ft.	Room	Sq. Ft.
121 .....	371	178 .....	664
122 .....	421	179 .....	104
123 .....	300	180 .....	39
126 .....	532	182 .....	284
128 .....	606	183 .....	284
129 .....	859	184 .....	1,087
130 .....	280	185 .....	488
131 .....	4,564	186 .....	475
156 .....	1,632	186a .....	134
172 .....	777	186b .....	162
173 .....	832	187 .....	633
174 .....	213	Windows .....	773
175 .....	573		
176 .....	312		17,690
177 .....	291		

## Entresol Floor.

Room	Sq. Ft.	Room	Sq. Ft.
533a .....	30	543 .....	2,639
535 .....	929	544 .....	529
536 .....	431	545 .....	740
537 .....	184	546 .....	740
538 .....	397	547 .....	533
539 .....	418	Windows .....	340
540 .....	610		
541 .....	368		9,532
542 .....	644		

## 2nd Floor.

Room	Sq. Ft.	Room	Sq. Ft.
278 .....	722	287 .....	430
279 .....	440	288 .....	201
280 .....	440	289 .....	436
281 .....	1,475	290 .....	283
282 .....	236	291 .....	660
283 .....	516	292 .....	773
284 .....	509	Windows .....	347
285 .....	566		
286 .....	715		8,776

## 3rd Floor.

Room	Sq. Ft.	Room	Sq. Ft.
337 .....	1,534	355 .....	223
341 .....	358	356 .....	453
342 .....	39	357 .....	211
345 .....	764	357a .....	607
347 .....	293	358 .....	449
540 .....	293	359 .....	752
348 .....	568	360 .....	238
349 .....	482	361 .....	126
350 .....	538	362 .....	545
351 .....	506	Windows .....	355
352 .....	623		
353 .....	416		10,799
354 .....	324		

## GEORGE F. PAYNE &amp; CO.

Philadelphia, Penna., June 6th, 1905

Board of Commissioners of Public Grounds &amp; Buildings, Harrisburg, Pa.:

Feb. 16 to June 6, 1905.

Feb. 16, 1905, to cement floors laid throughout State Capitol  
 Building, Harrisburg, Penna., per list hereto attached, June 6,  
 28,015 sq. ft. at 14½ cts., ..... \$4,062 17

## CAPITOL BUILDING.

## Basement.

Room	Sq. Ft.	Room	Sq. Ft.
6 .....	316	9 .....	1,984
8 .....	466	55 .....	1,870

## First Floor.

Room	Sq. Ft.	Room	Sq. Ft.
157 .....	1,828	168 .....	897
158 .....	444	169 .....	727
163 .....	419	Windows .....	181
164 .....	392	170 .....	772
166 .....	535	171 .....	915
167 .....	897	Windows .....	33

## Second Floor.

Room	Sq. Ft.	Room	Sq. Ft.
200 .....	517	203 .....	517
202 .....	706	205 & 6 .....	68

## Third Floor.

Room	Sq. Ft.	Room	Sq. Ft.
300 .....	660	302 .....	660
301 .....	746	Windows .....	43

Fourth Floor.			
Room	Sq. Ft.	Room	Sq. Ft.
427 .....	741	463 .....	335
453 .....	430	464 .....	390
454 .....	489	465 .....	483
455 .....	490	466 .....	616
456 .....	460	449 .....	537
457 .....	642	448 .....	290
458 .....	638	447 .....	450
459 .....	630	446 .....	274
451a .....	52	471 .....	360
460 .....	865	Windows .....	291
461 .....	670		
462 .....	442	Sq. Ft. ....	28,015

## GEORGE F. PAYNE &amp; COMPANY.

Philada., Penna., March 31st, 1906.

To cement floors laid throughout the Capitol Building, Harrisburg,, Penna., as per list hereto attached:

17,389 sq. ft. at 14½ cents, ..... \$2,521 40

## CAPITOL BUILDING.

Laying cement floors throughout the building.

First Floor.			
Room	Sq. Ft.	Room	Sq. Ft.
101 .....	556	117 .....	271
103 .....	556	118 .....	384
109 .....	27	120 .....	207
110 .....	226	124 .....	301
111 .....	402	187a .....	30
113 .....	3 170	187b .....	20
115 .....	172		
116 .....	339		

Second Floor.			
Room	Sq. Ft.	Room	Sq. Ft.
210 .....	48	238 .....	639
222 .....	101	294 .....	32
227 .....	47		
229 .....	1,944		2,871

Fourth Floor.			
Room	Sq. Ft.	Room	Sq. Ft.
400 .....	615	439 .....	449
401 .....	777	441 .....	78
402 .....	621	442 .....	279
431 .....	275	434 .....	440
433 .....	279		7,259
435 .....	329		
437 .....	2,987		
438 .....	329		

Closets alongside of elevators c 7 d on the first, entresol, second, third and fourth floors, 588 sq. ft., total, sq. ft., .....

17,389



## ITEM 9. INTERLOCKING HARDWOOD PARQUETRY FLOORING.

Board of Commissioners of Public Grounds and Buildings,

Harrisburg, Penna., May 1st, 1906.

To George F. Payne & Company, Dr.

To furnishing English laid interlocking parquetry flooring in the following rooms in the Capitol Building, Harrisburg, Pa.:

Page 112, Room 535, Item 28, 927 ft. at 90c, .....	\$834 30
Page 113, Room 536, Item 28, 455 ft. at 90c, .....	409 50
Page 114, Room 537, Item 28, 190 ft. at 90c, .....	171 00
Page 115, Room 538, Item 28, 378 ft. at 90c, .....	340 20
Page 116, Room 539, Item 28, 400 ft. at 90c, .....	360 00
Page 117, Room 540, Item 28, 591 ft. at 90c, .....	531 90
Page 118, Room 541, Item 28, 379 ft. at 90c, .....	341 10
Page 119, Room 542, Item 28, 539 ft. at 90c, .....	485 10
Page 317, Room 461, Item 28, 668 ft. at 90c, .....	601 20
Page 318, Room 462, Item 28, 450 ft. at 90c, .....	405 00
Page 319, Room 463, Item 28, 293 ft. at 90c, .....	263 70
Page 321, Room 464, Item 28, 462 ft. at 90c, .....	415 80
Page 320, Room 465, Item 28, 447 ft. at 90c, .....	402 30
Page 322, Room 466, Item 28, 522 ft. at 90c, .....	469 80
 Total, 6,701 ft. at 90c, .....	 \$6,030 90

Per order Mr. J. M. Shumaker, Supt., dated March 20th, 1906.

Philadelphia, July 2, 1906.

Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa. .

To George F. Payne & Co., Dr.

To furnishing English laid interlocking parquetry flooring in the following rooms in Capitol Building, Harrisburg, Pa.:

Page 11, Room 113, Item 28, 2,715 ft. at 90c, .....	\$2,443 50
Page 12, Room 115, Item 28, 172 ft. at 90c, .....	154 80
Page 13, Room 116, Item 28, 339 ft. at 90c, .....	305 10
Page 14, Room 117, Item 28, 271 ft. at 90c, .....	243 90
Page 15, Room 118, Item 28, 384 ft. at 90c, .....	345 60
Page 16, Room 120, Item 28, 207 ft. at 90c, .....	186 30
Page 60, Room 169, Item 28, 701 ft. at 90c, .....	630 90
Page 61, Room 170, Item 28, 796 ft. at 90c, .....	716 40
Page 69, Room 178, Item 28, 665 ft. at 90c, .....	598 50
Page 71, Room 182, Item 28, 279 ft. at 90c, .....	251 10
Page 72, Room 183, Item 28, 285 ft. at 90c, .....	256 50

Page 73, Room 184, Item 28, 1,122 ft. at 90c, .....	1,009 80
Page 74, Room 185, Item 28, 489 ft. at 90c, .....	440 10
Page 120, Room 543, Item 28, 2,610 ft. at 90c, .....	2,349 00
Page 121, Room 544, Item 28, 515 ft. at 90c, .....	463 50
Page 122, Room 545, Item 28, 744 ft. at 90c, .....	669 60
Page 123, Room 546, Item 28, 750 ft. at 90c, .....	675 00
Page 124, Room 547, Item 28, 533 ft. at 90c, .....	479 70
Page 153, Room 229, Item 28, 1,944 ft. at 90c, .....	1,749 60
Page 193, Room 278, Item 28, 646 ft. at 90c, .....	581 40
Page 194, Room 279, Item 28, 448 ft. at 90c, .....	403 20
Page 195, Room 280, Item 28, 426 ft. at 90c, .....	383 40
Page 196, Room 281, Item 28, 1,506 ft. at 90c, .....	1,355 40
Page 197, Room 282, Item 28, 330 ft. at 90c, .....	297 00
Page 198, Room 283, Item 28, 512 ft. at 90c, .....	460 80
Page 199, Room 284, Item 28, 508 ft. at 90c, .....	457 20
Page 200, Room 285, Item 28, 510 ft. at 90c, .....	459 00
Page 201, Room 286, Item 28, 714 ft. at 90c, .....	642 60
Page 202, Room 287, Item 28, 433 ft. at 90c, .....	389 70
Page 203, Room 288, Item 28, 207 ft. at 90c, .....	186 30
Page 204, Room 289, Item 28, 445 ft. at 90c, .....	400 50
Page 205, Room 290, Item 28, 256 ft. at 90c, .....	230 40
Page 205, Room 290A, Item 28, 14 ft. at 90c, .....	12 60
Page 206, Room 291, Item 28, 734 ft. at 90c, .....	660 60
Page 207, Room 291A, Item 28, 12 ft. at 90c, .....	10 50
Page 207, Room 292, Item 28, 317 ft. at 90c, .....	285 30
Page 208, Room 294, Item 28, 92 ft. at 90c, .....	82 80
Page 216, Room 306, Item 28, 127 ft. at 90c, .....	114 20
Page 217, Room 308, Item 28, 819 ft. at 90c, .....	737 10
Page 218, Room 309, Item 28, 433 ft. at 90c, .....	389 70
Page 219, Room 310, Item 28, 696 ft. at 90c, .....	626 40
Page 220, Room 311, Item 28, 762 ft. at 90c, .....	685 80
Page 222, Room 313, Item 28, 1,293 ft. at 90c, .....	1,163 70
Page 273, Room 412, Item 28, 335 ft. at 90c, .....	301 50
Page 274, Room 413, Item 28, 463 ft. at 90c, .....	416 70
Page 275, Room 414, Item 28, 305 ft. at 90c, .....	274 50
Page 276, Room 415, Item 28, 684 ft. at 90c, .....	615 60
Page 277, Room 416, Item 28, 478 ft. at 90c, .....	430 20
Page 278, Room 417, Item 28, 518 ft. at 90c, .....	466 20
Page 279, Room 418, Item 28, 709 ft. at 90c, .....	638 10
Page 280, Room 419, Item 28, 1,327 ft. at 90c, .....	1,194 30
Page 282, Room 421, Item 28, 567 ft. at 90c, .....	510 30
Page 283, Room 422, Item 28, 330 ft. at 90c, .....	297 00
Page 284, Room 423, Item 28, 560 ft. at 90c, .....	504 00
Page 285, Room 424, Item 28, 183 ft. at 90c, .....	164 70
Page 286, Room 425, Item 28, 405 ft. at 90c, .....	364 50
Page 287, Room 426, Item 28, 560 ft. at 90c, .....	504 00
Page 288, Room 427, Item 28, 750 ft. at 90c, .....	675 00
Page 289, Room 428, Item 28, 170 ft. at 90c, .....	153 00
Page 291, Room 431, Item 28, 75 ft. at 90c, .....	67 50
Page 292, Room 433, Item 28, 279 ft. at 90c, .....	251 10
Page 297, Room 438, Item 28, 329 ft. at 90c, .....	296 10
Page 298, Room 439, Item 28, 449 ft. at 90c, .....	404 10

Page 299, Room 441, Item 28, 78 ft. at 90c, .....	70 20
Page 300, Room 442, Item 28, 279 ft at 90c, .....	251 10
	<hr/>
	\$33,834 60
	<hr/>

Per order Mr. J. M. Shumaker, Supt., dated March 20th, 1906.

# GEORGE F. PAYNE & COMPANY.

Philadelphia, Penna.,

Page 296, Room 437, Item 28, Feet 2,966, Price 90c, .....	\$2,669 40
Page 338, Room 26, Item 28, Feet 477, Price 90c, .....	429 30
Page 339, Room 27, Item 28, Feet 433, Price 90c, .....	389 70
Page 339, Room 28, Item 28, Feet 466, Price 90c, .....	419 40
Page 340, Room 29, Item 28, Feet 444, Price 90c, .....	399 60
Page 340, Room 30, Item 28, Feet 482, Price 90c, .....	433 80
Page 341, Room 31, Item 28, Feet 578, Price 90c, .....	520 20
Closet off of room 180, Item 28, 19 ft., .....	17 10
Closet alongside of elevator C floor, Item 28, 88 ft., .....	79 20
Closet alongside of elevator C 3rd floor, Item 28, 88 ft., .....	79 20
Closet alongside elevator C 2nd floor, Item 28, 40 ft., .....	36 00
Closet alongside of elevator C 1st floor, Item 28, 40 ft., .....	36 00
Closet alongside of elevator B 1st floor, Item 28, 55 ft., .....	49 50
Closet alongside of elevator B entresol floor, Item 28, 55 ft., .....	49 50
Closet alongside elevator C entresol floor, Item 28, 88 ft., .....	79 20
Closet alongside elevator B 3rd floor, Item 28, 42 ft., .....	37 80
Closet alongside elevator B 4th floor, Item 28, 42 ft., .....	37 80
	<hr/>
	\$5,762 70
	<hr/>

# GEORGE F. PAYNE & COMPANY.

Philadelphia, Penna., July 31st, 1906.

Board of Commissioners of Public Grounds and Buildings:

To furnish English laid interlocking parquetry flooring in the following rooms in Capitol Building, Harrisburg, Penna.:

Page 2, Room 101, Item 28, Feet 556, Price 90c, .....	\$500 40
Page 17, Room 121, Item 28, Feet 371, Price 90c, .....	333 90
Page 21, Room 126, Item 28, Feet 470, Price 90c, .....	423 00
Page 23, Room 128, Item 28, Feet 603, Price 90c, .....	542 70
Page 25, Room 130, Item 28, Feet 291, Price 90c, .....	261 90
Page 126, Room 200, Item 28, Feet 484, Price 90c, .....	435 60
Page 128, Room 202, Item 28, Feet 661, Price 90c, .....	594 90
Page 129, Room 203, Item 28, Feet 495, Price 90c, .....	445 50
Page 130, Room 205, Item 28, Feet 40, Price 90c, .....	36 00

Page 131, Room 206,	Item 28, Feet 31, Price 90c, .....	27 90
Page 141, Room 218,	Item 28, Feet 199, Price 90s, .....	179 10
Page 142, Room 219, *	Item 28, Feet 92, Price 90c, .....	82 80
Page 143, Room 220,	Item 28, Feet 535, Price 90c, .....	481 50
Page 144, Room 221,	Item 28, Feet 482, Price 90c, .....	433 80
Page 145, Room 222,	Item 28, Feet 106, Price 90c, .....	95 40
Page 147, Room 224,	Item 28, Feet 595, Price 90c, .....	535 50
Page 148, Room 225,	Item 28, Feet 219, Price 90c, .....	197 10
Page 149, Room 225A,	Item 28, Feet 442, Price 90c, .....	397 80
Page 151, Room 226,	Item 28, Feet 120, Price 90c, .....	101 00
Page 152, Room 227,	Item 28, Feet 36, Price 90c, .....	32 40
Page 154, Room 230,	Item 28, Feet 573, Price 90c, .....	515 70
Page 155, Room 231,	Item 28, Feet 495, Price 90c, .....	445 50
Page 156, Room 232,	Item 28, Feet 883, Price 90c, .....	794 70
Page 157, Room 233,	Item 28, Feet 512, Price 90c, .....	460 80
Page 158, Room 234,	Item 28, Feet 369, Price 90c, .....	332 10
Page 159, Room 235,	Item 28, Feet 583, Price 90c, .....	524 70
Page 160, Room 236,	Item 28, Feet 40, Price 90c, .....	36 00
Page 161, Room 238,	Item 28, Feet 660, Price 90c, .....	594 50
Page 173, Room 254,	Item 28, Feet 105, Price 90c, .....	94 50
Page 174, Room 255,	Item 28, Feet 54, Price 90c, .....	48 60
Page 175, Room 256,	Item 28, Feet 635, Price 90c, .....	571 50
Page 176, Room 257,	Item 28, Feet 239, Price 90c, .....	215 10
Page 177, Room 258,	Item 28, Feet 161, Price 90c, .....	144 90
Page 178, Room 259,	Item 28, Feet 94, Price 90c, .....	84 60
Page 179, Room 260,	Item 28, Feet 795, Price 90, .....	715 50
Page 182, Room 265,	Item 28, Feet 335, Price 90c, .....	301 50
Page 183, Room 266,	Item 28, Feet 270, Price 90c, .....	243 00
Page 184, Room 267,	Item 28, Feet 85, Price 90c, .....	76 50
Page 185, Room 267A,	Item 28, Feet 43, Price 90c, .....	38 70
Page 186, Room 268,	Item 28, Feet 233, Price 90c, .....	209 70
Page 187, Room 270,	Item 28, Feet 133, Price 90c, .....	119 70
Page 188, Room 272,	Item 28, Feet 66, Price 90c, .....	59 40
Page 189, Room 273,	Item 28, Feet 106, Price 90c, .....	95 40
Page 190, Room 274,	Item 28, Feet 485, Price 90c, .....	436 50
Page 191, Room 275,	Item 28, Feet 227, Price 90c, .....	204 30
Page 210, Room 276,	Item 28, Feet 348, Price 90c, .....	313 20
Page 211, Room 300,	Item 28, Feet 634, Price 90c, .....	570 60
Page 212, Room 301,	Item 28, Feet 728, Price 90c, .....	655 20
Page 266, Room 302,	Item 28, Feet 634, Price 90c, .....	570 60
Page 267, Room 400,	Item 28, Feet 616, Price 90c, .....	554 40
Page 268, Room 401,	Item 28, Feet 777, Price 90c, .....	699 30
Page 293, Room 402,	Item 28, Feet 621, Price 90c, .....	558 90
Page 294, Room 434,	Item 28, Feet 440, Price 90c, .....	396 00
Page 185, Room 435,	Item 28, Feet 334, Price 90c, .....	300 60

---

\$18,126 90

---

## JOHN H. SANDERSON.

Philadelphia, Penna., October 1st, 1905.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

English laid interlocking wood flooring in the following rooms:

Room	Sq. Ft.	Room	Sq. Ft.
519, .....	514	329 .....	480
520 .....	428	330 .....	485
521 .....	438	331 .....	429
522 .....	433	332 .....	348
523 .....	545	333 .....	317
524 .....	546	323 .....	351
525 .....	542	324 .....	435
526 .....	466	325 .....	464
527 .....	431	326 .....	559
250 .....	502	327 .....	529
249 .....	569	508 .....	539
248 .....	516		
246 .....	649		12,069
245 .....	454		

Item 28, 12,069 sq. ft. at \$1.50 less 15 per cent., \$1.27½, ..... \$15,387 97

## JOHN H. SANDERSON.

Philadelphia, Penna., April 17th, 1906.

Care J. M. Shumaker, Supt.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol Building.

Interlocking Wood Flooring, Series "F."

	Feet.
Page 221, Room 312, .....	658
Page 223, Room 314, .....	725
Page 224, Room 315, .....	2,502
Page 225, Room 315A, .....	386
Page 226, Room 316, .....	695
Page 77, Room 186, .....	510
Page 75, Room 186A, .....	120
Page 76, Room 186B, .....	290
Page 78, Room 187, .....	510
Page 345, Room 38, .....	605
Page 345, Room 39, .....	602
Page 346, Room 40, .....	452
Page 346, Room 41, .....	592
Page 347, Room 42, .....	437
Page 347, Room 43, .....	560

\$9,644

Item 28, 9,644 ft. at \$1.50 less 15 per cent., \$1.27½, ..... \$12,296 10

## GEO. F. PAYNE &amp; COMPANY.

Philadelphia, Penna., September 1st, 1906.

To furnishing English laid interlocking parquetry flooring in the following rooms in Capitol Building, Harrisburg, Penna.:

Room 103,	Page 4,	Item 28, Feet 556,	Price 90c, .....	\$500 40
Room 109,	Page 7,	Item 28, Feet 35,	Price 90c, .....	31 50
Room 100,	Page 8,	Item 28, Feet 226,	Price 90c, .....	203 40
Room 111,	Page 9,	Item 28, Feet 402,	Price 90c, .....	361 80
Room 122,	Page 18,	Item 28, Feet 436,	Price 90c, .....	392 40
Room 123,	Page 19,	Item 28, Feet 296,	Price 90c, .....	266 40
Room 124,	Page 20,	Item 28, Feet 293,	Price 90c, .....	263 70
Room 129,	Page 24,	Item 28, Feet 526,	Price 90c, .....	473 40
Room 131,	Page 26,	Item 28, Feet 4,695,	Price 90c, .....	4,225 50
Room 140,	Page 33,	Item 28, Feet 2,128,	Price 90c, .....	1,915 20
Room 140A,	Page 34,	Item 28, Feet 55,	Price 90c, .....	49 50
Room 156,	Page 48,	Item 28, Feet 1,598,	Price 90c, .....	1,438 20
Room 210,	Page 133,	Item 28, Feet 47,	Price 90c, .....	42 30
Room 211,	Page 134,	Item 28, Feet 164,	Price 90c, .....	459 00
Room 212,	Page 135,	Item 28, Feet 510,	Price 90c, .....	147 60
Room 213,	Page 136,	Item 28, Feet 111,	Price 90c, .....	99 90
Room 214,	Page 139,	Item 28, Feet 243,	Price 90c, .....	218 70
Room 215,	Page 140,	Item 28, Feet 164,	Price 90c, .....	147 60
Room 216,	Page 181,	Item 28, Feet 513,	Price 90c, .....	461 70
Room 217,	Page 302,	Item 28, Feet 7,819,	Price 90c, .....	7,037 10
Room 264,	Page 302,	Item 28, Feet 4,781,	Price 90c, .....	4,302 40
Room 444,	Page 137,	Item 28, Feet 1,536,	Price 90c, .....	1,382 40
Room 445,	Page 138,	Item 28, Feet 1,782,	Price 90c, .....	1,603 80
				<hr/>
				\$26,024 40
				<hr/>

## GEO. F. PAYNE &amp; COMPANY.

Philadelphia, Penna., June 1st, 1906.

To furnishing English laid interlocking parquetry flooring in the following rooms in Capitol Building, Harrisburg, Penna.:

Page 29,	Room 137,	Item 28, Feet 219,	Price 90c, .....	\$197 10
Page 30,	Room 138,	Item 28, Feet 474,	Price 90c, .....	426 60
Page 32,	Room 139,	Item 28, Feet 1,036,	Price 90c, .....	932 40
Page 50,	Room 157,	Item 28, Feet 1,587,	Price 90c, .....	1,428 30
Page 51,	Room 158,	Item 28, Feet 479,	Price 90c, .....	431 10
Page 54,	Room 163,	Item 28, Feet 394,	Price 90c, .....	354 60
Page 55,	Room 164,	Item 28, Feet 381,	Price 90c, .....	342 90
Page 57,	Room 166,	Item 28, Feet 449,	Price 90c, .....	404 10
Page 58,	Room 167,	Item 28, Feet 930,	Price 90c, .....	837 00
Page 59,	Room 168,	Item 28, Feet 916,	Price 90c, .....	824 40
Page 62,	Room 171,	Item 28, Feet 909,	Price 90c, .....	818 10
Page 63,	Room 172,	Item 28, Feet 802,	Price 90c, .....	721 80
Page 64,	Room 173,	Item 28, Feet 820,	Price 90c, .....	738 00

Page 65, Room 174,	Item 28, Feet	219, Price 90c, .....	187 10
Page 66, Room 175,	Item 28, Feet	404, Price 90c, .....	363 60
Page 67, Room 176,	Item 28, Feet	325, Price 90c, .....	292 50
Page 68, Room 177,	Item 28, Feet	301, Price 90c, .....	270 90
Page 70, Room 179,	Item 28, Feet	103, Price 90c, .....	92 70
Page 241, Room 337,	Item 28, Feet	1,520, Price 90c, .....	1,368 00
Page 244, Room 341,	Item 28, Feet	605, Price 90c, .....	544 50
Page 245, Room 342,	Item 28, Feet	35, Price 90c, .....	31 50
Page 246, Room 345,	Item 28, Feet	765, Price 90c, .....	688 50
Page 247, Room 346,	Item 28, Feet	290, Price 90c, .....	261 00
Page 248, Room 347,	Item 28, Feet	285, Price 90c, .....	256 50
Page 249, Room 348,	Item 28, Feet	561, Price 90c, .....	504 90
Page 250, Room 349,	Item 28, Feet	476, Price 90c, .....	428 40
Page 251, Room 350,	Item 28, Feet	592, Price 90c, .....	532 80
Page 253, Room 352,	Item 28, Feet	620, Price 90c, .....	558 00
Page 252, Room 351,	Item 28, Feet	502, Price 90c, .....	451 80
Page 254, Room 353,	Item 28, Feet	417, Price 90c, .....	375 30
Page 257, Room 354,	Item 28, Feet	321, Price 90c, .....	288 90
Page 256, Room 355,	Item 28, Feet	224, Price 90c, .....	201 60
Page 258, Room 356,	Item 28, Feet	461, Price 90c, .....	414 90
Page 259, Room 357,	Item 28, Feet	196, Price 90c, .....	176 40
Page 260, Room 357A,	Item 28, Feet	600, Price 90c, .....	540 00
Page 261, Room 358,	Item 28, Feet	418, Price 90c, .....	376 20
Page 262, Room 359,	Item 28, Feet	501, Price 90c, .....	450 90
Page 264, Room 360,	Item 28, Feet	289, Price 90c, .....	260 10
Page 303, Room 361,	Item 28, Feet	121, Price 90c, .....	108 90
Page 304, Room 368,	Item 28, Feet	642, Price 90c, .....	577 80
Page 305, Room 446,	Item 28, Feet	446, Price 90c, .....	401 40
Page 306, Room 447,	Item 28, Feet	283, Price 90c, .....	254 70
Page 309, Room 448,	Item 28, Feet	289, Price 90c, .....	260 10
Page 310, Room 449,	Item 28, Feet	508, Price 90c, .....	457 20
Page 311, Room 453,	Item 28, Feet	577, Price 90c, .....	519 20
Page 312, Room 454,	Item 28, Feet	487, Price 90c, .....	438 30
Page 313, Room 456,	Item 28, Feet	484, Price 90c, .....	435 60
Page 314, Room 455,	Item 28, Feet	456, Price 90c, .....	410 40
Page 315, Room 457,	Item 28, Feet	496, Price 90c, .....	446 40
Page 316, Room 458,	Item 28, Feet	639, Price 90c, .....	575 10
Page 324, Room 459,	Item 28, Feet	658, Price 90c, .....	592 20
Page 325, Room 460,	Item 28, Feet	582, Price 90c, .....	523 80
Page , Room 470,	Item 28, Feet	336, Price 90c, .....	320 40
Page 255, Room 471,	Item 28, Feet	271, Price 90c, .....	243 90

---



---

\$24,948 90

## ITEM 12. VAULTS AND SAFES.

### THE PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., January 29, 1906.

State of Pennsylvania, Harrisburg, Penna.:

Balance due for vaults and safes in connection with second section of steel furniture as follows:

Vaults for Treasury room 116, Auditor General's Room 132, Treasurer's Vault in basement room 16, and Auditor General's Vault in basement Room 21, and safe in Auditor General's Chief Clerk Room 128, Treasurer's Cashier Room 117, and State Department Chief Clerk, Room 312, .....	\$33,000 00
---	-------------

### PENNSYLVANIA CONSTRUCTION COMPANY.

Marietta, Penna., May 6th, 1905.

On account of furnishing of vaults, safes and vault doors for the Department of State Treasurer and Auditor General, in accordance with contract, .....	\$33,000 00
---	-------------

Itemized statement of payment on material delivered covered by certificate No. 576, issued May 10th, 1905, by J. M. Huston, Architect:

Treasurer's Cash Vault, one-half completed.  
 Treasurer's Basement Vault, two-thirds completed.  
 Auditor General's main vault, three-quarters completed.  
 Auditor General's Basement vault, two-thirds completed.  
 Total, \$33,000.00.

## ITEM 14. ADDITIONS AND ALTERATIONS TO ELECTRIC LIGHTING THROUGHOUT THE BUILDING.

JOHN H. SANDERSON.

Philadelphia, Dec. 9, 1904.

Sold to the Commonwealth of Pennsylvania, Harrisburg, Pa.  
 Care J. M. Shumaker, Supt.

For New Capitol Building.

To extra approved work as per requirements for the necessary changes and additions in the electric lighting system as per attached schedule, .....	\$71,833 00
--	-------------



Changes and additions in the lighting of the Senate and House Chambers for the Pennsylvania State Capitol Building, Harrisburg, Pa.:

SENATE:

4—24 light standards, with eight switches to control the same on the panel board.

6—72 light chandeliers with one switch to control the same on the panel board, and thirty-six fuse connections placed on a fuse panel located in the attic.

14—10 light brackets with one switch to control the same on the panel board and fourteen fuse circuits in the attic.

64 desk lights with four switches to control the same on the panel board.

18 receptacles and plugs with two switches to control the same on the panel board.

2—3 light standards at the President's desk with one switch to control the same on the panel board.

4—10 light chandeliers for the gallery with four switches to control the same on the panel board.

2—40 light reflectors with one switch to control the same on the panel board, and eight fuse circuits in the attic.

The balance of the lighting in the ante rooms, etc., will remain as per the original schedule, and will be controlled by seven switches on the panel board. There will also be two switches for night lighting.

HOUSE OF REPRESENTATIVES:

4—148 light chandeliers with one switch to control the same on the panel board, and forty fuse connections placed on a separate panel in the attic.

6—72 light chandeliers with one switch to control the same on the panel board and thirty-six fuse connections in the attic.

18—10 light brackets with one switch to control the same on the panel board, and eighteen fuse connections in the attic.

4—24 light standards with eight switches to control the same on the panel board.

2—3 light standards at Speaker's desk with one switch to control the same on the panel board.

226 desk lights with sixteen switches to control the same on the panel board.

16 receptacles and plugs with one switch to control the same on the panel board.

1—80 light reflector and 4—30 light reflectors with one switch to control the same on the panel board, and thirteen fuse connections in the attic.

4—10 light chandeliers in the gallery with four switches to control the same on the panel board.

The balance of the lighting in the ante rooms, etc., will remain the same as per the original schedule, and will have eight switches to control the same on the panel board. There will also be two switches for night lights.

Substituting for the 12—6 light brackets originally specified for the Grand Hall, first floor, 12—24 light standards and 2—10 light standards, and substituting for the 14—9 light brackets in the Dome, second floor, 17—24 light standards.

This change involves wiring for 716—16 candle power lamps instead of 193 lamps, or an increase of 519 lamps.

Changes in wiring of the Pennsylvania State Capitol Building, to meet the requirements of the fixture work:

#### FIRST FLOOR, WING "B" OR MAIN BUILDING.

Main Entrance, Outside: 2—25 light standards, to be taken off the circuits which were liberated on B-1, by the introductions of new panels for the standards.

Main Vestibule: 1—15 lt. chandelier changes to 1—10 lt. 2—10 lt. standards changed to 2—12 lt. No change in wiring.

#### FIRST FLOOR, WING "D"-2.

Ante Room, Speaker of the House: 1—4 lt. chandelier changed to 1—9 lt. by running an additional circuit from panel board D-2-1.

Speaker of the House: 1—6 lt. chandelier changed to 1—9 lt. One additional circuit 21 A. The change in the Speaker of the House and ante room can be made by re-arranging the lights with the addition of only one circuit.

Treasury Department: Change 10—4 lt. chandeliers to 10—6 lt. by the addition of two circuits on panel board D-2-1. Change lighting in resident clerk's room and ante room from 1—4 lt. chandelier and 2—3 lt. brackets, by re-arranging the circuits. No additional circuit required. This also means the addition of two switches. Add 1—1 lt. bracket in closet adjoining new location of resident clerk's office.

House Library: 4—6 lt. chandeliers to be changed to 2—12 lt. Change 4—3 lt. brackets to 5—2 lt. brackets. Add 22—1 lt. ceiling outlets and eleven (11) switches for the same, using two additional circuits from panel board D-2-1.

House Caucus Room: Change 8—4 lt. chandeliers to 4—12 lt. Change main of panel board D-2-1 from 1-0 to 2-0. Change 9—3 lt. brackets to 7—2 lt. and add 2—5 lt. standards and one switch.

#### FIRST FLOOR, WING D-1, OR MAIN BUILDING.

Superintendent of Buildings and Grounds: Rooms A and B. Change 2—4 lt. chandeliers in each room to 2—9 lt. chandeliers by running three additional circuits from panel board D-1-1. This also means the addition of two switches. In five committee rooms change the lights on the circuits in such a way that the chandeliers will be six light instead of four light and the brackets will be two light instead of three light. This necessitates the addition of five switches.

Librarian: Change six light chandelier to nine light and reduce 3—3 light brackets to 3—2 lt. This means the re-arrangement of lights on circuit. Change 4—6 lt. chandeliers to 2—12 lt. Add 40—1 lt. ceiling outlets, by running four additional circuits from panel board B-1. These lights to be controlled by four additional switches in the room. These lights are over book cases. Increase the size of main to panel board D-1-1 to 0.

Senate Caucus Room: Change 6—4 lt. chandeliers to 4—12 lt. by using three additional circuits from panel board D-1, which are liberated by throwing clerks' room into Senate library. 1—3 lt. standard additional by placing light outlets and receptacles on the same circuit.

#### FIRST FLOOR, WING "A."

Vestibule: The first floor plan shows 2—3 lt. chandeliers in the vestibule and the mezzanine floor plan shows one. In installing this work we have installed 1—3 lt. outlet, but this will be changed to 2—3 lt. outlets.

Stairway and Elevator Hall: Change 2-5 lt. brackets to 2-12 lt. standards by running an additional circuit to panel board A-1.

Correspondents' Room "A:": Change 2-4 lt. Chandeliers to 2-9 lt. by running one additional circuit from panel board A-a-1.

Room "C:": 2-4 lt. chandeliers to be changed to 2-6 lt. and 5-3 lt. brackets to be changed to 5-2 lt. brackets, by running one additional circuit to panel board A-a-1. This will necessitate the addition of one switch.

Board of Public Charities: 2-4 lt. chandeliers to be changed to 2-9 lt. by adding one circuit from panel board A-1. This will necessitate the addition of one switch. 4-3 lt. brackets to be changed to 4-2 lt.

Supply Room: 3-4 lt. chandeliers changed to 3-6 lt. chandeliers by running one additional circuit from panel board A-1. Two additional switches in room.

Committee Rooms, Soldiers' Orphans Schools, Etc.: 2-12 lt. chandeliers in place of 3-4 lt. by running one additional circuit to panel board A-1. Change 7-3 lt. brackets to 7-2 lt.

Supt. of Public Printing: 2-6 lt. chandeliers to be changed to 2-9 lt. by running one additional circuit from panel board A-1 and one additional switch in room. 4-3 lt. brackets changed to 4-2 lt.

Public Printing, Clerks and Supply Room, Committee Room: 6-3 lt. brackets in each room to be changed to 2 lt. Chandeliers to remain four light.

Factory Inspector: 2-4 lt. chandeliers to be changed to 1-9 lt. chandelier. 4-3 lt. brackets to be changed to 4-2 lt. brackets.

Main Clerical Room: 6-3 lt. brackets changed to 6-2 lt. brackets. Chandeliers to remain six light each.

#### FIRST FLOOR WING "C."

The first floor plan shows 2-3 lt. chandeliers in the vestibule and the mezzanine floor plan shows one. In installing this work we have installed 1-3 lt. outlet, but this will be changed to 2-3 lt. outlets.

Stairway and Elevator Hall: 2-12 lt. standards to take the place of 2-5 lt. brackets by running one additional circuit from panel board C-1.

State Treasurer: 1-6 lt. chandelier changed to 1-9 lt.

State Treasurer, Private Office: 1-3 lt. chandelier changed to 1-9 lt. chandelier by running two additional circuits from panel board C-a-1.

Cashiers' Rooms: 1-4 lt. chandelier changed to 1-6 lt. chandelier by rearranging lights on circuit. 3-2 lt. brackets to remain unchanged.

Messengers' Waiting Room: 2-3 lt. brackets changed to 2-2 lt.

Auditor General: 1-6 lt. chandelier changed to 1-9 lt. by running one additional circuit from panel board C-a-1.

Auditor General's Private: 1-6 lt. chandelier changed to 1-9 lt. by running one additional circuit from panel board C-a-1.

Deputy Auditor General: 1-4 lt. chandelier changed to 1-6 lt. 3-2 lt. brackets to remain.

Messengers' Waiting Room: 3-3 lt. chandeliers changed to 3-4 lt.

Chief Clerk: 2-3 lt. chandeliers changed to 1-6 lt.

Entresol Floor Wing A: Two outlets in main corridor to be thrown into private corridor, which will necessitate the addition of one switch.

Committee Rooms: 4-4 lt. chandeliers changed to 6-6 lt. 2-6 lt. 14-3 lt. brackets to be changed to 14-2 lt.

#### ENTRESOL FLOOR WING "C," OR SOUTHEAST WING.

Rooms E, F, G and H: 5-4 lt. chandeliers and 2-6 lt. chandeliers changed to 6-6 lt. by running one additional circuit to panel board C-a-e. 14-3 lt. brackets changed to 14-2 lt. brackets.

Assembly Room: 2—6 lt. chandelier changed to 2—9 lt. by running another circuit to panel board C-a-e. 5—3 lt. brackets changed to 5—2 lt.

Clerks, Messengers and Stenographers: 4—4 lt. chandeliers changed to 4—6 lt. chandeliers by running two additional circuits to panel board C-e. 10—3 lt. brackets changed to 10—2 lt.

Superintendent of Public Instruction: 1—6 lt. chandelier changed to 1—9 lt. 4—3 lt. brackets changed to 4—2 lt. by re-arranging the outlets on circuit.

Private Room: 1—4 lt. chandelier changed to 1—6 lt. by re-arranging outlets.

Room Between Superintendent and Deputy: 1—4 lt. chandelier changed to 1—6 lt. 4—3 lt. brackets changed to 4—2 lt.

#### ENTRESOL FLOOR WING "B."

Stair Landing: 2—2 lt. brackets changed to 2—3 lt.

Main Rotunda Stair Landing: 2—9 lt. standards changed to 2—12 lt.

Ten Committee Rooms: 12—4 chandeliers and 4—6 lt. chandeliers changed to 6—6 lt. chandeliers by re-arranging wiring and adding to panel board B-e, one additional circuit, and on panel board B-a-e, two additional circuits. 40—3 lt. brackets changed to 40—2 lt. brackets.

#### SECOND FLOOR WING "B."

Lieutenant Governor's Room: 2—4 lt. chandeliers to be changed to 2—9 lt. by adding one additional circuit to panel board B-a-2 and one additional switch in room. 3—3 lt. brackets changed to 3—2 lt. brackets.

Ladies' Room: Change 2—4 lt. chandeliers to 2—6 lt. chandeliers.

#### SECOND FLOOR WING "B," OR NORTHEAST EXTENSION.

Chief House Clerk: 2—4 lt. chandeliers changed to 2—6 lt. 4—3 lt. brackets changed to 4—2 lt.

Senate Chief Clerk: 2—4 lt. chandeliers changed to 2—6 lt. by running an additional circuit from panel board B-b-2. 4—3 lt. brackets changed to 4—2 lt.

Senate Executive Clerk: 2—4 lt. chandeliers changed to 2—6 lt. 4—3 lt. brackets to remain.

Sergeant-at-Arms of Senate: 2—4 lt. chandeliers changed to 2—6 lt. 4—3 lt. brackets changed to 4—2 lt.

#### SECOND FLOOR WING D-1.

Senate: 14—10 lt. brackets changed to 14—12 lt.

Ante Room to Senate: 2—6 lt. chandeliers changed to 2—12 lt. chandeliers by running an additional circuit and installing one extra switch.

Public Ante Room to Senate: 3—6 lt. chandeliers changed to 3—12 lt. chandeliers by running two additional circuits and installing two switches in room.

President Pro Tem.: 2—4 lt. chandeliers changed to 2—9 lt. by running an additional circuit to panel board A-a-2 and re-arranging the lights. 6—3 lt. brackets changed to 6—2 lt.

#### SECOND FLOOR WING D-2.

Ante Room to House: 2—6 lt. chandeliers changed to 2—12 lt. by running an additional circuit and installing one extra switch in room.

Public Ante Room: 3—6 lt. chandeliers changed to 3—12 lt. by running two additional circuits and installing two extra switches in room.

## SECOND FLOOR, WING "A," OR NORTHWEST WING.

Secretary of Internal Affairs: 2-6 lt. chandeliers changed to 2-9 lt. by carrying one additional circuit from panel board A-a-2 and placing one additional switch in room. 5-3 lt. brackets changed to 5-2 lt. brackets.

Chief Clerk: 1-4 lt. chandelier changed to 1-6 lt. 2-3 lt. brackets changed to 2-2 lt.

Deputy Secretary of Internal Affairs: 2-4 lt. chandeliers changed to 2-6 lt. by running an additional circuit from panel board A-a-2.

Stenographers' 1-4 lt. chandelier changed to 1-6 lt. 2-3 lt. brackets changed to 2-2 lt.

Two Rooms for Clerks: 4-4 lt. chandeliers changed to 4-6 lt. by running an additional circuit to panel board A-a-2. 8-3 lt. brackets changed to 8-2 lt. brackets.

Bureau of Railroads: 2-4 lt. chandeliers changed to 2-6 lt. 4-3 lt. brackets changed to 4-2 lt.

Supt. Bureau of Railroads: 2-4 lt. chandeliers changed to 1-9 lt. 4-3 lt. brackets changed to 4-2 lt.

Vital Statistics: 2-4 lt. chandeliers changed to 2-6 lt. by running one additional circuit to panel board A-2. 4-3 lt. brackets changed to 4-2 lt.

Comparing Room: 2-4 lt. chandeliers changed to 2-6 lt. by running an additional circuit from panel board A-2. 4-3 lt. brackets changed to 4-2 lt.

Clerks and stenographers: 2-4 lt. chandeliers changed to 2-6 lt. by re-arranging the outlets on circuit. 4-3 lt. brackets changed to 4-2 lt.

## SECOND FLOOR, WING C, OR SOUTHEAST WING.

Ante room to Governor's Suite: 1-4 lt. chandelier changed to 1-6 lt. by re-arranging outlets on circuit. 1-4 lt. chandeliers changed to 1-6 lt. and 1-6 lt. chandelier in Governor's private room to be placed on the same circuit and controlled by the same switch. Run an additional circuit to C-a-2.

Governor's Room: 2-6 lt. chandeliers changed to 2-12 lt. 4-3 lt. brackets changed to 4-2 lt.

Two Toilet Rooms: Changed 1-3 lt. chandeliers to 2-2 lt. One additional switch.

Grand Executive Reception Room: The 4-30 light chandeliers in this room will remain. The 96-1 light ceiling outlets will be changed to 4-20 light standards. This will require the re-arranging of conduits.

Attorney General: 2-6 lt. chandeliers changed to 2-9 lt. by running an additional circuit to panel board C-2. 4-3 lt. brackets changed to 4-2 lt.

Resident Clerk of House and Transcribing Room: 2-4 lt. chandeliers changed to 2-6 lt. by running an additional circuit to C-2.

## THIRD FLOOR, WING B.

Three Committee Rooms: 12-3 lt. chandeliers changed to 12-2 lt.

Two Stair Landings: 2-3 lt. brackets changed to 2-2 lt.

## THIRD FLOOR, WING B, OR NORTHEAST EXTENSION.

Suite of Rooms for Judges, Supreme and Superior Court: 2-4 lt. chandeliers and 3-6 lt. chandeliers changed to 5-6 lt. chandeliers by running an additional circuit to B-a-3. Sixteen (16) brackets to remain unchanged.

Five Committee Rooms: 2-6 chandeliers and 6-4 lt. chandeliers changed 8-6 lt. chandeliers by running three additional circuits from panel board. Brackets will remain unchanged.

## THIRD FLOOR WING D-1.

Museum of Agriculture: 6-4 lt. chandeliers changed to 6-6 lt. by adding two circuits from panel board A-3 and two switches in the room.

## THIRD FLOOR, WING C.

Secretary of the Commonwealth: 2-6 lt. chandeliers changed to 2-9 lt. by running an additional circuit from panel board C-a-3 and one additional switch in room. 4-3 lt. brackets changed to 4-2 lt.

Deputy Secretary of the Commonwealth: 2-3 lt. chandeliers changed to 2-6 lt. by adding one circuit from panel board C-a-3. 2-2 lt. brackets to remain unchanged.

Reception Room: 2-6 lt. chandeliers changed to 2-9 lt. by adding an additional circuit from panel board C-a-3 and one additional switch in room. 4-3 lt. brackets changed to 4-2 lt.

Chief Clerk: 2-4 lt. chandeliers changed to 2-6 lt. by adding one additional circuit to panel board C-a-3. Brackets to remain unchanged. 4-2 lt. brackets to be changed to 4-3 lt.

Commission Clerk: 4-4 lt. chandeliers changed to 4-6 lt. by adding one circuit to panel board C-3. 5-2 lt. brackets changed to 6-2 lt.

Stenographers: 2-4 lt. chandeliers changed to 2-6 lt. by adding one circuit to panel board C-3. 3-2 lt. brackets changed to 4-2 lt.

Room Between Corporation Clerk and Stenographer: 2-3 lt. chandeliers changed to 2-6 lt.

## THIRD FLOOR, WING "A" OR NORTHEAST WING.

Waiting Room: 2-3 lt. chandeliers changed to 2-6 lt. by adding one additional circuit to panel board A-a-3.

Secretary of Agriculture: 1-6 lt. chandelier changed to 1-9 lt. 3-3 lt. brackets changed to 3-2 lt. by re-arranging outlets.

Private: 1-4 lt. chandelier changed to 1-9 lt. by adding one additional circuit to panel board A-a-3.

Chief Clerks and Clerks Private Office: 1-4 lt. chandelier in each room changed to six light by adding one additional circuit to panel board A-a-3.

Dairy and Food Commissioner: 1-6 lt. chandelier changed to 1-9 lt. by adding one additional circuit to panel board A-a-3.

Economic Zoologist: 2-4 lt. chandeliers to be changed to 2-9 lt. by adding one additional circuit to panel board A-3 and two additional switches. One for the fixtures and one for the brackets.

State Veterinarian: 1-6 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board A-3.

Commissioner of Forestry: 2-4 lt. chandeliers to be changed to 2-9 lt. by adding one additional circuit to panel board A-3. 4-3 lt. brackets to be changed to 4-2 lt.

Chief Clerk: 1-4 lt. chandelier to be changed to 1-6 lt.

Waiting Room: 1-3 lt. chandelier to be changed to 1-6 lt. by re-arranging the outlets on circuits.

Game Commissioner: 2-4 lt. chandeliers to be changed to 2-9 lt. by adding an additional circuit to panel board A-3. 3-3 lt. brackets to be changed to 3-2 lt.

## FOURTH FLOOR, WING "A" OR NORTHWEST WING.

Thirteen Committee Rooms: 7-6 lt. chandeliers and 12-4 lt. chandeliers to be changed to 13-6 lt. by adding six circuits to A-4 and A-4. 50-2 lt. brackets to remain unchanged.

## FOURTH FLOOR, WING "C" OR SOUTHEAST WING.

Messenger Room: 1-4 lt. chandelier changed to 1-6 lt. 3-3 lt. brackets to be changed to 3-2 lt.

Adjutant General's Office: 1-6 lt. chandelier to be changed to 1-9 lt. by re-arranging lights. 4-3 lt. brackets to be changed to 4-2 lt.

Reception Room: 1-4 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board C-a-4. Brackets to remain unchanged.

Chief Clerk: 1-4 lt. chandelier to be changed to 1-6 lt. by re-arranging outlets on circuit.

Examining Room: Run additional circuit from panel board C-4.

Clerks and Stenographers, Banking Department: 1-4 lt. chandelier to be changed to 1-6 lt. 3-3 lt. brackets to be changed to 3-2 lt. by re-arranging outlets on circuit.

Waiting Room: 2-3 lt. chandeliers changed to 2-6 lt. by adding one additional circuit to panel board C-4.

Deputy Banking Commissioner: 1-4 lt. chandelier to be changed to 1-6 lt. by re-arranging outlets on circuit.

Banking Commissioner: 1-4 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board C-4. 4-3 lt. brackets to be changed to 4-2 lt.

Insurance Commissioner: 1-6 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board C-4. 4-3 lt. brackets to be changed to 4-2 lt.

Stenographers: 1-3 lt. chandelier to be changed to 1-4 lt.

Waiting Room: 2-3 lt. chandeliers to be changed to 2-6 lt. by re-arranging outlets on circuits and changing brackets in Deputy Insurance Commissioners and clerical room of Insurance Department from three light to two light.

## FOURTH FLOOR, WING "B," MAIN BUILDING.

Two Stairways: 2-2 lt. brackets to be changed to 2-3 lt.

Three Committee Rooms: 6-4 lt. chandeliers to be changed to 6-6 lt. by adding three additional circuits to panel board B-a-4. 12-2 lt. brackets to remain unchanged.

Two Stair Landings: 2-2 lt. brackets to be changed to 2-3 lt. brackets.

## FOURTH FLOOR, WING "B," OR NORTHEAST EXTENSION.

Prothonotary: 1-4 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board B-4. 4-2 lt. brackets to remain unchanged.

Consulting Room: 1-4 lt. chandelier to be changed to 1-9 lt. by adding one additional circuit to panel board C-4.

Judges Anteroom: 1-4 lt. chandelier to be changed to 1-6 lt. 4-2 lt. brackets to remain unchanged.

Attorney's Room: 1-4 lt. chandelier to be changed to 1-6 lt. 4-2 lt. brackets to remain unchanged.

## FOURTH FLOOR, WING D-1.

Five Committee Rooms: 7-4 lt. chandeliers to be changed to 7-6 lt. by adding three additional circuits to panel board A-4 and A-a-4. All the brackets in these rooms to be changed to two light.

# ITEM 15. INSTALLING WIRES FOR TWO TELEPHONE AND TWO TELEGRAPH SYSTEMS THROUGHOUT THE BUILDING.

JOHN H. SANDERSON.

Philadelphia, Penna., February, 1906.

Board of Commissioners of Public Grounds and Buildings.

Dec. 22, 1904, to Feb. 26, 206.

To installing double telephone system, Capitol Building, Harrisburg, Penna.

Week ending Dec. 22, 200 hours, wiremen at 35c, .....	\$70 09
Week ending Dec. 22, 198 hours, helpers at 25c, .....	49 50
Week ending Dec. 29, 302 hours, wiremen at 35c, .....	105 70
Week ending Dec. 29, 605 hours, helpers at 35c, .....	151 25
Week ending Jan. 4, 631 hours, wiremen at 35c, .....	220 85
Week ending Jan. 4, 631 hours, helpers at 25c, .....	157 75
Week ending Jan. 11, 236 hours, wiremen at 35c, .....	82 60
Week ending Jan. 11, 212 hours, helpers at 25c, .....	53 00
Week ending Jan. 25, 409 hours, wiremen at 35c, .....	143 15
Week ending Jan. 25, 222 hours, helpers at 25c, .....	55 50
Week ending Feb. 8, 43 hours, wiremen at 35 c, .....	15 05
Week ending Feb. 8, 106 hours, helpers at 25c, .....	26 50
Week ending Feb. 15, 172 hours, wiremen at 35c, .....	60 20
Week ending Feb. 15, 53 hours, helpers at 25c, .....	13 25
Week ending Feb. 22, 130 hours, wiremen at 35c, .....	45 50
Week ending Mar. 1, 173 hours, wiremen at 35c, .....	60 55
Week ending Mar. 1, 36 hours, helpers at 25c, .....	9 00
Week ending Mar. 8, 185 hours, wiremen at 35c, .....	64 75
Week ending Mar. 8, 36 hours, helpers at 25c, .....	9 00
Week ending April 6, 89 hours, wiremen at 35c, .....	31 15
Week ending April 6, 55 hours, helpers at 25c, .....	13 75
Week ending April 19, 456 hours, wiremen at 35c, .....	159 60
Week ending April 19, 192 hours, helpers at 25c, .....	48 00
Week ending April 26, 360 hours, wiremen at 35c, .....	126 00
Week ending April 26, 180 hours, helpers at 25c, .....	45 00
Week ending May 4, 58 hours, wiremen at 35c, .....	20 30
Week ending May 11, 96 hours, wiremen at 35c, .....	333 60
Week ending May 18, 101 hours, wiremen at 35c, .....	35 35
Week ending May 18, 18 hours, helpers at 25c, .....	4 50
Week ending May 31, 12 hours, wiremen at 35c, .....	4 20
Week ending June 7, 60 hours, wiremen at 35c, .....	21 00
Week ending June 7, 18 hours, helpers at 25c, .....	4 50
Week ending June 14, 795 hours, wiremen at 35c, .....	278 25
Week ending June 14, 284 hours, helpers at 25c, .....	71 00
Week ending June 21, 874 hours, wiremen at 35c, .....	305 90
Week ending June 21, 365 hours, helpers at 25c, .....	91 25
Week ending June 28, 366 hours, wiremen at 35c, .....	128 10
Week ending June 28, 63 hours, helpers at 25c, .....	15 75
Week ending July 6, 284 hours, wiremen at 35c, .....	99 40



Week ending July 6, 34 hours, helpers at 25c, .....	8 50
Week ending July 13, 286 hours, wiremen at 35c, .....	100 00
Week ending July 13, 28 hours, helpers at 25c, .....	7 00
Week ending July 19, 9 hours, wiremen at 35c, .....	3 15
Week ending July 19, 4 hours, helpers at 25c, .....	1 00
Week ending July 26, 33 hours, wiremen at 35c, .....	11 55
Week ending Aug. 9, 43 hours, wiremen at 35c, .....	15 05
Week ending Aug. 16, 10 hours, wiremen at 35c, .....	3 50
Week ending Aug. 25, 10 hours, wiremen at 35c, .....	3 50
Week ending Sept. 3, 22 hours, wiremen at 35c, .....	7 70
Week ending Sept. 27, 87 hours, wiremen at 35c, .....	30 45
Week ending Sept. 27, 28 hours, helpers at 25c, .....	7 00
Week ending Oct. 9, 166 hours, wiremen at 35c, .....	58 10
Week ending Oct. 9, 26 hours, helpers at 25c, .....	7 00
Week ending Oct. 11, 175 hours, wiremen at 35c, .....	61 25
Week ending Oct. 11, 38 hours, helpers at 25c, .....	9 50
Week ending Oct. 18, 405 hours, wiremen at 35c, .....	106 75
Week ending Oct. 18, 55 hours, helpers at 25c, .....	13 75
Week ending Oct. 26, 54 hours, wiremen at 35c, .....	18 90
Week ending Oct. 26, 28 hours, helper at 25c, .....	7 00
Week ending Nov. 1, 134 hours, wiremen at 35c, .....	46 90
Week ending Nov. 21, 46 hours, wiremen at 35c, .....	16 10
Week ending Nov. 30, 123 hours, wiremen at 35c, .....	43 05
Week ending Dec. 6, 75 hours, wiremen at 35c, .....	26 25
Week ending Dec. 13, 165 hours, wiremen at 35c, .....	57 75
Week ending Dec. 20, 314 hours, wiremen at 35c, .....	109 90
Week ending Dec. 27, 88 hours, wiremen at 35c, .....	30 80
Dec. 26 to April 26, 268 hours, machinist at 44c, .....	117 92
131,367 feet wire at \$9.75 per M, .....	1,280 80
275 call boxes at 41 cents, .....	112 75
275 mahogany mats at 32c, .....	88 00
273 face plates at \$2.70, .....	737 10
8 bug boards at \$2.36, .....	18 88
56 rolls tape at 25c, .....	14 00
Tubing screws, tags, solder, etc., .....	154 71
Freight and hauling, .....	38 12

Repairing walls and partitions where damaged by electricians:

Plasterers, 564 hours at 50c, .....	282 00
Laborers, 232 hours at 35c, .....	98 70
Material, .....	122 40
Bricklayer, 84 hours at 51c, .....	42 84
Laborers, 60 hours at 35c, .....	21 00
16 barrows of mortar at 60c, .....	9 60
157 ft. tile at 20c, .....	31 40

---



---

\$6,911 45

## GEORGE F. PAYNE &amp; COMPANY.

Philadelphia, Penna., June 30, 1905.

Board of Commissioners of Public Grounds and Buildings.

Capitol Building.

No. 55.

To furnishing and installing wires for both telephone systems.

44,035 feet red and black twisted telephone cable rubber covered at \$10.20 per M., .....	\$449 15
14,028 ft. twisted paired in black and red wire at \$2.60 per M., ....	126 25
40,032 ft. A 3-32 twisted paired okomite rubber covered telephone wire at \$1.80 per C., .....	720 58
12,993 ft. red and black twisted paired rubber covered telephone wire at \$9.00 per M., .....	116 94
72,972 ft. twisted paired white and black wire at \$10.50 per M., ....	744 31
8,631 ft. B. & S. twisted telephone wire at \$10.50 per M., .....	90 62
22,341 ft. B. & S. 1st Ins. twisted pr. tel. wire at \$10.50, .....	234 58
6 coils twisted paired 3,015 ft. at \$12.00 per M., .....	36 18
2 reals twisted paired 12 silk one cotton, .....	1,106 15
34 dry batteries at 30c, .....	10 20
44-14 point bug boards, .....	85 05
210 rolls tape at 25c, .....	52 50
242 pounds Manilla rope at 18c, .....	43 56
151 plates engraved at 30c, .....	45 50
Twine, alcohol, solder, etc., .....	20 58
Freight on wire, \$32.26, lanterns, \$4.95, .....	34 98
Week ending Dec. 22, 584 hours, wiremen at 35c, .....	204 40
Week ending Dec. 29, 413 hours, helpers at 25c, .....	103 25
Week ending Dec. 29, 711 hours, wiremen at 35c, .....	248 85
Week ending Dec. 29, 1,123 hours, helpers at 25c, .....	280 75
Week ending Jan. 4, 794 hours, wiremen at 35c, .....	277 90
Week ending Jan. 4, 1,318 hours, helpers at 25c, .....	329 50
Week ending Jan. 11, 640 hours, wiremen at 35c, .....	224 00
Week ending Jan. 11, 775 hours, helpers at 25c, .....	193 75
Week ending Jan. 18, 679 hours, wiremen at 35c, .....	273 65
Week ending Jan. 18, 497 hours, helpers at 35c, .....	124 25
Week ending Jan. 25, 257 hours, wiremen at 35c, .....	89 95
Week ending Jan. 25, 238 hours, helpers at 25c, .....	59 50
Week ending Feb. 1, 535 hours, wiremen at 35c, .....	187 25
Week ending Feb. 1, 578 hours, helpers at 25c, .....	144 50
Week ending Feb. 8, 483 hours, wiremen at 35c, .....	189 05
Week ending Feb. 8, 370 hours, helpers at 25c, .....	92 50
Week ending Feb. 15, 274 hours, wiremen at 35c, .....	95 30
Week ending Feb. 15, 228 hours, helpers at 25c, .....	57 00
Week ending Feb. 22, 612 hours, wiremen at 35c, .....	214 20
Week ending Feb. 22, 329 hours, helpers at 25c, .....	82 25
Week ending Mar. 1, 771 hours, wiremen at 35c, .....	269 85
Week ending Mar. 1, 324 hours, helpers at 25c, .....	81 00
Week ending Mar. 8, 583 hours, wiremen at 35c, .....	204 05
Week ending Mar. 8, 283 hours, helpers at 25c, .....	70 05
Week ending March 15, 824 hours, wiremen at 35c, .....	288 40
Week ending March 15, 523 hours, helpers at 25c, .....	130 75

Week ending Mar. 22, 809 hours, wiremen at 35c, .....	283 15
Week ending Mar. 22, 293 hours, helpers at 25c, .....	73 25
Week ending April 5 to 26, 1,545 hours, wiremen at 35c, .....	540 75
Week ending April 5 to 26, 784 hours, helpers at 25c, .....	196 00
Week ending Mar. 29, 583 hours, wiremen at 35c, .....	204 05
Week ending Mar. 29, 99 hours, helpers at 25c, .....	24 75
Week ending May 4, 421 hours, wiremen at 35c, .....	147 35
Week ending May 4, 126 hours, helpers at 25c, .....	31 50
Week ending May 11, 423 hours, wiremen at 35c, .....	148 05
Week ending May 11, 100 hours, helper at 25c, .....	25 00
Week ending May 17, 360 hours, wiremen at 35c, .....	128 80
Week ending May 17, 80 hours, helper at 25c, .....	20 00
Week ending May 24, 250 hours, wiremen at 35c, .....	182 00
Week ending May 24, 117 hours, helpers at 25c, .....	29 25
Week ending May 31, 385 hours, wiremen 35c, .....	134 75
Week ending May 31, 61 hours, helpers at 25c, .....	15 25
Week ending June 7, 301 hours, wiremen at 35c, .....	105 35
Week ending June 7, 36 hours, helpers at 25c, .....	9 00
Week ending June 14, 70 hours, wireman at 35c, .....	24 50
Week ending June 14, 4 hours, helper at 25c, .....	1 00
Week ending June 21, 44 hours, wireman at 35c, .....	15 40
Week ending June 28, 94 hours, wiremen at 35c, .....	32 90
Week ending June 28, 10 hours, helpers at 25c, .....	2 50
<hr/>	
\$10,755 23	

---

**ITEM 16. INSTALATION OF THERMOSTATS AND VALVES  
THROUGHOUT THE BUILDING, SPECIAL WORK IN CON-  
NECTION WITH HEATING AND VENTILATING, ALSO AIR  
COMPRESSORS.**

---

JOHN H. SANDERSON.

Philadelphia, Penna., Dec. 9, 1904.

Sold to Commonwealth of Pennsylvania, Harrisburg, Penna.

For New Capitol.

To installation as per architect's specifications attached of thermostats and valves throughout Capitol Building.

Special work in cennnection with the heater coils, fans and dampers in the ducts of the Senate, House of Representatives and adjoining rooms.

Also the air compressor for furnishing compressed air into the system, together with the diaphram valves to be provided under the special work equaling 673 thermostats.

Item No. 34, \$100.00, less 21 per cent—\$79.00 each, ..... \$53,167

JOHN H. SANDERSON.

Philadelphia, Penna., April 17, 1906.

For New Capitol Building.

Special designer thermostats.

Item No. 34, 79 at \$100.00, less 21 per cent.—\$79.00 each, ..... \$6,241 00

As per attached list.

Page.	Room.	Thermostats.	
327.....	1	1	
327.....	1A	1	
328.....	2	1	
328.....	3	1	
329.....	6	1	
330.....	8	1	
330.....	9	4	
331.....	10	1	
332.....	13	1	
332.....	14	1	
333.....	15	1	
333.....	16	2	
334.....	17	1	
334.....	18	1	
335.....	19	1	
335.....	20	1	
336.....	21	1	
336.....	22	1	
337.....	23	1	
337.....	24	1	
338.....	25	1	
338.....	26	1	
339.....	27	1	
339.....	28	1	
340.....	29	1	
340.....	30	1	
341.....	31	1	
342.....	33	1	
342.....	34	2	
343.....	34A	2	
343.....	35	2	
344.....	36	1	
345.....	38	1	
345.....	39	1	
346.....	40	1	
346.....	41	1	
347.....	42	1	
348.....	43	1	
348.....	45	1	
347.....	46	2	
349.....	47	1	
349.....	48	2	
349.....	49	1	
350.....	50	2	
350.....	51	2	
350.....	52	1	
351.....	53	1	
351.....	54	1	
351.....	55	2	
353.....	60	1	
354.....	Attic,	1	Board of Health.
355.....	Attic,	1	Board of Health.
356.....	Attic,	1	Board of Health.
358.....	Attic,	1	Board of Health.
358.....	Attic,	7	storage rooms.
359.....	Attic,	3	Draughting room.
361.....	Attic,	1	Moth proof room.
361.....	Attic,	2	Draughting rooms.
Total, .....		79	

To furnishing and suitably locating pneumatic themostats controlling dampers and valves as follows:

All room thermostats of special design, to be made from designs prepared by the architect.

All radiator valves to be placed on radiators in rooms to be controlled by room thermostats stated above.

All large dampers for controlling the temperature in the two chambers and adjacent rooms.

All cold air thermostats controlling two valves on each of the three heating coils.

All ducts thermostats controlling two valves on each of the tempering coils.

One steam or electric air compressor as may be preferred by the architect.

The above mentioned thermostats, valves and dampers are to be connected by means of suitable air piping to said compressors, the whole comprising a complete system of heating regulation for the building.

**Pneumatic Thermostats:** The thermostats throughout the building are to a special design as follows:

There are to be four distinct designs, that is one for the Senate Chamber, one for the House, one for the Supreme Court rooms, and one general design for the other rooms in the building.

The architect is to prepare and furnish designs for these thermostats to the contractor who will have patterns made and produce the thermostats. The finish of these thermostats to be in accordance with the wishes of the architect. Each thermostat is to be neatly and firmly attached to the wall at the location in the rooms indicated by the architect.

**Air Piping:** All air piping is to be of galvanized iron of the proper sizes. The general scheme of piping is to comprise three  $\frac{3}{4}$ -in. risers, one near the central dome and one in each wing. These risers are to be connected with half inch mains running on the floors tapering to mains of 3-8-in pipe, but in no case are mains to be smaller than 3-8-in. All return lines from thermostats to valves and dampers are to be of  $\frac{1}{8}$ -in. pipe. All pipe must be tight under pressure of 20 pounds to the square inch.

**Diaphragm Dampers:** These dampers are to be well made, having cast iron frames so that the blades cannot bind in case of twisting or setting of the galvanized iron ducts. These blades to be firmly rivetted to trunnions so that they cannot get out of adjustment, the trunnions to be made of brass. The dampers are to be operated by suitable diaphragm attachments which are either to be attached direct to the dampers frame or to a suitable support thereby.

**Diaphragm Valves:** These valves are to be made of the very best material, and in all cases to be provided with Jenkins discs, and guaranteed steam tight when subjected to the pressure for which they are intended, namely a pressure of not over twenty pounds to the square inch.

**Air Compressor:** There is to be furnished and placed in a suitable position, one duplex steam air compressor of ample capacity to operate the thermostat system throughout the building. This compressor to be erected on brick or concrete foundations.

There is to be furnished and erected also the necessary steam and air governors for maintaining the air at an uniform pressure.

There is also to be furnished and erected an air tank of not less than thirty gallons capacity.

If it shall appear in discussing the matter with the architect that an electric compressor may be more suitable than a steam compressor, the contractor agrees to substitute for the steam air compressor specified, an electric air compressor of suitable capacity for operating the plant, the whole to be approved by the architect.

**Guarantee:** The apparatus as described above is to be guaranteed as follows: That it shall comprise a complete system of heat controlled for the various rooms of the building in which the apparatus is placed.

That the thermostats shall fully open and close the respective valves and dampers to which they are attached at a variation of not more than one degree above or below the point at which the thermostats are set and as read at the location of the thermostats by thermometer attached thereto, and that the action of the same or the position of the valves or dampers shall not be affected by changes in atmospheric or barometrical pressures or external temperature when artificial heat is required.

That the air piping shall be practically tight under a pressure of twenty pounds to the square inch.

That the air pressure shall be of sufficient capacity to supply the waste of air for the entire system.

That all material shall be guaranteed against original defects of material and workmanship for a period of three years and the general care of the system for a period of one year from the date of the first operation.

These guarantees do not hold when changes of temperature arise from sources of heat other than that part of the heating apparatus to which the device is attached, or if the heating apparatus or heat regulating apparatus be improperly cared for according to the usual rules governing all classes mechanism.

In the following rooms:

#### First Floor.

100 Entrance lobby.	129 Messenger waiting room.
100 A main entrance outside.	130 Corporation deputy.
101 Men's reception room.	131 Aud. Genl. main dept.
102 Main vestibule.	132 Vault off room 131.
103 Ladies reception room.	133 Toilet.
104 Corridor to elevator "F."	134 S. E. corridor.
105 Grand hall.	135 Elevator and stair hall.
106 Toilet.	136 E. corridor main building.
107 Toilet.	137 Reception room Res. Clerk.
108 Closet off toilet.	138 Resident Clerk.
109 Closet off room 110.	138 AA closet off room 138.
110 Ante room to Speaker of House.	139 House library.
111 Speaker of House.	140 House caucas.
112 Laboratory.	141 Lobby.
113 Main clerical room Treas. Dept.	142 Toilet.
114 Toilet.	149 A Closet off room 140.
115 Messenger and waiting room.	141 A Closet off room 141.
116 Cashier.	143 Committee room.
117 State Treas.—Private.	144 Committee room.
118 State Treas.	145 Committee room.
119 S. E. vestibule.	146 Committee room.
120 Private passage.	147 Committee room.
121 Auditor General.	148 Corridor.
122 Auditor General—Private.	149 Committee room.
123 Deputy Auditor General.	150 Committee room.
124 Private corridor.	151 Committee room.
125 Toilet.	152 Committee room.
126 Reception room.	153 Committee room.
127 Stenographer.	154 Toilet.
128 Chief Clerk.	155 Lobby.

156 Senate caucus room.	173 Senate Hearing room.
156 A Closet off 156.	174 Stenographer.
156 B Closet.	175 Chairman of Senate Genl. Appro.
157 Senate library.	Com.
158 Senate Librarian.	176 Room A Correspondents.
159 West Corridor.	177 Room B Correspondents.
160 Elevator and Stair Hall.	178 Room C Correspondents.
161 N. W. Corridor.	179 Private passage.
161 A. Janitor Closet.	180 Toilet.
162 N. W. Vestibule.	181 Toilet.
163 Waiting Room.	182 Stenographers' room.
164 Clerks' Room.	183 Chairman Senate hearing.
165 Toilet.	184 House Hearing Room.
166 Board of Public Charities.	185 Waiting room.
167 Supply room.	186 Supt., P. B. & Grds.
168 Com. of Soldiers' and Orphans' Home.	187 Supt., P. B. & Grds.
169 Supt. of Public Printing.	187 A closet off 187.
170 Public Printing, Supply and Clerk room.	187 B closet off 187.
171 Committee room.	188 Toilet.
172 Waiting room.	189 Toilet.
	190 Corridor to elevator E.
	191 Stair-hall off Senate Library.

## Entresol Floor.

500 Passage to elevator.	525 Committee room.
501 Corridor to stairs.	526 Committee room.
502 S. E. Corridor.	527 Committee room.
503 Toilet.	528 Sergeant-at-arms, Senate.
504 Toilet.	529 Lobby.
505 Room E.	530 Corridor.
506 Room H.	531 Passage to elevator.
507 Room G.	532 Passage to stairs.
508 Room F.	533 N. W. Corridor.
509 Assembly.	533 A Janitor.
510 Storage & Sup. Dpt. Public Instc.	534 Toilet.
511 Clerks, Messengers & Stenographers.	535 Clerks.
511 A Waiting room.	536 Deputy Supt. of Mines
512 Private to Supt. of Public Instruction.	537 Stenographer.
513 Supt. of Public Instruction.	538 Messenger.
514 Room between 513 & 515.	539 Private corridor.
515 Deputy to Supt. of Public Insten.	540 Supt. of Mines.
516 Toilet.	541 Waiting room.
517 Lobby.	541 A Closet off 541.
518 Slop Sink.	542 Exhibit room.
519 House Sergeant-at-arms.	543 Fire proof room.
520 Committee room.	544 Committee room.
521 Committee room.	546 Committee room.
522 Committee room.	547 Committee room.
523 Committee room.	548 Toilet.
524 Committee room.	549 Toilet.
	550 Landing.

## Second Floor.

200 Lieut. Governor.	249 Senate Executive Clerk.
201 Toilet.	250 Journal Clerk.
202 Lieut. Gov. Recptn. room.	251 Senate Toilet and Wash Room.
203 Ladies' reception room.	252 Senate Locker and Wash Room.
204 Toilet.	252-A Closet off 252.
205 Vestibule to Ladies' Receptn room.	253 Lobby.
206 Vestibule to Lieut. Gov. room.	254 Senate Post Office.
207 Grand Hall.	255 Senate Telegraph Room.
208 Corridor F.	256 Senate Private ante-room.
209 Toilet.	257 Senate entrance.
210 Passage.	258 Senate correspondents.
211 House Telephone & Telegraph.	259 Senate Telephone Rooms.
212 House Ante-room.	260 Senate Public Ante-room.
213 House correspondents.	261 Alcove off 260.
214 House entrance.	262 Toilet.
215 House post office.	263 Corridor E.
216 House private Ante-room.	264 Senate.
217 Speaker of House.	265 Ante-room.
218 House of Representatives.	266 Library.
218 A Closet off 218.	267 Closet off 266.
219 Ante-room to Speaker.	268 Stair Hall.
220 Speaker Recptn. Room.	269 Toilet.
221 Clerks & Stenographers.	270 Passage behind Senate.
222 Page.	271 Barber Shop.
223 Toilet.	272 Reception room to C. C. Senate.
224 Governor.	273 Chief Clerk to Senate.
225 Governor Private Secty.	274 Transcribing room.
225 A Waiting Room.	275 President pro tem's room.
226 Passage.	276 President pro tem's room.
227 Passage.	277 Closet off 276.
228 Toilet.	278 Bureau of Industrial Statistics.
229 Grand Executive Recptn.	279 Clerks and Stenographers.
230 Atty. General.	280 Comparing room.
231 Deputy Atty. Gen'l.	281 Draughting room.
232 Law Library.	282 Vital Statistics.
233 Chief Clerk.	283 Supt. Bureau of Railways.
234 Stenographer.	283-A Closet off 283.
235 House Transcribing C. C.	284 Bureau of Railways.
236 Stairs to House.	285 Clerical room.
237 Toilet.	286 Clerical room.
238 Messenger and Waiting Room.	287 Assessments of taxes.
239 S. E. Corridor.	288 Stenographers.
240 Passage to Stairs.	289 Deputy Secretary of Internal Affairs.
241 Passage to Elevator.	290 Chief Clerk of Internal Affairs Dept.
242 Lobby.	290-A Closet off 290.
243 House Locker.	291 Secretary of Internal Affairs.
243 A Closet off 243.	291-A Closet off 291.
244 House Toilet and Wash Room.	292 Waiting Room.
245 House Transcribing Room.	293 Toilet.
246 House Chief Clerk.	294 Passage.
247 Corridor.	
248 Senate Chief Clerk.	



295 Toilet.	297-A Janitor.
296 Toilet.	298 Passage to elevator.
297 N. W. Corridor.	299 Passage to stairs.

## Third Floor.

300 Committee Room.	334 Bath.
301 Committee Room.	335 Entry to bath.
302 Committee Room.	336 Lobby.
303 Corridor F.	337 Museum Dept. of Agriculture.
303-A Closet off 303.	338 Passage to elevator.
304 Toilet.	339 Passage to stairs.
305 Toilet.	340 N. W. Corridor.
306 Reception room, private.	340-A Janitor.
307 Toilet.	341 Game Commission.
308 Reception room.	342 Closet.
309 Deputy of Commonwealth.	343 Passage.
310 Secretary of Commonwealth.	344 Toilet.
311 Messenger and Waiting Room.	345 Exhibit Room.
312 Chief Clerk.	346 Chief Clerk.
313 Commission Clerk.	347 Waiting Room.
314 Corporation Clerk.	348 Commission of Forestry.
315 State Dept. Main Clerical Room.	349 Reception Room.
315-A Waiting Room.	350 Agriculture Dept. of Storage.
316 Stenographer.	351 State Veterinarian.
317 Passage to elevator.	352 Economic Zoologist.
318 Passage to stairs.	353 Dairy and Food Commissioner.
319 S. E. Corridor.	354 Private to Chief Clerk Dept. Agri- culture.
320 Lobby.	355 Chief Clerk Dept. Ag.
321 Toilet.	356 Dep. Clerk Dept.
322 Toilet.	357 Stenographers.
323 Committee Room.	357-A Waiting Room.
324 Committee Room.	358 Private corridor.
325 Committee Room.	359 Sect. of Agriculture.
326 Committee Room.	360 Sect. Private.
327 Committee Room.	361 Private Passage.
328 Corridor.	362 Toilet.
329 Judges private corridor.	363 Toilet.
330 Judges Superior and Supreme Court.	364 Toilet.
331 Judges Superior and Supreme Court.	365 Toilet.
332 Judges Superior and Supreme Court.	366 Library Dept. Agriculture.
333 Judges Superior and Supreme Court.	367 Corridor E.
	367-A Closet off 367.

## Fourth Floor.

400 Committee Room.	404-D Corridor around dome.
401 Committee Room.	404-E Corridor around dome.
402 Committee Room.	405 Closet off room 404-B.
403 Closet off of 404-B.	406 Passage to elevator.
404-A Corridor around dome.	407 Passage to stairs.
404-B Corridor around dome.	408 S. E. Corridor.
404-C Corridor around dome.	409 Toilet.

410 Toilet.	442 Janitor.
411 Closet off 412.	443 Lobby.
412 Reception Room Adj. Gen.	443-A Closet off 443.
413 Adjutant Gen.	444 Gallery in House.
414 Chief Clerk.	445 Gallery in Senate.
415 Clerks and stenographers.	446 Committee Room.
416 Messenger and waiting room.	447 Committee Room.
417 Clerks.	448 Corridor.
418 Main clerical.	449 Committee Room.
419 Clerical and examination room.	450 Passage to elevator.
420 Toilet.	451 N. W. Corridor.
421 Dep. Banking Com.	451-A Janitor closet.
422 Banking Commissioner.	452 Closet off 453.
423 Insurance.	452-A Blue Prints.
424 Stenographer.	453 Committee Rooms.
425 Waiting Room.	454 Chief Dep. Public Roads.
426 Dep. Insurance Commissioner.	455 Committee Room.
427 Clerks Ins. Dept.	456 Committee Room.
428 Vault.	457 Committee Room.
429 Toilet.	458 Committee Room.
430 Lobby.	459 Committee Room.
430-A Closet off 430.	460 Statistician.
431 Private passage.	461 Chief Clerk.
432 Toilet.	462 Committee Room.
433 Records.	463 Cashier.
434 Attorneys Room.	464 Chief of Factory Ins.
435 Prothonotary.	465 Committee Room.
436 Corridor.	466 Committee room.
437 Supreme Court.	467 Toilet.
438 Consulting Room.	468 Toilet.
439 Judges ante-room.	469 Corridor E.
440 Toilet.	470 Committee Room.
441 Private passage.	475 Committee Room.

---

Office of the Attorney General,  
Harrisburg, Pa., Oct. 16, 1906.

To the Board of Public Grounds and Buildings, Harrisburg, Pa.:

Gentlemen: I enclose herewith a copy of a letter addressed to me by the State Treasurer and a copy of my reply under the dates of October 9th and 10th respectively.

If you have in your possession any records which will enable me to arrive at a determination of the facts which it is necessary that I should obtain before I can reach any legal conclusion, you will oblige me by sending me copies of the same at the earliest practicable moment. It is all-important that I should be furnished with a copy of the contracts made by your Board, together with the specifications upon which they were based, and all other information relative to advertising for bids, together with the records relating

to the opening of the bids and the awards, and such other papers as constitute in a legal sense a contract, particularly such papers as throw light upon the subject-matter of the contracts and the specifications which form a part thereof. I should also like to see the minutes of the Board during the time the action of your Board is contemporaneous with the work of the Capitol Building Commission.

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

Office of the Attorney General,  
Harrisburg, Pa., Oct. 16, 1906.

Hon. William A. Stone, President Capitol Building Commission,  
Pittsburg, Pa.:

Sir: I enclose herewith a copy of a letter addressed to me by the State Treasurer and a copy of my reply under the dates of October 9th and 10 respectively.

It is important to determine the exact facts before I can give a legal opinion or reach a definite legal conclusion. You will oblige me by sending me a copy of the contract or contracts made by the Capitol Building Commission with George F. Payne & Company or any sub-contractor, together with copies of such other records as would throw light upon the action of the Commission and as determining the extent and character of the work performed by it. Your early attention will very greatly oblige me.

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

Office of the Attorney General,  
Harrisburg, Pa., Oct. 16, 1906.

Hon. James M. Shumaker, Superintendent of Public Grounds and Buildings:

Sir: I enclose herewith a copy of a letter addressed to me by the State Treasurer and a copy of my reply under the dates of Oct. 9th and 10th respectively.

If you have in your possession any records which will enable me to arrive at a determination of the facts which it is necessary for me to obtain before I can reach any legal conclusion, you will oblige

me by sending me copies of the same at the earliest practical moment.

Very truly yours,

HAMPTON L. CARSON,

Attorney General.

---

Treasury Department,  
Harrisburg, October 31, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: I herewith transmit to you additional facts in regard to the building of the State Capitol. I have examined the signed copy of the specifications and the list of exceptions attached thereto, and find that it corroborates my former statement to you as to the several items which were specified in the original contract as a part of the building, contemplated to be built within the appropriation of \$4,000,000, made by the Legislature for that purpose.

I am still of the opinion that since these items were thus specified as a part of the building, the Board of Public Grounds and Buildings has exceeded its authority in ordering and paying for this work.

I would call your attention specifically to paragraphs 2, 3, 4 and 5, page 87, and to paragraph 6, page 59, and paragraph 1, page 60 as giving two instances of duplication.

The vault doors and vestibules referred to on page 87 are included in the contract with Payne & Company and paid for in the lump sum received by him. They have been paid for a second time by the Board of Public Grounds and Buildings, as shown in the accompanying voucher, and no allowance has been made to the State or the Capitol Commission.

The walls back of the rostrums of the Speaker of the House and the President of the Senate have not been finished, as described on page 59 and 60, and no allowance has been made for the omission.

I am convinced that other cases of this kind exist, but how many can only be determined by an investigation, such as I am not able to make without funds or time.

There have been no warrants presented to me for further payments upon this work, but in the statement issued by the Governor and the Auditor General (a copy of which is hereto attached) some unpaid bills are mentioned, and it is to possible warrants for these amounts that I referred in my former letter.

I have requested Mr. Bailey to send you the signed copy of the specifications and the exceptions thereto, which form a part of the contract with Payne & Company, and to which I have referred.

This, I believe covers the requests in your letter to me, and while

I regret the delay in transmitting the information, assure you that the delay has not been my fault.

I now desire to inform you of certain facts in regard to the expenditure of \$4,562,252.00 by the Board of Public Grounds and Buildings in furnishing the new Capitol.

I find on investigation that enormously excessive prices have been paid for nearly every item of this furniture.

A special schedule of 41 items, and a general schedule of 23 items were made and bids were asked upon them, duly advertised, and where the specifications are clear or samples exhibited, the bidding was competitive and fair prices were offered for every item advertised.

A bid was received from J. H. Sanderson on every item in both lists, and on those items, clearly specified, his bids were lower; many of them much lower than any other offered. For instance:

Item. Special Schedule.

2	Leather covered easy arm chair (Mahogany) "Series F,"....	\$32 65 net.
3	Leather covered swivel arm chair (Mahogany) "Series F,"..	28 80 net.
4	Clothes trees (Mahogany), .....	5 55 net.
5	Tables (Solid Mahogany) 6 feet by 3½ feet, "Series F," ....	21 60 net.
6	Couch (Mahogany) "Series F," .....	22 50 net.

and so on for 21 items. Some of these prices are 50 per cent. lower than any others bid.

I have requested Mr. Shumaker to hand you the original signed schedule, and you can verify these and the following facts:

Item 22 is ambiguously and indefinitely drawn to cover all furniture and fittings to be used in the building, as follows:

"Item 22—Designed furniture, fittings, furnishings and decorations, of either wood work, stone, marble, bronze, mosaic, glass and upholstery."

and the bidder is asked to bid "per foot" without a definite statement as to what a foot of furniture is. Mr. Sanderson, who seemed to be the only person who knew how to measure furniture, is the lowest bidder on this item at \$18.40 per foot, and the entire contract is awarded to him.

The results of this award was as follows:

There are six "leather covered easy arm chairs (mahogany) in my private office, which are accurately described in Item 2 (Special Schedule), and which were offered by Mr. Sanderson to the State under this item for \$32.65 each, and which were furnished by him under Item 22 by the foot at \$138.00 each, or more than four times the original offer.

I have made inquiries, but have as yet failed to learn exactly how to measure furniture, but there is a "leather covered mahogany

couch" in my private office which through apparently smaller in one dimension than that specified in Item 7 (General Schedule), and which was offered by Mr. Sanderson under this item for \$60.00 net, and furnished by him under Item 22 (Special Schedule) for \$386.40, or more than six times the competitive price.

I have also a mahogany roll-top desk in my office, somewhat smaller than the one specified in Item 6 of the general schedule, and offered to the State for \$88.00, and which was furnished under Item 22 (Special Schedule) for \$368.00, or more than four times the competitive price.

The nearest approach to a reasonable price in any of that furniture is in "swivel arm chairs," which are offered under Item 3 (Special Schedule) at \$28.80 each, and furnished under Item 22 (Special Schedule) at \$55.20 each for one type, and \$73.66 each for another type, or more than twice the competitive price.

I have asked the Auditor General to furnish you with the original bills and vouchers, which will show these prices.

The entire list of furniture is open to the same criticism, and since \$876,000.00 was paid for furniture, I am persuaded that at least \$500,000 of this sum is overcharge.

I now take up the matter of bronze chandeliers, and call your attention to Item 31, on the special schedule, which calls for bids on

"Designed special finished bronze, metal, gas and electric fixtures, Series E. F."

and upon which, with the design furnished, competitive bids could be made. This fixture was offered by Mr. Sanderson under Item 31 (Special Schedule) for \$193.50. Item 32 (Special Schedule) is made to indefinitely include Series E. F. and all other bronze decorations in the building, as follows:

"Designed bronze metal, for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and rechased, Series E. F."

and asks for bids per pound. The contract was awarded to Mr. Sanderson on the item, although his bid was 17 per cent. or \$350,000 higher than that of the International Manufacturing Supply Co., and all the bronze work was furnished and paid for under Item 32, special schedule.

This item calls for "mercurial gold finish" on all this work, while Item 31 does not. There is a chandelier in my office, which according to experts, is finished in the ordinary way and laquered. I therefore conclude that it is one of those described in Item 31, and offered to the State by Sanderson under Item 31 for \$193.50, including, as I am informed the glass globes and panels. This chandelier was furnished under Item 32 for \$1,941.21, without the glass, for

which an additional sum of \$568.80 must be added, making a total of \$2,510.01 for this chandelier, or more than twelve times the competitive price.

There are four types of bronze chandeliers in the Treasury Department, for which the prices were \$1,941.00, \$1,200.00, \$1,137.00 and \$837.00 respectively, without the glass. All of these are finished alike and lacquered, and the cheapest of them is more than four times the competitive price offered under Item 31, special schedule.

The contractor has been permitted to load these fixtures with metal to five or ten times their proper weight. A single side bracket, carrying one light in my office weighs 56 pounds, and cost \$263.00, without the glass globe, which cost \$46.00 additional.

The letting of this contract at a higher price than was offered has cost the State \$350,000, and the loading of the fixtures with unnecessary metal has cost at least \$1,000,000 more.

Item 24 (Special Schedule)—“Decorating and painting”—was also awarded to Sanderson at 50 per cent. more than the lowest bidder, resulting in a loss to the State of more than \$350,000.

The metallic filing cases were let by the “square foot,” and paid for by the “cubic foot” resulting in a loss to the State of more than \$1,000,000.

In the wainscoting of wood and marble the same proportion of overcharge is apparent.

This contract was signed by Governor Pennypacker, Auditor General Snyder and ex-State Treasurer Harris, and the payments under it were authorized and made by them and ex-State Treasurer Wm. M. Mathues. The vouchers were certified by the contractors, the architect, Mr. Huston, and the Superintendent of Public Grounds and Buildings, Mr. Shumaker.

The facts recited, the documentary evidences of which I have submitted, and the physical evidences of which are apparent in every room in the building, are conclusive evidence to my mind that a great wrong has been perpetrated, and that it could not have been accomplished without the collusion of the paid agents of the State.

I submit the facts to you as the legal officer of the State, and ask your advice—first as to the legality of the expenditures made by the Board of Public Grounds and Buildings in “completing the capitol,” and second—as to how I shall proceed to identify the parties who have manipulated these contracts, so as to defraud the State, and bring them to justice.

Respectfully yours,

WM. H. BERRY.

Office of the Attorney General,  
Harrisburg, Pa., October 31, 1906.

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

Dear Sir; I herewith acknowledge receipt of your communication of to-day, handed to me by Mr. Measey, of your Department, accompanied by a copy of the specifications of the Capitol Building—a printed volume of 212 pages—which, I understand from your letter, you secured for me from Mr. Bailey, the treasurer of the Capitol Building Commission, and the original articles of agreement made on the 30th of September, 1902, signed by the members of the Capitol Building Commission, appointed under the act of 18th of July, 1901, and George F. Payne and Charles G. Wetter, trading as George F. Payne & Company. These papers, taken together, relate to what was done by the contractors for the Capitol Building Commission.

These are the only papers which you send me, and I therefore turn to your letter to see what information you supply. You reiterate a conclusion that the Board of Public Grounds and Buildings—a body legally distinct from the Capitol Building Commission—has exceeded its authority in ordering and paying for work specified in the original contract. As I am not furnished with the means of determining the facts upon which your conclusion rests, I cannot without further evidence and investigation judge of the accuracy of your conclusion. It will be necessary for me to have evidence of the contracts made by the Board of Public Grounds and Buildings, and also of the payments made by that Board for items alleged to be contained in the Capitol Commission contract, and also of the payments made by the Treasurer upon warrants of the Auditor General for the items which you consider questionable.

Your conclusion is based upon the assumption that the Board of Public Buildings and Grounds has, in point of fact, paid sums of money which ought to have been paid by the Capitol Building Commission, and I call your attention to a circumstance which is at variance with your conclusion, to wit: That on the 22d of August, 1906, the architect certified as follows:

“And I further certify that no part of the materials furnished or labor performed under the contract between the Capitol Building Commission and George F. Payne & Co., above referred to, was paid for by the Board of Public Grounds and Buildings, excepting certain items omitted by the Capitol Building Commission, and for which full credit was given them under the provisions of said contract above referred to.”

The schedules of omissions and the prices credited to the Capitol Building Commission aggregate the sum of \$21,632, and the sched-



ules of additions approved by the Capitol Building Commission amount to the total sum of \$38,614.12. In the face of this positive certificate from the architect it is necessary to produce proof of the falsity of the certificate, and that proof must be substantial and convincing.

I shall relieve you of the burden of supplying the contracts with the Board of Public Grounds and Buildings by calling on that Board to send them to me, but you can substantially aid me by giving me a full list of the items which you conclude were included in the Capitol Commission contract and were, in your judgment, assumed by the Board of Public Grounds and Buildings, either in relief of the Capitol Building Commission or in the duplication of items contracted for by them or in addition thereto by being outside of the terms of that contract. In this way the examination can be narrowed to a vital point.

You will also oblige me by sending me from your own records a statement of the dates and amounts of the payments made by the Treasury Department upon the items which you dispute, together with the names of the persons receiving the money. This can be easily met by copies of the Treasury drafts and their endorsements, if you do not care to send the originals outside of your Department.

I observe that you state that the vaults, doors and vestibules referred to on page 87 of the Specifications, included in the contract with Payne & Company and paid for in a lump sum received by them, were paid for a second time by the Board of Public Grounds and Buildings, "as shown in the accompanying voucher," and no allowance has been made to the State or Capitol Building Commission.

Through inadvertence "the accompanying voucher" has not been sent to me. On looking at page 87 of the Specifications, I find that the vault doors and vestibule linings are specifically for vaults in the Auditor General's and Treasury Departments. I do not know, and cannot state, in the absence of vouchers, whether it relates to a payment for these vaults, or vaults elsewhere in the building, or whether there are or are not other vaults in the building, but it occurs to me that if there has been a second payment for this item, which is specific and capable of exact identification, and that George F. Payne & Company received payment therefor, Treasury drafts must be in the Treasury Department, drawn in favor of Payne & Company and duly endorsed by them. If you have not such a duplication of drafts, will you be kind enough to give me the means of determining the basis of your conclusion that the two drafts, if they exist, relate to the same subject-matter? If such a double payment has been made, of course there ought to be a

charge back against Payne & Company to the extent of the second payment, but without an examination of the entire debit and credit items in Payne & Company's account, I cannot determine the accuracy of your statement that "no allowance has been made to the State or the Capitol Commission."

In relation to the walls back of the rostra of the Speaker of the House and the President of the Senate, which have not been finished, as described on pages 59 and 60 of the printed specifications, and to the omission of an allowance therefor, will you kindly furnish me with the evidence of payment made to the contractor for this work, or point out to me in the account with Payne & Company the debit charge made by them for such work and the absence of a corresponding credit. The fact of payment must be evidenced by the original draft among the records of your Department. Of course I can understand that the draft may have included many other items. If such be the case, it is all the more necessary for me to inquire whether the draft, as paid, did, in point of fact, cover a charge made by Payne & Company for work not done, and for which no credit was allowed to the Commission. This will require further examination.

I observe that you state that you are convinced that other cases of this kind exist, but how many can be determined only by an investigation such as you are not able to make, being without funds or time. I am equally hard pressed as to time, and the fund allowed me by the Legislature for all of the contingent expenses of my Department for two year's amounts to the sum of \$1,400, upon which there are various calls. If you are willing to state the grounds upon which your conviction rests, perhaps I can aid you, for if the State has been wronged I am as urgent as yourself in the disposition to right the wrong so far as the means at my command permit.

I observe that you state that no warrants have been presented to you for further payments upon the work. If this be so, there is no question arising at present which calls for any expression of opinion upon my part. If the warrants should turn up and be presented to you for payment, and you have good grounds for objection, you will oblige me by presenting those grounds to my consideration, and, if the payee of the warrant is a person against whom an offset exists, or who has no right to the money, I will aid you in defending mandamus proceedings.

In regard to the remaining portion of your letter, in which you state the conclusion that enormously excessive prices have been paid, I have no means of judging without careful and laborious examination, which, in contracts of such magnitude and variety will necessarily occupy much time. It will require, of course, a careful examination of the schedules, the specifications, the draw-

ings and the plans of the architect, upon which bids were invited, of the bids that were made and of the award of the contracts to the lowest bidder, together with an accurate ascertainment as to whether or not the standard of judgment adopted by you in reaching a conclusion is sound. I will give to the matter the closest attention and when fully prepared will state to you the result of my examination. The words "completing the Capitol" are words calling for a legal interpretation, and interpretations can never be safely given upon abstract propositions but only upon definite facts.

As to the identification of "the parties who have manipulated those contracts so as to defraud the State and bring them to justice," I must first point out to you the gravity of such a charge. To defraud the State is unquestionably a crime. If committed by a single individual, he must be dealt with singly. If committed by a number of individuals, acting with a common purpose and in concert, and with the same illegal and wicked end in view, a charge of conspiracy would properly lie. The charge of conspiracy, under the law, is the easiest charge to make and the hardest charge to prove, and requires the utmost caution in proceeding step by step in order to demonstrate the common purpose and the unlawful end in view. A conspiracy may consist of an agreement between individuals to do an unlawful thing, the means employed being either legal or illegal, or it may be an agreement to do a legal thing by the employment of illegal means. I suggest that a proper step in the way of identification of the parties, if such exist, would be to secure all the information within your command of the names of the contractors, sub-contractors, and, if possible, actual employes and workmen, together with their residences, and a statement of the character of the work supplied or attempted to be done, care being taken not to confuse independent contractors with the relations of other parties or to involve a tangle of accounts and transactions which it would be difficult for a court or a jury to understand.

Before a charge of crime against one or many can be made by this Department, or before I can safely advise you that it is your duty to swear out a warrant, I must scrutinize the testimony, mindful that, while the rights of the Commonwealth are sacred and should be scrupulously guarded, the rights of individuals are equally so.

Very respectfully,

HAMPTON L. CARSON,  
Attorney General.

Office of the Attorney General,  
Harrisburg, Pa., November 1, 1906.

John H. Sanderson, Esq., Philadelphia, Pa.:

My Dear Sir: In a letter addressed to me by Hon. William H. Berry, State Treasurer, under date of October 31, 1906, there are certain paragraphs which affect you in regard to the work done by you in furnishing the Capitol. They are as follows:

"I find on investigation that enormously excessive prices have been paid for nearly every item of this furniture.

"A special schedule of 41 items, and a general schedule of 23 items were made and bids were asked upon them, duly advertised, and where the specifications are clear or samples exhibited, the bidding was competitive and fair prices were offered for every item advertised.

"A bid was received from J. H. Sanderson on every item on both lists, and on those items, clearly specified, his bids were lower; many of them much lower than any others offered. For instance:

"Special Schedule.

"Item 2. Leather covered easy arm chair (mahogany)

'Series F,' \$32.65 net.

"Item 3. Leather covered swivel arm chair (mahogany)

'Series F,' \$28.80 net..

"Item 4. Clothes tree (mahogany), \$5.55 net.

"Item 5. Tables (solid mahogany) 6 feet by 3½ feet,

'Series F,' \$21.60 net.

"Item 5. Couch (mahogany), 'Series F,' \$22.50 net.

and so on for 21 items. Some of these prices are 50 per cent. lower than any other bid.

"I have requested Mr. Shumaker to hand you the original signed schedule, and you can verify these and the following facts:

"Item 22 is ambiguously and indefinitely drawn to cover all furniture and fittings to be used in the building, as follows:

"'Item 22. Designed furniture, fittings, furnishings, and decorations, of either wood work, stone, marble, bronze, mosaic, glass, and upholstery.'

and the bidder is asked to bid 'per foot' without a definite statement as to what a foot of furniture is. Mr. Sanderson, who seemed to be the only person who knew how to measure furniture, is the lowest bidder on this item at \$18.40 per foot, and the entire contract is awarded to him.

"The results of this award was as follows:

"There are six 'leather covered easy arm chairs (mahogany)' in my private office, which are accurately described in Item 2 (special schedule), and which were offered by Mr. Sanderson to the State under this item for \$32.65 each, and which were furnished by him under Item 22 by the foot at \$138.00 each, or more than four times the original offer.

"I have made inquiries, but have as yet failed to learn exactly how to measure furniture, but there is a 'leather covered mahogany couch' in my private office which though apparently smaller in one dimension than that specified in Item 7 (general schedule), and which was offered by Mr. Sanderson under this item for \$60.00 net, and furnished by him under Item 22 (special schedule), for \$386.40, or more than six times the competitive price.

"I have also a mahogany roll-top desk in my office, somewhat smaller than the one specified in Item 6 of the general schedule, and offered to the State for \$88.00, and which was furnished under Item 22 (special schedule), for \$368.00, or more than four times the competitive price.

"The nearest approach to a reasonable price in any of that furniture is in 'swivel arm chairs,' which are offered under Item 3 (special schedule), at \$28.80 each, and furnished under Item 22 (special schedule), at \$55.20 each for one type, and \$73.66 each for another type, or more than twice the competitive price.

"I have asked the Auditor General to furnish you with the original bills and vouchers, which will show these prices.

"The entire list of furniture is open to the same criticism, and since \$876,000.00 was paid for furniture, I am persuaded that at least \$500,000.00 of this sum is overcharge.

"I now take up the matter of bronze chandeliers, and call your attention to Item 31, on the special schedule, which calls for bids on

"'Designed special finished bronze, metal, gas and electric fixtures, Series E.F,'

and upon which, with the design furnished, competitive bids could be made. This fixture was offered by Mr. Sanderson under Item 31 (special schedule), for \$193.50. Item 32 (special schedule), is made to indefinitely include Series E.F. and all other bronze decorations in the building, as follows:

"'Designed bronze metal, for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and re chased, Series E.F.'

and asks for bids per pound. The contract was awarded to Mr. Sanderson on the item, although his bid was 17 per cent., or \$350,000 higher than that of the Interna-

tional Manufacturing Supply Co., and all the bronze work was furnished and paid for under Item 32, special schedule.

"This item calls for 'mercurial gold finish' on all this work, while Item 31 does not. There is a chandelier in my office, which according to experts, is finished in the ordinary way and lacquered. I therefore conclude that it is one of those described in Item 31, and offered to the State by Sanderson under Item 31 for \$193.50, including, as I am informed the glass globes and panels. This chandelier was furnished under Item 32 for \$1,941.21, without the glass, for which an additional sum of \$568.80 must be added, making a total of \$2,510.01 for this chandelier, or more than twelve times the competitive price.

"There are four types of bronze chandeliers in the Treasury Department, for which the prices were \$1,941.00, \$1,200.00, \$1,137.00 and \$837.00 respectively, without the glass. All of these are furnished alike and lacquered, and the cheapest of them is more than four times the competitive price offered under Item 31, special schedule.

"The contractor has been permitted to load these fixtures with metal to five or ten times their proper weight. A single side bracket, carrying one light in my office weighs 56 pounds, and cost \$263.00, without the glass-globe, which cost \$46.00 additional.

"The letting of this contract at a higher price than was offered has cost the State \$350,000, and the loading of the fixtures with unnecessary metal has cost at least \$1,000,000 more.

"Item 24 (special schedule), 'decorating and painting,' was also awarded to Sanderson at 50 per cent. more than the lowest bidder, resulting in a loss to the State of more than \$350,000.00."

You will oblige me by giving this matter your early and careful consideration. I should like to know the basis of your bid "per foot" and also have from you a statement as to what you interpret that phrase to mean, and a statement as to how you acted upon it.

I should also like to know whether the articles of furniture described in Item No. 2 in the Special Schedule Series F, were actually furnished by you under Item 22, by the foot, and if so what was the reason for your doing so.

I should like the same kind of explanation with regard to articles specified in Item 7, General Schedule, and whether they were furnished under Item 22, Special Schedule, and if so, for what reason.

I put the same question with regard to Item 6 on the General Schedule and ask whether the articles were furnished under Item 22 on the Special Schedule.

So with regard to Item 3 of Special Schedule, and ask whether the articles were furnished under Item 22 of the same Schedule.

The same question is addressed to you in regard to Item 31 on the Special Schedule, Series E, F, and I should like to be advised of its relation to Item 32 of the Special Schedule.

I also would like to be advised as to the meaning of "mercurial gold finish," and whether in point of fact the chandeliers were finished in the ordinary way and lacquered.

I also call your special attention to Item 31 of the Special Schedule in its bearing upon the various types of bronze chandeliers and ask to be informed whether in point of fact these fixtures were loaded with metal to five or ten times their proper weight.

Again I call your attention to Item 24 of the Special Schedule relating to decorating and painting and ask for an explanation of your action in that regard.

I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Office of John H. Sanderson,  
Philadelphia, Pa., November 8, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: Your favor of the 1st inst. would have received earlier attention, but for my absence from the city.

In regard to the various questions you ask concerning the work furnished by me to the State Capitol I submit the following:

(1) Your first question is:

"I should like to know the basis of your bid 'per foot,' and also have from you a statement as to what you interpret that phrase to mean, and a statement as to how you acted upon it."

In answer thereto, I would say that the basis of my bid "per foot" was on surface measurements, and that is my interpretation of the phrase. For a statement as to how I acted upon this I would say that the measurements were taken by me from the finished articles which were furnished.

(2) Your second question is:

"I should also like to know whether the articles of furniture described in Item No. 2 in the special schedule, Series F, were actually furnished by you under Item No. 22, by the foot, and if so, what was the reason for your doing so."

The articles of furniture described in Item No. 2 of the special schedule, Series F, were not furnished by me under Item No. 22 by the foot. The six easy arm chairs in Mr. Berry's office, referred to by him in his letter to you as coming under Item No. 2, are "especially designed" articles, and were ordered under Item No. 22. Item No. 2 "leather covered easy arm chairs (mahogany) Series F," referred to by Mr. Berry, covers goods of a commercial character such as can be found in stock anywhere.

(3) The third question is:

"I should like the same kind of explanation with regard to articles specified in Item No. 7, general schedule, and whether they were furnished under Item No. 22, special schedule, and if so, for what reason."

Before I answer this question I want to call your attention to the fact that Mr. Berry was mistaken in saying that Item No. 7 of the general schedule required me to furnish "leather covered mahogany couch." He evidently means to refer to Item No. 9 of the general schedule as follows: "leather covered couch 3 feet by 6 feet 6 inches (solid mahogany) per sample." I say that Mr. Berry evidently made a mistake in mentioning in this connection Item No. 7, because that item is as follows: 'roll top desks (mahogany veneered) per sample.'"

My answer is the same as to question No. 2. The articles specified in Item No. 7 general schedule mentioned by Mr. Berry (he evidently meaning Item No. 9) were not furnished by me under Item No. 22, special schedule. None of the articles referred to in either Item No. 7 or Item No. 9 of the general schedule were furnished by me under Item No. 22, special schedule.

(4) Your fourth question is:

"I put the same question with regard to Item No. 6, on the general schedule and ask whether the articles were furnished under Item No. 22, on the special schedule."

My answer is the same as to the two preceding questions. The articles mentioned under Item No. 6 of the general schedule, as follows:

"Roll top desks  $5\frac{1}{2}$  by  $3\frac{1}{2}$  (mahogany) per sample" were not furnished by me under Item No. 22 on the special schedule.

(5) Your fifth question is:

"So with regard to Item No. 3, of special schedule, and ask whether the articles were furnished under Item No. 22, of the same schedule."



My answer is the same as to the preceding questions. The articles mentioned under Item No. 3 of the special schedule were not furnished by me under Item No. 22 of the special schedule.

(6) Your sixth question is: •

“The same question is addressed to you in regard to Item No. 31, on the special schedule, Series E.F., and I should like to be advised of its relation to Item No. 32, of the special schedule.”

In answer to this question I would say that the fixture referred to by Mr. Berry was not furnished under Item No. 31 of the special schedule “designed specially finished bronze, metal gas and electrical fixtures, Series E-F” for the reason that my order for this fixture specifies it to be furnished under Item No. 32 of the special schedule, which is “designed bronze metal for gas and electrical fixtures, hardware and ornamental, mercurial, gold finish, hand tooled and rechased, Series E-F.” This fixture was finished, hand tooled and rechased as required under Item No. 32 and the color was made in accordance with the specifications.

(7) Your seventh question is:

“I would also like to be advised as to the meaning of ‘mercurial gold finish,’ and whether in point of fact the chandeliers were finished in the ordinary way and lacquered.”

The term “mercurial gold finish” is a generic term applied to the application of pure gold to another metal, and where it is called for under the specifications in this work, it was applied in the most approved manner known to the arts. Such portions of the work which had to be colored in accordance with the specifications were lacquered gilt in the usual way to correspond to samples made for the architect's approval.

(8) Your eighth question is:

“I also call your special attention to Item No. 31, of the special schedule in its bearing upon the various types of bronze chandeliers and ask to be informed whether in point of fact these fixtures were loaded with metal to five or ten times their proper weight.”

The character of the designs and size of building necessarily called for bold and heavy work of a monumental character, and in the making of these fixtures there was no unnecessary weight added or anything used in their composition excepting that which was called for. The statements that lead or any other heavy material was added to these fixtures to increase the weight is absolutely false.

(9) Your ninth question is:

“Again I call your attention to Item No. 24, of the special schedule relating to decorating and painting, and ask for your explanation of your action in that regard.”

In answer to this question, I would say that my proposal for this work was accepted as submitted, and that work has been properly executed according to the terms of same.

Permit me to say in conclusion that before I executed this work I asked for and received a complete and specific order for each article to be furnished, each one of these orders specified the item number under which each article was to be furnished, and this specification of the item number necessarily fixed the price.

Having thus answered all your questions to the best of my ability, I beg further to say that I am at all times ready and willing to give you any additional information you may desire if it is within my power to do so.

Yours very truly,

JOHN H. SANDERSON.

---

Philadelphia, Pa., Nov. 1, 1906.

Hon. Hampton L. Carson, Attorney General of Pennsylvania, Harrisburg, Pa.

My dear Sir: I have read your letter in answer to my communication of yesterday, printed in the morning papers, and a copy of which, I presume, has been forwarded to my office in Harrisburg, and I wish to say, in reply, that I have purposely omitted many instances of overcharge which might have been cited, and confined myself to a comparatively few specific instances, which seemed to me to clearly establish the correctness of my conclusion that there has been a collusion of the representatives of the State with the contractors who furnished and completed the State Capitol. I have given you page and paragraph in the printed specifications to show the duplication of payments, and submitted to you a copy of the same, as requested. This was furnished me by the Treasurer of the Capitol Commission and handed to you by my representative. I have also specified several instances of overcharge, and demonstrated the fact that, while Mr. Sanderson was the lowest bidder on many of the items, the contract was let to him on the items in which the specification was indefinite, and in two of which he was the highest bidder, to the extent of \$700,000; that nearly all the purchases were made under these items, and that from four to ten prices were paid for them. The documents required to assure you

of the correctness of my statement are in the hands of the Auditor General and the Superintendent of Public Grounds and Buildings, namely, the receipts and vouchers itemizing the goods furnished being in the hands of the Auditor General, and the contract showing the method and facts as regard the award of the contract, in the hands of Mr. Shumaker, the Superintendent of Public Grounds and Buildings. Neither of these gentlemen would surrender the documents to my care. I have requested them both to hand them to you, and I think that had you waited an hour or two before answering me, or sent a messenger to the offices of these gentlemen, these documents would have been forthcoming. If not, a process of law would doubtless bring them. Until you have examined the documentary evidence to which I have referred, I understand quite well that you cannot intelligently answer or advise me. I therefore await your convenience. The failure of these gentlemen to promptly comply with my request leads me to fear that they are not altogether candid in their professions of a disposition to aid in bringing this matter to the public view speedily.

Very truly yours,

WILLIAM H. BERRY.

---

Office of the Attorney General,  
Harrisburg, Pa., Nov. 2, 1906.

Hon. William H. Berry, State Treasurer,

Dear Sir: I am in receipt of your letter of November 1st, mailed from Philadelphia, in reply to mine of October 31st, written from Harrisburg. It was due doubtless to your absence from the Capitol when I sent that letter from my desk to your Department that you were required to read it for the first time in the newspapers.

I regret that you should, in official correspondence, which calls for decorum, undertake to challenge gratuitously the good faith of other officers. They have responded to my calls most willingly and promptly. I expect shortly to be in receipt of an answer from John H. Sanderson, to whom I sent a copy of your letter, with a request for information.

I must again emphasize the thought that in law it is improper to start with a conclusion and thence infer the facts. It is usual first to ascertain the facts and then draw a conclusion. I cannot permit you to substitute your judgment upon the sufficiency of what is necessary for me to secure as legal evidence, that being a question of law with which you are not familiar. I am gratified to note that you state that, until I have examined the documentary evidence, you understand that I cannot intelligently answer or ad-

wise you. I again point out to you the importance of supplying me from the records of your Department with the data which I have called for, particularly the information relating to the drafts which have been paid, the dates of payments, and the names of parties to whom payments were made.

You can still further substantially aid me by giving me the names and addresses of the witnesses and experts with whom you have been presumably in conference upon the character of the work, so that I may question them as to their knowledge without lack of time.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Office of the Attorney General,  
Harrisburg, Pa., November 10, 1906.

John H. Sanderson, Esq., 622 Chestnut St., Philadelphia:

My Dear Sir: Permit me to acknowledge the receipt of your reply of November 8th to mine of the first instant.

Availing myself of your willingness to give me any additional information that I may desire, I now address to you for reply at your earliest convenience the following questions suggested by a careful consideration of your letter:

1st—Is the bid “per foot” on the basis of “surface measurements” the usual method of determining the value of articles of furniture? Is it known generally or partially to the trade? Have you yourself used it in other contracts outside of the Capitol contract? If you answer yes, how often have you used it and to what extent? If you know of others using it, was it in contracts similar to that of the Capitol contract?

2nd—How are these surface measurements taken? In an article like a chair or a sofa or lounge the seat and back of which are stuffed and covered with leather, either plain or tufted, what portions of the surface are used in order to determine the price? Is the measurement by the square foot or the linear foot? Is it confined to the wood work or does it include the leather and upholstery? In chairs or sofas not upholstered, how would the surface measurements be taken? If there is any difference in method, what effect would such difference have upon the price?

3rd—In a sale of articles by the piece, as shown in trade priced catalogues, or by sample in warehouses or sales rooms, what method is used to determine the price at which the article is offered?

4th—Did the specifications on which bids were invited point out the method by which values were to be determined?

5th—Was there any reference to the “per foot” rule in the specifications? If there was, in what words did it appear? If there was not, why was it adopted?

6th—Was there in the specifications anything which would render it plain that a different method of measurement and valuation could or should be adopted between the methods of valuing the articles called for by Item 2 and Item 22? If you answer yes, what was there which would so indicate it to the trade or to brother bidders?

7th—Were all articles described in Item No. 2 of the Special Schedule Series F valued by the piece? If so, what method was used in determining their value? I understand from your letter that all articles furnished under the above item were not furnished by the foot. This suggests the employment of another method. What was that method?

8th—What was the number and character of the articles furnished under item No. 2 of the Special Schedule Series F? Were the prices in all cases such as would belong to goods of a commercial character such as could be found in stock anywhere?

9th—What is the meaning of the phrase “specially designed” articles as used in connection with Item No. 22?

10th—Was the “per foot” rule used in determining the value of all articles furnished under Item No. 22?

11th—If you answer the preceding question in the affirmative, why was the “per foot” rule used in this connection?

12th—Why should a special design make it necessary to adopt the “per foot” rule? Why could not the articles have been furnished at so much a piece?

13th—Would or would not the “per foot” rule be equally applicable to the determining of the value of articles of a commercial character? If you answer yes, why is it not so used? If you answer no, why is it discarded?

14th—If the “per foot” rule is in point of fact used in the trade, what effect would it have upon the price as compared with the price per piece? If it is not so used in the trade, please state why it is not so used in the trade.

15th—What effect would a special design have upon the price of the articles furnished? Would it increase it or diminish it? If it increased it, what would be the items of increased cost? What percentage of increase of cost would there be over articles furnished under Item No. 2?

16th—Assuming that a special design involved the preparation of patterns not in stock, what increase in the cost of machinery or labor would be involved? Why would not this increased cost of both machinery and labor and workmanship, if added to the cost of material, plus a reasonable profit, measure the final price of the

article—or, to put it in other words, why would it not be possible to arrive at a price per piece for all articles furnished under Item No. 22 without adopting the “per foot” rule?

17th—How much did the application of the “per foot” rule add to the price of the article?

18th—What was the number and character of the articles furnished under Item No. 22? What proportion did this bear to articles furnished under Item No. 2? Was it in excess or was it less? If in excess, why?

19th—From whom did you receive a complete and specific order for each article to be furnished?

20th—If each one of the orders referred to in the preceding questions specified the item number, in what way would the specification of the item number necessarily fix the price? Would it involve a computation or was a price designated in the item number?

If the “per foot” rule was not specified, how would the price be fixed? If it was so specified, how would the computation be made?

21st—Did you have a contract for a specific number of articles at a specific price, or capable of being made specific, or was it a contract upon a quantum meruit or what the articles furnished would be reasonably worth?

22nd—What limit was there upon the number of articles to be furnished, or what limit was there upon the price?

23rd—Was the contract under Item No. 2 sublet by you? If so, what was the name of the sub-contractor? If there was more than one sub-contractor, please give a full list of such persons. If there were sub-contracts, what was the difference between the price paid by you and the price charged against the State?

24th—Was the contract under Item No. 22 sublet by you? If there were sub-contracts, please give the names of the sub-contractors and state the difference between the price paid by you to them and the prices charged the State.

25th—As to Items numbers 31 and 32, were there sub-contracts? If so, what were the names of the sub-contractors, and what was the difference between the prices paid by you to the sub-contractors and the prices charged by you against the State?

26th—Please consider all the foregoing questions repeated as to the adoption of the “per pound” standard adopted in the articles furnished and charged for by weight.

27th—Were you in partnership with anybody, either individual or corporate? If so, please give the names of your partners.

28th—Did any one have any interest with you in the profits, either directly or indirectly? If you answer in the affirmative, please give the names of the parties and state the extent of their interest.

Thanking you for your courtesy in your previous letter and relying upon your readiness and willingness to give me any additional information that I may desire, I reserve the right to put additional questions should further study of the subject require it.

Awaiting your reply, I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Office of John H. Sanderson,  
Philadelphia, Pa., November 17, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My Dear Sir: I beg to acknowledge the receipt of yours of the 10th inst. containing twenty-eight further questions for me to answer.

I herewith submit my answers to each question in regular order:

"1st. Is the bid 'per foot' on the basis of 'surface measurements' the usual method of determining the value of articles of furniture? Is it known generally or partially to the trade? Have you yourself used it in other contracts outside of the Capitol contract? If you answer yes, how often have you used it and to what extent? If you know of others using it, was it in contracts similar to that of the Capitol contract?"

Answer: It is not a usual method, but is frequently employed. I believe it is known generally to the trade. I have used it in other contracts; in fact it is applicable to all contracts where similar furnishings are required, and it is the only rule that can be applied to most of the work referred to under Item No. 22. As a matter of fact it has been the custom of the Board of Public Grounds and Buildings for many years to advertise and specify furniture and other articles to be furnished per foot, and I, as well as other contractors, have bid upon and furnished furniture and other articles under such schedules and specifications to the State of Pennsylvania.

"2d. How are these surface measurements taken? In an article like a chair or a sofa or lounge the seat and back of which are stuffed and covered with leather, either plain or tufted, what portions of the surface are used in order to determine the price? Is the measurement by the square foot or the linear foot? Is it confined to the woodwork or does it include the leather and upholstery? In chairs or sofas not upholstered, how would the surface measurements be taken? If there is any difference in method, what effect would such differences have upon the price?"

Answer: In answer to your second question, I would say that surface measurements are taken by the height, width and depth. In an article like a chair, sofa or lounge all portions of the surface, including leather or upholstery, are used in order to determine the price. In chairs and sofas not upholstered the measurements would be taken in the same way as described above, and there is no difference in method. It is the superficial area that is measured. Notwithstanding the fact that this method has been the custom in prior contracts, I was not allowed payment under this contract of my bills in all instances upon this basis, but was compelled to accept the measurement fixed by the architect.

“3d. In a sale of articles by the piece, as shown in trade priced catalogues, or by sample in warehouses or sales rooms, what method is used to determine the price at which the article is offered?”

Answer: The method used to determine the price of any article under this head is based (1) upon its cost and (2) upon the price it can be sold for in a competitive market.

“4th. Did the specifications on which bids were invited point out the method by which values were to be determined?”

Answer: Yes. Either by article or by measurement or by weight.

“5th. Was there any reference to the ‘per foot’ rule in the specifications? If there was, in what words did it appear? If there was not, why was it adopted?”

Answer: Yes. In a number of items bids were asked per foot, as follows:

Item No. 22. “Designed furniture, fittings, furnishings and decorations of either wood work, stone, marble, bronze, mosaic, glass and upholstery, Series F, per foot.”

Item No. 23. “Mural and art painting, Series F, per foot.”

Item No. 24. “Decorating and painting, Series F, per foot.”

Item No. 25. “Designed sofas, seating, etc., either upholstered wood, metal or stone, Series F, per foot.”

Item No. 27. “Designed special desks and tables, Series F, per foot.”

Item No. 28. “English laid interlocken wood and rubber parquetry flooring, Series F, per foot.”

Item No. 29. “Venetian blinds, wood or metal, Series F, per foot.”

Item No. 30. “Modeling or sculptor decoration, Series F, per foot.”

Item No. 35. “Special designed carpets, Sovommerie, imported Scotch axminster, Series C, per foot.”



Item No. 36. "Special rugs, antique-Persian, Kermanshaw, Tabiez and Berlin, Series C, per foot."

Item No. 37. "Special wilton corona carpets, Series C, per yard."

Item No. 38. "Designed curtains, draperies and panels Aubusson tapestry, and silk brocade, silk trimmings, Series F, per yard."

Item No. 40. "Faverille and bacarat glass, Series F, per foot."

-Item No. 41. "Moravian tiles, Series F, per foot."

"6th. Was there in the specifications anything which would render it plain that a different method of measurement and valuation could or should be adopted between the methods of valuing the articles called for by Item No. 2, and Item No. 22? If you answer yes, what was there which would so indicate it to the trade or to brother bidders?"

Answer: Yes. Item No. 2 calls for "leather covered easy arm chairs (mahogany) Series F, each"—a specific article at a definite price each, whereas Item No. 22 "designed furniture, fittings, furnishings and decorations of either wood work, stone, marble, bronze, mosaic, glass and upholstery, Series F, per foot," calls for specially designed articles of widely different character, at a price per foot. This to my mind makes it perfectly clear to any bidder that a different method of measurement or valuation would be adopted in the cases of articles furnished under the two items.

"7th. Were all articles described in Item No. 2 of the special schedule, Series F, valued by the piece? If so, what method was used of determining their value? I understand from your letter that all articles furnished under the above item were not furnished by the foot. This suggests the employment of another method. What was that method?"

Answer: Yes. They were valued by the piece. I do not know what method was used by the Board of Public Grounds and Buildings for determining their maximum value mentioned in the schedule, and on which I bid a certain percentage off, if that is what you mean. I only know that I offered and was willing to furnish them at a specific price each. I did not furnish any articles under Item No. 2 either by the piece or by the foot as none was ordered, and I would not have had any right to furnish and charge for them by the foot if they had been ordered.

"8th. What was the number and character of the articles furnished under Item No. 2 of the special schedule, Series F? Were the prices in all cases such as would belong to goods of a commercial character such as could be found in stock anywhere?"

Answer: As I said above in answer 7, I had no orders under Item

No. 2, and therefore did not furnish anything. However, the prices in my bid under that item covered articles of a commercial character such as could be found in stock anywhere.

"9th. What is the meaning of the phrase 'specially designed' articles as used in connection with Item No. 22?"

Answer: "Specially designed articles" are articles usually designed by an artist or architect to attain an ideal condition, to carry out in detail the ideas of fitness and appropriateness of each article to its surroundings, and to develop a harmonious effect which could not otherwise be obtained; something unusual, different from the ordinary, and with an individuality of its own, and their application has reference to a singular or particular condition or place which may never occur again. Specially designed articles are made from specially designed patterns constructed specially for that purpose, which patterns are of no general use after the specially designed articles are made.

"10th. Was the 'per foot' rule used in determining the value of all articles furnished under Item No. 22?"

Answer: Yes.

"11th. If you answer the preceding question in the affirmative, why was the 'per foot' rule used in this connection?"

Answer: Because the schedule required bids per foot.

"12th. Why should a special design make it necessary to adopt the 'per foot' rule? Why could not the articles have been furnished at so much a piece?"

Answer: A special design does not make it necessary to adopt the per foot rule. Some articles could have been furnished by the piece, but were not so specified in the schedule.

"13th. Would or would not the 'per foot' rule be equally applicable to the determining of the value of articles of a commercial character? If you answer yes, why is it not so used? If you answer no, why is it discarded?"

Answer: Yes. The per foot rule is equally applicable to commercial articles, but is rarely used because such articles are usually catalogued and illustrated, and therefore the price per piece is used, I presume, because it is more simple for the average buyer.

"14th. If the 'per foot' rule is in point of fact used in the trade, what effect would it have upon the price as compared with the price per piece? If it is not so used in the trade, please state why it is not so used?"

Answer: It does not have any effect. I have already stated that the reason the price per foot is not generally used is because it is not so simple.

“15th. What effect would a special design have upon the price of the article furnished? Would it increase it or diminish it? If it increased it, what would be the items of increased cost? What percentage of increase of cost would there be over articles furnished under Item No. 2?”

Answer: A specially designed article of any kind would necessarily cost more than a regular article by reason of number, character of design, unusual dimensions, character of finish, character of material, etc., etc. Therefore no fixed percentage of increased cost in any one article could be arrived at.

“16th. Assuming that a special design involved the preparation of patterns not in stock, what increase in the cost of machinery or labor would be involved? Why would not this increased cost both of machinery and labor and workmanship, if added to the cost of material, plus a reasonable profit, measure the final price of the article, or, to put it in other words, why would it not be possible to arrive at a price per piece for all articles furnished under Item No. 22, without adopting the ‘per foot’ rule?”

Answer: There is no certain limit as to increased cost of a specially designed article. It would vary with each article. As I said in answer 12, some of the articles under Item No. 22 could have been purchased by the piece, but were not so specified.

Others in the same Item could only be priced by measurement.

“17th. How much did the application of the ‘per foot’ rule add to the price of the article?”

Answer: The application of the per foot rule did not make the total cost of the articles under Item 22 any greater than if they had been specified in a different way.

“18th. What was the number and character of the articles furnished under Item No. 22? What proportion did this bear to articles furnished under Item No. 2? Was it in excess or was it less? If in excess, why?”

Answer: All “designed furniture, fittings, furnishings and decorations of either woodwork, stone, marble, bronze, mosaic, glass and upholstery” were furnished under Item No. 22. I have had no orders to furnish anything under Item No. 2. The number and character of the articles furnished under Item No. 22 will be found in the orders given by the Board of Public Grounds and Buildings, copies of which orders are in a book in the Auditor General’s Office.

"19th. From whom did you receive a complete and specific order for each article to be furnished?"

Answer: From the Board of Public Grounds and Buildings.

"20th. If each one of the orders referred to in the preceding question specified the item number, in what way would the specification of the item number necessarily fix the price? Would it involve a computation or was a price designated in the item number? If the 'per foot' rule was not specified, how would the price be fixed? If it was so specified, how would the computation be made?"

Answer: In answer to this question, I think the best way to make the matter clear is to insert here an exact copy of the special schedule issued by the Board of Public Grounds and Buildings upon which I bid.

Item No.	Estimated quantity required.	Description of Articles.	Maximum price.
SPECIAL FURNITURE, CARPET, FITTINGS AND DECORATION SCHEDULE FOR THE EQUIPMENT OF THE NEW CAPITOL, HARRISBURG, PA.			
1	.....	Book cases and wardrobes (Mahogany), Series F, .....per lineal foot,	\$37 00
2	.....	Leather covered easy arm chairs (Mahogany), Series F, .....each,	55 00
3	.....	Leather covered swivel arm chairs (Mahogany), Series F, .....each,	40 00
4	.....	Clothes trees (Mahogany), .....each,	15 00
5	.....	Tables, 6x3½ (solid Mahogany), Series F, .....each,	45 00
6	.....	Couch (Mahogany), Series F, .....each,	50 00
7	.....	Leather covered couch, 3 ft. x 6 ft. 6 in. (solid Mahogany) Series F, .....each,	100 00
8	.....	Office table, 6 feet (Mahogany), Series F, .....each,	120 00
9	.....	Wood seat arm chairs (Mahogany), Series F, .....each,	23 00
10	.....	Roll-top desks, 5 feet, quartered oak, highly polished with fine flake, .....each,	60 00
11	.....	Series F, .....each,	25 00
12	.....	Rotary chairs, oak, Series F, .....each,	25 00
13	.....	Flat-top desks, quartered oak, highly polished with fine flake, 6x4 feet, Series F, .....each,	28 00
14	.....	Flat-top desk, quartered oak, highly polished, with fine flake, double 6x4 feet, Series F, .....each,	45 00
15	.....	Letter press stands, oak mahogany finish, Series F, .....each,	13 00
16	.....	Oak clothes trees, Series F, .....each,	9 00
17	.....	Lambli Dictionary holder No. 6, complete, Series F, .....each,	9 00
18	.....	Mirror, French plate, 20x20, with frame to be selected, Series F, .....each,	12 00
19	.....	Card catalogue case, 13 drawers, Series F, .....each,	42 00
20	.....	Filing cabinet (right to select), for letters, 12 drawers, Series F, .....each,	75 00
21	.....	Case for insect specimens, specifications to be submitted, Series F, .....each,	75 00
22	.....	Designed decorative exterior lights, Series E-F, .....each,	15 00
23	.....	Designed furniture, fittings, furnishings and decorations of either woodwork, stone, marble, bronze, mosaic, glass and upholstery, Series F, .....per foot,	20 00
24	.....	Mural and art painting, Series F, .....per foot,	50 00
25	.....	Decorating and painting, Series F, .....per foot,	3 00
26	.....	Designed sofas, seating, etc., either upholstered wood, metal or stone, Series F, .....per foot,	15 00
27	.....	Designed State chairs, Series F, .....each,	150 00
28	.....	Designed special desks and tables, Series F, .....per foot,	12 00
29	.....	English laid interlocken wood and rubber parquetry flooring, Series F, .....per foot,	1 50
30	.....	Venitian blinds, wood or metal, Series F, .....per foot,	1 50
31	.....	Modeling or sculptor decoration, Series F, .....per foot,	100,00
32	.....	Designed special finished bronze-metal gas and electric fixtures, Series E-F, .....each,	225 00
33	.....	Designed bronze metal for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and re-chased, Series E-F, .....per pound,	5 00
	.....	Designed special finished white metal gas and electric fixtures, Series E-F, .....each,	150 00

Item No.	Estimated quantity required.	Description of Articles.	Maximum price.
34	.....	Special designed thermostat, .....each,	100 00
35	.....	Special designed carpets, Sovommerie, imported Scotch Axminster, Series C, .....per foot,	4 00
36	.....	Special rugs, Antique-Persian, Kermanshaw, Tabiez and Berlin, Series C, .....per foot,	3 00
37	.....	Special Wilton Corona carpets, Series C, .....per yard,	3 25
38	.....	Designed curtains, draperies and panels, Aubusson tapestry, and silk brocade, silk trimmings, Series F, .....per yard,	40 00
39	.....	Designed clock fittings or fixtures, Series F, .....each,	150 00
40	.....	Feverille and Bacaret glass, Series F, .....per foot,	30 00
41	.....	Moravian tiles, Series F, .....per foot,	3 00
Complete plans for all the furniture, fittings, decorations and furnishings and samples for the carpets can be seen at the office of J. M. Huston, Architect, 1102 Witherspoon Building, Philadelphia, Pa., where full instructions will be given. No bid above the limit herein given will be received. The Board of Public Grounds and Buildings reserve the right to reject any and all bids.			

If you will kindly refer to it you will see at once that opposite each item the maximum price is stipulated for all work coming under that item. I had no option to bid any other way. It would involve computation as the price was stipulated at so much per piece, per foot, per pound and per yard. Where the per foot rule was not specified, the price was fixed per article. Where the per foot rule was specified, the computation was made, as previously stated.

"21st. Did you have a contract for a specific number of articles at a specific price, or capable of being made specific, or was it a contract upon a quantum meruit, what the articles furnished would be reasonably worth?"

Answer: If you will examine the copy of the schedule submitted in answer to question No. 20, you will see that it does not mention any certain number of articles to be furnished under any item, but the bidder was called upon to offer to furnish any quantity of the articles mentioned in the different items that would be required for the "equipment of the new Capitol Building at Harrisburg." My bid which was accepted obliged me to furnish all the articles in the special schedule at the prices named, and this is evidenced by a letter sent to me at the time, copy of which follows:

"Office of the Superintendent of Public Grounds and Buildings,

Harrisburg, Pa., June 7, 1904.

"John H. Sanderson, Esq., Philadelphia:

"Dear Sir: At a meeting of the Board of Commissioners of Public Grounds and Buildings held this afternoon

you were awarded the contract for furnishing all supplies, articles and materials and performing all work required under the "special furniture, carpet, fittings and decoration schedule for the equipment of the new Capitol building, Harrisburg, Pa." embracing items 1 to 41 inclusive of said schedule.

"The Board has instructed me to direct you to commence work at once on the furniture and fittings for the Senate, House of Representatives and committee rooms, etc., belonging thereto, and I therefore direct you to furnish all materials and do all necessary work according to the plans and specifications of Joseph M. Huston, Architect, with diligence and dispatch.

Yours truly,

J. M. SHUMAKER, Supt."

"22d. What limit was there upon the number of articles to be furnished, or what limit was there upon the price?"

Answer: The number of articles to be furnished was limited by my specific orders, and the price for everything was limited by my accepted proposal, which was based on the items specified in the schedule.

"23d. Was the contract under Item No. 2 sublet by you? If so, what was the name of the sub-contractor? If there was more than one sub-contractor, please give a full list of such persons. If there were sub-contractors, what was the difference between the price paid by you and the price charged against the State?"

Answer: No. I furnished nothing under this item.

"24th. Was the contract under Item No. 22 sublet by you? If there were sub-contracts, please give the names of the sub-contractors and state the difference between the price paid by you to them and the prices charged the State."

Answer: My contract with the State required me to furnish the articles mentioned in the schedule upon which my bid was accepted at the prices therein named. The quantity of material that I furnished and the price charged for the same are set forth item by item in the orders given me by the Board of Public Grounds and Buildings, copies of which, as I have already said, are in the Auditor General's Office. With these before you, you can learn what was the number of articles I furnished and the price which I charged for the same, and if you can find in any respect any mistake made by me, I will cheerfully correct the same. I submit, however, with all due deference, that my rights under the contract and the State's rights thereunder are in no way affected by the cost to me of the articles, or by the fact that I did or did not sublet the contract.

"25th. As to Items numbers 31 and 32, were there sub-contracts? If so, what were the names of the sub-contractors, and what was the difference between the prices paid by you to the sub-contractors and the prices charged by you against the State?"

Answer: I give to this question the same answer which I gave to the preceding one.

"26th. Please consider all the foregoing questions repeated as to the adoption of the 'per pound' standard adopted in the articles furnished and charged for by weight."

Answer: The same reasons in a general way will apply and govern answers to queries per pound as given to queries per foot.

"27th. Were you in partnership with anybody, either individual or corporate? If so, please give the names of your partners?"

Answer: No.

"28th. Did any one have any interest with you in the profits, either directly or indirectly? If you answer in the affirmative, please give the names of the parties and state the extent of their interest."

Answer: No.

Anticipating any further queries that may occur to you in this connection, permit me to point out a very material fact which has been completely ignored or overlooked, and that is that the maximum price in the schedule per item was fixed by the Board, and therefore on such items as No. 22, for example, it was necessarily an average price, because it covered articles of a widely different character, cost, composition, design and manufacture, and although some of the articles furnished under that item actually cost a great deal more than the price bid, I made my proposal at a lower rate than those costs because other articles cost less, as I was compelled by the wording of the schedule to make an average price.

Public attention has been directed in every case to articles which any one can see did not cost as much as the average price, but no attention has been called to highly ornamental and expensive articles which cost far more than the average price, and the unjust criticism caused by, and the wide publicity given to, these groundless charges have been the means of paralyzing my business since the agitation began, and have caused me a serious financial loss.

I was compelled to make my bids on schedules prepared by the Board of Public Grounds and Bu'ldings, which schedules in the main followed the forms that had been used at Harrisburg for more than ten years. Other people had the same opportunity to bid with

these schedules before them, and they availed themselves of that opportunity. Bids were required for some articles by the piece, for some by the pound, for some by the foot, and for some by the yard. In this respect the schedules did not depart from what had been in prior schedules for years.

In conclusion let me say that in the Auditor General's Office may be found my bids that will show you for what I agreed to furnish each one of the articles under the different items. In the same office will be found certified copies of each bill that I presented, which will show what I declared I delivered, and what I declared was the price due for the article delivered. The State Treasurer's Office will show every dollar paid me. With all this data before you, it would seem to me that you would have no difficulty in discovering (1) whether I delivered the articles which I agreed to deliver, and (2) whether I charged the price which I agreed to charge. I think that you should go to that source of information, and make your investigation, and then report if you find that I have in any way whatever departed from the terms of my contract.

I now repeat that if you can find in any respect whatever that I have not fulfilled my contract with the State, I am fully responsible and willing to do it; but, if you find that I have fulfilled my contract, then I am entitled to a public declaration from you to that effect in order to vindicate the name of the direct representative of an honored and respected family, whose business record in this community extends over a period of nearly a century, whose integrity has never been questioned, and whose reputation has never been sullied with even the suspicion of having received a dishonest dollar.

I beg to remain,

Very truly yours,

JNO. H. SANDERSON.

---

Office of the Attorney General,  
Harrisburg, Pa., Nov. 11, 1906.

Hon. William H. Berry, State Treasurer.:

My Dear Sir: I am obliged to argue an important case for the Commonwealth to-morrow morning (Monday) in the Superior Court, involving the constitutionality of the Act of April 22, 1905, entitled "An Act to preserve the purity of the waters of the State for the protection of the public health"—a question of far-reaching significance. I will be unable to reach Harrisburg until late in the afternoon or evening. I drop you this line to say that it will best suit my official engagement—which are numerous and pressing, as I have an opinion to dictate after leaving court, affecting the In-



sane Hospital at Danville—to meet you in my Department on Tuesday morning at ten o'clock.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Office of the Attorney General,  
Harrisburg, Pa., November 12, 1906.

Joseph M. Huston, Esq., Witherspoon Building, Philadelphia:

My Dear Sir: As you were the architect of the Capitol, and prepared the specifications and the drawings upon which the advertising for bids in the matter of furnishing the Capitol were based, I now address to you the following questions:

First. How were these specifications prepared? Were they prepared by you? What knowledge had you, either theoretical or practical, of the methods of determining the proper basis upon which bids for furniture, and fixtures for lighting, should be invited?

Second. What knowledge had you of the per foot rule adopted with regard to furniture, under Schedule No. 22, and the per pound rule adopted with regard to chandeliers, side brackets, standards, castings, electroliers, glass adornments, and other fixtures, furnishings or fittings, and adornments relating to the lighting of large buildings, and official rooms, corridors and galleries, passageways, and vaults, before the preparation of the schedules, the drawings, and the specifications? If you had knowledge of the per foot and per pound rule in the above connections, from whom did you obtain such knowledge, and when did you acquire it?

Third. Had you ever known, in practice, the standards of per foot in the measuring of furniture, and of per pound in the weighing of chandeliers and other matters detailed in the previous question, prior to your preparation of these schedules? If you answer that you had known them to be used before, please state where they were used, and where they are now in use. If you answer that you had no such knowledge, be good enough to state by whom you were informed that such standards could be properly adopted, and the reasons given for such adoption. Give the names of all the persons with whom you had conversations, and state time, place and circumstances.

Fourth. If such standards of value were unknown to you, how did the thought occur to you to employ them? Who suggested them? With whom did you have conferences before the schedules were prepared? Did any of the actual bidders make such suggestion?

Fifth. Did John H. Sanderson make any such suggestion prior to the publication of invitations for bids? Were any such suggestions made by him before you prepared or while you were preparing the schedules?

Sixth. Have you any knowledge of the names of the bidders whose bids were opened? If so, please state their names, and state whether or not you had, previous to such advertising, any conference or conversation whatever with any one of such bidders, and, if so, state whether or not such conversations affected your judgment in the shaping of the schedules, and whether or not you adopted such suggestions, in whole or in part, and introduced them into the schedules?

Seventh. Why was there a distinction made between Item No. 2 and Item No. 22 of the Special Schedule? What, in your judgment, is that difference? What effect would it have upon the price? If it had no effect, why was it adopted? If it had the effect of increasing the price, why was it adopted? Who would benefit by the increase, if there was an increase?

Eighth. Why should a special design or drawing or model call for the per foot rule? Why could not the articles have been supplied under Item No. 2?

Ninth. Why was not such a rule adopted as to Item No. 2?

Tenth. What general or special reason was there for inviting it in Item No. 22?

Eleventh. The advertising for bids referred to the fact that the schedules, drawings and designs were at your office, open to examination by prospective bidders. State when you first put them upon exhibition; state who examined them; state when they were examined; state who saw you in relation to them; state whether or not, if such people saw you, any difficulty was expressed by any one or more of them as to a comprehension of the basis of the bids. If so, state what objections were made, who made them, when they were made, and why, if such were the case, the schedules were not reformed, or a report made to the Board of Public Grounds and Buildings that the schedules were unintelligible?

Twelfth. Please consider all the foregoing questions, as relating to the per foot rule, repeated as to the per pound rule, in cases where such rule was adopted.

Awaiting your reply, I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

November 19, 1906.

Hon. Hampton L. Carson, Attorney General.

My dear Sir: In answer to your letter of the twelfth instant, relative to the special furniture and fittings for the new Capitol building, I beg leave to reply as follows:

The specifications were prepared in the usual manner in my office, that is a description of the kind and quality of the articles required and that those specifications were prepared by me.

The knowledge I had relative to this subject was obtained during over twenty years in the practice of my profession.

Regarding my knowledge of the per pound and per foot rule, I would state that this principle of unit prices which you refer to was used by me in the specifications of the Capitol building of which you have a copy and which on page 18 read as follows: "Each bidder must state the unit prices called for on the blank form of proposal; and said prices will be used as a basis in the valuation of changes that may be required in the work and as further stated hereinbefore." The form of proposal, upon which estimates were given by contractors for the construction of the Capitol building contained the items upon which unit prices were required.

I enclose herewith a copy of this form of proposal for your information, which you will note contains sixteen items upon each of which an estimate is required, either by foot, yard, perch, thousand, or by the pound. I may also state that the above referred to clause in the specifications and the form of proposal are similar to those used by architects employed by the United States Government, other commonwealths, and city governments and in good private practice. This being my first public work of this character, when I saw the system had already been adopted in the schedules of the State for years past, containing items calling for articles by the foot and by the pound, it was evident to me that it should be continued and used to cover the equipment of the new Capitol building.

This method is generally used by the trades in making up prices for bids and is the common practice all over England.

I know in the practice of the arts, in all lines, the per foot rule is applied for the determining of costs and in the giving of bids by the above rule for wainscotings, bookcases, wardrobes, mantels, over-mantels, cabinets, etc. and in the schedule of 1904, the items for specially designed furniture for the new Capitol building were framed to extend this principle to tables, chairs, desks, and other articles of furniture.

I also know all metals are bought by the weight.

Upon investigation and research for lighting fixtures of good quality and methods for buying same, I found that one of the finest

examples for this quality of work and the method of having it performed so as to bring about the best ultimate result was placed in the residence of Mr. William H. Vanderbilt in New York, where all special lighting fixtures were paid for by the pound in preference to by the piece. And that a more satisfactory and artistic result was obtained by this method.

I had in mind a standard of metal work for this building which was beyond anything yet accomplished in this country. My precedent for the great bronze standards was obtained from the Pantheon at Rome and the Altar pieces in St. Mark's in Venice, where I had replicas made for my guidance in obtaining a standard of excellence in this work.

Generally stated, if a bidder desired to bid by the piece instead of by the foot he had the design of each piece and a specification at hand. He could find the number of feet from the drawings, which were made to scale, and reduce it to the foot rule as requested by the schedule without any difficulty. There are two systems of determining the quantity of materials, weights and measures, and in many instances the one is used to determine the other.

In regard to the conferences with prospective bidders who are seeking business in my office, there are hundreds of them in the course of a year. I do not recall any of the nature you suggest.

I searched many places for precedents in this country and Europe. I visited Albany, Providence, Boston, New York, Washington, and many other places and necessarily had many conversations relative to this work, for I have done nothing but think and talk of this matter for many years. The only conference I recall relative to the preparation of the schedules for the articles required for the equipment of the Capitol building prior to the publication of the schedules was in a meeting of the Board of Commissioners of Public Grounds and Buildings at which all members were present as well as yourself. I then went into the subject at length, and the board adopted the unit price system, and had it incorporated in the schedule.

I gave my professional judgment and I now think, as I did then, that it is the fairest system for the State on such unusual work.

No bidders made suggestions to me prior to the preparation of the schedule.

John H. Sanderson did not make any suggestions to me prior to the publication of invitations for bids or while schedules were being prepared.

I have no knowledge of the names of the bidders whose bids were opened, I have no record of them on file. Previous to such advertising, I had no conferences or conversations with such bidders. Having had no such conversations I was not affected in my judgment

by the same and did not adopt any suggestions by bidders in whole or in part and did not incorporate any such into the schedule.

I did not suggest the placing of Item 2 in the schedule and do not know what it was intended to cover. I would further state that I did not suggest any of the items from 1 to 20 inclusive in the special schedule.

I was asked by the board to prepare such items only as would be required for the special furniture and fittings which would come under my supervision.

My answer to your eighth, ninth, and tenth questions is the same as the above as they relate to Item 2.

A special design does not necessarily call for the per foot rule. Neither does it necessarily for the per piece rule; the unit price system having been adopted for the schedule it was so adopted to this furniture. A special design is made to order after detail drawings and is not ready made from stock. For example in a room the architectural style of which is French, the furniture would be designed in the French style. In a Doric room, Doric detail; in a Corinthian room, Corinthian detail; Greek room, Greek detail; English room, English detail; Gothic room, Gothic detail, etc.

This illustrates to you the theory of design which was applied to the Capitol building, the idea being to produce a harmony of design in each room.

The drawings and specifications were on exhibition in this office on the days authorized by the board from about May 7 to June 7, 1904. I did not keep a list of the various firms. estimating on the work. The drawings were examined during office hours from 9 A. M. to 5 P. M.

No objections are on file in this office and no communications of that character were received and therefore no report made to the board for the reforming of the schedule.

You will note on page 14 of the Capitol building specifications the following clause relative to verbal inquiries:

"Neither the commission nor the architect will be responsible in any manner for verbal answers given to inquiries regarding the meaning of drawings and specifications or for any verbal instructions, whether by themselves, their employes, or others, in advance of the award of the contract. The bidder will be responsible for any and every error in his proposal."

A similar clause is in all specifications for this work. The reason for such a clause is an architect must so protect himself and his clients against any such irregularities as your letter suggests.

I have devoted conscientiously five years of my life to this work.

I was called upon by the Commonwealth of Pennsylvania to design a Capitol commensurate with her dignity. My issue was to produce a building which would combine utility, stability, and beauty. I gave my best and all of the artisans and artists employed on the building have given their best, and I repudiate the insinuations that are being made. We have tried to do our duty honestly and well. If I have made any mistakes, they are mistakes of judgment, and not of intention, and I stand to do all I can to correct them. I based all of my judgments upon the highest precedents, and followed the instructions of my clients to the best of my ability.

In regard to extravagance, I say there is no extravagance,—there is richness of design. We must advance artistically as well as commercially, and this building is the artistic expression of the culture of this great State, which will tell of us to coming generations.

Art is not a necessity, but architecture is one of the last refining touches which strikes a problem, and it is richer when embellished by the sister arts of sculpture and painting as this building will be, and I believe thousands upon thousands of the good people of this and other states will enjoy this work for all the coming years and the total cost of it of \$1.00 per cubic foot, including all the sculpture, painting, furniture, document filing cases, vaults, lighting fixtures, art bronze, and all expenses, is reasonable and capable of being favorably compared with any other public or private structure of a like monumental character, and since, in the Capitol building, time was one of the important features of the contract, so in my instructions from the board, all diligence and dispatch would be used. The completion of this entire work within the time of 46 months, and occupied by all the departments of the State is unprecedented.

Hoping that the answers which I have given to your questions will be satisfactory to you, I am,

Very truly yours,

J. M. HUSTON..

---

Office of the Attorney General,  
Harrisburg, Pa., Nov. 13, 1906.

Messrs. Geo. F. Payne & Co., No. 401 S. Juniper St., Philadelphia, Pa.

Gentlemen: It has been alleged that there has been a duplication of payments in the sum of \$66,000, or thereabouts, for Vault Doors, Vestibules and Safes in the Capitol Building, and that you have given no proper credit therefor. To enable me to ascertain the

facts concerning this matter I address to you several questions, answers to which, at your earliest convenience will oblige me.

I observe on page 87 of the printed specifications of the Capitol Building, attached to the contract entered into by you with the Capitol Building Commission, organized under the Act of 18th of July, 1901 (P. L. 713), the following item:

“Vault Doors and Vestibules.

“The Contractor shall provide and erect in place complete the vault doors and vestibule linings for the vaults shown in the Auditor General's and Treasury Departments.

“Bolts for doors, bolt frame, bar and angle attachment, all handles, hinge tips, locks and faces to be polished and heavily nickel plated steel.

“The outer bolt doors to have first class four wheel combination lock, the vestibule doors to have approved flat key lock with four keys.

“The doors to be finished in approved colors, with Gold bands, with the Coat of Arms of Pennsylvania emblazoned in the centre of each vault door, and to be in every respect equal to the best class of safe vault work.

“All other portions of the iron and steel work to be painted in plain colors as directed.”

The work above alluded to falls entirely within the terms of your contract with the Capitol Building Commission. Be kind enough to inform me what work was done by you under this item, where it was placed, when it was placed, whether you were paid for it, what you were paid for it, when you were paid for it, and also by whom you were paid for it. I mean by the last question whether you were paid for it by the Treasurer of the Capitol Building Commission or by warrant drawn upon the State Treasury by the Auditor General upon bills approved by the Commissioner of Public Grounds and Buildings. I have been informed that this work has been actually done by the Penn Construction Company, and that that company was paid the sum of \$66,000 for furnished vaults, safes and vault doors, vaults in the Treasury Department and Auditor General's Department, two vaults in basement, and safes in other State Departments. If this be so—and it appears to be true from the evidence in the Auditor General's Office which I have examined—then please point out to me the manner in which you give credit for the sum in your final account or any preceding account.

Will you also inform me whether you had any contract or contracts with the Commissioners of Public Grounds and Buildings for the vault doors and vestibules in the Auditor General's and Treasury Departments, as detailed in the item in the Specifications above

quoted, in lieu of or in substitution for the material and labor required to be furnished by you, under your contract with the Capitol Building Commission. If you answer "yes," then state whether or not you relieved the Capitol Building Commission to that extent, either by failing to make a charge against it for work so done and material so furnished, or by a corresponding credit in the final settlement of your account with the Capitol Building Commission or any preceding accounts.

Please state further whether you made any contract or contracts with the Commissioners of Public Grounds and Buildings for vault doors and vestibules in any other part of the building than the Treasury Department and the Auditor General's Department, for which you have been paid by warrant drawn upon bills approved by the Commissioners of Public Grounds and Buildings.

The purposes of my inquiry is to ascertain whether or not you contracted with the Commissioners of Public Grounds and Buildings for vault doors and vestibules in the Auditor General's and Treasury Departments, and were in fact paid for this work by a warrant of the Auditor General upon bills approved by that Board, such work being called for by your contract with the Capitol Building Commission; or whether you contracted with the Commissioners of Public Grounds and Buildings for vaults and safes outside of and in addition to the work called for in your contract with the Capitol Building Commission or whether you were relieved of all these matters by the substitution of The Penn Construction Company.

Please attach to your answers a detailed list of all the debit items in your account relating to vaults, safes and vestibules whether rendered to the Capitol Building Commission or to the Commissioners of Public Grounds and Buildings, together with the dates and amounts of the various payments therefor, whether made by the Treasurer of the Capitol Building Commission or by the warrant of the Auditor General upon bills approved by the Board of Commissioners of Public Grounds and Buildings.

Or, if you were relieved of this portion of your original contract by the substitution of The Penn Construction Company, then please state how and in what manner and by whose authority such substitution took place, and how and in what manner the Commonwealth received a corresponding credit upon your contract, whether such contract was with the Capitol Building Commission or with the Commissioners of Public Grounds and Buildings.

Awaiting your reply, I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.



Philadelphia, November 16th, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Penna.

Dear Sir: We are in receipt of yours of the 13th inst. concerning payments for vault doors, vestibules and safes in the Capitol Building at Harrisburg, Penna., and beg leave to reply as follows:

In accordance with our contract with the Capitol Building Commission, we were to furnish vault doors and vestibules as called for on page No. 87 of the specifications.

These were not furnished by us for this reason. When the time arrived for us to place the contract for the vault doors and vestibules as specified, we were informed that a contract had been awarded the Penn Construction Company for putting in a complete system of burglar and fireproof vaults, of an entirely different character, and far more elaborate than those contemplated in our contract.

We were instructed by the Architect to build foundations for the vault system furnished by the Penn Construction Company, extending from the basement to the 1st floor level. These foundations were necessary to carry the additional weight and were clearly an extra.

An examination of the contract plans signed by us with the Capitol Building Commission, which are on file in Harrisburg, do not show nor indicate any foundations to be built under vaults. An inspection of the building will confirm our statement that foundations of concrete and brick were built.

These cost us \$881.26 using the unit prices approved by the Capitol Building Commission, and embodied in our contract, as a basis of cost.

Before submitting our estimate to the Capitol Building Commission (which was in September 1902) for the erection of this building, we received proposals from two reliable firms for the vault doors and vestibules, namely Messrs. Stiffel & Freeman, and Herrin-Hall-Marvin Safe Company. These proposals were respectively \$100.00, \$135.00 and \$173.54 per set of doors, making the total expense for two sets of doors \$200.00, \$270.00 and \$347.08.

We used the amount of \$270.00 in making up our proposal, as this included all work which we were required to perform.

The original proposals we submit herewith for your verification and examination.

We have made no allowance to the Capitol Building Commission for the omission of the vault doors, neither have we been paid by them nor by the Board of Public Grounds and Buildings, nor the State Treasurer for the cost of the foundations, which as stated above was \$881.26, showing that we have furnished the Commonwealth of Pennsylvania, materials in this item alone in excess of the contract requirements, amounting to \$611.26.

In making settlement with the Capitol Building Commission, we were prevented from collecting this amount, due to their ruling that they would pay for no extra work unless authorized and directed by said Commission, and as this particular work had already been done, we were estopped from collecting the same.

We would also state that we have not made any contract or contracts with the Commissioners of Public Grounds and Buildings for vault doors and vestibules in any part of the building, neither have we been paid any money for any such work.

Trusting the above will answer all your questions, and awaiting your further commands, we are

Very respectfully,

GEO. F. PAYNE & CO.

---

Philadelphia, August 22, 1902.

Messrs Geo. F. Payne & Co., No. 401 South Juniper St., Philadelphia.

Gentlemen: As the specifications for vault doors for the State Capitol Building, Harrisburg, do not call for any certain kind of doors but describe the finish, we enclose you cuts of No. 4 and No. 5 doors, either of which will answer the purpose.

We will furnish you the No. 4 doors, finished as described and set in place for One Hundred Dollars (\$100.00) per set.

These are the kind of doors that we have put into the present offices of the State Treasurer and Auditor General.

We will furnish you the No. 5 doors, which have more elaborate bolt work for the sum of one hundred thirty-five dollars (\$135.00).

Respectfully yours,

STIFFEL & FREEMAN.

Per Werkheisey.

---

Philadelphia, Pa., August 28, 1902.

Messrs. Geo. F. Payne & Company, 401 S. Juniper Street, Philadelphia:

Gentlemen: Referring to the two vault doors required for the Pennsylvania State Capitol Building, Harrisburg, Pa., we do hereby propose to build and deliver two vault doors, as per specifications enclosed herewith, for the sum of one hundred and seventy-three

dollars and fifty-four cents (\$173.54) per set; or, three hundred and forty-seven dollars and eight cents (\$347.08) for the two sets complete.

Very truly,

WALTER RYAN,  
Manager.

---

SPECIFICATIONS OF FIRE-PROOF VAULT DOOR FOR THE  
NEW STATE CAPITOL BUILDING, AT HARRISBURG, PA.

---

We propose to furnish for the Auditor General's and Treasury Department in the new State Capitol Building at Harrisburg, Pa., vault doors as follows:

One set to fit opening in wall eight feet high, four feet wide, three feet deep, and the other set for opening eight feet high, four feet wide, three feet, six inches deep.

Outer and inner frames of bar iron overlapping walls of vault on the outside and inside.

Outer door of plate iron with an angle iron bolt frame around inner edge. Four (4) round horizontal bolts extending from front to rear, one up and one down bolt.

Bolts checked by a four tumbler combination lock.

Inside doors folding of plate iron locked by flat bolts and key tumbler lock with four keys.

Vestibule lining of plate iron secured to the frames and corners front to rear covered by angles.

The doors and exposed part of vestibule to be puttied, rubbed down and painted a plain color with gold striping and varnished.

Locking bolts, carrying bars, throw bolt handle, hinge tips and dial nickel-plated.

The Coat of Arms of Pennsylvania to be emblazoned in center of each outside door.

The above vault doors to be delivered and erected in place complete.

HERRING-HALL-MARVIN SAFE CO.,

Walter Ryan,

Philadelphia, August 28, 1902.

Office of the Attorney General  
Harrisburg, Pa., Nov. 14, 1906.

The Pennsylvania Construction Company, Marietta, Pa.,

Gentlemen: I find, upon examination of the original vouchers in the possession of the Auditor General, a bill dated "Marietta, Penna., May 6, 1905," rendered to the State of Pennsylvania by The Penna. Construction Company (metallic furniture for banks, trust and insurance companies, public buildings, etc.), in the amount of \$33,000, "on account of furnishing of vaults, safes and vault doors for the departments of the State Treasury and Auditor General in accordance with contract."

On the 10th of May, 1905, the architect issued a certificate in favor of the Penna. Construction Co., that the company was entitled to a payment of \$33,000 "on account of its contract with the Commonwealth of Pennsylvania for work done and material delivered on vaults, safes and vault doors for the State Treasury and Auditor General's Departments at Capitol Building."

A warrant was drawn by the Auditor General upon the State Treasurer, dated June 13, 1903, in favor of the Pennsylvania Construction Company or order in this sum for "metallic furniture furnished for the vaults, safes and vault doors for the Auditor General's and Treasury Departments in the new Capitol Building." This warrant was endorsed in handwriting. "pay to Quaker City N. Bank, Philadelphia, or order, Penna. Construction Company, per E. B. Reinhold" with this stamp "pay any bank or order. Endorsements guaranteed. Quaker City National Bank, Philadelphia, W. D. Brelsford, Cashier."

I find also that a second bill was rendered by your company, dated January 29, 1906, to the Commonwealth, for "balance due for vaults and safes in connection with second section of steel furniture as follows: "Vaults for Treasury, room 116, Auditor General, room 132, treasurer's vault in basement, room 16, and Auditor General's vaults, basement, room 21, and safe in Auditor General's chief clerk's room, 128, Treasurer's Cashier, room 117, and State Department, Chief Clerk, room 312, \$33,000."

This bill is accompanied by an affidavit of the Pennsylvania Construction Company, by H. Burd Cassel, dated 7th of February, 1906, and the bill is certified as correct by the architect and by the Superintendent of Public Grounds and Buildings under date of February 5, 1906.

On the 3rd of February the architect certified that the Pennsylvania Construction Company was entitled to a payment of \$33,000, on account of its contract with the Commonwealth of Pennsylvania, for work done and materials delivered on safes and vaults in room 115, 132, 9, 24, 128, 117 and 312, Capitol Building, Harrisburg, Penna.

The warrant of the Auditor General, dated February 14, 1906, was drawn upon the State Treasurer, payable to The Pennsylvania Construction Company in the amount of \$33,000, for work done and materials furnished on safes and vaults in room 115, 132, 9, 24, 128, 117 and 312. This warrant is endorsed by stamp "The Penna. Construction Company, per E. L. Reinhold (written). Pay the Quaker City National Bank, Philadelphia, Pa., or order, Penn. Construction Company, per E. L. Reinhold, President, (written). Pay any bank or order. Endorsements guaranteed, The Quaker City National Bank, Philadelphia, W. D. Brelsford, Cashier."

Both of the architect's certificates are accompanied by receipts of your company, dated respectively June 13, 1905, and February 14, 1906.

Upon the foregoing facts I am led to inquire, in view of the fact that the bills are in gross amounts and do not specify the separate values of the vaults and linings so furnished.

1. Whether you will not, at your early convenience, give me the separate items furnished to the Auditor General's and Treasury Departments and the value of each item, so that I may know exactly what was the value of the work and material furnished to the Auditor General and Treasurer's Departments, as distinguished from vaults or safes or linings furnished to rooms in either of those departments.

2. Please give me the items and the values attached thereto or labor done and materials furnished to other rooms in the Capitol Building outside of and in addition to the State Treasurer's and Auditor General's Departments.

3. Will you also explain the difference between the first and the third endorsements upon the warrant of the Auditor General dated February 14th, 1906, the first being "The Penna. Construction Company, per E. L. Reinhold," and the second being "Penn Construction Co., per E. L. Reinhold, President." Are these two companies separate and distinct corporations? If so, will you kindly give me a reference to the date of the granting of the charters and explain whether the work was done by the first company or by the second if, in point of fact, they be two separate companies.

4. If they are not separate companies, why were there two endorsements, separated from each other by the endorsement of the Quaker City National Bank?

5. Was the work, as paid for by the foregoing warrants, done by your company or either of them or by sub-contractors and, if by sub-contractors, kindly furnish me the names of the corporations or of the individuals or firms which actually did the work?

6. If there were sub-contracts what was the difference between

the price charged by the sub-contractor or sub-contractors for doing the work and the price which your company charged to the State?

Awaiting your reply, I am,

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Lancaster, Pa., November 24, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.

My Dear Mr. Attorney: I herewith enclose you, on behalf of the Pennsylvania Construction Company, a formal, but I trust respectful and non-evasive, answer to your several interrogatories.

Inasmuch as you addressed this communication as law officer of the State, I felt it only fair that my clients should respond through their counsel.

In view of the fact that your letter to them was not mailed from Harrisburg until the morning of November 15th, though the contents of it were given to the newspapers and Associated Press on the afternoon of November 14th, I have felt that it was only fair to furnish, simultaneously with the mailing of this to you, copies of it to the Associated Press.

Very truly yours,

W. U. HENSEL.

---

Lancaster, Pa., November 24, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.

Sir: Your letter of November 14, 1906, addressed to The Pennsylvania Construction Company, was received by it at 5 P. M. on November 15th. The absence in the West of an official of the Penn Construction Company and a member of the firm of The Pennsylvania Construction Company, until lately, has prevented earlier reply to your communication. After consultation with the officers of the Penn Construction Company and the members of the firm of The Pennsylvania Construction Company, for all of whom I am counsel, and an ascertainment from them of the facts of the case, I beg to say, in answer to your statement of facts and six separate interrogatories:

The statement of facts in your communication preceding the said interrogatories is substantially correct. On behalf of my clients I answer your inquiries as follows:

1. Repeating a statement issued by The Pennsylvania Construc-

tion Company, furnished to the Associated Press of Philadelphia, and widely published as early as October 12, 1906:

"In 1902, under the provision of the Act of March 26, 1895, the Board of Commissioners of Public Grounds and Buildings, the only body constituted which is authorized to buy such supplies for the State, advertised, as provided by law, for metallic furniture: To this (The Pennsylvania Construction) Company, as the only, the lowest and an entirely responsible bidder, the contract was awarded—it having, by contract, the sole agency in Pennsylvania for the Jamestown (N. Y.), factory

"On January 14, 1903, by a resolution of the said Board this company was directed to prepare plans and specifications for the equipment of the various offices and departments of the new Capitol Building, the plans and specifications to be submitted to the heads of the various departments for their approval and for the approval of the Board of Public Grounds and Buildings.

"After these plans had been prepared by this company and approved by the heads of the departments and by the Board itself, the Commissioners adopted revised plans furnished by Architect Huston to conform to the general design of the building; formal notice was served upon this company that it must furnish the said furniture and fixtures, under the supervision of the said architect, and that the Auditor General be directed to make payment for the same, in part or in full, upon certificate of said architect, and that the said architect be empowered to make the detail of the cases in special rooms to conform to the architectural finish of said room at his discretion, and that the price on all special work which is not fully covered by the schedule under which this contract has been awarded the said Pennsylvania Construction Company shall be fully agreed upon between the said Pennsylvania Construction Company and said Joseph M. Huston, Architect, before any certificate for payment shall be issued."

A certified copy of a resolution to this effect, adopted by the Board of Public Building and Grounds April 5, 1904, was also served upon the Pennsylvania Construction Company sometime prior to May 27, 1904,

This company was directed by Mr. J. M. Huston, Architect, to manufacture and install certain vaults and safes in the offices of the State Treasurer and Auditor General; and, in answer to his requisition, this company submitted items, specifications and prices, which were accepted by the architect. The only contract upon this subject was the following bid and acceptance (the detailed specifications exhibiting "each item" can be obtained by you either from the architect or from the records of the Board of Public Grounds and Buildings):

Marietta, Pa., May 27, 1904.

Mr. J. M. Huston, Architect, Witherspoon Building, Philadelphia.

My Dear Mr. Huston: Under the contract awarded us for metallic fixtures for the State Capitol at Harrisburg, I find that you have directed us to manufacture and install a number of vaults and safes,

We will furnish the following items, detailed specifications for each being hereto attached:

**TREASURER'S VAULT.** We will construct and furnish one vault lining, outside dimensions of linings to be ten feet two inches long, six feet seven inches deep, eight feet two inches high, with vestibule and doors six and one-half inch thick. Lining to be made of interlocked rails with a steel plate cladding on the outside and a two plate lining on the inside of the rails. Also place two manganese steel safes therein, all of which are to be built in accordance with the attached sketch and specifications.

**AUDITOR GENERAL'S VAULT:** We will construct on a foundation one vault lining approximately twenty feet, four inches wide, seven feet deep, twelve feet four inches high; lining to be of one-half inch steel plate with vestibule, doors, locks, etc., all complete as per accompanying specifications and plans.

We will furnish two additional sets of vault doors for the basement vaults, one under the Treasurer's and one under the Auditor General's, of the same construction as specified for the Auditor General's vault, without day gate as mentioned in the specifications.

We will furnish two folding doors, fire-proof and burglar-proof safes approximately fifty-two inches wide by thirty-six inches high by thirty inches deep over all, and two safes of the same character approximately thirty-six inches wide by thirty-six inches high by thirty inches deep over all and two safes of the same character, approximately forty-two inches wide by thirty-six inches high by thirty inches deep, over all, all constructed and finished as per accompanying specifications and plans.

We will furnish all of the above work, erected in the State Capitol Building at Harrisburg, for the sum of (\$66,000.00) sixty-six thousand dollars.

All of the above proposition to you for the erection of the vaults, vestibules, doors and safes. contemplate all foundations to be furnished by you ready to receive said work. No mason work of any kind is included in the above propositions. You are also to provide for a proper opening to receive said work and give us the required space and place to work, and all necessary permits for placing same.

We are to secure our own measurements, and provide labor and



material, shoring, etc., and be responsible for all damage, property and personal, caused by placing of this work.

You will note that we have attached to the various plans the specifications belonging thereto, and have numbered same to correspond with the proposition. All of which, we trust, will be fully intelligible. The specifications will show upon what doors time locks are to be placed. However, that only occurs in one instance, viz., the Treasurer's vault.

You will note a detailed drawing showing the inside of the vault door, which is to be used for the Treasurer's vault.

We believe this proposition you will find fully explanatory.

All of the above work to be subject to your approval,

Yours very truly,

PENNA. CONSTRUCTION CO.,

Accepted

By H. Burd Cassel.

---

J. M. Huston, Architect, June 20, 1904.

You will observe that this is a lump or gross contract. It was not specified by items, nor can the items be segregated; nor is the cost of each item a relevant subject of inquiry. The price submitted and agreed upon was as a whole; and, as the vaults or safes or linings furnished to each particular room are defined in the contract, and as the work was done in accordance with the contract and the specifications, I know of no reason why it should now be itemized, unless there is an allegation that in some respect the contract was not fulfilled, the specifications were not complied with, or that some item paid for was not furnished. The two warrants for \$33,000 each to which you refer were, first, a payment on account, and second, payment of the balance in full of this contract price.

2. In answer to your inquiry for items of labor done and material furnished to other rooms in the Capitol building, I beg to say that for every article furnished by this company to the State Capitol a bill was duly rendered, and the same is on file with the Board of Public Grounds and Buildings, which files are accessible to you, and which are the best evidence of the articles furnished and the prices charged. In this connection I beg to repeat the averments in the statement published by this company October 12, 1906:

"From the time the contract was ordered until it was completed this company has been subject to the control of that contract, and to the provisions of the law of 1895, under which it is bound to furnish greater or less quantities when required than the schedule contemplates, and to submit to such changes and modifications as

the Commissioners order. Neither by suggestion, nor solicitation, nor by any kind of control, did this company influence the designs or quantities of supplies furnished. In all cases covered by the schedule and contract the prices were fixed; and in case of all special or additional orders, proposals and prices were duly submitted to the Board and no contract was made, or articles furnished, until after the price had been approved and agreed upon.

"Every item for which a bill has been rendered by this company to the Commonwealth, and paid by it has been the subject of legitimate contract. As to the quantities ordered, and the designs adopted, it has been wholly subject to the control and direction of the Board of Public Grounds and Buildings" from whose records you can verify these statements and obtain the detailed information asked for.

3 and 4. With regard to your inquires as to why a draft or warrant drawn to the order of The Pennsylvania Construction Company was subsequently endorsed by The Penn Construction Company, I beg to again refer you to the statement published more than a month ago, in which it is said:

"The Pennsylvania Construction Company, after being in business, as a partnership, for twelve years, was incorporated May 18, 1905, under the corporate name 'Penn Construction Company'—the firm name having already been appropriated by another corporation. Its only stockholders are the same persons who composed the firm—each having an equal interest—E. L. Reinhold, President; E. B. Reinhold, Secretary, and H. Burd Cassel, Treasurer. The contracts of the Commonwealth were entirely with the partnership."

All contracts for the Capitol supplies having been made with The Pennsylvania Construction Company, warrants of the Commonwealth were drawn only in its favor, but that company, having gone out of business—except for the purposes of completing its contracts with the State—and keeping no separate bank account, its warrants for convenience of banking were endorsed over to its successor, The Penn Construction Company, whose stockholders are the same persons, their holdings being in the same proportion as in the partnership.

5 and 6. Neither the Penn Construction nor The Pennsylvania Construction Company has any manufacturing plant. Each of them has been the general agent for the State of Pennsylvania of the Jamestown Company, which is a manufacturing company. All contracts made by that company in Pennsylvania are made through The Penn Construction Company. All supplies furnished by the Penn Construction Company are ordered by it from the Jamestown Company; but, as this contract of the Commonwealth was with The Pennsylvania Construction Company alone, it did not sub-con-

tract otherwise than that it purchased the supplies or had them made for it by the Jamestown company. Inasmuch as all contracts with the Commonwealth were express contracts for a stipulated price, I do not understand that it is the subject of relevant inquiry what profit, if any, was made by The Pennsylvania Construction Company. It furnished exactly what it contracted to furnish, upon proposals and specifications previously submitted and approved, and at the prices agreed upon in advance.

Respectfully yours,

W. U. HENSEL,

Counsel for The Pennsylvania Construction Company and The Penn Construction Company.

---

Office of the Attorney General,  
Harrisburg, Pa., Nov. 14, 1906.

Hon. William A. Stone, President of the Capitol Building Commission, Pittsburgh, Pa.

My dear Sir: Will you kindly oblige me at the earliest practicable moment by sending me a complete list and exact copies of all the modifications of the Plans and Specifications for the Capitol Building at Harrisburg which were authorized by your Commission?

I find on page 87 of the printed Specifications the following item:

“Vault Doors and Vestibules.

“The contractor shall provide and erect in place complete the vault doors and vestibule linings for the vaults shown in the Auditor General's and Treasury Departments.

“Bolts for doors, bolt frame, bar and angle attachment, all handles, hinge tips, locks and faces to be polished and heavily nickel plated steel.

“The outer bolt doors to have first class four wheel combination lock, the vestibule doors to have approved flat key lock with four keys.

“The doors to be finished in approved colors, with gold bands, with the coat of arms of Pennsylvania emblazoned in the centre of each vault door, and to be in every respect equal to the best class of safe and vault work.

“All other portions of the iron and steel work to be painted in plain colors as directed.”

In a type written paper (which was handed to me by the Auditor General), entitled “Official Record of Modifications made in Plans and specifications for Capitol Building to date”—the last date being February 24th, 1905—I do not find any authorized change in the

foregoing item, nor anything which by any possibility of construction could suggest an authorized change.

I am uncertain whether this paper is complete, as it is not verified by signature; hence my request as contained in the first paragraph of this letter.

Upon the examination of the vouchers in the hands of the Auditor General I find two certificates of the Architect, dated respectively May 16th, 1905 and February 3rd, 1906, each in the sum of \$33,000 in favor of the Pennsylvania Construction Company, the first being "On account of its contract with the Commonwealth of Pennsylvania for work done and material delivered on vaults, safes and vault doors for State Treasurer's and Auditor General's Departments at Capitol Building"; the second being "On account of its contract with the Commonwealth of Pennsylvania for work done and material delivered on safes and vaults in Rooms 115, 132, 9, 24, 128, 117, and 312, Capitol Building, Harrisburg.

The first certificate was accompanied by a receipt, dated June 12, 1905, and signed "Pennsylvania Construction Company, per E. B. Reinhold."

The second certificate was accompanied by a receipt, dated February 14th, 1906, signed "Pennsylvania Construction Company, per H. Burd Cassel."

I have examined the warrants issued by the Auditor General in favor of the Pennsylvania Construction Company, showing such payments, and the amounts and the dates correspond.

This indicates that the vaults and safes, as described in the Architect's certificates, were paid for by the warrants of the Auditor General.

As the description in the contract of George F. Payne & Co. with your Commission, as contained in the extract quoted in the second paragraph of this letter, and the description in the Architect's certificates, as given to the Pennsylvania Construction Company, do not correspond exactly in terms—the latter being slightly broader than the former by the inclusion of a room or rooms not connected with the Treasury Department or the Auditor General's Department.—I am led to inquire of you as to that part which is clearly under the terms of the contract of your Commission with George F. Payne & Co.

1. Whether any bill was presented by George F. Payne & Co. to your Commission for vaults and safes in the Treasury Department and Auditor General's Department; or, if not in the shape of a separate bill.

2. Whether any debit item appeared against your Commission in any account either partially or finally rendered to you by George F. Payne & Co.

3. Whether your Treasurer ever made any payment to Payne & Co. for safes and vaults.

4. Whether, if such payment or payments were made, what was the reason therefor.

5. Whether, if such payment or payments were made, it is not an error?

6. If such error was discovered, was it charged back against Payne & Co.?

7. Whether, if not so charged back, you do not think it should be so charged?

Desiring in the investigation I am making that the exact truth shall be elicited and no injustice done to anyone, I ask further:

8. Whether, in point of fact, George F. Payne & Co. were relieved by your Commission of this part of their contract; and, if so,

9. How and in what manner they were so relieved, and, if so relieved,

10. What credit did Payne & Co. give your Commission in settlement, either upon partial or final account.

Awaiting your reply I am,

Very truly yours,

Hampton L. Carson  
Attorney General.

---

Pittsburgh, Nov. 19, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My Dear Sir:—Replying to your letter of inquiry of the 14th, instant, I have the honor to give you the following information:

I enclose herewith extracts from the minutes of the Capitol Building Commission covering certain modifications of the plans and specifications for the Capitol Building Commission, which were authorized by the Capitol Building Commission. I also enclose a copy of the certificate of the architect to the effect that the plans and specifications referred to were complied with in every particular saving and excepting certain alterations, additions and omissions itemized in said certificate.

Our contract with George F. Payne & Co. was for the construction of the entire building, they to furnish all the material and all labor, with the exception of certain decorative work of Mr. Abbey, Miss Oakley and Mr. Bernard.

We paid George F. Payne & Co. on certificates or estimates by the Architect of the work done, as per our contract, which required us to pay as the work progressed. These certificates or estimates did not recite that certain items in the specifications were completed

or in place, but that a certain per cent. or portion of the work had been done, and under the contract George F. Payne & Co. was entitled to so much money. George F. Payne & Co. did not render bills, nor were they paid on bills, but paid on certificates of the Architect as the work progressed, namely, certificates certifying that under the contract a certain per cent. of the work had been done and that the contractor was entitled to so much money.

The specifications regarding the vault doors and vestibules is correctly stated as part of the work undertaken by George F. Payne & Co., for our Commission. So far as the Capitol Building Commission knows no alteration, change or modification was ever made on this work, and no credits were allowed to the Commission on account thereof, and no report was ever made to the Commission of any failure to put the work in or to furnish the material, and no knowledge ever came to the Building Commission concerning it; on the contrary, the Architect, Mr. Huston, and Mr. Bernard Green, our consulting engineer, certified that the plans and specifications had been complied with, with the exception of certain authorized alterations and omissions, among which the item of vault doors and vestibules does not appear. So far as we had information and knowledge that portion of our specifications calling for the installation of vault doors and vestibules was complied with, and when the building was completed finally, and accepted by us, these items were in place.

The work of the Capitol Building Commission was practically completed in November or December of 1905.

Early in the Spring of 1903, the Capitol Building Commission furnished the Board of Public Buildings and Grounds with a copy of the contract with George F. Payne & Co., and a copy of the specifications.

The Capitol Building Commission was not furnished by the Board of Public Buildings and Grounds with a copy of their plans and specifications, nor did the Commission know anything about their work, or have anything whatever to do with it. The Commission, therefore, have no knowledge as to whether any portion of their work was duplicated in payment by the Board of Public Buildings and Grounds.

The final settlement with the contractors was made after a certificate was given by the Architect, confirmed and ratified by Mr. Bernard Green, that the building was completed in accordance with the plans and specifications, as modified.

Yours very respectfully,

William A. Stone.

Harrisburg, November 27th, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir:—I have called your attention in a general way to the matter of decorating and painting in the new Capitol, for which according to the statement of the Governor and Auditor General, the sum of \$779,472.96 was paid by the Board of Public Grounds and Buildings, and I now ask you to specially notice paragraph 2, page 57 of the specifications, which reads as follows:

“All plain plaster walls and ceilings of all rooms and corridors throughout the basement, first entresol, second, third and fourth floors *not otherwise specified* shall be given four coats of white lead and linseed oil paint, the last coat to be stippled down to a fine egg shell finish in colors as directed.”

(The italics are mine.)

The work here designated was excepted, and an allowance of \$25,000 was made therefor in the payment to Payne & Company.

The following paragraphs 3, 4, 5, and 6, page 57; and 1, 2, 3, 4, and 5, page 58 indicate certain decorative work which is “otherwise specified,” and which was not excepted, and therefore included in the contract of Payne & Company and paid for in the lump sum received by them. They read as follows:

“DECORATION AND FINISH OF PLASTER WALLS AND CEILINGS IN THE GRAND EXECUTIVE RECEPTION ROOM, HOUSE OF REPRESENTATIVES, SENATE, SUPREME AND SUPERIOR COURT ROOM, AND THE GRAND ROTUNDA AND DOME.”

---

“Ceiling and Wall Painting.”

3: “After all plain plaster surfaces not otherwise specified have been made true and perfect in every particular, they shall be given two priming coats of best quality B. B. English White Lead or equal quality, broken and rendered down to the proper consistency, suitable for the application of the same with the finest quality of linseed oil only. Turpentine to be used only as a thinner.”

4: “After the priming coats are completed and thoroughly dry, all flat and plain moulded surfaces shall be covered with the best quality of unbleached muslin, put on with a mastic consisting of pure white lead, oil and varnish, and rolled down to a perfectly flat surface free from all blisters and other defects. After

which all muslin shall receive two coats of white lead and linseed oil priming as above specified."

5: "The two coats of priming on all ornamental plaster work shall be so applied that the modeled and carved parts will be as sharp and distinct as before the application of these coats."

6: "All color decorations shall be applied on all the above surfaces with three coats of Windsor and Newton's tube

1: Colors in transparent tones, or as many more coats as may be necessary to produce the depth of coloring for the proper iridescent tones of colors required."

2: "All high lights of projecting and enriched members shall be gilded with the best quality pure gold leaf and all gilding shall be protected by a coat of gold leaf preservative."

3: "All color surfaces shall be flatted down to a dull smooth finish with a thin coat of white wax."

4: "The groined coves at the intersection of the walls and ceilings in the Senate and House of Representatives shall be covered with aluminum leaf and glazed into gold of a tone which will harmonize with the balance of the decorations, after which these surfaces shall be laid off to imitate gold mosaic blocks of about three-fourth inch tessere size. The prevailing tones of colors in the different rooms and dome are to be as noted on the drawings."

5: "All wall surfaces where descriptive paintings are indicated shall be covered with heavy canvass subject to approval of the architect applied as above specified for muslin. The above mentioned surfaces shall receive four coats of French zinc ground in poppy oil. The final colors to be in strict conformity with the surrounding decorations of the rooms in which they occur."

I find on inspecting the receipted bills that all of this work, excepting the Grand Reception Room, and the Supreme Court Room was done by J. H. Sanderson, and paid for by the Board of Public Grounds and Buildings, as follows:

Grand Rotunda of Dome, .....	\$122,724 00
Senate Chamber, .....	50,000 00
House of Representatives, .....	87,711 12

Making a total of, ..... \$260,435 12

which so far as I am able to discover is a clear duplication of payments to this amount.

This work was done and paid for under item 24 of the General Schedule, on which the bid of J. H. Sanderson was \$2.52 net, per foot, as against that of John Gibson at 52 cents per foot. Why this contract was let to Sanderson at \$2.00 per foot more than the lowest bidder I have not learned. Nor have I been able to master



the mysteries of the "per foot" method of calculation, by which two rooms of exactly the same dimensions are made to differ so widely in cost. For instance, room No. 118 (the Treasurer's private office) measures 15 feet x 22 feet, and the ceiling alone is decorated. The bill rendered is for 2,175 feet at \$2.52 per foot, or \$5,481, while room No. 121 (Auditor General's private office) exactly similar as to size and amount of space decorated, is billed as 913 feet at \$2.52 per foot, or \$2,300.76.

These two ceilings are decorated with raised plaster panels, upon which the painting is done, and the highest estimate placed upon them by experts is \$1,000 each, including the plaster mouldings.

The ornamental plaster in these rooms, and all others, was included in the contract with Payne & Company (see page 53, paragraphs 2, 3, 4, 5, 6 and 7) and paid for in the lump sum received by them. They read as follows:

#### "ORNAMENTAL AND MOULDED WORK.

2: "The following portions of the building are to have plain and ornamental plaster work."

3: "The Grand Executive Reception Room, House of Representatives, Senate, rotunda and dome, Supreme and Superior Court room, all rooms comprising the Executive Department, the room assigned to the Auditor General, Attorney General, State Treasurer, Secretary of the Commonwealth and Secretary of Internal Affairs, and their reception rooms, the caucus rooms and libraries of the House of Representatives and Senate, the ante rooms of the House and Senate, the Lieutenant Governor's room, reception room and ladies' room on the second floor (Wing B, front), the two reception rooms on either side of the main entrance vestibule in the centre of the building."

4: "The room of the Speaker of the House on the first floor, the two rooms of the President pro. tem. of the Senate, all corridors throughout the building except basement and wherever specially noted or shown on the drawings."

5: "All rooms throughout all floors above the basement not otherwise specified, shall have a three-inch cove at the intersection of walls and ceilings. All windows throughout basement, first and entresol floors shall have plaster jambs and heads with metal beads as above specified unless otherwise shown."

6: "Full size models shall be furnished to the architect for all ornamental plaster and the modeler shall be subject to his approval. The finished work shall be equal in every respect to the approved models."

7: "All moulded work shall be straight and true and no imperfect mitres or rough and uneven surfaces shall be accepted."

These items were not excepted. The work of Sanderson was therefore confined to painting, gilding and covering the walls with muslin, and the price paid was from five to ten times what the work should have cost to yield a fair profit.

Rooms No. 116 and 117 are plain rooms, devoid of ornamentation, 15 x 18 feet, in which the walls and ceilings are covered with muslin and painted in plain tints. There are 270 square feet in the ceiling and 530 square feet in the walls of each, or 800 feet in each room. Under the mysterious "per foot" system of measurement these rooms are billed as 292 feet at \$2.52, or \$735.84 each. So that while the measurement is only one-third of the superficial area of the room, the price (according to experts) is seven times what the work should have cost. As I look into this "per foot" system, I am more than ever persuaded that it is merely a blind under which the contractor was allowed to charge any price he chose for the work.

Confining our observation to the rooms in the Treasury Department, Nos. 113, 115, 116, 117 and 118, in which the total cost of decorating and painting was \$15,386.32, and for which \$3,200 would have been a large price, we find the overcharge to have been \$12,886 or 400 per cent.

Applying this percentage to the total cost of decorating and painting, or \$779,472.96, the total overcharge in this item appears to be about \$600,000.

The documentary evidence of the above facts are in your possession, and the expert testimony will be forthcoming when you need it.

I am now preparing similar statements as to other items, and will submit them as soon as they are ready.

Yours truly,

W. H. Berry.

---

Office of the Attorney General,  
Harrisburg, Pa., December 11th, 1906.

John H. Sanderson, Esq.,

My Dear Sir:—There are still some matters, concerning which I have questioned you, which have not been made plain by your answers, and I am under the necessity of again addressing you.

In your letter of November 17th, in reply to mine of the 10th, you state that the bid, "per foot," is not an unusual method, but is frequently employed, and you believe that it is generally known to the trade. May I ask:

(First.) Whether it is known to the trade as a method of determining value, and as a basis of charge for furniture in the broadest sense, and particularly for such articles as sofas, arm chairs, easy chairs, rotary chairs, hat-racks, clothes-poles, umbrella-stands, and marble benches?

(Second.) What firms, and what individuals, in the same line of business with yourself, can you mention to whom such a method is familiar, and who have acted on it in practice? And in what instances have you yourself used it, outside of your own contracts with the State of Pennsylvania.

(Third.) There is difficulty, in the minds of those who are not experts in your line, in understanding how you apply the rule or how your measurements should be tested. Will you not kindly indicate the manner of measuring each of the articles referred to in Question No. 1, stated in terms that would enable a carpenter to make the measurements? How are air spaces and irregularities of surface, ornamentation and shape dealt with? How is a sofa, containing comparatively very little wood, but a great deal of leather on the back, open arms, or solid sides and seat, to be subjected to the same rule as is applicable to a rotary chair with open arms and partially open back, supported on a trunk containing a screw? How do you measure a rotary chair? How do you determine the height of a chair with tall, slender legs, and air spaces between them, and air spaces beneath the seat, the back springing from the rear of the seat? How do you determine its length and its depth? Please explain the process. And how do you apply the foot rule to the results thus obtained?

(Fourth.) What is your knowledge of the foot rule? How long has it been known? With whom did it originate? Who invented it? From whom did you get the idea? When did you first act on it, and what are its advantages? If, as you say, it is not used in commercial articles because not so simple to the average buyer as the price per piece, why should it be used in public contracts where State officers, who are not in the furniture business, are quite as likely to be puzzled as ordinary purchasers?

(Fifth.) When, to your knowledge, did it first appear in the Schedules of the Commonwealth? How did it get there? Who suggested it? Did you suggest it either directly or indirectly? If so, what arguments did you use in its favor with the then Superintendent of Public Grounds and Buildings or other State Officer? If you did not suggest it, did it not strike you as a novelty when you first saw it, and did you not ask for some explanation, both as to its origin, its meaning, and as to the reasons for its use? As you have been contracting with the State since April, 1896, and have furnished goods in large amounts in each year, it occurs to me that

you can probably throw light upon the question, and as none of the Governors, Auditors General, State Treasurers, and Superintendents have been in that line of business, it is improbable that any of them suggested it.

(Sixth.) Did you ever, at any time or place, directly or indirectly, orally or by correspondence with any State officer, high or low, during the past twelve years, up to and inclusive of June, 1904, aid, by suggesting on request or otherwise, in the preparation of a Schedule of the State upon which you bid or expected to bid?

(Seventh.) Did you ever take part, directly or indirectly, in any conference, conversation or correspondence when a superintendent of Public Grounds and Buildings was preparing the manuscript of the Schedule for the printer, or was correcting the galley proofs, or when you knew that he had such a duty to perform at the usual time each year?

(Eighth.) When did you first know that there was to be a special Schedule for the furnishing of the new Capitol? From whom or from what source did you learn of it, and what was it to embrace? As you finally acted on it, of course your knowledge had a starting point. What was that starting point?

(Ninth.) From whom did you first obtain a copy of the printed Schedule for 1904, and when did you obtain it? Did you ever have advance copies, in manuscript or in galley?

(Tenth.) Did you know of the contents of the Schedule for 1904, directly or indirectly, particularly as to the special Schedule bids 55 and 56 before its publication; while in manuscript or even before the manuscript was complete? If so, from whom did you obtain your information, or copies, and with whom did you converse or correspond?

(Eleventh.) Did you ever talk or correspond, either directly or through others, with Captain John C. Delaney, Mr. T. L. Eyre, Mr. James M. Shumaker, Governor Stone, Governor Pennypacker, Auditor General Hardenberg, State Treasurer Harris, Auditor General Snyder, State Treasurer Mathues, George F. Payne, H. G. Wetter, or Joseph M. Huston, or any of them, at any time or place, concerning the special Schedule, or its actual or probable contents, either before or after it had been prepared? If so, with whom, and where? What was said or written by them or any of them, or by you?

(Twelfth.) How long have you known Mr. Joseph M. Huston, the Architect of the Capitol? When and where did you first have conversations or correspondence with him in regard to the furnishing of the Capitol? What was the substance of the conversations or correspondence? If there be correspondence, please attach copies thereof to your answer.

(Thirteenth.) When, and in what manner and from whom did you first learn that Mr. Huston was charged with the duty of preparing the drawings, designs, and special lists of the furniture required for the new Capitol?

(Fourteenth.) How long was it before the advertisements appeared that you knew that Mr. Huston was engaged in preparing the drawings, designs and special lists of furniture?

(Fifteenth.) Did your first knowledge come from the advertisements themselves? If so, in what paper or papers did you read them, and when?

(Sixteenth.) When did you proceed to figure up the percentages you bid off of the maximum prices? Had you already prepared yourself by a previous careful consideration of the questions involved so that you could without delay ascertain the percentages which you could safely deduct? How does it happen that the percentages off of the maximum prices as to items 1 to 20, inclusive, are very large, and the percentages off of the remaining items from 21 to 41, inclusive, are comparatively very small?

(Seventeenth.) Had you ever undertaken a contract similar to this one in its magnitude and variety? How could you safely figure on such a large number of items, embracing such a variety of articles, in the short space of a single month?

(Eighteenth.) Had you ever at any time before the present contracts furnished under one item, such as item 22, such a great variety of articles of wood, stone, marble, mosaic, glass and bronze? Did you ever before do it at the same price per foot, irrespective of material and no matter what the design? If so, when and where?

(Nineteenth.) How did you explain to your own mind the difference between the simplicity and singleness of items 1 to 20 and the generality and vagueness of item 22?

(Twentieth.) What did you understand item 22 to cover? What kind of articles and how many of each? Did you ask the Architect to furnish you the information as to its scope or request any explanation of its scope and meaning? If so, when? How long before you saw the advertisements or how long after you read the Schedule?

(Twenty-first.) When did you first obtain estimates of the amounts which you would be required to furnish under item 22 and the specification of the articles required thereunder?

(Twenty-second.) You noticed that the columns for estimated amounts opposite each item in the Schedule were blank, did you not? How did you fill them up as to quantity, and on what information and from whom obtained?

(Twenty-third.) What previous experience had you had as a contractor for chandeliers, bronzes, electroliers and lighting fixtures?

What contracts had you ever previously made for such articles as were here called for?

(Twenty-fourth.) How long were you in preparing your bids—particularly on items Nos. 22, 31, 32, 33 and 34? Whom did you consult as to prices and what amounts did you state to them would be required so as to enable them to give you reasonable quotations?

(Twenty-fifth.) In fixing the amounts of your bids for items, Nos. 1 to 21 inclusive, in the Special Schedule, upon the first of which you bid 58 per cent. off; on the second, 36 per cent. off; on the third, 28 per cent. off; on the fourth, 63 per cent. off; on the fifth, 52 per cent. off; on the sixth, 55 per cent. off; on the seventh, 40 per cent. off; on the eighth, 26 per cent. off; on the ninth, 35 per cent. off; on the tenth, 45 per cent. off; on the eleventh, 26 per cent. off; on the twelfth, 66 per cent. off; on the thirteenth, 67 per cent. off; on the fourteenth, 64 per cent. off; on the fifteenth, 68 per cent. off; on the sixteenth, 58 per cent. off; on the seventeenth, 64 per cent. off; on the eighteenth, 53 per cent. off; on the nineteenth, 48 per cent. off; on the twentieth, 57 per cent. off; on the twenty-first, 7 per cent. off; and in fixing your bids for the items confessedly drawn by the Architect, as to which your bids were as follows: Item twenty-two, 8 per cent. off; item 23 “net”; and on the twenty-fourth your bid was 16 per cent. off; on the twenty-fifth, 14 per cent. off; on the twenty-sixth, 10 per cent. off; on the twenty-seventh, 10 per cent. off; on the twenty-eighth, 15 per cent. off; on the twenty-ninth, 15 per cent. off; on the thirtieth, “net”; on the thirty-first, 14 per cent. off; on the thirty-second, 3 per cent. off; on the thirty-third, 76 per cent. off; on the thirty-fourth, 21 per cent. off; on the thirty-fifth, 16 per cent. off; on the thirty-sixth, 17 per cent. off; on the thirty-seventh, 24 per cent. off; on the thirty-eighth, 18 per cent. off; on the thirty-ninth, 23 per cent. off; on the fortieth, 21 per cent. off; and on the forty-first, 25 per cent. off. Please state specifically how, in arranging in your mind as safe limits the bids as above stated, you determined in advance of your bidding, the probable or actual quantities and character of each article under the foregoing items you would be called on to furnish.

(Twenty-sixth.) Did you know from any source of information that you would not be called upon to furnish articles under the item upon which your percentages off were large; and that the weight, in substance and value, of the contract would mainly fall upon items Nos. 22, 23, 24, 31 and 32, as to which your bids off were at comparatively small percentages?

(Twenty-seventh.) How did you know, and from whom did you ascertain, the probable quantities and character of the articles which would be required under Items Nos. 22, 23, 24, 31 and 32?

(Twenty-eighth.) Were your bids made after careful study and consideration or were they blindly and inconsiderately made?

(Twenty-ninth.) What knowledge had you, either original or acquired or communicated to you by others, at the time your bids were made, of the cost of the various articles called for by the items?

(Thirtieth.) How, particularly as to Item No. 22 did you ascertain that it would be safe for you to bid 8 per cent. off of \$20.00 per foot for articles not described except by the general adjective "designed" and made of "either wood work, stone, marble, bronze, mosaic, glass and upholstery?" How could such a varied assortment of material, and admitting of such infinite variety of shape, ornamentation and design, and differing as widely as glass, bronze and marble, be reducible to the same flat rate per foot?

(Thirty-first.) What knowledge had you at the time you made this bid of the cost or probable cost of such a miscellaneous and varied list? Had you the Architect's figures before you at the time? Had you the Architect's descriptions and designs before you at the time? Had you the Architect's estimates of quantities before you at the time? If so, what were they? Please state in detail.

(Thirty-second.) Did you ascertain from those who became sub-contractors, or from others who, while not sub-contracting, were consulted in the matter, the prices at which they would be willing to contract, and, if so, what information did you give them as to quantity and character of articles needed? From what source did you get this information?

(Thirty-third.) Were you not obliged to have all of this information before you could fix the amount of your bids, and, being obliged to have it, did you not, in point of fact, secure it, and, having secured it, did it not reveal to you exactly under what items you would be called on to furnish the bulk and real value of the contracts?

(Thirty-fourth.) What inquiries as to cost did you make of the sub-contractors or those whose line of business qualified them to aid you by information as to the cost of articles in which you were not a dealer or manufacturer?

(Thirty-fifth.) Taking Item No. 31 for "designed special bronze, metal, gas and electric fixtures, Series E-F, each \$225.00," on which your bid was 14 per cent., and taking Item No. 32, "designed bronze metal for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand-tooled and re-chased, Series E-F, per pound \$5.00," on which your bid was 3 per cent. off, please inform me what prior experience you had ever had in these lines, and give the particulars of such experience if you had any.

(Thirty-sixth.) Had you the details and figures and estimates of

quantity of the Architect before you at the time you prepared your bids upon the two above named items? What information had you from sub-contractors or those skilled in that line as to the probable cost?

(Thirty-seven.) Did you not observe the difference between the two foregoing items—Item 31, giving a maximum price per piece, and Item No. 32, being quoted at the maximum price of \$5.00 per pound?

(Thirty-eighth.) Was not this unit price per pound a complete novelty to you? Did you understand it, and if you did, from whom did you seek an explanation, and from whom did you obtain sufficient information as to its practical application to enable you to estimate whether you could safely bid upon the item? If you had had any previous experience of selling or supplying such articles by the pound, be kind enough to inform me of the details of such experience, giving the names of the persons or firms or governments, municipal, State or National, to whom goods were supplied upon such a standard of value, and when and where supplied?

(Thirty-ninth.) In my twenty-sixth question, addressed to you in my letter of November 10th, I asked you to consider all the foregoing twenty-five questions repeated as to the adoption of the per pound standard adopted in the articles furnished and charged for by weight, and you answered "The same reasons in a general way will apply to cover answers to queries per pound as given to queries per foot."

In your letter of November 17th you laid much stress upon the fact that the Schedules of the State had in previous years contained a reference to the per foot rule, and that it was not a novelty. In view of the fact that you have made this reference to the Schedules of former years, and in view of the further fact that you have been awarded contracts under bids of yours for the supply of furniture under the Schedules of previous years, back as far as the year 1896, I ask you specifically whether you do not know, as a matter of fact, that the only reference in the Schedules of former years to the per pound standard, under the head of Electric Light Fixtures, is to Vasalin in one pound cans, and that, in the Schedule from 1899 to 1903 inclusive, all of the references to electric light fixtures and alterations, such as electric desk fan outfits, portable electric desk lamps, adjustable portables with slate base and shade, bronze posts for arc light, polished brass electric pendants with sockets, shades and holders, and polished brass electric brackets are all quoted at a maximum price per piece?

(Fortieth.) Do you not recognize, in view of these facts, the inadequacy of your answer, and do you not further know that the introduction of the standard per pound in relation to the articles re-



ferred to under Items Nos. 31 and 32, was a novelty and therefore an unknown feature of the Schedule upon which bids were invited?

(Forty-first.) If such a standard of value was in truth unknown to you in experience, or unknown to the former Schedules of the State, as an examination of them will disclose, were you not obliged to have specific information from those skilled in the business, who acted or who would be likely to act as sub-contractors, as to what the cost of such articles, tested by such a standard, would be, before you could safely signify your willingness to bid upon such a basis, even at a percentage off; and were you not obliged to secure specific information from the Architect, or from his drawings and plans and estimates, of the amount and quantity of the articles, as well as their character, likely to be called for under such an item? If so, what inquiries did you make? Of whom did you inquire, and what quotations as to cost did they furnish you?

(Forty-second.) I observe that as to Item 22 your bid was 8 per cent. off and as to Item 32 your bid was 3 per cent. off. Do you not know, in view of the information which you obtained as to the cost to you of sub-contracts, that your bid to the State in each instance was for more than a reasonable profit on the probable cost?

(Forty-third.) What would be regarded as a fair percentage of profit upon the cost, considering that this was a public contract, one involving responsibility and large amounts of expenditures, and running in its totals into very large figures? Did you or did you not, in fixing your bid, exceed to a large extent a reasonable profit upon the cost in charging the prices which you did to the State?

(Forty-fourth.) In a contract of such magnitude, involving such unusual quantities of articles, and with previous knowledge on your part of the character and quantities of the articles to be furnished under Items 22 and 32, would not less than the ordinary percentage of profits be accepted? Is it not a business rule that, where articles difficult to make, unusual in character and but few in number would command a higher price, and that where they are unusual in character and difficult to make, yet if ordered in large quantities, the percentage of profit should be reduced?

(Forty-fifth.) Do you not know that the information which you obtained as to the cost of articles to be furnished under Item 22 and Item 32, and that the information as to the quantities to be furnished under such items, would have enabled you to reduce, by a large percentage, the amount of your bid to the State instead of adhering so closely to the maximum figures of the Architect?

(Forty-sixth.) At the time you prepared your bids and sent them under seal to the Board of Public Buildings and Grounds, what total figures had you fixed in your mind as representing the prob-

able amount of the contract? Did your first view of the contract, taking it in its entirety, in case you were the successful bidder upon items 22 and 32 alone, involve more than the sum of half a million of dollars? If this sum be less than that presenting itself to your mind, how much larger was the total?

(Forty-seventh.) Assuming that you might be the successful bidder upon all of the items upon which you bid, inclusive of Items 22 and 32, and in view of the information which you must have had in order to make your bids intelligently, what sum did you fix in your mind as representing the total value of the contract? Would you say that the entire contract, as consisting of all of the items which you bid, would exceed one million and a half of dollars? If you answer this affirmatively, then please specify how much greater, in your judgment, the contract was.

(Forty-eighth.) Did you, as the work progressed, and you from time to time called upon the Architect for certificates upon which to obtain warrants upon the Auditor General, perceive that the figures were running largely in excess, so far as the aggregate was concerned, of what you had previously judged to be the extent and value of the contract? If this was not apparent to you, then please state how large you thought the contract would be originally, and what it would probably involve. If you did perceive that the figures were running in excess of what you had originally supposed, then please explain the cause of the increase, and by what reasonable explanation the result may be determined?

(Forty-ninth.) Did you, in fixing very large percentages off of the first twenty-one items bid upon, and in reducing the percentages off upon the items from 21 to 41 inclusive, seek to obtain a general low average bid upon the contract in its entirety?

(Fiftieth.) In answering the eleventh question in my letter of the 10th of November, which was to this effect: "Why was the per foot rule used in determining the value of all articles furnished under Item No. 22"? you answered in your letter of November 17th: "Because the Schedule required bids per foot."

I call your attention to the fact that during the years, beginning with 1896 down to and inclusive of 1903, when in some instances the Schedule did contain a reference to the per foot rule and you were the successful bidder for a supply of furniture, that you did not, except in comparatively few instances, employ the per foot rule, but charged, as your bids show, by the piece, and I ask you why, if you were at liberty to depart from the per foot rule in former years, even though it was mentioned in the schedule, you did not feel at liberty to depart from the per foot rule as to Item No. 22, and I ask you this particularly because I observe from an examination of your bills, that you charged for rotary chairs in large numbers, fur-

nished under Item 22, by the per foot rule, and in former years you made no such test of value, but furnished them by the piece; and I call your attention to Item No. 11, in the Special Schedule, which calls for rotary chairs, oak, Series F, each \$25.00, and I also call your attention to page 57 of the Schedule of 1904, under the designation "General Furniture Schedule," to Item No. 13, "Rotary chairs as per sample, each \$25.00," as to the first of which you bid 26 per cent. off and as to the second you bid 56 per cent. off; and I ask you why a change in the character of the wood, from oak to mahogany, would involve a difference in price to the State between the sum mentioned in Item 13, of the General Furniture Schedule, and Item No. 11 in the General Special Schedule, and the price at which rotary chairs were furnished, tested by the per foot rule under Item 22, involved treble the cost?

(Fifty-first.) In view of the foregoing result upon the price, I am at a loss to understand your answer, as contained in your letter of November 17th to my fourteenth question contained in my letter of the 10th, in which you said that the per foot rule did not have any effect upon the price as compared with the price per piece. Pray make this matter plain and specify with particularity the cause of the increase in price of such an article as a rotary chair. Can you say that the mere use of a special design would account for such a difference, and, if so, why?

(Fifty-second.) Inasmuch as you have stated that there is no certain limit as to increased cost of a specially designed article, but that it would vary with each article, I ask you how it was possible for you to reduce to a flat rate per foot the price of articles called for or which might have been called for under Item 22 of the Special Schedule.

(Fifty-third.) You also state the application of the per foot rule did not make the total cost of the articles under Item 22 any greater than if they had been specified in a different way. Please make this matter plain to me, as I candidly confess that I do not understand your answer. How much do you attribute to design, and how much did you attribute to the measurement per foot? Why should the design, particularly where it is very slight in its differences from what is usual, and appears and reappears in very many articles, work such a result?

(Fifty-fourth.) I ask you whether you are not in error in stating that you had specific orders for each article to be furnished from the Board of Public Grounds and Buildings, and I ask you whether you are not in error in stating that the number and character of the articles furnished under Item 22 will be found in the order given by the Board of Public Grounds and Buildings, copies

of which orders you state are in a book in the Auditor General's office. I call your attention to the following:

"Harrisburg, Pa., June 7, 1904.

"John H. Sanderson, Esq.

"622 Chestnut St.

"Philadelphia, Pa.

"Dear Sir: At a meeting of the Board of Commissioners of Public Grounds and Buildings held this afternoon you were awarded the contract for furnishing all supplies, articles and materials and performing all work required under the Special Furniture, Carpet, Fittings and Decorating Schedule for the Equipment of the New Capitol Building, Harrisburg, Pa., embracing Items 1 to 41 inclusive of said schedule.

"The Board has instructed me to direct you to commence work at once on the furniture and fittings for the Senate, House of Representatives and committee rooms, etc., belonging thereto and I therefore direct you to furnish material and do all necessary work, according to the plans and specifications of Joseph M. Huston, architect, with diligence and dispatch.

"Yours truly,

"J. M. SHUMAKER,

"Superintendent."

Is it not true that this is the only direct order which you had from the Board of Public Grounds and Buildings, except that, desiring to preserve an interesting memento of a contract so important, you had a copy carefully engrossed and signed by all the members of the Board of Public Grounds and Buildings, which engrossed copy you now have framed.

(Fifty-fifth.) If, upon an examination of all the papers in your possession, you find yourself in the possession of any specific orders, signed by all or any of the Members of the Board of Public Grounds and Buildings, directing you to deliver the specific articles charged for, you will kindly oblige me by furnishing me with copies of those orders, and be careful in sending me the copies to add thereto the names of the individuals signing or purporting to sign such orders.

(Fifty-sixth.) You state that the number of articles to be furnished by you was limited by "my specific orders and the price for everything was limited by my accepted proposal, which was based on the items specified in the schedule."

I again ask you to furnish me with copies of those specific orders, if they be in your possession, or if you find that you are in error upon this point, and that you have nothing more except the general order before referred to under date of June 7, 1904, I shall ask you to correct your answer. If on examination you find that you have

in your possession specific orders, signed by the Architect, Joseph M. Huston, then be good enough to furnish me with copies of those orders, making the copies full and exact.

(Fifty-seventh.) I observe that in your letter you state that "Public attention has been directed in every case to articles which any one can see did not cost as much as the average price, but no attention has been called to highly ornamental and expensive articles which cost far more than the average price."

Desiring to avoid in the utmost extent the slightest injustice to you, let me ask you to furnish a list of the articles as well as of the prices which you complain the public has ignored, and which cost you more than the average price, and also furnish a list of the articles which cost less than the average price. In this way a just view will be obtained of the net result to you and no ground for complaint on your part can exist.

(Fifty-eighth.) I observe that your contract, as awarded by the Board of Public Grounds and Buildings, was of the date of June 7th, 1904, and, on examination of the certificates of the Architect in your favor, upon which warrants were drawn, I observe that you obtained, upon Certificate No. 501, under date of July 9, 1904, a warrant, No. 1040, dated July 11, 1904, in the sum of \$50,000 for "amount advanced on account of contract dated June 7, 1904, for fittings and furnishings of the new Capitol Building." This warrant is by you endorsed and was regularly returned to the proper office.

I observe also that on Certificate No. 507, dated August 4, 1904, you obtained the further sum of \$75,000, paid to you by Warrant No. 1270, dated August 8, 1904, "for work done on material, fittings and furnishings of the new Capitol." This warrant was also endorsed by you and found its way back to the proper State office.

In view of the very short time elapsing between the award of the contract and the securing of these moneys, I ask you what work was done by you at that time for the State. What was the condition of its progress? Was it ready for delivery? Was it actually delivered? Where was it delivered and of how many articles did it consist, and what was the character of those articles? Were they furnished or to be furnished under Items 22 or 32 or either or both? If they were, and therefore regarded as special designs, how was it that, within so short a time, you were able, notwithstanding the handicap of special designs, to prepare and have ready so large an amount of material as to entitle you to these sums of money?

(Fifty-ninth.) I observe also that you furnished a bond, signed by yourself and by the City Trust, Safe Deposit and Surety Company, of Philadelphia, as surety, under date of 7th of July, 1904, in the sum of \$50,000, reciting the contract entered into on the 7th of June, 1904, and reciting the further fact that you had made application

for partial payments to be made to you on account of the contract, as work upon said special furniture, carpets, fittings and decoration progressed. I find a similar bond, so far as recital and condition are concerned, dated August 4, 1904, in the sum of \$75,000, the condition of both bonds being that you and your surety were to protect the State from any loss or damage or expense which might be sustained by reason of making said partial payments.

Inasmuch as you were required to furnish and did furnish, under the terms of the advertisement preceding your bid, a bond in the sum of \$100,000, I ask you to explain the reasons why you called upon the State to advance you these moneys so shortly after the date of the contract. What reason did you assign to the Architect in requesting his certificate for the advances? What reason did you give to the State officers when they demanded a bond, as to why it was necessary for you to secure the money at the inconvenience as well as burden of giving what was unusual, a bond to cover payments. As these facts appear unmistakable upon the public records and are unusual in their character, I call upon you for a full explanation.

Very truly yours,

Hampton L. Carson,  
Attorney General.

---

622 Chestnut St.,  
Philadelphia, Pa., December 29, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: In answer to yours of the 11th inst., which was not received until the 18th, I would reply to the questions seriatim as follows:

(1) In answer to your first question, I would say that the method is known to the trade as a method of determining value and as a basis of charge for furniture in its broadest sense, and applies to such articles as sofas, arm chairs, and other articles mentioned in your question. In fact, every manufacturer when asked to name the price for an article must, before he can name the price, determine the number of feet in the article and the other items of expense incurred to produce the article.

(2) In reply to your second question, I would say that I always calculate the number of feet in an article that is to be produced and every other item of expense involved in producing it before I fix the price at which I will sell it, and I believe that every other firm and individual must necessarily do the same thing before they can name the price of an article. To confirm this statement of

mine, I refer you without hesitation to any one or all of the competitive bidders on this contract.

(3) To indicate the manner of measuring in order that a carpenter, or, what is better, a cabinet maker may make the measurements, I would say that the way would be to take any article of furniture, such as a sofa, arm chair, easy-chair, rotary chair, hat rack, clothes pole, or umbrella stand, and determine by board measure the amount of lumber required to build it, bearing in mind the necessary amount lost by waste. By board measure is meant twelve inches square by one inch thick equals one foot. For other materials, such as leather upholstery etc., square measurement, regardless of thickness, is taken. These totals will give the number of feet of material required in the article. It was in this manner that I computed my bills, but, as I have previously stated to you in my letter of November 17th, I did not collect from the State the amounts represented thereby, but accepted a lower figure fixed by the Architect. Air spaces are totally ignored. Irregularities of surface, such as tufting of upholstery, are considered in the original estimate of material, and are measured as stated above. Ornamentation and shape are only dealt with in figuring the amount of waste material they will cause in manufacturing the article.

(4) In answer to your fourth question, I would say that I have known of the foot rule as a method of determining the price at which I could manufacture and sell an article ever since I have been in business, over thirty years. I do not know with whom it originated or who invented it. I got the idea from the general practice in my business. As I have said, I first acted on it when I began business. It is the only method by which a manufacturer can arrive at the cost of an article, and its advantages are that he can thereby determine accurately the cost of all the material used. When I said it is not used in commercial articles, I meant that articles in stock are not sold by the foot, but by the piece, but the value of all articles before they can have a price fixed at which they will be sold at retail must be determined by a calculation based upon the number of feet in the article and the other items of labor and expense involved in its production. It is used in all contracts in cases where the article is a specially designed one, and this rule would apply as well to State officers as to private individuals. If said officers desire specially designed articles, they must pay the same price which private individuals, who also desire specially designed articles, must pay.

(5) To the best of my recollection it appeared in the schedules of the Commonwealth as long ago as in 1896. I do not know how it got there, or who suggested it, but I did not suggest it, either

directly or indirectly. It did not strike me as a novelty when I first saw it, and I did not ask for any explanation either as to its origin, its meaning or as to the reasons for its use.

(6) In answer to your sixth question, I say no.

(7) In answer to your seventh question, I say no.

(8) In answer to your eighth question, I would say that my first knowledge that there was to be a special schedule for the furnishing of the new Capitol was when I saw the schedule itself in the book which I asked for and received after reading the advertisement.

(9) I first obtained a copy of the printed schedule for 1904 after the advertisements for bids appeared. I obtained it from the Superintendent of Public Grounds and Buildings, who mailed it to me at my request. I never had advance copies in manuscript or in galley or in any other way.

(10) In answer to your tenth question I say no.

(11) In answer to your eleventh question, I say no.

(12) In answer to your twelfth question, I would say that I have known Mr. Joseph M. Huston, the Architect for the Capitol, since 1899. I have no recollection of having any conversations, and I am sure that I had no correspondence, with him in regard to the furnishing of the Capitol until after the schedules were published, at which times I went to his office and sought information the same as any other bidder. I never had any previous business relations with him, either personal or professional.

(13) In answer to your thirteenth question, I would say that when Mr. Huston received the appointment as Architect from the Board of Public Grounds and Buildings, and that appointment became a matter of public knowledge, I learned with others of the fact, and naturally assumed that he was charged with the duty of preparing designs and necessary drawings, as that is an Architect's usual duty.

(14) In answer to your fourteenth question, I would say that I do not know how long it was before the advertisements appeared that I knew Mr. Huston was engaged in preparing drawings, but I presume, it was shortly after his appointment as Architect to the Board of Public Grounds and Buildings became known to the public.

(15) In answer to your fifteenth question, I would say that my first knowledge did not come from the advertisements themselves.

(16) In answer to your sixteenth question, I would say that I proceeded to figure up the percentages which I bid off of the maximum prices as soon as I received the schedules, and had examined the drawings and specifications and floor plans of the buildings on file in the Architect's office, and also got some information by examination of the building itself. I had not "already prepared my-



self by a previous careful consideration of the questions involved, so that I could without any delay ascertain the percentages which I could safely deduct." The reason the percentages off of the maximum prices as to Items No. 1 to No. 20 inclusive are very large was because they are almost exclusively stock articles of known value, and I considered that the maximum prices printed on the schedule averaged high, and the reason the percentages off of the remaining Items from Nos. 21 to 41, inclusive, are comparatively small was because they are specially designed articles, the cost of which was not known, and I did not think it advisable to bid a greater percentage off than I did.

(17) In answer to your seventeenth question, I would say that I had never undertaken a contract similar to this one in its magnitude and variety. In answer to the second clause of this question 17 as to how I could safely figure on such a large number of items embracing such a variety of articles in the short space of a month, I would say that I used my best judgment, enlightened by my previous experience, and by my inquiries of people conversant with the manufacture of some of the articles upon which I was to bid.

(18) In answer to your eighteenth question, I would say that I never "at any time before the present contract furnished under one item, such as Item No. 22," such a great variety of articles.

(19) In answer to your nineteenth question, I would say that I did not attempt to explain to my own mind the difference between the simplicity and singleness of Items Nos. 1 to 20, and what you term the generality and vagueness of Item No. 22; as I found by a careful examination of the plans, together with the specifications that, while item No. 22 was more difficult to estimate upon than the others, the greatest difficulty was as to quantities, and those once approximately estimated, the unit price per foot, which, of course, was an average price, was readily determined.

(20) In answer to your twentieth question. I would say that I understood Item No. 22 to cover the kind of articles mentioned in it, but the exact number of each could only be approximately estimated from the plans and the notations on the designs which were found in Mr. Huston's office. I not only asked the Architect to give me any information he could as to its scope, but I requested also any and all explanations that he could give as to its scope and meaning, and he referred me to the plans and specifications as containing all the necessary information. This I did after I received the schedules, and went to his office for that purpose. This was not done before I saw the advertisement, but was shortly after I received and read the schedule.

(21) In answer to your twenty-first question, I would say that I made my own estimate of the amounts which I would probably be

required to furnish under Item No. 22, after I had gone over the plans and specifications, but I did not receive the specification of the articles required thereunder until several months after the contract was awarded to me.

(22) I noticed that the columns for estimated amounts opposite each item in the schedule were blank. I never filled them up as to quantity, but I made an estimate as to quantity upon the information obtained from the plans, etc.

(23) In answer to your twenty-third question, I would say that I had had considerable previous experience as a contractor for chandeliers, bronzes, electroliers and lighting fixtures in hotels, club houses, banks, offices and private residences by reason of having furnished such articles in connection with furniture, decorations etc., etc.

(24) In answer to your twenty-fourth question, I was engaged from the time the schedules were published practically until the day of the letting of the contract in preparing my bids not only on the items mentioned in this question but on all other items. I consulted as to prices with experienced manufacturers and artisans, and I gave them estimated amounts such as I had estimated would be required from my examination of the blueprints, designs and plans.

(25) In answer to your twenty-fifth question, I would say that in fixing the amount of my bids for Items Nos. 1 to 20, inclusive, in the special schedule, I could not determine the probable or actual quantities of each article, but fixed the price at which I could furnish one or more of each article mentioned in these items. The character of these articles I was more or less familiar with owing to the experience I had in furnishing goods to the State of Pennsylvania under previous contracts.

In fixing the price at which I felt I could safely agree to furnish the articles mentioned in Items Nos. 22 to 41 inclusive I used the information derived from an examination of the blueprints, the plans and designs found in the Architect's office, and I was able from the data thus obtained to estimate with considerable accuracy the number and character of most of the articles called for, but I found when I received the approved orders for the actual requirements that in some instances I had underestimated the quantities needed.

(26) In answer to your twenty-sixth question, I would say that I did not "know from any source of information that I would not be called upon to furnish articles under the items upon which my percentages off were large, and that the weight, in substance and value, of the contracts would mainly fall upon Items Nos. 22, 23, 24, 31 and 32."

(27) In answer to your twenty-seventh question, I would say that I did not know, but I estimated the probable quantities and character of the articles which would be required under Items Nos. 22, 23, 24, 31 and 32 from the blueprints, plans and designs in the Architect's office.

(28) In answer to your twenty-eighth question, I would say that my bids were made after study and consideration as carefully and accurately as I could make them, knowing that there was a large element of risk in making bids for such a contract.

(29) In answer to your twenty-ninth question, I would say that the knowledge which I had at the time my bids were made of the cost of the various articles called for by the items was obtained from my own experience, and by inquiry from the best and most reliable manufacturers of some of the articles called for in the different items.

(30) In answer to your thirtieth question, I would say from the information which I obtained from the blueprints and plans I made the most accurate estimate I could of the quantities of the different articles required, and in my judgment, in view of the great risk attending contracts of this character and the great amount of money involved, it was not advisable to undertake to agree to supply such a varied assortment of articles at a discount of more than eight per cent. off of the \$20 per foot. This conclusion was also influenced by my inquiries of different manufacturers of the various articles mentioned in that item. The only way that "such a varied assortment of material and admitting of such an infinite variety of shape, ornamentation and design, and differing as widely as glass, bronze and marble," could "be reducible to the same flat rate per foot" was by reaching a general average price for the estimated number of articles, and estimated amount of work and material required. For instance let us suppose that Item 22 required the furnishing of ten different classes of articles. From what information I could get from a study of the plans and blueprints, and an examination of the building itself, I would make a calculation of the probable quantity of materials required in the first class, and from the plans and designs I would estimate the probable cost of producing the articles specially designed, and with the result of these estimates before me I would be able to strike an average price per foot at which I would be able to furnish all the articles in that class. I would pursue the same process as to each one of the other nine classes. After I had gotten an average for each one of the ten classes, I could easily get an average that was to be applied to all ten classes together by adding together the averages for each class, and dividing by the number of classes. Of course this would not be absolutely accurate, and would be subject to some uncertainty,

but there could be no great loss to me unless there was a great overestimate in my calculation of the quantity of the articles in a class whose average price was low.

(31) In answer to your thirty-first question, I would say that the knowledge that I had at the time I made the bid of the cost or probable cost of such a miscellaneous and varied list was from my own estimate of what I knew some of the articles would cost, and was from my inquiries of other manufacturers, all based upon the Architect's designs and plans. I examined all of the plans, specifications, and designs on exhibit in the Architect's office, and made my estimates from them as previously stated. I did not have any estimates of quantities before me at that time, except those I made myself.

(32) In answer to your thirty-second question, I would say that I ascertained, so far as I was able, "from those who became subcontractors and from others who, while not subcontractors, were consulted in the matter, the prices at which they would be willing to contract," and I gave them such information as I had obtained in the way repeatedly set forth in answer to these questions, as to the quantity and character of articles needed.

(33) I was not obliged to have, nor did I have, all the information you refer to before fixing the amount of my bids, for if once the unit price, or average price was established from approximate estimates of quantities, it could not seriously affect me except by an underestimate of the estimated quantities of the most expensive articles. The prices bid for articles, each per piece, would not disturb the calculation at all. When I made my bid I did not know exactly under what items I would be called on to furnish the bulk and real value of the contract.

(34) In answer to the thirty-fourth question, I would say that I have answered this before, and I now repeat that I made inquiries of those whose line of business qualified them to aid me by information as to the cost of articles in which I was not a regular dealer or manufacturer.

(35) In answer to your thirty-fifth question, I would refer you to my answer to your twenty-third question.

(36) In answer to your thirty-sixth question, I would say that I had such details and figures and estimates of quantity as the blue-prints and floor plans of the Architect indicated at the time I prepared my bids upon the two items above named, and the plans showed clearly all the outlets for the electrical fixtures of the building, and the designs for the fixtures were also on exhibition. My information which I had from those skilled in that line as to the probable cost was such as to induce me to believe that I could afford to bid

the percentage which I did off of the maximum price of the special schedule.

(37) In answer to your thirty-seventh question, I would say I did.

(38) In answer to your thirty-eighth question, I would say that, whilst I had never bid at this unit price, I had no difficulty in securing an estimate based on a unit price per pound. I understood it. I did not have any previous experience of selling or supplying such articles by the pound.

(39) In answer to your thirty-ninth question, I would say as a matter of fact I did not know until the receipt of your letter whether the State had or had not advertised for electric fixtures by the pound, and when I stated in my letter of November 17th that the "same reasons in a general way apply to cover answers to queries per pound as given to queries per foot," I did not mean to convey the idea that the State had advertised for such articles by the pound, but simply wanted to indicate that it was as easy to obtain a unit price per pound as it was to obtain a unit price per foot, and I believe that with this exception the answers may be equally applied to either set of queries.

(40) In answer to your fortieth question, I would say that in view of the explanation in my answer to your thirty-ninth question, you will no doubt understand why my answer was apparently inadequate, and in answer to your present query I would say that I did not know that it was a novelty, nor an unknown feature of the schedule, for I was able, as I said in my answer to your thirty-eighth question, to readily secure an estimate based on a unit price per pound.

(41) In answer to your forty-first question, I would say that as to this particular item, the designs and fixtures were on exhibition and the outlets for the fixtures were clearly indicated on the plans of the building. Therefore the "specific information" was readily obtainable by any one accustomed to making estimates from plans and specifications. As previously stated, I made inquiries in relation to this matter from those skilled in that particular line of business. The quotations I received on the estimated amount of work to be done induced me to make the proposal I subsequently adopted.

(42) In answer to your forty-second question, I would say that the estimates which I received indicated to me that it would not be advisable to bid any greater percentage off of the maximum price than I did, and they did not lead me to believe that the profit would be excessive.

(43) In answer to your forty-third question, I would say that I do not know "what would be regarded as a fair percentage of profit upon the cost, considering that this was a public contract," and I

do not think that any two persons would agree as to what would be such fair percentage of profit. In fixing my bid I did expect to make a profit upon the cost in charging the price I did to the State, but I made all my bids under competition with other people, and as I was the lowest bidder, I must have received a less profit than would have been received had any of my competitors obtained the contract,

(44) In answer to your forty-fourth question, I would say that where large quantities and the character and cost of articles are definitely known a less percentage of profit is always expected than upon a single article, but where the cost is estimated, it is usually done in a manner that is calculated to provide a safe margin of profit, and in the manufacture of the article the purpose is to keep the actual cost below the estimated cost. This estimated cost as frequently results in a loss as it does in a profit on special work, but the intention of the estimator in figuring on large quantities is to calculate on a smaller percentage of profit than if he were only to make one article. It is no doubt a business rule that where articles are difficult to make, unusual in character and but few in number, they would command a higher price, and that where they are unusual in character and difficult to make, yet if ordered in large quantities, the percentage of profit would be reduced.

(45) In answer to your forty-fifth question, if you mean by this question to ask whether I knew at the time I made my bid that I could have reduced it, I say no, but if you mean to ask whether I know now, I say yes.

(46) In answer to the forty-sixth question, assuming this question is intended to learn what I estimated was the probable amount which all the articles under Items 22 and 32 would cost, I would say that I estimated it at about \$3,000,000.

(47) In answer to your forty-seventh question, I would say about \$4,000,000.

(48) To the first question of this interrogatory I would say, yes. The reason was because of the extra amount of work on the approved plans signed by the Board of Public Grounds and Buildings given me in December, 1904.

(49) In answer to your forty-ninth question, I would say no. I considered each item separately and bid accordingly.

(50) In answer to your fiftieth question, I would say that so far as I am able to recall now, in my contracts with the State prior to the present one, where I agreed to furnish furniture according to the per foot rule, I always furnished it that way, and charged accordingly. I do not recall that I ever in such cases charged by the piece. If my recollection as to this is correct, then your inquiry as to why,

if I was at liberty to depart from the per foot rule in former years I did not feel at liberty to depart from the per foot rule as to Item No. 22, falls, because it is based upon a supposed state of facts which does not exist. You say that I charged in the present contract for rotary chairs in large numbers furnished under Item 22 under the per foot rule, and in former years I made no such test of value, but furnished them by the piece. If this be so, I can only reply by saying that in former years the bid was to furnish them by the piece, and under the present contract they were all ordered under Item No. 22 by the foot. You call my attention to "Item No. 11 in the special schedule calling for rotary chairs, oak, series F, each \$25," and also to page 57 of the schedule of 1904 under the designation of "General Furniture Schedule," to item No. 13, "rotary chairs, as per sample, each \$25;" as to the first of which you say I bid 26 per cent. off and to the second I bid 56 per cent. off, and you ask me "why a change in the character of the wood, from oak to mahogany, would involve a difference in price to the State between the sum mentioned in Item 13, of the General Furniture Schedule, and Item No. 11 in the General Special Schedule, and the price at which rotary chairs were furnished, tested by the per foot rule under Item 22, involve treble the cost." In reply I would say if you will examine my bid in the general schedule of 1904, you will find that I bid 56 per cent. off of the entire schedule thereby making an average price of 56 per cent. off of the maximum prices of all the items in the general furniture schedule, whilst in the special schedule under item No. 11 I bid 26 per cent. off for that one single item. This accounts for the apparent difference between the prices of the rotary chairs under the general schedule, and under the special schedule—under the general schedule there being an average bid of 56 per cent. off of the maximum price upon all the articles mentioned in the general schedule, whilst in the special schedule there was a bid of 26 per cent. off of the single item No. 11. The difference in the price which you call attention to is not due to the fact that there was a change in the character of the wood from oak to mahogany, as you supposed, but the difference was caused for the reasons above stated, to wit, that the 56 per cent. off was upon the whole group of articles under the general schedule, and the 26 per cent. off was upon a single article in Item No. 11. The cause of the difference between the price at which the bid was made to sell rotary chairs under Item 11 of special schedule and the actual price as furnished under Item 22 was due to the fact that they were specially designed furniture per foot, and therefore ordered under the average price per foot of all the articles called for under Item No. 22.

(51.) In reply to your fifty-first inquiry, I would say that the difference in price between the rotary chair if furnished under Item 11 of the Special Schedule, to wit, \$25, and the price of the specially designed chair, if furnished under Item 22, is not due solely to the fact that in the former case it is a chair taken from stock, and in the latter case it is a specially designed one. This difference between a stock chair and designed chair accounts to some extent for the difference in the price, but it must be remembered that I was asked to fix a general average price at which I would furnish everything under Item 22, not only rotary chairs but every other item mentioned thereunder, and therefore in fixing an average price for everything under item 22 I had to calculate the probable amount of quantities of specially designed other articles mentioned under that item before I could reach an average price per foot for each article under that item.

(52.) In answer to your fifty-second question, I would say that the only way it was possible to reduce to a flat rate per foot the price of articles called for, or which may have been called for, under item 22 of the Special Schedule was to calculate from the best information I was able to get the probable amount and character of the different articles mentioned under that item, and it was only after such a calculation that I was able to name a flat rate per foot average price. In other words, the average rate is fixed by a due calculation of the price of each specific class of articles to be furnished under that item.

(53.) In my judgment the statement I made that the total cost of all the articles under an average price would not be greater than if sold by piece can be explained by the following: All calculations necessarily start with the weight or amount of the raw material to be used in an article, to this is added the cost of labor, and all other expenses, which total shows the absolute net cost—to this profit is added, and we get the selling price; now if we divide this selling price by the number of units of weight or amount used in its construction, we reach an average selling price per unit, and it matters not whether the article is sold by the piece or by the unit, the result is the same. The element of design, patterns, modeling, &c., are identical in their effect upon the price, whichever way the calculation is made.

(54.) In reply to your fifty-fourth question, I would say that the letter which you have quoted is not, in my opinion, the only direct order which I had from the Board of Public Grounds and Buildings. I herewith insert a copy of one of the many such orders which I received:



Room No. 290. Quantity.	Attorney General—Article.	Paid on account.	Total cost.
3	Venetian inside blinds, .....	Item 29	
3	Venetian outside blinds, .....	Item 29	
3	Fair designated window curtains, .....	Item 38	
91 yds.	Domestic Wilton carpet, .....	Item 37	
1,434 ft.	Designed wood work and marble, .....	Item 22	
2,082 ft.	Decorating and painting, .....	Item 24	
1	Designed clock fitting No. 5, .....	Item 39	
1	Fire set and screen, .....	Item 23	
1	Wardrobe, .....	Item 22	
1	Umbrella tub, .....	Item 22	
1	Round table, .....	Item 22	
1	Flat top desk, .....	Item 22	
1	Rotary chair, .....	Item 22	
6	Easy chairs, .....	Item 22	
1	Sofa, .....	Item 22	
1	Cabinet, .....	Item 22	
2	Designed electric chandeliers, .....	Item 22	
4	Designed electric brackets, .....	Item 32	
559 ft.	English laid interlocking Parquetry flooring, .....	Item 28	
1	Special designed thermostat, .....	Item 34	

We hereby certify that the above is a correct list of the special furniture, fittings and decorations awarded to John H. Sanderson for the equipment of the above room in the new Capitol Building as approved and adopted by the Board of the Public Grounds and Buildings on Dec. 13th, 1904, from plans numbering 400-A 200, 393-A 213, 395-A 215, 394-A 214, 396-A 216, 397-A 217, and 418-A 238, inclusive, and which plans are now in the possession of the Superintendent of Public Grounds and Buildings.

(Signed) J. M. HUSTON, Architect,

(Signed) J. M. Shumaker,

Supt. Public Grds. and Bldgs.

This is a copy of an order to deliver furniture, and do specific work for one of your own rooms. You will see by referring to the letter which you quoted that the Superintendent advised me that the Board "had awarded (to me) the contract for furnishing all supplies, articles and materials and performing all work, required under the "Special" Furniture, carpet, fittings and decorations schedule for the equipment of the new Capitol building, Harrisburg, Pa., embracing items 21-41, inclusive, of said Schedule.

The letter from the Superintendent of Public Grounds and Buildings is the general order authorizing me to do all the work, for, after advising me that I was awarded the contract, it directs me "to commence work at once on the furniture and fittings for the Senate, House of Representatives and committee rooms, belonging thereto," and the copy above set forth is one of the specific orders from the same authority. In addition to that letter I have received specific

orders (copy of one of which is inserted above) covering every room in the building, all of which are signed by the Superintendent of Public Grounds and Buildings, and approved by the Architect, together with which I have ground floor plans signed by the entire Board of Public Grounds and Buildings and the Superintendent thereof, as follows: "Samuel W. Pennypacker, Governor; W. P. Snyder, Auditor General; W. L. Mathues, State Treasurer; J. M. Shumaker, Superintendent," showing the articles for which these specific orders were given, and to which the book of orders corresponds. As already stated, you will find a volume of these orders in the Auditor General's office, and on the first page of some you will find the following:

"Schedule of the furniture, fittings, gas and electrical fixtures, carpets, hangings, decorations, etc., as called for by the plans approved and adopted Dec. 13, 1904, by the Board of Commissioners of Public Grounds and Buildings, for the equipment of the new Capitol building, Harrisburg, Pa., Jos. M. Huston, Architect."

(55.) In answer to your fifty-fifth question, I would say that I do not find myself in the possession of any orders signed by all or any of the members of the Board of Public Grounds and Buildings. The general and specific orders of the Board which I have are signed by the Superintendent of the Board and the Architect, as referred to in the preceding answer.

(56.) In answer to your fifty-sixth question, I would say that I have in my possession specific orders approved by the Architect, Jos. M. Huston, and I have given you a copy of one of them approved by the Architect, Jos. M. Huston, and signed by J. M. Shumaker, Superintendent of Public Grounds and Buildings, in my answer to the fifty-fourth question. I have such individual orders covering every article required in every room in the building.

(57.) I would say in answer to your fifty-seventh question, wherein you quote a portion of my answer to a previous query, that my answer was prompted by the fact that no attention whatever had been directed to the very evident expensive work, such as some of the elaborate decorations in the House, Senate and Dome, the Executive Departments, the elaborately carved and highly ornamented imported marbles, some of the specially designed and artistic furniture, many parts of the architectural bronze fixtures. All of the above work cost far more than the average price. The actual loss I incurred in furnishing the above is, as I understand it, no more material to the question now under consideration than is the profit I gained by furnishing other items.

(58) In answer to your fifty-eighth question, I would say that the payments therein mentioned by you were authorized by the Auditor General, and made by the State Treasurer as advances on account of

material in progress of manufacture. I could not procure these payments without giving security of a Trust Company that the money would be returned if I did not furnish the material for which these payments were in advance. As the material was furnished subsequently the State received a proper credit for the advance made on account of the bills presented, so that there was no overpayment by the State, but simply an advancement to the extent mentioned before the goods were actually delivered upon proper and satisfactory security and certification by the Architect that the amount of the advances had been used in the process of manufacture up to that time.

(59.) In answer to the fifty-ninth question, I would say the answer to this question is the same as the answer to your fifty-eighth question.

I beg to remain,  
Very truly,  
(Signed) JNO. H. SANDERSON.

---

Office of the Attorney General,  
Harrisburg, Pa., Dec. 15, 1906.

Joseph M. Huston, Esq., 1101 Witherspoon Building, Philadelphia,  
Pa.

My Dear Sir:—After a careful consideration of your letter of the 19th of November last, in reply to mine of the 12th, I find myself under the necessity of asking you for more specific information, even at the risk of appearing obtuse.

You say that the specifications were prepared in your office "in the usual manner," and you add, by way of explanation, "that is a description of the kind and quality of the article required, and that these specifications were prepared by (you) me." You somewhat confuse the matter in your next paragraph by referring to the specifications of the Capitol Building, to which I made no reference. To clear this let me say that the Specifications I had in mind in putting my questions were the specifications upon which bids were to be invited by advertisement by the Board of Public Grounds and Buildings for the furnishing of the Capitol Building, and which were, in point of fact, advertised for in fourteen papers in the State, there being 24 insertions in six newspapers, 25 insertions in seven papers, and 27 insertions in one paper, during May and early June of 1904, and upon which, contracts were awarded to John H. Sanderson as the successful bidder upon the items contained in the Special Schedule. I begin with these because they lie at the foundation of the contracts made by the Board of Public Grounds and Buildings for furnishing the Capitol, and in date precede the contracts.

To bring the matter definitely before you, let me recall the circumstances connected with the origin of your relationship to the Board of Public Grounds and Buildings. A review of the correspondence shows that you took the initiative, for on December 2, 1902, you asked that you might meet the Board of Public Grounds and Buildings to go over the entire field, and were notified in reply that an appointment would be arranged for within a few days. Nothing was done, however, before the expiration of the term of Governor Stone, but in the latter part of February, 1903, you were notified that the next meeting of the Board would be held on March 3rd, and on that day you laid before the Board, in a communication dated March 2nd, a report of the condition of the entire problem of the State Capitol.

After reciting that the Capitol Building Commission was authorized and empowered to construct, build and complete the State Capitol Building at Harrisburg, including a power, light and heat plant of sufficient capacity to satisfactorily supply the needs of the building, you pointed out that the work had been placed under contract with yourself as Architect; George F. Payne & Company, General Contractors; Edwin A. Abbey, Official Mural Director; George Gray Bernard, Official Sculptor; and Miss Violet Oakley, Decorator of the Governor's Reception Room, all working under your direction as Architect, and under the direction of the Commission; working out in architecture, sculpture and painting the magnificent problem of a great Corinthian building, 519 feet 10 inches in length, 254 feet in depth, with a dome 250 feet in height and 94 feet in diameter at the base. You emphasized the point that the work of the Capitol Building Commission was at an end "so far as entering into any more contracts is concerned." You also pointed out that the law did not provide for the beautifying of Capitol Hill and the building of approaches, which were, in your judgment, as necessary to the finished structure as the Plaza and approach were to the Basilica of St. Peter, at Rome, or the magnificent gardens are to the Taj Mahal in India.

You also pointed out that the contract for the building included interior decorations of a high order for the House of Representatives, the Senate, Supreme and Superior Courts, the Governor's Grand Reception Room, also the Lieutenant Governor's Room, and you stated "These are the only rooms in the building which should have specially designed furniture, carpets, rugs, electroliers, gas and electric fixtures—to match in every way the interior architectural effects."

You also pointed out that "In view of the fact that the new Capitol is to be a fireproof building and a permanent depository for all State records, etc., suitable steel cases should be provided for each Department indicated on the plans of the building," and added that another important item, the position of which was already indicated upon the plans but not included in the general contract, was steel armor plate.

You also stated that the office of each department head was to be finished in mahogany, the working offices in oak, thus saving the item of expense in furnishing offices. You also stated "Another item is the furnishing of gas and electric fixtures, standards, etc., which are always considered furniture in a building." You added "But the idea in my mind is that all this work should be studied, drawings prepared for the same, prices ascertained, made and ready to be placed in the building simultaneously with the date of completion named in the laws, January 1, 1906, as I consider haste would be disastrous to the best work, and we now have ample time for the completion in its entirety if done in time. The completion of the whole building, approaches, grounds, decorations, furniture, gas and electric fixtures, steel cases and vaults would rebound great credit to the State." You dwelt upon the artistic unity which had been the ground of the Commission's advice in the art of the Capitol, which had been so widely and favorably commented upon by the entire press and public in general, and which would be carried out in the smallest detail and according to the best professional practice, and you close your communication by stating that you held yourself in readiness to cooperate with the Board to accomplish this work in the same manner and with the same spirit which you had used in designing the Capitol Building.

No definite action was taken, however, until the 9th of September following, when the Board of Public Grounds and Buildings, in a communication of that date addressed to you, suggested that you, as Architect for the erection of the building, would, because of your knowledge of the building, be the most suitable person to select as Architect "to prepare the plans and specifications and detailed drawings for all interior fittings, furniture, electric and gas fixtures." The Board then dwelt upon the importance of the work being done as economically as possible, and that no doubt, because of the fact that you already possessed information of the magnitude of the contract, including Capitol and furniture, you would be willing to make special terms advantageous to the State, and you were asked upon what terms you would undertake the work. To this you replied, on September 11, that you would undertake the work therein named, "that is, to prepare the plans and specifications and detailed drawings for all interior fittings, furniture, electric and gas fixtures for the Capitol building, for the sum of five per cent. on the cost of the work," and stated your readiness to meet the Board at any time suggested.

On the 13th of October, 1903, at a meeting of the Board, you were unanimously appointed as Architect "to prepare plans and specifications and detailed drawings for all interior fittings, furniture, electric and gas fixtures for the new Capitol building in accordance with your proposition contained in your letter to the Secretary of the

Board, dated September 11, 1903," and you were informed that when the above plans and specifications were completed the same should be submitted to the Board for their approval, the compensation for your services as Architect to be reckoned at 4 per cent on the cost of the work.

In a letter dated the 16th of October, 1903, you agreed to carry out the same as outlined in the communication of the Board, and on the 8th of December you submitted plans and specification for the metallic furniture for certain rooms in the Capitol building. On the 5th of April, 1904, you presented drawings and specifications for wood and metallic furniture, draperies, carpets and electroliers for the new Capitol Building, and before any action was taken the Superintendent of Public Grounds and Buildings was directed to take the drawings and specifications and go over the same, and, if found satisfactory, to return them with his approval and report at the meeting to be held on April 12th. On that day the Board resolved that the designs and specifications for all interior fittings and furnishings, decorations, clocks, gas and electric fixtures, curtains, draperies, and carpets, No. 1-F to 42-F inclusive, 1-C to 8-C inclusive, 1-E-F to 37-E-F inclusive, for the new Capitol Building, as presented by you as Architect, be adopted, and the resolution was adopted.

On the same day the Superintendent of Public Grounds and Buildings was instructed to advertise in twelve newspapers, not more than three of which should be printed in any one county, inviting sealed proposals for contracts for all of the furnishings, fittings, etc., each proposal to cover the entire furnishing in accordance with the plans adopted and the specifications prepared by the Architect, and submitted by the Superintendent, and to be delivered to the Board of Public Grounds and Buildings at 12 o'clock, noon, on the 28th of April, 1904, and that the contract be awarded to the lowest responsible bidder or bidders; and it was further resolved that no proposal for any contract should be considered or accepted unless accompanied by a bond of \$100,000, with at least two sureties, duly approved by the Judge of the Court of Common Pleas of the county in which the person making such proposal should reside, conditioned for the faithful performance of the terms of the contract.

On the 13th of April, at a special meeting of the Board, the action taken the preceding day in reference to advertising for bids for furnishing the State Capitol was reconsidered, and, on motion of Auditor General Hardenbergh, seconded by State Treasurer Harris, it was resolved that all furnishings, fittings, electrical fixtures, etc., be placed upon the schedule for 1904. That schedule was duly prepared and contained a special schedule, consisting of pages 55 and 56 of the schedule of 1904, special schedule relating specifically to

the furnishing of the new Capitol Building. The advertisements were made as above indicated.

Assuming now that we both have in mind the same subject-matter, when the phrase "specifications" is used, I observe that the special schedule consisted of the following items:

Item number.	Description of Articles.	Maximum price.	John Gibson.	Horn & Brannen Mfg. Co.	International Mfg. and Supply Co.	John H. Sanderson.
	Special Furniture, Carpet, Fittings and Decoration Schedule for the Equipment of the New Capitol Building, Harrisburg, Pa.:					
1	Book cases and wardrobes (mahogany), Series F, per lineal foot, .....	\$37 00			40	58
2	Leather covered easy arm chairs (mahogany), Series F, each, .....	55 00			25	37
3	Leather covered swivel arm chairs (mahogany), Series F, each, .....	40 00			25	28
4	Clothes trees (mahogany), each, .....	15 00			30	63
5	Tables, 6x3½ (solid mahogany), Series F, each, .....	45 00			20	52
6	Couch (mahogany), Series F, each, .....	50 00			20	55
7	Leather covered couch, 3 ft. x 6 ft. 6 in. (solid mahogany), Series F, each, .....	100 00			25	40
8	Office table, 6 feet (mahogany), Series F, each, .....	120 00			20	26
9	Wood seat arm chairs (mahogany), Series F, each, .....	23 00			33 1-3	35
10	Roll-top desks, 5 feet, quartered oak, highly polished with fine flake, Series F, each, .....	60 00			20	45
11	Rotary chairs, Series F, each, .....	25 00			15	26
12	Flat-top desks, quartered oak, highly polished, with fine flake, 5 ft. x 4 ft., Series F, each, .....	28 00			net	66
13	Flat-top desk, quartered oak, highly polished, with fine flake, double, 5 ft. x 4 ft., Series F, each, .....	45 00			15	67
14	Letter press stands, oak or mahogany finish, Series F, each, .....	13 00			net	64
15	Oak clothes trees, Series F, each, .....	9 00			33 1-3	68
16	Lambill dictionary holder No. 6, complete, Series F, each, .....	9 00				58
17	Mirror, French plate, 20x20, with frame to be selected, Series F, each, .....	12 00			20	63
18	Card catalogue case, 18 drawers, Series F, each, .....	42 00			20	53
19	Filing cabinet (right to select) for letters, 12 drawers, Series F, each, .....	75 00			20	48
20	Case for insect specimens, specifications to be submitted, Series F, each, .....	75 00			net	57
21	Designed decorative exterior lights, Series D-F, each, .....	15 00				7
22	Designed furniture, fittings, furnishings and decorations of either wood-work, stone, marble, bronze, mosaic, glass and upholstery, Series F, per foot, .....	20 00			net	8
23	Mural art painting, Series F, per foot, .....	50 00				net
24	Decorating and painting, Series F, per foot, .....	3 00	82½			16
25	Designed sofas, seating, etc., either upholstered, wood, metal or stone, Series F, per foot, .....	15 00				14
26	Designed State chairs, Series F, each, .....	150 00			net	10

Item number.	Description of Articles.	Maximum price.	John Gibson.	Harrisburg Steam Heat and Power Co.	Horn & Brannen Mfg. Co.	Sterling Bronze Co.	International Mfg. and Supply Co.	Strawbridge & Clothier.	John H. Sanderson.
27	Designed special desks and tables, Series F, per foot, .....	\$12 00	.....	.....	.....	.....	net	.....	10
28	English laid interlocking wood and rubber parquet flooring, Series F, per foot, .....	1 50	.....	.....	.....	.....	.....	.....	15
29	Venetian blinds, wood or metal, Series F, per foot, .....	1 50	.....	.....	.....	.....	.....	.....	15
30	Modeling or sculptor decorations, Series F, per foot, .....	100 00	.....	.....	.....	.....	.....	.....	net
21	Designed special finished bronze-metal gas and electric fixtures, Series E-F, each, ..	225 00	.....	.....	5	3	.....	.....	14
32	Designed bronze-metal for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and re-chased, Series E-F, per pound, .....	5 00	.....	.....	5	3	20	.....	3
33	Designed special finished white metal gas and electric fixtures, Series E-F, each, ..	150 00	.....	.....	5	70	80	.....	76
34	Special designed thermostat, each, .....	100 00	.....	5	.....	.....	.....	.....	21
25	Special designed carpets, Scovimmerie, imported Scotch Axminster, Series C, per foot, .....	4 00	.....	.....	.....	.....	.....	.....	16
36	Special rugs, Antique-Persian, Kerman-shaw, Tables and Berlin, Series C, per foot, .....	3 00	.....	.....	.....	.....	10	.....	17
37	Special Wilton Corona carpets, Series C, per yard, .....	3 25	.....	.....	.....	.....	.....	.....	24
38	Designed curtains, draperies and panels Abusson tapestry and silk brocade, silk trimmings, Series F, per yard, .....	40 00	.....	.....	.....	.....	( 10	.....	18
39	Designed clock fittings or fixtures, Series F, each, .....	150 00	.....	.....	.....	.....	.....	.....	23
40	Faverville and Baccarat glass, series F, per foot, .....	30 00	.....	.....	5	20	.....	.....	21
41	Moravian tiles, Series F, per foot, .....	3 00	.....	.....	.....	.....	.....	.....	25

Complete plans for all of the furniture, fittings, decorations and furnishings and samples for the carpets can be seen at the office of J. M. Huston, Architect, 1102 Witherspoon Building, Philadelphia, Pa., where full instructions will be given.

No bid above the limit herein fixed will be received.

The Board of Public Grounds and Buildings reserve the right to reject any or all bids.

I observe, first, that you fixed the maximum prices for Items 21 to 41 inclusive in the Special Schedule, and that, in your letter of 19th of November you stated that you did not suggest the placing of Item No. 2 in the Schedule, and did not know what it was intended to cover; and you further stated that you did not suggest any of the items from 1 to 20 inclusive in the Special Schedule; that you were asked by the Board to prepare such items only as would be required for the special furniture and fittings which would come under your supervision.

I am at a loss to understand why you had nothing to do with one-half of the items contained in this Schedule, which was entitled "Special Furniture, Carpet, Fittings and Decoration Schedule for the equipment of the new Capitol Building, Harrisburg, Pa." Let me ask you if you have knowledge as to how and by whom and when the maximum prices contained in the first twenty items of the Schedule were fixed.



Confining my observation only to those Items to which your supervision was directed, I observe, on examining the bids, that John H. Sanderson bid 7 per cent. off of the maximum price fixed for Item 21; 8 per cent. off of the maximum price for Item 22; that his bid was net for Item 23; that he bid 16 per cent. off Item 24; 14 per cent. off of Item 25; 10 per cent. off of Item 26; 10 per cent. off of Item 27; 15 per cent. off Item 28; 15 per cent. off of Item 29; that his bid was net for Item 30; that he bid 14 per cent. off of Item 31; 3 per cent. off of Item 32; 76 per cent. off of Item 33; 21 per cent. off of Item 34; 16 per cent. off of Item 35; 17 per cent. off of Item 36; 24 per cent. off of Item 37; 18 per cent. off of Item 38; 23 per cent. off of Item 39; 21 per cent off of Item 40; and 25 per cent. off of Item 41.

The foregoing differences between the prices fixed by you and the amounts bid are so great—amounting in contracts of such magnitude, variety and extent to something very considerably above the amounts actually paid—that they suggest the thought, either that the prices fixed by you were high or that the bids of the contractor were low; and so I am led to inquire more particularly as to the preparation by you of the Specifications and the determination by you of “A unit of price.” To be perfectly fair with you as to what is in my mind, I know that you are an Architect by profession, and that you do not claim to be a dealer in nor a manufacturer of furniture or chandeliers, or standards, or electroliers, and further that it would be unreasonable to expect you to have the knowledge of an expert or dealer in these lines, however such collateral information you have naturally acquired in the practice of a noble profession.

Hence I ask you to define:

1. What you mean by preparation in “the usual way”; and
2. What you mean by “a unit of price”?

In answer please state the basis of your knowledge. Was it personal or acquired; and, if so, how acquired, or was it communicated; and if so, by whom was it communicated and when? Please give names and addresses, business and length of experience of your informants, and state when and where your interviews with him, her or them took place; whether they were oral or in writing, and if in writing, please attach copies of letters, notes or memoranda to your answers.

As to furniture, taking up the Items hereinbefore detailed, and particularly Items Nos. 22, 25, 26, 27, 31, 32 and 34, for the present, let me ask

- (a) How did you fix the maximum price as to each one of these?
- (b) Did you consult price lists, trade catalogues or circulars or advertisements, or did you visit warerooms and examine samples; or did you prepare or have prepared and exhibited drawings or descrip-

tions of what you wanted? If the former, what price lists, trade catalogues, circulars or advertisements did you consult? How did you get them? From whom did you get them? With whom did you converse, either directly or through others, or with whom did you correspond, either directly or through others? If you visited ware-rooms or sent others to visit them, when and where was it, and whose were the rooms or warehouses or factories visited? Whom did you see? With whom did you talk, or with whom did you correspond? or if you were visited in your rooms by persons who gave you information, please state their names, business, and business addresses. Or, if the interviews did not take place at any business spot, did you have conversation or communications, either written or oral, with anyone at any other place or places? If you prepared or had prepared drawings or descriptions of what you wanted, as would be natural for special designs in harmony with the style of the rooms to be furnished, to whom did you exhibit them? With whom did you converse, or with whom did you correspond in order to possess yourself of the information necessary to enable you to fix a maximum price? What question did you ask as to cost? Of whom did you ask questions as to cost before you fixed the maximum prices?

What estimate of quantities and numbers of articles required under each Item did you prepare? Would it not be absolutely necessary for you to prepare such estimates before you could justly fix a standard price or unit price for each article? Is it not manifest that, where an unusual number of articles of one kind was required and a smaller number of articles of another character, there would be a substantial difference in the cost of manufacture and in the resulting profit to the manufacturer? If you answer this affirmatively, then would not the estimates be indispensable to you? Please attach copies of all such estimates to your answers.

(c) Was the price fixed a trade price; and, if so, how was it shown or demonstrated to you to be the trade price?

(d) Did the price thus fixed include a profit to the contractor? If so, what percentage of profit was there over cost?

(e) If the price fixed was not a trade price—because for an article for which a special design or drawing had to be made or had been made, and hence not an article to be picked up in a competitive market—how did you fix that price?

(f) Would or would not the special design enhance the cost? If so, how much over and above an article in stock or which could be made from a stock design? What additional labor upon the raw material did the special design involve? Was it capable of being made by machinery, or did it involve hand work or new and special

machinery? If so, what would the increased cost be over the price of the raw material? How did you figure on these items, or other items to enable you to fix the price?

Please give in detail as to all of the Items from 21 to 41 inclusive, as above referred to, a full answer, as a general answer will not be regarded as satisfactory.

(g) If you should answer that you cannot answer the foregoing questions either in whole or in part, then please inform me from whom you got your information; when you got it and where you got it. State name, business place, time and circumstances. Did you consult, directly or indirectly, orally or by correspondence, any manufacturer or dealer in furniture or in gas fittings or electroliers or standards before fixing the price? If you did, name him, her or them. If you did not, then how did you fix it, with any reasonable certainty, that it was a fair price which you could properly recommend to the Board of Public Grounds and Buildings as a basis for the inviting of bids?

(h) Did you prepare a list or lists of furnishings required for each department, and each room in each department, of the number of chairs, desks and sofas before you fixed the maximum prices? Did you prepare estimates, either partial or total, of the probable cost to the State? Did you exhibit any such estimates to the Board of Public Grounds and Buildings? If so, please attach copies of such estimates to your answers and state when you presented them to the Board. Were these lists or plans, or drawings or estimates ever varied and added to, and, if so, when and how and to what extent?

In connection with the foregoing questions let me inform you that the minutes of the Board of Public Grounds and Buildings disclose the fact that a meeting was held on June 7, 1904, for the purpose of opening and reading the bids of the General and Special Schedules for furniture, carpets, gas and electric fixtures, supplies, stationery, etc., for the year ending June 1st, 1905; that, after the opening and reading of the same the Board adjourned to the Executive Chamber to examine said bids; that the Special Schedule for furniture, carpets, fittings and decorations for the new Capitol was taken up, but was laid over until "Architect Huston could be consulted as to maximum prices, bids and probable cost of the whole." The minutes, reading further, are as follows:

"The matter of the special schedule for the furnishing of the new Capitol building was again taken up. After hearing Mr. Huston on the maximum prices and the probable cost of the whole, which was from \$500,000 to \$800,000, the Board took up the bids on furnishings, as per pages 55 and 56 of special schedule. Two bids were received, viz: that of Strawbridge & Clothier

and that of Wilt & Son, of Philadelphia, on furniture only, and one firm, John H. Sanderson, on the entire special furniture schedule. After due examination and comparison of said bids it was found that John H. Sanderson was the lowest bidder, and it was therefore, on motion of State Treasurer Mathues, seconded by Auditor General Snyder, that the award of the entire contract for the special furniture, carpet, fittings and decorations schedule for the equipment of the new Capitol building, as set forth on each item from 1 to 41 inclusive, on pages 55 and 56 of the special schedule, be made to John H. Sanderson, of Philadelphia. Motion carried."

(i) Please consider all of the preceding questions repeated as to the Item relating specifically to chandeliers, standards, electroliers, brackets, bronze work and metal work in any sense connected with the lighting of the building, exclusive of wires in the walls or ceilings, for Items Nos. 31, 32, 33 and 34.

Please explain in this connection, how you, not being a dealer in or manufacturer of such articles, fixed the maximum prices as to these. Be kind enough not to answer generally but specifically as though each question were again put.

Turning now to that portion of your letter which relates to the "per pound" and "per foot" rule, I note that you stated in your letter of November 19th that this "principle of unit price" was used by you in the specifications of the Capitol Building, and you quote from page 18 of the Capitol Building Specifications. I am willing to concede this, but it does not touch the matter which I have in mind. I can well see that it may be proper, and doubtless is, to introduce the per pound and per foot rule into contracts relating to buildings qua buildings, consisting of stone, cement, marble, wood and brick work, but I am questioning you as to its use in contracts for furniture and fittings, decorations and chandeliers.

I am not clear that in your letter, stating that the form of proposal was similar to those used by the Architects employed by the United States Government, other Commonwealths and city governments, and in good private practice, you meant to be understood as stating that the United States Government, other Commonwealths, city governments, as well as individuals made contracts for furniture or lighting fixtures upon the basis of the unit rule per foot or per pound; that is, that they purchased chandeliers or lighting fixtures by the pound. I do not wish to misunderstand you in this matter. If the position taken by you is that the introduction of the per foot and per pound rule as a unit of price is usual, so far as furniture and lighting fixtures are concerned in government contracts, you will oblige me by referring me to such contracts as you have knowledge of for such matters, made at any time or at any place by the Govern-

ment of the United States or the Government of any State other than Pennsylvania or by private individuals.

In your letter you state that you know that all metals are bought by the weight. Pardon me, but I was not interrogating you as to the purchase of metals; I was questioning you about manufactured articles made of metal, and the question is as to the use of the per pound rule as a test of the market value of the manufactured article.

My difficulty in understanding you in this matter is because of your reference in the early part of your letter to specifications drawn by you for the Capitol Building, in which you did use the principals of unit price referred to. From my point of view, the contract with the Capitol Building Commission is not only legally distinct from the contracts with the Board of Public Grounds and Buildings, but it is also distinct in a business sense, as relating to an entirely different subject matter, and that, while stone, brick, marble, cement or wood may be properly contracted for by such a unit rule, yet when the rule comes to be applied to articles of furniture, and you take the ground that such is the case (if you do take such ground), I would like to be advised of the instances in which such use of the principle was made.

You are correct in stating the Schedules of the State or Pennsylvania since 1899 did, in some instances, introduce the per pound and per foot rule, but, upon examining the original bills presented by the contractor, John H. Sanderson, who was the successful bidder for contracts to supply the State with furniture from the years 1899 to 1903 inclusive, I do not find an actual application of the rule to such articles as chairs, sofas, clothes poles or trees, even though marked "special"; nor is it adhered to by him in all instances of tables, desks, wardrobes, book cases and articles of that character, there being repeated instances of such articles being supplied by the piece at a specific price.

I am confirmed in this by the statement in your letter of November 19th that you know that "in the practice of the arts in all lines the per foot rule is applied for the determining of costs and in the giving of bids by the above rule for wainscoting, book cases, wardrobes, mantels, over-mantels, cabinets, etc.," but you bring into sharp relief the thought that, while as to the articles before mentioned the rule might be well applied, yet in items of specially designed furniture, the rule was probably a novel one, because you add these words: "and in the Schedule of 1904 the Items for specially designed furniture for the new Capitol Building were framed to extend this principle to tables, chairs, desks and other articles of furniture." Clearly this language, which is your own, indicates that, to your mind, there was an extension of the principle which would imply

novelty, and hence I ask how as a practical man you can apply the foot rule to such an article as a chair or a sofa, and how, in figuring upon the maximum price, you took your measurements as to probable cost, particularly if you did so without information from some one skilled in the trade.

Inasmuch as you were obliged to certify, and did certify to the correctness of the Sanderson bills, such certification being necessary before a warrant could be properly drawn, I ask you by what means you verified the measurements by the foot of such articles as rotary chairs, side chairs, easy chairs, chairs placed in the rooms of the heads of departments, as well as in the Governor's Room, the Lieutenant Governor's Room, the Reception Rooms and the chambers of the Senate and House, and the Room of the Supreme Court, and all other rooms where specially designed chairs and sofas were to be placed. Did you do this measuring yourself in order to verify the Sanderson bills, or, if not, whom did you employ for that purpose, and what method was adopted by him, her or them in testing the accuracy of the bills? Where were the measurements made? For I take it they were made before the goods were actually shipped for delivery. Please give the name and addresses and business experience of the persons making such measurements, and state whether or not conferences were had in relation thereto between yourself and Mr. Sanderson or between any representative of yourself and any representative of Mr. Sanderson.

I ask further whether Mr. Sanderson, prior to the making of his bid, examined your special drawings and specifications at the Witherspoon Building or elsewhere, and, if so, what took place between yourself and him or between any representative of yourself and any representative of Sanderson? And what information did you give him or his representative as to the quantities and numbers of articles which would be required under each specific item in the Special Schedule? I take it that his bids with definite percentages off of your maximum prices were not blindly made, inasmuch as the statement was made in the Schedule that no bids would be received in excess of the maximum price, and that the drawings and specifications were on exhibition at your rooms in the Witherspoon Building; that anyone, preparing himself to bid intelligently and prudently as a business man, in order to ascertain whether or not he could safely fill the contract, would necessarily have interviews with you or with your representatives.

I ask further what delay would be involved because of special drawing or design in the manufacture of the article called for. If it involved hand-carving, would it not necessarily consume a greater amount of time and the labor of an unusual number of men? If, on the other hand, it could be done by a machine, what difference

in the cost to the State would the employment of the per foot rule make in its application to a specially designed article? In other words, why could not all of the specially designed articles, supplied under Item 22, have been supplied under the appropriate Item in the Schedule, numbered from 1 to 20 inclusive, where the price was fixed per piece? What necessity would there be for charging for a rotary chair, for instance, by the per foot rule as was done in the case of the rotary chairs supplied to the heads of Departments under Item 22, when Item No. 11 specifically refers to chairs, although the kind of wood therein specified was oak and the chairs supplied to heads of Departments were of Mahogany? How would the mere difference in the kind of wood introduce a difference in the method of determining the cost, and justify the application of the per foot rule instead of fixing the price by the piece?

Would the special design, as called for in Item 22, whether in its application to tables with flat tops or desks with flat tops, or desks with rolling tops, or wardrobes or wainscoting, add either to the difficulty of manufacture or to the cost of manufacture, and would the fact of a special design for chairs, whether rotary, side, easy, or stuffed, and for sofas of like character, add to the delay of manufacture and the cost of production? If there would be no addition of cost and no additional delay in the matter of manufacture, why, then, was there such a large proportion of the goods actually supplied from Item 22 rather than under Items from 1 to 20 inclusive?

If, on the other hand, the preparation of special drawings and designs involved delay and additional cost, how was it that John H. Sanderson was able to supply so large an amount of fittings and furnishings for the new Capitol Building as to draw upon your Certificate No. 501, dated July 9th, 1904, but two days more than a month after the making of the contract under the award of his bid on June 7th of that year, so large an amount as \$50,000, and, upon your certificate No. 507, dated August 4th, 1904, less than two months after the date of his contract, the further sum of \$75,000? And how is it that your Certificate and the accompanying warrant based thereon read as advances on account of contract? And how was it that the amount of these advances was subsequently deducted, so far as the \$50,000 were concerned, from the certificate issued by you, No. 998, under date of June 12, 1905, for the sum of \$250,000; and, so far as the \$75,000 were concerned, was deducted from Architect's Certificate No. 999, dated June 22, 1905, the first payment being charged up against Warrant No. 6,947, dated June 13, 1905, and the second sum being charged up against Warrant No. 7,515, under date of July 11, 1905, there having been numerous warrants paid to Mr. Sanderson under certificates given by you in the meantime, from which deductions could have been more speedily made?

If your answer be that the Certificate was issued for lighting fixtures in metal instead of for furniture in wood or leather, then I repeat my question as to how the use of a special design for a fixture or a chandelier and the application of the per pound rule would or would not add to the delay in manufacture and the cost of the article. The same difficulties as to promptitude of delivery and propriety of making advances occur whether the subject matter was furniture or chandeliers.

Let me ask you, how did it happen that you gave the certificates numbers 501 and 507 to Sanderson so soon after the date of his contract? What had he done to entitle him to them? What was the character and amount of work that he had performed? Was it ready for delivery? Was it delivered, either in whole or in part? If so, to whom was it delivered, and where was it delivered and when was it delivered? Is it not a fact that no goods were then ready for delivery and were not delivered, and that the certificates were unaccompanied by bills for goods sold and delivered? Did you voluntarily furnish him with the certificates? If so, why? If you did not furnish them voluntarily, did he demand them? And if so, what reason did he give for his demand?

Please explain the scope and meaning of Item No. 22. How did you ascertain that a foot of wood, stone, marble, bronze, mosaic, glass and upholstery would cost the same, irrespective of material, if required for "designed furniture, fittings, furnishings and decorations"? Was no importance to be attached to the character of the material? Did it make no difference in the cost what the material was, provided the design were a special one? Was there such uniformity of design as to make it a matter of no importance as to the character of the material, or, assuming elaboration and variety of design, why would the cost per foot be the same whether in wood work, stone, marble, bronze, mosaic, glass and upholstery?

As you stated in your letter of March 2nd, 1903, that "the only rooms in the building which should have specially designed furniture, carpets, rugs, electroliers, gas and electric fixtures—to match in every way the interior architectural effects" were the House of Representatives, the Senate, Supreme and Superior Courts, the Governor's Grand Reception Room, also the Lieutenant Governor's Room, will you please explain why it was that all of the furniture in the rooms of heads of departments were furnished under Item No. 22? Was the original plan ever changed? If so, when, by whom, by whose authority, and to what extent? Please cite me the written evidence of authority for this or supply me with copies of the orders, together with a statement of the names attached thereto.

To sum up, I must again ask what knowledge had you of the per foot rule adopted with regard to furniture under Item No. 22, particularly with regard to such articles as chairs, sofas and clothes-



poles, and the per pound rule adopted with regard to chandeliers, side brackets, standards, electroliers, glass adornments and other fixtures, furnishings or fittings relating to the lighting of the rooms of the Capitol before the preparation of the schedule or drawings, whether special or usual, and the fixing of a maximum price.

I must again ask you whether you had ever known any practice or standard of per foot in the measuring of such articles of furniture as sofas and chairs prior to your preparation of the Schedule in the Items which you yourself inserted and the fixing of the maximum price. You have not given me a statement of where they were used or where they are now in use, or of the names of the persons with whom you had conversations relating to such matters. I am not asking questions relating to your private business which I know is large, nor have I any reference to the hundreds of prospective bidders seeking business in your office in the course of a year. Inasmuch as the Capitol business was special in its nature, and the drawings upon which bids were invited were special in their nature, it should not be difficult to detach those interested as prospective bidders from the mass of those interested in matters extraneous to the Capitol.

How long have you known John H. Sanderson? When and where did you first come into contact with him in regard to the business of the Capitol? Do you wish to be understood as saying that prior to the time of the advertisements in the papers you had no conversation with him whatever, at any time or place, in regard to the Capitol business, or in regard to the character of the work which you had in hand, particularly in the line of what it was his regular business to supply? Do you wish it to be understood that, after the advertisements appeared and before the awarding of the bids, and during the time that the special drawings and specifications were on exhibition at your office in the Witherspoon Building, John H. Sanderson, or some one representing him, never called to examine the drawings and specifications, and that no conversation whatever ensued between you and himself or between himself and some representative of yours, or some representative of his, in explanation of your drawings and what they entailed, or as to what effect the introduction of the per foot rule in its application to chairs and sofas would have, either upon the price or the time required for the production of the article?

Do you wish it to be understood that John H. Sanderson bid percentages off of your maximum prices without any conversation whatever with you at any time or place in relation thereto? Do you wish it to be understood that, in your view, the application of the per foot rule to chairs and sofas was a novel extension of the principle before that time applicable to wardrobes, wainscoting, flat top tables and flat top desks, and, if so impressed by its novelty, do you wish

it to be understood that you did not remark thereon to John H. Sanderson at any time or place? Do you wish it to be understood that, when you came to issuing the certificates upon which he was to draw warrants, no conversation or explanation took place in regard to the matter of verifying his measurements and his computations as to cost?

If you do not so wish to be understood, then please state the substance of the conversation, the names of the persons with whom the conversations were held, and the places where such conversations were held, and the time, so far as you can fix it, of each conversation. If you acquiesce in the correctness of the minutes of the Board of Public Grounds and Buildings of the 7th of June, 1904, that you stated to the Board, while discussing maximum prices, that the probable cost of the whole work would be from \$500,000 to \$800,000, and you found that the bills as presented by John H. Sanderson were far exceeding these figures, and soon running into millions, what explanation did you require of him to account for this increased amount, and what communications to the Board of Public Grounds and Buildings did you make in order to correct the impression made upon the minds of its members as to the proper cost? What new estimates or plans or drawings or data or explanations did you furnish to the Board or to its individual members at any time or place, and if such explanations are in writing, be good enough to attach copies thereof to your answers.

Did you, at any time after the maximum prices had been fixed for the Items in the Special Schedule, as advertised, increase the number of articles of furniture in any or all of the rooms of the Capitol, and if you did not, then what explanation have you for the largely increased cost which must have developed under your eye from time to time as Sanderson repeatedly called upon you for further certificates? And if you did increase the number of articles required, did you communicate the fact to the Board or any of its members that the cost would vastly exceed the amount of your original estimate, and that your figures were mistakingly low? If you did this, then please state when, where and to whom you made such communication.

How did John H. Sanderson know of the number of articles he was required to furnish under each Item? Did you give him specific orders, either originally or from time to time? If so, please attach copies of such orders, in the order of their dates, to your answers.

Please consider all of the foregoing questions as relating to the per foot rule repeated as to the per pound rule in cases where such rule was adopted.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

January 7th, 1907.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.

My Dear Sir:—Your letter of the 15th of December, 1906, asking for more specific information regarding the furniture and fittings for the new Capitol Building, is received.

I note first that there seems to be some misunderstanding between us regarding the meaning of the word "Specifications," your letter indicating to me that you now mean you consider the "Items" in the "Special Schedule" as "Specifications," while my interpretation of the word "Specifications" has always been, up to this time, and I may say is universally understood to mean in my profession—the written pamphlet or book containing a description or enumeration of the various kinds and qualities of materials and finishes of the different articles required. The Capitol Building Specifications were mentioned in my letter of November 19th to further illustrate to you that the "unit price" system had been used in the "Form of Proposal" for this Building, and I wish to emphasize the fact that the "Items" in the Schedule of 1904 were never looked upon by me as "Specifications," as I understand the meaning of the word, but as a "Form of Proposal" or list of the kinds or articles to be furnished according to the drawings and specifications prepared by me under the direction of the Board of Public Grounds and Buildings and approved by them. The specifications accompanied the drawings and were explanatory of the same.

I shall assume now, however, that when you use the word "Specifications" that you mean the "Items" in the "Special Schedule."

Your recitation of the facts leading up to my appointment as Architect by the Board of Public Grounds and Buildings is substantially correct.

I observe that you state that I fixed the maximum prices in the Special Schedule on Items 21 to 41 inclusive. This is not the case. I was requested by the Board of Public Grounds and Buildings to state to them what I considered should be the maximum prices for the items above named. I appeared before the Board, as stated in my last letter, and explained to them, to the best of my ability, my ideas in relation to the "Unit price" system; the Board adopted my suggestions and directed its Superintendent to compile them in the Special Schedule. I assisted the Superintendent in compiling Items 21 to 41 inclusive. I did not suggest or compile the items from 1 to 20 inclusive, because they did not cover the work designed by me. I suppose they were put into the Schedule by the Board or its Superintendent.

I do not know why these items were placed in the Special Schedule, unless the Board or its Superintendent thought some of these arti-

cles might be required. They were apparently printed simultaneously with the other items as they appear on the same printed page. I do not know how, by whom, or when the maximum prices contained in the first twenty items of the Schedule were fixed.

Having said that I now understand you to mean the "Items" in the "Schedule" when you refer to the "Specifications," I shall endeavor to explain how I arrived at the suggested maximum prices for the different "Items" in the Schedule.

I will state first that I have been a purchaser of the best quality of interior wood work and marble work, furniture, gas and electric fixtures, sculptural and mural decorations, rugs, carpets, etc., during the past twelve years.

I have also designed and superintended the construction of office buildings, churches, college buildings and private residences in which the above classes of work have been designed and selected by me. These experiences formed the basis of my information regarding the maximum prices suggested to the Board of Public Grounds and Buildings. I have at various times examined the catalogues, price lists and advertisements of manufacturers and retail dealers sent to me by them or their representatives unsolicited, and I have also visited the warerooms and manufactories of furniture, interior wood, marble, bronze, glass and gas and electric fixtures to see the different kinds and qualities of articles and to ascertain the prices of the same as carried in stock by them.

Some of the dealers and manufacturers whose warerooms I have visited, and whose catalogues I have examined, and others with whom I have conversed, which aided me in determining the value of the work under discussion, without explaining to them, however, for what purpose I desired such information, and the conversations with whom were of a general character, are: Henry-Bonnard Bronze Co.; Tiffany & Co.; Ferdinand Keller; Strawbridge & Clothier; Derby Desk Co.; William Russel; A. Wilt & Sons; Hunt, Wilkinson & Co.; Beuhler & Lauter; J. E. Caldwell & Co.; Petry & Reid; John Inglis; D. R. MacGregor & Bro.; Johnson Service Co.; R. C. Fisher & Co.; Jackson & Sharp Co.; James L. Riley; Wm. B. Van-Ingen; Edwin A. Abbey and George Gray Barnard; Keller, Pike & Co.; Woodbury Granite Co.; J. W. & C. H. Reeves; George F. Payne & Co.

I did not secure the names of the salesmen with whom I conversed in the different stores and warerooms relative to the cost of articles, as I did not expect to be called upon to furnish the information now requested by you. Neither have I the rough data or memoranda made at the time.

Having stated how I obtained my knowledge and from whom I gained additional information which enabled me to suggest the max-

imum prices covering the work under my supervision, I will endeavor to explain to you how I arrived at the maximum prices as contained in items from 21 to 41 inclusive.

Item 21. Designed Decorative Exterior Lights, . . . each, \$15.00.

I inquired of a representative of Messrs. Keller, Pike & Co., the sub-contractors for the electrical work in the building, and my consulting engineer, Mr. James L. Riley, the cost of running the conduits and wires for outlets, as well as a representative of the Woodbury Granite Co., relative to the cutting of the necessary holes through the granite work for these conduits and wires, and I came to the conclusion that \$15.00 would be a fair average maximum price.

Item 22. Designed furniture, fittings, furnishings and decorations of either woodwork, stone, marble, bronze, mosaic, glass and upholstery, per foot, . . . . . \$20.00

After carefully going over the drawings Nos. 1-F to 42-F, inclusive, and the specifications for the same, with my associate, Mr. Lewis, and noting the quality of the various kinds of work and materials desired, and taking into consideration my personal experience in the purchase of these kinds of articles, my inquiries and observations at this office, warerooms and manufactories, we came to the conclusion that \$20.00 per foot would be a fair average maximum price off of which contractors could bid.

Item. 23. Mural and Art Painting—per foot. . . . . \$50.00

This was the price at which Mr. Abbey had stated that he would undertake to do the work.

Item 24. Decorating and Painting—per foot. . . . . \$3.00

On going into this subject myself and inquiring of Buehler & Lauter, J. W. & C. H. Reeves, and Payne & Co., the cost of ornamental plaster and applied ornamentation, and of D. R. MacGregor & Bro., and Tiffany & Co., the cost of the canvas, painting and gilding, I came to the conclusion that the above would be a fair average maximum price. I hereinafter explain in detail the work required by and executed under this item, and which included the moulded and ornamental plaster, as well as the plain and ornamental painting and gilding.

Item 25. Designed Sofas, Seating, Etc., either upholstered wood, metal or stone, per foot. . . . . \$15.00

This was arrived at in the same manner as described under Item No. 22.

Item No. 26. Designed State Chairs, each. . . . . \$150.00

This chair is called for on drawing No. 16-F and was intended to be used on special State occasions in the dome or elsewhere, and the cost was arrived at in the same manner as Item 22, but none of these chairs were ordered.

Item No. 27. Designed Special Desks and Tables, per foot.. \$12.00

This was intended to cover the furniture in clerical departments and was arrived at in the same manner as Item 22. These desks and tables were subsequently compared with stock articles of similar character, and a price allowed which was less than their price and the number of feet allowed was less than these articles actually measured.

Item 28. English laid interlocken Wood and Rubber Parquetry Flooring, per foot ..... \$1.50

Having had similar flooring laid I considered this a fair maximum price for the character of work desired. It was placed lower than the maximum price stated in schedules of former years.

Item 29. Venetian Blinds, wood or metal, per foot, .....\$1.50

Having had similar blinds hung I considered this a fair average maximum price.

Item 30. Modeling or Sculptor Decoration, per foot..... \$100.00

I talked this subject over with Mr. Barnard and also with Buehler & Lauter, and decided that this was a fair average price for the work contemplated.

Item 31. Designed Special Finish Bronze Metal Gas and Electric Fixtures, each ..... \$225.00

The fixtures contemplated under this Item are shown on drawing No. 25 E-F and was an alternate design to be used in the clerical departments, should the Board decide that the more elaborate fixture required by drawing No. 36-E-F should not be used. None of these fixtures were ordered. Its maximum price was arrived at by comparison with other fixtures of like design.

Item 32. Designed bronze metal for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and rechased, per pound, .....\$5.00

First I learned that the French Government during the years about 1863-66 had a contract with and paid to F. Barbedienne, a well known bronze worker, 25 francs per pound for work similar to that in the Capitol Building, and also allowed him 10 per cent. additional for models, making about \$5.50 per pound.

The following list of fixtures and bronze work was manufactured by the Henry Bonnard Bronze Co.

The fixtures in a private residence were manufactured at a cost of \$7.25 per pound.

An Empire design candelabra, made to sell to the trade, cost \$7.00 per pound.

Special candelabras cost \$11.50 per pound.

The bronze door in the Capitol Building cost \$6.12 per pound.

The hardware, knobs, etc., for a Japanese Room cost \$8.25 per pound.

The metal decorations in a parlor of a private residence in gilt brass cost \$9.08 per pound, and hardware of the same metal and finish sells to the trade at over \$10.00 per pound.

I might add here many other comparisons to show that the maximum price suggested to the Board for the class of work called for by the drawings and now in place in the building, are very reasonable, and I would be glad to have you visit the show rooms of different dealers and manufacturers with me to personally verify the above statements.

As far as I can now recall, when I began to formulate my ideas upon the standards, electroliers and art bronzes for the Capitol Building, I turned, as I said in my letter of Nov. 19th, to the Pantheon at Rome, and St. Marks in Venice, as precedents. I designed this work on a very high key, and the question in my mind was what would be a fair way to pay for them, first to the State and second to the bidder, in order that I might get a result which was to be beyond anything yet accomplished in this country. The idea of paying for them by the pound occurred to me as just on first learning that the French Government had adopted this method for all fine work of this character they desired, as stated hereinbefore. The Henry-Bonnard Bronze Co., of New York, having been awarded the contract for the bronze work for the Capitol Building, the Superintendent of which company, Mr. Eugene F. Aucaigne, was introduced to me by Mr. George Grey Barnard, Sculptor, immediately previous to the signing of Mr. Barnard's contract for the sculpture for this building with the Capitol Building Commission. Mr. Barnard took me to see the process of casting his "Hewer" in bronze, and their work was so satisfactory that I recommended them to the Capitol Building Commission. I subsequently heard the Henry-Bonnard Bronze Co., of which Mr. Aucaigne is the manager and an expert bronze worker, had taken the gold medal for casting Mr. Barnard's "God Pan" in one piece at the Paris Exposition in 1900. No higher compliment can be paid to any bronze worker in the world. He has also since taken the Grand Prize from the St. Louis Fair in

this country, and I may say years ago cast the Hartranft Statue in Capitol Park at Harrisburg. I regard Mr. Aucaigne as the foremost bronze worker in America.

During our conversation I naturally asked him whether the payment for bronze work by the pound was not the fairest way to all concerned to get a fine result, which I so greatly desired, and it was his judgment that it was the best way. Asking him for a specific instance where the per pound method had been used in this country, he answered, as I stated in my letter of November 19th, 1906, that the finest example of this quality of work, and the method of having it performed so as to bring about the best ultimate results, was placed in a private residence in New York, where all special lighting fixtures were paid for by the pound in preference to by the piece and that a more satisfactory and artistic result was obtained by this method.

As to the length of experience of Mr. Aucaigne, I beg leave to state that he is a French gentleman and learned his art in France, and has been engaged in the practice of it practically all his life. He has cast the beautiful bronze doors at the northern entrance to Trinity Church, New York, Richard M. Hunt, Architect, Carl Bitter, sculptor; also the doors for St. Bartholmew's Church, New York, and worked for other leading sculptors. Any reputable sculptor or architect in America will tell you of his standing.

I have had no communication in writing relative to the per pound price.

Taking into consideration the character of work desired, and the information I had obtained relative to the costs, I came to the conclusion that \$5.00 per pound would be a fair average maximum price for the making, shipping and hanging of these fixtures.

Item 33. Designed special finish white metal gas and electric fixtures, each, .....\$150.00

These fixtures are called for on drawings No. 22 E-F, and were intended for and used in the toilet and wash rooms throughout the building. The maximum prices for these fixtures were determined by comparison with similar fixtures.

Item 34. Special designed Thermostats, each, .....\$100.00

The work contemplated under this item included the pumps, special piping, special valve, the theremostatic instruments, and the special cases for the same, as designed by me, and the maximum price was arrived at after a thorough consideration of the matter with my consulting engineer and the Johnson Service Co. I may add that many of the cases alone covering the thermostatic instruments have been since represented to me by the contractor as



costing him the amount of the maximum price above stated, and cost at the rate of about \$20.00 per pound for the finished bronze metal alone. I believe this item had been in former schedules, at a less maximum price but they did not contemplate special cover cases.

Item 35. Special designed carpets, Sovommerie, imported Scotch Axminster, Series C, per foot, .....	\$4 00
Item 36. Special rugs, antique Persian, Kermanshaw, Tabiez and Berlin, Series C, per foot, .....	3 00
Item 37. Special Wilton Corona carpets, Series C, per yard,	3 25
Item 38. Designed curtains, draperies and panels, Aubusson tapestry and silk brocade, silk trimmings, Series F, per yard, .....	40 00

In arriving at the maximum prices for the carpets, rugs and curtains contained in Items 35, 36, 37, 38, I consulted Mr. John Inglis, the manager for Sloane & Co., of New York, whom I met some years ago in New York.

When I was requested by the Board to suggest to them the maximum prices for these articles, I sent for Mr. Inglis and he came to my office in Philadelphia, and after carefully talking over the matter, the amounts suggested were considered fair average maximum prices.

Mr. Inglis was regarded as one of the most expert rug and carpet men in America.

I would further state that two of my brothers have been manufacturers and makers of Axminster carpets and rugs for many years, and I naturally discussed this subject with them.

Item 39. Designed clock fittings and fixtures, Series F, each,	\$150 00
--	----------

Following out my intentions throughout this entire undertaking, and desiring to obtain, in the clocks, an equally substantial, permanent and artistic result, I talked this matter over some time before the schedule was published, with J. E. Caldwell & Co., of Philadelphia, from whom I have purchased clocks and have known personally and by reputation for years. I arrived at the suggested maximum price for this item after a most careful study of the matter.

Item 40. Faverille and Bacarat glass, Series F, per foot, ...	\$30 00
---	---------

Mr. Wm. B. Van Ingen, of New York, having secured the contract for the art windows in the House and Senate from Geo. F. Payne & Co., the contractors for the building, I naturally had many conversations with him during my supervision of his work and in talking over this work the amount suggested was arrived at as a fair average maximum price.

Item 41. Moravian tiles, Series F, per foot, ..... \$3 00

After consulting with Mr. Henry C. Mercer, of Doylestown, who had secured the contract for the tile floors in the main first floor corridor in the capitol building, I arrived at the maximum price suggested for this item.

In my conversations with the various men, no written or stenographic notes were taken, neither were any written estimates obtained from them. I did not consider this necessary to arrive at the suggested average maximum prices, and I cannot now recall the dates or the exact substance of such conversations, but only, in a general way, to secure the information desired.

You ask "was the price fixed a trade price, and if so, how was it shown or demonstrated to you to be the trade price?" I beg leave to state that I did not fix the prices for these articles, but suggested to the Board the maximum prices above referred to off of which contractors could bid the percentages which they determined would arrive at a price for which they would agree to do the work. The prices were not fixed until such estimates had been received and accepted by the Board.

The articles contained in the items of the schedule, the maximum prices for which were suggested by me, were not stock articles, and these prices were arrived at in the manner above stated. They were intended to cover a profit for the contractor, but no fixed percentages were computed by me. I presume that the contractor in offering to do the work calculated on a profit. I did not inquire the amount of that profit, nor do I know.

Articles of special design usually cost more than stock articles.

Not being a manufacturer, I was unable to determine what additional labor on the raw materials was required, or whether it was capable of being made by machinery, and therefore am not able to determine what would be the increased cost over the price of the raw material.

In answer to your question contained in paragraph (h), which reads as follows: "Did you prepare a list or lists of furnishings required for each Department, and each room in each Department, of the number of chairs, desks and sofas before you fixed the maximum prices?" I beg leave to state that I did not prepare a specific list of the quantities of articles, materials or work to be done prior to the award of the contract, but as the architect of the building, I knew approximately the number of electric outlets, the number of rooms in the building, and also the purpose for which each room was to be used. I also knew the approximate amount of decoration which was to be done, and whereas I did make general notes of these quantities at the time of determining the maximum prices

suggested to the Board, I did not make a specific list at that time of these quantities, nor did I ever prepare a list of quantities of any of the articles and number of feet of decoration to be done in this building until called upon to do so by the Auditor General, Hon. W. P. Snyder, after the quantitative plans had been approved by the Board on December 13, 1904, except the list of House, Senate and committee room furniture, which list was prepared after carefully going over these rooms with Mr. Herman P. Miller, Senate Librarian, and Mr. Charles Johnson, the Chief Clerk of the House, after the contract had been awarded. I may add that if the State had authorized me to prepare a specific list of all of the above mentioned articles and quantities of work to be done, prior to the bidding upon this work, and presented to the bidders at the quantities which they would be required to furnish, in my judgment, upon the award of this contract, the State would have been liable for all quantities of articles contained in such list. Not having been authorized by the Board to prepare such an official list, I did not do so, and to have prepared an accurate list it would have taken much time in the preparation of a set of quantitative plans to determine the same.

Previous to the award of the contract, the Board not having authorized any definite quantities, and even after June 7, 1904, when John H. Sanderson was awarded this contract by a letter from the Superintendent, it meant nothing except that portion of the letter which specifically directed him to furnish that portion of the contract referring to the furniture and fittings for the House and Senate chambers and committee rooms. This is my reason for not having prepared any lists of quantities and for verbally stating to the bidders, other than in a general way, that the quantities that might be required could be ascertained by them in an examination of the plans and specifications on file in my office of the building, as well as the personal examination of the building itself, which was at that time nearing completion in the rough. If the Board of Public Grounds and Buildings had requested me to prepare a statement of the cost of the entire work contained in this contract after the preparation of the quantitative plans and the list of quantities, I could have done so, but not prior to the preparation of these plans and list.

I did not prepare estimates, either partial or total, of the probable cost to the State, and did not exhibit any such estimate to the Board of Public Grounds and Buildings.

In the latter part of paragraph (h) of your letter you refer to the meeting held by the Board of Public Grounds and Buildings on June 7th, 1904, for the purpose of opening and reading the bids for the general and special schedules for furniture, carpets, gas and electric fixtures, supplies, stationery, etc., for the year ending

June 1, 1905, that after the opening and reading of the same, the Board adjourned to the Executive Chamber to examine said bids; that the special schedule for the carpets, furniture, fittings, and decorations for the new capitol was taken up but was laid over until "Architect Huston could be consulted as to maximum prices, bids and probable cost of the whole." The minutes reading further, are as follows.

"The matter of the special schedule for the furnishing of the new Capitol building was again taken up. After hearing Mr. Huston on the maximum prices, and the probable cost of the whole, which was from \$500,000.00 to \$800,000.00, the Board took up the bids on furnishings, as per pages 55 and 56 of the special schedule. Two bids were received, viz: that of Strawbridge and Clothier, and that of Wilt & Son, of Philadelphia, on furniture only, and one firm, John H. Sanderson, on the entire special furniture schedule. After due examination and comparison of the bids, it was found that John H. Sanderson was the lowest bidder, and it was therefore, on motion of State Treasurer Mathues, seconded by Auditor General Snyder, that the award of the entire contract for the special furniture, carpet, fittings and decorations schedule for the equipment of the new Capitol building, as set forth on each item from 1 to 41 inclusive, on pages 55 and 56 of the special schedule, be made to John H. Sanderson, of Philadelphia. Motion carried."

When I was called into conference on the above date, I understood the Board to ask me what would be the probable cost of the furniture for this building, and my recollection is that I stated that I approximated this cost to be between \$800,000.00 and \$1,000,000.00, and this statement has proven approximately correct. I wish to emphatically state that I did not understand the question of the Board to mean that they wished me to state what all of the metal cases, interior decoration, mural and art paintings, sculpture, and bronze work would cost, as I did not know at that time what percentages had been bid off of the items in the schedule, and no accurate quantitative plans or lists had been prepared. You can therefore see how absolutely impossible it would have been for me to have arrived, with any degree of certainty at the cost of all of this work.

I would further state that subsequently a contract was executed by the Board with Edwin A. Abbey for a portion of Item 23 of the contract of John H. Sanderson, and assigned by him, which amounted to over \$200,000, a copy of which is herewith enclosed.

In answer to your many questions and deductions made by you relative to the payment for the various articles and materials contained in the schedule after the award of the contract, I would state as follows:

Upon the presentation of the bill by the contractor for any such articles and materials, I went over each item carefully, and compared the same with the drawings and the completed articles, either in the factory or at the building, and the size or weight of each article was verified. In cases where there were many articles of the same size and design, I had weighed or measured sufficient of them to determine the correctness of bill. In the matter of wainscotings, decorations and paintings, I determined these first from the working scale drawings of the different rooms and afterwards by an accurate measurement of the work in the building, and wish to state here that in nearly every instance the amounts claimed by the contractor were reduced by me. In certain cases, where I had secured comparisons, I refused to pass bills, and used my discretion as an architect, in the protection of my client, until the contractor had made his bill for the furniture in these cases for this building less than that called for by the catalogues of manufacturers of articles of a similar character, though of stock patterns, in conformity with what I had decided was the proper measurement to allow. In addition to this the contractor was required to attach an affidavit to each invoice that the quantity of material was actually furnished, and that the quality was in accordance therewith. In substantiation of this statement I beg leave to submit herewith illustrations taken from above referred to catalogues marked "A," "B," "C," "D," which will illustrate to you the foregoing statement.

I will also state that the actual weights of certain bronze fixtures are in excess of the weights allowed by me. I will further state that in the matter of Painting and Decorating the number of feet allowed to the contractor is less than one-half of that actually done by him in the building.

I will also state in the matter of wainscoting, mantels, etc., that the number of feet allowed to the contractor is about two-thirds of that actually furnished by him in the building. I would also state that at my solicitation the Board of Public Grounds and Buildings secured the release of the contractor on Item 28 and awarded a contract for this work at a less price to another contractor.

You will pardon me for saying that the above statements are made to illustrate to you the position I have taken throughout this entire proposition, that is, the protection of my client in every way possible in my power.

In answer to your question as to whether Mr. Sanderson, prior to the making of his bid, examined my special drawings and specifications at the Witherspoon building, I beg leave to state that Mr. Sanderson and his representatives did examine such special drawings and specifications in my rooms in the Witherspoon building, set apart for that purpose, during the time required by the

advertisements of the Board, and that he was given the same information that all other bidders received. No specific list was given or specific statement made of the quantities and numbers of articles which would be required, to Mr. Sauderson, or to any other bidder. Bidders were told generally that they should examine the plans of the building, which I had on file with the special drawings and which contained the names of all rooms of departments, committee rooms throughout the building, the electric light outlets for which fixtures were to be furnished, the radiators which were to be controlled by the thermostats regulation, as well as the number and size of windows to be supplied with curtains, shades and blinds. They also gave the approximate amount of floor surface for which carpets might be required, and the approximate number of feet of wall decoration, and the number of clocks of the different kinds which would be required in the various rooms of the departments, and also to examine the building, then nearing completion in the rough, which would give them a more concrete idea of the number of electric outlets, etc., and number and size of rooms in the building. This was all the information I could have given them and I believe it was amply sufficient for them to make an intelligent bid.

You ask what delay would be involved because of special drawings or designs in the manufacture of the article called for.

This is a very difficult question to answer because I would venture to say that no two manufacturers have the same facilities for the manufacture of either special or stock furniture, and whereas one manufacturer might be able to fill an order for special designed furniture in one or two months, another would require 6 to 8 months.

The same principle would also apply to an order for so called stock articles, therefore I am unable to determine what delay would be involved because of special drawings or designs in the manufacture of articles called for without having an estimate for the same with a statement from the manufacturer giving time required. It usually does require more time to manufacture specially designed furniture, and also adds additional cost. The proportionate additional cost could not be arrived at without specific estimates on the different articles required. You ask further why could not all of the specially designed articles, supplied under Item 22, have been supplied under the items 1 to 20 inclusive, and I repeat that I had nothing to do with these items, and therefore cannot answer your question as to why the articles referred to were not purchased under these items.

You ask further what necessity would there be for charging for a rotary chair, for instance, by the per foot rule, as was done in

the case of the rotary chairs supplied to the heads of departments under Item 22, and Item 11 specifically refers to rotary chairs, although the kind of work therein specified was oak, and the chairs supplied to heads of departments were mahogany?

How would a mere difference in the kind of wood introduce a difference in the method of determining the cost, and justify the application of the per foot rule, instead of fixing the price by the piece?

At the time of suggesting to the Board the maximum price for Item No. 22, I considered the furniture for the building in the same class with all other interior fittings, such as wainscotings, book cases, wardrobes, mantels, over mantels, cabinets, etc., as they were designed by me and would go through the same process of manufacture, in fact special furniture is made by the same men who make the articles above referred to and I could see no good reason why they could not be paid for in the same manner, for I have observed, upon my many visits to the factories of William Russel, of Philadelphia, and others, the same expert mechanics working on wainscoting, mantels, etc., at one time, and chairs, tables, etc., at another.

You ask further would the special design, as called for in Item 22, whether in its application to tables with flat tops or desks with flat tops, or desks with rolling tops, or wardrobes or wainscoting, add either to the difficulty of manufacture or to the cost of manufacture.

They do usually add to the difficulty and the cost of manufacture.

And you further ask would the fact that a special design for chairs, whether rotary or side, easy or stuffed, and for sofas of like character, add to the delay of manufacture and the cost of production.

They do usually add to the delay and to the cost of production.

You ask "how was it that John H. Sanderson was able to supply so large an amount of fittings and furnishings for the new capitol building as to draw upon your certificate No. 501, dated July 9, 1904, but two days more than a month after the making of the contract under the award of his bid on June 7th of that year, so large an amount as \$50,000, and upon your certificate No. 507, dated August 4, 1904, less than two months after the date of his contract, the further sum of \$75,000.

My recollection in connection with this matter is that John H. Sanderson requested the Auditor General, who had been authorized by the Board to pay for this work, to make such advancements on account of articles manufactured, which could not be delivered to the building on account of there being no suitable place to put them and also for a large amount of work in course of manufacture,

and offering to furnish to the State a trust company's bond covering such advances. The Auditor General asked me about it, and I said that I saw no reason why such advances should not be made under the conditions. He then requested me to issue the necessary certificates for the amounts requested, and I did so.

I did not know that the amounts called for by these certificates had not been deducted from certificates subsequently issued by me until June and July of 1905. I was not requested by the Auditor General to certify to the deduction of the above referred to amounts until the times above stated.

Having previously answered your questions contained in the second paragraph of page 19, and the first and second paragraphs on page 20, I shall proceed to answer the questions contained in the third paragraph on page 20, which reads as follows:

"As you stated in your letter of March 2, 1903, that 'the only rooms in the building which should have specially designed furniture, carpets, rugs, electroliers, gas and electric fixtures, to match in every way the interior architectural effects, were the House of Representatives, the Senate, Supreme Court and Superior Court, the Governor's grand reception room, also the Lieutenant Governor's room,' will you please explain why it was that all of the furniture in the rooms of heads of departments were furnished under Item 22?"

At the time the above letter was written the general finish throughout the building, outside of certain specified rooms, was to be of oak, but on June 9, 1904, a resolution was passed by the Capitol Building Commission, authorizing the change of this material to mahogany or birch, which reads as follows:

"Resolved, That the contractors be permitted to substitute either mahogany or birch, the same as used by the Pullman Car Co., in furnishing the interior of their sleeping cars, where oak is specified for finishing the interior of the building, except in the Executive reception room and the basement, provided this is done without additional cost to the commission."

Under this resolution George F. Payne & Co. did put in birch finish throughout the building, finished like mahogany with mahogany panels in the doors.

My drawings and specifications for the furniture for this building call for all furniture to be made out of mahogany with the exception of the rooms comprising the Executive suite, and the ladies' reception room of the Lieutenant Governor's suite.

I have already answered your questions contained in paragraphs 2 and 3 on page 21.



You ask "How long have you known John H. Sanderson? When and where did you first come into contact with him in regard to the business of the capitol? Do you wish to be understood as saying that prior to the time of the advertisements in the papers you had no conversation with him whatever, at any time or place, in regard to the capitol business, or in regard to the character of the work which you had in hand, particularly in the line of what it was his regular business to supply?"

As well as I can remember, I met Mr. Sanderson in the Spring of 1899.

I do not remember ever having had any conversation with Mr. Sanderson regarding the capitol business prior to the time of the advertisements in the papers.

You further ask, "Do you wish it to be understood that after the advertisements appeared and before the awarding of the bid, and during the time that the special drawings and specifications were on exhibition at your office in the Witherspoon building, John H. Sanderson, or some one representing him, never called to examine the drawings and specifications?"

I have stated hereinbefore that he and his representatives did call and examine the drawings.

You further ask, "Do you wish it to be understood that John H. Sanderson bid percentages off of your maximum prices without any conversation whatever with you at any time or place in relation thereto? Do you wish it to be understood that, in your view, the application of the per foot rule to chairs and sofas was a novel extension of the principle before that time applicable to wardrobes, wainscoting, flat top tables and flat top desks, and if so impressed by its novelty, do you wish it to be understood that you did not remark thereon to John H. Sanderson at any time or place? Do you wish it to be understood that when you came to issuing the certificates upon which he was to draw warrants, no conversation nor explanation took place in regard to the matter of verifying his measurements and his computations as to costs?"

I stated in my letter to you of November 19, in answer to your letter of November 12th, that "John H. Sanderson did not make any suggestions to me prior to the publication of invitations for bids, or while schedules were being prepared," and I have hereinbefore stated that "Mr. Sanderson and his representatives did examine such special drawings and specifications," during the time required by the advertisements of the Board, and that he was given the same information that other bidders received, and also explained the nature of such information. I am therefore at a loss to know why you assume that I wish it to be understood that John H. Sanderson bid percentages off of the maximum prices without any

such information. I fail to find anything in my letter of the 19th of November to you that would lead you to assume that I consider the use of the so-called per foot and per pound rule a novelty, and I now do not consider that by the extension of this rule it constituted a novelty, and I did not so remark to John H. Sanderson, or any one else at any time or place. When it came to issuing the certificates, I acted as hereinbefore stated.

I do not wish to be so understood, and have hereinbefore stated as clearly as possible just how I arrived at the maximum prices for each item suggested to the Board.

I do not acquiesce in the correctness of the minutes of the Board of Public Grounds and Buildings of the 7th of June, 1904, as I have hereinbefore stated.

When the bills were presented by John H. Sanderson, I examined the same as hereinbefore stated, and issued a certificate to him to be presented to the Board. Feeling that the Board was thoroughly familiar with the entire transaction, and not knowing what impression had been made upon their minds, I did not feel called upon to further communicate to the Board relative to the cost of the work.

No new estimates or plans or drawings or data or explanation were ever furnished by me to the Board, or its individual members, at any time or place after the 13th day of December, 1904, except further necessary explanatory detail working drawings, at which time each individual member of the Board carefully examined and signed the Quantitative Plans numbering 400-A200, 393-A213, 394-A214, 395-A215, 396-A216, 397-A217 and 418-A238 inclusive, and which plans have remained in the possession of the Superintendent of Public Grounds and Buildings at the request of the Board.

I do not recall ever having increased the number of articles of furniture in any or all of the rooms of the capitol at any time after the maximum prices had been fixed for the items of the special schedule, and have no further explanation to give for the slightly increased cost of these articles, other than that hereinbefore stated.

You ask "How did John H. Sanderson know of the number of articles he was required to furnish under each item? Did you give him specific orders, either originally or from time to time?"

The first specific order given to John H. Sanderson was on June the 7th, 1904, which reads as follows:

---

June 7, 1904.

John H. Sanderson, Esq.,

No. 622 Chestnut Street, Phila.

Dear Sir: At a meeting of the Board of Commissioners of Public Grounds and Buildings held this af-

ternoon, you were awarded the contract for furnishing all supplies, articles and materials and performing all work required under the "Special Furniture, Carpet, Fittings and Decorations Schedule for the Equipment of the new Capitol building, Harrisburg, Pa.," embracing Items 1 to 41 inclusive of said schedule.

The Board has instructed me to direct you to commence work at once on the furniture and fittings for the Senate, House of Representatives and committee rooms, etc., belonging thereto, and I therefore direct you to furnish all materials and do all necessary work, according to the plans and specifications of Joseph M. Huston, Architect, with diligence and dispatch.

Yours truly,

(Signed)

J. M. SHUMAKER,  
Superintendent.

---

On June 9th, 1904, I wrote as follows:

John H. Sanderson, Esq.,

No. 622 Chestnut Street, Phila.

Dear Sir: In pursuance with the instructions of J. M. Shumaker, Superintendent of Public Grounds and Buildings, acting for the Board of Commissioners of Public Grounds and Buildings, I send herewith a list of the furniture, fittings, carpets, etc., for the Capitol building, as per schedule under which you hold this contract together with the designs required, for the meeting of the next Legislature on January 1, 1905. You will please proceed to manufacture this work in accordance therewith so as to complete the same on or before Dec. 15, 1904.

Very truly yours,

(Signed)

J. M. HUSTON.

---

August 23, 1904.

John H. Sanderson,

622 Chestnut Street, Phila.

Dear Sir: You will please furnish at the earliest possible date the English interlocking floor for the House and Senate pasting and folding-rooms in the Capitol building as per your contract and sample submitted. The steel cases for these rooms are now in place. You will therefore take all measurements for this floor at the building.

Yours truly,

(Signed)

J. M. HUSTON,  
Architect.

August 23, 1904.

John H. Sanderson,

622 Chestnut Street, Phila.

Dear Sir: You are hereby authorized to proceed with the manufacture of 10,000 yards of the standard pattern of carpet for the Capitol building in accordance with schedule and sample submitted.

(Signed)

Yours truly,

J. M. HUSTON,  
Architect.

August 23, 1904.

John H. Sanderson,

622 Chestnut Street.

Dear Sir: You are hereby authorized to manufacture the articles of gas fixtures for the Capitol building for the Commonwealth of Pennsylvania contained in the accompanying list prepared in this office on August 10, 1904.

These goods must be absolutely in accordance with the plans and specifications and satisfactory to my inspection.

(Signed)

Yours truly,

J. M. HUSTON,  
Architect.

The contractor, John H. Sanderson, refused to proceed with the balance of the work until a set of quantitative plans was prepared defining the quantity and location of each article, and I therefore proceeded to prepare such plans, and on their completion I presented them to the Board for their approval on December 5, 1904, and they were approved by them, and the following resolution passed: "Resolved that the revised plans presented by Joseph M. Huston for the special furniture, fittings, and decorations for the equipment of the new capitol building, as approved by the Board of Public Grounds and Buildings, December 13, 1904, numbering from 393-A213, 394-A214, 395-A215, 396-A216, 397-A217, 400-A200 and 418-A238, inclusive, and that the contractor, John H. Sanderson was directed to furnish the same under the supervision of the said architect, and the Auditor General is hereby directed to make payment for the same in part or in full upon certificate of the architect, according to the schedule of June, 1904, under which contract was awarded, and that the prices on any work not provided for in the plans adopted December 13th, 1904, shall be fully agreed upon between the said John H. Sanderson and the said Joseph M. Huston, architect, subject to the approval of the said Board of Public

Grounds and Buildings and Superintendent, J. M. Shumaker, before any certificate for payment shall be issued."

The above resolution was adopted.

As the above referred to plans and resolutions were adopted, I turned over to John H. Sanderson a set of these plans and directed him to proceed to furnish all of the articles required thereby in the following communication:

January 21, 1905.

John H. Sanderson, Esq.,

No. 622 Chestnut Street, Phila.

Dear Sir: The plans showing the quantities of the articles and materials for the equipment of the Capitol building having been approved by the Board of Public Grounds and Buildings, you are hereby directed to furnish the same in accordance with these plans, blue print copies of which I send you herewith.

Very truly yours,

(Signed)

J. M. HUSTON.

And I further find that on February 1, 1905, the following communication was sent:

Mr. John H. Sanderson,

No. 622 Chestnut Street.

Dear Sir: According to the plans of the special furniture fittings and decorations for the equipment of the new Capitol building at Harrisburg, Pa., included in the schedule of 1904-5, Items Nos. 1 to 41 inclusive, contract of John H. Sanderson, and approved by Samuel W. Pennypacker, Governor, W. P. Snyder, Auditor General, W. L. Mathues, State Treasurer, and J. M. Shumaker, Superintendent of Public Grounds and Buildings, and resolutions pertaining to the carrying out of same, you are hereby authorized to order from W. B. Van Ingen and John W. Alexander, paintings from connecting north and south corridors marked on plans, "Lunettes on both sides" of corridor painted as per item 23.

Mr. Alexander to paint Lunette of South Corridor.

Mr. Van Ingen to paint Lunette of North Corridor.

Very truly yours,

(Signed)

J. M. HUSTON.

July 10, 1905.

John H. Sanderson, Esq.,

No. 622 Chestnut Street, Phila.

Dear Sir: You are hereby authorized to proceed at once with the interior decoration of walls and ceilings,

wood and marble wainscoting, seats, etc., clocks, thermostats, ornamental plaster and wood cornices and ceilings, in accordance with the "plans of the special furniture, fittings and decorations for the equipment of the new Capitol building at Harrisburg, Penna.," and included in the schedule of 1904-5, Items 1 to 41 inclusive.

You will kindly call at this office to secure the necessary information to proceed with the work at once.

Very truly yours,  
(Signed) J. M. HUSTON.

August 4, 1905.

Mr. John H. Sanderson,  
622 Chestnut Street.

Dear Sir: According to the plans of special furniture, fittings and decorations for the equipment of the new Capitol building at Harrisburg, Pa., included in the schedule of 1904-5, Items Nos. 1 to 41 inclusive, contract of John H. Sanderson and approved by Samuel W. Pennypacker, Governor, W. P. Snyder, Auditor General, W. L. Mathues, State Treasurer, and J. M. Shumaker, Supt. of Public Grounds and Buildings, and resolutions pertaining to the carrying out of the same, you are hereby authorized to proceed with wainscotings, mantels, and decorations and painting in accordance with the detail drawings Nos. 401, 483, 485 to 527 inclusive, 332, 340, 344, 374, 370, 336, 343, 405, as signed by J. M. Shumaker, Supt. of Public Grounds and Buildings.

Your bill for this work shall be rendered in accordance with the square foot measurement for wainscotings under Item No. 22, and decorating and painting under Item 24.

Very truly yours,  
(Signed) J. M. HUSTON.

So far as I am able to determine at this time, these are all of the orders issued by me to John H. Sanderson, in connection with this work.

In answer to your questions which read as follows: "I ask you to draw the line of demarcation between the work of the Capitol Commission and that of the Commissioners of Public Grounds and Buildings as distinctly, as broadly, as definitely as can be done. Where did the work of the first commission end, and where did the work of the second commission begin?"

I would first state that the contract of Geo. F. Payne & Co., with the Capitol Building Commission is defined by the drawings called for on pages 13 and 14 of the Capitol Building Specifications, which

read as follows: "The drawings, which together with the specifications, form the basis of the contract are numbered: A-13, A-14, A-15, A-16, A-17, A-18, A-19, A-20, A-21, A-22, A-23, A-24, A-25, A-26, A-28, D-29, D-30, D-31, D-32, D-32½, S-33, S-34, S-35, S-36, S-37, S-38, S-39, S-40, S-41, G-42, G-43, G-44, G-45, G-46, G-47, G-48, G-49, G-50, G-51, P-62, P-63, and drawings P-52, P-53, P-54, P-55, P-56, P-57, P-58, P-59, P-60, P-61 are furnished for the information of the bidder to illustrate the character of the work already in place and subject to change, as required by drawings 13 to 51 inclusive, and this specification and the work must be carried out in accordance therewith and with such other details, models, instructions, etc., as may be provided." And the contracts between the Capitol Building Commission and Edwin A. Abbey for four (4) mural paintings in the large Lunettes in the dome, and with Violet Oakley for the mural paintings in the frieze above the wainscoting in the grand executive reception room, and with George Grey Barnard for the two groups of sculpture to be placed on the pedestal at either side of the main entrance to the building. The amounts of these contracts were: Geo. F. Payne & Co., \$3,505,656.00; George Grey Barnard, \$100,000; Edwin A. Abbey, \$70,000.00; Miss Violet Oakley, \$20,000, and my commission on the cost of the work amounted to \$185,651.91.

There was also allowed to Geo. F. Payne & Co. the sum of \$16,982.12 for extra work in connection with their contract for the building. This amount was made up of the following items:

Installing complete system of telephone conduits and boxes for distribution tablets and outlets, ordered by Capitol Commission, May 5, 1904, .....	\$3,828 00
Additional panel in switch board, .....	1,336 50
Rain conductors for dome, .....	2,943 51
Increased weight of grillage beams in column foundations, Nos. 1, 4, 163, 166, 29, 32, 159, and 162, .....	1,549 32
Extra foundation work, .....	10,430 90
Running extra telegraph conduit, per resolution of Capitol Commission, Nov. 9, 1904, 576 feet at \$1.50 per foot, .....	864 00
Additional foundations for main entrance steps, .....	503 50
Lowering beams 18 inches on entresol floor wings "A" and "C," .....	1,726 39
Making extension to front granite platforms, .....	1,800 00
Extra steel work, etc., in mechanical plant, .....	5,748 10
Closing elliptic transoms in corridors, 1st floor D-1 and D-2, and diffusors over House, Senate and dome, .....	6,001 61
Furnishing bronze registers, screens and ventilators, ...	1,882 29

---

Making a total of, ..... \$38,614 12

## Credits.

Flooring throughout building, .....	\$7,100 00
Two dynamos and engines, .....	8,000 00
Plaster coves, .....	750 00
Two dust chutes, .....	300 00
Glass in dome, House of Representatives, Senate and corridors, .....	5,482 00
<hr/>	
Making a total of, .....	\$21,632 00

Leaving a balance due to Geo. F. Payne & Co., as extras on their contract with the Capitol Building Commission of \$16,982.12.

I would here call your attention to the credits allowed by Geo. F. Payne & Co., by omissions of work required by the specifications for the flooring throughout the building, plaster coves, and the glass in dome, House of Representatives, Senate and corridors, and also to the resolution of the Capitol Building Commission of September 3, 1903, regarding the bronze work furnished under the contract of Geo. F. Payne & Co., and further to my letter dated August 4th, 1903, a copy of which I also enclose herewith, which is the recommendation referred to in the above resolution, which clearly sets forth the specific items of bronze work to be furnished by Geo. F. Payne & Co., except that the bronze tablet contained in the list of the bronze work in this letter having been omitted in the resolution of the Capitol Building Commission of August 6, 1903; and I would further in this connection call your attention to a letter addressed to me by Geo. F. Payne & Co., a copy of which is contained in the above referred to resolutions, which further defines the modifications contemplated by George F. Payne & Co., and the prices of the same, in their allowance of \$21,000.00 for these modifications to be applied to the cost of the bronze work.

This cost was defined in the capitol building specification on page 86, paragraph 7, which reads as follows:

"The contractor shall allow in his estimate the sum of \$30,000 for all bronze doors, frames, standards, screens and grilles over same," and on page 159, paragraph 3, which reads as follows:

"All heating and ventilating registers and screens in front of direct radiators throughout the building are to be furnished by this contractor, and as they all will be of special design and finish, the sum of \$10,000.00 must be allowed to cover the cost of this item;" thus you will see how the Capitol Building Commission arrived at the allotment of \$41,000.00 for the specific items of bronze work hereinbefore mentioned and as called for by the resolution of the Capitol Building Commission of September 3, 1903, that is, taking the \$30,000.00 called for on page 87, and adding thereto the \$10,-



000.00 called for on page 159, making \$40,000.00, and deducting therefrom the \$15,000.00 referred to under the letter "H" in the alterations and omissions of the capitol building contract, we have left \$25,000.00, and still further add thereto the \$21,000.00 allowed by George F. Payne & Company, under modifications approved by the Capitol Building Commission on August 4, 1903, you have \$46,000.00, of which sum \$41,000.00 covered the cost of the specific items of bronze work and \$5,000.00 was to cover the cost of the bronze registers, screens, etc.

I also enclose herewith a copy of the alterations and omissions made in the contract between Geo. F. Payne & Company and the Capitol Building Commission, prior to the signing of the same, as called for on pages 15, 16 and 17 of the said contract and marked with the letters from "A" to "I" inclusive. Under the letter "B" it called for "the omission of the two (2) glass mosaic frieze bands around the main rotunda, and the four (4) glass mosaic circular medallions in main rotunda" at the price of fourteen thousand, five hundred and eighty-four (\$14,584.00) dollars. Subsequently, the Grounds and Buildings Commission under their contract with John H. Sanderson placed gold glass mosaic backgrounds, with blue shaded letters forming inscriptions from the writings of William Penn, as selected by the Hon. Samuel W. Pennypacker, in these frieze bands, and in the four (4) circular medallions, the Grounds and Buildings Commission, under their contract with John H. Sanderson, having secured an assignment from him (Sanderson) of a portion of Item No. 23 ("Mural and Art Painting"), and subsequently signed a contract with Edwin A. Abbey, Dec. 14, 1904, and which contract was approved and signed by John G. Johnson, Esq., acting for Mr. Abbey, and approved by Hon. Hampton L. Carson, acting for the State, to place a series of mural art paintings in the above referred to circular medallions, and which are now nearly completed.

Under the letter "C," it calls for "the omission of the painting of walls and ceilings of all rooms and corridors as called for in paragraph 2, page 57, of the specifications, with the exception of the walls and ceilings of all toilets and bath-rooms valued at twenty-five thousand (\$25,000.00) dollars."

To draw the line of demarcation in the work of painting and decorating, I will here state that the contract between George F. Payne & Company and the Capitol Building Commission is defined on pages 54 to 58 inclusive of the specifications, and by referring to the above modification you will observe that that portion of the work required in paragraph 2, page 57, of these specifications was omitted from the contract, which reads as follows:

**"All plain plaster walls and ceilings of all rooms and corridors**

throughout the basement, first, entresol, second, third and fourth floors not otherwise specified shall be given four coats of white lead and linseed oil paint, the last coat to be stippled down to a fine egg-shell finish in colors as directed."

George F. Payne & Company did paint all of the toilet and bath-rooms and all the ceiling and wall decoration in the grand executive reception room, House of Representatives, Senate, Supreme and Superior Court room and the grand rotunda and dome, and did do all of the other painting and polishing work required by these specifications on the pages above referred to from 54 to 58 inclusive, in accordance therewith.

The decorating and painting work done by the Grounds and Building Commission in their contract with John H. Sanderson, under "Item No. 24, decorating and painting, Series F, per foot, \$3.00," consisted of covering all the plain plaster surfaces of the walls and ceilings of all of the other 470 odd rooms throughout the building, with the exception of the rooms above noted, with first quality canvas duck, after the walls had been properly prepared for the same, and the application of four or more coats of first quality paint to these canvas surfaces, as well as all of the ornamental plaster work, as required by drawings Nos. 203, 332, 336, 340, 343, 344, 370, 378, 374, 401, 405, 483, 485 to 527 inclusive, 533 to 537 inclusive, and 600, and such other full size details, models and instructions as were required, except that called for on page 53 of the capitol building specifications, which reads as follows:

"All rooms comprising the Executive Department, the rooms assigned to the Auditor General, Attorney General, State Treasurer, Secretary of the Commonwealth and Secretary of Internal Affairs, and their reception rooms, the caucus rooms and libraries of the House of Representatives and Senate, the ante-rooms of the House and Senate, the Lieutenant Governor's rooms, reception room and ladies' room on the second floor (Wing B, front), the two reception rooms at either side of the main entrance vestibule in the centre of the building."

Which ornamental and moulded plaster work is defined by explanatory detail No. 223-A86, forming a part of the contract between George F. Payne & Company and the Capitol Building Commission, a copy of which I enclose herewith, to show you the character and quantity of work required in these rooms under the capitol building contract. In some few rooms, notably the Executive suite, and the two reception rooms at either side of the main entrance vestibule in the centre of the building, after the cornices and beams required by the detail drawings above referred to No. 223-A86, which designated all of the ornamental plaster required in these rooms, had been run by George F. Payne & Company in accordance with their contract, it

was found in the further perfecting of the detailed interiors of these rooms, under my contract with the Grounds and Buildings Commission, that they were not applicable to the style of decorations in these rooms, and they had to be removed; but in every instance, where possible, these cornices or beams put in by George F. Payne & Company, were allowed to remain.

I have hereinbefore stated that this work of the Commissioners of Public Grounds and Buildings was defined by drawings Nos. 203, 332, 336, 340, 343, 344, 370, 374, 378, 401, 405, 483, 485 to 527 inclusive, 533 to 537 inclusive and 600, and such other full size details, models and instructions as were required; and I will now state that these drawings were prepared after the plans of the interior furnishings and fittings of the capitol building, viz: 393-A213, 394-A214, 395-A215, 396-A216, 397-A217, 400-A200, 418-A238, had been approved by the Board of Public Grounds and Buildings on December 13, 1904, that they were the detailed drawings required for the wainscotings, mantels, and interior decorations, called for by the plans above referred to, as approved by the Board of Grounds and Buildings on December 13, 1904, as well as the drawings No. 40F, approved by the Board of Public Grounds and Buildings on April 12, 1904, and of which drawings the above referred to drawings, Nos. 203, 332, 336, 340, 343, 344, 370, 374, 378, 401, 405, 483, 485 to 527 inclusive, 533 to 537 inclusive and 600 were a further explanation of the drawings 40F,—all of which drawings were approved by the Superintendent of Public Grounds and Buildings, and the work required thereby was executed by John H. Sanderson under his contract with the Grounds and Buildings Commission, and the painting and decorating work required by these drawings was paid for under Item 24 of the schedule of 1904, and consisted of the following work:

In the rooms where George F. Payne & Co. had placed the plaster cornices and beams required by drawing No. 223-A86 under their contract with the Capitol Building Commission, these cornices or beams were painted or gilded as required by the specifications for the painting and decorating by John H. Sanderson. The other ceiling decoration required in these rooms, as well as the cornices and beams required by the above referred to drawings in the 42 other rooms in which no cornices or beams were required to be put in by George F. Payne & Co., John H. Sanderson, under the item of decorating and painting, did all of the work required thereby, that is, scaffolding, expanded metal forming the shapes of the cornices, beams and sub-beams, the running of all plaster cornices, beams and sub-beams, the placing of ornamental members on all such cornices, beams and sub-beams, as well as the models for and the castings in plaster of such ornamentation, and the applied ornamentation between such beams or sub-beams, and the decoration in paint, and the gilding

of such portions of the ornamental plaster as was required to obtain the desired effect.

This work did not overlap, nor did it conflict with the work executed by George F. Payne & Co. to any greater extent than that hereinbefore stated in detail.

I now turn to that portion of your letter referring to the decoration of the House of Representatives, Senate Chamber and the dome of grand rotunda.

Having hereinbefore stated that all of this work required to be done under the contract between the Capitol Building Commission and George F. Payne & Co., was done by them, I will now endeavor to explain to you what work was done, and why it was done by the Grounds and Building Commission under their contract with John H. Sanderson. I will begin by stating first, that as the work progressed in this building I became more and more impressed with its possibilities, and particularly as regards the final result of the interior decoration of these halls, and in seeking for further precedent to guide me in this work, I made several trips to Europe to personally examine the many great edifices of the old country. I could here add the names of many of the buildings examined by me at these times, and I would further state that even after I had made such trips and observations that I was not satisfied to undertake this work alone, without endeavoring to obtain the services of the most expert artists and decorators. I wanted artistic confirmation by some one of recognized ability and standing, and arranged with Mr. Edwin A. Abbey for professional criticism upon the color and decorative schemes of the House, Senate and dome. You will notice on the original contract drawings for the Capitol building, my idea for the color of the Senate was green, gold and mahogany, and dome white and gold tones, and in the House of Representatives autumnal tints. After our consultation the color scheme remained the same as my original decision in the Senate and dome, and we decided to make the House of Representatives blue, gold and ivory. You will understand, however, the color of a room does not change its cost. The original specifications and plans did not contemplate the elaborate solid gilding of the "raised renaissance ornament, capitals, architectural ornament, mouldings, etc.," as to-day is apparent, but as you will see in paragraph 2, page 58 of the specifications for the capitol building, it only required "high-lights," and reads as follows: "All high lights of projecting and enriched members shall be gilded with the best quality of pure gold leaf and all gilding shall be protected by gold leaf preservative." Now a "high-light" is the spot of light upon the eminence of a curve or irregular surface of an object. The decoration of ornaments is com-

posed of "deep shadows," "middle tones," and "high-lights." To further explain—the capitol building contract called for on these ornaments the "deep shadows," and the "middle tones" were to be in color, and the "high lights" in gold. The contracts of the Grounds and Buildings Commission covered gilding solid of all portions of the ornamentations solid gold.

Beyond this the contract of the Grounds and Buildings Commission covered the additional applied ornamentation in the spaces originally called for in the capitol building contracts to have glass, for which George F. Payne & Co., made an allowance to the Capitol Building Commission, and also the additional applied ornamentation in the coves between the walls and ceiling of these rooms, which were frescoed only under the contract of the Capitol Building Commission.

I visited Europe during the meeting of the Legislature of 1905, while the rooms were being used in the white, that is without the additional applied ornamentation for interior decoration or the solid gilding of the same, or the solid gilding of the architectural ornaments in the cornices, beams, capitals, columns, pilasters, rosettes, soffits, etc. The delay occasioned by this meeting of the Legislature in these halls at this time enabled me to thoroughly study the final decorative results for them. While in Europe, during the meeting of this Legislature I had students of the American School of Rome make sketches of the ceiling of St. John Lateran, which influenced me most in the style of decoration, and I found then all the raised ornament was gilded solid on backgrounds of solid color. This was confirmed by Mr. Abbey, and the work was so done.

I may say all the expenses for this additional study and advice were paid for by me and were not charged to the State.

In the matter of wainscotings, all of the drawings hereinbefore recited, Nos. 203, 232, 236, etc., relative to the decorating and painting are applicable to the wainscoting, mantels, etc., as called for by the contract between the Grounds and Buildings Commission and John H. Sanderson.

By referring to the specifications for the capitol building, forming the basis of the contract between the Capitol Building Commission and George F. Payne & Co., you will see on page 74, paragraphs 2 and 6, that it requires George F. Payne & Co. to furnish the wainscotings and mantels in the grand executive reception room and in the Supreme and Superior Court rooms, and that in paragraph 5 of the above referred to page in the specifications, there is a specific allowance called for of \$350.00 for the mantel in the Governor's room and \$250.00 each for the mantels in the Lieutenant Governor's reception room and the ladies' room adjoining. These are all of the

wood wainscoting or mantels required by the specifications to be furnished by George F. Payne & Co.

The wainscotings in the Supreme Court and the wainscoting in the Executive reception room were furnished by George F. Payne & Co., as required, and by referring to the bills of John H. Sanderson for the wainscoting and mantels in the other rooms throughout the building, as required under his contract with the Grounds and Buildings Commission, you will see that no charge is made by him for wainscoting and mantels in the above referred to rooms. There was therefore no overlapping or conflict of the two contracts in this respect.

In the preparation of the working detail drawings for the wainscoting and mantels in the Executive reception room, the numbers of which working detail drawings are No. 385-A205 and No. 386-A206, I came to the conclusion that the mantels indicated on drawing No. D-29 for the capitol building were not large enough, or altogether suitable for a room of such large dimensions, and I therefore designed mantels with large carved oak brackets extending from the floor to the under side of the wainscoting cap, which you may now observe in place in this room, as being more suitable and in scale with the surrounding work. I forwarded blue print copies of the above detail drawings to George F. Payne & Co., to execute the work by. A representative of Payne & Co. came to my office and complained that the work required by these details would cost more than was called for by the contract drawings. After going over the contract and detail drawings and his estimates for the work, I told him to put in writing his claim, and on September 9, 1905, I received the following communication from them:

Mr. Joseph M. Huston, Architect,

Dear Sir: Referring to your detail drawings for grand executive reception room, No. 385-A205 and 386-A206, we note some deviations from the work shown on the contract plans.

We have taken up this question with our sub-contractor and we are willing to substitute the four (4) carved brackets shown on said drawings provided we are not required to furnish or make any further allowance for the mantels in the Governor's and Lieutenant Governor's rooms.

We submit below a summary of the cost, together with the allowance, which as you will note, will entitle us to a credit of \$190.00 additional.

As this work will require considerable time, we trust for your early instructions.

(Signed) Truly yours,  
GEO. F. PAYNE & CO.

## Summary.

Cost of hand carved brackets, .....	\$1,800 00
Less amount specified for mantels, \$350.00, \$250.00 and \$250.00, ...	\$850 00
Mantels shown on plans in above rooms, .....	760 00
	<hr/>
	1,610 00
	<hr/>
	\$190 00

After going over this proposition with the drawings before me, I wrote to them on September 12, 1905, the following letter:

Messrs. Geo. F. Payne & Co.,

No. 409 S. Juniper Street, Phila.

Gentlemen: In reply to your letter of September 9th, relative to the cost of the carved mantel brackets in the grand executive reception room in the Capitol building, will state that I cannot allow you the additional compensation of \$190.00, but if you will execute the work in accordance with the details, from which I cannot make any modifications without destroying the spirit of the design, I will agree to the adjustment suggested in your letter and you may proceed with the work.

(Signed) Yours truly,  
J. M. HUSTON.

No drawings were ever made by me for the three (3) mantels required under the stipulated amount of \$350.00 and \$250.00 as called for on page 74 of the Capitol Building Specifications, either on the contract or subsequent detail drawings, and in fact these three (3) mantels were apparently overlooked by me until the contention arose regarding the extra compensation demanded by the contractors for the brackets for mantels in the Executive Reception Room. At this time you will, however, observe by the dates of the above letters, the wainscoting and the mantels were being placed throughout the other portions of the building by John H. Sanderson under his contract with the Grounds and Buildings Commission, and therefore the mantels called for by the stipulated amounts above referred to were not required, and I saw no reason why these small amounts should not be utilized in this adjustment. There were other adjustments of difficulties and differences which arose between the plans and specifications, which developed from time to time as contemplated under the 2nd paragraph in the specifications on page 18, which reads as follows:

"The drawings and these specifications are intended to co-operate fully, but should a case arise in which they apparently do not,

the Architect shall decide the point and his decision shall be final and binding on all parties," and I adjusted such difficulties and differences to the best of my ability; and as the amount involved was less than \$1,000, I had no hesitation in making this decision under above referred to clause.

Under the letter "F" in the list of alterations and omissions in the Capitol Building contract, calling for "The omission of the Thermostatic Regulation from the Mechanical Plant entirely, as required by the drawings, and as called for in the specifications (paragraphs 5, 6, 7, 8 and 9, page 155, and paragraphs 1, 2, 3 and 4, page 156) valued at \$12,000.00," you will notice that these Thermostats were put into the building by the Grounds and Buildings Commission under their contract with John H. Sanderson, as hereinbefore explained in detail.

I would here further call your attention to modification No. 2, in the resolution of the Capitol Building Commission of August 4th, 1903, relative to the "changing of the column capitals in 2nd floor rotunda, from marble, as called for on page 63, clause 6, to hard composition gilded," and also to paragraph "J" in the alterations and omissions to the contract between the Capitol Building Commission and George F. Payne & Co., which calls for the "omission of marble lining of wall above the wainscoting in connecting corridors of first floor in Wing "D" which marble lining above the wainscoting in these corridors is defined on contract drawing No. A-28.

All of the work hereinabove recited as omitted from the contract of George F. Payne & Co., was subsequently placed in the building in marble by George F. Payne & Co., under my direction, instead of hard composition, as required by the above Resolutions and alterations and omissions to the contract, in lieu of the marble and mosaic work back of the rostrums of the Speakers of the House and Senate, as called for by Paragraph 6, pages 59 and 60. Although I had recommended to the Capitol Building Commission the omission of these carved marble capitals from its contract with George F. Payne & Co., to secure the allowance for bronze work in the further preparation of the scale and full size detail drawings and supervision of this work, I felt it was inadvisable to place the heavy marble pediments on top of the composition capitals, and that a much more desirable effect would be obtained in the connecting corridors D, by having these marble wainscoting extend to the under side of the cornice, instead of only 5 feet 6 inches high, as required by the contract. The question having arisen regarding galleries in the House and Senate Chamber for the newspaper correspondents, and a contract having been subsequently awarded to George F. Payne & Co., for them, and as



these galleries obviated the necessity of placing this work back of these rostrums, I authorized this change, which was a decided benefit to the building, without extra expense to the Capitol Building Commission. This question of the Press Galleries is still in abeyance.

The work done by Payne & Co., on the Capitol Building as called for in their final bill, and not covered by alterations and omissions in the contract or the Resolutions and Minutes of the Commission, was done under the following clause in their contract with the Commission: "Twelfth: Should any additional work or alteration be required of such character that a specific estimate for the same cannot be submitted to the Architect and accepted by the owner, the contractor shall proceed with such work upon the written order of the Architect, approved by the owner, and shall render bills for the same at cost; to the amount of such cost ten per centum shall be added for his profit."

I would further call your attention to paragraph 7, page 71, of the specifications for the Capitol Building, which reads as follows:

"No desks or furniture of any kind to be included in this contract."

And also to the note on drawing No. D-29 for the Capitol Building, forming a part of the contract between the Capitol Building Commission and George F. Payne & Co., which reads as follows:

"Note: No chairs, tables, desks, descriptive paintings or furniture of any kind to be included in this contract in any Department."

Other modifications referred to in these Resolutions did not involve an extra cost to the Commission, although claims were presented by the contractors.

There were necessarily a number of other minor changes or modifications throughout the entire building made by me in the restudy and preparation of the scale and full size working details for the various and multitudinous materials for this building, as is always done in my profession, and my authority for doing this in this case is covered by the clause in the specifications on page 17, which reads as follows:

"No change, variation or deviation from the drawings or specifications (which diminishes the structural strength of the building, involves any difference in the cost of construction, diminishes the value of the work or materials supplied, or which may in any manner be a departure from the spirit of the design, or which may form the basis of any claim on the part of the contractor for an extra compensation) shall be made except by order of the Commission through the Architect.

Minor changes not coming within the above provisions may be made upon the order of the Architect."

One of these modifications was vault doors and vestibules called for on Page 87 of the specifications, about which you have written to George F. Payne & Co. By referring to drawing A-15 of the Capitol Building, you will see that in the Treasury Department and Auditor General's Department there is indicated a vault in each Department. By these plans they were to be built of two (2) thicknesses of terra cotta partition blocks with an air space between and with standard vault doors and vestibules, thus constituting no more nor less than a fire proof closet. I find that the words "armor plate" appear on one of them, but no mention is made of them in the specifications, and no further notations appear on the plan as to the amount and quality, and I have never considered them as imposing any requirements on the contractor, for as far back as March 2nd, 1903, in my communication to the Board of Commissioners of Public Grounds and Buildings, which you refer to in your letter, it is stated that it was indicated on the plans and not included in the general contract.

When appointed Architect for the equipment of the Capitol Building, I took up detail with the head deputies and chief clerks, the requirements of each department as regards the fitting up of the same with metal filing cases, vaults, etc., at the direction of the Board, and I beg leave to submit herewith blue print copies of the floor plans of the Auditor General's Department and the Treasury Department, Nos. 55 and 64, and also the details of the vaults required by them, and also a copy of the specifications covering the entire contract for the Metal Document Filing Cases, vaults, safes, screens and galleries, as furnished under the contract of the Pennsylvania Construction Company. You will notice that these plans are approved by the State Treasurer, Auditor General and Superintendent of Public Grounds and Buildings, as well as myself, and were also approved by the Board of Public Grounds and Buildings by Resolution dated April 5th, 1904, a copy of which you already have, as you quote the same on page 31 of your letter to me of December 15th, 1906. You will see by referring to plan No. 55 that the vault is not in the same location as required by plan A-15 of the Capitol Building. This change in location was required in the re-study of this Department with the head, the chief clerk and Deputy, at the time of preparing this drawing, as being a more suitable location for the proper transaction of the business of this Department. The vaults or fire proof closets required by drawing A-15 being of light construction, did not require foundation any more than the other hollow tile partition work throughout the building, and therefore no foundations were shown or required for them, but the heavy burglar proof vaults provided by drawings Nos. 55 and 64 above referred to did

require heavy and substantial foundations, and I therefore directed George F. Payne & Co., to build these foundations in lieu of the vault doors and vestibules called for in the specifications for the Capitol Building after I had computed the amount of brick masonry required for these foundations. George F. Payne & Co., claim now, however, that these foundations for the vaults have cost them the sum of \$611.26 more than they had allowed for the vault doors and vestibule, as computed by them in accordance with the computed prices on the proposal sheet in connection with their contract with the Capitol Building Commission. I have never conceded or allowed such claim and told them that I would not approve it if they presented it to the Capitol Building Commission in their final bill for the Capitol Building. You will therefore see that the State received a benefit rather than a loss by this modification.

The work of the Commissioners of Public Grounds and Buildings is defined by drawings No. 1-F to 42-F inclusive, 1-C to 8-C inclusive, 1-E-F to 37 E-F, and 400-A200, 393-A213, 395-A215, 394-A214, 396-A216, 397-A217, and 418-A238 inclusive, the specifications describing the work required by the, the work scale detail drawings Nos. 203, 392, 336, 340, 343, 344, 370, 374, 378, 401, 405, 483, 485 to 527 inclusive, 533 to 537 inclusive, and 600, and such other full size details, models and instructions as were required.

I would further state that George F. Payne & Co., as the contractors for the Building, performed all of the work required by their contract with the Capitol Building Commission, including all such modifications as are called for by the above referred to Resolutions, and final bill for extra work presented by George F. Payne & Co., to the Capitol Building Commission, to the best of my knowledge and belief.

The work required by the contract of John H. Sanderson with the Grounds and Buildings Commission, as required by the drawings above referred to as defining this contract, was carried out by him in accordance therewith to the best of my knowledge and belief. I will also here state that the contract between the Grounds and Buildings Commission, and the Pennsylvania Construction Company, as defined by drawings Nos. 1 to 211 inclusive, the specifications describing the work required by them, and such other full size details, models and instructions as were required, was performed by them in accordance therewith to best of my knowledge and belief.

To further broadly draw the line of demarcation between the work of the Capitol Building Commission, and that of the Commissioners of Public Grounds and Buildings, I would state as follows: In the contract between the Capitol Building Commission and George F. Payne & Co., the building was completed through-

out as required thereby, and as far as the interior finished walls were concerned they were "in the white;" that is, the plaster white coating was done, but no decoration in the shape of painting, canvassing or other form of decoration, with the exception of the walls of the Supreme Court and the Executive Reception Room, which were completely decorated, and the walls of the House of Representatives, Senate Chamber and Dome of Rotunda, which were partially decorated. I may also add here that the leather frieze in the Lieutenant Governor's Room, as well as the painting of the toilet room walls were included in the Capitol Building Commission contract. The walls of all the other rooms throughout the building, comprising about 470 in number, as well as the additional applied ornamentation and solid gilding in the House of Representatives, Senate Chamber and Dome of Rotunda, were done by the Grounds and Building Commission under their contract with John H. Sanderson.

I notice on page 27 of your letter of December 15th, you refer to a meeting of the Board of Public Grounds and Buildings under date of November 11th, 1902, "for the purpose of examining the plans and specifications of the Pennsylvania Construction Company of Marietta, Penna., for equipping the various departments of the new Capitol Building being erected at Harrisburg with metallic furniture under contract awarded in June, 1902." You say, "give me with particularity all of your information in relation to this subject." I first wish to state that I have not been supplied with a copy of the Minutes or Resolution adopted by the Board of Public Grounds and Buildings of June, 1902, or of November 11th, 1902, although in subsequent Resolutions dated December 9th, 1903, April 12th, 1904, and December 13th, 1904, at the times my plans were approved by the Board of Public Grounds and Buildings, the Pennsylvania Construction Company was directed to execute the work in accordance with the schedule under which the contract had been awarded. I understood, however, that the contract for the metallic furniture had been awarded to the Pennsylvania Construction Company under the schedule of 1902. I do not know what plans were referred to in the Minutes of the Board of Public Grounds and Buildings under date of November 11th, 1902, neither do I know what plans were referred to in the subsequent resolutions of January 14th, 1903, and March 3rd, 1903, and April 7th, 1903, and I therefore do not know how far those contracts were completed by the Pennsylvania Construction Company. The specifications and plans referred to as having been prepared by the Pennsylvania Construction Company were not approved by me, and I have not certified to the Auditor General that any moneys was due to the Pennsylvania Construction Company on account of work done

which may have been called for by the plans and specifications referred to. I may further add here that the Pennsylvania Construction Company has never requested me to issue certificates for any work which may have been called for by such plans, and if I am correctly informed, no actual work was ever done by the Pennsylvania Construction Company required by the above referred to plans and specifications, but I have been recently informed that certain steel plates and work of that character were ordered by the Pennsylvania Construction Company to be used in this contract, and subsequently used in the construction of some of the metal furniture required by the plans and specifications prepared by me.

After my appointment as Architect by the Board of Public Grounds and Buildings to prepare "the plans and specifications and all detail drawings for all interior fittings, furniture, electric and gas fixtures for the new Capitol, I secured a copy of the specifications from the Board of Public Grounds and Buildings, and sent for the Pennsylvania Construction Company to go over the work required thereby, under which they had been awarded the contract. After making myself familiar with the requirements of these specifications, I proceeded to prepare drawings for this metal furniture, and on completion of the first section of them, designated by numbers from 1 to 54 inclusive, I presented the same to the Board of Public Grounds and Buildings for their approval on December 8th, 1903. I have no further records of the Minutes of the above referred to meeting of the Board other than the following Resolution:

"Resolved, That the revised plans for the metallic furniture and fixtures, Numbers 1 to 54 inclusive, as presented by Joseph M. Huston, Architect, be adopted, and that the said Pennsylvania Construction Company be directed to furnish the said furniture and fixtures under the supervision of the said Architect, and that the Auditor General be directed to make payment for the same in part or in full upon the certificate of the Architect, and that the said Architect be empowered to make the detail of the cases in the special rooms to conform to the architectural finish of said rooms, at his discretion, and that the price on all special work which is not fully covered by the schedule under which the contract has been awarded the said Pennsylvania Construction Company shall be fully agreed upon between the said Pennsylvania Construction Company and the said Joseph M. Huston, Architect, before any certificate for payment shall be issued. Extract from the Minutes of December 8th, 1903."

But my recollections are that I explained to the Board at the meeting what I considered would be necessary to make this metal furniture conform to the architectural finish of the rooms, which

consisted of bronze metal, cornices, pilasters, base, capitals, mouldings, etc., and marble bases, counters, screens, etc., all of which I considered necessary to carry out the uniform qualities of the different materials and finishes in the various rooms of the building.

The Board evidently thought my suggestions were appropriate for they approved the plans and passed the above referred to Resolution.

Regarding the similarity in the names of rooms contained in the Minutes of the following day, December 9th, to the rooms mentioned in the Resolution of April 7th, 1903, also to the Resolution of March 3rd, and the earlier Resolution of January 14th, 1902, I can only infer that these Resolutions covered the work required by the plans of the Pennsylvania Construction Company for the rooms which this Company probably thought would be required first. As they were in fact generally the first rooms which I considered would be ready to receive this work and I here repeat again that I do not know of any duplication of this work and would further state that I do not know what is meant by the phrase "revised plans" referred to in the Resolution. There was no rejection by me of work already done by the Pennsylvania Construction Company and no payments were authorized to be paid therefor by me prior to such rejection rendered unproductive of value to the State. As I have stated that I do not know why the phrase "revised plans" was used and no payments for work previously inferred to have been done, no additional cost to the State was involved therein. Therefore no additional labor was imposed on the Pennsylvania Construction Company,—as no varying or improvements were made upon the plans already prepared.

You ask me further "to state in detail the exact nature and terms of the contract which you made as to prices with the Pennsylvania Construction Company, giving both in detail and in the aggregate the amount of money certified by you as due to the Pennsylvania Construction Company under said agreement." I beg leave to state that the contract having already been awarded to the Pennsylvania Construction Company for this metallic furniture and by the Resolutions above referred to, I was directed to secure from the Pennsylvania Construction Company an estimate of the cost of this detail of the cases the (kind and quality above referred to in this letter in detail) to make them conform to the architectural finish of the rooms, I requested the Pennsylvania Construction Company to submit to me such estimate of cost, which they did, and after going over each item in detail and upon representation made by them that they were agreeing to supply this work at actual cost of the same to them, I approved their estimates and forwarded them to the Board of Grounds and Buildings for their action. I further prepared for

the Board a book of Quantities showing in detail all of the work required by the plans prepared by me and approved by the Board, numbering from one (1) to two hundred and eleven (211) inclusive. I enclose herewith a copy of such estimates for your further information.

In answer to your request for my professional judgment as an architect of "what constituted construction, what was necessary to complete the building while in the hands of the Capitol Building Commission and what constituted furnishing or furnishings in the technical and proper business sense" I beg leave to herein below give you a summary of the whole proposition in a general way setting forth the work of the Capitol Building Commission and of the Grounds and Building Commission and accompanied by a detailed list showing what I consider a part of the construction and what can be called strictly furnishings.

#### CAPITOL BUILDING STATEMENT.

The Capitol Building, as built under the appropriation of \$4,000,-000.00 consisted of a contract with George F. Payne & Co., for \$3,-505,655.00 for the building, and contracts for painting and sculpture as follows:—George Barnard, Sculptor, \$100,000.00, Edwin A. Abbey, Artist, \$70,000.00 and Miss Viola Oakley, Artist \$20,000.00 The Architect, Joseph M. Huston, was paid a Commission of five per cent. on the cost of the work, amounting to \$185,631.91. With the expenses of the Capitol Building Commission and extras paid to Payne & Co., amounting to \$16,982.12, there remained an unexpended balance of about \$30,000.00.

Under this contract the building was completed throughout "in the white," that is, without any wall finish or decorations, with the exception of the walls of the Supreme Court and Executive Reception Room, which was completely decorated, and the House of Representatives, Senate Chamber and Dome of Rotunda, which were partially decorated. Additional applied ornament and gilding was placed in these rooms by the Public Grounds and Buildings Commission.

No electric fixtures, standards, wainscotings in the various other rooms, ornamental ceilings mantels, thermostats, metal fire proof filing cases, Steel vaults, marble wainscotings in corridor on first floor middle wing rear, interlocking parquetry floors, furniture, hangings and carpets were included in this contract. No finished work whatsoever was required for the attic or fifth floor.

These matters were laid before the Board of Commissioners of Public Grounds and Buildings in detail, and they authorized the preparation of a complete set of drawings showing "Furniture, carpets, fittings and decorations for the equipment of the new

Capitol Building." This being done items covering the different articles and materials required were placed in the yearly schedule and bids advertised for in the newspapers as required.

John H. Sanderson being the lowest bidder, the contract was awarded to him.

The monumental character, and the quality and finish, of the building as executed under the contracts of the Capitol Building Commission, demanded and set a standard for the furniture, fittings and decorations to be carried out by the Public Grounds and Building Commission, which they recognized and authorized without hesitation. The result being; the model building of the world, most completely and elaborately fitted up with fireproof metal documents filing cases and vaults, substantial and appropriate furniture, permanent monumental and artistic bronze standards, chandeliers and brackets for the proper illumination of the Building, and decorated, throughout its entire interior, in the most lasting manner pure gold leaf being used on ornamental parts, and all plain plaster surfaces of the walls and ceilings being first covered with the best quality of the fine canvas duck before painting.

The utmost economy was used in the construction of this entire edifice consistent with the best quality of work, money was spent intelligently to produce those exterior permanent decorative artistic effects to the eye, which are lasting in their quality, and a continual pleasure to behold.

It must be admitted that all of this work has been designed and executed at a time when materials and labor are at their highest price, while other buildings to which this must be compared, approximately, were built when materials and labor were at least thirty per cent. to forty per cent. cheaper. I believe, upon a close examination, it will be found that the greatest care has been exercised in the execution of this work. In comparing this building with other buildings it must be in a more or less approximate manner, for the reason that no two buildings are exactly alike. Things can only be compared exactly when the mathematical rule is followed: "Things which are equal to the same thing are equal to one another."

The size of this building is about 525 feet by 270 feet to 218 feet, has eight floors, a cubic contents of 12,131,666 cubic feet, a total floor area of 629,898 square feet, or 14½ acres, is built of monumental granite, and cost \$6,985,968.52, exclusive of metal filing cases, furniture and electric fixtures which cost the additional amount of \$5,572,772.03, making a total of \$12,558,740.55, or one four-one-hundreds dollars per cubic foot, for the building complete with furniture and fittings. This price includes Mural Historical Paintings and Sculpture by Abbey, Barnard, Oakley, Van Ingen, Alexander and



MacGregor, amounting to about \$464,873.00, but does not include the cost of the old brick building built by a former Commission, for the reason that it cost the Capitol Building Commission at least as much as it cost in making the necessary alterations to it in order to obtain the present satisfactory results.

In order to give an adequate idea of the comparative size, cost etc., of this Capitol Building, I here below give some data, as complete as it could be obtained, relative to six of the most prominent capitols and public buildings in this country.

### CAPITOL BUILDING, WASHINGTON, D. C.

Single floor area,.....153,112 square feet.

Total floor area, 627,350 sq. ft. (14½ acres).

Cubic contents, 13,780,080 cu. ft.

Cost, \$15,000,000.00 (without furnishing).

Size, 750 ft. x 350 ft.

Materials, marble and sandstone painted.

N. B.—The furnishings are taken care of by the sergeant-at-arms of the Senate and by the chief clerk of the House. Each succeeding committee has made additions and changes to the furnishings to suit their convenience. Impossible to obtain an accurate cost at this time.

Whereas the single floor area and the cubic contents of this building are in excess of ours, there are 2,548 sq. ft. more of total floor area in Pennsylvania Capitol and it cost considerably less including all furnishings than the Capitol at Washington.

### City Hall, Philadelphia, Penna.

Area, 167,500 sq. ft.

Total floor area, 633,360 sq. ft. or 14½ acres.

Cubic feet 25,125,000 (close approximate).

Cost (1901), \$24,641,765.77 (about \$2,000,000.00 spent since).

Materials, granite base, marble superstructure.

Size, 470 ft. x 486 ft. (deduct light court 200 ft. x 220 ft.).

Note.—“Cost of construction of building proper ready for furnishings and finishings,” 1901, \$18,243,339.86.

Approximate cost of furnishings, \$7,500,000.00.

Whereas the single floor area and the cubic contents of this building are in excess of the capitol, the total floor area is practically the same and the total cost is over double that of the capitol.

## Capitol Building, Albany, New York.

Area, 107,396 sq. ft.

Total floor area, 590,673 sq. ft. (close approximate)  $13\frac{3}{4}$  acres.

Cubic contents, 13,424,560 cub. ft.

Cost (1905), \$24,265,082.00 ('will cost several million to complete.')

Materials, granite, Hallowell, Maine.

Sizes, 300 ft. x 400 ft. (deduct light court 92 ft. x 137 ft.).

Furnishings, has extended over many years, no accurate data obtainable.

## Library of Congress.

Cubic contents, 10,092,084.

Cost, \$6,344,585.34.

Materials, granite.

Sizes, 470 ft. x 340 ft., 80 ft. high generally.

Furnishings, \$600,000.00.

N. B.—No metal filing cases for various departments.

## Capitol Building, Boston, Mass.

Area, 67,147 sq. ft.

Cubic contents, 6,246,494 cu. ft.

Cost, \$3,477,226.00.

Materials, marble.

Sizes, 401 ft. x 173 ft. to 212 ft.

Furnishings, \$591,460.00.

## Capitol Building, St. Paul, Minn.

Cubic contents, 7,368,595 cu. ft.

Cost, \$3,700,839.00.

Materials, granite.

Sizes, 435 ft. x 230 ft. to 135 ft.

Furnishings, \$432,000.00.

No metal filing cases, and the electric fixtures are made of wood.

If the Board of Commissioners of Public Grounds and Buildings had not authorized all of the interior equipment of the capitol building to be designed in accordance with the principle laid down by Decartes in his "Discourse on method" in which he says "There is seldom so much perfection in works, composed of many separate parts, upon which different hands have been employed, as in those completed by a single master. Thus it is observable that the buildings which a single architect has planned and executed are generally more elegant and commodious than those which several have

attempted to improve by making old walls serve for purposes for which they were not originally built." The condition of the many departments would have remained as they have for many years, scattered about the city with inadequate accommodations for the proper transaction of the business of the State, waiting for the preparation of their rooms, or they would have attempted to move in with a lot of misfit and inappropriate wooden filing cases and furniture, hampering and causing untold injury to their work.

The wisdom of this Board is demonstrated now, when the Commonwealth presents to the country the most complete building possible for its uses. The Legislature and Departments comfortably housed, the records permanently preserved and the cultured, scholastic and artistic interests of the State well represented, and the whole spirit of the Commonwealth adequately illustrated in this monument, which shall tell to coming generations the motives and forces which founded it. This result could not have been accomplished in any other way than that in which it has been done.

The architect's intentions throughout have been guided by the following wise sentiment expressed by John Ruskin.

"All work of taste must bear a price in proportion to the skill, time, expense and risk attending their invention or manufacture. Those things called dear are, when justly estimated, the cheapest, they are attended with much less profit to the artist than those which everybody calls cheap. Beautiful forms and compositions are not made by chance, nor can they ever, in any material, be made at small expense. A composition for cheapness, and not for excellence of workmanship is the most frequent and certain cause for the rapid decay and entire destruction of arts and manufactures."

This building is in the class with the largest public buildings in this country, and in its furnishings and finishings is in a class all by itself.

Regarding architect's commission, it can be stated that "nearly all architects of recognized standing in their profession, charge from 5 to 10 per cent extra for designing mantels and other ornamental fixtures, carved work, and decorative work of all kinds. Fifteen per cent. on their cost is a common charge for selecting carpets, furnishings, etc." (Architects and Builders Hand Book, Kidder.)

ITEMIZED STATEMENT AND COST OF SPECIAL FURNITURE, CARPETS,  
FITTINGS AND DECORATIONS FOR THE EQUIPMENT OF THE NEW  
CAPITOL BUILDING AS PER SCHEDULE.

1. Special designed fire proof cases for filing and preservation of records and papers, .....	\$1,534,856 20
2. Furniture, desks, chairs, tables, etc., .....	876,066 40
3. Carved panels, wainscoting, mantels and designed wood work, .....	889,940 00
4. Electric chandeliers, brackets and bronze standards, (see itemized statement), .....	2,049,522 96
5. Bacarat cut glass panels, .....	138,757 09
6. Designed glass mosaic, .....	28,759 20
7. Bronze P. O. fronts and gallery, railing and stairs in House and Senate Library, screen in Treasury Dept., and bronze trimmings on all special filing cases, .....	400,000 00
8. Bronze railing, .....	2,754 80
9. Marble wainscotings, mantels, bases, etc., .....	278,109 47
10. Fire-places and construction of flues, etc., .....	21,237 59
11. Raised ornamentation, gilding, decoration and painting, ....	789,472 96
12. Mural art painting, .....	40,985 50
13. Interlocking hardwood parquetry floors, .....	148,104 07
14. Modeling and sculpture with patterns, .....	137,600 00
15. Vaults and safes, .....	66,000 00
16. Carpets, rugs, hangings and curtains, .....	46,874 25
17. Designed clocks and clock fittings, .....	32,079 20
18. Installation of thermostats and valves throughout building, special work in connection with heating and ventilating, air compressors, etc., .....	59,408 00
19. Cement floors throughout the building to receive the finish parquetry flooring, .....	25,117 77
20. Additions and alterations to the electric light system throughout the building, .....	71,833 00
21. Temporary fittings, alterations, carpets, electric lights, furniture, etc., for House and Senate, committee rooms and departments, .....	45,351 16
22. Labor and materials furnished by George F. Payne & Co., in constructing fifth floor for use of new departments and committee rooms, .....	303,693 14
23. Installing wires for two telephone and two telegraph systems throughout the building, .....	17,666 73
24. Edwin A. Abbey, mural art painting, .....	222,887 50
25. Marble and wood seats, railings and fire sets, .....	21,712 00
26. Joseph M. Huston, architect's commission, .....	329,951 56
Total expenditures, .....	\$8,588,740 55
Expended by Capitol Building Commission under appropriation by the Legislature for the building (1901) about .....	3,970,000 00
Total, .....	<u>\$12,558,740 55</u>

LIST OF ITEMS UNDER SPECIAL EQUIPMENT SCHEDULE WHICH  
FORM A PART OF, AND SHOULD BE INCLUDED IN COST OF BUILD-  
ING CONSTRUCTION.

Item.	
3. Carved panels, wainscoting, mantels and designed wood work,	\$389,940 00
6. Designed glass mosaic, .....	28,759 20
8. Bronze railing, .....	2,754 80
9. Marble wainscoting, mantels, bases, etc., .....	278,109 47
10. Fireplaces, .....	21,237 59
11. Raised ornamentation, gilding, decorating and painting, ....	789,472 96
12. Mural art painting, .....	40,985 50
13. Interlocking hard wood parquetry flooring, .....	148,104 07
18. Thermostats, .....	59,408 00
19. Cement floors, .....	25,117 77
20. Additions to electric lighting system, .....	71,833 00
22. Finishing fifth floor, .....	303,693 14
23. Wires for telephone and telegraph systems, .....	17,666 73
24. Mural art paintings, .....	222,887 50
25. Architect's commission, .....	115,998 79
Total amount applied to building, .....	\$3,015,968 52
Expended by Capitol Building Commission, about .....	3,970,000 00
Total cost of building construction, .....	\$6,985,968 52

Hoping this information will answer your questions definitely,  
I am,

Very truly yours,

J. M. HUSTON.

(Exhibit attached to Mr. Huston's Letter.)

OFFICIAL RECORD OF MODIFICATIONS MADE IN PLANS  
AND SPECIFICATIONS OF CAPITOL BUILDING TO DATE.

The specifications for the capitol building on page 36 states that the foundation walls are to be built of "first quality local building granite."

The contractors were unable to obtain this granite on account of the only available quarry having closed up. They were, therefore, requested to submit a stone of equal quality. They submitted the Hummelstown brownstone, and after making a thorough test of its crushing strength and adaptability for this purpose, it was approved. This stone was used in the massive foundation of the present building and its adoption makes a more uniform foundation wall

for the whole building. No addition or deduction in price to be made on account of this alteration.

On the contract plans for the capitol building the engines and dynamos were placed in the sub-basement of the eastern wing (B-2), as the greater portion was already excavated and could be utilized without much expense. In working out the plant in detail, however, it was found that the "head room" was not sufficient for the desired amount of ventilation and did not show off the plant to a good advantage. In addition, the foundations for these large engines and dynamos came very near to the column and wall foundations of the building. The Supreme and Superior Court room being located directly over this portion of the building, the vibration transferred up the walls and columns would have been annoying to all occupants of this wing of the building. The contractors were therefore requested to locate this plant outside the walls of the main building and immediately adjoining the other mechanical apparatus for the building, making the plant more convenient to handle, giving much additional head room, more liberal floor surface and also placing it in a position where it can be seen by the public from a gallery without danger. The contractors consented to make the necessary additional excavation and to locate the machinery in the new position requested.

A plan of the mechanical plant is herewith attached.

See Minutes of August 6, 1903. No addition or deduction in price to be made on account of the alteration.

On August 4, 1903, a report was submitted suggesting modifications in the marble and wood work which would allow an additional sum of \$21,000 for the purpose of bronze work, the allowances for which, as called for on pages 86 and 159, having been reduced at the signing of the contract (see page 16 of contract), by the sum of \$15,000, leaving a balance of only \$25,000 for all bronze and register work, which is not considered sufficient for a building of such magnitude.

Modification No. 1 contemplates the changing of capitals of pilasters in first floor corridors from marble, as called for on page 62, class 3, from marble to hard composition gilded.

Modification No. 2 contemplates the changing of the column capitals in 2d floor rotunda from marble, as called for on page 63, clause 6, to hard composition gilded.

Modification No. 3 contemplates the changing of the figures over the entrances to the House of Representatives and Senate from marble to hard composition gilded. These figures are not called for specifically and therefore cannot be referred to in the specifications.

Modification No. 4 contemplates the changing of the marble work in the dome from Italian veined, as called for on page 17 of contract, to cream white polished marble, as per sample in architect's office, except the steps which are to be of Italian veined marble.

Modification No. 5 contemplates the substitution of hard composition for the ornamental carved wood work as called for on page 73, clauses 5 and 6.

Below is a copy of letter received from Payne & Co., relative to the above modifications:

Philadelphia, Aug. 3, 1903.

Mr. Joseph M. Huston, Architect, Philadelphia, Penna.:

Dear Sir: Since our interview of the 1st inst., we have been in conference with our sub-contractors regarding the modifications on the capitol building with a view of getting a greater allowance. We have succeeded in getting some further concessions which enable us to agree to make deductions as follows:

If gilded composition is used for plaster capitals in first floor corridors, deduct the sum of .....	\$3,000 00
If gilded composition is used for column and plaster capitals in second floor of rotunda, deduct .....	2,000 00
If gilded composition is used for figures in entrance to House and Senate, deduct .....	8,000 00
If cream white polished marble is used for interior of dome, deduct .....	6,000 00
If composition and metal is used for relief carving, and interior wood work, deduct .....	2,000 00

We might state that while these deductions may not be as large as those mentioned by others, we would add that our sub-contractor for marble was much below all other competitors in his general estimate, and consider that we have been fortunate in getting the above concessions.

Would be much pleased to have your early answer and if any further information or data is needed kindly advise us.

Very respectfully,

(Signed)

GEORGE F. PAYNE & CO.

Sept. 3, 1903.

Approved, WM. A. STONE, Pres.

Approved, GEORGE F. PAYNE & CO.

Approved, J. M. HUSTON.

December 28, 1901.

Resolution by Senator Snyder:

Resolved, Joseph M. Huston be selected as Architect of the new capitol building, provided he can satisfy the Commission that the building proposed by him will not exceed in cost the amount appropriated.

This motion was seconded by Mr. Graham. On roll being called all members voted with the affirmative.

---

August 5, 1902.

The regular called meeting of the Capitol Building Commission was held in the Executive Chamber at 12 o'clock noon to-day, all members and officers being present excepting Dr. Shaeffer and Mr. Graham.

Mr. Huston submitted his report upon his investigation of the estimate cost of the capitol building, and assured the Commission that it could be constructed for the amount appropriated, including the Architect's commission, Commissioners expense, mural paintings and sculpture aggregating \$675,000.00, which report was directed to be filed.

---

September 30, 1902.

The Capitol Building Commission met at 2:30 p. m. All the members and officials were present.

Messrs. Huston and Green submitted a report of the result of their conference with George F. Payne & Company, which show that certain omissions and deductions could be made in the cost of the building in accordance with and on a basis of unit prices and agreement authorized in the specifications in the sum of \$204,344.00. The various omissions suggested and the allowances therefor were considered at great length.

Senator Snyder moved that the deductions proposed be accepted with the addition of \$5,000.00 to the item "Painting walls omitted" and excluding the last item "granite omitted" in section D 3 and D 4.

Mr. Bailey made a motion to amend by striking out the figures \$5,000.00 and inserting \$20,000.00, received no second and was therefore not voted on.

Senator Snyder's motion was seconded by Dr. Shaeffer and carried.

Mr. Graham moved that the last item "granite" omitted section D3 and D4 be stricken from the list of deductions, thus leaving the



exterior of the building as originally planned. This motion was seconded by Mr. Bailey and the question being put was carried, Dr. Schaeffer voting in the negative.

---

July 16, 1903.

The postponed meeting of the Capitol Building Commission was held at 12 o'clock all members and officers being present.

Mr. Huston made a report of the alterations made in the plans and specifications of the power plant, which embraced a change in location principally and do not involve any additional expense. Mr. Green being present and approving of the change and Messrs. Payne and Mittes being present and agreeing thereto, on motion of Mr. Graham seconded by Mr. Snyder, the said alterations were approved.

Mr. Huston submitted an estimate showing that bronze work proposed would cost upwards of \$50,000 in excess of the amount set aside by the Commission. He said the bronze doors provided for in the specifications could not be procured for less than \$65,000. He suggested placing a bronze statue on the top of the dome to cost \$11,500 and two bronze sculptural tablets to cost \$5,850.00, these items with the bronze doors making a total of \$83,450.00. Mr. Young called attention to the fact that the item for bronze work included certain bronze registers to cost \$10,000.

Mr. Graham moved that the entire matter be left to the Architect and Mr. Green to report on what would be absolutely necessary.

---

August 6, 1903.

All officers and members were present excepting Mr. Graham.

Mr. Huston submitted his report upon bronze work, which report contemplated changes in interior decoration and finish, by which it was suggested that sufficient saving could be made to pay for the deficit in the item of bronze work.

Mr. Snyder moved the item calling for a bronze tablet and calling for the installation of the Nernst Lamp be stricken from the report and that the report then be submitted to a committee of two, who in connection with the architect should have power to act upon the recommendations contained therein. This motion was carried. The chair appointing Mr. Snyder and Mr. Bailey in this committee.

It appeared that the contractor could not make the proposed changes in heating and ventilating without additional cost. The matter was left in the hands of the architect, engineer and contrac-

tor, who were by resolution authorized to make such changes along the line of the reports of Mr. Green and Mr. Huston as would improve the system and not increase the cost of construction.

---

September 3, 1903.

All members and officers were present excepting Mr. Schaeffer and Mr. Eyre.

Mr. Graham moved that the moneys heretofore allotted for bronze work and moneys deducted by Payne & Company on account of alterations; adopted to-day, a total of \$41,000, be allowed the contractor for bronze work as per recommendations made by the architect at the meeting of August 6, 1903 except the memorial tablets at the side of the main entrance and that the proposed contract with the Bernard Bronze Co. be approved. The design of the figure on the dome to be submitted to the Commission for their approval. This resolution was seconded by Mr. Snyder and carried.

---

May 5, 1904.

The members and officials were all present.

It was resolved that the contractors may submit promenade tile for copper roofing on the capitol building, in accordance with the terms of the proposition submitted by them, provided that such substruction shall not release the contractors from their guarantee of the roof of the building for ten years, the Commission being assured by the architect and the engineer that the tile referred to is more desirable than copper roofing and that the cost of the tile will be as great as the cost of the copper roofing, it being also understood that the substitution is to be without additional cost to the Commission.

Resolved, That an additional conduit for telephone lines be installed in the capitol building at a cost not to exceed \$3,828.00, the plans and construction thereof to be approved by the architect.

---

June 9, 1904.

Resolved, That the contractors be permitted to substitute either mahogany or birch, the same as used by the Pullman Company in furnishing the interior of their sleeping cars, where oak is specified for finishing the interior of the building, except in the executive reception room and the basement, provided this is done without additional cost to the Commission.

November 9, 1904.

During the session of the Commission, Mr. Green, Mr. Huston, Messrs. Payne & Co., and the managers of the telegraph companies, agreeing upon the exact requirements of the situation, and on motion the contractors were authorized to insert the extra conduit desired and recommended by the architect at a cost not to exceed \$1.50 per foot.

---

December 8, 1904.

In the matter of floors in certain rooms of the building, which had been changed by the Board of Grounds and Buildings, Mr. Huston stated that the Commission would be allowed credit for the yellow pine floors provided in the specifications which were to be omitted, and in any other matter which had been changed by the Board of Grounds and Buildings the Commission would receive the credit.

---

December 28, 1904.

On motion of Mr. Graham seconded by Mr. Snyder it was resolved that the proposition of George F. Payne & Company to reconstruct the Press galleries in the House and Senate in accordance with the plans and specifications submitted by J. M. Huston, the architect, be accepted by the Commission with the following provisions:

First.—That there shall be sufficient money in the hands of the Commission after paying in full all the obligations of the Commission. If, however, there shall not be sufficient moneys, then the said George F. Payne & Co. are to accept whatever balance there may be in full discharge and payment of said reconstruction of said Press galleries.

Second.—That such plans for reconstruction of said galleries shall first be approved in writing by the representatives of the newspapers interested.

Third.—Provided further that the total cost of all work and materials, including wainscoting, painting and decorating plaster, for the reconstruction of said Press galleries shall not exceed the sum of \$30,000.

---

February 24, 1905.

The architect submitted an itemized statement and list of proposed changes in the arrangement of telephone lines, showing the

relative cost of additions and deductions therefor. It appearing that these changes were necessary and advisable, and did not entail any additional expense to the Commission, the said alterations and changes in the telephone system as indicated in said report, on motion approved.

### LIST OF ALTERATIONS AND OMISSIONS CAPITOL BUILDING CONTRACT.

That whereas subsequent to the acceptance of the proposal of the contractor, and in accordance with the provisions therefor on pages 11 and 12 of the specifications on which the said proposal was based, under the heading "Rights Reserved," certain alterations and omissions have been made in the said specifications and plans, and consequent deductions made from the total amount of the said proposal, which was (including a granite drum for the dome) the sum of \$3,710,000.

Now it is further expressly understood and agreed by and between the parties hereto, that the said alterations and omissions and consequent deductions shall be as follows, viz:

A. The omission of the sub-basement under wings A and C, and under the new portions of connecting wings D, the necessary covered ducts, flues, and pipe-trenches to be consequently constructed by the contractor under the basement floor of the said wings, involving the following reductions:

Excavations, 16,923 cubic yards at 55c, .....	\$9,307 00
Concrete footings, 257 cubic yards at \$7.00, .....	1,799 00
Foundation stone masonry, 4,511 per, at \$5.40, .....	24,359 00
Brick work of areas, 95,300 per M. at \$18.00, .....	1,716 00
Granite copings around areas, 147 cu. ft., at \$4.00, .....	588 00
Structural steel work of basement floor, 520,000 pds., at 3c .....	15,600 00
12-inch T. C. arches in basement floor, 19,340 sq. ft., at 20c, .....	3,868 00
15-inch T. C. arches in basement floor, 3,264 sq. ft., at 23c, .....	750 00
8-inch and 9-inch T. C. arches in basement floor, 6,488 sq. ft., at 18c, .....	1,167 00
Cement floors in corridors of basement, 4,420, valued at 10c, ....	442 00
Concrete filling over arches in basement, 16,950, valued at 8c, ....	1,356 00
Wood floors and sleepers in basement, 18,050 sq. ft., valued at 10c, ..	1,808 00
B. The omission of two glass mosaic frieze around the main rotunda and the four glass circular medallions in main rotunda, substituting plaster and painting therefor, 1,823 sq. ft., at \$8.00	14,584 00
C. The omission of the painting of the walls and ceilings of all rooms and corridors as called for in paragraph 2, page 57, of the specifications, with the exception of the walls and ceilings of all toilet and bath rooms, valued at .....	25,000 00

D. The substitution of ornamental cast iron painted in place of polished marble in the light courts of wings A and C from the ceiling of the entresol floor to the ceiling of the fourth floor, as shown on drawings and called for by proposal, .....	25,000 00
E. Reducing the price of Moravian mosaic tile floors in corridors, halls and vestibules on the first floor from \$2.00 per square foot as specified (paragraph 2, page 87), to \$1.50, 16,000 sq. ft., at 50c, .....	8,000 00
F. The omission of thermostatic regulation from the mechanical plant entirely, as required by the drawings and as called for in the specifications (paragraphs 5, 6, 7, 8 and 9, page 155, and paragraphs 1, 2, 3 and 4, page 156), valued at .....	12,000 00
G. The omission of the economizers from the mechanical plant entirely, as required by the drawings and as called for in the specifications, (paragraphs 5 and 6, page 163), valued at .....	3,000 00
H. The omission of the sum of \$15,000.00 from the allowances called for in the specifications (paragraph 7, page 86, and paragraph 3, page 159), .....	15,000 00
I. The omission of all exterior electric lighting as required by the drawings and called for in the specifications (paragraphs 6 and 7, page 195, and paragraphs 1, 2, 3, 4 and 5, page 196, and the whole of page 206), valued at .....	12,000 00
J. The omissions and alterations to the interior marble work as follows: The omission of marble lining of walls above the wainscoting in connecting corridors in first floor of wings D, the substitution of Sienna marble for the serpentine marble wainscoting, and Mycenian marble for Serpentine marble columns and bases in the House of Representatives, the substitution of marble mosaic borders and small panels with marble mosaic borders and Terrazo fields for the marble tile floors as shown on the drawings and as called for in the specifications (paragraphs 4, 5, 6 and 7, page 61), and the substitution of selected Italian veined marble for the English veined and Columbian to match in every particular the marble in the main stair hall in the Library of Congress Building, at Washington, D. C., valued at .....	27,000 00
Being a total deduction of .....	\$204,344 00
From the amount of said proposal, to wit: .....	3,710,000 00
Leaving the balance of .....	<u>\$3,505,656 00</u>

Which last mentioned amount is the sum hereinbefore stated as being the consideration money moving from the owner to the contractor.

August 4, 1903.

Capitol Building Commission, Harrisburg, Penna.:

Gentlemen: Since the last meeting of your Commission I have been studying the question of bronze work for the capitol building. The amount now set aside in the specifications for this work is so

small for a building of this magnitude that it is entirely inadequate for the requirements to produce the required effect. I have therefore given the matter careful consideration and in going over the matter in detail with the contractors, Messrs. Geo. F. Payne & Co., to ascertain where modifications could be made to obtain a sufficient amount to cover the expense of replacing in the building most of the bronze work called for by plans and specifications, prior to the reduction made in the same at the time of signing the contract to bring the cost of the building well within the amount appropriated, I respectfully submit the following list of modifications for your approval:

1. Making the pilaster capitals in the first floor corridors of gilded compositions in place of marble. These capitals are eleven feet from the floor line and immediately under the decorated plaster cornice and gilded groined ceiling and are therefore in keeping with same.

2. Making column and pilaster capitals in the second floor of rotunda, of gilded composition in place of marble to match all the other main pilaster capitals in the rotunda as called for by the specifications, thus producing a uniform effect.

3. Making the figures of the entrances to the House and Senate of gilded composition giving a more handsome appearance with the surrounding bronze and polished marble work of these entrances.

4. Making the interior marble work of the dome of selected and matched white Vermont polished marble in place of Italian veined. This is a warm cream white marble which harmonizes with the surrounding decorations of the dome (which are cream and gold), and also the paintings of Mr. Abbey, much better than the cold blue veined Italian.

5. Making the heavy ornamental relief carvings on the interior wood work of composition and metal in place of wood. I consider this better, in that the wood in such bulk is very liable to crack and split with the dampness and the artificial heat in the building.

These modifications will enable Messrs. Payne & Co. to make an allowance to the Commission of the sum of twenty-one thousand (\$21,000.00) dollars, included in the contract of Payne & Co., for the bronze work, making a total of forty-one thousand (\$41,000.00) dollars, exclusive of the five thousand (\$5,000.00) dollars which they have included for the bronze registers.

I would further respectfully ask your consideration of the proposition made by the Westinghouse Electric and Manufacturing Co., for the installation of the Nernst Lamp throughout the building in place of the incandescent lamp, as this will effect a further saving of at least four thousand (\$4,000.00) dollars, which could be applied to the bronze work. This lamp will give a greater quantity and a

better quality and at a much less cost for maintenance to the State.

The statement of the Westinghouse Co. is attached hereto, and I recommend its adoption as I believe it would make one of the most beautiful and effective plants in this country, and would not destroy the color scheme of the interior or descriptive paintings as is always the case with the incandescent lamps.

The following bronze work could be placed in the building by the adoption of the modifications submitted:

One pair of doors at main entrance, .....	\$11,000 00
Two pairs of doors at entrances to wings A and C, .....	16,000 00
One symbolic figure on top of dome, .....	10,000 00
One memorial tablet at side of main entrance, .....	2,500 00
Screens and grilles at entrance to House and Senate, ....	3,500 00
Railings at third and fourth floor line in dome, .....	2,000 00
<hr/>	
Total, .....	\$45,000 00

These suggestions do not in any way effect the structural conditions of the building, but on the contrary greatly enhances its beauty and secures a sufficient sum to replace the desired amount of bronze work in the building at the same time.

I would therefore request that you take favorable action in the matter so that the bronze work may be placed under contract at once, that the work may be entirely completed simultaneously with the building.

(Signed)

Very truly yours,  
J. M. HUSTON.

#### VOUCHERS ISSUED TO GEO. F. PAYNE & CO.

##### CAPITOL BUILDING.

##### Main Contract.

##### George F. Payne & Co.

Dec. 13th, 1902, 1st. order No. ...., by resolutions of Commission, ..	\$350,000 00
Aug. 11th, 1903, 2nd. order No. 36, by resolution of Commission, ..	450,000 00
Feb. 4th, 1904, 3rd. order No. 107, work and materials furnished, ..	175,482 50
March 9th, 1904, 4th. order No. 126, work and materials furnished, ..	81,999*50
April 5th, 1904, 5th. order No. 150, work and materials furnished, ..	97,537 50
May 4th, 1904, 6th. order No. 171, work and materials furnished, ..	198,517 50
June 8th, 1904, 7th. order No. 203, work and materials furnished, ..	126,990 00
July 9th, 1904, 8th. order No. 502, work and materials furnished, ..	110,585 00

Aug. 12th, 1904, 9th. order No. 510, work and materials furnished,	186,889 50
Sept. 7th, 1904, 10th order No. 516, work and materials furnished,	157,488 00
Oct. 3rd, 1904, 11th. order No. 524, work and materials furnished,..	172,261 00
Nov. 7th, 1904, 12th order No. 529, work and materials furnished,..	167,152 50
Dec. 7th, 1904, 13th. order No. 535, work and materials furnished,..	162,753 75
Jan. 9th, 1905, 14th. order No. 548, work and materials furnished,..	158,584 50
Feb. 4th, 1905, 15th. order No. 558, work and materials furnished,..	100,130 00
March 7th, 1905, 16th order No. 562, work and materials furnished,	701,745 00
May 1st, 1905, 17th order No. 568, work and materials furnished, ..	64,034 75
June 6th, 1905, 18th. order No. 581, work and materials furnished,	72,228 75
July 11th, 1905, 19th order No. 586, work and materials furnished,	64,812 50
Aug. 11th, 1905, 20th. order No. 593, work and materials furnished,	67,171 25
Sept. 13th, 1905, 21st. order No. 598, work and materials furnished,	65,492 50
Jan. 26th, 1906, 22nd. order No. 642, by resolution of Commission,..	50,000 00
Feb. 15th, 1906, 23rd. order No. 643, by resolution of Commission,..	50,000 00
March 20th, 1906, 24th. order No. 684, on work done and materials furnished on letters from Wm. A. Stone and E. Bailey, .....	150,000 00
June 13th, 1906, 25th. order No. 772, work and materials furnished,	173,800 00

Note: The two first orders amounting to \$800,000.00 were turned over by contractor on receipt of same and deposited with the Treasurer.

(Exhibit attached to Mr. Huston's Letter.)

### SPECIFICATIONS

Of Work and Materials Required for the Metal Document Filing Cases, Vaults, Safes, Screens and Galleries for the Capitol Building at Harrisburg, Penna., for the Commonwealth of Pennsylvania acting herein by the Board of Commissioners of Public Grounds and Buildings, According to the Drawings and Under the Supervision of Joseph M. Huston, Architect.

The contractor shall furnish all labor and materials for the proper and complete installation of the work herein described in a thorough and workmanlike manner, and according to the true intent of the drawings, these specifications and to the entire satisfaction of the Architect.

All material used to be the best of its kind, and that best adapted to the special construction for which it is to be employed. The work throughout, except where otherwise stated, to be made of the best mild steel, pickled and cold rolled, free from scale or buckle. The framing portions of the work to be built of rolled or formed shapes of mild steel, as hereinafter specified. The kind and gauges of metal to be used in the several parts of the work, to be those designated hereafter under detailed specifications.



### General Conditions.

All work shall be placed in position complete and ready for immediate use by the different departments of the State.

All foundations for the cases, vaults, screens, galleries, etc., are provided at the building, and the necessary openings and free access will be allowed, but this contractor will be held responsible for any damage done to the building in the erection of this work and they shall be responsible for injury done to their men or to men employed by other contractors through negligence or carelessness of this contractor.

All the necessary casings of boards shall be provided by this contractor to properly protect all jambs or polished and finished portions and shall also lay heavy flooring boards or sheet iron plates to properly protect finished floors.

All work is to be in strict accordance with these specifications, drawings, sketches and instructions as may be furnished and agreed upon.

The contractor is to furnish information for such foundations as may be required.

The work to be subject to a test and to inspection of material, and the contractor shall furnish such assistance and machinery as may be required for making such tests.

The entire work is to be made in the best and most workmanlike manner.

The welded steel and iron is to be of 5-ply laminated as indicated, rolled to the finished thickness.

All welded steel and iron plates, angles and sections are to have uniformity of structure throughout the laminae. to gauge accurately in thickness and to be brought to true planes, to be homogenous, smooth and free from rust, blisters and scale.

The edges of all plates, angles and sections to be planed to make mechanically tight joints throughout.

All threaded holes in welded steel and iron sections to be filled with fire-clay during the process of heating and hardening. All threaded holes must be drilled, not punched.

All plates and sections to be subjected to severe drill tests after hardening.

All material specified as Bessemer steel to be free from flaws, scale or rust, rolled accurately to gauge, straightened and planed to form tight mechanical joints.

All screws for vestibules and doors will be of Basic Steel. All screws will be made with large counter-sunk heads.

Cases containing sheet steel devices, which are less than twelve inches wide, to be built in two parts, viz:

First—An outer steel plate casing, forming a finished exterior, as per full size details.

Second—An inner sheet steel body, containing the devices; this is to be placed inside the outer casing and attached to it by concealed machine screws. Except where doors or curtains are specified, fronts of interior bodies shall be exposed. Backs to cases to be provided as hereinafter specified. All drawer heads to be neatly panelled.

Cases containing devices over 12 inches wide, are to be constructed of steel plates joined by angles, tees, flat bars, or channel shapes, or by flanges turned directly on the plates, all securely riveted or bolted. All exposed rivets to be filed smooth; all joints to be carefully made; and all mitres accurately cut and fitted. All rivets, bolts and screws to be so spaced as to prevent opening of joints or buckling of plates.

All cases to have backs, and top and bottom shelves.

Cornices shall be supplied for all cases as required by drawings. They are to be made of steel plates, striped, or with applied mouldings of brass, iron or solid cast bronze throughout as shown or noted.

The ends of cases in basement work shall be made of No. 16 gauge steel, with front edges covered with iron corner moulds, and paneled with ends laid on iron moulds.

Cornices to be plain, of formed steel as per detail drawings. The bases to be from 4 inches to 6 inches of No. 10 gauge steel, capped with iron mould to receive marble base.

The backs to be made of No. 22 gauge steel.

All cases not otherwise shown or marked, shall have ends of No. 16 gauge steel with front edges covered with brass corner moulds or with cast bronze pilasters, caps, bases, etc., as shown, and finished with polished marble base.

The ends to have panel strips made of No. 10 gauge steel and the coves of panels fitted with brass or solid cast bronze moulds.

Cornices shall be six and one-half inches high, made of steel plates with applied crown, bed and neck moulds of brass or cast bronze as detailed.

Bases shall be from 4 inches to 6 inches high of No. 10 gauge steel, capped with brass or cast bronze moulds to receive the marble base.

Backs shall be of No. 22 gauge steel.

All the brass mouldings where called for by drawings, to be made of gauges of not less than No. 22 brass, carefully drawn, annealed, straightened, and reinforced where necessary by a soldered steel backing suited to shape of mould. Where the face of mould is ornamented, the ornamentation to be in sharp, clear relief,

artistically executed. All fillets to be sharp and uniform in width and depth. Mouldings to be applied in a thoroughly workman-like manner; corners accurately mitered and fitted.

Card or label holders to be made of No. 24 gauge brass, or cast bronze, of the sizes detailed on plans, so struck up as to form a recess for receiving cards. They are to be riveted to devices with brass rivets neatly headed at back over suitable brass washers.

Combination label holders and pulls to be of sheet brass, of sizes and designs detailed, of gauges of No. 18 or 20 sheet brass according to the devices to which they are attached, and made as specified above. All edges to be left clean and smooth and all outlines to be sharply formed.

File handles to be made of No. 18 gauge brass struck up to form an opening large enough to admit the full hand; backs to be completely closed. Handles to be strongly riveted to drawer fronts with four brass rivets, two at top and two at bottom, through washers set in off-set file head for extra strength.

All handles for doors to be of steel, drop-forged. Pulls for curtains to be made of solid cast brass or bronze, turned or ground smooth and true; same to be solidly bolted or riveted to cases.

For extra large or heavy drawers, handles to be made of three-eighth inches steel rods securely fastened to drawer heads.

All brass work and mouldings and cast bronze work shall be well buffed to a polish, finished in statuary bronze and well lacquered.

All steel portions of the work to be finished as follows:

All work must be thoroughly well cleaned before finishing; framing parts ground smooth; plate surfaces well sand-papered; the entire product treated to a benzine dip to remove oil and dirt. The work to then receive a heavy coat of well baked mineral filler. Same to be thoroughly sand-papered down to a smooth, even surface and then coated with two coats of best baking japan and baked at a temperature of not less than 300 degrees for dark colors and 150 for light colors; the work to be sand-papered smooth between bakings. Exposed portions where necessary to be neatly striped.

The final finished colors for all cases shall be olive, dark green or grained mahogany as required.

All of the above and other selected colors applied, shall have exposed surfaces well rubbed down in pumice stone and water to a dead finish.

All wood tops for counters, desks, or tables to be built up of 5-ply veneers well glued, with grains crossing each other at right angles, finished surface to be mahogany or oak as desired. These tops to be well filled and sand-papered smooth, and then given four coats of shellac and varnish, well rubbed down with pumice stone and oil after each coat.

All marble bases shall be of Tennessee or black marble, one and one-fourth inches thick and of height indicated, fastened to metal bases by neat, oval headed, brass machine screws, put in from the front.

All document files shall be made of No. 22 gauge steel, with all edges, except top and rear, folded for smoothness and strength. Body of file to be in one piece; sides folded at right angles to bottom; bottom to have a continuous flanged groove formed in it to receive compressor, and anti-friction slides to be struck down at the sides for strength and smoothness. Head or front of file to have a raised panel and to be flanged and firmly riveted to body. File to be supplied with handle and label holder as hereinbefore described. Top of file front and rear edges of body to be folded around a No. 12 wire for strength and finish.

Compressing slides shall be of malleable iron, fitted to run smoothly and lock positively in compressing grooves. Following board to be of quartered sycamore, riveted to No. 20 gauge steel clip, and attached to compressor so that it will compress papers vertically when file is closed or fall back to a convenient angle for searching when file is open.

Document files to be supplied with suspension bales of five-eighth inches by No. 14 steel riveted to rear of body, to permit filing of papers without removal of files from case. Wire suspension hooks to be fitted to front of all file cases over five files high. Where files are over seven rows high, a file handler is to be provided for removing upper files; same to be made of three-sixteenth steel with upper end covered with rubber; lower end fitted to wooden handles.

#### Document File Cases.

Interior cases to be made with No. 22 gauge steel uprights, No. 22 gauge steel shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs; front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inches at sides and rear; front edges formed into a concave stop, fitted to receive the top of the file front to form a substantially dust proof compartment. Continuous three-sixteenth inches steel rods to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at ends of sections.

Deposit files to be made the same as document files, of sizes suited to paper to be accommodated. The cases to be constructed like those for document files.

#### Pigeon Hole Cases.

To be built substantially like document file cases, with plain, rounded front edges. Where label holders are specified, pigeon

holes are to be fitted with holders attached to front of shelves at top of each opening.

Plain box drawers are to be built of No. 20 to 24 gauge steel (according to size of drawer) with bodies made in one piece; sides folded at right angles to bottom and both seamed to fronts and backs; top edges to be beaded over three sixteenth inches stiffening rods. Fronts to have a lining sheet of No. 16 steel with air space between heads for additional protection. Drawers to have latches riveted to sides at rear, suspending them in case when fully extended.

Cases for drawers to have interior standards made of one-inch by one-half inch, front and back bars riveted at tops to three-fourth inches angles attached to No. 10 or 13 gauge top plates. Drawer guides to be riveted to upright bars, same to be made of No. 16 gauge steel, angled and rounded at top to lessen friction. Drawer stops or front bars to be made of one-inch by one-half inch steel, tenoned to standards to form a substantially dust proof stop.

Cases for box drawers over 12 inches wide to have steel plate uprights of not less than 16 gauge, with shelves of No. 20 gauge.

Cases for box drawers under 12 inches wide to be made with No. 22 gauge uprights, No. 22 gauge shelves and No. 20 gauge backs. Rear edges of uprights to be flanged and riveted to backs; front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inches at sides and rear; front edges formed into a concave stop for top of drawer front to form a substantially dust proof compartment. Continuous three-sixteenth inch steel rods to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at end of sections.

Triangular, suspension letter files are to be made of No. 22 gauge steel; body to be made in one piece with triangular sides folded at right angles to bottom; exposed edges to be folded.

Front of drawer to have raised panel and a double head with three-fourth inch space between walls; outer head to be seamed to drawer body with upper edge folded over a No. 8 wire rod; inner head locked to outer at top and provided with side and bottom flanges, for additional fire protection. Suitable combination pull and label holder to be furnished. Rear of drawer bottom to be re-inforced by five-eighth inch by No. 20 gauge steel strip. The rear edge of bottom to be folded over a three sixteenth inch steel rod with free ends spaced to engage with suspension blocks riveted to sides of drawer opening, allowing drawer to suspend in case at an angle of 45 degrees. Head of file to be fitted with two heavy, well tempered three and three-fourth inch by No. 19 steel springs attached to two No. 16 gauge steel plates, operating a web of No.

8 and No. 10 wires suited to automatically compress papers in file or drawn back as a rest for letters when file is open. Both plates and compressing wires to be nickel plated.

Head of file to be fitted to receive index, one of which shall be furnished for each file, of the style of index specified.

Daily report files to be made like letter files, except that no index attachment or index is to be provided.

Interior cases to be made with No. 22 gauge steel uprights, No. 20 gauge steel shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs; front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inch at sides and rear; front edges formed into a concave stop, fitted to receive the top of file front to form a substantially dust proof compartment. Continuous three-sixteenth inch steel rods to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at ends of sections.

Storage drawers to be made of No. 20 gauge steel, substantially like regular document files, except that the compressor shall be of extra strength. This shall be made of No. 16 steel, in size the full width of drawer, with a sheet steel clamping strip having side flanges travelling in compressing groove, operated by a sheet steel cam and spring, arranged to rigidly lock follower at any point in drawer. Storage drawers 14 inches deep or under to have document file suspension. Other depths to have pan-suspension.

Cases for storage letter or book file drawers to be made of No. 13 gauge steel uprights, and shelves of No. 18 gauge steel.

Storage letter drawers or book drawers over 14 inches deep, vertical letter files, check files, card index drawers and cash drawers, are to be fitted with suspension trays. These are to be so constructed as to suspend drawers (their entire depth) horizontally when heavily loaded and extended. Trays to be made of No. 20 gauge steel. A suspension stop also to be attached to back of drawer.

Vertical letter files are to be made of No. 20 gauge steel in form similar to document files. The bottom of drawer to be made double with continuous groove shaped to receive foot of guide cards, locking rod, and steel follower. The follower to be made of No. 16 gauge steel, in size the full width of the drawer, with a sheet steel clamping strip having flanges travelling in compressing groove operated by sheet steel cam and spring arranged to rigidly lock follower at any point in drawer.

The file to be fitted with pan-suspension, suspending it in a horizontal position when fully loaded and extended.

Guide cards and folders to be furnished only as specified.

Cases for vertical files to be built with No. 13 gauge steel uprights with five-sixteenth steel tubing on front edges and No. 18 gauge shelves both united by three-sixteenth inch steel rods. Backs to be of No. 20 gauge steel, fastened through flanges to uprights.

Files for checks are to be built of No. 22 gauge steel, with body in one piece; sides formed at right angles to bottom; both seamed to front; top edges of body double folded; head of drawer formed of No. 24 gauge steel over No. 16 gauge plate forming an inner head. Front of file to have raised panel and furnished with combined pull and label holder. The bottom of the drawer to have a continuous flanged groove formed in it to receive foot of guide cards or partitions, locking rod and rear follower. The follower to be made of No. 16 gauge steel, in size the full width of the drawer, with a sheet steel clamping strip having side flanges travelling in compressing groove, operated by sheet steel cam and spring arranged to rigidly lock follower at any point in drawer. Anti-friction slides for partition to be struck down next to side for smoothness and strength.

The guide cards, or card board partitions, to be made of tan board with a projection at bottom having hole for locking rod and fitted to slide in the flanged groove of drawer bottom. Tops of guide cards to have brass label holders firmly riveted to cardboards, with an opening to receive label holders showing the name of account. Twenty-six guide cards to be furnished with each drawer except where otherwise specified.

Files to be fitted with pan-suspension, suspending drawer horizontally when fully loaded and extended.

Cases for check files to be made with No. 22 gauge steel uprights, No. 20 gauge shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs; front edges to be formed around No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inch at sides and rear; front edges to be formed into a concave stop, fitted to receive the top of file front to form a substantially dust proof compartment. Continuous three-sixteenths inches steel rods to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at ends of sections

Card index drawers are to be made with bodies of No. 22 gauge steel, backs of No. 16; bodies to be made in one piece, with sides folded at right angle to bottom; top edges of body to be folded. The backs to be riveted to sides and bottom; the front to body. A "V" shaped lining sheet to be fitted to rear of drawer head, the upper side of "V" forming a bearing for cards when tilted forward, the lower side a recess for lower edges when tilted backward,

utilizing bottom of drawer to the extreme front. The rod adjustment in these drawers to be either "V" shaped, round or flat rods as required.

The rear follower to be fitted to travel on bottom strip. Follower to be made of No. 16 steel with a steel clamping strip having side flanges at bottom, and operated by a sheet steel cam and spring to rigidly lock follower at any point in drawer.

Interior cases to be made with No. 22 gauge steel uprights, No. 22 gauge steel shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs; front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downward one-half inch at sides and rear; front edges formed into a concave stop, fitted to receive top of file front to form a substantially dust proof compartment. Continuous three-sixteenth inch steel rods to be run under shelves through uprights at front and back, binding both firmly together with clamping nuts at ends of sections.

Drawers for legal blanks or flat forms are to be built of No. 22 gauge steel with body in one piece; sides formed at right angles to bottom; top edges of body double folded; head of drawer formed of No. 22 gauge steel. The head shall be hinged at sides permitting it to drop down when the drawer is drawn out three or four inches, leaving the blanks exposed, substantially as on a shelf. Back of drawer to be provided with suspension stop.

Interior cases to be made of No. 22 gauge steel uprights, No. 22 gauge steel shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs; front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inch at sides and rear; front edges formed into a concave stop, fitted to receive top of file front to form a substantially dust proof compartment. Continuous three-sixteenth inch steel rods to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at ends of sections.

Scoop or pidgeon hole files are to be made of No. 22 gauge steel, body made from one piece with sides folded at right angles to bottom; front to be seamed at sides. Top to extend back about three and one-half inches to serve as dust protector and support for papers; sides to be trimmed down at an angle from top to rear of file; front and top to be seamed to body; exposed edges to be folded. A strip of No. 22 spring brass, nickel finished, to be riveted to top of drawer as a compressor.

Interior cases to be made with No. 22 gauge steel uprights, No. 22 gauge steel shelves, and No. 22 gauge steel backs. Rear edges of uprights to be flanged their entire length and riveted to backs;



front edges to be formed around a No. 7 steel rod for stiffness and finish. Shelves to be flanged downwardly one-half inches at side and rear; front edges formed into a concave stop, fitted to receive the top of file front to form a substantially dust proof compartment. Continuous three-sixteenth inch steel rod to be run under shelves through uprights at front and back binding both firmly together with clamping nuts at ends of sections.

Where a general lock is specified for files or drawers, a device shall be furnished arranged to lock an entire section by a lever controlled by one key. The device shall have a locking frame made of a series of horizontal and vertical bars one inch by one-eighth inch, fitted between rear of drawers and backs of case. The horizontal bars to be located back of each horizontal row of drawers and to have a series of lugs or hooks upset on side nearest drawer, spaced so as to engage with rear of each device.

The frame to be operated by a lever bar one and one-fourth inch by one and one-fourth pivoted at center under a shelf, the rear end attached to back bars, the front, or free end, to project as a handle one and one-half inches beyond front of case, controlled by a single flat key lock. The operating lever to work in a horizontal plane, moving it to right and left to lower or raise horizontal bars in back, engaging or disengaging hooks in holes in bottoms of drawers, locking or unlocking them accordingly.

The frame for roller shelves to be made of steel bars eleven-sixteenth inch by one-eighth inch, with a supporting bar at front and back, and four intermediate cross bars to carry rollers. The rear ends of cross-bars to be firmly tenoned to back bar; the front ends to pass through and be firmly mortised to front bar with the free ends supporting front rollers. The front bar to have re-entrant bend formed directly in the center, spaced midway between the front dollars, to afford a hand hole for grasping books. A stiffening bar to be riveted to back of hand hole with ends tenoned to two inner cross bars. Both ends of the front and back are to be folded at right angles and punched to receive adjustment bolts which attach shelves to uprights. Each pair of cross bars carrying rollers to be reinforced by eleven-sixteenth by ten bar tenoned to same, midway between front and back.

Regular shelves to have eight rollers. Those in front to be of No. 19 gauge brass tubing, so spaced as to prevent books from striking the front edge of frame when placed on shelf.

The rollers inside the frames to be about five inches long and made formed into two tight pin spindles on which the rollers revolve. tube, with head sharply and smoothly turned, and bearing ends of No. 18 gauge steel formed from one piece of plates into a smooth

The rollers to be accurately and carefully made and ground or tumbled until entirely smooth.

Three rollers to be set in each outer section of frame, so spaced that the top of roller shall project one-eighth inches above the shelf frame.

The construction of roller shelf cases to be that specified for heavy sheet steel cases. The upright partitions to be of No. 13 gauge steel with adjustment slots punched at front and back of uprights, the holes to be one-half inches apart to receive stove bolts and hip washers for adjustment of shelves. Ends of cases to have finished uprights as specified. Tops and bottoms of cases to be fitted with plain shelves of No. 18 steel. The backs to be of No. 22 steel, built in sections, with edges flanged and neatly and tightly fitted between uprights. The front edges of uprights to be protected by vertical rollers made of No. 18, one piece, brass tubing. The ends of rollers to be spun over brass heads with center pivots. Upright rollers to be attached to cases by solid cast brass brackets screwed to plate uprights, and rollers so pivoted that they shall revolve freely in same.

Plain shelves to be made of No. 16 gauge steel; sides and back flanged downwardly five-eighth inches, the front formed into a five-eighth inch roll; side flanges punched to receive the bolts which attach shelves to uprights.

Plain shelf cases to be constructed of No. 13 to No. 10 gauge steel uprights. Adjustment slots to be punched at front and back of uprights, the holes to be one-half inches apart to receive stove bolts and hip washers for adjustment of shelves. Ends of cases to have finished uprights as specified. Tops and bottoms of cases to be fitted with plain shelves of No. 18 steel. The backs to be of No. 22 steel, built in sections with edges flanged and neatly and tightly fitted between uprights. The adjustment of shelving where specified, to be identical and interchangeable with that of roller shelving.

Stalls for books are to be made with upright divisions of No. 13 gauge steel, the intermediate divisions to extend one-half the depth of case, with smooth front edges. Uprights to have neat hand holes cut out of center. Tops and bottoms of stalls to be made of No. 18 gauge steel with mounted front edges, riveted or bolted to uprights. Where required, each stall to have a brass roller located at front of shelf at bottom of stall projecting one-eighth above the bottom to facilitate handling of heavy books.

Cupboards forming, base sections to be made of No. 10 gauge steel uprights, tops and bottoms attached by heavy riveted one inch steel angles. Doors to be of No. 10 gauge steel, with stiles of No. 10 gauge steel having interlocking corners. Door openings to be fitted with one inch by one-four inch striking bars riveted to up-

rights. Doors to be attached to cases by heavy steel hinges finished with acorn tips. Doors to be fitted with heavy forged steel tee handles, well plated, or bronze knobs as required.

Backs are to be made of No. 22 gauge flanged rearwardly on four sides and bolted firmly to plate uprights so as to entirely close openings.

Where top of cupboard at front is used as a ledge, it shall be neatly finished and left smooth and clean and fitted with wood tops. Dividing shelves and devices to be fitted to cupboards as detailed on plans. Locks specified to be of the best Yale pattern, arranged to lock handle bars firmly in place.

Steel curtains are to be made of strips of No. 26 gauge steel with both edges stiffly beaded. The bead on one side of strips to be enough larger than that on the other to permit their being slipped together in a smoothly working hinge, connecting strips together in a continuous flexible sheet, having dust, smoke and water proof joints. The face of each strip to have a small "V" shaped crease formed in the center for neatness and strength. Front ends of curtain to be faced with a finish channel rail of two inches by No. 14 gauge steel.

The sides of openings in cases to be fitted with a smooth and uniform channel made of No. 16 gauge steel, securely riveted to uprights and carried along front and rear edges and across top or bottom, bent in a true curve to form a continuous groove in which curtain shall slide.

Curtains are to be accurately fitted to grooves in such a manner as to ensure their being easily operated in case.

Curtains to be properly counter-balanced. Counter-weights to be so fitted as to ensure curtains working easily and their being exactly counter-balanced at all points in the case.

Duplex curtains to be furnished where required, and to be constructed of slats as specified. They are to be made in two parts of equal length, their front ends fitted with finish channel rails of two inch by No. 14 steel, meeting accurately in the center of the opening. The curtains are to be so hung and connected with specially made steel chains attached to front of cases over one inch pulleys at top and bottom of openings, that one part of curtain shall exactly counter-balance the other at all points.

Duplex curtains must be so constructed as to meet the following points:

1. They must meet evenly in center of the opening making it unnecessary to stoop to bottom of case to unlock curtains.

2. They must be so hung that when one part of the curtain is moved one-half of the height of case, it shall open or close entire opening.

Sliding or pull shelves in cases are to be made of No. 13 gauge steel with three-fourth inch flanges struck down on all sides, the front corners neatly rounded. The opening for shelf to be framed with inch channels at sides and one at bottom, suited to engage, respectively with sides of shelf and a suspension bar riveted underneath.

Shelves are to be covered with Pergamoid and bound with a neat brass angle mould on front and sides.

Shelves to be strong and fitted to work easily. Front edges to project sufficiently to form a convenient hand hold underneath.

Wardrobes to be constructed of uprights of No. 13 gauge steel, backs of No. 22, and shelves of No. 16. The doors to be made of No. 10 gauge steel with panel strips of one-fourth inch steel. Doors to be hinged to uprights by heavy steel hinges with acorn tips, and to strike against one inch by three-eighth inch steel bars riveted to sides of upright. Fronts of doors to be perforated at top for ventilation. Doors to have Yale, individual paracentric key locks.

Interior of wardrobes to be fitted with hat shelf, coat hooks, mirror, bronze mirror frame, umbrella holder made of five-eighth inch oval steel strips and brass drip pan.

Construction of galleries shall consist of one-half inch by three inch floor bars.

The floors of galleries shall be made of one and one-half inch white marble polished on lower side and sand blast finish on upper side, firmly attached to the one-half inch by three inch gallery floor bars. The front edge of galleries to be framed together with a fascia of one-half inch by six inch steel and ornamented with cast bronze fascia plate.

Gallery fronts shall have heavy ornamental bronze ceiling, well stayed, of design detailed with wood book shelf at top.

Stairway shall be made of one-fourth inch wrought steel stringers with bronze fascia and special bronze railings and newels.

The treads and risers shall be of No. 13 gauge steel, the treads being covered with Mason lead treads.

The stairway railings and newels shall correspond with design of gallery railings.

All work to be properly fitted with neat joints in a finished and workmanlike manner.

Drawers for flat plans are to be made of No. 20 gauge steel bodies of one piece; sides folded at right angles to bottom and both seamed to fronts and backs. The edges to be beaded over three-sixteenths inch stiffening rods. Fronts to have a lining sheet of No. 16 gauge steel with air space for additional protection between heads.

Drawers to have channel guideways, formed from No. 16 gauge steel, riveted to sides of drawer suited to engage with similar one

and one-fourth inch by one-fourth inch channels riveted to sides of drawer openings. In addition they are to be supplied with steel latches to sides of drawer at rear, spaced to engage with top of front of drawer opening when drawers are extended.

Drawers to be supplied with a fixed hood at rear, four inches wide, to prevent rear edges of plans from curling. Front of drawer to have a similar hood or flap hinged to top of front of drawer to protect the front edges of plans, and so attached to drawer that it may be folded over front of drawer body for examination of plans.

The bottom of drawer to be fitted with a metal strip for raising plans in searching. Strip to be not less than three inches wide, riveted to bottom of drawer at rear, the free end at front to be flanged to the height of inside of drawer with suitable finger catch at top.

These to have interior standards made of one inch by one-half inch front and back bars riveted at tops to three-fourths inch framing angles attached to plate tops. Front bars to be made of one inch by one-fourth inch bars tenoned to standards. Backs to be of No. 20 gauge firmly attached to uprights.

The treasurer's screen shall be constructed of marble, bronze, plate glass, steel and wood as per detail drawings.

All marble shall be of cream white Vermont to match in every particular that used in the rotunda and main corridors, all exposed surfaces being highly polished.

All bronze work shall be cast, moulded, ornamented and welded to carry out the design in the most artistic and workmanlike manner.

The metal counter work back of screen shall be constructed as hereinbefore specified.

Openings shall be left for electric wires to be run by the electrical contractor to supply light to the globes on top of columns.

All work to be furnished, finished and erected in place ready for immediate use.

The House and Senate post offices shall be fitted up with standard Yale & Towne U. S. type of boxes, six and one-half inches by six and one-fourth inches with glass panel in front and Yale individual paracentric key, and numbered from one to the highest number required in each case.

The frame or fronts shall be of cast bronze with marble base as per design. The base for Senate post office shall be of green Connemara to match that in Senate Chamber, and that for House shall be of French Pyreneese to match that in House Chamber.

All work shall be executed in the most workmanlike and artistic manner and left ready for immediate use.

## SPECIFICATIONS FOR TELEPHONE BOOTHS.

---

All telephone booths are to be of size shown on drawings, and constructed with double walls formed of No. 13 gauge steel with planted on iron moulds forming panels, or with stiles forming panels of one-fourth inch steel and bronze mould placed at intersection of same. Deadening space between plates to be one inch clear. Upper portion of telephone booths to be formed of two sheets of glass, with chipped glass outside and with clear plate glass inside, with deadening space in between these sheets of glass of one-half inch clear. Ceiling to be formed of one-half inch thick plate glass. The back of telephone booths where they are to be placed against walls shall be attached with screws so that back can be removed to get at any pipes, wires, etc. Booths where shown to have pilasters shall have same formed of ornamental steel or bronze, as noted. Cornices to be formed with steel with applied bronze mouldings, or made of solid cast bronze, as shown on drawings. Base plate of telephone booths to be formed of No. 10 gauge steel plate with iron or bronze mouldings, as shown. The base plate to be perforated to receive marble base. Doors to be furnished with first class paracentric key Yale locks.

The burglar-proof and fire-proof safes in the various departmental rooms where shown in connection with the document filing cases shall be constructed as follows:

The outer casing will be made of welded frames made of two and one-half inches by two and one-half by five-sixteenths inch angles. The body sheet shall be of one-fourth inch plate. The inner casing shall be made with a welded frame made of two and one-half by two and one-half by one-half inch angles at the rear and front. Horizontal corners shall be covered with two and one-half by two and one-half by one-half angles, inside of which will be placed two layers of steel one-half inch thick each. The first and outer layer shall be of 5-ply welded steel and iron, tempered drill proof. The second layer shall be of open hearth steel. Inside of this will be placed an angle frame covering all corners two and one-half by two and one-half by five-sixteenths inch. The doors shall be made folding and fitted with a rebate, tongue and groove joint at the top and bottom and interlocking joint at centre. On the hinge side, shall be made with rebates and a projecting flange extending under the outside frames.

The doors will be four and one-half inches thick, outside plate three-eighths inch thick, the built up jamb of wrought steel bars to a thickness of two and one-half inches. Inside of this shall be

three full size plates one-half inch thick each, one of 5-ply welded steel and iron, tempered drill proof and one of open hearth steel. These plates to be securely fastened together with three-fourths inch countersunk head drill proof machine screws three-fourths inch diameter, placed not more than six inches apart, a row of screws to be placed not more than two inches from the edge of each layer. The two inch space in the doors and the body of the safe shall be filled with a concrete filling (fire-proof).

Each door shall be provided with a bolt frame made of two and one-fourth inches by one and one-fourth inch steel bars, forming a continuous frame around the door through which will operate one and one-fourth inch round bolts, bolting two each to the right and left and one each to the top and bottom. Bolts will be operated by "T" handles and checked by a 4-tumbler Yale bronze case lock with a sideshaft, the spindles operating the lock by means of a gear connection forming a cut-off between the lock and spindles. The lock and bolt spindles shall be made of drill-proof steel, cone shape and collared between plates. The inside of the safes will be fitted up as may be directed. The safes will be placed on a steel angle base five inches high.

The inside of the safes shall be finished with two coats of lead and enamel paint. The outside shall be given a coat of iron filling plaster, rubbed smooth and neatly striped. The doors shall be paneled with a bronze beading corresponding with the trim on metal furniture.

Hinges shall be of bronze of special design.

Hinges, handles and dials shall be all bronze finish. The built up frames shall be copper oxidized and the bolts nickel plated. Safes to be finished in such color as may be directed.

---

#### STEEL VAULT LINING, VESTIBULES, DOORS, DAY-GATE, ETC., FOR THE AUDITOR GENERAL'S DEPARTMENT.

---

The dimensions of vault shall be twenty feet, four inches wide, seven feet deep, twelve feet, four inches high. Vestibule to be deep enough to pocket the inside doors and allow two inches of space for hinging the day-gate on a hinge leaf on the inside of the outer door jamb. Clear walk into the vault to be thirty-one inches wide by seventy-eight inches high.

The vault lining shall be made of open hearth steel plates one-half inch thick and to be approximately thirty inches wide or as near that width as the construction will admit. All wide plates

to be placed vertically and to be of full length. Top and bottom plates to extend from front to rear. All plates to be planed true to form tight fitting but joints. All corners both vertical and horizontal to be covered on the outside with three by three by one-half inch angles. The horizontal angles will be welded to form solid corners to extend one-half way from front to rear and each arm made sufficiently long to join with the arm of the opposite corner. The vertical angle to be of full length extending from corner to corner. All joints of plates to be covered with three by one-half inch lap bars. All corners and bars to be securely riveted with countersunk head rivets of Norway iron, forming perfectly smooth and flush surface on the inside.

The outside door shall be made four and one-half inches thick, built up with rebates, tongue and groove on four sides to correspond and fit with the corresponding jamb. All layers of steel to be of full size. Outside to be one-half inch thick of retreated open hearth steel. Inside of this will be one plate of 5-ply welded steel and iron, tempered drill-proof. The jambs to be built up with a cast steel frame to the thickness of four inches, inside of which shall be placed a one-half inch plate of open hearth steel of full size, making a total of four and one-half inches.

All plates to be securely fastened to the frame with countersunk head machine screws and inside plates to be securely fastened to the outside plates by means of two channel bars extending the full length from top to bottom placed inside of the door. The space formed in this construction to be filled with a concrete fire-proof filling. The jamb or frame of the door shall be built up to correspond with the door and be filled with fire-proof filling. The outer layer of this frame to be made of four by four by one-half inch angle to form a solid continuous frame. Outside of this to be an architrave formed of six inches by one-half inch plate, the inner edge being chambered off and placed two inches from the edge of the door making the face of the frame on two sides and top eight inches wide.

The vestibule shall be made of three-eighths inch plate secured at all horizontal corners with three inches by three inches by one-half inch angles. The inside frame to be made of three by two by one-half inch angles with a face plate overlapping the lining of four by one-half inch bars.

Inside doors shall be folding and made of one-fourth inch plates with a two by two by one-half inch bolt frame extending around the four sides, making the door one-half inch thick on all edges.

The outside door shall be fitted with rebate, tongue and groove joint on the four sides, fitting into a corresponding jamb. The grooves to be packed with Usodorian packing, the tongues serrated to form tight-fitting joints on the packing.



Outside door shall be hung on a goose neck crane hinge made of steel casing provided with ball bearings, steel set screws for the adjustment of the hinge. The door to be provided with a pressure bar across the center of the door with an eccentric at each end and to be operated with a hand wheel with gear connection. All to be secured with proper housings and keepers made of cast steel.

The inside doors shall be hung on pin hinges with adjusting screws.

Outside door shall be provided with a bolt frame made of two and one-fourth inches by one and one-fourth inch cold rolled steel bars consisting of four vertical and four horizontal, with a series of short bolts one and three-eighths inch diameter, operating six each to the right and left and two each to the top and bottom, checked by a 4-tumbler bronze case Yale combination lock. The bolt frame to be secured to the door by means of one inch machine bolts with hexagon nuts covered with bronze caps. The spindles operating lock and bolt work will be made of drill proof steel, cone shape and collared between the plates.

The inside doors shall be provided with one inch round steel bolts bolting at four points each at the right and left and interlocking at center and one bolt on each door and top and bottom. The inside doors to be checked by a 4-tumbler combination lock.

The entrance shall be provided with a foot bridge affording a level walk into the vault. This bridge to be made to form an incline on the outside for the use of an omnibus or truck, or made to fit on the jamb of the outside door as directed.

The entrance shall be provided with a neat design of day gate. The frame made of cold rolled steel bars one-half inch by one and one-half inch, through which shall be fitted five-eighth inch round brass rods, placed vertically two and one-half inches on centres. Each rod provided with ornamental bronze tips. Across the centre of the gate shall be placed a guard plate twelve inches wide. The gate to be hung on an adjustable leaf hinge to the inside of the outer door jamb and provided with a first class flat key lock. The gate to be hung on automatic self closing hinges and made to swing to the outside and lock in the jamb of the outside door while in use and to fold back into the vestibule when the vault is closed.

The inside of the vault shall be finished with one coat of primer and two coats of lead paint. The doors and outside frame to be finished with three coats of plaster or iron filler, rubbed smooth, neatly ornamented and varnished and finished in such color as directed.

The crane hinge to be finished in plain black with an egg shell gloss and to be provided with bronze tips on all butts.

All brass trimmings, such as hinge tips, bolt caps, day-gate, rods

and ornaments on day-gate, etc., shall be lacquered bronze finish. The pressure bar, hand wheel, bolts, carrying bars, handles and dials shall be nickel-plated. The bolt frame, day-gate frame to be copper oxidized.

The vault doors for the vaults in the basement under above described vault shall be built the same as above described without day-gates and without bronze trimmings. The bolt frames to be finished in aluminum bronze.

---

#### BURGLAR PROOF VAULT LINING WITH DOORS, LOCKS, GLASS DOOR AND DAY-GATE FOR THE TREASURY DE- PARTMENT.

---

The outside dimensions of lining shall be ten feet, two inches long, six feet, seven inches deep, eight feet, two inches high, with a vestibule and door having a clear walk 32 inches wide by six feet, six inches high. The lining shall be made 60 lb. steel railroad rails—rails to be reversed and placed together so that the rails will interlock with each other. The bottom and top rails to extend from front to back. The side rails to be placed vertically on top of the bottom rails and underneath the top rails extending around all sides forming a solid cage. The space between the heads of the rails to be filled in with a concrete grouting forming a solid mass. All rails to be covered on the outside with six by eight inches by one-half inch angles forged and welded to form solid corners—arms to be long enough to meet with the arm of the opposite corner. Vertical corners to be covered with angles extending the full length from the top to the bottom corners. Where the lining intersects with the vestibule, rails shall be covered with an angle built in and forming part of the vestibule, and this shall be secured with a reversed angle on the outside. The panels formed by the angle frames on all sides shall be filled with full length plates one-half inch thick and thirty inches wide. All angles shall be securely fastened with five-eighths inch countersunk head machine screws passing through the angle and through the flange of the rail into the concrete filling. All plates shall be securely fastened with three (3) rows of screws, each row being secured to the alternate rails in the same manner as the angles are fastened. On the inside of the rail lining, all rails shall be securely fastened to angle frames made of four inch by four inch by one-half inch angles forged and welded to form solid corners and extending around all corners vertically and

horizontally. These angles shall be securely fastened with countersunk head machine screws passing through the angle and flange of each rail. Inside of this angle frame shall be placed plates of full length, extending from angle to angle, each plate being secured to the rails with countersunk head machine screws, passing through the three (3) rows in each plate, spaced eight inches apart, passing through the plate into the rail. This layer shall be made of 5-ply welded steel and iron, tempered drill proof. Inside of this shall be a second layer made of one-half inch angles and plate of open hearth steel constructed in the same manner as described for the first layer forming a rebate of one-half inch by one-half inch, covering all edges of plates of the outer layer.

Plates placed in the second layer shall be made to break joints in the first layer of not less than four inches, with a row of screws passing around the edge of each plate and angles, spaced eight inches apart. Three (3) additional rows of screws shall be placed horizontally in all plates spaced eight inches apart. All joints of angles and plates shall be planed true to form tight metallic fitting joints to form a smooth surface on the inside. All 5-ply welded steel and iron shall be tempered drill proof.

---

### VESTIBULE AND DOOR.

---

Clear walk through the doorway to be thirty-two inches wide by six feet, six inches high. Door to be six and one-half inches thick.

#### Construction of Door.

The outside layer of the door to be one and one-half inch thick; second layer one inch; third layer one-half inch; fourth and fifth layers one inch; sixth layer one-half inch; seventh layer one inch; of alternate layers of open hearth steel and 5-ply welded Chrome steel and iron, which shall be tempered drill proof.

The outside layer of door frame shall be made of six inch by six inch by one inch open hearth steel angles forged into solid continuous frames. The remaining layers of frame shall be built up of open hearth steel and 5-ply welded steel and iron. Layers to correspond with those of the door. In addition to the outer angles, this frame is to have two additional layers formed of angles and which shall be securely fastened to the vestibule. The vestibule shall be constructed with double angles on the inside covering both the outside and inside of the rail lining. On the outside of the door frame

shall be an architrave made of six inch by one-half inch bars covering the two sides and across the top, the architrave being welded at two corners. All layers shall be securely fastened together with countersunk head machine screws made of basic steel. Screws passing from the inside. No screws passing through more than two layers and no screws to come through to the surface of the door.

The outer layer on the door shall be fastened with one and one-fourth inch screws. All one inch layers shall be fastened with one inch screws. All one-half inch layers shall be fastened with three-fourth inch screws. A row of screws shall be placed not more than two inches from the edge of all layers, spaced eight inches apart and scattering throughout the body of the door 10 inches apart. The door frame and vestibule plates shall be secured in the same manner as described for the door.

The door shall be fitted with rebates and tongue and groove which will fit into a corresponding jamb with close fitting metallic joints. All edges and face of plates in the jamb to be ground smooth and hand polished. The tongues to be serrated and the grooves packed with Usudorian or other suitable packing to form a close fitting joint with the tongues.

The door shall be hung on a goose neck crane hinge made of cast steel of sufficient size to carry a door of this size and remain perfectly rigid. The hinges shall be fitted with ball bearings between steel discs and to have vertical rollers and steel adjusting pins to take up the lateral motion. The door shall be provided with two pressure bars with eccentric on each end and shall be provided with proper housing and keepers—the bars to be connected by means of a three-fourths gear connection and operated by hand wheel moving the door squarely into and out of the jamb.

Door shall be provided with a bolt frame consisting of four vertical and four horizontal bars. The outer line of bolt frame to be two and one-half by three and one-fourth inches, the inner line to be one by three and one-fourth inches. Twenty-four round steel bolts two inches in diameter, eight (8) each to the right and left and four (4) each to the top and bottom. Bolts to be checked by two bronze case combination locks with outside shaft, operated by a built in cone-shaped spindle. The lock and bolt spindles to be made drill proof and collared between plates so that they cannot be driven in nor drilled out. The door shall be additionally secured by a 3-movement time lock with all the latest improvements of either Sargent & Greenleaf or Yale make.

Inside of this door shall be placed a glass door made of a steel angle frame fitted to the inside of the outer bolt frame. This gate to be hinged and to be provided with a substantial flat key lock. Frame to be provided with a plate glass cover.

On the inside of the vault all screw heads shall be thoroughly puttied and finished with one coat of primer, and three coats of plastic iron filler, rubbed smooth and varnished.

The vestibule on the inside shall be finished in the same manner.

The outside door, crape hinge, housings, door frame and the outside of the inside door shall be finished with three coats of iron filler, rubbed smooth and finished in such color as may be desired and neatly striped and varnished.

The bolt frames, carrying bars, glass door frame and day-gate frame shall be copper oxidized with high lights on such portions as may be selected, or gun barrel finished.

The bolt and lock connections, handles and pressure bars, caps and hinge tips will be nickel plated. The bronze caps on nuts on the bolt work on the outside doors, bronze covers over the gear connections on the bolt work on the inside and on the pressure system on the outside and the bronze ornaments on the day-gate and the etched finishing plates on the inside of the door shall be polished and lacquered in a brass finish.

At the inner edge of the vestibule there shall be a grille partition across the entrance as shown on drawings. This partition shall be made of three horizontal bars framed into vertical bars made of one-half inch by one and one-half inch cold rolled steel.

Steel rods shall be placed vertically passing through this frame spaced two and one-half inches on centres. These rods shall be covered with brass tubes neatly fitted to the frame.

In the centre of this partition shall be a day-gate, the frame being made of one and one-half inch polished bars with brass rods, extending vertically through the frame spaced two and one-half inches apart with neat bronze ornamental tips and collars.

A jiggered brass guard plate eight inches wide shall be placed across the centre of the gate.

This gate to be provided with a first class spring bolt flat key lock.

The frame to be plated and finished in gun barrel finish.

Brass rods, ornaments and guard plate to be polished and lacquered in brass finish.

Two Manganese steel safes shall be placed on the left hand side of the vault, one on top of the other. The lower safe to be placed on a base with wheels. The upper safe to be placed on a base made to fit on the lower safe and to form a base for the upper safe.

The two safes to extend from the floor to the ceiling and to be forty-two inches diameter each and thirty-six inches deep over all.

These safes to consist wholly in its defensive feature of one thickness of touch drill proof Manganese steel made by the Hadfield process. Body to be cast in one piece of said steel and to have

a minimum thickness of three inches with a thickness at jamb of six inches.

The door shall be cast in one piece of this steel and to have a minimum thickness in the centre of three and one-fourth inches and on the edges including the bolt frame, which is the integral part of the door, of six inches.

The spindles to be made of the same material. All other parts of the safes to be of steel or bronze of the best grade for their respective purposes. The base to be made of cast iron.

The doors shall be made circular with an opening twenty-seven and one-half inches diameter. Both doors to swing to the right. The door to be ground accurately to form a tight fitting throughout the bearing surface. The door to be provided with six bolts each having a cross section of bearing face of bolts to fit the bearing face of the bolt groove, so as to first draw to and then secure the door to a seat. The door to have patent bolt-actuating mechanism, crank spindle, two lock spindles, two Yale time and combination locks with 72-hour movements. Combination locks to control the connection between the crank spindle and the bolting mechanism.

The hinge to consist of heavy steel crane casting with patent centering adjustment, automatic handle and a spring plunger, which places the door in proper position for closing.

All work to be done in the very best manner. The interior of safes to be fitted as directed, one having an inner compartment with door and combination lock.

Safes to be finished and painted in the best manner, of color as directed.

The vault doors for vault in basement under treasurer's vault shall be built of the same construction and finish as that described for vault doors in basement under Auditor General's vault.

---

#### EXHIBITS PENNA. CONSTRUCTION CO.

---

Joseph M. Huston, Architect.

Philadelphia, June 1, 1904.

The Penna. Construction Co.:

Gentlemen: I have been giving the furnishing of certain rooms in the new State Capitol Building at Harrisburg considerable thought and have decided that the metallic furniture for which you have the contract should be made more elaborate than the plans which I have directed you to proceed under, in order that the work may

correspond more fully with the finish of these rooms. I therefore submit you herewith revised plans 1 to 54 inclusive and specifications for the first section, and desire you to advise me as to the exact cost for completing the work as per revised plans.

You will discontinue work on these rooms until we can arrange for this extra work.

Very truly yours,

(Signed)

J. M. HUSTON.

---

The Pennsylvania Construction Company.

• Marietta, Pa., June 10, 1904.

Mr. J. M. Huston, Architect, Witherspoon Building, Philadelphia:

My Dear Mr. Huston: Replying to your letter of June 1, 1904, in reference to the changes to be made in the first section of the metallic work for which we have the contract to erect in the new State Capitol at Harrisburg, I submit you herewith copy of letter dated June 8, 1904, received from the Art Metal Construction Co., which will explain to you the changes necessary in our method of construction. We agree to deliver all this work according to your revised plans for the sum of \$50,000.00.

We should be pleased to have you send us a formal order for this work at as early a date as possible.

Very truly yours,

(Signed)

PENNA. CONSTRUCTION CO.

By H. BURD CASSEL.

---

Joseph H. Huston, Architect.

Philadelphia, Pa., June 14, 1904.

Penna. Construction Co., Marietta, Penna.:

Gentlemen: I have your letter of June 10, 1904, in reference to the changes to be made in the first section of the metallic work in the State Capitol Building, and under authority of the resolution passed by the Board of Public Grounds and Buildings of the State of Pennsylvania on April 5, 1904. I hereby accept your proposition and direct you to proceed at once upon the changes as suggested.

Very truly yours,

(Signed) J. M. HUSTON.

DETAILED LIST SHOWING CHARACTER AND QUANTITY, SPECIAL MATERIAL, CONSTRUCTION AND LABOR INCLUDED IN SUPPLEMENTAL CONTRACT DATED JUNE 14, 1904, ISSUED TO THE PENNSYLVANIA CONSTRUCTION COMPANY BY J. M. HUSTON, ARCHITECT, IN CONNECTION WITH THE FIRST SECTION OF METAL FURNITURE FOR THE STATE CAPITOL BUILDING, SHEETS 1 TO 54 INCLUSIVE.

---

SENATE LIBRARY SHEETS 21 TO 25 INCLUSIVE.

48 ft. 2 in. bronze rail, 36 in. high.  
1 bronze stair 11 ft. 0 in. high, 5 ft. 0 in. wide.  
36 special bronze label holders.  
48 ft. 2 in. bronze fascia,  $6\frac{3}{4}$  in. deep.  
545 ft. 0 in. bronze base mould.  
370 ft. 0 in. bronze base mould.  
6290 ft. 0 in. 069 bronze water leaf mould.  
388 bronze handles.  
350 ft. 0 in. bronze cornice mould.  
794 ft. 0 in. bronze mould for panels under gallery.

HOUSE LIBRARY SHEETS 12 TO 14 INCLUSIVE.

31 ft. 6 in. bronze rail 36 in. high.  
1 bronze stair and rail, 11 ft. 0 in. by 5 ft. 0 in.  
30 special bronze label holders.  
31 ft. 6 in. bronze fascia  $6\frac{1}{2}$  in. deep.  
2,940 ft. 0 in. of 069 mould, water leaf type.  
185 ft. 0 in. of cornice mould.  
185 ft. 0 in. of base mould.  
396 ft. 0 in. of 082 corner mould.  
257 bronze handles.

450 ft. 0 in. bronze mould under gallery.

All of the above made necessary entire special construction of all steel work in connection therewith.

---

August 12th, 1904.

Mr. J. M. Huston, Architect, 1106 Witherspoon Building, Philadelphia:

Dear Sir: We will furnish the marble for the 2nd Section of the work for the State Capitol, Harrisburg, Pa., as enumerated below and as shown on drawings prepared by you, the same being num-



bered from 55 to 102 inclusive, for the sum of twenty-five thousand (\$25,000.00) dollars.

The above estimate includes the following work:

State Department—Marble counter.

House Post Office—Sienna marble counter.

Senate Post Office—Irish green marble counter.

State Treasurer's office—Marble counter.

The above estimate does not include or cover any marble base.

Respectfully submitted,

(Signed) PENNSYLVANIA CONSTRUCTION CO.,

By H. Burd Cassel.

Accepted,

J. M. HUSTON,

Architect.

---

Joseph M. Huston, Architect.

Philadelphia, Sept. 17th, 1904.

Penna. Construction Co., Marietta, Penna.:

Gentlemen: I enclose you herewith plans and specifications for the Second Section, plans No. 55 to 102 inclusive, for the metallic work, Capitol Building. You will find in these plans and specifications considerable change from your ordinary method of constructing your work, and also a large amount of bronze work.

I should be pleased to have you advise me how much these changes and the bronze work will cost in addition to your contract price with the State of Pennsylvania.

Very truly yours,

(Signed) J. M. HUSTON,

Architect.

---

The Pennsylvania Construction Company.

Marietta, Penna., September 27th, 1904.

Mr. Joseph M. Huston, Architect, Witherspoon Building, Philadelphia:

My Dear Sir: In reply to your letter of September 17th, we beg to enclose you herewith copy of letter received from Art Metal Construction Company, in reference to the extra work on plans Nos. 55 to 102 inclusive. We will agree to deliver this work at Harrisburg for the sum of \$200,000.00.

Trusting to receive your official order for the same, we beg to remain,

Yours very truly,  
(Signed) PENNA. CONSTRUCTION CO.,  
By H. Burd Cassel.

---

Joseph H. Huston, Architect.

Philadelphia, Oct. 1st, 1904.

Penna. Construction Co., Marietta, Penna.:

Gentlemen: I beg to acknowledge receipt of your letter of September 27th, in reference to the change to be made in the Second Section of the metallic work, Plans Nos. 55 to 102 inclusive, for the State Capitol Building, and under the authority of the resolution passed by the Board of Public Grounds and Buildings of the State of Pennsylvania, April 5th, 1904, I hereby accept your proposition and direct you to proceed upon the changes as suggested.

Very truly yours,  
(Signed) J. M. HUSTON,  
Architect.

---

DETAILED LIST SHOWING CHARACTER AND QUANTITY,  
SPECIAL MATERIAL, CONSTRUCTION AND LABOR IN-  
CLUDED IN SUPPLEMENTAL CONTRACT DATED OCTOBER  
1, 1904, ISSUED TO THE PENNSYLVANIA CONSTRUCTION  
COMPANY BY J. M. HUSTON, ARCHITECT, IN CONNECTION  
WITH SECOND SECTION, METAL FURNITURE FOR THE  
STATE CAPITOL BUILDING, SHEETS 55 TO 102 INCLUSIVE.

---

TREASURER'S OFFICE, SHEETS 55 TO 64 INCLUSIVE.

- 1 bronze screen for counter, including doors, wickets, etc., 55 ft. 6 in. long, 9 ft. 9 in. high.
- 132 ft. bronze cornice, 6½ inches high.
- 194 ft. bronze base mould.
- 268 ft. bronze egg and dart mould for panels.
- 16 bronze pilasters, caps and bases, 75½ in. by 5 in.
- 16 bronze pilasters, caps and bases, 28 in. by 5 in.
- 4 bronze pilasters, caps and bases, 78 in. by 5 in.
- 4 bronze pilasters, caps and bases, 99½ in. by 5 in.
- 10 special steel panels, 14¼ in. by 75½ in.
- 10 special steel panels, 24¼ in. by 28½ in.

- 4 special steel panels, 18 in. by  $75\frac{1}{2}$  in.
- 4 special steel panels, 34 in. by 36 in.
- 4 special steel panels, 19 in. by  $83\frac{1}{2}$  in.

#### AUDITOR GENERAL'S DEPT. SHEETS 64 TO 77 INCLUSIVE.

- 504 ft. bronze egg and dart mould for cornices.
- 152 ft. bronze cornice,  $6\frac{1}{2}$  in. high.
- 6 bronze pilasters, bases and caps,  $99\frac{1}{2}$  in. by 5 in.
- 18 bronze pilasters, bases and caps,  $28\frac{1}{8}$  in. by 5 in.
- 18 bronze pilasters, bases and caps,  $75\frac{1}{2}$  in. by 5 in.
- 108 pieces bronze egg and dart mould for caps.
- 1,060 ft. bronze egg and dart mould for panels.
- 511 ft. bronze base mould.
- 52 special steel pilasters, bases and caps,  $75\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 52 special steel pilasters, bases and caps,  $28\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 4 special steel pilasters, bases and caps,  $105\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 504 special steel cornice,  $6\frac{1}{2}$  in. deep.
- 34 special steel panels,  $14\frac{1}{4}$  in. by  $75\frac{1}{2}$  in.
- 34 special steel panels,  $24\frac{1}{4}$  in. by  $28\frac{1}{2}$  in.
- 8 special steel panels,  $19\frac{3}{4}$  in. by  $105\frac{1}{2}$  in.
- 2 special steel panels,  $32\frac{3}{4}$  in. by 26 in.
- 2 special steel panels,  $68\frac{1}{2}$  in. by 36 in.
- 14 special steel panels, 29 in. by  $75\frac{1}{2}$  in.
- 14 special steel panels,  $28\frac{3}{4}$  in. by  $28\frac{1}{2}$  in.
- 1 special steel panel, 37 in. by 105 in.

#### SENATE POST OFFICE. SHEETS 81 TO 83 INCLUSIVE.

- 19 ft. 9 in. by 9 ft.  $1\frac{3}{4}$  in. bronze partition front, including bronze lock P. O. boxes.
- 8 ft. 3 in. by 9 ft.  $1\frac{3}{4}$  in. dividing bronze partition.

#### HOUSE POST OFFICE. SHEETS 84 TO 85 INCLUSIVE.

- 19 ft. 9 in. by 9 ft.  $1\frac{3}{4}$  in. bronze partition front, including bronze P. O. boxes.

#### STATE DEPARTMENT. SHEETS 86 TO 102 INCLUSIVE.

- 128 pieces bronze egg and dart mould for caps.
- 1,514 ft. bronze egg and dart mould for panel work.
- 525 ft. bronze base mould.
- 482 ft. bronze egg and dart mould for cornices.
- 27 ft. bronze cornice  $6\frac{1}{2}$  in. deep.
- 4 bronze pilasters, caps and bases, 48 in. by 5 in.

- 4 bronze pilasters, caps and bases, 28 in. by 5 in.
- 2 bronze pilasters caps and bases, 28 in. by 5 in.
- 2 bronze pilasters, caps and bases, 78 in. by 5 in.
- 482 ft. special steel cornice,  $6\frac{1}{2}$  in. deep.
- 54 special steel pilasters, caps and bases,  $75\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 20 special steel pilasters, caps and bases,  $105\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 54 special steel pilasters, caps and bases,  $28\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.
- 34 special steel panels,  $75\frac{1}{2}$  in. by  $14\frac{1}{4}$  in.
- 51 special steel panels,  $24\frac{1}{4}$  in. by  $28\frac{3}{8}$  in.
- 13 special steel panels,  $19\frac{3}{4}$  in. by  $75\frac{1}{2}$  in.
- 4 special steel panels,  $43\frac{1}{4}$  in. by  $105\frac{1}{2}$  in.
- 4 special steel panels,  $16\frac{3}{4}$  in. by  $75\frac{1}{2}$  in.
- 2 special steel panels, 72 in. by  $35\frac{1}{2}$  in.
- 2 special steel panels, 35 in. by 26 in.
- 14 special steel panels,  $18\frac{1}{4}$  in. by  $105\frac{1}{2}$  in.
- 2 special steel panels,  $18\frac{1}{4}$  in. by 78 in.
- 8 bronze ornaments for table (39).
- 3 bronze gates, 36 in. by 36 in.
- 5 bronze corbels for counter.

All of the above work made necessary entire special construction of all steel work in connection therewith.

---

Joseph M. Huston, Architect.

Philadelphia, Aug. 14th, 1905.

Penna. Construction Co., Marietta, Penna.:

Gentlemen: I enclose you herewith a full revised set of drawings of Section Three of the plans and specifications for the State Capitol Building at Harrisburg, embodying plans Nos. 103 to 211 inclusive.

We are extremely anxious to have all this work installed by January 1st, 1906, and desire that you push the work with as much force as possible. You will find in these drawings considerable work which will be an extra to you, being work which is not embodied in the original contract.

You will please advise me by early mail how much this extra work will cost over and above your original price.

Yours very truly,

(Signed) J. M. HUSTON,  
Architect.

## The Pennsylvania Construction Company.

Marietta, Penna., Aug. 18, 1905.

Mr. Joseph M. Huston, Architect, Witherspoon Building, Philadelphia:

My Dear Mr. Huston: Replying to your favor of August 14, we beg to submit herewith a copy of letter received from the Art Metal Construction Company, who are building the work for the State Capitol at Harrisburg, and in accordance with their proposition we agree to build, deliver and erect all this work for the sum of \$150,000.00 in addition to our regular contract price.

Trusting to receive your official order, we beg to remain,

Very truly yours,

(Signed) PENNA. CONSTRUCTION CO.,

By H. Burd Cassel.

---

Joseph M. Huston, Architect.

Philadelphia, Aug. 19, 1905.

Penna. Construction Co., Marietta Penna.:

Gentlemen: In receipt of your favor of August 18th, regarding Section Three of the metallic work, embodying plans Nos. 103 to 211 inclusive, for the State Capitol Building at Harrisburg.

By virtue of authority vested by the resolution of the Board of Public Grounds and Buildings, of the State of Pennsylvania, I hereby accept your proposition, and direct you to proceed with the work according to plans and specifications as stated.

Yours very truly,

(Signed) J. M. HUSTON,

Architect.

---

DETAILED LIST SHOWING CHARACTER AND QUANTITY,  
SPECIAL MATERIAL, CONSTRUCTION AND LABOR INCLUDED IN SUPPLEMENTAL CONTRACT DATED AUGUST 19TH, 1905, ISSUED TO THE PENNSYLVANIA CONSTRUCTION COMPANY BY J. M. HUSTON, ARCHITECT, IN CONNECTION WITH THE THIRD SECTION, METAL FURNITURE FOR THE STATE CAPITOL BUILDING, SHEETS 103 TO 211 INCLUSIVE.

---

INSURANCE COMMISSIONER'S DEPARTMENT.

Sheets 122 to 127 inclusive.

142 ft. bronze egg and dart mould for cornice.

56 pieces bronze egg and dart mould for caps.

406 ft. bronze egg and dart mould for panels.  
160 ft. base mould.  
24 special steel pilasters,  $75\frac{1}{4}$  in. by  $2\frac{1}{4}$  in.  
24 special steel pilasters, 105 in. by  $2\frac{1}{4}$  in.  
8 special steel pilasters, 28 in. by  $2\frac{1}{4}$  in.  
142 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
16 special steel panels, 14 in. by  $75\frac{1}{4}$  in.  
16 special steel panels, 24 in. by 28 in.  
4 special steel panels, 18 in. by 105 in.  
315 ft. bronze water leaf mould.

### INTERNAL AFFAIRS.

Sheets 128 to 143 inclusive.

387 ft. bronze egg and dart mould for cornice.  
96 pieces bronze egg and dart mould for caps.  
450 ft. bronze egg and dart mould for panels.  
425 ft. bronze base mould.  
26 special steel pilasters, caps and bases,  $75\frac{1}{4}$  in. by  $2\frac{1}{4}$  in.  
26 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
26 special steel pilasters, caps and bases, 105 in. by  $2\frac{1}{4}$  in.  
18 special steel pilasters, caps and bases, 36 in. by  $2\frac{1}{4}$  in.  
387 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
26 special steel panels, 14 in. by  $75\frac{1}{4}$  in.  
26 special steel panels, 24 in. by 28 in.  
26 special steel panels, 18 in. by 105 in.  
18 special steel panels, 28 in. by 36 in.  
1,725 ft. bronze water leaf mould.

### BANKING COMMISSIONER'S DEPARTMENT.

Sheets 144 to 149 inclusive.

153 ft. bronze egg and dart mould for cornice.  
44 pieces bronze egg and dart mould for caps.  
375 ft. bronze egg and dart mould for panels.  
175 ft. bronze base mould.  
20 special steel pilasters, caps and bases, 54 in. by  $2\frac{1}{4}$  in.  
20 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
4 special steel pilasters, caps and bases, 82 in. by  $2\frac{1}{4}$  in.  
153 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
14 special steel panels, 15 in. by 54 in.  
14 special steel panels, 21 in. by 28 in.  
4 special steel panels, 19 in. by 82 in.  
275 ft. bronze water leaf mould.

## FACTORY INSPECTOR'S DEPARTMENT.

Sheets 150 to 156 inclusive.

223 ft. bronze egg and dart mould for cornice.  
60 pieces of bronze egg and dart mould for cornice.  
375 ft. bronze egg and dart mould for panels.  
250 ft. bronze base mould.  
26 special steel pilasters, caps and bases,  $49\frac{1}{4}$  in. by  $2\frac{1}{4}$  in.  
26 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
• 8 special steel pilasters, caps and bases, 79 in. by  $2\frac{1}{4}$  in.  
223 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
26 special steel panels,  $49\frac{1}{4}$  in. by 15 in.  
26 special steel panels, 24 in. by 28 in.  
8 special steel panels, 79 in. by 18 in.  
315 ft. bronze water leaf mould.

## ATTORNEY'S GENERAL'S DEPARTMENT.

Sheets 157 to 162 inclusive,

250 ft. bronze egg and dart mould, for cornices.  
52 pieces bronze egg and dart mould for caps.  
406 in. bronze egg and dart mould for panels.  
285 ft. bronze base mould.  
4 special steel pilasters, caps and bases 84 in by  $2\frac{1}{4}$  in.  
8 special steel pilasters, caps and bases 36 in. by  $2\frac{1}{4}$  in.  
8 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
32 special steel pilasters, caps and bases, 66 in. by  $2\frac{1}{4}$  in.  
250 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
18 special steel panels,  $15\frac{1}{4}$  in by 66 in.  
6 special steel panels,  $14\frac{1}{4}$  by 36 in.  
6 special steel panels,  $20\frac{1}{4}$  in. by 28 in.  
6 special steel panels,  $28\frac{1}{2}$  in. by 66 in.  
4 special steel panels,  $18\frac{1}{4}$  in. by 84 in.  
1020 ft. bronze water leaf mould.

## ADJUTANT GENERAL'S DEPARTMENT.

Sheets 163 to 169 inclusive.

36 special steel pilasters, caps and bases,  $28\frac{1}{2}$  by  $2\frac{1}{4}$  in,  
36 special steel pilasters, caps and bases,  $53\frac{1}{2}$  by  $2\frac{1}{4}$  in.  
8 special steel pilasters, caps and bases,  $83\frac{1}{2}$  in. by  $2\frac{1}{4}$  in.  
2 special steel pilasters, caps and bases, 66 in. by  $2\frac{1}{4}$  in.  
27 special steel panels,  $14\frac{1}{4}$  in. by  $53\frac{1}{2}$  in.  
27 special steel panels,  $19\frac{1}{4}$  in. by  $28\frac{1}{2}$  in.

8 special steel panels, 14 in. by  $83\frac{1}{2}$  in.  
6 special steel panels,  $14\frac{3}{4}$  in. by 66 in.  
82 pieces bronze egg and dart for caps.  
3 ft. bronze cornice,  $6\frac{1}{2}$  in. high.  
8 bronze pilasters, caps and bases,  $83\frac{1}{2}$  in. by 5 in.  
234 ft. steel cornice,  $6\frac{1}{2}$  in. high.  
234 ft. bronze egg and dart mould for cornice.  
280 ft. bronze base mould.  
500 ft. egg and dart panel mould.  
790 ft. bronze water leaf mould.

### FORESTRY DEPARTMENT.

Sheets 170 to 174 inclusive.

93 ft. bronze egg and dart mould for cornice.  
30 pieces bronze egg and dart mould for caps.  
380 ft. bronze egg and dart mould for panels.  
110 ft. bronze base mould.  
6 special steel pilasters, caps and bases 105 in. by  $2\frac{1}{4}$  in.  
12 special steel pilasters, caps and bases 75 in. by  $2\frac{1}{4}$  in.  
12 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
6 special bronze pilasters, caps and bases, 77 in. by 5 in.  
40 ft. special bronze cornice,  $6\frac{1}{2}$  in. high.  
93 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
4 special steel panels, 77 in. by  $18\frac{1}{2}$  in.  
2 special steel panels,  $14\frac{1}{2}$  in. by 105 in.  
4 special steel panels,  $16\frac{1}{4}$  in. by 105 in.  
10 special steel panels,  $14\frac{1}{4}$  in. by  $75\frac{1}{2}$  in.  
10 special steel panels,  $24\frac{1}{4}$  in. by 28 in.  
500 ft. bronze water leaf mould.

### AGRICULTURAL DEPARTMENT.

Sheets 196 to 207 inclusive.

380 ft. bronze egg and dart mould for cornice.  
116 pieces bronze egg and dart mould for caps.  
1025 ft. bronze egg and dart mould for panels.  
410 ft. bronze base moulds.  
32 special steel pilasters, caps and bases,  $75\frac{1}{4}$  in. by  $2\frac{1}{4}$  in.  
32 special steel pilasters, caps and bases, 28 in. by  $2\frac{1}{4}$  in.  
52 special steel pilasters, caps and bases, 105 in. by  $2\frac{1}{4}$  in.  
380 ft. special steel cornice,  $6\frac{1}{2}$  in. high.  
20 special steel panels, 14 in. by  $75\frac{1}{4}$  in.



20 special steel panels, 24 in. by 28 in.  
30 special steel panels, 18 in. by 105 in.  
6 special steel panels, 28 in. by 105 in.  
4 special steel panels, 14 in. by 105 in.  
2125 ft. bronze water leaf mould.

---

August 17th, 1904.

Penna. Construction Co., Marietta, Penna.

Gentlemen: You will notice by the drawings for the metallic fixtures for the Capitol Building that both black and Tennessee marble bases are required. You will please submit to me an estimate for these bases before proceeding with the work.

Very truly yours,

(Signed) J. M. HUSTON.

---

The Pennsylvania Construction Company.

Marietta, Penna., August 22nd, 1904.

Mr. Joseph M. Huston, Architect, Witherspoon Building, Phila.

My Dear Sir: Replying to your favor of August 17th, would say we will furnish the marble bases referred to at the following prices:

Black marble, \$5.74 per lineal foot.

Tennessee marble, \$3.34 per lineal foot.

Trusting to receive an early approval of this estimate, we beg to remain,

Very truly yours,

(Signed) PENNA. CONSTRUCTION CO.

By H. Burd Cassel.

---

August 29th, 1904.

Penna. Construction Co., Marietta, Penna.

Gentlemen: Your estimate of August 22nd, for the marble bases for the metallic fixtures in the Capitol Building is hereby accepted. You will proceed to execute this work in accordance with the drawings.

Very truly yours,

(Signed) J. M. HUSTON.

December 8th, 1903.

Board of Commissioners of Public Grounds and Buildings, Harrisburg, Penna.

Gentlemen: I beg leave to submit herewith plans and specifications for the Metallic furniture for certain rooms in the Capitol Building, for your approval. The drawings submitted contemplates the furniture and fittings required in the following rooms:

House locker room, 2nd floor.

Senate locker room, 2nd floor.

59 committee rooms in different parts of the building.

House library, 1st floor.

House resident clerk and transcribing room, 2nd floor.

House pasting and folding rooms, basement.

House speaker's room, 1st floor.

Senate library, 1st floor.

Senate transcribing room, 2nd floor,

Sergeant at Arms, 2nd floor.

Superintendent of Public Grounds and Buildings, office, 1st floor.

Superintendent Public Grounds and Building Storage Room, basement.

These drawings have been prepared after careful study and consultation and they meet with all requirements. Hoping they will meet with your approval, I am,.

Very respectfully,

(Signed) J. M. HUSTON.

---

May 27, 1904.

Mr. J. M. Huston, Architect, Witherspoon Building, Philadelphia:

My Dear Mr. Huston: Under the contract awarded us for metallic fixtures for the State capitol building at Harrisburg, I find that you have directed us to manufacture and install a number of vaults and safes.

We will furnish the following items detailed specifications for each being hereto attached:

Treasurer's Vault.—We will construct and furnish one vault lining, outside dimensions of lining to be 10 feet, 2 inches long, 6 feet, 7 inches deep, 8 feet, 3 inches high, with vestibule and doors  $6\frac{1}{2}$  inches thick. Lining to be made of interlocked rails with a steel plate cladding on the outside and a two plate lining on the inside of the rails. Also place two manganese steel safes therein, all of which are to be built in accordance with attached sketch and specifications.

**Auditor General's Vault.**—We will construct on a foundation one vault lining approximately 20 feet, 4 inches wide, 7 feet deep, 12 feet, 4 inches high; lining to be of  $\frac{1}{2}$  inch steel plate with vestibule, doors, locks, etc., all complete as per accompanying specifications and plans.

We will furnish two additional sets of vault doors for the basement vaults, one under the Treasurer's and one under the Auditor General's, of the same construction as specified for the Auditor General's vault, without day-gate as mentioned in specifications.

We will furnish two folding doors, fireproof and burglar proof safes approximately 52 inches wide by 36 inches high by 30 inches deep over all, and two safes of the same character approximately 42 inches wide by 36 inches high by 30 inches deep, over all, all construction and finish as per accompanying plans and specifications.

We will furnish all of the above work, erected in the State capitol building at Harrisburg, for the sum of (\$66,000.00) sixty-six thousand dollars.

All of the above propositions to you for the erection of the vaults, vestibules, doors and safes, contemplates all foundations to be furnished by you ready to receive said work. No mason work of any kind is included in the above mentioned propositions. You are also to provide for a proper opening to receive said work and give us the required space and place to work, and all necessary permits for placing same.

We to secure our own measurements, and provide labor and material, shoring, etc., and be responsible for all damage, property and personal, caused by the placing of this work.

You will note that we have attached to the various plans the specifications belonging thereto, and have numbered same to correspond with the proposition. All of which we trust will be fully intelligible. The specifications will show upon what doors time locks are to be placed. However that only occurs in one instance, viz: The Treasurer's vault. We believe this proposition you will find fully explanatory.

All of the above work is to be subjected to your approval.

(Signed) Yours very truly,  
PENNA. CONSTRUCTION CO.

By H. Burd Cassel.

Accepted—J. M. HUSTON, Architect, June 20, 1904.

**Note.**—A number of other exhibits were sent by Mr. Huston. These consisted of blue prints and cuts of furniture, as the printing of them herewith would involve a great outlay of expense and time, it is has been thought best not to include them herewith. They will be kept on file in the office of the Attorney General.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 17, 1906.

Hon. Frank G. Harris, Clearfield, Pa.:

My Dear Sir: As you were a member of the Board of Public Grounds and Buildings in the year 1904, I have examined the minutes of that body and find that at the meeting of April 12, 1904, the following resolutions were adopted:

"Resolved, That the designs and specifications for all interior fittings and furnishings, decorations, clocks, gas and electric fixtures, curtains, draperies and carpets, Nos. 1-F to 42-F inclusive, 1-C to 8-C inclusive, 1-E-F to 37-E-F inclusive for the new Capitol Building for the Commonwealth of Pennsylvania, presented by Joseph M. Huston, architect, be adopted. Resolution was adopted.

"Governor Pennypacker offered the following resolution:

"Resolved, That whereas the architect selected by this Board has prepared plans for the furnishing, carpets, rugs, casings, hangings, chandeliers and other personal fittings required for the Capitol about to be erected, and such plans having been adopted, and

"Whereas, Some of this furniture will be needed for the next session of the Legislature, and, therefore, promptness in action is necessary.

"Resolved, That the Superintendent of Public Grounds and Buildings be instructed to at once advertise in twelve newspapers, not more than three of which shall be printed in any one county, inviting sealed proposals for contracts for all of said furnishings, fittings, etc., each proposal to cover the entire furnishing in accordance with the plans so adopted and the specifications prepared by the architect and submitted by the Superintendent and to be delivered to the Board of Public Grounds and Buildings at 12 o'clock noon, on the 28th day of April, 1904, and that the contract be then awarded to the lowest responsible bidder or bidders.

"Resolved, That no proposal for any contract shall be considered or accepted unless accompanied by a bond in the sum of \$100,000, with at least two sureties, or one surety company, approved by the judge of the court of common pleas of the county in which the person or persons making such proposal shall reside, conditioned for the faithful performance of the terms of the contract.

"The motion was unanimously adopted."

I find further that at a special meeting, called at 11 a. m. on Wednesday, April 13, 1904 (Minute Book, page 218), the following entry was made:

"On motion of Frank G. Harris, State Treasurer, seconded by E. B. Hardenbergh, Auditor General, the ac-

tion of the Board taken on Tuesday, April 12, 1904, with reference to advertising bids for furnishing for the State Capitol Building was reconsidered. On motion of E. B. Hardenbergh, Auditor General, seconded by Frank G. Harris, State Treasurer, it was resolved that all furnishings, fittings, electric fixtures, etc., be placed upon the schedule for 1904."

Will you kindly explain to me the reasons which actuated you in rescinding the action taken by the Board of the previous day on the motion and resolution of Governor Pennypacker, which provided for a special advertisement, and the substitution therefor on your motion and that of Auditor General Hardenbergh of a resolution to place the advertising for the furnishings, fittings and electrical fixtures upon the schedule for 1904?

I find also, under date of January 14, 1903, at a meeting of the Board when you were present, the following resolution was offered by the State Treasurer and was unanimously agreed to:

"Resolved, That the Pennsylvania Construction Company, of Marietta, Pa., who have been awarded the contract for metallic fixtures and furniture under the Schedule of June, 1902, be directed to prepare plans and specifications for the equipment of the various offices and departments in the new Capitol Building, which plans and specifications will be submitted to the heads of the various departments for their approval and for the approval of the Board of Public Grounds and Buildings.

"Resolution was adopted."

I find also that, under date of December 8, 1903, at a meeting of the Board of Public Grounds and Buildings, at which you were present, you introduced and offered the following resolution, signing the same with your own name:

"Resolved, That the revised plans for the metallic furniture and fixtures, No. 1 to 54 inclusive, as presented by Joseph M. Huston, architect, be adopted, and that the Pennsylvania Construction Company be directed to furnish the said furniture and fixtures under the supervision of the said architect, and that the Auditor General be directed to make payment for the same, in part or in full, upon certificate of said architect, and that the said architect be empowered to make the detail of the cases in special rooms to conform to the architectural finish of said rooms at his discretion and that the price on all special work which is not fully covered by the Schedule under which the contract was awarded the said Pennsylvania Construction Company, shall be agreed upon between the said Pennsylvania

Construction Company and the said Joseph M. Huston, architect, before any certificate for payment shall be issued.

"The resolution was agreed to."

I ask you what reason governed you in the introduction of the just-quoted resolution, and what led you to clothe the architect with authority to fix the price on all special work not fully covered by the schedule under which the contract was awarded the Pennsylvania Construction Company without requiring the same to be reported back to the Board.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Clearfield, Pa., December 22, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My dear Sir: In reply to your communication of the 17th instant, relative to certain business transacted by the Board of Public Grounds and Buildings, of which I was a member during my term, as State Treasurer of Pennsylvania, I would say as to your first interrogatory:

My reason for making the motion to reconsider the resolution of Governor Pennypacker, of April 12th, 1904, which resolution I offered at the meeting, on April 13th, 1904, which meeting was called by the Governor, was that the act of Assembly creating the Board of Grounds and Buildings, approved March 26, 1895, and prescribing their powers and duties, required said Board to place the articles enumerated by the Governor in his resolution referred to, on the Schedule, and that said Act of Assembly made no provision for any other method of advertising and bidding for such furnishings, fittings, &c. And further, because but a few days remained to complete the work already begun by the Board.

Second. My reasons for offering the resolution at the Board Meeting of January 14th, 1903, authorizing the Pennsylvania Construction Company to prepare plans and specifications for the equipment of the various offices and departments in the new Capitol Building were, first, that said Construction Company had been awarded the contract under the previous schedule, they being the lowest and best bidders, as provided by the act of Assembly above referred to, and I then believed, and still believe, that it was the duty of said Construction Company to prepare said plans and specifications for submission to the Board for their approval. Further, in accordance with said resolution said plans and specifications were

presented by said Construction Company, that said plans were submitted to the heads of the several Departments and that in each case the plans were approved by such officials, and that the plans for the Attorney General's office were approved by you as its head, or by some one for you.

Third. My reasons for offering the resolution under date of December eighth, 1903, by which the plans of Joseph M. Huston, Architect, were adopted, and authorizing said Pennsylvania Construction Company to manufacture the furnishings referred to in said resolution, providing for payment on account and providing a method for fixing the price of any special work not found in the Schedule, were, First, the Contract was a large one requiring several months to complete and it was the practice of the Board to pay for such work as it progressed on certificate of the architect. Second, I considered it the duty of our Board to provide against any controversy that might arise between the Board or its successor in office and the contractors, over the price or prices of such special work by requiring the Architect, Joseph M. Huston, who was employed by the Board to agree to the prices as well as the plans, before they were presented to the Board of Grounds and Buildings for their final approval and adoption. That was the practice adhered to by our Board and I believe generally followed in such cases. I believed then, as I believe now, that said Architect, acting for the Board of Grounds and Buildings, was fully competent to advise us in the premises. As a matter of fact no special work or work not covered by the schedule, came before our Board for its approval during my term of office. In short, in all my course as a member of the Board of Public Grounds and Buildings I tried to perform my duties as I understood them, under the act of Assembly creating said Board and prescribing its powers and duties.

Respectfully submitted,

FRANK G. HARRIS.

---

December 17, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: Sometime ago I wrote you asking for an opinion as to the validity of certain contracts in regard to furnishings for the new Capitol, and expressing an unwillingness to make further payments upon the same until an investigation could be had. You then asked me as to whether any warrants had been presented for further payments upon these contracts. I replied later that no further warrants had been presented, but I now advise you that the follow-

ing bills have been presented to the Board of Public Grounds and Buildings, and by John H. Sanderson, which are certified as correct by J. M. Huston, architect.

They are as follows:

“Certificate No. 778—For chairs, desks, rails, seats, marble-seats and fire sets. Item 22—1,180 feet at \$20.00 per foot, less 8 per cent.—\$21,712.00.”

I decline to approve this bill on the ground that the lack of proportion between prices and measurements convince me that the prices have been arbitrarily set, without regard to measurement, confirming my previous conclusions as to the irregular, indefinite and possibly crooked character of the specifications under which the contracts were let, and which rendered intelligent competitive bidding impossible.

There are 60 items in the bill, and a reference to a single item will illustrate my meaning:

“Item 1—Room No. 444 (Gallery of the House of Representatives) 144 designed seats “Series F”—144 feet @ \$20.00, less 8 per cent.—\$2,649.60.”

This is exactly one foot per seat, and there is not a single chair in this gallery that does not measure more than one foot in any dimension; showing conclusively that measurement has nothing whatever to do with fixing the price.

The smallest and most simply constructed chairs previously billed to the State are said to contain  $1\frac{1}{2}$  feet each. They are much simpler in design and construction than those in the House gallery, which are billed at one foot each. The fact that under the influence of the “limelight” the price has been cut down does not warrant me in approving the bill.

“Certificate No. 779—For curtains under Item 38—921 1-3 yards @ \$40 per yard, less 18 per cent.—\$30,220.31, or \$240 per pair net; and one rug—Item 36, 1,048 square feet @ \$3.00, less 17 per cent.—\$2,609.52.”

Having been told by Mr. Sanderson at the last meeting of the Board that a foot of carpet consisted of one foot in length, on a piece  $\frac{3}{4}$  yards wide, and containing  $2\frac{1}{4}$  square feet, I am therefore uncertain as to the correctness of this bill, and decline to approve it.

“Certificate No. 780 is for mural art paintings—Item 23, 527 square feet @ \$50.00 per foot net—\$26,350.00.”

Being in doubt as to what was meant by the term “per foot” in the specifications, under which competitive bids were asked, I must decline to approve this bill.



“Certificate No. 781 is for English laid interlocking parquetry flooring—Item 28, 14,108 square feet @ \$1.50, less 15 per cent.== \$17,987.70.”

Item 28 calls for “English laid interlocking wood and rubber parquetry flooring,” and I decline to approve this bill on the ground that the work is not according to the specifications. It is entirely domestic, and contains no rubber at all.

“Certificate No. 782 is for decorating and painting—Item 24, 3,968 1-3 square feet @ \$3.00, less 16 per cent.== \$10,000.25.”

I decline to approve this bill on the ground that the contract was let to Sanderson at five times the price offered by another responsible bidder, and that according to careful estimates by competent experts, Mr. Sanderson has already been overpaid to the extent of more than \$500,000 for decorating and painting in the new Capitol.

In addition to the foregoing, I decline to approve any bills purporting to be in pursuance of the contract between the Board of Public Grounds and Buildings and Mr. Sanderson until an investigation can be had to determine whether this contract was not secured by fraud.

I believe that the records and the obvious facts furnish prima facie evidence of fraud in the letting of the contract and in the payments under it.

“The next bill (not certified) is from Joseph M. Huston, for professional services, making plans and specifications, superintendence, etc., for interior fittings and furnishings in the Capitol building at Harrisburg, Pa.—Commission at 4 per cent. on account== \$50,000.”

I decline to approve this bill on the ground that the commission is estimated on a fictitious valuation of the work. I believe that the architect has already received about \$50,000 more than a fair valuation of the work would yield at 4 per cent.

As a member of the Board of Public Grounds and Buildings, I decline to approve these bills, and as Treasurer will decline to approve the settlements or to pay the warrants if issued.

The Legislature will meet in a short time, and I will await its instruction.

Respectfully yours,

WM. H. BERRY,  
State Treasurer.

Office of the Attorney General,  
Harrisburg, Pa., Dec. 17, 1906.

Hon. E. B. Hardenbergh, Honesdale, Pa.:

My dear Sir: As you were a member of the Board of Public Grounds and Buildings in the year 1904, I have examined the minutes of that body and find that at the meeting of April 12, 1904, the following resolutions were adopted:

"Resolved, That the designs and specifications for all interior fittings and furnishings, decorations, clocks, gas and electric fixtures, curtains, draperies and carpets, Nos. 1-F to 42-F inclusive, 1-C to 8-C inclusive, 1-E-F to 37-E-F inclusive for the new Capitol Building for the Commonwealth of Pennsylvania, presented by Joseph M. Huston, Architect, be adopted. Resolution was adopted.

"Governor Pennypacker offered the following resolution:

" 'Resolved, That whereas the Architect, selected by this Board has prepared plans for the furnishing, carpets, rugs, casings, hangings, chandeliers and other personal fittings required for the Capitol about to be erected, and such plans having been adopted, and

"Whereas, Some of this furniture will be needed for the next session of the Legislature, and, therefore, promptness in action is necessary,

"Resolved, That the Superintendent of Public Grounds and Buildings be instructed to at once advertise in twelve newspapers, not more than three of which shall be printed in any one county, inviting sealed proposals for contracts for all of said furnishing, fittings, etc., each proposal to cover the entire furnishing in accordance with the plans so adopted and the specifications prepared by the Architect and submitted by the Superintendent and to be delivered to the Board of Public Grounds and Buildings at 12 o'clock noon, on the 28th day of April, 1904, and that the contract be then awarded to the lowest responsible bidder or bidders:

"Resolved, That no proposal for any contract shall be considered or accepted unless accompanied by a bond in the sum of \$100,000, with at least two sureties or one surety company, approved by the judge of the court of common pleas of the county in which the person or persons making such proposal shall reside, conditioned for the faithful performance of the terms of the contract.

"The motion was unanimously adopted."

I find further that at a special meeting, called at 11 A. M. on Wednesday, April 13, 1904, (Minute Book, page 218), the following entry was made:

"On motion of Frank G. Harris, State Treasurer, seconded by E. B. Hardenbergh, Auditor General, the action of the Board taken on Tuesday, April 12, 1904, with reference to advertising bids for furnishing for the State Capitol Building was reconsidered. On motion of E. B. Hardenbergh, Auditor General, seconded by Frank G. Harris, State Treasurer, it was resolved that all furnishings, fittings, electric fixtures, etc., be placed upon the Schedule for 1904."

Will you kindly explain to me the reasons which actuated you in rescinding the action taken by the Board on the previous day on the motion and resolution of Governor Pennypacker, which provided for a special advertisement, and the substitution therefor, on your motion and that of State Treasurer Harris, of a resolution to place the advertising for the furnishings, fittings and electrical fixtures upon the Schedule for 1904?

I find that, at a meeting of the Board, under date of April 5, 1904, at which you were present, you offered the following resolution:

"Resolved, That the revised plans for the metallic furniture and fixtures, Nos. 55 and 102 inclusive, as presented by Joseph M. Huston, architect, be adopted, and that the Pennsylvania Construction Company be directed to furnish the said furniture and fixtures under the supervision of the said architect, and that the Auditor General be directed to make payment for the same, in part or in full, upon the certificate of said architect, and that the said architect be empowered to make the detail of the cases in special rooms to conform to the architectural finish of the said rooms at his discretion, and that the price on all special work which is not covered by the Schedule under which the contract has been awarded the said Pennsylvania Construction Company shall be fully agreed upon between the said Pennsylvania Construction Company and the said Joseph M. Huston, architect, before any certificate for payment shall be issued.

"The above resolution was adopted."

I ask you what reasons governed you in the introduction of the just quoted resolution, and what led you to clothe the Architect with authority to fix the price on all special work not fully covered by the Schedule under which the contract was awarded the Pennsylvania Construction Company, without requiring the same to be reported back to the Board.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

Honesdale, Wayne County, Pa.,  
December 21, 1906

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear Sir: Your communication, reciting resolutions adopted by the Board of Public Grounds and Buildings on April 5, 12 and 13, 1904, and making certain inquiries concerning them, is at hand.

I will answer in the chronological order of the resolutions:

Resolution of April 5, 1904.

“As to the reasons that governed me in the introduction of this resolution, and led us to ‘clothe the architect with authority to fix the price on all special work not fully covered by the schedule under which the contract was awarded to the Pennsylvania Construction Company, without requiring the same to be reported back to the Board.’”

As I recall the matter, the reason that governed me in the introduction and adoption of this resolution was the necessity for acting on the revised plans presented by the architect, by either adopting or rejecting them. These plans being satisfactory to the Board, we adopted them and intrusted their supervision to Mr. Huston, who had been employed by the Board as supervising architect. As to special work not covered by the schedule under which the contract was awarded, should any such be found necessary, its selection and supervision were placed in the hands of Mr. Huston, for the same reasons, substantially, which had led to his appointment as supervising architect; because of his expert knowledge of the designs and what materials suited to the purpose, and of the prices that should be paid for them. It was also thought that, having designed the Capitol, he could the more readily keep any extra work in harmony with the character of the structure, As to giving him authority to fix the prices for such work, my construction and understanding of the resolution were that, should special work be found necessary, it would be the duty of the architect to arrange the plans and specifications for it, as for all other work, with the estimated cost thereof, after conferring with the Construction Company, and obtaining from them prices which he regarded as satisfactory, and report the same for consideration of the Board; in short, that he would proceed with the special work as he had already done with the general work. He was to be the medium through which the Board would reach an agreement with the Construction Company. As the work was to be done under his supervision, the Board followed the customary practice in such cases by requiring his certificate before making payment for either general or special work.

I may add that no special work, under this resolution, was done while I was a member of the Board.

Resolutions of April 12 and 13, 1904.

"As to the reasons for rescinding the former resolution and substituting the latter."

During the progress of the work, the Board arranged a schedule for each year, during the month of June, as I recall the date.

As less than a month of my official term remained, I wished to complete the pending business in my Department as far as possible, and arrange all details for turning over the office to my successor, it appeared to me, upon further reflection after the adjournment of the meeting of April 12th, that all the time at my disposal would be required for this purpose, and especially that I could not, in the brief interval between April 28th and May 3d (one day of which was Sunday), without neglecting my department duties, give adequate consideration to the bids which were to be opened at noon on the 28th. As the incoming Auditor General and State Treasurer would form a majority of the Board, and share in the future supervision of the work, it seemed to me proper that they should take part in awarding the contracts, and that for this purpose the articles included in the resolution of April 12th should be placed on the schedule of 1904, to be prepared by the Board as constituted after May 3d. I next discussed the matter with State Treasurer Harris,—I think on the morning of the 13th,—and we agreed as to the propriety of this course. We then conferred with the Governor, and he was so far satisfied with our view that he reconvened the Board, and the resolution of rescission was adopted without dissent. The sole purpose and effect of this was to leave the matter entirely open for the action of our successors.

Yours truly,

E. B. HARDENBERGH.

---

December 18th, 1906.

Hon. John C. Delaney, Harrisburg, Pa.:

My dear Sir: You held the position of Superintendent of Public Grounds and Buildings under the administration of Governor Hastings, and a part of your official duty each year was to compile and publish the schedules upon which bids were invited by the Board of Commissioners of Public Grounds and Buildings for supplies needed by the various departments of the State during the ensuing fiscal year.

I observe upon an examination of the schedules published during

your term that the per foot rule was introduced in the items relating to furniture.

Be good enough to inform me from what source you derived the information necessary to justify the insertion of what is asserted by many to be an unusual standard of value, and what arguments were used with you for its introduction into the schedule.

Have you any knowledge or previous experience of its prior use as a basis for bills for government work, whether national, state or municipal? If so, kindly point me to the sources of information, documentary or departmental, from which such information was derived.

Or was it suggested to you by some one experienced in the matter of either manufacturing or selling furniture, either at retail or wholesale?

Did you have conferences with any such persons, and if so, be kind enough to state when, where, and also furnish me with their names and their business addresses.

Did you during your term as superintendent become acquainted with John H. Sanderson, of Philadelphia, carrying on business at No. 622 Chestnut street, as a dealer in furniture, in fact, as the head of a large, well known, and long established house?

Did you know him prior to the time that you became superintendent?

Did he at any time during your term of office consult with you, either directly or indirectly, personally or by representative, orally or by correspondence, as to the furniture items contained in the general schedules?

Did he at any time, directly or indirectly, personally or through some representative, either orally or in writing, suggest to you the propriety and business feasibility of introducing the per foot rule into the schedules? If he did, be kind enough to inform me what arguments he used in support of such a suggestion, in what terms he made the suggestion, when he made the suggestion, and state further whether at the time he made the suggestion he either had previously been a bidder for State work, or whether at the time he made the suggestion he was a prospective bidder, or whether his suggestion followed an actual bid, and then state whether after your adoption of it he bid for State work upon such a basis.

In short, I desire to be informed by you to the fullest extent of your knowledge or information as to the source whence the per foot suggestion came and how it appeared in the schedules of the State, and whether its appearance was in any way due to any personal suggestion or indirect suggestion on the part of Mr. Sanderson.

I desire also to know whether if at any time during your holding of the office Mr. Sanderson conferred with you with regard to the

schedules before they were prepared, while they were in a state of preparation or while the galley slips of the matter were in your hands for correction before the final printing.

If you know of any one else to whose suggestions or arguments such an introduction of the per foot rule is due, whether that person be a dealer or manufacturer of furniture, or whether he be or was a State officer, high or low, or any person connected directly or indirectly with the furniture business or interested directly or indirectly in the matter of the preparation of the schedules, be kind enough to inform me by giving name, place, circumstances and dates connected therewith.

I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

December 22nd, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My dear Sir: Your esteemed favor of the 18th inst. came to hand on the 19th inst., to which I now make respectful reply.

From March 28th, 1895, to April 24th, 1899, it was my honor to occupy the position of Superintendent of Public Grounds and Buildings, having been appointed thereto by Governor Daniel H. Hastings, and I was the first incumbent of said office under the Act of 1895.

As observed by you, the per foot rule in items relating to furniture was used in the schedule for supplies for the State Government for the year ending June, 1899.

Though aside from your specific inquiries, permit a statement as to the furniture items subject to the per foot rule, as per the 1898-99 schedule, and the method of their measurement thereby. There were seven such items, namely:

Wainscoting.

Book cases and wardrobes .

Mantles.

Over mantles and cabinets.

Committee tables and flat top desks.

Roll top and double desks.

Leather covered sofas.

These were the only articles of furniture to which the per foot rule was applied. In none of them was the cubic measurement allowed. In but one, namely, wainscoting, was the square measurement applied. But in all the items, excepting wainscoting, the

measurement was by lineal foot, the longest dimension only being taken. The per foot rule of measurement was applied in the schedules to many things besides furniture; it was used, however, only in respect to articles whose dimensions were not given, and which could not be given before-hand as they vary in size according to the requirements of the several departments during the contract year.

During upwards of twenty years experience with first class furniture dealers, I found the per foot rule in common use for determining the value of articles of furniture made according to special designs and specifications; and as the furniture items in the schedule were of that character the said rule was made use of.

Prior to its introduction into the schedule of 1898-99, I had both knowledge and experience of its use as a basis for government work. I learned of its use in national government work from Col. Swords (now in the Customs service, New York), during the term of President Harrison (1889-93), sustained substantially the same relation to the furnishing of Federal furniture as the Superintendent of Public Grounds and Buildings in Pennsylvania sustains to State furniture. I used the same rule in respect to National work during 1890 to 1893 while Receiver of Public Moneys at Oklahoma City in the furnishing of the Land Office in that City. I was also familiar with it during the eleven years of my service as Senate Librarian 1879-1890. It was then used as a basis for State work.

The introduction of the per foot rule was not at the suggestion of any person in any way related to any branch of the furniture business.

I had no conference with any such persons on the subject of introducing such a rule of measurement into the schedule.

I did not make the acquaintance of John H. Sanderson during my term as superintendent.

I knew Mr. Sanderson prior to the time that I became superintendent; in fact from his boyhood until the present time.

Mr. Sanderson at no time and in no way suggested the introduction of the per foot rule into the schedules, nor was its introduction therein due in any wise to Mr. Sanderson.

Mr. Sanderson never conferred with me concerning the schedules at any time before they were issued and placed in the hands of bidders for supplies, except when I consulted with him, as I did with many other dealers in furniture and every other line of business pertaining to the schedule as to value, quality etc., of goods, so as to enable me to decide upon proper maximum prices to place on the several items of the schedule before its issue. This was my practice without which I could not gain the necessary information to enable me to prepare an intelligent schedule, as to maximum prices for the hundreds of items in the annual list of supplies.



The introduction of the per foot rule into the schedule was not at the suggestion of any person or persons not officially related thereto; but it was put in on my own motion, in view of my long previous experience in respect to its common use by reputable furniture dealers, and after consultation with and approval by Governor Hastings, Auditor General McCauley and State Treasurer Beacom, who composed the Board of Public Grounds and Buildings.

Among the many furniture dealers with whom I had business relations, and with whom I consulted freely were the following: Amos Hilborn, 10th and Market Sts., Philadelphia; Mr. Trymbe, of Trymbe & Rhene, Market Street, Philadelphia; F. T. Mecke, of Mecke & Wolfe, Chestnut Street, Philadelphia; Charles Brockway, with John Wanamaker, said to be the most noted expert on furniture in America; J. H. Sanderson, Philadelphia; Peter Boyd, Harrisburg; Arthur Hodges, New York, who had the contract for furnishing the Pennsylvania State Building at the World's Fair, Chicago in 1893, who told me at the time that the per foot rule was used by him.

When discussing the use of the per foot rule with the Board of Public Grounds and Buildings, Governor Hastings stated that the per foot rule had been used in connection with the furnishing of his own residence at Bellefonte, which was prior to the schedule of 1898-99.

In conclusion, it ought to be understood that furnishings for the present Capitol Building were not scheduled nor purchased until years after my term of office as superintendent of Public Grounds and Buildings had terminated.

Very truly yours,  
J. C. DELANEY.

---

Office of the Attorney General,  
Harrisburg, Pa., Dec. 18, 1906.

Hon. James M. Shumaker, Superintendent of Public Grounds and Buildings.:

My dear Sir: Permit me to interrogate you in regard to certain matters upon which I am seeking information as to facts in their bearing upon the allegations of overcharges, duplications of payments and alleged performance of acts in excess of legal authority in relation to the furnishing of the Capitol Building.

(First.) When did you become the Superintendent of the Board of Commissioners of Public Grounds and Buildings?

(Second.) Did you prepare, compile and publish the Schedules containing lists of stationery, supplies, repairs, etc., for the Senate,

House of Representatives and the several departments of the State Government of Pennsylvania for the fiscal year ending the first Tuesday of June, A. D., 1904? Was this the first Schedule with which you had any official connection?

(Third.) From what sources of information did you compile this Schedule and what assistance had you in its preparation?

(Fourth.) Did this Schedule for 1904 contain any features of difference from any of the publications of your predecessors? If so, state what those differences were.

(Fifth.) What publication was made by way of advertisement of the Schedule of 1904? In what newspapers was notice published? How many insertions were made in each paper and what was the form of notice? Attach to your answer a copy thereof in extenso.

(Sixth): Did you prepare, compile and publish the schedule for the fiscal year ending the first Tuesday of June, 1905? From what sources of information did you prepare this schedule, and from whom did you obtain assistance in its preparation?

(Seventh): Did or did not the schedule of 1905 differ in its features from the schedules of preceding years, and, if so, in what respects? State the reasons for such differences if differences existed.

(Eighth): I find upon examination, on pages 55 and 56 a schedule entitled "special furniture, carpet, fittings and decoration schedule for the equipment of the new Capitol Building, Harrisburg, Pa., and ask you whether you prepared this schedule; from what sources of information you compiled it, and what assistance you had in its preparation; and please specify particularly the items as to which you received special or general assistance from anybody, stating the names of the persons making suggestions, drafting items, varying, correcting or adding thereto.

(Ninth): What assistance, if any did you have from Joseph M. Huston, Architect of the Capitol Building, and please specify the items in which he assisted you, either wholly or in part,

(Tenth): State the manner in which he participated in the preparation of this special schedule? Did he furnish the manuscript copy for the printing. If so, was it done by transmission to the printer through your hands, and did his original manuscript pass through your hands? Have you all or any part of his original manuscript?

(Eleventh): Did you, in the preparation and compilation of this special schedule, have any conversations with John H. Sanderson, or anyone representing him, or anyone speaking in his behalf or at his suggestion; and, if so, what suggestions; were made by him or his representative or person speaking in his behalf? What form did such suggestions take, either in the way of conversations or

written communication? If there were written communications and you still retain them, please attach copies to your answer.

(Twelfth): Did you have any conversation in regard to the preparation or compilation of this special schedule with your predecessor, T. L. Eyre, at any time or place, and did he or did he not suggest the insertion of any part or portion, phrase or phrases, in any item of the special schedule, from No. 1 to 41 inclusive?

(Thirteenth): Did he make any suggestion as to the introduction into Items Nos. 22, 29, 33, 35, 36, 40 and 41 of the per foot standard?

(Fourteenth): Did he suggest, either directly or indirectly, the introduction into Items Nos. 22, 23, 24, 25, 26, 27, 28, 29, 30, 35, 40 and 41 of the per foot standard?

(Fifteenth): Did he suggest, either directly or indirectly, the introduction into Item No. 32 of the per pound standard?

(Sixteenth): Did you have any conversation with your predecessor in office, J. C. Delaney, in regard to any item contained in the Special Schedule of 1905, and did he suggest the introduction into the items numbered as in the above questions of the per foot or per pound standard?

(Seventeenth): Did you, either alone or with others, prepare, compile and publish the language of the items in the Special Schedule from Nos. 1 to 21 inclusive, and if so did you call the attention of the Architect, Joseph M. Huston, thereto and ask whether or not they met with his approval as Architect of the Capitol in supervision of the furniture requirements for said building?

(Eighteenth): Did you participate in the composition and compiling of Items 22 to 41 inclusive in the Special Schedule or were they exclusively the work of the Architect?

(Nineteenth): Did you have any conversation, at any time or place, either before the publication of the Schedules or after their publication, with the Architect or with John H. Sanderson or any one representing them in relation to the meaning of the per foot or per pound rule? If so, please state when and where and with whom such conversations took place, and state the substance of the conversation or conversations.

(Twentieth): State what publication was made of the Schedule of 1905, giving the names of the newspapers, the places of publication, the dates between which publication took place, the number of insertions in each newspaper, and attach to your answer a copy of said advertisement.

(Twenty-first): State what knowledge you have as to how the Special Schedule was published as a part of the General Schedule instead of being separately published, and state also how the pages of the Special Schedule—pages 55 and 56—were inserted or came to

be inserted between pages 54 and 57, 59, 60, 61 to 70 of the General Schedule.

(Twenty-second): State what method you adopted for the general distribution among possible bidders of this General Schedule, to whom it was distributed, and state further whether or not you received, after the date of the advertisements, written or oral requests from prospective bidders for copies thereof. If you did receive such requests, please state the names and addresses of the persons so requesting a copy, and whether you complied with their requests.

(Twenty-third): State the names of the bidders upon the respective items contained in the General Schedule from end to end, and also the names of the bidders upon the various items from 1 to 41 inclusive in the Special Schedule, together with the amounts of their respective bids.

(Twenty-fourth): Did John H. Sanderson obtain from you, either directly upon request or through correspondence, a copy or copies of the Schedules for 1905, and, if so, when did he first obtain them and how many copies did he receive?

(Twenty-fifth): Have you any knowledge, either personal or from information, as to whether John H. Sanderson saw copies of the Schedules prior to their publication, or while they were in manuscript, or while the galley proofs were being corrected, or whether you gave or heard that he had received from anybody information with regard to the contents of said Schedules in advance of their publication?

(Twenty-sixth): I observe, on examining the Special Schedule for 1905, that the column headed "Estimated Quantity Required," standing in front of the blank entitled "Description of Articles," is left blank as to all of the items from No. 1 to 41 inclusive. State how these blanks were filled and when they were filled with estimates of the quantity required and by whom they were filled.

(Twenty-seventh): I observe that the names of the bidders in the columns devoted to that purpose are written in opposite to the columns containing maximum prices, not in the proper handwriting of the bidder, but in a uniform handwriting. Hence I conclude that \*you must have had some other means of communication as to the bids which each man was willing to make; and I ask you whether I am correct in this, and, if so, I ask you further in what manner each of the bidders, whose names are thus inscribed in the official copy of the Schedule made known their intention of bidding, and whether you are in possession of their original communication. If so, please attach copies of said original bids, or, if they are not in your possession, be kind enough to inform me in whose possession the original

bids are. State also which of the original bids were accompanied by bonds.

(Twenty-eighth): Were you present at the time of the opening of the bids on the first Tuesday of June, 1905, and were you also present at the time of the awarding of the contract? If so, please state what members of the Board were present and what method was adopted for determining who was the lowest bidder.

(Twenty-ninth): I observe that John H. Sanderson bid upon all of the items contained in the Special Schedule, and that so far as his bids upon the first twenty items were concerned, the percentage off were exceedingly substantial, being as to No. 1, 58 per cent off; No. 2, 37 per cent. off; No. 3, 28 per cent. off; No. 4, 63 per cent. off; No. 5, 52 per cent. off; No. 6, 55 per cent. off; No. 7, 40 per cent. off; No. 8, 26 per cent. off; No. 9, 25 per cent. off; No. 10, 45 per cent. off; No. 11, 26 per cent. off; No. 12, 66 per cent. off; No. 13, 67 per cent. off; No. 14, 64 per cent. off; No. 15, 68 per cent. off; No. 16, 58 per cent. off; No. 17, 60 per cent. off; No. 18, 53 per cent. off; No. 19, 48 per cent. off; No. 20, 57 per cent. off; and that, from Items No. 21 to 41 inclusive, his percentages were materially less, being on No. 21, 17 per cent. off; No. 22, 8 per cent. off; No. 23, "net;" No. 24, 16 per cent. off; No. 25, 14 per cent. off; No. 26, 10 per cent. off; No. 27, 10 per cent. off; No. 28, 15 per cent. off; No. 29, 15 per cent. off; No. 30, "net;" No. 31, 14 per cent. off; No. 32, 3 per cent. off; No. 33, 76 per cent. off; No. 34, 21 per cent. off; No. 35, 16 per cent. off; No. 36, 17 per cent. off; No. 37, 24 per cent. off; No. 38, 18 per cent. off; No. 39, 23 per cent. off; No. 40, 21 per cent. off; and No. 41, 25 per cent. off; and I ask whether, in the determination of the fact whether he was the lowest bidder the Board regarded each item separately or summed up the total of his bids so as to obtain an average rate.

(Thirtieth): Were you present at the time of the award of the contract to John H. Sanderson, and did you communicate that fact to him, as the Superintendent of the Board, in a letter dated June 7, 1904? If so, please attach to your answer a copy of said letter.

(Thirty-first): Did you ever give him, in writing or in print, signed by you officially as Superintendent, or signed by the members of the Board, or a majority of them, any special orders for the various articles demanded or required of him under the various items? If so, please state when and in what terms you gave such orders, and if you have retained copies thereof, be good enough to annex copies to your answer.

(Thirty-second): I call your attention to the fact that John H. Sanderson, in his reply to the 18th question propounded by me in my letter of November 10th, stated that "The number and character of the articles furnished under Item 22 will be found in the orders given by the Board of Public Grounds and Buildings, copies of

which orders are in a book in the Auditor General's Office," and that, in reply to my 19th question: "From whom did you receive a complete and specific order for each article to be furnished?" he answered "From the Board of Public Grounds and Buildings." Inquiry of the Auditor General has led me to believe that this answer is erroneous. I ask you to give such information as is within your knowledge as to enable me to understand what actually took place.

(Thirty-third): If you did not give such orders, signed by you as Superintendent, have you any knowledge, personal or official, of such specific orders being delivered or transmitted to John H. Sanderson, signed by the full Board or a majority of its members?

(Thirty-fourth): What information had you from the Architect as to the various amounts and kinds of articles required of John H. Sanderson under the terms of his contract? In what shape does this information appear? When was it delivered to you, and do you still have it in your custody?

(Thirty-fifth): If it consists of plans or specifications drawn by the Architect, please state when, if such be the case, such plans and specifications were presented to the Board of Public Grounds and Buildings, when they were officially approved? Did you yourself approve them? How many sets of plans and specifications were there? How often were they presented and on what dates to the Board for its action? Were the plans in addition to those previously presented, and how many sets of plans were there, and did they remain unmodified and unchanged, or were they altered, added to or enlarged at any time subsequent to the awarding of the contract down to the completion of the contract?

(Thirty-sixth): In what form were the various bills of John H. Sanderson made out to the Commonwealth? Were they sent to you for approval as Superintendent? Were the goods shipped to you and received by you, and did you not make a practice of stamping on the face of each bill the words "Received in good condition as per designs and specifications," signing your name as Superintendent, and having added thereto the official approval of the Architect?

(Thirty-seventh): Did you or did you not make a practice of stamping on the back of each bill a certificate to the following effect: "I hereby certify that the above or within bill is correct and true; that the quantities and prices are correct and according to contract and plans approved by the Board of Public Grounds and Buildings for the furniture, etc., of the new Capitol," and did you sign such certificates with your name as Superintendent?

(Thirty-eighth): If such was your practice, please state what you did, when the goods were received, in order to ascertain whether

they were, in point of fact, received in good condition; whether they conformed to the designs and specifications? What means did you take and whose assistance did you have in determining whether or not they did conform to the designs and specifications?

(Thirty-ninth): State further what means you adopted of informing yourself as to whether or not, when the goods were received, and as a preliminary to stamping approval upon the bill, to ascertain whether the bill as rendered was correct and true? How did you ascertain that the quantities and prices were correct and according to contract and plans approved by the Board of Public Grounds and Buildings?

(Fortieth): Please state under what items, from Nos. 1 to 41 inclusive, goods were delivered by John H. Sanderson and in what relative proportions?

(Forty-first): State whether or not the bulk of his contract was delivered under items 22 and 32, and state if possible the relative percentage of his contract represented by those two items.

(Forty-second): If your answer to the foregoing questions confirms the truth of the supposition that the majority of the articles delivered by John H. Sanderson were delivered under Items Nos. 22 and 32, please state who it was that directed him specifically to make deliveries under said items, and state particularly whether it was the Architect alone who did so upon the Architect's orders, or whether the matter was canvassed and discussed before the Board of Public Grounds and Buildings, and that body designated the character of articles and the quantities of each article to be delivered under said terms.

(Forty-third): State whether prior to this time you had had any previous experiences in determining the value of specially designed articles, either of wood work, stone, marble, bronze, mosaic, glass and upholstery, as tested by the per foot standard. If so, when and where. If you had not, what means did you adopt for the purpose of testing the measurements per foot of articles furnished by the Contractor under Item 22? What instructions did you receive from either the Architect or Sanderson, the contractor, as to the proper method of making such measurements and applying such tests? Who assisted you in these tests and furnished you with the information necessary to support your certificate?

(Forty-fourth): I repeat this question as to articles furnished by the pound under Item 32. I ask what experience you had had of designed bronze metal for gas and electric fixtures, hardware, ornamental work, mercurial gold finish, hand-tooled and rehashed, to enable you to test the accuracy of the weights charged for by the Contractor. Whose assistance did you have in the actual determination of the weights? What methods of testing did you apply?

Where were they applied? Who assisted you? Did you receive any instruction, suggestion or assistance therein from either the Architect or John H. Sanderson or someone representing them, or either of them, before attaching your certificates?

(Forty-fifth): What knowledge had you of the magnitude of the contracts awarded to John H. Sanderson? What information had you from the Architect as to the probable amount and value thereof at or about the time of the award? Did you or did you not, as the work progressed and the goods were being delivered in installments, notice from the amounts of the bills presented, and the frequency with which they were presented, that the amounts were rapidly running into large figures?

(Forty-sixth): Did you express to anyone, either the Architect or Contractor, or to the members of the Board, any opinion or judgment as to the amounts involved, and have you any knowledge as to whether the Board was aware of the amounts of money concerned, and, if so, when did the Board first obtain such information?

(Forty-seventh): Was it the practice to present the bills as rendered by the Contractor to the Board for their approval as a Board, or were the bills, as approved on their face by you as Superintendent, and approved also on their face by the Architect and certified to by you as correct in quantities and amounts by the stamp upon the back, sent to the Auditor General to join in a settlement certificate with the State Treasurer prior to the drawing of the warrants, without coming before the Board of Public Grounds and Buildings?

(Forty-eighth): Can you say of your own knowledge that this was the practice from the middle of the year 1904 until March of 1906, and that, during the interim, no such bills, as rendered and certified to, came before the Board for its approval?

(Forty-ninth): State whether your knowledge is sufficient to enable you to answer that first bill approved for payment by the full Board, prior to a settlement certificate between the Auditor General and the State Treasurer, was approved on March 13, 1906, and that thereafter all bills, as subsequently rendered, were approved by the three members of the Board before settlement certificate was given.

(Fiftieth): State what knowledge you have in regard to this change in the practice and why it took place.

(Fifty-first): Are you in possession of the original plans of furniture marked approved and signed by the members of the Board? Please specify how many sets of plans there are and the dates of official approval of each set.

(Fifty-second): State also as to whether, on or about February 10, 1905, there were changes made in the plans for metallic furniture. State whether or not the plans approved by the various depart-



ments, prior to September, 1903, for the metallic furniture, were the plans upon which the cases were finally constructed and delivered, or whether at sometime subsequent thereto the architect furnished other plans in lieu thereof, which were presented to the Board for its approval, and, if so, please state the dates of such new plans and of such approval.

(Fifty-third): State whether or not there were any plans approved on or about December 9, 1903, for bronze work, and whether or not, on or about April 5, 1904, additional plans for metallic work and metallic furniture, carpets and electroliers were adopted, and, if so, when they were approved by the Board, and how far they superseded or modified any previous plans.

(Fifty-fourth): State also specifically where the chandeliers, side lights, brackets and other bronze fixtures were weighed, who weighed them, the name of the weigher, the place where the weighing was done, and what record was kept of the specific weights of of each article.

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Harrisburg, Pa., December 27, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My dear Sir: Replying to your letter of interrogation to me of December 18, 1906, in relation to the furnishing of the new Capitol Building, I beg leave to answer your queries therein contained, as follows:

Q. 1. When did you become the Superintendent of the Board of Commissioners of Public Grounds and Buildings?

A. 1. I became Superintendent of Public Grounds and Buildings on the 21st day of January, 1903, as evidenced by my commission.

Q. 2. Did you prepare, compile and publish the Schedules containing lists of stationery, supplies, repairs, etc., for the Senate, House of Representatives and the several departments of the State Government of Pennsylvania for the fiscal year ending the first Tuesday of June, A. D., 1904? Was this the first Schedule with which you had any official connection?

A. 2. I prepared the Schedule of Supplies for the year ending the first Tuesday of June, 1904, and it was the first Schedule that I prepared. The Schedule for the year ending the first Tuesday of June, 1903, which was prepared by my predecessor in office, was still

in force when I entered upon the duties of my office in January, 1903, and remained in force until the first Tuesday of June, 1903.

Q. 3. From what sources of information did you compile this Schedule and what assistance had you in its preparation?

A. 3. I compiled the Schedule for the year ending the first Tuesday of June, 1904, using former Schedules as a guide, and incorporating and including therein any supplies desired by the different Departments which were not already on the Schedule.

Q. 4. Did this Schedule of 1904 contain any features of difference from any of the publications of your predecessors? If so, state what those differences were.

A. 4. The Schedule of 1904 only differed from the Schedule of 1903 in that it contained the additional articles of supplies requested by the various departments.

Q. 5. What publication was made by way of advertisement of the Schedule of 1904? In what newspapers was notice published? How many insertions were made in each paper and what was the form of notice? Attach to your answer a copy thereof in extenso.

A. 5. As required by law, the advertisement for proposals for supplies, etc., for 1904 was published in 12 Pennsylvania newspapers. The papers were the Times, Pittsburg, 19 insertions; Franklin Repository, Chambersburg, 19 insertions; Gazette, Pittsburg, 19 insertions; Dispatch, York, 19 insertions; Tribune, Johnstown, 19 insertions; Gazette and Bulletin, Williamsport, 19 insertions; Tribune, Altoona, 19 insertions; Star Independent, Harrisburg, 19 insertions; Harrisburg Telegraph, Harrisburg, 19 insertions; Item, Philadelphia, 19 insertions; Evening Bulletin, Philadelphia, 19 insertions; and Inquirer, Philadelphia, 19 insertions. The following is a copy of said advertisement:

#### “PROPOSALS”

##### PROPOSALS FOR STATIONERY, SUPPLIES, ETC., FOR THE SEVERAL DEPARTMENTS OF THE STATE GOVERNMENT OF PENNSYLVANIA.

Office of the Board of Commissioners of Public Grounds  
and Buildings.

Commissioners

SAMUEL W. PENNYPACKER,

Governor.

W. P. SNYDER,

Auditor General.

W. L. MATHUES,

State Treasurer.

J. M. SHUMAKER,

Superintendent.

In compliance with the Constitution and laws of the  
Commonwealth of Pennsylvania, we hereby invite

sealed proposals, at prices below maximum rates fixed in Schedules, to furnish stationery, fuel and other supplies for the several departments of the State Government, and for making repairs in the several departments and for the distribution of the public documents, for the year ending the first Tuesday of June, A. D., 1904.

Separate proposals will be received and separate contracts awarded as announced in said Schedules. Each proposal must be accompanied by a bond, with at least two sureties or one surety company, approved by a judge of the Court of Common Pleas of the county in which the person or persons making such proposals may reside, conditioned for the faithful performance of the contract, and addressed and delivered to the Board of Commissioners of Public Grounds and Buildings before twelve o'clock M., of Tuesday, the 2nd day of June, A. D. 1904, at which time the proposals will be opened and published, in the Reception Room of the Executive Department at Harrisburg, and contracts awarded as soon thereafter as practicable.

Blank bonds and schedules containing all necessary information can be obtained at this Department.

J. M. SHUMAKER,  
Superintendent.

For the Board of Commissioners of Public Grounds and Buildings."

Q. 6. Did you prepare, compile and publish the Schedule for the fiscal year ending the first Tuesday of June, 1905? From what sources of information did you prepare this Schedule, and from whom did you obtain assistance in its preparation?

A. 6. I compiled the Schedule for the year ending the first Tuesday of June, 1905, using former Schedules as a guide and incorporating and including therein any supplies desired by the different departments not already on the Schedule. As to the Special Furniture Schedule included therein on pages 55 and 56 of said Schedule, from Item 1 to Item 20 inclusive I took from the General Furniture Schedule and put in the Special Schedule. In case this furniture on the Special Schedule could not be furnished in time for the session of the Legislature of 1905 we could then supply it from the General Furniture Schedule. This was my object in putting in these items. Items 21 to 41 inclusive, on the Special Furniture Schedule, were furnished to me by J. M. Huston, architect to prepare plans and specifications for decorations and furniture for the new Capitol Building.

Q. 7. Did or did not the Schedule of 1905 differ in its features from the Schedules of preceding years, and, if so, in what respects? State the reasons for such differences if differences existed.

A. 7. The Schedule for 1905 differed from the previous Schedules only from the fact that it contained the "Special Furniture, Carpet, Fittings and Decoration Schedule for the Equipment of the New Capitol Building, Harrisburg, Pa.," on pages 55 and 56.

Q. 8. I find, upon examination, on pages 55 and 56 a Schedule entitled "Special Furniture, Carpet, Fittings and Decoration Schedule for the equipment of the new Capitol Building, Harrisburg, Pa.," and ask you whether you prepared this Schedule; from what sources of information you compiled it, and what assistance you had in its preparation; and please specify particularly the items as to which you received special or general assistance from anybody, stating the names of the persons making suggestions, drafting items, varying, correcting or adding thereto.

A. 8. Repeating here my answer to your 6th question, I would add that in the preparation of the Special Furniture Schedule I received no further assistance or instructions than therein stated.

Q. 9. What assistance, if any, did you have from Joseph M. Huston, Architect of the Capitol Building, and please specify the items in which he assisted you, either wholly or in part.

A. 9. As stated before, Mr. Joseph M. Huston, Architect, furnished me with Items 21 to 41 inclusive on the Special Furniture Schedule.

Q. 10. State the manner in which he participated in the preparation of this Special Schedule? Did he furnish the manuscript copy for the printing? If so, was it done by transmission to the printer through your hands, and did his original manuscript pass through your hands? Have you all or any part of his original manuscript?

A. 10. As far as my knowledge goes, Mr. Joseph M. Huston was requested by the Board of Public Grounds and Buildings to furnish plans and specifications for the new furniture, electric light fixtures and decorations for the interior of the new Capitol Building. He furnished the manuscript copy for the printer. This manuscript was handed to me and added to the balance of our copy for the 1905 Schedule and sent with it to the printer. I do not have the original manuscript copy for the 1905 Schedule.

Q. 11. Did you, in the preparation and compilation of this Special Schedule, have any conversation with John H. Sanderson, or anyone representing him, or anyone speaking in his behalf or at his suggestion; and, if so, what suggestions were made by him or his representative or person speaking in his behalf? What form did such suggestions take, either in the way of conversations or written communication? If there were written communications and you still retain them, please attach copies to your answer.

A. 11. I had no conversation with John H. Sanderson, or any representative of his, in the preparation of the Special Furniture Schedule and never had any written communication with him or any representative of his in regard thereto.

Q. 12. Did you have any conversation in regard to the preparation or compilation of this Special Schedule with your predecessor, T. L. Eyre, at any time or place, and did he not suggest the insertion of any part or portion, phrase or phrases, in any item of the Special Schedule, from No. 1 to 41 inclusive?

A. 12. I never had any conversation with Mr. T. L. Eyre in regard to the preparation of the Special Schedule of 1905.

Q. 13. Did he make any suggestion as to the introduction into Items Nos. 22, 29, 33, 35, 40 and 41 of the per foot standard?

A. 13. In answer to this question I can only state, as in the 12th Answer, that I never had any conversation whatever with Mr. T. L. Eyre with reference to any items on the Special Furniture Schedule of 1905.

Q. 14. Did he suggest, either directly or indirectly, the introduction into Items Nos. 22, 23, 24, 25, 26, 27, 28, 29, 30, 35, 40 and 41 of the per foot standard?

A. 14. No sir; and I repeat my 12th and 13th Answers.

Q. 15. Did he suggest, either directly or indirectly, the introduction into Item No. 32 of the per pound standard?

A. 15. No sir; and I repeat my 12th and 13th Answers.

Q. 16. Did you have any conversation with your predecessor in office, J. C. Delaney, in regard to any item contained in the Special Schedule of 1905, and did he suggest the introduction into the items numbered as in the above questions of the per foot or per pound standard?

A. 16. I never spoke to Mr. J. C. Delaney, or he to me, in reference to the preparation of the Special Furniture Schedule of 1905.

Q. 17. Did you, either alone or with others, prepare, compile and publish the language of the items in the Special Schedule from Nos. 1 to 21 inclusive, and if so did you call the attention of the Architect, Joseph M. Huston, thereto and ask whether or not they met with his approval as Architect of the Capitol in supervision of the furniture requirements for said building?

A. 17. From Items 1 to 21 inclusive on the Special Furniture Schedule I simply followed previous Schedules as a guide. Item 21 was one of the items furnished by Mr. Huston. I never consulted or conversed with Mr. Huston in regard to the first 20 items contained in the Special Furniture Schedule of 1905.

Q. 18. Did you participate in the composition and compiling of Items 22 to 41 inclusive in the Special Schedule or were they exclusively the work of the Architect?

A. 18. I had nothing whatever to do with the composition or compiling of Items 21 to 41 inclusive on the Special Schedule. They were furnished to me by Mr. Huston, the Architect, in manner hereinbefore stated.

Q. 19. Did you have any conversation, at any time or place, either before the publication of the Schedules or after their publication, with the Architect or with John H. Sanderson or anyone representing them in relation to the meaning of the per foot or per pound rule? If so, please state when and where and with whom such conversations took place, and state the substance of the conversation or conversations.

A. 19. I never had any conversation whatever with either Mr J. M. Huston the Architect, or Mr. John H. Sanderson, the Contractor, or any one representing them, either before or after the publication of the Special Furniture Schedule, as to the meaning of the per foot or per pound rule.

Q. 20. State what publication was made of the Schedule of 1905, giving the names of the newspapers, the places of publication, the dates between which publication took place, the number of insertions in each newspaper, and attach to your answer a copy of said advertisement.

A. 20. The Schedule of 1905 was published daily in 14 Pennsylvania newspapers, (2 more than the law requires); 24 insertions in each, from May 10th to June 6th, 1905, inclusive. The papers were: Telegraph, Harrisburg; Bulletin, Philadelphia; Inquirer, Philadelphia; Dispatch, York; Franklin Repository, Chambersburg; German Democrat, Philadelphia; Item, Philadelphia; Tribune, Johnstown; Tribune, Altoona; Times, Pittsburg; Gazette, Pittsburg; Dispatch-News, Erie; Daily Union, Coatesville; and Republican, Scranton. The following is a copy of said advertisement:

#### “PROPOSALS

PROPOSALS FOR STATIONERY, SUPPLIES, ETC.,  
FOR THE SEVERAL DEPARTMENTS OF THE  
STATE GOVERNMENT OF PENNSYLVANIA,  
ALSO THE FURNISHING OF THE NEW CAPITOL  
BUILDING WITH CARPETS, FURNITURE, ELEC-  
TRIC LIGHT FIXTURES, ETC., ETC.

Office of the Board of Commissioners of Public Grounds  
and Buildings.

Commissioners  
SAMUEL W. PENNYPACKER,  
Governor.

W. P. SNYDER,  
Auditor General.  
W. L. MATHUES,  
State Treasurer.

J. M. SHUMAKER,  
Superintendent.

In compliance with the Constitution and laws of the  
Commonwealth of Pennsylvania, we hereby invite

sealed proposals, at prices below maximum rates fixed in Schedules, to furnish stationery, fuel and other supplies for the several departments of the State Government, also the furnishing of the New Capitol Building with carpets, furniture, electric light fixtures, etc., etc., and for making repairs in the several departments and for the distribution of the public documents, for the year ending the first Tuesday of June, A. D. 1905.

Separate proposals will be received and separate contracts awarded as announced in said Schedules. Each proposal must be accompanied by a bond, with at least two sureties or one surety company, approved by a judge of the Court of Common Pleas of the county in which the person or persons making such proposals may reside, conditioned for the faithful performance of the contract, and addressed and delivered to the Board of Commissioners of Public Grounds and Buildings, at the office of its Superintendent, before 12 o'clock noon, of Tuesday the 7th day of June, A. D. 1904, at which time the proposals will be opened and published in the Reception Room of the Executive Department at Harrisburg, and contracts awarded as soon thereafter as practicable.

Special attention is called to the Schedule for the furnishing of the New Capitol Building, plans and specifications for which can be seen at the office of Joseph M. Huston, architect, 1102 Witherspoon Building, Philadelphia, Pa.

Blank bonds and schedules containing all necessary information can be obtained at this Department.

J. M. SHUMAKER,  
Superintendent.

For the Board of Commissioners of Public Grounds and Buildings."

Q. 21. State what knowledge you have as to how the Special Schedule was published as a part of the General Schedule instead of being separately published, and state also how the pages of the Special Schedule—pages 55 and 56—were inserted or came to be inserted between pages 54 and 57, 59, 60, 61 to 70 of the General Schedule.

A. 21. The Special Furniture Schedule was included in the General Schedule of 1905 in order to avoid additional expense of publication and printing as well as the loss of time that would be consumed by holding a separate letting for the Special Furniture and Fittings, the Board considering it advisable to have the whole matter of Supplies and Furnishings disposed of at one letting, the general letting in June as required by law. There was no particular reason for inserting the Special Furniture Schedule at pages 55 and 56 of the General Schedule. It was the usual place occupied in previous General Schedules by the Furniture Schedule.

Q. 22. State what method you adopted for the general distribution among possible bidders of this General Schedule, to whom it was distributed, and state further whether or not you received, after the date of the advertisements, written or oral requests from prospective bidders for copies thereof. If you did receive such requests please state the names and addresses of the persons so requesting a copy, and whether you complied with their requests.

A. 22. In compliance with the advertisements for proposals which state that necessary blanks and Schedules could be obtained at this office, we received many verbal and written requests for the necessary bidding blanks, bonds and Schedules, as well as information in regard thereto, all of which were complied with. The following is a list of all those who received the Schedule of 1905 and bid thereon, viz: M. H. Plank, Harrisburg; Johnston & Co., Harrisburg; Roberts & Meck, Harrisburg; Detre & Blackburn, Philadelphia; John Wanamaker, Philadelphia; Harrisburg Cycle & Typewriter Co., Harrisburg; Strawbridge & Clothier, Philadelphia; Remington Typewriter Company, Philadelphia; Smith Premier Typewriter Company, Philadelphia; Ellis A. Gimbel, Philadelphia; Oliver Typewriter Company, Philadelphia; Dives, Pomeroy & Stewart, Harrisburg; International Manufacturing & Supply Company, Philadelphia; George Milnor, Harrisburg; Williams, Brown & Earle, Philadelphia; Frank J. Hess, Harrisburg; George H. Lewis, Harrisburg; Arthur H. Saunders, Binghamton, N. Y.; Gilbert & Son, Harrisburg; The Elliot Company, Philadelphia; David Stockton, Harrisburg; John Jos. McVey, Philadelphia; Rees Welsh & Co., Philadelphia; N. K. Hoffert, Harrisburg; Charles S. Lingle, Harrisburg; George F. Rohrer, Harrisburg; W. H. Smith, Harrisburg; John Pyne, Harrisburg; Joseph Goldsmith, Harrisburg; George C. Potts, Harrisburg; H. M. Kelley & Co., Harrisburg; D. L. Jauss & Co., Harrisburg; Charles E. Covert, Harrisburg; L. F. Neefe, Harrisburg; H. Geisel, Harrisburg; Harrisburg Steam Heat & Power Co., Harrisburg; John H. Miller, Lebanon; Henry F. Mitchell Co., Philadelphia; P. G. Diener, Harrisburg; Howard Y. Cassel, Marietta; S. F. Prentzell, Philadelphia; J. D. Brenneman, Harrisburg; Holmes Seed Co., Harrisburg; Charles L. Schmidt, Harrisburg; P. J. Lynch, West Grove; Hartman Company, Philadelphia; John Gibson, Philadelphia; Horn & Brennen, Philadelphia; John H. Sanderson, Philadelphia; Sterling Bronze Company, Philadelphia; C. S. Weakley & Co., Harrisburg; Harrisburg Couch Company, Harrisburg; A. B. Tack, Harrisburg; Joseph H. Pownall, Harrisburg; People's Ice Company, Harrisburg; Theodore C. Erb, Harrisburg; United Telephone Co., Harrisburg; American Telephone & Telegraph Co., New York, N. Y.; Charles H. Miller, Harrisburg; D. D. Boas Estate, Harrisburg; W. Scott Stroh, Harrisburg; Paxtang Electric Com-



pany, Harrisburg; Keller, Pike & Co., Philadelphia; C. E. Diehl, Harrisburg; Harrisburg Light, Heat & Power Co., Harrisburg; F. W. Rohm, Harrisburg; Robert S. Gitt, Harrisburg; J. E. Caldwell & Co., Philadelphia; George F. Payne & Co., Philadelphia; Vulcanite Paving Company, Philadelphia; Harry T. Boyles, Harrisburg; Thornton A. Bell, Harrisburg; J. Wesley Neill, Harrisburg; 73 in all.

Q. 23. State the names of the bidders upon the respective items contained in the General Schedule from end to end, and also the names of the bidders upon the various items from 1 to 41 inclusive in the Special Schedule, together with the amounts of their respective bids.

A. 23. The names of all the bidders on the General Schedule are contained in the 22nd Answer above. The names of the bidders on the Special Schedule are as follows: John Gibson, Philadelphia; Horn & Brennan Mfg. Co., Philadelphia; International Manufacturing & Supply Company, Philadelphia; John H. Sanderson, Philadelphia; Harrisburg Steam Heat & Power Co., Harrisburg; Sterling Bronze Company, Philadelphia; Strawbridge & Clothier, Philadelphia.

Attached to this letter and made a part hereof, marked Exhibit "A" is a copy of the Special Furniture Schedule, together with the bidders and their respective bids thereon.

Q. 24. Did John H. Sanderson obtain from you, either directly, upon request or through correspondence, a copy or copies of the Schedules for 1905, and, if so, when did he first obtain them and how many copies did he receive?

A. 24. I sent John H. Sanderson, on his request through mail, 2 copies of the Schedule for 1905 sometime after the proposals were advertised for but do not now remember the date.

Q. 25. Have you any knowledge, either personal or from information, as to whether John H. Sanderson saw copies of the Schedules prior to their publication, or while they were in manuscript, or while the galley proofs were being corrected, or whether you gave or heard that he had received from anybody information with regard to the contents of said Schedules in advance of their publication?

A. 25. I have no knowledge of John H. Sanderson seeing or getting copies of the Schedules prior to their publication, or while they were in manuscript, or while the galley proofs were being corrected, and did not give him any information in regard to said Schedules prior to their publication nor did he make any request to me therefor.

Q. 26. I observe, on examining the Special Schedule for 1905, that the column headed "Estimated Quantity Required," standing

in front of the blank entitled "Description of Articles," is left blank as to all of the items from No. 1 to 41 inclusive. State how these blanks were filled and when they were filled with estimates of the quantity required and by whom they were filled.

A. 26. The blanks on the Special Schedule under the heading "Estimated Quantity Required" were not filled for the reason that the Board did not know at the time the Schedule was made up what quantity of any of the items was required and did not know until they received the floor plans of each floor on which were designated the respective amounts of furniture and fixtures required in each room. These plans are in my possession and were approved by Governor Pennypacker, Auditor General Snyder and State Treasurer Mathues comprising the Board of Public Grounds and Buildings, and J. M. Shumaker, Superintendent, on December 13, 1904.

Q. 27. I observe that the names of the bidders in the columns devoted to that purpose are written in opposite to the columns containing maximum prices, not in the proper handwriting of the bidder, but in a uniform handwriting. Hence I conclude that you must have had some other means of communication as to the bids which each man was willing to make; and I ask you whether I am correct in this, and, if so, I ask you further in what manner each of the bidders, whose names are thus inscribed in the official copy of the Schedule, made known their intention of bidding, and whether you are in possession of their original communication. If so, please attach copies of said original bids, or, if they are not in your possession, be kind enough to inform me in whose possession the original bids are. State also which of the original bids were accompanied by bonds.

A. 27. In accordance with the provisions of the law governing the letting of contracts for supplies, etc., by the Board of Public Grounds and Buildings, and as stated in our advertisements for proposals, the bidders hand in their sealed bids, either to my department or the Secretary of the Board, on or before 12 o'clock noon of the first Tuesday in June of each year; and then, as stated in the advertisements and required by law, these bids are opened and publicly read out by the Board, in the presence of the bidders or their representatives in the Governor's Reception Room, the opening and publishing of the bids being commenced at 12 o'clock noon on said first Tuesday of June. These bids are then tabulated in the Certified Schedules (our official record) by my department and submitted to the Board for the awarding of the contracts to the successful bidders on the respective items contained in the Schedule and the awards are certified to in the Official Schedules by the personal signatures of the Members of the Board. The original

bids and bonds are in my possession but they are very voluminous and it would be a stupendous work, involving much delay, to copy them. I will submit the original to you any time you desire to examine them.

Q. 28. Were you present at the time of the opening of the bids on the first Tuesday of June, 1905, and were you also present at the time of the awarding of the contract? If so, please state what members of the Board were present and what method was adopted for determining who was the lowest bidder.

A. 28. I was present at the opening of the bids on the first Tuesday of June, 1905. I was also present at the time of the awarding of the contract by the Board. All of the members of the Board were present at that meeting, viz, Governor Pennypacker, Auditor General Snyder and State Treasurer Mathues, and the following is an extract from the Minutes of the Board covering the awarding of the contract under the Special Furniture Schedule:

"The matter of the Special Schedule for the furnishing of the new Capitol Building was again taken up. After hearing Mr. Huston on the maximum prices and the probable cost of the whole which was from \$500,000 to \$800,000, the Board took up the bids on furnishings as per pages 55 and 56 of the Special Schedule. Two bids were received, namely, that of Strawbridge & Clothier and that of Wilt & Son, of Philadelphia, on the furniture only and one firm, John H. Sanderson, on the entire Special Furniture Schedule. After due examination and comparison of said bids, it was found that John H. Sanderson was the lowest bidder and it was therefore on motion of State Treasurer Mathues, seconded by Auditor General Snyder, that the award of the entire contract for the Special Furniture, Carpets, Fittings and Decoration Schedule for the equipment of the new Capitol Building, as set forth on each item from 1 to 47 inclusive on pages 55 to 56 of the Special Schedule, be made to John H. Sanderson, of Philadelphia.

Motion carried."

Q. 29. I observe that John H. Sanderson bid upon all of the items contained in the Special Schedule, and that so far as his bids upon the first twenty items were concerned, the percentages off were exceedingly substantial, being as to No. 1, 58 per cent. off; No. 2, 37 per cent. off; No. 3, 28 per cent. off; No. 4, 63 per cent. off; No. 5, 52 per cent. off; No. 6, 55 per cent. off; No. 7, 40 per cent. off; No. 8, 26 per cent. off; No. 9, 25 per cent. off; No. 10, 45 per cent. off; No. 11, 26 per cent. off; No. 12, 66 per cent. off; No. 13, 67 per cent. off; No. 14, 64 per cent. off; No. 15, 68 per cent. off; No. 16, 58 per cent. off; No. 17, 60 per cent. off; No. 18, 53 per cent. off; No. 19, 48 per cent. off; No. 20, 57 per cent. off; and that, from Items No. 21 to 41 inclusive, his percentages were materially less, being on No. 21, 17 per cent. off; No. 22,

8 per cent. off; No. 23, "net;" No. 24, 16 per cent. off; No. 25, 14 per cent. off; No. 26, 10 per cent. off; No. 27, 10 per cent. off; No. 28, 15 per cent. off; No. 29, 15 per cent. off; No. 30, "net;" No. 31, 14 per cent. off; No. 32, 3 per cent. off; No. 33, 76 per cent. off; No. 34, 21 per cent. off; No. 35, 16 per cent. off; No. 36, 17 per cent. off; No. 37, 24 per cent. off; No. 38, 18 per cent. off; No. 39, 23 per cent. off; No. 40, 21 per cent. off; and No. 41, 25 per cent. off; and I ask whether in the determination of the fact whether he was the lowest bidder the Board regarded each item separately or summed up the total of his bids so as to obtain an average rate.

A. 29. The extract from the Minutes of the Board, quoted in my answer to your 28th question, answers this question. I am without further knowledge on the subject.

Q. 30. Were you present at the time of the award of the contract to John H. Sanderson, and did you communicate that fact to him, as the Superintendent of the Board, in a letter dated June 7, 1904? If so, please attach to your answer a copy of said letter.

A. 30. I was present at the time of the award of the contract to John H. Sanderson and notified him by letter on June 7, 1904 of the award to him of said contract. The following is a copy of said letter:

OFFICE OF BOARD OF COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS.

Harrisburg, June 7, 1904.

John H. Sanderson, Esq., 622 Chestnut Street, Philadelphia, Pa.

Dear Sir: At a meeting of the Board of Commissioners of Public Grounds and Buildings held this afternoon, you were awarded the contract for furnishing all supplies, articles and materials and performing all work required under the Special Furniture, Carpets, Fittings and Decoration Schedule for the Equipment of the New Capitol Building, Harrisburg, Pa., embracing Items 1 to 41 inclusive of said Schedule.

The Board has instructed me to direct you to commence work at once on the furniture and fittings for the Senate, House of Representatives and Committee Rooms, etc., belonging thereto and I therefore direct you to furnish all materials and do all necessary work, according to the plans and specifications of Joseph M. Huston, Architect, with diligence and dispatch.

Yours truly,

J. M. SHUMAKER,  
Superintendent."

Q. 31. Did you ever give him, in writing or in print, signed by you officially as Superintendent, or signed by the members of the

Board, or a majority of them, any special orders for the various articles demanded or required of him under the various items? If so, please state when and in what terms you gave such orders, and if you have retained copies thereof, be good enough to annex copies to your answer.

A. 31. I did sign a book, in duplicate, one copy for the Auditor General and one for John H. Sanderson, which contained all the furniture and fixtures on the original floor plans that are now in my possession. This book in duplicate was first signed by Joseph M. Huston, Architect, and then approved by me.

Q. 32. I call your attention to the fact that John H. Sanderson, in his reply to the 18th Question propounded by me in my letter of November 10th, stated that "The number and character of the articles furnished under Item 22 will be found in the orders given by the Board of Public Grounds and Buildings, copies of which orders are in a book in the Auditor General's Office," and that, in reply to my 19th Question: "From whom did you receive a complete and specific order for each article to be furnished?" he answered "From the Board of Public Grounds and Buildings." Inquiry of the Auditor General has led me to believe that this answer is erroneous. I ask you to give such information as is within your knowledge as to enable me to understand what actually took place.

A. 32. The only order signed by me was the notification of the award of the contract and direction to proceed thereon at once sent to John H. Sanderson on June 7, 1904, in accordance with the resolution of the Board of Public Grounds and Buildings of that date; and also the quantities in said book, hereinbefore referred to, which contains the quantities indicated on the floor plans signed by all members of the Board.

Q. 33. If you did not give such orders, signed by you as Superintendent, have you any knowledge, personal or official, of such specific orders being delivered or transmitted to John H. Sanderson signed by the full Board or a majority of its members?

A. 33. I have no knowledge of anything except the resolution of the Board and the book signed by Joseph M. Huston, and approved by me, said book showing the quantities contained on the original floor plans, which plans were signed by all the members of the Board of Public Grounds and Buildings, of which book Mr. Sanderson has a copy and there is also a copy of it in the hands of the Auditor General, which was signed by Joseph M. Huston and approved by me.

Q. 34. What information had you from the Architect as to the various amounts and kinds of articles required of John H. Sanderson under the terms of his contract? In what shape does this in-

formation appear? When was it delivered to you, and do you still have it in your custody?

A. 34. With the exception of the floor plans hereinbefore mentioned I never had any information from Joseph M. Huston, Architect, as to the various amounts and kinds of articles required of John H. Sanderson under the terms of his contract.

Q. 35. If it consists of plans or specifications drawn by the architect, please state when, if such be the case, such plans and specifications were presented to the Board of Public Grounds and Buildings, and when they were officially approved? Did you yourself approve them? How many sets of plans and specifications were there? How often were they presented and on what dates to the Board for its action? Were the plans in addition to those previously presented and how many sets of plans were there, and did they remain unmodified and unchanged, or were they altered, added to or enlarged at any time subsequent to the awarding of the contract down to the completion of the contract?

A. 35. The floor plans showing the furniture and fixtures for the respective rooms were presented to the Board of Public Grounds and Buildings by Architect Huston on December 13, 1904 and then approved by all the members of the Board and myself. I have the original of these plans, on tracing cloth, in my possession, but do not know how many blue print or other copies have been taken therefrom. I do not know how often or on what dates these plans were presented to and considered by the Board. The minutes of the Board, which are kept by the Secretary and are not in my possession, may show this. The original plans have not been changed since they came into my possession on December 13, 1904.

Q. 36. In what form were the various bills of John H. Sanderson made out to the Commonwealth? Were they sent to you for approval as Superintendent? Were the goods shipped to you and received by you, and did you or did you not make a practice of stamping on the face of each bill the words "Received in good condition as per designs and specifications," signing your name as Superintendent, and having added thereto the official approval of the architect?

A. 36. The bills of John H. Sanderson were made out in itemized form, so many articles or so many feet or pounds, and were sent to me for approval, accompanied by the architect's signed certificate and his signature on the bills that the articles furnished or work done was in accordance with the plans and specifications. No bills were approved by me except those that first contained the architect's signature and certificate as above stated. The goods were shipped "Care of J. M. Shumaker, Superintendent, Capitol

Building, Harrisburg, Pa.," and were either received by me or by Sanderson's superintendents or foremen on the respective jobs. The Auditor General gave me the stamp which reads as follows:

"I hereby certify that the above or within bill is correct and true. That the quantities and prices are correct according to contract and plans approved by the Board of Public Grounds and Buildings for the furnishing, etc., of the new Capitol Building.

.....  
Supt. P. G. & B."

In compliance with his request I stamped this on each bill and signed the same.

Q. 37. Did you or did you not make a practice of stamping on the back of each bill a certificate to the following effect: "I hereby certify that the above or within bill is correct and true. That the quantities and prices are correct and according to contract and plans approved by the Board of Public Grounds and Buildings for the furniture, etc., of the new Capitol," and did you sign such certificates with your name as Superintendent?

A. 37. The bills were not so stamped on the back but on the face. The certificate was as stated in Answer 36 and was signed by me as Superintendent.

Q. 38. If such was your practice please state what you did when the goods were received, in order to ascertain whether they were in point of fact, received in good condition, whether they conformed to the designs and specifications? What means did you take and whose assistance did you have in determining whether or not they did conform to the designs and specifications?

A. 38. Everything received was passed on by the Architect. I had no way of knowing that the goods were made according to plans and specifications only by the certificate attached to the bills by the Architect and his signature on said bills as to their correctness.

Q. 39. State further what means you adopted of informing yourself as to whether or not, when the goods were received, and as a preliminary to stamping approval upon the bill, to ascertain whether the bill as rendered was correct and true? How did you ascertain that the quantities and prices were correct and according to contract and plans approved by the Board of Public Grounds and Buildings?

A. 39. We take from the Special Schedule prices, and the bills were audited in my office before being sent to the Board for payment. All goods having been first inspected by Joseph M. Huston, architect as to correctness, before the bills were paid. The quantities were checked up in my department.

Q. 40. Please state under what items, from Nos. 1 to 41 inclusive goods were delivered by John H. Sanderson and in what relative proportions?

A. 40. I have not got the bills in my possession and am unable to tell, but I think all of the goods were furnished under Items 21 to 41.

Q. 41. State whether or not the bulk of his contract was delivered under Items 22 and 32 and state, if possible, the relative percentage of his contract represented by those two Items?

A. 41. I think that all electric fixtures and bronze standards were furnished under Item 32, but the total cost of these articles I am not able to give you. As to Item 22, I am unable to state what was furnished thereunder or the price paid therefor. The bills on file in the Auditor General's Department would give you the information desired by this question.

Q. 42. If your answer to the foregoing question confirms the truth of the supposition that the majority of the articles delivered by John H. Sanderson were delivered under Items 22 and 32, please state who it was that directed him specifically to make deliveries under said items, and state particularly whether it was the architect alone who did so upon the Architect's orders, or whether the matter was canvassed and discussed before the Board of Public Grounds and Buildings and that body designated the character of the articles and the quantities of each article to be delivered under said terms.

A. 42. The Board of Public Grounds and Buildings signed the original floor plans for the furnishing of the new Capitol, which included, in my estimation, all the furnishings of the new Capitol Building and the book containing all these Items was the order to John H. Sanderson to furnish the new Capitol, as he would have no other way of ascertaining the quantities needed in each room; said book being signed by Joseph M. Huston, architect, and J. M. Shumaker, Superintendent.

Q. 43. State whether prior to this time you had had any previous experience in determining the value of specially designed articles either of wood work, stone, marble, bronze, mosaic, glass and upholstery, as tested by the per foot standard. If so, when and where? If you had not, what means did you adopt for the purpose of testing the measurements per foot of articles furnished by the contractor under Item 22? What instructions did you receive from either the architect or Sanderson the contractor, as to the proper method of making such measurements and applying such tests? Who assisted you in these tests and furnished you with the information necessary to support your certificate?

A. 43. I never had any experience in determining the value of specially designed articles either of wood work, stone, marble,



bronze, mosaic, glass and upholstery as tested by the per foot standard. I never had any instructions from John H. Sanderson, the contractor, or J. M. Huston, the architect; but Joseph M. Huston, the architect, frequently measured the furniture in my presence and found the measurements correct.

Q. 44. I repeat this question as to articles furnished by the per pound under Item 32. I ask what experience you had had of designed bronze metal for gas and electric fixtures, hardware, ornamental work, mercurial gold finished, hand tooled and rechased, to enable you to test the accuracy of the weights charged for by the contractor? Whose assistance did you have in the actual determination of the weights? What methods of testing did you apply? Where were they applied? Who assisted you? Did you receive any instructions, suggestion or assistance therein from either the architect or John H. Sanderson or anyone representing them, or either of them, before attaching your certificate?

A. 44. I have had no experience in any of the above metals, further than the fact that I have weighed the smaller side brackets and chandeliers, and found them in many cases to overrun their weight, but never found any of them short in weight. The larger fixtures I had no means of weighing but the architect informed me he had passed upon them before they were shipped to Harrisburg. I had no assistance or instructions from John H. Sanderson nor anyone representing him.

Q. 45. What knowledge had you of the magnitude of the contracts awarded to John H. Sanderson? What information had you from the architect as to the probable amount and value thereof at or about the time of the award? Did you or did you not, as the work progressed and the goods were being delivered in installments, notice from the amount of the bills presented, and the frequency with which they were presented, that the amounts were rapidly running into large figures?

A. 45. I had no information from Joseph M. Huston, architect, or any other person, as to the probable cost of the furnishings, fittings and decorations for the new Capitol Building. I noticed as the bills were presented that the cost was running into large figures.

Q. 46. Did you express to anyone, either the architect or contractor, or to the members of the Board, any opinion or judgment as to the amounts involved, and have you any knowledge as to whether the Board was aware of the amounts of money concerned, and, if so, when did the Board first obtain such information?

A. 46. To the best of my knowledge, I never expressed any opinion or judgment as to the amounts involved for I had no way of ascertaining what the contract would amount to. I have no informa-

tion that the Board was aware of the amounts of money concerned.

Q. 47. Was it the practice to present the bills as rendered by the contractor to the Board for their approval as a Board, or were the bills, as approved on their face by you as Superintendent, and approved also on their face by the architect and certified to by you as correct in quantities and amounts by the stamp upon the back, sent to the Auditor General to join in a settlement certificate with the State Treasurer prior to the drawing of the warrants, without coming before the Board of Public Grounds and Buildings?

A. 47. In the early part of the contract the bills were sent to me for my approval as to the quantities furnished; also to the architect, Joseph M. Huston, for his certificate, and then paid by the Auditor General and State Treasurer, without going before the Board as a whole.

Q. 48. Can you say of your knowledge that this was the practice from the middle of the year 1904 until March of 1906, and that, during the interim, no such bills, as rendered and certified to, came before this Board for its approval?

A. 48. From the best of my knowledge this was the practice in the early part of the contract, but as to the date from the middle of the year 1904 until March 1906, I am unable to give you any definite information.

Q. 49. State whether your knowledge is sufficient to enable you to answer that the first bill for payment by the whole Board, prior to a settlement certificate between the Auditor General and the State Treasurer, was approved on March 13, 1906, and thereafter all bills, as subsequently rendered, were approved by the three members of the Board before settlement certificate was given.

A. 49. I am unable to state as to whether the first bill approved by the three members of the Board was on March 13, 1906 or not; but since the approval of the first bill by the full Board all bills have been first submitted to the Board before any payment was made.

Q. 50. State what knowledge you have in regard to this change in the practice and why it took place?

A. 50. I do not recall why the change was made.

Q. 51. Are you in possession of the original plans of furniture marked approved and signed by the members of the Board? Please specify how many sets of plans there are and the dates of official approval of each set.

A. 51. I am not in possession of the original plans and designs of furniture marked approved and signed by the members of the Board. I have only the floor plans, as hereinbefore mentioned, which show the location of the different articles of furniture and

electrical fixtures. I do not know how many sets of plans there are or the dates of their respective approvals.

Q. 52. State also as to whether, on or about February 10, 1905, there were changes made in the plans for metallic furniture. State whether or not the plans approved by the various departments, prior to September, 1903, for the metallic furniture, were the plans upon which the cases were finally constructed and delivered. Or whether at sometime subsequent thereto the architect furnished other plans and, if so, please state the dates of such new plans and of such approval.

A. 52. I do not know whether or not on or about February 10, 1905, there were changes made in the plans for metallic furniture and have no record of any meeting of the Board being held on that date. I do not know what plans were used finally for the construction and delivery of the metallic furniture. I do not have any records in my department that would furnish this information.

Q. 53. State whether or not there were any plans approved on or about December 9, 1903, for bronze work, and whether or not, on or about April 5, 1904, additional plans for metallic work and metallic furniture, carpets and electroliers were adopted, and, if so, when they were approved by the Board, and how far they superceded or modified any previous plans.

A. 53. I do not know whether or not there were any plans approved on December 9, 1903 for bronze work, or whether or not on or about April 5, 1904 additional plans for metallic furniture, etc., were adopted by the Board. I do not have any records in my department that would enable me to give this information.

Q. 54. State also specifically where the chandeliers, side lights, brackets and other bronze fixtures were weighed, who weighed them, the name of the weigher, the place where the weighing was done, and what record was kept of the specific weights of each article.

A. 54. I do not know where the chandeliers, side brackets, and other bronze fixtures were weighed, or who weighed them, except what I weighed as stated in my answer to Question 44.

I do not have the records of the proceedings of the Board as that is kept by the Secretary, and in answering your questions as above I have done so from the best of my recollection and the information derived from the certified schedules in my possession.

Very truly yours,

J. M. SHUMAKER,  
Superintendent of Public Grounds and Buildings.

Item number.	Estimated quantity required.	Description of Articles.	Maximum price.	John Gibson.	Harrisburg Steam Heat and Power Co.	Horn & Brannen Mfg. Co.	Sterling Bronze Co.	International Mfg. and Supply Co.	John H. Sanderson.
1	.....	Book cases and wardrobes (mahogany), Series F, per lineal foot, .....	\$37 00	.....	.....	.....	.....	40	58
2	.....	Leather-covered easy armchairs (mahogany), Series F, each, .....	55 00	.....	.....	.....	.....	25	37
3	.....	Leather-covered swivel armchairs (mahogany), Series F, each, .....	40 00	.....	.....	.....	.....	25	28
4	.....	Clothes trees (mahogany) each, .....	15 00	.....	.....	.....	.....	30	63
5	.....	Tables, 6x3½ (solid mahogany), Series F, each, .....	45 00	.....	.....	.....	.....	20	52
6	.....	Couch (mahogany), Series F, each, .....	50 00	.....	.....	.....	.....	20	55
7	.....	Leather-covered couch, 3 ft. x 6 ft. 6 in. (solid mahogany), Series F, each, .....	100 00	.....	.....	.....	.....	25	40
8	.....	Office table 6 feet (mahogany), Series F, each, .....	120 00	.....	.....	.....	.....	20	26
9	.....	Wood-seat armchairs (mahogany), Series F, each, .....	23 00	.....	.....	.....	.....	33½	35
10	.....	Roll-top desks, 5 feet, quartered oak, highly polished, with fine flake, Series F, each, .....	60 00	.....	.....	.....	.....	20	45
11	.....	Rotary chairs, Series F, each, .....	25 00	.....	.....	.....	.....	15	26
12	.....	Flat-top desks, quartered oak, highly polished, with fine flake, 5x4 ft., Series F, each, .....	28 00	.....	.....	.....	.....	net	66
13	.....	Flat-top desk, quartered oak, highly polished, with fine flake, double, 5x4 ft., Series F, each, .....	45 00	.....	.....	.....	.....	15	67
14	.....	Letter press stands, oak or mahogany finish, Series F, each, .....	13 00	.....	.....	.....	.....	net	64
15	.....	Oak clothes trees, Series F, each, .....	9 00	.....	.....	.....	.....	33½	68
16	.....	Lambill dictionary holder, No. 6, complete, Series F, each, .....	9 00	.....	.....	.....	.....	.....	58
17	.....	Mirror, French plate, 20x20, with frame to be selected, Series F, each, .....	12 00	.....	.....	.....	.....	20	63
18	.....	Card catalogue case, 18 drawers, Series F, each, .....	42 00	.....	.....	.....	.....	20	53
19	.....	Filing cabinet (right to select) for letters, 12 drawers, Series F, each, .....	75 00	.....	.....	.....	.....	20	48
20	.....	Case for insect specimens, specifications to be submitted, Series F, each, .....	75 00	.....	.....	.....	.....	net	57
21	.....	Designed decorative exterior lights, Series E-F, each, .....	15 00	.....	.....	.....	.....	.....	7
22	.....	Designed furniture, fittings, furnishings and decorations of either woodwork, stone, marble, bronze, mosaic, glass and upholstery, Series F, per foot, .....	20 00	.....	.....	.....	.....	net	8
23	.....	Mural art paintings, Series F, per foot, .....	50 00	.....	.....	.....	.....	.....	net
24	.....	Decorating and painting, Series F, per foot, .....	3 00	82½	.....	.....	.....	.....	16
25	.....	Designed sofas, seating, etc., either upholstered, wood, metal or stone, Series F, per foot, .....	15 00	.....	.....	.....	.....	.....	14
26	.....	Designed State chairs, Series F, each, .....	150 00	.....	.....	.....	.....	net	10
27	.....	Designed special desks and tables, Series F, per foot, .....	12 00	.....	.....	.....	.....	net	10
28	.....	English laid interlocken wood and rubber parquet flooring, Series F, .....	1 50	.....	.....	.....	.....	.....	15
29	.....	Venetian blinds, wood or metal, Series F, per foot, .....	1 50	.....	.....	.....	.....	.....	15
30	.....	Modeling or sculptor decorations, Series F, per foot, .....	100 00	.....	.....	.....	.....	.....	net
31	.....	Designed special finished bronze-metal gas and electric fixtures, Series E-F, each, .....	225 00	.....	.....	5	3	.....	14
32	.....	Designed bronze-metal for gas and electric fixtures, hardware and ornamental work, mercurial gold finish, hand tooled and re-chased, Series E-F, per pound, .....	5 00	.....	.....	5	3	20	3
33	.....	Designed special finished white metal gas and electric fixtures, Series E-F, each, .....	150 00	.....	.....	5	70	80	76
34	.....	Special designed thermostat, each, .....	100 00	.....	5	.....	.....	.....	21
35	.....	Special designed carpets, Sovommerle, imported Scotch Axminster, Series C, per foot, .....	4 00	.....	.....	.....	.....	.....	16
36	.....	Special rugs, antique Persian, Kermanshaw, Tabies and Berlin, Series C, per foot, .....	3 00	.....	.....	.....	.....	10	17
37	.....	Special Wilton Corona carpets, Series C, per yard, .....	3 25	.....	.....	.....	.....	.....	24

\*Per cent.

Item number.	Estimated quantity required.	Description of Articles.	Maximum price.	John Gibson.	Harrisburg Steam Heat and Power Co.	Horn and Brannen Mfg. Co.	Sterling Bronze Co.	International Mfg. and Supply Co.	John H. Sanderson.
38	.....	Designed curtains, draperies and panels, Abusson tapestry and silk brocade, silk trimmings, Series F, per yard, .....	40 00	.....	.....	.....	.....	10	18
39	.....	Designed clock fittings or fixtures, Series F, each, .....	150 00	.....	.....	.....	.....	.....	23
40	.....	Faverill and Baccarat glass, Series F, per foot, .....	30 00	.....	.....	5	20	.....	21
41	.....	Moravian tiles, Series F, per foot, .....	3 00	.....	.....	.....	.....	.....	25

Complete plans for all the furniture, fittings, decorations and furnishings and samples for the carpets can be seen at the office of J. M. Huston, Architect, No. 1102 Witherspoon Building, Philadelphia, Pa., where full instructions will be given.

No bid above the limit herein fixed will be received.

The Board of Public Grounds and Buildings reserve the right to reject any or all bids.

Harrisburg, December 19, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

Dear sir: For your further information in the matter of the Capitol finishing and furnishing by the Board of Public Grounds and Buildings, I submit the following facts:

Paragraphs 4 and 5, page 59 of the specifications read as follows:

"The two lines of cornice frieze for lettering around the Rotunda shall be made of semi-transparent opalescent glass and back-topped with gold leaf.

"The four circular medallions between the four descriptive paintings around the Rotunda shall be executed with favrile opalescent glass set in Kenne's cement. All tones of glass shall harmonize with the surrounding decorations and paintings."

These items were excepted from the Payne contract, and an allowance made as follows:

"The omission of two glass mosaic frieze bands around the main rotunda, and the four glass mosaic circular medallions in main rotunda, substituting plaster and painting therefor, 1,823 sq. ft. at \$8.00=\$14,584."

Eight dollars per square foot was probably not an excessive price, since the "four circular medallions" referred to were of a complicated and difficult pattern. They were also difficult of access, and were to be made of "favrile opalescent glass," which I am informed is a foreign product, and quite expensive.

After this contract was surrendered, a contract was let to J. H. Sanderson for the "two lines of cornice frieze," mentioned in paragraph 4, and paid for under Item 22 at \$18.40 per square foot. They were made of domestic glass, and put in by a Pittsburg sub-contractor, who furnished all the materials, and did all the work, including scaffolding. This contractor made a fair profit and received considerably less than \$4.00 per square foot for the work. The sub-contractor was paid for 202 feet in the upper circle, and 1,141 feet in the lower circle; a total of 1,343 feet, which at the price named in Item 22 (\$18.40 per foot) would have netted Mr. Sanderson \$24,711.20.

The price paid to him according to the published statement of the Governor and Auditor General was \$28,759.20; a difference (in excess) of \$4,068.00, which may be accounted for in the elasticity of the per foot system of measurements.

It would be interesting and profitable to know why this contract for 1,343 feet of imported mosaic, at \$8.00 per foot, which was surrendered for \$10,744, was re-let to Sanderson for a cheaper domestic article at \$18.40 per foot, and paid for at a cost of \$28,759.20.

As compared to some of the transactions to which I have called your attention, this over-payment of \$18,000 seems small, but when compared to the price paid the sub-contractor (\$5,000) it comes into the regular order at about five times the proper price.

I feel quite safe in saying that not a single contractor in this country, except Sanderson, knew that this work was included in Item 22, and that there was absolutely no opportunity given for competitive bidding.

Yours very truly,

WM. H. BERRY.

---

December 18th, 1906.

Hon. T. Larry Eyre, West Chester, Pa.:

My dear sir: You held the position of Superintendent of Public Grounds and Buildings under the administration of Governor Stone, and a part of your official duty each year was to compile and publish the schedules upon which bids were invited by the Board of Commissioners of Public Grounds and Buildings for supplies needed by the various departments of the State during the ensuing fiscal year.

I observe upon an examination of the schedules published during your term that the per foot rule was introduced in the items relating to furniture.

Be good enough to inform me from what source you derived the information necessary to justify the insertion of what is asserted

by many to be an unusual standard of value, and what arguments were used with you for its introduction into the schedule.

Have you any knowledge or previous experience of its prior use as a basis for bids for government work, whether national, State or municipal? If so, kindly point me to the sources of information, documentary or departmental, from which such information was derived.

Or was it suggested to you by some one experienced in the matter of either manufacturing or selling furniture, either at retail or wholesale, or did you simply take it from the schedules of former years?

Did you have conferences with any such persons, and if so be kind enough to state when, where, and also furnish me with their names and their business addresses.

Did you during your term as superintendent become acquainted with John H. Sanderson, of Philadelphia, carrying on business at No. 622 Chestnut street, as a dealer in furniture, in fact, as the head of a large, well known and long established house?

Did you know him prior to the time that you became Superintendent?

Did he at any time during your term of office consult with you either directly or indirectly, personally or by representative, orally or by correspondence, as to the furniture items in the general schedules?

Did he at any time, directly or indirectly, personally or through some representative, either orally or in writing, suggest to you the propriety and business feasibility of introducing the per foot rule into the schedules? If he did, be good enough to inform me what arguments he used in support of such a suggestion, in what terms he made the suggestion, when he made the suggestion, and state further whether at the time he made the suggestion he either had previously been a bidder for State work, or whether at the time he made the suggestion he was a prospective bidder, or whether his suggestion followed an actual bid, and then state whether after your adoption of it he bid for State work upon such a basis.

In short, I desire to be informed by you to the fullest extent of your knowledge or information as to the source whence the per foot suggestion came and how it appeared in the schedule of the State, and whether its appearance was in any way due to any personal suggestion or indirect suggestion on the part of Mr. Sanderson.

I desire also to know further if at any time during your holding of the office Mr. Sanderson conferred with you with regard to the schedules before they were prepared, while they were in a state of preparation, or while the galley slips of the matter were in your hands for correction before final printing.

If you know of any one else to whose suggestions or arguments

such an introduction of the per foot rule is due, whether that person be a dealer or manufacturer of furniture, or whether he be or was a State officer, high or low, or any person connected directly or indirectly with the furniture business or interested directly or indirectly in the matter of the preparation of the schedules, be kind enough to inform me by giving name, place, circumstances and dates connected therewith. I am

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

Philadelphia, Pa., Dec. 19th, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My dear sir: I am in receipt of your favor of December 18th, and in reply thereto would state that I was appointed Superintendent of Public Grounds and Buildings under the administration of Governor Stone, and qualified as such on May 1st, 1899, and that the schedule was in course of preparation at the time of my appointment as aforesaid, as under the law, it is necessary to advertise the schedule for three weeks prior to the first Tuesday of June of each year. I followed the precedent of the preceding year, submitted the schedule, after its preparation, to the Board of Public Grounds and Buildings and received from the Board their approval to the same, and this course was continued during the time that I held the office.

I have known John H. Sanderson, of 622 Chestnut street, Philadelphia, since 1889, but at no time during my incumbency in the office of Superintendent of Public Grounds and Buildings did he directly or indirectly, personally or by representative, orally or by correspondence, make any suggestions to me as to the furniture items contained in the general schedule.

The above answer also applies to the per foot rule referred to by yourself.

I also beg to state that at no time during my holding of the office of Superintendent of Public Grounds and Buildings did Mr. Sanderson confer with me with regard to the schedules before they were prepared, while they were in a state of preparation, or while the galley slips of the matter were in my hands for correction.

In conclusion, permit me to say, I was retired from the office of Superintendent of Public Grounds and Buildings January 21st, 1903, and had no part in the preparation of schedules or the awarding of contracts for the furnishing of the new Capitol Building.

Very sincerely yours,

T. L. EYRE.



Office of the Attorney General,  
Harrisburg, Pa., Dec. 23, 1906.

To the Commissioners of Public Grounds and Buildings, Harrisburg,  
Pa.:

Gentlemen: In endeavoring to ascertain the facts in relation to the allegation of overcharges, duplications of payments and contracts entered into without warrant of law or in excess of the legal authority of your Board, I find it necessary to be advised upon certain matters, and therefore address interrogatories to you as I have done to the architect and contractors and to members of the Capitol Building Commission.

Let me ask:

(First): What Acts of Assembly, in your judgment, define your powers and measure the scope of your jurisdiction in relation to the capitol building and the duty of furnishing it?

(Second): What line of demarcation is to be drawn, in your judgment, between the duties devolving upon the Capitol Building Commission, created by the Act of 18th of July, 1901 (P. L. 714), and your duties under the acts relating to your Board? I am not asking for a legal opinion, as that I cannot expect nor exact from your Board, but for your best judgment as practical administration, charged with the execution of the statutes relating to your Board.

(Third): I observe, in the first section of the Act of 18th of July, 1901, creating the Capitol Building Commission, the words: "Which Commission is hereby authorized and empowered to construct, build and complete the State capitol building at Harrisburg, including a power, light and heating plant of sufficient capacity to satisfactorily supply the needs of said building or buildings."

The third section provided:

"The total aggregate cost for the construction of said Capitol Building, including dome and the departmental winds, also including all fees, commissions, salaries and expenses of all kinds for the Commission, counsellors and attorneys, engineers, experts, architects, superintendents, clerks and other employes, shall not exceed four million (\$4,000,000) dollars."

The Act of 14th of April, 1897, was expressly repealed and all other acts or parts of acts inconsistent with the Act of 18th of July, 1901, were repealed.

I find, in the Act of 26th of March, 1895 (P. L. 22), in the first section, the words:

"That the Governor, Auditor General and State Treasurer shall constitute a Board to be known as the 'Board of Commissioners of Public Grounds and Buildings,' and

who shall have entire control and supervision of the public grounds and buildings, including the Executive Mansion, and all the repairs, alterations and improvements made, and all work done or expenses incurred in and about such grounds and buildings, including the furnishing and refurnishing of the same, and are authorized to enter into contracts for stationery, supplies, furniture, distribution of documents, fuel, repairs, alterations or improvements and other matters needed by the Legislature, the several Departments, boards and commissions of the State Government and Executive Mansion."

The second section provided for advertisements for proposals for contracts, and specified the manner and extent of advertising; what should be included in contracts, and, after repeating the words "stationery, supplies and fuel, by the Legislature, the State departments, boards and commissions of the State government, for the Executive mansion and for distributing the laws, journals, department reports and other matter," added the words "and for repairing, altering, improving, furnishing or refurnishing, and all other matters or things required for the public grounds and buildings, legislative halls and rooms connected therewith, the rooms of the several departments, boards, commissions and the executive mansion."

It further provided what should be included in contracts, declared when and to whom the proposals should be delivered, fixed a date for the opening of proposals, prescribed the method of awarding contracts, and the approval of contracts, and provided for re-advertising in case no proposal had been received, or where those received came from irresponsible persons.

Sections 3 and 4 of the act relate to matters of detail for the purpose of carrying the foregoing powers into execution.

The fifth section provided for the appointment of a Superintendent of Public Grounds and Buildings, whose duties, inter alia, were to notify the departments to furnish lists of articles, of all furniture and furnishings, stationery, supplies, repairs, alterations or improvements, fuel and all other matters or things that might be needed by the respective departments, boards, commissions, Senate or House of Representatives for the fiscal year beginning on the first Tuesday of June in each year, the departments to make detailed lists, and the Superintendent was to classify the articles, full descriptions of articles were to be given and number of goods when possible, proper maximum prices fixed, and whenever deemed necessary by the Board it was the duty of the Superintendent to have designs and specifications prepared for their approval "of any furniture or furnishings, repairs, alterations and improvements, paying

for the preparation of the same out of the Board's general fund;" and shall state in the list or schedule that the work or articles, from which the designs and specifications are prepared, are to be taken or furnished in accordance therewith; and that the designs or specifications will be found in his office for inspection, and copies of the same shall be furnished to the successful bidders.

The lists or schedule, when prepared by the Superintendent, were to be presented to the Board of Public Grounds and Buildings for approval, and the Board, after conferring with the heads of departments and other persons in authority, was clothed with power to make such changes therein as might be deemed proper, and when the same "have been approved and signed by a majority of the Board, it shall be returned to the Superintendent, who shall cause it to be printed in pamphlet form as a schedule of stationery, papers, supplies, fuel, furniture, furnishings, distribution of documents, repairs, alterations, improvements and other matters and things needed for the Public Grounds and Buildings, Senate and House of Representatives, the several State departments, boards and commissions and the Executive Mansion."

It was further provided in the fifth section how bids on the schedules should be received, the form of proposal, the advertisement of notice, and what it should set forth, the receipt by the Board of bids and bonds, conditioned for the faithful discharge of the bidders proposition, to be sealed and properly addressed, and the method of opening said bids and the tabulation thereof were also prescribed.

The sixth section provided that the Superintendent should receive from the contractor or contractors the articles mentioned in the schedule. It provided further:

"It shall be his duty to reject all articles not up to the standard required; and if a contractor shall fail to exchange them for articles that meet the requirements prescribed, the Board may go into the open market and purchase articles to take the place of those adjudged to be of inferior quality and deduct the expense from the amount due the contractor from the Commonwealth; or may proceed against his sureties."

And it was further provided that in all cases it should be the duty of the Auditor General to withhold from the contractor the warrant for one-fourth of the entire contract "until the Superintendent shall certify that the contract has been fully complied with."

The seventh section provided that it should be the duty of the Superintendent to care for and store the articles.

By the eighth section storage rooms and offices were provided, and it was further enacted that, whenever the heads of the departments, the executive officers of State boards and commissions, and the

chief clerks, should require any portion of the furniture, stationery or supplies named in their original lists, a requisition therefor should be made upon the Superintendent, who should cause the articles to be delivered, taking a proper receipt therefor.

The ninth section required the Superintendent to keep a full and complete account of all furniture, furnishings, stationery, etc., delivered to the several departments, boards, commissions and chief clerks, to the various public grounds and buildings and Executive Mansion, and at the end of each fiscal year make a report of the furniture so delivered.

The eleventh section imposed upon the Superintendent the duty of examining all bills on account of contracts entered into under the provisions of the act, and, if found correct, the further duty of certifying that the materials had been furnished or that the work or labor had been performed in accordance with the contract, and after having been so certified by him they should be presented to the Board of Public Grounds and Buildings for their examination and approval, and when so approved shall be paid by warrant drawn by the Auditor General on the State Treasurer in the usual form.

The remaining sections of the act relate to the policing of the public grounds and buildings, to matters of salary, and the sixteenth section created a general fund for the purpose of making purchase of any article of furniture, furnishings, stationery, supplies, fuel or any other matters "and for the payment of any repairs, alterations or improvements, the want of which may not have been anticipated at the time of the issue of the annual schedule, and which did not appear in the same, and for which requisition is made on the superintendent, and the sum of three thousand dollars, or so much thereof as may be necessary, is hereby annually appropriated, which amount shall be known as the Board's General Fund."

The seventeenth section provided that nothing in the act should interfere with the contracts for State printing and binding or supplies for the State printing or for the Legislative Record or Record wrappers.

I do not find any repeal of this act, nor any amendment thereof, but I do find, in the general appropriation act of 1895 (P. L. 547), specific appropriations of various sums of money mentioned in the Statute, for the payment of salaries, for the payment of the expenses of keeping the public grounds and buildings in order, and repairing and improving the same; for the payment of the general contingent fund; for the payment of metallic cases, premiums for insurance and other items not necessary to detail, except that as to the item for electric light, power and steam heat, the amount, instead of being specifically mentioned, was described as "such amount as may be found due on the contract made for furnishing said electric

light, power and steam heat upon an account rendered and settled by the Auditor General in the usual manner, and also such amount for gas as may be found due the gas company when supplied, upon a regular account being rendered to the Auditor General and settled in the usual manner, in accordance with existing laws, all contracts to be awarded and all moneys to be expended under the direction of the Board of Public Grounds and Buildings, and all work to be under the supervision of the Superintendent of the same, who shall certify to the Board of Public Grounds and Buildings that the contracts have been carried out in a satisfactory manner before warrants shall be drawn."

In 1897, by act of April 14th (P. L. 19), provision was made for the erection of a new capitol building for the use of the General Assembly, and to secure plans for said building and such other buildings to be erected in future as may be necessary for executive and departmental purposes, and the Commissioners of Public Grounds and Buildings and other officers were constituted and appointed Commissioners to erect the building. A limitation of expenditure was placed upon the Commissioners, said limitation being the sum of \$550,000, which was specifically appropriated for that purpose. I need not dwell further on this act, as it was repealed expressly by the act of July 18, 1901, creating the Capitol Building Commission, to which I have already referred. I find, however, that the General Appropriation Act for 1897, followed the line, plan and detail of the Appropriation Act of 1895.

The same is true of the General Appropriation Act of 1899 (P. L. 372), and of the General Appropriation Act of 1901 (P. L. 823), and it must be borne in mind that the Act of 18th of July, 1901, in its third section, fixed the limit of the annual expenditures to be made in any one fiscal year out of the sum of \$4,000,000, mentioned as the total aggregate cost of the construction of the capitol building, except in certain instances not necessary to be specified.

The General Appropriation Act of 1903 (P. L. 511), followed in detail and in plan of structure and in substantially the same language, the provisions of the preceding general appropriation acts, there being no enlargement, so far as a careful reading of the statute discloses, of any powers of expenditure.

The General Appropriation Act of 1905 (P. L. 576), after repeating all of the provisions of the preceding appropriation acts, and enlarging and specifying with greater particularity the salaries of officers and employes, which item was distinctly disapproved of by the Governor (P. L. 603)—all this being done under the specific head of "Public Grounds and Buildings," (P. L. 576-579 inclusive)—introduced a new feature not to be found in any of the preceding appropriation acts. Thus section 10 (P. L. 597), reads as follows:

"The State Treasurer is hereby authorized and directed to pay, out of any moneys in the treasury not otherwise appropriated, on accounts to be audited by the Auditor General and State Treasurer in the usual manner, for the two fiscal years commencing June 1, 1905, such sums as may be required by contracts made in pursuance of law, for the payment of stationery, printing paper and materials for the public printing, for supplies of heat or fuel furnished to the two Houses of the Legislature and the several departments of government; and for the printing, binding and distribution of the laws, journals and department reports, and for the miscellaneous printing, folding, stitching and binding; and for repairs to and furnishing of the chambers and committee rooms of the two Houses of the Legislature and the several departments of government, which shall be done only on the written orders of the Board of Commissioners of Public Grounds and Buildings: Provided, That expenditures allowed under this section shall not be so construed as to authorize the Commissioners of Public Grounds and Buildings to complete the present Capitol Building."

I have now recited all of the Acts of Assembly which, so far as my examination goes, relate to matters pertinent to this inquiry, and I ask whether or not you, as practical administrators, know of any other statutory provision bearing upon the matter which I have overlooked.

(Fourth): With this body of legislation before you as your guide, I ask you to draw the line of demarcation between what you conceived to be the jurisdiction and province of the Capitol Building Commission and your own authority and jurisdiction as Commissioners of Public Grounds and Buildings.

(Fifth): I next ask what business status you found existing as to contracts entered into by your predecessors in the Board of Public Grounds and Buildings, and outstanding as binding contracts upon the Board on or about the 20th of January, 1903.

(Sixth): In this connection I call your attention, so as to direct your search and, if possible, save your time, to the fact that, on the minutes of your Board it appears, in Volume 2, page 114, that on the 11th of November, 1902, there being present Governor Stone, Auditor General Hardenbergh and State Treasurer Harris, a meeting was held for the purpose of examining the plans and specifications of the Pennsylvania Construction Company of Marietta "for equipping the various departments of the new capitol building being erected at Harrisburg with metallic furniture, under contract awarded them in June, 1902," and it further appears upon the same page of the minutes that "The Auditor General and State Treasurer again considered the plans and specifications and schedule of the metallic

furniture presented by the Pennsylvania Construction Company, and on motion it was resolved that the plans and specifications of the Pennsylvania Construction Company and the schedule of prices submitted by them be accepted and contract awarded to them."

I may add, as a matter of history in this connection, that it appears from page 6, Volume 2 of the Minute Book, that as early as January 3, 1900, a reference was made to the Pennsylvania Construction Company, and a bill presented by that company was approved in the sum of \$3,602.25, less \$152.78, deduction on account of glass measurement for remodeling metallic furniture in the office of State Treasurer, Auditor General and Secretary of the Commonwealth, and that, on May 31, 1900, Volume 2, Minute Book, page 20, E. B. Reinold, of Marietta, was directed to prepare the specifications of metallic cases, etc., in the departments, eliminating all patents so that persons in the business might bid on the same.

(Seventh): I find further, on page 127 of the same volume of minutes, under date of January 14, 1903, there being present Governor Stone, Auditor General Hardenbergh and State Treasurer Harris, it was resolved unanimously, on motion of the State Treasurer:

"That the Pennsylvania Construction Company, of Marietta, Pa., who have been awarded the contract of metal fixtures and furniture under the Schedule of June, 1902, be directed to prepare plans and specifications for the equipment of the various offices and departments of the new Capitol Building, which plans and specifications will be submitted to the heads of the various departments for their approval and for the approval of the Board of Public Grounds and Buildings."

And I find further, on page 142 of the same volume, under date of March 3, 1903, a resolution introduced at a meeting of the Board, at which Governor Pennypacker presided, and there were present State Treasurer Harris and Auditor General Hardenbergh, that the following resolution by State Treasurer Harris, seconded by the Auditor General, was agreed to:

"Resolved that, Whereas the plans for the furniture of the offices of the Insurance Commissioner and the office of the State Treasurer and the office of the Auditor General in the new Capitol Building, as presented by the Pennsylvania Construction Company, have been approved by the Insurance Commissioner, the State Treasurer and the Auditor General; therefore, be it

"Resolved, That the said Pennsylvania Construction Company be authorized and instructed to proceed to manufacture said furnishing for the said offices in accordance with the said plans and specifications herewith presented, they having been awarded the contract for metallic fixtures, etc., under the Schedule."

(Eighth): I find further, on page 144 of the same volume of minutes, under date of April 7, 1903, at a meeting of your Board, at which Governor Pennypacker, Auditor General Hardenbergh and State Treasurer Harris were present, that the Auditor General offered the following resolution, which was duly seconded by State Treasurer Harris, and carried:

“Resolved, Whereas the plans for furnishing the office of the Attorney General, Secretary of the Commonwealth, Secretary of Internal Affairs, Adjutant General, Department of Agriculture, Factory Inspector, Commissioner of Banking, Commissioner of Forestry, Board of Public Charities, Board of Soldiers' Orphans Schools, Senate Library, Committee Rooms and Locker Rooms connected with other departments pertaining to the Senate and House of Representatives, Library, Committee Rooms, Lockers, etc., and such other offices as belong to the House and Superintendent of Public Grounds and Buildings, have been approved by the heads of the said departments, the said plans completing the work necessary to furnish all the offices in the new Capitol Building with metal cases, fixtures, etc., therefore, be it

“Resolved, That the said Pennsylvania Construction Company be authorized and instructed to proceed to manufacture said furnishings for said offices in accordance with said plans and specifications herewith presented, they having been awarded the contract for metallic fixtures, etc., under the schedule.”

(Ninth): I find further, on page 188 of the same volume of minutes, under date of December 8, 1903, at a meeting of the Board, presided over by Governor Pennypacker, and also attended by Auditor General Hardenbergh and State Treasurer Harris, that, on motion of the State Treasurer, the following resolution was adopted:

“Resolved, That the revised plans for metallic furniture and fixtures, Nos. 1 to 54 inclusive, as presented by Joseph M. Huston, architect, be adopted, and that the Pennsylvania Construction Company be directed to furnish the said furniture and fixtures under the supervision of the said architect, and that the Auditor General be directed to make payment for the same, in part or in full, upon certificate of said architect, and that the said architect be empowered to make the detail of cases in special rooms to conform to the architectural finish of said rooms at his discretion, and that the price on all special work which is not fully covered by the Schedule under which the contract was awarded the said Pennsylvania Construction Company, shall be fully agreed upon between the said Pennsylvania Construction Company and the said Joseph M. Huston, architect, before any certificate for payment shall be issued.”



(Tenth): I find further, on page 213 of the same minute book, under date of April 5, 1904, at a meeting presided over by Governor Pennypacker, and at which Auditor General Hardenbergh and State Treasurer Harris were also present, that the Auditor General offered the following resolution, which was adopted:

“Resolved, That the revised plans for the metallic furniture and fixtures, Nos. 55 to 102 inclusive, as presented by Joseph M. Huston, architect, be adopted, and that the Pennsylvania Construction Company be directed to furnish the said furniture and fixtures under the supervision of the said architect, and that the Auditor General be directed to make payment for the same, in part or in full, upon certificate of said architect, and that the said architect be empowered to make the detail of the cases in special rooms to conform to the architectural finish of the said rooms at his discretion, and that the price on all special work which is not covered by the Schedule under which the contract has been awarded the said Pennsylvania Construction Company shall be fully agreed upon between the said Pennsylvania Construction Company and the said Joseph M. Huston, architect, before any certificate for the payment shall be issued.”

(Eleventh): I find further, upon page 283 of the same volume of minutes, under date of December 13, 1904, at a meeting of your Board, which was presided over by Governor Pennypacker, and at which Auditor General Snyder and State Treasurer Mathues were present, a statement to the following effect:

“The architect, Mr. Huston, presented plans for metallic furniture and fixtures, numbering from 103 to 211. After examining same it was moved by State Treasurer Mathues that the plans for metallic furniture and fixtures, Nos. 103 to 211 inclusive, presented by Joseph M. Huston, architect, be adopted under the conditions presented in the Resolution of December 8, 1903, and resolution of April 7, 1904.”

(Twelfth): The foregoing are the only references which I find upon the minutes of your Board relating to the matter of metallic furniture, and I ask whether or not this is a complete reference to all that is disclosed by your minutes, and whether it embraces all the facts within your knowledge, whether upon the minutes or otherwise, relating to the contract of the Pennsylvania Construction Company, but I desire to have explained from your records whether the plans and specifications presented to your Board and approved, whether presented by the Pennsylvania Construction Company or by the architect in revision thereof, overlapped each other in any way,

contained duplications of items, or enlarged the contract previously made, and, if so, to what extent and in what particulars.

(Thirteenth): I desire further to be advised as to whether there was or was not furnished by the Pennsylvania Construction Company metallic furniture under the contract awarded them under the schedule of June, 1902, and delivered to the State and received by your Superintendent, and certified to as being in accordance with the contract, prior to and entirely irrespective of the revision of the plans by Mr. Huston, the Architect, as referred to under the resolutions previously quoted, under date of April 7 and December 8, 1903, and April 5 and December 13, 1904. In other words, I should like to be informed specifically what was done by the Pennsylvania Construction Company under the resolution of January 14, 1903 (Minute Book, Vol. 2, p. 127) and resolution under date of March 3, 1903 (Ibid, p. 142), and April 7, 1903 (Ibid, p. 144), before the appearance upon the scene of Mr. Joseph M. Huston, as architect, as indicated by the resolution of December 8, 1903, (Ibid, p. 188). Or, to put the matter in other words, to what extent had performance on the part of the Pennsylvania Construction Company been carried under its contract, awarded by your predecessors under the schedule of June, 1902, in the way of making actual deliveries of metallic furniture prior to any revision by the architect of the capitol?

(Fourteenth): To what extent had they received payment for the same upon bills presented and approved by your Superintendent and by your Board, and to what extent did they draw moneys upon the warrants of the Auditor General in payment therefor prior to the presentation of Mr. Huston's revised plans on the 8th of December, 1903?

(Fifteenth): After having given me all the information in detail within your knowledge relating to these matters, or having pointed me to the sources of information, from which I can derive more exact knowledge, by supplementing your answers as a Board of Public Grounds and Buildings, by a report from the Auditor General, who is a member of your Board, as to the warrants actually drawn in favor of the Pennsylvania Construction Company prior to the date of December 8, 1903, I now ask as to the extent and meaning of the revision of the plans for metallic furniture and fixtures, as indicated in the resolution of December 8, 1903 (Minute Book, page 188), April 5, 1904 (Minute Book, p. 212), December 13, 1904 (Minute Book, p. 283). Please inform me what the revision involved, what additional expense it involved to the State over and above the contract previously made with the Pennsylvania Construction Company, and further be good enough to inform me whether the Architect, under the resolution of December 8, 1903 (Minute Book, p. 188), and the resolution of April 5, 1904 (Minute

Book, p. 212), who was empowered to agree with the Pennsylvania Construction Company upon the price of making the detail of the cases in special rooms to conform to the architectural finish of the said rooms at his discretion, and upon the price on all special work which was not covered by the schedule under which the contract had been awarded the said Pennsylvania Construction Company, ever reported to your Board the terms of his contracts as to prices so agreed upon by him under the authority aforesaid, and, if so, whether you have any record or schedule of these contracts or prices among your archives, and whether your Superintendent certified any bills to your Board for approval before the issuance of any certificate for payment.

(Sixteenth): Be kind enough to inform me also whether the plans, approved by the various departments prior to September, 1903, were the plans upon which the cases were finally constructed and furnished, either in whole or in part, by the Pennsylvania Construction Company, or whether the revised plans of Mr. Huston, the architect, superseded, either in whole or in part, the plans of the Pennsylvania Construction Company; and whether or not the cases furnished by the Pennsylvania Construction Company, prior to the revision of their plans by the architect (if, in point of fact the Pennsylvania Construction Company did furnish and deliver such cases and were paid for the same prior to such revision), were rendered useless and of no value to the State because of said revision; or whether they were used as the basis of Mr. Huston's revision, and in this manner were accepted for modification in accordance with Mr. Huston's revision by the State. Or, to put it in other words, was the revision by Mr. Huston of the plans for the metallic furniture, as contracted for with the Pennsylvania Construction Company, a total or a partial revision? If partial, to what extent?

(Seventeenth): Was such revision a rejection, either in whole or in part, of what had previously been done by the Pennsylvania Construction Company, or did it amount to an acceptance of what had been done by the Pennsylvania Construction Company, and for which payment was made to that effect, plus the expenditure of additional labor thereon to make such articles conform to the architect's revision? And, if so, what was the character of the revision or additional work performed, and what was the additional expense growing out of said revision?

(Eighteenth): Were there any other contracts made by your predecessors as members of the Board of Public Grounds and Buildings, outstanding and binding upon your Board other than the foregoing contract with the Pennsylvania Construction Company for metallic furniture? If there were, what were the contracts? Please inform

me of the detail, character and extent and the subject matter thereof.

(Nineteenth): If, on the other hand, there were no outstanding contracts entered into by your predecessors in the Board of Public Grounds and Buildings, other than the contracts referred to, I now address myself to what new contracts were entered into by your Board for the furnishing, repairs, alterations or improvements of the capitol building in any of the particulars falling within the language of the Acts of Assembly quoted at the head of this communication.

(Twentieth): In order to enable you to draw the line of demarcation between the work of the Capitol Building Commission and that of your own Board, allow me to call your attention to the fact that it appears from your minutes, Volume 2, p. 121, and also page 141, that, in pursuance of a request of Mr. Huston, to meet your Board, Mr. Huston, on the 3d of March, 1903, presented a written communication, under date of March 2, 1903, in which, after reciting the Act of Assembly relating to the Capitol Building Commission, he pointed out that the work had been placed for that building with himself as architect; George F. Payne & Company, general contractors; Edwin A. Abbey, official mural decorator; George Gray Bernard, official sculptor; and Miss Violet Oakley, decorator of the Governor's reception room, all working under his direction as architect. In this connection he emphasized the fact that the work of the Capitol Building Commission was at an end "so far as entering into more contracts is concerned," and he further pointed out that the contract for the building included interior decorations of a high order for the House of Representatives, the Senate, Supreme and Superior Courts, the Governor's grand reception room; also the Lieutenant Governor's room, and then stated: "These are the only rooms in the building which should have specially designed furniture, carpets, rugs, electroliers, gas and electric fixtures—to match in every way the interior architectural effects."

He further pointed out that "In view of the fact that the new capitol is to be a fireproof building and a permanent depository for all State records, etc., suitable steel cases should be provided for each department indicated on the plans of the building," and added that another important item, the position of which was already indicated upon the plans but not included in the general contract, was steel armor plate.

He also pointed out that the office of each department head was to be finished in mahogany, the working offices in oak, thus saving the item of expense in furnishing the office, and also stated "Another item is the furnishing of gas and electric fixtures, standards, etc., which are always considered furniture in a building."

He then dwelt upon the importance that all this work should be studied, drawings prepared for the same, prices ascertained, made and ready to be placed in the building simultaneously with the date of the completion named in the laws, January 1, 1906, as he considered haste would be disastrous to the best work, and closed with the statement: "The completion of the whole building, approaches, grounds, decorations, furniture, gas and electric fixtures, steel cases and vaults would redound great credit to the State."

I do not find that any action was taken by your Board upon this communication prior to September 9, 1903. I should like to be advised as to what consideration was given to this communication of the architect in the meantime, particularly as to the scope and character of the work which the Board considered properly within its province and what it involved.

(Twenty-first): I find that a correspondence took place between your Board and Mr. Huston under the respective dates of letters: September 9, 1903; September 11, 1903; September 15, 1903, and I should be glad to have copies of these letters attached to your reply.

(Twenty-second): From an examination of this correspondence it appears that a contract was entered into between your Board and Joseph M. Huston, architect, as the special employe of the Board, at a commission of four per cent upon the total cost of the work, being one per cent. less than that at first requested by the architect; and I find that the terms of his employment were "to prepare the plans and specifications and detailed drawings for all interior fittings, furniture, electric and gas fixtures for the new capitol building, in accordance with the proposition of the architect, contained in his letter to the Superintendent of your Board, dated September 11, 1903."

Please state when the architect first presented plans and specifications and detailed drawings, as thus designated, to your Board for approval and what action was taken by your Board. Were the plans, specifications and drawings, as first presented by the architect, adopted without modification, or did he present other and additional or revised plans at any subsequent date?

So far as my examination has gone, it would appear (Vol. 2 of the Minutes, p. 212), that Mr. Huston presented, on April 5, 1904, drawings and specifications for wood and metal furniture, draperies, carpets and electroliers for the new capitol building, but that before any action the Superintendent of the Board of Public Grounds and Buildings was directed to take the drawings and specifications and go over the same, and if found satisfactory to return them with his approval and report at the regular meeting on Tuesday, April 12th; and it would further appear from the Minute Book, page 215,

under date of April 12th, that the Superintendent on that day appeared before the Board and stated that he had approved the plans and specifications referred to him by the Board, as of the date of April 5, 1904.

(Twenty-third): I find, upon page 215 of the Minute Book, that at the meeting of April 12, 1904, the following resolution was adopted:

“Resolved, That the designs and specifications for all interior fittings and furnishings, decorations, clocks, gas and electric fixtures, curtains, draperies and carpets, Nos. 1-F to 42-F inclusive, 1-C to 8-C inclusive, 1-E-F to 37-E-F inclusive, for the new Capitol Building for the Commonwealth, presented by Joseph M. Huston, be adopted.”

(Twenty-fourth): I find further that Governor Pennypacker offered the following resolution, which was adopted:

“Resolved, That, whereas the architect selected by this Board has prepared plans for the furnishing, carpets, rugs, casings, hangings, chandeliers and other personal fittings required for the capitol about to be erected, and such plans having been adopted, and

“Whereas, Some of this furniture will be needed for the next session of the Legislature and therefore promptness in action is necessary.

“Resolved, That the Superintendent of Public Grounds and Buildings be instructed to at once advertise in twelve newspapers, not more than three of which shall be printed in any one county, inviting sealed proposals for contracts for all of said furnishings, fittings, etc., each proposal to cover the entire furnishing in accordance with the plans so adopted and the specifications prepared by the architect and submitted by the superintendent and to be delivered to the Board of Public Grounds and Buildings at 12 o'clock, noon, on the 28th day of April, 1904, and that the contract be then awarded to the lowest responsible bidder or bidders:

“Resolved, That no proposal for any contract shall be considered or accepted unless accompanied by a bond in the sum of \$100,000, with at least two sureties or one surety company, approved by the judge of the court of common pleas of the county in which the person or persons making such proposal shall reside, conditioned for the faithful performance of the terms of the contract.”

(Twenty Fifth): Stopping at this point, it would seem from the foregoing recital (and if it be imperfect or inaccurate in any particular I should like to be corrected) that a definite result had been reached by the Board of Public Grounds and Buildings by the adoption of certain definite plans submitted by the architect, duly em-

ployed for that purpose, and that these plans had in turn been submitted to the Superintendent of the Board, by him approved, and that the Board itself had approved them; and that the action of the Board in adopting the resolution of the Governor, looking to advertisement for bids or proposals for contracts upon these plans and specifications, had resulted in a definite determination of the subject-matter of the contracts to be entered into; and that the scope and character, as well as the detail of the contracts, were to be found in the plans so approved. Am I right in this conclusion? •

(Twenty-sixth): If I am correct in this conclusion, will you kindly advise me whether, at the time of the adoption of these plans, as presented by the architect, the plans were so far detailed and circumstantial as to make it possible to determine with accuracy the exact number, quality, character, designs and material of each article to be furnished; and, if so, whether at that time there was an estimate presented by the architect of the quantities which would be required of each article or under each item in the contract; and whether at that time the architect presented figures fixing the maximum price of each article or class of articles called for by his plans.

(Twenty-seventh): Whether at that time the architect suggested the per foot rule as a proper method of reaching the value of articles of furniture and the per pound rule as the proper method of determining the weight of electric fixtures to be furnished, or other items in metal.

(Twenty-eighth): Whether at that time the architect gave an estimate of the total probable cost of the entire contract as presented in and represented by the plans, drawings and specifications presented by him for the approval of the Board and by the Board adopted.

(Twenty-ninth): I consider this of importance in determining the basic fact upon which legal action in behalf of the State must turn in an effort to undo, if such a thing be possible, an executed contract, executed on both sides, and with no executory features whatever, and I consider it also important upon its bearing upon the fundamental legal question as to whether or not the contract was definite in its terms, both as to the subject matter, terms of payment, prices to be paid, or whether it so far left the terms of the contract, in certain vital particulars, incomplete, as to present the proposition that the contract finally was one upon a quantum meruit and not for a fixed price per article.

(Thirtieth): I consider it also important in determining whether or not the schedules for the fiscal year ending the first Tuesday in June, 1905, upon which the bids were invited, were in conformity in all particulars with the plans, drawings and specifications pre-

sented by the architect and adopted by the Board, or whether the schedules, as published and upon which bids were invited, contained items, quantities, estimates or articles which were not described with reasonable certainty or indicated with reasonable certainty in the drawings, plans and specifications as adopted.

(Thirty-first): As a matter of incidental inquiry, but important in its relation to the question as to whether or not the schedules upon which bids were invited were fair in the notice which they gave to competitive bidders, I turn now to the question of actual notice to the public.

The resolution of Governor Pennypacker, as to the method of publication, adopted at the meeting of April 12, 1904 (Minute Book, page 215), was, "as I read it, rescinded at a special meeting of the Board, called at 11 a. m., on Wednesday, April 13, 1904 (Minute Book, Vol. 2, p. 218), where, "on motion of Frank G. Harris, State Treasurer, seconded by E. B. Hardenbergh, Auditor General, the action of the Board, taken on Tuesday, April 12, 1904, with reference to advertising bids for furnishing for the State capitol building was reconsidered. On motion of E. B. Hardenbergh, Auditor General, seconded by Frank G. Harris, State Treasurer, it was resolved that all furnishings, fittings, electric fixtures, etc., be placed upon the schedule for 1904."

(Thirty-second): I ask to be informed of the reason for this action, and whether or not it involved any less publicity of notice to bidders than the special advertising provided for in the Governor's resolution of the preceding day, and I ask whether the Board of Commissioners is in the possession of any information as to why the second method of advertising was adopted. As I have asked the Superintendent of Public Grounds and Buildings to furnish me with the exact detail and dates of the advertisements actually made of the schedule, I need not repeat the request for information here.

(Thirty-third): In passing, however, I remark that a study of the schedule, as actually published and as compiled and prepared by the Superintendent, and upon which bids were subsequently actually awarded by the Board, shows that it contains, so far as Items 22, 23, 24, 25, 27, 28, 29, 30, 35, 36, 40 and 41 are concerned, a specific introduction of the per foot rule in relation thereto; and that, so far as Item 32 was concerned there was an introduction of the per pound rule; that so far as Item 1 was concerned the rule was per lineal foot; that so far as Items 2 to 21 inclusive, and Item 26 and Items 31, 33, 34 and 39 were concerned there was a maximum price fixed per piece.

(Thirty-fourth): I ask whether there was any discussion before the Board by any or all of its members, either with the architect or his representative, or with the Superintendent, prior to the publica-



tion of the schedule as to the meaning and effect of these standards or unit prices.

(Thirty-fifth): I ask further what knowledge the members of the Board, either as a Board or individuals, had of the actual composition, preparation and publication of the special schedule, consisting of pages 55 and 56 of the general schedule for the fiscal year ending the first Tuesday of June, 1905.

(Thirty-sixth): I ask further whether the architect presented to the consideration of the Board the manuscript of his draft of Items 22 to 41 inclusive, the authorship of which he has himself avowed.

(Thirty-seventh): I ask further whether he indicated upon the plans, drawings and specifications presented by him and adopted by the Board at its meeting of 5th of April, 1904 (Minute Book, page 212), or its meeting of April 12, 1904 (Minute Book, page 215), in connection with a consideration of the items in the schedule, Nos. 22 to 41 inclusive, an estimate of the probable amount and a statement of the quality and kind of articles required under each item, and whether at the same time he presented any view of the question, either from a discussion of his plans or from a separately stated examination and study of the subject, any data from which it could be concluded that the main portion of the articles required, both as to numbers and value, would be called for under Items 22 and 32 respectively.

(Thirty-eighth): It must be borne in mind that the plans, drawings and specifications of the architect were presented to the Board on April 5, 1904; that they were acted upon by the Board on April 12, 1904; that the method of advertising was finally determined by the Board on April 13; and that the advertising made by the Superintendent, in pursuance of the action of the Board on April 13th, took place between a date in May and the date fixed by the Board for the opening of the bids, to-wit: June 7, 1904; hence any such analysis of the plans in connection with the architect must necessarily have taken place, if it took place at all, between the dates of April 12, 1904, and the first publication in May, 1904, for I take it that the schedule, as published, was complete and ready for delivery to prospective bidders at the time when the first advertisement appeared.

(Thirty-ninth): I ask further whether the architect explained to the Board how he fixed the maximum prices designated in the appropriate column in the schedule opposite each item, or whether the whole matter of maximum prices and standards of value was left entirely to his discretion.

(Fortieth): I find upon your minutes (Volume 2, p. 225), under date of June 7, 1904, the day on which the bids were opened, the following entry:

"The matter of the special schedule for the furnishing of the new capitol building was again taken up. After hearing Mr. Huston on the maximum prices and the probable cost of the whole, which was from \$500,000 to \$800,000, the Board took up the bids on furnishings, as per pages 55 and 56 of the special schedule. Two bids were received, viz: That of Strawbridge & Clothier and that of Wilt & Son, of Philadelphia, on furniture only, and one firm, John H. Sanderson on the entire special furniture schedule. After due examination and comparison of said bids it was found that John H. Sanderson was the lowest bidder, and it was therefore, on motion of State Treasurer Mathues, seconded by Auditor General Snyder, that the award of the entire contract for the special furniture, carpets, fittings and decoration schedule for the equipment of the new capitol as set forth in each item from 1 to 47 (sic) (clearly 41) inclusive, on pages 55 and 56 of the special schedule, be made to John H. Sanderson, Philadelphia."

"Motion carried."

(Forty-first): I ask, in view of the fact that this is the first entry which I have been able to discover as to any mention of a probable price, whether or not this was the first communication from the architect to the Board of the probable total cost of the contracts which the Board was about to enter into, or whether he had at any previous time been interrogated concerning such cost, and whether, at the time that he did give this estimate, he demonstrated with any particularity, either from the plans themselves, accompanied by the schedules, and by figures carrying out the standards of value as applied to the quantity of articles required under each item, or total figures, his accuracy in that regard, or whether it was a mere general statement made without any accompanying proof in the nature of figures as applied to items contained in the schedule.

(Forty-second): I ask further for a statement of the method adopted by the Board in determining the fact as to who was the lowest bidder; whether the various items, 1 to 21 inclusive in the schedule, separately bid upon by John H. Sanderson, were regarded separately and the contract awarded to him for each item separately, or whether the total percentages which he bid off each item were summed up, establishing an average bid off, regarded as a bid upon the whole schedule.

(Forty-third): I find that on the 7th of June, 1904, the Superintendent notified John H. Sanderson as follows:

"Dear Sir: At a meeting of the Board of Commissioners of Public Grounds and Buildings, held this afternoon, you were awarded the contract for furnishing all

supplies, articles and materials, and performing all work required under the special furniture, carpet, fittings and decorations schedule for the equipment of the new capitol building, Harrisburg, Pa., embracing Items 1 to 41 inclusive of said schedule. The Board has instructed me to direct you to commence work at once upon the furniture and fittings for the Senate and House of Representatives and committee rooms, etc., belonging thereto, and I therefore direct you to furnish materials and do all necessary work on the plans and specifications of Joseph M. Huston, Architect, with diligence and dispatch.

“Yours truly,  
“J. M. SHUMAKER,  
“Superintendent.”

I ask whether or not this communication was the only order given by the Board of Public Grounds and Buildings to John H. Sanderson. I am not referring to an engrossed copy of the foregoing communication which the members of the Board, at Mr. Sanderson's request, signed as an interesting memorial of the awarding of his contract, that engrossed copy being simply a duplicate of the communication just quoted. But I am asking a direct question as to whether or not the Board of Public Grounds and Buildings, or any of its members, or its Superintendent acting for it and with its authority, gave to Mr. Sanderson from time to time specific orders for the delivery of articles and quantities of articles under the various items contained in the schedule.

I dwell upon this because Mr. Sanderson, in a letter addressed to me, under date of November 17th, in reply to a communication addressed by me to him, under date of November 10, 1906, asserted, in his 19th answer to a specific question from me, as follows:

“Question. From whom did you receive a complete and specific order for the articles to be furnished?

“Answer. From the Board of Public Grounds and Buildings.”

In his answer to my 18th question he says:

“The number and character of the articles furnished under Item 22 will be found in the orders given by the Board of Public Grounds and Buildings, copies of which orders are in a book in the Auditor General's office.”

Upon inquiry of the Auditor General I was informed, if my recollection serves me correctly, that he had no such orders nor had he any such book. Desiring to avoid misapprehension as to any of the facts, and particularly desiring to avoid injustice to anybody. I ask to be fully and definitely informed upon this subject.

(Forty-fourth): It is clear that if no such specific orders were given, and that Mr. Sanderson is incorrect in making the statement, and that, in point of fact, the only order which he received was the communication of your Superintendent under date of June 7, 1904, then I am obliged, in view of the indefiniteness of the schedules upon which bids were invited, owing to their failure to specify under the appropriate column the estimated quantity required of each item, to turn to some other source of information in order to ascertain with accuracy how, under all the circumstances, the items actually furnished by Mr. Sanderson were ordered, by whom they were ordered, in what quantities they were ordered, what descriptions of the articles were given, and how he complied with the requests. If your Board or any of its members have information bearing directly or indirectly upon this subject, it would be a material aid to me if you will communicate it.

(Forty-fifth): Did the Board or any of its members undertake to direct Mr. Sanderson specifically as to what amounts of each article were required or as to the specific item in the special schedule under which goods were required to be delivered? Was this matter left to the architect to give specific orders, or was it to be deduced by the architect and the contractor, Sanderson, from the plans, drawings and specifications presented to the Board and adopted by it on the 12th of April, 1904?

(Forty-fifth): Assuming now that the plans, drawings and specifications of the architect, as adopted by the Board on April 12, 1904, constituted the basis of the published schedule; that the schedule, as printed and as advertised, constituted the basis of the bids received from Sanderson; that the letter of your Superintendent, under date of June 7, 1904, constituted an acceptance of the bidder's proposal; and that the sets of papers thus designated and taken together constituted the contract, I now ask whether there was, at any subsequent time, any modification, alteration, addition or variation of the terms of the contract so entered into, either as to the character and quality, material, quantity, price or standard of price in the articles covered by the contract of John H. Sanderson.

(Forty-sixth): Did the architect, at any date subsequent to the awarding of the contract to John H. Sanderson, present any new or additional plans, drawings or specifications, calling for the action of the Board, and adopted by the Board, which would in any way modify or vary the obligation of John H. Sanderson under the contract? If so, in what respect were the original plans, drawings and specifications altered? Were such modifications presented to John H. Sanderson for his approval, and did he assent thereto? Or were there any other contracts entered into between John H. Sanderson and your Board, covering articles, material or work not called for

by the special schedule, and not called for by the general schedule for the fiscal year ending the first Tuesday of June, 1905?

(Forty-seventh): I find upon your minutes (page 228), under date of June 14, 1904, at a meeting of the Board at which Governor Pennypacker, Auditor General Snyder and State Treasurer Mathues were present, that the minutes of May 10th and June 7th were read and approved, with the exception of the matter of the special schedule for furniture, electric fixtures, carpets, etc., which read between \$500,000 and \$800,000, was corrected to read between \$400,000 and \$500,000.

In view of this correction, which was in reduction of the amount quoted as having been presented to the Board on June 7, 1904, I repeat my question as to whether or not the total probable cost of the contract was discussed, and whether any data were before the Board other than those referred to in questions Nos.

(Forty-eighth): In this connection I ask when the Board or any of its members first ascertained that the estimate of the probable total cost, as fixed by the architect, was inadequate, and that the figures were being largely increased?

(Forty-ninth): I find, from an examination of the warrants drawn in favor of John H. Sanderson, the first being dated July 11, 1904, and of the accompanying bills, certified to by the Superintendent and the architect, and accompanied by the settlement of the Auditor General and State Treasurer in favor of Sanderson, that the practice pursued in regard to the Sanderson bills, from the date of the first warrant up to March 14, 1906, was that they were not approved by the Board or by all of its members. Hence I conclude that what was done was this: That when Sanderson, the contractor, presented a bill, he obtained an approval of it upon its face, signed by the architect, and also approved by the Superintendent of Public Grounds and Buildings; that the bill was then regularly stamped by the certificate of the Superintendent in exact conformity with the Act of Assembly of 26th of March, 1895, and that the bill, thus approved, was accompanied by a certificate of the architect, appropriately numbered and certifying that there was due to the contractor the sum named in the bill; and that these papers were presented to the Auditor General and State Treasurer, who joined in a settlement certificate, as is usual in all Treasury settlements, without the participation of the Governor; and that, upon this settlement of the fiscal officers of the State, warrants were drawn in favor of the contractor; and that it was not until March 14, 1906, that the approval of the three members of the Board of Public Grounds and Buildings was obtained before a settlement certificate was issued in favor of the contractor by the Auditor General and State Treasurer for the payment of the bill so approved. Am I correct in this statement of facts or in my conclusion?

(Fiftieth): Let me ask whether, when it was ascertained by the Board of Public Grounds and Buildings or by any of its members, that the figures of the total probable cost, as estimated by the architect, were being far exceeded, there was any explanation required by the Board or any of its members either of the architect or of the contractor or both, as to the cause of this increase, and whether or not it was ascertained to the satisfaction of the members of the Board that a mistake had been made by the architect in estimating the total probable cost of the contract.

(Fifty-first): An examination of all of the contractor Sanderson's bills, as attached to the warrants on file in the Auditor General's office, discloses the fact that the bills, while in conformity with the schedule, and particularly Items 22 and 32, did not figure out the price per piece, but dealt simply in summaries of totals of the number of feet and the number of pounds, multiplying the aggregate number of facts and the aggregate number of pounds by the maximum prices mentioned in the schedule, less the percentages off bid by the contractor, and thus, while the totals give the definite amount of each bill, yet without computation there is nothing to determine the price per piece of each article furnished.

I ask whether the Board or any of its members undertook to determine the value per piece by actual computation, or whether the totals were left to be verified by the Superintendent of the Board and the architect, both of whom have certified to the accuracy of the bills and their compliance with the terms of the contract, and both of whom I have specifically interrogated as to the methods adopted by them and each of them in order to test the accuracy of the bills, whether based upon the per foot rule, the per pound rule or the price per piece.

I shall make other matters, as to which information is desirable before a conclusion can be reached, as to the actual facts relating to the making and the execution of the Sanderson contracts, the subject of a future communication, and remain

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

Harrisburg, Pa., December 28, 1906.

Dear Sir: In reply to your letter of December, 1906, without more specific date, addressed to the Commissioners of Public Grounds and Buildings, we assume that your inquiries are directed to the two members of the Board individually who took part in awarding the contract of June 7, 1904. The State Treasurer is at present

a member of the Board but he necessarily knows nothing of the awarding of that contract or what preceded it save what he has learned by the communications from the other two members or from examination of the minutes and papers. All of these minutes and papers are tendered to you. Whatever information we can give is at your service upon inquiry, and we presume it will be more satisfactory to you to get such information in this manner rather than through other and secondary sources. The Governor, while he claims the right under the Constitution to make inquiries of any and all officials in the employment of the Commonwealth and denies the right of any and every official or other person to make inquiries of him concerning the performance of his duties, nevertheless cheerfully joins in this response because he believes it important for the information of the people and because he regards it as a step which will be helpful in enabling them to understand and appreciate what has been done in their behalf by the Board of Public Grounds and Buildings. At the outset we call your attention to the fact that two Governors, two Auditors General, and three State Treasurers, four of the seven being trained in the law, have participated to a greater or less extent in what has been done. Not one of them appears to have had any doubt of the power of the Board or of the propriety of the methods adopted except the present State Treasurer, and his misgivings were expressed not in the deliberations of the Board but in speeches to partisan assemblages in a political campaign. We now proceed to answer as fully and definitely as possible your inquiries:

1st. The Acts of Assembly which define our powers and measure the scope of our jurisdiction are, we think, fully cited in the third paragraph of your letter except that you have omitted any reference to the Act of June 28, 1885, approved by Governor Pattison, under which act the system originated, and which the Act of March the 26th, 1895, continued with what were regarded as reforms and improvements. We also call your attention to that part of the language of section 5, of the Act of 1895, which provides that "the Board shall have the right to reject any and all bids." This is important in showing that the purpose of the law was to give the determination of the questions arising under the act to the discretion of the three officials presumed to have the most knowledge upon the subject, and to entrust them with sufficient authority. The General Appropriation Act of July 18, 1901, in section 10, makes an appropriation "for repairs to and furnishing of the chambers and committee rooms of the two Houses of the Legislature and the several departments of the government." This same language is repeated in section 10, of the General Appropriation Act of 1903, P. L. page 529, and in section 10, of the General Appropriation Act of 1905, P. L. page 597.

Your 2d and 4th queries which appear to be in substance identical, we shall endeavor to answer together. In our opinion the power given to the Building Commission by the Act of July 18, 1901, was the power "to construct, build, and complete the State capitol building at Harrisburg." The practical exercise of this power was limited by the amount of the appropriation. What that Commission was able to do and undertook to do can be definitely ascertained by an examination of the contract which they made. The power given to the Board of Public Grounds and Buildings under the statutes heretofore cited was to repair, alter, and improve every and all buildings including the State capitol, to furnish and refurnish these buildings, and to do "all other matter or things required for the Public Grounds and Buildings, Legislative halls and rooms connected therewith."

On or about the 20th of January, 1903, to which date your 5th paragraph and inquiry are directed, the Board found outstanding all of the contracts for supplies, labor and materials made under the schedule of June, 1902, including a contract with the Pennsylvania Construction Company of Marietta, for equipping the various departments of the new capitol building with metallic cases. The resolution which had been adopted January 14, 1903, by the Board, consisting of Governor Stone, Auditor General Hardenbergh, and State Treasurer Harris, recited that this contract had been awarded and directed the preparation of plans and specifications under it. The later members of the Board felt that they had nothing to do with this contract except to carry it into effect according to its terms. They could not have broken the contract had they so desired, and they did not so desire because they recognized the fact that it is important both for the welfare and the reputation of the Commonwealth that contracts made in its behalf of those authorized to act for it should be carried out with fairness to all who are interested.

The resolutions cited in your 6th, 7th, 8th, 9th, 10th and 11th paragraphs are, we believe, correctly cited and they embrace substantially all of the facts within our knowledge. As to whether the plans approved by the architect overlapped "each other in any way contained duplications of items or enlarged the contract" of the Pennsylvania Construction Company based upon the plans presented by them can be best determined by a comparison of the two sets of plans. Our understanding of the matter, which was in effect determined by the architect, was that the contract to a certain extent was enlarged. The contract as made with the Pennsylvania Construction Company, provided only for metallic cases. These cases required changes adapting them to spaces and to make them harmonize in ornamentation with the rest of the fittings so as to be suited



to the building and its equipment. The architect recommended earnestly that these changes be made. If this work was to be done at all, it could only properly be done at that time, since to have had them finished and delivered and then at some future time sent away bronzed and ornamented, would have included much unnecessary expense. This work could only be done by the Pennsylvania Construction Company for the reason that they had possession of the cases and had the contract to construct them. The work was approved and the changes made. In a general way they consisted of adaptation, bronze and ornamentation, but the blue prints and lists of quantities in detail are on file in the office of the Auditor General and will show specifically what was done and they are herewith tendered.

13th. In reply to your query in the 13th paragraph, so far as the Board is informed no actual deliveries of metallic cases had been made for the capitol by the Pennsylvania Construction Company prior to the preparation of the new plans by the architect.

14th. An advanced payment of twenty thousand dollars had been made prior to December 8, 1903, which sum was deducted on settlement dated April 29th, 1904, for cases delivered.

15th. We have already in a general way indicated the character of the changes made in the plans by the architect and have also informed you how specific and detailed information can be secured. These changes involved an additional expense amounting in the whole to \$400,000. The architect reported to the Board the prices submitted by the Pennsylvania Construction Company. These figures can probably be given to you by the architect. No bills were paid by the present Board without the certificates of the architect and the Superintendent.

16th. In reply to your query in the 16th paragraph, the preparation by Mr. Huston of the plans for the metallic cases, as contracted for by the Pennsylvania Construction Company, was a partial revision to the extent which has been heretofore explained.

17th. The preparation of the plans by the architect consisted of an acceptance of what had been done by the Pennsylvania Construction Company, together with additional labor and material thereon to make such articles conform to the plans, the architecture and the equipment of the building. The character of the revision and the additional expense have been heretofore given.

18th. As has already been stated, there were other contracts made under the schedule of 1902, of a general character for supplies, labor and material, by our predecessors as members of the Board of Public Grounds and Buildings, but none excepting that with the Pennsylvania Construction Company for metallic cases which seems to us to be material in this inquiry.

19th. Your 19th paragraph contains no query .

20th. The information contained in your 20th paragraph was furnished by the architect to the Board and was regarded by the Board in the light of a suggestion by the architect of the Building Commission with the knowledge he possessed of its contract of the construction of the building and of its needs as to what ought to be its proper treatment by the Board of Public Grounds and Buildings in order to utilize it for the requirements of the Commonwealth.

21st. We append to this communication copies of letters of September 9, 1903; September 11, 1903, and September 15, 1903, as you request, marked "A."

22d. With respect to the 22d, 23d, 24th and 25th paragraphs, we answer as follows: At this time the construction of the capitol had so far proceeded under the contract of the Building Commission and under their direction as to make it manifest that the building would be in its arrangement and with respect to its architecture eminently satisfactory for the purpose for which it was intended as well as beautiful and artistic. It reflects great credit upon the Commission having it in charge, but their powers had been limited by the amount of the sum appropriated by the Legislature. The building is so extensive that we cannot undertake to speak at all in detail, but it may be said in a general way that had it been left in the condition for which their contract provided it would have been without light and necessary thermostatic heat regulation, without means of approach; without the panelings on the walls, without the fire places and mantel pieces; without the important part of the decorations in the House and Senate rooms; without the rich decorations of the great central dome, including the citations from the writings of Penn, selected by the Governor, which represent the spirit of the building, and without the twenty-eight paintings of Mr. Abbey, yet to be placed, covering 4,438 feet of wall space, and the paintings of Van Ingen and Alexander for the corridors, without the decorations in 470 rooms and many other features, as well as without cases or furniture. At this time the departments of the State government were doing their work scattered over the town in rented buildings, the largest of them being the Bay Shoe Building, which housed several departments, and which stood along side of the railroad surrounded by wooden structures and lumber piles in continual danger of destruction by fire, and the Commonwealth was paying the rent for these buildings. The heads of the departments and employes were endeavoring to do their work under these conditions, but properly anxious to get into the hall provided for them as soon as possible. By the statutes which have been cited, the duty was imposed upon the Board of making provision for the departments and the authority had been given to them. This author-

ity had been exercised upon numerous occasions and was supported by numerous precedents throughout many years and terms of office. It is being exercised to-day though with less publicity. At the last general meeting of the Board held December 5, 1906, when all its members were present it was unanimously determined to alter and improve the Executive building, which cost \$500,000, without equipment, under Governor Pattison's administration, so that it may be prepared for use as a library and museum. At a subsequent special meeting of the Board, all of the members being present, it was unanimously determined to erect telephone booths in the House and Senate rooms in the new capitol. These booths were not included in the contract of the Capitol Commission, nor were they on the plans of the architect adopted by the Board. This work in both instances is now being done in the exercise of the same authority, and differs, not in principle, but only as to the amounts to be expended. The only question which arose was as to the manner in which the equipment of the capitol should be performed. The Board recognized that it would be easy to ruin the whole of the work by meretricious ornamentation and cheap and unsuitable equipment. They felt that their duty required them to endeavor to perform their task in such a way as to harmonize with the building and to be creditable to the Commonwealth. None of them were builders or architects or artists, all of them were very busy with other necessary labors, and none of them had the qualifications which would have enabled them to supervise a work requiring such technical skill. They therefore did as every sensible man would do with his own affairs under like circumstances and employed an architect. In making the selection there were many reasons why Mr. Huston should be the representative of the Board. He had proven his unusual capacity; he was familiar with the contract, knew the building, what was required for it, and in this way uniformity of design, which was of the utmost importance, could be secured. The Board after strenuous efforts obtained his services at one per cent. below the usual architect's commissions. The building itself is the proof of the wisdom of the selection. Having employed an architect in whom they had confidence, they then necessarily depended upon him in the determination of the practical questions which arose. For them to have interfered with the details of ornamentation and equipment would in all probability have been to have spoiled the effect of what was done. The plans were prepared by the architect and submitted to the Board on the 5th of April, 1904. They were then given over to the Superintendent in order that the Board might likewise have the benefit of his thought and he approved them. On the 12th of April, 1904, they were approved by the Board. This action as you suggest had resulted in a definite determination of the

subject matter of the contracts to be entered into, save that the Board might have subsequently adopted additional plans if it had been found necessary. The reason why the resolution of April 12, 1904, was not carried into effect, with respect to advertising, was because of a sense of uncertainty due to the fact that the Act of 1895 fixes another time of the year in which advertisements shall be made.

26th. The plans themselves will show definitely whether or not it is possible "to determine with accuracy, the exact number, quality, character, design, and material of each article to be furnished." That, however, was the purpose intended to be accomplished by their preparation. No estimate was at that time presented by the architect of the quantities which would be required, nor did the architect at that time present figures fixing the maximum price.

27th. The architect did not at that time suggest the per foot rule as a proper method of reaching the value of articles of furniture and the per pound rule as the proper method of determining the value (you have said "weight") of electric fixtures.

28th. At that time the architect did not give the probable cost of the entire contract as presented in and represented by the plans, drawings and specifications.

29th. The Board did not consider that the contract finally adopted was one at all in the nature of a quantum meruit, but as the purchase of a definite article for a fixed price, save that under the system provided for by the Act of 1895, the schedules prepared by the Board do not fix the number of the articles to be furnished. Usually the number is left to be decided by the Board itself in the orders which it gives. The contractor is required to fill all of the orders. The subject matter is defined and the price is fixed, but the number is left to be determined.

31st. As has been heretofore stated, the rescission of the resolution of April 12, 1904, was regarded by the Board only as a rescission with respect to time.

32d. The action to which you refer did not involve any less publicity of notice to bidders. On the contrary the plan pursued gave greater publicity since the advertising was extended to 14 newspapers instead of 12.

In answer to the queries contained in your 33d and 34th paragraphs, there was no discussion before the Board by any or all of the members or with the Superintendent as to the meaning and effect of the per foot rule and the per pound rule. The architect was directed to prepare the item of special design work for the schedule in such a way as to secure the best results, having in view the production of the result covered by his plans and specifications. The Board knew nothing about the importance of the per pound and per foot method of valuation, except that they

found it in use on previous schedules and that in a general way some of them knew that such elaborate and complicated problems of manufacture as the construction of steel railway bridges had their value so determined. Of course they did not need technical information to instruct them that a chair is a more simple article of manufacture than a steel bridge. If there be any objection to the method of valuation by the per foot and the per pound rule it is a remarkable fact that throughout the course of advertising covering a period of from three to four weeks during which time, as we were informed, many persons examined the schedule and plans with a view to bidding, not one of them objected to the Board to the method adopted. If anybody had seen then, what some people profess to see now, and had called the attention of the Board to any uncertainties in the schedule they could have been corrected. We ought to add further that we have no reason to believe that this is not an entirely proper method of valuation and one in general use.

35th. The Board directed the preparation of the special schedule. The object was to attract as widely as possible the attention of contractors. They thought then and they believe now that in separating that schedule from the general schedule with its many items and calling particular attention to the special schedule and in referring in it to the new capitol they were taking the best possible means of securing favorable results for the Commonwealth. The actual preparation of the schedule was done by the Superintendent and the architect.

36th. The manuscript of the special schedule was presented and approved by the Board prior to the advertising.

With respect to the 37th and 38th paragraphs, no such analyses as you describe were made.

39th. The architect did not explain to the Board how he fixed the maximum prices, designated in the column in the schedule, opposite each item. He was an architect of experience presumed to have such information, and these maximum prices however accurate or inaccurate, represented his experience.

In respect to the 40th and 41st paragraphs, the resolution of June 7, 1904, was not the first mention of a probable price. The judgment of the architect as to the probable price had been ascertained by requiring him to fix the figures upon the schedule for which, according to his judgment, these articles could be secured. We therefore had his estimate in detail. After the bids had been opened and it was found that the bid of John H. Sanderson was much the lowest bid made, the Board were still anxious to know what, in the judgment of the architect, the whole work was likely to cost. The Board then wanted as nearly as it could be secured an approximation of the total figures. They did not suppose then this

total could be given with anything like accuracy, because of the magnitude of the transactions and the number of its details, but they wanted such information as the knowledge of the architect could furnish them. It was a general estimate.

42d. By the resolution of April the 12, 1904, the Board determined to award the contract as an entire contract. It was believed that by the adoption of this course the best result would be secured for the Commonwealth. In the first place it ensured uniformity of treatment as well as design. The object was not to buy single articles of furniture as one buys in a store, but to equip an enormous building in a special way with everything there was need for in it. It would little help the Commonwealth if a single article could be bought for a less sum if upon the whole it had to make a greater outlay. On opening the bids it was found that on 37 of the 41 items Sanderson was the lowest bidder and on most of them very much the lowest bidder. The question was determined by a comparison of the bids and not by an attempted estimate as to what would have been the amount upon the total sum of purchases under all of the items which result they had no means of securing.

43d. The letter of J. M. Shumaker on the 7th of June, 1904, was a general order to the contractor. This was followed by the adoption, on December 13, 1904, by the Board, of a series of "quantity plans," if we may so term them. That is, plans were drawn by the architect, submitted to the Board and approved, which contained a complete description of the building, with a further description of each article to be supplied to each room and its location, the number of the room and the number of all the articles within the room. These plans are submitted for your examination. As an interpretation of these plans a descriptive volume containing 361 pages was prepared for the use of the Auditor General, by the architect and the Superintendent, and certified by them. This volume is also submitted for your examination. We presume that a copy of these plans was furnished to the contractor by the architect. If so, Mr. Sanderson is correct in saying that he had a complete and specific order for each of the articles to be furnished.

44th. This paragraph is covered by the answer to the 43d paragraph.

45th. The Board did not nor did any of its members undertake to direct Mr. Sanderson specifically as to what amounts of each article were required nor as to the specific item of the special schedule under which goods were required to be delivered. The guide to Sanderson was the "quantity plan" to which reference has been made.

46th. At no subsequent time was there any modification, alteration, addition or variation of the terms of the contract entered into,

either as to the character, quality, material, quantity, price or standard of price in the articles covered by the contract of John H. Sanderson, except that on December 13, 1904, the Board substituted for the expensive carpet upon the special schedule another carpet at a much less price which appeared on the general schedule, which carpet is precisely the same kind of carpet and at the same price which Mr. Sanderson has undertaken, by a recent renewed order of December the 18th, 1906, to make for the House and Senate, and except that on a certain day in December, 1905, the Board, finding that the expenses of equipment of the capitol had reached figures beyond their anticipations, ordered that no work up to that time not commenced should be undertaken.

47th. There were no data before the Board other than those already referred to.

48th. Prior to the meeting mentioned in December, 1905, the Auditor General called the attention of the Governor to the fact that the moneys paid to the contractor had already considerably overrun the figures which had been anticipated. At this meeting the order was given that nothing up to that time not commenced should be undertaken. In justice, however, to the architect it ought to be said that the figures have been very largely perverted and therefore probably misunderstood. The entire cost of the furniture has been \$876,066.44. In order to make up the \$9,000,000 which have been widely published as the cost of the "furnishings" incurred by the Board, it has been necessary with great ingenuity, and no truth, to include the sum of \$550,000, expended during the administration of Governor Hastings in erecting the walls of a building afterward practically abandoned, the further sum of \$303,693.14, expended in preparing the eighth story of the capitol for the use of departments not in existence when the Capitol Commission made its contract, and many other items requiring the exercise in almost equal degree of the same qualities of mind.

49th. The query contained in this paragraph has already been answered.

50th. The statement of facts made by you in the 50th paragraph is substantially correct. The authority for the course pursued is given to the Auditor General and State Treasurer by section 10, of the Act of May 11, 1903, and by section 10 of the Act of May 15, 1905, and also by resolution of the Board of Public Grounds and Buildings of January 10, 1905. It was at the request of the Auditor General that subsequent to March 14, 1906, the bills were submitted to the Board at its meetings, and approved in writing by them.

51st. At the meeting before mentioned in December, 1905, the architect was present by request. An explanation of the estimate and the increased figures was given. In further justice to the archi-

tect it ought to be stated that his general estimate was not intended to cover the metallic cases and had nothing to do with the fitting up of the eighth story. You need not of course be told that it is very much easier to calculate now than it was to estimate at the outset.

52d. In addition to the certificate of the architect and the Superintendent, and the affidavit of the contractor as to the correctness of the bills, the Auditor General had in the books to which reference has been made and the bills the number of feet or the number of pounds, as the case may be, the number of the room, the number of the articles in the room and the price fixed, so that he was as to the article able to verify the correctness of the bill and did in each instance so verify it by actual computation.

In conclusion let us say that we shall take very great pleasure in answering any other queries upon this subject which you may feel it important in the course of your investigation to make. Permit us also to suggest that you broaden the scope of your inquiry so as to ascertain whether or not the capitol could have been then or could now be erected and equipped as it is for a less sum than has been expended on it, and whether or not any other similar building has been so economically completed. This appears to us to be the one pertinent and important inquiry and so far it has been persistently kept out of public sight. There is another matter which a judicial and judicious investigator will bear in mind. No farmer, when asked the cost of his barn, includes the oats in his bin. No citizen, when asked the price of his house, includes the paintings which hang on the parlor walls. This capitol has been subjected to a test never applied to a public building before so far as we know. When the United States government publishes the cost of the capitol at Washington as \$15,000,000.00, it means only the cost of erection and not of equipment, and so of all other public buildings with which comparison is made. When it is proclaimed that this capitol has cost \$13,000,000.00, those figures are only reached by adding to the expense of erection everything in and about the capitol, as well as the expense of the abortive attempt of ten years ago.

The Governor was inaugurated on the 20th of January, 1903, and the Auditor General entered upon the performance of his duties May 3, 1904. What each has answered concerning events prior to these respective dates has been based upon the examination of papers and upon information. The Honorable William L. Mathues, who was State Treasurer from May 2, 1904, to May 7, 1906, we have had no opportunity to consult.

SAML. W. PENNYPACKER,  
W. P. SNYDER.

Honorable Hampton L. Carson,  
Attorney General, Harrisburg, Pa.



"A."

Harrisburg, Pa., September 9, 1903.

Joseph M. Huston, Esq., Philadelphia, Pa.:

My Dear Sir: It has been suggested to the Board of Public Grounds and Buildings that it is important that the preliminary steps should be taken to provide for furnishing of the capitol, after its erection. It is further suggested that you, as architect for the erection of the building, would, because of your knowledge of the building, be the most suitable person to select as architect to prepare the plans and specifications, and detail drawings for all interior fittings, furniture, electric and gas fixtures. It is important nevertheless, that the work should be done as economically as possible. No doubt, because of the fact that you already possess such information of the magnitude of the contract, including capitol and furniture, you will be willing to make special terms advantageous to the State.

Please let us know, as promptly as possible, upon what terms you would undertake the work.

Very truly yours,

(Signed)

JOHN E. STOTT,  
Secretary.

---

Joseph M. Huston, Architect,  
Witherspoon Building, Philadelphia,  
September 11, 1903.

John E. Stott, Esq., Secy. Public Grounds and Buildings Commission, Harrisburg, Pa.:

My Dear Sir: Your letter of September 9th has been received. In reply I beg leave to state that I will undertake the work therein named, that is to prepare the plans and specifications and detail drawings for all interior fittings, furniture, electric and gas fixtures for the capitol building for the sum of 5 per cent. on cost of the work.

I take the liberty of enclosing to you a hand book containing on page 760 the charges and professional practice of architects, which will show to you that my work would be done as economically as possible for the State. You will please return book when you have finished with it.

I hold myself in readiness to meet your Board in Harrisburg at any time you may appoint.

When I am commissioned to do the work, I shall do everything in my power to push it to completion so that the halls will be ready for the meeting of the next Legislature.

Very truly yours,

(Signed)

J. M. HUSTON.

---

September 15, 1903.

Mr. J. M. Huston, Architect, Witherspoon Building, Philadelphia, Pa.:

My Dear Sir: I am in receipt of your letter, also book. I beg to state that same will be presented to the Board. I will return the book after their meeting. If they wish you at any time will wire or write.

Very respectfully,

(Signed)

JOHN E. STOTT,  
Secretary.

---

- Office of the Attorney General,  
Harrisburg, Pa., Dec. 29, 1906.

Hon. William H. Berry, State Treasurer:

Dear Sir: Your letter of the 17th inst., and a request of the Auditor General for an official opinion as to his duty under the circumstances detailed by you, call for attention somewhat earlier than I had anticipated. I enclose a copy of my reply to the Auditor General, for your information.

I have been engaged for weeks past, as you know, in an exhaustive and laborious inquiry into the origin, making and manner of fulfillment of the contracts relating to the furnishing, equipment, alterations and improvements of the State capitol by the Commissioners of Public Grounds and Buildings, and am still engaged upon that work. Until I receive replies to all of the interrogatories which I have addressed to the contractors, architect and State officers, and send out one or two additional letters of inquiry, I cannot advise you of the legal position which can be safely assumed by the Attorney General in regard to an attack in the courts upon executed contracts, involving questions of the utmost legal difficulty, because of the fact that the contracts have been completed by the delivery of the goods and the payment of the moneys therefor, except as to a comparatively trifling balance alleged to be due, which does not effect the principle.

I can advise you, however, that as to executed contracts—that is, contracts which have been completed upon both sides by the sale and the delivery of goods and the payment of the moneys therefor—you have no present duty as State Treasurer to perform. The contracts were made by the Board of Public Grounds and Buildings prior to your becoming a member thereof, and the payments were made by State Treasurers prior to your present incumbency. No question of your responsibility as State Treasurer, nor as a member of the Board of Public Grounds and Buildings in relation thereto, can by any possibility arise, except as to acts in which you participated or had the opportunity to participate, and you are therefore officially freed from any duty of criticism or responsibility as to past acts. I may add that it is not the function of the State Treasurer to challenge the business acts of his predecessors, unless there be positive evidence of wrong doing of acts of fraud, of which you have discovered evidence, not in the shape of inferences, but of facts disclosed by the books or the records of the department. Nor is it the function of a present member of the Board of Public Grounds and Buildings to challenge the business acts of his predecessors, the whole responsibility for which rests upon them. In the absence of any evidence of fraud, of which, if you charge that it exists, you must be prepared to give the evidence, not by way of argument, but of acts, any action which you may take in relation thereto, or any attitude which you may assume thereto, must necessarily be personal and individual, and not official; nor can your sureties be involved in such matters.

In regard to your attitude toward the unpaid bills of John H. Sanderson and Joseph M. Huston, concerning which you wrote me on December 17, I might with entire propriety treat your letter as a simple notification to me of your attitude toward these bills, accompanied by a statement of your reasons for declining to approve them, but it seems scarcely fair to you that I should do so, particularly in view of the fact that this letter was written to me and made public some hours before the bills themselves had been acted upon by the members of the Board.

You state in your letter that as a member of the Board you decline to approve the bills, and you add further that, as Treasurer you decline to approve the settlements or pay the warrants, if issued. A mere notification to the Attorney General of the reasons for your act does not impose upon me any responsibility, nor change the legal status of yourself as an officer. I ought to point out to you that, although you are the State Treasurer and also a member of the Board of Public Grounds and Buildings, you ought not to confuse your relations or carry your functions as State Treasurer into the performance of your duties as a member of the Board.

Government is a human contrivance for the conduct of the public affairs of society, whether organized as a nation, a state or a municipality, and under the Constitution and statutes various functions have been assigned and various powers delegated to different officers for the effective carrying on of administrative work, in which the lines of demarcation between the jurisdiction and powers of certain officers, boards and commissions are distinctly drawn and should not be lost sight of, even though the same man as an individual may find himself a member of one, two or more boards, commissions, or holding two or more official positions. The action of any board, however composed, must necessarily be complete and effective to accomplish its purpose, even though one of its members, holding another State office, may dissent from its action, and a State officer, holding a position outside of the Board, cannot use his authority, as such officer, to obstruct or impede the orderly performance of duty on the part of a Board of which he finds himself a minority member. Any other doctrine would throw the government into confusion, and render its operations impracticable. Hence it follows that, while you are State Treasurer and also a member of the Board of Public Grounds and Buildings, it is necessary for you to keep clearly in mind the difference between the functions, powers and duties which you possess in these various capacities, just as much so as if you did not hold both positions; and it follows from these considerations that you cannot, as State Treasurer, undertake to carry your views, as State Treasurer, into the Board of Public Grounds and Buildings. You must act there as a member with your colleagues, or as dissenting from their views, precisely in the same manner as though you held no other State office; and it follows further that the expression of your dissent, as notified to me by your letter of December 17th, and as an expression of your intention to act in a certain designated manner as State Treasurer, can have no legal effect whatever on the action of the Board. In other words the presentation of your reasons for disapproving of the bills of Messrs. Sanderson and Huston should have been legally expressed at the meeting of the Board of Public Grounds and Buildings, and spread upon the minutes, so that you would have secured the advantage of having upon the minutes a statement of your reasons for dissenting from the action of the majority of the Board and guarded your own conduct, as such member, from the legal consequences of having erred in manner and place as to the proper method of expressing your dissent.

As the record now stands, your reasons, as notified to me, and your statement of an intention to act in a certain manner as Treasurer, cannot in the slightest degree affect the legal position which now exists to the effect that a majority of the Board of Public Grounds

and Buildings has approved the bills of Messrs. Sanderson and Huston, which were duly certified to by the architect, and also approved by the Superintendent of Public Grounds and Buildings.

I have thus gone into detail in order that you may fully understand the legal significance of what you have done, and in order that you may not be misled into the thought that what you have done outside the Board has any effect whatever upon what the Board has done. The legal position, therefore, is that the bills have been approved by a majority of the Board, and you cannot make your dissent, which is that of a minority member, effective legally to overturn the approval of the Board by indicating to me the reasons upon which your dissent was based, or by following that up with an expression of your intention as State Treasurer to refuse to join in a settlement with the Auditor General, and to refuse payment of the warrants, if such warrants be issued.

So far as the expression of your determination not to join the Auditor General in a settlement certificate is concerned, and of your intention not to pay the warrants, if issued, I must advise you that it is entirely within your power, as State Treasurer, to take this position, but I am bound, in fairness to you, as the law officer of the State, to advise you that power is not always synonymous with right. It is not within my province to determine whether you are right or wrong. If you desire to have the legal right tested, and to this end persist in your refusal, of course the matter can be brought, and doubtless will be speedily brought, before a court for a judicial determination, which is the only proper method of disposing of it.

Mandamus proceedings to compel you to join in the settlement certificate, or to compel you to pay the warrant, may be instituted. The institution of them rests, of course, with the claimants themselves, and it is not for me to suggest what they should do, but should such mandamus proceedings be instituted, it will then be your duty to file, through the Attorney General, an answer to such proceedings, setting forth the grounds upon which your refusal to act is based. It is at this point that I feel it to be proper to inform you that an issue thus framed in court is subject to the rules which govern legal practice. The answer of the treasurer, setting forth his reasons as to why he has refused to join another State officer in a settlement, which is an unnecessary step following that of approval of the bills by a majority of the Board of Public Grounds and Buildings, or why he has refused to honor a warrant upon the treasury, drawn by the Auditor General to make payment of a bill adjudicated by the Board, as due to the contractor, must necessarily disclose grounds which can safely be presented to the consideration of a court, and those grounds must rest upon testimony or upon legal objections which can be safely urged by the Attorney General upon

the attention of the court. Behind each fact there must be a witness or a document. It will not be sufficient to aver a mere belief that the contract was improperly entered into, no matter how strong or honest your personal beliefs may be. You must disclose the grounds of your belief, and you must be able to sustain them by witnesses competent to testify or to express an opinion.

As you are not an expert in the line of these contracts, you will not be permitted to testify as such expert, and as you have no personal knowledge of the manner of performance, your testimony would probably be objected to by counsel for the claimants. If you should fall back upon the opinions of experts in the line of the work criticised, you must be careful to see that the experts called upon to express adverse opinions are men who measure up to the full requirements which the court will exact of experts before they are permitted to express their views; and it is not going too far to say that the courts will probably require the expert to be skilled in the particular line of work criticised, and that his own experience must be in the line of contracts of the same character, magnitude and importance as those which he is called upon to disapprove. In other words, the experts must rank in the same class with those whose work is criticised.

To use an illustration which will make my meaning plain, the captain of a river tug boat could not be called as an expert in admiralty proceedings to criticise the conduct of the captain of an ocean liner, nor could a house or sign painter or a paper hanger, in a small way, be called on to express an opinion upon the value and character of performance of work taking high rank, or claiming to take high rank, as an artistic production.

I am not in the slightest degree intimating what my own views are in respect to this matter, for it would be improper for me to do so, nor am I intimating what my views are either upon the problem as a whole or in detail. I am simply advising you, as I am in duty bound, and as having a clearer perception than you can have of the legal difficulties of your situation, that when you are called upon to face the problem of defending your action, as contemplated, in a court of justice, you will be put to the extreme test of being able to produce witnesses whose testimony will fully sustain your position and whose competency will be undoubted. There is humiliation in a position which, if taken, finds itself unable to stand.

These thoughts are not intended in the slightest degree to influence your conduct or to deter you from the line of what you conceive to be your duty, but they are intended to make plain to you all of the difficulties of the situation before you commit yourself definitely to a position of resistance. Resistance means the ability

to defend. To defend has a technical significance. In this sense it is necessary for a defendant, in his affidavit of defense, to swear that he is informed, believes and expects to be able to prove every material ingredient of his defense. That does not mean a mere theoretical belief or a mere conjectural expectation; it means that he has witnesses or testimony, which, in the judgment of his legal adviser, justify him in the reasonable expectation of being able to prove legally the ingredients of the defense. Nothing short of this would be accepted in a court of justice, and nothing short of this can be dispensed with in a case so grave.

Let me add that you have not furnished me with the names or the addresses of the experts to whom you have once or twice alluded in correspondence, nor have you sent me their reports. If you send them to me, I will candidly examine them, and if I find them insufficient will gladly point out to you their defects, and willingly suggest the line and character of the testimony you ought to secure; or if, on the other hand, they be sufficient to justify their presentation to a court, I will cheerfully draft your answer in mandamus, should such proceedings be instituted before my retirement from office.

I note that, in closing your letter of December 17th, you state that the Legislature will meet in a short time and you will await its instruction.

The Legislature must, of course, be a judge of what it deems proper under the circumstances, but legally the Legislature cannot give instructions to an executive officer, particularly if that officer be not charged with the duty of protecting the legal interests of the State; nor could the Legislature pass any act which would impair the obligation of a contract, that being a matter prohibited by the Constitution of the United States. The bald, unmistakable feature that must be confronted is this: to undo an executed contract there must be proof of fraud or collusion, either in the making or in the execution of the contract. Unless the proof measures up to these requirements, the executed contract will stand, and it will require a very much stronger measure of proof than if the contract were executory. I am looking for such evidence, and if I can discover any in the search I am making, or you can furnish me with any, of course it will be utilized, if strong enough to bear just legal scrutiny, in the defense of the mandamus. It must not be inferred that, because I am making such a search, fraud exists. The legal attitude under the Constitution and laws must be that fraud and collusion must be found, before it can be alleged, and as to the acts of all public officers there is a presumption that they were rightly done. As was said by Chief Justice Woodward in the case of *Philadelphia v. Commonwealth*, 52 Pa. St. Rep., 453: "the submission of all necessary vouchers, and all due examination and deliberation are to

be presumed. It was a public duty performed by officers of State, and the maxim applies, *Omnia praesumuntur rite acta.*” This is binding upon you as well as upon me. It would be folly for either of us to ignore it.

Very truly yours,  
HAMPTON L. CARSON,  
Attorney General.

---

Office of the Attorney General,  
Harrisburg, Pa., Dec. 29, 1906.

Hon. William P. Snyder, Auditor General:

My dear sir: I find it necessary, in the course of the investigation I am making into the contracts and expenditures relating to the Capitol, to address to you several interrogatories which I deem pertinent to the inquiry.

1. It is important to ascertain the total amount of these expenditures and the manner in which they were made. As you are in possession of all of the vouchers representing expenditures and the warrants by which payments of the various bills were made, will you oblige me by stating, on one side of the account, the aggregate of the expenditures, both for the Capitol Commission and for the Commissioners of Public Grounds and Buildings, and, on the other side of the account, the various sums expended by both of these bodies, stating the chief heads under which the expenditures were made.

To make my meaning plain, it is generally known that the sum of \$4,000,000 was expended by the Capitol Commission; that the sum of upwards of \$2,000,000 was expended upon metallic cases; and that to this there must be added the additional amount required by the alteration in the plans made by Mr. Huston, the architect, in order to make the cases, as furnished, conform to the furnishings and design of the various rooms; that \$876,000 was paid for furniture; that \$500,000 was expended upon a building started during Governor Hastings' term. What I desire to know—these heads being suggested merely as illustrative—is how the sum total is accounted for by arrangement under appropriate heads. I cannot ask you to give a detailed book-keeper's statement, as that would impose too vast an amount of labor upon you, and simply confuse by its intricacy of detail, but I would like to see summed up upon the credit side of the account, under sufficiently descriptive headings, the various sums, so that the people may be informed as to how what is alleged to be an aggregate sum of \$13,000,000 was actually expended, when the payments were made and to whom. Will you



kindly arrange this matter in a tabulated form, so stated as to be easily comprehended.

2. Inasmuch as you have in your possession the data from which to determine the subject matter of the various expenditures, I should like to be informed whether you are aware of any duplications of payments or overlapping by which either Payne & Company were paid for work which they did not do, and for which they allowed no proper credit, or, if they were relieved of any portions of their contracts, similar work was done by the Commissioners of Public Grounds and Buildings, and what sums were paid, if any, for such work.

3. It has been charged that, in the matter of decorating and painting, there was paid by the Board of Public Grounds and Buildings the sum of \$779,472.96; that Payne & Company were required by their contract to do all plain plaster walls and ceilings of all rooms and corridors throughout the basement, first, entresol, second, third and fourth floors "not otherwise specified" with four coats of white lead and linseed oil paint, the last coat to be stippled down to a fine egg shell finish in colors as directed; that Payne & Company were relieved of this and an allowance made therefor of \$25,000; that the work of a decorative character "otherwise specified," which was not excepted, and therefore included in the contract of Payne & Company, was contracted for under the head of "Decoration and Finish of Plaster Walls and Ceilings in the Grand Executive Reception Room, House of Representatives, Senate, Supreme and Superior Court Room, and the Grand Rotunda and Dome;" that this work, being so contracted for by Payne & Company, was subsequently paid for to Sanderson by the Board of Public Grounds and Buildings in the following amounts:

Grand Rotunda of Dome, .....	\$122,724 00
Senate Chamber, .....	50,000 00
House of Representatives, .....	87,711 12

---

Making a total of ..... \$260,435 12

which, it is charged, is a clear duplication of payments to this amount. I cannot satisfy myself as to the correctness of this charge without being further advised as to the particulars.

4. Be kind enough, from an examination of the vouchers in your possession, to give me all the information applicable to this matter, or refer me to those items in the Sanderson contract, as contained in the book prepared for your guidance when vouching bills, to enable me to determine whether Sanderson did that which Payne & Company had contracted for, or whether Sanderson did something in lieu of or by way of substitution for that which Payne & Company

had contracted to do, or whether what Sanderson did was in addition to and exclusive of that which was done by Payne & Company.

5. Be kind enough also from the vouchers in your possession to give me such explanation as appears from the data of what was to be done as to enable me to understand the difference in cost between decorating a ceiling in Room 118, the treasurer's private office, and Room 121, the Auditor General's private office, and state whether or not the vouchers show that the rooms were similar as to size and amount of space decorated, and yet were billed at a different price.

6. If so billed, what explanation appears on the face of the vouchers to account for the difference in prices, it being alleged that the first cost the sum of \$5,481.00 while the second cost but the sum of \$2,300.76.

7. It has also been alleged that the ornamental plaster in the two rooms referred to was included in the contract with Payne & Company, and paid for in the lump sum received by them, and that these items were not excepted; that under the contract with Payne & Company for ornamental and moulded work the following portions were to have plain and ornamental plaster work; to wit: The Grand Executive Reception Room, House of Representatives, Senate, Rotunda and Dome, Supreme and Superior Court Room, all rooms comprising the Executive Department, the room assigned to the Auditor General, Attorney General, State Treasurer, Secretary of the Commonwealth and Secretary of Internal Affairs, and their Reception Rooms and Libraries of the House of Representatives and Senate, the Ante Rooms of the House and Senate, the Lieutenant Governor's Room, Reception Room and Ladies' Room on the second floor (wing B front), the two reception rooms on either side of the main entrance vestibule in the center of the building. The room of the Speaker of the House on the first floor, the two rooms of the President Pro Tem. of the Senate, all corridors throughout the building except basement and wherever specially noted or shown on the drawings. All rooms throughout all floors above the basement not otherwise specified, shall have a three inch cove at the intersection of walls and ceilings. All windows throughout basement, first and entresol floors shall have plaster jambs and heads with metal beads as above specified, unless otherwise shown. Full size models were to be furnished to the architect for all ornamental plaster and the modeler was to be subject to his approval.

Was the foregoing work done by Payne & Company? If so, was it paid for? If not done by Payne & Company, by whom was it done and how much was paid for it? Was the work, if done by Sanderson, in lieu of or in substitution for that called for by the Payne contract, or was it in addition to or exclusive of that done by Payne & Company?

8. As to Rooms 116 and 117, it is charged that there are 270 square feet in each ceiling and 530 square feet in the walls of each, or 800 feet in each room; that under the system of measurement adopted by Sanderson the rooms were billed as 292 feet at \$2.52 per foot, or at \$735.84 each. Be kind enough to inform me what the vouchers in your possession disclose as to the measurements and as to charges for decorating and painting.

9. Be kind enough also to inform me whether, from any vouchers in your possession, it appears that there is a duplication of payments made to Payne & Company for work done upon vaults and vault doors, for which the sum of \$66,000 was paid to the Pennsylvania Construction Company.

10. Was there any wainscoting done by Sanderson & Company and paid for by the Board of Public Grounds and Buildings, which was included in the wainscoting to be done by Payne & Company under their contract? If so, to what extent was there an overlapping, and was there a duplication of payments in this regard?

11. Was Payne & Company paid for any wainscoting not done by them or for which they made no proper allowance, or was the wainscoting done by the Board of Public Grounds and Buildings in different rooms from those contracted for by Payne & Company? Was the wainscoting thus done in addition to and exclusive of the wainscoting contracted for by Payne & Company? I am

Very truly yours,

HAMPTON L. CARSON,  
Attorney General.

---

Department of the Auditor General.

Harrisburg, Jan. 2nd., 1907.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Penna.:

Dear sir: Your letter of December 28th, 1906, advising me that you find it necessary in the course of the investigation you are making into the contracts and expenditures relating to the Capitol, to address to me several interrogatories which you deem pertinent to the inquiry, was received and which I take pleasure in answering.

In answer to the first interrogatory, I submit herewith a tabulated statement of all the expenses of building and equipping the new Capitol Building, including the appropriation made by the Legislature, approved April 14th, A. D. 1897; also, explanatory of the sum total accounted for, I have attached to the tabulated statement, statements giving the date of the bill, amount of bill, architect's certificate, date paid, warrant number and to whom paid. In the tabulated statement I have designated the headings of items under "Expenses of the New Capitol" by numbers; the "Date of the Bill,"

"Amount of Bill," "Architect's Certificate," "Date Paid," "Warrant Number," and "To Whom Paid" by a corresponding number, to number on the tabulated statement.

Second Interrogatory: I am not aware of any duplications or overlapping by which Payne & Company were paid for work which they did not do and for which they were allowed no proper credit, and if they were relieved of any portion of their contracts, it was what was considered at the time by the Capitol Building Commission as a fair compensation for work so omitted. George F. Payne & Company were relieved of laying pine flooring, for which an allowance of \$7,100.00, was made. The Board of Public Grounds and Buildings ordered interlocking parquetry flooring, and copies of bills paid by the Board of Public Grounds and Buildings are attached to my letter to you of October 24th, 1906. Also omission of two glass mosaic bands around the main rotunda and the four glass mosaic circular medallions in the main rotunda, for which an allowance of \$14,580.00, was made by George F. Payne and Company. These bands were covered by glass mosaic with inscription from writings of William Penn. The medallion spaces are to be covered by paintings of Edwin A. Abbey. The glass mosaic was paid for to John H. Sanderson, and the Abbey paintings are to be paid for by the Board of Public Grounds and Buildings to Abbey, as this item was assigned by John H. Sanderson to Abbey and a contract executed between Abbey and the Board of Public Grounds and Buildings, December 14th, 1904 (see, tabulated statement).

Omissions of the painting of all walls and ceilings of all rooms and corridors as called for in paragraph 2, page 57, of the specifications, excepting walls and ceilings of toilet and bath rooms. Omission of Thermostatic Regulations from the mechanical plant entirely (see copy of bills paid and attached to my letter of October 24th, 1906).

Other omissions, additions and modifications from Capitol Building Contract, will be found in contract between Capitol Building Commission and Payne and Company. Minutes of Capitol Building Commission and letter to Chairman of Capitol Building Commission under date of August 24th, 1906, copies of these papers are now in your possession.

Interrogatories Three and Four: I shall answer together: On the receipt of the first bill from John H. Sanderson for decorating and painting. I addressed a letter to Joseph M. Huston, architect, under date of January 10th, 1906, which reads as follows:

Harrisburg, Penna., Jan. 10, 1906.

Joseph M. Huston, Architect, Witherspoon Building,  
Philadelphia, Penna.

Dear Mr. Huston: In looking over the printed specifications for the capitol building, by the capitol commission, I notice on page 57, under the head of decorations and finishing of plaster walls, ceilings, etc., that there is a provision for the finishing of the rooms, and provision is also made in other places for finishing of certain parts. I have some recollection of the Capitol Commission making certain changes before awarding the contract, but I have no records indicating to me where the work of the Capitol Commission ends and where the work that the Board of Public Grounds and Buildings took up furnishing, decorating, etc. I desire this information that I can intelligently audit the accounts presented by the contractor to the Board of Public Grounds and Buildings for finishing, decorating, etc., of the new capitol building.

Yours truly,  
(Signed) W. P. SNYDER.

Under date of January 15, 1906, I received the following answer from Mr. Huston:

Joseph M. Huston, Architect, Witherspoon Building,  
Philadelphia, January 15, 1906.

Hon. William P. Snyder, Harrisburg, Penna.:

Dear Sir: In answer to your letter of January 10, 1906, I would state that the contract between George F. Payne and Company and the Capitol Commission omitted the painting of all walls and ceilings of all rooms and corridors as called for in paragraph 2, page 57, of the specifications, with the exception of the walls and ceilings for all toilets and bath rooms, and that the specifications require the contractor to paint the dome, House and Senate chambers as required by the specifications on pages 57 and 58, which was done by the contractors. The number of feet of decorating and painting done by the Board of Grounds and Buildings consists of applied ornament and gilding of all ornamentation solid throughout, as per the amounts called for in the book containing the quantity, furnishing, fittings, etc., required for the furnishings and complete equipment of the new capitol building.

Hoping this will give you the desired information, I remain,

Very respectfully yours,  
(Signed) J. M. HUSTON.

P. S.—No part of the work ordered by the Board of Grounds and Buildings was provided for in the contract

between George F. Payne and Company and the Capitol Building Commission.

(Signed) J. M. HUSTON, Architect.

The decorating and painting done by the Board of Grounds and Buildings was to paint the dome, House and Senate Chambers, which consisted of additional applied ornament and gilding of all ornamentations, solid throughout, and corresponds to the number of feet in the book above referred to, which is a book of quantities and certified as such by the architect and superintendent as correct and according to the plan of quantities approved by the Board of Public Grounds and Buildings and Superintendent on the 13th day of December, 1904, for the furnishing, etc., of the New Capitol Building. Referring to page 58 of the specifications, it required only that all "high lights of projecting and enriched members to be gilded" by Payne & Company.

The amount paid John H. Sanderson for the additional applied ornament and the gilding of all ornamentation solid, throughout, is as follows:

Main rotunda (Room 207) and Main Hall (Room 105) 48,700 ft. at \$3.00 per foot less 16 per cent. equals \$2.52 per ft. (Item No. 24 of schedule) amounting to \$122,724. 1,350 feet paid for in room 105, main hall was not included in contract of George F. Payne and Company.

Senate Chamber (Room 264) 19,482 ft. at \$3.00 less 16 per cent. equals \$2.52 per foot (Item No. 24) \$50,001.84.

House of Representatives (Room 217) 34,806 feet at \$2.52 per ft. net, (Item No. 24) equals \$87,711.84.

No payments were made to John H. Sanderson for decorating and painting room (229) Grand Executive Reception Room, or room (437) Supreme and Superior Court Room.

There is no record in this Department showing where George F. Payne and Company's contract ended and where Sanderson commenced doing the work. However, this additional work was authorized by the approval of the quantity, plans, etc. The book referred to, prepared for my guidance in vouching for bills, and certified as before stated, states that there is in the main rotunda (room 207) 47,350 feet; in the Senate Chamber (Room No. 264) 19,842 feet and in the House of Representatives called for 47,413 feet, but there were but 34,806 feet charged and paid for as against 47,413 feet certified.

You will find attached to the letter sent you on October 24th, 1906, itemized statements of copies of bills in my possession covering this item, aggregating in all \$779,472.96, designating the number of the room, the item in the schedule, the number of feet paid for in each room and the price per foot.

Interrogatories Five and Six: Rooms 118 and 121 are about the same size, but I observe the decorating and painting is different in the rooms and the book of quantities calls for 2,175 feet and 913 feet for the respective rooms. The cost given by you in Interrogatory six is correct.

Interrogatory Seven: As far as I am informed, all of the ornamental plaster called for by the contract of George F. Payne & Company, was furnished by them, excepting the 3-inch plaster coves, for which an allowance of \$750.00 was made by George F. Payne and Company to the Capitol Building Commission: See credits on final bill attached to letter to you of October 24th, 1906, addressed to Hon. William A. Stone.

Interrogatory Eight: The vouchers show that 292 feet at \$3.00, less 16 per cent. per foot (Item No. 24), or \$735.84, each, were paid for decorating and painting rooms 116 and 117. The certified book of quantities show that 1,081 feet were certified as the number of feet approved.

Interrogatory Nine: I have no vouchers showing duplication of payment to George F. Payne & Company for vaults and safes, for which the sum of \$66,000.00 was paid to the Pennsylvania Construction Company, of Marietta, Pennsylvania. The original contract with George F. Payne and Company provided for vault doors and vestibules in the Auditor General and Treasury Departments. The vouchers for the payment of \$66,000.00 provide for four vaults, one in the Auditor General's Department, one in the Treasury Department, and two in the basement; also safes in the metallic cases of the several departments of the State Government. Mr. J. M. Huston, in a letter to the Board of Public Grounds and Buildings, under date of March 2nd, 1903, informed the Board that the plans of the Capitol Building Commission did not include safes and vaults.

Interrogatory ten: I have no vouchers in my possession showing overlapping or duplication of payments in regard to wood wainscoting done by George F. Payne and Company, and paid for by the Board of Public Grounds and Buildings. In examining the specifications for the Capitol Building Contract, I find only wood wainscotings mentioned for the Grand Executive Room and the Supreme and Superior Court Rooms, and the vouchers on file, paid by the Board of Grounds and Buildings, do not call for any payments, for wainscoting in these rooms.

Interrogatory Eleven: I have no vouchers showing that where any marble wainscoting was not done by George F. Payne and Company, there was not a proper allowance made. The letter of October 24th, 1906, above referred to, gives a copy of the vouchers which were paid by the Board of Public Grounds and Buildings.

In the rear corridor of Wing B. 1st, floor a 12 inch marble base

was called for in the specifications of the Capitol Building Commission with George F. Payne and Company and was placed there by them. The bills provide for the payment to John H. Sanderson for marble wainscoting in this location as designated by rooms 141, 148 and 151 in quantity plans. The marble wainscoting designated in the above rooms run from base to ceiling and was paid for to Sanderson. I do not observe from the vouchers that payment was made by the Board of Public Grounds and Buildings for marble wainscoting in any other locations that might enter into George F. Payne and Company's contract.

The payments made by the Capitol Building Commission were in a lump sum and paid on account of the contract, by the Treasurer of the Commission, when ordered to do so by the Capitol Building Commission, and upon the certificate of the architect, certifying that Payne and Company were entitled to such sums on account of their contract.

All the records of this Department are respectfully tendered to you, and I shall be glad to render to you any further assistance in your investigation of this subject.

Yours very truly,

W. P. SNYDER,  
Auditor General.

---

#### TABULATED STATEMENT.

---

##### Expenses of the New Capitol Building.

No. 1. Special designed fireproof cases for filing and preserving of records and papers, .....	\$1,534,856 20
No. 2. Furniture, desks, chairs, tables, etc., .....	876,066 40
No. 3. Carved panels, wainscoting, mantels and designed wood work, .....	889,940 00
No. 4. Bacarat cut glass panels, .....	138,757 09
No. 5. Bronze post office fronts, gallery, railing and stairs in House and Senate, library, screen in Treasury Department and bronze trimmings on all special fire proof filing cases, .....	400,000 00
No. 6. Designed glass mosaic, .....	28,759 20
No. 7. Bronze railing, .....	2,754 80
No. 8. Marble wainscoting, mantels, bases, .....	278,109 47
No. 9. Constructions for flues, fire places, etc., .....	21,237 59
No. 10. Raised ornamentation, gilding, decorating and painting, .....	779,472 96
No. 11. Mural art painting, .....	14,660 50
No. 12. Interlocking hardwood parquetry flooring, .....	142,412 47
No. 13. Modeling and sculpture with patterns, .....	137,600 00
No. 14. Vaults and safes, .....	66,000 00



No. 15. Carpets, rugs, hangings and curtains, .....	14,044 42
No. 16. Designed clocks and clock fittings, .....	32,079 20
No. 17. Monumental art bronze standards, chandeliers, brackets in the three chief departments of the Government (Executive, Legislative and Judi- cial), main entrance, dome, House, Senate, ante rooms, caucus rooms, Supreme Court room and Executive Reception room: Standards, ..... \$436,950 40 Chandeliers and brackets, ..... 630,606 95	
	<hr/> 1,067,557 35
No. 18. Special designed bronze electric chandeliers and brackets in the subordinate departments, .....	981,965 61
No. 19. Installation of thermostats and valves throughout the building, special work in connection with heating and ventilating, also air compressors, .....	59,408 00
No. 20. Additions and alterations to electric lighting throughout the building, .....	71,833 00
No. 21. Cement flooring throughout the building to receive the finished parquetry flooring, .....	25,117 77
No. 22. Temporary alterations, fittings, carpets, electric lights, furniture, etc., for House and Senate committee rooms and departments, .....	45,351 16
No. 23. Labor and material furnished by George F. Payne & Com- pany in constructing the eighth floor for the use of new departments and committee rooms, .....	303,693 14
No. 24. Installing wires for two telephone and two telegraph sys- tems throughout the building, .....	17,666 73
No. 25. Edwin A. Abbey, account of mural art painting contract,	15,000 00
No. 26. Joseph M. Huston, account of architect commission, ....	235,000 00
	<hr/> \$3,179,343 06
Balance due J. H. Sanderson, .....	108,879 73
Balance due parquetry flooring, Payne & Co., .....	106 20
Balance due Edwin A. Abbey, contract Dec., 1904, .....	207,877 50
Balance due J. M. Huston's 4 per cent., .....	104,585 42
Amount expended or to be expended by the Capitol Building Commission, .....	4,000,000 00
	<hr/> \$12,600,801 91
Amount expended under Act of April 14, 1897, .....	\$550,000 00
	<hr/> \$13,150,801 91

# No. 1. SPECIAL DESIGNED FIREPROOF CASES FOR FILING AND PRE-SERVING OF RECORDS AND PAPERS.

Date.	Amount.	Architect's certificate.	Date paid.	Amount.	Warrant No.	To whom paid.
May, 1904, .....	\$128,250 00	198	Aug. 3, 1904, .....	\$50,000 00	1,244	Penna. Const. Co.
June, 1904, .....	134,611 20	513	May 11, 1903, .....	25,000 00	10,691	Penna. Const. Co.
Aug. 2, 1904, .....	72,143 00	512	May 2, 1904, .....	89,622 80	16,313	Penna. Const. Co.
Aug. 2, 1904, .....	72,143 00	557	June 7, 1904, .....	141,474 00	441	Penna. Const. Co.
		158	June 3, 1904, .....	50,000 00	1,245	Penna. Const. Co.
	\$407,147 20	509	April 13, 1904, .....	50,000 00	16,174	Penna. Const. Co.
			Aug. 18, 1904, .....	3,025 20	1,413	Penna. Const. Co.
			Aug. 18, 1904, .....	3,025 20	1,412	Penna. Const. Co.
				\$412,147 20		

The excess to the amount of \$5,000 is due to advance payment of \$25,000, May 11, 1903. This excess of \$5,000 was deducted from bill dated September 3rd, 1903, vouchers 13,363 and 13,364, for amounts of \$20,000 and \$8,043.35 respectively.

December 1, 1904, .....	\$33,065 70	540	Dec. 13, 1904, .....	3,871	Penna. Const. Co.
December 1, 1904, .....	7,421 40	543	Dec. 13, 1904, .....	3,872	Penna. Const. Co.
December 1, 1904, .....	54,991 70	539	Dec. 13, 1904, .....	3,873	Penna. Const. Co.
December 1, 1904, .....	31,338 60	542	Dec. 13, 1904, .....	3,874	Penna. Const. Co.
May 5, 1905, .....	6,053 40	571	May 17, 1905, .....	6,317	Penna. Const. Co.
May 5, 1905, .....	13,861 80	572	May 17, 1905, .....	6,318	Penna. Const. Co.
November 1, 1905, .....	42,100 20	573	May 17, 1905, .....	6,319	Penna. Const. Co.
May 5, 1905, .....	63,954 00	605	Nov. 15, 1905, .....	10,224	Penna. Const. Co.
December 16, 1905, .....	12,454 50	617	Jan. 3, 1906, .....	11,291	Penna. Const. Co.
December 16, 1905, .....	8,441 70	618	Jan. 3, 1906, .....	11,292	Penna. Const. Co.
December 16, 1905, .....	11,861 70	619	Jan. 3, 1906, .....	11,294	Penna. Const. Co.
December 16, 1905, .....	13,218 30	620	Jan. 17, 1906, .....	11,477	Penna. Const. Co.
December 16, 1905, .....	6,509 40	621	Jan. 3, 1906, .....	11,476	Penna. Const. Co.
December 16, 1905, .....	6,498 00	623	Jan. 17, 1906, .....	11,292	Penna. Const. Co.
January 7, 1906, .....	5,785 50	628	Feb. 2, 1906, .....	11,681	Penna. Const. Co.
January 7, 1906, .....	4,651 26	629	Feb. 2, 1906, .....	11,682	Penna. Const. Co.
January 7, 1906, .....	2,131 80	630	Feb. 2, 1906, .....	11,683	Penna. Const. Co.
January 7, 1906, .....	2,485 20	631	Feb. 2, 1906, .....	11,684	Penna. Const. Co.
January 7, 1906, .....	3,683 20	632	Feb. 2, 1906, .....	11,685	Penna. Const. Co.
January 7, 1906, .....	8,988 90	633	Feb. 2, 1906, .....	11,686	Penna. Const. Co.
January 7, 1906, .....	9,376 50	634	Feb. 2, 1906, .....	11,687	Penna. Const. Co.
January 7, 1906, .....	1,447 80	635	Feb. 2, 1906, .....	11,688	Penna. Const. Co.
January 7, 1906, .....	4,719 60	636	Feb. 2, 1906, .....	11,689	Penna. Const. Co.
January 7, 1906, .....	2,508 00	637	Feb. 2, 1906, .....	11,690	Penna. Const. Co.
January 7, 1906, .....	4,799 40	638	Feb. 2, 1906, .....	11,691	Penna. Const. Co.
January 7, 1906, .....	1,881 00	639	Feb. 2, 1906, .....	11,692	Penna. Const. Co.
January 7, 1906, .....	2,854 19	640	Feb. 2, 1906, .....	11,693	Penna. Const. Co.
January 7, 1906, .....	769 50	641	Feb. 2, 1906, .....	11,694	Penna. Const. Co.
February 12, 1906, .....	1,425 00	622	Mar. 6, 1906, .....	12,380	Penna. Const. Co.
	592 80	661		12,382	Penna. Const. Co.
	14,580 60	659		12,378	Penna. Const. Co.
	4,474 00	663		12,381	Penna. Const. Co.
	6,275 70	664		12,382	Penna. Const. Co.
	22,549 20	666		12,379	Penna. Const. Co.
	18,490 80	669		12,377	Penna. Const. Co.
	11,217 60	668		12,376	Penna. Const. Co.
	4,474 50	665		12,373	Penna. Const. Co.
	5,289 60	670		12,374	Penna. Const. Co.
	10,704 60	667		12,375	Penna. Const. Co.
	\$100,074 90				
March 8, 1906, .....	187,735 20	679	Mar. 14, 1906, .....	100,000 00	12,590
			Mar. 20, 1906, .....	87,735 00	12,713
March 17, 1906, .....	34,382 40	692	Mar. 27, 1906, .....		12,926
March 17, 1906, .....	946 20	685	Mar. 27, 1906, .....		12,920
March 17, 1906, .....	3,431 40	688	Mar. 27, 1906, .....		12,922
March 17, 1906, .....	4,035 60	687	Mar. 27, 1906, .....		12,921
March 17, 1906, .....	9,000 00	693	Mar. 27, 1906, .....		12,927
March 17, 1906, .....	1,892 40	691	Mar. 27, 1906, .....		12,925
March 17, 1906, .....	24,601 20	685	Mar. 27, 1906, .....		12,919
March 17, 1906, .....	7,706 40	689	Mar. 27, 1906, .....		12,923
March 17, 1906, .....	6,261 80	690	Mar. 27, 1906, .....		12,924
March 29, 1906, .....	4,382 00	695	April 4, 1906, .....		13,024
March 29, 1906, .....	3,823 00	696	April 4, 1906, .....		13,025
March 29, 1906, .....	2,770 20	697	April 4, 1906, .....		13,026

## No. 1. SPECIAL DESIGNED FIREPROOF CASES FOR FILING AND PRE-SERVING OF RECORDS AND PAPERS—Continued.

Date.	Amount.	Architect's certificate.	Date paid.	Amount.	Warrant No.	To whom paid.
March 29, 1906, .....	\$6,064 80	698	April 4, 1906, .....		13,027	
March 29, 1906, .....	4,434 60	699	April 4, 1906, .....		13,034	
March 29, 1906, .....	75,696 00	751	April 11, 1906, .....		13,088	
April 4, 1906, .....	5,893 80	729	April 11, 1906, .....		13,103	
March 31, 1906, .....	9,621 60	717	April 11, 1906, .....		13,092	
March 31, 1906, .....	2,697 60	716	April 11, 1906, .....		13,091	
March 31, 1906, .....	2,946 90	714	April 11, 1906, .....		13,089	
March 31, 1906, .....	1,618 80	715	April 11, 1906, .....		13,090	
March 31, 1906, .....	30,118 80	723	April 11, 1906, .....		13,097	
March 31, 1906, .....	10,721 79	724	April 11, 1906, .....		13,098	
April 4, 1906, .....	513 00	726	April 11, 1906, .....		13,100	
April 4, 1906, .....	4,320 60	721	April 11, 1906, .....		13,101	
April 4, 1906, .....	5,910 90	725	April 11, 1906, .....		13,089	
April 4, 1906, .....	3,055 20	728	April 11, 1906, .....		13,102	
March 31, 1906, .....	2,576 40	719	April 11, 1906, .....		13,093	
March 31, 1906, .....	7,524 00	720	April 11, 1906, .....		13,094	
March 31, 1906, .....	17,789 70	721	April 11, 1906, .....		13,095	
March 31, 1906, .....	8,225 10	722	April 11, 1906, .....		13,096	
April 4, 1906, .....	4,537 20	730	April 17, 1906, .....		13,162	
April 4, 1906, .....	2,040 60	731	April 17, 1906, .....		13,163	
April 4, 1906, .....	3,602 40	732	April 17, 1906, .....		13,164	
April 4, 1906, .....	5,369 40	733	April 17, 1906, .....		13,165	
April 4, 1906, .....	1,476 30	734	April 17, 1906, .....		13,166	
April 4, 1906, .....	4,377 60	736	April 17, 1906, .....		13,167	
April 4, 1906, .....	10,419 60	737	April 17, 1906, .....		13,168	
April 4, 1906, .....	4,183 80	738	April 17, 1906, .....		13,169	
April 4, 1906, .....	4,069 80	739	April 17, 1906, .....		13,170	
April 4, 1906, .....	3,853 20	740	April 17, 1906, .....		13,171	
April 4, 1906, .....	1,231 20	741	April 17, 1906, .....		13,172	
April 4, 1906, .....	2,103 30	743	April 17, 1906, .....		13,174	
April 4, 1906, .....	2,308 50	742	April 17, 1906, .....		13,173	
April 4, 1906, .....	8,447 40	744	April 17, 1906, .....		13,175	
April 4, 1906, .....	6,828 60	745	April 17, 1906, .....		13,176	
April 4, 1906, .....	319 20	746	April 17, 1906, .....		13,177	
April 4, 1906, .....	2,302 80	747	April 17, 1906, .....		13,178	
April 4, 1906, .....	47,446 80	748	April 17, 1906, .....		13,179	
March 31, 1906, .....	3,408 60	752	April 17, 1906, .....		13,181	
April 4, 1906, .....	980 40	753	April 17, 1906, .....		13,182	
January 25, 1906, .....	4,833 60	607	Feb. 14, 1906, .....		12,000	
January 25, 1906, .....	3,613 80	655	Feb. 14, 1906, .....		12,016	
January 25, 1906, .....	798 00	654	Feb. 14, 1906, .....		12,007	
January 25, 1906, .....	513 00	653	Feb. 14, 1906, .....		12,015	
January 25, 1906, .....	5,301 00	652	Feb. 14, 1906, .....		12,006	
January 25, 1906, .....	3,032 40	651	Feb. 14, 1906, .....		12,005	
January 25, 1906, .....	10,716 00	650	Feb. 14, 1906, .....		12,014	
January 25, 1906, .....	3,477 00	649	Feb. 14, 1906, .....		12,004	
January 25, 1906, .....	3,613 80	648	Feb. 14, 1906, .....		12,003	
January 25, 1906, .....	6,213 00	647	Feb. 14, 1906, .....		12,002	
January 25, 1906, .....	5,301 00	646	Feb. 14, 1906, .....		12,001	
January 25, 1906, .....	1,447 80	645	Feb. 14, 1906, .....		12,013	
January 25, 1906, .....	3,727 80	644	Feb. 14, 1906, .....		12,012	
Total, .....	\$1,534,856 20					

## No. 2. FURNITURE, DESKS, CHAIRS, TABLES, SOFAS, ETC.

Date.	Amount.	Architect's certificate.	Date paid.	Amount.	Warrant No.	To whom paid.
January 4, 1905, .....	\$338,130 50	550	Jan. 19, 1906, Feb. 1, 1906,	\$200,000 00 138,130 50	4,551 4,703	J. H. Sanderson. J. H. Sanderson.
January 4, 1905, .....	280,703 90	551	Jan. 11, 1906,	.....	4,413	J. H. Sanderson.
March 23, 1906, .....	93,168 40	703	April 11, 1906,	.....	13,158	J. H. Sanderson.
March 23, 1906, .....	53,318 60	701	April 18, 1906,	.....	13,209	J. H. Sanderson.
March 23, 1896, .....	61,948 20	702	April 18, 1906,	.....	13,210	J. H. Sanderson.
March 23, 1896, .....	48,796 80	759	May 25, 1906,	.....	13,231	J. H. Sanderson.
	\$876,066 40					

## No. 3. CARVED PANELS, WAINSCOTING, MANTELS AND DESIGNED WOOD WORK.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
April 17, 1906, .....	\$155,001 60	761	May 2, 1906,	13,416	J. H. Sanderson.
April 23, 1906, .....	155,627 20	762	May 2, 1906,	13,417	J. H. Sanderson.
April 23, 1906, .....	142,544 80	763	May 2, 1906,	13,438	J. H. Sanderson.
December 26, 1905, .....	190,096 00	614	Jan. 10, 1906,	11,428	J. H. Sanderson.
Total warrants, \$474,544.56; other furnishings on this bill.			Jan. 17, 1906,	11,475	J. H. Sanderson.
			Jan. 29, 1906,	11,665	J. H. Sanderson.
			Feb. 7, 1906,	11,755	J. H. Sanderson.
			Feb. 14, 1906,	11,999	J. H. Sanderson.
February 19, 1906, .....	246,670 40	672	Feb. 6, 1906,	12,366	J. H. Sanderson.
Total warrants, \$301,979.58; other furnishings on bill.			Mar. 27, 1906,	12,918	J. H. Sanderson.
			Mar. 14, 1906,	12,589	J. H. Sanderson.
Total, .....	\$889,940 00				

## No. 4. BACARAT CUT GLASS PANELS.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
July 31, 1905, .....	\$31,526 92	590	Aug. 8, 1905,	7,864	J. H. Sanderson.
March 15, 1906, .....	58,444 20	683	April 4, 1906,	13,023	J. H. Sanderson.
March 15, 1906, .....	43,799 57	682	April 4, 1906,	13,022	J. H. Sanderson.
October 1, 1905, .....	4,386 40	606	Nov. 23, 1905,	10,292	J. H. Sanderson.
Total, .....	\$138,757 69				

No. 5. BRONZE POST OFFICE FRONTS, GALLERY RAILING AND STAIRS IN HOUSE AND SENATE LIBRARY, SCREEN IN TREASURY DEPARTMENT, AND BRONZE TRIMMINGS ON ALL SPECIAL FIRE PROOF FILING CASES.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
August 10, 1904, .....	\$10,000 00	514	Aug. 18, 1904,	1,414	Penna. Con. Co.
August 24, 1904, .....	25,000 00	525	Oct. 25, 1904,	3,151	Penna. Con. Co.
March 8, 1905, .....	50,000 00	560	Mar. 28, 1905,	5,588	Penna. Con. Co.
May 6, 1905, .....	25,000 00	574	Aug. 29, 1905,	8,089	Penna. Con. Co.
May 6, 1905, .....	50,000 00	575	Aug. 29, 1905,	8,090	Penna. Con. Co.
November 1, 1905, .....	40,000 00	616	Jan. 3, 1906,	11,262	Penna. Con. Co.
November 1, 1905, .....	50,000 00	612	Jan. 3, 1906,	11,261	Penna. Con. Co.
March 24, 1906, .....	110,000 00	709	April 4, 1906,	13,029	Penna. Con. Co.
March 28, 1906, .....	40,000 00	708	April 4, 1906,	13,028	Penna. Con. Co.
Total, .....	\$400,000 00				

No. 6. DESIGNED GLASS MOSAIC.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
March 15, 1906, .....	\$28,759 20	750	April 11, 1906,	13,160	J. H. Sanderson.

No. 7. BRONZE RAILING.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
April 17, 1906, .....	\$2,754 80	761	May 2, 1906,	13,416	J. H. Sanderson.

## No. 8. MARBLE WAINSCOTING, MANTELS, BASES.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
December 26, 1906, .....	\$27,213 60	614	Jan. 10, 1906, .....	11,426	J. H. Sanderson.
Total warrants, \$474,344.56; other furnishings on bill.			Jan. 17, 1906, .....	11,475	J. H. Sanderson.
			Jan. 29, 1906, .....	11,605	J. H. Sanderson.
			Feb. 7, 1906, .....	11,755	J. H. Sanderson.
February 19, 1906, .....	38,327 20	672	Feb. 14, 1906, .....	11,999	J. H. Sanderson.
Total warrants, \$301,979.88; other furnishings on bill.			Mar. 6, 1906, .....	12,366	J. H. Sanderson.
			Mar. 14, 1906, .....	12,589	J. H. Sanderson.
March 15, 1906, .....	8,813 60		Mar. 27, 1906, .....	12,918	J. H. Sanderson.
April 17, 1906, .....	131,688 80		April 11, 1906, .....	13,160	J. H. Sanderson.
April 5, 1906, .....	30,407 24	749	May 2, 1906, .....	13,415	J. H. Sanderson.
March 29, 1906, .....	16,659 08	694	April 17, 1906, .....	13,180	J. H. Sanderson.
December 27, 1906, .....	25,000 00	622	Mar. 27, 1906, .....	12,925	J. H. Sanderson.
	\$278,109 47		Jan. 31, 1906, .....	11,643	J. H. Sanderson.

## No. 9. CONSTRUCTION FOR FLUES, FIRE PLACES, ETC.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
July 31, 1906, .....	\$21,237 59	588	Aug. 8, 1905, .....	7,862	J. H. Sanderson.

## No. 10. RAISED ORNAMENTATION, GILDING, DECORATING AND PAINTING.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
April 23, 1906, .....	\$253,659 84	765	May 2, 1906, .....	13,420	J. H. Sanderson.
July 31, 1905, .....	20,434 68	589	Aug. 8, 1905, .....	7,863	J. H. Sanderson.
April 23, 1906, .....	109,642 68	764	May 2, 1906, .....	13,419	J. H. Sanderson.
March 9, 1906, .....	70,355 88	680	April 4, 1906, .....	13,021	J. H. Sanderson.
October 1, 1905, .....	51,362 64	696	Nov. 23, 1905, .....	10,292	J. H. Sanderson.
February 19, 1906, .....	16,982 28	672	Mar. 6, 1906, .....	12,366	J. H. Sanderson.
Total warrants, \$301,979.88; other furnishings on bill.			Mar. 14, 1906, .....	12,589	J. H. Sanderson.
December 26, 1906, .....	257,034 96	614	Mar. 27, 1906, .....	12,918	J. H. Sanderson.
	\$779,472 96		Jan. 10, 1906, .....		J. H. Sanderson.
			Jan. 17, 1906, .....		J. H. Sanderson.
Total warrants, \$474,344 56; other furnishings on bill.			Jan. 29, 1906, .....		J. H. Sanderson.
			Feb. 7, 1906, .....		J. H. Sanderson.
			Feb. 14, 1906, .....		J. H. Sanderson.

## No. 11. MURAL ART PAINTING.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
March 27, 1906, .....	\$14,660 50	706	April 11, 1906,	13,159	J. H. Sanderson.

Advanced to Edwin A. Abbey, \$15,000.00.

## No. 12. INTERLOCKING HARDWOOD PARQUETRY FLOORING.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
October 1, 1905, .....	\$15,387 97	606	Nov. 23, 1905,	10,292	J. H. Sanderson.
April 17, 1905, .....	12,296 10	755	April 25, 1906,	13,227	J. H. Sanderson.
May 1, 1906, .....	6,030 90	766	May 8, 1906,	13,502	Geo. F. Payne.
June 1, 1906, .....	24,948 90	.....	June 13, 1906,	14,105	Geo. F. Payne.
July 2, 1906, .....	33,834 60	.....	July 11, 1906,	14,638	Geo. F. Payne.
September 1, 1906, .....	26,024 40	.....	Sept. 12, 1906,	16,548	Geo. F. Payne.
July 31, 1906, .....	23,889 60	.....	Aug. 15, 1906,	15,011	Geo. F. Payne.
	\$142,412 47				

## No. 13. MODELING.

Sketch and Working Models for Electric Fixtures.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	Amount.	To whom paid.
October 17, 1904, .....	\$101,500 00	527	Oct. 28, 1904,	3,177	\$101,000 00	J. H. Sanderson.
March 15, 1906, .....	25,000 00	760	Oct. 31, 1904,	3,219	101,500 00	J. H. Sanderson.
March 15, 1906, .....	11,100 00	682	April 11, 1906,	13,160	.....	J. H. Sanderson.
			April 4, 1906,	13,022	.....	J. H. Sanderson.
	\$137,600 00					

## No. 14. VAULTS AND SAFES.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
January 29, 1906, .....	\$33,000 00	558	Feb. 14, 1906,	12,017	Penna. Con. Co.
May 6, 1906, .....	33,000 00	576	June 18, 1905,	6,941	Penna. Con. Co.
	\$66,000 00				

## No. 15. CARPETS, RUGS, HANGINGS AND CURTAINS.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
March 29, 1906, .....	\$14,044 42	710	April 25, 1906,	13,226	J. H. Sanderson.

## No. 16. DESIGNED CLOCKS AND CLOCK FITTINGS.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
April 17, 1906, .....	\$32,079 20	756	April 25, 1906,	13,228	J. H. Sanderson.



No. 17 and 18. SPECIAL DESIGNED BRONZE ELECTRIC CHANDELIERS,  
BRACKETS AND STANDARDS.

Date.	Amount.	Architect's certificates.	Date paid.	Warrant No.	To whom paid.
December 5, 1904, .....	\$39,576 00	534	Dec. 7, 1904,	3,693	J. H. Sanderson.
December 12, 1904, .....	87,300 00	544	Dec. 13, 1904,	3,876	J. H. Sanderson.
December 31, 1904, .....	62,968 95	545	Jan. 4, 1905,	4,259	J. H. Sanderson.
January 24, 1905, .....	213,400 00	564	Mar. 23, 1905,	5,873	J. H. Sanderson.
January 24, 1905, .....	1,584 00	563	April 12, 1905,	5,564	J. H. Sanderson.
January 24, 1905, .....	204,524 50	554	April 12, 1905,	5,874	J. H. Sanderson.
April 15, 1905, .....		566	April 26, 1905,	6,080	J. H. Sanderson.
May 31, 1905,* .....	189,909 02	567	May 17, 1905,	6,316	J. H. Sanderson.
June 22, 1905,* .....	52,970 16	993	June 13, 1905,	6,947	J. H. Sanderson.
July 3, 1905, .....	50,161 12		July 11, 1904,	1,040	J. H. Sanderson.
July 31, 1905, .....	73,224 08	585	Aug. 8, 1904,	1,270	J. H. Sanderson.
October 5, 1905, .....	124,733 21	590	July 11, 1905,	7,515	J. H. Sanderson.
November 8, 1905, .....	48,938 92	600	Aug. 8, 1905,	7,615	J. H. Sanderson.
December 6, 1905, .....	12,260 80	604	Oct. 17, 1905,	7,884	J. H. Sanderson.
January 1, 1906, .....	35,699 33	610	Nov. 14, 1905,	9,881	J. H. Sanderson.
January 22, 1906, .....	25,447 95	627	Dec. 11, 1905,	10,233	J. H. Sanderson.
January 30, 1906, .....	60,503 75	656	Jan. 18, 1906,	10,777	J. H. Sanderson.
February 19, 1906, .....	9,756 00	657	Feb. 21, 1906,	11,680	J. H. Sanderson.
March 5, 1906, .....	42,069 20	673	Feb. 21, 1906,	12,040	J. H. Sanderson.
February 19, 1906, .....	1,872 00	675	Mar. 6, 1906,	12,347	J. H. Sanderson.
March 1, 1906, .....	104,614 50	674	Mar. 6, 1906,	12,368	J. H. Sanderson.
March 23, 1906, .....	139,515 30	671	Mar. 14, 1906,	12,542	J. H. Sanderson.
February 29, 1906, .....	131,813 15	705	Mar. 20, 1906,	12,712	J. H. Sanderson.
April 17, 1906, .....	119,319 70	707	April 13, 1906,	13,212	J. H. Sanderson.
March 23, 1906, .....	187,348 22	757	April 18, 1906,	13,229	J. H. Sanderson.
	\$2,049,522 96	704	April 18, 1906,	13,211	J. H. Sanderson.
*Total bills, .....					\$272,878 18
Advance payment, July 11, 1904, .....				\$50,000 00	
Advance payment, August 8, 1904, .....				75,000 00	
Warrant 6,941, .....				138,909 02	
Warrant 7,515, .....				7,976 16	
					\$272,878 18

No. 19. INSTALLATION OF THERMOSTATS AND VALVES THROUGH-  
OUT THE BUILDING, SPECIAL WORK IN CONNECTION WITH HEAT-  
ING AND VENTILATING, ALSO AIR COMPRESSORS.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
December 9, 1904, .....	\$53,167 00	537	Dec. 13, 1904,	3,875	J. H. Sanderson.
April 17, 1906, .....	6,241 00	758	April 26, 1906,	13,230	J. H. Sanderson.
	\$59,408 00				

**No. 20. ADDITIONS AND ALTERATIONS TO ELECTRIC LIGHTING  
THROUGHOUT THE BUILDING.**

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
December 9, 1904, .....	\$71,833 00	537	Dec. 13, 1904,	3,875	J. H. Sanderson.

**No. 21. CEMENT FLOORING THROUGHOUT THE BUILDING TO RE-  
CEIVE THE FINISHED PARQUETRY FLOORING.**

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
February 1, 1905, .....	\$4,062 17	.....	June 14, 1905,	6,992	Geo. F. Payne.
February 27, 1905, .....	11,748 63	.....	Jan. 11, 1905,	4,414	Geo. F. Payne.
February 18, 1905, .....	6,785 57	.....	Mar. 15, 1905,	5,366	Geo. F. Payne.
March 31, 1906, .....	2,521 40	768	May 2, 1906,	13,421	Geo. F. Payne.
	\$25,177 77				

**No. 22. TEMPORARY ALTERATIONS, FITTINGS, CARPETS, ELECTRIC  
LIGHTS, FURNITURE, ETC., FOR HOUSE AND SENATE COMMITTEE  
ROOMS AND DEPARTMENTS.**

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
January 9, 1905, .....	\$21,883 75	549	April 12, 1905,	5,864	J. H. Sanderson.
February 1, 1905, .....	809 89	.....	June 14, 1905,	6,992	Geo. F. Payne & Co.
January 14, 1905, .....	15,930 34	.....	Feb. 16, 1905,	1,920	Geo. F. Payne & Co.
January 24, 1905, .....	4,152 18	.....	April 12, 1905,	5,874	J. H. Sanderson.
January 31, 1906, .....	2,575 00	.....	Feb. 14, 1906,	11,961	Geo. F. Payne & Co.
	\$45,351 16				

No. 23. LABOR AND MATERIAL FURNISHED BY GEORGE F. PAYNE & COMPANY IN CONSTRUCTING THE EIGHTH FLOOR FOR THE USE OF NEW DEPARTMENTS AND COMMITTEE ROOMS.

Date.	Amount.	Architect's certificate.	Date paid.	Warrant No.	To whom paid.
April 30, 1905, .....	\$56,690 00	577	June 20, 1905,	7,109	Geo. F. Payne.
July 23, 1905, .....	87,713 90	594	Sept. 11, 1905,	8,412	Geo. F. Payne.
October 16, 1905, .....	75,466 40	603	Nov. 15, 1905,	10,221	Geo. F. Payne.
October 30, 1905, .....	21,300 76	611	Dec. 12, 1906,	10,823	Geo. F. Payne.
May 11, 1906, .....	17,611 77	768	May 2, 1906,	13,421	Geo. F. Payne.
February, .....	44,310 31	678	Mar. 14, 1906,	12,592	Geo. F. Payne.
	\$303,693 14				

No. 24. INSTALLING WIRES FOR TWO TELEPHONE AND TWO TELEGRAPH SYSTEMS THROUGHOUT THE BUILDING.

Date.	Amount.	Architect's certificate	Date paid.	Warrant No.	To whom paid.
June 30, 1905, .....	\$10,755 28	591	Aug. 9, 1906,	7,905	Geo. F. Payne.
February, 1906, .....	6,911 45	677	Mar. 14, 1906,	12,543	Geo. F. Payne.
	\$17,666 73				

No. 26. JOSEPH M. HUSTON, ON ACCOUNT OF ARCHITECT'S COMMISSION.

Date.	Warrant No.	Amount.
1904.		
July 13, .....	1,078	\$10,000
October 19, .....	3,108	5,000
1905.		
February 1, .....	4,725	10,000
May 17, .....	6,315	10,000
June 7, .....	6,778	10,000
June 21, .....	7,135	10,000
July 24, .....	7,653	10,000
August 29, .....	8,091	20,000
November 21, .....	10,262	20,000
1906.		
January 23, .....	11,510	20,000
February 21, .....	12,050	10,000
April 11, .....	13,106	50,000
April 25, .....	13,232	50,000
Total, .....		\$235,000 00

Office of the Attorney General.  
Harrisburg, Pa., Dec. 29, 1906.

Hon. W. L. Mathues, Media, Pa.:

My dear Sir: For two years you were a member of the Board of Public Grounds and Buildings, covering the period of time during which contracts were made with John H. Sanderson, Contractor for the furnishing of the Capitol, and with Joseph M. Huston, Architect.

Permit me to ask you:

1. What knowledge did you have as to the awarding of those contracts?

2. What had you to do with the awarding of them?

3. What knowledge had you of the terms and basis of the contracts?

4. What knowledge had you of the Schedule of 1905 and its preparation?

5. What do you know of the introduction into the Special Schedule of the "per foot" and "per pound" rule?

6. What suggestion, if any, did you make to the Superintendent of Public Grounds and Buildings as to their introduction?

7. What was your knowledge as to their meaning and effect?

8. Who explained them to you?

9. Did you know John H. Sanderson at the time the Schedule of 1905 was being prepared; and, if so, how long had you known him?

10. Did you have any conversation or correspondence with him, either direct or indirect, upon the subject of the Schedule, his bids, or his contracts? If so, please state it in full to the best of your recollection, or, if in writing, please annex copies of the correspondence to your answer.

11. Did he ask you, or did any one in his behalf ask you to speak or communicate with the Superintendent, either directly or indirectly, as to the matter to be contained in the Schedule, particularly as to the introduction of Items 21 to 41 inclusive? If so, did you so speak or communicate? And, if so, please state how and in what terms or through whom you spoke or communicated.

12. What knowledge had you as to the probable cost and extent of these contracts?

13. From whom or from what sources did you derive your information?

14. Were you aware that the Architect estimated generally that the cost would be between \$500,000 and \$800,000? Were you present at the meeting of the Board of Public Grounds and Buildings on the same day on which the bids were opened and the contract was awarded to John H. Sanderson—when the Architect so stated?

15. If you answer the foregoing question affirmatively, please state your recollection of what was said by him, and how far he disclosed the grounds of his estimate?

16. When did you first become aware of the fact that the actual cost was running far in excess of these figures?

17. Did you express to your colleagues of the Board, either at a Board meeting, or informally, a judgment in the matter? If so, what was it? To whom was it expressed and when?

18. Did you ever discuss the matter of the growing cost at a meeting of the Board, or hear it discussed by your colleagues? If so, when, where, and by whom was it so discussed?

19. Were you present at the meetings of the Board when the plans of the Architect were laid before it, showing the detail of the furnishing, decoration, equipment and improvement of the rooms of the various Departments? Did you approve of the plans?

20. Did you then ask their cost, if carried out?

21. Did you, or did you not, leave everything to the Architect?

22. Did you, as Treasurer, join the Auditor General in settlement certificates for the various payments made to John H. Sanderson, and to the Pennsylvania Construction Company?

23. Did any one in your behalf, in your absence, join in such settlement certificates? If so, who? State his name and address.

24. What proportion of settlements did you personally join in, and what proportion of settlements were joined in by someone for you?

25. Did you require the submission of the bills of the contractor to the full Board, or to a majority of the Board, before joining in such settlements or before they were joined in by some one for you?

26. When, to your knowledge, was the submission of the bills to the Board or a majority of its members first made, before payment?

27. What instructions did you give as to these matters to any one acting in your absence?

28. You are aware, are you not, that shortly before your retirement from office, very heavy payments were made to the contractor, John H. Sanderson?

29. What explanation have you to give as to them?

30. What examination did you make as to their accuracy in amount, before making payment or directing payment to be made?

31. What explanation did you require when you found the amounts to be so largely in excess of the Architect's original general estimate?

32. Of whom did you require the explanation?

33. In what shape did you demand it?

34. If you required such explanation, in what shape and from whom did you receive it. Please give it in full detail.

Very respectfully yours,

HAMPTON L. CARSON,  
Attorney General.

---

Media, Pa., December 31st, 1906.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Pa.:

My dear Sir: Your communication dated December 29th received and in reply to your interrogatories, beg to answer as follows:

1. (a) Was present as a member of the Board of Public Grounds and Buildings when the contract was awarded to John H. Sanderson for the furnishing the Capitol.

(b) Was not a member of said Board when Joseph M. Huston was employed as architect.

2. Participated with Governor Pennypacker and Auditor General Snyder as members of the Board in awarding the contract to John H. Sanderson.

3. My knowledge of the terms and basis of the contract was derived from the schedule and from my fellow members of the Board.

4. Had no knowledge of the preparation of the schedule of 1905 until after I assumed my duties as State Treasurer and became a member of the Board of Public Grounds and Buildings.

5. Have no knowledge of the introduction into the Special schedule of the "per foot" and "per pound" rule as said schedule was prepared before I became a member of the Board.

6. Made no suggestions whatever.

7. Had no knowledge as to their meaning and effect, except that we were following a custom established by previous boards and which I supposed Mr. Huston, the architect was familiar with.

8. No one.

9. I do not know when the schedule of 1905 was prepared as the same was done before I became a member of the Board. Did not meet Mr. Sanderson until June 7th, 1904, the day the bids were opened.

10. Did not have any conversation or correspondence with John H. Sanderson, or with any one in his behalf, direct or indirect, upon the subject of the schedule, his bids or his contracts.

11. He did not ask me nor did anyone in his behalf ask me nor did I speak or communicate with the Superintendent either directly or indirectly, as to the matter contained in the schedule, particularly as to the introduction of items 21 to 41 inclusive.

12-13. None other than that derived from the Architect, Mr. Huston.

14. Yes.

15. After the bids were opened on June 7th, the Board retired to the Executive Chamber and before the contract was awarded, Mr. Huston, the architect, was requested to give the Board an estimate of the probable cost of the furniture. He replied that as near as he could tell it would cost between \$500,000, and \$800,000. I did not understand this estimate to include previous contracts.

16-17-18. First became aware that the actual cost was exceeding the estimate along about October or November 1905, and discussed the matter informally with the Auditor General, and the same was discussed at a subsequent meeting by all the members of the Board.

19. Yes.

20. This question was not asked to my knowledge.

21. Yes.

22. Yes.

23-24. It is my recollection that I joined in all the settlement certificates.

25. Sometimes to a full Board, always to a majority of the Board.

26. The bills were always submitted to the Board or a majority before payment.

27. My recollection is, I was always present.

28. Yes.

29. None other than that about this time a great many of the Departments in the Capitol were being completed and ready for occupancy, and the bills were presented and passed upon by the Board in the regular way.

30. I paid no bills unless accompanied by a certificate of the Architect and Superintendent and the auditing of the same by the Auditor General; said certificates were attached to the bills on file in the Auditor General's office.

31-32-33-34. I requested the Architect to explain why the cost was exceeding his estimate and my recollection is that he stated that estimate of \$500,000, to \$800,000, was a general estimate as to furniture and did not include the metallic fixtures, decorations and paintings.

I remain very respectfully yours,

(Signed) WM. L. MATHUES.

---

January 3rd, 1907.

Hon. Hampton L. Carson, Attorney General, Harrisburg, Penna.:

My dear Sir: My answer to interrogatory number 19 contained in your letter of December 29th, 1906, was "Yes."

This answer I believe is misleading to you as the plans and specifications for all the interior furnishings of the Capitol, including metal furniture, were approved by the heads of the several departments and adopted by the previous board of public grounds and buildings.

I was, however, present at a meeting of the board in December 1904 when Mr. Huston was presented a set of plans showing space for furniture, etc., and this is what I meant by my answer "yes."

I am very respectfully,

W. L. MATHUES.

.



---

# APPENDIX.

---

## SCHEDULE A.

## FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

Board of Township Commissioners of Mifflin Township, Allegheny County.	Mandamus, .....	Writ allowed.
Marshall Avenue Street Railway Company, .....	Quo warranto, .....	Allowed.
Marshall Avenue Street Railway Company, .....	Quo warranto, .....	Allowed.
Broad Street Rapid Transit Street Railway Company, .....	Quo warranto, .....	Allowed.
John H. Baizley, Common Councilman Thirty-ninth Ward, Philadelphia.	Quo warranto, .....	Refused.
Osceola Water Supply Company, .....	Quo warranto, .....	Proceedings discontinued.
Consolidated Stock Exchange of Philadelphia .....	Quo warranto, .....	Allowed.
Colonial Street Railway Company and Penn Park Street Railway Company.	Quo warranto, .....	Allowed.
Haight & Freese Company, .....	In equity, .....	Use of name of Com'th allowed.
Grant and Liberty Street Railway Company, .....	Quo warranto, .....	Allowed.
Union Supply Company and H. C. Frick Coke Company, .....	Application under Act of June 9, 1891.	Refused.
Howard and East Street Railway Company, .....	Quo warranto, .....	Allowed.
Potter County, .....	Application under Act of May 2, 1905.	Allowed.
North Side and South Side Street Railway Company, .....	Quo warranto, .....	Allowed.
Pittsburg Allegheny and Manchester Passenger Railway Company et al.	Quo warranto, .....	Allowed.
City View Street Railway Company, .....	Quo warranto, .....	Proceedings abandoned.
Allegheny Hilltop Street Railway Company, .....	Quo warranto, .....	Proceedings abandoned.
Howard and East Street Railway Company, .....	Quo warranto, .....	Allowed.
Cedar Avenue Street Railway Company, .....	Quo warranto, .....	Allowed.
Hummelstown Water Company, .....	Quo warranto, .....	Refused.
David H. Meyers, .....	In equity, .....	Use of name of Com'th allowed.
Delaware, Lackawanna and Western Railroad Company, .....	In equity, .....	Use of name of Com'th allowed.
Frank X. Kreidler Associate Judge of Forest County, .....	Quo warranto, .....	Refused.
Olanta Coal Mining Company, .....	Quo warranto, .....	Refused.
North Rochester Electric Street Railway Company, .....	Quo warranto, .....	Proceedings discontinued.
North Rochester Electric Street Railway Company, .....	Quo warranto, .....	Proceedings discontinued.
Keystone Publishing Company, .....	Quo warranto, .....	Allowed.
School Directors of Waynesboro, Franklin County, .....	Mandamus, .....	Writ allowed.
Morris Run Coal Mining Company, .....	Quo warranto, .....	Allowed.
Estate of James McCloskey, .....	Application under Act of April 26, 1855.	Allowed.
B. Harry Warren, Dairy and Food Commissioner, .....	Quo warranto, .....	Allowed.

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL—Continued.

Four Mile Run Improvement Company, .....	Quo warranto, .....	Allowed.
Edna Water Company, .....	Quo warranto, .....	Allowed.
Black Diamond Oil and Gas Company of Towanda, .....	Quo warranto, .....	Allowed.
John D. Schafer, Additional Law Judge, Allegheny County, .....	Mandamus, .....	Application refused.
Monongahela Short Line Railroad Company, .....	Quo warranto, .....	Pending.
United Traction Company of Reading, .....	Quo warranto, .....	Refused.
Citizens Light, Heat and Power Company of Portage, .....	In equity, .....	Pending.
Bates Street Railway Company, .....	Quo warranto, .....	Application withdrawn.
Sharon and West Middlesex Street Railway Company, .....	Quo warranto, .....	Application withdrawn.
Hyde Park Gas Company of Scranton, .....	Quo warranto, .....	Pending.
Atlantic Refining Company, .....	In equity, .....	Application withdrawn.
Conemaugh Valley Railroad Company, .....	Quo warranto, .....	Refused.
Conemaugh Valley Street Railway Company, .....	Quo warranto, .....	Refused.
Lehigh Valley Railroad Company, .....	In equity, .....	Refused.
Consolidated Stock Exchange of Philadelphia, .....	In equity, .....	Use of name of Com'th allowed.
Seymour Street Railway Company, .....	Quo Warranto, .....	Allowed.
Mohnsville and Adamstown Railroad Company, .....	Quo warranto, .....	Allowed.
Mosser Tanning Company, .....	Quo warranto, .....	Allowed.
Philadelphia and Darby Creek Railway Company, .....	Quo warranto, .....	Allowed.
Walther Peptonized Port Company, .....	Quo warranto, .....	Allowed.
A. L. Butz Cork Company, .....	Quo warranto, .....	Allowed.
West Coplay Land Company, .....	Quo warranto, .....	Allowed.
Philadelphia Rapid Transit Company, .....	Quo warranto, .....	Allowed.
Dr. R. H. M. Mackenzies Medical and Surgical Offices, .....	Quo warranto, .....	Allowed.
Umbria Street and Shawmont Avenue Electric Street Rail- way Company, .....	Quo warranto, .....	Allowed.
The King Car Company of Scranton, .....	Quo warranto, .....	Allowed.
Susquehanna Canal and Power Company, .....	Quo warranto, .....	Allowed.
Susquehanna and Tidewater Railroad Company, .....	Quo warranto, .....	Allowed.
Chemical Specialty Company, .....	Quo warranto, .....	Allowed.
Beaver Valley Railroad Company, .....	In equity, .....	Use of name of Com'th allowed.
Duquesne Street Railway Company, .....	Quo warranto, .....	Refused.
Tidewater and Susquehanna River Railroad Company, .....	Quo warranto, .....	Allowed.
Home Gas Company, .....	In equity, .....	Refused.
Clarion Gas Company, Southern Oil Company and Pittsburg Oil and Gas Company, .....	In equity, .....	Refused.
Pennsylvania Railroad Company (In re Tibby Brothers Glass Company.) .....	Quo warranto, .....	Refused.
Pennsylvania Railroad Company (In re Mary C. Darlington), Edward M. Biddle, Jr., claiming to be State Senator from old Thirty-second District. ....	Quo warranto, .....	Refused.

## SCHEDULE B.

## INSURANCE COMPANY AND BANK CHARTERS APPROVED.

Chanceford Mutual Fire Insurance Company, Chanceford township, York county, .....	April 8, 1905.
Consolidated Mutual Fire Insurance Company, Harrisburg, Pa., .....	May 11, 1905.
Cotton Seed Crushers Mutual Assurance Company, Philadelphia, Pa., .....	July 26, 1905.
Commonwealth Casualty Company, Philadelphia, Pa., .....	March 20, 1906.
Diamond Mutual Fire Insurance Company, York, Pa., .....	April 27, 1905.
Dublin Live Stock Insurance and Protective Company, Dublin, .....	December 30, 1905.
Fraternalities Accident Insurance Company, Philadelphia, Pa., .....	February 20, 1905.
Fulton County Mutual Fire Insurance Company, Needmore, .....	April 8, 1905.
Fidelity Mutual Fire Insurance Company, Pottstown, .....	May 10, 1906.
Flood City Mutual Fire Insurance Company, Johnstown, .....	May 14, 1906.
Grocers' Cash Deposit Mutual Fire Insurance Company, Huntingdon, .....	July 26, 1905.
Gettysburg Mutual Fire Insurance Company, Gettysburg, .....	May 29, 1906.
Guardian Fire Insurance Company of Pennsylvania, Pittsburg, .....	May 28, 1906.
Iron City Health and Accident Insurance Company, Pittsburg, .....	August 9, 1905.
Imperial Assurance Company, Pittsburg, .....	August 8, 1906.
Independence Mutual Life Insurance Company, Philadelphia, .....	September 13, 1906.
Kensington Mutual Fire Insurance Company, Philadelphia, .....	November 1, 1906.
Liberty Mutual Fire Insurance Company, Philadelphia, .....	February 17, 1906.
Lincoln Mutual Fire Insurance Company, Philadelphia, .....	October 29, 1906.
Mifflin County Mutual Fire Insurance Company, Lewistown, .....	September 7, 1905.
The Manufacturers' and Merchants' Mutual Fire Insurance Company, Philadelphia, .....	April 27, 1906.
Philadelphia Mutual Life Insurance Company, Philadelphia, .....	October 14, 1905.
Provident Mutual Fire Insurance Company, Philadelphia, .....	November 29, 1905.
Philadelphia Life Insurance Company, Philadelphia, .....	April 17, 1906.
Pennsylvania Mutual Hail, Tornado and Wind Storm Insurance Company of Knoxville, .....	July 12, 1906.
Railway Mutual Indemnity Company, Philadelphia, .....	May 24, 1905.
Reserve Mutual Fire Insurance Company, Philadelphia, .....	March 17, 1906.
Somerset Mutual Fire Insurance Company, Somerset, .....	September 15, 1905.
Transportation Mutual Insurance Company, Philadelphia, .....	April 27, 1905.
United States Manufacturing Mutual Fire Insurance Company, Wilkes-Barre, .....	February 26, 1906.
York County Fire Insurance Company, York, .....	June 6, 1906.
Kensington Mutual Fire Insurance Company, Philadelphia, .....	November 1, 1906.
Cirard Mutual Fire Insurance Company, Philadelphia, .....	November 30, 1906.
United States Merchants' Mutual Fire Insurance Company, Philadelphia, .....	November 30, 1906.
York County Mutual Live Stock Insurance Company, Bank of Newberry, Williamsport, .....	January 3, 1907.
City Bank of McKeesport, .....	February 8, 1905.
South Side Banking Company, South Bethlehem, ....	February 8, 1905.
Lykens Valley Bank, Elizabethtown, .....	May 29, 1905.
Dollar Deposit Bank, Johnstown, .....	June 14, 1905.
The People's Bank of Erie, .....	May 17, 1905.
	October 7, 1905.

## SCHEDULE B—Continued.

## INSURANCE COMPANY AND BANK CHARTERS APPROVED.

---

All Nations Deposit Bank, .....	November 1, 1905.
Honesdale Dime Bank, Honesdale, .....	November 22, 1905.
People's Deposit Bank, Annville, .....	April 19, 1906.
South Side Bank, Wilkes-Barre, .....	April 19, 1906.
Allison Hill Bank, Harrisburg, .....	June 20, 1906.
Citizens' Bank, Harrisburg, .....	July 11, 1906.
Farmers' State Bank of Hanover, .....	October 11, 1906.

---

## SCHEDULE C.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Penn Tanning Company, .....	\$3,170 37	C. S. 1904. Paid.
Central Pennsylvania Lumber Company.	18,139 45	C. S. 1904. Paid.
Buffalo and Susquehanna Railroad Company.	14,411 33	L. T. 1903. Paid.
Western Union Telegraph Company,	11,250 00	C. S. 1902. Paid.
Delaware and Atlantic Telegraph and Telephone Company.	100 00	C. S. 1903. Paid.
United Ice and Coal Company, ....	857 13	C. S. 1903. Paid.
The Long Brothers Company, .....	903 06	Bonus. Verdict for defendant.
The Long Brothers Company, .....	175 00	C. S. 1903. Verdict for def't.
Erie Traction Company, .....	1,000 00	C. S. 1902. Paid.
Union Steel Company et al., .....	62,051 65	Bonus. Paid.
Sterling Iron and Railway Company.	54 82	Bonus. Verdict for the def't.
Barrett Manufacturing Company, ..	1,666 67	Bonus. Pending.
Barrett Manufacturing Company, ..	755 49	Bonus. Pending.
Curtis Publishing Company, .....	7,193 72	Bonus. Pending.
Delahanty Dyeing Machine Company.	352 00	Bonus. Pending.
American Ice Company, .....	10,000 00	C. S. 1903. Paid.
Allentown Gas Company, .....	372 40	L. T. 1904. Verdict for def't.
Allentown Gas Company, .....	372 40	L. T. 1903. Verdict for def't.
Chapman Slate Company, .....	125 40	L. T. 1904. Verdict for def't.
Chapman Slate Company, .....	1,784 84	C. S. 1904. Paid.
Robesonia Iron Company, Limited, ..	820 00	C. S. 1904. Paid.
Du Bois Traction Company, .....	38 00	L. T. 1897. Verdict for def't.
Du Bois Traction Company, .....	38 00	L. T. 1898. Verdict for def't.
Du Bois Traction Company, .....	38 00	L. T. 1899. Paid.
Du Bois Traction Company, .....	38 00	L. T. 1900. Paid.
Du Bois Traction Company, .....	38 00	L. T. 1901. Paid.
Du Bois Traction Company, .....	59 38	L. T. 1902. Paid.
Du Bois Traction Company, .....	72 20	L. T. 1904. Paid.
Du Bois Traction Company, .....	62 50	C. S. 1897. Verdict for def't.
Du Bois Traction Company, .....	62 50	C. S. 1898. Paid.
Du Bois Traction Company, .....	62 50	C. S. 1899. Paid.
Du Bois Traction Company, .....	85 00	C. S. 1900. Paid.
Du Bois Traction Company, .....	100 00	C. S. 1901. Paid.
Du Bois Traction Company, .....	100 00	C. S. 1902. Paid.
Du Bois Traction Company, .....	600 00	C. S. 1903. Paid.
Du Bois Electric Company, .....	500 00	C. S. 1903. Paid.
Du Bois Electric Company, .....	376 20	L. T. 1903. Paid.
Philadelphia County and Southern Traction Company.	99,020 83	Bonus. Paid.
Fairmount Park Transportation Traction Company.	6,500 00	C. S. 1904. Verdict for def't.
Mortgage Trust Company of Pennsylvania.	1,320 90	C. S. 1904. Paid.
Parrish Coal Company, .....	7,268 62	C. S. 1904. Paid.
Hecla Coke Company, .....	3,505 50	C. S. 1904. Paid.
Delaware and Hudson Company, ..	43,804 72	C. S. 1904. Paid.
Scranton Gas and Water Company,	15,140 45	C. S. 1904. Paid.
Buffalo and Susquehanna Railroad Company.	18,468 94	L. T. 1903. Paid.
Buffalo and Susquehanna Railroad Company.	27,756 00	C. S. 1904. Verdict for def't.
Pennsylvania Company for Insurance on Lives and Granting Annuities.	63,312 77	C. S. 1904. Paid.
Hudson Coal Company, .....	1,300 00	C. S. 1904. Paid.
S. S. Fretz Manufacturing Company,	1,000 00	C. S. 1904. Paid.
E. P. Wilbur Trust Company, .....	4,739 91	C. S. 1904. Paid.
Commercial Trust Company, .....	17,897 45	C. S. 1904. Paid.
Bangor and Portland Railway Company.	3,697 50	C. S. 1904. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
State Line and Sullivan Railroad Company.	2,740 00	C. S. 1904. Paid.
Rockhill Iron and Coal Company,...	1,812 50	C. S. 1904. Paid.
Investment Company of Philadelphia.	12,977 29	C. S. 1904. Paid.
Guarantee Trust and Safe Deposit Company.	9,504 34	C. S. 1904. Verdict for def't.
Philadelphia Mortgage and Trust Company.	988 77	C. S. 1904. Paid.
Mortgage Trust Company of Pennsylvania.	9,720 11	Loans 1904. Paid.
Delaware, Lackawanna and Western Railroad Company.	1,671 01	Loans 1904. Paid.
Ketterlinus Lithographic Manufacturing Company.	2,500 00	C. S. 1904. Verdict for def't.
Coaldale Mining Company, .....	200 00	C. S. 1903. Paid.
General Chemical Company .....	2,387 85	C. S. 1904. Pending.
Good Roads Machinery Company,...	123 00	C. S. 1903. Paid.
Good Roads Machinery Company,...	125 00	C. S. 1904. Paid.
Good Roads Machinery Company,...	83 34	Bonus. Verdict for defendant.
The Pullman Company, .....	545 15	Bonus. Pending.
Delaware, Lackawanna and Western Railroad Company.	393,000 00	C. S. 1904. Paid.
Alliance Coal Mining Company, ....	1,125 00	C. S. 1904. Paid.
American Dredging Company, .....	15,000 00	C. S. 1904. Paid.
Goodyear Lumber Company, .....	10,000 00	C. S. 1904. Paid.
Home Electric Light and Steam Heating Company.	250 00	C. S. 1904. Verdict for def't.
Alden Coal Company, .....	3,054 62	C. S. 1904. Paid.
New York, Lake Erie and Western Coal and Railroad Company.	2,000 00	C. S. 1904. Paid.
Black Creek Improvement Company.	3,935 00	C. S. 1904. Paid.
Blossburg Coal Company, .....	625 00	C. S. 1904. Paid.
Northwestern Mining and Exchange Company.	750 00	C. S. 1904. Paid.
Buffalo, Bradford and Pittsburgh Railroad Company:	625 00	C. S. 1904. Paid.
Hillside Coal and Iron Company,...	750 00	C. S. 1904. Paid.
Butler Mine Company, Limited, ...	100 00	C. S. 1904. Paid.
Enterprise Transit Company, .....	3,000 00	C. S. 1904. Paid.
Jefferson Railroad Company, .....	2,500 00	C. S. 1904. Paid.
Nypano Railroad Company, .....	6,000 00	C. S. 1904. Paid.
Erie Railroad Company, .....	4,750 00	C. S. 1904. Paid.
Cowanshannock Coal and Coke Company.	5,000 00	C. S. 1904. Pending.
Potter Gas Company, .....	1,157 90	L. T. 1904. Paid.
Wilkes-Barre and Easton Railroad Company.	4,590 00	C. S. 1904. Paid.
Dill and Collins Company, .....	2,978 78	L. T. 1904. Paid.
Buffalo, Bradford and Kane Railroad Company.	500 00	C. S. 1904. Verdict for def't.
Erie and Wyoming Valley Railroad Company.	5,125 00	C. S. 1904. Paid.
Erie Land and Improvement Company.	25 00	C. S. 1904. Paid.
Consumers' Gas Company of Coudersport.	452 00	C. S. 1904. Paid.
New York, Susquehanna and Western Coal Company.	500 00	C. S. 1904. Paid.
Philadelphia Brewing Company,...	4,770 76	C. S. 1904. Paid.
Beech Creek Cannel Coal Company,	150 00	C. S. 1904. Paid.
Beech Creek Extension Railroad Company.	11,750 00	C. S. 1904. Paid.
Beech Creek Railroad Company,...	38,250 00	C. S. 1904. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Woodside Real Estate Company,...	500 00	C. S. 1903. Verdict for def't.
Woodside Real Estate Company,...	525 00	C. S. 1904. Verdict for def't.
Henrietta Coal Mining Company,...	1,000 00	C. S. 1904. Paid.
Pennsylvania Coal Company, .....	31,533 05	C. S. 1904. Verdict for Com'th.
Coudersport and Port Allegheny Railroad Company.	1,750 00	C. S. 1904. Verdict for def't.
Silver Brook Coal Company, .....	1,725 00	C. S. 1904. Paid.
W. H. Chandler Company, .....	259 26	C. S. 1904. Paid.
Mid Valley Supply Company, Ltd.,	523 23	C. S. 1904. Paid.
Valley Coal Company, .....	300 00	C. S. 1904. Paid.
Bear Creek Ice Company, .....	500 00	C. S. 1904. Paid.
Schenley Distilling Company, .....	100 70	L. T. 1904. Verdict for def't.
Cranberry Improvement Company,.	4,400 00	C. S. 1904. Paid.
Beech Creek Railroad Company, ...	2,803 66	L. T. 1904. Verdict for def't.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1897. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1898. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1899. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1900. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1901. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1902. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1903. Paid.
New York Central and Hudson River Railroad Company.	5,000 00	C. S. 1873. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1874. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1875. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1876. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1877. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1878. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1879. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1880. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1881. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1882. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1883. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1884. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1885. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1886. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1887. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1888. Verdict for def't.
New York Central and Hudson River Railroad Company.	6,000 00	C. S. 1889. Verdict for def't.
New York Central and Hudson River Railroad Company.	12,000 00	C. S. 1890. Verdict for def't.



## SCHEDULE C—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
New York Central and Hudson River Railroad Company.	12,000 00	C. S. 1891. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1892. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1893. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1894. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1895. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1896. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1897. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1898. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1899. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1900. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1901. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1902. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1903. Paid.
New York Central and Hudson River Railroad Company.	20,000 00	C. S. 1904. Paid.
Pennsylvania Bituminous Coal Corporation.	250 00	C. S. 1904. Paid.
Packer Coal Company, .....	800 00	C. S. 1904. Paid.
Stevens Coal Company, .....	1,590 00	C. S. 1904. Paid.
W. K. Niver Coal Company, .....	2,500 00	C. S. 1904. Paid.
Delaware Division Canal Company of Pennsylvania.	750 00	C. S. 1904. Paid.
Pocono Mountain Ice Company, ....	1,000 00	C. S. 1904. Verdict for def't.
Union Improvement Company, ....	14,575 00	C. S. 1904. Paid.
Penn Gas Coal Company, .....	10,000 00	C. S. 1904. Paid.
Philadelphia Warehousing and Cold Storage Company.	1,825 00	C. S. 1904. Paid.
Penn Traffic Company, .....	5,250 00	C. S. 1904. Paid.
Westinghouse Air Brake Company, ..	26,835 94	C. S. 1904. Paid.
White Haven Water Company, ....	48 26	L. T. 1904. Pending.
White Haven Water Company, ....	49 40	L. T. 1903. Verdict for def't.
St. Marys Gas Company, .....	186 20	L. T. 1904. Verdict for Com'th.
Bethlehem and Nazareth Passenger Railway Company.	750 00	C. S. 1904. Paid.
Provident Life and Trust Company of Philadelphia.	270,826 44	C. S. 1904. Pending.
South Fork Coal Mining Company, ..	800 00	C. S. 1904. Paid.
Northern Coal and Iron Company, ..	8,000 00	C. S. 1904. Verdict for def't.
Mid Valley Coal Company, .....	10,093 87	C. S. 1904. Paid.
Curwinsville and Bower Railroad Company.	400 00	C. S. 1904. Paid.
Central Trading Company, .....	56 38	Bonus. Verdict for def't.
National Biscuit Company, .....	1,333 87	C. S. 1904. Paid.
American Ice Company, .....	10,000 00	C. S. 1904. Paid.
American Ice Company, .....	3,700 00	Bonus. Verdict for def't.
C. Schmidt & Sons Brewing Company.	5,000 00	C. S. 1904. Paid.
Walnut Run Coal Company, .....	500 00	C. S. 1904. Verdict for def't.
Jurague Iron Company, .....	317 12	C. S. 1904. Paid.
Keystone Telephone Company of Philadelphia.	12,500 00	C. S. 1904. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Keystone Telephone Company of Philadelphia.	12,500 00	C. S. 1903. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	49,777 71	C. S. 1904. Paid.
Delaware and Atlantic Telegraph and Telephone Company of Pennsylvania.	100 00	C. S. 1904. Paid.
Diamond Coal Land Company, .....	500 00	C. S. 1904. Paid.
Avono Gas Coal Company, .....	1,250 00	C. S. 1901. Paid.
Avono Gas Coal Company, .....	1,125 00	C. S. 1900. Paid.
Jefferson Coal Company, .....	925 00	C. S. 1904. Paid.
Gimbel Brothers, Incorporated, .....	38,813 63	C. S. 1904. Paid.
Gimbel Brothers, Incorporated, .....	10,637 00	C. S. 1903. Paid.
Buck Run Coal Company, .....	500 00	C. S. 1904. Paid.
North Philadelphia Land Company,	93 75	C. S. 1904. Paid.
John Hancock Ice Company, .....	554 25	C. S. 1904. Paid.
West Branch Coal Company, .....	150 00	C. S. 1904. Verdict for def't.
Berwick Water Company, .....	521 64	C. S. 1904. Paid.
Westinghouse Electric and Manufacturing Company.	26,876 31	C. S. 1903. Paid.
Powhatan Coal Company, .....	1,000 00	C. S. 1904. Paid.
Schenley Distilling Company, .....	3,000 00	C. S. 1904. Paid.
Chevington and Bunne Coal Company.	150 00	C. S. 1904. Paid.
Claridge Gas Coal Company, .....	1,200 00	C. S. 1901. Paid.
Empire Coal Mining Company, ....	1,000 00	C. S. 1904. Paid.
Potter Gas Company, .....	2,000 00	C. S. 1904. Verdict for def't.
Bethlehem Steel Company, .....	1,012 68	C. S. 1904. Paid.
Bethlehem Steel Company, .....	824 68	C. S. 1903. Paid.
Carbon Coal Company, .....	2,100 00	C. S. 1901. Paid.
Carbon Coal Company, .....	2,250 00	C. S. 1900. Paid.
Cambria Steel Company, .....	5,668 99	C. S. 1904. Paid.
Clearfield Bituminous Coal Corporation.	10,000 00	C. S. 1904. Paid.
The United Gas Improvement Company.	247,935 60	C. S. 1904. Paid.
Susquehanna River North and West Branch Telegraph Company.	405 37	C. S. 1903. Paid.
Susquehanna River North and West Branch Telegraph Company.	405 37	C. S. 1902. Paid.
Susquehanna River North and West Branch Telegraph Company.	405 37	C. S. 1901. Paid.
Susquehanna River North and West Branch Telegraph Company.	405 37	C. S. 1900. Verdict for Com'th.
Susquehanna River North and West Branch Telegraph Company.	405 37	C. S. 1899. Paid.
Greensburg Coal Company, .....	800 00	C. S. 1901. Verdict for def't.
Greensburg Coal Company, .....	800 00	C. S. 1900. Paid.
Millwood Coal and Coke Company, ..	692 50	C. S. 1904. Paid.
Clearfield Southern Railroad Company.	510 00	C. S. 1904. Paid.
Hempfield Coal Company, .....	1,250 00	C. S. 1900. Paid.
Hempfield Coal Company, .....	1,875 00	C. S. 1901. Paid.
Altoona and Logan Valley Electric Railway Company.	3,572 10	L. T. 1904. Paid.
Consumers' Gas Company of Couderdport.	93 10	L. T. 1904. Paid.
Bethlehem Steel Company, .....	31,869 60	L. T. 1903. Paid.
Freeport Water Works Company, ..	121 60	
Gimbel Brothers, Incorporated, ...	1,965 55	L. T. 1904. Verdict for def't.
Gimbel Brothers, Incorporated, ...	331 12	L. T. 1903. Verdict for def't.
John Hancock Ice Company, .....	152 00	L. T. 1904. Verdict for def't.
Pittsburg and Eastern Railroad Company.	1,184 51	L. T. 1904. Verdict for def't.

## SCHEDULE C—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Bethlehem Steel Company, .....	32,176 06	L. T. 1904. Paid.
Rockhill Iron and Coal Company, ..	1,621 22	L. T. 1904. Verdict for def't.
Bell Telephone Company of Philadelphia.	75,523 91	C. S. 1904. Paid.
Boothby Hotel Company, .....	750 00	C. S. 1904. Paid.
Pittsburg Dry Goods Company, ....	4,500 00	C. S. 1904. Paid.
Manor Gas Coal Company, .....	362 90	L. T. 1904. Pending.
Manor Gas Coal Company, .....	760 00	L. T. 1902. Pending.
River Coal Company, .....	2,000 00	C. S. 1904. Paid.
Whitehall Portland Cement Company.	1,749 92	L. T. 1904. Verdict for def't.
Penfield Coal Company, .....	123 50	L. T. 1904. Verdict for def't.
Sharon Steel Company, .....	3,635 48	L. T. 1904. Pending.
Wm. Cramp Ship and Engine Building Company.	19,213 20	L. T. 1904. Paid.
Upper Lehigh Coal Company, .....	5,563 75	C. S. 1904. Paid.
Morris Run Coal Mining Company, ..	875 00	C. S. 1904. Paid.
Dodson Coal Company, .....	1,750 00	C. S. 1904. Paid.
Tioga Improvement Company, ....	1,000 00	C. S. 1904. Paid.
Carnegie Natural Gas Company, ....	500 00	C. S. 1904. Paid.
Allentown and Slatington Street Railway Company.	1,250 00	C. S. 1904. Paid.
Island Coal Company, .....	3,250 00	C. S. 1904. Paid.
Jamestown and Franklin Railroad Company.	1,250 00	C. S. 1904. Paid.
Philadelphia and West Chester Traction Company.	2,236 07	C. S. 1904. Paid.
Upper Lehigh Supply Company, Limited.	500 00	C. S. 1904. Paid.
Nescopeck Coal Company, .....	2,000 00	C. S. 1904. Paid.
Midland Mining Company, .....	4,000 00	C. S. 1904. Paid.
Salem Coal Company, .....	600 00	C. S. 1901. Paid.
Clairton Land Company, .....	175 00	C. S. 1904. Paid.
Youngsville and Sugar Grove Street Railway Company.	254 50	C. S. 1904. Verdict for def't.
Franklin and Clearfield Railroad Company.	250 00	C. S. 1904. Paid.
Somerset Colliery Company, .....	125 00	C. S. 1904. Verdict for def't.
Fall Brook Railway Company, .....	20,000 00	C. S. 1904. Paid.
Union Railroad Company, .....	19,500 00	C. S. 1904. Paid.
Allentown and Slatington Street Railway Company.	1,250 00	C. S. 1903. Paid.
Union Steel Company, .....	127 50	C. S. 1904. Paid.
Union Steel Company, .....	21,036 04	L. T. 1904. Paid.
St. Benedict Village Company, .....	129 00	C. S. 1902. Paid.
St. Benedict Village Company, .....	322 25	C. S. 1903. Paid.
St. Benedict Village Company, .....	481 93	C. S. 1904. Paid.
H. C. Frick Coke Company, .....	58,039 00	C. S. 1904. Paid.
Union Supply Company, .....	4,000 00	C. S. 1904. Paid.
Carnegie Land Company, .....	400 00	C. S. 1904. Paid.
Sharon Coke Company, .....	1,829 00	C. S. 1903. Paid.
Sharon Coke Company, .....	1,810 00	C. S. 1904. Paid.
Sharon Coke Company, .....	1,749 92	L. T. 1904. Verdict for def't.
Sharon Coke Company, .....	1,749 92	L. T. 1903. Verdict for def't.
Sharon Land Company, .....	25 00	C. S. 1904. Paid.
National Mining Company, .....	1,500 00	C. S. 1904. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	5,303 12	C. S. 1904. Paid.
Dents Run Coal Company, .....	2,275 00	C. S. 1904. Paid.
Broad Top Seam, Anthracite Coal Company.	175 00	C. S. 1904. Paid.
Edri Coal Company, .....	500 00	C. S. 1904. Paid.
W. Dewes Wood Company, .....	440 00	C. S. 1904. Paid.
Etna and Montrose Railroad Company.	500 00	C. S. 1904. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Shenango Valley Railroad Company.	375 00	C. S. 1904. Paid.
Manufacturers' Water Company,...	4,000 00	C. S. 1904. Paid.
White Haven Water Company, ....	130 00	C. S. 1904. Paid.
Cambria Coal Mining Company,...	700 00	C. S. 1904. Paid.
International Navigation Company,	1,227 70	C. S. 1904. Paid.
Finance Company of Pennsylvania,	4,897 69	C. S. 1904. Paid.
East Broad Top Railroad and Coal Company.	4,717 00	C. S. 1904. Paid.
Philadelphia Fillzuig Company, ...	2,201 55	C. S. 1904. Paid.
Lehigh Valley Traction Company, ..	9,527 25	C. S. 1904. Paid.
Lehigh Valley Traction Company, ..	9,521 50	C. S. 1903. Paid.
Lehigh Valley Traction Company, ..	12,022 25	C. S. 1902. Paid.
Lehigh Valley Traction Company, ..	8,433 50	C. S. 1901. Paid.
Lehigh Valley Traction Company, ..	4,467 50	C. S. 1900. Paid.
Philadelphia and Lehigh Valley Traction Company.	2,500 00	C. S. 1904. Paid.
Pittsburg Coal Company of Pennsylvania.	3,735 72	L. T. 1904. Paid.
Pittsburg Coal Company of Pennsylvania.	87,552 11	C. S. 1904. Paid.
Geo. B. Newton and Company, Incorporated.	270 83	C. S. 1904. Verdict for def't.
Tamaqua and Lansford Street Railway Company.	2,667 33	C. S. 1904. Paid.
Susquehanna and New York Railroad Company.	3,750 00	C. S. 1904. Paid.
Susquehanna and New York Railroad Company.	1,368 05	C. S. 1903. (Pt.) Paid.
Susquehanna and New York Railroad Company.	1,116 66	C. S. 1903. (Pt.) Paid.
Lehigh Coal and Navigation Company.	100,896 99	C. S. 1904. Paid.
Altoona and Logan Valley Electric Railway Company.	4,555 00	C. S. 1904. Paid.
Leetonia Railway Company, .....	500 00	C. S. 1904. Paid.
Clear Springs Water Company, ....	536 22	C. S. 1904. Verdict for def't.
Delaware River Telegraph Company.	500 00	C. S. 1904. Verdict for def't.
Tionesta Valley Railway Company,	2,050 62	C. S. 1904. (Pt.) Paid.
Tionesta Valley Railway Company,	546 07	C. S. 1904. (Pt.) Paid.
Fairmount Coal Company, .....	500 00	C. S. 1904. Paid.
Lewisburg, Milton and Watson-town Passenger Railway Company.	300 00	C. S. 1904. Paid.
Kittanning Consolidated Natural Gas Company.	1,569 50	C. S. 1904. Paid.
South Bethlehem Supply Company, Limited.	1,200 00	C. S. 1904. Paid.
Harrisburg Gas Company, .....	3,930 00	L. T. 1904. Paid.
Kingston Coal Company, .....	34,883 70	C. S. 1904. Paid.
Lehigh Valley Railroad Company, ..	126,904 00	C. S. 1904. Paid.
Girard Trust Company, .....	87,284 59	C. S. Pending.
County of Allegheny, .....	5,630 11	Tax on personal property 1904. Judgment for defendant.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1896. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1895. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1894. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1893. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1892. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1891. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1890. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1889. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1888. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1887. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1886. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1885. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1884. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1883. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1882. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1881. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1880. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1879. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1878. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1877. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1876. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1875. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1874. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1873. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1872. Paid.
Central Railroad Company of New Jersey.	15,000 00	C. S. 1871. Paid.
Central Railroad Company of New Jersey.	25,000 00	C. S. 1904. Paid.
Coaldale Mining Company, .....	100 00	C. S. 1904. Verdict for def't.
Union Traction Company, .....	101,192 16	C. S. 1904. Paid.
People's Traction Company, .....	32,571 23	C. S. 1904. Paid.
Electric Traction Company, .....	35,577 76	C. S. 1904. Paid.
Philadelphia Traction Company, ...	85,941 08	C. S. 1904. Paid.
Philadelphia Rapid Transit Company.	38,604 18	C. S. 1904. Paid.
Keystone Coal and Coke Company, ..	14,062 50	C. S. 1902. Paid.
Keystone Coal and Coke Company, ..	25,000 00	C. S. 1903. Paid.
Keystone Coal and Coke Company, ..	22,500 00	C. S. 1904. Paid.
Scranton Railway Company, .....	10,627 75	C. S. 1904. Paid.
Wyoming Valley Coal Company, ...	1,000 00	C. S. 1904. Paid.
Pennsylvania and New York Canal and Railroad Company.	5,000 00	C. S. 1904. Paid.
Glen Summit Hotel and Land Company.	67 50	C. S. 1904. Paid.
Lehigh Valley Coal Company, .....	7,500 00	C. S. 1904. Paid.
Loyalsock Railroad Company, .....	2,250 00	C. S. 1904. Paid.
Hazleton Water Company, .....	1,250 00	C. S. 1904. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Easton and Northern Railroad Company.	1,500 00	C. S. 1904. Paid.
Bethlehem Electric Light Company,	1,000 00	C. S. 1904. Paid.
Schuylkill and Lehigh Valley Railroad Company.	1,725 00	C. S. 1904. Paid.
Locust Mountain Water Company.	175 00	C. S. 1904. Paid.
New York and Middle Coal Field Railroad and Coal Company.	6,000 00	C. S. 1904. Paid.
Henry Shenk Company, .....	1,507 16	C. S. 1904. Pending.
Quakertown Traction Company, ....	365 56	Loans 1901. Paid.
Quakertown Traction Company, ....	593 56	Loans 1902. Paid.
Quakertown Traction Company, ....	831 06	Loans 1903. Paid.
Quakertown Traction Company, ....	831 06	Loans 1904. Paid.
Keystone Coal and Coke Company, ..	3,010 89	Loans 1902. Paid.
Keystone Coal and Coke Company, ..	4,589 84	Loans 1903. Paid.
Keystone Coal and Coke Company, ..	4,743 99	Loans 1904. Paid.
Lackawanna Iron and Steel Company.	11,253 34	C. S. 1904. Paid.
Huron Coal Company, .....	250 00	C. S. 1902. Verdict for def't.
Huron Coal Company, .....	250 00	C. S. 1903. Verdict for def't.
Huron Coal Company, .....	375 00	C. S. 1904. Paid.
W. Dewees Wood Company, .....	2,140 99	L. T. 1904. Verdict for Com'th.
Chester Electric Light and Power Company.	662 25	C. S. 1904. Verdict for def't.
Chester Electric Light and Power Company.	380 00	L. T. 1904. Verdict for def't.
Western Union Telegraph Company,	10,500 00	C. S. 1903. Paid.
Western Union Telegraph Company,	10,750 00	C. S. 1904. Paid.
Smith and Davis Company, .....	75 00	C. S. 1904. Pending.
Quaker City Cab Company, .....	200 00	C. S. 1901. Paid.
Quaker City Cab Company, .....	200 00	C. S. 1902. Paid.
Quaker City Cab Company, .....	200 00	C. S. 1903. Paid.
Quaker City Cab Company, .....	200 00	C. S. 1904. Paid.
A. P. Swoyer Company, .....	500 00	C. S. 1904. Verdict for def't.
A. P. Swoyer Company, .....	3,555 56	C. S. 1896-1903. Verdict for def't.
A. P. Swoyer Company, .....	333 33	Bonus. Verdict for def't.
Lancaster County, .....	819 66	Tax on personal property. 1894. Judgment for defendant.
Huntingdon Gas Company, .....	100 00	C. S. 1904. Verdict for def't.
Dill and Collins Company, .....	2,079 30	L. T. 1903. Paid.
Northampton Iron Company, .....	316 54	L. T. 1904. Verdict for def't.
Lehigh and Wilkes-Barre Coal Company.	25,000 00	C. S. 1904. Paid.
Bethlehem and Nazareth Passenger Railway Company.	750 00	C. S. 1902. Paid.
Mingo Coal Company, .....	5 00	C. S. 1904. Verdict for Com'th.
Continuous Metal Refining Company.	500 00	C. S. 1904. Verdict for Com'th.
Bala and Merion Electric Company,	387 00	C. S. 1903. Paid.
Bala and Merion Electric Company,	378 00	C. S. 1902. Paid.
Clairton Steel Company, .....	1,024 25	C. S. 1904. Verdict for Com'th.
Clairton Steel Company, .....	13,387 47	Loans 1904. Pending.
Columbia Electric Light Company of Pennsylvania.	323 20	C. S. 1903. Paid.
Columbia Electric Light Company of Pennsylvania.	280 00	C. S. 1902. Paid.
Diamond Electric Company, .....	1,750 00	C. S. 1903. Paid.
Diamond Electric Company, .....	1,500 00	C. S. 1902. Paid.
Wissahickon Electric Light Company.	1,170 00	C. S. 1903. Paid.
West End Electric Company of Philadelphia.	1,765 00	C. S. 1903. Paid.
Suburban Electric Company, .....	3,339 00	C. S. 1903. Paid.
American Railway Company, .....	9,644 71	L. T. 1904. Verdict for def't.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Equitable Illuminating Gas Light Company of Philadelphia.	25,585 18	L. T. 1904. Paid.
Hollenback Coal Company, .....	4,065 00	C. S. 1904. Paid.
Schuylkill Anthracite Coal Royalty Company.	313 50	L. T. 1904. Verdict for def't.
Lake Shore and Michigan Southern Railway Company.	37,560 69	C. S. 1904. Verdict for def't.
Lake Shore and Michigan Southern Railway Company.	36,605 29	C. S. 1904. Paid.
Consumers' Brewing Company of Philadelphia.	2,083 33	C. S. 1903. Paid.
Consumers' Brewing Company of Philadelphia.	860 10	L. T. 1902. Verdict for Com'th.
Olean, Rock City and Bradford Railroad Company.	760 00	C. S. 1902. Paid.
Southern Electric Light and Power Company.	4,152 40	C. S. 1902. Paid.
Manufacturers' Electric Company of Philadelphia.	2,745 00	C. S. 1903. Paid.
Manufacturers' Electric Company of Philadelphia.	3,544 25	C. S. 1903. Paid.
Germantown Electric Light Company.	2,044 00	C. S. 1902. Paid.
Germantown Electric Light Company.	1,618 50	C. S. 1902. Paid.
Northern Electric Light and Power Company.	8,182 00	C. S. 1903. Paid.
Northern Electric Light and Power Company.	10,268 00	C. S. 1903. Paid.
Overbrook Electric Company, .....	418 25	C. S. 1903. Paid.
Overbrook Electric Company, .....	330 60	C. S. 1902. Paid.
Powelson Electric Company, .....	7,582 00	C. S. 1903. Paid.
Powelson Electric Company, .....	4,941 32	C. S. 1902. Paid.
Barber Asphalt Paving Company,...	1,696 50	C. S. 1902. Pending.
Filbert Paving and Construction Company (of Delaware).	140 62	C. S. 1902. Pending.
Filbert Paving and Construction Company (of Delaware).	1,081 41	C. S. 1903. Pending.
Filbert Paving and Construction Company (of Delaware).	965 15	C. S. 1904. Pending.
Pressed Steel Car Company, .....	41,666 66	Bonus. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1896. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1897. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1898. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1899. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1900. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1901. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1902. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1903. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1904. Pending.
Cameron Lumber Company, .....	750 00	C. S. 1904. Verdict for Com'th.
Wheeler and Wilson Manufacturing Company.	848 10	C. S. 1874-1891. Paid.
Wheeler and Wilson Manufacturing Company.	1,099 00	C. S. 1892-1895. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Wheeler and Wilson Manufacturing Company.	52 50	Bonus. Paid.
General Insurance Investment Company.	50 19	C. S. 1904. Verdict for def't.
Reading Traction Company, .....	1,722 20	L. T. 1903. Paid.
West Laurel Hill Cemetery Company.	3,125 00	C. S. 1900-1-2-3-4. Paid.
West Laurel Hill Cemetery Company.	625 00	C. S. 1905. Paid.
Buck Run Coal Company, .....	340 00	L. T. 1905. Paid.
Pine Run Coal and Coke Company,	125 00	C. S. 1905. Paid.
Gilpin Coal Company, .....	625 00	C. S. 1905. Paid.
Annora Coal Company, .....	250 00	C. S. 1905. Paid.
Avonmore Coal and Coke Company,	625 00	C. S. 1905. Paid.
Stevens Coal Company, .....	1,250 00	C. S. 1905. Paid.
Bethlehem City Water Company,...	943 92	L. T. 1904. Verdict for def't.
Bethlehem City Water Company,...	943 92	L. T. 1905. Paid.
Bethlehem City Water Company,...	1,660 67	C. S. 1905. Paid.
Delaware, Lackawanna and Western Railroad Company.	524 00	C. S. 1905. Paid.
Mahoning Valley Railroad Company.	750 00	C. S. 1905. Paid.
Philadelphia Warehousing and Cold Storage Company.	1,059 77	C. S. 1905. Paid.
Pennsylvania and Western Railroad Company.	500 00	C. S. 1905. Paid.
Central Pennsylvania Lumber Company.	22,360 81	C. S. 1905. Paid.
Westinghouse Air Brake Company,	24,395 37	C. S. 1905. Paid.
Citizens' Title and Trust Company,	1,068 75	C. S. 1905. Pending.
Philadelphia Brewing Company,...	4,070 76	C. S. 1905. Paid.
Schenley Distilling Company, ....	38 00	L. T. 1905. Verdict for def't.
Schenley Distilling Company, ....	1,824 22	C. S. 1905. Paid.
U. S. Electric Lighting Company of Pennsylvania.	500 00	C. S. 1902. Paid.
U. S. Electric Lighting Company of Pennsylvania.	500 00	C. S. 1903. Paid.
Pennsylvania Heat, Light and Power Company.	50,328 00	C. S. 1901. Paid.
Brush Electric Light Company of Philadelphia.	9,452 80	C. S. 1902. Paid.
Brush Electric Light Company of Philadelphia.	9,111 90	C. S. 1903. Paid.
Edison Electric Light Company of Philadelphia.	26,887 55	C. S. 1902. Paid.
Edison Electric Light Company of Philadelphia.	32,776 00	C. S. 1903. Paid.
Bowman Coal Mining Company,...	250 00	C. S. 1905. Paid.
Alden Coal Company, .....	2,604 24	C. S. 1905. Paid.
Dents Run Coal Company, .....	1,037 50	C. S. 1905. Paid.
Chevington and Bunn Coal Company.	500 00	C. S. 1905. Paid.
American Dredging Company, ....	10,000 00	C. S. 1905. Paid.
Bethlehem and Nazareth Passenger Railway Company.	750 00	C. S. 1905. Paid.
Coudersport and Port Allegheny Railroad Company.	1,750 00	C. S. 1905. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	7,723 40	C. S. 1905. Paid.
Kittanning Consolidated National Gas Company.	1,500 00	C. S. 1905. Paid.
Lewisburg, Milton and Watontown Passenger Railway Company.	350 00	C. S. 1905. Paid.



## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Beech Creek Railroad Company,...	2,115 12	L. T. 1905. Paid.
Fall Brook Railway Company,.....	18,750 00	C. S. 1905. Paid.
Jamestown and Franklin Railroad Company.	1,250 00	C. S. 1905. Paid.
Leetonia Railway Company, .....	655 59	C. S. 1905. Paid.
Jefferson Coal Company, .....	925 00	C. S. 1905. Paid.
Highland Coal Company, .....	3,000 00	C. S. 1905. Paid.
Midland Mining Company, .....	500 00	C. S. 1905. Verdict for Com'th.
Empire Coal Mining Company,.....	625 00	C. S. 1905. Paid.
Hudson Coal Company, .....	1,250 00	C. S. 1905. Verdict for def't.
Diamond Coal Land Company, ....	500 00	C. S. 1905. Verdict for def't.
Lehigh and Wilkes-Barre Coal Company.	21,821 31	C. S. 1905. Paid.
American Ice Company, .....	10,000 00	C. S. 1905. Paid.
Consumers' Brewing Company of Philadelphia.	5,000 00	C. S. 1905. Paid.
Oliphant Water Company, .....	600 00	C. S. 1905. Paid.
Mid Valley Supply Company, Limited.	250 00	C. S. 1905. Paid.
Cambria Steel Company, .....	7,282 35	C. S. 1905. Verdict for def't.
E. P. Wilbur Trust Company, ....	4,944 27	C. S. 1905. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	16,250 00	C. S. 1905. Paid.
Mid Valley Coal Company, .....	4,221 36	C. S. 1905. Paid.
Nescopee Coal Company, .....	1,695 50	C. S. 1905. Paid.
Hollenback Coal Company, .....	2,035 32	C. S. 1905. Paid.
Eastern Securities Company, .....	250 00	C. S. 1905. Paid.
Hillside Coal and Iron Company,...	750 00	C. S. 1905. Paid.
Wilkes-Barre and Eastern Railroad Company.	4,950 00	C. S. 1905. Paid.
New York, Susquehanna and Western Coal Company.	500 00	C. S. 1905. Paid.
Erie Land and Improvement Company.	25 00	C. S. 1905. Paid.
New York, Lake Erie and Western Coal and Railroad Company.	2,000 00	C. S. 1905. Paid.
Butler Mine Company, Limited,...	100 00	C. S. 1905. Paid.
Nypano Railroad Company, .....	6,500 00	C. S. 1905. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	625 00	C. S. 1905. Paid.
Jefferson Railroad Company, .....	2,500 00	C. S. 1905. Verdict for Com'th.
Pennsylvania Coal Company, .....	40,530 00	C. S. 1905. Paid.
Northwestern Mining and Exchange Company.	750 00	C. S. 1905. Paid.
Blossburg Coal Company, .....	625 00	C. S. 1905. Paid.
Fall Brook Coal Company, .....	4,000 00	C. S. 1904. Paid.
Fall Brook Coal Company, .....	4,000 00	C. S. 1905. Paid.
Erie Railroad Company, .....	5,893 72	C. S. 1905. Paid.
Erie and Wyoming Valley Railroad Company.	5,125 00	C. S. 1905. Paid.
Buffalo and Susquehanna Railroad Company.	40,000 00	C. S. 1905. Paid.
Lackawanna Coal and Coke Company.	5,000 00	C. S. 1905. Paid.
Parrish Coal Company, .....	6,938 32	C. S. 1905. Paid.
Scranton Gas and Water Company, ..	18,591 00	C. S. 1905. Paid.
St. Marys Gas Company, .....	1,000 00	C. S. 1905. Paid.
State Belt Electric Street Railway Company.	500 00	C. S. 1905. Paid.
Susquehanna and New York Railroad Company.	3,303 86	C. S. 1905. Paid.
Union Improvement Company, ....	9,397 48	C. S. 1905. Paid.
Upper Lehigh Coal Company, .....	3,315 80	C. S. 1905. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
West Branch Coal Company, .....	217 25	C. S. 1905. Paid.
Cambria Coal Mining Company,...	750 00	C. S. 1905. Verdict for Com'th.
Harbison-Walker Refractories Company.	41,263 35	Bonus. Paid.
American Coke and Gas Construction Company.	99,160 00	C. S. 1905. Pending.
Bangor and Portland Railway Company	3,825 00	C. S. 1905. Paid.
Delaware Division Canal Company of Pennsylvania	1,250 00	C. S. 1905. Paid.
Victor Coal Company, .....	250 00	C. S. 1905. Paid.
Union Supply Company, .....	4,875 00	C. S. 1905. Verdict for Com'th.
Beech Creek Railroad Company,...	35,000 00	C. S. 1905. Paid.
Cambria Incline Plane Company,...	375 00	C. S. 1905. Paid.
Central District Printing Telegraph Company.	8,479 18	Bonus. Verdict for def't.
Northern Liberties Railway Company.	110 00	C. S. 1905. Verdict for Com'th.
Pittsburg and Ohio Valley Railway Company.	500 00	C. S. 1905. Verdict for Com'th.
Dodson Coal Company, .....	1,750 00	C. S. 1905. Paid.
Rittersville Hotel Company, .....	300 00	C. S. 1905. Verdict for def't.
Penn Traffic Company, .....	4,125 00	C. S. 1905. Paid.
Susquehanna Lumber Company,...	159 40	C. S. 1905. Verdict for def't.
Delaware and Atlantic Telegraph and Telephone Company.	250 00	C. S. 1905. Verdict for def't.
Potter Gas Company, .....	2,250 00	C. S. 1905. Paid.
Potter Gas Company, .....	50 00	L. T. 1905. Verdict for def't.
Delaware, Lackawanna and Western Railroad Company.	3,209 91	L. T. 1905. Paid.
Bell Telephone Company of Philadelphia.	87,081 94	C. S. 1905. Verdict for def't.
Brookwood Coal Company, .....	439 28	C. S. 1905. Verdict for def't.
Commercial Trust Company, .....	20,274 00	C. S. 1905. Paid.
Fairmount Coal Company, .....	500 00	C. S. 1905. Paid.
Paul Wuesthoff Company, .....	200 00	C. S. 1905. Verdict for def't.
Paul Wuesthoff Company, .....	250 00	C. S. 1904. Paid.
Tionesta Valley Railway Company,	2,500 00	C. S. 1905. Paid.
Kingston Coal Company, .....	18,429 82	C. S. 1905. Paid.
Conshohocken Gas Light Company,	75 40	C. S. 1905. Verdict for def't.
C. Day Rudy Company, .....	49 40	L. T. 1905. Verdict for def't.
Bradford Gas Company, .....	2,401 53	C. S. 1905. Verdict for Com'th.
Robisonia Iron Company, Limited,	945 00	C. S. 1905. Paid.
Johnstown Water Company, .....	2,750 00	C. S. 1905. Paid.
Westinghouse Traction Brake Company.	333 33	Bonus. Verdict for def't.
Westinghouse Traction Brake Company.	500 00	C. S. 1905. Verdict for def't.
Germantown Trust Company, .....	6,780 00	C. S. 1905. Verdict for def't.
Keystone Store Company, .....	375 00	C. S. 1905. Verdict for Com'th.
Tyler Mercantile Company, .....	150 00	C. S. 1905. Verdict for def't.
Erie County Telegraph Company,...	125 00	C. S. 1905. Paid.
Penn Gas Coal Company, .....	8,000 00	C. S. 1905. Paid.
Hanover and Newport Railroad Company.	500 00	C. S. 1905. Paid.
Powhatan Coal and Coke Company,	1,125 00	C. S. 1905. Paid.
Edri Coal Company, .....	650 00	C. S. 1905. Paid.
Keystone Telephone Company of Philadelphia.	7,582 94	C. S. 1905. Paid.
Buffalo and Susquehanna Railroad Company.	27,298 57	L. T. 1905. Paid.
Quakertown Traction Company, ..	831 06	L. T. 1905. Verdict for def't.
Kensington Shipyard Company,...	760 00	L. T. 1905. Verdict for def't.
Allentown Electric Light and Power Company.	140 60	L. T. 1905. Verdict for def't.

## SCHEDULE C—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Thomas Meehan and Sons, Incorporated.	121 60	L. T. 1905. Verdict for def't.
Philadelphia and West Chester Traction Company.	1,167 80	L. T. 1904. Verdict for def't.
Coudersport and Port Allegheny Railroad Company.	931 00	L. T. 1905. Paid.
W. Dewees Wood Company, .....	2,140 99	L. T. 1905. Verdict for Com'th.
Hudson Coal Company, .....	285 00	L. T. 1905. Verdict for Com'th.
State Belt Electric Street Railway Company.	623 20	L. T. 1905. Verdict for def't.
Sharon Steel Company, .....	3,635 48	L. T. 1905. Verdict for Com'th.
Rittersville Hotel Company, .....	44 97	L. T. 1905. Verdict for def't.
Eiler Lumber and Mill Company, ..	121 83	L. T. 1905. Verdict for def't.
Charles J. Webb and Company, Incorporated.	1,346 00	L. T. 1905. Paid.
South Fork Coal Mining Company, ..	750 00	C. S. 1905. Paid.
Sharon Land Company, .....	25 00	C. S. 1905. Verdict for Com'th.
Robert Smith Ale Brewing Company.	2,125 00	C. S. 1905. Discontinued.
Pennsylvania Heat, Light and Power Company.	54,401 28	C. S. 1902. Paid.
Pennsylvania Heat, Light and Power Company.	54,401 28	C. S. 1903. Paid.
River Coal Company, .....	2,250 00	C. S. 1905. Verdict for Com'th.
National Mining Company, .....	3,000 00	C. S. 1905. Verdict for def't.
Madeira Hill Coal Mining Company.	625 00	C. S. 1905. Paid.
Investment Company of Philadelphia.	15,819 39	C. S. 1905. Verdict for def't.
H. C. Frick Coke Company, .....	57,797 00	C. S. 1905. Verdict for Com'th.
Guarantee Trust and Safe Deposit Company.	11,156 25	C. S. 1905. Paid.
General Insurance Investment Company.	500 00	C. S. 1905. Paid.
Etna and Montrose Railroad Company.	500 00	C. S. 1905. Verdict for Com'th.
Curtis Publishing Company, .....	1,190 00	C. S. 1905. Paid.
Cranberry Improvement Company.	2,200 00	C. S. 1905. Paid.
Clairton Land Company, .....	175 00	C. S. 1905. Verdict for Com'th.
Carnegie Natural Gas Company, ..	600 00	C. S. 1905. Verdict for Com'th.
Carnegie Land Company, .....	500 00	C. S. 1905. Verdict for Com'th.
Cameron Lumber Company, .....	500 00	C. S. 1905. Verdict for def't.
Bulletin Company, .....	2,812 50	C. S. 1905. Paid.
Boston and Philadelphia Steamship Company.	7,725 00	C. S. 1903-4-5. Paid.
Boston and Philadelphia Steamship Company.	2,153 05	C. S. 1902. Paid.
Bedford Springs Company, Limited.	150 00	C. S. 1905. Paid.
Central Railroad Company of New Jersey.	1,600 00	C. S. 1905. Verdict for Com'th.
New York Central and Hudson River Railroad Company.	700 00	C. S. 1905. Paid.
Norfolk and Western Railway Company.	500 00	C. S. 1905. Pending.
Marietta Chair Company, .....	70 00	C. S. 1901. Pending.
Sorosis Shoe Company of Pittsburg,	492 27	C. S. 1905. Paid.
Sorosis Shoe Company of Philadelphia.	644 16	C. S. 1905. Paid.
Westmoreland Coal Company, ....	24,833 33	C. S. 1905. Paid.
The United Gas Improvement Company.	267,434 64	C. S. 1905. Paid.
Alliance Coal Mining Company, ....	1,125 00	C. S. 1905. Paid.
Real Estate Holding Company, ....	5 00	C. S. 1905. Paid.
Walnut Run Coal Company, .....	625 00	C. S. 1905. Verdict for Com'th.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Pennsylvania Heat, Light and Power Company.	20,101 17	C. S. 1904. Paid.
Pennsylvania Heat, Light and Power Company.	20,101 17	C. S. 1905. Paid.
North Philadelphia Land Company,	125 00	C. S. 1905. Paid.
U. S. Electric Lighting Company of Pennsylvania.	500 00	C. S. 1904. Verdict for def't.
U. S. Electric Lighting Company of Pennsylvania.	500 00	C. S. 1905. Verdict for def't.
Overbrook Electric Company, ....	100 00	C. S. 1905. Paid.
Overbrook Electric Company, ....	50 00	C. S. 1904. Paid.
Monongahela River Consolidated Coal and Coke Company.	28,420 53	L. T. 1905. Pending.
Southern Electric Light and Power Company.	3,750 00	C. S. 1904. Paid.
Northern Electric Light and Power Company.	3,500 00	C. S. 1904. Paid.
Germantown Electric Light Company.	750 00	C. S. 1904. Paid.
Germantown Electric Light Company.	625 00	C. S. 1905. Verdict for def't.
Powelton Electric Company, .....	2,995 70	C. S. 1904. Verdict for def't.
Powelton Electric Company, .....	2,995 70	C. S. 1905. Verdict for def't.
Edison Electric Light Company of Philadelphia.	18,700 00	C. S. 1905. Paid.
Edison Electric Light Company of Philadelphia.	22,250 00	C. S. 1904. Paid.
Lehigh Coal and Navigation Company.	216,813 12	C. S. 1905. Paid.
Delaware and Hudson Company,...	59,493 40	C. S. 1905. Verdict for def't.
Philadelphia Electric Company, ....	8,518 28	C. S. 1904. Paid.
Coxe Brothers & Co., Incorporated,	10,640 60	C. S. 1905. Paid.
Lehigh Valley Railroad Company, ..	135,763 05	C. S. 1905. Paid.
Delaware, Susquehanna and Schuylkill Railroad Company.	7,500 00	C. S. 1905. Paid.
Hazleton Water Company, .....	1,250 00	C. S. 1905. Paid.
Consolidated Real Estate Company,	25 00	C. S. 1905. Paid.
Glen Summit Hotel and Land Company.	67 50	C. S. 1905. Paid.
Lehigh Valley Coal Company, ..	6,875 00	C. S. 1905. Paid.
Wyoming Valley Coal Company,...	875 00	C. S. 1905. Paid.
New York and Middle Coal Field Railroad and Coal Company.	6,000 00	C. S. 1905. Paid.
Schuylkill and Lehigh Valley Railroad Company.	1,700 00	C. S. 1905. Paid.
Pennsylvania and New York Canal and Railroad Company.	5,000 00	C. S. 1905. Paid.
Easton and Northern Railroad Company.	1,500 00	C. S. 1905. Paid.
Loyalsock Railroad Company,.....	2,500 00	C. S. 1905. Paid.
State Line and Sullivan Railroad Company.	2,663 75	C. S. 1905. Paid.
Clearfield Bituminous Coal Corporation.	2,500 00	C. S. 1905. Paid.
Buffalo, Rochester and Pittsburgh Railway Company.	59,108 25	C. S. 1905. Paid.
Tamaqua and Lansford Street Railway Company.	2,100 00	C. S. 1905. Paid.
Provident Life and Trust Company Philadelphia.	309,388 82	C. S. 1905. Pending.
Gimbel Brothers Incorporated,.....	22,396 87	C. S. 1905. Paid.
Albert Lewis Lumber and Manufacturing Company.	1,525 00	C. S. 1905. Paid.
Ferroman Land Company, .....	227 47	C. S. 1905. Verdict for def't.
Rockhill Iron and Coal Company,...	500 00	C. S. 1905. Paid.
Girard Trust Company, .....	85,955 36	C. S. 1905. Pending.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Midland Coal Company, .....	1,325 00	C. S. 1903. Paid.
Midland Coal Company, .....	1,375 00	C. S. 1904. Paid.
Midland Coal Company, .....	1,425 00	C. S. 1905. Paid.
Elk Tanning Company, .....	1,722 00	C. S. 1905. Verdict for def't.
East Broad Top Railroad and Coal Company.	5,000 00	C. S. 1905. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1900. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1901. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1902. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1903. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1904. Paid.
Columbia and Montour Electric Railway Company.	1,875 00	C. S. 1905. Paid.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1900. Verdict for def't.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1901. Paid.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1902. Paid.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1903. Paid.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1904. Paid.
Columbia and Montour Electric Railway Company.	1,396 00	L. T. 1905. Paid.
Sorosis Shoe Company of Philadelphia.	296 11	Bonus. Pending.
Sorosis Shoe Company of Pittsburgh.	236 52	Bonus. Pending.
Woodside Real Estate Company,...	625 00	C. S. 1905. Paid.
Real Estate Holding Company,....	95 00	L. T. 1905. Verdict for def't.
St. Clair Terminal Railroad Company.	2,500 00	C. S. 1905. Verdict for Com'th.
Scranton Railway Company, .....	18,800 00	C. S. 1905. Paid.
Silver Brook Coal Company, .....	1,250 00	C. S. 1905. Paid.
Union Railroad Company, .....	19,500 00	C. S. 1905. Verdict for Com'th.
Union Traction Company, .....	113,258 86	C. S. 1905. Verdict for def't.
W. K. Niver Coal Company, .....	1,500 00	C. S. 1905. Verdict for Com'th.
Philadelphia and West Chester Traction Company.	1,027 22	L. T. 1905. Paid.
Philadelphia Mortgage and Trust Company.	2,938 47	C. S. 1905. Paid.
Philadelphia Traction Company,...	93,895 59	C. S. 1905. Paid.
Philadelphia Rapid Transit Company.	43,299 82	C. S. 1905. Paid.
Philadelphia Securities Company,...	125 00	C. S. 1905. Verdict for def't.
People's Traction Company, .....	33,127 79	C. S. 1905. Paid.
Maryd Coal Company, .....	1,802 77	C. S. 1905. Paid.
Monongahela Southern Railroad Company.	800 00	C. S. 1905. Paid.
Mortgage Trust Company of Pennsylvania.	1,711 24	C. S. 1905. Paid.
Lackawanna Iron and Steel Company.	8,125 00	C. S. 1905. Paid.
Lake Shore and Michigan Southern Railway Company.	34,194 85	C. S. 1905. Paid.
International Navigation Company.	1,127 70	C. S. 1905. Paid.
Altoona and Logan Valley Electric Railway Company.	4,335 96	L. T. 1905. Paid.
Bethlehem Steel Company, .....	20,988 28	L. T. 1905. Paid.

## SCHEDULE C—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
DuBois Electric Company, .....	375 00	C. S. 1905. Paid.
Fairmount Park Transportation Company.	4,500 00	C. S. 1905. Paid.
DuBois Traction Company, .....	269 13	C. S. 1905. Paid.
Electric Traction Company, .....	37,986 69	C. S. 1905. Paid.
Hecla Coke Company, .....	2,500 00	C. S. 1905. Verdict for Com'th.
Clairton Steel Company, .....	1,563 83	C. S. 1905. Verdict for Com'th.
Consumers' Brewing Company of Erie.	500 00	C. S. 1905. Verdict for Com'th.
Pennsylvania Company for Insurance on Lives and Granting Annuities.	59,502 81	C. S. 1905. Paid.
Knickerbocker Ice Company, .....	5 00	C. S. 1905. Paid.
Goodyear Lumber Company, .....	3,764 93	C. S. 1905. Paid.
N. Z. Graves Company, .....	2,798 16	C. S. 1905. Paid.
Rock Cliff Water Company, .....	148 50	C. S. 1905. Paid.
Beech Creek Extension Railroad Company.	10,353 00	C. S. 1905. Paid.
Jermyn and Rush Brook Water Company.	475 00	C. S. 1905. Paid.
Republic Coke Company, .....	2,250 00	C. S. 1905. Verdict for Com'th.
Finance Company of Pennsylvania.	31,005 23	C. S. 1905. Paid.
Union Steel Company, .....	127 50	C. S. 1905. Verdict for Com'th.
Union Steel Company, .....	21,115 64	L. T. 1905. Pending.
Sharon Coke Company, .....	1,749 92	L. T. 1905. Paid.
Sharon Coke Company, .....	1,848 75	C. S. 1905. Verdict for Com'th.
Lycorning Electric Company, .....	508 50	C. S. 1905. Verdict for def't.
Philadelphia and West Chester Traction Company.	2,386 07	C. S. 1905. Paid.
People's Ice, Light and Storage Company.	913 50	C. S. 1905. Verdict for Com'th.
Consolidated Water Supply Company.	3,723 03	L. T. 1905. Verdict for def't.
Hamburger Distilling Company, Limited.	2,000 00	C. S. 1905. Verdict for def't.
Mortgage Trust Company of Pennsylvania.	8,681 33	L. T. 1905. Paid.
Lackawanna Valley Water Supply Company.	420 00	C. S. 1905. Paid.
Scranton Railway Company, .....	6,090 55	L. T. 1905. Paid.
Consolidated Water Supply Company.	1,052 50	C. S. 1905. Paid.
Pulaski Iron Company, .....	206 37	C. S. 1905. Verdict for def't.
Pulaski Iron Company, .....	137 58	Bonus. Verdict for def't.
Printz Degreasing Company, .....	600 00	C. S. 1905. Pending.
Crystal Lake Water Company, .....	465 00	C. S. 1905. Paid.
Laurel Hill Cemetery Company, .....	500 00	C. S. 1900-1905. Pending.
Mingo Coal Company, .....	6,546 50	C. S. 1905. Verdict for Com'th.
Mount Vernon Cemetery Company, .....	1,080 00	C. S. 1856-1891. Paid.
Mount Vernon Cemetery Company, .....	600 00	C. S. 1892-1899. Paid.
Mount Vernon Cemetery Company, .....	61 50	C. S. 1900-1905. Paid.
Nesquehoning Valley Railroad Company.	7,260 00	C. S. 1905. Verdict for def't.
People's Street Railway Company of Nanticoke and Newport.	500 00	C. S. 1905. Paid.
United Ice Company, .....	101 00	C. S. 1905. Paid.
Westinghouse Electric and Manufacturing Company.	96,426 92	C. S. 1905. Paid.
Allentown Gas Company, .....	741 00	L. T. 1905. Verdict for def't.
Buffalo and Susquehanna Coal and Coke Company.	2,695 03	L. T. 1904. Paid.
Equitable Illuminating Gas Light Company of Philadelphia.	24,936 44	L. T. 1905. Paid.
Knickerbocker Ice Company, .....	1,031 86	L. T. 1905. Verdict for def't.
Lehigh Valley Coal Company, .....	31,099 47	L. T. 1905. Paid.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
N. Z. Graves Company, .....	2,989 70	L. T. 1905. Verdict for def't.
West Berwick Water Supply Company.	190 00	L. T. 1905. Paid.
Pittsburg, Bessemer and Lake Erie Railroad Company.	4,614 56	L. T. 1905. Verdict for Com'th.
Pittsburg, Bessemer and Lake Erie Railroad Company.	36,586 07	C. S. 1905. Verdict for Com'th.
Mountain Coal Company, .....	770 00	C. S. 1905. Paid.
Bessemer and Lake Erie Railroad Company.	5,000 00	C. S. 1905. Verdict for Com'th.
Berwick Water Company, .....	607 17	C. S. 1905. Paid.
Raven Run Coal Company, .....	60 00	C. S. 1905. Verdict for def't.
Maryd Coal Company, .....	1,226 83	Bonus. Verdict for def't.
Mellott Heating Company, .....	80 00	C. S. 1901. Pending.
Mellott Heating Company, .....	80 00	C. S. 1902. Pending.
Mellott Heating Company, .....	80 00	C. S. 1903. Pending.
Valley Supply Company, .....	166 67	Bonus. Pending.
White Haven Water Company, ....	43 70	L. T. 1905. Pending.
Thomas Meehan and Sons, Incorporated.	500 00	C. S. 1904. Paid.
Atlantic Crushed Coke Company, ..	700 00	C. S. 1904. Paid.
Atlantic Crushed Coke Company, ..	1,000 00	C. S. 1905. Paid.
Oscar Smith and Sons Company, ..	158 56	C. S. 1905. Pending.
Bethlehem Steel Corporation, New Jersey.	333 33	Bonus. Verdict for def't.
The Pullman Company, .....	97 51	Bonus. Pending.
National Tube Company of New Jersey.	80 00	C. S. 1905. Verdict for Com'th.
Shenango Valley Railroad Company.	300 00	C. S. 1905. Paid.
Water Street Bridge Company, ....	300 00	C. S. 1905. Paid.
Benjn. Booth and Company, Limited.	123 73	C. S. 1905. Verdict for def't.
Upper Lehigh Supply Company, Limited.	590 00	C. S. 1905. Paid.
Leechburg Land and Improvement Company.	300 00	C. S. 1905. Paid.
Chester Electric Light and Power Company.	662 25	C. S. 1905. Verdict for def't.
Clearfield Bituminous Coal Corporation.	1,041 08	L. T. 1905. Verdict for Com'th.
Irvona Coal and Coke Company, ...	750 00	C. S. 1905. Verdict for Com'th.
Atlas Portland Cement Company, ..	2,050 00	C. S. 1905. Paid.
Santo Domingo Silver Mining Company.	120 00	C. S. 1905. Paid.
Woodruff Sleeping and Parlor Coach Company.	101 57	C. S. 1905. Verdict for Com'th.
Harrisburg Gas Company, .....	3,930 00	L. T. 1905. Paid.
Susquehanna Traction Company, ...	200 00	C. S. 1904. Paid.
Susquehanna Traction Company, ...	200 00	C. S. 1905. Paid.
Continuous Mutual Refining Company.	500 00	C. S. 1905. Verdict for def't.
Bethlehem Steel Company, .....	886 81	C. S. 1905. Paid.
West Berwick Water Supply Company.	175 00	C. S. 1905. Paid.
Huntingdon Gas Company, .....	125 00	C. S. 1905. Paid.
Spring Brook Lumber Company, ...	250 00	C. S. 1905. Verdict for Com'th.
Scranton Vitrified Brick and Tile Manufacturing Company.	118 82	L. T. 1905. Pending.
Shelby Steel Tube Company, .....	2,041 75	Bonus. Pending.
National Tube Company of New Jersey.	8,367 08	Bonus. Pending.
Ross Tacony Crucible Company, ...	603 78	C. S. 1905. Paid.
Blubaker Coal Company, .....	1,850 00	C. S. 1905. Pending.
Northampton Portland Cement Company.	3,267 23	Bonus. Pending.
Union News Company, .....	1,666 67	Bonus. Verdict for def't.

## SCHEDULE C—Continued.

## LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
D. L. Clark Company, .....	479 90	L. T. 1905. Verdict for Com'th.
Dunbar Furnace Company, .....	1,349 16	C. S. 1904. Paid.
Du Bois Electric and Traction Company.	1,000 00	Bonus. Verdict for def't.
National Docks Railroad Company,	2,500 00	Bonus. Verdict for def't.
West End Trust Company, .....	14,487 48	C. S. 1905. Pending.
Pennsylvania Water Company,....	1,622 00	C. S. 1905. Pending.
Republic Iron and Steel Company,.	7,728 85	Bonus. Paid.
Republic Iron and Steel Company,.	450 00	C. S. 1902. Paid.
Republic Iron and Steel Company,.	540 00	C. S. 1903. Paid.
Republic Iron and Steel Company,.	540 00	C. S. 1904. Paid.
Republic Iron and Steel Company,.	6,747 51	C. S. 1905. Paid.
Connellsville Central Coke Company.	1,029 20	L. T. 1905. Verdict for def't.
People's Coal Company, .....	881 60	L. T. 1903. Paid.
People's Coal Company, .....	1,021 28	L. T. 1904. Paid.
People's Coal Company, .....	1,021 28	L. T. 1905. Paid.
People's Light Company of Pittston	486 40	L. T. 1903. Paid.
People's Light Company of Pittston	486 40	L. T. 1904. Paid.
People's Light Company of Pittston	486 40	L. T. 1905. Paid.
People's Coal Company, .....	3,250 00	L. T. 1903. Paid.
Pittsburg-Buffalo Company, .....	9,390 56	L. T. 1905. Paid.
Harbison-Walker Company, .....	4,726 00	L. T. 1903. Paid.
Harbison-Walker Company, .....	4,726 00	L. T. 1904. Paid.
Harbison - Walker Refractories Company.	283 50	C. S. 1903. Paid.
Harbison - Walker Refractories Company.	288 00	C. S. 1904.
Harbison - Walker Refractories Company.	7,910 00	L. T. 1903.
Harbison - Walker Refractories Company.	6,477 20	L. T. 1904. Paid.
Run Trust Company, .....	1,047 26	L. T. 1905. Paid.
Bessemer Coke Company, .....	1,671 40	L. T. 1905. Paid.
Bindley Hardware Company, .....	1,174 00	C. S. 1905. Paid.
H. W. Johns-Manville Company,...	328 53	C. S. 1903. Paid.
H. W. Johns-Manville Company,...	331 50	C. S. 1904. Paid.
H. W. Johns-Manville Company,...	382 41	C. S. 1905. Paid.
National Automatic Weighing Machine Company.	240 75	C. S. 1905. Verdict for def't.
Manufacturers' Gas Company, ....	2,424 47	C. S. 1905. Paid.
Belle Vernon Bridge Company,....	164 61	L. T. 1905. Paid.
Belle Vernon Bridge Company,....	156 97	L. T. 1904. Paid.
Belle Vernon Bridge Company,....	156 97	L. T. 1903. Paid.
United Power and Transportation Company.	5,989 58	Bonus. Paid.
United Power and Transportation Company.	58,897 54	C. S. 1900.
United Power and Transportation Company.	58,897 54	C. S. 1901.
United Power and Transportation Company.	58,897 54	C. S. 1902. Paid.
United Power and Transportation Company.	58,897 54	C. S. 1903.
United Power and Transportation Company.	58,897 54	C. S. 1904.
United Power and Transportation Company.	58,897 54	C. S. 1905. Paid.
United Power and Transportation Company.	58,897 54	C. S. 1899. Paid.
McCall Ferry Power Company, ..	2,708 33	C. S. 1905. Verdict for Com'th.
Sayre Land Company, .....	1,100 00	C. S. 1905. Paid.
Pennsylvania Salt Manufacturing Company.	375 00	C. S. 1905. Paid.
Meadville, Conneaut Lake and Linesville Railroad Company.	1,505 00	C. S. 1892-1905. Verdict for Com.



## SCHEDULE C—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1905.

Name.	Amount.	Remarks.
Lucesco Coal Company, .....	250 00	C. S. 1905. Paid.
York Haven Water and Power Company.	7,500 00	C. S. 1901. Pending.
York Haven Water and Power Company.	15,000 00	C. S. 1902. Paid.
York Haven Water and Power Company.	15,000 00	C. S. 1903. Paid.
York Haven Water and Power Company.	15,000 00	C. S. 1904. Paid.
York Haven Water and Power Company.	20,000 00	C. S. 1905. Paid.
York Haven Water and Power Company.	1,575 00	Loans. 1902. Paid.
Westinghouse Electric and Manufacturing Company.	107,866 19	C. S. 1905. Paid.
Howard Gas Coal Company, .....	250 00	C. S. 1905. Verdict for def't.
Philadelphia Caramel Company, ...	66 67	Bonus. Verdict for def't.
Huron Coal Company, .....	325 00	C. S. 1905. Paid.
Manor Gas Coal Company, .....	760 00	L. T. 1903. Pending.
Girard Trust Company, .....	84,665 31	C. S. 1903. Pending.
American Steamship Company, ....	1,250 00	Bonus. Pending.
South Lincoln Land Company, ....	133 00	L. T. 1902. Pending.
Central Accident Insurance Company of Pittsburg.	333 34	Bonus. Pending.
National Steel Company, now Carnegie Steel Company.	9,409 35	Bonus. Pending.
National Steel Company, now Carnegie Steel Company.	444 76	Bonus. 1902. Pending.
American Steel Hoop Company, now Carnegie Steel Company.	11,573 09	Bonus. 1901. Pending.
American Steel Hoop Company, now Carnegie Steel Company.	3,148 58	Bonus. 1902. Pending.
American Steel and Tin Plate Company.	38,666 67	Bonus. 1904. Pending.
Lehigh Valley Transit Company, ...	11,080 00	L. T. 1905. Verdict for def't.
The United Gas Improvement Company.	26,216 50	Bonus. Paid.
Follmer Clogg and Company, .....	462 31	Bonus Pending.
York Haven Water and Power Company.	925 30	L. T. 1901. Paid.
York Haven Water and Power Company.	1,920 20	L. T. 1903. Paid.
York Haven Water and Power Company.	3,203 65	L. T. 1904. Paid.
York Haven Water and Power Company.	4,017 56	L. T. 1905. Paid.
Majestic Apartment House Company.	10,000 00	C. S. 1903. Verdict for Com'th.
Majestic Apartment House Company.	10,000 00	C. S. 1904. Verdict for Com'th.
Majestic Apartment House Company.	10,000 00	C. S. 1905. Verdict for Com'th.
Brookwood Coal Company, .....	212 86	Bonus. Pending.
American News Company, .....	1,333 33	Bonus. Verdict for def't.

## SCHEDULE D.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA  
DURING THE YEARS 1905 AND 1906.

Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, vs. Delaware, Lackawanna and Western Railroad Company, appellant, .....	Reversed.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, appellant, vs. Monongahela Bridge Company, .....	Affirmed.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, plaintiff vs. B. Harry Warren, Dairy and Food Commissioner, defendant, .....	Pending.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, vs. Frederick H. Collier et al., judges constituting the several courts of Common Pleas of Allegheny county, Pennsylvania being the fifth judicial district, .....	Mandamus awar'd.
Commonwealth of Pennsylvania ex rel., John P. Elkin, Attorney General, appellant, vs. Consumers' Gas Company of Scranton, .....	Reversed.
Edward C. Stull, plaintiff, appellant, vs. J. H. Reber, Chas. H. Coover, Chester A. Geesaman and Dr. Samuel G. Dixon, defendants, .....	Affirmed.
Commonwealth of Pennsylvania, appellant vs. Joseph S. Vetterlein, trading as Vetterlein Brothers, .....	Affirmed.
Commonwealth of Pennsylvania, vs. Thomas Cover, Loring A. Cover and Henry E. Drayton, trading as Cover & Drayton, appellants, .....	Affirmed.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, vs. A. H. Rowe, J. S. Strickler, H. C. Criswell, J. E. Frantz, W. J. C. Jacobs and F. M. Stoler, school directors of Waynesboro School District, appellants, .....	Pending.

## SCHEDULE E.

LIST OF CASES ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA  
DURING THE YEARS 1905 AND 1906.

Commonwealth of Pennsylvania, appellant vs. Childs' Dining Hall Company, .....	Pending.
Commonwealth of Pennsylvania vs. Edward Emmers, appellant, .....	Pending.

## LIST PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Commonwealth of Pennsylvania vs. John T. Shoener, appellant, .....	
--	--

## SCHEDULE F.

## QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
Seymour Street Railway Company, .. William Kaufman et al., and the Marshall Avenue Street Railway Company.	Allowed. Decree of ouster. Allowed. Pending.
Pittsburg, Allegheny and Manchester Passenger Railway Company, Pittsburg, Allegheny and Manchester Traction Company, United Traction Company of Pittsburg and Pittsburg Railways Company.	Allowed. Pending.
Howard and East Street Railway Company and Allegheny, Bellevue and Perrysville Railway Company.	Allowed. Pending.
Cedar Avenue Street Railway Company.	Allowed. Pending.
North Side and South Side Street Railway Company.	Allowed. Pending.
Mohnsville and Adamstown Railroad Company.	Allowed. Decree of ouster.
Mosser Tanning Company, .....	Allowed. Decree of ouster.
Morris Run Coal Mining Company, ..	Allowed. Decree of ouster.
Philadelphia and Darby Creek Street Railway Company.	Allowed. Decree of ouster.
Four Mile Run Improvement Company.	Allowed. Decree of ouster.
Black Diamond Oil and Gas Company,	Allowed. Decree of ouster.
Walther Peptonized Port Company, ..	Allowed. Decree of ouster.
A. L. Butz Cork Company, .....	Allowed. Decree of ouster.
West Coplay Land Company, .....	Allowed. Decree of ouster.
Philadelphia Rapid Transit Company..	Allowed. Pending in Phila. county.
Dr. R. H. M. Mac Kenzies, Medical and Surgical Offices.	Allowed. Pending.
Umbria Street and Shawmount Avenue Electric Street Railway Company.	Allowed. Decree of ouster.
The King Car Company of Scranton, ..	Allowed. Decree of ouster.
Susquehanna Canal and Power Company.	Allowed. Proceedings discontinued.
Susquehanna and Tidewater Railroad Company.	Allowed. Proceedings discontinued.
Tidewater and Susquehanna River Railroad Company.	Allowed. Proceedings discontinued.

## SCHEDULE G.

## LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania, ex rel., Hampton L. Carson, Attorney General,	Bill dismissed.
vs. Beaver Valley Railroad Company. Commonwealth of Pennsylvania, ex rel., Hampton L. Carson, Attorney General.	Bill filed. Pending.
vs. Pennsylvania Railroad Company, Delaware, Lackawanna and Western Railroad Company, Lehigh Valley Railroad Company, Cumberland Valley Railroad Company, Buffalo and Susquehanna Railroad Company and the Erie Railroad Company.	
Commonwealth of Pennsylvania,	Bill filed. Argued on demurrer. Pending.
vs. George B. Luper, James H. Lambert, Israel W. Durham, J. Clayton Erb and R. E. Forster.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Wm. Clarke Mason,	Bill filed. Preliminary injunction continued.
vs. Robt. McAfee, Secretary of the Commonwealth and Ernest L. Tustin.	
Commonwealth of Pennsylvania, plaintiff,	Bill filed. Decree entered by which the Commonwealth receives all for which it contended.
vs. McCall Ferry Power Company, Susquehanna Canal and Power Company and Susquehanna and Tidewater Railroad Company, defendants.	
Commonwealth of Pennsylvania, plaintiff,	Bill filed. Pending.
vs. Philadelphia and Erie Railroad Company, Pennsylvania Railroad Company.	
Commonwealth of Pennsylvania, plaintiff,	Bill filed. Pending.
vs. Pittsburg, McKeesport and Youghiogheny Railroad Company, Pittsburg and Lake Erie Railroad Company.	

## SCHEDULE H.

## MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
In re petition of Knights of the Modern Maccabees,	Peremptory mandamus awarded.
vs.	
David Martin, Insurance Commissioner.	
Commonwealth ex rel., John Goyne, Jr.,	Judgment entered in favor of plaintiff.
vs.	
Robert McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Wm. Clarke Mason,	Alternative mandamus awarded.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
John Goyne, Jr.,	Judgment for plaintiff on demurrer.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Edward M. Biddle, Jr.,	Judgment for plaintiff on demurrer.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Francis S. McIlhenny,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Vivian Frank Gable,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Harry E. Miller and Harry S. Mesinor,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Thomas L. Jennings,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Thomas Cavanaugh and James Kohn,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Percy B. McCullough,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Arthur J. McKeever,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	

## SCHEDULE H—Continued.

## MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Samuel G. Hill,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, John C. Hinckley and Morris S. Lowenstein.	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Joseph Gross,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Lionel T. Schlsinger and Edmond B. Sieberlich,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Harry T. Bauerle,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, John Kuestner and Herman Becker,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Samuel B. Scott and Robt. R. Deardon,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Samuel Christian,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Hugh A. Hill and Thomas Bischoff,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, Harry J. Stone and Joseph W. Crawford,	Judgment for plaintiffs.
vs.	
Robt. McAfee, Secretary of the Commonwealth.	

## SCHEDULE H—Continued.

## MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis, John L. Leib and James E. Roming, vs. Robt. McAfee, Secretary of the Commonwealth.	Judgment for plaintiffs.
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Charles A. White, vs. Robt. McAfee, Secretary of the Commonwealth.	Judgment for plaintiffs.
Commonwealth ex rel., Franklin S. Edmonds, Edwin O. Lewis and Wm. P. Logan, vs. Robt. McAfee, Secretary of the Commonwealth.	Judgment for plaintiffs.
Commonwealth ex rel., Thomas H. Dale, vs. Robt. McAfee, Secretary of the Commonwealth.	Judgment for plaintiffs.

## SCHEDULE I.

PROCEEDINGS HAVE BEEN INSTITUTED BY THIS DEPARTMENT AGAINST THE FOLLOWING INSURANCE COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Name.	Result.
Life Insurance Company of Pennsylvania.	Dissolved. Receiver.
Philadelphia Fire Insurance Company.	Dissolved. Receiver.
United States Mutual Fire Insurance Company.	Dissolved. Receiver.
Equitable Realty Company, .....	Dissolved. Receiver.
Home Purchasing and Real Estate Company.	Dissolved. Receiver.
Consolidated Stock Exchange Company of Philadelphia.	Dissolved. Receiver.
Anthracite Real Estate Company, ...	Proceedings abandoned.
National Investment Company, .....	Dissolved. Receiver.
Johnstown Mutual Fire Insurance Company.	Dissolved. Receiver.
Republic Mutual Fire Insurance Company.	Dissolved. Receiver.
United States Mutual Live Stock Insurance Company of Johnstown.	Dissolved. Receiver.
Pennsylvania Guaranty Company, ....	Dissolved. Receiver.
Savings Fund Loan Association of Pittsburg.	Dissolved. Receiver.
Lahaska Insurance Company, .....	Proceedings discontinued.
Monongahela Valley Bank, Duquesne.	Dissolved. Receiver.
United States Mutual Live Stock Insurance Company of Johnstown.	Dissolved. Receiver.
Columbia Savings and Trust Company of Pittsburg.	Dissolved. Receiver.
Homebuilders Savings and Loan Association of Reading.	Dissolved. Receiver.



## SCHEDULE J.

## ACTIONS IN ASSUMPSIT INSTITUTED IN COMMON PLEAS OF DAUPHIN COUNTY.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Robt. Tagg vs. Commonwealth of Pennsylvania.	Account for supplies furnished.	\$1,840 00	Paid.
Commonwealth of Pennsylvania vs. John W. Kambeck, late Captain, Co. B, Thirtieth Regiment, N. G. P., and Ruth Q. Powell and C. J. Powell, his sureties.	Suit on official bond, ..	1,842 79	Suit pending.
Commonwealth of Pennsylvania vs. Edward S. Heefner, late Captain, Co. C, Eighth Regiment, N. G. P., and John C. Gerbig and W. A. Susong, his sureties.	Suit on official bond, ..	1,167 68	Suit discontinued.
Commonwealth of Pennsylvania vs. Joseph H. Klemmer (Register of Wills, Philadelphia).	Suit to recover collateral inheritance tax collected in 1904.	11,140 37	Pending.
Cunningham Piano Company.	Tax on capital stock, 1895.	5 00	Paid.
Cunningham Piano Company.	Tax on capital stock, 1896.	15 00	Paid.
Cunningham Piano Company.	Tax on capital stock, 1897.	25 00	Paid.
Cunningham Piano Company.	Tax on capital stock, 1898.	27 50	Paid.
Cunningham Piano Company.	Tax on capital stock, 1899.	40 00	Paid.
Cunningham Piano Company.	Tax on capital stock, 1900.	60 00	Paid.
Cunningham Piano Company.	Tax on loans, 1895, ..	45 60	Suit discontinued.
Cunningham Piano Company.	Tax on loans, 1896, ..	83 60	Suit discontinued.
Cunningham Piano Company.	Tax on loans, 1897, .....	60 80	Suit discontinued.
Cunningham Piano Company.	Tax on loans, 1898, ..	72 20	Suit discontinued.
Cunningham Piano Company.	Tax on loans, 1899, ..	76 00	Suit discontinued.
Cunningham Piano Company.	Tax on loans, 1900, ..	81 70	Suit discontinued.

## SCHEDULE K.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1905.		
Jan. 3.	Electric Traction Company, capital stock, 1903, .....	\$518 43
3.	Philadelphia Rapid Transit Company, capital stock, 1903, .....	260 13
3.	People's Traction Company, capital stock, 1903, .....	542 58
3.	Philadelphia Traction Company, capital stock, 1903, ....	374 26
3.	Union Traction Company, capital stock, 1903, .....	917 21
3.	Nesquehoning Valley Railroad Company, capital stock, 1903, .....	78 34
5.	Wyoming Valley Electric Light, Heat and Power Company, capital stock, 1903, .....	116 81
9.	Montoursville Passenger Railway Company, capital stock, 1903, .....	25 00
9.	Acme Coal Mining Company, capital stock, 1903, .....	25 00
9.	Beech Creek Extension Railroad Company, capital stock, 1903, .....	400 00
9.	Pine Creek Railway Company, capital stock, 1903, ....	650 00
9.	Clearfield Southern Railroad Company, capital stock, 1903, .....	3 60
9.	Beech Creek Railroad Company, capital stock, 1903, ....	1,525 00
9.	Milton Electric Light and Power Company, capital stock, 1903, .....	5 62
10.	New York, Chicago and St. Louis Railroad Company, loans tax, 1903, .....	10 60
10.	E. A. Bowker & Co., Incorporated, capital stock, 1903, ..	25 00
11.	Bell Telephone Company of Philadelphia, capital stock, 1903, .....	1,294 99
12.	Bangor Water Company, capital stock, 1903, .....	75 00
17.	Windsor Hotel Company:	
	Capital stock, 1896, .....	\$50 00
	Capital stock, 1897, .....	50 00
	Capital stock, 1898, .....	50 00
	Capital stock, 1899, .....	50 00
	Capital stock, 1900, .....	50 00
	Capital stock, 1901, .....	25 00
	Capital stock, 1902, .....	25 00
		300 00
19.	Coudersport and Port Allegheny Railroad Company loans tax, 1903, .....	27 00
31.	Pennsylvania Bituminous Coal Company, capital stock, 1903, .....	60 00
Feb. 2.	West Branch Coal Company, capital stock, 1903, .....	12 50
6.	State Insurance Company of Philadelphia, capital stock, 1897-8, .....	199 50
Mar. 7.	Clearfield and Indiana Coal Company, loans tax, 1901, ..	133 60
13.	Clearfield and Indiana Coal Company, capital stock, 1900, .....	100 00
14.	Beech Creek Coal and Coke Company, capital stock, 1902, .....	800 00
21.	Commercial Trust Company, capital stock, 1903, .....	500 00
24.	Guarantee Trust and Safe Deposit Company, capital stock, 1903, .....	300 00
27.	Robisonia Iron Company, Limited, capital stock, 1903, ..	30 40
27.	Delaware and Hudson Company, capital stock, 1903, ..	2,015 00
27.	Harrisburg Gas Company, loans tax, 1903, .....	876 85
27.	Gas Company of Luzerne County, loans tax, 1903, .....	148 20
29.	James Smith Woolen Machinery Company, loans tax, 1903, .....	79 80
29.	Philadelphia Securities Company, capital stock, 1903, ..	75 00
31.	Delaware and Atlantic Telegraph and Telephone Company, capital stock, 1903, .....	100 00
31.	Potter Gas Company:	
	Capital stock, 1902, .....	\$187 50
	Capital stock, 1901, .....	50 00
	Capital stock, 1900, .....	50 00
	Capital stock, 1899, .....	75 00
		362 50

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.		Name.	Amount.
Apr.	6,	Penn Tanning Company, capital stock, 1904, .....	350 00
	10,	Central Pennsylvania Lumber Company, capital stock, 1904, .....	400 00
	24,	Singer Manufacturing Company:	
		Capital stock, 1873, .....	\$120 36
		Capital stock, 1874, .....	124 15
		Capital stock, 1875, .....	128 28
		Capital stock, 1876, .....	133 79
		Capital stock, 1877, .....	130 74
		Capital stock, 1878, .....	135 78
		Capital stock, 1879, .....	145 77
		Capital stock, 1880, .....	159 99
		Capital stock, 1881, .....	171 72
		Capital stock, 1882, .....	170 28
		Capital stock, 1883, .....	174 50
		Capital stock, 1884, .....	163 77
		Capital stock, 1885, .....	161 16
		Capital stock, 1886, .....	164 74
		Capital stock, 1887, .....	157 62
		Capital stock, 1888, .....	161 24
		Capital stock, 1889, .....	165 25
		Capital stock, 1890, .....	168 13
		Capital stock, 1891, .....	170 46
		Capital stock, 1892, .....	258 76
		Capital stock, 1893, .....	230 39
		Capital stock, 1894, .....	226 33
		Capital stock, 1895, .....	208 72
		Capital stock, 1896, .....	197 70
		Capital stock, 1897, .....	257 03
		Capital stock, 1898, .....	244 03
		Capital stock, 1899, .....	243 81
		Capital stock, 1900, .....	388 55
		Capital stock, 1901, .....	504 05
		Capital stock, 1902, .....	558 16
		Capital stock, 1903, .....	645 21
			6,870 17
May	14,	Fall Brook Railway Company, capital stock, 1903, .....	625 00
	18,	Paul Wuesthoff Company, capital stock, 1903, .....	46 00
	19,	S. S. Fretz Manufacturing Company, capital stock, 1903, .....	225 00
	22,	Rochester and Pittsburg Coal and Iron Company, capital stock, 1903, .....	3,600 00
	22,	Cowanshannock Coal and Iron Company, capital stock, 1903, .....	975 00
	22,	Philadelphia Brewing Company, capital stock, 1903, ..	200 00
	23,	Altoona and Logan Valley Electric Railway Company, capital stock, 1903, .....	262 50
	24,	Reynoldsville and Falls Creek Railroad Company, capital stock, 1903, .....	337 50
	25,	Delaware, Lackawanna and Western Railroad Company, loans tax, 1903, .....	500 00
June	5,	Lehigh Coal and Navigation Company, loans tax, 1901, .....	330 53
	5,	Buffalo and Susquehanna Railroad Company, loans tax, 1903, .....	836 00
	6,	Union Steel Company, bonus, .....	20,183 66
	7,	Philadelphia County and Southern Traction Company, bonus, .....	18,816 34
	8,	Lehigh Valley Railroad Company, loans tax, 1901, .....	31 18
	8,	National Biscuit Company:	
		Capital stock, 1899, .....	\$12 50
		Capital stock, 1900, .....	20 00
		Capital stock, 1901, .....	30 00
		Capital stock, 1902, .....	50 00
		Capital stock, 1903, .....	50 00
			162 50

APPENDIX I TO REPORT  
SCHEDULE K—Continued.  
SCHEDULE OF COLLECTIONS.

Off. Doc.

Year.	Name.	Amount.
July 13,	Medix Run Railroad Company: Capital stock, 1902, ..... \$175 00 Capital stock, 1904, ..... 175 00	350 00
July 20,	Partridge and Richardson Company, capital stock, 1904,	2,100 00
July 11,	North Jersey and Pocono Mountain Ice Company: Capital stock, 1901, ..... \$50 00 Capital stock, 1902, ..... 5 00 Bonus, ..... 33 33	
		88 33
	14, James Manufacturing Company, bonus, .....	93 75
	23, Potter Gas Company, capital stock, 1903, .....	85 00
Aug. 1,	Mortgage Trust Company of Pennsylvania, capital stock, 1904, .....	187 50
	7, Western Union Telegraph Company, capital stock, 1902,	1,000 00
	7, Royal Laundry Company, capital stock, 1903, .....	260 38
	10, Robeson Iron Company, Limited, capital stock, 1904,	20 00
	15, New York Department Store Company, capital stock, 1901, .....	65 00
	17, Butler Mine Company, Limited, capital stock, 1904, .....	25 00
	17, Hillside Coal and Iron Company, capital stock, 1904, .....	25 00
	17, Buffalo, Bradford and Pittsburg Railroad Company, capital stock, 1904, .....	25 00
	17, Northwestern Mining and Exchange Company, capital stock, 1904, .....	25 00
	17, Blossburg Coal Company, capital stock, 1904, .....	25 00
	17, New York, Lake Erie and Western Coal and Railroad Company, capital stock, 1904, .....	25 00
	17, Lehigh Coal and Navigation Company, loans tax, 1903, .....	170 00
	17, Erie and Wyoming Valley Railroad Company, capital stock, 1904, .....	25 00
	17, Erie Land and Improvement Company, capital stock, 1904, .....	25 00
	17, New York, Susquehanna and Western Coal Company, capital stock, 1904, .....	25 00
	17, Wilkes-Barre and Eastern Railroad Company, capital stock, 1904, .....	25 00
	17, Erie Railroad Company, capital stock, 1904, .....	25 00
	17, Nypano Railroad Company, capital stock, 1904, .....	25 00
	17, Jefferson Railroad Company, capital stock, 1904, .....	25 00
23,	Cunningham Piano Company: Capital stock, 1895, ..... \$5 00 Capital stock, 1896, ..... 15 00 Capital stock, 1897, ..... 25 00 Capital stock, 1898, ..... 27 50 Capital stock, 1899, ..... 40 00 Capital stock, 1900, ..... 60 00 Capital stock, 1901 to 1904 inclusive, ..... 300 00	472 50
Sept. 25,	Delaware and Atlantic Telegraph and Telephone Company, capital stock, .....	100 00
25,	Consumers' Gas Company (Coudersport), capital stock, 1904, .....	25 00
25,	Diamond Coal Land Company, capital stock, 1904, .....	175 00
25,	Chevington and Bunn Coal Company, capital stock, 1904, .....	505 00
26,	Millwood Coal and Coke Company, capital stock, 1904, .....	87 50
26,	Empire Coal Mining Company, capital stock, 1904, .....	175 00
26,	Investment Company of Philadelphia, capital stock, 1904, .....	1,775 00
26,	Chapman Slate Company, capital stock, 1904, .....	400 00
26,	Buck Run Coal Company, capital stock, 1904, .....	15 00
27,	United Ice and Coal Company: Capital stock, 1902, ..... \$126 11 Capital stock, 1903, ..... 25 57	151 68

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
27,	The Good Roads Machinery Company, capital stock, 1904, .....	37 50
27,	C. Schmidt and Sons Brewing Company, capital stock, 1904, .....	900 00
27,	Cranberry Improvement Company, capital stock, 1904, ..	175 00
27,	Potter Gas Company, capital stock, 1904, .....	150 00
27,	North Philadelphia Land Company, capital stock, 1904,	93 75
28,	Erie Traction Company:	
	Capital stock, 1901, .....	\$125 00
	Capital stock, 1902, .....	125 00
		250 00
28,	Parrish Coal Company, capital stock, 1904, .....	500 00
28,	Bethlehem Iron Company:	
	Capital stock, 1904, .....	\$325 00
	Capital stock, 1903, .....	325 00
		750 00
29,	Philadelphia Mortgage and Trust Company, capital stock, 1904, .....	475 00
29,	Philadelphia Brewing Company, capital stock, 1904, ....	100 00
29,	Pennsylvania Company for Insurance on Lives and Granting Annuities, capital stock, 1904, .....	287 50
29,	Good Roads Machinery Company, capital stock, 1903, ..	37 50
29,	Rockhill Iron and Coal Company, capital stock, 1904, ..	177 80
Oct. 2,	Scranton Gas and Water Company, capital stock, 1904,	1,962 50
2,	Statte Line and Sullivan Railroad Company, capital stock, 1904, .....	75 00
2,	Alden Coal Company, capital stock, 1904, .....	100 00
3,	Alliance Coal Mining Company, capital stock, 1904, ....	50 00
3,	The United Gas Improvement Company, capital stock, 1904, .....	1,000 00
10,	The Southern Railroad Company, capital stock, 1904, ..	3 00
11,	The Buffalo and Susquehanna Railroad Company, capital stock, loans tax, 1904, .....	1,247 00
11,	Berwick Water Company, capital stock, 1904, .....	25 00
11,	Creek Cannel Coal Company, capital stock, 1904, .....	15 00
11,	Schenley Distilling Company, capital stock, 1904, .....	250 00
11,	Mortgage Trust Company of Philadelphia, loans tax, 1904, .....	76 00
11,	Commercial Trust Company, capital stock, 1904, .....	1,550 00
12,	Hudson Coal Company, capital stock, 1904, .....	10 00
12,	The Delaware and Hudson Company, capital stock, 1904,	500 00
12,	The Black Creek Improvement Company, capital stock, 1904, .....	50 00
12,	The Philadelphia Warehousing and Cold Storage Company, capital stock, 1904, .....	750 00
12,	The Bangor and Portland Railway Company, capital stock, 1904, .....	300 00
12,	The Consumers' Gas Company, capital stock, 1904, ....	50 00
13,	The Lehigh Valley Traction Company:	
	Capital stock, 1900, .....	\$1,200 00
	Capital stock, 1901, .....	1,500 00
	Capital stock, 1902, .....	2,100 00
	Capital stock, 1903, .....	1,600 00
	Capital stock, 1904, .....	1,600 00
		8,000 00
13,	The Philadelphia and Lehigh Valley Traction Company, capital stock, 1904, .....	1,000 00
13,	The Allentown and Slatington Passenger Railway Company:	
	Capital stock, 1903, .....	\$500 00
	Capital stock, 1904, .....	500 00
		1,000 00
13,	Westinghouse Air Brake Company, capital stock, 1904, ..	6,250 00
16,	The Pittsburgh Coal Company of Pennsylvania, loans tax, 1904, .....	3,735 72

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
Oct. 16,	The Midvalley Coal Company, capital stock, 1904, .....	500 00
16,	The Midvalley Supply Company, Limited, capital stock, 1904, .....	87 50
16,	Silver Brook Coal Company, capital stock, 1904, .....	125 00
16,	The American Dredging Company, capital stock, 1904, ..	225 00
16,	E. P. Wilbur Trust Company, capital stock, 1904, .....	525 00
16,	The Enterprise Transit Company, capital stock, 1904, ..	375 00
16,	The Union Improvement Company, capital stock, 1904, ..	925 00
16,	The Packer Coal Company, capital stock, 1904, .....	125 00
16,	Jefferson Coal Company, capital stock, 1904, .....	100 00
16,	The Penn Traffic Company, capital stock, 1904, .....	850 00
17,	Juragua Iron Company, capital stock, 1904, .....	15 00
17,	Keystone Telephone Company of Philadelphia:	
	Capital stock, 1904, .....	\$1,750 00
	Capital stock, 1903, .....	1,750 00
		3,500 00
17,	Bear Creek Ice Company, capital stock, 1904, .....	12 50
17,	Altoona and Logan Valley Electric Railway Company, loans tax, 1904, .....	476 30
17,	Claridge Gas Coal Company, capital stock, 1901, .....	175 00
18,	Royal Laundry Company:	
	Capital stock, balance due 1903, .....	\$151 48
	Loans tax, 1903, .....	26 60
		178 08
18,	Penn Gas Coal Company, capital stock, 1904, .....	750 00
18,	W. H. Chandler Company, capital stock, 1904, .....	18 58
19,	Greensburg Coal Company, capital stock, 1900, .....	200 00
19,	Hecla Coke Company, capital stock, 1904, .....	500 00
25,	Goodyear Lumber Company, capital stock, 1904, .....	880 00
26,	Westinghouse Electric and Manufacturing Company, capital stock, 1903, .....	6,475 00
27,	Delaware, Lackawanna and Western Railroad Company, loans tax, 1904, .....	475 00
27,	Delaware Division Canal Company of Pennsylvania, capital stock, 1904, .....	125 00
30,	W. K. Niver Coal Company, capital stock, 1904, .....	225 00
30,	American Ice Company:	
	Capital stock, 1903, .....	\$1,650 00
	Capital stock, 1904, .....	1,500 00
		3,150 00
31,	Capt. Heefner et al., Company C, Eighth Regiment, N. G. of Pa., compromise settlement, .....	100 00
Nov. 1,	Buffalo, Rochester and Pittsburg Railway Company, capital stock, 1904, .....	5,000 00
1,	Pittsburg Coal Company of Pennsylvania, capital stock, 1904, .....	552 11
1,	Bethlehem and Nazareth Passenger Railway Company, capital stock, 1904, .....	125 00
1,	Bethlehem Steel Company:	
	Loans tax, 1903, .....	\$5,142 00
	Loans tax, 1904, .....	7,128 00
		12,270 00
9,	Powhatan Coal Company, capital stock, 1904, .....	450 00
14,	Delaware, Lackawanna and Western Railroad Company, capital stock, 1904, .....	15,000 00
14,	Salem Coal Company, capital stock, 1901, .....	175 00
14,	Philadelphia and West Chester Traction Company, capital stock, 1904, .....	100 00
14,	Upper Lehigh Supply Company, Limited, capital stock, 1904, .....	65 00
14,	Upper Lehigh Coal Company, capital stock, 1904, .....	1,160 00
14,	Nescopeck Coal Company, capital stock, 1904, .....	100 00
16,	Dill and Collins Company, loans tax, 1904, .....	80 00
16,	Midland Mining Company, capital stock, 1904, .....	25 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1905.		
Nov. 16,	Philadelphia Freezing Company:	
	Capital stock, 1903, .....	\$163 19
	Capital stock, 1904, .....	250 00
		413 19
21,	Union Traction Company, capital stock, 1904, .....	393 71
21,	People's Traction Company, capital stock, 1904, .....	400 58
21,	Electric Traction Company, capital stock, 1904, .....	488 43
21,	Philadelphia Traction Company, capital stock, 1904, ..	434 26
21,	Philadelphia Rapid Transit Company, capital stock, 1904, .....	395 63
22,	White Haven Water Company, capital stock, 1904, .....	9 75
Dec. 1,	Bell Telephone Company of Philadelphia, capital stock, 1904, .....	1,523 91
1,	Lehigh Valley Railroad Company, capital stock, 1904, ..	1,212 50
1,	Central Railroad Company of New Jersey:	
	Capital stock, 1897, .....	\$800 00
	Capital stock, 1898, .....	800 00
	Capital stock, 1899, .....	800 00
	Capital stock, 1900, .....	800 00
	Capital stock, 1901, .....	800 00
	Capital stock, 1902, .....	800 00
	Capital stock, 1903, .....	800 00
	Capital stock, 1896, .....	800 00
	Capital stock, 1895, .....	800 00
	Capital stock, 1894, .....	800 00
	Capital stock, 1893, .....	800 00
	Capital stock, 1892, .....	800 00
	Capital stock, 1891, .....	500 00
	Capital stock, 1890, .....	500 00
	Capital stock, 1889, .....	500 00
	Capital stock, 1888, .....	500 00
	Capital stock, 1887, .....	100 00
	Capital stock, 1886, .....	250 00
	Capital stock, 1885, .....	250 00
	Capital stock, 1884, .....	250 00
	Capital stock, 1883, .....	75 00
	Capital stock, 1882, .....	75 00
	Capital stock, 1881, .....	75 00
	Capital stock, 1880, .....	75 00
	Capital stock, 1879, .....	75 00
	Capital stock, 1878, .....	75 00
	Capital stock, 1877, .....	75 00
	Capital stock, 1876, .....	50 00
	Capital stock, 1875, .....	50 00
	Capital stock, 1874, .....	50 00
	Capital stock, 1873, .....	25 00
	Capital stock, 1872, .....	25 00
	Capital stock, 1871, .....	25 00
	Capital stock, 1904, .....	800 00
		14,000 00
18,	Lewisburg, Milton and Watsontown Passenger Railway Company, capital stock, 1904, .....	130 00
18,	Lackawanna Iron and Steel Company, capital stock, 1904, .....	3,125 00
18,	Highland Coal Company, capital stock, 1904, .....	400 00
19,	Scranton Railway Company, capital stock, 1904, .....	950 00
19,	Tamaqua and Lansford Street Railway Company, capital stock, 1904, .....	150 00
19,	South Bethlehem Supply Company, Limited, capital stock, 1904, .....	175 00
20,	Leetonia Railway Company, capital stock, 1904, .....	25 00
20,	Tionesta Valley Railway Company:	
	Capital stock, 1904, from February 17, ....	\$550 00
	Capital stock, 1904, to February 17, .....	150 00
		700 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1905.		
Dec. 20,	Harrisburg Gas Company, loans tax, 1904, .....	900 00
21,	Huron Coal Company, capital stock, 1904, .....	15 00
21,	Avona Gas Coal Company:	
	Capital stock, 1901, .....	\$275 00
	Capital stock, 1900, .....	475 00
		750 00
21,	Hempfield Coal Company:	
	Capital stock, 1900, .....	\$500 00
	Capital stock, 1901, .....	600 00
		1,100 00
21,	Keystone Coal and Coke Company:	
	Capital stock, 1902, .....	\$500 00
	Capital stock, 1903, .....	2,500 00
	Capital stock, 1904, .....	1,250 00
		4,250 00
22,	Susquehanna River North and West Branch Telephone pany:	
	Capital stock, 1903, .....	\$10 00
	Capital stock, 1902, .....	10 00
	Capital stock, 1901, .....	10 00
	Capital stock, 1900, .....	10 00
	Capital stock, 1899, .....	10 00
		50 00
26,	Morris Run Coal Mining Company, capital stock, 1904, ..	350 00
26,	Tioga Improvement Company, capital stock, 1904, .....	200 00
26,	Kittanning Consolidated Natural Gas Company, capi- tal stock, 1904, .....	25 00
27,	International Navigation Company, capital stock, 1904, ..	227 70
27,	Finance Company of Pennsylvania, capital stock, 1904, ..	2,250 00
27,	Broad Top Semi-Anthracite Coal Company, capital stock, 1904, .....	25 00
27,	Dodson Coal Company, capital stock, 1904, .....	50 00
27,	Jamestown and Franklin Railroad Company, capital stock, 1904, .....	85 00
27,	Shenango Valley Railroad Company, capital stock, 1904, ..	75 00
1906.		
Jan. 2,	Lehigh Coal and Navigation Company, capital stock, 1904, .....	\$14,050 00
2,	East Broad Top Railroad and Coal Company, capital stock, 1904, .....	175 00
2,	Kingston Coal Company, capital stock, 1904, .....	950 00
2,	Pennsylvania Bituminous Coal Company, capital stock, 1904, .....	15 00
2,	South Fork Coal Mining Company, capital stock, 1904, ..	1,000 00
2,	New York Central and Hudson River Railroad Com- pany:	
	Capital stock, 1891, .....	\$350 00
	Capital stock, 1892, .....	350 00
	Capital stock, 1893, .....	350 00
	Capital stock, 1894, .....	350 00
	Capital stock, 1895, .....	350 00
	Capital stock, 1896, .....	350 00
	Capital stock, 1897, .....	350 00
	Capital stock, 1898, .....	350 00
	Capital stock, 1899, .....	350 00
	Capital stock, 1900, .....	350 00
	Capital stock, 1901, .....	350 00
	Capital stock, 1902, .....	350 00
	Capital stock, 1903, .....	350 00
	Capital stock, 1904, .....	350 00
		4,900 00



## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
Jan. 2,	Fairmount Coal Company, capital stock, 1904, .....	135 00
2,	Dents Run Coal Company, capital stock, 1904, .....	100 00
2,	Wm. Cramp and Sons Ship and Engine Building Company, loans tax, 1904, .....	400 00
4,	Carbon Coal Company:	
	Capital stock, 1901, .....	\$400 00
	Capital stock, 1902, .....	450 00
		850 00
8,	Susquehanna and New York Railroad Company:	
	Capital stock, 1904, .....	\$500 00
	Capital stock to May 26, .....	255 00
	Capital stock from May 26, .....	275 00
		1,030 00
10,	Bethlehem Electric Light Company, capital stock, 1904, .....	100 00
17,	Franklin and Clearfield Railroad Company, capital stock, 1904, .....	137 50
31,	Henriette Coal Mining Company, capital stock, 1904, .....	225 00
Feb. 1,	Wheeler and Wilson Manufacturing Company:	
	Capital stock, 1874-1891, .....	\$848 10
	Capital stock, 1892-1895, .....	1,099 00
	Bonus, .....	52 50
		1,999 60
9,	Du Bois Traction Company:	
	Loans tax, 1899, .....	\$20 00
	Loans tax, 1900, .....	20 00
	Loans tax, 1901, .....	20 00
	Loans tax, 1902, .....	20 00
	Loans tax, 1903, .....	57 00
	Capital stock, 1898, .....	5 00
	Capital stock, 1899, .....	12 50
	Capital stock, 1900, .....	2 50
	Capital stock, 1901, .....	5,500 00
	Capital stock, 1902, .....	5 00
	Capital stock, 1903, .....	90 00
		257 00
9,	Du Bois Electric Company, capital stock, 1903, .....	295 00
15,	Dunbar Furnace Company, capital stock, 1903, .....	150 00
16,	Clearfield Bituminous Coal Corporation, capital stock, 1904, .....	950 00
19,	S. S. Fretz Manufacturing Company, capital stock, 1904, .....	225 00
19,	H. C. Frick Coke Company, capital stock, 1904, .....	1,039 00
19,	Edri Coal Company, capital stock, 1904, .....	225 00
21,	Etna and Montrose Railroad Company, capital stock, 1904, .....	250 00
23,	Dunkirk, Allegheny Valley and Pittsburgh Railroad Company, capital stock, 1904, .....	1,960 00
23,	Union Supply Company, capital stock, 1904, .....	250 00
23,	National Mining Company, capital stock, 1904, .....	150 00
23,	River Coal Company, capital stock, 1904, .....	250 00
23,	Stevens Coal Company, capital stock, 1904, .....	100 00
26,	Beech Creek Railroad Company, capital stock, 1904, .....	1,525 00
26,	Beech Creek Extension Railroad Company, capital stock, 1904, .....	400 00
26,	Curwensville and Bower Railroad Company, capital stock, 1904, .....	50 00
26,	Sharon Coke Company:	
	Capital stock, 1903, .....	\$229 00
	Capital stock, 1904, .....	210 00
		439 00
26,	Clairton Land Company, capital stock, 1904, .....	175 00
26,	Carnegie Land Company, capital stock, 1904, .....	450 00
27,	W. Dewes Wood Company, capital stock, 1904, .....	440 00
27,	Sharon Land Company, capital stock, 1904, .....	25 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
Feb. 27,	Carnegie Natural Gas Company, capital stock, 1904, ...	150 00
27,	Union Railroad Company, capital stock, 1904, .....	4,000 00
28,	Cambria Coal Mining Company, capital stock, 1904, ....	325 00
Mar. 2,	Fall Brook Railway Company, capital stock, 1904, ....	625 00
7,	Lehigh Valley Coal Company, capital stock, 1904, .....	300 00
13,	City Savings Fund and Trust Company of Lancaster:	
	On account of sinking fund, ..... \$20,000 00	
	Interest, ..... 88 90	
	Capital stock, 1904, ..... \$127 50	
	On account of general fund, ..... 45,000 00	
	Interest, ..... 199 07	
		14,784 61
13,	Easton and Northern Railroad Company, capital stock, 1904, .....	100 00
13,	Hazleton Water Company, capital stock, 1904, .....	525 00
13,	Locust Mountain Water Company, capital stock, 1904, ...	12 50
13,	Loyalsock Railroad Company, capital stock, 1904, .....	150 00
13,	Pennsylvania and New York Canal and Railroad Company, capital stock, 1904, .....	200 00
13,	Schuylkill and Lehigh Valley Railroad Company, capital stock, 1904, .....	225 00
13,	Glen Summit Hotel and Lans Company, capital stock, 1904, .....	67 50
13,	New York and Middle Coal Field Railroad and Coal Company, capital stock, 1904, .....	1,950 00
13,	Wyoming Valley Railroad Company, capital stock, 1904, .....	175 00
21,	Reading Traction Company, loans tax, 1903, .....	133 00
21,	Boothby Hotel Company, capital stock, 1904, .....	25 00
21,	Pittsburg Dry Goods Company, capital stock, 1904, .....	25 00
28,	Union Steel Company:	
	Capital stock, 1904, ..... \$127 50	
	Loans tax, 1904, ..... 536 00	
		663 50
Apr. 11,	Quaker City Cab Company:	
	Capital stock, 1901, ..... \$2 50	
	Capital stock, 1902, ..... 2 50	
	Capital stock, 1903, ..... 2 50	
	Capital stock, 1904, ..... 2 50	
		10 00
May 16,	Harbison Walker Refractories Company, bonus, .....	13,100 00
1,	West Laurel Hill Cemetery Company:	
	Capital stock, 1900-1904, ..... \$1,600 00	
	Capital stock, 1900-1904, ..... 400 00	
		2,000 00
3,	Savings Fund and Trust Company, Lancaster:	
	On account State Deposit, ..... \$8,945 91	
	On account State Deposit, ..... 3,080 70	
		12,026 61
17,	Lakeside Railway Company:	
	G. R., 1895 (6 months), ..... \$34 00	
	G. R., 1896 (6 months), ..... 96 33	
	G. R., 1896, (6 months), ..... 110 63	
	G. R., 1897 (6 months), ..... 79 00	
		370 01
31,	Midland Coal Company:	
	Capital stock, 1903, ..... \$25 00	
	Capital stock, 1904, ..... 25 00	
	Capital stock 1905, ..... 25 00	
		75 00
June 1,	Philadelphia Warehousing and Cold Storage Company, capital stock, 1905, .....	259 77
1,	Midvalley Supply Company, Limited, capital stock, 1905, .....	75 00
1,	Potter Gas Company, capital stock, 1905, .....	525 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906. June	1, Lackawanna Coal and Coke Company, capital stock, 1905, .....	100 00
	1, Manufacturers Water Company, capital stock, 1904, ....	25 00
	1, Penn Gas Coal Company, capital stock, 1905, .....	500 00
	4, Parrish Coal Company, capital stock, 1905, .....	350 00
	4, Scranton Gas and Water Company, capital stock, 1905, ..	233 75
	4, St. Mary's Gas Company, capital stock, 1905, .....	187 50
	4, Olyphant Water Company, capital stock, 1905, .....	200 00
	4, Union Improvement Company, capital stock, 1905, ....	975 00
	4, Schenley Distilling Company, capital stock, 1905, .....	300 00
	4, Johnstown Water Company, capital stock, 1905, .....	31 25
	4, Mahoning Valley Railroad Company, capital stock, 1905, ..	50 00
	4, Leetonia Railway Company, capital stock 1905, .....	50 00
	5, Lewisburg, Milton and Watsontown Passenger Railway Company, capital stock, 1905, .....	125 00
	5, South Fork Coal Mining Company, capital stock, 1905, ..	50 00
	5, Philadelphia Brewing Company, capital stock, 1905, .....	150 00
	5, Susquehanna and New York Railroad Company, capital stock, 1905, .....	500 00
	5, Tionesta Valley Railway Company, capital stock, 1905, ..	350 00
	5, Rockhill Iron and Coal Company, capital stock, 1905, ..	180 00
	5, Nescopee Coal Company, capital stock, 1905, .....	50 00
	5, Upper Lehigh Coal Company, capital stock, 1905, .....	155 00
	6, Powhatan Coal and Coke Company, capital stock, 1905, ..	500 00
	6, Keystone Store Company, capital stock, 1905, .....	175 00
	6, Robesonia Iron Company, Limited, capital stock, 1905, ..	45 00
	6, Pennsylvania Coal Company, capital stock, 1905, .....	25 00
	6, Blossburg Coal Company, capital stock, 1905, .....	25 00
	6, Northwestern Mining and Exchange Company, capital stock, 1905, .....	25 00
	6, Hillside Coal and Iron Company, capital stock, 1905, ..	25 00
	6, Butler Mine Company, Limited, capital stock, 1905, ..	25 00
	6, New York, Susquehanna and Western Coal Company, capital stock, 1905, .....	25 00
	6, Wilkes-Barre and Eastern Railroad Company, capital stock, 1905, .....	25 00
	6, New York, Lake Erie and Western Coal and Railroad Company, capital stock, 1905, .....	25 00
	6, Nypano Railroad Company, capital stock, 1905, .....	25 00
	6, Buffalo, Bradford and Pittsburg Railroad Company, capital stock, 1905, .....	25 00
	6, Jefferson Railroad Company, capital stock, 1905, .....	25 00
	6, Erie Railroad Company, capital stock, 1905, .....	25 00
	6, Erie and Wyoming Valley Railroad Company, capital stock, 1905, .....	25 00
	6, Erie Land and Improvement Company, capital stock, 1905, .....	25 00
	7, Kittanning Consolidated Natural Gas Company, capital stock, 1905, .....	25 00
	7, Hanöver and Newport Railroad Company, capital stock, 1905, .....	100 00
	8, West Branch Coal Company, capital stock, 1905, .....	50 00
	8, Westinghouse Air Brake Company, capital stock, 1905, ..	6,225 00
	8, Penn Traffic Company, capital stock, 1905, .....	175 00
	12, Stevens Coal Company, capital stock, 1905, .....	125 00
	25, Cranbury Improvement Company, capital stock, 1905, ..	200 00
	25, Bowman Coal Mining Company, capital stock, 1905, ..	75 38
	25, Albert Lewis Lumber and Manufacturing Company, capital stock, 1905, .....	350 00
	25, Commercial Trust Company, capital stock, 1905, .....	295 00
	25, Hollenback Coal Company: Capital stock, 1904, .....	\$1,000 00
	Capital stock, 1905, .....	1,000 00
		2,000 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
June 25,	Equitable Illuminating Gas Light Company of Philadelphia, loans tax, 1904, .....	1,175 00
25,	Empire Coal Mining Company, capital stock, 1905, .....	50 00
25,	Bedford Springs Company, Limited, capital stock, 1905, .....	125 00
25,	Dill and Collins Company, loans tax, 1905, .....	152 00
25,	Edri Coal Company, capital stock, 1905, .....	250 00
26,	Dodson Coal Company, capital stock, 1905, .....	100 00
26,	Highland Coal Company, capital stock, 1905, .....	300 00
26,	Gimbel Bros., Incorporated:	
	Capital stock, 1904, .....	\$725 00
	Capital stock, 1905, .....	1,125 00
		1,850 00
26,	Chevington and Bunn Coal Company, capital stock, 1905, .....	5 00
26,	Paul Wuesthoff Company, capital stock, 1905, .....	46 00
26,	Jefferson Coal Company, capital stock, 1905, .....	75 00
27,	Pine Run Coal and Coke Company, capital stock, 1905, .....	40 00
27,	Gilpin Coal Company, capital stock, 1905, .....	300 00
27,	Fall Brook Coal Company, capital stock, 1905, .....	2,250 00
27,	Quakertown Traction Company:	
	Loans tax, 1901, .....	\$89 56
	Loans tax, 1902, .....	1 00
	Loans tax, 1903, .....	10 00
	Loans tax, 1904, .....	10 00
		110 56
27,	Guarantee Trust and Safe Deposit Company, capital stock, 1905, .....	400 00
27,	Pennsylvania and Western Railroad Company, capital stock, 1905, .....	25 00
26,	American Dredging Company, capital stock, 1905, .....	700 00
27,	Consumers' Brewing Company of Philadelphia:	
	Capital stock, 1903, .....	\$337 50
	Capital stock, 1904, .....	337 50
	Capital stock, 1905, .....	725 00
		1,400 00
27,	John Hancock Ice Company, capital stock, 1904, .....	38 00
27,	Avonmore Coal and Coke Company, capital stock, 1905, .....	75 00
28,	Delaware Division Canal Company of Pennsylvania, capital stock, 1905, .....	125 00
29,	Annora Coal Company, capital stock, 1905, .....	150 00
29,	Bangor and Portland Railway Company, capital stock, 1905, .....	450 00
29,	The Bulletin Company, capital stock, 1905, .....	350 00
29,	Bethlehem and Nazareth Passenger Railway Company, capital stock, 1905, .....	125 00
July 2,	Jamestown and Franklin Railroad Company, capital stock, 1905, .....	50 00
2,	Fall Brook Coal Company, capital stock, 1904, .....	2,250 00
3,	Lehigh and Wilkes-Barre Coal Company:	
	Capital stock, 1904, .....	\$1,745 00
	Capital stock, 1905, .....	1,760 00
		3,505 00
5,	Bethlehem and Nazareth Passenger Railroad Company, capital stock, 1902, .....	125 00
6,	Beech Creek Railroad Company, capital stock, 1905, .....	1,525 00
9,	Huntingdon and Broop Top Mountain Railroad and Coal Company, capital stock, 1905, .....	2,875 00
9,	General Insurance Investment Company, capital stock, 1905, .....	25 00
11,	Bethlehem City Water Company:	
	Loans tax, 1905, .....	\$98 16
	Capital stock, 1905, .....	375 00
		473 16

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
July 11,	E. P. Wilbur Trust Company, capital stock, 1905, .....	325 00
11,	Fall Brook Railway Company, capital stock, 1905, .....	625 00
13,	Fairmount Coal Company, capital stock, 1905, .....	50 00
13,	Coudersport and Port Allegheny Railroad Company:	
	Capital stock, 1905, .....	\$70 00
	Loans tax, 1905, .....	23 00
		93 00
17,	Alden Coal Company, capital stock, 1905, .....	100 00
24,	Kingston Coal Company, capital stock, 1905, .....	1,875 00
31,	Buck Run Coal Company, loans tax, 1905, .....	209 00
Aug. 6,	Dents Run Coal Company, capital stock, 1905, .....	9 00
29,	Keystone Coal and Coke Company:	
	Loans tax, 1902, .....	\$243 00
	Loans tax, 1903, .....	450 00
	Loans tax, 1904, .....	668 00
		1,361 00
30,	Buffalo and Susquehanna Railroad Company:	
	Capital stock, 1905, .....	\$3,431 02
	Loans tax, 1905, .....	1,250 00
		4,681 02
31,	Columbia Electric Light Company, capital stock, 1903,..	47 50
31,	Diamond Electric Company:	
	Capital stock, 1903, .....	\$150 00
	Capital stock, 1902, .....	100 00
		250 00
31,	Germantown Electric Light Company:	
	Capital stock, 1903, .....	\$175 00
	Capital stock, 1902, .....	75 00
		250 00
31,	Edison Electric Light Company of Philadelphia:	
	Capital stock, 1902, .....	\$650 00
	Capital stock, 1903, .....	1,500 00
		2,150 00
31,	Brush Electric Light Company of Philadelphia:	
	Capital stock, 1902, .....	\$1,050 00
	Capital stock, 1903, .....	950 00
		2,000 00
31,	Columbia Electric Light Company, capital stock, 1902,..	35 00
31,	Manufacturers' Electric Company:	
	Capital stock, 1902, .....	\$100 00
	Capital stock, 1903, .....	150 00
		250 00
31,	Northern Electric Light and Power Company:	
	Capital stock, 1902, .....	\$500 00
	Capital stock, 1903, .....	950 00
		1,450 00
31,	Overbrook Electric Company:	
	Capital stock, 1903, .....	\$75 00
	Capital stock, 1902, .....	50 00
		125 00
31,	Pennsylvania Heat, Light and Power Company:	
	Capital stock, 1901, .....	\$825 00
	Capital stock, 1902, .....	1,700 00
	Capital stock, 1903, .....	2,150 00
		4,675 00
31,	Powelton Electric Company:	
	Capital stock, 1903, .....	\$1,050 00
	Capital stock, 1902, .....	237 00
		1,287 00
31,	Southern Electric Light and Power Company, capital	
	stock, 1902, .....	25 00
31,	Suburban Electric Company of Philadelphia, capital	
	stock, 1903, .....	150 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
Aug. 31,	West End Electric Company, capital stock, 1903,.....	75 00
31,	Wissahickon Electric Light Company, capital stock, 1903, .....	50 00
31,	United States Electric Lighting Company:	
	Capital stock, 1902, .....	\$100 00
	Capital stock, 1903, .....	100 00
		200 00
31,	Bala and Merion Electric Company:	
	Capital stock, 1903, .....	\$23 50
	Capital stock, 1902, .....	23 50
		47 00
Sept. 10,	Slate Belt Electric Street Railway Company, capital stock, 1905, .....	375 00
24,	Dunkirk, Allegheny Valley and Pittsburg Railroad Company, capital stock, 1905, .....	1,950 00
Nov. 28,	Harbison Walker Company:	
	Loans tax, 1904, .....	378 10
	Loans tax, 1904, .....	378 10
		756 20
28,	Harbison Walker Refractories Company:	
	Capital stock, 1903, .....	\$3 50
	Capital stock, 1904, .....	3 50
	Loans tax, 1903, .....	597 00
	Loans tax, 1904, .....	1,116 44
		1,720 44
28,	Bessemer Coke Company, loans tax, 1905, .....	236 80
28,	Manufacturers' Gas Company, capital stock, 1905, .....	525 00
Dec. 3,	United Ice Company, capital stock, 1905, .....	35 00
3,	Penn Trust Company, capital stock, 1905, .....	126 72
3,	Belle Vernon Bridge Company:	
	Loans tax, 1905, .....	\$38 00
	Loans tax, 1904, .....	38 00
	Loans tax, 1903, .....	38 00
		104 00
4,	H. W. Jons-Manville Company:	
	Capital stock, 1903, .....	\$225 01
	Capital stock, 1904, .....	188 28
	Capital stock, 1905, .....	3 26
		416 49
5,	Bindley Hardware Company, capital stock, 1905, .....	80 00
5,	Electric Traction Company, capital stock, 1905, .....	5,061 29
5,	Philadelphia Rapid Transit Company, capital stock, 1905, .....	2,122 59
5,	People's Traction Company, capital stock, 1905, .....	3,183 86
6,	Philadelphia Traction Company, capital stock, 1905, ...	15,367 72
10,	United Power and Transportation Company:	
	Bonus, .....	\$8 34
	Capital stock, 1900, .....	12 50
	Capital stock, 1901, .....	12 50
	Capital stock, 1902, .....	12 50
	Capital stock, 1903, .....	12 50
	Capital stock, 1904, .....	12 50
	Capital stock, 1905, .....	12 50
	Capital stock, 1899, .....	6 94
		90 23
10,	Buffalo and Susquehanna Coal and Coke Company, loans tax, 1904, .....	2 32
12,	Atlantic Crushed Coke Company:	
	Capital stock, 1904, .....	\$50 00
	Capital stock, 1905, .....	25 00
		75 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
Dec. 13,	People's Coal Company:	
	Loans tax, 1903, .....	\$24 40
	Loans tax, 1904, .....	13 40
	Loans tax, 1905, .....	13 40
	Capital stock, 1903, .....	42 50
		93 70
14,	Pittsburg-Buffalo Company, loans tax, 1905, .....	1,172 88
17,	Philadelphia Mortgage and Trust Company, capital stock, 1905, .....	150 00
17,	Philadelphia and West Chester Traction Company:	
	Loans tax, 1905, .....	\$185 00
	Capital stock, 1905, .....	155 00
		340 00
17,	Mortgage Trust Company of Philadelphia:	
	Capital stock, 1905, .....	\$25 00
	Loans tax, 1905, .....	945 00
		980 00
17,	Buffalo and Rochester and Pittsburg Railway Company, capital stock, 1905, .....	9,000 00
17,	The United Gas Improvement Company, capital stock, 1905, .....	8,000 00
17,	Scranton Railway Company, loans tax, 1905, .....	95 00
17,	Harrisburg Gas Company, loans tax, 1905, .....	575 00
18,	Mountain Coal Company, capital stock, 1905, .....	25 00
18,	Susquehanna Traction Company:	
	Capital stock, 1904, .....	\$50 00
	Capital stock, 1905, .....	40 00
		90 00
18,	Pennsylvania Company for Insurance on Lives and Granting Annuities, capital stock, 1905, .....	4,750 00
18,	People's Street Railway Company of Nanticoke and Newport, capital stock, 1905, .....	22 50
18,	Atlas Portland Cement Company, capital stock, 1905, ..	850 00
18,	Lackawanna Iron and Steel Company, capital stock, 1905, .....	2,000 00
18,	Lackawanna Valley Water Supply Company, capital stock, 1905, .....	12 50
18,	Jermyn and Rushbrook Water Company, capital stock, 1905, .....	6 50
18,	Crystal Lake Water Company, capital stock, 1905, .....	5 00
18,	Rock Cliff Water Company, capital stock, 1905, .....	2 00
18,	Consolidated Water Supply Company, capital stock, 1905, .....	375 00
18,	Altoona and Logan Valley Electric Railway Company, loans tax, 1905, .....	150 00
18,	Santo Domingo Silver Mining Company, capital stock, 1905, .....	1 00
19,	Midland Mining Company, capital stock, 1905, .....	75 00
19,	Irvona Coal and Coke Company, capital stock, 1905, ....	250 00
19,	Spring Brook Lumber Company, capital stock, 1905, ....	90 00
19,	Walnut Run Coal Company, capital stock, 1905, .....	25 00
19,	W. K. Niver Coal Company, capital stock, 1905, .....	50 00
19,	Maryd Coal Company, capital stock, 1905, .....	43 80
20,	Silver Brook Coal Company, capital stock, 1905, .....	600 00
20,	Upper Lehigh Supply Company, Limited, capital stock, 1905, .....	80 00
20,	Midvalley Coal Company, capital stock, 1905, .....	250 00
20,	Eastern Securities Company, capital stock, 1905, .....	65 00
20,	International Navigation Company, capital stock, 1905, ..	200 00
21,	Leechburg Land and Improvement Company, capital stock, 1905, .....	50 00
24,	Du Bois Traction Company, capital stock, 1905, .....	100 00
24,	Du Bois Electric Company, capital stock, 1905, .....	75 00

## SCHEDULE K—Continued.

## SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1906.		
Dec. 24,	Beech Creek Extension Railroad Company, capital stock, 1905, .....	100 00
24,	Westmoreland Coal Company, capital stock, 1905, .....	2,050 00
24,	Equitable Illuminating Gas Light Company of Philadelphia, loans tax, 1905, .....	1,100 00
24,	State Line and Sullivan Railroad Company, capital stock, 1905, .....	127 28
24,	Bethlehem Steel Company:	
	Loans tax, 1905, .....	\$1,000 00
	Capital stock, 1905, .....	375 00
		1,375 00
24,	Chas. J. Webb & Co., Incorporated, loans tax, 1905, ....	100 00
24,	Maderia Hill Coal Mining Company, capital stock, 1905, ....	25 00
24,	Finance Company of Pennsylvania, capital stock, 1905, .....	2,500 00
24,	Goodyear Lumber Company, capital stock, 1905, .....	1,175 00
24,	East Broad Top Railroad Coal Company, capital stock, 1905, .....	175 00
26,	Knickerbocker Ice Company, capital stock, 1905, .....	5 00
26,	Thomas Meehan & Sons, Incorporated, capital stock, 1904, .....	75 00
27,	Alliance Coal Mining Company, capital stock, 1905, ....	50 00
28,	North Philadelphia Land Company, capital stock, 1905, ..	125 00
31,	Berwick Water Company, capital stock, 1905, .....	50 00
31,	West Berwick Water Supply Company:	
	Loans tax, 1905, .....	\$25 00
	Capital stock, 1905, .....	50 00
		75 00
31,	Erie County Telegraph Company, capital stock, 1905, ..	15 75
31,	New York Central and Hudson River Railroad Company, capital stock, 1905, .....	375 00
31,	Gimbel Brothers, Incorporated, capital stock, 1905, ....	1,700 00
	Total, .....	\$516,632 16
	Attorney General's Commissions, .....	20,121 22
	Grand total, .....	\$536,753 38



# INDEX.

## A.

	Page.
ACTUARIAL FEES.	
Right of Commonwealth to, .....	31
ADJUTANT GENERAL, OPINIONS TO.	
Interest on daily balances not for use of Armory Board but to be turned into State Treasury, .....	123
Insurance on armories payable out of appropriation and not by Super- intendent of Public Grounds and Buildings, .....	123
ADVISORY DUTIES.	
Summary of opinions rendered to different officials, .....	11
AGRICULTURE, DUTY OF SECRETARY OF, .....	167, 170, 171, 172, 173, 175, 176
AMENDMENTS—See Charters.	
AMERICAN GUARANTY COMPANY OF CHICAGO.	
Sale of endowment bonds and guaranteeing to pay insurance pre- miums, .....	131
ANDERSON, A. H., LETTER TO.	
Filing of statement of election expenses, .....	413
APPEALS, LIST OF.	
Schedule C, .....	822
APPENDIX TO REPORT, .....	817
APPLICATION FOR CHARTER, .....	5
APPROPRIATIONS.	
To the Eastern Penitentiary, .....	11
Drawing of warrant by Auditor General in favor of Chairman of Appropriation Committee for expenses in making investigations of schools, reformatories, prisons, etc., .....	90
Act of May 13, 1903, appropriating ten thousand dollars for mainte- nance of Coatesville Hospital for two years, did not divide fiscal year into quarters, .....	93
Payment of, to Free Kindergarten and Nursery Association of Harris- burg, .....	94
Non-deduction of amount due Normal Schools, .....	102
Members of Legislature cannot be paid salaries before appropria- tion is made, .....	113
Apportionment of, to public roads, .....	227
Amount of contracts for building roads must not exceed lump sum appropriated, .....	238
Hamilton Road Law inoperative because of lack of appropriation, ....	338
Non-inclusion in general appropriation bill of sums of money for expenses of investigation for treatment and prevention of diseases of domestic animals, .....	340

	Page.
Modification of plans by trustees of hospital at Norristown to bring cost of building within the amount of appropriation, .....	355
Payment of expenses of Water Supply Commission, .....	401
ARMENIA INSURANCE COMPANY.	
Merger of, into Guardian Fire Insurance Company of Pennsylvania, ..	47
ARMORY BOARD.	
Interest on daily balances not for use of, but should be paid into State Treasury, .....	123
Insurance upon armories payable out of appropriation and not by Board of Public Grounds and Buildings, .....	123
ASSUMPSIT.	
Actions in, instituted; Schedule J, .....	849
ATTORNEY GENERAL.	
No power to compel attendance of witnesses in quo warranto, .....	354
No authority to release him on bond, .....	355
AUDITOR GENERAL.	
Deduction of per diem services rendered by judges in districts of their own, when erroneously paid, .....	59
Payment of judges by monthly warrants, .....	61
Acceptance of orders for vouchers from clerk of the House of Representatives for expense of sending out Legislative Record, .....	62
Receipt from prothonotaries of State Taxes upon "cases stated, quo warrantos, alternative mandamuses, and appeals from the judgments of magistrates or justices of the peace," .....	64
Need not go to offices in person or by Deputy to examine books, papers or accounts of State officers, .....	67
Sending of travelling auditor to East Stroudsburg Normal school, ....	76
Should draw warrant under Act of January 15, 1906, to pay for work done upon Quay statue, .....	80
Drawing of warrant for increased salary of Deputy Prothonotary and clerk of the Supreme Court for the Eastern District, .....	84
Not enabled by provisions of Act of April 17, 1905, to compare, tabulate,, and make use of returns made by Recorder of Deeds and mortgages entered and satisfied each day, .....	86
Payment of warrant in favor of chairman of Appropriation Committee making investigation of schools, reformatories, prisons, etc., ....	90
Availability of money appropriated for use by the Gettysburg Battlefield Memorial Commission, .....	92
Payment of quarterly sum to Coatesville Hospital, .....	93
Payment of appropriation to Free Kindergarten and Nursery Association of Harrisburg, prior to appropriation, .....	94
Acceptance of vouchers of the Treasurer of the Capitol Commission drawn to pay for contracts maturing after Jan. 1, 1906, .....	97
Non-approval of vouchers for hotel expenses at Harrisburg, of State officer, .....	100
Filing of copy of contract for erection of State hospital for the insane at Norristown, .....	101
No authority to deduct from quarterly appropriation to normal schools amount of vouchers paid trustees for supplies sold by them, .....	102
Payment of salaries of secretary, solicitor, superintendent and expert engineer for services rendered after expiration of term of Capitol Commission but before completion of their labors, .....	103

	Page.
Issuance of duplicate warrant to Department of Public Health and Charities of City of Philadelphia when original was lost in the mails, .....	104
Issuance of warrants of bills of John H. Sanderson and Joseph M. Huston, when same have been approved by a majority of Public Grounds and Buildings, .....	105
Disapproval of contract between Commonwealth and George F. Payne & Company for building approaches and improvements to Capitol Park, .....	277
AUDITOR GENERAL, OPINIONS TO.	
Compensation for services rendered by judges outside of their districts, .....	59
Compensation of chaplains of the Senate and House of Representatives, .....	60
Payment of judicial salaries by monthly warrants, .....	61
Vouchers to cover expenses of sending out Legislative Record, .....	62
Twenty-five per cent. of personal property tax to be returned to Allegheny and Philadelphia counties to be retained by the State, .....	63
Receipt from Prothonotaries upon "cases stated, quo warrantos, alternative mandamuses, and appeals from the judgments of magistrates or Justices of the Peace," .....	64
Non-payment of stale claim presented by Nanny R. Schell, against the State, .....	65
Not necessary for Auditor General to go into offices of State officers to examine their books, papers or accounts, .....	67
Furnishing of supplies, etc., to State normal school at Mansfield, Tioga county, by Trustees thereof, .....	73
Alleged violation of Act of April 23, 1903, by two directors of the East Stroudsburg Normal School, .....	76
Prohibition against selling supplies to a State Normal school by a trustee thereof, covers the item of printing, .....	78
Contract for sketch model of Quay statue, .....	80
Payment of salary of the Deputy Prothonotary and clerk of the Eastern District of the Supreme Court, .....	84
No provision to enable Auditor General to compare, tabulate, and make use of returns of mortgages entered and satisfied by Recorders of Deeds, .....	86
Payment of salary of Harbor Master of Philadelphia, .....	88
Payment of expenses of Appropriation Committee in making investigations of Schools, Reformatories, prisons, asylums, hospitals, and other institutions submitted in whole or in part by the State, .....	90
Money appropriated by Act of July 18, 1901, available for use by the Gettysburg Battlefield Memorial Commission, .....	92
Payment to Coatesville Hospital of quarterly payment upon appropriation made thereto, .....	93
Payment of appropriation of maintenance of the Free Kindergarten and Nursery Association, of Harrisburg, .....	94
Capitol Commission cannot exist or make contracts after Jan. 1, 1906, but must wind up and liquidate its affairs thereafter, .....	97
Non-approval of voucher for hotel expenses at Harrisburg of a State officer, .....	100
Reduction to writing and filing with the Auditor General of contracts referring to State hospitals for the insane, .....	101

	Page.
No authority of law for deducting from quarterly appropriation to Normal Schools the amount of vouchers paid trustees for supplies sold by them, .....	102
Payment of Secretary, solicitor, superintendent, and expert engineer of the Capital Commission for services rendered after the expiration of the term of the Commission, .....	103
Issuing of a duplicate warrant when original sent to the city of Philadelphia was lost in the mail, .....	104
Issuing of warrants of bills of John H. Sanderson and Joseph M. Huston when approved by majority of the Board of Public Grounds and Buildings, .....	105
<b>AUTOMOBILES.</b>	
Construction of Acts of 1903 and 1905, .....	234
<b>B.</b>	
<b>BANKING.</b>	
Approval by Board of Revenue Commissioners of five active banks selected by the State Treasurer in which to deposit sufficient daily receipts to transact the current business of the State, .....	51
Declination to advise Banking Commissioner whether liabilities of stockholders applies to shareholders in trust companies, .....	154
Loan by savings bank upon security of its own capital stock not permissible, .....	157
A bank of discount and deposit cannot act as trustee under a mortgage executed to secure issue of bonds of corporation of the first class, .....	159
Charters approved by Attorney General, Schedule B, .....	820
<b>BANKING COMMISSIONER, OPINIONS TO.</b>	
American Guaranty Company of Chicago; sale of endowment bonds and guaranteeing to pay insurance premiums, .....	131
Acts of Building and Loan Association that are ultra vires and that should be stopped by, .....	149
Declination to advise upon question whether Act of May 11, 1874, fixing liabilities of stockholders of banks and banking institutions applies to shareholders in trust companies, .....	154
Building and loan associations not to use their mortgages and judgments as collateral for borrowed money, .....	155
Loan by savings bank and loan company upon security of its own capital stock not permissible under its charter, .....	157
Bank of discount and deposit cannot act as trustee under mortgage executed to secure issue of bonds of a corporation of the first class, .....	159
Limited partnerships, formed under Act of June 2, 1874, conducting a banking business, not within supervision of, .....	160
Bringing of criminal proceedings against officers of Real Estate Trust Co. of Philadelphia, .....	163
<b>BEATES, JR., HENRY, SECRETARY OF MEDICAL COUNCIL, OPINIONS TO.</b>	
Registration of physician in office of Prothonotary in county to which he moves, .....	386
Practice of medicine without full compliance with requirements of Acts of Assembly, .....	387
Holders of degree of B. M. from English Medical College entitled to examination by Board of Medical Examiners of Pennsylvania, .....	388

	Page.
Unlicensed physician cannot take charge of practice of legal practitioner, .....	389
<b>BELL, JOHN C., LETTER TO.</b>	
Forwarding by Banking Commissioner of reports for use in determining whether there was criminal conduct on the part of officers of Real Estate Trust Company of Philadelphia, .....	420
<b>BEMAN, R. D., CHIEF CLERK HIGHWAY DEPARTMENT.</b>	
Declination to give opinion in reference to vacancy in office of Supervisor in Muncy Township, Lycoming county, .....	251
<b>BERWICK.</b>	
Erection of State bridge over Susquehanna River, .....	271
<b>BICYCLES.</b>	
Application of Automobile Laws of 1903 and 1905 to, .....	234
<b>BIDDLE, CADWALADER, OPINION TO.</b>	
Application of Act of April 23, 1903, to Trustee, President of Board of Directors, and Director of Oil City Hospital, .....	412
<b>BLACK COMPANY, SAMUEL W.</b>	
Application for charter of, .....	5
<b>BLOOMSBURG STATE NORMAL SCHOOL.</b>	
Prohibition against trustees selling supplies to institution covers item of printing, .....	78
<b>BOARD OF PUBLIC GROUNDS AND BUILDINGS, OPINIONS TO.</b>	
Erection by State of bridge over Susquehanna River at Berwick, .....	271
Contract for fire insurance on Capitol building, .....	275
No contract between Commonwealth and George F. Payne & Co., for building of approaches and improvements to Capitol Park, ....	277
Rebuilding by State of Mifflinville bridge, .....	290
Lighting of Capitol during extra session of Legislature, .....	294
Purchase of supplies and materials for State Department not on regular schedule, .....	297
<b>BOND.</b>	
Form of, to secure State Deposits, .....	393
<b>BOROUGH.</b>	
Word defined in opinion, .....	251
<b>BRIDGES,</b> .....	271-290
<b>BROBST, FRANCIS H.</b>	
Petition for issuance of writ of quo warranto against United Traction Company of Reading, .....	418
<b>BROWN, WALTER S., VS. DAIRY AND FOOD COMMISSIONER.</b>	
Application for writ of quo warranto to test title to office, .....	398
<b>BUILDING AND LOAN ASSOCIATIONS.</b>	
Defining acts that are ultra vires and that should be stopped by Banking Commissioner, .....	149
Not to use their mortgages and judgments as collateral for borrowed money, .....	155
Proceedings against; Schedule I, .....	848

C.

**CANADA LIFE ASSURANCE COMPANY.**

Complaint of S. M. Rodelheim against, for violations of anti-rebate law, .....	141
--	-----

	Page.
<b>CAPITOL INVESTIGATION.</b>	
See special index.	
Report of Attorney General, .....	vi, 437
<b>CAPITOL BUILDING.</b>	
Issuance by Auditor General of warrants for bills of John H. Sander- son and Joseph M. Huston, when same have been approved by majority of Public Grounds and Buildings, .....	105
Placing of fire insurance upon, .....	275
No contract between Commonwealth and George F. Payne & Com- pany for building approaches and improvements to park, .....	277
Lighting of, during extra session of Legislature, .....	294
<b>CAPITOL COMMISSION.</b>	
Non-existent after January 1, 1906, though it must wind up and liquidate its affairs thereafter, .....	97
Payment of salaries of Secretary, solicitor, superintendent and ex- pert engineer for services rendered after expiration of term of Com- mission but before completion of their labors, .....	103
Payment for fire insurance upon Capitol building, .....	275
<b>CARVER, CHARLES, OPINION TO.</b>	
Commutation of term of prisoner in Eastern State Penitentiary, .....	366
<b>CARNAHAN, J. C., OPINION TO.</b>	
Members of State Police not entitled to costs charged up in making arrests, .....	431
<b>CHAPLAINS OF SENATE AND HOUSE OF REPRESENTATIVES.</b>	
Not entitled to increase of pay under Act of April 27, 1903, .....	60
<b>CHARTERS.</b>	
Amendment of Coal and Timber Publishing Co., .....	6
Amendment of, Pennsylvania Stave Company, .....	44
Amendment to charter of Penn Company, .....	127
Non-allowance of amendment of charter of fire insurance company containing an extension of power originally granted, .....	145
Non-allowance of, to street railway for any part of National road without public necessity therefor, .....	243
Insurance and Bank approved by Attorney General, Schedule B, .....	820
<b>CHILD LABOR.</b>	
Employment of boys by newspaper to distribute papers does not violate Act of May 2, 1905, .....	185
<b>CLARION WATER COMPANY VS. CLARION GAS COMPANY.</b>	
Application for joinder of name of Commonwealth in bill in equity, ..	417
<b>CLIFFE, W. L., OPINION TO.</b>	
Applicant for certificate under Pharmaceutical Examining Board to be graduate of some reputable and properly chartered college of pharmacy, .....	428
<b>COAL AND TIMBER PUBLISHING COMPANY.</b>	
Amendment of charter of, .....	6
<b>COATESVILLE HOSPITAL.</b>	
Payment of appropriation made by Act of May 13, 1903, .....	93
<b>COLLECTIONS.</b>	
Summary of, .....	viii
Schedule K, .....	850
<b>COLLIER, COMMONWEALTH VS.</b>	
Imposition of non-judicial duties upon lower courts, .....	iv

	Page.
<b>COMMERCIAL FERTILIZERS.</b>	
Duty of Secretary of Agriculture to publish analyses of, and prosecute manufacturers or importers of the same, .....	167
<b>COMMISSIONER OF BANKING.</b>	
Vested with sufficient discretion to deal with building and loan associations committing acts that are ultra vires, .....	149
Investigation of affairs of Real Estate Trust Company of Philadelphia, .....	163
<b>COMMISSIONER OF FISHERIES.</b>	
Discretionary power of in construction of law in regard to operation of fish basket with wing walls, .....	258
Conferring authority to take carp, suckers, and mullets with seine nets from September 1, to June 20, largely a matter of discretion of the Commissioner, .....	260
Seizure and confiscation of nets in Lake Erie, .....	261
<b>COMMISSIONER OF HEALTH, OPINIONS TO.</b>	
Providing sustenance for indigent persons, .....	211
Payment of expenses of vaccinating children of indigent parents, ....	212
Non-attendance as a witness when public exigencies demand his presence elsewhere, .....	215
Employment and pay of guards to prevent spread of epidemic of smallpox in borough of Marietta, .....	216
Prohibiting the construction of a sewer in borough of Holidaysburg, .....	217
Requiring borough authorities of Pottstown to submit a report and plans of sewerage system, .....	219
<b>COMMISSIONER OF HIGHWAYS.</b>	
Proceeds of sale of buildings belonging to old Cumberland road may be used in improvement of said road, .....	232
Letting of contracts for building of roads with understanding that payment will be made when money becomes available, .....	238
Authority to extend State aid for reconstructing abandoned turnpike, .....	245
Taking possession of condemned portion of National or Cumberland Road, .....	247
Payment of amount due on road when there is a dispute between contractor and sub-contractor, .....	249
Payment for lighting dangerous portion of road a proper expenditure, .....	250
Agreement with applicants for charter for street railway for part of National Road, .....	243
<b>COMMISSIONER OF INSURANCE.</b>	
Advised to ascertain whether a new corporation designs to transact all lines of insurance named in its charter, .....	127
Powerless to institute general investigation into methods of conducting life insurance in State, .....	138
Prevention of practice of rebating, .....	138
Not duty of, to prosecute offenses against anti-rebate law, .....	141
<b>COMMISSIONS.</b>	
Summary of, .....	viii
<b>COMMUTATION OF SENTENCE.</b>	
Prisoner in Eastern State Penitentiary, .....	366
<b>COMPANY STORE ACT.</b>	
Application for writ of quo warranto against the H. C. Frick Coke Company, .....	362

	Page.
COMPULSORY VACCINATION LAW.	
Construction of Act of July 11, 1901, .....	195
CONESTOGA FIRE INSURANCE COMPANY.	
Merger of, into Guardian Fire Insurance Co. of Pennsylvania, .....	47
CONSOLIDATED STOCK EXCHANGE OF PHILADELPHIA.	
Opinion in re petition for writ of quo warranto against, .....	345
CONSTABULARY, STATE.	
Superintendent not required to advertise for bids before awarding contracts for supplies, .....	372
Damages caused in making an arrest at Florence, Jefferson county, ..	430
Members of State Police not entitled to costs charged up in making arrests, .....	431
CORPORATIONS.	
Amendment of Charters—See Charters.	
Application for charter of Samuel W. Black Co., .....	5
Merger and consolidation of Lehigh Valley Passenger Railway Company, et al., .....	13
Merger and consolidation of the Pittsburg, Youngstown and Ashtabula Railway Company, .....	22
Amendment to charter of Pennsylvania State Co., .....	44
Merger of fire insurance companies, .....	47
Change of name, .....	94
Ascertainment by Insurance Commissioner whether new corporation designs to transact all lines of insurance named in its charter, Individual, partnership or unincorporated association not to be licensed to conduct business of life insurance, .....	127 135
Association of officers and stockholders of a corporation, or members of a large business house, as individuals, into a beneficial association, .....	143
Non-allowance of amendment of charter of fire insurance company containing extension of power originally granted, .....	145
Incorporated by special acts before Constitution of 1874 prohibited from taking as security for any loan any part of its capital stock, ..	157
Bank of discount and deposit not to act as trustee under mortgage executed to secure issue of bonds of corporation of first class, .....	159
Limited Partnerships, formed under Act of June 2, 1874, conducting banking business, within supervision of Banking Department, .....	161
Fish dam constructed by corporation during spring and summer of 1901 subject to provisions of law requiring construction and maintenance of fish ways, .....	255
In re petition of A. Perranod for writ of quo warranto against Consolidated Stock Exchange of Philadelphia, .....	345
Foreign corporation registered but doing business in Pennsylvania in an illegal manner, to be proceeded against by quo warranto; matter of Haight & Freeze, .....	352
Application for writ of quo warranto against Grant and Liberty Street Railway Company, .....	358
Cannot employ physicians who have not qualified under Act of Assembly, .....	387
Licensing of stockholders in corporations formed to do any undertaking business, .....	410
CORRUPT PRACTICES ACT.	
Payment of expenses and compensation of delegates to a county convention, .....	54



	Page.
Instruction as to form of blank to be used, .....	55
Filing by a candidate for the Senate of statement of election expenses, .....	413
COUNTY TREASURERS.	
Retention by Commission of personal property tax in counties of Allegheny and Philadelphia, .....	63
COVER, COMMONWEALTH VS.	
Mercantile taxes on manufactured leather, .....	v
CRIMINAL PROCEEDINGS.	
Special Commission, .....	350
CUMBERLAND ROAD.	
Disposition of proceeds of sale of building formerly used in connection with, .....	232
Highway Commissioner cannot take possession of portion condemned unless condemnation proceedings are rescinded, .....	247
D.	
DAIRY AND FOOD COMMISSIONER.	
Commonwealth v. Warren, .....	v
Application for writ of quo warranto to test title to office, .....	398
DAIRY AND FOOD COMMISSIONER, OPINIONS TO.	
Addition of coloring matter to butter, .....	309
Repayment of fines collected from persons convicted of selling adulterated liquors, .....	310
Allowance of 3 per cent. commissions to sheriff, .....	312
Prosecutions for selling adulterated liquors, .....	313
Payment into State Treasury of unexpended sums of money arising from licenses, fines, and all other sources, .....	315
Payment to special agents of Dairy and Food Division of Department of Agriculture, of witness fees and mileage, .....	316
Deduction from mileage, witness fees, and analytical fees of accounts for salary, traveling expenses, or chemist's services, .....	318
DANVILLE, STATE ASYLUM FOR INSANE.	
What expenditures should be classed as maintenance, .....	424
DECHERT, HENRY M., OPINION TO.	
Purchase of chemical engine for State Asylum for chronic insane, .....	351
DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, COMMONWEALTH VS.	
Construction of new road by railroad company, .....	v
DEPOSIT.	
Bond to secure State Deposits, .....	393
DEPOSITORIES, STATE.	
Approval by Board of Revenue Commissioners of selections by State Treasurer, .....	51
DRUGS.	
Conforming to recognized formulae, .....	415

## E.

## EASTERN PENITENTARY.

Construction of Act making eight hours a day's labor for employes, ..	11
Removal of insane prisoners to asylum, .....	20
Commutation of sentence, .....	366
Appropriation for specific purpose not available for any other purpose, ..	422

	Page.
<b>EAST STROUDSBURG STATE NORMAL SCHOOL.</b>	
Guilt or innocence of two directors of, under Act of April 23, 1903, should be determined by courts of Monroe county, .....	76
Investigation by Auditor General of condition of, .....	350
<b>ECONOMIC ZOOLOGIST.</b>	
Purchase of materials and supplies necessary to prevent spread and secure extermination of insects or diseases injurious to trees, ....	175*
<b>ECONOMIC ZOOLOGIST, OPINION TO.</b>	
Rebate on taxes on account of trees planted along public roads, .....	335
<b>EEL BASKETS.</b>	
Requirements as to construction of, .....	263
<b>EMPLOYES' BENEFICIAL ASSOCIATIONS.</b>	
Distinct from Insurance Companies and incorporation of, provided by law, .....	143
<b>ENTERPRISE NATIONAL BANK.</b>	
History of litigation, .....	iv
Request of surety companies for insurance of bonds given to cover State deposits, .....	390
<b>EQUITY CASES.</b>	
Schedule G, .....	844
<b>EVANS AND DETTRA, OPINION TO.</b>	
Appropriation to State Hospital at Norristown, .....	355
<b>EXPENSES OF STATE OFFICER.</b>	
Non-approval by Auditor General for hotel expenses at Harrisburg,..	100
<b>F.</b>	
<b>FACTORY INSPECTOR, OPINION TO.</b>	
Employment by newspaper of boys to distribute papers does not violate Act of May 2, 1905, .....	185
<b>FEEBLE-MINDED AND EPILEPTIC, INSTITUTION FOR.</b>	
Suggestions for printed contract, .....	373
<b>FEES.</b>	
Paid into Insurance Department, and right of Commonwealth to, ..	31
On commission of State officer, .....	336
<b>FIRE INSURANCE COMPANIES.</b>	
Merger of, .....	47
<b>FISH BASKETS.</b>	
Licenses to maintain for the purpose of taking eels, .....	258
<b>FISHER, JACOB L., LETTER TO.</b>	
Damages caused by State Police in making an arrest at Florence, Jefferson county, .....	430
<b>FISHERIES, OPINIONS TO COMMISSIONER OF.</b>	
Dam construction by corporation during spring and summer of 1901, subject to provisions of Act of May 29, 1901, .....	255
Use of seines in Ohio River; requirements for netting carp; seizure of nets, .....	256
License to maintain fish baskets for purpose of taking eels, .....	258
Use of nets and similar devices for taking fish in boundary lakes between the 15th day of November and 15th day of March of suc- ceeding year, .....	259
Authority to take carp, suckers and mullets with seine nets from September 1, to June 20th, largely a matter of discretion of the Commissioner, .....	260

	Page.
Seizure and confiscation of nets in Lake Erie, .....	261
Classification of snapping turtles as terrapin, .....	262
Acquirement of property rights to wing walls, .....	262
Requirements regarding eel baskets, .....	263
Owner of dam, in which are chutes for fishways to keep same in repair, .....	264
Providing of chutes, slopes and fishways in dam destroyed by freshet, .....	266
FORENSIC DUTIES.	
Tax appeals in Common Pleas of Dauphin county, .....	iii
FORESTRY COMMISSIONER, OPINION TO.	
Rebate of taxes upon forested land, .....	181
FREE KINDERGARTEN AND NURSERY ASSOCIATION OF HARRISBURG.	
Payment by Auditor General of appropriation for maintenance although name was changed to Nursery Home of Harrisburg prior to appropriation, .....	94
FRICK COKE COMPANY.	
Petition of Hantman for quo warranto against, .....	362
FRIDY, SAM MATT., OPINION TO.	
Payment of stale claim presented by Nanny S. Schell, .....	65
Receipt from Prothonotaries of State taxes upon "cases stated, quo warrantos, alternative mandamuses, and appeals from the judgments of magistrates or justices of the peace," .....	64
G.	
GAME COMMISSION, OPINIONS TO SECRETARY OF.	
Expenditure of penalty money or expenses, .....	329
Construction of term "record costs" as used in Act of April 16, 1903, ..	330
GEARHART, CICERO, LETTER TO.	
Transmitting report of investigation by Auditor General of condition of East Stroudsburg Normal School, .....	350
GEORGE, DR. CHARLES T., OPINION TO.	
Conforming of drugs to recognized formulae, .....	415
GETTY, G. H., OPINION TO.	
Vacancy in office of Justice of the Peace by reason of disability, .....	339
GETTYSBURG BATTLEFIELD COMMISSION.	
Availability of money appropriated to, by Act of July 18, 1901, .....	92
Expiration of commissions of, .....	375
GILPIN, BERNARD, OPINION TO.	
Licensing of Undertaker's employes, .....	410
GOVERNOR.	
Signature of, to agreement of bailment for United States Steamships used by State of Pennsylvania, .....	43
No increase of salaries of appointees during term for which appointed, ..	88
Not compelled to appear in court as a witness when public exigencies demand his presence elsewhere, .....	215
Competent to become party plaintiff in bill in equity to restrain construction of sewer for which a permit cannot be given, .....	217
GOVERNOR, OPINIONS TO.	
Application for charter of Samuel W. Black Co., .....	5
Amendment to charter of Coal and Timber Publishing Co., .....	6
Appropriation to the Eastern Penitentiary, .....	11

	Page.
Merger and consolidation of Lehigh Valley Passenger Railway Co.,...	13
Insane Prisoners in Eastern State Penitentiary, .....	20
Merger and consolidation, Pittsburg and Youngstown and Ashtabula Railway Companies, .....	22
Actuarial fees in Insurance Department, .....	31
Use of United States Steamships by State of Pennsylvania, .....	43
Amendment to charter of the Pennsylvania State Company, .....	44
Merger of Armenia Insurance Company of Pittsburg and the Cones- toga Fire Insurance Company of Pennsylvania into the Guardian Fire Insurance Company of Pennsylvania, .....	47
GRANT AND LIBERTY STREET RAILWAY COMPANY.	
Application for quo warranto against, .....	358
GROOME, JOHN C., OPINION TO.	
Not required to advertise for bids for Department of State Police be- fore awarding contracts for supplies, .....	372
GROUNDS AND BUILDINGS, BOARD OF.	
Approval of bills of John H. Sanderson and Joseph M. Huston, and issuance of warrants by Auditor General, .....	105
GUARDIAN FIRE INSURANCE COMPANY, OF PENNSYLVANIA.	
Merger of Armenia Insurance Company of Pittsburg, and the Cones- toga Fire Insurance Company of Pennsylvania into, .....	47
<b>H.</b>	
HAIGHT & FREEZE.	
Application for leave to use the name of the Commonwealth in an information in equity, .....	352
HANNA, WILLIAM B., OPINION TO.	
Fee paid to Secretary of Commonwealth for issuing commission of State Officer, .....	336
HANTMAN VS. H. C. FRICK COKE COMPANY.	
Application for quo warranto, .....	362
HARBOR MASTER, PHILADELPHIA.	
Increase of salary of, .....	88
HART, DR. CHARLES D., LETTER TO.	
Appropriation to Eastern Penitentiary for specific purpose not avail- able for any other purpose, .....	422
HEALTH, DEPARTMENT OF.	
Opinions to, .....	211, 212, 213, 215, 216, 217, 219
Cannot punish adulterators of liquors under Act of April 27, 1905, .....	313
HEARINGS, FORMAL, BEFORE ATTORNEY GENERAL.	
Schedule A, .....	818
HIGHWAYS, OPINIONS TO COMMISSIONER OF.	
Damages sustained by abutting property owners in rebuilding, re- locating or changing grade of any highway, to be included in cost of improvement and proper portion to be paid by State, .....	227
State cannot advance portions of cost of improving public road to be paid by county or township through which road passes, .....	225
Whole law relating to Department to be found in act of 1905; appor- tionment of amount of State aid to counties; increase of salaries, ..	227
Credit on road tax for using wide tired wagons, .....	231
Disposition of proceeds of sale of buildings formerly used in connec- tion with Cumberland Road, .....	232
Construction of law relating to motor vehicles, .....	234

	Page.
Election and appointment of road supervisors in townships of second class, .....	237,240
Payment for building roads when applications call for greater amount than is appropriated, .....	238
Charter for street railway to pass over portion of National Road should not be granted without public necessity therefor and agreement between applicants and Commissioner, .....	243
Authority to extend State aid in reconstruction of abandoned turnpike, .....	245
Cannot take possession of portion of Cumberland Road unless condemnation proceedings are rescinded, .....	247
Abolition of office of Town Clerk, .....	248
Dispute between contractor and sub-contractor of a State road, .....	249
Expenditure of road tax money for lighting dangerous section of road, .....	250
Refusal to give opinion upon local matter, .....	251
Act creating Department not applicable to incorporated town of Bloomsburg; construction of word "Borough," .....	251
<b>HOSPITALS.</b>	
Care of indigent injured miners, .....	364
Maintenance of State, .....	424
<b>HOYT, L. T., LETTER TO.</b>	
Appointment to represent Commonwealth in criminal proceedings in Potter county, .....	350
<b>HUSTON, JOSEPH M.</b>	
Issuance by Auditor General of warrants for bills of, .....	105

## I.

**INCOMPATIBILITY OF OFFICES.**

State Senator and Oil Inspector, .....	397
--	-----

**INSANE.**

Reduction to writing of contracts for State Hospital for the Insane and filing with the Auditor General, .....	101
--	-----

**INSANE PRISONERS.**

Removal of, from State Penitentiaries to asylum, .....	20
--	----

**INSURANCE.**

Commonwealth v. Luper, et al., .....	vi
Right of Commonwealth to actuarial fees collected by Insurance Commissioner, .....	31
Merger of Armenia Insurance Company of Pittsburg and the Conestoga Fire Insurance Company of Pennsylvania into the Guardian Fire Insurance Company of Pennsylvania, .....	47
On armories payable out of appropriation to Armory Board and not by Board of Public Grounds and Buildings, .....	123
Ascertainment by Insurance Commissioner whether a new corporation designs to transact all lines of insurance named in its charter, .....	127
Violation of Act of May 7, 1889, by special renewal contract of Mutual Reserve Life Insurance Company, .....	130
American Guarantee Company of Chicago; sale of endowment bonds and guaranteeing to pay insurance premiums, .....	131
Refusal by Commissioner to license an individual, partnership or incorporated association to conduct business of life insurance, .....	135

	Page.
Insurance Commissioner powerless to institute general investigation into methods of conducting business of life insurance, .....	138
Prevention of practice of rebating, .....	133
Complaint of S. M. Roedelheim against Canada Life Assurance Company for violations of anti-rebate law, .....	141
Organization of beneficial association for protection of employes of firms and corporations against distress of sickness, accident or death, .....	142
Non-allowance of amendment to charter of a fire insurance company containing an extension of power originally granted, .....	145
Placing of fire insurance upon capitol, .....	275
Charters approved by Attorney General, Schedule B, .....	820
Proceedings instituted against companies; Schedule I, .....	848
INSURANCE COMMISSIONER, OPINIONS TO.	
Right of The Penn Company to transact a life, accident and health business under an old charter, .....	127
Special renewal contract of Mutual Reserve Life Insurance Company in violation of Act of May 7, 1889, .....	130
American Guaranty Company of Chicago; sale of endowment bonds and guaranteeing to pay insurance premiums, .....	131
Refusal of license to individuals, partnerships or unincorporated associations to conduct business of life insurance, .....	135
General investigation into methods of conducting life insurance business, .....	138
In re complaints of S. M. Roedelheim against Canadian Life Insurance Company for violations of anti-rebate law, .....	141
Incorporation of employes' beneficial associations, .....	143
Non-allowance of amendment of a charter of a fire insurance company containing an extension of power originally granted, .....	145
J.	
JAYNE, H. LA BARRE, LETTER TO.	
Attorney General has no authority to release land covered by a lien of the Commonwealth from such lien, .....	355
JONES, ALFRED E., LETTER TO.	
Attorney General has no power to compel attendance of witness nor the production of books or papers in quo warranto proceedings, ...	354
JONES, RICHARD M., LETTER TO.	
Application of vaccination law to private schools, .....	422
JUDGES.	
Drawing of warrants by Auditor General for services rendered outside of their own districts, .....	59
Salaries of, to be paid by monthly warrants of Auditor General, drawn on the State Treasurer, .....	61
JUSTICE OF THE PEACE.	
Vacancy in office of an account of disabilities, .....	339
K.	
KEYSTONE, STEAMSHIP.	
Use of, by State of Pennsylvania, .....	43
KLEMMER, COMMONWEALTH VS.	
Fees properly allowable to Register of Wills of Philadelphia, .....	v

L.

LEGISLATIVE RECORD.

Acceptance of vouchers by Auditor General for sending out, ..... 62

LEGISLATURE.

When convened in special session may appropriate money to pay salaries of Members although such appropriation is not embodied in Governor's call, ..... 113

Members of, cannot draw salaries in advance of performance of duties, ..... 115

Salary of deceased member, ..... 342

Resignation of members—Powers of Speakers in recess, ..... 376

Issuance of writs for special elections, ..... 383

LEHIGH VALLEY PASSENGER RAILWAY COMPANY.

Merger and consolidation, ..... 113

LICENSES.

Use by owners of same for taking carp, ..... 256

Maintenance of fish baskets with wing walls, ..... 258

Nets and similar devices for taking fish in boundary lakes,..... 259

Unexpended sums of money received by Dairy and Food Commissioner arising from licenses, fines and all other sources to be paid into State Treasury, ..... 315

Employees of undertakers, ..... 410

Acquirement of property rights to wing walls, ..... 262

LIMITED PARTNERSHIPS.

Formed under Act of June 2, 1874, conducting a banking business within supervision of State Banking Department, ..... 161

LIVE STOCK SANITARY BOARD.

Destruction of diseased cattle, ..... 323, 325

Taxes assessed upon farm purchased by, to be paid by the State,.... 176

Form of deed for farm purchased for use of Board, ..... 326

Non-inclusion in general appropriation bill of sums of money for expenses of investigation for treatment and prevention of diseases of domestic animals, ..... 340

LOAN COMPANY.

Loans by upon security of its own capital stock, not permissible,.... 157

LUPER ET AL., COMMONWEALTH VS.

Insurance investigation, ..... vi

M.

MAINTENANCE.

What constitutes, ..... 424

MANDAMUS.

In re John D. Scheaffer, Associate Judge sitting by detail as President Judge of Court of Quarter Sessions of Allegheny County, ..... 405

Schedule H, ..... 845

MANSFIELD STATE NORMAL SCHOOL.

Furnishing of supplies, etc., by trustees or managers of schools at Mansfield, Tioga county, ..... 73

McCAULEY, LEVI-G., OPINION TO.

Non-admission to Soldiers' Orphan Schools of children or adopted children of soldiers or sailors, ..... 384

	Page.
<b>MEDICINE, PRACTICE OF.</b>	
Registration of physician in office of prothonotary in county in which he moves, .....	386
Corporations cannot employ physicians who have not qualified under Act of Assembly, .....	387
Holders of degree of B. M. from English Medical College entitled to examination by Board of Medical Examiners of Pennsylvania, .....	388
Unlicensed physician cannot take charge of practice of legal practitioner, .....	389
<b>MEREDITH, H. B., OPINION TO.</b>	
Expenditures by State Hospital for Insane at Danville to be classed as maintenance, .....	424
<b>MERGER AND CONSOLIDATION.</b>	
Lehigh Valley Passenger Railway Company, et al., .....	13
Of Pittsburg, Youngstown and Ashtabula Railway Company, .....	22
Armenia Insurance Company of Pittsburg and the Conestoga Fire Insurance Company of Pennsylvania into the Guardian Fire Insurance Company of Pennsylvania, .....	47
<b>MIFFLINVILLE.</b>	
Rebuilding bridge at, .....	290
<b>MILEAGE BOOK.</b>	
Commonwealth v. Pennsylvania Railroad Company et. al., .....	v
<b>MINES, OPINION TO CHIEF OF DEPARTMENT OF.</b>	
Chief of Department not empowered to purchase typewriters for use of mine inspectors, .....	207
Branding of cars in coal mines, .....	238
<b>MINING.</b>	
Indigent persons injured in and about mines to be cared for by State hospitals, .....	364
<b>MINTZER, GEORGE W.</b>	
Withdrawal of resignation of, as member of the House of Representatives, .....	376
<b>MITCHELL, LEX. N., LETTER TO.</b>	
Damages caused by State Police in making an arrest at Florence, Jefferson county, .....	430
<b>MORGANZA, REFORM SCHOOLS,</b>	
Title to lands occupied and used by, .....	402
<b>MOTOR VEHICLES.</b>	
Construction of Acts of 1903 and 1905, .....	234
<b>MUTUAL RESERVE LIFE INSURANCE COMPANY.</b>	
Special renewal contract violates Act of May 7, 1889, by extending certain benefits and favors to a special class of policy holders, .....	130
<b>MYERS, C. W., OPINION TO.</b>	
Form of bond required to secure deposit of State moneys, .....	393
<b>N.</b>	
<b>NATIONAL ROAD.</b>	
Non-allowance of charter for street railway over any part of without public necessity therefor or without agreement between Commissioner of Highways and applicants for charter, .....	243
Highway Commissioner cannot take possession of portion condemned unless condemnation proceedings are rescinded, .....	247



	Page.
<b>NOMINATIONS.</b>	
Certifying by Secretary of the Commonwealth in Senatorial districts where provisions of apportionment Act are inconsistent with the Act of 1874, .....	54
Filing by Secretary of Commonwealth; erasure of words; certificate signed by a secretary of convention but not by a president, not recognized, .....	416
<b>NORFOLK AND WESTERN RAILROAD CO., COMMONWEALTH VS.</b>	
Value of cars in transit through Pennsylvania, .....	v
<b>NORMAL SCHOOLS.</b>	
Furnishing of supplies, etc., by trustees or managers of school at Mansfield, Tioga county, .....	73
Guilt or innocence of two directors of East Stroudsburg Normal School under Act of April 23, 1903, to be determined by the Courts, ..	76
Prohibition against trustees selling supplies to institution covers item of printing, .....	78
Non-deduction by Auditor General from quarterly appropriation of amounts of vouchers paid trustees for supplies sold by them, .....	102
Investigation by Auditor General of condition of East Stroudsburg Normal School, .....	350
<b>NORRISTOWN STATE HOSPITAL FOR THE INSANE.</b>	
Reduction to writing of contracts for and filing of same with Auditor General, .....	101
<b>NURSERY HOME OF HARRISBURG.</b>	
Change of name of Free Kindergarten and Nursery Association of Harrisburg and payment of appropriations thereto, .....	94
<b>NURSERY INSPECTION.</b>	
Inspector employed by Secretary of Agriculture, .....	173
<b>O.</b>	
<b>OHIO FISHERIES.</b>	
Demand by authorities for production of permit allowing owners of seine to use seine for capture of carp, .....	256
<b>OIL CITY HOSPITAL.</b>	
Application of Act of April 23, 1903, to Trustee, President of Board of Directors, and Director, .....	412
<b>P.</b>	
<b>PALMER, H. W., LETTER TO.</b>	
Filing of nomination papers, .....	416
<b>PAYNE &amp; COMPANY, GEORGE F.</b>	
No contract for building approaches and improvements to capitol park, .....	277
Contract for lighting Capitol during extra session of Legislature, .....	294
<b>PENITENTIARIES.</b>	
Construction of Act making eight hours a day's labor for employes, ..	11
Removal of insane prisoners to asylum, .....	20
Commutation of term of prisoners in, .....	366
Appropriation for specific purpose not available for any other purpose, .....	422
<b>PENN COMPANY, THE.</b>	
Amendment to charter of, .....	127

	Page.
PENN, W. F., OPINION TO.	
Title to lands occupied and used by Pennsylvania Reform School at Morganza, .....	402
PENNSYLVANIA RAILROAD COMPANY, COMMONWEALTH VS.	
Mileage Book, .....	v
PENNSYLVANIA STAVE COMPANY.	
Amendment to charter of, .....	44
PERRANOD, A.	
Opinion In re petition of, for writ of quo warranto against Consolidated Stock Exchange of Philadelphia, .....	345
PERSONAL PROPERTY TAX.	
Per cent. to be retained by the Auditor General from amount to be returned by the State to Allegheny and Philadelphia counties, .....	63
PHARMACEUTICAL EXAMINING BOARD.	
Cannot prosecute ordinary liquor seller, .....	313
Applicant for certificate to be graduate of some reputable and properly chartered college of pharmacy, .....	428
PITTSBURG, YOUNGSTOWN AND ASHTABULA RAILWAY CO.	
Merger and consolidation, .....	22
PLUMMER, J. LEE, OPINION TO.	
Non-inclusion in general appropriation bill of sums of money for expenses of investigation for treatment and prevention of diseases of domestic animals, .....	340
Payment of salary of deceased member of House of Representatives, .....	342
PROVIDENT LIFE AND TRUST COMPANY, COMMONWEALTH VS.	
Liability for five mills capital stock tax, .....	v
PUBLIC GROUNDS AND BUILDINGS, BOARD OF.	
Not required to pay insurance on State armories, .....	123
Proceedings for erection of bridge by State over Susquehanna River at Berwick, .....	271
Payment of fire insurance upon capitol building, .....	275
No contract with George F. Payne & Co. for building approaches and improvements to Capitol Park, .....	277
Rebuilding bridge at Mifflinville, .....	290
Lighting of Capitol during extra session of Legislature, .....	294
Purchase of supplies and materials for State Departments not on regular schedule, .....	297
Typewriters for use of Mine Inspectors should be obtained from, .....	207
PUBLIC HEALTH AND CHARITIES OF PHILADELPHIA, DEPARTMENT OF.	
Issuance by Auditor General of duplicate warrant when original was lost in the mail, .....	104
PUBLIC PRINTING.	
Bulletins to be printed by Department of Agriculture limited to 25,000, .....	171
Publication by Secretary of Agriculture of Bulletin upon subject of fruit growing, .....	172
Application of law to Department of Public Instruction, .....	203
Authority of Chief Clerk of Senate and House of Representatives to order, .....	304
Payment for "trimming and delivery" of public documents, .....	304
Qualifications of City, County or Borough Superintendents, .....	191
Issuance of commission to superintendent of public schools of city of Franklin, .....	192

	Page.
Superintendent of schools a county officer; must have been a citizen and inhabitant of county one year before appointment, .....	202
<b>PURE FOOD ACT.</b>	
Addition of coloring matter to butter, .....	309
Payment of fines collected from persons convicted of selling adulterated liquors, .....	310
Prosecutions for selling adulterated liquors, .....	312
Prosecutions for selling adulterated liquors, .....	313
Witness fees and mileage of special agents of Dairy and Food Division of Department of Agriculture, .....	316
Q.	
<b>QUAY STATUE.</b>	
Drawing of warrant by Auditor General to pay for work done thereon, .....	80
<b>QUO WARRANTO.</b>	
In re petition of A. Perranod vs. Consolidated Stock Exchange of Philadelphia, .....	345
Opinion in matter of Haight & Freeze, .....	352
Attorney General has no power to compel attendance of witnesses nor the production of books or papers in quo warranto proceedings, ....	354
Application for writ against Grant and Liberty Street Railway Company, .....	358
Petition of Hantman against H. C. Frick Coke Company, .....	362
In re Brown against the Dairy and Food Commissioner, .....	398
List of proceedings in; Schedule F, .....	843
Petition of Francis H. Brobst for quo warranto against United Traction Company of Reading, .....	418
R.	
<b>RAILROADS.</b>	
Merger and consolidation of Pittsburg, Youngstown and Ashtabula Railway Co., .....	22
<b>RAPID TRANSIT COMPANY OF PHILADELPHIA, COMMONWEALTH VS.</b>	
Right of, to lay and maintain tracks on Broad Street, Philadelphia, .....	vi
<b>REAL ESTATE TRUST COMPANY OF PHILADELPHIA.</b>	
Investigation of affairs by Banking Commissioner, .....	163
Inquiry by District Attorney of Philadelphia to determine whether there was criminal conduct on the part of officers of, .....	420
<b>RECORDER OF DEEDS.</b>	
Auditor General cannot compare, tabulate, and make use of lists of mortgages entered and satisfied by, .....	86
<b>REGISTRARS.</b>	
Hours for sitting in City of Scranton, .....	423
<b>RESIGNATION.</b>	
Of members of House, .....	376
<b>REVENUE COMMISSIONERS, BOARD OF.</b>	
Approval of sureties of bonds given to State Treasurer to protect deposits of State moneys in banking institutions, .....	51
Per cent. of personal property tax to be deducted by Auditor General from amount returned by the State to Allegheny and Philadelphia counties, .....	63

	Page.
Not to return bonds given to cover State deposits upon request of surety companies, .....	390
Form of bond required to secure deposit of State moneys, .....	393
RIDGWAY, O. S., LETTER TO.	
Hours for sitting of Registrars of City of Scranton, .....	423
ROADS.	
Commonwealth v. D., L. & W. R. R. Co., .....	v
Damages sustained by abutting property owners in relocating, re-building or changing grade, .....	223
State cannot advance portion of costs of improving public road to be paid by township through which road passes, .....	225
Apportionment of State aid for building, .....	227
Construction of Act of 1905, .....	227
Credit on tax for using wide tired wagons, .....	231
Disposition of proceeds of sale of buildings formerly used in connection with Cumberland Road, .....	232
Running of motor vehicles upon, .....	234
Election and appointment of supervisors in townships of second class, .....	237, 240
Payment by Highway Commissioner when applications for State roads exceed the allotment for a year, .....	238
Non-allowance of charter to street railway company for any part of National Road without public necessity therefor, .....	243
Highway Commissioner has authority to extend State aid for reconstructing abandoned turnpike, .....	245
Taking possession by Highway Commissioner of condemned portion of National or Cumberland Road, .....	247
Payment by Highway Commissioner when there is a dispute between contractor and sub-contractor, .....	249
Payment by Highway Commissioner for lighting dangerous portion of road, .....	250
Rebate on taxes on account of trees planted along public road, .....	335
Hamilton Road Law inoperative because of non-appropriation, .....	338
ROBINSON, THOMAS, LETTER TO.	
Practice for obtaining the use of the name of the Commonwealth, .....	353
ROEDELHEIM, S. M.	
Complaint against Canada Life Assurance Company, .....	141
ROWE, COMMONWEALTH VS.	
Vaccination and compulsory school laws, .....	iv

## S.

## SALARIES.

Judges of the State to be paid by warrants of Auditor General drawn on the State Treasurer, .....	61
Drawing a warrant for increased salary of Deputy Prothonotary and Clerk of Supreme Court, .....	84
No increase of, during term for which officer is elected; Harbor Master of Philadelphia, .....	88
Secretary, Superintendent, Solicitor and Expert Engineer of Capitol Commission, .....	103
Salaries of Members of Legislature not payable in advance of performance of duties, .....	113
Increase of, in Highway Department, .....	227

	Page.
Deduction of accounts for salary by Representative or employes of the Dairy and Food Commissioner from mileage, witness fees and analytical fees collected, .....	318
Non-payment of salary of deceased member of House of Representatives, .....	342
Salary of deceased member, .....	342
Members of State Police paid by salaries in lieu of fees, .....	431
SANDERSON, JOHN H.	
Issuance by Auditor General of warrants for bills of, .....	105
SAVINGS BANK.	
Loan upon security of its own capital stock not permissible, .....	157
SCHAEFFER, JOHN D.	
Petition for permission to file in the Supreme Court a petition for writ of mandamus against, .....	405
SCHELL, FRANK R.	
Claim presented by Nanny R. Schell, assignee of Caroline H. Schell, for services rendered, .....	65
SCHEDULE A.	
Formal hearings before Attorney General, .....	818
SCHEDULE B.	
Insurance company and bank charters approved, .....	820
SCHEDULE C.	
List of Appeals filed, .....	822
SCHEDULE D.	
List of cases argued in Supreme Court of Pennsylvania, .....	842
SCHEDULE E.	
List of cases argued in Superior Court of Pennsylvania, .....	842
SCHEDULE F.	
List of Quo Warranto proceedings, .....	843
SCHEDULE G.	
List of equity cases, .....	844
SCHEDULE H.	
Mandamus proceedings, .....	845
SCHEDULE I.	
Proceedings against Insurance Companies and Building and Loan Associations, .....	848
SCHEDULE J.	
Actions of assumpsit instituted, .....	849
SCHEDULE K.	
List of collections, .....	850
SCHOCK, O. D., ASSISTANT DAIRY AND FOOD COMMISSIONER,	
OPINION TO.	
Addition of coloring matter to butter, .....	309
Allowance of 3 per cent. commissions to sheriff, .....	312
Unexpended sums of money received by Dairy and Food Commissioner arising from licenses, fines, and all other sources, to be paid into State Treasury, .....	315
SCHOOLS.	
Commonwealth v. Rowe; vaccination and compulsory attendance, ..	iv
Non-admission to Soldiers' Orphan School of grandchildren or adopted children of soldiers or sailors, .....	384
Attendance of unvaccinated children, .....	420
Application of vaccination law to private school, .....	422

	Page.
SCHWENK, SAMUEL K., LETTER TO.	
Transportation to Vicksburg, Miss., of old soldiers employed by U. S. Government at Washington, .....	363
SCOTT, JOHN M., LETTER TO.	
Form of printed matter relating to contract for building of institution for the feeble-minded and epileptic, .....	373
SUPREME COURT.	
List of cases argued in; Schedule D, .....	842
SECRETARY OF AGRICULTURE.	
Not liable to persons who may be injured by his acts when such acts are within his authority, .....	167
Authority to employ expert to prepare Bulletin upon fruit growing and publishing the same, .....	172
Sending of Inspector to nurseries of State and giving of certificate that stock therein is free from insects or disease, .....	173
Empowered by law to purchase material and supplies necessary to prevent spread and secure extermination of insects or diseases injurious to trees, .....	175
SECRETARY OF AGRICULTURE, OPINIONS TO.	
Duty in regard to publishing analyses of commercial fertilizers and prosecuting manufacturers or importers of same, .....	167
Protection of trees, shrubs, vines and plants against destructive insects and disease, .....	170
Fixing 25,000 as the legal limit of bulletins to be printed for the Department, .....	171
Employment of expert to prepare Bulletin upon subject of fruit growing and publication of same, .....	172
Sending of inspector to nurseries to make examination and giving of certificate that stock is free from insects and disease, .....	173
Purchase of materials and supplies necessary to prevent the spread or secure the extermination of insects or diseases injurious to trees, .....	175
Levying and assessment of taxes upon farm purchased by the State Live Stock and Sanitary Board, .....	176
SECRETARY OF THE COMMONWEALTH.	
Should follow Act of 1874 in certifying nominations for Senatorial districts where provisions of apportionment Act of 1906 are inconsistent therewith, .....	54
Instruction as to form of blank to be used in statement of expenses required from candidates under Corrupt Practices Act, .....	55
Fee for issuing commission of State officer, .....	336
SECRETARY OF THE COMMONWEALTH, OPINIONS TO.	
Approval of bonds given to State Treasurer to protect deposits of State moneys in banking institutions, .....	51
Payment of expenses and compensation of delegates to the county convention under Corrupt Practices Act, .....	54
Certifying of nominations for Senatorial districts where provisions of the apportionment Act are inconsistent with the Act of 1874, .....	54
Form of blank to be used in Statement of Expenses under Corrupt Practices Act, .....	55
SENATORIAL NOMINATIONS.	
Method of certifying, .....	54
SEWERAGE.	
Construction of a sewer without a permit in borough of Hollidaysburg, .....	217

	Page.
Pottstown borough authorities required to submit a report and plans of sewerage system, .....	219
<b>SHEARWATER, STEAMSHIP.</b>	
Use of, by State of Pennsylvania, .....	43
<b>SMALL-POX.</b>	
Employment and payment of guards to prevent spread of, in borough of Marietta, .....	216
<b>SOLDIERS' ORPHAN INDUSTRIAL SCHOOLS.</b>	
Non-admission of grandchildren or adopted children of soldiers or sailors, .....	384
<b>STATE ASYLUM FOR CHRONIC INSANE.</b>	
Purchase of chemical engine for, .....	351
<b>STATE HOSPITAL FOR INSANE AT DANVILLE.</b>	
What expenditures should be classed as maintenance, .....	424
<b>STATE NORMAL SCHOOLS.</b>	
Furnishing of supplies, etc., by trustees or managers of school at Mansfield, Tioga county, .....	73
Guilt or innocence of two directors of East Stroudsburg Normal School, under Act of April 23, 1903, to be determined by the Courts, .....	76
Prohibition against trustees selling supplies to institution covers item of printing, .....	78
Non-deduction by Auditor General from quarterly appropriation of amounts of vouchers paid trustees for supplies sold by them, .....	102
<b>STATE TREASURER.</b>	
Unnecessary to join with Auditor General in making formal settlement for payment of judicial salaries, .....	61
Forbidden to pay warrant for increased salary of Deputy Prothonotary and clerk for the Eastern District of the Supreme Court when the Act of May 4, 1905, failed to make appropriation therefor, .....	84
No authority to pay salaries of Members of Legislature before appropriation is made for same, .....	113
Allowed to pay each member of the Legislature \$300 after organization in January, .....	115
Disapproval of contract between Commonwealth and George F. Payne & Co. for building approaches and improvements to capitol park, ...	277
<b>STATE TREASURER, OPINIONS TO.</b>	
Liability of surety company on bond to cover deposit in a bank not destroyed by letter or demand that money be withdrawn from bank, .....	111
Payment of salaries of Members and Senators in special session before appropriation, .....	113
Return to makers of old bond covering a State deposit, .....	114
Payment of members of the Legislature in advance of performance of duties, .....	115
<b>STEAMSHIPS.</b>	
Use of United States Steamships by State of Pennsylvania, .....	43
<b>STOTT, JOHN E., OPINIONS TO.</b>	
Payment for fire insurance upon Capitol building, .....	275
<b>STREET RAILWAYS.</b>	
Merger and consolidation of Lehigh Valley Passenger Railway Company, et al., .....	13
<b>SUMMARY OF BUSINESS,</b> .....	vii
<b>SUPERINTENDENT OF PUBLIC GROUNDS AND BUILDINGS, OPINION TO.</b>	
Lighting of Capitol during extra session of Legislature, .....	294

	Page.
Purchase of supplies and materials for State Departments not on regular schedule, .....	297
Authority of Chief Clerk of Senate and House of Representatives to order public printing, .....	303
Payment for "trimming and delivery" of public documents, .....	304
SUPERINTENDENT OF PUBLIC INSTRUCTION, OPINION TO.	
Election of superintendents of public schools, .....	191
Issuance of permit to superintendent of public schools of City of Franklin, .....	192
Compulsory vaccination law, .....	195
County Superintendent of schools a county officer and must have been a citizen and inhabitant of county one year before appointment, ....	202
Application of general printing law to Department of Public Instruction, .....	203
SUPERIOR COURT.	
List of cases argued in; Schedule E, .....	842
SUPREME COURT.	
Duty of Auditor General to draw warrants for increased salary of Deputy Prothonotary and clerk provided by Act May 4, 1905, .....	84
List of cases argued in, Schedule D, .....	842
SURETY COMPANY.	
Cannot destroy liability on bond given to cover State deposit by demand that money be withdrawn from bank, .....	111
T.	
TANNERS' MUTUAL FIRE INSURANCE COMPANY OF PENNSYLVANIA.	
Amendment to charter of, .....	145
TAXES.	
Per cent. of personal property tax to be deducted by Auditor General from amount returned by the State to Allegheny and Philadelphia counties, .....	63
Receipt by Auditor General of taxes upon "cases stated, quo warrantos, alternative mandamuses and appeals from the judgments of magistrates or Justices of the Peace," .....	64
Sources whence revenues of the Commonwealth are derived, .....	71
Taxes assessed upon farm purchased by State Live Stock and Sanitary Board to be paid by the State, .....	176
Rebate of, upon forested lands, .....	181
Credit on road tax for using wide tired wagons, .....	231
Rebate on account of trees planted along public road, .....	335
THORN, GEORGE D., OPINION TO.	
Instruction as to form of blank to be used for statement of expenses required from candidates under Corrupt Practices Act, .....	55
TOWN CLERK.	
Office of, not abolished by Act of April 12, 1905, .....	248
TRUST COMPANIES.	
Right of, to do banking business; declination to advise Commissioner of Banking, .....	154
Investigation by Banking Commissioner of affairs of Real Estate Trust Company of Philadelphia, .....	163



## U.

Page.

## UNDERTAKERS.

Licensing of employes of, ..... 410

## UNITED TRACTION COMPANY OF READING.

Petition of Francis H. Brobst, President of Tax Payers' League for  
quo warranto against, ..... 418

## V.

## VACANCIES.

Vacancy created by resignation of a member of the House of Repre-  
sentatives; matter of George W. Mintzer, ..... 376Issuance of writs for special election to fill vacancies in House of  
Representatives by calling a special session, ..... 383

## VACCINATION.

Commonwealth v. Rowe, ..... iv

Exclusion of unvaccinated children from public schools, ..... 195

Payment of expenses of vaccinating children of indigent parents, .... 212

Refusal by teacher of admission of child who has not been vaccin-  
ated or does not present a certificate of successful vaccination,.... 420

Application of law to a private school, ..... 422

## VANDERSLICE, JOHN M.

Expiration of commissions of Gettysburg Battlefield Memorial Com-  
mission, ..... 375

## VETERINARIAN, STATE, OPINIONS TO.

Destruction of diseased cattle, ..... 323, 325

Form of deed for farm purchased for use of State Live Stock Sani-  
tary Board, ..... 326

## VICKSBURG MONUMENT.

Transportation of soldiers employed by U.S. Government at Washing-  
ton, ..... 363

## W.

## WALKER, G. E., LETTER TO.

Vaccination; compulsory attendance of schools, ..... 420

## WALTON, HENRY F., OPINION TO.

Withdrawal of resignation by member of House of Representatives,. 376

Issuance of writs for special election to fill vacancy in House of  
Representatives upon calling of a special session, ..... 383

## WARREN, COMMONWEALTH EX REL VS.

Testing title of office of Dairy and Food Commissioner,..... v

## WATER SUPPLY COMMISSION.

Payment of expenses of, ..... 401

## WAYNE, WILLIAM, OPINION TO.

Hamilton Road Law inoperative because of non-appropriation,..... 338

## WHITWORTH, JOHN F.

Payment of expenses of Water Supply Commission, ..... 401

## WILEY, JOHN A.

Incompatibility of offices of State Senator and oil inspector,..... 397

## WING WALLS.

Operation of fish baskets with wing walls, ..... 258

Acquirement of property rights in,..... 262

Y.

	Page.
YOST, H. F.	
Care of indigent persons injured in and about mines cared for by State hospitals, .....	364

# INDEX TO REPORT IN RE CAPITOL INVESTIGATION.

## A.

	Page.
ALTERATIONS AND OMISSIONS.	
List of, .....	667
AUDITOR GENERAL.	
Letter from Attorney General, .....	455
Reply to Attorney General, .....	455
Letter of Attorney General to, .....	791
Reply to letter of Attorney General, .....	794

## B.

BASES, MARBLE, ITEM 3.	
Sold to Commonwealth by Pennsylvania Construction Company, .....	469
BERRY, WM. H., STATE TREASURER.	
Letter to Attorney General, .....	452
Letter from Attorney General, .....	453
Letter to Attorney General, .....	523
Reply from Attorney General, .....	527
Letter to Attorney General, .....	537
Reply of Attorney General, .....	538
Letter of Attorney General to, .....	551
Letter to Attorney General, .....	574
Letter to Attorney General, .....	710
Letter to Attorney General, .....	749
Letter of Attorney General, .....	785
BOARD OF PUBLIC GROUNDS AND BUILDINGS.	
Letter of Attorney General to, .....	521

## C.

CARVED PANELS, ITEM 2.	
Sold to Commonwealth by John H. Sanderson, .....	465
CARPETS.	
Itemized statement of cost of, .....	659
CEMENT FLOORING, ITEM 8.	
Sold to Commonwealth by George Payne & Co., .....	492
COMMISSIONERS OF PUBLIC GROUNDS AND BUILDING.	
Letter of Attorney General to, .....	752
Reply to letter of Attorney General, .....	773

	Page.
D.	
DECORATING, ITEM 4.	
Sold to Commonwealth by John H. Sanderson, .....	477
DECORATIONS.	
Itemized statement of cost of, .....	659
DELANEY, JOHN C.	
Letter of Attorney General to, .....	716
Reply to letter of Attorney General, .....	718
DESIGNED WOOD WORK, ITEM 2.	
Sold to Commonwealth by John H. Sanderson, .....	465
E.	
ELECTRIC LIGHTING, ADDITIONS AND ALTERATIONS TO, ITEM 14.	
Sold to Commonwealth by John H. Sanderson, .....	503
EQUIPMENT.	
Itemized statement of cost of, .....	659
EYRE, T. LARRY.	
Letter of Attorney General to, .....	749
Reply to Letter of Attorney General, .....	751
F.	
FITTINGS.	
Itemized statement of cost of, .....	659
G.	
GILDING, ITEM 4.	
Sold to Commonwealth by John H. Sanderson, .....	477
GLASS MOSAIC, DESIGNED, ITEM 5.	
Sold to Commonwealth by John H. Sanderson, .....	492
H.	
HARDENBERGH, E. H.	
Letter of Attorney General to, .....	713
Reply to letter of Attorney General, .....	715
HARRIS, FRANK G.	
Letter of Attorney General to, .....	707
Reply to letter of Attorney General, .....	709
HEATING AND VENTILATION, ITEM 16.	
Thermostats sold to Commonwealth by John H. Sanderson, .....	514
HENSEL, W. U.	
Letter to Attorney General forwarding reply of Pennsylvania Construction Company, .....	565
HUSTON, JOSEPH M.	
Letter of Attorney General to, .....	552
Reply to Attorney General, .....	554
Letter of Attorney General to, .....	602
Reply to letter of Attorney General, .....	618

## I.

## INTERLOCKING HARDWOOD PARQUETRY FLOORING, ITEM 9.

Sold to Commonwealth by George F. Payne & Co., ..... 496

## M.

## MARBLE WAINSCOTING, ITEM 3.

Sold to Commonwealth by Pennsylvania Construction Co., ..... 469

## MANTELS, ITEM 2.

Sold to Commonwealth by John H. Sanderson, ..... 465

## MANTELS, ITEM 3.

Sold to Commonwealth by Pennsylvania Construction Co., ..... 469

## MATHUES, W. L.

Letter of Attorney General to, ..... 811

Reply to letter of Attorney General, ..... 813

## METAL DOCUMENT FILING CASES.

Specifications of, ..... 671

## MATERIAL, CONSTRUCTION AND LABOR.

Detailed list; Supplemental contract, issued to Pennsylvania Construction Co., ..... 695, 697, 700

## MODELING AND SCULPTURE WITH PATTERNS.

Item I. Sold to Commonwealth by John H. Sanderson, ..... 462

## MODIFICATIONS.

Official record of, ..... 660

## O.

## ORNAMENTATION, RAISED, ITEM 4.

Sold to Commonwealth by John H. Sanderson, ..... 477

## P.

## PAINTING, ITEM 4.

Sold to Commonwealth by John H. Sanderson, ..... 477

## PARQUETRY FLOORING, ITEM 9.

Sold to Commonwealth by George F. Payne & Co., ..... 496

## PAYNE &amp; COMPANY, GEORGE F.

Letter of Attorney General to, ..... 557

Reply to Attorney General, ..... 560

## PENNSYLVANIA CONSTRUCTION CO.

Letter of Attorney General to, ..... 563

Reply to Attorney General, ..... 565

## R.

REPORT OF ATTORNEY GENERAL, ..... 437

## S.

## SAFES, ITEM 12.

Sold to Commonwealth by Pennsylvania Construction Co., ..... 503

## SAFES.

Specifications of, ..... 671

	Page.
SANDERSON, JOHN H.	
Letter of Attorney General to, .....	534
Reply to letter of Attorney General, .....	534
Letter of Attorney General to, .....	539
Reply to Attorney General, .....	542
Letter of Attorney General to, .....	577
Reply to Letter of Attorney General, .....	589
SCREENS.	
Specifications of, .....	671
SHUMAKER, J. M., SUPERINTENDENT PUBLIC GROUNDS AND BUILDINGS.	
Letter of Attorney General to, .....	522
Letter of Attorney General to, .....	720
Reply to letter of Attorney General, .....	728
SNYDER, WILLIAM P.	
Letter of Attorney General to, .....	791
Reply to letter of Attorney General, .....	794
SPECIAL FURNITURE.	
Itemized statement of cost of, .....	659
SPECIAL FURNITURE, CARPET, FITTINGS AND DECORATION SCHEDULE FOR EQUIPMENT OF NEW CAPITOL, .....	547
SPECIFICATIONS OF FIRE-PROOF VAULT DOOR, .....	562
SPECIFICATIONS FOR TELEPHONE BOOTHS, .....	685
SPECIFICATIONS OF WORK AND MATERIALS FOR METAL DOCUMENT FILING CASES, VAULTS, SAFES, SCREENS AND GALLERIES.	
Exhibit attached to Mr. Huston's letter, .....	671
STATE TREASURER.	
Letter to Attorney General, .....	452
Letter from Attorney General, .....	453
Letter to Attorney General, .....	523
Reply of Attorney General, .....	527
Letter to Attorney General, .....	537
Reply of Attorney General, .....	538
Letter of Attorney General to, .....	551
Letter to Attorney General, .....	574
Letter to Attorney General, .....	710
Letter of Attorney General to, .....	785
STATIONERY, SUPPLIES, &c., COPY OF ADVERTISEMENT FOR.	
Exhibit in letter of J. M. Shumaker, .....	729, 733
STEEL VAULT LINING FOR AUDITOR GENERAL'S DEPARTMENT.	
Specifications of, .....	686
STONE, WILLIAM A., PRESIDENT CAPITOL COMMISSION.	
Letter of Attorney General to, .....	522
Letter of Attorney General to, .....	570
Reply to letter of Attorney General, .....	572
T.	
TABULATED STATEMENT OF EXPENSES BY ITEMS.	
Exhibit attached to letter of Auditor General, .....	799-810
TELEGRAPH SYSTEMS, INSTALLING WIRES, ITEM 15.	
John H. Sanderson, .....	511
TELEPHONE BOOTHS.	
Specifications for, .....	685

	Page.
TELEPHONE SYSTEMS, INSTALLING WIRES, ITEM 15.	
John H. Sanderson, .....	511
THERMOSTATS AND VALVES, INSTALLATION OF, ITEM 16.	
Sold to Commonwealth by John H. Sanderson, .....	514

## V.

VAULTS.	
Specifications of, .....	671
VAULTS, ITEM 12.	
Sold to Commonwealth by Pennsylvania Construction Co., .....	503
VAULT, BURGLAR PROOF, WITH DOORS, LOCKS, &c., FOR TREASURY.	
Specifications, .....	689
VESTIBULES FOR AUDITOR GENERAL'S DEPARTMENT.	
Specifications, .....	686

## W.

WAINSCOTING, ITEM 2.	
Sold to Commonwealth by John H. Sanderson, .....	465