Commonwealth of Pennsylvania

REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

PENNSYLVANIA

FOR THE

TWO YEARS ENDING DECEMBER 31, 1914.

JOHN C. BELL,
Attorney General.

HARRISBURG, PA.:
WM. STANLEY RAY, STATE PRINTER
1915.

REPORT OF THE ATTORNEY GENERAL

FOR THE

Two Years Ending December 31, 1914.

Office of the Attorney General,

Harrisburg, Pa., January 1, 1915.

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

I have the honor to submit a summary and report of the official business transacted by the Attorney General during the two years ending December 31st, 1914.

A report was submitted January 1, 1913, to the Legislature and this report is supplementary thereto, showing the summary of the activities of the Attorney General's Department under my administration since that date.

I have retained in their several positions the entire office staff except Hon. Wm. N. Trinkle, Third Deputy Attorney General, who resigned August 5, 1913, to become counsel to the Public Service Commission, Hon. Morris Wolf was appointed his successor, and was commissioned September 23, 1913.

SUMMARY OF THE BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1913, TO DECEMBER 31, 1914.

Quo warranto proceedings in Common Pleas of Dauphin County,		14
Equity proceedings in Common Pleas of Dauphin County,		15
In all other counties,	3	18
Actions in assumpsit instituted by the Commonwealth in the Common Pleas of Dauphin County,		94

Actions in assumpsit brought by the Commonwealth against Boroughs to recover Penalties imposed for violation of the decrees of State Department of Health, ... 2
Actions in assumpsit brought against the Commonwealth of Pennsylvania, defendant, ... 4
Actions in trepass brought against the Commonwealth of Pennsylvania, defendant, ... 2
Cases stated for the determination of the Court, ... 1
Orders to show cause, etc., against insolvent companies and associations, ... 19
Mandamus proceedings in Common Pleas of Dauphin County, 9
Cases argued in the Supreme Court of Pennsylvania, ... 28
Cases argued in the Superior Court of Pennsylvania, ... 1
Cases argued in the Supreme Court of the United States, ... 2
Tax Appeals in the Common Pleas of Dauphin County, ... 245
Bridge proceedings under the Act of June 3, 1895, (P. L. 130), and supplements, ... 5
Insurance charters approved by the Attorney General,..... 5
Bank charters approved by the Attorney General, ... 21
Applications for sewerage approved by the Attorney General, 163
Formal opinions rendered in writing, ... 148
Cases now pending in the Supreme Court of Pennsylvania,.... 5
Cases pending in the Superior Court of Pennsylvania, ... 2
Cases pending in the Supreme Court of the United States, .. 3

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

	Heard.	Refused.	Allowed.	Withdrawn.	Pending.	Continued indefinitely.
Quo warranto,	22	1	13	6	1	2
Mandamus,	2	.....	2	1	.....	.....
Equity,	4	1	2	1	.....	1

Proceeding under Act of May 7, 1887, (P. L. 94), ... 1
Proceedings under Act of May 23, 1895, (P. L. 114), ... 4
Proceedings under Act of June 9, 1891, (P. L. 256),..... 1
Collections for 1913, ... $4,583,166.34
Collections for 1914, ... 742,909.25

Total, ... $2,326,075.59

Pursuant to the authority vested in me, and for which an appropriation was made by the General Appropriation Act of 1913, (P. L. 761), I appointed Paxson Deeter and John Hyatt Naylor, Esquires, special attorneys to collect the amounts due the Commonwealth for the support and maintenance of the insane, confined as indigents in various asylums of the Commonwealth, but who in fact have estates sufficient to pay in whole or in part, for their maintenance therein. This is the first systematic effort made to recover these sums and it promises much. A summary of the services performed by these gentlemen, is submitted herewith.

SUMMARY OF THE COLLECTION OF AMOUNTS DUE THE COMMONWEALTH FOR THE SUPPORT AND MAINTENANCE OF INSANE.

Investigations concerning estates of lunatics have been made in forty-four counties of the Commonwealth and collections have been made in twenty-two counties. Additional collections are pending in all these counties and in many of the other counties throughout the State.

From the reports made to me, I am of opinion that there is recoverable for maintenance of insane persons due the Commonwealth, up to January 1, 1915, not less than $500,000.00. Perhaps the sum would largely exceed that amount, and in the future, from the efforts heretofore made and those that are now in progress, there will be a probable annual return of not less than $100,000.00. Whatever is collected from this source will largely depend upon the amount of the appropriation made by the Legislature. The $5,000 appropriated by the last Legislature has long since been exhausted, but the attorneys employed have continued their efforts, depending upon the Legislature for a deficiency appropriation to reimburse them.

The work of these attorneys not only consists in the collection of the amount due, but also in ferreting out the information concerning the estates of the inmates of the various asylums who are presumed to be indigent. The appropriation of $5,000 made by the last Legislature was entirely inadequate and I therefore recommend that an appropriation for this purpose of $20,000, for the next two fiscal years, be made.

Amount collected up to Janurary 1, 1915, in sixty-nine cases, ...	$24,105.86
Average collection in each case, ...	349.34

SPECIAL CASES

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

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

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

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

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

Upon appeal, the Supreme Court unanimously reversed the Court of Common Pleas No. 2 of Philadelphia County, (245 Pa., 370), dismissed the bill and sustained the contention of the Commonwealth.

When this case was decided two years' taxes had accrued, and for those two years alone, $566,734.55 has been added to the revenues of the State.

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

The Supreme Court of Pennsylvania reversed the Court of Common Pleas of Dauphin County and sustained the contention of the Commonwealth. (239 Pa., 288.) It involves the question whether the State has the power to impose tax on premiums of foreign insurance companies received from residents of the State but paid to agents outside the State or to the home office of the company, that is to say, whether as to such payments the company is doing business in Pennsylvania. An appeal, however, has been taken to the Supreme Court of the United States.

Commonwealth vs. Joseph Patsone.

This case involves the constitutionality of the Act of May 8, 1909, P. L. 466, which prohibits unnaturalized foreign born residents from owning or being in possession of, a shot gun or rifle.

The defendant was convicted in the Court of Quarter Sessions of Allegheny County, and appealed to the Superior Court, alleging that the act was unconstitutional. The Superior Court, sustained its constitutionality (44 Pa. Super. Ct. 128) and the Supreme Court affirmed the Superior Court (231 Pa., 46).

This case not only involved important questions of the exercise of the police power of the State, but also involved the interpretation of rights of person and of property of Italians under the treaty between the United States and the Kingdom of Italy. An appeal was taken to the Supreme Court of the United States and that Court sustained the Supreme Court of Pennsylvania and the contention of the Commonwealth. (The case is reported in 232 U. S., 138.)

Commonwealth, ex rel., vs. Hyneman, et al.

This case was an amicable action of quo warranto brought directly in the Supreme Court of Pennsylvania at Philadelphia, to test the constitutionality of the Act of March 29, 1913, P. L. 20, providing additional judges in the courts of common pleas of Philadelphia County. Similar cases were brought against each of the other judges, viz: Thomas D. Finletter, Wm. M. Stewart, Jr., Joseph P. McCullen, D. Webster Dougherty.

This Act of Assembly provided for the appointment of an additional judge in each of the five courts of Philadelphia County. It was attacked upon the ground that when three or more judges were appointed, a new court must be organized, as provided by the constitution. The Supreme Court, by a divided court, declared the act unconstitutional. (242 Pa., 244.)

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

At the time the last report was made by me to the Legislature, this case was pending in the Supreme Court of Pennsylvania. It was an attack upon the constitutionality of the Act of June 19, 1911, P. L. 1053, which is known as the "Full Crew Law." This attack was in a concerted effort by a bill in equity instituted in the Dauphin County Court by the Pennsylvania Railroad Company, the Philadelphia and Reading Railway Company, the Delaware, Lackawanna and Western Railroad Company, The Delaware and Hudson Company, and the Lehigh Valley Railroad Company.

The Dauphin County Court sustained the constitutionality of the Act in every particular. The case was argued in the Supreme Court of Pennsylvania October 27, 1912, and a re-argument was ordered by the Court, which was held May 5, 1913.

The Supreme Court sustained the Court of Common Pleas of Dauphin County and the Constitutionality of the law. The case was reported in 241 Pa., 581.

Commonwealth vs. Thomas W. McComb.

This case arose in Delaware County. The defendant was charged with violating the provisions of the Act of May 31, 1907, P. L. 329, which prohibits the use of automatic guns for killing game and wild birds. The act was attacked as unconstitutional and as a unreasonable exercise of the police power. The Court of Quarter Sessions of Delaware County declared the act unconstitutional. The Superior Court (39 Pa. Super. Ct., 411) reversed the Court of Quarter Sessions of Delaware County. An appeal was taken to the Supreme Court which sustained the Superior Court (227 Pa. 377), and an appeal is now pending in the Supreme Court of the United States.

Plymouth Coal Company vs. Commonwealth of Pennsylvania.

This case raised the constitutionality of Section 10 of Article III of the Act of June 2, 1891, P. L. 176, known as the "Anthracite Mine Code." The law made it obligatory on owners of adjoining coal properties to leave a pillar of coal in each seam or vein of coal along the line of the adjoining property, of sufficient width to be a sufficient barrier for the safety of the employees in either mine. The Inspector of Mines of the district filed in Luzerne County a bill in equity to restrain the Plymouth Coal Company from mining out the coal necessary for such a barrier pillar. The act was attacked as violating both the State and the Federal constitutions. The Court of Common Pleas of Luzerne County, sustained it. The Supreme Court in turn sustained the Court of Common Pleas of Luzerne County (232 Pa.

141). An appeal was taken to the Supreme Court of the United States and the constitutionality of the law was sustained in every respect. (232 U. S. 531.)

Commonwealth, ex rel. Attorney General, vs. A. W. Powell, Auditor General, and Robert K. Young, State Treasurer.

This litigation involved the constitutionality of Section 10 of the Act of July 7, 1913, P. L. 672, which provides that the moneys derived from registrations and from license fees should be paid into the State Treasury, and are specifically appropriated to the use of the State Highway Department. The Section was attacked as unconstitutional in that it was not a proper appropriation and that it was reversing the method of payment of moneys which had heretofore been established and adopted. After many legal skirmishes the case was finally decided by the Court of Common Pleas of Dauphin County sustaining in every respect the constitutionality of the section. An appeal has been taken by the Auditor General and State Treasurer which is now pending in the Supreme Court.

State Highway Commissioner vs. Chambersbury & Bedford Turnpike Road Co.

This case arose on proceedings to condemn a turnpike road by the State Highway Commissioner, and the Act of May 31, 1911, P. L. 468, which is known as the "Sproul Law" establishing the highway system of the State, was attacked as unconstitutional. The Court of Quarter Sessions of Fulton County sustained the law and the Supreme Court in turn upheld the lower court. (242 Pa. 171.)

Commonwealth vs. C. W. Burtnett.

This case arose in the Court of Quarter Sessions of Dauphin County, upon an indictment for violating the Act of 1901, P. L. 275, and the question was whether it was a violation of law to add water to vinegar in the process of its manufacture. The Court of Common Pleas of Dauphin County sustained the construction of the Act put upon it by the Dairy & Food Department and sustained the conviction of the defendant. An appeal was taken to the Superior Court which has been argued, but not yet decided.

Commonwealth vs. Fidelity and Deposit Co. of Maryland.

This case arose in the Court of Common Pleas of Dauphin County upon an appeal from the settlement of tax on premiums against the defendant, a foreign corporation. It was contended that the Com-

monwealth of Pennsylvania could not impose a tax upon the premiums received by the defendant upon bonds given by the United States government officials for the faithful performance of their duties because the tax thereon would be taxing the agencies of the Federal Government. The Court of Common Pleas of Dauphin County sustained the contention of the Commonwealth in its effort to collect the tax and was affirmed by the Supreme Court of Pennsylvania (244 Pa., 67). An appeal, however, has been taken to the Supreme Court of the United States, and has not yet been argued.

Commonwealth vs. Barrett Manufacturing Company.

This case involves the duty imposed by law upon foreign corporations in the collection of tax on loans. In the case of Commonwealth vs. Welsbach Company, the Court of Common Pleas of Dauphin County decided that the treasurer of a foreign corporation who lived in the State was required, when paying interest in the State, to deduct the tax due the Commonwealth from individual residents of Pennsylvania. This case was not appealed.

The Barrett Manufacturing Company pays the interest in the State, but its Treasurer does not live in Pennsylvania and it contended that the State could not impose upon its non-resident treasurer, the duty of deducting the tax, when paying the interest to individual residents of Pennsylvania. The Court of Common Pleas of Dauphin County sustained this contention and was affirmed by the Supreme Court of Pennsylvania. (The case was reported in 246 Pa., 301.)

Commonwealth vs. Lehigh Valley Railroad Company.

This is a very important case construing the taxing statutes of the Commonwealth. It involved the question as to whether the bonds and other obligations of corporations owned by savings institutions having no capital stock, exempted the corporations, issuing the bonds, from the payment of the tax thereon. The Court of Common Pleas of Dauphin County sustained the contention of the Commonwealth, and it was affirmed by the Supreme Court. (244 Pa., 241.) This case resulted largely in increasing the revenues of the Commonwealth.

Tax on Anthracite Coal.

By the Act of June 27, 1913, P. L. 639, a tax of 2½ per cent. was imposed upon all anthracite coal mined in Pennsylvania, when prepared for market. Immediately after its passage, a concerted attack was made by the coal operators upon this legislation. A bill in equity was filed by the Peoples Coal Company to prevent the Auditor General from settling the tax, which was heard in the Court of Common Pleas

of Dauphin County, but before it was decided, settlements were made by the Auditor General and State Treasurer against various operators, and numerous appeals were taken to the Court of Common Pleas of Dauphin County. Three test cases, viz: Commonwealth vs. Adlen Coal Company, Commonwealth vs. St. Clair Coal Company, Commonwealth vs. Plymouth Coal Company, were heard and fully argued, but have not yet been decided.

Winston, Appellant, vs. Moore, et al., County Commissioners.

This was a case stated between certain tax payers of the city of Philadelphia and the County Commissioners for the City of Philadelphia, in which the Commonwealth of Pennsylvania intervened. It involved the constitutionality of the non-partisan ballot law of July 24, 1913, P. L. 1001. The Court of Common Pleas No. 1 of Philadelphia, sustained the law and it was affirmed by the Supreme Court. (244 Pa., 447.)

Henry Gerlach vs. Robert J. Moore, et al., Commissioners for the County of Philadelphia, Defendants, and the Commonwealth of Pennsylvania, Intervening Defendant.

Henry Gerlach, a tax payer, filed a bill in equity in Common Pleas No. 4 of Philadelphia County, restraining the County Commissioners from expending funds of the county to make provision for the holding of the municipal court in Philadelphia County.

It involved the constitutionality of the Act of July 12, 1913, P. L. 711, establishing the municipal court of Philadelphia. The Court sustained the validity of the Act, and the Supreme Court affirmed it, in an opinion reported in 243 Pa., 603.

Commonwealth, ex rel., vs. City of Pottsville.

Since the last session of the Legislature, the Attorney General's Department has authorized the institution of proceedings in two cases involving the validity of the charters of cities of the third class, viz: the cities of Pottsville and South Bethlehem.

In the former case the validity of the charter of the city of Pottsville was attacked on the ground that the election upon the question of becoming a city of the third class had been ordered by the Court of Quarter Sessions of Schuylkill County, under the Act of April 15, 1907, P. L. 66, rather than by the Borough Council, under the Act of May 28, 1907, P. L. 268. Quo warranto proceedings were instituted in the Court of Common Pleas of Dauphin County at No. 2 C. D. 1914, and it was held by that Court that the Act of May 28, 1907, P. L. 268, was not inconsistent with and did not repeal the Act of April 15,

1907, P. L. 66, but that both acts were to be considered as amendments by the Legislature of 1907 of existing legislation providing for the incorporation and government of cities of the third class.

Judgment was entered against the Commonwealth and in favor of the city and its officers. Upon appeal by the Commonwealth to the Supreme Court, the judgment of the Court of Common Pleas of Dauphin County was affirmed in an opinion reported in 246 Pa., 468.

Commonwealth, ex rel., vs. City of South Bethlehem.

Quo warranto proceedings, at the relation of the Attorney General, were instituted in the Court of Common Pleas of Northampton County, at No. 28, February Term, 1914, requiring the city of South Bethlehem to show by what authority it claims to be a city of the third class and why its charter should not be vacated. This charter was attacked on the ground that the election by the electors of the former borough of South Bethlehem upon the question of becoming a city of the third class, was a *special* election held on the 22nd day of August, 1913, pursuant to the provisions of the Act of July 17, 1913, P. L. 694, providing that cities of the third class may be chartered whenever a majority of the electors of any borough having at least 10,000 inhabitants, shall vote at any special election in favor of the same. The constitutionality of this act was challenged upon the ground that it violated Section 1 of Article 15 of the Constitution providing that "cities may be chartered whenever a majority of the electors of any town or borough having a population of at least 10,000 shall vote at any *general* election in favor of the same." The case was so proceeded in, in the Court of Common Pleas of Northampton County, that a judgment in favor of the Commonwealth, *non obstante veredicto,* was entered; the said special election decreed to be null and void, and a judgment of ouster pronounced against the said city and its officers. An appeal from this judgment was taken by the city of South Bethlehem and is now pending in the Supreme Court.

Commonwealth, ex rel., Attorney General, vs. Neva R. Deardorff, No. 6, C. D. 1914, Common Pleas of Dauphin County.

This was a quo warranto proceeding in which the principal question involved was whether the Commissioner of Health of the Commonwealth of Pennsylvania has authority to appoint a local registrar of vital statistics for the city of Philadelphia, or whether that city was, at the date of the approval of the vital statistics Act of 1905, within one of the provisos of that act, to the effect that in cities where health officers or secretaries of local boards of health were officiating as registrars of births and deaths under local ordinances,

such officers should be continued as registrars of vital statistics in and for such cities. It was held by the Court of Common Pleas of Dauphin County that the city of Philadelphia was within the terms of said proviso. From this decision the Commonwealth appealed, and this appeal is now pending in the Supreme Court.

Alexander Martin, et al., vs. Bureau of Medical Education and Licensure.

This was a bill in equity filed in the Court of Common Pleas No. 4 of Philadelphia County, at June Term No. 4163, 1914, praying for an injunction to restrain the Bureau of Medical Education and Licensure from enforcing certain rules adopted by it for the purpose of regulating the practice of optometry in Pennsylvania. The main question involved was whether optometry is a branch of medicine and surgery. The said Court of Common Pleas No. 4 of Philadelphia County, held that practitioners of optometry were not practicing medicine or surgery, and granted the injunction prayed for. From this decision the Commonwealth has appealed and the appeal is now pending in the Supreme Court.

Commonwealth vs. Isadore S. Grossman and Joseph H. Reich.

In this case judgment was entered at No. 788, October Term 1913, in the Court of Common Pleas of Allegheny County, against the defendants, as sureties upon a bond given by Louis Amshel, under the private banking act of June 19, 1911, P. L. 1060. Amshel having been licensed as a private banker under the terms of said act, became insolvent and at the instance of the Commissioner of Banking judgment was entered in the sum of $15,000 against the above mentioned defendants, as sureties, upon his bond. Application was made by the defendants to the Court of Common Pleas of Allegheny County to strike off the judgment upon the ground that the private banking act of 1911 was unconstitutional. The rule granted by said court to show cause why said judgment should not be stricken off was, after argument, discharged in an opinion holding the said private banking act constitutional and deciding also that the defendants having taken advantage of the privileges of the act, would not be permitted to question its constitutionality. From the judgment of the Court of Common Pleas of Allegheny County, discharging the rule to strike off the judgment, the defendants appealed to the Supreme Court, which court in an opinion not yet reported, declared the act constitutional and affirmed the judgment of the court below.

Pennsylvania Cold Storage and Market Company, et al., vs. N. B. Critchfield, et al.

This case originated in a bill in equity filed in the Court of Common Pleas of Dauphin County, to restrain the Secretary of Agriculture and the Dairy and Food Commissioner from enforcing the Act of May 16, 1913, P. L. 216, known as the "Cold Storage Law." The defendants attacked the law as unconstitutional, for various reasons. The case has been argued in the Court of Common Pleas of Dauphin County, but not yet decided.

Respectfully submitted,

JOHN C. BELL,
Attorney General.

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

FOR THE

TWO YEARS ENDING DECEMBER 31, 1914.

JOHN C. BELL,

Attorney General.

OPINIONS TO THE GOVERNOR.

OPINIONS TO THE GOVERNOR.

SPECIAL POLICEMEN.

The Governor does not have power to appoint special officers or policemen for a church or other religious institution.

Office of the Attorney General,
Harrisburg, Pa., January 12, 1915.

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

Sir: I have before me the petition of the Pastor of St. Joseph's Roman Catholic Church, of Everson, Fayette County, Pennsylvania, asking for the appointment of two special officers as policemen, under the Act of June 25, 1885, P. L. 167.

This Act of Assembly is entitled:

> "An act empowering the Governor of this Commonwealth to appoint special officers, or policemen for incorporated or unincorporated associations, heretofore or hereafter organized, *for any charitable purpose.*"

and the first section provides:

> "That, whenever any incorporated or unincorporated association, heretofore or hereafter organized in this Commonwealth, *for any charitable purpose,* shall apply," etc.,

The Constitution and the laws of Pennsylvania do not use the terms "charitable" and "religious" interchangeably. When the Legislature has had occasion to legislate for religious corporations or institutions it has done so in plain terms. When the legislation has referred to purely charitable institutions it has also used the appropriate language.

I am, therefore, of opinion that the power given to the Governor to appoint policemen for associations, organized "for any charitable purpose" does not include the power to appoint special officers or policemen for a church or other religious institution.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

OPINIONS TO THE AUDITOR GENERAL.

OPINIONS TO THE AUDITOR GENERAL.

INSPECTION OF DOCUMENTS IN AUDITOR GENERAL'S DEPARTMENT.

Any person has a right to inspect the records and documents in the Auditor General's Department with relation to the expenditure of State moneys, at such reasonable times and under such reasonable regulations as the Auditor General may prescribe.

Office of the Attorney General,

Harrisburg, Pa., January 8th, 1913.

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

Sir: This Department is in receipt of your communication, under date of January 6th, stating that a representative of the North American, a newspaper published in the City of Philadelphia, has made application to you as Auditor General for permission to go over the vouchers filed in your Department by the State Highway Department, with a view of securing information in relation to the expenditures of money by that Department, under and pursuant to the provisions of the Act of May 31st, 1911, P. L. 568, providing for the establishment of the said State Highway Department, and for the maintenance, repair and construction of the State Highways and State-Aid Highways in said Act described. $4,000,000 is specifically appropriated for these purposes by the Act, which further provides, in substance and effect, that the expenditures for the aforesaid purposes shall be properly certified by the State Highway Commissioner and audited by the Auditor General; and when so audited and allowed, shall be paid out of said appropriation by warrants drawn by the Auditor General upon the State Treasurer.

It is your duty, as Auditor General, to keep an account and publish a report of the expenditures of public moneys made by warrants drawn by you upon the State Treasurer. The records of your Department showing in what sums, to whom and for what purposes you have authorized payments of public moneys to be made by the State Treasurer are public records.

Two views as to the right of inspection of public records have been held and expressed by the courts of this State; one to the effect that before an applicant is entitled to inspect a public record he must show that he has an interest in the record or document sought to be inspected and that the application is for a legitimate purpose

(In re Marriage License Docket No. 2, 4 Pa. Dist. Rep. 284); the other, that a public record is accessible to all (In re Marriage License Docket, 4 Pa. Dist. Rep. 162). These cases raised the specific question as to the right of representatives of newspapers to inspect the marriage license dockets required to be kept under the Act of June 23rd, 1885, P. L. 146, and the difference in judicial opinion was set at rest by the Act of May 22nd, 1895, P. L. 99, requiring clerks of Orphans Courts to keep marriage license dockets open for inspection by the public and to allow copies or abstracts of the same to be made for publication. This Act would seem to express the public policy of the State in such matters, and is furthermore in accord with the preponderance of judicial decisions in other jurisdictions.

Thus, in Burton vs. Tuite, 78 Mich. 363, Morse, J. said: "I do not think any common law ever obtained in this free government that would deny to the people thereof the right of free access to and proper inspection of public records. They have an interest always in such records and I know of no law, written or unwritten, that provides that before an inspection or examination of a public record is made the citizen who wishes to make it must show some special interest in such record."

To the same effect is Lum vs. McCarty, 39 N. J. 287.

In my opinion, therefore, and as a result of what has been said, any citizen has a right to inspect the records and documents for the inspection of which application is now made to you.

You further ask to be advised as to what extent the proper management of your Department would permit of its furnishing this information. The details of the management of your own Department are entirely within your control, and although the records and documents referred to should be accessible to all citizens of the State, the right of the individual citizen to inspect the same is necessarily subject to the superior right of the public to have the business of your Department conducted without unnecessary hindrance or delay.

In the case of People vs. Reilly, 38 Hun. 429, it was held that under the laws of the State of New York, making it the duty of the Register of Deeds to permit all persons to have free access to the books, etc., a title company was entitled to the privileges of other persons, "but the Register may make reasonable regulations concerning examinations, etc., may assign custodians to oversee certain examiners and not others, may require that his own employees shall take down the books and may exclude persons who are insolent, etc."

Again, in Lum vs. McCarty, 39 N. J. 287, Chancellor Runyon, speaking of this subject, said: "The clerk is the lawful custodian of the records and indexes thereto and is responsible for the safe-keeping thereof. His powers over them are such as are necessary for their

protection and preservation. To that end he may make and enforce proper regulations consistent with the public right for the use of them. But they are public property, for public use, and he has no lawful authority to exclude any of the public from free access to and inspection and examination thereof at proper seasons and on proper application."

You are therefore advised that you should grant the application now pending and permit an examination of the records, vouchers and documents relating to the expenditure of the appropriations above mentioned, at such reasonable times and under such reasonable regulations as you may prescribe, having regard to the safe-keeping of these records, vouchers, documents, etc., and the prevention of any unnecessary interference with the due performance of the public duties incumbent upon you and your departmental clerks.

This opinion, of course, is intended to apply only to the right of inspection of those documents which in contemplation of law are public records, and has no application to those reports and records of the Commonwealth the contents of which are forbidden by express legislative enactment to be divulged or disclosed.

Very truly yours,

JNO. C. BELL,
Attorney General.

POSTAL SAVINGS BANKS.

Deposits in postal savings banks are subject to State taxation, and returns thereof should be made to the local assessors.

There is nothing in the Act of Congress of June 25, 1910, 36 Stat. 814, establishing postal savings depositories, prohibiting State taxation thereof.

Office of the Attorney General,

Harrisburg, Pa., January 9, 1913.

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

Sir: Your favor of November 20th, addressed to the Attorney General, was duly received.

You ask to be advised as to whether deposits bearing interest in Postal Savings banks are required to be returned as personal property to the local assessor for taxation for State purposes.

The form of "Return of Personal Property" prepared by the Auditor General contains in Section 3, Sub-division C, the following:

> "Accounts bearing interest including certificates of deposit or pass books issued by national, state or private banks, trust companies or banking institutions."

This is explanatory of the words "accounts bearing interest" made taxable in the taxing statutes.

The Act of Congress of June 25, 1910, established postal savings depositories for depositing savings at interest with the security of the Government for the repayment thereof (36 Stat. 814). The savings accounts placed at interest for a period of time under the provision of this Act of Congress are within the same category as the other accounts bearing interest referred to in the Section of your form of "Return of Personal Property" just quoted, unless Congress has declared that such savings should not be subject to taxation by the states.

I find nothing in the savings law which prohibits the State from imposing a tax on its citizens having such deposits at interest.

I am also of opinion that while Postal Savings Banks may be governmental agencies, the deposits in them, due to citizens of the Commonwealth, are not, for that reason exempt from taxation.

I therefore advise you that accounts bearing interest in Postal Savings Banks are taxable and should be returned for taxation.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

CAPITOL PARK EXTENSION COMMISSION.

On the death of one of the Commission of three, the powers and duties thereof including the power to draw money from the State Treasury may be exercised by the two remaining members of the commission.

Office of the Attorney General,

Harrisburg, Pa., February 12, 1913.

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

Sir: In your letter of the 30th ultimo to the Attorney General, and by him referred to me, you inquire whether, in view of the vacancy now existing in the membership of the Capitol Park Extension Commission, caused by the death, on January 23, 1913, of Archibald G. Knisely, who was one of the three members originally appointed by Governor Tener, under the act of Assembly approved June 16, 1911 (P. L. 1027), the acts of the two surviving members of the commission are the lawful and valid acts of the said com-

mission, provided for by the said act of Assembly, and whether such survivors have the power to draw money from the State Treasury, pursuant to the provisions of that act.

Section 1 of said act provides as follows:

> "Be it enacted, etc., That the Governor of the Commonwealth of Pennsylvania shall, upon the passage of this act, appoint three citizens of this Commonwealth, none of whom shall be directly or indirectly interested in any of the property to be acquired as hereinafter provided for, who shall constitute a commission to be known as the Capitol Park Extension Commission, which commission shall exist as long as may be necessary for the performance of the work, but not later than the first day of June, one thousand nine hundred and seventeen, when its work shall be completed in all of its parts, and the said commission shall cease to exist. Any vacancy occurring in the membership of the said commission shall be filled by an appointment by the Governor, for the unexpired term."

For the purpose of the extension of the Capitol Park in the city of Harrisburg, this commission is empowered and required to acquire, by amicable agreement, or upon just compensation, upon the conditions and in the manner specifically provided in the act, all the land within certain boundaries therein defined.

Section 7 makes an appropriation of $2,000,000 for carrying the act into effect, and provides that:

> "All payments for property, judgments, costs, expenses and compensation shall be paid by the State Treasurer, on warrants drawn by the Auditor General, from time to time upon the presentation to him of specifically itemized vouchers approved by the commission."

In accordance with Section 1, the Governor duly appointed the decedent, Archibald G. Knisely, Samuel Kunkel and Samuel C. Todd, who, at once, entered upon the performance of their duties, to the end that the work of the said commission "shall be completed in all of its parts," "not later than the first day of June, one thousand nine hundred and seventeen," as the act requires.

Mr. Knisely's death having occurred, suddenly and unexpectedly, on January 23, 1913, as above stated, a reasonable time must, of course, be afforded the Governor, to enable him, in the exercise of his deliberative judgment, to appoint a proper "citizen of the Commonwealth" to fill the vacancy thus occasioned.

I am of opinion that, in the meanwhile, pending such proper appointment, the joint acts of the two surviving members, for and in the name of the said commission, constitute the lawful and valid acts

of said commission, and that the commission does not cease to exist, under this statute, pending the making of the said appointment by the Governor.

The Act of Assembly does not say that, upon the death of any of the members of the said commission, the commission itself shall, *ipso facto,* cease to exist, or that its functions in the public interest shall, thereupon, be suspended, nor is there any implied provision to that effect.

It is true that:

> "When powers are granted to several persons to transact private business the rule is that all must join in the execution of the power."

Thus, it is the familiar rule in the case of private trustees, that all the trustees named must join in the doing of any act involving the exercise of the trust discretion. It is well established, on the other hand, however, that the rule of unanimous action, applicable to private trustees has no cogency with relation "to public business of a judicial nature, nor to public business of a deliberative nature, though not strictly judicial, nor to cases where powers are given to corporate bodies." Commissioners of Allegheny County v. Lecky, 6 S. & R. 166.

It would seem quite clear that the powers and duties conferred and imposed upon the Capitol Park Extension Commission by the said act of 1911 are committed to it as a public administrative body, which is to be viewed legally as a quasi corporation; the action of the majority of the members of which is binding upon it as such.

The act declares expressly that the "commission shall exist as long as may be necessary for the performance of the work, but not later that the first day of June, one thousand nine hundred and seventeen, when its work shall be completed in all of its parts, and the said commission shall cease to exist." And, in the next sentence it is provided that "any vacancy occurring in the membership of the said commission shall be filled by an appointment by the Governor for the unexpired term."

This language certainly does not evince any legislative intendment that the commission as a body shall be so far dismembered by the death of any one of its members, leaving a majority surviving, that it shall cease to exist as a commissions *before* "its work shall be completed in all of its parts." On the contrary, so far as the express language of the act itself is concerned, the reasonable inference to be drawn therefrom is that the commission is intended to continue as a commission, notwithstanding the death or resignation of one of its members, provided a majority be left surviving, in accord-

ance with established principles of common law—the Governor having the power, as above pointed out, to fill "any vacancy occurring in the membership of the said commission." *Commonwealth ex rel Hall v. The Canal Commissioners, 9 Watts, 466,* is directly in point, and the decision therein decisive of the question involved here.

It is especially interesting, in that an opinion upon the point had been expressed with positiveness by the then Attorney General of the Commonwealth, which was directly contrary to that which subsequently was held to be the law of the case by the Supreme Court, in an opinion by Chief Justice Gibson. The facts were that an award of damages had been made by the Board of Appraisers provided for by the Act of April 6, 1830, pursuant to which the Governor was required to appoint three individuals as a Board of Appraisers, to whom all appeals were to be made by persons who might be dissatisfied with the amount of damages offered by the canal commissioners. At the time this award was made by the Board of Appraisers, one of the members of that board had resigned and the two surviving apprasiers made the award, the award so made being $2,500, which was twelve times the amount which had been offered by the canal commissioners. The canal commissioners raised the question as to the power and authority of the two surviving members of the Board of Appraisers to make this award, and submitted the question to the Attorney General for an opinion.

Attorney General Johnson gave them his opinion as follows, viz:

> "It is my opinion, founded on a well known common sense rule of construction, that alone can guide us in the interpretation of laws, that the three individuals designated as a board of appraisers must act in every case, though I think the decision of two would be valid. It will, of course, follow that the act of two only, in the absence of the third, is not an act of the board of appraisers, constituted by law, and cannot, as such be executed."

Following a reference to the decision of the Supreme Court in in the case of Broad Street Road, 1 S. & R. 444, the Attorney General concluded his opinion in these words:

> "After a careful examination of this subject, I cannot entertain a doubt of the result, should the determination ever be submitted to that tribunal" (meaning the Supreme Court).

The determination of the question was afterwards submitted to the Supreme Court, upon an application by Hall for a rule to show cause why a mandamus should not issue to the Canal Commissioners, requiring them to pay the sum of $2,500, which had been awarded by

the two surviving members of the board of appraisers. The Supreme Court did not concur in the opinion of the Attorney General, to the effect that the act of the two surviving members of the board, in the absence of the third, was "not an act of the board of appraisers constituted by law," but, on the contrary held specifically, after a careful review of the English common law and prior Pennsylvania decisions, that in "every aspect," the "two members of the board" were "competent to constitute a quorum, and that an appraisement by it thus constituted," was "valid."

Chief Justice Gibson, in the opinion, said:

> "The criterion, however, seems to be not so much the character of the power, or of the act to be done by virtue of it, as the character of the agent appointed for the performance of it. Perhaps the result of the cases is, that an authority committed to several as individuals, is presumed to have been given to them for their personal qualifications, and with a consequent view to an execution of it by them all; but that where it is committed to them as a body, there is no presumption in the way of the usual method of corporate action by a majority. * * * * * * * The rule which requires execution by all, has never been applied to public business of a judicial or of a deliberative nature; or to cases where powers are given to corporate bodies—all which is incontestable. But all judicial and deliberative bodies partake strongly of the nature of corporation. * * * * * * * It may be safely said, then, that any duty of an aggregate organ of the government, may be performed by a majority of its members where the constituting power has not expressly required a concurrence of the whole. * * * Though not apparent on the face of the return, it is conceded that there was a vacancy by resignation in the membership at the time of the assessment. But that is a fact which, instead of weakening the relator's case would strengthen it, and the possibility of its recurrence may make it a legitimate ground of argument; for it can not be supposed that the functions of the board would be suspended, to the detriment of the public, by the loss of one of its members. Private business might bear to be postponed till such a loss could be repaired, but public affairs are usually so urgent that they could not."

So, with relation to the Capitol Park Extension Commission having functions to perform, under the Act of Assembly, very similar to the board of appraisers, under the Act of 1830, and charged with public business which it is required to complete within a time limited in the act, the duties of such an aggregate organ of government so prescribed "may be performed by a majority of its members," since not only has "the constituting power not expressly required a con-

currence of the whole" (a fact which, of itself is sufficient to warrant the conclusion here reached), but the act itself, as above pointed out, further indicates, positively, upon its face, that this was the legislative intention.

The legislative intention must be determined with regard to the principles of common law expounded in the above cited opinion of Chief Justice Gibson, in accordance with which, during the period of time reasonably required for an appointment by the Governor to fill the vacancy, "it cannot be supposed that the functions of the commission (board) would be suspended, to the detriment of the public, by the loss of one of its members," by death, and to the obstruction of the consummation of the public business, within the time expressly required by the act.

I am therefore of opinion, and so advise you, that, upon the grounds stated, the Capitol Park Extension Commission does not cease to exist, nor are its functions suspended, during the reasonable period of time required for the making of an appointment by the Governor to fill the vacancy occasioned by Mr. Knisely's death, and that during such period of time the powers and duties of said commission, including the power to draw money from the State Treasury, pursuant to the provisions of the said Act of 1911, may, in every respect, be exercised and performed by the two surviving members, to wit, Samuel Kunkel and Samuel C. Todd, as if the said vacancy, during the said period of time, did not exist.

Very truly yours,

WM. N. TRINKLE,
Assistant Deputy Attorney General.

SALARY REQUISITION.

A requisition for salary of a maintenance engineer in the State Highway Department is for the compensation of "necessary labor" within the meaning of the "Sproul" Act and may be honored.

Office of the Attorney General,

Harrisburg, Pa., June 10, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: In your letter of the 29th ult., you request the opinion of this Department to the right of the accounting officers of the Commonwealth to honor the requisition of George H. Biles, Maintenance

Engineer of the State Highway Department, for the sum of $300, in payment of his salary for services as Maintenance Engineer for the month of May, 1913.

By the Act of May 31, 1911, (P. L. 468), known as the "Sproul Act," the Legislature manifestly intended to provide for the building and maintaining of a comprehensive system of highways throughout the Commonwealth. The said highways are divided by the act into two classes—State Highways and State-aid Highways. The system of State Highways comprises 296 separate and distinct routes. The other class of highways consist of the State-aid Highways constructed at the joint expense of the several municipalities and the Commonwealth, as provided in the said act.

Section 6 of said act provides that the system of State Highways shall be "built, re-built, constructed, repaired *and maintained by and at the sole expense* of the Commonwealth, and shall be under the exclusive authority and jurisdiction of the State Highway Department."

By section 11:

> "The State Highway Commissioner is directed to construct or improve *and thereafter to maintain and repair,* at the cost and expense of the Commonwealth, the highways forming the plan or system of the State Highways, in the several counties and townships hereinafter mentioned, and such improvement and *maintenance shall be made according to specifications to be prepared by the State Highway Department,* as regards the character, construction and material to be used; and the said work of construction and *maintenance of said State Highways shall be done under the direction and supervision of the State Highway Commissioner.*"

Section 19 provides that the State Highway Commissioner shall:

> "*establish standards* for the construction and *maintenance* of highways in various sections, *taking into consideration* the topography of the country, the natural conditions and the character and availability of road building material, etc."

Section 29 provides that:

> "*The work of maintaining and repairing all State-aid Highways,* improved under the provisions of this act, or which shall have been previously reconstructed by State aid, *shall be done by the State Highway Department.*"

Section 5 of the act provides that:

> "The highways designated in this act as State Highways shall be taken over by the State Highway Depart-

> ment from the several counties or townships of the State, and when so taken over *shall thereafter be constructed, improved and maintained by the State Highway Department,* at the expense of the Commonwealth."

Section 3 of the act gives the State Highway Commissioner power:

> "to make and adopt rules and regulations for *conducting the busines and work of the department not otherwise expressly provided in this act,* and to prescribe the duties of all appointees and employes."

and by this section is given the further specific power "to purchase all machinery, implements, tools and materials of any and every kind incident to or necessary in the construction, building, rebuilding and maintenance of the State Highways hereinafter described, *including the right to employ all necessary labor.*"

Section 11 provides that:

> "The expense of the construction, improvement *and maintenance of State Highways* provided for in this act, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose by warrants drawn therefor by the Auditor General upon the State Treasurer."

Section 33 provides as to the State-aid Highways that:

> *"The total cost of the improvement and maintenance of the State-aid Highways* constructed under the provisions of this act, as provided by the terms of the contract, or otherwise as herein provided, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer."

By section 37 the sum of $3,000,000, or so much thereof as may be necessary in establishing and carrying on the work of the Department.

> "is hereby appropriated *for the purpose of maintenance, repair and construction of the State Highways* herein described, *and* for the payment of the *State's share of the maintenance and repair of State-aid Highways* heretofore constructed, or constructed or improved under the provisions of this act."

I understand the facts to be that the duty thus enjoined upon the State Highway Commissioner by the mandatory provisions of this act, of properly and economically doing the work of maintaining

the State and State-aid Highways established by the said act, necessitates the employment of a maintenance engineer, and that the services covered by the requisition in question are services rendered by Mr. Biles as such maintenance engineer, in the performance of the said maintenance work—services without which it would be impossible to do the work and perform the duty which the statute imposes upon the Highway Department, in order that this great vast highway improvement of the greatest public importance may be accomplished in accord with the legislative intent.

> "Where the law commands anything to be done, it authorizes the performance of whatever may be necessary for executing its commands."
>
> *II Lewis' Sutherland Statutory Construction, 508; Fohamb's Case, 5 Coke, 116.*
>
> "Whenever a power is given by statute everything nessary to make it effectual or requisite to attain the end is implied."
>
> *II Lewis' Sutherland Statutory Construction, 508; Duarris on Statutes, 514-17; Commonwealth v. Conyngham, 66 Pa., 99.*

This being a salutary and remedial statute, enacted to provide, in the interest of the public welfare (pro bono publico) a great public improvement, the above quoted provisions thereof should, under well settled principles of law, be given a liberal construction, so as to carry the evident purpose of the enactment into effect.

Giving the statute, therefore, that liberal construction which, under the law, should be given to all statutes of its kind, and with proper regard to the context, the subject matter, the effects and consequences and spirit and reason of this act, I am of opinion that the requisition submitted, if it be for maintenance engineering services, which were necessary to the performance of the duty of properly maintaining the State Highways, which, as we have seen, is clearly imposed upon the Highway Department by the above quoted provisions of the Sproul Act, is a requisition for the compensation of "necessary labor," within the meaning of that act, such as the Highway Commissioner is not only given the implied, but the express, power to employ. It therefore follows that said requisition may be lawfully honored.

Very truly yours,

WM. N. TRINKLE,
Third Deputy Attorney General.

GENERAL APPROPRIATION BILL.

The State Highway Department is a branch of the Executive Department. An appropriation for the construction of highways is an ordinary expense of the State Highway Department and may properly be included in the General Appropriation Bill.

Office of the Attorney General,

Harrisburg, Pa., July 23, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: Your communication of the 22nd inst., addressed to this Department, is at hand, and the questions therein raised, by reason of their importance, require prompt consideration and disposition.

After directing attention to Section 15 of Article III of the Constitution, which reads as follows:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth," etc.

and to Section 1 of Article IV, which reads:

> "The executive department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs and a Superintendent of Public Instruction,"

you ask to be advised whether "payments can legally be made out of appropriations made by items in the general appropriation bill to the departments other than those specifically mentioned in the last quoted paragraph—for example: The Department of State Police, the Highway Department, and others," and you further inquire "whether or not expenditures for the construction of highways, etc. may be considered ordinary expenses of the Executive Department, within the meaning of Article III, Section 15, above quoted."

In this connection, you addressed to the State Highway Commissioner, under the same date, a letter which has been referred by him to this Department. This letter reads as follows:

> "I am not at present fully satisfied that appropriation to your Department, by an item of the General appropriation Bill only, is a constitutional method. The matter is of such importance, and the expenditures so large,

that I am compelled to withhold approval of any vouchers to be paid from this source, pending a legal conclusion of questions involved.

"If this will inconvenience your Department I regret very much, but can see no other way that, as a fiscal office of the Commonwealth, this Department can fully perform its obligations to the people."

Section 1 of Article IV of the Constitution relates only to the Executive as distinguished from the Legislative and Judicial Departments of the State Government, but we understand that, when you inquire whether payments can legally be made out of appropriations made by items in the General Appropriation Bill to departments other than those specifically mentioned in that section, you mean to ask whether such governmental agencies as the Highway Department, the Health Department, Banking Department, Department of State Police and Water Supply Commission, for example, are parts of the Executive Department of the Commonwealth within the meaning of Section 15 of Article III of the Constitution.

If there were any substantial doubt about the proper disposition of your inquiries, the beneficial operation of the various agencies of the State Government would be seriously affected.

To hold now, for the first time since the adoption of the Constitution of 1874, that items in the General Appropriation Bill, making appropriations to the various governmental agencies, created by legislative enactment since the adoption of that constitution, have been illegal, would be to reverse settled legislative practices and to conclude that a long line of distinguished and competent Auditors General have disregarded their constitutional obligations; and it would also follow from such conclusion that all moneys disbursed from the State Treasury pursuant to such appropriations have been paid out contrary to law for a period of more than thirty-five years.

To determine that this method of appropriation is illegal would paralyze, at least until the Legislature, at great expense to the Commowealth, could come to their relief in a special session, a great number of offices, bureaus and commissions of the State Government, including the Departments of Health, Pure Food, Banking, Insurance, Mines, Labor and Industry, Highway and the Board of Public Grounds and Buildings, whose continued activities are vital to the safety, health and general welfare of the people of this Commonwealth.

To illustrate: The State tuberculosis sanatoria and the dispensaries under the jurisdiction of the Commissioner of Health would have to be closed, and the unfortunate victims of communicable diseases, bereft of all means of taking care of themselves, would have to be turned out upon the community, and upon their own resources, with results that might be calamitious. The work of the Pure Food

Department would stop; the occupation of mining, which, without regulation, is fraught with grave danger to life, would be left without adequate supervision; the important functions of the State Insurance Department and the Banking Department would cease; the protection to the women and children in the factories of the Commonwealth, afforded by the Department of Labor and Industry, would be withdrawn; the great public highway improvements could not be proceeded with; and the Board of Public Grounds and Buildings could no longer purchase indispensable State supplies and would be obliged to neglect the very Capitol Building itself. These are but a few of the results which would follow from such a construction, and it is therefore a conclusion which should not be reached unless the Constitution imperatively demands it.

Addressing ourselves to the inquiry whether the State Highway Department, for instance, is one of the branches of the Executive Department of the Commonwealth within the constitutional provision under discussion, it is to be observed that while the people of this Commonwealth have provided in Section 1 of Article IV of their Constitution that:

> "The Executive Department of this Commonwealth shall consist of a Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs and a Superintendent of Public Instruction,"

they have nowhere, either expressly or by implication, said that the Executive Department shall consist exclusively of these specifically named officials.

It is obvious that the purpose of this section is merely to declare what offices are essential to the composition of the Executive Department. It is quite clear that the people have imposed no constitutional limitation upon their inherent right to create, through legislative enactment, other offices not inconsistent with those named, as the growth and needs of the State may require. On the contrary, the people have indicated, in Section 8 of Article IV of the Constitution, that additional Executive offices are to be created by law from time to time, for it is there provided that the Governor, in addition to appointing a Secretary of the Commonwealth, an Attorney General and a Superintendent of Public Instruction, "shall appoint such other officers of the Commonwealth as he is or may be authorized by the constitution *or law* to appoint."

> "Constitutions generally provide necessary public offices, and the legislative branch of the Government may create offices and agencies not specifically provided for by the constitution, the limitation being that there must not be any invasion of the plan of fundamental law, or anything inconsistent with its provisions, or their unobstructed operations."

23 Am. & Eng. Ency. of Law. 328.

It is inconceivable that the people of this Commonwealth, in adopting their fundamental law, intended to place it beyond the power of the representatives chosen by them to exercise the legislative function of their government to create additional executive offices not inconsistent with those specifically provided for in the Constitution itself. In the exercise of this power the Legislature has, from time to time, created many such executive governmental agencies.

Is the State Highway Department, to which you refer, such an agency?

In our governmental framework there are only three divisions or departments: The Executive, the Legislative and Judicial, and every governmental agency falls within one or the other of these fundamental divisions.

> "The Executive Department of a free government is that department which executes the laws made in the Legislative Department."
>
> *In re Davies, 165 N. Y. 89; 56 L. R. 855.*
>
> "The executive department of government is that department of government which carries the laws into effect."
>
> *In re Railroad Commissioners, 15 Neb. 679; 50 N. W. 275.*
>
> "The department of government which carries the laws into effect or secures their due performance."
>
> *17 Cyc. 1579.*

The heads of these departments of legislative creation, are appointed by the Governor pursuant to the constitutional provision above mentioned. These departments are created for the express purpose of executing our laws relating to public health, banking, insurance, highways, etc.

The State Highway Department and the other departments referred to in your communication, are neither legislative nor judicial departments. They are clearly executive, and are expressly charged with the execution of the laws severally relating to them.

We, therefore, entertain no doubt whatever upon the first question:

(a) That the Legislative has the complete power from time to time, as it may deem expedient, to create as a part of the Executive Department, such additional offices as are not inconsistent with those specifically provided for in the Constitution itself.

(b) That the Highway Department, as created, and the other departments mentioned above, all of which are involved in your inquiry, are part of the Executive Department of the State Government within the meaning of Article IV, Section 1, and of Article III, Section 15, relating to the General Appropriation Bill.

The next branch of your inquiry relates to the question whether "Payments can legally be made out of appropriations made by items in the general appropriation bill" to departments of the state government similar to the State Highway Department.

Confining the remainder of this opinion to the State Highway Department as illustrative and typical of other departments of the State Government similarly created, it is important to note that your inquiry raises merely a purely technical question with reference to the *form* of the appropriation, and not with reference to the power of the Legislature to make the appropriation itself.

You do not question the right of the Legislature to appropriate money for the construction, repair and maintenance of highways, but you ask to be advised whetеher such appropriation may constitutionally be made *in the form of* an item in the General Appropriation Bill, or whether it must be made by separate bill.

By Section 5 of Article III of the present Constitution it is provided that "no bill *except general appropriation bills* shall be passed containing more than one subject, which shall be clearly expressed in its title."

And by Section 15 of Article III it is enacted that:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the excutive, 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."

With reference to the matter of appropriations it is further prescribed by Section 16 of Article IV that:

> "The Governor shall have power to disapprove of any item or items of any bills making appropriations of money embracing distinct items," etc.

As was said by Chief Justice Mitchell in *Commonwealth ex rel vs. Gregg, 161 Pa. 582.*

> "The history and purpose of that section (Section 15 of Article III) are well known. It was aimed at the objectionable practice of putting a measure of doubtful strength on its own merits, into the general appropriation bill, in legislative phrase tacking it on as a rider, in order to compel members to vote for it or bring the wheels of government to a stop. The same constitu-

> tional intent is embodied in Section 16 of Article IV giving the Governor power to disapprove separate items of appropriation bills. It is the practice of thus forcing the passage of extraneous matters not germane to the purpose of the bill itself, that was intended to be abolished. As to general legislation the same object among others was secured by the provisions of Section 3 of Article III that 'no bill, except general appropriations, shall be passed, containing more than one subject.' General appropriation bills from their nature usually cover a number of items, not all relating strictly to one subject. They were therefore excepted from the requirement of Section 3 and this exception necessitated the special section 15 relating to them. The object of both is the same. is the present measure within the mischief that was intended to be prohibited? The instances cited by the appellant covering a period of twenty years since the adoption of this constitution, show the legislative understanding on the subject, and we may fairly infer that of the executive also, as the various acts cited were approved by the Governor. Such understanding and practice are not, of course, binding upon the judiciary, who are the ultimate authority in the interpretation of the constitution; but, as the view of the two co-ordinate branches of the goverment, they are entitled to respectful consideration, and persuasive force if the matter be at all in doubt."

The only defect suggested by your inquiry is one of mere form of enactment, and it is a well established principle of law that practical acquiescence in a law or system of legislative practice claimed to be unconstitutional is of great weight when the objection concerns merely the form, rather than the substance of the legislation or practice. If the objection is merely technical long acquiescence will be almost conclusive against it.

Cooley on Constitutional Limitations, (7th Ed.) 106.
Continental Imp. Co. vs. Phelps, 47 Mich. 299.

If the question were in doubt, the legislative interpretation, acquiesced in without objection since the adoption of the Constitution, and the interpretation of all of the fiscal officers, the Attorneys General, as the chief legal officers, and the chief executives of the State, from that time to this, would, underwell settled principles, go far to solve that doubt.

Commonwealth vs. Barnett, 199 Pa., 161.

Having reached the conclusion that the State Highway Department is one of the branches of the executive department of the Commonwealth it follows that appropriations to the State Highway for expenditures which may properly be considered as falling within "the

ordinary expenses of the executive * * * department of the Commonwealth" are properly made in the form of items in the General Appropriation bill.

The remaining question is whether items of appropriation in the General Appropriation bill for the construction of highways, to which you refer, provide for the payment of what may properly be considered "ordinary expenses" of the State Highway Department, as a branch of the Executive Department of the Commonwealth.

The Act of May 31, 1911, P. L. 468, creating the State Highway Department, imposes upon it as its principal duty the consruction, maintenance and repair of the state highways designated in the act, and the State-aid highways referred to therein.

The only appropriations to which your communication can refer are the following:

> First: "For the permanent improvement of highways described in the act creating the State Highway Department approved May thirty-first one thousand nine hundred and eleven and acts supplementary and amendatory thereto as state-aid highways two years the sum of one million dollars ($1,000,000),"

Which item was reduced by the Governor in the exercise of his constitutional authority above referred to, to the sum of nine hundred thousand ($900,000) dollars.

> Second: "For the maintenance of the improved and unimproved State highways described in the act creating the State Highway Department approved the thirty-first of May one thousand nine hundred and eleven, and acts supplementary and amendatory thereto, two years, the sum of one million nine hundred thousand ($1,900,000)) dollars,"

which item was reduced by the Governor to one million four hundred thousand ($1,400,000) dollars.

> Third: "For the construction and repair of State highways described in the act creating the State Highway Department approved May thirty-first one thousand nine hundred and eleven, its supplements and amendments, and for the payment of the State's share of the maintenance and repair of State-aid highways constructed prior to or constructed or improved under the provisions of the act creating the State Highway Department, approved May thirty-first one thousand nine hundred and eleven, its supplements and amendments, two years, the sum of three million six hundred thousand ($3,600,000) dollars."

Which item was reduced by the Governor to one million ($1,000,000) dollars.

It is apparent at a glance that these appropriations were made for the purpose of enabling the State Highway Department to perform the duties expressly imposed upon it by law.

Can there be any doubt that such expenditures are "ordinary expenses" of government within the meaning of Section 15 of Article III of the Constitution, and as distinguished from such extraordinary expenditures as may be occasioned, for example, by the happening of unforseen contingencies or calamities.

"The word 'ordinary,' a synonym for regular, is defined by Webster as 'methodical, regular, according to established order.' "

Zoolich vs. Bowman, 43 Pa. 83, 87.

In the Century Dictionary it is defined to mean "sanctioned by law, established."

The regular duties specifically imposed by law upon a department of the State Government are certainly the ordinary duties of that department. The expenses necessarily incurred in the performance of these duties are just as clearly the ordinary expenses of such department, with the true intent and purpose of the provisions of Section 15 of Article III of the Constitution.

In *Commonwealth vs. Gregg, supra,* the Supreme Court, dealing with the question of whether an item of appropriation in the General Appropriation Bill was for an ordinary expense, said:

> "In regard to the particular item under consideration, it appears to be intended to pay for part of the regular and ordinary work of the offices named, and therefore to be for their ordinary expenses."

Upon this further question which you raise we are therefore of opinion that the appropriations to the State Highway Department for the construction and maintenance of State highways and State-aid highways, are within the purview of Section 15 of Article III of the Constitution, and are appropriations properly included in the General Appropriation Bill. Consequently we advise you that payments can be legally made out of the moneys thus appropriated for such construction or maintenance and for the performance of the duties imposed by the Act of Assembly creating that Department.

We are also in receipt of your communication of July 23, supplementing that of July 22nd, directing our attention to other items in the General Appropriation Bill.

In our judgment, a proper application of the general principles stated for your guidance in the foregoing opinion will enable you to determine without difficulty any questions which may arise with reference to other items in the General Appropriation Bill, including those referred to in your communication of July 23rd.

If, however, there are any special facts connected with any particular item which render the principles above stated difficult of application, we shall be glad to reply to any specific inquiry you may desire to submit with reference to such concrete instances.

WM. N. TRINKLE,
WM. M. HARGEST,
J. E. B. CUNNINGHAM,
Deputy Attorneys General.

ADVANCES OF APPROPRIATIONS TO STATE HOSPITALS FOR THE INSANE.

Advances cannot be made to State Hospitals for the Insane. Payments can only be made to them out of the appropriation upon quarterly reports as required by the Act of April 23, 1909, P. L. 146.

Office of the Attorney General,

Harrisburg, Pa., August 21, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: Your favor of the 5th inst. addressed to the Attorney General was duly received.

You ask to be advised whether advances may be made under the Act of April 23, 1909, P. L. 146, to meet the necessary expenses of State Hospitals for the insane, out of the appropriation of $4,000,000 for the maintenance of the indigent insane of the Commonwealth, made by the Act of July 25, 1913.

The Act of July 25, 1913, provides in part as follows:

> "The said appropriation shall be paid on the warrant of the Auditor General on the basis of settlements by that officer and the State Treasurer, but *no warrant shall be drawn or settlement made until the trustees, directors or managers of the several hospitals and asylums for the insane shall have made under oath or affirmation to the Auditor General a quarterly report* setting forth the actual number of indigent insane persons received and maintained in said hospitals and asylums for the insane respectively *during the quarter for which the report is made,* with the dates of their admission and discharge or death respectively, and the actual time during which each of said indigent insane persons was treated, maintained and cared for during said quarter."

By the second Section of this Act it is provided that the quarterly report shall be accompanied by a specifically itemized statement, made under oath, of the receipts and income of said hospitals and asylums from all sources whatsoever, and of the expenditures for all purposes whatsoever during the quarter together with the cash balance on hand at the beginning of, or available at any time during said quarter, which cash balance shall be deducted from the amount chargeable for maintenance to the State for such quarter, etc.

The Act of April 23, 1909, P. L. 146, is entitled:

> "An act prescribing a method of disbursing and accounting for certain appropriations to departments, bureaus, commissions and other branches of the State Government."

It provides, in part:

> "That hereafter when any appropriation is made to any department, bureau, commission, or other branch of the government of this Commonwealth, which is intended for expenses of such nature as to make it impracticable for said department, bureau, commission, or other branch of the government of the Commonwealth to file with the Auditor General itemized receipts or vouchers prior to the advance by the accounting officers of funds sufficient to meet such expenses, it shall be lawful for such department, bureau, commission, or other branch of the State government to make requisition upon the Auditor General, from time to time, for such sum or sums of the appropriation as may be neccessary to meet such expenses; and the Auditor General, after the approval of said requisition by himself and the State Treasurer, shall draw his warrant upon the latter officer for such sum or sums, to be paid out of the appropriation, as in the discretion of the Auditor General may be necessary."

The first, but not necessarily the controlling question arising under your inquiry is whether a State hospital for the insane is a branch of the State government, within the purview of said Act of 1909. That act was manifestly intended to furnish a general method for the disbursement of funds appropriated for the payment of the expenses of the various State governmental agencies of such a character that it would be practically impossible for the governmental agencies in question to procure an itemized voucher for the inspection, consideration and approval of the Auditor General and State Treasurer prior to the actual payment of the money by the department, bureau, commission or other branch of the State government to the claimant against the Commonwealth, hence the authority to the Auditor General and State Treasurer to advance to the department, bureau or

commission such sums as in their discretion may seem reasonable to be expended by such agencies primarily at their own risks as to the legality of the expenditures and subject to the subsequent approval of the fiscal officers of the State before making further advances.

It is in this manner that the ordinary contingent expenses of the various departments, bureaus and commissions are advanced, disbursed and accounted for. If the appropriation in question had been made without any special qualification or limitation as to time or method of payment, it might be possible to construe the said Act of 1909 as broad enough to include State hospitals for the insane as among the State agencies to which it is intended to apply. The appropriation with which we are now dealing is not, strictly speaking, an appropriation to any particular department, bureau, commission or other branch of the government of this Commonwealth, but is an appropriation for "the care, treatment and maintenance of the indigent insane of the Commonwealth" wherever they may be under such care and treatment as to entitle their custodians to participate in the distribution of the appropriation. Both the time and the basis for making distribution of the appropriation are specifically prescribed by the Legislature, viz., quarterly distributions based upon data contained in quarterly reports of the various institutions claiming to be entitled to share in the appropriation. It is expressly provided that no warrant shall be drawn or settlement made in favor of any hospital or asylum until the Auditor General shall have before him quarterly report from the institution, setting forth the actual number of indigent insane persons received and maintained during the quarter for which the report is made, with the dates of their admission, discharge or death, and the actual time during which each indigent insane person was treated, maintained and cured for, in and by such institution.

In addition, this report must be accompanied by a specifically itemized statement made under oath or affirmation, showing the receipts and income of the institution from all sources, all expenditures for all purposes, and the cash balance on hand at the beginning of, or available at any time during the quarter. Even if State hospitals for the insane might properly be considered as governmental agencies within the purview of the Act of 1909, I am of opinion that the special conditions and limitations prescribed by the Legislature of 1913 with reference to the expenditure of the appropriation in question, take this appropriation out of any possible operation of the general Act of 1909, and you are accordingly advised that no payments can legally be made out of this appropriation except upon the quarterly reports required by the said Act of 1913.

As the State institutions entitled to participate in this appropriation are, as a rule, without working capital, this method of distri-

buting the appropriation will doubtless work a hardship upon them, but the responsibility for any inconvenience or hardship inflicted upon the State institutions rests with the Legislature, which body, in making the appropriation, has exercised its right to attach such conditions and limitations with reference to its distribution as to it seemed necessary or advisable.

Very truly yours,

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

PAY OF ELECTION OFFICERS.

The Judges, inspectors and clerks of the district election boards throughout the State except in Philadelphia elected or appointed after June 2, 1913 shall receive five dollars per day for all services in conducting each primary election.

Office of the Attorney General,

Harrisburg, Pa., August 21, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of August 5th, 1913, asking to be advised whether the Act of June 27, 1913, providing, in substance, that from and after the passage of the Act the pay of judges, inspectors and clerks at all elections to be held within this Commonwealth (except in a city co-extensive with a county) shall be five dollars each for all services rendered in the conducting of said election, and repealing all general, local and special laws inconsistent therewith, is to be considered as the act fixing the compensation to be paid to election officers for holding the primary elections provided for by the Act of July 12, 1913, and if so, whether the provisions of said Act of June 27, 1913, are applicable to election officers elected or appointed prior to the said 27th day of June, 1913.

Election officers are constitutional officers, the election of judges and inspectors, and the appointment of clerks being provided for by Section 14 of Article VIII of the Constitution, by which Section it is provided that "District election boards shall consist of a judge and two inspectors, who shall be chosen annually by the citizens. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk, etc."

By virtue of the constitutional amendments of 1909 election officers are to be chosen bi-ennnially at municipal elections.

Without reference to prior acts fixing the compensation of election officers, which acts are immaterial to the present inquiry, it is to be noted that by the Act of June 24, 1895, P. L. 237, it was provided that the pay of judges and inspectors at all elections should be three dollars and a half each at each election, without regard to time, and that the pay of the several clerks to each election board should be three dollars each, without regard to time, and that by the Act of April 16, 1903, P. L. 220, this Act was amended so as to provide that the pay of the judges and inspectors and several clerks to each election board at all elections, should be three dollars and a half, at each election, without regard to time.

The Uniform Primaries Act of February 17, 1906, P. L. 36, enacted that the primaries provided for by that act should be conducted by the regular election boards, and that the members of such boards should receive one-half the compensation for their services that they received at general elections. Under the Act of 1906 the polls at primary elections were required to be open between the hours of two o'clock P. M. and eight P. M.

Thus stood the legislation of the Commonwealth at the time of the enactment of the said primary act of July 12, 1913, and the said Act of June 27, 1913, regulating the pay of election officers and clerks.

By Section 11 of the new primaries act, it is provided that:

> "The primaries shall be conducted by the regular election boards duly elected under existing or future laws, who shall receive the same compensation for their services as they receive at elections. Inspectors of elections shall have the right to appoint clerks to assist them as at elections, who shall receive the same compensation that clerks receive for such services at elections. Vacancies in election boards shall be filled in the manner now provided by law. Before entering upon their duties the election officers and clerks shall be sworn and execute written oaths, as is now required by law.
>
> "The polls shall be open between the hours of seven o'clock ante meredian and seven o'clock post meridian."

By the express terms of this provision the judges and inspectors of the regular election boards are required to conduct the primaries provided for in the Act. Inspectors are authorized to appoint clerks in the same manner as clerks are appointed at general elections. Evidently because, under the new primaries Act, the polls are to be open between the hours of seven o'clock A. M. and seven P. M., it is provided that the members of the regular election boards and

their duly appointed clerks, shall receive the same compensation for services rendered at primary elections as they are entitled to receive at other elections.

You are accordingly advised that subject to the qualification hereinafter mentioned, the judges, inspectors and clerks of the district election boards throughout this Commonwealth (except in a city co-extensive with a county), will be entitled to receive five dollars each for all services rendered in the conducting of each primary election.

In my opinion, the compensation of five dollars for such judge, inspector and clerk for all services rendered in the conducting of an election, is intended as the compensation for election officers at all elections, whether general, municipal, primary or special.

Thus far we have been discussing only the general proposition whether the Act of June 27, 1913, regulating the pay of election officers and clerks, is intended to apply to primary elections, and have answered that proposition in the affirmative. This general conclusion, however, is subject to the constitutional qualification expressed in Section 13 of Article III of the Constitution, to the effect that "no law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment."

That judges and inspectors of elections are public officers within the terms of the above quoted section of the Constitution, was decided in the case of Goodman vs. the County Commissioners of Huntingdon County, 17 Pa. C. C. 393. In that case an inspector of elections elected to said office on the third Tuesday of February, 1895, for the Third ward of the Borough of Huntingdon, claimed to be entitled to the compensation fixed by the above quoted Act of June 24, 1895, P. L. 237. In disposing of this contention, the Court said:

> "The Act under which the petitioner claims pay was passed after his election. Its purpose was to change the pay of election officers, and whether its effect would be to either increase or diminish it, it cannot be held to apply to officers elected before its passage. As to them it is clearly within the inhibition of the constitutional provisions referred to, which prohibits the passage by the legislature of any law which shall increase or diminish the salary of any public officer after his election. It cannot be pretended that the legislature intended to do what the Constitution prohibited, therefore, this Act of 1895 must, in our opinion, be construed to apply only to officers elected after its passage.
>
> "The petitioner is entitled to receive pay under the provisions of the law as it stood at the time of his election, and not under the Act of 1895."

You are accordingly advised that the compensation of five dollars each, fixed by the said Act of June 27, 1913, for all services rendered in the conducting of elections, will be payable to all judges, inspectors and clerks of elections elected or appointed in any election district of the Commonwealth (except in a city co-extensive with a county) after the 27th day of June, 1913, for their services at subsequent primary elections; and that all election officers elected or appointed prior to the said 27th day of June, 1913, rendering services during their existing terms of office at subsequent primary elections will be entitled to receive for such services such compensation as is provided by existing legislation exclusive of said Act of June 27, 1913.

Very truly yours,

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

MOTHERS PENSIONS.

The Auditor General, with the State Treasurer, should apportion the appropriation of $200,000 for mothers pensions to the counties, according to their respective population as shown by the census of 1910.

Office of the Attorney General,

Harrisburg, Pa., September 17, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your recent communication, asking to be advised with reference to the constitutionality of the Act approved April 29, 1913, entitled: "An act applicable to all counties of this Commonwealth, to provide monthly payments, as approved by the trustees, to indigent, widowed, or abandoned mothers, for partial support of their children in their own homes; the manner of appointment of the trustees; the administration of the trust; amount of appropriations, proportioning appropriations, coordinate appropriations; amounts to be paid, form or records, eligibility, penalties, and reports, as set forth," and popularly known as the "Mothers' Pension Act."

Refraining for the present from any comment upon the effect of the obscurity of the language of the Act in several particulars, it may be observed that this law is, in substance, an Act appropriating the sum of two hundred thousand dollars, out of the public moneys in the State Treasury, as a fund out of which monthly payments are to be made by the State Treasurer upon the warrant of the

Auditor General, based upon the requisition of certain trustees, to indigent, widowed or abandoned mothers, for the partial support of their children in their own homes. The appropriation of the moneys of the State is not an unconditional and unrestricted appropriation, but is subject to the condition that, before indigent, widowed or abandoned mothers, resident in any county in the State, may receive the benefits of the act, such county shall provide, for the same object or purpose, a sum of money equal to the amount apportioned to it out of the State appropriation of $200,000.00.

It is provided in the second section of the act that the said sum of $200,000.00, appropriated out of the moneys in the State Treasury to carry the provisions of the act into effect, shall be apportioned "to the counties of the Commonwealth, according to their respective population in the census of one thousand nine hundred and ten, by the Auditor General and State Treasurer;" and it is further provided that, upon the approval of the bill, "the State Treasurer shall place the proportionate amount of the entire appropriation to the various counties, upon the books of the State Treasury, to the credit of the trustees; one-half of which amount shall be available the first year after approval, and the remainder the second year, or until another appropriation may become available."

A proviso is attached to this section, which reads as follows:

> "No county, through their trustees or otherwise shall receive their allotment of the State's appropriation unless an equal amount has been provided by the government of such county desiring the benefits under this act."

If it were not for another conflicting provision it might be argued that the language above quoted indicates that the State appropriation is made to such counties in the Commonwealth as provide a like amount for the purpose of the act, or perhaps to the trustees whose appointment is provided for in the act.

In the first section of the act, however, it is provided that the payments are "to be made direct to the recipient by the State Treasurer, upon warrants drawn by the Auditor General, and direct to the recipient by the county treasurer," thus seemingly indicating that, in one view of this law, it is an act making appropriations of public moneys directly to the mothers entitled to receive the same under the terms of the act, if and when the county in which they reside fulfills the condition imposed upon it.

The maximum amount to be paid jointly by the State and the county is fixed at not more than $12.00 per month for one child; $20.00 per month for two children; $26.00 per month for three children; and $5.00 per month for each additional child. These payments

are to be made upon the recommendation and requisition of certain trustees hereinafter referred to, and are to continue so long as said trustees may direct, provided the children, for whose partial support they are made, are attending school, if of proper age and physically able so to do, and provided further that, in no event, shall payments be made for the partial support of any child after such child shall have reached the age at which it may legally be employed under the laws of this Commonwealth. The proportion in which the payments allowed under the act shall be paid by the county and State respectively is not expressly stated, but presumably it is 50 per cent. each.

The administration of the act is committed to a board of not less than five, nor more than seven, women trustees, to be appointed by the Governor in each county desiring to avail itself of the provisions of the act. The trustees are to serve without compensation, but are to be paid their traveling expenses and the expenses incident to the maintenance of headquarters and the appointment of an investigator and a stenographer. A maximum amount to be paid for such expenses and salaries is fixed for counties containing cities of the first class, and lower amounts for counties containing cities of the second and third classes, and for all other counties. The act contains no express provision with relation to the manner in which these expenses and salaries are to be paid, nor does it appear from the language of the act whether these expenses and salaries are to be paid jointly by the State and the proper county, although that would seem to be the fair inference from the general scope of the Act.

Provision is made in Section 4 for the compiling of records of each family in receipt of payments under the act, and it would seem that, when the trustees have determined that a mother, within the terms of the act, is entitled to monthly payments thereunder, and have fixed the amount of the payments, an application for a warrant for the payment, monthly, of one-half the amount fixed is to be made to the Audtior General, and an application for the remaining half is to be made to the proper county treasurer, which applications or requisitions are to be accompanied by a copy of the record of the family, said copy to be verified by the oath of an investigator and approved by at least a majority of the trustees.

Notwithstanding some obscurity of expression both in the title and in the body of the act, its general purpose is discernible and may be said to be joint assistance by the State and proper county to indigent, widowed or abandoned mothers, to the end that they may be enabled to rear and educate their children of tender years in their own homes, and thereby avoid the necessity of committing such children to the care of private or public charitable institutions. This would seem to be a commendable purpose, and in line with the general policy of the Commonwealth to afford assistance to its indigent

citizens. Large appropriations are made biennially for the maintenance and treatment in sanitoria and dispensaries of indigent persons afflicted with tuberculosis, and the State maintains a number of State hospitals for the maintenance and treatment of indigent residents physically or mentally afflicted.

Whether young children, whose widowed or abandoned mothers are unable to maintain them, are to be maintained and educated in charitable institutions or in their homes, as proposed by this act, would seem to be largely a question of public policy for the determination of the legislative branch of the government; but, inasmuch as this act expressly provides that after investigation by, and upon the recommendation of, the trustees, whose appointment is provided for therein, payments shall be made monthly, out of the public moneys in the State Treasury, directly to the mothers contemplated by the act, the question naturally arises whether this act contravenes Section 18 of Article III of the Constitution, which provides that "No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

This section seems to be a limitation upon the general power of the legislature to make appropriations. It is a fundamental proposition of our Constitution that no money shall be paid out of the State Treasury except upon appropriations made by law and on warrants drawn by the proper officer in pursuance thereof. For many years appropriations have been made, both to charitable and educational institutions exclusively under the control of the Commonwealth, and to such institutions under private control; but it is provided in Section 17 of Article III, in substance, that no appropriation shall be made to an institution not under the absolute control of the Commonwealth (except Normal Schools), except by a vote of two-thirds of all the members elected to each House.

By Section 19 of Article III, the General Assembly is authorized to make appropriations to institutions wherein the widows of soldiers are supported or assisted, or the orphans of soldiers are maintained or educated, but such appropriations must be applied exclusively to the support of such widows and orphans.

In addition to these constitutional provisions, the general Act of June 23, 1911 (P. L. 1119), prohibits the making of appropriations to unincorporated charitable, reformatory or correctional institutions, organized or established after the date of the approval of the act.

It is not entirely clear whether the Legislature, in appropriating $200,000.00 "in order to carry the provisions of this act into effect," and in directing this sum to be apportioned to the counties according

to population, intended the appropriation to be an appropriation to such *counties* as, being desirous of obtaining the benefit of the act, should severally provide amounts of money equal to the several sums so apportioned to the said counties, which joint sums should be expended for the purposes contemplated by the act, or whether the appropriation was intended to be an appropriation made directly to such *mothers* as might be recommended by the trustees, on condition that the county in which they were residents should also provide a sum equal to such county's apportionment of the State funds. Indeed, it is to be further observed that there is language in the second section of the act which might be construed to mean that the appropriation was intended to be an appropriation to the *trustees* when appointed. It is provided in that section that the amounts apportioned to the various counties shall be placed to the credit of the trustees upon the books of the State Treasury.

Plainly, therefore, the true and proper meaning and construction of the act is involved in doubt, and the question of its constitutionality is largely dependent upon the interpretation to be placed upon its language. After an Act of Assembly has been certified to the Governor as having been duly passed by both Houses and has received the approval of the Governor, this Department has, of course, no jurisdiction or authority to pronounce it unconstitutional—that power being exclusively vested in the judiciary. As every act duly passed and approved is presumed to be constitutional until a court of competent jurisdiction has pronounced it unconstitutional, an expression of the opinion of this Department at this time upon the constitutionality of this act could serve no good purpose, as such opinion would not be binding upon any individual or any department of the State Government.

You do not state in your communication whether the apportionment provided for by the act has been made, or whether the trustees have been appointed in any county, or whether any county of the State has provided an amount equal to the amount apportioned to it out of State funds for the purpose of the act, or whether any applications have been made to you by trustees, under Section 4 of the act. Until an application has been made, under Section 4 of the act, for a warrant, you are not required to take any official action, except to join with the State Treasurer in making the apportionment provided for in the second section.

You are accordingly advised that, if you have not already done so, you should join with the State Treasurer in making an apportionment of the appropriation of $200,000.00 to the counties of the Commonwealth, according to their respective population as shown by the census of 1910, which proportionate amounts should be set out on the books of your Department, and of the Treasury Department, to

the credit of the various counties, to be drawn against by the trustees of the respective counties. This is the only official action required of you until trustees have been appointed in such counties as have provided, for the purposes of the act, sums of money equal to the amounts apportioned to them.

If, upon receipt of an application for a warrant payable to a recipient of the benefits of the act, you have a substantial doubt as to the constitutionality of the act, and consequently as to the legality and propriety of the issuing of a warrant thereunder, you may decline to draw such warrant, and should, I respectfully suggest, co-operate with the trustees making application therefor, in the institution of mandamus proceedings for the purpose of securing a judicial construction of the act and a judicial decision upon the question of its constitutionality.

Yours faithfully,

JOHN C. BELL,
Attorney General.

SALARIES DE FACTO JUDGES.

The five judges in Philadelphia appointed under provision of the Act of March 29, 1913, were de facto judges and entitled to the salary for the time they served, notwithstanding said Act of Assembly was afterwards declared unconstitutional.

Office of the Attorney General,

Harrisburg, Pa., October 1, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: Replying to your recent request, I am of opinion that the five persons, learned in the law, severally appointed by the Governor to each of the five Courts of Common Pleas of Philadelphia County, pursuant to the Act approved March 29th, 1913, entitled "An act providing for another judge in each of the Courts of Common Pleas of Philadelphia County," and who severally qualified and discharged the duties of their offices during the period of a month and upwards, were *de facto* judges and entitled to the salaries fixed by law incident to the said office.

In Volume 8 of American and English Encyclopedia of Law, page 800, under the title "De Facto Officers," the principle is laid down as follows:

> "A person may be a *de facto* officer where he holds and exercises an office which has an irregular or merely potential existence; as, for instance, an office which the legislature has given a city council power to create, but in creating which the city council did not follow the mode prescribed by the statute."

The analogy is obvious; the Legislature had the undoubted power under the Constitution to increase the number of judges in the Courts of Common Pleas of Philadelphia County, but, unfortunately, the Assembly "did not follow the mode prescribed by the Constitution." Each of the five appointments was regular on its face, and emanated from a source, to wit: the Legislature, which had the legal and constitutional power to provide for and authorize the appointments. In a word, therefore, under the principle of law above quoted, and the many authorities to be found in the foot notes supporting it, the appointees were *de facto* judges.

One of these authorities is so apposite that I shall refer to it somewhat at length. It is the case of in re Ah Lee, reported in 6 Sawyer (U. S., 410), (1878-1880). The pertinent facts were:

The constitution of Oregon authorized the Legislature, when the population should reach two hundred thousand, to district the state into designated circuits, and provide for the election of judges therein. The Legislature passed an act providing for the election of such judges at a general election to be held at a specified time thereafter, and also that the Governor should appoint such judges in the meantime; which was done. It developed, however, that the act was passed and the appointments made before the State had in fact attained the prescribed population. The appointments by the Governor were, therefore, held invalid, but the Court further decided that, although the act was unconstitutional and the appointments by the Governor invalid, still the persons so appointed under the act, and performing the duties of judges of said courts, were judges *de facto*.

The principle of law announced by the court as arising out of the above facts, as stated in the syllabus of the case, is as follows:

> "A person in office by color of right is an officer *de facto,* and his acts as such are valid and binding as to third persons; and an unconstitutional act is sufficient to give such color to an appointment to office thereunder."

Reverting to the case in hand, as I have before said, the persons appointed exercised the powers and discharged the duties incident to the office of Judge of the Courts of Common Pleas of Philadelphia County until the Supreme Court decided that the Legislature, notwithstanding its undoubted power in the premises, had nevertheless irregularly exercised the same in the Act of Assembly in question.

The authorities above referred to (collated in 8th American and English Encyclopedia of Law, pages 800, 812, 813) further clearly establish that a *de facto* officer is entitled to his salary. It therefore results, from what has been said, that the five appointees under the said mentioned Act of Assembly, are entitled to the compensation or salary, for their terms of service respectively, incident to the office of Judge of the Courts of Common Pleas of Philadelphia County; and hence that you should honor a requisition therefor when duly presented to your office.

Very truly yours,

JOHN C. BELL,
Attorney General.

P. S. I am enclosing herewith copy of the opinion of the Supreme Court, as requested.

APPROPRIATIONS—CRIMINAL INSANE.

The criminal insane and indigent insane are not separate and distinct classes. The appropriation for the care of the indigent insane may be used for payment of maintenance of criminal insane.

Office of the Attorney General,

Harrisburg, Pa., October 30, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: You request an opinion of this Department concerning the proper application of the appropriations to the maintenance of the Criminal Insane at the State Hospital at Farview.

The Act of May 1st, 1907, P. L. 153 provides that the amount to be paid by the State towards the care and treatment of indigent insane in State hospitals for the insane shall in no case exceed $2.50 per week for each indigent insane person.

By the Act of July 25, 1913, P. L. 1355, an appropriation of four million dollars has been made by the Legislature for the care, treatment and maintenance of the indigent insane for the two years ending May 31, 1915.

By the Act of July 25, 1913, P. L. 1336, an appropriation has been made to the State Hospital for the Insane at Farview, which contains the following item:

> "For the maintenance, treatment, and care of the patients in said institution, including expenses of trustees, salaries, wages, labor, and repairs, the sum of seventy-five thousand ($75,000) dollars."

In reducing this item to $50,000 the Governor said:

> "I withhold my approval from the remainder of said item for the reason that House Bill No. 1272, heretofore approved, provides for maintenance in part of said inmates."

In the case of the Trustees of State Hospital at Danville vs. County of Lycoming, 239 Pa. 492, the Supreme Court affirming the Court of Common Pleas of Dauphin County, held that the criminal insane, and indigent insane were not distinct and separate classes, but that the term indigent insane included the criminal insane who were also indigent. Therefore, the liability of counties for the payment of maintenance of the criminal insane who are indigent is determined by the laws relating to indigent insane, and under such statutes the State is required to assist in the maintenance of criminal insane who are also indigent.

It follows that the appropriation to the indigent insane must be considered as having included all classes of indigents, criminal or not. This being so I am of opinion, and so advise you, that the State Hospital for the Criminal Insane at Farview is entitled to be paid for the maintenance of criminal insane. who are also indigent, out of the appropriation for the care, treatment and maintenance of indigent insane, and that the appropriation of fifty thousand dollars may be used to pay for the cost per capita for the care and treatment of criminal insane patients at Farview, over and above the amount received out of the appropriation for the care, treatment and maintenance of indigent insane.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

GENERAL APPROPRIATION BILL.

"Ordinary expenses" of the various State Departments included in the General Appropriation Bill construed. An ordinary expense is one that will recur with regularity and certainty.

Office of the Attorney General,

Harrisburg, Pa., November 11, 1913.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This department is in receipt of the following communications from you, under the following dates: 1st, September 29th, 1913; 2nd, October 1st, 1913; 3rd, October 1st, 1913; 4th, October 2nd,

1913; and 5th, October 2nd, 1913; requesting to be advised whether, in view of the provisions of Section 15 of Article III of the Constitution, providing 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 six items referred to in your five above mentioned communications were properly and legally incorporated in the General Appropriation Bill, approved July 16th, 1913.

The six items referred to in your several communciations are as follows:

1. An item under the heading of "State Live Stock Sanitary Board," in Section 2 of said bill, reading as follows:

> "For the enforcement of the acts of May twenty-first one thousand eight hundred and ninety-five, and March thirtieth, one thousand nine hundred and five, and subsequent acts, and for the payment of indemnity for animals afflicted with dangerous, contagious or infectious diseases, and for the expense of detecting, quarantining, and disposing of such animals as provided by law, two years, the sum of three hundred and fifty thousand dollars ($350,000)."

This item was approved by the Governor in the sum of three hundred thousand dollars ($300,000).

2. An item under the heading "Department of Forestry," in Section 2 of said bill, reading as follows:

> "For the purchase of lands to be set aside and held as State Forest Reserves, two years, the sum of fifty thousand dollars ($50,000)."

3. An item forming Section 32 of said General Appropriation Bill and reading as follows:

> "For the purpose of reimbursing the several counties of the Commonwealth for payments made to Incorporated County Agricultural Associations, under the provisions of the Act of June thirteenth, one thousand nine hundred and seven, the sum of one hundred thousand dollars ($100,000), or so much thereof as may be necessary."

4. An item forming Section 56 of said Bill and reading as follows:

> "For the purpose of reimbursing Joseph A. Glesemkamp, of Pittsburgh, Pennsylvania, for fines erroneously paid into the State Treasury, the sum of one thousand nine hundred and thirty-two dollars and ninety-five cents ($1,932.85)."

This item was approved by the Governor in the sum of one thousand, three hundred dollars ($1,300).

5. An item forming Section 59 of said Bill and reading as follows:

> "For the payment of the expenses of the Commission authorized by concurrent resolution to investigate the different systems of recording deeds, mortgages, and insurance of titles, the sum of three thousand dollars, ($3,000), or so much thereof as may be necessary."

6. An item forming Section 28 of said Bill and reading as follows:

> "For the payment of the expense of holding uniform primary elections, as prescribed by the Act of the General Assembly of the Commonwealth of Pennsylvania, approved the seventh day of February, one thousand nine hundred and six, for the two fiscal years beginning June first, one thousand nine hundred and thirteen, and for the deficiency which has arisen under the provisions of said act, the sum of eight hundred thirty thousand dollars ($830,000), or as much thereof as may be necessary."

Your inquiries raise the question whether the items above referred to are "ordinary expenses" of the executive and legislative departments of the Commonwealth, or, in other words, such expenditures as may properly be provided for in the General Appropriation Bill, as distinguished from those requiring separate appropriation bills. The question raised is, of course, a technical one relating to the proper *method,* under our Constitution, of making appropriations. No one questions the right of the Legislature to make the appropriations now under discussion. The only question is whether these items were constitutionally included in the General Appropriation Bill, or whether they should have been made in separate bills.

In considering Section 15 of Article III of the Constitution, above quoted, it must be read in connection with Section 3, of Article III, providing that:

> "No bill, except *general appropriation bills,* shall be passed containing more than one subject, which shall be clearly expressed in its title,"

and in connection with Section 16 of Article III, providing 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,"

and also in connection with Section 16 of Article IV, providing that:

> "The Governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, etc."

In construing Section 15 of Article III, of the Constitution, prescribing what may be embraced in the General Appropriation Bill, Chief Justice Mitchell, in *Commonwealth ex rel. v. Gregg, 161 Pa. 582,* said:

> "The history and purpose of that section (Section 15 of Article III) are well known. It was aimed at the objectionable practice of putting a measure of doubtful strength on its own merits, into the general appropriation bill, in legislative phrase tacking it on as a rider, in order to compel members to vote for it or bring the wheels of government to a stop. The same constitutional intent is embodied in Section 16 of Article IV giving the Governor power to disapprove separate items of appropriation bills. It is the practice of thus forcing the passage of extraneous matters not germane to the purpose of the bill itself, that was intended to be abolished. As to general legislation the same object among others was secured by the provisions of Section 3 of Article III that 'no bill, except general appropriation, shall be passed, containing more than one subject.' General appropriation bills from their nature usually cover a number of items, not all relating strictly to one subject. They were therefore excepted from the requirement of Section 3 and this exception necessitated the special Section 15 relating to them. The object of both is the same. Is the present measure within the mischief that was intended to be prohibited? The instances cited by the appellant covering a period of twenty years since the adoption of this constitution, show the legislative understanding on the subject, and we may fairly infer that of the executive also, as the various acts cited were approved by the Governor. Such understanding and practice are not, of course, binding upon the judiciary, who are the ultimate authority in the interpretation of the constitution; but, as the view of the two co-ordinate branches of the government, they are entitled to respectful consideration, and persuasive force if the matter be at all in doubt."

The question which gave rise to the controversy to the above cited case of Commonwealth v. Gregg, was whether an item for the salary of a clerk in the office of the Prothonotary of the Supreme Court had been properly included in a General Appropriation Bill. The Supreme Court held that, as the appropriation in question was made to pay for part of the regular and ordinary work of the office in

question, it was "an ordinary expense" of the Commonwealth, within the meaning of the section of the Constitution limiting general appropriation bills to the ordinary expenses of government.

Perhaps the best interpretation of the phrase "ordinary expenses" is found in the case of *Brown v. City of Corry, 175 Pa., 528,* in which it is held that:

> "Any expense that recurs with regularity and certainty, and is necessary for the existence of the municipality, or for the health, comfort and perhaps convenience of the inhabitants, may well be called 'an ordinary expense.'"

In "Words and Phrases Judicially Defined," Vol. 6, page 5,027, it is shown that the legal signification of the word "ordinary" is "regular; according to established order; common; usual; often recurring."

With these decisions and general principles and the principles laid down for your guidance in a general opinion furnished your Department by this Department, under date of July 23, 1913, it now becomes necessary to consider and test each of the six items referred to in your communications.

The first item above mentioned is found under the heading "State Livestock Sanitary Board," in Section 2 of the General Appropriation Act, and reads as follows:

> "For the enforcement of the acts of May twenty-first, one thousand eight hundred and ninety-five, and March thirtieth, one thousand nine hundred and five, and subsequent acts, and for the payment of indeminity for animals afflicted with dangerous, contagious or infectious diseases, and for the expenses of detecting, quarantining, and disposing of such animals as provided by law, two years, the sum of three hundred and fifty thousand dollars ($350,000)."

This item was approved by the Governor in the sum of three hundreo thousand dollars ($300,000).

The Act of May 21, 1895, (P. L. 91), is entitled:

> "An act to establish the State Livestock Sanitary Board of Pennsylvania, and to provide for the control and suppression of dangerous, contagious and infectious diseases of domestic animals."

By Section 1 of this act it is provided that:

> "This board shall consist of the Governor of the Commonwealth, the Secretary of Agriculture, the State Dairy and Food Commissioner and the State Veterinarian."

Under the terms of this act certain powers and duties are conferred and imposed upon this Board, among others being the ascertainment of the amount of indemnity due to the owners of animals which it is found necessary to condemn and kill to prevent the further spread of disease.

The Act of March 30, 1905, P. L. 78, is an act further defining the duties and powers of the State Livestock Sanitary Board.

By a subsequent Act of Assembly, approved July 22, 1913, P. L. ———, Act No. 441, an attempt was made to codify the laws of this state relating to domestic animals, and to more fully define and specify the powers and duties of the State Livestock Sanitary Board.

By the fifth section of this act it is provided that the said board shall remain as at present constituted, and by sections 20, 21 and 22 the method of ascertaining the amount of the indemnity due to the owner of any domestic animal required to be destroyed to prevent the spread of disease is prescribed.

A review of this legislation demonstrates that the Legislature, deeming it of prime importance that the health of the domestic animals of the state be preserved, not only for the protection of the animal industries of the State but also for the protection of the health of the inhabitants thereof by preventing the spread of dangerous, infectious or contagious diseases transmissible from animals to human beings, established our present State Livestock Sanitary Board.

One of the methods prescribed by existing legislation for preventing the spread of disease is the destruction of diseased domestic animals. Recognizing the fact that the owners of animals condemned by the representatives of the State should be reimbursed to some extent for the loss which they have suffered in the interest of the public good, a method for the payment of a reasonable indemnity was provided. The payment of this indemnity is one of the expenses incident to the protection of the health of our domestic animals, and the health of the inhabitants of the State, and is an expense which recurs from year to year, and may be expected to continue until the Legislature sees fit to change our present methods. You are accordingly advised that the item in the General Appropriation Act of 1913, now under discussion, was, in the opinion of this Department, properly included therein.

The second item referred to in your communications, is an item found under the heading "Department of Forestry," in Section 2 of the General Appropriation Bill, and reads as follows:

> "For the purchase of lands to be set aside and held as State forest reserves, two years, the sum of fifty thousand ($50,000.00) dollars."

The Department of Forestry was created by the Act of February 25, 1901, for the purpose, inter alia, of purchasing "any suitable lands in any county of the Comonwealth that in the judgment of said commission the State should possess for forest preservation."

By the terms of this act it was provided that in no case shall the amount paid for any tract of land exceed the sum of five dollars per acre; and by this act it was also provided that the purchase money for lands should be paid by the State Treasurer out of any moneys in the treasury not otherwise apprporiated, on the warrant of the Auditor General, upon vouchers duly approved, etc.

By the Act of April 15, 1903, it was provided that the amount of money to be expended by the State Forestry Preservation Commission for the purchase of lands in any one fiscal year should not exceed the sum of $300,000.

Prior to 1907 there were no specific appropriations of any specific amount of money for the purpose of purchasing forest reserves. Beginning with the year 1907 and continuing down to the year 1911, the practice of having the legislature make specific appropriations by separate acts of assembly for the various expenses incident to the management of the Department of Forestry prevailed, for instance; by the Act of June 14, 1911, P. L. 300, (Appropriation Acts) the sum of $50,000.00 was appropriated "for the purchase of land by the Department of Forestry to be set aside and held as State forest reserves, for the two fiscal years, beginning June 1, 1911."

It will be observed that the language of the section of the general appropriation bill of 1913, now under discussion, is identical with the language of the said separate Act of 1911. It is apparent from a consideration of the legislation referred to that in 1901 the Commonwealth adopted the policy of acquiring, from time to time, various large tracts of land to be held as state forest reserves, and there is no indication that such policy is to be abandoned in the near future. The total acreage now owned by the State as its forest reserves is about one million acres.

It is likewise apparent that the Legislature intended that purchases of tracts of land should be made from year to year, and that annual expenditures should be made through the Department of Forestry, in the accomplishment of the purposes for which it was established.

In the opinion of this Department, the expenditure of certain sums of money, from year to year, for the purchase of State forest reserves, is one of the ordinary expenses of one of the branches of the Executive Department of the State government, and you are accordingly advised that the item of $50,000, above referred to, was properly included in the General Appropriation bill of 1913.

The third item referred to in your communications, is an item forming Section 32 of the General Appropriation Bill, and appro-

priating $100,000 "for the purpose of reimbursing the several counties of the Commonwealth for payments made to Incorporated County Agricultural Associations under the provisions of the Act of June 13, 1907."

This act is found at page 702 of the pamphlet laws of 1907, and is stated in its title to be an act for the purpose of encouraging agriculture and the holding of county agricultural exhibitions, etc. In substance, it provides for the annual payment by the commissioners of the several counties out of the county treasury to incorporated county agricultural associations (paying premiums upon exhibits, exclusive of premiums on trial of speed, and prohibiting gambling in any form upon the premiums of said association, during its regular annual exhibition) of the sum of $1,000.

By the 3rd section it is enacted that, upon the filing with the Auditor General, on or before December 15th in each year, of a certificate on the county treasurer showing the amount of money paid agreeably to the act, the Auditor General shall draw his warrant upon the State Treasurer for payment into the treasury of the proper county of the amount paid out by said county to such agricultural association.

The act contemplates annual expenditures by the counties and the annual reimbursement of the counties out of the State treasury. The Legislature has, in its wisdom, seen fit to authorize this annual expenditure of State moneys, and the expenditure so authorized will be a regular expenditure year after year, until the act in question has been repealed or modified.

You are accordingly advised that this appropriation was, in the opinion of this Department, properly and legally included in the General Appropriation Bill.

Taking up the fourth item referred to in your communications, to wit, the item forming section 56 of the General Appropriation Bill, and appropriating $1,300 "for the purpose of reimbursing Joseph A. Glesemkamp of Pittsburgh, Pennsylvania, for fines erroneously paid into the State Treasury," it is to be observed that this item contains no explanation of the circumstances under which the fines were paid into the state treasury, or of the reasons for the conclusion that they were erroneously paid. It does not appear when or by whom or for what alleged violation of law the fines were imposed.

Testing this item by the principles hereinbefore laid down, to wit, that an ordinary expense of the State government is an expense which recurs with regularity and certainty and is necessary for the existence of the Commonwealth, or for the health, comfort and convenience of its inhabitants, it seems very clear that this item cannot be considered an ordinary expense, within the constitutional pro-

vision. So far as appears from the General Appropriation Bill itself, this is an unusual, exceptional, extraordinary and single expenditure, that is, one which, in so far as the person named in the item is concerned, has never heretofore occurred and probably will never again occur. In the absence of any explanation as to the reason for the expenditure, it would not be fair to conclude that it is an item "of doubtful strength on its own merits," but, in the language of Chief Justice Mitchell, in *Commonwealth v. Gregg, supra,* it is an extraneous matter, not germane to the purpose of the General Appropriation Bill itself.

You are accordingly advised that, in the opinion of this Department, this item was improperly and unconstitutionally included in the General Appropriation Bill, and that this appropriation should have been or should hereafter be made by a separate bill embracing this one subject.

The fifth item questioned in your communications is an item forming section 59 of the General Appropriation Bill, and appropriating $3,000,

> "For the payment of the expense of the Commission authorized by concurrent resolution to investigate the different systems of recording deeds, mortgages and insurance of title."

This commission was originally created by concurrent resolution No. 50, approved May 12, 1911, and the General Appropriation Bill of 1911 in item No. 41 thereof, appropriated $3,000 for the payment of its expenses.

By joint action of the Senate and House of Representatives, at the Legislative sesson of 1911, the Governor was authorized to appoint the commission in question to investigate and examine the various laws now in effect in the different states relating to the recording of deeds and mortgages, the transfer of lands, the insurance of titles and the practical operation of such laws. The commission was directed to report to the next session of the Legislature such act or acts and changes in the Constitution, if necessary, as would, in its opinion, materially improve the present system in this State.

By a concurrent resolution approved July 21, 1913, this commission was continued and directed to report to the General Assembly of 1915. In and by the resolution continuing the commission the expenses were limited to $3,000, or so much thereof as may be necessary, and it was resolved, "That the same be provided for in the next General Appropriation Bill."

There is no question about the right of the General Assembly, through the joint action of both houses, to appoint commissions of this character and the expenses incident to the performance of their duties

are, in the opinion of this Department, ordinary expenses of the legislative department of the State government, and you are accordingly advised that the item in question was properly included in the General Appropriation Bill.

The sixth and last item referred to in your communications is an item forming section 28 of the General Appropriation Bill, and appropriates $830,000:

> "For the payment of the expense of holding uniform primary elections, as prescribed by the act of the General Assembly of the Commonwealth of Pennsylvania approved the seventh day of February one thousand nine hundred and six, for the two fiscal years beginning June first, one thousand nine hundred and thirteen, and for the deficiency which has arisen under the provisions of said act."

By the act approved February 17, 1906 (P. L. 36), popularly known as the "Uniform Primaries Act," it was provided in section 9 thereof, in substance, that the county commissioners of the respective counties should keep an accurate account of the entire expense of holding such primaries and that the total amount thereof should be paid in the first instance by the county treasurer, upon the order of the county commissioners. The county commissioners are then required to prepare an itemized statement of the amount so paid, and send the same, accompanied by receipted vouchers, to the Auditor General, who, if he finds the same correct, is directed to draw a warrant on the State Treasurer payable to the proper county for the amount so approved. This act was expressly repealed by the Act of July 12, 1913, (No. 400), popularly known as the "State-Wide Primaries Act."

By section 12 of the last mentioned act, however, similar provisions are enacted with reference to the payment by the counties of the expense of primary elections, and the reimbursement of the counties by the State.

It is clear, from the legislation above referred to, that the Legislature has deemed it advisable to impose upon the Commonwealth the ultimate expense of conducting primary elections. This expense will recur with regularity and certainty until the Legislature sees fit to change the present system and, in the opinion of this Department, it is one of the ordinary expenses of the State government, and the item referred to was, therefore, properly and legally included in the General Appropriation Bill.

Very truly yours,

JOHN C. BELL,
Attorney General.

APPROPRIATIONS—UNEXPENDED BALANCE.

The appropriation of June 14, 1911 (P. L. 918) actually unexpended at the end of appropriation period, viz: May 31, 1913, reverted to the State Treasury at that time unless its expenditure had been expressly contracted for before May 31, 1913.

Office of the Attorney General,
Harrisburg, Pa., January 27, 1914.

C. P. Rogers, Jr., Chief Bureau of Accounts, Auditor General's Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of January 19th, asking to be advised concerning the unexpended balance from the appropriation of $6,000 made to the Commission to investigate and report upon the needed requirements for proper and safe construction of buildings within Commonwealth, appointed by joint resolution approved 14th June, 1911, (P. L. 918).

That resolution provided for the appointment of five persons to investigate and report upon the needed requirements for the proper and safe construction of buildings within the Commonwealth, to determine the strength and character of materials used therein, to suggest new legislation relative to this subject matter, and to codify the existing legislation.

Section 3 of the act provided that the Commision should report the result of its labor to the Governor three months prior to the time that the Legislature should convene in 1913, or on or before February 1, 1913.

Section 6 of the act provided:

> "For the expenses of said commission the sum of six thousand dollars ($6,000), or so much thereof as may be necessary, is hereby appropriated."

The Commission did not finish its work within the time fixed by section 3 of this act, and a joint resolution was passed on May 19, 1913, (P. L. 222) extending the time for the making of the report by the said Commission to November 1, 1914.

By section 46 of the General Appropriation Act of 16th July, 1913, (P. L. 755), an appropriation was made to this Commission of $6,000, "or so much thereof as may be necessary, to be used and expended in the same manner as authorized by said joint resolution approved June fourteen, one thousand nine hundred and eleven."

I understand that the Commission had not used, or contracted for the use of, the entire $6,000 appropriated by the Act of 14th, June, 1911, when the fiscal year of 1913 ended on May 31st, 1913. The question which you raise is whether, in addition to the $6,000 to which the Commission is entitled, under section 46 of the Appropriation Act of 1913, it may requisition the unexpended balance of the appropriation made by the Act of 14th June, 1911.

You are advised that in the opinion of this Department, the unexpended balance of the appropriation made by the Act of 14th June, 1911, reverted to the State Treasury on May 31st, 1913. The general principle may be stated to be that unless the act making the appropriation is of such a nature that it could not reasonably have been expected or intended that the sum appropriated would be expended, or its expenditure actually contracted for, by the end of the two fiscal years succeeding the meeting of the Legislature, the balance not expended or actually contracted for to be expended, will be deemed to revert to the State Treasury at the end of said two years.

Illustrations of the application of this rule are afforded by two cases, in one of which this Department held that the intention of the Legislature was that the appropriation should not be expended within two years, and in the other of which it hold that the manifest intention was that it should be expended within two years. The first case is that of the appropriation made by the Act of 11th May, 1905, (P. L. 400), for the erection of buildings for a State Hospital to treat and care for the criminal insane.

Section 7 of that act was as follows:

> "To enable the Commissioners to commence the erection of said buildings, the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby specifically appropriated, etc."

When the fiscal period of appropriations made in the session of the Legislature of 1905 had expired, only $25,000 of the sum appropriated had been used, and the question was whether the balance had lapsed. It was held by Attorney General Todd, that it had not. (Reports of the Attorney General 1907-8, page 103). He said:

> "There is nothing in the language of the act making the appropriation which places any limit on the time within which it must be expended. Nevertheless a specific appropriation may not remain indefinitely unexpended, but must be expended within a reasonable time for the accomplishment of the purpose for which it was made. In this case there is nothing that shows unreasonable delay on the part of the Commission. The appropriation is made 'to enable the commissioners to commence the erection of said building.' This language

> is evidence of a legislative intent that the appropriation would be followed by such other appropriations as should be necessary for the completion of the requisite buildings contemplated by the purpose of the act of assembly creating the commission. * * * * The next Legislature will no doubt take into consideration the unexpended amount of the previous appropriation in making further appropriations to continue and complete the buildings begun and partly constructed and paid for, out of previous appropriations. No great public work which requires more than two years to be completed can be successfully prosecuted in any other way."

It must be noted that the Commission provided for by the Act of 11th May, 1905, (P. L. 460), was not required to finish its work within any specified time.

The second opinion illustrating the general rule above suggested, it that of Assistant Deputy Attorney General Cunningham, given on July 18, 1907, to the Secretary of the Armory Board (Reports of Attorney General 1907-8, page 316). The Act of 11th May, 1905, (P. L. 442), creating the Armory Board of the State of Pennsylvania, carried an appropriation of $250,000. All of this sum was not expended at the expiration of the fiscal period of appropriations made in the session of 1905, and by Act of 13th June, 1907, (P. L. 634) an appropriation of $400,000 was made for the same purposes that the original appropriation of $250,000 had been made. This Department held that the unexpended balance of the appropriation of $250,000 made by the Act of 1905 remaining on June 1, 1907, lapsed to the State.

After reviewing several opinions it was said:

> "The precedents, therefore, seem to hold that although no time may be fixed by the act making the appropriation within which it must be expended or contracts made for its expenditure, the appropriation will be deemed to have lapsed into the State Treasury at the end of the two fiscal years succeeding the making of the appropriation."

In the present case the original intention of the Legislature was to create a commission which should complete its work before the next Legislature met, and it therefore was expected and intended that the money appropriated by the Act of 14th June, 1911, would be required, if required at all, before the end of the two fiscal years next succeeding.

In making the appropriation contained in the general appropriation Act of 1913, the Legislature must be presumed to have known

that any balance of the earlier appropriation actually unexpended, or the expenditure of which had not been contracted for, would lapse, and to have taken that fact into consideration when it determined the amount to be appropriated for the next two years.

Under these circumstances you are advised that whatever balance of, said appropriation of 1911 was actually unexpended at the time of the expiration of the fiscal period of appropriations made in the session of 1911, viz., May 31, 1913, reverted to the State Treasury at that time, unless its expenditure, in whole or in part, had been expressly contracted for prior to May 31, 1913.

Very truly yours,

WM. N. TRINKLE,
Third Deputy Attorney General.

TAX UPON APPEALS FROM JUSTICES.

Under section 3 of the Act of April 6, 1830, P. L. 272, a State tax of 25 cents is to be collected by the prothonotary of the Court of Common Pleas upon the filing of each transcript of appeal from a judgment of a justice of the peace.

Office of the Attorney General,

Harrisburg, Pa., February 9, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of January 22, 1914, asking, in substance, to be advised whether an appeal from the judgment of a justice of the peace or alderman to a court of common pleas is to be considered for the purpose of fixing the amount of the State tax thereon as an "original writ" under section 3 of the Act of April 6, 1830, (P. L. 272), upon which the sum of fifty cents is taxable, or as a "transcript of a judgment of a justice of the peace or alderman," within the meaning of said section, upon which the tax is fixed at twenty-five cents.

The said Act of 1830 is an act fixing, inter alia, the amounts which prothonotraies of courts of common pleas shall tax and collect, in addition to the fees theretofore required by law, for and on aaccount of the Commonwealth.

In the 3rd section of this act it is provided that prothonotaries "shall demand and receive on any original writ issued out of said courts (except the writ of habeas corpus) and on the entry of every amicable action the sum of fifty cents * * * and on every transcript of a justice of the peace or alderman the sum of twenty-five cents."

In an opinion heretofore rendered to your Department under date of June 2, 1910, by Second Deputy Attorney General Hargest, (Official Opinions of the Attorney General, 1909-10, page 87), it is held that the words "original writ," as used in the above quoted section of the Act of 1830, are used to describe "the first process or judicial instrument by which the court commands something therein mentioned to be done." Upon all such writs a tax of fifty cents is fixed.

Your present inquiry, however, relates more particularly to the provision fixing a tax of twenty-five cents on "every transcript of a judgment of a justice of the peace or alderman," and the question now arising is, whether an appeal from the judgment of a justice of the peace or alderman is to be considered as included in the general description "every transcript of a judgment of a justice of the peace or alderman."

By the 4th section of the Act of May 20, 1810, 5 Su. 164, it is provided that when an appeal is taken from the judgment of a justice of the peace, the whole proceeding "shall be certified to the prothonotary of the proper county, who shall enter the same on his docket; and the suit shall from thence take grade with and be subject to the same rules as other actions where the parties are considered to be in court," and it is further provided in said section that the party appellant "shall file the *transcrip* of the record of the justice in the prothonotary's office on or before the first day of the next term of the court of common pleas of the proper county, etc."

In addition to this provision for the filing of a transcript of the record of the magistrate upon an appeal from his judgment, provision is made by the 10th section of said act of 1810, 5 Sm. 166, for the entering by prothonotaries on their dockets of "transcripts of judgments obtained before justices of the peace of their proper counties," for the purpose of obtaining a lien upon the real estate of the defendant or defendants in said judgments, and to the end that further proceedings may be had thereon.

These last mentioned transcripts are clearly within the class of transcripts referred to in the said Act of 1830, and for the filing of which a State tax of twenty-five cents is therein fixed. In view of the provision of the said Act of 1910 that when an appeal has been taken from the judgment of a justice of the peace, and the appellant has filed a transcript of the record of the justice in the prothonotary's office of the proper county, "the suit shall from thence take grade with and be subject to the same rules as other actions where the parties are considered to be in court," it is clear that the paper certified by the magistrate and filed in the office of the prothonotary, is not an original writ within the meaning of the said act of 1830, as construed in the opinion herein referred to.

In a proceeding of this character nothing is issued out of the court of common pleas. The affect of the filing of the paper is to place a suit upon the records of the court of common pleas in which suit the parties are "considered to be in court." The filing of this paper within the time specified by law perfects the appeal. The Act of 1810 describes the paper required to be filed by the appellant as "the transcript of the record of the justice."

You are accordingly advised that such transcripts filed for the purpose of appealing from the judgments entered by justices of the peace or aldermen, are "transcripts of a judgment of a justice of the peace or alderman," within the meaning of the 3rd section of the Act of 1830, and that a State tax of twenty-five cents is to be charged and collected upon each transcript of this character, as well as upon transcripts filed for the purpose of securing a lien upon real estate.

Very truly yours,

JOHN C. BELL,
Attorney General.

APPROPRIATIONS—UNEXPENDED BALANCE.

The appropriation of 14th June, 1911, to the Panama-Pacific International Exposition Commission did not lapse by May 31, 1913.

Office of the Attorney General,

Harrisburg, Pa., February 19th, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of February 13th, 1914, asking to be advised whether your Department may lawfully charge against the appropriation of $50,000, made to defray the expenses of the Panama Pacific International Exposition, by the joint resolution of 14th June, 1911, P. L., 950, a requisition from that Commission now presented to you.

The Joint Resolution of 14th June, 1911, P. L., 950, was passed to provide for the proper representation of the Commonwealth of Pennsylvania at an exposition which, as recited in the act, is to be held in San Francisco in the year 1915, and the proper representation referred to in the act is stated to include "the erection of a suitable State building, and aiding exhibitors as in their judgment shall be proper in order to secure exhibits on the part of the Commonwealth." The sum of $50,000 was appropriated to defray the expenses of the Commission.

By the Act approved 25th July, 1913, P. L. 1863, $150,000, was appropriated, "for the purpose of further carrying out the provisions of a joint resolution approved the 14th day of June, 1911."

The question which you ask is whether the unexpended balance of the appropriation made by the Joint Resolution of 1911 lapsed into the State Treasury on May 31, 1913, the end of the fiscal period for appropriations made by the Legislature of 1911. The rule in cases of this kind is stated in our opinion to you under date of January 27, 1914, in reference to the unexpended balance from an appropriation made to the Commission to investigate and report upon the needed requirements for the proper and safe construction of buildings within the Commonwealth, as follows:

> "The general principle may be stated to be that unless the act making the appropriation is of such a nature that it could not reasonably have been expected or intended that the sum appropriated would be expended or its expenditure actually contracted for by the end of the two fiscal years succeeding the meeting of the Legislature, the balance not expended or actually contracted to be expended, will be deemed to revert to the State Treasury at the end of the said two years."

Applying that test to the present inquiry, it is clear that the act making the appropriation, viz., the act of 14th June, 1911, was not of such a nature that it could have expected or intended that the sum appropriated would be expended, or its expenditure actually contracted for by May 31, 1913, because the purpose of the appropriation was to provide for the representation of the State at an exposition which would not be held unto two years after May 31, 1913, and the work of the Commission was evidently intended to extend quite up to the time that the exposition opened, if not beyond that time. It clearly was not intended, if indeed it was possible, to erect the State Building and arrange for the exhibits in it by May, 1913.

You are therefore advised that the unexpended balance of the appropriation of 1911 did not lapse, but that that balance, together with the apropriation made by the Act of 1913, is available for the proper uses of the Commission, and that the requisition drawn against the appropriation of $50,000 should be honored by your Department.

Very truly yours,

JOHN C. BELL,
Attorney General.

INCOMPATIBLE OFFICES.

The offices of Deputy State Fire Marshal and County Commissioners are not incompatible.

Office of the Attorney General,

Harrisburg, Pa., March 26th, 1914.

C. P. Rogers, Jr. Esq., Chief Bureau of Accounts, Auditor General's Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of March 10, 1914, requesting an opinion as to the right of Thomas H. Ledden, who has been appointed a Deputy State Fire Marshal, to occupy that position during the period of his service as County Commissioner of Elk County.

Article XII, Section 2, of the Constitution of Pennsylvania, prohibits the holding of paid State offices by Federal office holders, and concludes: "The General Assembly may, by law, declare what offices are incompatible."

Pursuant to this provision, the Act of 15th May, 1874, P. L., 186, was passed, and by its sections certain designated offices were declared to be incompatible. The only reference in this act, or in any other legislation concerning the incompatibility of offices, to county commissioners, is Section 7 of the Act of 1874, which provides:

> "No county commissioner shall be eligible to serve as a member of the Board of Health or Director of the Public Schools during his continuance in office."

You are advised that there is no incompatibility in the two offices, and that Mr. Ledden, therefore, is entitled to occupy the position of Deputy State Fire Marshal during his encumbency of the office of County Commissioner.

Very truly yours,

WM. N. TRINKLE,
Third Deputy Attorney General.

MOTHERS' PENSIONS.

The expenses of trustees of Mothers' Pension Funds in attending a conference at Pittsburgh cannot be paid by the Auditor General.

Office of the Attorney General,

Harrisburg, Pa., June 16, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry under date of May 1st asking, in substance, to be advised whether any part of the appropriation of two hundred thousand dollars made by the Act of April 29, 1913, P. L. 118, for the payment of the State's share of the Mothers' Pensions, provided for in said act, and for the payment of certain expenses of the trustees whose appointment is provided for therein, will be available for the payment of such expenses as may be incurred by the trustees of Mothers' Pension Funds appointed in the various counties of the Commonwealth while attending the contemplated general conference of trustees of Mothers' Pension Funds to be held at Pittsburgh in the County of Allegheny during the first week of June, 1914.

I infer from your inquiry that it is proposed to hold a conference in Pittsburgh of all the trustees of Mothers' Pension Funds, who have been appointed and are now serving throughout the Commonwealth under the provisions of the above mentioned Act of Assembly, and you now desire to be advised whether you, as Auditor General, have authority in law to pay to the trustees of counties, other than the County of Allegheny, the traveling and hotel expenses which will be incurred by them in attending said conference.

The purpose of the act in question, as expressed in its title, is to "Provide monthly payments as approved by the trustees to indigent, widowed or abandoned mothers for partial support of their children in their own homes."

The act provides, inter alia, for the appointment by the Governor of not less than five nor more than seven women, residents of each county desiring to avail itself of the provisions of the act, to act as trustees, which trustees are authorized to recommend, after investigation, the payment of certain sums to certain mothers for the purpose of partially supporting their children in their own homes.

It is provided by the second section of the act that:

> "The administration of this act shall lie solely in the hands of the trustees appointed annually by the Governor. They shall serve without pay; but shall be permitted to charge for traveling expenses, in making investigations of cases before a final recommendation is

made to the Auditor General and County Treasurer. The trustees shall provide a headquarters and appoint an investigator and a stenographer (if necessary) also suitable furnishings, stationery and postage; but at no time shall the yearly expenses be more than three thousand dollars for counties with cities of the first class, twenty-four hundred dollars for counties with cities of the second class, eighteen hundred dollars for counties with cities of the third class and twelve hundred dollars for counties other than the aforesaid classes, with the exception of the first year, when the trustees shall be permitted to expend an additional sum of not more than five hundred dollars, if necessary, for furnishings."

The act then proceeds to make an appropriation of two hundred thousand dollars "in order to carry the provisions of this act into effect."

It is expressly provided in the section of the act above quoted that the trustees themselves shall serve without pay but may employ, and pay a salary to, an investigator and a stenographer, when necessary.

Trustees are also authorized to rent and furnish suitable quarters and supply the same with the necessary stationery and postage. The salaries and expenditures are payable, with the limitations set forth in the Act, out of the appropriation made thereby for the two fiscal years beginning June 1, 1913, and ending June 1, 1915.

The only traveling expenses contemplated by the act are traveling expenses of the trustees *"in making investigations of cases before a final recommendation is made to the Audtior General and County Treasurer."*

As the jurisdiction of each board of trustees in making recommendations for the payment of Mothers' Pensions is confined to the county for which it has been appointed it is manifest that the expenses incurred in attending the conference in Allegheny County can not be said to be expenses incurred in making *investigations of cases* for the purpose of deciding whether a recommendation of a pension shall be made.

You are accordingly advised that there is no authority in law for you to pay any expenses incurred by trustees of Mothers' Pension Funds in attending the conference referred to in your letter.

Very truly yours,

JOHN C. BELL,
Attorney General.

APPROPRIATIONS.

The appropriation of $29,500 for opening up the streets of Austin, Potter Co., Pa., is constitutional.

Office of the Attorney General,

Harrisburg, Pa., July 9, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: I have had under consideration for some time, your communication asking, in substance, to be advised whether the Act of July 25, 1913, P. L. 1317, entitled: "An act providing for the reimbursement for loss or damage sustained by the breaking of a dam near Austin, Potter County, and making an appropriation therefor," is a constitutional exercise of legislative power. This act contains a preamble reciting, inter alia, that by reason of the breaking of the Bayless dam near Austin, Potter County, on the 30th of September, 1911, great loss of life and property in the Borough of Austin and the Township of Portage, was occasioned; that as a result of the disaster the assessed value of the property of the Borough of Austin "was reduced about one-half, and its population cut in two, and great damage was done to its water mains, sewers, streets and water channels, causing a much greater burden than the said borough is able to bear in its present financial condition," and that the health authorities of the Commonwealth found it necessary to destroy real and personal property to the value of thousands of dollars, for the purpose of preventing disease and pestilence.

By the first section of the act a commission, to consist of the law judge of the 55th judicial district, and two citizens of Pennsylvania, is created under the name of "The Austin Dam Commission." This commission is directed.

> "To ascertain the injury and loss sustained by the breaking of the dam near Austin, Potter County, Pennsylvania, on the 30th day of September, one thousand nine hundred and eleven, and out of the moneys herein specifically appropriated and subject to the provisions of this act, to recompense in a proportionate measure the loss and damage sustained thereby by individuals and municipalities not including corporations or the owners of said dam."

Upon the completion of its labors the commission is required to report thereon in writing to the Governor, setting forth an itemized account of all expenditures made. The commission is further authorized to act in co-operation with the borough of Austin and the township of Potter in said County of Potter.

By the 5th section of the act it is provided that payment of the moneys appropriated shall be an order of the chairman of the commission, countersigned by the secretary, and upon warrant of the Auditor General, and subject to such regulations as may be imposed by the Auditor General.

The act contains the following appropriations in sections 2, 3 and 4 thereof:

1. $150,000.00 "to the commission for the purpose of recompensing individuals who sustained loss and damage and injury, by reason of the breaking of said dam, not including municipalities, corporations or owners of said dam." In the exercise of the power vested in him by Article IV, Section 16 of the Constitution, the Governor disapproved this item.

2. $17,500.00 to the commission "to pay the bonded indebtedness of the borough of Austin."

This item was likewise disapproved by the Governor.

3. $13,000.00 to the commission "to pay the current indebtedness of the said borough of Austin."

4. $29,500.00 to the commission "to be used in opening up the streets of said borough in rebuilding sidewalks, repairing sewers and water mains, opening the main channel of Freeman Run, cleaning up the debris still remaining in and about said borough, and otherwise rehabilitating and reconstructing the former local conditions."

5. $5,000.00 to the commission for the purpose of "liquidating the current indebtedness of the township of Portage and reimbursing said township for the loss of its school buildings and township buildings."

The 3rd, 4th, and 5th item above mentioned, aggregating $47,500.00 were approved by the Governor, and your inquiry raises the question whether any or all of these appropriations are in contravention of the Constitution of this Commonwealth. The act is a separate Act of Assembly, and therefore complies with Article III, Section 15, requiring all appropriations except those properly included in the general appropriation bill to be made by separate bills, each embracing one subject.

The main question arises, with relation to the operation of Section 9 of Article IX and of Section 18 of Article III, upon the power of the Legislature to make the appropriations in question. It seems clear that the appropriation of $13,000.00 to pay the current indebtedness of the borough of Austin, and of $5,000.00 for the purpose of liquidating the current indebtedness of the township of Portage, and for the purpose of reimbursing the said township for the loss of its school buildings and township buildings, are appropriations

of moneys out of the State Treasury for payment, in part, at least, of the debts of said borough of Austin and Township of Portage. It is proposed to apply the revenues of the Commonwealth to the partial payment of debts due from these municipalities. It follows therefore that these appropriations are in violation of the said Section 9 of Article IX of the constitution, for it is therein provided that "the Commonwealth shall not assume the debt or any part thereof, of any city, county, borough, or township, unless such debt shall have been contracted to enable the State to repel invasion, supress domestic insurrection, defend itself in time of war, or to assist the State in the discharge of any portion of its present indebtedness."

The appropriation of $29,500.00 to be used in opening up the streets of the borough of Austin, rebuilding sidewalks, repairing sewers, cleaning up the debris, etc., is not, however, such a debt and not therefore in contravention of this provision of the Constitution. The question arises, however, whether Section 4 of the act containing this appropriation is not in contravention of Section 18, Article III of the Constitution, which reads as follows:

> "No appropriations, except for pensions, or gratuities, for military services, shall be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

In order that the appropriation of $29,500.00 shall be held to be within this constitutional prohibition, such appropriation must obviously be, first: an appropriation for a charitable purpose, and, second: an appropriation to a community. I do not consider that the opening up of the Borough streets, the rebuilding of sidewalks, the repairing of sewers and water mains, the opening of the main channel of a run, and the cleaning up of debris are charitable acts. The opening up of streets is an essential public obligation, the fulfillment of which is of the utmost importance, not only to the citizens of the community in which the streets are, but to all persons who, in their passage through the State, might desire to use the streets. Every road constitutes an integral part of the system of highways throughout the State and forms a link in the chain. The health and safety of the public, not only in the borough of Austin, but in the entire district in which Austin is located, might be seriously imperiled if the debris is not cleaned up and the sewers and water mains repaired, and the main channel of the stream running through the borough cleared out.

Moreover, it is not at all clear that the word "community" as used in the section of the Constitution in question applies to a recognized governmental unit like a borough. Used as it is, in opposition to the word "person" the natural meaning to attach to

it is a number of persons not forming a unit for the purposes of government. In this view we should be very reluctant, indeed, to hold that the Legislature might not come to the financial relief of any part of the whole State where extraordinary conditions like the present—resulting from flood, fire, storm or pestilence, may justify or require such aid.

After the Johnstown flood an act was passed (28th April, 1891, P. L. 27), appropriating almost $400,000 for the re-payment of sums expended to alleviate the emergencies of the situation, and no attack was made upon the constitutionality of the act.

The constitutionality of every act or section thereof is, of course, to be presumed, and if capable of two interpretations, that one is to be adopted which sustains its constitutionality.

In this case, leaving the presumption out of consideration, this department feels that the appropriation of $29,500.00 should be held to be constitutional. If the presumption of constitutionality be taken into consideration, the conclusion is reinforced.

In view of this conclusion, it is scarcely necessary to add that I do not consider the act a violation of any other provisions of the Constitution, and hence not a local or special law regulating the affairs of counties, cities, townships, wards, boroughs, etc., nor a delegation to a special commission to make and supervise municipal improvements and perform municipal functions. You are therefore advised that in my opinion it is your duty to honor requisitions drawn against this appropriation of $29,500.00.

Very truly yours,

JOHN C. BELL,
Attorney General.

MOTHERS' PENSIONS.

The unexpended balance of appropriation for Mothers' Pensions does not lapse, but will be available if no new appropriation is made for same purpose at session of 1915.

Office of the Attorney General,

Harrisburg, Pa., July 15th, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: I am in receipt of your letter of June 17th enclosing a copy of a letter received by your Department from the trustees of Mothers' Pensions in and for Allegheny County and requesting a construction

by this Department of that portion of Section 2 of the Mothers' Pension Act of April 29, 1913, P. L. 118, which makes an appropriation for the purpose of carrying the provisions of the act into effect.

Using the County of Allegheny as a concrete illustration for the purpose of discussing and disposing of your inquiry, I understand the material facts to be as follows:

Out of the sum of $200,000 appropriated by said act for the payment of the State's one-half share of pensions granted to indigent widowed or abandoned mothers, (which amount is directed therein to be proportioned to the counties of the Commonwealth according to their population as shown by the census of 1910), the amount proportioned to Allegheny County and placed, in accordance with the directions of the act, upon the books of the State Treasury to the credit of the Trustees of Allegheny County, was $26,573.96, one-half of which amount, viz., $13,286.98, was to be "available" the first year after approval or from June 1, 1913, to June 1, 1914, and the remainder viz: $13,286.98, the second year, to wit. from June 1, 1914 to June 1, 1915, or "until another appropriation may become available."

Allegheny County having complied with the provisions of the act by providing through its county government an equal amount for the payment of Mothers' Pensions, trustees were duly appointed therein and certain pensions have been recommeded and are now being paid in said county. The total amount expended out of the State funds during the year beginning June 1, 1913, and ending June 1, 1914, in the payment of Mothers' Pensions in said county, was $1,877.50 and the Mothers' Pension Roll for June, 1914 amounted to $442.50, which would make a total expenditure of at least $5,310.00 for the current year, even if no additional pensions were recommended and granted.

You now ask to be advised whether the unexpended balance of Allegheny's proportionate share of State money for Mothers' Pensions for the appropriation year from June 1, 1913, to June 1, 1914, to wit, $11,409.48, has lapsed into the State Treasury, or whether it is still available to the trustees in Allegheny County and if so, when and under what conditions. The language of that portion of the act under consideration which relates to the appropriation, is not clear and the legislative intent is consequently difficult of interpretation. The act reads as follows:

> "In order to carry the provisions of this act into effect, an appropriation of $200,000 from moneys not otherwise appropriated, is hereby made; proportioned to the counties of the Commonwealth according to their respective population in the census of one thousand nine hundred and ten, by the Auditor General and State

> Treasurer; upon the passage and approval of this bill the State Treasurer shall place the proportionate amount of the entire appropriation to the various counties upon the books of the State Treasury to the credit of the trustees; one-half of which amount shall be available the first year after approval, and the remainder the second year, or until another appropriation may become available."

The legislative intent, as expressed in the language above quoted, seems to be, first,—that in no county shall trustees be permitted to grant pensions which, in so far as the State's liability is concerned, will exceed, in the aggregate, during either the first or second years referred to in the act, more than one-half of the total amount apportioned to and available for such county; and, secondly,—that the total amount carried by the bill is to be available until another appropriation becomes available, or in case no further appropriation should be made, then until it has been exhausted. The evident purpose of the bill is to make provision of the payment of pensions during the two appropriation years succeeding the approval of the bill, with the expectation that subsequent legislatures will make such additional appropriations as may be necessary to continue the system. If, however, the Legislature at its next session, for instance, should fail to make an appropriation, it seems to be the intent of this bill that the funds carried by it shall be available until exhausted. For this reason I am of opinion that it was not contemplated that any part of the funds appropriated by the Act of 1913 and directed to be set apart to the credit of the trustees of the various counties should lapse into the general fund in the State Treasury except upon the making of a new appropriation by a subsequent Legislature. It is equally clear that no county board of trustees can grant pensions exceeding, in the aggregate, the amount available to that county each year. For instance, the Allegheny County trustees could not have granted pensions payable by the Commonwealth during the year June, 1913-1914, exceeding, in the aggregate, $13,286.98, nor during the year June, 1914-1915 can they, as against the Commonwealth, grant new or continue old pensions, exceeding, in the aggregate, $13,286.98.

A new system of pensions is inaugurated by the Act of 1913 with the evident hope upon the part of its advocates, that subsequent legislatures would continue the system by making the necessary appropriations. In the event, however, that no subsequent appropriation should be made it was intended that the appropriation carried by the Act of 1913 should be available; i. e., capable of being used or employed by the trustees, until exhausted.

I am, therefore, of opinion that the liability of the Commonwealth for the payment of old and new Mothers' Pensions in Allegheny

County cannot exceed, in the aggregate, $13,286.98 for the year beginning June 1, 1914, and ending June 1, 1915, and that any surplus remaining out of the respective amounts apportioned to Allegheny County for the year June, 1913-1914 and June, 1914-1915, will be available for the payment of the State's share of Mothers' Pensions, if no new appropriation for this purpose is made at the session of 1915, until the said surplus has been exhausted. In the event, however, that an appropriation is made by the session of 1915 for the payment of the State's share of Mothers' Pensions, then said surplus will revert to the general fund in the State Treasury upon the date at which such new appropriation becomes available, and such surplus will doubtless be taken into consideration in the making of a new appropriation.

Very truly yours,

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

APPROPRIATIONS TO CHARITABLE INSTITUTIONS.

The Act of June 9, 1911, P. L. 736, making appropriations to institutions not wholly managed by the Commonwealth liens on the premises of such institutions for the use of the Commonwealth, is not in conflict with section 7, art. iii, of the Constitution, prohibiting local or special laws authorizing the creation, extension or impairing of liens. This section does not apply to liens in favor of the State.

Office of the Attorney General,

Harrisburg, Pa., September 16, 1914.

Hon. A. W. Powell, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry under date of August 14th, asking to be advised whether in its opinion the Act of June 9, 1911, P. L. 736, entitled

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

is in conflict with Section 7 of Article III of the Constitution, prohibiting the passing of any local or special law, "authorizing the creation, extension, or impairing of liens," or whether there is any other constitutional or legal objection to the filing with the prothonotaries of the proper counties of the liens contemplated by said act. The

act referred to is a general one, providing in substance that appropriations made by the Commonwealth after the date of its passage to benevolent, charitable, philanthropic, educational, or eleomosynary institutions, not wholly supported by the State and not under the exclusive control and management thereof, for structures, erections, or other permanent improvements of any kind, shall constitute non-interest bearing liens on the real estate of such institutions.

The act expressly provides for the obtaining by the Auditor General of complete descriptions of the real estate; the filing by such officer with the Prothonotaries of the respective counties of the liens in question; their payment out of the proceeds of sales of the real estate against which they have been filed, and their satisfaction, etc.

No attack has been made within the knowledge of this Department, upon the constitutionality of this act, and so far as this Department, and so far as your Department is concerned, it is of course assumed to be constitutional until declared unconstitutional by a court of competent jurisdiction.

In this connection, however, reference may be made to the opinion of our Supreme Court in the case of *Booth & Flinn, Ltd. vs. Miller, 257 Pa. 297.*

Prior to the approval of the general Act of 1911, it had been the legislative practice for some years to attach to each appropriation to private charitable institutions, a legislative condition to the effect that the amount appropriated should be a non-interest bearing lien on the premises of the institution for the use of the Commonwealth. At the legislative session of 1909, an appropriation with a condition of this kind was made to the Western Pennsylvania Hospital, a corporation which had been in existence for some time.

In December, 1910, the hospital issued a number of bonds, payable in three years after date, and as security for said bonds, executed and delivered a mortgage covering its real estate in the city of Pittsburgh. The question arose whether in view of the condition attached to the appropriation, which appropriation was duly accepted by the hospital, the bonds and mortgage given to secure the same, were a first lien on the property. It was contended that the bonds were not a first lien because of the prior lien created in favor of the Commonwealth by the said appropriation Act of 1909.

The court below held that the part of the appropriation act creating the lien was unconstitutional, because (1) it contained more than one subject, and (2) was a local or special law authorizing the creation of a lien.

Upon appeal to the Supreme Court, the judgment of the Court of Common Pleas was reversed, and it was held in an opinion by Mr. Justice Mestrezat that the title of the act was sufficient and that

Section 7 of Article III of the Constitution, prohibiting, *inter alia,* the enactment of local or special laws, authorizing the creation of liens, did not apply to liens in favor of the State.

In the light of this decision, it would seem that any attack upon the constitutionality of the general Act of 1911, would probably fail. I, therefore, beg to advise you that in my opinion it is your duty to follow the provisions of the act and forthwith transmit to the Prothonotaries of the proper counties, your certificates, setting forth the amount of such appropriations, the location, and full description of the real estate, the fact of the acceptance of the appropriations by the various institutions, and the date of approval thereof by the Governor.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO THE STATE TREASURER.

OPINIONS TO THE STATE TREASURER.

STATE SCHOOL FUND.

Under sections 2701 to 2706 of the School Code of May 18, 1911, P. L. 309, the *corpus* of the State School Fund consists of: (1) 80 per centum of the net receipts and proceeds from the forest reservations; (2) all State water powers and water rights; (3) all real estate owned by the Commonwealth, not used for other public purposes; (4) all escheated estates; and (5) all other property or money which shall in any way accrue to such fund, whether by act of assembly, devise, gift or otherwise. This last source of revenue includes all interest money belonging to the school fund paid by the State depositories in which it is deposited; such interest is to be added to the *corpus;* and any portion of the income from investments made with the school fund, not used for the purposes of the act, shall be added annually to the *corpus*.

The phrase "80 per centum," in section 2701, applies only to the net receipts and proceeds derived from forest reservations. In ascertaining such net receipts and proceeds, there should be deducted the costs and expenses of protecting and improving the lands as provided by the Act of April 15, 1903, P. L. 201, but not the total expenses of maintaining the Department of Forestry.

All money received by the Secretary of Internal Affairs for lands of the Commonwealth granted to private owners and paid into the general fund of the State Treasury should be credited to the State School Fund.

The proceeds of escheats, adjudicated subsequently to May 18, 1911, the date of the approval of the School Code, should be credited to the State School Fund.

Control and management of the funds and property, rentals, income, interest and investment thereof, and the separation of accounts of principal and income by the State Treasurer, considered.

Construction of sections 2701 to 2706 of the Code.

Office of the Attorney General,

Harrisburg, Pa., January 6, 1913.

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

Sir: This Department is in receipt of your request for a construction of sections 2701 to 2706, constituting Article 27 of the School Code, approved May 18, 1911, (P. L. 309), and relating to the "State School Fund."

The fundamental and primary purpose of these sections is the creation of a permanent State School Fund, which fund is to be under the control and management of the State Board of Education, and the income of which fund is to be expended by said Board "towards equalizing the educational advantages of the different parts of this Commonwealth * * * and to further and promote educa-

tion in the conversation of natural resources, and education in forestry, agriculture and other industrial pursuits in the public schools of this Commonwealth."

Section 2701 reads as follows:

> "Eighty per centum of the net receipts and proceeds derived in any way from, or on account of, the forest reservations, now or hereafter acquired by this Commonwealth, together with all water-powers and water-rights belonging to this Commonwealth in the streams, rivers, lakes, or other waters of this Commonwealth, and all real estate owned by this Commonwealth which is not used for State or other public purposes, all escheated estates in this Commonwealth, and all other property or money which shall in any way accrue to such fund, whether by act of assembly, devise, gift, or otherwise, shall belong to and constitute a fund, to be known and designated as 'The State School Fund of Pennsylvania,' which is to be maintained as herein provided: Provided, however, That the forest reservations shall continue to be wholly under the control of the State Forest Reservation Commission, as now provided by law."

The proper construction of this section is not free from difficulty. It might be contended, with some force, that the phrase "eighty per centum" is intended to be carried through the section, and that the fund is to be constituted of eighty per centum of the net receipts and proceeds derived from the various sources therein mentioned.

I am of opinion, however, that under a proper construction of the section, the corpus of the fund is to consist of,

First: *Eighty per centum* of the net receipts and proceeds derived from the forest reservations of the Commonwealth now owned, or hereafter acquired by it.

Second: *All* water-powers and water-right belonging to the Commonwealth in the streams, rivers, lakes or other waters thereof.

Third: *All* real estate owned by the Commonwealth which is not used for State or other public purposes.

Fourth: *All* escheated estates in the Commonwealth.

Fifth: "*All* other property or money which shall in any way accrue to such fund, whether by act of assembly, devise, gift or otherwise."

Aside from a literal construction of the phrase "together with" preceding all the designations of the sources from which the fund is to be derived, except the first, it is to be observed that the last specified source is "all other property or money which shall, in any way accrue to such fund * * * by devise, gift or otherwise," and it is certainly clear that the Legislature intended that the whole amount, and not merely eighty per centum, of any gift or devise, should accrue to the fund.

This provision is coupled with the preceding provisions relative to water-powers and water-rights, real estate owned by the Commonwealth but not used for public purposes, and escheated estate. You are therefore advised that the phrase "eighty per centum" applies only to net receipts and proceeds derived from forest reservations.

Under the Act of April 15, 1903, it is provided that all proceeds derived from the forest reservations shall be paid into the State Treasury and there held as a special fund for the purposes of assisting in defraying the necessary expenses of protecting and improving forestry reservations, or for the purchase of additional land. The amount to be credited to the State School Fund is eighty per centum of the "net receipts and proceeds derived in any way from, or on account of the forest reservations."

In ascertaining the net receipts and proceeds there should be deducted from the gross receipts and proceeds the costs and expenses of protecting and improving the lands, but not the total expenses of maintaining the Department of Forestry.

The second and third component part of the fund, viz: water-powers and water-rights, and real estate owned by the Commonwealth but not used for public purposes, may, for the purposes of this opinion, be treated together. There is nothing in the school code to indicate that the Legislature intended to repeal existing legislation relative to the granting of warrants of survey and patents for lands, the title to which remains in the Commonwealth.

Without undertaking to pass, at this time, upon the question of whether the water-powers and water-rights referred to in this section relate only to water-powers and water-rights in the public and navigable rivers and streams, the title to the beds of which remains in the Commonwealth, it is sufficient for our present purpose to say that all sums of money received by the Secretary of Internal Affairs for lands of the Commonwealth granted to private owners, and under the present practice, paid into the general fund of the State treasury, should be credited by you to the State School Fund.

With regard to the fourth source from which the fund is to be derived, viz: all escheated estates in this Commonwealth, you are advised that all moneys paid into the State Treasury by the Auditor General, as the proceeds of escheats of real or personal property, are to be credited by you to the State School Fund. The school code is not retroactive, and, as any proceedings in escheat were in progress at the time the act now under discussion was approved, it becomes necessary to fix some line by which the payments from the Auditor General's Department into the State Treasury, as the proceeds of escheated estates which are to be credited to the State School Fund, may be divided from these which are to be credited to the general fund in the State Treasury. Of course, the title of the Commonwealth

to escheated estates vests at the date of the death of the owner of the property which escheats, or at the date of the happening of the event which gives rise to the escheat in other cases.

But there is no ascertainment of the rights of the Commonwealth until the adjudication by a court of competent jurisdiction of the fact that certain property has escheated. The date of such adjudication is easily ascertainable in each case, and you are therefore advised that in all cases where the adjudication of the escheat has been made subsequent to May 18, 1911, the date of the approval of the act, the proceeds of the escheat are to be credited to the State School Fund.

The fifth component element of the fund, viz., appropriations made hereafter by acts of assembly, or devises and other gifts, requires no detailed discussion. It is apparent from what has been said, that this State School Fund may be composed of both real and personal estate, and it is provided in Section 2702 that "all real and personal property belonging to the State School Fund shall be wholly under the control and management of the State Board of Education."

By Section 2704 it is provided that

> "The State Board of Education may also lease, sell or otherwise dispose of any of the real estate, securities or other property belonging to the State School Fund, and invest the proceeds thereof in compliance with this act."

The next subject requiring attention is the custody of the State School Fund. By section 2702 it is provided that:

> "All net receipts derived in any way from or on account of the State Forest Reservations, or from or on account of any real or personal property belonging to the State School Fund, and all other moneys accruing to said fund, shall always be promptly paid to the State Treasurer, and kept by him in a separate account, subject to the disposal of the State Board of Education, as herein provided."

Section 2703 evidently contemplates that all proceeds from sales of real estate, etc., shall be received by the State Treasurer, for the section refers, inter alia, to "all proceeds from the sales of real estate received by the State Treasurer."

With reference to the funds thus directed to be kept in a separate account, it is further directed in Section 2702 that:

> "The State Treasurer shall deposit said funds in the properly authorized depositories for State funds, and shall add to such funds the interest received from the depositories for the use of the same * * * * The

> State Treasurer and his bondsmen shall be responsible for the safe keeping of and accounting for said funds, in the same manner and under the same penalties as for the safe keeping of and accounting for the other funds of this Commonwealth."

We next take up the question of the production of the income from the fund, other than the interest payable thereon by the depositories, already referred to, and directed to be added to the funds kept in said separate account.

By Section 2703 it is enacted that:

> "The State Board of Education shall promptly invest and keep invested as constantly as possible, to the best advantage of the State School Fund, all receipts derived from or on account of the State Forest Reservations, and all proceeds from the sale of real estate received by the State Treasurer, together with all appropriations, devises, gifts and other receipts for this purpose, as a permanent State School Fund, whose income only may be expended."

In the latter part of this section, the bonds in which such investments may be made are specified and it is directed that all such investments must be first approved by the Auditor General. The method of withdrawing funds for investment or reinvestment is prescribed in Section 2705, as follows:

> "So much of the State School Fund as is to be invested or reinvested in any securities * * * * shall be paid out by a proper order authorized by the State Board of Education, and signed by the president and secretary thereof, drawn on the State Treasurer on said funds, which order shall first be approved by the Auditor General."

To the end that the income of the fund may be expended for the purposes specified in the act, it is also provided in said Section 2705 that so much of the income as may be used for any of the purposes of the act shall be paid out of the State Treasury in the same manner as is specified with reference to the payment of such part of the corpus as is to be invested at any particular time.

By Section 2704 it is provided that any portion of the income not used for the purposes of the act shall be annually added to the principal of said State School Fund.

Section 2700 provides that:

> "The State Treasurer shall report to the State Board of Education, at such times as said board requests, the condition of said fund, and shall in his annual report make an itemized statement of the receipts, disburse-

> ments, and amount on hand of said school fund and its income. The State Board of Education shall annually make to the Governor and to the Auditor General a complete detailed report of the condition of said fund, including its receipts, expenditures and investments."

The sections of the act now under discussion seem to be somewhat contradictory in so far as the matter of the disposition of rentals arising from real estate belonging to the State School Fund is concerned.

In section 2702 it is provided that all net receipts, derived in any way from or on account of any real or personal property belonging to the fund, shall be promptly paid to the State Treasurer and kept by him in the separate account above referred to, whilst section 2704 provides that:

> "The State Board of Education is hereby authorized to use so much of the interest, rentals and other income of the said school fund as it deems wise," etc.

Taking into consideration the general purpose of the legislation, you are advised that any rentals received by the State Board of Education from real estate belonging to the State School Fund, should be paid into the State Treasury and credited to said separate account of the corpus of the fund. If any case should arise in the future requiring the modification of this conclusion, by reason of any special circumstances or facts, the matter can then be disposed of on the concrete state of facts arising.

By section 2702 it is also enacted that

> "All income derived from any investment of the State School Fund shall be paid to the State Treasurer and kept deposited as herein provided, in a separate account subject to the order of the State Board of Education."

It will, therefore, be necessary for you as State Treasurer, in the Fund, and of the interest received thereon from the depositories in which the same may be deposited, which interest, as above stated, proper performance of your duties under this act, to open two separate accounts in the books of your Department, in the first of which should be kept an account of the corpus of the State School is to be added to the fund; and in the other should be kept an account of the income derived from any investments made by the State Board of Education of any portion or portions of the corpus of the fund. The necessity for this second account is apparent when it is noted that the income, and the income alone, may be used and

expended by the State Board of Education for the purposes specified in the act, and that any income not expended shall be annually added to the principal of the fund.

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

CO-OPERATIVE AGRICULTURAL EXTENSION WORK.

The State Treasurer should pay to State College the Federal appropriation for agricultural extension work.

Office of the Attorney General,
Harrisburg, Pa., September 24, 1914.

Hon. Robert K. Young, State Treasurer, Harrisburg, Pa.

Sir: This Department is in receipt of a communication from your Department under date of September 8, 1914, stating that you, as Treasurer of the State of Pennsylvania, are in receipt of a warrant of the Treasurer of the United States, payable to your order, in the sum of $5,000, in payment of a semi-annual installment, due July 1, 1914, to the State of Pennsylvania out of the appropriation made to the several States by the Act of Congress approved May 8, 1914, entitled "An act to provide for co-operative agricultural extension work between the agricultural colleges in the several States receiving the benefits of an Act of Congress approved July 2, 1862, and of acts supplementary thereto, and the United States Department of Agriculture," and asking to be advised whether you should pay this money over to the Treasurer of Pennsylvania State College without further specific action on the part of the Legislature of Pennsylvania.

This appropriation seems to be a federal appropriation of the same general character as the appropriations referred to in an opinion given by this Department to one of your predecessors in office under date of July 14, 1909, (Report of Official Opinions of the Attorney General of Pennsylvania, 1909-1910, page 87); to which opinion you are respectfully referred.

In said opinion reference is made to the appropriations made from time to time out of the proceeds of the public lands for the more complete endowment and support of the colleges established under the provisions of an Act of Congress approved July 2, 1862, the leading object of which, it was enacted, should be to teach such branches of learning as are related to agriculture and the mechanic arts.

The appropriation now under discussion is made for the purpose of inaugurating and maintaining co-operative agricultural extension work between such agricultural colleges and the United States Department of Agriculture. This agricultural extension work is to consist of the giving of instruction and practical demonstrations in agriculture and home economics to persons not attending or resident in such colleges, and imparting to such persons information on said subjects through field demonstrations, publications and otherwise.

It is expressly provided in section 5 of the act of Congress of May 8, 1914, that no part of the moneys therein appropriated shall be applied to the purchase, erection, preservation or repair of any building or buildings or the purchase or rental of lands or any college course, teaching, lectures in colleges, promoting agricultural trains or any other purpose not specified in the act.

I assume that the assent of the Governor to the provisions of the act has been given, as required by section 3 thereof, and that satisfactory plans for the work to be carried on under the act have been submitted by the proper officials of said college to, and approved by, the Secretary of Agriculture.

The general plan for the distribution of the appropriation by the federal officials to the proper agricultural colleges through the agency of designated state officials, established in the case of the appropriations referred to in the above mentioned opinion, has been followed in the act now under discussion, with one exception hereinafter referred to.

It was held in the former opinion that Pennsylvania State College is an agricultural college entitled to receive the benefits of the above mentioned act of Congress approved July 2, 1862, and the acts supplementary thereto, and that the State Treasurer of the Commonwealth of Pennsylvania, when performing the duties imposed upon him by the appropriation acts therein referred to, is acting in the capacity of an agent or representative of the Federal Government rather than solely in his capacity as State Treasurer, and that said appropriations may, therefore, be paid over to the Treasurer of Pennsylvania State College by the State Treasurer without violating the Act of Assembly of May 11, 1909, P. L. 519, making it a misdemeanor, inter alia, for the State Treasurer to pay any money out of the State Treasury except in accordance with the provisions of the Act of Assembly specifying the amount and purpose of the expenditure.

In my judgment these general conclusions are applicable to the present inquiry.

The Act of Congress of August 30, 1890, relative to the payment of the appropriations referred to in said former opinion, provided that the sums of money thus appropriated to the states and territories

should be annually paid "to the state or territorial treasurer or to such other officer as shall be designated by the laws of such state or territory to receive the same, who shall, upon the order of the trustees of the college, * * * * Immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same, and such treasurer shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior on or before the first day of September of each year a detailed statement of the amount so received and of its disbursements."

Under the above quoted language, the treasurers required to make the report to the Secretary of Agriculture were the *treasurers of the colleges* receiving the appropriation through the agency of the State Treasurer.

The Act of Congress now under consideration provides, in section 4, as follows:

> "Section 4. That the sums hereby appropriated for extension work shall be paid in equal semiannual payments on the first day of January and July of each year by the Secretary of the Treasury upon the warrant of the Secretary of Agriculture, out of the Treasury of the United States, to the treasurer or other officer of the State duly authorized by the laws of the State to receive the same; and such officer shall be required to report to the Secretary of Agriculture on or before the first day of September of each year, a detailed statement of the amount so received during the previous fiscal year, and of its disbursement, on forms prescribed by the Secretary of Agriculture."

This act omits the provisions that the State Treasurer shall, upon order of the trustees of the proper college, pay over said sums to the college treasurer, and imposes upon the *State Treasurer,* instead of upon the *college treasurer,* the duty of reporting to the Secretary of Agriculture "a detailed statement of the amount so received during the previous fiscal year and of its disbursement on forms prescribed by the Secretary of Agriculture."

As you say in your communication, it is manifestly impossible for you to make the statement above referred to upon your own personal knowledge and, on the other hand, it is equally impossible for you to disburse the money except by turning it over to the treasurer of the proper agricultural college.

This Department has no knowledge of the "forms prescribed by the Secretary of Agriculture," but, in view of the further provision of the act requiring each college receiving a part of the appropriation to make a detailed report to the Governor of the State "of its operations in the direction of extension work as defined in this act, including a detailed statement of receipts and expenditures from

all sources for this purpose, a copy of which report shall be sent to the Secretary of Agriculture and to the Secretary of the Treasury of the United State," it would seem that the report, required from you as state treasurer, if based upon the report and detailed statement thus furnished by the proper college officials, would be within the legislative intent of the act, and you are accordingly so advised.

Taking into consideration that the present act and the former acts herein referred to all relate to the same general subject matter and provide for the distribution of these federal appropriations by the same general plan, I beg to further advise you that, in my opinion, upon the filing of a proper order of the trustees of Pennsylvania State College directing you to pay the said sum of $5,000 to the treasurer of said college, you should forthwith pay over the same to such treasurer and should follow the same procedure in disposing of subsequent installments of this appropriation as the same may be received by you, from time to time, from the Federal authorities.

Very truly yours,

JOHN C. BELL,
Attorney General.

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

7—23—1915

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

ELECTIONS—JUDGE LUZERNE COUNTY.

The candidates for Judge of the Court of Common Pleas of the 11th District (Luzerne County) are to be nominated by the filing of nomination papers with the Secretary of the Commonwealth, who will certify them to the County Commissioners of Luzerne County for printing on the official ballot.

Office of the Attorney General,

Harrisburg, Pa., August 26, 1913.

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

This Department is in receipt of your letter of August 25th, asking, in effect, to be advised whether the names of candidates for nomination to the office of Judge of the Court of Common Pleas of the 11th Judicial District (Luzerne County) are to be certified by you to the proper county commissioners for printing upon the official non-partisan primary ballots to be used at the approaching fall primary on September 16th, or whether the names of all candidates filing proper petitions are to be certified by you to the county commissioners prior to the approaching municipal election on November 4, 1913, under the provisions of Section 15 of said non-partisan primary law approved July 24, 1913, to the end that the same may be printed upon the official ballots to be used at said municipal election.

The material facts upon which your inquiry is based are as follows: On July 21, 1913, the Governor approved an act providing for an additional law judge of the several courts of the 11th Judicial District. As this act was approved more than two months before the municipal election of 1913, provision was made for an appointment by the Governor to said office until the first Monday of January, 1914, and for the election at the municipal election which will be held on November 4, 1913, of a person to fill said office for the full term of ten years, beginning on said first Monday in January next succeeding said election.

Your inquiry relates to the manner in which candidates for the full term of ten years are to be nominated under existing legislation. Under the 4th and 5th sections of the non-partisan primary Act of July 24, 1913, the general plan for securing the printing of the

names of the candidates for the office of judge, upon the official non-partisan primary ballot is by the filing of a petition with the Secretary of the Commonwealth for the certification of the name of the candidate to the county commissioners of the proper county. This petition in the case of a candidate for the office of judge of a judicial district must be filed with the Secretary of the Commonwealth at least four weeks prior to the primary, or, in the present year, not later than August 19th, and this petition cannot be circulated prior to sixty days before said last day upon which it may be filed.

In my opinion the approval of the said Act of July 21, 1913, created an original vacancy in the office of additional law judge in the 11th Judicial District. The vacancy thus arising is the only vacancy in a judicial office to be filled at the approaching municipal election in said district. This vacancy arose, happened or occurred on the date of the approval of the act, to wit, July 21, 1913, which date was less than thirty days prior to the last day for filing petitions for the printing of the names of candidates on the official non-partisan primary ballot to be used at the fall primary on September 16th, viz., August 19th. The non-partisan primary ballot law provides for different general classes of vacancies:

1. Where a nomination petition has been filed and the candidate named therein dies before the printing of the non-partisan primary ballot.

2. Where, after the primary, and before the succeeding election, a candidate nominated pursuant to the provisions of the act dies or becomes disentitled to have his name printed on the ballot for the election.

3. "Whenever an office within the provisions of this act is to be filled at a regular or special election because of the prior happening of a vacancy in such office, nominations of candidates for such office for such election shall be made as follows."

The case now under discussion comes, in my opinion, within the third class of vacancies above mentioned. The office in question is to be filled at the regular municipal election to be held on November 4, 1913, because of the approval of said act by the Governor upon July 21, 1913.

We must therefore look into the further provisions of Section 15 to ascertain how the nominations for the office in question are to be made. Said section further provides:

> "If such vacancy is to be filled at a regular election, or at a special election to be held at the same time as a regular election, and if such vacancy happened not less than thirty days prior to the last day for filing nomination petitions for the office for the regular primary ante-

cedent to such election, nominations shall be made at the primary preceding such election, in the same manner that candidates for the same office are nominated, under the provisions of this act, when there has been no antecedent vacancy occasioning the election.

In all other cases within the purview of this section, candidates for such office shall be nominated, with the same effect, as though nominated at a primary, by the filing of nomination petitions on behalf of and affidavits by such candidates, in the manner and form and according to the directions hereinbefore provided in sections four and five of this act with respect to getting the name of a candidate for such office printed upon the ballot for the primary, varied in so far as may be necessary to fit the different purpose. Any number of candidates may be so nominated. Such nomination petitions and affidavits shall be filed the same length of time prior to the election as corresponding nomination petitions are required to be filed before a primary, and shall be filed in the same office; and the same proceedings shall be had with respect thereto, with relation to the election, as herein provided with respect to a primary; Provided, however, Said nomination petitions shall not be deemed to be filed too late if filed within ten days after such vacancy happened."

The vacancy in question having happened less than thirty days prior to the last day for filing nomination petitions, nominations cannot be made at the primary in the same manner that candidates are nominated when there has been no antecedent vacancy occassioning the election. This case is, however, a case "within the purview of the section," and candidates must be nominated in accordance with the method provided for in the second paragraph of the above quoted portion of the act. The reason for the distinction is evident. Where the vacancy occurs more than thirty days before the last day for filing petitions, a full opportunity is afforded for the circulation and filing of petitions, but where the vacancy arises less than thirty days before the last day for filing petitions, it was deemed necessary by the Legislature to provide an exceptional method for securing the printing of the names of candidates upon the official ballots for the ensuing November election.

You are accordingly advised that no names should be certified by you for printing upon the official non-partisan primary ballot to be used at the approaching fall primary on September 16, 1913, as the names of candidates for the office in question, and that candidates for this office are to be nominated by the filing of nomination petitions on behalf of and affidavits by each candidates with you, at least four weeks prior to November 4, 1913, which petitions shall not be circulated prior to sixty days before said last day on which they are to be filed, and which are to be varied in so far as may be neces-

sary to fit the purpose. The names of all candidates filing proper petitions with you under the provisions of the third paragraph of Section 15 of said non-partisan ballot law, are to be certified by you to the proper county commissioners for printing upon the official ballot to be used at the municipal election on said 4th day of November, 1913.

Very truly yours,

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

NON-PARTISAN PRIMARY.

Under section 13 of the Non-Partisan Primary Act of July 24, 1913, (Act 457), any candidate to an office, for which but one person is to be elected, receiving a number of votes greater than one-half of the votes cast for such office and also greater than one-half of the ballots cast in the district, shall be the sole nominee therefor. The phrase "greater than one-half of the number of ballots cast in the political district or division," is equivalent to greater than one-half of the number of electors participating, regardless of whether they cast both party and non-partisan ballots or non-partisan ballots alone.

A certificate from the county commissioners to the Secretary of the Commonwealth, setting forth the total number of electors who cast valid ballots at the primary, is necessary to determine the result. In the absence of such certificate, the Secretary should certify to the county commissioners the names of the candidates shown by the returns to have received the highest and next highest number of votes, since any candidate claiming the right as sole nominee has the burden of establishing the facts necessary therefor.

Office of the Attorney General,

Harrisburg, Pa., September 30, 1913.

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

Sir: This Department is in receipt of your communication of September 29th, 1913, asking to be advised: "As to how the total number of ballots cast in a judicial district under the 13th Section of the Non-partisan Primary Act is to be determined."

In reply you are advised that the general purpose of the act of July 24, 1913, (P. L..... No. 457), regulating the nomination and election, inter alias, of all judges of courts of records, contemplates the certification by you to the county commissioners of the proper county of candidates equal in number to twice the number to be elected at the succeeding election, but by the proviso to Section 13 of said act, it is enacted:

> "That whenever, at any primary, any candidate for nomination to any of the aforesaid offices to which but one person is to be elected at the succeeding election shall receive a number of votes greater than one-half of the total number of votes cast for such office at such primary and *greater than one-half of the number of ballots cast in the political district or division* within which the nomination is to be made, *such candidate shall be the sole nominee for such office;* and his name and none other shall be printed as candidate for such office upon the official ballots for use at such succeeding election."

In the opinion of this Department, the phrase "greater than one-half of the number of ballots cast in the political district or division" is equivalent to greater than one-half of the number of electors who participated in the primary in question, regardless of the fact whether such electors cast both party and non-partisan ballots, or non-partisan ballots alone, provided, of course, such electors cast a valid ballot, i. e., a ballot which could legally be counted for any office for which nominations were to be made.

As we understand the situation, you are in doubt as to the proper method of determining whether any of the candidates for the office of judge of the court of common pleas in the counties of Bucks and Lehigh has received a number of votes greater than one-half of the number of ballots cast in these respective counties. You now have returns from the county commissioners of each of said counties showing the total number of votes cast for each candidate for said office and from these returns you can readily ascertain whether any candidate has received more than one-half of the total number of votes cast "for such office at such primary"; and, in addition, you have a certificate from the commissioners of Bucks County showing the total number of votes cast in said county for each office to be filled at the ensuing election, from which certificate it appears that there were more votes cast for candidates for nomination to the office of judge of the court of common pleas than for any other office. There is, however, no certificate from the commissioners of either of said counties on file in your Department purporting to set forth the total number of electors who cast valid ballots at the primary in question. A certificate of this character is, in the opinion of this Department, necessary, in order that you may determine the second question arising under said proviso, namely, whether any of the candidates for said office received "more than one-half of the number of ballots cast in the political district or division."

You are, therefore, advised to request the county commissioners of Bucks and Lehigh Counties to certify to you the number of valid ballots cast by the electors who participated in the primary in question.

Upon the receipt of such certificate you will be able, from the returns which will then be on file in your Department, to ascertain whether any one of the candidates for the office of judge of the court of common pleas in said counties has received not only more than one-half of the total number of votes cast for that office, but also more than one-half of the number of ballots cast in the political district or division within which the nomination was made, to wit: the proper judicial district. We may add that, in the absence of such certificate or return from the county commissioners, it would be your duty, acting upon the returns now before you, to certify to the county commissioners the names of the candidates shown by the returns to have received the highest and next highest number of votes for the office in question, for any candidate who claims the right to have his name certified as the sole nominee, has the burden of establishing the facts necessary to bring himself within the proviso above quoted.

Very truly yours,
J. E. B. CUNNINGHAM,
First Deputy Attorney General.
JOHN C. BELL,
Attorney General.

KEYSTONE PARTY.

The Keystone party, at the general election in 1912, having had a candidate who polled 2 per centum of the largest vote in each of ten counties and a total vote of 2 per centum of the largest entire vote cast in the State for any elected candidate, is a political party as defined by section 2 of the Direct Primaries Act of July 12, 1913, P. L. 719, and cannot make its nominations by nomination papers.

Office of the Attorney General,
Harrisburg, Pa., January 14, 1914.

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

Sir: This Department is in receipt of your communication of November 20th, 1913, asking to be advised whether a certain nomination paper presented to you, nominating J. C. Gordon Foster for the office of representative in the general assembly, from the Second Representative District of the County of Philadelphia, should be received and filed by you.

As I understand the facts, this paper is presented under the provisions of the Act of July 9, 1897, (P. L. 223) and by means of this paper it is sought to have the name of the candidate therein mentioned printed upon the official ballot to be used at the general election which will be held in November, 1914.

It is stated upon the face of the paper that the electors signing the same are members of the Keystone Party.

The question arises, therefore, whether the members of the Keystone Party in said legislative district are entitled to nominate a candidate for said office by means of nomination papers. Candidates for the office of, inter alia, member of the State House of Representatives, are to be nominated on the third Tuesday of May, 1914, under the provisions of the act of July 12, 1913, (P. L. 719), popularly known as the "Direct Primaries Act," and the names of those duly nominated will appear upon the official ballot to be used at the general election in November, 1914.

The above mentioned Primary Act provides a comprehensive system for the making of nominations by political parties to elective public offices, but it is provided in the first section thereof, that nothing therein contained "shall prevent any body of electors *not constituting a political party* from nominating candidate by *nomination* papers, as is now or may hereafter be provided by law."

By Section 2, political parties in the State and in the counties of the State are defined as follows:

> "Any party or body of electors, one of whose candidates at the *general* election next preceding the primary polled in each of at least ten counties of the State not less than two per centum of the largest entire vote cast in each of said counties for any elected candidate, and polled a total vote in the State equal to at least two per centum of the largest entire vote cast in the State for any elected candidate, is hereby declared to be a political party within the *State;* and shall nominate all its candidates for any of the offices provided for in this act, and shall elect its delegates and alternate delegates to the National convention, State committeemen, and also such party officers, including members of the National committee, as its rules provide shall be elected by a vote of the party electors, in accordance with the provisions of this act.
>
> Any party or body of electors, one of whose candidates at either the *general* or *municipal* election preceding the primary polled at least five per centum of the largest entire vote cast for any elected candidate in any county, is hereby declared to be a political party within said *county;* and shall nominate all its candidates for office in such county, and in all political districts within said county, or of which said county forms a part, and shall elect such party officers as its rules provided shall be elected therein by a vote of the party electors, in accordance with the provisions of this act."

It is to be noticed that the section just quoted makes a clear distinction between political parties in the State and political parties in a county, in that the vote by which the question of whether a

body of electors constitutes a political party in the *State* is to be tested in the vote at the *general* election, next preceding the primary in question, whilst the vote by which the question whether a body of electors constitutes a political party in a *county,* is to be tested, is the vote at *either* the *general* or *muncipal* election, preceding the primary in question.

Having regard to the character of the office in question, I am of opinion that the election to be considered in determining whether the Keystone Party is entitled to make this nomination by nomination papers is the general election held in the year 1912.

From the returns of this election on file in your Department, it appears that at the general election in 1912 the largest entire vote cast in the State for any elected candidate was cast for Honorable Archibald W. Powell, who was elected to the office of Auditor General, and received, upon all tickets, 621,234 votes, two per centum of which would be 12,425 votes.

At this election Honorable William H. Berry was the candidate of the Keystone Party for the office of State Treasurer, and received at said election, under that particular party name alone, 36,927 votes. It further appears that the said Hon. William N. Berry in each of the more than ten counties of the State, received at said election votes to the number of more than two per centum of the largest entire vote cast in each of said counties for the said Hon. Archibald W. Powell.

It therefore follows from an examination of these returns that the Keystone Party had a candidate at the general election in 1912, who polled, in each of at least ten counties of the State, not less than two per centum of the largest entire vote cast in each of said counties for any elected candidate, and polled a total vote in the State equal to at least two per centum of the largest entire vote cast in the State for any elected candidate.

Under the express terms of the said State-wide Primaries Act of 1913, these facts constitute the Keystone Party a political party within the State of Pennsylvania, and it must therefore make its nominations in accordance with the provisions of that act and not by nomination papers.

I am further of opinion that the word "Keystone" cannot be used in nomination papers for the ensuing general election. *Savage's Nomination, No. 3, 15 Pa. C. C. 508.*

You are therefore advised to decline to receive or file the nomination paper in question.

Very truly yours,

JOHN C. BELL,
Attorney General.

PUBLICATION CONSTITUTIONAL AMENDMENTS.

The Secretary of the Commonwealth must publish proposed amendments to the Constitution which have passed the General Assembly.

Office of the Attorney General,

Harrisburg, Pa., June 25, 1914,

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

Sir: This Department is in receipt of your communication under date of June 15, 1914, directing attention to the fact that, at the legislative session of 1913, two different joint resolutions, to-wit; joint resolutions Nos. 2 and 6, proposing two separate and distinct amendments to the same article and section of the Constitution, namely Section 8 of Article IX, relating to debts of municipalities, as amended by the electors of this Commonwealth in November, 1911, were agreed to by a majority of the members elected to each house, duly entered on their journals with the yeas and nays taken thereon and are now on file in your office.

You ask to be advised whether, in view of the apparently conflicting provisions of these proposed amendments and in view of the apprehended difficulty in determining what the organic law of the Commonwealth would be in case both of these proposed amendments should be passed at the legislative session of 1915 and adopted by the qualified electors of the State, it is your duty to publish both of the proposed amendments three months before the general election of 1914 in at least two newspapers in every county in which such newspapers shall be published.

One of the proposed amendments relates only to the City of Philadelphia and the other to the City and County of Philadelphia.

The original Section 8 of Article IX of the present Constitution provided, in substance, that the debt of any county, city or other municipality should never exceed seven per centum upon the assessed value of the taxable property therein, and that no municipality should incur any new debt or increase its indebtness to an amount exceeding two per centum upon such assessed valuation of property without the assent of the electors at a public election, but that any city, the debt of which, at the time of the adoption of said Constitution, exceeded seven per centum of such assessed valuation, might be authorized by law to increase the same three per centum in the aggregate at any one time upon such valuation.

By the amendment of 1911 to this Section of the Constitution, it was provided, in substance, that any debt or debts, thereafter incurred by the City and County of Philadelphia for the construction

and development of subways for transit purposes or for the construction of wharves and docks, or the reclamation of land to be used in the construction of a system of wharves and docks as public improvements to be owned by said City and County and which yield current net revenues in excess of the interest on such debt or debts and of the annual installments necessary for their cancellation, might be excluded in ascertaining the power of the City and County of Philadelphia to become otherwise indebted, provided a sinking fund for their cancellation should be established and maintained.

By said joint resolution No. 6, it is now proposed to further amend Section 8 of Article IX, as thus amended in 1911, by striking out of the specification of the debts which may be excluded, under certain circumstances, in ascertaining the power of the City and County of Philadelphia to become otherwise indebted, debts incurred for the construction and development "of subways for transit purposes" and by inserting a proviso to the effect that such indebtness shall not at any time exceed, in the aggregate, the sum of twenty-five million dollars for certain specified purposes and by also inserting a proviso that the City and County of Philadelphia shall, at or before the time of incurring certain indebtedness, provide for the collection of an annual tax sufficient to pay the interest thereon and also the principal thereof within fifty years from the incurring thereof.

By said joint resolution No. 2, it is likewise proposed to further amend Section 8 of Article IX, as amended in 1911, inter alia, by providing that the City of Philadelphia, upon certain conditions therein set forth, may increase its indebtedness to the extent of three per centum in excess of seven per centum upon the assessed value of the taxable property therein for certain specific purposes, namely: the construction and improvement of subways, tunnels, railways, elevated railways and other transit facilities, the construction and improvement of wharves and docks and the reclamation of land to be used in the construction of wharves and docks owned or to be owned by said City. It is provided that such increase shall only be made, however, with the assent of the electors at a public election. This proposed amendment contains elaborate provisions with relation to the deduction of certain credits in ascertaining the borrowing capacity of said City and also contains provisions relating to the issuing of obligations maturing not later than fifty years from date and with relation to the establishment of sinking funds, etc.

No attempt has been made herein to analyze the proposed amendments with any degree of care or to construe their provisions because such action is unnecssary in disposing of your inquiry, but it seems obvious that if both of these amendments should finally be adopted by the people at the same time it would be somewhat diffi-

cult to determine just what the people intended to provide in their Constitution with reference to the power of the City and County of Philadelphia to become indebted.

The apprehended confusion and difficulty, however, is a matter for the consideration, in the first place, of the members of the House and Senate at the legislative session of 1915, when the proposed amendments will again be before the General Assembly for action by that body, and, finally, of the qualified electors of the State in the event that the amendments receive the approval of a majority of the House and Senate at the ensuing session.

Your duty in the premises is clear. By Article XVIII of the Constitution, relating to future amendments of that instrument, it is provided that

> "Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; if the same shall be agreed by a majority of the members elected to each House; such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, *and the Secretary of the Commonwealth shall cause the name to be published three months before the next general election* in at least two newspapers in every county in which such newspapers shall be published," etc.

The article further provides for submission of the proposed amendment or amendments to the General Assembly next afterwards chosen and, if agreed to by a majority of the members elected to each house, then for a second publication by you and, finally for their submission to the qualified electors of the State at such time at least three months after being so agreed to by the two houses as the General Assembly shall prescribe.

In discussing the duties of the Secretary of the Commonwealth with relation to amendments proposed to the Constitution our Supreme Court, in the case of Commonwealth vs. Griest, 106 Pa. 396, said, at page 405:

> "It will be observed that the duty of the secretary of the Commonwealth follows immediately upon the entry of the amendment on the journals of the two houses with the yea and nay votes of the members. There is no other action by any department of the state government that is either required or allowed, prior to the action of the secretary. And that action of the secretary is prescribed in mandatory language, thus, 'And the Secretary of the Commonwealth shall cause the same to be published,' etc. He has no discretion in the premises. His action does not depend upon any other action whatever. It is his own, personal, individual and official duty, imperative in its character, and of

> the very highest and gravest obligation because it is imposed by the constitution itself, and he can only discharge that duty by literally performing its terms. He cannot excuse himself for non-performance by setting up advice, opinion or action of any other person, organization or department, official or otherwise, for the simple reason that the article of the constitution which prescribes his duty does not allow it. There is no opportunity for any, even the least, intervention, between the entry of the amendment on the journals and the publication in the newspapers in the whole course of the proceeding for the creation of the amendment."

You are accordingly advised that it is your duty to publish, in accordance with the provisions of Article XVIII of the Constitution, the amendment proposed by joint resolution No. 2 of the sessions of 1913 and also the amendment proposed by joint resolution No. 6 of the same session.

Very truly yours,

JOHN C. BELL,
Attorney General.

OPINIONS TO THE COMMISSIONER OF BANKING.

OPINIONS TO THE COMMISSIONER OF BANKING.

BANKS OF DISCOUNT AND DEPOSIT.

Where the articles of association of a bank provide that its capital may be increased from time to time as may be deemed expedient, subject to the Act of May 13, 1876, P. L. 161, the bank may, subject to the regulations of that act and its amendment of May 3, 1909, P. L. 412, increase its capital stock to the amount authorized, when it deems it expedient so to do, without complying with section 4 of the Act of May 13, 1876, P. L. 161, or the Act of Feb. 9, 1901, P. L. 3, and such increase may be made before the bank actually begins business.

Office of the Attorney General,

Harrisburg, Pa., July 17, 1913.

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

Sir: Your favor of the 16th instant is at hand. You ask to be advised whether a bank may increase its capital stock before it commences business. The facts I understand to be as follows:

The Miners and Merchants Deposit Bank of Portage, Pa., incorporated June 5, 1913, under the Act of May 13, 1876, (P. L. 161), entitled: "An act for the incorporation and regulation of banks of discount and deposit" and the amendment thereto of May 3, 1909, (P. L. 412), provided in its articles of association that the capital may be increased from time to time to $50,000. It, however, contemplated beginning business with a capital of $25,000. It appeared that the shares were over-subscribed and that the stockholders voted to increase the capital to $40,000 before commencing business.

Section 4 of the banking Act of 1876, above referred to, provides: and prescribes the contents of such notice.

> "That before application shall be made under the provisions of this act for the *creation* of any corporate body with banking or discounting privileges, or for the *renewal* of the charter or *increase* of capital thereof, the person forming the same shall cause a notice of such application to be advertised in two newspapers printed in the county in which such corporate body is intended to be located, at least once a week, for three months before such application shall be made, etc."

and prescribe the contents of such notice.

Section 10 of the said act provides:

> "That any corporation formed under this act may provide in its articles of association for an increase of its capital stock from time to time as may be deemed expedient, subject however to the regulations of this act; that only such maximum increase shall be allowed as shall be provided for in the articles of association, unless a majority of the stockholders shall formerly certify in writing to the Auditor General their consent to a greater increase."

The Articles of Association of the Miners and Merchants Bank, Portage, Pa., provide:

> "The capital stock of the proposed corporation may be increased from time to time as may be deemed expedient, subject to the regulations of the Act of May 13, 1876, hereinabove recited, and its supplements, to the amount of $50,000."

Section 4 of the act above referred to requires an advertisement for three months of an intended application for the "creation," "renewal," or "increase of the capital" of the corporations formed under said act, but Section 4 must be read in connection with Section 10, and when thus read it requires only such advertisement for an increase of capital where the corporation has not provided in its articles of association for such increase, or to an amount in excess of the amount authorized in such articles of association.

The Act of February 9, 1901, (P. L. 3), is an act providing for the increase of capital stock and indebtedness of corporations and points out the method by which the stockholders may authorize such increase. The shareholders of the Portage bank, by reason of the provision in the articles of association above quote, have already authorized the increase from time to time as may be deemed expedient of the capital stock from $25,000 to $50,000. The corporation is, therefore, in the same position as if the method provided by the Act of 1901 had been resorted to. The corporate authority for such increase exists as may be deemed "expedient."

The fact that the increase in this case is deemed "expedient" before the corporation has begun business with the original capital of $25,000 does not seem to alter the situation. There is no limitation in the Act of Assembly as to the time of such increase.

I am, therefore, of opinion, that, in view of the authority given by the shareholders in the articles of association, the bank may, subject to the regulations of the Act of May 13, 1876, and its supplements, increase the capital stock to any amount not exceeding $50,000, when they may deem it expedient so to do, without resorting to the method pointed out, either by Section 4 of the Act of 1876,

or the Act of February 9, 1901, and that such increase may be made before the corporation actually begins business.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

CRIMINAL LAW.

Act of June 10, 1911 (P. L. 1060) re-sale of steamship tickets and acting as agent of an express company construed.

Office of the Attorney General,

Harrisburg, Pa., November 19, 1913.

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

Sir: I am in receipt of your letter of recent date, concerning the liability to prosecution, under the Private Bankers' Act of June 19, 1911, P. L. 1060, of an individual who "sells steamship tickets, and at the same time is an agent for an express company, and receives and sends money through the company."

The Act provides, Section 1:

> "No individual, partnership or unincorporated association shall hereafter *engage directly or indirectly* in the business of receiving deposits of money for safe keeping, or *for the purpose of transmission to another,* or for any other purpose," without a license, etc.

Certain exceptions, however, are enumerated in Section 8 of the Act, viz, inter alia, in case of

> "Any express company, or telegraph company receiving money for transmission, *provided such company is not engaged directly or indirectly in the sale of steamship tickets.*"

This, and the 6th exception enumerated in the said 8th Section of the Act, makes it manifest that the evil sought to be remedied by the Act was aggravated, in the view of the Legislature, in those cases in which the business of receiving deposits of money for safe keeping, or for the purpose of transmission to another, was carried on in conjunction with the sale of railroad or steamship tickets. Your letter does not set forth a concrete, but rather an abstract or hypothetical case, and I should much have preferred, in accordance with the rules of this Department, that you had asked my opinion

upon a concrete case in which the exact facts and circumstances were definitely stated. However, I gather from your letter that you are asking my opinion at the instance and in the language of a request made of you by one of the district attorneys of the State.

In reply, therefore, I beg to state that if, in the case supposed, the individual engaged in the sale of steamship tickets, also acts at the same time simply and solely as an agent for an express company, which is not engaged in the sale of steamship tickets, in the receipt of money for the company, and for transmission by the company to another, it may be doubted whether the individual acting as such agent technically violates the Act. And I may say, in passing, that it would be well to obtain a judicial determination of this question, in order to settle the construction of the Act in this regard.

If, however, as is fairly inferable from other parts of your letter to me, such dual plan or method of doing business by an individual is a scheme or subterfuge resorted to in order to defeat the purpose and object of the Act; as if, for instance, the facts and circumstances established that the individual was dealing with his own former customers or depositors; and in receiving and transmitting their money was, in truth, acting not as the agent of the express company, but instead using the express company as his agent for the transmission of such moneys, then, in my opinion, such individual would be guilty of a violation of the Act.

Indeed, the language above quoted in the request for my opinion may be construed as applying to either of the cases supposed; i. e., the case in which the individual is an agent of the company, and the case in which the company is an agent of the individual who "*receives* and sends money *through* the company."

Very truly yours,

JOHN C. BELL,
Attorney General.

CO-OPERATIVE BANKING ASSOCIATIONS.

A co-operative banking association incorporated under the Act of May 18, 1893, P. L. 89, is subject to the Usury Acts of May 23, 1878, P. L. 109, and May 28, 1858, P. L. 622, and, therefore, has no right to charge more than 6 per cent. per annum interest upon its loans.

Section 2 of the Co-operative Banking Association Act of May 18, 1893, P. L. 89, providing that a copy of the articles of association shall be "recorded in the office of the clerk of the county in which the office of the association shall be located," and, there being no such official in Pennsylvania, the safest rule is to record the articles in the office of the recorder of deeds, where articles of association of other corporations must be recorded under the Corporation Act of April 29, 1874, P. L. 73, and also in the office of the prothonotary or clerk of the courts of such county, where partnerships must be registered under section 13 of the Act of April 14, 1851, P. L. 612.

Office of the Attorney General,

Harrisburg, Pa., October 20, 1914.

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

Sir: This Department is in receipt of your letter of October 1, 1914, enclosing for its consideration a copy of a brief filed by A. E. Hurshman, Esq., Attorney for the Southwark Co-operative Banking Association of Philadelphia.

This brief considers two questions relative to co-operative banking associations incorporated under the Act of May 18, 1893, P. L. 89, concerning which you have heretofore asked the opinion of this Department.

The first question is whether such associations are permitted under the law to charge more than 6 per centum per annum interest for the loans which they make.

The Act of May 28, 1858, (P. L. 622), provides:

> "That the lawful rate of interest for the loan or use of money, in all cases where no express contract shall have been made for a less rate, shall be 6 per centum per annum."

By the Act of May 23, 1878, (P. L. 109) it was provided that

> "Hereafter every contract for the loan or advance of money, by banking corporations heretofore incorporated or hereafter to be incorporated under the laws of this Commonwealth; shall be subject to the provisions of an act, entitled 'An Act regulating the rate of interest,' approved May 28, 1858."

As was pointed out by Mr. Justice Trunkey, in *Lebanon National Bank vs. Karmany, 98 Pa. 65, 1881,* the Act of 1878 was not passed because banks had any right to charge usurious interest before the Act was passed, but because "it was well to remove any ground for said fictitious claims, and in doing so no validity or sanction was given those which were previously made."

In this case it is clearly and emphatically pointed out that under the laws of the State of Pennsylvania it is illegal for parties to contract for a greater rate of interest than 6 per cent.

That this policy of the State is to be rigidly observed is evidenced by the strictness with which the courts have held agreements, which were essentially usurious, to be unlawful, however carefully their usurious character may have been disguised. A striking instance is found in the case of *Thompson vs. Prettyman, 231 Pa. 1 (1911),* in which even the giving of a release was held not to prevent the recovery of a usurious charge.

In only one class of contracts has the prohibition against usury been lifted, and that is in the case of loans by building associations. The necessity for a direct legislative exemption of these associations was recognized, and it was provided by the Act of April 29, 1874, (P. L. 73), in Section 37, Clause 6 (at page 98):

> "No premiums, fines or interest on such premiums that may accrue to the said corporation according to the provisions of this Act shall be deemed usurious, and the same may be collected as debts of like amount are now by law collected in this Commonwealth."

Even in the case of building associations the courts required that loans should be made after open bidding, in strict compliance with the provisions of the building association act, in order that the building associations could take advantage of the exemption from the prohibition against usurious interest. An instance of that strictness is given in *Stoddart vs. Myers, 52 Super. 179, (1912).* The requirement of open bidding has now been removed by the Act of May 14, 1913, (P. L. 205), which provides:

> "No premium contracted for under this section with or without bidding shall be deemed usurious, although in excess of the legal rate of interest."

It is very likely that building associations were exempted from the usury law on account of the fact that they were entirely co-operative and that the high interest paid by the member as a borrower was likely to be greatly reduced by the profits from the high interest rates paid by others and which came to him as a stockholder.

It may be that co-operative banking associations incorporated under the Act of 1893 might have been exempted by the Legislature for a similar reason, although the purely co-operative features of a building association are not compulsory upon a co-operative banking association.

However that may be, the fact is that the Legislature did exempt building associations from the usury laws, and that it not only did not exempt "banking corporations," but specially provided by the Act of 1878 that all such heretofore or hereafter incorporated should be subject to the usury law.

And while it may be true that if such associations are properly conducted, the excessive interest charges may be returned to the borrowers in the form of dividends, yet this constitutes no warrant to exempt such associations from the plain language of the Act of 1878. Moreover, the operation of a co-operative banking association is not sufficiently similar to the relation between partners who contract with each other for a return upon their capital in excess of 6 per centum,

as to bring a borrower from a co-operative banking association within the rule laid down in the case of partners in such cases as *Duffy vs. Gilmore, 202 Pa. 444, 1902.*

Further, the co-operative banking act providing for the incorporation of co-operative banking associations expressly provides, as in the case of other corporations possessing banking and discounting privileges, that compliance must be had with the requirements of Section II, Article 16 of the Constitution. The Act further provides that "no such association shall commence business until the financial standing, responsibility and character of the original stockholders shall have been approved and certified by the superintendent of the Banking Department of the Commonwealth." Such co-operative banking associations are also made subject to the control of the Banking Department by Section I of the Act of February 11, 1895, creating the Banking Department, and defining its purpose and authority and designating what corporations shall be subject to supervision and exemption by the commissioner of said department.

In my opinion, therefore, as a result of what has been said a co-operative banking association incorporated under the Act of 1893 is subject to the provisions of the Acts of 1878 and 1858 above mentioned.

You are, therefore, specifically advised that a co-operative banking association has no right to charge interest at the rate of more than 6 per cent. per annum.

The second question is whether the articles of association of a co-operative banking association should be filed and recorded in the office of the Prothonotary of the Court in which the Association does business, or in the office of the recorder of deeds of said county.

The Act of 1893 provides in Section 2 that a copy of the articles "shall be filed and recorded in the office of the clerk of the county in which the office of the association shall be located, and the said clerk shall certify by his official signature and seal of his office that the said certified copy of said articles has been filed and recorded in his office."

There is no official in the counties of this State who is properly designated as the "clerk of the county." The use of those words in the Act engenders, that it was copied verbatim from the laws of some other state where the functions of such associations were better understood than they are in Pennsylvania.

Under the circumstances the safest rule for your department to adopt is to require recording in the office of the Recorder of Deeds of the county in which the office of the association is located, where the articles of association of other corporations must be recorded under the General Corporation Act of 1874, and also in the office of the

Prothonotary or Clerk of the Courts of such county, where partnerships must be registered under the Act of April 14, 1851, (P. L. 615), Section 13.

If either of these offices refuse to accept the articles of association for record, mandamus proceedings may be brought and a judicial interpretation obtained of the ambiguous language of the Act of 1893.

Very truly yours,

JOHN C. BELL,
Attorney General.

OPINIONS TO THE CHIEF OF DEPARTMENT OF MINES.

OPINIONS TO THE CHIEF OF DEPARTMENT OF MINES.

BORE HOLES IN MINES.

In the enforcement of Rule No. 18 of the General Rules of the Act of June 9, 1911, P. L. 756, a bore hole should be kept not less than three feet in advance of the face of the work.

Office of the Attorney General,

Harrisburg, Pa., September 9, 1913.

Hon. James Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of September 3rd, requesting an interpretation of Rule No. 18 of the Act of June 9, 1911, (P. L. 756), entitled:

> "An Act to provide for the health and safety of persons employed in and about the bituminous coal mines of Pennsylvania, and for the protection and preservation of property connected therewith."

Rule No. 18 of the General Rules, as printed at page 828 of the Pamphlet Laws, reads as follows:

> "In the cutting of clay veins, spars, or faults, entries or other narrow workings, going into the solid coal, in mines wherein explosive gas is generated in dangerous quantities, a bore hole shall be kept not less than three feet in advance of the face of the work, or three feet in advance of any shot hole drilled for a blast to be fired in."

This rule applies only to mines "wherein explosive gas is generated in dangerous quantities," the evident purpose of the advance bore holes therein referred to being the detection of the presence of explosive gas in time to prevent the liberation thereof in dangerous quantities in the course of mining operations.

It is to be inferred from the language of the rule that the workings in bituminous coal mines may be roughly classified as *wide* and *narrow* workings; rooms, for instance, belonging to the classification described as "wide workings," and entries belonging to the classification described as "narrow workings."

I assume from your inquiry that "clay veins, spars or faults" are encountered in both wide and narrow workings.

You ask to be advised whether, in the operation of mines to which the rule applies, a bore hole must be kept not less than three feet in advance of the face of the work, or three feet in advance of any shot hole drilled for the purpose of firing a blast, in every instance in which clay veins, spars or faults are encountered and are being cut through in the due course of mining operations, regardless of the location of such clay veins, spars or faults, in the mine workings.

A comparison of the language of Rule 18 in the said Act of 1911, with that of the similar rule, to wit, Rule 61, in the prior Act of 1893, throws some light upon the proper interpretation of the rule now under consideration. The similar rule in the Act of 1893 reads as follows:

> "In the cutting of clay veins, spars or faults in entries, or other narrow workings going into the solid coal in mines where explosive gases are generated in dangerous quantities, a bore hole shall be kept not less than three feet in advance of the face of the work, or in advance of any shot hole drilled for a blast to be fired therein."

Under the former rule the bore hole was to be kept in advance of the face of the work "in cutting of clay veins, spars or faults *in entries,* or other narrow workings going into the solid coal, etc.," whilst under the present rule the bore hole is to be kept in advance "in the cutting of clay veins, spars, or faults, entries or other narrow workings, going into the solid coal, etc."

It is clear that the advance bore hole was required under the old rule only in the cutting of those clay veins, spars or faults which were found in entries or other narrow workings, but the Legislature has seen fit to make a material modification of the language of the former rule in formulating the new rule.

The omission of the word "in" preceding the word "entries" is significant, and in my opinion broadens the scope and application of the rule in a material degree.

It is a fair inference that the Legislature intended to provide in the said Act of 1911 that the advance bore hole must be made in the cutting of *all* clay veins, spars or faults, wherever the same may be found, whether in entries or other narrow workings or in rooms or other wide workings.

In addition to providing for an advance bore hole whenever and wherever clay veins, spars or faults are about to be cut, the Legislature further provided in the rule under discussion that such advance bore hole should likewise be kept three feet in advance of the face of the work, or a like distance in advance of any shot hole, in

the cutting of "entries or other narrow workings," regardless of the presence or absence of clay veins, spars or faults in such entries or other narrow workings.

In my opinion the former rule provided for an advance bore hole only in the cutting of such clay veins, spars or faults as were located and encountered in entries or other narrow workings, but the new rule provides for such advance bore hole in the cutting of all clay veins, spars or faults wherever the same may be located, and also for such bore hole in the cutting of all entries or other narrow workings themselves.

You are accordingly advised that in the enforcement of Rule No. 18 of the General Rules of the said Act of 1911, which is applicable only to mines wherein explosive gas is generated in dangerous quantities, you should require a bore hole to be kept not less than three feet in advance of the face of the work or three feet in advance of any shot hole drilled for the firing of a blast, whenever a clay vein, spar or fault is about to be cut in any of the mine workings, and further that such bore hole be kept in advance of the face of the work or of a shot hole in the cutting of all entries or other narrow workings going into the solid coal.

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

REPORTS OF ACCIDENTS IN MINES.

In addition to reports of accidents in mines to the Department of Labor and Industry, reports must be made to the Department of Mines.

Office of the Attorney General,
Harrisburg, Pa., November 25, 1913.

Hon. James H. Roderick, Chief Department of Mines, Harrisburg, Pa.

Sir: Sometime ago you requested an opinion of this Department as to whether reports of accidents should be made to your Department, in view of the Act of July 19, 1913, (P. L. 843).

Section 1 of Article 13 of the Act of June 2, 1891, (P. L. 176), known as the Anthracite Mine Act, provides:

> "Whenever loss of life to a miner or other employe occurs in or about a mine or colliery, notice thereof shall be given promptly to the inspector of mines for the district in which the accident occurred, by the mine foreman or outside foreman or other person having immediate charge of the work at the time of the accident;

> and when death results from personal injury such notice shall be given promptly after the knowledge of the death comes to the said foreman or person in charge."

Section 2 provides:

> "Whenever loss of life occurs or whenever the lives of persons employed in a mine or at a colliery are in danger from any accident, the inspector of mines shall visit the scene of the accident as soon as possible thereafter and offer such suggestions, as in his judgment shall be necessary, to protect the lives and secure the safety of the persons employed," etc.

The Bituminous Mine Code, approved July 9, 1911, (P. L. 757), provides in Section 19, that:

> "The mine foreman shall, once each week, on blank forms provided for that purpose, report to the inspector all fatal and serious accidents that have occurred in or about the mines, giving the age, nationality, and occupation of the injured persons, together with facts as to the families or dependents affected."

The Act of June 2, 1913, (P. L. 396), created the Department of Labor and Industry, and provides for a comprehensive system of inspection of all rooms, buildings and other places throughout the State where labor is employed, and for securing statistics and information concerning, all of the industries and industrial conditions of the State.

The Act of July 19, 1913, (P. L. 843), in order to provide the machinery for securing the statistics and information, provides in Section 1 that within thirty days after the beginning of the disability of an employe because of any personal injury, caused by an accident occurring in the course of the employment, the employer, whether a person, firm or corporation, shall make report of such accident to the Department of Labor and Industry. This is a general act, applying to all kinds and classes of industries.

Section 4 of the Act provides:

> "No employer who has made the report required by this act shall be required to make any other or further report of such accident to any other department of the government of the Commonwealth."

A strict literal reading of this section would seem to repeal the provisions of the anthracite and bituminous laws above quoted, but it is a familiar rule that statutes must be interpreted according to their reason and spirit, and when the letter of the law conflicts with the reason and spirit, the strict literal interpretation must give way.

Moreover, statutes, if in pari materia, are to be harmonized and construed together, and hence a later act will not be held to repeal an earlier one, unless there be an irreconcilable repugnancy. And a special statute will not be construed as repealed by an earlier general one, but as an exception thereto, unless the language of the general statute expressly, or by necessary implication, requires such construction and permits of no other.

In *36 Cye, 1151,* the following is said on the subject:

> "Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view of giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

In *Whitmire v. Township of Muney Creek, 17 Superior Ct., 399,* President Judge Rice, said:

> "Before adopting any proposed construction of a passage susceptible of more than one meaning, it is important to consider the effects or consequences which would result from it, for they often point out the general meaning of the words. * * * * Several acts in pari materia, and relating to the same subject, are to be taken together and compared, in the construction of them, because they are considered as having one object in view, and as acting upon one system. * * * * Growing out of these rules is the presumption that the legislature does not intend to make any alteration in the law beyond what it explicitly declares either in express terms or by unmistakable implication; in other words, beyond the immediate scope and object of the statute. In all general matters beyond, the law remains undisturbed."

See further the opinion of the same judge in *Flemming v. Bush, 43 Superior Ct. 405; Ritter v. Wray, 45 Superior Ct. 440.*

Again, in *Commonwealth v. Crewl, 52 Superior Ct., 539,* that court, per Henderson, J., said:

> "An earlier statute is repealed only in those parts wherein it is clearly inconsistent and irreconcilable with later amendments. The antagonism must be so great as to convince the mind that the last enactment repealed the former. The objects of the two statutes are not the same, and if so both can stand, though they may refer to the same object."

And so, in *Jackson v. P. R. R., 228 Pa., 566,* the Supreme Court, per Potter, Justice, declares:

> "'Repeals by implication are not favored, and will not be indulged unless it is manifest that the legislature so intended:' 25 Am. & Eng. Ency. of Law, (2d ed.) 721. Chief Justice Sterrett said, in Com. v. De Camp, 177 Pa. 112, 'It is well settled that the leaning of all courts is strongly against repealing the positive provisions of a former statute by construction. There must be such a manifest and total repugnance that the two enactments cannot both stand. It is not enough that there is a discrepancy between different parts of a system of legislation on the same general subject; there must be a conflict between different acts on the same specific subject. An earlier statute is repealed only in these particulars wherein it is clearly inconsistent and irreconcilable with the later enactment.'"

These principles should be applied in determining the effect to be given to Section 4 of the Act of July 19, 1913, above quoted.

The Legislature of Pennsylvania has committed to the Department of Mines, through its Chief, and his subordinates, the complete supervision of the important mining industry of the Commonwealth. No other State official is charged with the duty of safeguarding life in and about the operation of the mines. So late as 1911 the Legislature adopted an elaborate code, covering 76 pages, for the regulation of mining in the Bituminous coal regions, in which reports of all accidents were required to be made to the Department of Mines, as above stated. And it will be recalled that an elaborate system for the government of the Anthracite mines had previously been made.

The purpose of the Anthracite and Bituminous Mine Laws requiring reports to be made to the inspectors of mines is to enable a prompt investigation looking to the safeguarding of human life, by the Department charged with the supervision of that particular industry.

The purpose of the Act of 1913 is different. It does not require immediate reports to the Department of Labor and Industry, but a report within thirty days after the beginning of disability, of an employee, and the essential purpose and object of such report is to enable the Department of Labor and Industry to carry out the provisions of the act creating such Department, with reference to the collection and preservation of statistics, and general information regarding industrial accidents and occupational diseases. Thus Section 11 of the act provides that the

> "Bureau of Statistics and Information shall collect, assert, public and systematize the details and general

> information regarding industrial and occupational diseases and the methods of preventing and remedying the same and of providing compensation therefor."

Manifestly, therefore, the purposes of these acts are not the same. The mining laws relate to that industry alone. The act requiring reports to be made to the Department of Labor and Industry, include every kind of industry or employment.

To hold that Section 4 above referred to repeals the provisions of the mining laws requiring notice of accidents in and about mines or collieries, to be given to the inspectors of mines for the proper district, would, in effect, be holding that the general law repealed the specific law, without express words or necessary implication. Such a ruling would be contrary to the principles and authorities above quoted.

Moreover, in the construction of this section or provision of the Act of July 19, 1913, reference may be had to other laws relating to the same subject, or having the same general purpose, passed not only at different sessions, but also at the same session, of the Legislature. *36 Cyo, 1147.*

The Act of July 26, 1913, (P. L. 1374) known as "The Public Service Company Law" was passed seven days after the act requiring the reports which we are construing. In the Public Service Company Law it is provided, in Section 1 of Article II, that:

> "It shall be the duty of every public service company
> * * * * * *
> (x) To give immediate notice to said commission of the happening of any accident in or about, or in connection with, the operation of its property, facilities or service, wherein any person shall have been killed or injured." etc.

This act also provides for the investigation of accidents occurring in the operation of such companies.

It is a familiar rule of construction that acts passed at the same session of the Legislature should receive a construction, if possible, which will give effect to each. This rule was stated in *White v. City of Meadville, 177 Pa. 643, 651,* as follows:

> "Statutes enacted at the same session of the legislature should receive a construction, if possible, which will give effect to each. They are within the reason of the rule governing the construction of statutes in pari materia. Each is supposed to speak the mind of the same legislature, and the words used in each should be qualified and restricted, if necessary, in their construction and effect, so as to give validity and effect to every other act passed at the same session."

It would do violence to probability and is not reasonable to suppose that the Legislature intended, by the Public Service Company Law of July 26, 1913, to repeal pro tanto, the provisions of the Act of July 19, 1913, requiring reports of all accidents made to the Department of Labor and Industry, so far as it related to public service companies, because, without such reports, the Bureau of Statistics and Information of the Department of Labor and Industry, would not have complete statistics to carry out the provisions for which the bureau was created.

It may be added, that it is not unlikely that the real intent of the Legislature, as expressed in the said Section 4 of the Act of July 19, 1913, was to relieve employers generally from any obligation to make reports of accidents for statistical purposes to the Bureau of Industrial Statistics of the Department of the Secretary of Internal Affairs, under the various acts relating to such reports, and the rules and regulations in reference thereto, in force, or which might, thereafter, be adopted by that Department.

In my opinion, therefore, it results from what has been said, that the 4th section of the Act of July 19, 1913, does not repeal the several provisions in the Acts of Assembly above referred to, requiring reports of accidents in mines to be made to the Department of Mines, but that all persons, firms or corporations, employing labor, including persons, firms and corporations engaged in mining, are required to make reports to the Department of Labor and Industry, as provided by Section 1 of the Act of July 19, 1913.

That is to say, specifically answering your inquiry, I am of opinion that persons, firms or corporations, operating mines, are required to make reports both to the Department of Labor and Industry, as required by the Act of July 19, 1913, and also to the Department of Mines, as required by the acts hereinbefore referred to.

Very truly yours,

JOHN C. BELL,
Attorney General.

MINERS.

The word "miner" as used in the Mine Code is defined.

Office of the Attorney General,

Harrisburg, Pa., April 2, 1914.

Hon. James B. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: This department is in receipt of your letter of March 23rd, 1914, enclosing a copy of a letter addressed to you by the Secretary

of the Mine Inspectors meeting recently held at Scranton, directing attention to the action taken by certain executive boards of the United Mine Workers of America, and asking to be advised whether the action thus taken is within the contemplation of the mine laws applicable to the anthracite region.

The action referred to was the adoption of a resolution instructing the district officers to petition the Mine Foremen's and Assistant Mine Foremen's Examining Boards to adopt the following rule:

> "That all candidates for Mine Foremen and Assistants certificates be compelled to give satisfactory evidence, backed up with an affidavit to the effect that they are practical miners, had cut coal and worked at the face for five (5) years, and have had experience with gas."

The qualification required by law to be possessed by applicants for examination for certificates as mine foremen or for certificates as assistant mine foremen are prescribed by Section 2 of Article VIII of the Act of June 2, 1891, (P. L. 190). This section provides that such certificates may be issued to

> "Every applicant who may be reported by the examiners * * * * as having passed a satisfactory examination and as having given satisfactory evidence of at least five years practical experience as a miner, and of good conduct, capability and sobriety."

The question whether the word "miner," as used in this law, is to be limited in its application to persons who have had experience in cutting coal, and working at the face for five years, or should be interpreted to include laborers, loaders, starters, roadmen, repairmen and others who work at general work in the mines, but do not actually cut coal, was submitted to this department in 1895, and in reply to that inquiry, the then Deputy Attorney General John P. Elkin, now a Justice of the Supreme Court of Pennsylvania, wrote an opinion, under date of October 24, 1895, reported in 4 District Reports 665, from which opinion the following is quoted:

> "This department is in receipt of your communication of recent date, asking whether the word 'miner' as used in article VIII, Section 2 of the anthracite mining law, approved June 2, 1891, (P. L. 176), is to be confined in its application to the person who actually mines and cuts the coal, or whether it may include laborers, loaders, starters, roadmen, repairmen and others who work in the mines but do not actually cut coal.
>
> The section above referred to provides for the granting of certificates of qualification by the Secretary of Internal Affairs, to mine foremen and assistant mine foremen who have passed a satisfactory examination before the board of examiners, and who have had five years

practical experience as miners. The question your inquiry raises is, what constitutes 'practical experience as a miner' within the meaning of the law; or, in other words, does the above phrase require actual experience in cutting or digging coal.

Webster defines the word 'mines' as 'one who mines; a digger for metals and other minerals.' I do not understand that a miner must necessarily be a digger *of* minerals. The definition is satisfied if he is a digger *for* minerals. A person might be a long time digger *for* minerals, and yet never actually mine them. Then, again, Article XVIII of the act hereinbefore mentioned under the head of 'definition of terms,' contains the following, to wit: 'the term, 'mine' includes all underground workings and excavations and shafts, tunnels and other ways and openings; also all such shafts, slopes, tunnels and other openings in course of being sunk or driven, together with all roads, appliances, machinery and materials connected with the same below the surface."

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

The opinion of Judge Elkin is reaffirmed and adopted as my reply to your present inquiry.

The conclusion thus reached is in harmony with the provisions of the Bituminous Mine Code of June 9, 1911, (P. L. 756), which in Section 4 of Article XXIV thereof, at page 819, prescribes the qualifications for examination for a certificate as mine foremen or assistant mine foremen in the following language:

"Applicants for certificates of qualification as mine foremen and assistant mine foremen shall be citizens of the United States, of good moral character and of known temperate habits, at least twenty-three years of age, and shall have had at least five years practical experience, after sixteen years of age, as minors or mining engineers, or men of general work inside of the mines of Pennsylvania."

Very truly yours,

JOHN C. BELL,
Attorney General.

OPINIONS TO THE COMMISSIONER OF HEALTH.

OPINIONS TO THE COMMISSIONER OF HEALTH.

APPROPRIATIONS—UNEXPENDED BALANCE.

The appropriation of April 27, 1905, (P. L. 317), has not lapsed—but cannot now be applied to the reimbursement of the general fund of the Health Department, without authorization thereof by the Governor.

Office of the Attorney General,

Harrisburg, Pa., May 8th, 1913.

Hon. Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of April 24th, 1913, stating in substance that by reason of the unusual demands upon the general fund of the Department of Health occasioned by the disaster at Austin, and the Medical inspection in the public schools, require by the School Code, for which no special appropriation was made in 1911, you will not have enough money in said fund to pay the ordinary expenses of your Department until the first of June, 1913, and asking to be advised whether any part of the unexpended balance of $24,258.93, appropriated by the Act of April 27th, 1905, (P. L. 317), entitled:

> "An Act to establish an emergency fund, to be used, as occasion may require, in the suppression of epidemics, in the prevention of disease, and protection of human life in times of epidemic disease or of disaster threatening disease, and making an appropriation therefor,"

can legally be used to supply said deficiency in your general fund in so far as said deficiency was occasioned by the Austin disaster.

By the provisions of said Act of 1905 the sum of fifty thousand ($50,000.00) dollars was specifically appropriated "for the purpose of creating an *emergency fund,* to be used, as occasion may require, by the State Board of Health in the suppression of epidemics, prevention of disease, and protection of human life in times of epidemic, disease or disaster threatening disease, beyond the ability of the local authorities to check or to relieve," and a method for determining the amount and object of any expenditure was prescribed.

You state in your letter that subsequent to the approval of said Act of 1905, and prior to the 31st of May, 1907, there was expended out of said fund, in accordance with the provisions of the act, the sum of $25,741.07, leaving an unexpected balance of said appropriation of $24,258.93, which balance still remains in the State Treasury.

The first question arising under your inquiry is whether this unexpended balance lapsed or merged into the general fund in the State Treasury on May 31st, 1907, or whether it is still available for such expenditures as are contemplated by the Act making the appropriation.

It has been consistently held by this Department for many years that Acts of Assembly making appropriations for the erection of buildings, monuments, etc., contemplate prompt and diligent action on the part of those entrusted with the expenditure of the appropriations, and that such appropriations should not be held to be valid for an indefinite period. It has accordingly been held that where an appropriation is made for the purchase of a site, and the erection of a building or monument thereon, the ground must be purchased and contracts awarded for the erection of the contemplated structure thereon within the usual appropriation period of two years. The precedents, therefore, seem to hold that although no time may be fixed by the Act making the appropriation within which it must be expended, the appropriation will be deemed to have lapsed into the general fund in the State Treasury at the end of the two fiscal years succeeding the making of the appropriation, unless contracts for its expenditure have been entered into prior to that time. This rule is at least applicable to appropriations which contemplate the erection of completed structures and to appropriations made for the maintenance of institution.

There is, however, no inflexible rule governing the matter, and where a legislative intent to the contrary is apparent the rule has no application. Where, for instance, a great public work which requires more than two years for its completion is undertaken, and an appropriation is made for the purpose of commencing the erection of buildings, etc., and there is nothing in the language of the act making the appropriation which places any limit on the time within which the moneys appropriated must be expended it has been held that an unexpended balance of an appropriation of this character does not lapse at the end of the two-year period, but will be taken into consideration by the Legislature in making further appropriations, for the carrying on and completion of the work undertaken.

> Opinion of Attorney General Todd, dated June 15th, 1908, Official Opinions of the Attorney General, 1907-1908.

It is, therefore, apparent that each appropriation act must be con-

sidered by itself, and should be examined in the light of its legislative history, the circumstances which occasioned its passage, and the purpose of the expenditure.

The Act in question contains no express provision to the effect that any balance remaining unexpended on the thirty-first of May, 1907, should revert to the general fund in the State Treasury. This Act is by no means the first legislative enactment of its kind. The Act of June 2nd, 1893, (P. L. 254), was identical in language with the Act now under consideration.

On June 3rd, 1895, a similar statute, (P. L. 470), was enacted, but it was expressly provided in this act that any unexpended balance of the moneys appropriated by it or by the above mentioned Act of 1893 should revert to the State Treasury, and become a part of the general fund therein at the close of the two fiscal years succeeding the approval of each of said acts.

At the Session of 1897 the fund was re-established by the Act of July 22nd, 1897, (P. L. 316), and a like provision for the merging of any unexpended balance at the end of the two fiscal years was inserted in the said Act of 1897.

At the Sessions of 1899 and 1901 no appropriations of this character were made.

At the annual meeting of the State Medical Society of Pennsylvania, held September 16th to 18th, 1902, a resolution was adopted requesting the Legislature to re-establish the emergency fund in the sum of fifty thousand ($50,000.00) dollars, to remain in the Treasury until exhausted, and at the Legislative session of 1905 such appropriation was made by the Act of May 15th, 1903, (P. L. 427). In this Act of 1903 no express provision with reference to the merging of any unexpended balance was inserted. During the two fiscal years succeeding the approval of the Act of 1903 the fund was exhausted, and at the Legislative session of 1905 a similar appropriation was made by the above mentioned Act of April 22nd, 1905, (P. L. 317).

There is no express legislative provision either in said Act of 1905, or in any subsequent act to the effect that the unexpended balance above mentioned of $24,258.93 shall revert to the general fund in the State Treasury, and in endeavoring to ascertain the legislative intent with regard to this matter the omission from the Acts of 1903 and 1905 of the provision for the reversion which was inserted in the similar Acts of 1895 and 1897 should be given due weight.

The appropriation is made to the State Board of Health, but by Section 14 of the Act of April 27th, 1905, (P. L. 312), creating a Department of Health and defining its powers and duties it is provided that the Commissioner of Health in addition to the powers expressly conferred by that Act shall have all the powers conferred

and perform all the duties heretofore imposed by law upon the State Board of Health or any member, committee, or officer thereof, including the Secretary.

You are, therefore, advised that in the opinion of this Department the appropriation made by said Act of 1905 should be considered as an exception to the general rule above indicated, and that the unexpended balance thereof has not merged into the general fund in the State Treasury.

It does not follow, however, from this conclusion that any part of this unexpended balance can be used for the purpose indicated in your communication, to wit, the partial reimbursement of the general fund appropriated to your Department by the general appropriation bill of 1911, on account of the expenditures heretofore made out of said general fund in connection with the Austin disaster.

By the express terms of said Act of 1905, it is provided that:

> "The money herein appropriated shall be held in the Treasury of the Commonwealth, and whenever the Secretary of the State Board of Health shall find that the public health is threatened, either by epidemic or as a result of great disaster, to such an extent that the local authorities are unable to meet the emergency, he shall prepare a statement to that effect, rehearsing all the facts in the case, and the reason for considering that State aid is needed, and to what amount, and transmit the same to the Governor. If the statement and the reasons therein set forth shall meet with the approval of the Governor, he shall certify and file the statement and certificate of approval in the office of the Auditor General, who shall then draw his warrant upon the State Treasurer for the amount approved by the Governor, and place the same in the hands of the treasurer of the State Board of Health, to be used for the purpose set forth in the statement, approved as aforesaid, and for no other purpose. If, after the said epidemic shall have been suppressed, or the sickness or danger averted, there shall still be a balance of the amount drawn left in the hands of the treasurer of the State Board of Health, he shall, without delay, return the same to the State Treasurer, and it shall become part of the said emergency fund. He shall also file with the Auditor General a specifically itemized statement, made under oath, of the expenditures of said moneys, as soon as possible."

Under the express terms of the Act no expenditures can be made out of the appropriation except upon the certificate of approval of the Governor based upon the statement of the Commissioner of Health that in his opinion an emergency has arisen threatening the public health, either by epidemic or as a result of great disaster, to such an extent that the local authorities are unable to meet the emergency.

The Commissioner of Health and the Governor must be confronted with the emergency at the time the expenditure is authorized. If the procedure prescribed by this Act had been followed at the time of the Austin disaster the unexpended balance now under consideration would, in the opinion of this Department have been available, but we cannot see how said balance could now legally be applied to the reimbursement of the general fund, nor in my opinion can any part of this balance be used to defray the ordinary expenses of your Department. The fund is an emergency fund, and is to be expended only under the conditions prescribed in the Act creating it.

If, and when an emergency such as is contemplated by the Act arises you would be legally warranted in preparing and submitting to the Governor the statement provided for in the Act, and if the statement and reasons therein set forth meet with the approval of the Governor he may legally authorize the expenditure of any part or all of said unexpended balance.

Very truly yours,

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

FEES PORT OF PHILADELPHIA.

The Health Officer of the Port of Philadelphia is advised as to the fees to be paid by arriving and departing vessels.

Office of the Attorney General,

Harrisburg, Pa., May 11, 1914.

Mr. Charles H. Houstis, Health Officer, 617 City Hall, Philadelphia, Pa.

Sir: This Department is in receipt of your communication of April 29th and May 4th, 1914, inquiring as to the fees chargeable by you as Health Officer of the Port of Philadelphia, under the provisions of Section 6 of the Act of June 5, 1893, (P. L. 293), entitled:

> "A supplement to an act entitled 'An act to establish a health office and to secure the city and port of Philadelphia from the introduction of pestilential and contagious diseases, and for other purposes,' approved January 29, 1818," etc.

That part of Section 6 which is relevant to your inquiry, reads as follows:

> "On receiving from the captain or master of any vessel the certificate of health, as directed by this act, or upon making and filing the affidavit as to the health of the vessel herein required, such captain or master shall pay to the health officer, or the person in charge of said quarantine office, a fee according to the following rates: Any steam vessel arriving from a foreign port shall pay the sum of ten dollars; any sailing vessel arriving from a foreign port shall pay the sum of five dollars; and any coasting vessel, sail or steam, arriving from a port south of St. Mary river, shall pay the sum of two dollars and a half. No fee shall be collected from vessels other than specified."

1. Your first question is as to the fees which will be chargeable to vessels departing from ports on the western coast of the United States north of the latitude of the St. Mary river, and coming to Philadelphia by way of the Panama Canal,

(a) When such vessels stop at Canal ports, and

(b) When such vessels pass through the Canal without stopping except as required for inspection by the Health authorities.

(a) A vessel which does not make any stop between the port of departure on the western coast of the United States, and the port of Philadelphia, except such as the quarantine regulations of the Canal Zone may require, should be regarded as a "coasting vessel," and if the port of departure be north of the latitude of the St. Mary river, it could not be said to have arrived "from a foreign port south of St. Mary River," and therefore no fee should be collected from it. The fact that in the course of its voyage the vessel reached a point south of the latitude of the St. Mary river would make no difference.

(b) A vessel which does make a stop or stops within the Canal Zone, either to take on or leave off passengers or freight, should be said to arrive at Philadelphia from the last Canal Zone port at which it stops.

This is in accordance with the provisions of the Act of 29 January 1818, (P. L. 28), which still is in full force except as amended by the Act of 1893, and which, up to the passage of the Act of 1893, governed the question of fees.

Section 2 of that act provides, in part:

> "All American vessels from any port in the United States, where they may have touched or traded from a foreign port or place, shall pay the same sum as if they had arrived direct from such port or place."

Assuming that such a vessel is to be considered as having arrived at Philadelphia from the last port at which it stopped in the Canal Zone, the question remains whether it comes within the classification of a "steam vessel arriving from a foreign port," or a "coasting vessel, sail or steam, arriving from a port south of St. Mary river."

The answer to this inquiry necessarily depends upon whether the ports in the Canal Zone are to be considered foreign ports, or ports entitled to the benefits of the laws governing the coasting trade of the United States.

When Alaska and Hawaii became territories, and when Porto Rico and the Philippines were annexed, Congress passed laws expressly bringing their ports within the jurisdiction of the laws governing the coasting trade of the United States, and thereby made their ports, for the purpose of maritime trade, domestic, as distinguished from foreign ports, (See Huus vs. New York and Central Steamship Company, 182 U. S. 392, 1900).

In the case of the Canal Zone there has been no such legislation, and for purposes of maritime trade the ports of the Canal Zone are foreign ports.

A vessel arriving from a canal zone port, therefore, may be said to arrive from "a foreign port." At the same time it may be a "coasting vessel" because the Act of Congress of May 27, 1848, Chapter 40, U. S. Comp. Statutes, page 2036, provided:

> "Any vessel being duly registered, in pursuance of the laws of the United States, may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching one or more foreign ports during the voyage, and land, and take in thereat merchandise, passengers and their baggage, and letters and mails."
>
> (For a discussion of this Act see Anderson vs. Pacific Coast Steamship Co. 225 U. S. 187, 1911).

Under the provisions of this Act a coasting vessel may touch at foreign ports, if it be duly registered. A vessel so registered should be considered a "coasting vessel, sail or steam, arriving from a port south of St. Mary river," and should be charged a fee of $2.50, even though the port from which it arrives be a port in the Canal Zone, and therefore a foreign port. A vessel not entitled to the privileges of the Act of 1848 should not be considered a coasting vessel and should be charged a fee of ten dollars as a vessel "arriving from a foreign port."

2. Your second question is as to the fees which will be chargeable where vessels departing from a port on the western coast of the United States touch at Mexican or Central American ports before entering the Panama Canal.

The answer to this question is the same as the answer to your first question, viz., that where such vessels are entitled to the privileges of the Act of 1848, their stoppage at a foreign port for the purposes mentioned in the Act of 1848, does not change their character as coasting vessels, and they, therefore, should pay only the fee

of $2.50. If the vessels are not entitled to the benefits of the Act of 1848, they should be charged ten dollars as vessels arriving from foreign ports.

3. Your third question is as to the fees which will be chargeable where freight is landed on the Pacific side of the Panama Canal, brought across the isthmus by the Panama Railroad to a Canal Zone port on the Atlantic side of the canal, and thence brought to Philadelphia by vessel.

For the reasons heretofore given, if the vessel bringing the cargo from the Canal Zone port to Philadelphia has the privilege of touching at foreign ports, under the Act of 1848, it is to be considered as a coasting vessel and to be charged $2.50, otherwise it is to be considered as a vessel arriving from a foreign port and charged ten dollars.

Trusting that this answers your inquiries, I remain,

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

OPINION TO THE STATE HIGHWAY COMMISSIONER.

UNEXPENDED BALANCE APPROPRIATION.

The appropriation to pay 50 per cent. of the total amount of road tax collected by the several townships does not lapse on June 1st, 1913.

Office of the Attorney General,

Harrisburg, Pa., May 29th, 1913.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: In your letter of the 29th ultimo, you inquire whether the balance of the total appropriation made by the 17th section of the Act of June 14, 1911, (P. L. 942), for the purpose of carrying out the provisions of that act, is available for payment for such purpose after June 1st, 1913.

Said Section 17 reads as follows:

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

The amount of this appropriation was reduced by the Governor, in approving the Act, as follows:

> "Approved the fourteenth day of June, A. D., 1911, in the sum of $500,000. I withhold my approval from the remainder of said appropriation because of insufficient State revenue."

The determination of the question whether or not an appropriation lapses at the end of the fiscal period designated in the act depends, like all other questions of statutory construction, upon the intent of the Legislature,—the intent of the law, as expressed in the language of the act, being the law itself.

To ascertain this intention, the language of the act in its entirety must be considered with reference to the specific subject matter dealt with therein. Section 2 of this act authorizes townships of the sec-

ond class to levy a road tax which shall not exceed ten mills on each dollar of valuation, the said valuation to be the last adjusted valuation for county purposes, provided that a greater rate than ten mills and not to exceed ten additional mills, may be levied by order of the court of quarter sessions of the peace of that county, upon petition of the board of supervisors, with their unanimous recommendation and upon due cause shown, and that the said road tax shall be collected in cash. The section then goes on to provide that:

> "Each township shall receive annually from the State fifty per centum of the total amount of road tax collected by such township, as shown by the sworn statement of the board of township supervisors contained in the annual report furnished to the State Highway Commissioner on or before the first day of January in each year, as hereinafter provided for."

This section then provides that the money appropriated by the Commonwealth to pay each of said townships fifty per centum of the road tax so collected:

> "shall be expended by the supervisors of the respective townships for the making of permanent improvements on the township roads, according to plans and specifications furnished by the State Highway Department, and under the supervision of the said State Highway Department, such supervision to be without cost to the township, etc."

Section 10 provides that:

> "The board of supervisors of the several townships shall annually, on or before the first day of January in each and every year, make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner of the whole amount of tax levied during the preceding year for road purposes, and the total amount of road taxes collected during the year."

I am of opinion that fifty per centum of the total amount of road tax collected by the several townships, as shown in the said annual reports made by the township supervisors, during the two fiscal years beginning the first day of June, 1911, in accordance with the provisions of the act, and yet remaining unpaid, may be paid out of the balance of the said appropriation now remaining in the treasury, even after the first day of June, 1913, and that said appropriation does not lapse upon said last mentioned date as to any townships that have complied with the provisions of the act with regard to the making of their said reports within the time specified during the

said two fiscal years. These payments are, however, to be made out of the balance of said appropriated money as soon as reasonably practicable.

Very truly yours,

WM. N. TRINKLE,
Third Deputy Attorney General.

WAGES AND HOURS OF LABOR OF EMPLOYES.

The State Highway Commissioner is advised as to the payment of wages and hours of labor of employes working on the State Highways.

Office of the Attorney General,

Harrisburg, Pa., September 17, 1913.

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your communication under date of August 28th, enclosing copy of a letter addressed to your Department by George H. Martin, of Youngstown, Pa., complaining that your Department has been violating the laws of this Commonwealth relative to hours of labor and the time of payment of wages in that mechanics, working men and laborers in the employ of your Department and of contractors contracting with the Commonwealth for the construction and repair of highways have been worked ten hours a day, and in that your Department has not paid its employes the wages due them semi-monthly. In your communication you state that all laborers and teams hired directly by your Department are hired by the hour and that it is optional with any mechanic, workingman or laborer employed by your Department to quit work each day after working eight hours or to continue to work longer if such employe so desires.

You also state that, in the matter of the payment of wages, your superintendents make up the pay-rolls semi-monthly and forward them to your Department, but that owing to unavoidable congestion in the Departments of the Auditor General and State Treasurer it is not possible for the employes actually to receive the wages due them semi-monthly. In his letter the complainant refers to the Act of 1893, with reference to hours of labor, and to the Act of April 24, 1913, with reference to the payment of wages. You ask to be advised whether your Department is, under the facts above stated, violating the laws of the State.

In reply permit me to say that the complainant evidently intended to refer to the Act of July 26, 1897 (P. L. 418), as the present law governing the hours of labor. This Act is entitled: "An Act to regulate the hours of labor of mechanics, workingmen and laborers in the employ of the State or municipal corporations therein or otherwise engaged in public works." In substance the act provides that eight hours out of the twenty-four of each day shall make and constitute a regular day's work for mechanics, workingmen and laborers in the employ of the State, or any municipal corporation therein, or otherwise engaged in public works, whether such employes are employed directly by a Department of the State Government or a municipality, or by persons contracting with the State or with a municipal corporation for the performance of public works.

A violation of the act by an officer or agent of the State or of any municipal corporation, or by any person employing the employes described in said act on public work, it is provided, shall constitute a misdemeanor punishable by a fine not exceeding one thousand dollars.

If this act were in full force and effect the question raised by your request would require serious consideration, and it would probably be held that the mere fact that the employment is by the hour rather than by the day is immaterial, as the evident purpose of the act is to provide that no mechanic, workingman or laborer in the employments described in the act, shall work more than eight hours out of the twenty-four in each day.

It is unnecessary, however, to decide this question, because the Supreme Court of this State, in the case of *Commonwealth vs. Casey*, 231 Pa., 170, held that the said Act of July 26, 1897, is unconstitutional, because it contravenes Article III, Section 7, of the Constitution of this State, providing that "The General Assembly shall not pass any local or special law.....regulating labor, trade, mining or manufacturing." In the course of the opinion it is pointed out that this act is not an attempt by general law to regulate the hours of labor throughout the State, but is an attempt to regulate the hours of labor in the construction of public works, so distinguished from private enterprises of like character, and is therefore special legislation with regard to a subject which can be legislated upon only by general law. It is further stated that the attempted classification by including all the municipalities in the State is futile, because it is not based upon a substantial difference in conditions, inasmuch as there is no difference between municipal corporations and private corporations which would make a regulation as to the number of hours of employment in a day suitable for one class unsuitable for the other. You are accordingly advised upon this branch of your inquiry that the present practice of your Department does not violate any Act of Assembly now in force in this Commonwealth.

In the matter of the time of the payment of wages, it is provided by the Act of April 24, 1913, in substance, that, *unless otherwise stipulated in the contract of hiring,* each person, firm or corporation employing any person, other than at an annual salary, shall pay to such person his or her earnings or wages semi-monthly, the first payment to be made between the first and fifteenth day of each month, and the second to be made between the fifteenth and the last day of each month. Assuming for the present that this Act applies to a Department of the State Government, as well as to persons, firms or corporations contracting with such Department, which assumption, however, is subject to grave doubt, it is to be noted that the act applies only in cases where there is no stipulation to the contrary in the contract of hiring. Your Department is, therefore, at liberty to make any contract which it and its employes are willing to enter into with relation to the time of payment of their wages and earnings. By availing yourself of the right to stipulate in the contract of hiring when and how wages shall be paid, any question with reference to the violation of said Act of April 24, 1913, can readily be avoided.

Very truly yours,

JOHN C. BELL,
Attorney General.

HIGHWAYS.

The Act of June 30, 1885, P. L. 251, regulating the movement of machinery propelled by steam upon the highways, and the Act of July 7, 1913, P. L. 672, relating to and regulating motor-vehicles and providing for registration and license thereof, are not inconsistent, and compliance with both acts is necessary.

Steam traction engines cannot be operated upon the highways, under the Act of June 30, 1885, P. L. 251, without a license under section 6 of the Act of July 7, 1913, P. L. 672, subject to the rules and requirements to be established by the Highway Commissioner.

Office of the Attorney General,

Harrisburg, Pa., Sept. 23, 1913.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your letter of Sept. 12th, asking whether Act No. 385, of July 7, 1913, referring to motor vehicles, repeals the Act of June 30, 1885 (P. L. 251), relating to the moving of steam machinery on public roads.

The said Act of 1885 granted the restrictive right to transport steam machinery over public highways, and, as decided in Commonwealth vs. Allen, 148 Pa., 358, was not intended to license the unrestricted use of steam machinery upon the public highways of the Commonwealth.

Act No. 385, of July 7, 1913, is an Act relating to and regulating motor vehicles, and Section 2 provides that the term "motor vehicles" shall apply to all wheeled vehicles operated or propelled by any form of engine, motor or mechanical power, including traction engines. Section 6 of the Act, quoted by you, places the control of the use of traction engines in your Department, and provides in what cases you may issue "special licenses" for such use, and further fixes the fees for registration of such traction engines.

I take it the real intent and purpose of your inquiry is to be advised whether steam traction engines may be operated upon the highways of the Commonwealth under the provisions of the said Act of 1885 without a license from you. I answer that this may not be done. I am further of the opinion, however, that the provisions of the Act of 1885, regulating the movement of traction engines over public highways, in the interest of the safety of persons traveling in vehicles or in charge of teams along such highways, still stands and is in full force and effect. In a word, the two Acts are not inconsistent, and compliance with both is necessary.

I may add that the Act of 1913 further provides that the issuing of special licenses shall be "subject to the rules and requirements to be established by the Highway Commissioner, as provided by law," and that "any violation of such rules shall constitute a sufficient cause for the revocation of such special permit." The Highway Commissioner will, therefore, of course, duly adopt and promulgate such rules.

Very truly yours,

JOHN C. BELL,
Attorney General.

ROAD—BALLY BOROUGH.

The creation of the Borough of Bally transfers to the borough authorities jurisdiction over the road running through the borough, and they have the right to change the grade thereof.

Office of the Attorney General,

Harrisburg, Pa., September 24th, 1913.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of September 5th, 1913, relative to the status of a road or street in Bally, Berks County, Pennsylvania.

Replying I beg to advise you that the creation of the village of Bally into a borough transferred to the borough jurisdiction over the road, subject only to the same exceptions to which a borough created prior to the passage of the Act of May 31, 1911, would have had jurisdiction of the road. In other words, whether the borough came into existence before the Act was passed or after the Act was passed, is immaterial.

In either case under Section 10 of the Act of May 31, 1911, the status of the road is the same, namely, the State Highway Commissioner, if he believes that the road should be taken over by the State Highway Department, in order to prevent an unimproved gap, may take it over and improve or reconstruct it according to the standards of his Department "by and with the consent of the borough," at the expense of the State.

If, however, the road was a State-aid highway, as in the case mentioned by you, one-half of the cost of maintaining it (or if it were constructed of bricks or other permanent paving material, the entire cost of maintaining it) is imposed by the same section of the Act upon the borough. In this connection I refer you to the opinion of the Attorney General of September 11, 1912, In re Cost of Maintaining State-aid Highways.

I, therefore, answer your question "is this road or highway under the jurisdiction and care of the borough authorities or must the State Highway Department still maintain said road" by saying that the road is under jurisdiction and care of the borough authorities, and the utmost liability of the State Highway Department is for the payment of one-half of the cost of maintenance if the road was not constructed of bricks or other permanent paving material.

This conclusion necessarily leads to an affirmative answer to the question "have the borough authorities the right to change or alter the grade of said road or highway without the consent of the State Highway Department?"

The foregoing construction prevents the anomaly of the control by the State authorities of a street entirely within a borough or city, and leaves to the boroughs the exercise of the powers specifically given them by the Act of May 24, 1901, Section 1, (P. L. 299), "to regulate the roads, streets, lanes, alleys.....and the heights, grades, widths, slopes and forms thereof, and they shall have all other needful jurisdiction over the same."

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

ROADS.

The Highway Commissioner is advised he may obtain an injunction to obtain the removal of poles unlawfully placed on a highway by a traction company.

Office of the Attorney General,

Harrisburg, Pa., December 2, 1913.

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your letter of November 21st, 1913, enclosing the correspondence with the Central Pennsylvania Traction Company, and printed copy of regulations adopted by your Department, governing the erection of poles and the laying of conduits and pipes upon, or in, State highways or State-aid highways.

It appears from the correspondence that the Central Pennsylvania Traction Company desired to raise its tracks where the same run along State Highway No. 140; that permission was requested by the President of that company from your Department to raise the tracks; that you advised him that it was necessary that an agreement be signed and a permit given before the work could be done; that an agreement was prepared by your Department and submitted to the railway company, which objected to certain provisions thereof, and that before the form of the agreement had been agreed upon, the company, without any agreement or permit, proceeded to relay their ties and rails.

It is not clear from the correspondence whether the railway is upon the State highway, or only parallel with it, nor is it clear whether, in addition to laying tracks and ties, the railway company has erected poles.

Assuming that the railway has been laid within the lines of the State highway, I think that it was illegal for the railway company to have gone ahead with the work without your permission, whether the work included the erection of poles concerning which your Department has general regulations, or only the laying of tracks concerning which your Department has no general regulations.

Section 6 of the State Highway Act of May 31, 1911, (P. L. 468), provides that the roads which are therein designated as State highways "shall be under the exclusive authority and jurisdiction of the State Highway Department," and Section 17 of the same Act provides that "no railroad or street railway shall hereafter be constructed upon any State highway * * * except under such conditions, restrictions and regulations as may be prescribed by the State Highway Department."

The action of the traction company being illegal, the proper method of procedure is to apply for a mandatory injunction, praying for the removal of the tracks on the ground that they constitute a nuisance. (See Attorney General vs. Lombard and South Street Passenger Railway Co. 1 Weekly Notes of Cases, 488, 1874). I advise that such proceedings be instituted forthwith.

Very truly yours,

JOHN C. BELL,
Attorney General.

SUPERVISORS REPORTS.

The report of township supervisors for the year ending January 1, 1914, should be made by the board which took charge of affairs on the first Monday of December, 1913, and may be signed or made by the chairman thereof.

Office of the Attorney General,
Harrisburg, Pa., January 13, 1914.

Hon. Joseph W. Hunter, Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of January 8, 1914, inquiring whether the members of the Board of Township Supervisors whose term expired the first Monday in December, 1913, or the members of the Board of Supervisors who took charge of affairs on that date, are to sign the annual report which should be made on or before January 1st, 1914, to the State Highway Commissioner, by Township Supervisors, in townships of the second class.

The Act of 22nd July, 1913, (P. L. 915), provides, Section 21:

> "The Board of Supervisors of the several townships shall annually on or before the first day of January in each and every year make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner, of the whole amount of tax levied during the preceding year for road purposes, and the total amount of road taxes collected during the year, specifying in such report the amount expended for maintenance or repairs of roads, for opening and building of new roads and for macadamizing or otherwise permanently improving roads and the number of miles thus made and the total number of miles of township roads in said township; together with the names and addresses of the chairman, members and secretary and treasurer of the board and such other matters and things as the State Highway Commissioner may require."

Section 4 of said Act provides that the supervision of road affairs in townships of the second class shall be in the hands of three township supervisors elected for six years, the term of one supervisor expiring each two years. The term of all supervisors begins on the first Monday of December.

It seems a bit incongruous that officers elected on the first Monday of December should, on or before the first day of January immediately thereafter, make a report of the road tax levied and collected and of how it was expended during the preceding year by their predecessors in office. It would have seemed more natural that the Board in office during the time that the tax was levied and collected and the money expended, should make the report to the State Highway Commissioner. On the other hand, the report which is to be made on or before January 1st is to be made by "the Board of Supervisors of the several townships," and it would not be appropriate to describe the Board whose term had expired on the first Monday of December as constituting the Board of Supervisors after that date. In addition to this, the report is also to state the names and addresses of the chairman, members and secretary and treasurer of the Board. It would manifestly be of no use for the State Highway Commissioner to have the names of the persons who were officers of the Board which had ceased to exist on the first Monday of December; the information which he would want would be as to who would be the officers during the year succeeding the first Monday of December, and of course the new Board and not the old Board, would be the proper body to furnish such information.

A review of the Acts, however, shows that it was not through inadvertence that the report was required to be made within a short time after the new Board of Supervisors went into office. The Act

of April 12, 1905, (P. L. 142), which was the first Act covering the subject matter of the Act of 1913, provided that the terms of road supervisors in townships of the second class should begin on the first Monday of March, and the annual report to the State Highway Commissioner was required to be made on or before March 15. (Sec. 10).

The next Act, May 13, 1909, (P. L. 752), did not change the time of the beginning of the term of the supervisors, but allowed the Board until the first day of April to make its annual statement to the State Highway Commissioner, instead of the 15th day of March, as provided by the Act of 1905. This indicates that the difficulty of having a Board inducted on the first Monday of March, prepare reports for the preceding year, by the 15th of March had been observed, and that the Legislature by extending the time to the first day of April intended to mitigate the difficulty. Of course, if the reports had been intended to be prepared by the old Board, there would not have been this difficulty, because it could have begun the preparation of the reports before the first Monday of March.

The Act of June 14, 1911, (P. L. 942), changed the beginning of the term of supervisors to the first Monday of December, and provided that the annual report to the State Highway Commissioner should be made on or before the first day of January, exactly as is prescribed by the Act of 1913.

It has been the practice, under the Act of 1911, for the Board whose term begins in December, to make the report for the preceding year, and not to have the old Board whose term expired in December make the report.

The Department, therefore, advises you that the report for the year ending January 1, 1914, should be made by the Board which took charge of affairs on the first Monday of December, 1913.

Answering your second question, as to whether all the members of the board must sign the report, you are informed that, in the opinion of the department, this is not necessary. The Act of 1913 provides that the supervisors are to organize as a Board and the report which is required is not a report by the supervisors, but by the Board of Supervisors. It therefore may be made in the name of the Board of Supervisors, by the chairman or other authorized officer.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

ROUTE NO. 47.

The Highway Commissioner may decide which one of the two roads connecting East Freedom and Hollidaysburg is part of Route No. 47.

Office of the Attorney General,

Harrisburg, Pa., February 9, 1914.

Hon. Joseph W. Hunter, Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of December 30, 1913, supplemented by your letter of January 13, 1914, asking an opinion as to the right of the State Highway Commissioner to decide which one of two roads connecting East Freedom and Hollidaysburg, points named in the description of Route 47 in the State Highway Act of June 1, 1911, (P. L. 468), shall be made part of the State road.

The beginning of Section 6 of the Act provides that the State highways are to connect

> "all those certain existing public roads, highways, turnpikes, and toll roads * * * forming and being main traveled roads or routes, between the county seats of the several counties of the Commonwealth and main traveled roads or routes leading to the State line and between principal cities, boroughs and towns."

In view of this provision you are advised that where there are two roads or routes connecting points designated in the Act, and one of those roads or routes is clearly the "main traveled" road or route, that road or route should be selected as part of the State highway unless the location of the State road is changed with the approval of the Governor, as provided by Section 8.

Where, however, of the two roads or routes one is not clearly the "main traveled" road or route, the discretion as to which one is to form part of the State highway must be vested in some one, and the Act of June 1, 1911, clearly shows that the Legislature intended to vest this, as well as numerous other administrative details connected with the execution of the Act, in the State Highway Commissioner.

This is clearly indicated by the provision of Section 7, as follows:

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

Apparently, as I gather from your letter, the Commissioner, in the case under consideration, has selected the "main traveled" route; but if this be not so, then it seems clear that the description of Route 47 does not define the intermediate point of the route between East Freedom and Hollidaysburg, and hence the definite identification and determination thereof was within the express terms of the above quoted part of Section 7.

In your letter you say:

> "There is no change contemplated in the location of Route No. 47 as originally determined by the State Highway Commissioner, which was from East Freedom over the present turnpike road, by way of Newry and Duncansville, to Route No. 53 and then over Route No. 53 into Hollidaysburg and not over the abandoned turnpike road from Leamersville Bridge over Catfish Hill into Hollidaysburg."

It is clear, therefore, that the Commissioner's original determination or choice of the particular road referred to, being one of the two roads connecting the said mentioned termini, has not, in fact, been changed. That the Commissioner had authority to make such selection, there can, in my opinion, be no question. It is scarcely necessary to add, therefore, that Section 8 of the Act does not apply in this case.

JOHN C. BELL,
Attorney General.

CHANGE IN SPECIFICATIONS.

The Highway Department has no right to agree to a change in the specifications for the improvement of a State-aid road in Scalp Level Borough to brick instead of macadam, without re-advertisement of the contract.

Office of the Attorney General,

Harrisburg, Pa., April 13th, 1914.

S. D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of April 1st, inquiring whether your Department has a right to agree to a change in the specifications for the improvement of a State-aid road in Scalp Level Borough, upon the application of the borough. The change desired is that the surfacing be brick paving instead of water bound macadam.

However desirable it might be, in this particular case, that your Department should have the right, at the request of the local authorities most closely affected, to make changes in the specifications for the improvement of roads, you are advised that under the existing legislation there is no such right.

Section 18 of the Highway Act of May 31, 1911, (P. L. 468), provides:

> "The kind of materials to be used on any particular highway, or part thereof, to be built, shall be decided or selected by the State Highway Commissioner before the contract is let."

This would be necessarily implied from the provisions of Sections 13 and 14 concerning the letting of contracts for highway work.

Section 13 begins:

> "All work of construction, building or re-building of highways, excepting that of repairing and maintenance done under the provisions of this act, shall be by contract, and shall be according to plans and specifications to be prepared in every case by the State Highway Department; and in awarding any contract the work shall be given to the lowest responsible bidder."

Section 14 provides that the advertisements for proposals for work must designate where the plans and specifications may be had.

If, after the contract were advertised and let to the lowest responsible bidder, alterations should be made in the plans and specifications, there would be no certainty that the actual work done would correspond with the work advertised and bid for.

You are therefore advised that if the borough desires your Department, and your Department is willing, to change the plans and specifications, the contract should be readvertised.

Very truly yours,

JOHN C. BELL,
Attorney General.

INCOMPATIBLE OFFICES.

The offices of township tax collector and treasurer of township supervisors are incompatible.

Office of the Attorney General,

Harrisburg, Pa., May 25, 1914.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of April 24th, inquiring whether, under the provisions of the Act of July 22, 1913, (P. L. 915), it is proper for a township tax collector to be appointed treasurer of the board of township supervisors.

Section 6 of the said act provides that at their organization meeting the supervisors of each township

> "shall appoint a treasurer and a secretary, who may or may not be the same person, and who may or may not be a member of the board."

Section 14 provides for the collection of the road tax through the medium of the township collector, to whom the supervisors are directed to deliver a warrant to collect the road tax which they have levied. The tax collector is to keep account of the moneys collected, make monthly reports to the secretary of the board of supervisors,

> "and said collector shall pay over on the first day of each month to the treasurer all moneys collected during the previous month and take his receipt for the same. In case of the refusal or neglect of any tax collector to comply with the provisions of this act, he shall be guilty of a misdemeanor and on conviction therefor be sentenced to pay a fine of not less than one hundred dollars or to be imprisoned for a term not exceeding one year, or both, at the discretion of the court."

The foregoing quotation clearly indicates the intention of the Legislature that the tax collector and the treasurer of the board of township supervisors shall be different persons, and that the funds collected by the tax collector shall be paid over to and receipted for by the treasurer of the board. Such a proceeding would be useless if the offices were filled by the same person, but would serve the purpose of providing a monthly check upon the collections of the tax collector if the offices are filled by different persons.

Where the Legislature has intended that the collector of taxes and the treasurer of a particular board entitled to administer part of those taxes should be the same person, it has so stated expressly,

as, for example, in the case of the treasurer of the board of school directors in school districts of the first class. In that case it is provided Act of May 18, 1911, (P. L. 323), Section 503, as follows:

> "They (the school directors) shall elect the treasurer of the city constituting such school district of the first class as the school treasurer for such school district for the ensuing fiscal year."

You are, therefore, advised that the tax collector and the treasurer of the board should not be the same person.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

TOLL ROAD—ROBESONIA.

The condemnation of a toll road in a borough should be proceeded with under Act of June 2, 1887, P. L. 306, and its supplements.

Office of the Attorney General,

Harrisburg, Pa., June 2, 1914,

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your letter of May 12th, 1914, inquiring as to the status of a toll road in the Borough of Robesonia, which road forms part of one of the State highways described and defined by the Act of June 1, 1911, (P. L. 468). We understand that the toll road runs through Robesonia Borough and extends into Berks County (in which said Borough is located) and also into Dauphin County, and that what you desire to know is how the toll road may be condemned. We also understand that the State Highway Department has not taken over the road,

In the first place, as you were advised by this Department in an opinion dated September 24th, 1913, jurisdiction over parts of State highways within borough limits rests with the borough authorities, under the provisions of Section 10 of the Act of June 1, 1911, (P. L. 468), unless and until the State Highway Department takes over such parts of the State Highways under the conditions permitted by said section.

The condemnation of the toll road in question, therefore, should be proceeded with exactly as if it were not part of the State highway,

viz., by proceedings under the Act of June 2, 1887, (P. L. 306), and its supplements. This Act provides for the condemnation of toll roads at the expense of the counties of the State where the best interests of the people of the county require the condemnation. The Act of June 11, 1891, (P. L. 296), permits the condemnation of that portion of the toll road lying within the limits of the borough, if it is not desired to condemn the entire toll road.

You have not asked, and we therefore have not considered what remedy your Department may have if the county refuses or neglects to condemn.

Very truly yours,
MORRIS WOLF,
Third Deputy Attorney General.

STATE HIGHWAYS.

Subcontractors for State Highways should give notice to and, if necessary to collect their debt, bring suit against the bondsmen of contractors for State Highways.

Office of the Attorney General,
Harrisburg, Pa., June 2nd, 1914.

Mr. William R. Main, Auditor, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of May 15th, 1914, inquiring whether the provisions of the Act of 22nd April, 1903, (P. L. 255), should be observed by your Department.

The purpose of that Act was to provide a method for securing to sub-contractors upon public work a method of collecting sums due them from the public agency with which the contract was made. It provides:

> "Where labor or materials are furnished for any structure or other improvement for purely public purposes, in lieu of the lien given by this act, any sub-contactor who has furnished labor or materials thereto may be given a written and duly sworn notice to the Commonwealth, or any division or sub-division 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 principal part thereof, is situate, for distribution to such parties as would be entitled thereto were it paid into court in the case of a private owner; 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."

This Act amends the Mechanics' Lien Law of 4th June, 1901, (P. L. 431), which law had provided, Section 2:

> "But no lien shall be allowed for labor or materials furnished for purely public purposes."

Prior to the passage of the Act of 1901 no mechanics' lien legally could be filed against any improvement for purely public purposes, because, as was pointed out by Lowrie, J., in *Williams v. Controller, 18 Pa. 275, 1852,* a Levari Facias is the only execution proper on a judgment on a mechanics' lien, and that sort of execution is forbidden by the Act of 16th June, 1836, (P. L. 755), in the case of public corporate bodies. As far as the State itself is concerned the Constitution in Article I, Section 11, protects it from suit except where the Legislature directs otherwise.

The Act of 1903 was passed for the purpose of providing a remedy other than by lien in cases of sub-contractors engaged upon public work.

The remedy provided for by the Act, however, was one which did not exist before. For this reason it is unconstitutional, as providing a special method for the collection of debts contrary to Article III, Section 7, and the Supreme Court of Pennsylvania has so held in the case of *Smith's Appeal, 241 Pa. 336, (1913).*

In that case the board of school directors of a borough petitioned for leave to pay money into court, as provided by the Act of 1903. This petition was granted by the lower court, but the Supreme Court reversed the decree and directed the board to pay the balance due directly to the contractor.

Since this decision it is the duty of the State Highway Department, in spite of notices of the non-payment of sub-contractors, to pay to the principal contractor, or his representatives, the balance due upon any contract.

The sub-contractors are amply protected by the bonds which contractors are required to furnish under Section 13 of the Act of June 1,

1911, (P. L. 468), these bonds being conditioned, inter alia, that the contractor "shall well and truly pay to all and every person furnishing material or performing labor in and about the construction of said Highway, all and every sum and sums of money due him, them or any of them, for all such labor and materials, for which the contractor is liable."

Sub-contractors who have not been paid, therefore, should give notice to, and, if necessary, bring suit against, the bondsmen of the contractor.

Yours very truly,

JOHN C. BELL,
Attorney General.

TURNPIKES IN BOROUGH.

The obligation to repair so much of a turnpike, which the State Highway Department has condemned, as lies within the limits of the boroughs, rests not upon the boroughs but upon the State Highway Department.

Office of the Attorney General,

Harrisburg, Pa., July 7th, 1914.

Samuel D. Foster, Esq., Chief Engineer State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of June 4, 1914, inquiring whether the State Highway Department or the Borough is responsible for the repair of that portion of a turnpike condemned by the State Highway Commissioner under the Act of April 11, 1913, (P. L. 59), which is within the limits of the Borough, the turnpike constituting a portion of one of the State Highways, as defined and described in the Act of May 31, 1911, (P. L. 468).

Section 9 of the latter act (as amended by the Act of April 11, 1913, P. L. 59), provides that where a turnpike company owns any part of a road or route forming all or any portion of a State Highway the State Highway Commissioner may proceed to acquire the turnpike by amicable agreement or by condemnation. When it has been acquired and the price paid "said turnpike, toll-road, or part thereof, shall immediately become a State Highway, or part thereof, free from tolls, and the same may then be improved and maintained by the State Highway Commissioner in the manner provided by this act."

Section 6 of the Act of May 31, 1911, (P. L. 468), provides that the State Highways "shall be known, marked, built, rebuilt, con-

structed, repaired, and maintained by and at the sole expense of the Commonwealth; and shall be under the exclusive authority and jurisdiction of the State Highway Department, and shall constitute a system of State Highways."

If this were all of the relevant provisions of the State Highway Acts, the duty of the Commonwealth to maintain a turnpike forming part of the State Highway after its condemnation by the State Highway Department, would be clear.

Section 10 of the above mentioned Act of 1911 provides, however, that:

> "Anything herein contained, or any apportionment of the State into highway districts, shall not be construed as including or in any manner interfering with the roads, streets, and highways in any of the cities, boroughs, or incorporated towns of the Commonwealth."

Section 10 further provides that the State Highway Department may take over for improvement or reconstruction parts of the State Highways within the limits of a borough or incorporated town when such parts are not already improved or reconstructed according to the standards of the State Highway Department, and when the failure to take over such part of the State Highway would leave a gap in the State Highway. The cost of maintaining any part of the State Highway taken over by the State Highway Department within the limits of a borough or incorporated town is to be borne one-half by the State, and one-half by the borough or incorporated town, except that the borough or town must pay the entire cost where the part of the road taken over has heretofore been reconstructed as a state-aid road with bricks or similar permanent paving material.

The effect of this section as you were advised by this Department in an opinion given June 2, 1911, is that "jurisdiction over parts of State Highways within borough limits rests with the borough authorities under the provisions of Section 10 of the Act of May 31, 1911, (P. L. 468), unless and until the State Highway Department takes over such parts of the State Highways under conditions permitted by said section."

The purpose of Section 10 was to preserve to the local authorities which had theretofore had care of and jurisdiction over the roads, streets and highways within their limits, the autonomy which they enjoyed. That this is so is emphasized by the second proviso of Section 10, which authorizes the councils of any borough or incorporated town objecting to the taking over and appropriation of any road, street or highway as a State Highway to file their objection with the State Highway Department.

The question is whether a turnpike belonging to a private corporation, condemned and paid for by the State, comes within the ex-

ception of Section 10, that nothing contained in the Act of 1911 shall "be construed as including or in any manner interfering with the roads, streets and highways in any of the cities, boroughs, or incorporated towns of the Commonwealth."

A turnpike within the borough limits so long as it is operated and maintained by the Turnpike Company is, except for police purposes, entirely without the jurisdiction of the borough authorities. No duty or obligation as to its conditions rests upon them.

The Act of April 25, 1907, P. L. 104, repealed by the Act of May 10, 1909, P. L. 499, which in turn was repealed by the Act of March 15, 1911, P. L. 21, and the Act of April 25, 1907, P. L. 104, thereby revived, imposes upon counties, cities and boroughs the duty and expense of repairing and maintaining parts of turnpikes within their limits where the turnpikes have been (a) condemned and paid for by the county, or (b) abandoned by the turnpike company, or (c) where the turnpike company owning the same has been dissolved.

A turnpike condemned and paid for by the State does not come within the terms of the Act of April 25, 1907, (P. L. 104), and the borough is under no duty or obligation in reference to its condition. If the State did not have jurisdiction over such a turnpike there would be an entire absence of jurisdiction thereover. This is a condition which the Legislature certainly did not intend to create.

Under Section 10 such highways as are within the limits of boroughs, and under their jurisdiction, are not to be interfered with by the State except under the conditions prescribed, but highways within borough limits not under the jurisdiction of the borough authorities must be, like the rest of the State Highways, under the care of the State Highway Department. Any other interpretation would be manifestly unjust as well as contrary to public policy, because it would impose upon the local authorities, without their consent, liability for the repair of, and for the consequences of non-repair of, turnpikes which the State might conclude to condemn.

The distinction herein suggested has been made by the Courts in two recent cases.

In Soentgen vs. Rural Valley Borough, 5 Municipal Law Reporter, page 1, (C. P. Armstrong County 1913) a borough was held liable for an accident sustained through the non-repair of a road within its limits, which road constituted part of a State Highway.

The road was an abandoned turnpike. The Court said per Painter, J.

> "It is apparent from an examination of this Act (May 31, 1911, P. L. 468) that the streets of the boroughs were not intended to be made a part of the general highway system of the Commonwealth, nor can there be any in-

> tention of relieving the several boroughs, through which any highway passed, from the burden of maintaining the streets."

In this case it will be noticed the turnpike was abandoned, and the duty of maintaining it, therefore, rested upon the borough under the Act of 1907 above quoted.

In Commonwealth vs. Butler Borough, 5 Municipal Law Reporter, page 180 (Butler County 1914) on the other hand the turnpike within the limits of the borough had been conveyed by the turnpike company to the State Highway Department. The Court considered the Act of 1907 above quoted and said, per Galbraith, P. J.:

> "So long therefore as the ownership remained in the Plank Road Company the Borough of Butler had no responsibility for the maintenance except in case of abandonment of its franchise by the owning company, or by virtue of condemnation proceedings and payment for the value thereof."

In view of this, and in view of the evident intention of the Legislature that the duty of tending to the roads must be definitely placed upon some department the Court concludes:

> "Nothing, we think, would relieve the Commonwealth of the duty thus imposed (By Section 6 of the Act of May 31, 1911, P. L. 468) in respect to the state highway known as Route No. 72, except it was shown that part of the route lying within the limits of Butler Borough was, before being taken over by the State, subject to the control and authority of the borough council, and that the borough was responsible for its maintenance."

In view of the fact that the Borough was not responsible for the maintenance of the turnpike in question it was held that the State was liable.

Answering your question specifically you are advised that the obligation to repair so much of the turnpike, which the State Highway Department has condemned, as lies within the limits of the boroughs, rests not upon the boroughs but upon the State Highway Department.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

ROUTE NO. 48.

Where a route has been amended or relocated by the Legislature, the State Highway Department can have no claim of jurisdiction over the abandoned part of the route.

Office of the Attorney General,

Harrisburg, Pa., August 4th, 1914.

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of August 3rd inquiring whether the State Highway Department is required to continue to maintain these portions of certain State highways as described by the Act of May 31, 1911, (P. L. 468), which have been relocated by the amending Act of July 22, 1913, (P. L. 941).

For example, the former act provides that Route No. 48 shall go from Bedford to the Maryland State line by way of Cruso and Evitts. The amending act provides that this route shall go from Bedford to the Maryland state line by way of Bedford Springs and other places.

The two provisions are manifestly inconsistent, and the provisions of the latter act must prevail. Since the State highway must follow the route prescribed by the latter act the State Highway Department can have no claim of jurisdiction over the abandoned portion of the route. The care of that portion reverts to the authorities upon whom it rested prior to the passage of the Act of 1911.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

REPEAL OF SPECIAL ACT.

The Act of March 18, 1869, P. L. 384, is repealed by the general Act of July 22, 1913, P. L. 915.

Office of the Attorney General,

Harrisburg, Pa., August 5th, 1914.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of May 28th, 1914, inquiring whether the Act of July 22, 1913, (P. L. 915), relating to roads in townships of the second class, repeals the local Act of March 11, 1845, (P. L. 129), as extended to Caln township, Chester county, by the Act of March 18, 1869, (P. L. 584.)

The Act of 1913 provides a uniform, complete and detailed system for the management of highway affairs in townships of the second class, under the supervision of the State Highway Department. That it was passed in contemplation of inconsistent local acts, and that it was intended to repeal them is evident from the following language of Section 22:

> "As this act goes in effect, all acts or parts of acts, general, special or local, inconsistent herewith or supplied hereby, be and the same are hereby repealed."

The Act of March 11, 1845, (P. L. 129), is manifestly inconsistent with the Act of 1913.

For example, the earlier act provides that the supervisors shall be elected for three years, whereas the later act makes their term six years.

Under the earlier act all of the work of keeping the roads in repair is let out at public sale to the lowest bidder for three years. Under the Act of 1913 it is contemplated that the township itself shall do the greater part of the work. The most important difference, however, is that the earlier act does not subject the supervision to any outside control, whereas the act of 1913 makes the township supervisors subject to the rules and regulations of the State Highway Department, and in return secures to the townships important financial aid from the State.

There are numerous other details in which the acts differ, but enough has been said to show that the Act of 1913 is inconsistent with and supplies the local Acts of 1845 and 1869.

Even without the express repealer above quoted the inconsistency between the general act and the special acts would operate to repeal the latter. As is said by Mr. Justice Mestrezat in *Long vs. Phillips, 241 Pa. 246 (1913):*

> "It is a rule of statutory construction that an earlier act will be repealed by implication by an act covering the entire subject matter of the former law, and manifestly intended as a substitute for it."

See also:

Sun etc. Publishing Co. vs. Bennett, 26 Super. Ct. 243 (1904); Commonwealth vs. Prison Keeper, 49 Super. Ct. 547 (1912); Harrisburg vs. Harrisburg Gas Company, 219 Pa. 76 (1907); Pollock vs. Shenango Township, 22 Dist. Rep. 879, (1912).

You are, therefore, advised that Colon Township is subject to the provisions of the Act of July 22, 1913, (P. L. 915).

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

BRIDGE ON ROUTE NO. 172.

If the bridge, on Route No. 172 in question, was a township bridge on May 31st, 1911, it must be cared for and maintained by the State Highway Department.

Office of the Attorney General,

Harrisburg, Pa., August 6th, 1914.

Mr. J. Willis Whited, Bridge Engineer, State Highway Department, Harrisburg, Pa.

Sir: I have your letter of July 23rd inquiring whether a certain bridge on Route No. 172, in Wayne county, is part of the State highway, or is under the jurisdiction of the local authorities.

I understand that this was a township bridge, at least, until it was viewed in March, 1912, since which date proceedings appear to have been taken, which under ordinary circumstances would have resulted in making the bridge a county bridge.

I am of opinion that the status of the bridge, so far as the State Highway Department is concerned, must be determined as of May 31st, 1911, the date of the approval of the Sproul bill. If at that date the bridge was one which was built in accordance with then existing laws by a township, it became part of the state highway under the provisions of Section 34 of the Act of May 31, 1911, (P. L. 468). Subsequent proceedings have no effect whatever.

You are, therefore, advised that if the bridge in question was a township bridge on May 31st, 1911, it must be cared for and maintained by the State Highway Department.

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

TURNPIKES IN BOROUGHS.

The State Highway Department has the exclusive right to fix the grades on turnpikes condemned by it, notwithstanding such turnpike forms part of a borough street.

Office of the Attorney General,

Harrisburg, Pa., September 11th, 1914.

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of August 19th inquiring whether the State Highway Department has jurisdiction

over the establishment of the grade of that portion of a turnpike condemned by the State Highway Commissioner, which is within the limits of a borough, the turnpike constituting a portion of a state highway.

In an opinion given to you, under date of July 7, 1914, you were advised that where the State Highway Commissioner has condemned a turnpike within a borough, forming part of a state highway, the duty of maintaining that turnpike is upon the State Highway Department, and not upon the borough, for the reason that the borough never had any jurisdiction over the turnpike.

In conformity with that opinion you are advised that the State Highway Department has the exclusive right to fix the grades on turnpikes condemned by it, although such turnpike forms part of a borough street. Your attention is called to the Act of June 5, 1913, (P. L. 411), which gives the borough authorities the right to fix the size and width of footwalks, pavements, gutters, culverts and drains over and upon land abutting on state highways, and upon the beds of state highways, with the consent of the State Highway Commissioner.

The fixing of the grade of the highway is not included within this act and you are, therefore, advised that this duty rests upon your department.

Very truly yours,
MORRIS WOLF,
Third Deputy Attorney General.

ROAD—HICKORY TOWNSHIP, LAWRENCE COUNTY.

There is no authority for using, in 1914, an unexpended part of an appropriation of 1907 or 1909, to complete a road partially contracted for in 1907.

Office of the Attorney General,
Harrisburg, Pa., October 6th, 1914.

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of September 29th, 1914, enclosing copy of a letter from Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, concerning the completion of a road in Hickory Township, Lawrence County.

I understand that bids were received for the reconstruction of

12,500 feet of this road on March 26, 1907, but that no contract was entered into for any of the work at that time. On June 17, 1907, a contract was let for 6,975 feet, which was part of the total amount covered by the bid made in 1907. A contract was executed for the 6,975 feet, and that contract has been carried out.

Your present inquiry is whether a contract may now be let for the remaining 5,525 feet, under the bid made in 1907, and the cost of that work be charged against the unexpended balance of the appropriations made to your department in 1907 and 1909. I am without information as to the conditions under which the bid was made, and I scarcely can believe that the bidder remains bound to do the work now under any bid made over seven years ago.

Assuming, however, that the bidder is willing to perform the remainder of the work under his original bid, I am of opinion that the cost of this work cannot be charged against any unexpended balance which your department may have from the appropriations made by the Legislature in 1907 and 1909.

The unexpended balance of those appropriations lapsed at the end of the legislative years of 1907 and 1909, respectively.

It is true that Section 40 of the Act of May 31, 1911, (P. L. 468), contains a saving clause relative to "any state-aid highway for which plans and specifications have been made, and for which bids have been received and the contract awarded, and for which the counties, townships, boroughs or towns have signed the necessary agreement." In this case the contract was not awarded, and no agreement was made with the township.

For a statement of the general principle relative to the lapsing of the unexpended balance of an appropriation your attention is called to an opinion of this department to C. P. Rogers, Jr., Chief of the Bureau of Accounts, of the Auditor General's Department, of January 27, 1914, and for a definition of what constitutes an award under Section 40 of the Act of 1911 you are referred to the opinion of this department given to Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, March 27, 1912.

You are specifically advised that there is no authority for using any unexpended balance of appropriations made to your department in 1907 or 1909 in order to complete the road in question.

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

EMINENT DOMAIN.

Road supervisors may not take wood or timber for road purposes except by agreement with or by consent of owners, and, similarly, undertakers of public bridges may not take wood or timber for bridge purposes by eminent domain.

Office of the Attorney General,

Harrisburg, Pa., October 21, 1914.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of October 3rd, requesting an opinion as to whether the Act of June 13, 1836, (P. L. 555), gives township supervisors a right of eminent domain over such timber as they may need in building causeways and bridges, or, in case of emergency, roads.

Section 27 empowers and directs township supervisors

> "to purchase wood, timber and all other materials necessary for the purpose of making, maintaining and repairing the public roads or highways."

Section 28 authorizes them to enter adjoining land and to

> "dig, gather, and carry upon said roads any stone, sand or gravel found on the same, which they may think necessary for the purpose of making, maintaining or repairing said roads,"

when they cannot buy them at reasonable prices.

Section 29 provides for the determination of the amount to be paid by the supervisors to the owner of

> "any materials which may be wanted for making, maintaining or repairing the roads."

It may seem odd that the Legislature, having expressed in Section 27 its realization of the fact that wood and timber might be needed by the supervisors in their work upon the roads, should have limited the right of eminent domain conferred by Section 28, to stones, sand and gravel.

Such limitation, however, seems to have been in line with a conservation policy adopted even in those early days, for an examination of the General Railroad Act of February 19, 1849, (P. L. 79), shows a similar limitation of the right of eminent domain.

Section 10 of that Act gives railroad companies the right to enter upon adjoining land and

> "to quarry, dig, cut, take and carry away therefrom, any stone, gravel, clay, sand, earth, wood or other suitable

> material necessary or proper for the construction of any bridges, viaduct or other buildings which may be required for the use, maintenance or repairs of said railroad."

and then adds the proviso that

> "the timber used in the construction or repair of said railroad, shall be obtained from the owner thereof only by agreement or purchase."

Moreover, statutes conferring the right of eminent domain must be construed strictly, *(Woods vs. Greensboro Natural Gas Co. 204 Pa. 606, 1903; Crescent Pipe Line Company's Petition, 56 Superior 201, 1914),* and we cannot supply the omission of the Legislature even if it should seem to us to have been accidental.

You are advised, therefore, that road supervisors may not take wood or timber, for road purposes except by agreement with or purchase from the owners.

So far as causeways and bridges are concerned, Section 28 of the said Act of 1836 gives the

> "undertaker of any public bridge"

which includes the supervisors themselves, if they build it under the authority of Section 36—the right to enter adjoining lands

> "for the purpose of searching for and procuring the materials necessary for the building of such bridge, in like manner and with like authority as is hereinbefore provided in behalf of the supervisors of the public roads in like cases."

As in our opinion road supervisors may not take wood or timber for road purposes by right of eminent domain, and undertakers of public bridges have only "like authority," we necessarily hold that they may not take wood or timber by right of eminent domain for bridge purposes.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

MAINTENANCE OF BRIDGES.

County commissioners have the right to assist townships in the building of bridges and do not thereby make them county bridges so as to be maintained by the county. They remain township bridges and must be maintained by the State Highway Department.

Office of the Attorney General,

Harrisburg, Pa., October 26, 1914.

Samuel D. Foster, Esq., Chief Engineer, State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of September 29, 1914, requesting its opinion concerning the liability of the County of Tioga for the maintenance of eight bridges, the proceedings leading up to the construction of which are set forth in a report from S. W. Jackson, Assistant Engineer at Wellsboro, Penn'a. I assume that these bridges all are on the line of State highways, or State-aid highways.

Section 34 of the Act of May 31, 1911, (P. L. 468), known as the Sproul Bill, provides that:

> "The word 'highway,' as used in this Act, shall be construed to include any existing causeway or bridge, or any new causeway or bridge, or any drain or water course, which may form part of a road, and which has been or might properly be built, according to any existing laws, by the townships of the Commonwealth."

A State-aid highway, it is provided in the same section, "shall not include any causeway or bridge which should properly be built by the county or by the State, under existing laws."

More accurate language might have been used in defining just what bridges on State roads should come under the care of the State Highway Department. This Department has held, however, that the intention of Section 34 was to bring within the jurisdiction of the State Highway Department all bridges except county bridges; county bridges remaining under the jurisdiction of the County Commissioners. This being so—let us consider the status of the eight bridges in Tioga County. They were all authorized by the County Commissioners between 1892 and 1900. The minute book of the Commissioners of Tioga County shows that in each case the Commissioners, as far as it was within their power to do so, refused to make these bridges county bridges. In each case there was a view and report that the bridge was necessary and that it required more expense than it was reasonable for the adjoining townships to bear. In each case this report of the viewers was approved by the grand jury and by the court. Under these circumstances, the County Com-

missioners had a right under the law to build the bridge at the expense of the county and make it a county bridge, or to refuse to build it at all, or to furnish some or all of the cost of construction and provide that the bridge should not be a county bridge.

The Act of June 13, 1836, (P. L. 551), was the first general Act on the subject of the building of bridges. Section 35 provided that

> "When a river, creek or rivulet over which it may be necessary to erect a bridge crosses a public road or highway, and the erecting of such bridge requires more expense than it is reasonable that one or two adjoining townships should bear, the court having jurisdiction as aforesaid, shall, on the representation of the supervisors, or on the petition of any of the inhabitants of the respective townships, order a view, in the manner provided for in the case of roads, and if on the report of viewers, it shall appear to the court, grand jury, and commissioners of the county, that such bridge is necessary, and would be too expensive for such township or townships, it shall be entered on record as a county bridge."

The Act of June 11, 1879, (P. L. 146), amended this section of the Act of 1836, by providing

> "That whenever the County Commissioners do not deem it advisable to enter such bridge on record as a county bridge, but shall consider it proper to assist such township or townships in building the same, they are hereby authorized and empowered, from and out of the county funds, to either build such bridge, or to furnish such township or townships the whole or a part of the money necessary to build it, without entering such bridge on record as a county bridge."

Section 2 provides:

> "That such bridges shall be maintained, kept in repair and re-built, when necessary, by the respective township or townships, and the county shall in no event, be liable for the same."

The Act of May 25, 1887, (P. L. 267), amends the Act of 1879, by permitting the County Commissioners to build any portion or portions of the bridge if they did not find it advisable to build the entire bridge.

This was the state of the legislation at the time that the bridges in Tioga County were built. An inspection of the minutes shows that in each case the County Commissioners had clearly in mind the Act of May 25, 1887, and intended, pursuant to the authority which that Act gave them, to assist the townships in building the bridges, but not to enter such bridges on record as county bridges.

In view of the fact that the plain wording of the Act of 1887 authorized them to do exactly this, it is scarcely necessary to cite decisions in support of the conclusion that the County Commissioners acted within their rights.

In *Westfield Borough vs. Tioga County, 150 Pa. Page 152, (1892),* there is a full discussion of the rights of County Commissioners to accept or reject bridges for the county. That case arose in Tioga County and the court decided that the Acts of 1879 and 1887, which are mentioned hereinbefore, are applicable to that county in spite of some earlier local legislation. The case itself was one in which the bridge had been entered on record as a county bridge, and the question was whether the county had to bear the expense of building the approaches. It was held that it did.

The court said, after considering the Acts of 1879 and 1887, Page 161, per Mitchell, P. J.:

> "The effect of that legislation is to empower the County Commissioners to aid local communities in building county bridges, as they think proper, without adopting any bridge in question wholly as a county bridge."

In *Pittsburgh, etc. R. R. Co. vs. Lawrence County, 198 Pa., 1, (1901),* and *Commonwealth vs. Bowman, 218 Pa. 330, (1907),* the court points out what the commissioners must do in order to make a bridge a county bridge. The essentials to accomplish this result are expressed by Mr. Justice Mestrezat in the latter case, as follows:

> "The statutory prerequisites to the authority of the commissioners to build a bridge are: (1) A report of viewers that the bridge is necessary and would be too expensive for the township; (2) that these facts have been made to appear to the court, grand jury and commissioners of the county; and (3) that the bridge has been entered on record as a county bridge."

In that case the bridge had not been entered as a county bridge, and the court held that the commissioners therefore had no authority to proceed to build it.

From the foregoing discussion the conclusion necessarily follows that the County Commissioners of Tioga County had a right to assist the townships financially in the building of the bridges in question without thereby making them county bridges, and that when the commissioners not only failed to enter them on record as county bridges, but went further and resolved that they should not be county bridges, but should belong to the townships in which they were located, such action expressly prevented the bridges from becoming

county bridges. The duty of maintaining them, therefore, was not upon the county but upon the townships, and hence now upon the State Highway Department.

Very truly yours,

JOHN C. BELL,
Attorney General.

VACATION OF STATE HIGHWAY ROADS.

Under section 20 of the Act of June 13, 1836, P. L. 551, which has not been repealed by the Act of May 31, 1911, P. L. 468, the Courts of Quarter Sessions have jurisdiction to vacate parts of State roads and supply the parts vacated by new roads, without notice to the Commonwealth. The State Highway Department is not liable for the resulting damages nor to build or maintain the new road.

Remedial legislation suggested.

Office of the Attorney General,

Harrisburg, Pa., Nov. 4, 1914.

Samuel D. Foster, Esq., Chief Engineer State Highway Department, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of September 29th enclosing letters from Evans & Evans, Attorneys, of Ebensburg, relative to a part of State Highway Route No. 53, in Cambria County.

The facts, as I understand them, are that the State Highway Commissioner under Section 4 of the Act of May 31, 1911, (P. L. 468), gave notice to the proper local authorities of his intention to take over the road in question on June 1st, 1912.

On September 11, 1912, a petition was presented to the Court of Quarter Sessions of Cambria County asking that a part of Route 53 be vacated, and supplied by a new road. The matter was so proceeded in that viewers reported in favor of granting the prayer of this petition, and awarded damages to the persons whose property was injured by the laying out and construction of the new road. This report was confirmed by the Court of Quarter Sessions.

Of all these proceedings the State Highway Department had no notice.

The information given me does not show whether the petition to vacate the road and supply a new road set forth correctly the status of the road so that the Court was informed that it was a part of a State highway. Neither does my information show whether the proceedings were in due form.

I assume, however, that the petition set forth the facts fully and correctly, and that there was no formal defect in the proceedings.

The legal questions presented, therefore, are:

First: Whether the Courts of Quarter Sessions of counties through which a portion of a State highway runs have jurisdiction to vacate part of the State highway and supply the part vacated by a new road.

Second: Whether such proceedings may be taken without notice to the Commonwealth, and

Third: Whether the Commonwealth is bound to pay the damages awarded by the Viewers, and to open the new road approved by the Court.

The general road act of June 13, 1836, (P. L. 551), provides in Section 20 as follows:

> "The said courts (of Quarter Sessions) respectively, shall also have power in the manner aforesaid, to change, or supply by a new road, the route of any state road which may be laid out by direction of any Act of Assembly, within their respective counties, and thereupon to vacate so much of such State road as shall be supplied."

"The manner aforesaid" is the manner described by Section 18, namely, "the manner provided for the laying out of public roads and highways." "The manner provided for the laying out of public roads and highways" is contained in Section 1 to 10 of the Act of 1836. It contemplates the appointment of Viewers, their report in favor of the need of a road, their findings of the damages sustained by abutting owners, and the approval of the report and findings by the court.

I am unable to find that Section 20 of the Act of 1836 has been repealed and am compelled to reach the conclusion that it is still in force.

It applies only to State roads "which may be laid out by direction of any act of assembly," but the taking over by the State Highway Commissioner, under the provisions of the Act of 1911 of the roads therein designated and defined as State highways, cannot be said to be other than a laying out of these State roads by direction of an Act of Assembly.

You, therefore, are advised that the Court of Quarter Sessions of Cambria County had jurisdiction to change the route of the State highway above referred to, and to vacate so much of this State highway as the new road will supply.

Upon the question of notice it will be observed that the Act of 1836 did not provide for notice of the proceedings for laying out roads to any of the local authorities, and it was not until the Act

of 3 April, 1889, (P. L. 26), was passed that any notice was required to be given to any of the local authorities, although if the road was laid out the local authorities were compelled to provide for the payment of damages. The last mentioned Act provided for the giving of notice of the appointment of Viewers, and of the time and place of their meeting to the County Commissioners or their Clerk, and it has been held that under this Act such notice must be given where a part of a road is to be vacated and supplied by a new road. *Todd Township Public Road, 11 Pa. Dist. Rept. 332 (1902).*

There is no statute, however, which provides for notice in any such case to the State Highway Department or to any officer of the State.

Upon the question of damages, and upon the question of the construction of the new road, the Act of 1836 is silent. Section 8 of the Act of 1836 provides that where damages are assessed to persons abutting upon roads to be laid out, the county must pay the damages. In the absence of any direction that the State shall pay the damages in the case provided for by Section 20 that burden should not be placed upon the State.

If, therefore, the Court is of opinion that the route of a State road should be changed, the county must bear the damages and construct the new road.

It results, from what has been said, that while the Legislature has defined and described the State highways in the Act of 1911, and provided that the State Highway Department should take care of those highways, yet there is no obligation upon the State Highway Department, if county courts change the roads, also to build and keep in repair the new road.

Any other conclusion might be fatal to the system of State highways which the Legislature intended to provide for by the Act of 1911. County courts throughout the State might change parts of the route of State highways making the new route longer than the old one, and rendering the State liable for heavy damages without its consent or even its knowledge. It is regrettable that the local courts are given authority to interfere at all with the routes of the State highways.

In order to make the system uniform there should be a unity of jurisdiction over the State highways, and the Legislature by the Act of 1911 undoubtedly intended that jurisdiction to be in the State Highway Commissioner. However, it failed to repeal Section 20 of the Act of 1836 and until that failure is remedied local courts will be able to change the routes of State highways.

You are, therefore, advised that while the Court of Cambria county had jurisdiction under Section 20 of the Act of 1836 to change the route of the State road, and to vacate the State road supplied by the new road, without notice to your department, your department

is not bound to pay the damages resulting from the location of the new road, nor to build or maintain it. The need of remedial legislation in connection with this subject is evident from the conclusions herein reached.

Very truly yours,

JOHN C. BELL,
Attorney General,

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

LETTING CONTRACTS.

The Board of Public Grounds and Buildings may award a contract for an item in the schedule at the maximum price fixed upon that item, provided no lower bid has been received on such item.

Office of the Attorney General,

Harrisburg, Pa., April 18, 1913.

The Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Gentlemen: This Department is in receipt of a letter from your Secretary, under date of April 14, 1913, asking, in substance, that you be advised whether, under Section 12 of Article III of the Constitution and the Act of March 26, 1895, (P. L. 22), The Board of Commissioners of Public Grounds and Buildings may lawfully award a contract for State supplies upon a regular bid of a responsible bidder at the maximum price fixed by the Superintendent of Public Grounds and Buildings, with the approval of your Board, on one of the various items in one of the classifications of the printed and advertised schedule for the purchase of such supplies, in the event that no lower bid has been received on such item;—or whether contracts may legally be awarded only upon bids at a percentage below the maximum price fixed as aforesaid?

The above mentioned Section of the Constitution provides, inter alia, that State supplies shall be furnished "under contract to be given to the lowest responsible bidder below such maximum price and under such regulations as shall be prescribed by law."

The above cited Act of Assembly enacts, inter alia, that the Superintendent of Public Grounds and Buildings shall prepare the annual schedule, fixing "proper maximum prices" upon the various items of the different classifications thereof.

It is clear that the provisions relative to and requiring the fixing of maximum prices are intended to require your Board to fix a price on each item of the schedule above which it will be useless for any

bidder to bid. The fixing of such maximum price is, in effect, a declaration upon the part of your Board that in no event will the State pay more than the price thus specified for the articles mentioned in the item to which it is attached; and, further, that even that price will not be paid if any responsible bidder will agree to furnish the article or articles in question at a lower price. The very words "maximum price" necessarily mean that the price thus described is the outside or highest price the State will in any event pay, and then only if it should become necessary to do so, because no offer to furnish the supplies at a lower price has been received. When there are bidders, however, who bid less than such maximum price, then, of course, the contract is, "to be given to the lowest responsible bidder below such maximum price."

You are therefore advised that a contract may be awarded on an item in the schedule at the maximum price fixed upon that item, provided no lower bid has been received on such item.

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

BOND OF SUPERINTENDENT OF PUBLIC INSTRUCTION.

There is no statutory requirement that a bond shall be given by the Superintendent of Public Instruction.

Office of the Attorney General,
Harrisburg, April 28, 1913.

Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: Your favor of the 14th inst. addressed to the Attorney General, is at hand.

You ask to be advised "if the bond covering Hon. Nathan C. Schaeffer, as Superintendent of Public Instruction, in the amount of 1,000 pounds, is in the value of colonial pounds or sterling pounds."

The Act of May 18, 1911, (P. L. 309), known as the School Code, prescribes the powers and duties of the Superintendent of Public Instruction, whose office is provided for in the Constitution, but does not require that he give a bond for the faithful performance of the duties of his office.

The officer who corresponds to the present Superintendent of Public Instruction prior to the Constitution of 1874, was the Superintendent of Common Schools.

By the Act of April 18, 1857, (P. L. 263), the office of Superintendent of Common Schools was created as a distinct office and it was provided that:

> "The superintendent of common schools and his successors in office, appointed under this act, shall furnish the same security * * * * * that are now by law required of and devolved upon the superintendent of common schools."

Prior to the Act of 1857 the office of superintendent of common schools was held by the Secretary of the Commonwealth.

The Act of 1791 provided for the giving of a bond of 1,000 pounds, by the Secretary of the Commonwealth, for the faithful performance "of the several trusts to him committed."

The School Code, in Section 2824, provides:

> "This Act of Assembly is intended as an entire and complete school code for the public school system in this Commonwealth, hereby established in any school district therein, and the following acts or parts of acts * * * * * be and the same are hereby repealed."

All of the acts which relate to the superintendent of common schools above referred to, and which require the superintendent to give a bond, including the Act of April 18, 1857, are specifically repealed.

The Act of 1857 and the other acts relating to the superintendent of common schools having been repealed, the school code not having provided for the giving of any bond by the Superintendent of Public Instruction, I am therefore of opinion that there is no statutory requirement for any bond to be given by that official.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

CORRECTION OF DEFECTIVE BONDS.

The Board is advised to allow the correction of a bond by obtaining the signature thereto of the principal, where said principal was lowest responsible bidder for a contract.

Bids must be presented in duplicate.

Office of the Attorney General,

Harrisburg, Pa., June 4th, 1913.

Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Gentlemen: This Department is in receipt of your communication addressed to it by your Secretary, asking to be advised whether under the Act of March 26, 1895, (P. L. 22), as amended by the Act of April 10, 1913, (P. L. ———), your Board has discretionary power to permit certain defects in bonds accompanying bids to furnish supplies, etc. for the State government, to be corrected.

The communication referred to contains a general description of certain defects appearing upon the face of bonds submitted along with the bids opened by your Board on the second Tuesday of May, 1913. It would be improper and impracticable to attempt to express an opinion upon the general subject matter of your inquiry without having the exact facts of each individual case before this Department.

Your communication is accompanied by the bond in one case, and the correspondence with relation thereto, from which it appears that J. H. Weil & Company submitted a bid upon the stationery schedule, which bid was accompanied by a bond with the Fidelity & Deposit Company of Maryland as surety thereon. The bond was duly executed by the surety, but J. H. Weil, a member of said firm, inadvertently failed to execute said bond in behalf of the principal.

You ask to be advised whether your Board should permit the bidder to cure the defect in this bond by accounting the same after the bids had been opened and the defect discovered. By the Act of 1895, it was provided that no proposal should be considered or accepted unless 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 the proposal reside, etc. By the amendment of 1913 it is provided inter alia in effect that if the surety on such bond is a surety company authorized to act as surety in this Commonwealth no approval by a court is required. The bond in question, therefore, was in proper form with the exception that it had not been executed by the principal.

In construing the Act of 1895 with reference to a case in which a bond required to be approved by a judge of the court of common

pleas had not been so approved, this Department held in an opinion under date of October 24th, 1911, that the provisions of the act were mandatory and that the approval was a condition precedent to the submission of a bid in proper form. It was accordingly held that your Board had no power to waive the mandatory provisions of the act, and could not legally return the bond for correction, and subsequently award a contract upon the bid which it accompanied.

In that case there was no indication of an endeavor upon the part of the bidder to comply with the express provisions of the law. The case now under discussion differs from the one referred to in said opinion, in that the above named firm evidently endeavored to comply with the law, but through a mere inadvertence submitted a defective bond. As the bond was duly executed by the surety company it probably would be held that it protected the Commonwealth, although not signed by the principal.

Aside from this consideration, however, if this firm is the lowest responsible bidder upon certain items of the schedule, and has endeavored to make its bid in the manner required by law, it would be contrary to the best interests of the Commonwealth for your Board to reject its bid by reason of such a curable defect in the bond, and award the contract to the next lowest bidder.

Although the language of the act vests but little discretion in your Board in matters of this kind I am of opinion that under the facts in this particular case, the Board would be legally justified in permitting the execution of the bond by the principal, and in awarding the contract to this bidder.

You also state in your communication that a number of bids have been rejected because they were not presented in duplicate, and you ask whether your Board would be justified in permitting bidders to submit duplication of their bids subsequent to the time fixed by law for the opening of bids.

In reply to this inquiry permit me to say that it is expressly provided by the amendment to the fifth section of the said Act of 1895 that: "All bids shall be in duplicate, one of which shall be marked 'Duplicate Bid.'" This is an express mandatory provision of the law, and you are advised that where the bidder has failed to submit his bid in duplicate his proposal cannot be considered or accepted by your Board.

Failure to comply with this provision of the law is a matter of substance, and not of form, and your Board has no power to waive compliance with this provision.

Very truly yours,

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

BRIDGES.

It is the duty of the Board of Public Grounds and Buildings to appoint an engineer for a county bridge destroyed by flood, which is to be rebuilt by the State, where the bridge forms part of a State highway under the supervision of the State Highway Department.

Office of the Attorney General,

Harrisburg, Pa., July 28th, 1913.

Mr. Harry S. McDevitt, Secretary, Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your communication of the 17th instant as follows:

> "Under the Act of 1895 (P. L. page 130) amended by the Act of 1903 (P. L. page 230) the Board of Commissioners of Public Grounds and Buildings is directed to appoint an engineer to draw plans and to superintend the construction of county bridges which have been destroyed. Under the terms of the 1911 Act creating the Highway Department, the supervision of State roads is vested there.
>
> The question has therefore arisen whether the Board has the right to appoint a bridge engineer where the bridge in question forms part of a highway under the control of the State Highway Department, and the Board has directed me to procure from you an opinion relative to the same."

Section 1 of the Act of June 3rd, 1895, made it the duty of the Commonwealth to rebuild "all bridges maintained, owned and controlled by the several Counties, and known as county bridges, which are now or may hereafter be erected over and across the navigable rivers and such other streams as have been declared public highways by Act of Assembly, which may hereafter be carried away or destroyed by flood, fire, or other casualty, and rebuild the same in case the same are again carried away or destroyed from like cause."

The Amendatory Act of April 21st, 1903, amended the above section of the Act of 1895 so as to confine its duty of reconstruction to cases where county bridges might be "carried away or destroyed by flood or windstorm, and rebuild the same in case the same are again carried away or destroyed from like cause"—the case of destruction of such bridges by windstorm, in addition to the case of destruction by flood, being substituted for the case of destruction by fire or other casualty.

By the third section of the Act of 1903, it is made 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, etc." It is true that the Act of May 31st, 1911, (P. L. 468), providing for the establishment of the State Highway Department, imposes on that Department, the duty of constructing State Highways; but the fact, as stated in your letter, "that the bridge in question forms part of a highway," which highway, is "under the control of the State Highway Department" under that Act, is not, of itself determinative of the duty of that Department to construct the bridge. Section 34 of the Highway Department Act last mentioned, specifically provides that the word "highway" as used in this Act, shall be construed to include any existing causeway or bridge, or of any causeway or bridge, or any drain or water course which may form part of a road and which has been or might properly be built according to any existing laws by the townships of the Commonwealth." I think the interpretation given this provision of the Highway Department Act in the recent opinion of Judge Baldridge of Blair County, to the effect that the only kind of bridge which it is the duty of the State Highway Department to construct as a part of a road, is a township bridge, as defined in said Section 34, is the correct interpretation, and if, therefore, the bridge to which you refer in your letter, is not a township bridge but a county bridge destroyed by flood or windstorm, its rebuilding should be proceeded with by the Commonwealth, in accordance with the provisions of the Act of 1895 as amended by the said Act of 1903, imposing, inter alia, the duty on the Board of Public Grounds and Building to prepare plans and specifications for the new bridge. In the preparation of such plans and specifications, the Engineer appointed by the Board will doubtless confer with the State Highway Department to the end that there may be no conflict between the plans and specifications for the bridge, and the plans and specifications for the highway proper.

Yours very truly,

WM. N. TRINKLE,
Third Deputy Attorney General.

DRUGS AND CHEMICALS.

The Board of Public Grounds and Buildings is not required to furnish drugs, chemicals and scientific instruments for the purpose of making analyses by the Chemical Laboratory of the Agricultural Department.

Office of the Attorney General,

Harrisburg, Pa., July 30, 1913.

Mr. James C. Patterson, Deputy Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: Your letter, addressed to the Attorney General, was duly received.

You ask to be advised whether the Department of Public Grounds and Buildings should furnish drugs, chemicals, scientific instruments, etc., for the Chemical Laboratory of the Agricultural Department.

I understand that the Agricultural Department is required to make chemical analyses under certain Acts of Assembly, particularly by the Act of May 3, 1909, regulating the sale of concentrated commercial feeding stuffs, and the Act of April 29, 1913, regulating the sale of linseed oils and compounds and imitations thereof.

The first mentioned Act requires, in Section 5, "that the Secretary of Agriculture shall, together with his deputies, agents and assistants, be charged with the enforcement of this Act," and it also provides for the taking of samples, and that "the Secretary of Agriculture shall cause such samples as are secured by him under the provisions of this Act, as may seem to him proper, to be analyzed within sixty days after said samples are received by the Chief Chemist; and the results of the analysis of such samples, together with such additional information as circumstances advise, shall, by his authority, be published in reports or bulletins from time to time."

The Act of 1913 also imposes upon the Secretary of Agriculture the duty of enforcing the provisions of the Act and requires chemical analyses to determine whether linseed oil and its compounds comply with the standards fixed in said Act of Assembly.

There is also the Act of April 29, 1913, which regulates the sale of seeds, and requires certain analyses, and also imposes upon the Secretary of Agriculture the duty of carrying out the provisions of the Act.

Section 2 of the Act of 26th of March, 1895, relating to the public grounds and buildings, requires the Board of Public Grounds and Buildings to furnish "all stationery, supplies and fuel used by the Legislature, the several departments, boards and commissions of the State Government," etc.

If there were nothing further to be found in the laws, the last provision, requiring the furnishing of supplies by the Board of Public Grounds and Buildings, would authorize that Board to furnish the necessary drugs and chemicals to carry out the provisions of the Acts above referred to.

But, in the General Appropriation Bill, passed at the session of the Legislature of 1913, there appear the following items:

> "For the payment of the cost of selecting samples, making analyses and other expenses, including salaries incident to carrying into effect the provisions of the Act of Assembly, entitled 'An Act to regulate the sale of certain seeds, providing for the selection of samples thereof and their examination by the Department of Agriculture, and the publication of information concerning the same; providing also for the enforcement of the Act and fixing penalties for its violation' approved April twenty-ninth one thousand nine hundred and thirteen, two years, the sum of eight thousand dollars (approved by the Governor in the sum of four thousand dollars) or so much thereof as may be necessary."
>
> "For the payment of the cost of selecting samples, making analyses and other expenses, including salaries incident to carrying out the provisions of the Act of Assembly 'Regulating the sale of commercial feeding stuffs,' approved May third, one thousand nine hundred and nine, for two years, the sum of thirty-two thousand five hundred dollars." (Approved by the Governor in the sum of thirty thousand dollars.)
>
> "For the payment of the cost of selecting samples and making analyses and other expenses, including salaries incident to carrying out the provisions of the Act of April twenty-ninth, one thousand nine hundred and thirteen 'To prevent adulteration of linseed oil,' et cetera, for two years, the sum of five thousand, seven hundred dollars." (Approved by the Governor in the sum of four thousand, five hundred dollars.)

These appropriations being for the specific purpose of making the analyses required by these several Acts of Assembly above referred to, I am of opinion, and so advise you, that the furnishing of drugs, chemicals and scientific instruments necessary for the purpose of making the analyses required thereby, is an expense properly chargeable to the several items of the Appropriation Bill herein quoted, and that your Department is not required to furnish the drugs, chemicals and scientific instruments for the purpose of making such analyses.

Yours respectfully,

WM. M. HARGEST.
Second Deputy Attorney General.

REBUILDING BRIDGES BY THE COMMONWEALTH.

A county bridge, fallen into the river in the centre, the centre pier having been completely washed away, the other parts remaining upon their piers, and it being practicable to raise it and rebuild the centre pier, is "destroyed" within the meaning of the Act of April 21, 1903, P. L. 230, providing for the rebuilding by the Commonwealth of county bridges destroyed by flood, fire or other casualty.

The Commonwealth will be concluded where the report of viewers, finding that a county bridge has been "destroyed" by flood, has been confirmed and a decree entered directing that the bridge be rebuilt by the Commonwealth.

Office of the Attorney General,

Harrisburg, Pa., Oct. 10, 1913.

To the Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Gentlemen: You recently requested an opinion from this Department as to whether the bridge over the Shenango River, at Silver Street in Sharon, Pennsylvania, was destroyed within the meaning of the Act of April 21, 1903, (P. L. 230), so as to require its rebuilding by the Commonwealth.

You submit a photograph which indicates that the center pier of the bridge has been completely washed away, and that the bridge has fallen into the river in the center, while the other parts remain upon the piers. You also submit a supplemental report of Willis Whited, Engineer of Bridges of the State Highway Department, which states that, in his opinion, it would be "quite practicable to raise the bridge up to its original position, rebuild the center pier, repair the damaged bridge members and repave the structure."

The Act of Assembly to which you refer provides, in Section 1, "that the Commonwealth of Pennsylvania shall, from time to time, rebuild all bridges maintained, owned and controlled by the several counties and known as county bridges.....which may hereafter be carried away or destroyed by flood or windstorm, and rebuild the same in case the same are again carried away or destroyed from like cause."

It does not appear how much of the material of the superstructure of this bridge is damaged beyond repair, but, from the report of the Engineer above referred to, it is necessary to raise the bridge, rebuild the center pier, repair the damaged bridge members and repave the structure.

It is quite evident that the thing which is now resting in the Shenango River is not a bridge. As a bridge it has been destroyed, although all of its parts have not been rendered useless.

In *McCabe's License,* 11 Superior Court, 560, President Judge Rice, rendering the opinion of the Court, says:

> "The term 'to destroy' has on more than one occasion been construed to describe an act, which, while rendering useless for the purpose for which it was intended, did not literally demolish or annihilate the thing."

I am therefore of opinion that the bridge is destroyed within the meaning of the Act of Assembly aforesaid.

However, this matter is in any event concluded against the Commonwealth. The report of the viewers has found as a fact that the bridge was destroyed; no exceptions to that finding were filed, because of the agreement of the county commissioners to convey all the right, title and interest in the remaining parts of the bridge to the Commonwealth for use in reconstruction; and the court has confirmed the report of the viewers and ordered that the bridge "be rebuilt by the Commonwealth in accordance with the recommendations of the viewers."

I am therefore of opinion that the Commonwealth is under legal obligation to proceed with such rebuilding.

Yours truly,

WM. M. HARGEST,
Second Deputy Attorney General.

BRIDGE AT GARDNER AVE., NEW CASTLE, PA.

The Public Service Company Law, not yet in operation, does not in any way affect the right of the Board of Public Grounds and Buildings to contract for above named bridge.

Office of the Attorney General,

Harrisburg, Pa., October, 21, 1913.

Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Gentlemen: Some time ago this Department was requested to advise the Board of Commissioners of Public Grounds and Buildings whether the Act of July 26, 1913, known as "The Public Service Company Law," affected the duty of the Board of Commissioners of Public Grounds and Buildings to proceed with the erection and construction of a bridge at Gardner Avenue, New Castle, Pa., which bridge was destroyed by a flood early in the spring of 1913, because the new construction was intended to be elevated so as to eliminate grade crossings over the tracks of several railroads.

Presumably this question was asked because the Public Service Commission, in certain conditions under this law, is given the right to regulate the way in which public highways may be constructed across the tracks of railroad companies. But, by Section 54 of the Public Service Company Law, it is provided that it shall not go into effect until the 1st of January, 1914, except for the appointment of commissioners, officers and employes; the organization of the Commission, the establishment of rules and orders to become effective when the Act becomes effective.

It is therefore plain that the Public Service Company Law, not yet being in operation, does not in any way affect the right of the Board of Commissioners of Public Grounds and Buildings to contract for the rebuilding of this bridge by the Commonwealth, without reference to the Public Service Commission, since this bridge was destroyed before the Public Service Company Law was passed, and since the appointment of viewers and all proceedings thereunder have been completed before the law goes into operation.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

FEDERAL TAX.

No Federal tax is required upon bills of lading for the shipment of State property, nor are telegraph or telephone companies required to pay a Federal tax upon messages, conversations or despatches from State Departments in performing governmental functions of the State.

Office of the Attorney General,

Harrisburg, Pa., December 7th, 1914.

Hon. Samuel B. Rambo, Superintendent Board of Public Grounds and Buildings, Harrisburg, Pa.

Sir: I acknowledge receipt of your favor of the 3rd inst. You ask to be advised whether under the Act of Congress approved October 22, 1914, entitled:

> "An act to increase the internal revenue, and for other purposes,"

the various departments of the State government are required to pay a tax on shipments, by freight and express, and upon telephone and telegraph messages.

The Act of Congress provides, In Schedule A, in part, as follows:

"Express and freight: It shall be the duty of every railroad or steamboat company, carrier, express company, or corporation or person whose occupation is to act as such, to issue to the shipper or consignor, or his agent or person from whom any goods are accepted for transportation where a charge exceeding 5 cents is made a bill of lading, manifest, or other evidence of receipt and forwarding for each shipment received for carriage and transportation, whether in bulk or in boxes, bales, packages, bundles, or not so inclosed or included; and such shipper, consignor, agent or person shall duly attach and cancel, as is in this Act provided, to each of said bills of lading, manifest, or other memorandum, a stamp of the value of one cent; * * * * Any failure to issue such bill of lading, manifest or other memorandum, as herein provided, shall subject such railroad or steamboat company, carrier, express company, or corporation or other person to a penalty of $50 for each offense."

"Telegraph and telephone messages: It shall be the duty of every person, firm or corporation owning or operating any telegraph or telephone line or lines to make within thirty days after the expiration of each month a sworn statement to the collector of internal revenue in each of their respective districts, stating the number of dispatches, messages or conversations originated at each of their respective exchanges, toll stations or offices, and transmitted thence over their lines during the preceding month for which a charge of fifteen cents or more was imposed, and for each of such messages or conversations the said persons, firm or corporation shall collect from the person paying for the message or conversation a tax of 1 cent in addition to the regular charges for the message or conversation, which tax the said person, firm or corporation shall in turn pay to the said collector of internal revenue of their respective districts;* * * * * That messages of officers and employees of the government on official business shall be exempt from the taxes herein imposed upon telegraphic and telephonic messages."

I am advised that notices have been given by some of the corporations conducting express, freight, telegraph and telephone business, to the departments of the State government that after the first of December, 1914, the tax required by the provisions of the Act of Congress, above quoted, will be collected upon the bills of lading issued to the departments of the State government and upon telegraph and telephone messages sent by such departments.

Your inquiry raises the question of the power of the Federal Government to impose a tax upon the State Government.

This Act of Congress is passed by virtue of the power conferred by the First Clause of Section 8 of Article 1 of the Constitution of the United States which provides that:

"Congress shall have power to lay and collect Taxes, Duties, Imposts and Excises, to pay the debts and provide for the common defence and general welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

In the case of *South Carolina vs. United States, 199, U. S. 437,* Mr. Justice Brewer said, pages 451-453:

"These are all the constitutional provisions that bear directly upon the subject. It will be seen that the only qualification of the absolute, untrammeled power to lay and collect excises are that they shall be for public purposes, and that they shall be uniform throughout the United States. All other limitations named in the Constitution relate to taxes, duties and imposts. If, therefore, we confine our inquiry to the express provisions of the Constitution there is disclosed no limitation on the power of the General Government to collect license taxes. * * * *

Among these matters which are implied, though not expressed, is that the Nation may not, in the exercise of its powers, prevent a State from discharging the ordinary functions of government, just as it follows from the second clause of Article 6 of the Constitution, that no State can interfere with the free and unembarrassed exercise by the National Government of all the powers conferred upon it. * * * *

Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may be not unreasonably said that the preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National Government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States. * * * * *

It is admitted that there is no express provision in the Constitution that prohibits the General Government from taxing the means and instrumentalities of the States, nor is there any prohibiting the States from taxing the means and instrumentalities of that Government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

And after reviewing the authorities upon the subject, said (page 456):

"The exemption of the State's property and its functions from Federal taxation is implied from the dual character of our Federal system and the necessity of preserving the State in all its efficiency."

In the case of *United States vs. Railroad Company, 17 Wall. 332,* which was an attempt to collect a tax on money due from a railroad company to the city of Baltimore, it was held by the Supreme Court of the United States that the city was a portion of the State in the exercise of a limited portion of the powers of the State. The Court said (Page 327):

> *"The right of the States to administer their own affairs through their legislative, executive, and judicial department, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government."*

In *Ambrosini vs. United States, 187 U. S. 1,* it is said, (page 7):

> "The general principle is that as the means and instrumentalities employed by the General Government to carry into operation the powers granted to it are exempt from taxation by the States, so are those of the state exempt from taxation by the General Government. It rests on the law of self-preservation, for any government, whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government, exists only at the mercy of the latter."

In the case of *Pollock vs. Farmers Loan & Trust Company, 157 U. S. 429,* known as the "Income Tax Case," Mr. Chief Justice Fuller said, page 584:

> *"As the states cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalties or the property of a State."*

It is useless to multiply these citations.

It is necessary, in carrying out the governmental functions of the State, through its various departments, to send various articles of merchandise, supplies, documents and literature by freight and express. It is also necessary, in transacting the business of the various departments of the State, to use both the telegraph and telephone for long distance messages. The use of these agencies in the performance of governmental duties are clearly instrumentalities of the State Government, and when so used, there is no power in the Federal Government to impose a tax thereon.

Specifically answering your inquiry I have to advise you that no tax is required upon the bills of lading for the shipment of State

property for which, if a stamp were issued, the State or any of the departments thereof would be required to pay, and telephone and telegraph companies are not required to pay a tax upon messages, or conversations and dispatches, for which a charge of fifteen cents or more is imposed, if such dispatches, messages or conversations are sent to or from the various departments of the State Government in performing the governmental functions of the State, and paid for by the State.

I am advised that the Commissioner of Internal Revenue of the United States acquiesces in the conclusion herein stated.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

WATER SUPPLY.

The Commissioner of Fisheries may contract for a term of years for the supply of water to the Bellefonte hatchery.

Office of the Attorney General,
Harrisburg, Pa., April 15, 1913.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: Your favor of the 1st inst. is at hand. You ask to be advised whether your Department is authorized under the law to make a contract for the supply of water to the Bellefonte Hatchery, for a term of five years, with a right of extension for another term, with the owners of adjoining properties.

I understand that the Bellefonte Hatchery in Center County is entirely dependent for its supply of water upon springs on what is known as the Shugart property, which adjourns said land, and that your Department has for some time past been paying a monthly rental for the use of the said water, that it is proposed to make extensive improvements at the Bellefonte Hatchery and that your Department hesitates to authorize said improvements without the water supply being secured, because in the event of a sale of the Shugart property, the usefulness of the Hatchery might be seriously impaired by a refusal to permit the use of the water or the price might be raised to an exorbitant rate.

Under the general appropriation act of 1911 there is appropriated to your Department as follows:

> "For the purpose of hatching, propagating and distributing food and game fish and stocking and supplying the waters of the Commonwealth with same, and distributing fish, and employing the necessary labor and implements therefor, and paying for the repairs, improvements and necessary expenses to the State Hatcheries, two years, the sum of ninety-three thousand dollars ($93,000.00)."

I am of opinion and therefore advise you, that the language of this appropriation is sufficient to justify you in entering into a contract for a term of years for the supply of water upon a monthly or yearly rental to the Bellefonte Hatchery.

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

SALE OF TROUT.

It is unlawful to sell in Pennsylvania fresh trout imported from Norway.

Office of the Attorney General,

Harrisburg, Pa., March 25, 1914.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of February 24th, inquiring whether, under the provisions of Section 12 of the Act of May 1st, 1909 (P. L. 353), it is lawful to sell, within this Commonwealth, fresh trout imported from Norway, the trout being received here sealed hermetically in tin cans and put up in jelly.

Section 12 of the Act of 1909, to which you refer, provides:

> "It shall be unlawful for any * * * * * person, company or corporation, in this Commonwealth, to purchase, sell or expose for sale, any charr, commonly called brook trout, or any species of trout * * * * *provided that nothing in this section shall be construed as to prevent any person, company or corporation from selling charr, commony called brook or speckled trout, or any species of trout, bred or raised artificially, under the provisions of Section 11 of this act."

If this were the only section of the Act of 1909 relevant to your inquiry, this Department would be bound to advise you that the prohibition therein contained was directed solely to the sale of trout caught within this Commonwealth, in view of numerous decisions of our courts, of which reference is made to the following:

> *Commonwealth v. Wilkinson, 139 Pa. 298 (1890).*
> *Commonwealth v. Paul, 148 Pa. 559 (1892).*
> *Commonwealth v. Beilstein, 29 Supr. Ct. 373, (1905).*
> *Commonwealth v. Bitterson, 13 Pa. Dist. Rep. 364, (1904).*

Section 13 of the Act of 1909 provides, however, as follows:

> "That it shall be unlawful to purchase, sell or offer for sale, or have in possession, any fresh dead game fish, wherever caught, within this Commonwealth, or any fresh dead food fish, caught in the waters within this Commonwealth, except during the lawful period for catching the same, and the space of six days after such period has expired: Provided, however, that nothing herein shall be so construed as to prohibit the sale of food or game fish artificially propagated by any person or persons, under the provisions of Section 11 of this act."

Section 1 of the Act of 1909 classifies as game fish, all species of

trout, and Section 3 makes it unlawful to fish for or have in possession, the same being killed, any species of trout except lake trout, from August 1st to April 14th, both inclusive, except fish artificially propagated under Section 11.

Section 11 authorizes the Department of Fisheries to issue a license to persons or corporations desiring to carry on the business of propagating and selling game or food fish, or the eggs thereof.

The preceding acts for the preservation of fish, notably the Act of May 29th, 1901, (P. L. 302), do not contain any provision similar to that provision of Section 13, making it unlawful to purchase, sell, offer for sale, or have in possession, any fresh dead game fish "whereever caught." The words " wherever caught," especially when considered in conjunction with the words "caught in the waters within this Commonwealth," which refers to fresh dead food fish, indicate that the Legislature intended thereby to prohibit the sale of said game fish within this Commonwealth, during the closed season, whether such fish were caught in the waters within this Commonwealth, or elsewhere.

The legality of legislation prohibiting the importation into a state, during the closed season, of fish or game caught outside of the State, was considered and established by the Supreme Court of the United States in the case of Silz v. Resterberg, 211 U. S. 31, (1908), in which the court says, per Mr. Justice Day, as follows:

> "It has been provided that the possession of certain kinds of game during the closed season shall be prohibited, owing to the possibility that dealers in game may sell birds of the domestic kind under the claim that they were taken in another state or country. The object of such laws is not to affect the legality of the taking of game in other states, but to protect the local game, in the interest of the food supply of the people of the State. We cannot see that such purpose frequently recognized and acted upon is an abuse of the police power of the State."

You are therefore advised that the sale of the imported fish, about which you inquire, would constitute an infringement of the Act of May 1st, 1909.

Yours very truly,

JOHN C. BELL,
Attorney General,

EXPENSES OF STATE POLICE.

The Commissioner of Fisheries may pay the expenses of members of the State Police while acting as special fish wardens.

Office of the Attorney General,
Harrisburg, Pa., April 14, 1914.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of April 6th, inquiring whether it would be legal, if the Superintendent of State Police details men from his force to assist your Department, for your Department to pay the expenses of such men from its appropriation.

You are advised that this would be legal.

The Act of May 1, 1909, (P. L. 353), for the protection of fish, provides in Section 30 that the Commissioner of Fisheries may appoint special wardens who shall not be entitled to any salary nor to reimbursement for expenses "unless such special fish wardens should be detailed for duty by the Commissioner of Fisheries, in which case the Commissioner of Fisheries is authorized to make a per diem allowance for compensation and reasonable expenses out of any appropriation which may be made for the payment of wardens." Your authority, therefore, to appoint special fish wardens and pay them a salary and expenses is expressly conferred.

The Act of May 2, 1905, (P. L. 361), creating the Department of State Police, provides in Section 6:

> "They are also authorized and empowered to act as forest, fire, game and fish wardens."

The members of the State Police receive a regular salary and it, therefore, would not be legal for your department to pay them any additional compensation (Walsh vs. Luzerne County, 36 Super. Ct. 425, 1908), but as they would be entitled to their reasonable expenses from the Department of State Police if the expenses were incurred in the course of their work for that department, we can see no reason of public policy why their expenses incurred in the course of their work for the Department of Fisheries may not be paid by that department as the expenses of other special fish wardens may be.

You are, therefore, advised that if the Superintendent of State Police deems it advisable to detail members of the State Police force as special fish wardens, their expenses may be paid by you to the respective troop commanders from the appropriation of forty thou-

sand dollars ($40,000.00) made by the Act of July 16, 1913, (P. L. 755, at page 782: "For the payment of salaries and reasonable expenses of fish wardens."

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

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

HUNTERS' LICENSE TAGS.

The Department of Public Printing and Binding is required to furnish hunters' license tags upon requisition of the Game Commission.

Office of the Attorney General,

Harrisburg, Pa., July 28, 1913.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your letter of the 11th inst.

You state that you are in receipt of an order from the Game Commission for 209,000 hunters' license tags, to be issued under the Act of April 17, 1913, and you ask to be advised whether the Department of Printing should furnish such tags.

The Act above referred to, which is commonly known as the Hunters' License Act, requires the Game Commissioner to furnish free of charge, and the County Treasurer to issue, "with each license," a tag bearing the license number at least one inch in height, which tag said licensee is required to display on the back of the sleeve.

Section 10 of the Act of May 11, 1911, creating the Department of Public Printing and Binding, provides:

> "That it shall be the duty of the said superintendent to receive orders for all blanks, blankbooks, and miscellaneous printing and binding that may be needed by the Legislature, or either branch thereof, or any of the departments of the Commonwealth, or any commission created by an Act of Assembly, not otherwise provided for; have them executed by the contractor or contractors, and deliver such work to the officers ordering the same."

These hunters' license tags being required by the Act of 1913, and not being otherwise provided for, and coming within the designation of miscellaneous printing, I am of opinion that under the provisions of the Act of May 11, 1911, above quoted, the Department of Public Printing and Binding is required to furnish the same.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

DISTRIBUTION OF DOCUMENTS.

The Act of July 19, 1915, creating a Department of Distribution of Documents construed. "At the close of each year" in the meaning of the act refers to the year ending June 30th.

Office of the Attorney General,

Harrisburg, Pa., September 18th, 1913.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: Your favor of the 12th ult. addressed to the Attorney General is at hand. You ask that this Department construe Section 27 of the Act of July 19, 1913, entitled "An Act creating a Division of Distribution of Documents, etc."

Section 27 in part provides:

> "It shall be the duty of the head of each department, commission, etc., at the close of each year, to turn over to the Division of Distribution of Documents, all such pamphlets, bulletins, reports, Legislative bills, calendars, and Journals, et cetera, as will not be needed to supply a possible demand, and shall take a receipt for the same. The Chief of the Division of the Distribution of Documents shall receive all such documents, pamphlets, bulletins, reports, Legislative bills, calendars, and journals, as are turned over to him; and all that he may not have use for in his department shall be sold by the Superindent of Public Printing and Binding to the highest bidder," etc.

And your specific inquiry is whether the words "at the close of each year" refer to the calendar year.

Section 12 provides:

> "Whenever the Senate or House of Representatives, or any department or committee or commission, shall requisition and receive documents for distribution, it shall be the duty of the Librarian of the Senate, the Resident Clerk of the House of Representatives, and the head of such department, committee, or commission, to file with the division, before the first day of July of each year, the exact number of documents of each kind that have been requisitioned but not distributed during the year ending the first day of June preceding said first day of July."

Section 15, in part, provides:

> "The Chief of the Division shall, on or before the first day of July, annually, report to the Superintendent of Public Printing and Binding the number of documents received, the manner and on whose order they have been distributed, and the number remaining undistributed."

The Act also provides for the advertisement during the month of July for proposals for distributing documents, the opening of the bids on the second Monday of August, and the making of a contract for a period of one year from the fifteenth day of August in each year.

Section 27 of the Act provides:

> "It shall be the duty of the head of such department, commission, State Library, and the Librarian of the Senate, and the Resident Clerk of the House of Representatives, *at the close of each year,* to turn over to the Division of Distribution of Documents all such pamphlets, bulletins, reports, Legislative bills, calendars, and Journals, et cetera, as will not be needed to supply a possible demand, and shall take a receipt for the same."

In the absence of anything showing a different meaning, a year is construed to mean a calendar year.

> "While 'year' ordinarily means a calendar year, that signification is not always to be given the word; but the meaning of the word 'year' in a statute is to be determined by the subject-matter and the contest. Thornton vs. Boyd, 25 Misc. 596, 605."
> 8 Words 5 Phrases, 7552.

It is apparent from the sections quoted that the heads of the departments must file with the Division of Distribution of Documents before the first of July in each year the number of documents that have been requisitioned but not distributed during the previous year. The Chief of the Division is to report before the first of July annually the number of documents received, the manner and on whose order they have been distributed, and the number remaining undistributed.

The first day of July, therefore, seems to be the time fixed as the ending of the year within the meaning of the act, for the purpose of making reports and fixing the status of the number of pamphlets, bulletins, reports, etc., which have been received, distributed and which remain undistributed.

The number, therefore, of the undistributed documents is determined on the first day of July, and the heads of the departments, commissions, etc., of the State Government then know what have been distributed and are able to judge "what number will be needed to supply a possible demand."

There seems to be no reason why the close of the calendar year should be fixed for the purpose of turning over to the Division of Distribution of Documents such pamphlets, bulletins, reports, Legis-

lative bills, calendars, journals, etc., as will not be needed to supply a possible demand when the first day of July is fixed in the statute as the time when the status should be ascertained.

I am, therefore, of opinion, and so advise you, that the words "at the close of each year" in Section 27 refer to the year ending June 30th.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

DISTRIBUTION OF DOCUMENTS.

Construing act creating Department of Distribution of Documents, as to what publications are included in the word "documents."

Office of the Attorney General,

Harrisburg, Pa., October 22, 1915.

Hon. A. Nevin Pomeroy, Superintendent Department of Public Printing, Harrisburg, Pa.

Sir: I have your letter of September 25th, 1913, requesting the opinion of this Department as to the distribution of documents not specifically enumerated in the Act of July 19, 1913, (P. L. 845). You speak especially of the Game, Fish and Forestry laws, Arbor Day Periodicals and Elementary Courses.

These publications, I assume, are included within the definition of "documents" in Section 1 of the Act, namely, "documents, books, pamphlets, reports, and other publications of similar or analogous nature, printed at the expense of the Commonwealth for any department of the State Government, or any branch thereof, or for the General Assembly or for any legislative committee thereof, or for any commission or commissioner authorized by law."

If this be so Section 5 of the act requires the publications to be delivered by the State Printer to the Division of Distribution of Documents, unless otherwise directed by the Chief of that Division, and the duty of distribution, therefore, necessarily would rest upon the Division.

Paragraph 24 of the Act provides for the distribution of the documents therein enumerated. As to other documents where the distribution is provided for in the act authorizing their publication, the division is directed in Section 8 of the Act to distribute as provided

in the act authorizing the publication, for example, the distribution of the Game, Fish and Forestry laws is provided for in the Act of March 27, 1913, (P. L. 19), authorizing their publication.

As to documents not included within Section 24, and whose distribution is not provided for by the act authorizing their publication, under Section 28, the distribution is subject to the approval of the Superintendent of Public Printing and Binding.

I realize the possibility that the special act authorizing publication might provide for their distribution to other persons than those whom Section 9 of the act designates as "the only persons who shall be entitled to order documents from the division," but this difficulty need not be considered until a case arises.

I trust that this will answer your inquiry,

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

SHIPPING DOCUMENTS.

The contractor for shipping of documents is entitled to receive the actual expense incurred in the drayage of books or packages from the Division of Distribution of Documents to the express office or freight warehouse.

Office of the Attorney General,

Harrisburg, Pa., October 22nd, 1913.

Hon. A. Nevin Pomeroy, Superintendent Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of October 3rd, 1913, enclosing letter from Joseph Montgomery, the contractor for shipping documents under the Act of July 19, 1913, (P. L. 845), and asking this Department for an opinion as to Mr. Pomeroy's right to payment for expressage or drayage from the rooms of the Division of Distribution of Documents to the freight warehouses in Harrisburg.

The instructions for bidders, pursuant to which the contract was given to Mr. Montgomery provides "in addition to the charge allowed for preparation the successful contractor or contractors shall be entitled to the actual expense incurred by him or them for postage, expressage or freightage" in distributing the documents.

I beg to advise you that, in the opinion of this Department, this includes the actual expenses incurred for drayage on books or packages from the Division of Distribution of Documents to the express office or freight warehouse.

It may be that a technical definition of the word "express" would not include the charge in question (See opinion of Mr. Justice Blatchford in Retzer vs. Wood, 109 U. S. 185, 1883) but it apparently was intended to include within the word "express," both in the act itself, and in the invitation to bid, all means of transporting the documents, except personal delivery, mail or freight. We think that it would be so understood by any bidder. Neither do we see that it makes any difference whether Mr. Montgomery employs another company to do the draying, or does it himself, except that he may make no profit on the work if he does it himself, but is entitled to be reimbursed only to the extent of the actual expense incurred by him.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

DISTRIBUTION OF DOCUMENTS.

It is the duty of the Department of Distribution of Documents to send such documents to such persons as they are authorized to send them by an order in writing from the departments and offices entitled thereto.

Office of the Attorney General,

Harrisburg, Pa., October 29, 1913.

Hon. A. Nevin Pomeroy, Superintendent Department of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of October 14th, requesting an opinion as to your duty under the Act of July 19, 1915, (P. L. 845), in reference to the distribution of documents to which the various officers and departments are entitled under the act.

Under Section 24, Paragraph 1, of the Act, the Governor, for example, is entitled to requisition not more than five hundred copies of his Inaugural Address. I understand your question to be whether your duty is simply to deliver these copies to the Governor's office,

when he requests them, or whether it is intended that your Department should distribute the copies to such persons as the Governor may direct.

Bearing in mind the evil which existed prior to the passage of the Act of 1913, and which it was designed to remedy, it is clear that the legislative intent in passing this act was to provide for a distribution of the documents by the department created in the act.

Section 16 provides that documents are to be distributed personally, by mail or express, or by common carrier. This clearly indicates that the Legislature did not have in mind merely a transfer of the documents from one room in the Capitol to another, but contemplated distribution to points where transportation naturally would be had by mail, express or freight.

Section 8 provides that documents are to be distributed "only on a written order or requisition addressed to the Chief of the Division by the official or persons entitled to such documents."

I, therefore, advise you that it is your duty to send the documents to such persons as you shall be authorized to send them, in writing, by the departments and officers entitled thereto.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

PENNSYLVANIA AT GETTYSBURG.

In re distribution of "Pennsylvania at Gettysburg."

Office of the Attorney General,

Harrisburg, Pa., January 13, 1914.

Hon. A. Nevin Pomeroy, Superintendent Department of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of January 8, 1914, asking to be advised concerning the distribution of the publication known as "Pennsylvania at Gettysburg," the publication of which is authorized by the Act of July 25, 1913, (P. L. 1267).

That act provides for the printing and binding of 5,500 copies, of which 500 copies are for the use of the Governor, 500 for the use of the State Librarian, 500 copies for the use of the Fiftieth Anniversary Commission, 1,000 copies for the use of the Senate, and 3,000 copies for the use of the House of Representatives.

The Act of July 19, 1913, (P. L. 845), creates a Division of Distribution of Documents in the Department of Public Printing and Binding.

I understand your first question to be whether "Pennsylvania at Gettysburg" is a "document" within the purview of the Act of July 19, 1913, which act provides for the printing, binding and distribution of documents.

You are advised that "Pennsylvania at Gettysburg" comes within the meaning of the word "document" as defined by Section 1 of the Act of July 19, 1913, as follows:

> "That the word 'document,' as used in this act, shall be taken to mean all documents, books, pamphlets, reports, and other publications of similar or analogous nature, printed at the expense of the Commonwealth for any department of the State Government, or any branch thereof, or for any commission or commissioner authorized by law."

"Pennsylvania at Gettysburg," according to Section 1 of the Act of July 25, 1913, includes the report of the Board of Commissioners on Gettysburg Monuments, the report of the Gettysburg Battlefield Memorial Commission, and the report of the Fiftieth Anniversary of the Battle of Gettysburg Commission. It is, therefore, a report of certain commissions authorized by law, and within the words as well as the spirit of the Act of July 19, 1913.

I understand your second inquiry to arise in consequence of the provisions of Section 25 of the Act of July 19, 1913, as follows:

> "Whenever any document of any kind not included in this act shall be printed by the State Printer, for any branch of the State Government, or for the General Assembly, or for any legislative committee, or for any commission or commissioner authorized by law, five hundred and five copies thereof shall be printed in addition to the number called for. Of such additional copies the Governor may requisition fifty copies; the Secretary of the Commonwealth, fifty copies; the State Librarian, three hundred copies; the Division of Distribution of Documents, one hundred copies; and the Legislative Reference Bureau, five copies. The order for printing such additional copies shall be included by the Superintendent of Public Printing and Binding in his order to the State Printer for such publication."

The question is whether in addition to the 5,500 copies of "Pennsylvania at Gettysburg," provided by the Act of July 25, 1913, 505 additional copies must be printed for requisition by the persons mentioned in Section 25 of the Act of July 19, 1913.

In the judgment of this Department Section 25 above quoted was designed for the purpose of insuring the officers and departments

therein mentioned the right to requisition or receive the number of copies therein specified of any publication not provided for by Section 24 of the Act of July 19, 1913, but if the special act providing for the distribution of any such documents gave to the officers and departments mentioned in Section 25 at least as many copies as Section 25 provides that they shall have, there is no need for duplicating the order as to such officer or department.

Concretely I mean that since the act authorizing the publication of "Pennsylvania at Gettysburg" provides for the distribution to the Governor of more than fifty copies, and to the State Library of more than three hundred copies, it is unnecessary to order an additional fifty copies for the Governor, or three hundred copies for State Library. As the act authorizing the publication of "Pennsylvania at Gettysburg" does not, however, provide for the distribution of any copies to the Secretary of the Commonwealth, the Division of Distribution of Documents, or the Legislative Reference Bureau, in addition to the 5,500 copies provided for by the Act of July 25, 1913, you should order 155 copies to the distributed 50 copies to the Secretary of the Commonwealth, 100 copies to the Division of Distribution of Documents, and 5 copies to the Legislative Reference Bureau.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

PENNSYLVANIA AT GETTYSBURG.

The report of the 50th Anniversary of the Battlefield of Gettysburg Commission can be published only as part of the work "Pennsylvania at Gettysburg", as provided by Act July 26, 1913, P. L. 1267.

Office of the Attorney General,

Harrisburg, Pa., February 18th, 1914.

Hon. A. Nevin Pomeroy, Superintendent Department of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of January 30, 1914, containing a copy of a letter of transmittal from the Governor, wherein you are directed to print 10,000 copies of the report of The Fiftieth Anniversary of the Battle of Gettysburg Commission, and inquiring whether there is any authority for the printing of this number of copies of the report.

If an opinion given to you by this Department on January 13, 1914, you were advised that the Act of July 25, 1913, (P. L. 1267), authorizing the distribution of a publication known as "Pennsylvania at Gettysburg," taken in connection with the Act of July 19, 1913, (P. L. 845), creating and defining the duties of the Division of Distribution of Documents, required the printing of 5,500 copies and an additional 155 copies of the document.

The publication "Pennsylvania at Gettysburg" as explained by the Act of July 25, 1913, (P. L. 1267), includes the reports of three commissions, among which is the Fiftieth Anniversary of the Battle of Gettysburg Commission, and was no doubt intended definitely to provide the number of copies and the method of distribution of the report of that commission, which report was provided for generally in the Acts of May 13, 1909, (P. L. 777), and June 14, 1911, Appropriations, page 236, respectively creating and making appropriations for the Commission.

In view of the inclusion of the report of this Commission in the publication "Pennsylvania at Gettysburg," and of the fact that there is no other act providing definitely for the details regarding its publication, you are advised that the report can be published only as part of the work "Pennsylvania at Gettysburg" to the number, upon the conditions and under the supervision of the persons provided and named in the Act of July 25, 1913, (P. L. 1267), for the publication and distribution of "Pennsylvania at Gettysburg."

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

OPINIONS TO STATE LIVE STOCK SANITARY BOARD AND STATE VETERINARIAN.

OPINIONS TO STATE LIVESTOCK SANITARY BOARD AND STATE VETERINARIAN.

CATTLE.

The State Livestock Sanitary Board may place cattle owned by the State temporarily into the possession of a State institution.

Office of the Attorney General,

Harrisburg, Pa., May 5, 1913.

Hon. N. B. Critchfield and Hon. C. J. Marshall, Farm Committee, State Livestock Sanitary Board, Harrisburg, Pa.

Gentlemen: Your favor of the 30th ult. addressed to the Attorney General, was duly received.

You ask to be advised whether the Livestock Sanitary Board may arrange with State institutions to take cattle which have been bred in the course of making experimental tests, and maintain these cattle under the control of the Board, using the product in the maintenance of such institutions.

The facts as I understand them are that in the tests to determine the possibility of raising healthy cattle from tuberculous ancestry, you have now about twenty-five head of finely bred heifers and bulls which show no trace of tuberculosis and that the limitations of your farm are such as to make it advisable to place these cattle elsewhere, but that you desire to continue to have them under your control and superivsion; that certain State institutions desire to use the cattle, and are willing to take and maintain them.

I can see no objection, legal or otherwise, to the right of your Board to place any cattle belonging to the State under its control wherever the Board may desire, for the purpose of watching the said cattle in carrying out the experiments of the Board.

You are therefore advised that it is entirely within the right of the Board to put these cattle temporarily in the possession of a State institution, with the understanding that the final disposition and control of them is subject to your Board.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

STATE LIVESTOCK SANITARY BOARD.

Under the Act of March 30, 1905, P. L. 78, as amended by the Act of April 27, 1909, § 5, P. L. 189, providing for the appraisement of animals deemed necessary to destroy to prevent the further spread of a dangerous, contagious or infectious disease, the actual value of the animal at the time of the appraisement should be ascertained in all cases as the starting point for all subsequent calculations. The actual value should be ascertained by the same methods of investigation as are adopted in determining the actual value of any other kind of personal property. The State Veterinarian should not arbitrarily estimate the value by assuming that in no event can it be considered as being greater than a sum of which the maximum limit of appraisment fixed by law is two-thirds.

Office of the Attorney General,

Harrisburg, Pa., May 13th, 1913.

Hon. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of April 7th, stating that on March 13th and 14th, 1913, Walter K. Sharpe, Esq., of Chambersburg, had an inspection and tuberculin test made of his herd of pure bred Holstein cattle, as a result of which inspection thirteen were found to be tuberculous; that in accordance with the regulations of the State Live Stock Sanitary Board nine of said cattle were slaughtered at the instance of the owner at The Brelsford Packing House, Harrisburg, Pa.; that the owner applied to the State Live Stock Sanitary Board in the usual way for the appraisal of the reacting cattle under the provisions of the fifth section of the Act of March 30th, 1905, P. L. 78 as amended by the Act of April 27th, 1909, P.L. 189, and that said appraisement by the Board's agent and the owner was made on March 19th.

Attached to your communication is a copy of the appraisement, and a copy of the voucher issued by the State Live Stock Sanitary Board to the said Walter K. Sharpe, in the sum of $401.47, which voucher the said payee has declined to accept and sign upon the grounds set forth in his protest appearing upon the back of the appraisement hereinafter referred to.

In your communication you state that:

> "It has been the custom of our Board to estimate the actual value of condemned animals upon the basis of the two-thirds appraised valuation. Thus: a grade bovine animal appraised at $40.00 is assumed to have an actual value of $60.00 and the owner's limit of recovery under the 90 per cent. clause is $54.00. If the amount received from the butcher when added to the state appraisement exceeds the sum of $54.00 the State appraisement is reduced to such amount as when added to the sum received from the butcher will equal $54.00.

In the case of Pure Bred or Registered Cattle the two-thirds appraised valuation is limited to $70.00. The actual value based on this two-thirds valuation being $105.00 and the owner's recovery limited to 90 per cent. or $94.50."

In the agreement as to the appraisal of the animals each animal is appraised at $70.00, the first item, which is an illustration of the remaining items, reading as follows:

Stable No.	Sex.	Breed.	Age.	Markings.	Pennsylvania Quarantine Tag.	Registry No.	Appraisement.
1, ...	Female, ...	Holstein, ...	7 years, ...	Black and white.	14538	87253	$70 00

In the voucher the sum of $33.54 is fixed as the amount of the indemnity to be paid by the state to the owner of this animal, which amount is arrived at in the following manner:

Appraisement 2/3 actual value.	90 per cent. actual value.	Net proceeds from sale of carcases, etc.	Amount of excess.	Amount of indemnity.
$70.00, ...	$94 50	$60 96	$36 46	$33 54

In other words the owner is permitted to receive $94.50 for the animal in question, $60.96 thereof being received from the disposition of the carcasses etc., and $33.54 as cash indemnity from the State.

In the protest of the owner appearing upon the back of the appraisal agreement, he states that he signs the said agreement under protest for the following reasons:

"First, said agreement of appraisal does not set forth the actual value of the cattle and I as owner contend that the actual value should be set forth in the agreement of appraisal.

Second, under the Acts of Assembly the actual value should not be confined to the value of the animals after the tuberculin test when they have reacted.

> Third, the actual value of the cattle, even in the present reacted condition should be set forth in the agreement of appraisal and should be fixed in the case of those animals at a minimum of $175.00 for the least valuable animals and for others at much higher figures."

You ask to be advised with reference to the legality of the voucher in its present form, namely, whether the method of appraisement therein set forth is the legal method by which the amount of indemnity due to the owner of cattle destroyed to prevent the spread of tuberculosis, etc., should be ascertained.

In reply to your request you are advised that in my opinion you have not adopted the proper method for ascertaining the amount of the indemnity to be paid owners of cattle destroyed under the provisions of law, and that the third exception of the owner to the effect that "the actual value of the cattle even in the present reacted condition should be set forth in the agreement of appraisal" is well taken. You state in your letter that it has been the custom of the Board to *estimate* the *actual value* of the condemned animals upon the basis of the two-thirds appraised valuation, and you illustrate in the case of pure bred or registered cattle by stating that "the two-thirds appraised valuation is limited to $70.00; the actual value based on this two-thirds valuation being $105.00 and the owner's recovery limited to 90 per cent. or $94.50."

In other words instead of inquiring into and determining as a fundamental fact the actual value of the animal at the time of the appraisement and making much actual value the basis of subsequent calculation, you arbitrarily estimate the actual value by assuming that in no event can it be considered as being greater than a sum of which the maximum limit of appraisement fixed by law is two-thirds. In my judgment this is fundamentally wrong. Section 5 of the act under which appraisements are made, as amended, reads as follows:

> "Section 5. That the maximum limit of appraisement that shall hereafter be allowed for animals that it shall be deemed to be necessary to destroy, to prevent the further spread of a dangerous, contagious, or infectious disease, shall be as follows: For a horse or mule, sixty dollars, for a bovine animal, of grade or common stock, forty dollars; for a bovine animal, of pure breed or of registered stock, seventy dollars; for a sheep or pig, ten dollars: Provided, however, That the amount of appraisement shall not, in any case, exceed two-thirds of the actual value of the animal at the time of appraisement; And provided further, That the owner shall dispose of carcasses, parts of carcasses, hides and offal in a manner that is consistent with the protection of the health of the public and of animals, and that is in accord with lawfully established regulations of the

State Livestock Sanitary Board. The net proceeds to the owner from the sale of such carcasses, parts of carcasses, hides, or offal, as are permitted under the said regulations to be sold, shall be in addition to the amount of indemnity paid by the Commonwealth; but the total amount of the net proceeds from the sale of such carcasses, parts of carcasses, hides or offal, as are permitted under the said regulations to be sold, and of indemnity from the State, shall not exceed ninety per centum of the actual value of the animal at the time of appraisement."

The primary proposition of this section is that in no event shall the indemnity to be paid by the State exceed two-thirds of the actual value of the animal at the time of appraisement, and, secondly, that the owners shall not receive from the state even two-thirds of such actual value if said two-thirds is greater in amount than the maximum limits of appraisement fixed for the different kinds of animals referred to in the section.

Making a particular application of the provisions of the section to the case of one of the animals referred to in your inquiry, the first question to be considered and decided by the appraisers is what is the actual value of the animal at the time of appraisement i. e. after it has reacted to the tuberculin test. If that actual value be $105.00 or more than the owner is *prima facie* entitled to receive from the state the maximum limit of appraisement $70.00, but if that actual value be less than $105.00 the owner is *prima facie* entitled to receive from the State only two-thirds of such actual value. Assuming for sake of illustration that the owner's contention in this case to the effect that the actual value of some of the animals in question in their diseased condition and at the time of the appraisement was at least $175.00 each, so that two-thirds of such actual value would be $116.66 2-3, such owner would in no event be entitled to receive that sum as indemnity from the State, but would *prima facie* be entitled to receive the sum fixed by law as the maximum limit of appraisement for pure bred or registered bovine animals, to wit, seventy dollars.

I say *prima facie* because the next item for consideration is the further provision that the owner shall, under the regulations prescribed by your Board, be permitted to dispose of cascass, hides, offal etc., and to retain for his own use the net proceeds arising from such disposition; "but the total amount of the *net proceeds* from the sale of such carcases, hides and offal as are permitted under the regulations to be sold, and *indemnity* from the State shall not exceed ninety per cent. of the actual value of the animal at the time of the appraisement." It is perfectly clear that the purpose of this legislative enactment is to furnish a method through which the owner

of animals destroyed at the instance of the State authorities may, if possible, through the sale of the carcasses etc., and the payment of an indemnity by the State, receive ninety per cent. of the actual value of the animals at the time they are condemned.

A limit, however, is placed upon the indemnity to be paid by the State, and if the actual value of the animal is so high or the value of the carcass so insignificant that the sum received from the sale of the carcass, etc. when added to the maximum indemnity to be paid by the State does not equal ninety per cent. of the actual value of the animal, the owner must bear such loss.

When the owner has received any sum of money as the proceeds of the sale of the carcass etc., he can in no event receive from the State more than such an amount as if added to the amount received from the sale will make a total which does not exceed ninety per cent. of the actual value of the animal at the time of appraisement.

Applying these principles as furnishing the proper method of appraising the animal referred to in the first item of the voucher in question, and assuming for the purpose of illustration that the actual value of the animal was, as contended by its owner, $175.00 we have the following results. Although two-thirds of its value would be $116.66 2-3, the owner could in no event receive more than $70.00 from the State, and he may not receive even that amount if by the addition thereto of the sum received by him from the sale of the carcass, to wit, $60.96, the total amount from both sources would be more than ninety per cent. of the actual value of the animal at the time of the appraisement. Ninety per cent. of the actual value at the time of appraisement would be $157.50, so that if the maximum indemnity fixed by law, namely, $70.00 be added to the amount received from the sale of the carcass, to wit, $60.96, making a total of $130.96 it is clear that the owner in this case will not have received 90 per cent. of the actual value of the animal at the time of the appraisement.

From this it follows that the owner was entitled to receive from the State on account of this animal the sum of $70.00 instead of the sum of $33.54 as set forth in said voucher, if the actual value at the time of appraisement was, in fact, $175.00.

If the actual value of the animal in question had been $105.00 the valuation set forth in the voucher would be correct, but if the actual value was greater than $105.00 the owner has not been allowed a sufficient amount as the indemnity to which he is entitled by law, and on the other hand if the actual value was less than $105.00 the owner has been allowed a greater indemnity than he is entitled to.

It is only proper to point out that the certificate attached to the appraisal blank contemplates the making of appraisements in the manner indicated in this opinion. In this certificate it is stated:

> "That the above described animals believed to be afflicted with tuberculosis have been impartially appraised as above set forth; that the amount allowed for each animal is not more than two-thirds of its actual value in its present condition; that *full consideration* has been given to *its actual or true value* in the condition it was in at the time of appraisement," etc.

This certificate is not in accordance with the actual practice outlined in your communication, and indicated in the voucher above referred to. As a matter of fact no consideration seems to have been given to the question of the actual or true value of the animals in question in the condition in which they were at the time of appraisement, but on the contrary it was arbitrarily assumed that each and every one of them was of the actual value of $105.00, merely because it was deemed proper to allow the owner the *prima facie* maximum indemnity fixed by law for animals of the class in which the ones in question belonged.

It is essential that the actual value of the animal at the time of the appraisement be ascertained in all cases as the starting point for subsequent calculations. This actual value is a fact which varies in each particular case, and should be ascertained by the same methods of investigation as are adopted in determining the actual value of any other item of personal property. In my judgment there is no justification for assuming, as has been done in this case, that because the maximum indemnity fixed by law for a pure bred registered bovine animal is $70.00, and it is further provided by law that the indemnity to be paid by the State shall never exceed two-thirds of the actual value of the animal, it necessarily follows that the actual value of each of the animals referred to in this voucher was $105.00.

You are advised that a new appraisement should be made in this case, based upon the actual value of each animal at the time of the appraisement, namely, after it had reacted to the tuberculin test.

If two-thirds of the actual value of any animal is less than $70.00 the owner is *prima facie* entitled to an indemnity from the State to the amount of said two-thirds of the actual value. If said two-thirds exceeds $70.00 the owner is *prima facie* entitled to said sum of $70.00.

The next question is whether the owner has derived any proceeds from the sale of the carcass, etc., and if so the amount of said proceeds should then be added to the *prima facie* indemnity above mentioned. If the sum of these two amounts should exceed ninety per cent. of the actual value of the animal, the indemnity from the State must be reduced to such an extent as will permit the owner to receive not more than ninety per cent. of the actual value of the animal when the proceeds of the sale of the carcass have been added to the State indemnity.

If each sum is less than ninety per cent. of the actual value of the animal at the time of the appraisement the *prima facie* indemnity above mentioned should be paid to the owner, and he must suffer the loss of any discrepancy between the sum of the indemnity and the proceeds of the sale of the carcass, etc., and ninety per cent. of the actual value.

Very truly yours,

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

DOG TAX.

Dog owners may be required to pay city or borough and county dog tax.

Office of the Attorney General,

Harrisburg, Pa., March 18, 1914.

Dr. C. J. Marshall, Secretary State Livestock Sanitary Board, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of February 25th, 1914, inquiring whether owners of dogs, in cities or boroughs which have ordinances requiring dog owners to pay the city or borough a dog tax, may be required also to pay a county tax, and secure a county tag, as provided by the Act of June 15, 1911, (P. L. 965), and whether constables may destroy dogs running at large and bearing a city or borough, but not a State, tag.

You are advise that dog owners must comply with the provisions of the Act of 1911, entirely irrespective of what additional requirements there may be imposed by any city or borough ordinances.

The Act of 1911 is an act supplementary to the Act of May 25, 1893, (P. L. 136), which earlier act is entitled: "An act for the taxation of dogs and the protection of sheep."

The paramount power of the State to create, by the taxation of dogs, a fund for the compensation of owners of sheep injured by dogs, and in aid of such an act to require dogs whose owners have paid the tax to bear a tag, cannot be restricted by local regulations.

The fact that owners may have to pay two taxes and that dogs may have to bear two tags, a county tag and a local tag, does not militate in any way against the efficacy of the State act.

A similar situation arose when the automobile Act of April 19, 1905, (P. L. 217), was passed, requiring automobile owners to procure a license from the State. Prior to that time certain cities, by ordinance, had required automobile owners to obtain city license. It was held by the Supreme Court in the case of Brazier v. Philadelphia, 215 Pa., 297, (1906) that the State act and the ordinances could co-exist even though the result of such holding might be that automobiles would have to carry two licenses.

Inasmuch as dog owners who have paid a city or borough dog tax are subject to the requirements of the Act of 1911, upon their failure to obey its provisions, constables have the same right to kill their dogs as to kill dogs upon which no city or borough dog tax has been paid.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

OPINIONS TO COMMISSIONER OF LABOR AND INDUSTRY.

OPINIONS TO COMMISSIONER OF LABOR AND INDUSTRY.

EXPENSE DEPUTY FACTORY INSPECTORS.

The cost of noon day meal of Deputy Factory Inspectors in Philadelphia is a proper item of charge to "traveling expenses," where the inspection is so far from his home that the interests of the Department require such allowance to be made.

Office of the Attorney General,

Harrisburg, Pa., April 8, 1913.

Hon. C. V. Hartzell, Chief Factory Inspector, Harrisburg, Pa.

Sir: Your favor of March 22, 1913, addressed to the Attorney General, was duly received.

You ask to be advised as to whether deputy factory inspectors living in Philadelphia, and assigned to duty there, may be compensated for the expense of noon day meals eaten in Philadelphia.

You call attention to the fact that an opinion of this Department was given to your predecessor some time ago, which stated:

> "The noon day meal, or luncheon, of a deputy factory inspector, eaten for the sake of convenience elsewhere than at his home, but in his own city, could not in any sense be considered a traveling expense."

That opinion was asked for by a letter which did not disclose the facts contained in your communication. You now advise us that in Philadelphia only one of the fourteen deputies lives within the district to which he is assigned, and that the deputies there are often at work a number of miles from their homes, and to get to their homes for the noon-day meal and back to their work again, would, in many instances, involve the outlay of several car fares, "equaling, if not indeed exceeding, the cost of a meal," and require much more than an hour in making the trip.

You also add that the "meals of rural deputies eaten often at less remote places from their own homes than city deputies eat their away-from-home meals, have the expense thereof allowed without question."

You further call attention to the fact that meals in Philadelphia are eaten elsewhere than at the home of the deputy factory inspector, but not *"for the sake of convenience,"* as stated in the former opinion.

The Act of May 21, 1905, P. L. 352, provides in section 27:

> "The Governor shall appoint by and with the advice and consent of the Senate, thirty-nine deputy factory inspectors, five of whom shall be women, at a salary of twelve hundred dollars ($1,200) per annum, *and their necessary traveling expenses.*"

In view of all the facts and circumstances, and particularly the fact as pointed out by you, that it would be a saving of probably both the time and expense, in many instances, for the deputies to take their noon-day meals in the neighborhood of their work, I now advise you that you are authorized to allow reasonable compensation as a "traveling expense" for the purchase of a noon-day meal in such cases where the inspector is so far from his home that the interests of your Department require such allowance to be made.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

DEPARTMENT OF LABOR AND INDUSTRY.

The Act of June 2, 1913 (No. 267), creating the Department of Labor and Industry, is intended to be a comprehensive statute, embracing the whole subject of labor and factory inspections, the enforcement of laws relating thereto, the promotion of safety and the conditions in establishments employing labor, and supplies and, therefore, repeals the Acts of April 26, 1883, P. L. 15, and May 18, 1893, P. L. 102, relating to disputes between employers and employees.

Office of the Attorney General,

Harrisburg, Pa., June 30, 1915.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Dear Sir: Your inquiry of the 20th inst. addressed to the Attorney General was duly received. Prompted by an inquiry from the Acting Commissioner of Labor Statistics of Washington, D. C., you ask to be advised whether the Act of April 26, 1883, P. L. 15, and the Act of May 18, 1893, P. L. 102, are affected by the Act of June 2, 1913, creating the Department of Labor and Industry.

The first mentioned act provides for the appointment of a voluntary tribunal to endeavor to settle and adjust disputes arising in certain industries between employers and employes upon a petition of certain persons interested.

The Act of 1893 provides for the appointment of a board of arbitration for the purpose of settling disputes arising between employers and employes in all industries.

The Act of 1913 creates in your Department a bureau of Mediation and Arbitration, and Section 18 of the act provides:

> "Whenever a difference arises between an employer and his employes, which cannot be readily adjusted, the chief of the bureau shall proceed promptly to the locality thereof, and endeavor by mediation to effect an amicable settlement of the controversy. If such settlement cannot be effected, the dispute may be arbitrated by a board composed of one person selected by the employer, and one person selected by the employes, and a third who shall be selected by the representatives of the employer and employes."

Further provision is also made for the selection of the third person in the event of the failure of the representative of the employer and employes to agree. Provision is also made for the submission of the differences to such board.

The Act of June 2, 1913, creating your Department is intended to be a comprehensive statute, embracing the whole subject of labor and factory inspections, the enforcement of the laws relating thereto, and the promotion of safety and the industrial conditions in establishments employing labor, and is intended to supply other laws upon the same subject. The Act contains a section repealing "All acts or parts of acts inconsistent herewith."

I am of opinion that the provisions of the Act of 1913, are intended to supply and, therefore, repeals the provisions of the Acts of 1883 and 1893 above referred to, and that the Act of 1913 affords the only remedy now in force for the adjustment of labor disputes.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

COMMISSIONER OF LABOR AND INDUSTRY.

Under the Acts of May 2, 1905, P. L. 382, April 29, 1909, P. L. 293, and June 2, 1913, P. L. 396, the Commissioner of Labor and Industry has the right to prohibit the employment, in a moving-picture show or library, of children under fourteen years of age, but he has not of children over fourteen, if they comply with the provisions of the Act of April 29, 1909, P. L. 293.

Office of the Attorney General,

Harrisburg, Pa., July 16, 1915.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Dear Sir: Your favor of the 21st ult. is at hand.

You request an opinion of this Department as to whether children employed in moving picture shows and libraries are within the laws relating to your Department.

I understand that the fact which gives rise to this opinion is that a deputy factory inspector in Philadelphia has dismissed children employed in such moving picture shows and libraries upon the theory that they were illegally employed. You do not state the age of the children so dismissed.

The Act of June 2, 1913, creating the Department of Labor and Industry, provides, in Section 8:

> "The Commissioner of Labor and Industry shall visit and inspect or cause to be visited and inspected, during reasonable hours, and as often as practicable, any room, building or place when and where any labor is being performed, which is affected by the provisions of any law of this Commonwealth or of this act, and shall cause to be enforced therein the provisions of all such existing laws and of this act."

The Act of 1905, P. L. 582, is 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; to provide for the safety of all employes in all industrial establishments, and of men, women and children in schoolhouses, academies, seminaries, colleges, hotels, hospitals, storehouses, office buildings, public halls, and places of amusements, in which proper fire escapes, exits and extinguishers are required; to provide for the health of all employes, and of men, women and children in all such establishments, storehouses, and buildings, by proper sanitary appliances; and to provide for the appointment of inspection, office

clerks and others, who, with the Chief Factory Inspector shall constitute the Department of Factory Inspection; to enforce the same, and providing penalties for violations of the provisions thereof; fixing the term and salaries of the Chief Factory Inspector and his appointees."

Section 1 provides:

> "That the term 'establishment' where used for the purpose of this act, shall mean any place within this Commonwealth other than where domestic, coal mining or farm labor is employed; where men, women or children are engaged, and paid a salary or wages, by any person, firm or corporation, and where such men, women or children are employes, in the general acceptation of the term."

Section 2 provides:

> "No child under fourteen years of age shall be employed in any establishment."

The Act of April 29, 1909, P. L. 293, entitled:

> "An act to provide for the health and safety of minors in *certain* employments, by regulating the ages at which said minors may be employed, their hours of employment, their protection against injury," etc.

is not so comprehensive. It limits employment in certain kinds of establishments to sixteen years and in other more dangerous establishments to eighteen years. It nowhere mentions such establishments as theatres, moving picture shows and libraries.

The Act of 1905, however, in its title refers, in terms, to public halls and places of amusement, but only with reference to fire escapes, exits and extinguishers required in or about such places. No act of Assembly seems to refer to or limit the age at which a child may be employed in a moving picture establishment except the provision in Section 2 of the Act of 1905 which provides that "no child under fourteen years of age shall be employed in any establishment."

I am, therefore, of opinion that you have the right to prohibit the employment of children under fourteen years of age but no right to prohibit the employment of children over fourteen years of age, in a moving picture establishment or library, if they otherwise comply with the provisions of the Act of 1909.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

EMPLOYMENT OF FEMALES (NO. 2).

The domestic servants employed in the kitchen, dining-room and as chambermaids in the State Normal School at Bloomsburg, which the pupils, during the school year, practically make their home, are within the Act of July 25, 1913, P. L. 1024, providing that no female shall be "employed for more than six days in any one week or more than ten hours in any one day," except in "private homes and farming."

Office of the Attorney General,

Harrisburg, Pa., October 29, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: In a recent letter to this Department, you enclosed a letter from the president of the Board of Trustees of the State Normal School at Bloomsburg, and requested an opinion upon the facts stated therein, which are substantially as follows:

During the school year, the pupils of the State Normal School live in the buildings of the school, and practically, during that time, make the school their home. These pupils must be provided with food seven days in the week, and housed as well, and it is, therefore, necessary to employ, during the seven days, a large number of female domestic servants for service in the kitchen, dining room, and as chambermaids. The question propounded is, whether the domestic servants so employed are within the provisions of the Act of July 25, 1913, hereinafter recited.

The president of the Board of Trustees suggest that this is a semi-State institution, and if the additional burden be imposed by a literal interpretation of the act, it might result in financial disaster to the institution, and that, because this is, in effect, a "home" for the pupils during the school year, the provisions of the act should not apply.

However much desired it is not permissible, in construing an act of Assembly, to be guided or controlled by a question of policy, while a literal construction is not to be given to an act which would be contrary to the reason and spirit of the act; yet, when the language is plain, and the intention is thus clearly expressed, the statute must be given the interpretation as thus expressed.

This law provides, in section 3:

> "No female shall be employed or permitted to work in, or in connection with, any establishment, *for more than six days in any one week,* or more than ten hours in any one day."

And in section 1 it is said:

> "That the term 'establishment,' when used in this act shall mean any place within this commonwealth where work is done for compensation of any sort, to whomever payable; Provided, That this act shall not apply to work in *private* homes and farming."

If the State Normal School can, in any sense, be considered a home, it certainly is in no sense to be considered a "private" home. The Legislature was careful to limit the exemption to "private" homes, and it has expressed its meaning in unambiguous terms. There is nothing in the other provisions of the act which would indicate that it meant to relieve any other kind of establishment or home from the operation of the act, except "private homes and farming." If such interpretation of the act leads to hardship, the fault, or misfortune, is due to legislative oversight, but this does not justify us in construing the act so as to exempt from its operation establishments which, by the plain meaning of clear language, are not exempted.

I, therefore, am impelled to advise you, that, under the facts stated, the State Normal School at Bloomsburg is within the terms of the act, providing that no female shall be employed "for more than six days in any one week, or more than ten hours in any one day."

Very truly yours,

JOHN C. BELL,
Attorney General.

DEPARTMENT OF LABOR AND INDUSTRY.

Under the Act of June 2, 1913, P. L. 296, it is the duty of the Commissioner of Labor and Industry to inspect all places where labor is being performed which is affected by any statutory provision and enforce the laws relating thereto and the regulations of the Industrial Board.

A tenant for a term of years, having control over a whole building, and having sublet the first floor as a store, the second floor for offices, workshops and lodgings, is required by the Act of May 2, 1905, P. L. 352, to keep the halls, stairways, water-sinks and water-closets "in a clean and sanitary condition and properly lighted," and is liable for failure so to do.

The Act of May 3, 1909, P. L. 417, makes it the duty of the owner to provide fire-escapes.

Office of the Attorney General,

Harrisburg, Pa., October 29, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: You recently requested of this Department an opinion upon the following facts:

At 412 Market Street, Harrisburg, Pa., is a three story building, the owner of which is the Jennings Estate. This building is leased to R. J. Smith for a term of years, by the terms of which lease Mr. Smith is required to keep the premises in good repair.

The first story of the building is occupied by Mr. Smith as a dry goods store. The second and third stories are reached by stairways and halls which have an entrance on Market Street, separate and apart from the store entrance. The second floor is used for office purposes, and also by the Capital Artificial Limb Company, and the third floor is used in part by the Capital Artificial Limb Company as a work shop, and on the same floors are rooms occupied by lodgers.

Your inspectors have reported that the halls and stairways leading to the second and third stories are unclean and in need of lights, and that the water closet, which is for the joint use of all the tenants, is in an unsanitary condition, needs cleansing, ventilation and repairs, and that a sink in the corner of the hall (which sink is also for the joint use of tenants) is unclean and overflows, and that there is urgent need for a fire escape upon this building.

You ask to be advised who should be required to correct these conditions.

By the Act of June 2, 1913, creating your Department, it is provided in Section 8, in part as follows:

> "The Commissioner of Labor and Industry shall visit and inspect, or cause to be visited and inspected, during reasonable hours and as often as practicable, every room, building, or place, where and when any labor is being performed which is affected by the provisions of any law of this Commonwealth or of this act, and shall cause to be enforced therein the provisions of all such existing laws and of this act, and the rules and regulations of the Industrial Board hereinafter provided for."

And by Section 23:

> "All the powers and duties now by law vested in and imposed upon the Department of Factory Inspection, which is hereby abolished, are now hereby vested in the Department of Labor and Industry."

Reverting to your inquiries,—

First: As to the halls and stairways.

The Act of May 2, 1905, (P. L. 352), provides, in Section 13:

> "The owner, agent, leasee, or other person having charge or managerial control of any establishment, shall provide or cause to be provided not less than two hundred and fifty cubic feet of air space for each and every person in every work-room in said establishment, where

> persons are employed, and shall provide that all work-rooms, *halls and stairways* in said establishment be kept in a clean and sanitary condition and properly lighted."

Section 1 of this act defines the term "establishment," so far as it is applicable to this discussion, to mean any place

> "Where men, women or children are engaged and paid a salary or wages by any person, firm or corporation, and where such men, women or children are employes in the general acceptance of the term."

This building is an establishment, within the meaning of the Act of Assembly just quoted. Mr. R. J. Smith has the lease upon the entire building for a term of years, and therefore has charge of this establishment. The Capital Artificial Limb Company, as a sub-tenant, nor any of the other sub-tenants, does not have control over the entire building, and consequently does not control the halls and stairways, which are for the use of all the tenants. The leasee, having control over the whole building, and having sub-let a portion of it for the purposes mentioned, has brought it within the purview of the 13th section of the Act of 1905, requiring the "halls and stairways" in said establishment to be kept in a clean and sanitary condition, and properly lighted.

I am of opinion that it is the duty of the leasee, Mr. R. J. Smith, to see that the provisions of the Act of Assembly in that regard are carried out, and that he is liable for failure so to do. In regard to such liability I beg to refer you to Section 23 of the said Act of May 21, 1905, which provides that:

> "Any person who violates any of the provisions of the foregoing sections of this act * * * * shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars and not more than five hundred dollars, or an imprisonment in the county jail for a term not less than ten days nor more than sixty days, for each and every such violation."

Second: As to the water-closets and sink, what has just been said applies to them. They are under the control of no sub-tenant, but are for the use of all of the tenants in the building.

Section 8 of the said Act of May 21, 1905, provides that:

> "Every person, firm or corporation employing males and females in the same establishment, shall provide for such employes suitable and proper wash and dressing rooms and water-closets * * * * and all water-closets at all times be kept in a clean and sanitary condition."

I am also of opinion that the duty of keeping the water-closets and sink in a clean and sanitary condition, rests upon the lessee, Mr. R. J. Smith; and that the provisions of section 23 of said act are likewise applicable in case of his neglect so to do.

Third: As to fire escapes.

The Act of May 3, 1909, (P. L. 417) entitled:

> "An act for the safety of persons from fire or panic in certain buildings, not in cities of the first and second classes, by providing proper exits, fire-escapes, fire extinguishers, and other preventives of fire, etc."

provides in section 1 as follows:

> "That every building in this Commonwealth other than buildings situated in cities of the first and second classes, having more than two stories * * * * now used or hereafter to be used, in whole or in part, as a public building, office building, and not of fire proof construction, * * * * and every building in which persons are usually employed above the second story, in a factory, workshop, or mercantile establishment * * * * shall be provided with proper ways of egress, or means of escape from fire, sufficient for the use of all persons accommodated, assembled, employed, lodged or residing therein."

Section 6 of the said act provides:

> "The owner or owners of any of the buildings mentioned in the foregoing provisions of this act, who shall wilfully fail or refuse to comply with the provisions of this act * * * * shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of five hundred dollars, or six months imprisonment, or either or both, in the discretion of the court."

The Act of Assembly, therefore, makes it the duty of the owner of such building as you have described, and used as you have pointed out, to provide proper fire escapes, and if there is a failure to so provide, notice should be given to, and proceedings (if any be required) instituted, against the owner.

Very truly yours,

JOHN C. BELL,
Attorney General.

EMPLOYMENT OF FEMALES (NO. 1).

Section 3 of the Act of July 25, 1913, P. L. 1024, providing that no female shall be "employed for more than six days in any one week or more than ten hours in any one day," cannot be construed so as to permit some telephone employes to work seven days in one week so as to rotate the operators working on Sunday, in order that each may do her proportionate share of Sunday work.

Sections 6 and 7, requiring specific periods for rest or meals at the end of six hours' continuous work, do not apply to night telephone operators or operators in isolated railroad signal towers, as they are not continuously occupied with their work and have not enough to do to make a specific period for rest or meals necessary, and, hence, are not within the intent and spirit of the law.

Office of the Attorney General,

Harrisburg, Pa., October 29, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: You recently requested an opinion from this Department as to the intent of sections 1 and 3 of the Act of July 25, 1913, P. L. 1024, which defines the term "week" to mean "any seven consecutive days," and provides that no female shall be permitted to work "for more than six days in any one week or more than fifty-four hours in any one week, or more than ten hours in any one day," and also to section 6 and 7, which provide in substance that females shall be given a rest period of three-quarters of an hour after six hours of continuous employment as or for a lunch period or rest period.

This request is accompanied by letters from the Superintendent of the Bell Telephone Company and from certain women telegraph operators of the Pittsburgh Division of the Pennsylvania Railroad.

This opinion will not construe the act of assembly referred to in the abstract but is based upon the facts set out in the communications referred to, substantially as follows:

First: Female telephone operators are employed continuously, but the force on Sunday is perhaps one-third or one-fifth of the force necessary on other days of the week. To allow an operator to work only six days in any one week would require that the same employes should work on the same six days, and that those working on Sunday should always work on Sunday and those working on the other days of the week but not on Sunday would always have Sunday as the day off duty.

The question, as I understand it, is whether the act can be so construed as to permit some of the employes to work seven days in one week so as to rotate the operators working on Sunday, in order that they will each do their proportionate share of Sunday work.

The Act of Assembly referred to provides in section 1:

> "That the term 'establishment,' when used in this act, shall mean any place within this Commonwealth where work is done for compensation of any sort, to whomever payable,"

and that:

> "The term 'week', when used in this act, shall mean any seven consecutive days, and the term 'day' shall mean any twenty-four consecutive hours."

Section 3 provides in part:

> "No female shall be employed or permitted to work in, or in connection with, any establishment for more than six days in any one week or more than fifty-four hours in any one week, or more than ten hours in any one day."

The language seems to be both plain and positive. It prohbits any female from working "in or in connection with" any establishment for more than six days in any one week. If, therefore, a schedule cannot be arranged so as to rotate the female employes with regard to Sunday work, other than by requiring females to work seven days in any one week, such requirement would be in violation of this law. Though this may be a hardship, the difficulty is that the Legislature has so provided and the statute cannot be otherwise construed, than by reading something into it which it does not contain.

Second: In some places female telephone operators work at night, usually for a period of nine hours, from 11 P. M. to 8 A. M., but in this working period there is little or no business between midnight and five or six o'clock in the morning, and during these hours, in the intervals of rest or inactivity, the operator may, and usually does, read, sew, sleep or eat, as she desires.

You ask to be advised whether in such cases there must be a lunch or rest period of three-quarters of an hour provided during the early morning, after the operator has thus been at work for six continuous hours. You state such a "relief would not only be a serious disturbance to the operator herself, but would be an undesirable and useless expense and burden upon the company."

Section 5 of the act prohibits night work by females under twenty-one years of age, but provides "that this section shall not apply to females over eighteen years employed as telephone operators." In the light of your inquiry, Sections 6 and 7 of the act may be considered together.

Section 6 provides:

> "Not less than forty-five minutes shall be allowed to every female employed or permitted to work in, or in connection with, any establishment, *for the mid-day meal,* which period shall not be considered a part of the hours of labor; * * * * Employes shall not be required to remain in the work-rooms during the time allowed for meals."

Section 7 of the act provides:

> "No female shall be employed or permitted to work for more than six hours continuously in, or in connection with, any establishment, without an interval of at *least forty-five minutes,* and no period of less than forty five minutes shall be deemed to interrupt a continuous period of work."

These periods of forty-five minutes are then referred to as "rest periods."

You will observe that section 6 of the act refers to "the mid-day meal" but there is no provision requiring a midnight meal.

Assuming that such a night operator is over eighteen years of age, in my opinion she may follow the course of employment above referred to without interrupting the same for any lunch or meal period. The provision of Section 7, however, literally construed, would seem to require a specific "test period" of forty-five minutes after such operator has been employed "six hours continuously."

The nature of the employment in this case is such, however, as before observed, that from one-half to two-thirds of the period is nearly all passed in rest.

In my opinion the letter of the Act in such a case may be held to give way to the true humane intent and spirit of the law, and it is not encumbent upon you, in such a case, to insist that there should be a specific interval of time of forty-five minutes set apart as a rest period.

Third: The communication submitted from a committee of women operators of the Pittsburgh Division of the Pennsylvania Railroad, states these facts:

These operators work in the day time for eight hours in signal towers at isolated places along the railroad lines, but while they are on duty eight hours, the actual labor performed at such isolated tower does not perhaps, in the aggregate, exceed two hours, and the rest of the time they may spend as they wish "reading, writing, knitting or otherwise"; that because of the isolation of the place of their employment, it would not be practicable to relieve them for a specific lunch or rest period of forty-five minutes, by having another operator come for that short time to take their places.

While Section 6, as above quoted, provides that not less than forty-five minutes shall be allowed for the mid-day meal provided

that the time allowed for the mid-day meal may be reduced to not less than thirty minutes whenever any female shall be employed for less than eight hours, and while Section 7 requires a rest period of not less than forty-five minutes after working for "six hours continuously," or not less than thirty minutes where the employment is for less than eight hours in any one day, yet, as has already been said, the employment being such that the actual work consumes very little of the time spent, and that during the period in which the operator is not actually engaged, she may eat or rest, there would seem to be no real reason for requiring a specific period of forty-five minutes for rest, when three-fourths of the time is in fact spent in rest or inactivity, nor for requiring a specific period of forty-five minutes for a meal when the operator can take any of the time not actually spent in work for that purpose.

In my opinion, therefore, it is not within the true intent and spirit of the law that it should be literally enforced to require a specific period for rest or meals in such a situation as the facts disclose, and hence, that it is not encumbent upon you to insist upon a compliance with the strict letter of the law under such circumstances.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

EMPLOYMENT OF FEMALES.

Female cooks in restaurants may not work seven days a week of seven hours each day.

Office of the Attorney General,

Harrisburg, Pa., November 13th, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Your favor of the 6th inst. enclosing a letter from Thomas H. Greer, Esq., construing Section 3 (a) of the Act of July 25th, 1913 P. L. 1024, is at hand.

The section provides, in part, as follows:

> "No female shall be employed or permitted to work in, or in connection with, any establishment for more than six days in any one week or more than fifty-four hours in any one week, or more than ten hours in any one day."

It is contended that females may work seven days, provided they do not work more than fifty-four hours in any one week. The contention is that while no female may work more than six days, provided the six days constituted fifty-four hours, yet if a female does not work in the aggregate more than fifty-four hours, the fifty-four hours may be spread over seven days.

This Department cannot acquiesce in this construction. If the Legislature meant to limit the working hours to fifty-four in any one week, it was not necessary to limit the number of days. In order to give effect to all the language used, the provision must be construed to prohibit working more than six days in any one week, or more than fifty-four hours in any one week, and if some of the days were ten hour days, the other days would have to be correspondingly shortened, so that the total number of hours in six days should not in the aggregate exceed fifty-four.

I am, therefore, of opinion, that in the case presented it would be a violation of the act to require female cooks to work in restaurants seven days in the week of seven hours each.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

FEMALE EMPLOYEES.

Under section 3 of the Act of July 25, 1913, P. L. 1024, female employees cannot work twelve hours on Saturday or any other day, unless the day follows a holiday and the total number of hours does not exceed the maximum of fifty-four per week.

Office of the Attorney General,

Harrisburg, Pa., November 13th, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Your favor of recent date was received. You transmitted a letter from the Greensburg Board of Trade asking whether it is a violation of law to employ females for approximately twelve hours on Saturday, provided the number of hours do not exceed fifty-four in any one week. The Act of Assembly of July 25th, 1913, P. L. 1024, specifically answers this inquiry.

Section 3 provides, in part, as follows:

> "No female shall be employed or permitted to work in, or in connection with, any establishment for more than six days in any one week, or more than fifty-four hours in any one week, or more than ten hours in any one day."

and the only exception is:

> "That during weeks in which a legal holiday occurs and is observed by an establishment, any female may be employed by such establishment during three days of such week for a longer period of time then is allowed by this act; but no female shall be permitted to work more than two hours overtime during any one of such three days, nor more than the maximum hours specified in this act."

Therefore, I am of opinion that female employes cannot work twelve hours on Saturday, or any other day, except on a day which follows a holiday, and except also that by working twelve hours on a day following a holiday such employes shall not exceed the maximum of fifty-four hours per week, without violating the provisions of the law.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

EMPLOYMENT OF FEMALES (NO. 3).

Under the Act of July 25, 1913, P. L. 1024, regulating the employment of females, a female may be permitted to work twelve hours a day during three days following holidays, the maximum hours per week not exceeding fifty-four. Females under twenty-one years of age may be employed after nine o'clock in the evening during the three days in a week in which a holiday is observed, provided the maximum hours per week do not exceed fifty-four.

Office of the Attorney General,

Harrisburg, Pa., December 18, 1913.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Your favor of the 16th instant, enclosing letter of counsel for F. W. Woolworth Company and also a letter from your Chief Inspector, was duly received. I understand from these communications that you desire to be advised:

1st. Whether a female over the age of twenty-one years may be employed twelve hours a day in days following holidays, or may only be employed two hours in excess of the regular schedule of hours of employment in the establishment?

2nd. Whether a female under twenty-one years of age may be employed after nine o'clock in the evening in days following holidays?

Section 3 of the Act of July 25, 1913, (P. L. 1024) provides in part as follows:

> "No female shall be employed or permitted to work in, or in connection with, any establishment for more than six days in any one week, or more than fifty-four hours in any one week or more than ten hours in any one day.
>
> "Provided that during weeks in which a legal holiday occurs and is observed by an establishment, any female may be employed by such establishment during three days of such week for a longer period of time than is allowed by this act; but no female shall be permitted to work more than two hours overtime during any one of such three days, nor more than the maximum hours per week specified in this act."

Section 5 provides as follows:

> "No female under twenty-one years of age shall be employed or permitted to work in, or in connection with, any establishment before the hour of six o'clock in the morning or after the hour of nine o'clock in the evening of any day. Provided, That this section shall not apply to females over the age of eighteen years employed as telephone operators."

Section 13 requires a schedule of the hours of labor to be posted in a conspicuous place in the room where the female is employed or permitted to work.

The language of the proviso of Section 3 is that:

> "During the weeks in which a legal holiday occurs and is observed by an establishment, *any* female may be employed by such establishment during three days of such week for a *longer period of time than is allowed by this act;* but no female shall be permitted to work more than two hours *overtime* during any one of such three days, nor more than the maximum hours per week *specified in this act.*"

This language seems to refer directly to the time mentioned immediately preceding it in Section 3, that is to say, it refers to six days in any one week, fifty-four hours in any one week, or ten hours in any one day, as the time "allowed by this act."

The fact that Section 13 requires a schedule to be posted for the information of the employes has no bearing upon the provision of Section 3, and I am of opinion that the word "overtime" in the proviso of Section 3, refers to the time fixed in the section, and not to the time fixed in the schedule by Section 13.

Answering the first inquiry, I have to advise you that on days in weeks following holidays a female may be permitted to work twelve hours during three days of such week, provided the maximum hours per week do not exceed fifty-four.

It is a familiar rule in the construction of statutes that the whole statute must be read together, and so read that effect must be given to all of its language, and so that the various sections may harmonize.

A careful reading of the proviso in Section 3 shows that it refers to any female. Section 5 prohibits females under twenty-one years of age from working "after nine o'clock in the evening of any day." If this section were construed to prohibit females under the age of twenty-one from working after nine o'clock in the evening, the proviso of Section 3 could not be held to include females under twenty-one years of age, and would have to be construed as if it read "any female under twenty-one years of age." It does not so read. It permits any female to be employed overtime in days following holidays.

Therefore, construing the sections to give as much effect as possible to the language and to harmonize them, I am of opinion, and so advise you, that the law permits females under the age of twenty-one years to be employed after nine o'clock in the evening during the three days in a week in which a legal holiday is observed, provided the maximum hours of employment do not exceed fifty-four in such week.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

MATTRESSES.

Under the Act of May 1, 1913, P. L. 134, regulating the making and sale of mattresses, providing that after the first day of January, 1914, no mattresses shall be sold or offered for sale that shall not have written or printed thereon, or upon a tag sewed to the covering, a statement of the materials used in the filling, whether new or second-hand, and the names and addresses of manufacturers and vendors, the manufacturers of mattresses made in accordance with the act may furnish to dealers tags to be sewed to mattresses purchased from them prior to Jan. 1, 1914.

The act prohibits the use of mattresses of any material coming under the general designation and trade name of "shoddy," whether made from new or old fabrics.

The statement required to be placed upon every mattress must contain the name and address of the manufacturer and each successive vendor. Where a manufacturer sells to individuals for their own use, the name of the manufacturer should appear under the heading "vendor" as well as under the heading "manufacturer."

Though not required, it would be advisable to include in the statement that removing or defacing the statement is made a misdemeanor by section 7.

Office of the Attorney General,

Harrisburg, Pa., February 9, 1914.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of January 21st, 1914, enclosing a letter addressed to you by a company engaged in the business of manufacturing mattresses, relative to the construction of the Act of May 1st, 1913, P. L. 134, entitled:

> "An act defining matresses; regulating the making, remaking, and sale thereof; prohibiting the use of unsanitary and unhealthy materials therein; requiring that the materials used shall be accurately described, and prescribing the manner in which mattresses shall be labelled; providing for the enforcement of the provisions of this act; making certain acts criminal, and punishing the same; imposing certain duties upon the Commissioner of Health and the Chief Factory Inspector, and repealing legislation inconsistent with this act."

I understand that the said company manufactures mattresses and disposes of its product to dealers, and, prior to January 1st, 1914, the date upon which the act became effective, had manufactured and sold to dealers, in considerable quantities mattresses which have been made in accordance with the requirements of the act, but which do not have thereon a statement setting forth the kind or kinds of materials used in filling said mattresses.

Your first inquiry is, in substance, whether manufacturers of mattresses, which have been made in accordance with the provisions

of the act and are now in the hands of dealers for sale to the public, but do not have written or printed thereon, or upon a muslin or linen tag securely sewed to the covering thereof, the statement of the kinds of materials used in their manufacture, required by the third section of said act, may now furnish to such dealers muslin or linen tags containing the required statement, to be placed on the mattresses now in their stores and warehouses, to the end that said dealers may be enabled to sell such mattresses without violating the act.

The act regulates both the *making* and the *sale* of mattresses.

With reference to the manufacture of mattresses, it is provided by section two of the act, that certain materials shall, in no event, be employed or used in the making, remaking or renovating of any mattress. The prohibited materials are described as follows:

> (a) "Any material of any kind that has been used in, or has formed a part of, any mattress used in or about any public or private hospital, or institution for the treatment of persons suffering from disease, or for or about any person having any infectious or contagious disease."
>
> (b) "Any material known as 'shoddy,' and made in whole or in part from old or worn clothing, carpets or other fabric, or material previously used, or any other fabric or material from which shoddy is constructed."

It is further provided that "any material not otherwise prohibited by this act, of which prior use has been made," shall not be used in the manufacture of mattresses "unless the said material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commisioner of Health of this Commonwealth."

In addition to these regulations, with reference to the making, remaking or renovating of mattresses, it is provided that no person or corporation shall sell, offer to sell, deliver or consign, or have in possession with intent to sell, deliver or consign, any mattress made, remade, or renovated in violation of the provisions of the act. Evidently for the purpose of furnishing evidence as to the identity and address of the persons responsible for any violation of the act, it is provided that no mattress shall be sold or held or offered for sale after the first day of January, 1914, at wholesale or retail "that shall not have plainly and indelibly written or printed thereon, or upon a muslin or linen tag securely sewed to the covering thereof, a statement, in the English language, setting forth the kind or kinds of materials used in filling said mattress and whether the same are, in whole or in part, new, or old, or secondhand, and the name and address of the manufacturer or vendor thereof, or both."

Section 6 of act prescribes the form of the statement required to be placed upon the mattress itself, or upon a muslin or linen tag sewed to the covering thereof.

By Section 7 it is provided that:

> "Any person who shall remove, deface, alter or in any manner attempt the same, or shall cause to be removed, defaced or altered, any mark or statement placed upon any mattress under the provisions of this act, shall be guilty of a violation of this act."

In order that the act may go into full operation without working any unnecessary hardship upon dealers in mattresses, you are advised that it would be proper for the manufacturers of such mattresses as have been made in accordance with the provisions of the act and sold and delivered to dealers prior to January 1st, 1914, to now furnish the necessary written or printed muslin or linen tags to the said dealers, to be sewed by said dealers to the covering of such new mattresses, now in their possession, as may have been purchased by them from the manufacturers so furnishing the tags.

In the opinion of this Department, however, manufacturers should not be permitted to furnish such tags to be placed upon any mattress that has been used.

Your next inquiry relates to the construction of paragraph "b" of sub-section (1) of section two of the act, prohibiting the use, in the making, remaking or renovating of mattresses, of material known as "shoddy."

It appears from the correspondence which you have submitted, that there is on the market a material designated by the trade name "new shoddy," which is made from the clippings, etc., of new fabrics, as distinguished from ordinary "shoddy," made from old or worn fabrics.

In the opinion of this Department, the act in question prohibits the use of any material coming under the general designation and trade name of "shoddy," whether made from new or old fabrics.

You further inquire with relation to the construction of the provision requiring the placing of the name and address of the manufacturer or vendor, or both, of mattresses, upon the mattress itself, or upon a muslin or linen tag securely sewed to the covering thereof.

By section three of the act it is provided that the statement shall set forth, inter alia, "the name and address of the manufacturer or vendor thereof, or both," and, in the form of statement prescribed by section six of the act, blank spaces are indicated for the name and address of the manufacturer, and for the name and address of the vendor.

It is the evident legislative intent, as expressed in this act, that the statement required to be placed upon every mattress shall contain the name and address of the manufacturer of the mattress (who is the only person who has actual knowledge of and can certify to the

materials out of which it has been manufactured) and the name and address of each successive vendor, so that in case of a violation of the act responsibility may properly be fixed.

Where a manufacturer sells mattresses to individuals for their own use, as distinguished from sales to dealers, the name of the manufacturer should appear on the statement under the heading "vendor" as well as under the heading "manufacturer."

Again, you ask whether section seven of the act, providing that any person removing or defacing any mark or statement placed upon a mattress shall be guilty of a violation of the act, should be printed in full upon the mattress, or upon the muslin or linen tag.

There is nothing in the act requiring such notice to be placed upon mattresses, but it would be entirely proper, and indeed advisable, for manufacturers of mattresses to include this section of the act as a part of the statement written or, printed upon the mattress or upon the muslin or linen tag. By so doing, they will be giving notice that any person defacing or altering the statement which they have placed upon their mattresses will be guilty of a misdemeanor.

Very truly yours,

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

DUST PROTECTORS.

A factory operating emery wheels or belts more than three hours continuously must use blowers or similar apparatus, as required by the Act of July 24, 1913, P. L. 970, even though the same men may not be employed as operators for three hours continuously.

Office of the Attorney General,

Harrisburg, Pa., February 13, 1914.

Hon. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Sometime ago you requested an opinion of this Department as to the construction to be placed upon the second proviso to the first section of the act approved July 24, 1913, (P. L. 970).

This act provides for the protection of the health and lives of employes by requiring the use of blowers or similar apparatus in factories where emery wheels or emery belts of any kind are used.

The second proviso of the first section is:

> "This act shall not apply to factories, or workshops where men are not employed continuously at such wheels or belts more than three hours in twenty-four hours."

As I understand, the precise question is: Whether this language relieves factories or workshops which do not employ the same individual workmen more than three hours continuously, or whether all factories and workshops which operate such wheels or belts more than three hours continuously in twenty-four hours, are within the terms of the act?

If the act were intended to include only factories and workshops at which the same individual worked continuously at emery wheels or emery belts, it would have been easy for the Legislature to so say. The language used does not imply that the same individual must work continuously for three hours. The language is that the act shall not apply to factories or workshops *"where men are not employed continuously for more than three hours in twenty-four hours."*

I am of opinion that, if a factory is in operation and the men are employed at such wheels or belts more than three hours in twenty-four hours, even though no one of them may be continuously employed, without cessation, for three hours, such factory comes within the provisions of the act.

That is to say, if such factory operates such wheels or belts more than three hours continuously and men are employed there in such operation, even though the same men may not be employed for three hours continuously at such wheels or belts, such factory must comply with the terms of the act.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

17—23—1915

OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

BUREAU OF PROFESSIONAL EDUCATION.

Under provisions of the Act of June 19, 1911, (P. L. 1045), applicants from foreign countries for admission to schools of dentistry in this State, who have no desire or intent, upon graduation therefrom, to practise dentistry in this State, are not required to present a diploma or certificate of the kind referred to in the act, or to be examined by the Bureau of Professional Education before being admitted as students to said schools of dentistry.

Office of the Attorney General,

Harrisburg, Pa., October 4, 1913.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Dear Dr. Schaeffer: I have your letter of even date, in which you say:

> "Referring to the Act approved June 19th, 1911, (P. L. 1045), creating a Bureau of Professional Education, as a sub-department of this Department of Public Instruction, and defining the powers and duties of such bureau, will you kindly advise me whether applicants from foreign countries for admission to schools of denistry in this Commonwealth, but who are not applicants for a license to practice dentistry within the State of Pennsylvania, and who so certify at the time of admission to the schools, and who do not hold a diploma from an accredited college or the certificate provided for in the 4th section of the act, should be subjected to a preliminary examination by the bureau and awarded its certificate of proficiency before admission to such schools of dentistry in the State."

From the title, recital and enacting clauses of the act to which you refer, its purpose and object is clear, viz, in brief: "to establish a Bureau of Professional Education as a sub-department of the Department of Public Instruction for the purpose of determining the preliminary qualifications of those to be hereafter admitted to the practice of dentistry.....in this Commonwealth."

From your letter, and as a matter of common knowledge, I understand that there is a class of applicants from foreign countries for admission to schools of dentistry in the State, who have no desire or intent, upon graduation therefrom, to practice dentistry in this Commonwealth, and whose purpose, upon such graduation, is to return to the countries whence they came, and there to practice their profession.

In my opinion, therefore, under the letter and spirit of the statute to which you refer, such applicants are not required to present a diploma or certificate of the kind referred to in the act; nor, for want of such, to be subjected to an examination by the Bureau of Professional Education before being admitted as students in the said schools of dentistry.

Your bureau should, however, in my judgment, require of each applicant in the class mentioned for admission to any of the schools of dentistry in this State, a statement in writing, to be signed and perhaps sworn to by the applicant, containing a specific averment that he is not an applicant for licensure to practice dentistry within the State of Pennsylvania.

Very truly yours,

JOHN C. BELL,
Attorney General.

DATE OF ELECTION OF COUNTY SUPERINTENDENTS.

The Superintendent of Public Instruction should order the election of county superintendents in the year 1914, on the first Tuesday of May, 1914, to serve from the first Monday in June, 1914, to the first Monday of May, 1918.

Office of the Attorney General,

Harrisburg, Pa., December, 3, 1913.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of October 20th, asking to be advised with reference to the proper date upon which you should order the holding of elections of county superintendents of schools in the year 1914.

An examination of sections 1105 and 1106 of the School Code, approved May 18, 1911, discloses a legislative intent to provide, as a general proposition, for the election of county superintendents by the school directors of each county, on the second Tuesday of *April* every fourth year, for terms of four years, to begin on the first Monday of *May* next following the election.

Under the legislation repealed by the School Code, county superintendents were elected on the first Tuesday of *May* every third year for terms of three years, to begin on the first Monday of *June* following the election. As the year 1911 was the regular year under previous legislation for the election of county superintendents, these officers were elected throughout the Commonwealth on the first Tuesday of May, 1911, which date was prior to the approval of the School Code. The terms of the county superintendents elected on the first Tuesday of May, 1911 would, under prior legislation, and on the first Monday of June, 1914. To the end that these terms might not be disturbed, and in order that the new system might be put in operation without any unnecessary confusion, it was provided in Section 1105 of the Code that county superintendents should be elected:

> "On the second Tuesday of April one thousand nine hundred and eighteen, and on the same day of every fourth year thereafter * * * to serve for four years from the first Monday of May next following: Provided, That on the first Tuesday of May one thousand nine hundred and fourteen county superintendents shall be elected as herein provided to serve from the first Monday of June one thousand nine hundred and fourteen until the first Monday of May one thousand nine hundred and eighteen."

By following this express provision for putting the new system into operation no confusion will arise and the elections in the year 1918 will be the first regular elections under the new system for electing county superintendents. Although it is provided in Section 1106 of the Code that county superintendents shall give notice of the convention of school directors to be held "for the purpose of electing a county superintendent on the second Tuesday of April one thousand nine hundred and fourteen, and thereafter," etc., it is obvious, when this section is read in connection with the preceding section, that the designation of the year 1914 is erroneous, and that the Legislature intended to make a special provision for the election in the year 1914, by means of the above quoted proviso.

You are accordingly advised that you should order the elections of county superintendents in the year 1914 to be held on the first Tuesday of May, 1914, the superintendents elected on that date to serve from the first Monday of June 1914 to the first Monday of May 1918, and their successors to be elected on the second Tuesday of April, 1918.

Very truly yours,

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

COMPENSATION SCHOOL TAX COLLECTORS.

The compensation of school tax collectors is to be fixed by the Boards of School Tax Directors, who should follow the directions laid down by the Supreme Court in Mason vs. School District, 242 Pa. 359.

Office of the Attorney General,

Harrisburg, Pa., May 7, 1914.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of April 20th, asking to be advised how you shall instruct School Boards as to the compensation that school tax collectors are to be allowed in second, third and fourth class school districts.

Under the provisions of the Act of June 25, 1885, (P. L. 187), Section 9, the commissions of tax collectors were fixed at two per cent. on all taxes paid to them on which an abatement of five per cent. was allowed, and at five per cent. on other taxes, except where the total amount of taxes was less than one thousand dollars.

The Act of May 18, 1911, (P. L. 309), known as the School Code, provides in section 554, as follows:

> "In all school districts of the second, third and fourth class, all school tax collectors shall be paid such commissions or compensation as may be determined by the boards of school directors."

The Supreme Court of Pennsylvania has considered in a number of cases what the effect of the act of 1911 was on the Act of 1885, and has decided that except for such provisions as are inconsistent with the Act of 1911, the Act of 1885 was not repealed by the Act of 1911.

> *Black v. Duquesne Borough School District, 239 Pa. 96, (1913).*
> *Commonwealth v. Tobin, 239 Pa. 105, (1913).*
> *Commonwealth v. Dusman, 240 Pa. 464, (1913).*

These cases decided that the Act of 1911 was not inconsistent with the Act of 1885, so far as the person who shall collect the school taxes is concerned.

On the matter of compensation, however, the two acts are contradictory and cannot stand together. The Act of 1885 provides for a definite ascertained rate of compensation, and the Act of 1911 provides for a compensation to be determined by the Board of School Directors. The necessary result is that the Act of 1885 is superseded, so far as the question of the compensation of tax collectors is concerned, by the Act of 1911.

That this conclusion is correct follows from the decision of the preme Court in *Mason v. Hanover Township School District, 242 . 359, (1913),* in which case the court, upon the petition of a tax yer, reviewed the judgment of the school directors in fixing the npensation for the collection under section 554 of the Act of 1911, d enjoined the payment of what the court held to be an excessive npensation fixed by the directors.

The court said of section 554, per Mr. Justice Potter:

> "It is apparent that there must be somewhere a line of demarcation between the exercise of reasonable official discretion in fixing compensation upon the one hand, and a clear abuse of that discretion, and the unreasonable performance of duty, upon the other. No specific rate of compensation is fixed by the law. It contemplates the exercise of reasonable discretion by the school board, in the interest of the public. The language of the School Code is not, however, to be construed as vesting in the school board on arbitrary discretion, to be used in defiance of the public interest, and without restraint."

It results, from what has been said, that the compensation of ıool tax collectors is now to be fixed and determined by the Boards School Directors, under the provisions of the said mentioned :t of May 18th, 1911, known as the School Code; and, in my judg-ent, no better instructions could be given to the said boards, as their duty in determining and fixing the amount of such compention, than is contained in the above recited quotation from the inion of Mr. Justice Potter.

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

POWER OF SCHOOL BOARD TO BORROW MONEY.

In ascertaining the debt of a school district, the cash in sinking fund may be ducted from present indebtedness.

Office of the Attorney General,
Harrisburg, Pa., May 7, 1914.

r. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your communication under .te of April 7, 1914, enclosing an inquiry addressed to you under e same date by Superintendent of Schools, William G. Cleaver, by rection of the Board of School Directors of the School District

of Cheltenham, requesting to be advised with relation to the present power of the school authorities of said district to borrow money for school purposes without the assent of the electors thereof.

I understand the material facts to be that the total assessed value of property, taxable for school purposes, in said District of Cheltenham is $11,470,580 (two per cent. of which amount to $229,411.60); that the proper authorities of said district, without the assent of the electors, have heretofore created a bonded indebtedness in the sum of $210,000, which is the only indebtedness of said district now existing within the prohibition of the constitutional provision hereinafter referred to; and that there is now in the sinking fund, created for the purpose of paying said bonded indebtedness, a net cash balance of $21,511.81, applicable to the retirement of the above mentioned bonds, and which cannot be diverted to any other purpose.

You ask to be advised whether, in ascertaining the present capacity of said district to borrow money without the assent of the electors, the above mentioned cash balance of $21,511.81 in the sinking fund is to be deducted from the above mentioned amount of bonded indebtedness in the sum of $210,000, making the net existing indebtedness of said district $188,488.19, with the result that said district would have a present borrowing capacity of $40,923.41, without the assent of the electors, or whether such borrowing capacity is merely the difference between two per cent. of the assessed valuation of property, taxable for school purposes (which two per cent., as above stated amounts to $229,411.60) and the said bonded indebtedness of $210,000 namely $19,411.00.

The question raised by your communication is not affected by the recent amendment to section 2 of Article 9 of the Constitution of Pennsylvania, or by the new section, numbered 15 and added to said Article 9, which new section, as you have been heretofore advised, will not become operative with relation to school districts until enabling legislation has been passed.

The fundamental constitutional proposition with reference to this subject is that the debt of any school district shall never exceed seven per centum upon the assessed value of the property therein taxable for school purposes, nor shall any district "incur any new debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property without the assent of the electors thereof at a public election, etc."

Section 8 of Article IX of the Constitution has frequently been the subject of consideration by our Supreme Court, especially with reference to its applicability to the indebtedness of cities and boroughs.

It was said in *Wheeler v. Philadelphia, 77 Pa. 338,* that this section means that "the municipal authorities may increase the debt from time to time until two per centum has been added provided the original debt, with the increase, does not exceed seven per centum."

In the case of *Brooke, et al. v. Philadelphia, 162 Pa. 123,* it was held that the debt of the city of Philadelphia was properly ascertained by subtracting from its total indebtedness the amount of the certificates of the funded debt of the city held in the sinking fund.

In *Schuldice v. Pittsburgh, 234 Pa. 90,* the question involved was whether the city of Pittsburgh could lawfully negotiate a loan in the sum of eight-one thousand dollars, without the assent of the electors. It was made to appear in that case that the assessed value of the taxable property, as determined by the last preceding valuation thereof, was $751,226,965.00 and that two per cent. of the valuation, thus assessed, was $15,024,539.30. It was averred in the bill filed to enjoin the city from negotiating the proposed loan, that the existing net indebtedness of the city created without the assent of the electors, was $15,849,302.91. The city contended that its net indebtedness, incurred without the assent of the electors, was only $14,043,962.11 and that certain additional deductions should be made from this amount in order to fix its exact net indebtedness. After reviewing the cases construing the constitutional provision in question, Mr. Justice Elkin, speaking for the Supreme Court, said:

> "The rule announced in these cases is predicated upon the assumption that the Constitution intended to confer upon municipal authorities the power to create new indebtedness after its adoption, to the extent of two per centum of the assessed valuation without the accent of voters, provided the entire indebtedness, including the increase, does not exceed seven per centum."

The action of the court below in ascertaining the net indebtedness by, inter alia, deducting from the indebtedness set out in the bill all indebtedness created and in existence at the time the Constitution went into effect and also the amount of bonds issued since the adoption of the Constitution for the purpose of refunding an indebtedness created prior to that time, was affirmed by the Supreme Court. Continuing the opinion, Mr. Justice Elkin said:

> "It is also contended that bonds and cash in the various sinking funds should not be deducted in ascertaining the net indebtedness. As to bonds so held, the question of the right of the city to deduct has been settled by this court in two well-considered cases: Brooke v. Philadelphia, 162 Pa. 123; Bruce v. Pittsburgh, 166 Pa. 152. We see no good reason why moneys paid into a sinking fund for a specific purpose under statutory authority, and which cannot be diverted to any other municipal purpose, should not be deducted in the same manner as bonds so held are allowed to be deducted. The funds referred to in the present case were set apart pursuant to statutory authority and are held for a specific designated purpose. They must be used for the purpose intended and cannot be diverted to general mu-

nicipal purposes. The funds so held are available assets of the city, intact and ready to be applied in liquidation of outstanding liabilities, for the payment of which these funds are created. Why should they not be deducted? We think they should as did the court below."

This decision of our Supreme Court rules the question raised by your inquiry, and you are accordingly advised that, in the opinion of this Department, the proper authorities of the School District in question, in calculating and ascertaining its present net indebtedness, may deduct from its bonded indebtedness of $210,000 the cash balance in the sinking fund created for the purpose of redeeming its bonds and applicable only to such purpose amounting to $21,511.61, leaving its existing net indebtedness on account of said bonds $188,488.19.

Very truly yours,

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

SCHOOL DISTRICT INDEBTEDNESS.

The general purpose of the amendment to Art. IX of the Constitution (adopted in November, 1913) is to define what indebtedness may be excluded in ascertaining the borrowing power of a municipality, as that power is limited by section 8 of Art. IX, and, secondly, to increase the borrowing capacity itself by raising the limit beyond which no municipality can go, even by a popular vote, from 7 per centum to 10 per centum of the assessed valuation of its taxable property, provided the increase above 7 and not exceeding 10 per centum is assented to by three-fifths of the electors in the municipality.

The word "municipality" in this amendment is intended to apply to all the municipalities mentioned in the original section, including school districts.

Enabling legislation, however, will be necessary before this provision of the amendment will become operative.

Until appropriate legislation for carrying the amendment into effect has been enacted, no school district can avail itself of the power to increase its indebtedness to an amount not exceeding 10 per centum of the assessed value of its taxable property.

Office of the Attorney General,

Harrisburg, Pa., May 7, 1914.

Dr. Nathan C. Schaeffer Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of February 17, 1914, asking to be advised whether the amendment to Article IX of the State Constitution, adopted in November, 1913, relative to the increase of the indebtedness of counties and municipalities, applies to school districts.

The question you submit seems to be purely academic and it does not appear from your communication that any particular school district desires to increase its present indebtedness for any specified purpose or under any particular circumstances

In passing upon the question of the right of any municipality to increase its indebtedness regard must be had to the existing indebtedness, the purpose of the increase and other essential facts.

Assuming, however, that your inquiry is simply a general request to be advised as to whether school districts are intended to be included within the "municipalities" referred to in the amendment under discussion, it becomes necessary to give some consideration to the general subject of the increase of indebtedness by municipalities.

By the adoption of the amendment of 1913, a new section was added to Article IX of the Constitution of 1874. The original section 8 of Article IX (relating to taxation and finance) provided, in substance, that the debt of "any county, city, borough, township, school district or other municipality or incorporated district—shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such municipality or district incur any new debt or increase its indebtedness to an amount exceeding two per centum upon each assessed valuation of property without the assent of the electors, thereof at a public election in such manner as shall be provided by law," etc.

In 1911, this section 8 of Article IX was amended so as to provide, in substance, that any debt or debts thereafter incurred by the city and county of Philadelphia for the construction and development of subways or wharves and docks, etc., which should yield to the city and county a current net revenue in excess of the interest on such debt or debts and of the annual installments necessary for the cancellation thereof, may be excluded in ascertaining the power of the city and county of Philadelphia to become otherwise indebted. This amendment affected only the county and city of Philadelphia.

Following out the idea thus adopted for the city of Philadelphia, the people of the Commonwealth, in 1913, added a new section to the Article in the form of the amendment referred to in your communication. This amendment of 1913 has a two-fold purpose. In the first place, it provides, in substance, that, in ascertaining whether "any county or municipality other than Philadelphia" has the power to increase its indebtness, certain obligations may be excluded from the calculation of its existing indebtedness, that is, shall not be considered as debts within the meaning of said Section 8 of Article IX. And, in the second place, it provides that municipalities or counties "may incur indebtedness in excess of *seven* per centum and not exceeding *ten* per centum of the assessed valuation of the

taxable property therein if said increase of indebtedness shall have been assented to by *three-fifths* of the electors voting at a public election in such manner as shall be provided by law."

For the purpose of attaining the first object of the amendment, the people have said that no obligations, heretofore or hereafter issued "by any county or municipality other than Philadelphia" to provide for the construction or acquisition of water works, subways, underground railways or street railways or the appurtenances thereof, shall be considered as a debt of a municipality within the meaning of Section 8 of Article IX of the Constitution, or within the meaning of this amendment, if the net revenue derived from the property shall be sufficient to pay interest and sinking fund charges during certain specified periods.

After making certain modifications of the requirements of Section 10 of Article IX relating to the levying of taxes to pay interest and sinking fund charges, the amendment further provides that "any of the said municipalities or counties" may incur indebtedness in excess of seven per centum and not exceeding ten per centum of the assessed valuation of the taxable property therein, provided such increase shall have been assented to by three-fifths of the electors voting at a public election in such manner as shall be provided by law.

Your inquiry would seem to relate to the last mentioned feature of the amendment, for it is difficult to conceive how any school district could construct or acquire water works, subways or railways within the meaning of the first provisions of the amendment.

The purpose for which school districts may incur or increase an indebtedness to an amount not exceeding seven per centum of the assessed value of taxable property for school purposes are set forth in Section 506 of Article 5 of the School Code of 1911, P. L. 332, and do not include the above mentioned subjects.

It is to be noted that the general purpose of the amendment is, in the first place, to define what indebtedness may be excluded in ascertaining the borrowing power of a municipality as that power is limited by Section 6 of Article IX, and, in the second place, to increase the borrowing capacity itself by raising the limit, beyond which no municipality can go, even by a popular vote, from seven per centum to ten per centum of the assessed valuation of taxable property provided the increase, above seven and not exceeding ten per centum, is assented to by three-fifths of the electors in the municipality.

The language of the amendment, in describing the political divisions of the state to which it is intended to apply is "any county or municipality other than Philadelphia" and, in the latter part of the amendment, "any of the said municipalities or counties."

The language of the original section is "any county, city, borough, township, *school district* or other municipality or *incorporated district.*"

The question arises whether the word "municipality" in the amendment is intended to include school districts. In discussing the meaning of the word "muncipality", as used in our present Constitution, Judge Simonton, in the case of Commonwealth ex rel vs. County Commissioners of Dauphin County, 23 Pa. C. C. 646, said:

> "Cities and boroughs are in the strict sense of the term municipal corporations. Counties and townships have corporate power expressly conferred on them by the Act of April 15, 1834, P. L. 238, but are sometimes said to be only quasi corporations or quasi municipal corporations, because they have no legislative power. But all of these cities, boroughs, counties and townships are indiscriminately known as municipalities. They are so designated in Article IX, Section 8, of the Constitution, which restricts the limit of the creation of the debt of any county," etc.

School districts are, of course, included by name in the original Section 8 and there has never been any doubt about the provisions of that section applying to school districts.

Luburg's Appeal, 23 W. N. C. 454.

By the School Code of 1911, Article I, Section 119, P. L. 314, is provided that "the several school districts in this Commonwealth, established by this act, shall be and hereby are vested as bodies corporate, with all necessary powers to enable them to carry out the provisions of this act."

By Sections 123 and 124, it is provided that each school district shall have the right to sue and be sued in its corporate name; that legal process shall be served upon the president or secretary of its Board of School Directors and that each district may, by a majority vote of the Board of Directors, adopt a corporate seal for the use of said district.

Reading the amendment in connection with the original section 8 and the prior amendments thereto, as it is proper for us to do, I am, of opinion that the amendment now under discussion is intended to apply to all of the municipalities mentioned in the original section including school districts. I am unable to see, however, that this conclusion is of any practical importance at this time for, as already pointed out, it seems scarcely conceivable that any school district could legally contemplate the construction or acquisition of water works, subways or street railways from which it is proposed to derive sufficient net revenue to exclude the obligations issued for such purposes from a calculation of the indebtedness of a school district.

Further, insofar as the provision of the amendment authorizing municipalities to incur or increase an indebtedness to an amount not exceeding ten per centum of the assessed valuation of the taxable property therein upon obtaining the assent of three-fifths of the electors thereof is concerned, I am of opinion that enabling legislation will be necessary before this provision of the amendment will become operative. It was evidently not intended that the amendment should be self-acting. The provision here that the indebtedness may be incurred or increased only with the assent of the electors is similar to the provision on the original Section 8. Both the original section and the amendment authorize the increase of the indebtedness of the municipality above two per centum of the assessed valuation of taxable property only when the assent, under the original section, of a majority and, under the amendment, of three-fifths of the electors has been obtained at a public election, held in such manner as shall be provided by law.

The language of the amendment does not seem to indicate an intention to use the machinery, now provided by law for increasing indebtedness to seven per centum, for the purpose of increasing an indebtedness to ten per centum with the assent of three-fifths of the electors, but, on the contrary, contemplates additional enabling legislation.

The method of securing this assent, under the original Article of the Constitution, was prescribed by legislative enactments providing, in detail, for the submission of the question of the increase of the debt, of a municipality to the electors—the Act of April 20, 1874, P. L. 65, and the supplementary Acts of June 9, 1891, P. L. 252, and of April 13, 1897, P. L. 18, being examples of this kind of legislation.

Until, therefore, appropriate legislation for carrying the latter part of the amendment into effect has been enacted, no school district can avail itself of the power to increase its indebtedness, even with the consent of three-fifths of the electors, to an amount not exceeding ten per centum of the assessed value of the property therein taxable for school purposes.

Very truly yours,

JOHN C. BELL,

Attorney General.

COUNTY SUPERINTENDENT.

In the case of Livingston Seltzer, County Superintendent of Schuylkill County, the statutory method for hearing charges against him should be followed, and the Superintendent of Public Instruction should not entertain a proceeding under Section 1322 of the School Code for annulment of his teachers certificate.

Office of the Attorney General,

Harrisburg, Pa., June 17, 1914.

Dr. Nathan C. Schaeffer Superintendent of Public Instruction, Harrisburg, Pa.

Sir: Your favor of the 2nd inst. transmitting to this Department the complaint and bill of particulars filed against Livingston Seltzer, was duly received. The facts, as I understand them, are as follows:

An original petition of five citizens of Schuylkill County, which prays that "under section 1322 of the School Code you annul the certificate or certificates now held by Livingston Seltzer, of Pottsville, Pa., for incompetency, negligence, immorality and intemperance" has been presented to you.

Two of the petitioners, under date of May 18, 1914, asked that their names be stricken from the petition, stating that

> "We have no knowledge of the charges made against Mr. Seltzer, and furthermore, we are convinced, from printed public statements made by people, who, we are told, would prove charges that the whole matter was an effort to defeat Mr. Seltzer for re-election."

A bill of particulars "in re proceedings for the annulment of certificate or certificates held by Livingston Seltzer" was filed.

Livingston Seltzer is the County Superintendent of Schools of Schuylkill County. He has recently been re-elected as County Superintendent and is not now a school teacher. No objections to his election as County Superintendent were filed with fifteen days after his election.

Section 1322 provides for the annulment of certificates issued to teachers of the public schools for "incompetency, cruelty, negligence, immorality or intemperance, after hearing, of which reasonable notice in writing must be given to the party interested."

It appears in the bill of particulars that Livingston Seltzer has a diploma issued by a State Normal School of this Commonwealth and that makes him eligible for the office of county superintendent, under section 1103 of the School Code.

Sections 1111, 1112, 1113, 1114, 1115, 1116, 1119, of the School Code provide for the method of filing objections against the County

Superintendent, proceedings thereon and for the removal of such superintendent, by the Superintendent of Public Instruction. This course has not been followed against Superintendent Livingston Seltzer of Schuylkill County.

Inasmuch as this case, so far as this preceding is concerned, will establish a precedent under the School Code, and inasmuch as there is a statutory method for hearing charges against the County Superintendent, I am of opinion that this method should be followed, and that the Superintendent of Public Instruction should not entertain a proceeding under section 1322, which proceeding simply authorizes the annulment of a teachers certificate against a superintendent, who, as stated, is not a teacher, but that the charges should be made and the proceedings conducted strictly in the manner pointed out by the Act, for the removal of a superintendent.

You should, therefore, decline to proceed further on the papers as presented.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

EMPLOYMENT OF TEACHERS.

Under the School Code, a teacher who is a first cousin or niece of a school director's wife not require before employment the affirmative votes of three-fourths of all the members of the School Board.

Office of the Attorney General,
Harrisburg, Pa., July 20th, 1914.

Dr. Nathan C. Schaeffer Superintendent of Public Instruction, Harrisburg, Pa.

Dear Sir: Your favor of the 16th inst. addressed to the Attorney General, is at hand. You ask to be advised whether Section 1207 of the School Code includes relationships by the ties of affinity or by the ties of consanguinity only.

The section referred to reads as follows:

> "No teacher shall be employed in this Commonwealth, by any Board of School Directors, who is related to any member of the Board; as father, mother, brother, sister, husband, wife, son, daughter, step-son, step-daugh-

ter, grand-child, nephew, niece, first cousin, sister-in-law, brother-in-law, uncle or aunt, unless such teacher receives the affirmative votes of three-fourths of all the members of the board."

"Affinity" is the tie which arises from marriage between the husband and the blood relations of the wife and between the wife and the blood relations of the husband,—that is to say, it signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.

This is a prohibitive statute, excluding from the employment as teachers persons who are related to any member of the school board in the manner mentioned therein. The prohibition does not extend to any others than those specifically mentioned. The Legislature used among other terms, "father, mother, brother, sister." No one would assume that these terms meant step-father, step-mother, etc. However the Legislature also used the terms step-son, step-daughter, sister-in-law and brother-in-law, showing that it advisely included in the statute these relationships by affinity which it intended to exclude from employment except by a three-fourths vote.

I am, therefore, of opinion that the statute effects relationship by the ties of consanguinity only, except in the cases of affinity mentioned in it.

Answering the precise example which you put, I advise you that a teacher who is a first cousin or niece of a school director's wife, would not require the affirmative votes of three-fourths of all the members of the board before such teacher could be employed.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

RESIDENCE OF A SCHOOL CHILD.

A child inmate of the Messiah Home Orphanage at Grantham, Pa., is not a legal resident of the Grantham district, but retains the residence of its parents, guardians or the persons sustaining parental relations to such child.

Office of the Attorney General,
Harrisburg, Pa., December 22nd, 1914.

Dr. Nathan C. Schaeffer Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of November 20th, asking to be advised whether a child placed in the Messiah Home Orphanage, incorporated and having a branch home at Gran-

tham, Pa., becomes a legal resident of the school district in which said branch of said orphanage is located, although the guardian, or parent placing such child in said orphanage is a resident of a different school district.

I assume that the practical question intended to be raised by your inquiry is whether the directors of the school district in which said branch orphanage is located may charge the cost of tuition, text books and school supplies of and for the inmates of said branch orphanage against the districts of which said inmates are alleged to be legal residents.

The disposition of this question depends upon whether an inmate of said Messiah Home Orphanage, at Grantham, Pa., becomes under the Article of Agreement between the parent or guardian of such inmate and the said Messiah Home Orphanage, (a copy of which Article of Agreement you enclosed with your communication), a legal resident for school purposes of the school district in which the orphanage is located, or whether such inmate of said home retains his or her legal residence, notwithstanding said contract, in the school district in which the parent or guardian resides.

By Section 1402 of the School Code of May 18, 1911, P. L. 309, at page 380, it is provided that:

> "A child shall be considered a resident of the school district in which his parents or the guardian of his person resides. If any child has no parents or guardian of his person, then such child shall be considered a resident of the district in which the person sustaining parental relations to such child resides."

The Act of May 9, 1913, P. L. 192, however, clearly contemplates that children may be inmates of orphan asylums, homes for the friendless, children's homes or other institutions for the care or training of orphans or other children, without becoming legal residents of the school district in which such institution is located.

The Act referred to reads as follows:

> "The board of school directors of any school district in this Commonwealth, in which there is located any orphan asylum, home for the friendless, children's home or other institution for the care or training of orphans or other children, shall permit any children who are inmates of such homes, but not legal residents in such district, to attend the public schools in said district, either with or without charge for tuition, text-books, or school supplies as the directors of the district in which such institution is located may determine; Provided, That when the education of such inmates of such institutions is charged for, the cost thereof shall not exceed the cost of tuition, text-books and school sup-

> plies of other children of similar grade in such district: And, provided further, That such cost shall be paid to the district in which such institution is located by the district of which the respective pupils are legal residents."

It is perfectly clear that the Article of Agreement between the guardian or parent of the child and the Messiah Home Orphanage does not amount to an adoption. It merely provides for the release and relinquishment of all parental rights and claims to the child until he or she reaches the age of eighteen years, in consideration of which release the orphanage undertakes to feed, clothe and educate according to law, the child in question, etc. Although the article has a provision for what is called the "re-adoption" by the Orphanage of the child into some good christian home where it will receive like treatment and instruction it amounts in no legal sense to an adoption.

In the recent case of *Benson vs. Nicholas, 246 Pa. 229,* our Supreme Court, quoting from and reaffirming *Carroll's Estate, 219 Pa. 440,* said:

> "The only methods of adoption of children known to the law of Pennsylvania, are those prescribed by the Act of May 4, 1855, P. L. 430, Sec. 7, as reenacted by the Act of May 19, 1887, P. L. 125, Sec. 1, and the Act of April 2, 1872, P. L. 31, Sec. 2. The former provides for adoption by petition to, and decree of, the Court of Common Pleas; and the latter for adoption by deed duly executed and recorded. While the Act of 1872, refers to 'the common law form of adopting a child by deed,' yet the authorities are uniform to the effect that adoption was unknown to the common law, whether by deed or otherwise: Ballard vs. Ward, 89 Pa. 358; McCully's App. 10 W. N. C. 80; Session's Estate, 70 Mich. 297; Butterfield vs. Sawyer, 187 Ill. 598. We know of no authority for the proposition that, in the State of Pennsylvania, a child may be adopted by parol."

It should also be observed that the Act of May 19, 1887, P. L. 125, contemplates adoption of children by natural persons only, and not by a corporation such as the Messiah Home Orphanage, and further that the said orphanage cannot be considered a "person sustaining parental relations" to a child who has "no parents or guardian of his person," within the meaning of the above quoted Section 1402 of the School Code.

You are accordingly advised that a child who is an inmate of the Messiah Home Orphanage at Grantham, Pa., does not become, merely by virtue of the Article of Agreement between its guardian or parent and the orphanage, a legal resident of the district in which

the institution is located, but such child, notwithstanding this agreement, retains its legal residence in the school district in which its parents or guardian, or the person sustaining parental relations to such child resides, as provided in said Section 1402 of the School Code above quoted.

I may add that practically the only way in which a child who is an inmate of such an institution, whose parents or guardian lives or whose deceased parents lived in another district, could become a legal resident of the district in which the institution is located, would be through legal adoption of such child by a resident of the said district in one of the methods referred to in the opinion of the Supreme Court above quoted.

Very truly yours,

JOHN C. BELL,
Attorney General.

SCHOOL DISTRICT INDEBTEDNESS.

Swissvale Borough may increase debt of school district by action of School Board alone, the sum of $30,000, by a temporary loan payable within two years.

Office of the Attorney General,

Harrisburg, Pa., December 23, 1914.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of December 11th, enclosing a letter addressed to you by the Superintendent of Schools of Swissvale Borough, and asking in substance to be advised whether, under the facts stated in your communication and in said letter, the Directors of the School District of Swissvale Borough, a school district of the third class, have legal authority—

FIRST—To increase, at the present time and without the assent of the electors thereof at a public election, the indebtedness of said school district in the sum of $30,000, to meet casual deficiencies of revenue.

SECOND—If said Directors have such power, then (a)—may they borrow said sum of money as a temporary debt and issue an obligation therefor under the seal of the District, as provided in

Section 508 of the School Code of May 18, 1911, P. L. 309, at page 333, or (b)—must such increase of indebtedness be secured by a bond issue under Section 506 of said School Code, made at a time for assessing and levying the annual school taxes.

The material facts are as follows:

The total assessed value of property taxable for school purposes in said District, is.....	$9,450,000 00
Two per centum of this amount is.....	189,000 00
Seven per centum of this amount is.....	661,500 00
One-half of one per centum of this amount is.....	47,250 00

The present indebtedness of said school district, all of which is secured by bonds thereof, is made up of two classes, as follows:—

A—Outstanding bonds issued by authorization of the electors at a public election.....	$86,000 00	
B—Outstanding bonds issued by Directors without the assent of electors	120,500 00	$206,500 00

From the foregoing statement it appears that if, in considering and ascertaining the legal power of the Directors to increase the present indebtedness of the school district without the assent of the electors, the above mentioned item of $86,000 for bonds heretofore issued by authorization of the electors is to be taken into consideration and included in the calculation, then the present indebtedness of the district amounts to more than two per centum of the assessed valuation of property therein taxable for school purposes, and the school directors by reason of the prohibition contained in Section 8 of Article IX of the Constitution, have no power to increase the indebtedness of the district without the assent of the electors.

If, however, this item of $86,000 should be excluded from the calculation and only that portion of the existing indebtedness which was created by the Directors without the assent of the electors, to wit: the item of $120,500, is to be taken into consideration, then under the said constitutional provision the Directors still have a borrowing capacity to be exercised by themselves and without the assent of the electors, of $68,500, said amount being the difference between two per centum of the total valuation and the amount of outstanding indebtedness created solely by the proper school authorities.

The provisions of Section 8 of Article IX of the Constitution applicable to the first branch of your inquiry, read as follows:—

> "The debt of any * * * * school district * * * * shall never exceed seven per centum upon the assessed value of the taxable property therein, nor shall any such * * * * district incur any new debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property without the assent of the electors thereof at a public election in such manner as shall be provided by law * * * * ,"

The question therefore now arising may be stated as follows:—

Where the total existing indebtedness of a school district is more than two per centum of the assessed value of taxable property therein, but it appears that a part of such indebtedness was duly authorized by a vote of the electors, may such part be deducted from the gross amount of the indebtedness, and, if the remainder of the indebtedness is then less than two per centum of the assessed value, may such remaining indebtedness be increased to an amount not exceeding two per centum of the valuation without special authorization by the electors?

This statement of the question involved assumes, of course, that when the proposed increase is added to the aggregate of the existing indebtedness, no matter how created, the total indebtedness of the district will then not exceed seven per centum of the assessed valuation.

The inquiry thus stated, being the first inquiry set forth in your communication, is answered in the affirmative by the opinion of our Supreme Court in the case of *Keller vs. Scranton, 202 Pa. 586.* At the time the controversy disposed of by that case arose, the assessed value of taxable property in the City of Scranton was $23,121,000, and two per centum thereof amounted to $462,420.00. The debt of the City of Scranton was $582,000, or more than two per centum of the assessed value of taxable property. It appeared, however, that of this indebtedness, amounting in the aggregate to $582,000, the sum of $299,000 had been approved and authorized by a vote of the electors and the balance of the debt, to-wit: $283,000, considerably less than two per centum of the assessed value of taxable property, had been incurred without a vote of the electors.

It was proposed by the Councils of the City of Scranton to increase the indebtedness of the City through the erection of a viaduct which would cause damage to abutting property owners, in an estimated amount of possibly $100,000.

A bill was filed for an injunction to restrain the City authorities from thus increasing the then existing indebtedness of the City without first obtaining the consent of the electors. The court below found as a conclusion of law that the municipal authorities had no power to increase the indebtedness of the City without authorization from the electors. Upon appeal to the Supreme Court, that Court,

in an opinion by Mr. Justice Mitchell, reversed the decree of the court below and directed that the bill be dismissed.

In the course of the opinion it is held that—

> "The general scheme of the constitution with regard to the amount of municipal indebtedness is clear. Section 8 of Article 9 divides such indebtedness into three classes considered with reference to amount, first, debt exceeding seven per cent. of the assessed value of taxable property, which is absolutely prohibited, except as to cities whose debt exceeded seven per cent. at the time of the adoption of the constitution; second, new debt or increase of indebtedness by the municipal authorities, which is permitted to the extent of two per cent. of assessed value; and third, new debt or increase of indebtedness exceeding two per cent. but less than seven per cent. of assessed value, which is permitted with the assent of the electors at a public election.
>
> The words of the section with which we are directly concerned are, 'Nor shall any municipality or district incur any new debt or increase its indebtedness to an amount exceeding two per centum upon such assessed valuation of property without the assent of the electors thereof.' This though a limitation on the power of creating debt is also a recognition of its existence. The power to raise and spend money for public purposes is a necessary attribute of all governments, and in our system has always been exercised by the legislative branch of municipalities under such regulations as the legislature of the State has prescribed. The constitutional provision puts a limit on the power, and on the Legislature's authority to confer it, but at the same time is a recognition of the power as exercised by the municipalities. Hitherto it had been without limit not only as to amount of expenditure but also as to the time and mode of payment; it is still without limit as to amount of expenditure, if paid or means of payment provided at the time, but beyond two per cent. of assessed value, it cannot be authorized as a debt for the future without the assent of the electors obtained at a public election. The result of the provision is that the municipal authorities, charged with the raising and spending of public money incident to the current expenses of the government, still have the same power they have always hitherto had as to the creation of public debt up to the two per cent. limit, and the same power to the further limit of seven per cent. if authorized by a vote of the electors. The immediate necessity for money in the administration of the municipality's affairs may vary from day to day and the mode of meeting it was not intended to be taken out of the discretion of the ordinary municipal authorities, up to the prescribed limit, fixed as sufficient to provide for

> ordinary requirements. But when an extraordinary occasion or demand arises, requiring more than two per cent. then the assent of the voters must be obtained, and it will be sufficient up to the prescribed limit of seven per cent. The order in which these two powers may be exercised is not prescribed, and is not material. What the section is concerned with is the amount of the indebtedness of each class, not the order in which it is incurred.
>
> It was found as a fact by the learned judge below, that at the time the ordinance in question was passed, the debt of the city was more than two per cent. of the assessed value of taxable property therein, but that part of the debt had been duly authorized by a vote of the electors, and if this were deducted from the gross amount the remainder, created by the councils without special authorization by the electors, might be increased by the estimated debt to be incurred under the ordinance, without reaching the two per cent. limit. Under such circumstances the debt was within the authority of councils and the ordinance valid."

This decision is directly applicable to your inquiry. The existing indebtedness of the school district of Swissvale Borough consists of two classes: First, the sum of $86,000 authorized by the electors, and Second, the sum of $120,500 created by the school directors alone. As the amount of the indebtedness in the class authorized to be created by the school authorities without the assent of the electors is less by $68,500 than two per centum of the assessed value of taxable property, you are advised that the Directors of the District in question have authority by their action alone, to increase the present indebtedness in the amount now proposed, to-wit: $30,000.

Having reached the conclusion under the first branch of your inquiry that the Directors of the school district in question have the power to increase by their action alone the indebtedness of the district in the proposed amount of $30,000, it remains to inquire whether they may exercise this power under Section 508 of the School Code by creating a temporary debt secured by the obligation of the district, payable within two years from its date out of current revenues, or whether the increase must be by a bond issue under Sections 506 and 507.

In the drafting and enactment of the School Code, strict regard was had to the provisions of the above quoted Section 8 of Article IX of the Constitution and Section 10 of the same Article, providing in substance that any school district incurring any indebtedness should, at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof within thirty years. Hence provision was made in Section 506 of the Code for the issuing of bonds for the purposes therein

specified (which do not include ordinary current expenditures), to such an amount that the total indebtedness of the district would never exceed seven per centum upon the assessed value of property taxable for school purposes in the district, and it was provided that "such indebtedness or increase of indebtedness shall be incurred and bonds issued therefor only at the time of assessing and levying the annual school taxes."

By Section 507 it is provided that such bonds shall be made payable and become due at stated periods not exceeding thirty years after the date thereof and that the district shall in its annual tax levy provide for their payment within said period.

Nothing is said in Section 506 with reference to the authority by which the indebtedness therein authorized may be created, but this section must, of course, be read in connection with Section 8 of Article IX of the Constitution, prohibiting any school district from incurring any new debt or increasing its indebtedness to an amount exceeding two per centum upon the assessed valuation of property without the assent of the electors.

The matter of providing, through the action of the proper school authorities alone, for such funds, up to the constitutional limit, as will supply the necessities of school districts as these necessities may vary from time to time, is provided for in Section 508 of the Code. The material part of this section reads as follows:

> "Any school district having no indebtedness or whose indebtedness is less than two (2) per centum of the total valuation of the taxable property for school purposes therein, may at any time, by or through its board of school directors, incur, in addition to any bonds herein authorized, a temporary debt, or borrow money, which in school districts of the * * * * third * * * * class shall not exceed * * * * one-half of one (1) per centum of the total amount of taxable property in such school district, and issue an obligation therefor, under the seal of the district, if any, properly attested by the president and secretary thereof, payable within two years from the date thereof and bearing interest not exceeding the legal rate * * * * provided that the total amount of all indebtedness in any school district issuing such obligations shall not, at any time, including all such obligations, exceed two per centum of the total valuation of taxable property therein * * * * Provided further, that any school district incurring any temporary debt and issuing such obligations in the manner herein provided, shall provide from its current revenue for the payment of the same."

This section evidently relates exclusively to the second class of indebtedness defined by our Supreme Court in the foregoing citation

as "new debt or increase of indebtedness by the municipal (school) authorities, which is permitted to the extent of two (2) per centum of assessed value."

In construing the language used to describe the districts to which this section is intended to apply, namely: "Any school district having no indebtedness, or whose indebtedness is less than two (2) per centum of the total valuation of the taxable property for school purposes therein," the principles laid down by our Supreme Court in the case of Keller vs. Scranton, supra, should be applied. In the application of these principles to the facts in the present case for the purpose of ascertaining whether the directors of the district now in question have legal authority to exercise the powers conferred by Section 508 of the School Code, the item of $86,000 for outstanding bonds issued by authority of the electors, should be excluded and the existing indebtedness of the district of this class fixed at $120,500. Under this construction Swissvale Borough is a school district "whose indebtedness is less than two (2) per centum of the total valuation of the taxable property for school purposes therein," and its directors may, therefore, for the purpose of meeting the casual deficiency now existing, exercise the powers conferred by Section 508 of the School Code and borrow money as a temporary debt, to be paid within two years out of current revenues, up to the amount of one half of one per centum of the assessed value of its taxable property, i. e. up to $47,250, as this amount added to the existing indebtedness of this class will make the total indebtedness of the class less than two per centum of the total valuation.

It is true that the total amount of all indebtedness of the district will, after the proposed $30,000 has been borrowed, be $236,500, or more than two per centum of the total valuation of taxable property therein, and this condition would seem to be in violation of a literal interpretation of the language of the proviso of Section 508 above quoted, namely: "That the total amount of all indebtedness in any school district issuing such obligations shall not at any time, including all such obligations, exceed two (2) per centum of the total valuation of taxable property therein."

I am of opinion, however, that as the section now under discussion deals exclusively with the power of directors to incur new indebtedness or increase an existing indebtedness, the phrase "total amount of all indebtedness" as used in said proviso, must be understood as being descriptive of, and limited to, the second class of indebtedness, referred to in the foregoing opinion of our Supreme Court, namely: such indebtedness as is within the power of the directors to create. As the indebtedness of this class in the district now under consideration will, after the addition of the proposed temporary debt be only $150,500, or less than two per centum of the

assessed valuation of taxable property, I am of opinion that the terms of the proviso above quoted will not be violated by the proposed increase of indebtedness.

You are therefore advised that the directors of the school district of Swissvale Borough have legal authority to now borrow for the purposes indicated, the sum of $30,000 as a temporary debt and issue the obligation of the district therefor, payable within two years from its date out of current revenues.

Very truly yours,

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

OPINIONS TO THE DAIRY AND FOOD COMMISSIONER.

OPINIONS TO THE DAIRY AND FOOD COMMISSIONER.

COLD STORAGE.

Hospitals for the Insane and Penal and Charitable Institutions of the State, if operating a cold storage warehouse in which food is stored for 30 days or more are subject to the provisions of the Cold Storage Act of May 16, 1913.

Office of the Attorney General,

Harrisburg, Pa., July 18, 1913.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Dear Sir: Your favor of the 7th inst. is at hand.

You request to be advised whether hospitals for the insane and charitable and penal institutions which maintain and operate cold storage plants for preserving the foods used by the inmates, are under the provisions of the Act of May 16, 1913, known as the "Cold Storage Law."

This act is entitled:

> "An Act for the protection of the public health and the prevention of fraud and deception, by regulating the storage and sale of cold storage foods, fixing penalties for the violation of the provisions thereof, and providing for the enforcement thereof."

It provides in Section 3:

> "The term 'cold storage warehouse' as used in this act, shall mean an establishment employing refrigerating machinery or ice for the purpose of refrigeration, or a place otherwise artifically cooled, in which articles of food are stored, for thirty days or more, at a temperature of forty degrees Fahrenheit, or under."

Section 8 provides, in part:

> "No person, firm or corporation shall operate a cold storage warehouse without a license issued by the Department of Agriculture through its agent, the Dairy and Food Commissioner."

and further provides for the issuance of said license upon the payment of the sum of $50.00.

Other sections of the Act give the Dairy and Food Commissioner the right to make rules and regulations for its enforcement and to regulate the marking of goods which have been withdrawn from cold storage warehouses and offered for sale.

This Act of Assembly, as its title indicates, is for the protection of the public health. Its scope is comprehensive. It prohibits every "person, firm or corporation" from operating a cold storage warehouse without a license. The Legislature having determined that the interests of the public required this legislation for the protection of the health of the people, there appears to be no reason why such protection should not be afforded to those unfortunates who are confined in the hospitals, charitable and penal institutions, as well as to other citizens of the State. There is nothing in the Act which excludes any such institution from its operation.

If, however, the food kept in the cold storage warehouse operated by such hospitals and institutions is not sold, but is all consumed by the inmates thereof, the provisions of the Act in reference to the marking of such foods when offered for sale, would not apply, but the other provisions are applicable.

Specifically answering your inquiry, I advise you that hospitals for the insane and charitable and penal institutions of the State, if operating a cold storage warehouse, as defined in the said Act of Assembly, in which articles of food are stored for thirty days or more, are subject to the provisions of said Act of Assembly.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

WITNESS FEES—SPECIAL AGENTS.

A special agent, receiving a salary from the State is not entitled to witness fees from a county, where fees if collected, would belong to the State.

Office of the Attorney General,
Harrisburg, Pa., September 23, 1913.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Your favor of recent date asking whether special agents of your Bureau are entitled to witness fees when appearing as prosecutors or witnesses in criminal proceedings instituted by the Bureau was duly received.

The facts which prompted your inquiry I understand to be as follows: W. F. Hill, an agent of the Dairy and Food Department, by your direction, instituted a criminal prosecution for the adulteration of milk in the Court of Quarter Sessions of Clinton County. The Grand Jury ignored the bill, and placed the costs upon the county. The County Commissioners have refused to pay the witness fees of your agent. The Agent receives a salary, and the fees, if collected, would be turned into the State Treasury.

The law governing this State of facts is no longer in doubt. In the case of Walsh vs. Luzerne County 36 Super. Court. 425, a member of the State Police demanded the legal fees for service in executing a warrant against a defendant who was charged with assault and battery. The case so proceeded with that a verdict of not guilty was renderd, and the county of Luzerne was directed to pay the costs. The Superior Court said:

> "While differing in their reasons both parties give assent to the proposition that the officer cannot recover the fee in his own right. Therefore the question upon which the case turns is, whether an officer who is prevented by statute or by judicially established principles of public policy from demanding and collecting for his own use a fee for serving a criminal warrant may demand and collect it for the use of the Commonwealth."

The Superior Court in answering this question adopted the conclusion of the learned Court below which was that the plaintiff was "not entitled to recover the money in question either for his own use or that of the Commonwealth."

I, therefore, advise you that under the facts stated your Agent receiving a salary, and the fees if collected belonging to the Commonwealth, he is not entitled to receive payment therefor from the county of Clinton.

Very truly yours,

JOHN C. BELL,
Attorney General,

COLD STORAGE.

A ship used in transportation of beef from Argentine Republic is not a "cold storage warehouse" within meaning of Cold Storage Act.

Office of the Attorney General,

Harrisburg, Pa., January 14, 1914.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Some time ago you requested an interpretation of sections 3 and 20 of the "Cold Storage Act" of May 16, 1913, (P. L. 216), as applied to the shipment of beef from Argentine Republic.

I understand the facts upon which the request is based to be as follows:

Large quantities of fresh beef are shipped from Argentine Republic to this country and sold at a price somewhat lower than the beef raised here, and it takes from thirty to forty days from the time the beef is shipped until it reaches the consumer; the shipments are made in vessels having compartments, so that the fresh beef is kept, during shipment, at a temperature of slightly under 40 degrees Fahrenheit.

The precise question upon which you desire advice, is whether these vessels should be termed "Cold Storage Warehouses" and whether the beef which is thereby shipped should be marked "Cold Storage Food," or whether the shipment should be treated the same as if made in refrigerated cars and sold in the State as fresh beef. The practical effect of the determination of this question is that if the Argentine beef must be sold as "Cold Storage Food" it will be withdrawn from the markets of Pennsylvania, and sent to other States, where such restriction is not put upon it, and the people of Pennsylvania will be deprived of the benefit of the reduction in the price of that commodity.

Section 3 of the Act defines "Cold Storage Warehouse" as follows:

> "An establishment employing refrigerating machinery or ice for the purpose of refrigeration, or a place otherwise artificially cooled, in which articles of food are stored for thirty (30) days or more, at a temperature of forty degrees Fahrenheit, or under."

This language is broad enough in its terms to cover a vessel employing refrigerating machinery, because the articles of food are stored therein at forty degrees Fahrenheit or under,

But Section 20 of the Act provides for the transportation of products and is as follows:

> "Nothing in this Act shall be construed to prohibit the shipping, consigning, or transporting of fresh food in properly refrigerated cars within this State to points of destination; nor, when received, to prohibit the

same being held in a cooling room for a period of forty-eight (48) hours: And provided further, That nothing in this act shall be construed to prohibit the keeping of fresh food in ice boxes or refrigerators in retail stores, while the same is offered or exposed for sale."

The term "Cold Storage Warehouse" as defined in Section 3 is also broad enough to include refrigerated cars referred to in Section 20. It seems that the term as used in Section 3 is not intended to apply to cars or vessels used in transportation, but means a stationary establishment in which articles are stored at 40 degrees Fahrenheit, or under.

This Act must be construed so as to carry out the legislative intent as far as possible. It is not to be presumed that the Legislature intended any effect which would result in depriving the people of the State of securing Argentine beef at a lower cost than that paid for beef produced from cattle raised in this county.

I am of opinion that Section 20 was intended to include the transportation of fresh food and should be interpreted so as to apply to such transportation, whether in refrigerated cars or in refrigerated ships.

Specifically answering your inquiry, I advise you that a ship used in the transportation of beef from Argentine Republic is not a "Cold Storage Warehouse," within the meaning of Section 3 of the Act of Assembly, and that beef so transported is not required to be marked "Cold Storage Food" but that the shipment of such beef is governed by Section 20 of the Act, may be sold as fresh food and when it reaches its destination may be held in a cooling room for the period of forty-eight hours, as provided therein.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

TRANSFER OF OLEOMARGARINE LICENSE.

Upon proper application an oleomargarine license may be transferred from one place to another.

Office of the Attorney General,
Harrisburg, Pa., November 11, 1914.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: You have transmitted to this Department the letter of Joseph R. Shearer to you, enclosing copies of other communications passing between your Department and Mr. Shearer, and have asked to be advised concerning the transfer of the oleomargarine license of Mr. Shearer.

As I gather from the correspondence, Joseph R. Shearer holds a license for the sale of uncolored oleomargarine at retail, from a store in Chester, Pa. He desires to move his business and to have the license transferred so that he may have the right to sell uncolored oleomargarine at retail from a store in Wayne, Pa.

The Act of Assembly regulating the sale of oleomargarine, approved May 29, 1901, (P. L. 327), provides that no person, firm or corporation shall sell uncolored oleomargarine without first having obtained a license authorizing the holder of said license to engage in the sale of uncolored oleomargarine, and provides that application for such license shall be made in such form as shall be prescribed by the Dairy and Food Commissioner, which application,

> "in addition to other matters which may be required to be stated therein by the Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is to be carried on, and the name and style under which it is proposed to conduct the said business. If the said application is satisfactory to the said Dairy and Food Commissioner, and the name and style shall not, in the judgment of the Dairy and Food Commissioner, be calculated to deceive or mislead the public as to the real nature of the business so proposed to be carried on, he shall issue to the applicant or applicants a license authorizing him, her or them to engage in the manufacture or sale of oleomargarine or of similar substance which shall not contain a coloration or ingredient that causes it to resemble yellow butter."

The Act of Assembly also provides that such license shall not authorize the sale at any other place than that designated in the application and license, but that

> "Such license may be transferred by the Dairy and Food Commissioner upon the application, in writing, of the person, firm or corporation to which the same has been granted."

The authority to transfer is vested in the Dairy and Food Commissioner upon a proper application. If Joseph R. Shearer makes an application for the transfer of the license now held by him from Chester, Delaware County, to a place in Wayne, Delaware County, and the place to which the license is to be transferred is satisfactory to the Dairy and Food Commissioner, the Dairy and Food Commissioner has power under the provisions of the law just quoted, to make such transfer.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

OPINIONS TO BOARD OF GAME COMMISSIONERS.

OPINIONS TO BOARD OF GAME COMMISSIONERS.

GAME LAWS.

An accomplice cannot become informer against his partners in crime and receive one-half the penalty for violation of game laws.

Office of the Attorney General,

Harrisburg, Pa., April 5, 1913.

Hon. Joseph Kalbfus, Secretary Game Commission, Harrisburg, Pa.

Sir: You recently asked the advice of this Department as to whether or not an informer is entitled to one-half of the penalty recovered for violation of the game laws, upon what I understand to be the following facts:

One Stoll Jagger, in conjunction with two men by the name of Raitt, violated the 28th section of the Act of May 1, 1909, (P. L. 325), which prohibits game caught, taken or killed within this State, to be transported, shipped or removed out of the State, under certain conditions. Jagger, having discovered that the officers were seeking evidence against him, went before a justice of the peace, pleaded guilty, and paid the penalty imposed by law. Having paid the penalty, he himself became prosecutor against the two Raitts, who, having been convicted before the justice of the peace, paid the penalties imposed upon them.

Jagger now claims one-half of the penalties imposed upon the Raitts.

The 31st Section of the Act above referred to provides:

> "Where any other than a game protector is the prosecutor, one-half of any penalty thus collected shall belong to such prosecutor, and shall be paid to him by the court collecting the same."

The proposition thus presented is:

Can an accomplice thus reap the statutory benefit from his own violation of the law?

If the same penalty were imposed against each of the two Raitts as was imposed against Jagger, one-half of the penalty would equal the whole penalty imposed against Jagger, and Jagger, who is particeps criminis, goes unpunished.

To permit such a construction would be against the policy of the law.

> "Public policy means the public good. Anything that tends clearly to injure the public health, the public morals, the public confidence in the purity of the administration of the law, or to undermine that sense of security for individual rights whether of personal liberty or of private property which any citizen ought to feel, is against public policy."
> Goodyear vs. Brown, 155 Pa. 514.

It is enough to say that if a result such as sought in this case were permitted, the public confidence in the purity of the administration of the law in this respect would be destroyed.

I therefore advise you that the Act of 1909 above referred to must be construed so as not to permit a *particeps criminis* or accomplice, to receive one-half of the penalty recovered for violation of the law, and, specifically that Stoll Jagger is not entitled to one-half of the penalty imposed upon, and paid by, the two Raitts.

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

DELAWARE RIVER.

Under the agreement between New Jersey and Pennsylvania, providing for concurrent jurisdiction upon the Delaware River, approved by the Act of Sept. 20, 1783, 2 Sm. Laws, 77, officers of the Game Commission may arrest offenders upon any part of the river, whether the offence was committed on the river itself or within the State of Pennsylvania. But there being no agreement between New York and Pennsylvania, by which either ceded to the other any jurisdiction over the river, the right of officers of the Game Commission to make arrests on that part of the river which flows between those states does not extend beyond the boundary line established by the Act of Sept. 29, 1789, 2 Sm. Laws, 510.

A Pennsylvania license to hunt is limited to the boundary line.

Office of the Attorney General,
Harrisburg, Pa., January 16, 1914.

Hon. Joseph Kalfus, Secretary Board of Game Commissioners, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of November 26th, 1913, requesting an opinion regarding the right of the Game Commission to enforce the game laws on the Delaware River.

Your first question refers to the right to make an arrest on this river for an offense committed within the State of Pennsylvania.

In the case of an offense committed within the State of Pennsylvania, you are advised that the agreement between Pennsylvania and New Jersey made April 26, 1783, and approved by the General Assembly of Pennsylvania, September 20, 1783, (11 Statutes at Large, page 151), permits an arrest of the criminal to be made on any part of the Delaware river between these two states. The second paragraph of that agreement provides:

> "Each state shall enjoy and exercise a concurrent jurisdiction within and upon the water, and not upon the dry land, between the shores of said river."

and further provides:

> "All capital and other offenses, trespasses or damages committed on said river, the judicial investigation and determination thereof shall be exclusively vested in the state wherein the offender or person charged with such offense shall be first apprehended, arrested or prosecuted."

While the second provision applies only to offenses committed "on said river," the portion of the agreement first quoted confers upon the states concurrent jurisdiction, without limiting such jurisdiction to offenses committed on the river. The officers of the Game Commission, therefore, would have a right to arrest offenders upon any part of the Delaware River, whether the offense was committed on the river itself, or within the State of Pennsylvania.

So far, however, as the right of jurisdiction over the Delaware River where it forms the boundary between Pennsylvania and New York is concerned, there is no agreement between the two states whereby either ceded to the other any jurisdiction over the river. The boundary line between the two states was established by the Act of September 29th, 1789 (13 Statutes at Large, page 378), but that agreement expressly declared that the boundary line therein provided for shall be "the true and just line of boundary and partition both of territory and *jurisdiction* between the State of Pennsylvania and the State of New York, and that this Commonwealth of Pennsylvania doth not nor at any time hereafter shall or will claim to have, hold or exercise any right, power or jurisdiction in or over the soil or inhabitants dwelling northward of the said line hereby established, eastward of the said meridian line, or western boundary of New York."

The authority of your officers, therefore, to make arrests on the Delaware river between Pennsylvania and New York, does not extend beyond the boundary line established by the agreement referred to.

In answer to your second inquiry, viz: "How far toward the New Jersey shore on the Delaware river would a person holding a resident hunter's license in Pennsylvania have authority to hunt," you are advised that a resident hunter's license issued by the public authorities of this State does not give the holder any right to hunt beyond the boundary line between the two states. The above mentioned agreement between Pennsylvania and New Jersey does not give any rights of this kind to the citizens of the adjoining states. The agreement does declare that the river Delaware "is and shall continue to be and remain a common highway equally free and open for the use, benefit and advantage of the said contracting parties." The right of hunting is not included in this right of way which the agreement provides for, and, in the absence of an agreement with the State of New Jersey to that effect, the State is limited in conferring licenses to hunt to the boundary of the State.

Very truly yours,

JOHN C. BELL,
Attorney General.

Vide June 6, 1887 P.L. 358,
Pardon Reg Vol. 4, Page 424 - Vol 4

BOUNTY FOR KILLING NOXIOUS ANIMALS.

The counties of the State are liable for payment of bounties, prescribed by Act of July 25, 1913 (P. L. 1036).

Office of the Attorney General,

Harrisburg, Pa., March 25, 1914.

Hon. Joseph Kalbfus, Secretary Board of Game Commissioners, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of March 3rd, asking, in substance, to be advised whether, under existing legislation, the several counties of the Commonwealth are liable to pay to individuals complying with the provisions of the Act of July 25, 1913 (P. L. 1036) the rewards or bounties provided by said Act for the killing within the Commonwealth of the noxious animals and birds specified therein.

This Act of 1913 is an amplification of the Act of April 19, 1907 (P. L. 60), and supplies that Act. It was provided in said Act of 1907, and is re-enacted by said Act of 1913, that persons holding the required certificates of their right to receive a bounty should present the same to the Commissioners of the county within which the animal or bird was killed. It is then provided that:

> "Upon the presentation of such certificate, in proper form, the commissioners of the county shall give an order for the amount named in such certificate to the person presenting the same, drawn upon the county treasurer directing the payment of the reward or bounty, as provided for in this act; and the county treasurer *shall at once,* upon presentation of said order, pay the same from the *funds in his hands belonging to said county.*"

By Section 4 of said Act of 1913 the County Commissioners and the County Treasurer are required to keep an accurate account of the amounts directed to be paid, and actually paid, in compliance with said orders, and submit the same to the Auditor General, who, if he finds the return to be in proper form, is directed to

> "draw a warrant in favor of such county, upon the State Treasurer, for the amount so claimed and approved; which said warrant, upon presentation to the State Treasurer, shall be paid out of the funds which shall hereafter accumulate in the hands of the State Treasurer from the fifty per centum of the fees paid for hunters' licenses, as provided by Section 12 of the Act of Assembly" approved April 17, 1913, (P. L. 85).

In so far as the matter of providing or designating a fund out of which the counties are to be reimbursed is concerned, the Act of 1913 differs from the Act of 1907. The Act of 1907 contained in its sixth section an appropriation of $50,000 for the purpose of carrying the provisions of that Act into effect. The records of the State departments show that this sum was exhausteed prior to May 31, 1909, and that there was no appropriation available for the purpose of reimbursing counties during the appropriation period beginning June 1, 1909, and ending June 1, 1911.

By the Appropriation Act of July 25, 1913 (P. L. 1284) the sum of $50,000 was appropriated to reimburse counties for moneys paid by them for bounties under the provisions of the said Act of 1907, but no part of this appropriation is available for the payment of bounties arising under the Act of 1913.

It was evidently the intent of the Act of 1913 that the counties should be reimbursed for the payment of the bounties payable under that Act out of the funds accumulating in the State Treasury from the fees paid for hunters' licenses.

By the 12th Section of the said hunters' license Act of April 17, 1913 (P. L. 85), it is provided that:

> "All license fees collected under the provisions of this act, and all fines and penalties imposed and collected for violation of any of its provisions, shall be paid to the State Treasurer as hereinbefore designated, who shall

keep the moneys thus collected as a fund separate and apart, solely for the purpose of wild bird and game protection and for the purchase and propagation of game under the supervision of the Board of Game Commissioners of the Commonwealth of Pennsylvania, and the payment of bounties under the provisions of law. The several purposes to which the fund, so received by the State Treasurer, shall be applied, *to be clearly designated by an act of Legislature, either in the general appropriation act or by separate appropriation for the payment of bounties.* It being specifically provided that fifty per centum of any fund returned to the State through or because of the provisions of this act, or so much of said fifty per centum as may be needed, *shall be applied by the Legislature at its biennial sessions to the payment of bounties,* at the rate of one dollar for each mink killed, two dollars for each weasel killed, two dollars for each fox killed, four dollars for each wildcat killed, and such bounty upon other animals or birds as may hereafter have a bounty placed upon them by the Legislature of the State; such bounties to be paid upon proof of such killing as is now provided by the law of this Commonwealth."

It is expressly provided in this section that the purposes to which the fund therein referred to shall be applied are to be "Clearly designated by an Act of the Legislature, either in the general appropriation act, or by separate appropriation for the payment of bounties," and that "so much of said fifty per centum as may be needed shall be applied by the legislature at its biennial sessions to the payment of bounties," etc.

The Legislature at its session of 1913 failed to designate the purposes to which the fund shall be applied, and also failed to make a specific apropriation of any particular sum of money to the payment of bounties.

So far as your Department is concerned, you are advised that there is now no specific appropriation out of which the several counties of the Commonwealth may be reimbursed by the Auditor General and State Treasurer for the amounts paid by said counties out of county funds on account of bounties for the killing of noxious animals and birds. This conclusion does not, however, in any way affect the liability of the several counties to pay the bounties in question. The present situation is exactly similar to the situation existing during the appropriation period beginning June 1, 1909, and ending July 1, 1911.

In the case of *Brink vs. March, 53 Pa. Super. Ct., 293,* the county of Bradford refused to pay a bounty claimed under said Act of 1907, and based its refusal upon the ground that the Commonwealth had failed to make any appropriation or provision for the reimbursement of said county.

It was decided by the Superior Court that, under the Act of 1907.

"Payment of bounties are to be made primarily by the county which is to be reimbursed by the State; and the fact that there has been no appropriation by the State will not relieve the county from paying the bounty when a proper scalp certificate is presented."

In the course of the opinion in this case it is said that:

"It is to be borne in mind that the Legislature might have imposed absolute liability on the counties without any right of reimbursement from the State. Instead of doing this it provided that the counties should be reimbursed, but provision by adequate appropriation for such reimbursement is not made a condition precedent to the liability of the county."

After citing the case of *Commonwealth ex rel. vs. Griest, 196 Pa., 396,* in which it was held that the Secretary of the Commonwealth could not justify his refusal to publish a proposed amendment to the Constitution upon the ground that no appropriation had been made to defray the cost of publication, the opinion proceeds as follows:

"Our conclusion is that the intent and effect of the act are to impose the primary obligation on the county and to impose on the State the duty of reimbursement. But from the very nature of the latter duty, as well as by the express terms of the act, it does not arise until the county has paid; and as was said in the case last cited, it is not to be presumed that the State will not ultimately discharge it."

This decision, of course, was made upon the Act of 1907, but it is equally applicable to the Act of 1913, for, in so far as the questions involved and decided in that case are concerned, the Act of 1913 is merely a re-enactment of the Act of 1907.

You are accordingly advised that the several counties of the Commonwealth are legally liable to the persons presenting proper certificates for the payment of the bounties prescribed by the said Act of 1913, and that the counties thus paying said bounties must look to subsequent legislative action for their reimbursement.

Very truly yours,

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

CERTIFICATES OF EXEMPTION.

The Board of Game Commissioners has no power to grant a certificate exempting the holder from the operation of the game laws, except the three forms of certificates prescribed by Act of Assembly.

Office of the Attorney General,
Harrisburg, Pa., April 15, 1914.

Hon. Joseph Kalbfus, Secretary, Board of Game Commissioners, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of March 30, 1914, inquiring whether the Board of Game Commissioners has authority to grant to any persons certificates exempting the holders from certain of the restrictions of the Game Law of May 1, 1909, (P. L. 325), or whether the Board may grant such certificates only to agents of public museums and teachers of ornithology, scientists and propagators of game.

You are advised that the Board of Game Commissioners has no authority to grant certificates except to the classes designated.

The Act of May 1, 1909, (P. L. 325), is entitled:

> "An act to provide for the protection and preservation of game, game-quadrupeds and game-birds, and song and insectivorous and other wild birds, and prescribing penalties for violation of its several provisions."

The purposes expressed in the title are enforced by the detailed provisions of thirty-two sections. Section 6 provides that the game laws are not to apply to public zoological gardens, or to the Board of Game Commissioners, and then contains the following language. which gives rise to your inquiry:

> "The said Board of Game Commissioners shall be empowered to grant certificates, at their discretion, to the agent of any public museum in this Commonwealth, or to a teacher of ornithology in any school within this Commonwealth, authorizing the holder thereof to take birds, their nests and eggs, for strictly scientific study or for mounting, *or to any other person,* or for propagating purposes within the State, in accordance with the following provisions," etc.

The following provisions empower the Board of Game Commissioners to grant three classes of certificates, known respectively as "ordinary," "special," and "propagating" certificates.

"Ordinary" certificates may be granted "to any properly accredited person and legally authorized to act as the agent of any public museum, or to the teacher of ornithology in any school within the Commonwealth, residing in this Commonwealth."

"Special" certificates may be granted "only to a person of known scientific attainment in ornithology."

"Propagating" certificates may be granted to "any person or corporation or association desiring to operate a propagating plant for game in this Commonwealth."

The certificates give the holders thereof certain extraordinary privileges in regard to the taking of birds, nests and eggs.

The questions are, first, whether by the use of the words "to any other person" in section 6, the legislature intended to give the Board of Game Commissioners power to grant certificates at its discretion to whomsoever the Board pleased, and, second, if the legislature did so intend, what kind of certificates was the Board empowered to give to the persons whom it desired to favor?

It will be noted that in providing for the issuance of ordinary, special and propagating certificates, the Act in each case limits the persons to whom such certificates may be granted. No one except the agent of a museum, or a teacher of ornithology, may secure an ordinary certificate, no one except a person of known scientific attainment in ornithology may be granted a special certificate, and propagating certificates are to be issued only to persons who desire to operate propagating plants for game.

There is no provision for any kind of certificate which may be issued to a person not included within these three classes. This is a very clear indication that the legislature did not intend persons other than those included within the three classes to obtain certificates exempting them from the operation of the Game Laws.

The Board of Game Commissioners is empowered to grant certificates only "in accordance with" the provisions of section 6 relative to the kinds of certificates. And these provisions do not empower it to grant certificates to persons who are not agents of museums, teachers, scientists or propagators, the Board is not empowered to grant certificates at all to other persons.

A reading of the entire Act shows a careful and deliberate intention to exempt from its operation only these classes of persons whose activities will forward the science of game protection, and it seems probable that the word "or" in the phrase "the said Board of Game Commissioners shall be empowered to grant certificates at their discretion * * * * * to any person, or for propagating purposes," was inserted as the result of a typographical error and that what the legislature meant was that the Board might grant certificates at its discretion "to any other person for propagating purposes."

That this was the intention of the legislature seems more likely, in view of the provisions of the Act passed the same day, viz.: May 1, 1909, (P. L. 353), to protect the fish within the Commonwealth, Section 16 of this Act gives the Commissioner of Fisheries the right

to give written permission to catch fish at any season of the year, or with any kind of device "to persons engaged in scientific research; and also to corporations, associations, person, or persons, for the purpose of propagation of fish or stocking waters therewith."

I therefore conclude that the Board of Game Commissioners has no authority to grant a certificate exempting the holder thereof from the operation of the game laws, except the three forms of certificates hereinbefore mentioned, and that it has no authority to grant those certificates except to the persons expecially stated to be eligible therefor.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

OPINIONS TO BUREAU OF MEDICAL EDUCATION AND LICENSURE.

OPINIONS TO BUREAU OF MEDICAL EDUCATION AND LICENSURE.

REVOCATION OF LICENSE TO PRACTICE MEDICINE.

The Bureau of Medical Education and Licensure has no authority to hear charges against or to revoke licenses of physicians granted prior to the creation of said Bureau.

Office of the Attorney General,

Harrisburg, Pa., September 11, 1913.

Dr. Nathan C. Schaeffer, Secretary, Bureau of Medical Education and Licensure, Harrisburg, Pa.

Sir: This Department has been requested by the Bureau of Medical Education and Licensure of the Commonwealth of Pennsylvania, created by the Act of June 3rd, 1911, (P. L. 639), to advise said Bureau whether it has jurisdiction to entertain against practitioners of medicine and surgery who have been licensed to practice their profession by licensing certificates granted under the laws of this Commonwealth as they existed prior to the approval of the said Act of June 3rd, 1911, such charges as are specified in the twelfth section of said Act, conduct hearings thereon and, if the evidence justifies, revoke or suspend licenses granted prior to the date upon which said Act of 1911 became operative, namely, the first day of January, 1912.

As illustrative of this inquiry, you inform this Department that Dr. Cornelius Bartholomew, duly registered as a practitioner of medicine and surgery under the act of 1881, was convicted in 1907, in due course of law, in the Court of Quarter Sessions of Lehigh County, Pennsylvania, of having produced a criminal abortion; and that Drs. H. Leslie Lantz, John A. Koler, John E. Shafer and Jesse O. Dillon, duly licensed as practitioners of medicine and surgery under the laws of this Commonwealth as they existed prior to the approval of said Act of 1911, were convicted in due course of law, in the Federal Courts of the Western District of Pennsylvania, of misusing the United States mails in the perpetration of certain fradulent professional practices. You desire specifically to be advised whether the Bureau of Medical Education and Licensure has

authority to entertain charges against said physicians based upon the above facts, grant hearings thereon before the Bureau and, if justified by the evidence, revoke or suspend the licenses under which said physicians were practicing at the time of their respective convictions as aforesaid.

Your inquiry necessitates a consideration and construction of the provisions of said Act of 1911 applicable to the question submitted. The fundamental proposition of the Medical Act of 1911 is that after January 1st, 1912, it shall not be lawful for any person to engage in the practice of medicine and surgery in this State unless such person has received a certificate of licensure from the Bureau of Medical Education and Licensure, created by said Act, which license, it is provided, shall be properly recorded in the office of the Superintendent of Public Instruction at Harrisburg. Penalties are provided for a violation of this fundamental provision, but it is provided that this penal section "shall not apply to those persons who, under the laws of the Commonwealth at the date of the passage of this Act, have been accorded the right by a licensing certificate to diagnose and treat disease medically and surgically, etc."

It is clear from the language of the Act that since the first day of January, 1912, there have been two classes of practitioners of medicine and surgery in this State: First, those holding licenses granted by the Bureau of Medical Education and Licensure and properly recorded in the office of the Superintendent of Public Instruction; and, second, those physicians and surgeons who are exempt from the operation of the Act of 1911 by reason of the fact that, prior to the date of its approval, they had been authorized under previous legislation to practice their profession.

The jurisdiction and authority of the Bureau in question, in the matter of refusing, revoking or suspending the right to practice medicine or surgery in this State, is conferred, prescribed and limited by the provisions of the twelfth section of said Act of 1911. This section provides in substance that the Bureau shall refuse to grant a license to an applicant, upon the presentation to said Bureau of a court record showing the conviction in due course of law of said person for producing, or aiding or abetting in producing, a criminal abortion or miscarriage, by any means whatsoever; "and, further, the Bureau of Medical Education and Licensure, upon such evidence and proof, shall cause the name of such convicted person, *if a licentiate,* to be removed from the record in the office of the Superintendent of Public Instruction."

Such is the law with reference to the specific offense therein mentioned, but the section further provides that the Bureau may refuse, revoke or suspend the right to practice medicine or surgery in this State for any or all of the following reasons, to wit: "the conviction

of a crime involving moral turpitude, habitual intemperance in the use of ardent spirits or stimulants, narcotics, or any other substance which impairs intellect and judgment to such an extent as to incapicitate for the performance of professional duties."

The method of procedure is likewise provided in said section and is substantially as follows: Whenever any of the foregoing charges are preferred against "any person *who is a licentiate under this Act* or who is an applicant for examination for licensure," such person shall be furnished with a copy of the complaint and shall have a hearing before the bureau, at which witnesses may be examined respecting the guilt or innocence of the person against whom charges are made. If satisfied of the truth of the charges, the Bureau may refuse to examine the applicant, or to grant a license, or may revoke or suspend certain licenses.

The right of the Bureau to revoke or suspend licenses *granted by it* is beyond doubt, but the question now arising is whether the Bureau has any right to revoke or suspend licenses granted *prior* to the date of the approval of the act by which it is created.

The charge of which the above named Dr. Cornelius Bartholomew was convicted is clearly within the provisions of Section 12 and for the purposes of this discussion we may assume that the charges of which the other physicians above named were convicted are charges "involving moral turpitude" within the meaning of said section.

It should be noted in passing that at the Session of 1913 an amendment to the said Act of 1911 was approved by which amendment that portion of the title of the original act which reads as follows: "and providing for revocation or suspension of licenses *given* by said Bureau" was amended so as to read "and providing for revocation and suspension of licenses by said Bureau," thereby indicating an intention to confer upon the Bureau jurisdiction and authority to deal with medical licenses other than those granted by it. Although this intention is disclosed by the amendment to the title, Section 12 of the original act was not amended in any particular and the said amendment to the title, therefore, becomes immaterial.

Bearing in mind the classification of medical practitioners made as above indicated by the Act of 1911, it is not difficult to construe the Section defining the authority and jurisdiction of the Bureau in the matter of revoking or suspending licenses. It is expressly provided that, upon the presentation to the Bureau of a court record showing the conviction of a person for producing, or aiding or abbetting in producing, a criminal abortion or miscarriage, the Bureau "shall cause the name of such convicted person, *if a licentiate,* to be removed from the record in the office of the Superintendent of Public Instruction."

In my opinion, the word "licentiate" as used in this paragraph is intended to describe a person who has received a license from the Bureau since the first day of January, 1912, and whose license has been duly registered in the office of the Superintendent of Public Instruction. Passing from the specific offense above mentioned, when we look into the further provisions of Section 12 with reference to revoking or suspending the right to practice medicine or surgery in the State for any or all of the reasons specified in the section, we find that charges may be preferred against "any person who is a *licentiate under this act,*" but that there is no provision for filing complaints or investigating charges against any practitioners of medicine or surgery except those who are licentiates under the Act of 1911.

In the fourteenth section of the said Act of 1911 it is expressly stated that said Act is intended to furnish a complete and exclusive system in itself, so far as relates to the right to practice medicine and surgery in the Commonwealth of Pennsylvania.

Some of the previous legislation regulating the practice of medicine is repealed by express reference to the titles of the acts and all legislation inconsistent with the Act of 1911 is likewise repealed. The present act contains no saving clause with reference to the authority of your Bureau to suspend or revoke the licenses of practitioners licensed prior to its approval on account of the commission by, or conviction of, such practitioners of the specified offenses.

I am, therefore, of opinion and accordingly advise you that the Bureau of Medical Education and Licensure has no authority or jurisdiction to hear or determine any charges against the above named physicians, or to revoke or suspend the right of any of said physicians to practice medicine or surgery in this State; which specific conclusion is based upon the general proposition that, in the opinion of this Department, said Bureau has no jurisdiction or authority to suspend or revoke, for any reason, any licenses to practice medicine or surgery, except such licenses as have been granted by said Bureau since its creation.

Very truly yours,

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

PHYSICIANS' LICENSES.

An interne, even though on the staff of a hospital, cannot practice medicine without a license, as required by the Act of June 3, 1911, P. L. 639.

Office of the Attorney General,

Harrisburg, Pa., September 23rd, 1913.

Dr. John M. Baldy, No. 2219 DeLancey St., Philadelphia, Pa.

Sir: This Department is in receipt of your letters of June 2nd and June 11th, 1913, relative to the right of an unlicensed interne to practice medicine on the staff of a hospital.

Replying I beg to advise you that an interne who has not been licensed may not practice medicine, even though on the staff of a hospital, in spite of the provisions of Section 7 of the Act of June 3, 1911. That act must be given a construction in accordance with its general intention, which was to prohibit the practice of medicine by non-licensed persons.

It is unnecessary to define exactly what was meant by exempting from the requirement of securing a license "any one while actually serving as a member of the resident medical or surgical staff of any legally incorporated or state hospital." It is possible that this sentence is to be construed in connection with the one immediately preceding, and applies to a *duly registered practitioner of medicine in another state* who may be actually serving as a member of the resident medical or surgical staff of such an institution.

The acts providing for the licensing of dentists (May 7, 1907, P. L. 161, Section 7) and for the licensing of midwives (June 14, 1911, P. L. 928, Section 14), contain provisions allowing students to practice dentistry and obstetrics, respectively, under the supervision of the faculty. It scarcely can be supposed that the Legislature intended in the Physicians' Act passed at the same session as the Midwives Act to be less careful in regard to medical students. It surely did not intend that any one who might happen to be on a hospital staff might practice without any oversight or supervision on the part of licensed physicians.

As was stated by Ex-Attorney General Hampton L. Carson in an opinion given to the Board of Medical Examiners on July 21st, 1905, "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."

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

PRACTITIONERS IN OPTOMETRY.

Practitioners of optometry are subject to the provisions of the Medical Acts of June 3, 1911, P. L. 639, and July 25, 1913, P. L. 1220, regulating the examination and licensure of practitioners in medicine and surgery.

Office of the Attorney General,

Harrisburg, Pa., November 12, 1913.

John M. Baldy, M. D., President, Bureau of Medical Education and Licensure, 2219 Delancey St., Philadelphia, Pa.

Sir: This Department is in receipt of your communication of September 19, 1913, and of your supplemental inquiry of October 2nd, 1913, requesting the opinion of this Department with reference to the power and authority of the Bureau of Medical Education and Licensure of the Commonwealth of Pennsylvania, upon certain facts which you state as follows:

> "John Jones is now practicing 'neuropathy.' He states that he graduated from a school in Pittsburgh and one in Ohio—one a six weeks course, the other a six months or a year course. After receiving these diplomas he started two years ago to practice without a Pennsylvania State license, either authorizing him to practice medicine or surgery, or any part of it, and is still continuing his said practice."

It is not clear from your letters whether the case you state is an actual case or merely a hypothetical one, but, assuming for the purposes of this opinion, that you have stated an actual case, your Bureau is advised as follows:

By the Act of June 3, 1911 (P. L. 639), which became operative on January 1st, 1912, and is intended to form a comprehensive system for the regulation of the practice of medicine and surgery in this State, it is enacted, in Section 1 thereof, that it shall not be lawful, after January 1st, 1912, for any person in the State of Pennsylvania, to engage in the practice of medicine and surgery, or to hold himself or herself forth as a practitioner in medicine and surgery, or to assume the title of doctor of medicine and surgery or doctor of any specific disease, or to diagnose diseases, or to treat diseases by the use of medicine and surgery, or to sign any death certificate unless he or she has received a certificate of efficiency from the Bureau of Medical Education and Licensure created by the act.

A violation of this section of the act is a misdemeanor and subjects the person guilty of such violation to the penalties prescribed. It is provided, however:

> "That this section shall not apply to those persons who, under the laws of the Commonwealth, at the date of the passage of this act, have been accorded the right

> *by a licensing certificate* to diagnose and treat disease, medically and surgically, and to sign the form of death certificate required by laws of this Commonwealth, or who are exempt therefrom by further provisions of this act."

The phrase "Exempt therefrom by further provisions of this act" undoubtedly refers to practitioners of dentistry and practitioners of osteopathy, such practitioners being especially exempted by the 13th section of the act, and also to officers in the regular medical service of the United States Army and Navy, or the United States Public Health and Marine Hospital Service, while in the discharge of their official duties, or to duly registered practitioners of medicine in other states called into consultation by registered physicians of this State, such practitioners being exempted by the 7th section of the act.

The fundamental proposition of this law is that unless one has been, prior to January 1, 1912, "accorded the right by a licensing certificate to diagnose and treat disease medically and surgically," it shall be a misdemeanor for such person to engage in the practice of medicine and surgery in this Commonwealth without having first obtained a license from the Bureau of Medical Education and Licensure of this State.

It is clear that the act is intended to apply not only to the general practice of medicine and surgery, but also to all branches of the practice except dentistry and osteopathy.

In the title to the said Act of 1911 it is stated that one of the purposes of the said act is to prescribe the "means and methods whereby the right to practice medicine and surgery and any of its *minor branches* may be obtained."

By the Act of July 25, 1913 (P. L. 1220), the title and certain sections of the said Act of 1911 were amended. In the amendment to the title the above quoted phrase "medicine and surgery and any of its minor branches" is amended so as to read: "medicine and surgery and any of its branches."

By the 6th section of the said Act of 1911, as amended by the said Act of 1913, it is provided, in substance, that it shall be the duty of said bureau, at its discretion, to examine any person pretending to a knowledge of any branch or branches of medicine or surgery "for the purpose of establishing regulation and state licensure." The bureau is authorized to establish such oversight of the instruction and teaching of the schools or colleges or individuals so pretending as is provided for in the act in the case of medical schools and colleges and the bureau is authorized to conduct such limited examinations as may be necessary for the purpose of determining whether or not an applicant has adequate knowledge of his or her subject and is

worthy of registration and State licensure. Upon the requisite degree of knowledge and the moral character of the applicant being established, the bureau is authorized to issue a State certificate to the applicant, limited to the practice of his or her pursuit in this State, which fact shall be plainly stated across the face of the certificate. It is further provided that

> "Such a system of special licensure having once been established, it shall thereafter be unlawful for any person or persons to practice said system in this State without the said State certificate, which certificate shall be revocable by the Bureau of Medical Education and Licensure on proof of violation of the rules and regulations of said bureau," etc.

A record of all persons so licensed is required to be kept in the archives of the Department of Public Instruction.

From a consideration of this provision of the law it is apparent that the first question arising under your inquiry is whether the Bureau of Medical Education and Licensure has established the "system of special licensure" above mentioned. If so, then from and after the date of the establishment of such system it is unlawful for any person to begin, or continue, the practice of any branch of medicine or surgery without having first obtained the State certificate provided for in the act; unless such practitioner is within the above mentioned exemption to the first section of the act, that is, unless such practitioner has been accorded, prior to January 1st, 1912, "the right by a licensing certificate to diagnose and treat disease, medically and surgically."

Applying these principles to the case stated in your communciation, you are advised that the system of special licensure above mentioned having been first duly established, then unless the practitioner referred to submits to and successfully passes such limited examination as shall have been prescribed by your board, and obtains the State certificate authorized to be issued to him, your bureau, which is expressly charged with the prosecution of alleged violations of the act, should institute a prosecution against the said practitioner, for the purpose of securing a judicial determination of the question whether he is practicing a branch of medicine or surgery, contrary to law.

Very truly yours,

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

MEDICAL PRACTICE.

Any person competent to take an oath may initiate prosecutions for violations of the Act of July 25, 1913, P. L. 1220, relating to the right to practice medicine; but it would be more prudent to have such prosecutions begun by an agent of the Bureau of Medical Education and Licensure, so as to avoid liability for costs.

Office of Attorney General,
Harrisburg, Pa., January 13, 1914.

Dr. John M. Baldy, No. 2219 Delancey St., Philadelphia, Pa.

Sir: This Department is in receipt of your letter of December 30, 1913, enclosing letter from Dr. John A. Hawkins, of the Allegheny County Medical Society, both relative to the right of other persons than the agents of the Bureau of Medical Education and Licensure to initiate prosecutions of persons alleged to have violated the acts relating to the right to practice medicine in this Commonwealth.

I undersand that the difficulty arises because of the following provision of the Act of July 25, 1913, (P. L. 1220:)

> "It shall be the duty of the bureau to enforce all the requirements of this act. In case of violation of the provisions of this act, procedure shall be through either the office of the Attorney General of the State of Pennsylvania or by special attorney, or both, at the discretion of the bureau."

The general rule undoubtedly is that "every person who is competent to take an oath in a court of justice is competent to become a prosecutor." *Orlady, J. in Com. vs. Barr, 25 Sup. 609, 1912.*

I do not see anything in the Act of 1913 above quoted which conflicts with this general rule. Nothing at all is said in the Act of 1913 as to the person who shall make the affidavit upon which the warrant of arrest shall issue, and in the absence of some provision limiting the making of such affidavit, I should have no hesitation in holding that any person competent to take an oath may make such affidavit. After the prosecution has been begun it may be that the direction thereof may be taken from the district attorney of the county in which the indictment was found, and placed in the hands of the Attorney General, or a special attorney of the Bureau of Medical Education and Licensure, but as this question is not now before us, I do not mean to indicate any decision thereon.

Of course, it would be more prudent to have the prosecutions begun by an authorized agent of the Bureau, because if the defendant were acquitted there probably would be no liability for costs upon such a prosecutor. *(Com. vs. Shaffer, 52 Sup. 230, 1912).*

If the prosecutor is not an agent of the Bureau, he might not be able in case the prosecution miscarried, to avoid the imposition of costs.

Very truly yours,

JOHN C. BELL,
Attorney General.

TERM OF OFFICE.

The term of officers of Bureau of Medical Education and Licensure should be one year.

Office of the Attorney General,
Harrisburg, Pa., May 13th, 1914.

Dr. John M. Baldy, President, Bureau of Medical Education and Licensure, 2219 Delancey Street, Philadelphia.

Sir: This Department is in receipt of your letter of May 9, 1914, asking its opinion as to the length of the term of the President and Secretary elected by your Bureau at the first meeting which is held for the purpose of organization.

Section 3 of the Act of June 3, 1911 (P. L. 639), which in this respect was not changed by the amendments contained in the Act of July 25, 1913, (P. L. 1220), provides that the Bureau "at the first meeting held for the purpose of organization shall elect from its membership a president and a secretary, who shall also be treasurer."

This length of the term of these officers is nowhere stated in the act. The Bureau, however, consists of seven members and each year the term of one or two of the appointed members expires. It therefore seems to me that there should be an organization meeting held each year when the term of the old appointed member or members expires and that of the newly appointed member or members begins, and that at this organization meeting a president and a secretary should be elected.

I call your attention to the fact that under the old Act of May 18, 1893, (P. L. 94), Section 3, the officers of the Medical Council held office for one year. The same is true of the officers elected by the Dental Council (Act of May 7, 1907, P. L. 161, Sec. 1), and of those elected by the Board of Osteopathic Examiners, (March 19, 1909, P. L. 46, Sec. 4).

Very truly yours,

JOHN C. BELL,
Attorney General.

OSTEOPATHIC EXAMINERS.

Applicants for examination who have not had preliminary education required cannot legally be licensed as practitioners.

Office of the Attorney General,

Harrisburg, Pa., June 23, 1914.

Dr. O. J. Snyder, President State Board of Osteopathic Examiners, Witherspoon Building, Philadelphia, Pa.

Sir: In the matter of the right and duty of the State Board of Osteopathic Examiners to grant licenses to practice osteopathy, to Wm. J. Furey, and four other applicants, concerning which your board has had some correspondence with this Department, I understand the facts to be as follows:

These applicants graduated in February, 1913, from the Philadelphia College of Osteopathy, a regularly incorporated and reputable college of osteopathy, giving the instruction required by law.

At the February examinations in 1913, held by the State Board of Osteopathic Examiners, their applications for permission to take the examination were refused by your board upon the ground that the applicants were unable to present credentials satisfactory to the Board "covering their preliminary education prior to their beginning the study of osteopathy." At my suggestion, these applicants were admitted by your Board to a subsequent examination, and passed the same, but on account of the question with reference to their preliminary education no licenses have as yet been issued to them.

By section 10 of the Act of March 19, 1909, P. L. 46, as amended by the Act of May 11, 1911, P. L. 241, it is required, in substance, that candidates for licenses to practice osteopathy presenting their applications and undergoing examination after the first day of January, 1912, shall be obliged to present to the State Board of Osteopathic Examiners one of the following credentials satisfactory to the Board, covering their preliminary education prior to their beginning the study of osteopathy in some legally incorporated reputable osteopathic college, to wit:

(a) A diploma from a reputable college or university granting the degree of Bachelor of Arts or Science, or equivalent degree.

(b) "A diploma of graduation from an educational institution maintaining a four years course of study; that is, a State normal school or a high school, a seminary, an academy, or a college preparatory school."

(c) A certificate of having passed an examination for admission to the freshman class of a reputable, literary or scientific college or university.

(d) A certificate of having passed an equivalent examination conducted by a certified examiner for the State of Pennsylvania, etc.

In the statement made in behalf of these applicants under date of March 31, 1914, it is stated that "none had the full four years preliminary high school work," and it is not contended that any of them had any of credentials which your Board is authorized to require from applicants for examination presenting their applications after January 1, 1912.

Under the facts and the provisions of the statute above stated I am reluctantly compelled to advise you that in my opinion your Board cannot legally license the applicants above referred to.

If any of the applicants, or their counsel, believe that this construction of the law is incorrect, they may secure a judicial determination of the question by the institution of mandamus proceedings against your Board, under the provisions of the Act of June 19, 1915, P. L. 526. The only other redress is an appeal to the Legislature.

Very truly yours,

JOHN C. BELL,
Attorney General.

OPTOMETRY.

Practitioners of optometry are subject to the Acts of Assembly regulating the right to practice medicine.

Harrisburg, Pa., June 23rd, 1914.

Dr. John M. Baldy, President, Bureau of Medical Education and Licensure, No. 2219 Delancey Street, Philadelphia, Pa.

Sir: This Department is in receipt of your communication of May 31st, asking to be advised whether practitioners of Optometry in this State are subject to the provisions of the Act of June 3, 1911, (P. L. 639), as amended by the Act of July 25, 1913, (P. L. 1220), regulating the right to practice medicine and surgery and any of its branches within this Commonwealth.

In an opinion under date of November 12, 1913, this Department gave the Bureau of Medical Education and Licensure of the Department of Public Instruction an opinion construing the provisions of said acts with particular reference to the powers of said bureau in the matter of examining and licensing practitioners pretending to a knowledge of any branch or branches of medicine or surgery.

Pursuant to this opinion, your Bureau has established a system

of special licensure regulating the examination and licensure of practitioners of a number of branches of medicine and surgery, comprehensively described as drugless therapy.

The question arising under your present inquiry is whether Optometry may properly be considered as a branch of medicine or surgery, and whether the practitioners of Optometry are included within the scope of the general opinion above referred to.

Optometry is defined as:

> 1. "The measurement of the range of vision."
> 2. "The measurement of the visual powers in general, * * of the extent of the visual field, * * of the accommodative and refractive states of the eye * * * and of the position and movements of the eyeball."
>
> Century Dictionary & Encyclopaedia.

I understand from your inquiry that practitioners of Optometry hold themselves forth as able to determine whether the eye is normal or diseased, and in so doing use an instrument called the Ophthalmoscope. This would seem to be undertaking to make a differential diagnosis.

I am therefore of opinion that practitioners of Optometry are subject to the provisions of the said medical Acts of 1911 and 1913, and are within the scope of the opinion heretofore rendered to your Bureau, defining its powers and jurisdiction in the matter of granting limited licenses, after proper examination to practitioners of branches of medicine or surgery.

Very truly yours,

JOHN C. BELL,
Attorney General.

ELECTRO THERAPY.

Upon the application of Thomas Eldridge to practice electro therapy the Bureau for Licensure should examine him for right to practice "Massage and Allied Branches."

Office of the Attorney General,
Harrisburg, Pa., October 21, 1914.

Dr. John M. Baldy, President Bureau of Medical Education and Licensure, Harrisburg, Pa.

Sir: This Department is in receipt of your communciation of July 17th, asking to be advised whether, under the facts stated therein, the Bureau of Medical Education and Licensure should consider and take appropriate action upon the application of Thomas E. Eldridge, of Philadelphia, Pa., for a limited license to practice a branch of medicine designated as "Electro Therapy."

One of the facts stated in your communication is, that the applicant in question, although not the holder of a license from the State Board of Osteopathic Examiners, has been duly registered in the office of the Prothonotary of Philadelphia County as a practitioner of Osteopathy, under the provisions of the Act of March 19th, 1900, P. L. 46, entitled:

> "An act to regulate the practice of Osteopathy in the State of Pennsylvania; to provide for the establishment of a State Board of Osteopathic Examiners; to define the powers and duties of said Board of Osteopathic Examiners; to provide for the examining and licensing of Osteopaths in this State; and to provide penalties for the violation of this act."

In the opinion of this Department this is the only material fact involved in your inquiry. The osteopathic act became effective upon the date of its approval, and by its terms the practicing of osteopathy without a license from the Board of Osteopathic Examiners and the registration of the same in the office of the Prothonotary of the county in which the licentiate desires to practice, or in lieu of such license registration in such office under the exemption contained in said act, was made a criminal offense.

By the Act of June 3, 1911, (P. L. 639), as amended by the Act of July 25, 1913, (P. L. 1220), a comprehensive system for the regulation of the practice of medicine and surgery and any branches thereof was established.

By Section 6 of this general medical act, your Bureau was authorized, at its discretion, to establish a system for the examination and licensure of persons pretending to a knowledge of any branch or branches of medicine and surgery, under which section, as I understand the facts, the Bureau has established a system for the regulation of the practice of various branches of medicine and surgery under the general designations of "Drugless Therapy" and "Massage and Allied Branches" under which later designation Electro Therapy would be included.

The applicant has duly made application to the Bureau for a license to practice Massage and Allied Branches, and the question, therefore, arises whether in view of his previous registration as a practitioner of osteopathy, your Bureau should accept and consider his application, and when satisfied of his qualifications, grant him a license to practice Massage and Allied Branches.

By the 13th Section of the said Medical Act of June 3, 1911, (P. L. 639), it is enacted that:

> "The provisions of this act shall not apply, either directly or indirectly, by intent or purpose, to affect the practice of * * * osteopathy as authorized by the act aproved March 19, 1909, entitled 'An act to regulate the practice of Osteopathy," etc.

On the other hand, it is provided in the fourteenth section of the Osteopathic Act that:

> "Nothing contained in this act shall be construed as affecting the so-called practice of medicine."

It seems to be somewhat difficult to distinguish between the practice of certain branches of Drugless Therapy and Massage and Allied Branches and the practice of Osteopathy. The Legislature, however, has undertaken to deal with the practice of osteopathy as something separate and distinct from the general practice of medicine and surgery and its various branches. It has committed to the Board of Osteopathic Examiners jurisdiction over the practice of osteopathy, and to the Bureau of Medical Education and Licensure jurisdiction over the practice of medicine and surgery and the various branches thereof.

In the opinion of this Department it is important that the jurisdiction of the Osteopathic Board of Examiners and that of the Bureau of Medical and Licensure, should be as clearly defined as possible in order to prevent confusion and conflict of jurisdictions, and this was evidently the legislative intent, as expressed in the above mentioned provisions of said acts.

To the end that confusion may be avoided as far as possible I understand that it is expressly stated upon the face of the licenses issued by your Bureau for the practice of "Drugless Therapy" and for the practice of "Massage and Allied Branches" that neither of these licenses authorizes the holder thereof to practice Osteopathy. In view of this limitation upon the face of the licenses issued by your Bureau, this Department can see no valid reason why an applicant who is otherwise eligible to be admitted to the examinations prescribed by your Bureau for licensure to practice "Drugless Therapy" or to practice "Massage and Allied Branches," as the case may be, and who is able to pass successfully the prescribed examination, should not be permitted to obtain a license to practice "Drugless Therapy" or "Massage and Allied Branches," although he may also have registered as a practitioner of Osteopathy.

You are, therefore, advised that if the applicant, Thomas E. Eldridge, is otherwise eligible he should be permitted to take the examination prescribed by your Bureau for Licensure to practice "Massage and Allied Branches," and if successful in passing such examination the prescribed license should be issued to him by your Bureau.

Very truly yours,

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

OPINIONS TO OFFICERS OF STATE PENITENTIARIES.

OPINIONS TO OFFICERS OF STATE PENITENTIARIES.

REPAIR OF BUILDINGS—WESTERN PENITENTIARY.

Ordinary repair of buildings is included within the provision of law for maintenance, and should be charged to the several counties as maintenance.

Office of the Attorney General,

Harrisburg, Pa., October 15, 1913.

John Francies, Esq., Warden Western Penitentiary, Pittsburgh, Pa.

Sir: This Department is in receipt of your letter of sometime ago requesting an opinion as to the proper account to which the repairing of buildings, roads, sidewalks and machinery should be charged by the Board of Inspectors of the Western Penitentiary.

I beg to advise you that the cost of these repairs should be charged to the several counties as maintenance.

The Act of April 23, 1829, P. L. 341, Section 9, provides:

> "That the expenses of maintaining and keeping the convicts in the said eastern and western penitentiaries, shall be borne by the respective counties in which they shall be convicted."

The Act of February 27, 1833, P. L. 55, Section 5, repealed so much of the ninth section of the Act of April 23, 1829, above quoted, "as relates to the maintenance of convicts."

The Act of July 25, 1913, P. L.—— making an apropriation to the Western State Penitentiary provided that the amount of the appropriation should be for salaries, *extraordinary repairs,* insurance, hospital equipment, books, stationery, and payments to discharged convicts.

These two acts apparently are the only ones providing funds for the use of the institution, and the repairs about which you inquire must be paid for either by the counties or from the state appropriation.

Just what the Legislature intended in the Act of 1833 by repealing the provision for maintenance in the Act of 1829 is difficult to explain. The eariler act spoke of expenses for "maintaining and keeping" convicts. The latter act repeals the provision as to "mainten-

ance." The apparent intention, therefore, was to distinguish between maintaining and keeping the convicts, and to leave the counties thereafter liable for keeping, but not for maintenance.

In the case of Commonwealth vs. Floyd, 2 Pittsburg, 342, (1862) the Court granted a mandamus on the Treasurer of Allegheny County to pay a warrant for expenses of keeping the convicts of the county in the penitentiary. The Court said of this claim, per Storrett, P. J.:

> "We think it is distinguished from ordinary claims against the county, by the Act of April 23rd, 1829, in relation to the Eastern and Western Penitentiaries, which directs that the expenses of keeping the convicts shall be borne by the respective counties in which they shall be convicted."

The effect of this decision is practically to ignore the Act of 1833 above mentioned, and the uniform practice for the eighty years which have passed since the Act of 1833 was approved has been for the counties to pay the expenses of keeping the convicts.

There is no reasonable distinction between keeping and maintaining, and the word "maintenance" has been construed by this Department, in at least four cases, as sufficiently broad to include the cost of repairing buildings, roads, sidewalks and machinery.

The opinions referred to were given in cases where the maintenance of the indigent insane was involved, and the statute making the appropriation for their care, treatment and maintenance provided that those words should include necessary repairs to their buildings.

The definitions of the word "maintenance" given in those opinions, however, are equally applicable to the present case.

The first opinion is that of Hon. W. U. Hensel, Attorney General, given November 21st, 1893, in which it is said that maintenance includes expenses incurred "for repairs to buildings and equipment, such as are necessary to keep the existing institution up to its original condition." This definition is expended in the opinion, and the general rule is laid down as follows:

> "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, ceilings or foundations, etc."

This opinion was approved by Hon. Henry C. McCormick, Attorney General, in an opinion given October 27th, 1896, in which he held that the contribution of the difference between the amount received from insurance and the cost of the re-erection of buildings

totally destroyed by fire was included within an appropriation for maintenance. Hon. Hampton L. Carson, Attorney General in an opinion dated April 26, 1904, held that the tearing down of a wall in the Western Pennsylvania Hospital, and the substitution of a fire proof wall therefore was properly chargeable as maintenance. The opinion holds that the substitution of new heating or plumbing apparatus would also be maintenance, and states:

> "These might be viewed as improvements and changes, but they really constitute maintenance so as to secure to an existing institution an actual condition in accordance with approved modern methods of safety and of health."

The same Attorney General in an opinion dated November 13, 1906, amplified this opinion, holding that maintenance included expenditures for customary and usual repairs about the buildings and ground, expenditures for changing the lighting system from gas to electricity, and for the installation of pipes, fittings, etc., for the distribution of sewage.

The foregoing opinions, and an opinion of Hon. John T. Elkin, Attorney General, dated December 30, 1901, are reviewed, and the conclusion reached that they indicate a tendency to interpret the word "maintenance" liberally and reasonably.

That ordinary repairs were thought by the Legislature to be included within the provision for maintenance is also indicated by the language in the State appropriation for the expenditure of the sum therein mentioned for *"extraordinary repairs."*

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

COMMUTATION ACT.

The Commutation Act of May 11, 1901, P. L. 166, is not repealed by the Indeterminate Sentence Act of June 19, 1911, P. L. 1055, or its supplement of June 19, 1913, P. L. 532. Hence, prisoners sentenced prior to the Indeterminate Sentence Act have the right to claim, under the Commutation Act, credits for good behavior and release thereunder, and may waive the privilege of parole under the Indeterminate Sentence Act and its supplement of June 19, 1913.

It was not the intention of the legislature that the benefits provided by each act should be warded cumulatively to any one prisoner; that is, a prisoner may claim the benefit of one or other of the acts, but not of both.

Office of the Attorney General,

Harrisburg, Pa., October 28, 1913.

Mr. John Frances, Warden, Western Penitentiary, Pittsburgh, Pa.

Sir: I am in receipt of the recent letter from John H. Hagen, Parole Officer, to you, and referred by you to this Department for an opinion.

In substance, your inquiry is, whether a prisoner sentenced prior to the Indeterminate Sentence Act of June 19th, 1911, (P. L. 1055), and at a time when the Commutation Act of May 11th, 1901, (P. L. 186), was in force, is entitled to the benefit of this Commutation Act of 1901, or is bound to accept, in lieu thereof, the benefits conferred by the Indeterminate Sentence Act of June 19th, 1911, as supplemented by the Act of June 19th, 1913, (P. L. 532)?

The wording of the Act of 1911 indicates that it was not intended to repeal the Act of 1901, because it is provided in section 6 of the Act of 1911, that "no person sentenced for an indeterminate term, shall be entitled to any benefits under the Act," of 1901, which is a plainly implied recognition that the Act of 1901 was intended to still be and remain in force. And it is further provided in section 18 of the said Act of 1911, that "this Act * * * * shall not apply to any person heretofore sentenced and now serving imprisonment * * * ."

The supplement of 1913 provides:

> "That any convict in the State Penitentiaries who is now serving under a sentence or sentences imposed prior to the first day of July, 1911, may, when he or she shall have served one-third of such sentence or sentences, be eligible to parole, under the provisions and subject to the conditions of the act, (i. e. June 19th, 1911) to which this is a supplement."

The word "may" indicates the permissive character of the act and that the legislative intent was to confer a privilege of option upon the prisoner.

Indeed, there would be grave danger that this Supplementary Act of 1913 would be held unconstitutional as ex post facto legislation, if it were interpreted in such manner as to deprive the prisoner, sentenced under the Act of 1901, of the reduction of sentence for good behavior, provided for in said Act. For, if so interpreted, such amended act would, in effect, aggravate or add to the punishment of such prisoner, and thus come within that class of unconstitutional statutes descriptively referred to by Mr. Justice Elkins in *Comonwealth v. Kalch, 239 Pa. 533, (1913),* as

> "Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed."

As is stated by the Criminal Court of Appeals of Oklahoma, in re *William Ridley, 106 Pac. 549, (1910)* per Doyle, J.:

> "An act of the Legislature specifically defining credits for good behavior in existence at the date of the judgment against the prisoner, becomes a part of the sentence, and inheres into the punishment assessed."

Specifically answering your inquiry, therefore, I beg to advise you that, in my judgment, the Commutation Act of 1901, is not repealed by the Indeterminate Sentence Act of 1911, or its Supplement of 1913, and hence, prisoners, like the one to whom you refer in your letter, sentenced under the Commutation Act of 1901, have a right to claim credits for good behavior, and release thereunder, and may waive the benefit or privilege of parole under the later Indeterminate Sentence Act of 1911 and its Supplement of 1913.

Your second inquiry is, substantially, whether a prisoner, such as you name, having made application for and been granted parole under the Act of 1911 and its supplement of 1913, may, while on such parole, also claim the benefits or reduction in sentence permitted under the Commutation Act of 1901.

Replying to this inquiry, I beg to advise you that, in my opinion, the Parole Act of 1911 and its Supplement, and the Commutation Act of 1901, are to be applied independently, and it was not the legislative intent that both acts should apply in any one case; or, in other words, that the benefits provided by each act, should, together or cumulatively, be conferred upon, or awarded to any one prisoner. In a proper case, he may claim the benefit of one or other of the said acts, but not of both. This is manifest from the provision of section 6 of the act of 1911, already quoted, which provides, in substance, that no person sentenced for an indeterminate term, (i. e. under the said Act of 1911) shall be entitled to any benefits under the Act of 1901.

Very truly yours,

JOHN C. BELL,
Attorney General.

HUNTINGDON REFORMATORY.

The Act of 12th of June, 1913, P. L. 502, applies to defendants imprisoned at hard labor at Huntingdon.

Office of the Attorney General,

Harrisburg, Pa., May 23, 1914.

Richard W. Williamson, Esq., Solicitor for Pennsylvania Industrial Reformatory, Huntingdon, Pa.

Sir: This Department is in receipt of your letter of May 11, 1914, requesting its opinion on the question of the applicability to the Pennsylvania Industrial Reformatory of the Act of June 12, 1913, P. L. 502, entitled

> "An act to increase the powers of courts in summary proceedings for desertion or non-support of wives, children, or aged parents, by directing that imprisonment in such cases be had at hard labor in such institution as the court shall name, with the wages payable to the wives, children or parents; providing for the disbursement of moneys collected on forfeitures of bonds, bail-bonds, or recognizances; and by empowering such courts to appoint desertion probation officers for the performance of such duties as the court shall direct; and providing for the payment of the expenses incident to the carrying out of this act."

Section 1 of the act provides that in desertion proceedings in cases where the Court commits the defendant to imprisonment, "the Court may order the defendant to be imprisoned at hard labor under existing law or laws that may hereafter be passed, in such penal or reformatory institution as the Court shall direct."

Section 2 provides:

> "Whenever any defendant shall be ordered to be imprisoned at hard labor, under the provisions of this act, there shall be paid, by the official in charge of the penal or reformatory institution in which such defendant is imprisoned, to the person designated in the order of court as the proper recipient of such money, to be disbursed by said recipient as the order of court may direct the sum of sixty-five cents for each day, Sundays and legal holidays only excepted, during which he remains imprisoned. Such sum shall be paid as one of the general running expenses of such institution; and, if the labor done in such institution is not sufficient to pay the general running expenses of such institution, such sum shall be charged to and paid by the county from which such defendant was committed."

You call our attention to the fact that the Act of April 28, 1887, P. L. 65, providing for the government of convicts in the Pennsylvaia Industrial Reformatory, indicates that the convicts are not expected to earn money in the Reformatory, but are to be given instruction which will make them able to earn money after they leave the Reformatory. Your inquiry raises no question about the propriety of sentencing defendants to imprisonment at Huntingdon at hard labor. Such a sentence would require the convict to do work in the Reformatory, and section 17 of the act of April 28, 1887, apparently indicates that convicts were expected to labor because it provides that in ascertaining the cost of the support and maintenance of convicts in Huntingdon. which cost must be paid by the several counties, there shall first be deducted from the said cost "the amount received from the labor of the said convict, if any."

We do not see any reason, therefore, why the provisions of the Act of June 12, 1913, should not apply to defendants imprisoned at hard labor at Huntingdon, although the effect of paying sixty-five cents per day, as directed by section 2 of that act, necessarily will result in increasing the cost of support and maintenance for which the counties will be liable.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

COMMUTATION OF PRISONERS.

A convict, who forfeited his commutation, must serve the six years and one month commutation granted to, but forfeited by him, under his original sentence.

Office of the Attorney General,
Harrisburg, Pa., November 24, 1913.

John Francies, Esq., Warden Western Penitentiary, Pittsburgh, Pa.

Sir: This department is in receipt of your letter of November 12th, 1913, enclosing copy of a letter from John M. Egan, Parole officer, Western Penitentiary, with reference to G. S. Wycoff, Register No. A 5848, now confined in the Western Penitentiary.

I understand that Dr. Wycoff was first sentenced on June 28, 1893, for sixteen years, but was granted six years and one month commutation, and discharged May 26, 1903. On January 8, 1908, which was within the term of his original sentence, disregarding the com-

mutation, he was convicted again of abortion and sentenced to a term of five years. The question is whether, in addition to the second sentence, Dr. Wycoff must now serve the six years and one month, the commutation allowed to him under his first sentence.

The exact legal question raised by these facts has been decided by this department in three opinions, namely, opinion of Attorney General Todd, December 8, 1909, Opinions of Attorney General 1909-1910, page 306; opinion of Attorney General Bell to you May 16, 1911, and opinion of Assistant Deputy Attorney General Trinkle, to Charles D. Hart, Secretary Board of Inspectors Eastern Penitentiary, July 19, 1912.

In each of these opinions it has been held that where the sentence of a convict has been commuted under the provisions of the Act of May 11, 1901, P. L. 166, the condition annexed by the Governor under Section 4 of that act operates so that if the convict, during the period between the date of his discharge by reason of the commutation and the date of the expiration of the full term for which he was sentenced, be convicted of any felony, he shall in addition to the penalty imposed for that felony be compelled to serve "the remainder of the term, without commutation, which he or she would have been compelled to serve but for the commutation of his or her sentence as provided for in this act."

In the present case the convict was convicted of abortion, which is a felony (Act of March 31, 1860, P. L. 404, Sections 87 and 88) during the period between the date of his discharge by reason of his commutation, and the date of the expiration of the full term for which he was sentenced, that is during the period between May 26, 1903, and June 28, 1909, hence there must be added to the penalty imposed for the abortion the six years and one month which the convict would have been compelled to serve but for the commutation of his sentence.

The construction asserted by the convict, namely, that the remainder of the term for which he was sentenced under the first conviction and of which he was relieved by reason of his commutation, and the sentence under his second conviction, run concurrently, ignores the plain language of Section 4 of the Act of 1901, that the remainder of the term which he would have been compelled to serve, but for the commutation of his sentence, shall be served *in addition to* the penalty for the second offense.

You are, therefore, advised that the convict must serve the six years and one month commutation granted to, but now forfeited by him, under his original sentence.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

PAROLES AND DISCHARGES.

The Act of June 19, 1913, P. L. 532, supplemental to the Act of June 19, 1911, P. L. 1055, providing for the parole of convicts who have served one-third of their sentences, applies to all convicts sentenced prior to July 1, 1911, who have served one-third of their sentences.

Where no minimum is prescribed and the court determines the same under the Act of May 10, 1909, P. L. 495, it cannot exceed one-fourth of the maximum time. In such case, the convict would not be entitled to parole after serving one-third of the sentence.

Where, however, the minimum is more than one-third of the maximum, a convict would be eligible to parole after serving one-third of his maximum term.

The Commutation Act of May 11, 1901, P. L. 166, is not repealed by the Indeterminate Sentence Act of June 19, 1911, P. L. 1055, or its supplement of June 19, 1913, P. L. 532. Convicts, therefore, may secure final discharges under the Act of May 11, 1901, P. L. 166, just as if the Acts of May 10, 1909, P. L. 495, June 19, 1911, P. L. 1055, and June 19, 1913, P. L. 532, had not been passed. If a convict entitled to commutation seeks the benefit of the Parole Act, his final discharge will be determined by that act and not by the Commutation Act.

Office of the Attorney General,

Harrisburg, Pa., November 25, 1913.

Mr. Charles D. Hart, Secretary Board of Inspectors Eastern State Penitentiary, Philadelphia, Pa.

Sir: This Department is in receipt of your letter of October 30th, 1913, requesting the opinion of this Department upon three questions, all of which are asked in abstract terms. This Department has ruled that requests for opinions should state the facts of concrete cases and not ask merely general advice.

We proceed, however, to answer your questions as accurately as the information which you give us, permits.

1. Does the Act of June 19th, 1913, P. L. 532, affect all of the prisoners who may be serving minimum and maximum sentences?

That act which is said to be a supplement to the Act of June 19, 1911, P. L. 1055, provides as follows:

> "Any convict in the State penitentiaries who is now serving under a sentence or sentences imposed prior to the first day of July, 1911, may, when he or she shall have served one-third of such sentence or sentences, be eligible to parole under the provisions, and subject to the conditions of the act to which this is a supplement."

The only prisoners who can be serving minimum and maximum sentences imposed prior to July 1st, 1911, would be prisoners sentenced under the first Indeterminate Sentence Act (May 10, 1909, P. L. 495), as that act was the only one under which minimum and maximum sentences could be imposed until June 30th, 1911, when the second Indeterminate Sentence Act June 19, 1911 (P. L. 1055) went into effect.

The question, therefore, is whether prisoners sentenced under the Act of 1909 may take advantage of the Act of 1911 when they have served one-third of their sentence.

The "sentence" imposed by the Act of 1909 means the maximum sentence. As is said by Mr. Justice Elkin in *Com. vs. Kalck, 239 Pa. 533, 1913,* in upholding the constitutionality of the Act of 1909 and 1911, "A sentence for an indefinite term must be deemed a sentence for the maximum term prescribed by law as a punishment for the offense committed."

The Act of 1909 fixed the minimum limit of the term of imprisonment (Section 6) at "the term now or hereafter prescribed as the minimum imprisonment for the punishment of such offense, but if there be no minimum time so prescribed, the court shall determine the same, but it shall not exceed one-fourth of the maximum time."

In cases where the law provided no minimum, the minimum might now exceed one-fourth of the maximum, and in such cases the prisoner would be eligible to parole after serving one-fourth of his sentence. He therefore would not be benefitted by the permission given him under the Act of 1913 to apply for parole after serving *one-third* of his sentence.

Where, however, the law prescribes a minimum which is more than one-third of the maximum, as in the case of the act making the penalty for refusing to comply with the act regulating fire escapes, a minimum of one month and a maximum of two months (pointed out in Com. v. McKenty, 52 Sup. 332, 1913) a prisoner would be benefitted by becoming eligible to parole after serving one-third of his sentence, namely, two-thirds of a month, and in such cases, which will be very few, it is the opinion of this Department that the prisoner may invoke the Act of 1913.

2. You further say that:

> "Since * * * * * the first Indeterminate Sentence Act went into effect (June 30, 1909) we have received quite a number of prisoners under flat sentences where no minimum is imposed. According to the Supplementary Act above quoted, should one-third of their maximum sentence be computed, thus giving the prisoner the benefit of the lessened term."

In this connection, I beg to call your attention to the fact that the Supplementary Act does not specify in exact terms what prisoners it affects except those sentenced prior to July 1st, 1911. It is the opinion of this Department that the Act of 1913 applies to all convicts sentenced prior to July 1st, 1911, who have served one-third of their sentences, and desire to take advantage of its provisions. The manifest intention of the Legislature in passing the Act of 1913 was to extend to the convicts sentenced to a flat term, the eligibility

to parole, which now is recognized as a most meritorious principle of penal science, and there in no reason why the general language of the Act which embraces *all* convicts should be narrowed.

3. When should a final discharge be given to prisoners sentenced under the Commutation Act of May 11, 1901, P. L. 168, who have been paroled after serving one-third of their sentence, under the Act of 1913?

The Commutation Act of 1901 was not repealed by the Indeterminate Sentence Acts of 1909 or 1911, as to prisoners theretofore sentenced under it, and if these prisoners so elect, they can secure a final discharge according to the provisions of the Act of 1901 just as if the Acts of 1909 and 1911, and the Supplementary Act of 1913 had not been passed.

As has been said, however, the Supplementary Act of 1913 gave to certain prisoners sentenced to flat terms prior to July 1st, 1911—and who, therefore, would be entitled to the benefits of the Act of 1901—the further right or privilege to ask to be paroled under the provisions of the Act of 1911. If, however, a prisoner claimed, and was granted, this privilege of parole, he ceased, in my judgment to be entitled to claim any advantage; i. e. any reduction in sentence for good behavior under the Commutation Act; and it follows, therefore, that such prisoner has no right to final discharge except in accordance with the provisions and subject to the terms and conditions of the Parole Act of 1911. Indeed, the Supplementary Act of 1913 expressly provides that such prisoners shall be liable to parole "subject to the conditions" of the Act of 1911.

In this connection, your attention is called to an opinion rendered by this Department to John Francies, Warden of the Western Penitentiary, on October 28, 1913, in which it was said, in part:

> "The Parole Act of 1911 and its supplement, and the Commutation Act of 1901 are to be applied independently, and it was not the legislative intent that both acts should apply in any one case; or, in other words, that the benefits provided by each Act should, together or cumulatively, be conferred upon or awarded to any one prisoner. In a proper case he may claim the benefit of one or the other of the said acts, but not of both."

I repeat, therefore, if a prisoner entitled to commutation, seeks the benefits of the Parole Act of 1911, his final discharge will be determined by the provisions of the latter act, and not by those of the former act.

Very truly yours,

JOHN C. BELL,
Attorney General.

ADVERTISING FOR BIDS FOR MATERIALS.

The Board of Inspectors of the Western Penitentiary may use its discretion in determining the particular method of advertising for proposals for material to be used in constructing the new penitentiary at Bellefonte.

Office of the Attorney General,

Harrisburg, Pa., February 10, 1914.

William B. Sankey, Secretary Board of Inspectors, Western Penitentiary, Pittsburgh, Pa.

Sir: This Department is in receipt of your letter of December 31, 1913, stating that at a meeting of the Board of Inspectors of the Western Penitentiary, you were instructed to obtain the opinion of this Department upon the following questions relating to the method of advertising for bids or proposals to furnish materials for the construction of the new Western Penitentiary located in Centre County:

(a) In how many newspapers is the board required to advertise?
(b) How many insertions in each paper?
(c) For what period of time should the advertisement appear? And
(d) Must the advertisement appear in a paper published in the county in which the material is to be used?

Replying to your inquiry, it is to be observed that the only requirement relative to this subject in the Act of March 30, 1911, (P. L. 32), providing, inter alia, for the erection of the new Western Penitentiary, is found in the 3rd section thereof in the following language:

> "All contracts for material, as well as contracts for such portions of the work as cannot be done by the said inmates, shall be made by the board, subject to approval by the Governor and Attorney General; and any contract involving an expenditure of more than five hundred dollars shall only be made after *advertisement and competitive bidding.*"

In connection with the subject matter of your inquiry, your attention should be directed to the Act of May 1st, 1913, (P. L. 155), entitled:

> "An act regulating the letting of certain contracts for the erection, construction and alteration of public buildings."

By this act it is provided that:

> "In the preparation of specifications for the erection, construction and alteration of any public building, when

> the entire cost of such work shall exceed one thousand dollars, it shall be the duty of the architect, engineer or other person preparing such specifications, to prepare separate specifications for the plumbing, heating, ventilating and electrical work; and it shall be the duty of the person or persons authorized to enter into contracts for the erection, construction or alteration of such public buildings to receive separate bids upon each of the said branches of work, and to award the contract for the same to the lowest responsible bidder for each of said branches."

The said Act of 1911, under which your board is now erecting the new Western Penitentiary, does not undertake to prescribe any details with reference to the manner in which advertisements shall be made, inviting proposals to furnish materials, or to perform the work which cannot be done by the inmates.

Reading this act in connection with the said Act of 1913, the substantial legislative requirements intended to govern your board in the construction of the building in question are:

That separate specifications for the plumbing, heating, ventilating and electrical work must be prepared, and separate bids received upon each of the said branches of work, and further, that all contracts involving an expenditure of more than $500 must be awarded to the lowest responsible bidder, as ascertained by competitive bidding, in response to advertisements inviting individuals, firms and corporations able to furnish the materials, or perform the work, required, to submit proposals.

Within the limitations of these general provisions, your board, in inviting proposals to furnish any class of materials, is expected and required to exercise a sound discretion with reference to the number and places of publication, of the newspapers in which advertisements should be inserted, the number of insertions and the period of time during which the advertisements should appear.

It is obvious that no hard and fast rule could be prescribed which would properly apply to every case. The object sought to be attained is to acquire, in the interest of the Commonwealth, the beneficial results of the widest possible competition in bidding, and your board is at liberty to prescribe, in the case of each contract, such methods of advertising as, in its opinion, giving due consideration to the character of materials about to be purchased, the number and the location of the places of business of dealers or manufacturers who will be able to supply the same, will bring to the attention of the greatest number of prospective bidders the fact that the Commonwealth is about to enter into contracts for the purchase of the designated materials and invites the submission of bids. For instance, it would be useless to advertise in Centre County for materials which

can be supplied only by manufacturers or dealers living in Allegheny County. As a general rule, if you are about to purchase materials or supplies manufactured and sold in Allegheny county, an advertisement inserted in six different newspapers published in that county, for six issues of the same, would seem to be sufficient to secure real competition in bidding.

In addition to inserting advertisements in newspapers, there may be cases where your board might be able to secure greater competition by mailing invitations for proposals to manufacturers and dealers in the articles you are about to purchase.

Your board is not required to adopt or follow any particular unvarying rule with relation to the method of advertising. On the contrary, the legislative intent disclosed in the acts referred to, is that the particular method of advertising in each particular case is to be determined by your board. No attempt is made to designate specifically how, when or where the advertisement shall be made, but your board is expected and required to adopt, in each particular case, such method as will, in its opinion, secure the widest range of competitive bidding.

Very truly yours,

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

DISCHARGE OF PRISONER.

A prisoner released on parole on one sentence and returned to prison on a second sentence may be paroled on his second sentence after serving two years and twenty-two days of his second sentence of ten years.

Office of the Attorney General,

Harrisburg, Pa., April 9th, 1914.

Mr. Charles D. Hart, Secretary Board of Inspectors, Eastern State Penitentiary, Philadelphia, Pa.

Sir: This Department is in receipt of your letter of April 6th asking our opinion as to the time at which Warren Anderson B5146 will be entitled to discharge.

We understand that Anderson was sentenced on October 25, 1909, to an indeterminate term of from nine months to three years, on a charge of larceny; that he was released on parole October 3, 1910,

and was returned to your institution under a sentence imposed February 20, 1911, of not less than fourteen months nor more than ten years, for felonious entry and larceny.

One-third of this maximum sentence will have been served within a short time, and I assume that what you desire to know is whether, if the Parole Board decides at the expiration of one-third of the sentence to parole Anderson, he must be detained for the balance of the term of three years which was not served at the time of his release on parole, and when his parole time will begin to run.

You are advised by this Department in an opinion dated March 15, 1911, that the words "unexpired maximum term" used in the Parole Act of May 10th, 1909, P. L. 495, refer to the time of sentence and do not refer to the time passed on parole, and you were further advised in that opinion that a prisoner released on parole who is returned to the penitentiary to serve a new term should serve the new term first, and after its expiration be held for the unexpired maximum term of his first sentence.

The same opinion was rendered by this department to the Warden of the Western Penitentiary on November 24th, 1913.

It is, therefore, clear that when Anderson shall have served his sentence for the felonious entry and larceny he should still be held by your institution for two years and twenty-two days, the difference between the maximum of three years for which he was sentenced first, and the time which he served under that sentence before being released on parole.

The fact that under the provisions of the Act of June 19, 1913, P. L. 538, Anderson will become eligible to parole under the provisions of the Act of June 19, 1911, P. L. 1055, after having served one-third of his second sentence, does not change the rule.

When Anderson becomes eligible for parole the Parole Board may consider his application entirely irrespective of the fact that an imprisonment of two years and twenty-two days under his first sentence will have to be served after his release on parole under the second sentence.

If the Board decides to parole Anderson under his second sentence he will have to serve his two years and twenty-two days. At the expiration of that time he will be released on parole, and that parole will last for so much of the ten years of his second sentence as had not expired at the time that he began to serve the unexpired sentence of two years and twenty-two days under his first sentence.

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

WESTERN PENITENTIARY EMPLOYEES.

The employees of the Western Penitentiary, engaged in farm work on the farm on the site of the new Western Penitentiary, are within the Eight-Hour Act of July 26, 1897, P. L. 418.

Office of the Attorney General,

Harrisburg, Pa., July 15th, 1914.

William E. Sankey, Esq., Secretary Board of Inspectors Western Penitentiary, Pittsburgh, Pa.

Dear Sir: This Department is in receipt of your communication of June 6th, stating that at a metting of the Board of Inspectors of the Western Penitentiary held May 16, 1914, you were directed to secure the opinion of this Department upon the question whether the employees of the Western Penitntiary who are engaged in farm work on the farm belonging to the Commonwealth, and farming a part of the cite for new Western Penitentiary, in Centre County, are included in the provisions of the Act of July 26, 1897, P. L. 418, regulating the hours of labor of persons in the employ of the State or municipal corporations therein, or otherwise engaged in public works. I understand that the employees referred to in your communication are farm laborers employed by your Board to work upon the farm upon which some of the supplies for the prisoners in the Western Penitentiary are raised, and that these farm laborers are paid out of the funds collected from the various counties forming the Western Prison District for the maintenance of their prisoners in the Western Penitentiary. The Act is entitled: "An act to regulate the hours of labor of mechanics, working men and laborers in the employ of the State, or municipal corporations therein or otherwise engaged on public works."

It provides, in substancee, that eight hours out of the twenty-four of each day, shall make and constitute a legal day's work for mechanics, workmen and laborers in the employ of the State or any municipal corporation therein or otherwise engaged on public works.

By the second section it is provided that the Act shall apply to all "mechanics, working men and laborers now or hereafter employed by the State * * * through its agents or officers."

By section 3 it is provided that officers or agents of the State who shall wilfully violate or otherwise evade the provisions of the Act shall be deemed guilty of malfeasance in office.

Under the facts above stated I am of opinion that the employees referred to in your communication are laborers employed by agents of the State, viz., your Board of Inspectors, and that they are within the provisions of the said Act of July 26, 1897.

Very truly yours,

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

SECRETARY, BOARD OF INSPECTORS.

The Board of Inspectors of the Western Penitentiary may appoint a secretary who is one of their number and pay him a salary.

Office of the Attorney General,

Harrisburg, Pa., July 20 1914.

Hon. John Francies, Warden, Western Pentitentiary, Pittsburgh, Pa.

Dear Sir: Your favor of the 16th inst. addressed to the Attorney General, is at hand.

You ask to be advised whether the Board of Inspectors of the Western Penitentiary may appoint a secretary who is one of their number and pay such secretary a salary.

The Act of April 23, 1829, was amended by the Act of May 23, 1913, P. L. 328, to provide for this very thing. By the Act of April 23, 1829, it is provided as follows:

> "They (the inspectors) shall at their first meeting, and annually thereafter, appoint out of their number a president, secretary and treasurer * * * they shall serve without any pecuniary compensation."

The amendment to this section provides as follows:

> "They shall at their first meeting, and annually thereafter, appoint out of their number a president, and a treasurer. They shall appoint a secretary, who may be of their number if they deem it necessary. He shall receive such compensation as the inspectors may fix," etc.

Under the old act the secretary was required to be a member of the Board of Inspectors and was required to serve without a salary. Under the new act the secretary may be a member of the Board of Inspectors if the Board deem it necessary, and whether a member of the Board of Inspectors or not, he is entitled to receive such salary as the inspectors may fix.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

OPINIONS TO OFFICERS OF STATE HOSPITALS.

OPINIONS TO OFFICERS OF STATE HOSPITALS.

ANTITOXIN.

The Homeopathic State Hospital must pay the State Department of Health for antitoxin furnished.

Office of the Attorney General,

Harrisburg, Pa., April 15, 1914.

Mr. E. M. Young, Secretary and Treasurer Homeopathic State Hospital, Allentown, Pa.

Sir: This department is in receipt of your letter of April 4, 1914 inquiring whether the Department of Health of the State of Pennsylvania is within its rights in requiring you to pay for state diphtheria antitoxin which you obtained from one of the State distributors, for use in an emergency.

We understand there was danger of the spread of diphtheria in your institution, and that thereupon the physician in charge applied to the distributor of the State at Allentown, who furnished the physician with the required antitoxin.

The appropriation to the Department of Health for the purchase of antitoxin (Act of July 16, 1913, P. L. 755, at page 795) provides a fund "for the payment of the cost of diphtheria antitoxin and other products for free distribution for the poor," etc. Following the manifest intention of this appropriation the Department of Health hold uniformly that while it is its duty to furnish diphtheria antitoxin to all persons who need it, the antitoxin should be paid for by persons who can afford to do so.

The application and receipt which must be presented to the distributor in order to obtain the antitoxin contains a certificate "that the persons mentioned for whom this antitoxin is furnished, for the treatment of diphtheria, are indigent in the sense that they cannot procure the necessities of life and at the same time purchase antitoxin."

The physician from your hospital applied for the antitoxin in question for the hospital, and signed such a certificate.

In view of the fact that the Homeopathic State Hospital receives an appropriation from the state which presumably is sufficient to procure such medical supplies as are needed for the conduct of the

institution, it cannot be said to be financially unable to pay for the antitoxin, and it would seem to be contrary to public policy to put the entire burden of supplying antitoxin upon the Department of Health.

You are, therefore, advised that it is proper that your institution should pay the distributor for the antitoxin which was used, in order that the distributor may procure other antitoxin to replace it, and thereby be in a position to afford relief in case of another emergency.

Very truly yours,

JOHN C. BELL,
Attorney General.

CONTRACTS.

The State Hospital for the Insane at Danville may not contract with a corporation for construction of a building, of which corporation one of the hospital trustees is a stockholder—but may borrow money from a bank of which one of its trustees is a director.

Office of the Attorney General,

Harrisburg, Pa., May 11, 1914.

R. Scott Ammerman, Esq., Solicitor, Trustees of State Hospital for the Insane, Danville, Pa.

Sir: This Department is in receipt of your letter of April 24, 1914, inquiring whether it is proper for the Executive Committee of the Board of Trustees of the State Hospital for the Insane at Danville to award contracts for the building of an industrial building and a barn to Berwick Building and Supply Company, a corporation in which Mr. Lowrey, a trustee for the hospital, is a stockholder.

The answer to your inquiry depends upon the construction of section 66 of the Act of March 31, 1860, (P. L. 382), which makes it unlawful for any member of a public institution to "be in any wise interested in any contract for the sale or furnishing of any supplies or materials to be furnished to, or for the use of any corporation, municipality or public institution of which he shall be a member or officer," and upon the construction of the Act of April 23, 1913, P. L. 285, which makes it unlawful for any officer or member of the Board of Managers of an institution, at a time when the institution is receiving State moneys from legislative appropriation "to furnish supplies to such institution."

There is no room for doubt but that the State Hospital for the Insane is a public institution, within the Act of 1860, and receives

State moneys from legislative appropriations within the Act of 1903, nor that a trustee of the hospital is an officer, within the meaning of both of those acts.

It has been held so frequently that an officer of a public institution violates the Act of 1860 if he is a stockholder in a corporation, which has made a contract to furnish supplies or materials to the institution, that it is unnecessary to do more than refer to the cases of *Commonwealth v. DeCamp, 177 Pa. 112,* and *Marshall v. Elwood City Borough, 189 Pa. 348 (1899).*

The only possible question which could arise as to the contracts for building is whether they are contracts "for the sale or furnishing of any supplies, or materials, to be furnished to or for the use of" the hospital.

You are advised that the construction of a building does constitute a furnishing of materials, within the wording of the Act of 1860, and that it would be a misdemeanor upon the part of the trustee who is a stockholder in the building company to be on the board of trustees when contracts are awarded by the board of trustees to the building company. Of course it would be improper for the State Hospital to enter into such contracts.

You also inquire whether it is proper for the hospital to borrow money from a bank of which certain of the trustees are stockholders and directors. In this matter I beg to advise you that it has been decided by the Supreme Court in the case of *Long v. Lemoyne Borough, 222 Pa. 311, (1908)* that such borrowing does not constitute a violation of the Act of 1860, the court saying, per Mr. Justice Brown:

> "As to the second reason given by the borough for asking that the judgment be declared void, it is a sufficient answer to say that the Act of 1860 is a penal one and must be strictly construed: Trainer v. Wolfe, 140 Pa. 279. It prevents a member of council from profiting by any contract 'for the sale or furnishing of any supplies or materials' to his municipality. *Money is not within this letter and certainly not within its spirit, for the use of money and rate of interest is fixed by statute beyond which no lender can profit."*

Very truly yours,

MORRIS WOLFE,
Third Deputy Attorney General.

APPROPRIATION.

Where a contract for a building for which appropriation was made is let before expiration of appropriation period of two years—the appropriation will be available even though building is not completed within appropriation period.

Office of the Attorney General,

Harrisburg, Pa., May 21, 1914.

Mr. Henry S. Grove, Chairman Buildings and Grounds Committee, Hospital of University of Pennsylvania, Philadelphia, Pa.

Sir: Sometime ago you wrote the Attorney General asking whether it would be necessary to begin the construction of an addition to the Maternity Hospital of the University of Pennsylvania, for which $75,000 was appropriated by the Legislatture of 1913, on or before June first of this year.

In your letter you state "it is the general impression among our Board of Managers that this appropriation would not lapse if we begin work on the improvement on or before June, 1915 owing to the fact that there is no session of the Legislature this year."

The Act of July 25, 1913, making an appropriation to the Trustees of the University of Pennsylvania, containing the item for the addition to the Maternity Hospital, provides that the amount is appropriated "for the two fiscal years beginning June first, one thousand nine hundred and thirteen."

It has been settled by long interpretation and acquiescence that if a contract be let within the period for which the appropriation is made, although the work may not be completed within that period, the money appropriated is available to carry out such contract, and such interpretation finds expression in the General Appropriation Bill, which is for the ordinary expenses of the Executive, Judicial and Legislative Departments of the Commonwealth. It provides that the sums therein mentioned "be and the same are hereby specifically appropriated to the several objects herein named for the two fiscal years commencing on the first day of June, one thousand nine hundred and thirteen, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending May thirty-first, one thousand nine hundred and thirteen."

I, therefore, advise you that a contract for the erection of an addition to the University Hospital need not be made before the first of June of this year, and if such contract be made, and the work be begun on or before the thirty-first of May, 1915, the appropriation of $75,000 will be available even though the contract be not completed by that time.

Very truly yours,

WM. M. HARGEST,

Second Deputy Attorney General,

OPINIONS TO OFFICERS OF THE GENERAL ASSEMBLY.

OPINIONS TO OFFICERS OF THE GENERAL ASSEMBLY.

ACCOUNTS OF ELECTION EXPENSES.

Under section 7 of the Act of March 5, 1906, P. L. 78, relating to accounts of election expenses, it is unlawful for the Chief Clerk of the House of Representatives to administer the oath of office to any member-elect until he has filed an account of his election expenses or a certificate under oath that his aggregate receipts or disbursements did not exceed $50. When, however, such an account or certificate has been filed, the jurisdiction of the Chief Clerk ends, and he cannot pass upon the question of the truth thereof, or refuse to administer the oath of office. If the account is false in any particular, a remedy is provided in section 9 for an audit and investigation by the Court of Quarter Sessions.

Office of the Attorney General,

Harrisburg, Pa., January 6, 1913.

Hon. Thomas H. Garvin, Chief Clerk, House of Representatives, Harrisburg.

Sir: I am in receipt of your letter of January 4th, enclosing a letter and affidavit from W. A. Mitchell, of Milford, Pike County, and asking to be advised with reference to your action, under the facts set forth in said letter and affidavit, as Chief Clerk, in the matter of administering, or refusing to administer, the oath of office to Edwin F. Peters.

It appears from the letter that Mr. Mitchell alleges that the said Edwin F. Peters, a member elect of the legislature from Pike County, has not complied with the Act of March 5, 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,"

and that his non-compliance therewith appears from the enclosed affidavit. The affidavit made by Mr. Mitchell before the Prothonotary of Pike County avers that:

> "The expense account of Daniel B. Olmsted, Treasurer of the Democratic County Committee of Pike County, for the year 1912, as filed with the Clerk of Court of Quarter Sessions, in said county of Pike, shows among other receipts, contributions from Edwin F. Peters, Demo-

> cratic candidate for representative in the General Assembly, amounting to $159; and further, there is also on file in said clerk's office, the sworn statement of the said Edwin F. Peters, that the aggregate amount of his receipts or disbursements in connection with the election held on November 5, 1912, did not exceed the sum of $50.00."

By the 5th section of the above cited act, it is provided, inter alia, in substance, that every candidate for election and every treasurer of a political committee shall, within thirty days after every election, at which such candidate was voted for, file with the officers therein specified, a full, true and detailed account, subscribed and sworn or affirmed to, setting forth each and every sum of money contributed, received or disbursed for election expenses, etc. In the latter part of this section it is provided that:

> "If the aggregate receipts or disbursements of a candidate or political committee in connection with any nomination or election shall not exceed fifty dollars, the treasurer of the committee, or candidate, shall, within thirty days after the election, certify that fact, under oath, to the officer with whom the statement is filed, as hereinafter provided."

By section 7 it is provided that:

> "It shall be unlawful to administer the oath of office to any person elected to any public office until he has filed an account, as required by this act, and no such person shall enter upon the duties of his office until he has filed such account, nor shall he receive any salary for any period prior to the filing of the same."

As I understand the facts contained in the communication and affidavit enclosed with your request, the member elect, Edwin F. Peters, has, in accordance with the above quoted provision of the 5th section of the act, certified, under oath, that the aggregate of his receipts or disbursements, in connection with his election, did not exceed fifty dollars, but Mr. Mitchell contends that, in the light of the evidence contained in the account filed by the treasurer of the Democratic County Committee, this certificate of Mr. Peters seems to be untrue.

In my opinion you have no jurisdiction to pass upon this question.

Under the 7th section of the act it is your duty to refuse to administer the oath of office to any member elect until he has filed the account required by the said act of 1906, or, in lieu of such account, has filed a certificate under oath that his aggregate receipts or disbursements did not exceed $50.00, but when the account or

certificate has been filed your jurisdiction ends. If the account, or certificate in lieu thereof, is false in any particular, a remedy is provided by the 9th section of the act, for an audit and investigation by the Court of Quarter Sessions of the proper county, which is the only tribunal authorized to pass, in the first instance, upon the correctness of the account or certificate.

You are therefore advised, that the facts stated by Mr. Mitchell in his letter and affidavit are not sufficient to warrant you in declining to administer the oath of office to the said Edwin F. Peters.

Very truly yours,

JOHN C. BELL,
Attorney General.

CONSTITUTIONAL AMENDMENTS.

An amendment to the Constitution must first be adopted, before the Legislature may enact the necessary enabling legislation.

The following resolution asking for the opinion of the Attorney General of the Commonwealth of Pennsylvania, was adopted by the House of Representatives, April 10th, 1913:

Whereas, There is now pending on the third reading calendar of this House a joint resolution for the amendment of the Constitution of Pennsylvania, permitting the issuing of bonds against the Commonwealth to the extent of fifty million dollars for the building of new roads, and

Whereas, This joint resolution has passed the Legislature of the session of 1911-12, and,

Whereas, It will be necessary for the people of this Commonwealth to vote at the next election upon the acceptance of this proposed amendment, should the same pass this Legislature, and,

Whereas, This present session of the Legislature will more than likely be adjourned sine die before the date of the said election, and,

Whereas, It is questioned by many of the members of this House as to the legality of any enabling legislation that might be passed by this Legislature before the aforesaid proposed amendment to the Constitution is ratified at the next election, and,

Whereas, It is the desire of many of the members of this House to know whether or not such enabling legislation can be passed before they vote upon the third reading of the said joint resolution for the proposed Constitution amendment,

Therefore be it Resolved, That the Attorney General of the Commonwealth of Pennsylvania, be requested to inform this House, on or before Monday, the fourteenth day of April, 1913, whether or not, in his legal opinion, anticipatory legislation which will comply with the Constitution of this Commonwealth can be passed by the present Legislature which will permit the issuance of bonds in conformity with the proposed amendment to the Constitution of Pennsylvania, provided the said legislation is passed before the joint resolution has been ratified by the people at the election, and provided the said enabling legislation shall not take effect except upon the contingency of the said amendment being adopted at the said election.

I hereby certify that the above resolution is a true and correct copy.

(Signed) THOMAS H. GARVIN,

Chief Clerk of the House of Representatives.

Office of the Attorney General,

Harrisburg, Pa., April 14th, 1913,

To the Honorable, the House of Representatives, Harrisburg, Pa.

Dear Sirs: This is an acknowledgment of the receipt of your communication of the 10th instant requesting my opinion on or before Monday, the 14th instant.

It is, and long has been, an established rule of the Attorney General's Office, to give opinions to the Departments of the State Government, only upon a concrete state of facts, and to refuse to give an opinion upon any supposititious or hypothetical case propounded by any of the Departments; much less, therefore, should an opinion be given to the Legislature upon some possible bill not as yet introduced into the Legislature, nor, so far as appears, even drafted.

In view of this firmly settled and well grounded practice, you will permit me to express the regret that the opinion of this Department was not requested upon some bill actually introduced into your Honorable Body dealing with the subject matter of the resolution. However, as time seems to be made the essence of your request, and as it is my desire to afford all possible light upon the simple proposition involved in your inquiry, I may say that the proposed constitutional amendment, in my opinion, contemplates and requires the adoption of such amendment by the people as a condition pre-

cedent to the enactment of any enabling legislation therein and thereby authorized. The present constitution forbids the creation of such a bonded indebtedness. The purpose of the proposed amendment is to give constitutional authority, now lacking, to the Legislature, to create such a bonded indebtedness. Obviously, as it clearly seems to me, the amendment to the Constitution must be first adopted; and then, and not until then, will the Legislature have the constitutional authority to enact the necessary enabling legislation.

Faithfully yours,

JOHN C. BELL,
Attorney General.

SALARY DECEASED MEMBER OF THE LEGISLATURE.

The estate of a member of the Legislature, who died during the session, can obtain the proportionate part of his salary for which he served during the session. An item in the general appropriation bill giving his estate the full salary is unconstitutional.

His sucessor elected during the session will receive full salary for the session.

Office of the Attorney General,

Harrisburg, Pa., April 19, 1913.

Hon. Thomas H. Garvin, Chief Clerk, House of Representatives, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of April 3, 1913, stating, in substance, that the Hon. John E. Riebel, a member of the House of Representatives from the 13th district of the city of Philadelphia, for the session of 1913, died on the 27th day of February, 1913, having received on account of his official salary, under the general appropriation act approved June 14, 1911, (P. L. 251), two monthly payments of $300.00 each, thus leaving, in the state treasury, a balance of the total amount which the said Hon. John H. Riebel would have been entitled to receive, if he had lived until the end of the session of 1913, in the sum of $994.00, consisting of the following items: $900.00 salary, $50.00 for stationery and $44.00 for mileage.

In addition to having received $600.00 on account of his salary, the said officer also received his duly appropriated allowance of $100.00 for postage. You further state that you have had an item inserted in the general appropriation bill of 1913, at page 90, section 42, providing for the payment of the above balance of $94.00 to the legal representative of the said Hon. John H. Riebel.

It is further stated in your communication that pursuant to a writ for a special election issued by the Speaker, Max Aron was elected on the 26th of March, 1913, to fill the vacancy in said office caused by the death of the said Hon. John H. Riebel, and took his oath of office as a member of the House of Representatives on the 31st day of March, 1913.

You close your communication with this paragraph:

> "Will you kindly furnish me an opinion as to whether Mr. Aron is entitled to the full pay of a member, $1,500, mileage, stationery and postage, and state how same shall be paid, as there is no appropriation for this purpose. Also advise me as to whether I am correct in the case of Mr. Riebel."

The proper disposition of your inquiry necessitates some consideration of the nature of the compensation authorized by law to be paid to members of the Legislature, the legal rights of the members of that body with relation to such compensation and the existing appropriations made for the payment thereof.

Under the Constitution of 1776 the remuneration of members of the General Assembly is described as "wages;" under the Constitution of 1790 and 1839 it is termed "compensation," and under the present Constitution it is called "salary." In so far as the present inquiry is concerned, there is practically no distinction in the meaning of these words. They all mean a sum of money periodically paid for *services rendered.*

The present Constitution provides in Article II, Section 8; thereof, 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. 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 present salary or compensation of members of the General Assembly is fixed by the Act of July 7, 1885, (P. L. 254), which provides that:

> "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 as aforesaid, for each special or extraordinary session."

On the question of the legal rights of the members to receive the compensation provided by law, it is clear that the salary or compensation spoken of in the Constitution and the act of assembly above mentioned, is to be paid to the officers in question for actual services rendered by them.

In an opinion under date of March 21, 1906, Official Opinions of the Attorney General of 1905-06, page 342, Attorney General Carson held that 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 estate is not entitled to the salary, first, because such person is only a de facto and not a de jure member, and secondly, because a salary is "a sum of money paid for services rendered," and no services having been rendered, the salary cannot be paid.

Again, in reply to a request from the cashier of the treasury with relation to his right to advance moneys to members on account of their compensation as such members, Attorney General Carson, in an opinion dated December 28, 1906, 33 Pa. C. C., 177, exhaustively considered the nature of the office of a member of the General Assembly, and the right of such officer to receive the compensation provided by law.

Some of the conclusions reached in this opinion and fully supported by the authorities therein cited, may be stated as follows:

A public office is not property, nor are the prospective fees thereof the property of the incumbent. The relation between a public officer and the Government does not rest upon the theory of contract, but arises from the rendition of services.

In the course of his opinion Attorney General Carson said:

> "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."

In conclusion it was held in said opinion that the members of the General Assembly do not stand upon a contractual basis with their government, but are in the position of being required to earn, by actual services, that which they receive from the public treasury, and that therefore requests for advances of compensation not yet earned should not be honored.

Looking now to the appropriations made for the payment of the compensation to be earned by the members of the House during the legislative session of 1913, we find that by the general appropriation bill of June 14, 1911, at page 255, the sum of $310,625.00 is appropriated for the payment of the salaries of 207 members of the

House of Representatives, and the extra compensation allowed by law to the speaker, for the session of 1913; the sum of $14,000.00 for the payment of the mileage of said 207 members for said session; the sum of $10,350.00 to be distributed, $50.00 to each member for the payment of stationery for said session, and the sum of $20,700.00 to be distributed, $100.00 to each member for the payment of postage for said session. All of these appropriations are subject to the proviso at page 251 of said bill, to the effect that the Senators and Members "shall each be paid $300.00 per month for the first four months of the session, if the Legislature shall be in session that long, and the balance on the day fixed for the final adjournment of the Legislature, or during the two days previous thereto."

Applying the principles of law and the statutory provisions herein referred to, to the facts in the case under consideration, we find that Hon. John H. Riebel began his term of office on the first day of December, 1912, that the session of the Legislature for 1913 began on the 7th day of January, 1913; that the said officer rendered services in his said office until the date of his death, to wit, the 27th day of February, 1913.

If the said officer had lived until the end of the session, he would have been entitled to receive the following compensation under the above appropriations:

Salary, ...	$1,500.00
Stationery, ...	50.00
Postage, ...	100.00
Mileage, ...	44.00
Or a total of, ...	$1,694.00

Under the provisions of said appropriations he was entitled to receive $300.00 for the month January, and $300.00 for the month of February, which amounts were duly paid to him, together with his postage allowance of $100.00, leaving a balance of $994.00 still remaining in the state treasury out of the total sum of $1,694.00, appropriated to each of the 207 members as compensation for the rendition of services throughout the entire session of 1913.

In my opinion, Hon. John H. Riebel had drawn, prior to his death, all moneys due him from the State for his services, except the allowance of $50.00 for stationery, and $44.00 for mileage, which amount of $94.00 should now be paid to his estate, as a debt due to it from the Commonwealth.

You state that you have had inserted as section 42 of the general appropriation bill for 1913, an item which reads as follows:

> "For the payment of the balance of salary, stationery and mileage, for the session of one thousand nine hundred and thirteen, of Hon. John H. Riebel, Member of the House of Representatives, from Philadelphia County, deceased, the sum of nine hundred and ninety-four dollors ($994.00) or so much thereof as may be necessary, to be paid to his legal representatives," etc.

You further ask to be advised whether you are right in having the above quoted provision inserted in the general appropriation bill for 1913. In view of the express prohibition contained in Article III, Section 18, of the Constitution, I am of opinion that the provision for the payment to the estate of Hon. John H. Riebel, which has been inserted in the general appropriation bill for 1913, is unconstitutional.

The section of the Constitution referred to is as follows:

> "No appropriations except for pensions or gratuities for military services, shall be made for charitable, educational, or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association."

I can see no escape from the conclusion that the appropriation now under discussion is an appropriation to the personal representative of the deceased member for a benevolent purpose. The public moneys cannot be appropriated for such purpose, except, of course, in the way of pensions or gratuities for military services.

You are therefore advised that there is and can be no warrant in law, under our present Constitution, for paying the estate of the said Hon. John H. Riebel any sum in excess of the above mentioned sum of $94.00.

Referring lastly to your inquiry whether the Hon. Max Aron who was elected to fill the vacancy caused by the death of the said Hon. John H. Riebel, and who was sworn in as a Member of the House on March 31, 1913, is entitled to the full pay of a member, $1,500.00, mileage, stationery and postage, and how his compensation shall be paid, in view of the fact that there is no appropriation for this purpose, permit me to say that it follows, from what has already been said, that the Hon. Max Aron will be entitled to receive only the compensation fixed by law for such services as may be rendered by him on and after the 31st of March, 1913, viz., $300 for the fourth month of the session, to wit, the month of April, 1913, and $300.00 on the day fixed for the final adjournment of the Legislature, provided he continues to hold his said office for the remainder of the session. By this method the Hon. Max Aron will receive for his services during the time he serves as representative, exactly the same com-

pensation as each of the other 206 members of the House will receive for the same period of time. This amount has already been appropriated by the general appropriation act of 1911.

In my opinion, an item appropriating to the said Hon. Max Aron the necessary amount to pay his mileage, and the usual postage and stationery allowances, should be included in the general appropriation bill to be passed at the present session. These are the only additional appropriations necessary and proper in the promises to meet the legal obligations of the Commonwealth.

Very truly yours,

JOHN C. BELL,
Attorney General.

ADJOURNMENTS.

Construing the Constitutional provision "Neither House shall, without the consent of the other, adjourn for more than three days," in computing the three days, the first day of adjournment should be excluded.

Office of the Attorney General,

Harrisburg, Pa., May 12th, 1913.

To the Honorable, the Speaker and the Members of the House of Representatives,

Gentlemen: I am in receipt of a certified copy of the resolution of your Honorable Body of the 5th instant. Referring to the provision of the Constitution that "neither House shall, without the consent of the other, adjourn for more than three days," your twofold inquiry, as I interpret it, may be stated concretely as follows: Is it lawful for the Senate to adjourn without the consent of the House "for a period of *four full days,* one of which is Sunday"; first, when Sunday is the *fourth* day of adjournment, e. g., in the case of adjournment from Wednesday until the following Monday; and second, when Sunday is *one* of the *first three* days, e. g., in the case of adjournment from Friday until the following Wednesday.

In the adoption of the Constitutional provision quoted, the manifest intention was to provide that if either House should adjourn without the consent of the other, such House should reconvene upon the *fourth* day after the adjournment.

In the consideration of your inquiry, it is proper to promise that under the general rule of the common law, and by our declaratory Act of Assembly of June 28, 1883, (P. L. 136) when a fixed number of days is prescribed by law, the rule in counting the same is to exclude the first day. It follows that Wednesday is to be excluded

from the count in the first case put; and Friday is to be excluded in the second case put; and this much determined as to the initial or starting day in the computation, the next question is what is the *fourth* day thereafter in each case. And in this next question is involved the further one—whether Sunday is a *dies non* in either or both of the specific cases stated. The ancient common law drew a distinction between *dies juridici* and *dies non juridici,* and Lord Coke (1 Inst. 364) declares that at common law, the Sabbath is a dies non, and that no judicial acts may be lawfully done on that day. This ruling, that the Sabbath is a dies non, (see *Commonwealth vs. Mara, 8 Phila. 440)* still obtains, with certain limitations in Pennsylvania, i. e., it is a general rule of law that when the last day a fixed period of time prescribed for the performance of any act falls on Sunday (e. g., Sunday, the *fourth* day in the case first above stated) such Sunday is a dies non, and is to be excluded from the computation; and consequently, it is lawful to do the act on the following day, viz., Monday. When however, Sunday is not the last day of such a fixed period but falls within or during such period, (e. g. Sunday)—the *second* day in the case second above stated) such Sunday is, as a general rule, to be included in the computation (see *Fordham vs. Fordham, 15 W. N. C. 250,* and Act of June 20, 1883, cited supra).

Specifically answering your inquiry, therefore, I am of the opinion that, should the Senate adjourn on Wednesday to reconvene upon the following Monday, such adjournment is within the true intent of the Constitutional provision under discussion; but that an adjournment on Friday, to reconvene upon the following Wednesday, is not within such intent, and either House so adjourning should reconvene on the following Tuesday.

The conclusion upon the first branch of the inquiry is reinforced by reference to a precedent established in the House of Representatives in 1897, as appears from its Journal for that session at page 1114. It is there recorded that a motion was made.

> "that when the House adjourns this Wednesday evening, it be to meet on next Monday evening at nine o'clock."

The point of order was submitted that it was unconstitutional for the House to adjourn for more than three days without the consent of the Senate. The Speaker decided the point of order not well taken; that an adjournment of the House from Wednesday until the succeeding Monday was not an adjournment for more than three days as provided by the Constitution, Sunday being a dies non. (See also Buckalew on the Constitution, page 52.)

It may be finally said that even if either House adjourns for more than three days without the consent of the other, and then convenes,

and legislation is proceeded with, passed, and approved by the Executive such adjournment will not, in my opinion, invalidate any such legislation. (See West Philadelphia Passenger Railway Company vs. The Union Passenger Railway Company, 9 Phila.,495; Kilgore vs. Magee, 85 Pa., 401; and the remarks of Theodore Cuyler, Esq., reported in Volume 5, page 361, of the Debates of the Constitutional Convention; also White on the Contitution, Section 7, page 210.)

Faithfully yours,

JNO. C. BELL,
Attorney General.

IMPEACHMENT OF CIVIL OFFICERS.

A committee, appointed by the House of Representatives of the General Assembly to investigate allegations and charges against certain judges of a court of record, learned in the law, for the purpose of advising the House whether sufficient grounds exist to justify the impeachment of either or both of said judges by the House before the Senate, under art. vi, § 2, of the Constitution, has the power to continue its hearings and compel the attendance of witnesses and the production of books and papers after the adjournment *sine die* of the session. The wisdom or practicability of continuing such hearings after the adjournment must be determined by the committee.

Com. *v.* Costello, 21 Dist. R. 232, distinguished.

Office of the Attorney General,

Harrisburg, Pa., June 26, 1913.

Hon. Samuel A. Whitaker, Chairman, Special Committee of the House of Representatives, to investigate charges against Hon. Robert S. (2) Umbel, and Hon. John C. Van Swearingen, Judge of the 14th Judicial District of the Commonwealth of Pennsylvania.

Sir: This Department is in receipt of your communication of June 17th, stating that by action of the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania, your committee was appointed to investigate certain charges and accusations of unjudicial conduct on the part of Hon. Robert E. Umbel, and Hon. John C. Van Swearingen, Judge of the 14th Judicial District of this Commonwealth; that your committee has fixed June 19th, 1913, at 2 o'clock P. M. at Uniontown, as the time and place for its first meeting; and that the committee will be able to examine witnesses on the 19th, 20th and 21st of June, but still not be able to sit again during the present session of the General Assembly, as it is expected that both houses will adjourn sine die on June 26, 1913.

On the 18th inst. I acknowledged receipt of your communication and advised you that I would give the same my best consideration as soon as other matters having priority of claim upon my official attention should be disposed of. I further advised you that, whatever my opinion might be upon the question propounded by you, there was no legal reason why meetings for the examination of witnesses should not be held by your committee on the dates mentioned by you, viz: the 19th, 20th and 21st inst. I have learned since that meetings were in fact held on one or more of these days and witnesses examined.

Substantially, therefore, it remains to advise you as to the right of your committee to continue its hearings and investigation after the adjournment of the present session of the General Assembly, and with reference to its right to report its findings after said adjournment.

From your communication and from the Legislative Journal for June 3, 1913, at page 3840, I understand that your committee has been appointed for the purpose of investigating certain allegations and charges made against the above named judges of a court of record, learned in the law, for the purpose of advising the House of Representatives whether sufficient grounds exist to justify the impeachment of either or both of said judges by the House of Representatives before the Senate of this Commonwealth, under Article VI of the Constitution; and not for the purpose of ascertaining whether there is reasonable cause (not amounting to sufficient ground for impeachment) for the removal of said judges by the Governor, on the address of two-thirds of each House of the General Assembly, under Article V, Section 15, of the Constitution.

Such being the purpose of the appointment of your committee, it is pertinent to refer to the proper method of procedure in a proceeding for impeachment of a judge. Such method may be gleaned from the record of the impeachment proceedings against the Honorable Walter Franklin, President Judge of the 2nd Judicial District of Pennsylvania, which took place in 1825. *Journal of the House of Representatives, 404 et. seq.*

If your committee should determine, upon the investigation which it is directed to make, that proper grounds for the institution of the proceedings exist, you would so report to the House. If the House should adopt your report, it would then be necessary for it to appoint a committee to prepare articles of impeachment and if the report of this committee exhibiting formal articles of impeachment should be adopted, it would then be the duty of the House to appoint a committee to manage the trial before the Senate.

Reverting then to the power of your committee to continue its hearings and compel the attendance of witnesses, and the production of books and papers, after the adjournment sine die of the present session of the General Assembly, I have this to say:

The question of the power of a committee appointed by one branch of the Legislature to continue its investigations after the adjournment of the Legislative session, and to compel the attendance of witnesses, etc., received judicial construction in the recent cases of *Comonwealth vs. Costelle, 21 Pa. Dist. Rep. 232.* During the Legislative sesion of 1911 the Senate, on May 22, 1911, adopted a resolution appointing a committee of five senators to "constitute a committee whose duty it shall be to investigate any charges that have been heretofore, or may hereafter be made between Legislative sessions against any judge or other persons holding a civil office in this Commonwealth, of any immoral or dishonest conduct, or who have in any way violated their oaths of office, etc," and directed said committee to make report, in writing, of its investigations and recommendations to the General Assembly of Pennsylvania, at its first session in the year 1913.

Both houses of the General Assembly of 1911 adjourned sine die May 25, 1911. The committee attempted to perform the functions assigned to it by said resolution of the Senate, by holding hearings and subpoenaing witnesses subsequent to the date of adjournment of the Legislature. A witness was indicted in the Court of Quarter Sessions of Philadelphia County, for neglecting and refusing to appear in obedience to the command of a subpoena issued by the committee. He demurred to the indictment upon the ground that the committee had no lawful authority to require his attendance, or to require him to testify, because,

(a) The Senate had no power to appoint a committee to perform the duties imposed upon this committee by the resolution appointing it, and,

(b) The committee lost whatever power it had as soon as the Legislature adjourned.

The said Court sustained the demurrer upon the above mentioned grounds, holding "that the Legislature, or either of its branches, may and should seek such information as is necessary to intelligent action upon the business that comes before it, and may therefore provide for the investigation, through a committee, of whatever questions arise in the performance of its constitutional functions," but that the committee had evidently been appointed for the performance of duties which were "strictly judicial in character, and in no wise ancillary to the part played by the Senate in the work of legislation."

In the second place, the Court held that:

> "A committee may, by the point or concurrent resolution of the two branches of the Legislature, be authorized and empowered to continue its sessions after the the Legislature's adjournment";

but, because the separate branches of the Legislature have not severally general legislative authority, when the powers of one branch are ended, the powers of the other branch also cease, and to give effect after adjournment to the mere resolution of one branch would be to continue the power of that single branch.

It is stated in the opinion that the functions of the Legislature are terminated by the adjournment, and that the conclusion of the session puts an end to all pending proceedings of legislative character, and the court concludes that if the powers of the Senate ended with the adjournment, the powers of its committee necessarily ended at the same time.

I am of opinion that the present case is distinguishable from the case cited, and that the decision above referred to furnishes no precedent for the guidance of your committee in the present situation.

The purpose for which your committee was appointed, viz., to investigate whether grounds for impeachment exist, is clearly within the separate and distinct functions of the House of Representatives; for, Section 1 of Article VI of the Constitution expressly provides that "the House of Representatives shall have the sole power of impeachment."

In the next place, the institution of proceedings for the impeachment of a civil officer, is not a joint power or duty, nor is it a legislative function within the ordinary acceptation of that word. Each branch of the Legislature has a separate and distinct function to perform in such proceedings. The House of Representatives has the sole power of impeachment, and by Section 2 of Article VI of the Constitution, it is provided that:

> "All impeachments shall be tried by the Senate; when sitting for that purpose, the senators shall be upon oath or affirmation; no person shall be convicted without the concurrence of two-thirds of the members present."

The writer of the opinion in the case of the Commonwealth vs. Costello, supra bases his second conclusion upon the consideration that the Legislature as a unit is vested with legislative power, but that its constituent houses are not severally thus vested with legislative power through any specific provision of the Constitution.

With relation to the present inquiry, it is to be observed that the House of Representatives is specifically vested with the sole power of instituting impeachment proceedings.

I am therefore of opinion that as a legal proposition, the power of your committee to hold hearings and compel the attendance of witnesses, and the production of books and papers, etc., will not cease by reason of the adjournment of the General Assembly. But in view of such adjournment, and the further steps or proceedings which should follow your report, as above outlined, the question as to the wisdom or practicability of your continuing to hold sessions of the committee after adjournment, is one of which you are, of course, the judges.

Yours faithfully,

JOHN C. BELL,
Attorney General.

MISCELLANEOUS OPINIONS.

MISCELLANEOUS OPINIONS.

DELAWARE PILOTAGE.

The Board of Commissioners of Navigation for the river Delaware cannot, in the absence of a complaint by a person or persons injured or aggrieved, summon a pilot for trial on the charge of misbehavior in the execution of his duty, nor can the board, under the authority to make rules and regulations and prescribe penalties for the breach thereof, invest itself with greater power in reference to the trial of pilots than has been given it by the Acts of March 29, 1803, P. L. (1803-04) 542, and June 8, 1907, P. L. 469.

It seems, however, that the board should have power of its own motion to summon a pilot for trial for misbehavior, and it is, therefore, suggested that the board consider the propriety of securing such enabling legislation.

Office of the Attorney General,
Harrisburg, Pa., January 8, 1915.

George F. Sproule, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: Your favor of the 2nd inst., addressed to the Attorney General, was duly received.

You ask to be advised as to whether the Board of Commissioners of Navigation, in the absence of a complaint, may of their own motion summon a pilot before them for trial for misbehavior in the execution of his duty.

The inquiry, as I understand, is prompted by the collision which occurred on the evening of December 24th, off Cross Ledge Light, Delaware Bay, between the American Line Steamship "Marion" bound for Liverpool, and the British Steamship "Oceano", bound for Philadelphia, the latter being in charge of a pilot licensed under the laws of the State of Pennsylvania, and under the jurisdiction of your Board.

After careful investigation, I find the only law upon the subject to be found in Section 8 of the Act of June 8, 1907, (P. L. 469), which amends the 31st Section of the Act of March 29, 1803, and Section 1 of the same act, which amends Section 4 of the Act of March 29, 1803.

Section 6 provides:

> "If any pilot shall misbehave himself in the execution of his duty, so that damage shall accrue by reason of his negligence or incapacity, it shall be lawful for the person or persons injured or aggrieved to complain to the said Board of Commissioners of Navigation, who

> shall thereupon appoint a time and place of hearing, of which due notice shall be given such pilot, and, upon due proof being made thereof to the said Board of Commissioners of Navigation, it shall be lawful for them to fine such pilot, any sum not exceeding the amount of pilotage of the ship or vessel to which such damage shall have happened, for the use of deceased pilots, their widows and children, or to suspend such pilot for any term which the said Board of Commissioners of Navigation may deem proper."

Section 4 of the Act of March 29, 1893, as amended by the Act of 1907, provides:

> "The Board of Commissioners of Navigation for the river Delaware and its navigable tributaries shall have full power and authority, under the limitations hereinafter prescribed, to grant licenses to persons to act as pilots in the bay and river Delaware, and to make rules for their government while employed in that service * * * and to make, ordain and publish such rules and regulations, and with such penalties for the breach thereof in respect of the matters aforesaid, as they shall deem fitting and proper."

The power of the Board seems to be circumscribed by Section 31, above quoted, so that it can only act upon complaint of "persons injured or aggrieved" and the Board appears to have no authority to summon a pilot before it for trial, of its own motion.

No rules or regulations have been made under Section 4 covering such a case, and Section 4 authorizes the making of rules only "under the limitations hereinafter prescribed." The limitations of the Board as to trials of pilots having been prescribed, no rules or regulations can be made enlarging the powers of the Board or destroying the limitations imposed upon it by law.

I am, therefore, of opinion that the Board cannot, in the absence of a complaint by a person or persons injured or aggrieved, summon a pilot for trial on the charge of misbehavior in the execution of his duty, nor can the Board, under the authority to make rules and regulations and prescribe penalties for the breach thereof, invest itself with greater power in reference to the trial of pilots than has been given it by the Act of Assembly.

It seems that the Board of Commissioners of Navigation should have autority of its own motion to summon a pilot before it for trial for misbehavior, and impose penalties upon conviction, and I suggest that the Board consider the propriety of securing the necessary legislation for that purpose.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

DREDGING DELAWARE RIVER ANCHORAGES.

There is no appropriation available for dredging Delaware river anchorages.

Office of the Attorney General,
Harrisburg, Pa., March 29, 1913.

George F. Sproule, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: Your favor of recent date addressed to the Attorney General, is at hand.

You request to be advised whether the Board of Commissioners of Navigation is authorized to expend money appropriated to them under the Act of June 17, 1911, (Appropriation Acts 295), for dredging the State anchorages in the river Delaware.

I understand that by virtue of Section one of the Act of June 8, 1907, P. L. 469, creating the Board of Commissioners of Navigation, the Commissioners are authorized to "make rules for regulating, stationing and anchoring ships, vessels and boats in the river Delaware, and its navigable tributaries," and that under authority thus given, the Commissioners have set aside three specific areas in front of the City of Philadelphia known as the Port Richmond, Greenwich, and League Island Anchorage; that these locations are not within the area of the Delaware, under improvement by the United States government; that nothing toward the maintenance of their depths is paid out of Federal appropriations; that there is considerable difficulty in placing vessels of deep drafts in the anchorages, owing to the lack of depth and water, and that the Board of Commissioners of Navigation have no appropriation out of which any improvements can be made, or dredging done, except the Act of June 17, 1911, above referred to.

The act to which you refer is entitled "An act making an appropriation to the Board of Commissioners of Navigation for the river Delaware, and its navigable tributaries, for two years from June 1, one thousand nine hundred and eleven."

The sum of $63,000.00 is specifically approprated for the payment of the salaries of the employes of the Commissioners; for the payment of the crew of the Steam Tender M. S. Quay; for the payment and the rent, and care of offices, office supplies, and equipment of the Steam Tender M. S. Quay; and for official expenses of the Commission, and incidentals.

All of these purposes are definite and certain, and could by no stretch of imagination include the dredging of the river Delaware. The only language which is in any sense elastic is "of official expenses of the Commission, and incidentals." The "Official expenses

of the Commission," in the opinion of this Department, do not include the dredging of the river Delaware, and "incidentals", could not be interpreted to comprehend such distinctive and important work.

You are therefore advised that the Commissioners cannot expend any of the money appropriated under the Act of June 11, 1911, for that purpose.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

FOREST LANDS.

The Act of April 5, 1905, P. L. 111, repeals section 5 of the Act of February 5, 1901, P. L. 11, by providing that two cents an acre upon State forest lands shall be paid for the benefit of the roads in lieu of the fixed amount per mile under the Act of 1901.

Office of the Attorney General,

Harrisburg, Pa., April 10, 1913.

Hon. Robert S. Conklin, Commissioner of Forestry, Harrisburg, Pa.

Sir: Some time ago you asked to be advised by this Department of the effect of the Act of April 5, 1905, P. L. 111, upon the 8th section of the Act of February 5, 1901, P. L. 11.

The 8th section of the Act of 1901 above referred to, provides as follows:

> "The title of all lands acquired by the Commonwealth for forestry reservations shall be taken in the name of the Commonwealth and shall be held by the Commissioner of Forestry, and such lands shall not be subject to warrant, survey or patent, under the laws of the Commonwealth authorizing the conveyance of vacant or unappropriated lands, and all such forestry reservation lands shall be exempt from taxation from the time of their acquisition. In all cases where lands have been purchased, or many hereafter be purchased, by the Forestry Reservation Commission for forest reservations, where there are public roads, regularly established, running into or through said lands, the Commissioner of Forestry, under such rules and regulations as the Forestry Reservation Commission is hereby authorized to adopt, may expend a sum not exceeding twenty-five dollars per mile in each year for the maintenance, repair or extension of any such roads, and on roads bordering on reservations one-half of this rate per mile may be expended."

The Act of 1905, referred to, is entitled:

> "An act providing a fixed charge on lands acquired by the State for Forestry Reserves, and the distribution of revenue, so derived, for school and road purposes."

The act recites by preamble that the Commonwealth is acquiring large tracts of land for the purpose of forestry reservation, "that the purchasing of said lands by the Commonwealth makes said lands exempt from taxation" and "because of said exemption from taxation, districts in the several counties lose the revenue secured from said prior taxation, and works a hardship upon the citizens thereof, by compelling them to make up the loss on school and road taxes thus brought about."

The act then provides:

> "That from and after the passage of this act, all lands acquired by the Commonwealth for forest reserves, and now exempt from taxation, shall be subject to an annual charge of three cents per acre, for the benefit of the schools in the respective districts in which said reserve or reserves are located, and two cents per acre, for the benefit of the roads in the townships where said reserve or reserves are located."

The Act of 1905 seems to refer directly to the exemption from taxation contained in the Act of 1901, and in terms intended to relieve the townships and districts against such exemption. The expenditure of $25.00 per mile in the Act of 1901 on roads within the forestry reservations, and of half that amount bordering the forestry reservations, was intended to compensate for the exemption from taxation. The plain meaning of the Act of 1905 seems to be that such expenditure is not sufficient compensation for the loss of road taxes, and in lieu thereof, there should be a payment by the Commonwealth to the various districts and townships of two cents per acre for road purposes.

I am, therefore, of the opinion that the two cents per acre required to be paid under the Act of 1905, was to be in lieu of the fixed amount per mile which the Commissioner of Forestry was directed to expend upon roads under the Act of 1901, and therefore that the Act of 1905 repeals so much of the 8th section of the Act of 1901, as provides for the annual expenditure per mile upon such roads.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

INSOLVENT INSURANCE COMPANIES.

The Act of June 1, 1911, P. L. 599, being a comprehensive system for the winding up of insolvent insurance companies, was intended to provide the only method therefore, and thereafter there is no jurisdiction in any court to appoint a receiver or order the dissolution of an insurance company except under the provisions of the act.

Office of the Attorney General,

Harrisburg, Pa., February 14, 1913.

Hon. Thomas B. Donaldson, Special Deputy Insurance Commissioner, 65 Manhattan Building, Philadelphia, Pa.

Dear Sir: Your favor of recent date was duly received.

You ask to be advised how the Act of June 1, 1911, P. L. 599, affects the jurisdiction of the courts to decree the liability and dissolution of insurance companies. Your specific inquiry is with reference to the Flood City Mutual Fire Insurance Company, and the facts I understand to be as follows:

A petition was presented to the Court of Common Pleas of Cambria County against that company, and upon the petition the said court of Cambria County, on September 11, 1911, decreed the dissolution of the company and appointed a receiver to wind up its affairs.

The Act of June 1, 1911, P. L. 599, was in force at the time of the decree of the Cambria County Court. Subsequently, the Insurance Commissioner applied, under the provisions of the Act of June 1, 1911, above referred to, to the Court of Common Pleas of Dauphin County, and on December 26, 1912, the latter Court dissolved the company and appointed the Insurance Commissioner to liquidate its business and affairs.

The Act of Assembly above referred to is intended to provide a comprehensive system for the liquidation and dissolution of insolvent insurance companies. It provides that:

> "The Insurance Commissioner may, through the Attorney General, apply to the Court of Common Pleas of Dauphin County, or to the court of any county in which the principal office of such corporation is located, for an order directing such corporation to show cause why the Insurance Commissioner should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policy-holders, creditors, stockholders, or the public may require."

It also provides that after a full hearing "the court shall order the liquidation of the business of such corporation, or liquidation shall be made by and under the direction of the Insurance Commissioner."

It provides:

> "The order of liquidation shall, unless otherwise directed by the Court, provide that the dissolution of the corporation shall take effect upon the entry of such order in the office of the clerk of the county in which such corporation had its principal office for the transaction of business."

I am, therefore, of opinion that the Act of 1911, being a comprehensive system for the winding up of insolvent insurance companies, was intended to provide the only method therefor, and that after the passage of this act there was no jurisdiction in any court to appoint a receiver, or order the dissolution of an insurance company, except under the provisions of said Act, and that, therefore, the Cambria County Court had no jurisdiction to appoint a receiver in September 11, 1911, for the Flood City Mutual Fire Insurance Company.

It therefore follows that the dissolution of the company took effect on January 3, 1913, the day on which the certified copy of the decree of the Court of Common Pleas of Dauphin County was entered on the records of the County of Cambria.

Very truly yours,

WM. M. HARGEST,
Assistant Deputy Attorney General.

BOROUGH WATER SUPPLY.

The Commissioner of Forestry may grant use of water from State forests to a private water company where it appears that said company is acting in relief of and for the benefit of a borough.

Office of the Attorney General,

Harrisburg, Pa., May 12, 1913.

Hon. Robert S. Conklin, Commissioner of Forestry, Harrisburg, Pa.

Sir: Your favor of a recent date received, requesting an opinion upon facts which I understand to be as follows:

In 1906 your Department granted to the Borough of South Renovo the privilege of impounding and using the water of Hall's Run, Noyes Township, Clinton County, and to lay a pipe and convey water to the borough of South Renovo, under certain conditions and restrictions contained in the grant, and the application for a system of water works to use this water was subsequently approved by the Commissioner of Health.

The borough purchased the works of the South Renovo Water Company, incurred expense in the purchase and the subsequent construction of a water system, issued certificates of indebtedness in the sum aggregating about $38,000, and by reason of this indebtedness and the present inability of the borough to borrow additional money, it is impossible to extend its systeem of water mains and keep pace with the growth of the borough. In order to protect the borough and at the same time furnish the necessary water supply, certain public spirited citizens desire to enter into an agreement with the borough to take over the water works temporarily and to raise the money for said extensions and issue obligations carrying 5 per cent. interest, charging such rates as the borough has fixed or will fix, the water company agreeing that no dividends are to be paid and no distribution made to stockholders out of the earnings of the company, but all the earnings are to be applied to extensions, betterments and improvements made with the borough's consent, the payment of interest and the cancellation of indebtedness, and that when the borough, in the future, shall be financially able to take over the company, the company will re-convey the same back to the borough at the same price at which it was acquired, plus the cost of extensions, improvements and maintenance, with interest, less any amount which may have been paid from the earnings.

You ask specifically to be advised as to whether you have the right to permit the taking of the water from forest reservations for this purpose.

The Act of February 25th, 1901, (P. L. 11), creating the Department of Forestry, provided in section 1 thereof:

> "The said Commission shall * * * * have full power to manage and control all the lands which it may purchase under the provisions of this act, as well as those that have heretofore been purchased and which are now owned by the State under existing laws. Said Commission is also empowered to establish such rules and regulations with reference to control, management and protection of forestry reservations, and all lands that may be acquired under the provisions of this act, as in its judgment will conserve the interests of the Commonwealth."

The Act of April 14th, 1905, (P. L. 156), provides as follows:

> "That the Commissioner of Forestry and the Forestry Reservation Commission are hereby authorized and empowered to give to boroughs and other municipalities of this Commonwealth, upon such terms and subject to such restrictions and regulations as said Commissioner and Commission may deem proper, the privilege of impounding water upon any forest reservations now owned

or hereafter to be acquired by the Commonwealth, and of constructing, maintaining and operating lines of pipes upon and through said reservations for the purpose of conveying water therefrom, whenever, in the judgment of the said Commissioner and Commission it shall be to the public interest so to do."

The latter Act of Assembly seems to authorize the Forestry Reservation Commission to give the right to boroughs and municipalities only, and acting upon that authority such right was granted to the borough of South Renovo. The proposition to take over the waterworks of the borough of South Renovo does not have the ear marks of a corporation for profit. It seems to be rather a proposition in relief of the borough to operate the water works in trust for the borough, with the intention to re-convey as soon as the borough is financially able for such re-conveyance. In other words, it is a proposition to do what the borough is required, but unable to do, that is, to extend the water works so as to furnish water to all of its inhabitants, and is, in effect, discharging the obligation of the borough through the agency of the corporation. The persons who propose to furnish the money for such purpose naturally desire to have control and management of the water works to see that it is properly and economically conducted.

If the facts are as above stated, indicating, as they do that the arrangement is in relief and for the benefit of the borough, I am of opinion that a fair and reasonable interpretation of the Act of 1905, above quoted, would authorize the Commissioner of Forestry and the Forestry Reservation Commission to extend the right given to the borough of South Renovo, to the South Renovo Water Company.

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

REGISTRY OF NURSES.

The Board of Examiners for Registration of Nurses cannot register a nurse without examination unless application for registration was filed prior to June 1st, 1912.

Office of the Attorney General,
Harrisburg, Pa., June 19, 1913.

Dr. William S. Higbee, President State Board of Examiners for Registration of Nurses, Philadelphia, Pa.

Dear Sir: This Department is in receipt of your inquiry of June 11, 1913, asking that your board be advised whether Miss Winifred

M. Kelly, who entered upon her course of training in a reputable training school for nurses in November, 1908, but was obliged to suspend her training on account of ill health in April, 1909, and who resumed said course in November, 1910, and will graduate from a three year course about the middle of this month, is entitled to registration by your board without examination.

Under the Act of May 1, 1909, P. L. 321, creating your board, and providing for the registration of nurses, the fundamental proposition is that nurses shall be registered only after having graduated from a training school for nurses which gives at least a two years course of instruction, and after having passed an examination given by your Board. An exception was made, however, in favor of certain nurses by providing that upon application prior to a certain date nurses possessing certain qualifications might be registered without examination. This exception is found in section 8 of the Act, which reads as follows:

> "Any person, with the above qualifications regarding age and character, applying for registration before June one, one thousand nine hundred and twelve, who shall show to the satisfaction of the board that he or she has graduated from a reputable hospital or sanitarium or training school, where a systematic course of practical instruction in nursing has been given, or that he or she was, at the passage of this act a student in such an institution, and afterwards graduated therefrom, shall be entitled to registration without examination, upon payment of the fee of five dollars."

It is perfectly clear under this section that the only nurses entitled to registration without examination are those who make application prior to June 1, 1912, and satisfy your board that they have graduated from a reputable hospital, sanitarium, or training school prior to May 1st, 1909, or on said date were students in such institution, and graduated therefrom prior to June 1, 1912, this last mentioned date being the date upon which the privilege of making application for registration without examination expired.

The present applicant did not make her application until June 2, 1913, and although she might be said to have been a student in a proper institution on May 1st, 1909, she did not graduate prior to June 1st, 1912.

Your Board has no right to register any nurse without examination unless the application for such registration was filed prior to June 1st, 1912, and unless the applicant had prior to that date graduated from the kind of an institution described in said section. The present applicant did not make her application until long after the last date for making such application had expired, nor has she yet graduated from a course of training.

You are, therefore, advised that the present applicant cannot be registered by your board until she has passed the examination which your Board is authorized under the act to require.

Yours sincerely,

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

SCHOOL BUILDING.

The Capitol Park Commission can acquire title to a school building in Harrisburg from the school district.

Office of the Attorney General,

Harrisburg, Pa., August 5, 1913.

Capital Park Extension Commission, Harrisburg, Pa.

Gentlemen: In your letter to this Department under date of July 9, 1913, you refer to the release given by the City of Harrisburg of all claims "which it might have by reason of any action taken under the authority" of the Capitol Park Extension Act of 1911, with relation to the contemplated purchase by the Commission under that Act of the "property known as the William Howard Day School Building, situated on the south side of North street, just east of Fifth street."

You further state that the title to this property, like the title to all other school property, is held by "The School District of the City of Harrisburg" in its own right.

I understand your inquiry to be whether, in view of the said release filed by the city of Harrisburg of all its claims, the Commission is authorized to acquire this school property for a price to be agreed upon with the School District.

In my opinion the Commission is fully authorized to so acquire the proper title to this school property, which is vested in the School District of the City of Harrisburg, and that the above mentioned release by the City of Harrisburg, on file with the Commission, of any and all claims which the city might have taken under the Act of 1911, does not affect the matter of the acquisition of this property from the school District.

Very truly yours,

WM. N. TRINKLE,
Third Deputy Attorney General.

VACANCIES—STATE SENATOR.

A special election to fill the unexpired term of Hon. Jacob C. Stineman, State Senator, should be held at the general election in 1914.

Office of the Attorney General,

Harrisburg, Pa., August 7, 1913.

Hon. John M. Reynolds, President of the Senate, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of August 5th, 1913, stating that vacancies now exist in the Thirty-fifth and Fourty-fourth senatorial districts of the Commonwealth, which vacancies occurred during the last session of the Senate in the following manner, namely, in the Thirty-fifth district by the death, on April 2nd, 1913, of Hon. Jacob C. Stineman, elected to the office of State Senator at the November election, 1913, and in the Forty-fourth district by the resignation, on May 5th, 1913, of the Hon. A. W. Powell, elected to said office at the November election in the year 1910.

You further state in your communication that no writ was issued for an election to fill either of said vacancies, because at the time they occurred it was believed the Legislature might adjourn before an election could be held, and return thereto made.

You ask to be advised whether you, as the presiding officer of the Senate, are "obliged by law to issue a writ at this time for an election to be held on the first Tuesday after the first Monday in November next," or whether it is discretionary with you "as to whether the writ shall issue for the election in November of this year, or for the general election in November, 1914, conceding, however, that if a special session of the Legislature in the meantime be called it would be my (your) duty to order an election in time for such session."

The disposition of your inquiry requires an examination of the constitutional and legislative provisions applicable to the facts set forth in your request for an opinion.

By section 2 of Article 11 of the present Constitution it is provided that:

> "Members of the General Assembly shall be chosen at the general election every second year. Their term of service shall begin on the first day of December next after their election. 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 with relation to the filling of vacancies occurring in either house (which vacancies may occur either during a session

of the General Assembly, or during a recess taken with the consent of both houses, or during a recess following final adjournment) is practically identical with the similar provisions in the Constitution of 1790 and 1838.

By section 19 of Article 1 of the Constitution of 1790, it is provided that:

> "When vacancies happen in either house the Speaker shall issue writs of election to fill such vacancies,"

and this identical provision appears as Section 20 of Article 1 of the Constitution of 1838.

None of the constitutions referred to provided any machinery for carrying the above quoted provisions into effect, but such machinery was provided by the Act of July 2, 1839, P. L. 519, entitled: "An Act relating to the elections in this Commonwealth," as supplemented by the Act of January 16, 1855, P. L. 1.

In considering and construing these acts it should be borne in mind that they were approved at a time when representatives were chosen annually, at a general election on the second Tuesday of October, and when one-third of the whole number of senators were chosen at each annual election, and when the General Assembly met in regular session on the first Tuesday of January each year.

An analysis of Sections 35, 36, 37, and 38 of said Act of 1839, as supplemented by said Act of 1856, discloses that the Legislative intent expressed in the legislation under consideration was to secure a full representation in both houses *during sessions* of the General Assembly, by providing for the holding of special elections on special days, when necessary, to accomplish this purpose, and for the holding of special elections to fill unexpired terms at the time of the next general election succeeding the happening of a vacancy during a recess of the General Assembly. The time for holding the special election was dependent upon whether the General Assembly was in session when the vacancy occurred, or would be in session before the next general election. Hence, it was provided, in substance, that if the vacancy should happen in either house during a session of the General Assembly, or during a recess, but at a time when the members shall be required by the provisions of their own adjournment, or by the Governor, to meet at a date prior to the next general election, the Speaker issuing the writ should appoint a time as early as may be convenient, not exceeeding thirty days after the date of the writ for holding such election.

It was further provided that if the return of such election could not be made before the time appointed for a final adjournment the writ should not be issued, or if issued, should in the case of a vacancy

in the House of Representatives be countermanded, and in case of a vacancy in the Senate should, by another writ, be extended until the next general election.

It was also enacted that if a writ should be issued by the Speaker of the Senate during a general recess of the Legislature he should direct the special election to be held at the time appointed for holding general elections. As the members of the House were then elected annually there was no occasion for a special election to fill a vacancy in the House of Representatives, unless such vacancy occurred at a time when an election could be held and return made during either an existing session, or a session provided for by the terms of a previous adjournment, or a special session called by the Governor.

In the case of a vacancy in the Senate, however, it was provided that when the writ should be issued during the recess of the Legislature it should direct the special election to be held at the time appointed for holding the general election. Provision was also made for the contingency of a special session called after the issuing of such writ by enacting that, if, after a writ for a special election to take place on the day of the general election has been issued, the Governor shall issue his proclamation for convening the Legislature, the Sheriff to whom such writ shall be directed shall give notice of an election to be held within thirty days after the date of such proclamation.

The machinery thus provided was evidently designed to meet every contingency which might arise in connection with the holding of a special election to fill a vacancy in the office of State Senator.

The general principles deducible from this legislation are:

First: If the vacancy occurs during a session of the Senate (or during an adjournment of both houses to reconvene at a fixed time, or at a time when a proclamation for a special session has been issued) and it will be possible to hold a special election and have a return thereto made, before the time appointed for the final adjournment of the General Assembly, the writ should be issued appointing a time for such election as early as may be convenient, not exceeding thirty days after the date of the issuing of the writ.

Second: If the vacancy occurs during a general recess of the General Assembly (or at a time when an election cannot be held and return thereto made prior to the time fixed for final adjournment), the writ should provide for the holding of the special election at the time appointed for holding the next general election.

The vacancies referred to in your communication happened during a session of the General Assembly, but as no writ was issued by you prior to the final adjournment of that body, they are now vacancies *existing* during a general recess of the General Assembly, and

in my opinion are, under the circumstances in this case, to be considered for every practical purpose as vacancies *occurring* during a general recess.

The material provision of the said act of 1839 applicable to the present case is as follows:

> "If any writ shall be issued by the Speaker of the Senate during the recess of the Legislature, he shall, except as is hereinafter provided, direct the election to be held at the time appointed for holding the general election."

As above stated, at the time this provision was enacted the "time appointed for holding the general election" was the second Tuesday of October in each year. By Article VIII, Section 2 of the Constitution of 1874 this time was changed to the Tuesday next following the first Monday in November in each year, and by the amendment to this Article and section, adopted in 1909, the general election is to be held biennially on the Tuesday next following the first Monday of November in each even numbered year.

The office of State Senator is, under the election laws of this Commonwealth, a State office. The general purport of the various amendments to the Constitution, adopted in 1909, is, as expressed in the amendments to Article VIII, Section 3, and Article XII, Section 1, that:

> "Elections of State officers shall be held on a general election day and elections of local officers shall be held on a municipal election day, except when, in either case, special elections may be required to fill unexpired terms."

There are no circumstances now existing requiring a special election in either case at the municipal election in November, 1913.

In my opinion, therefore, the said acts of 1839 and 1855 should now be construed as providing for a special election to fill the unexpired term of the Hon. Jacob C. Stineman, as State Senator from the Thirty-fifth Senatorial District, to be held at the time of holding the general election on the Tuesday next following the first Monday in November, in the year 1914, and you are accordingly advised to issue the necessary writ for such election at an appropriate time.

As under section 3 of Article 11 of the present Constitution, Senators are elected for the term of four years, and as the Hon. A. W. Powell, who has resigned as State Senator from the Thirty-fourth Senatorial District, was elected in November, 1910, no special election will, in the ordinary course of events, be necessary to fill the vacancy now existing in this district because the general election in November, 1914, will be the regular time for electing a Senator from said district.

In the remote contingency that the Governor should, under Section 12 of Article IV of the Constitution, convene the General Assembly in a special session by reason of some extraordinary occasion, the other existing provisions of the above mentioned Acts of 1839 and 1856 will become applicable, and the said vacancies will then become vacancies existing at a time when the members of the General Assembly are required by the Governor to convene in special session, in which event you should issue writs for special elections to fill both of said vacancies, said elections to be held within thirty days after the dates of the respective writs.

In the absence, however, of a proclamation for a special session, you are advised that but one writ should be issued, namely, a writ for a special election to fill the vacancy in said Thirty-fifth Senatorial District for the unexpired term, which special election should be held at the time of holding the regular general election in November, 1914.

Very truly yours,

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

MOTOR BOATS.

If the noise occasioned by motor boats interferes with the carrying out of the duties of the Board of Commissioners of Navigation it is proper for the Harbor Master to enforce the Act of Assembly in re operating motor boats without a muffler.

Office of the Attorney General,

Harrisburg, Pa., August 13th, 1913.

Mr. George P. Sproule, Secretary Board of Commissioners of Navigation, Philadelphia, Pa.

Sir: Your letter of the 7th inst. addressed to the Attorney General is at hand.

You call attention to the Act of Assembly approved June 5, 1913, making it "unlawful to operate a motor boat without a muffler or adequate device to decrease the noise emitted by the exhaust," and to the fact that the duty of enforcing this Act is not imposed upon any particular person.

You ask to be advised whether the Harbor Masters appointed by the Board of Commissioners of Navigation would have power to enforce the provisions of this Act.

I understand that the reason for this inquiry is that many complaints have been made to your office concerning the noise created by motor boats.

Any person aggrieved, or any person having knowledge of an infraction of law may make an information for violation of the criminal laws. In fact in this State, as in some others, under certain conditions a criminal information may be made upon information or belief.

Therefore, it follows that it is not necessary that an Act of Assembly should impose upon a particular official the duty of enforcing it. Any citizen with knowledge or reliable information may start such a criminal prosecution.

You ask whether the Harbor Masters appointed by the Board of Commissioners of Navigation would have power to enforce the provisions of this act. They unquestionably would as citizens, but I understand your inquiry to mean whether they should take upon themselves the enforcement of the Act as a part of their official duties.

The Board of Commissioners of Navigation among other things have the power:

> "To make rules for *regulating,* stationing and anchoring ships, vessels, and boats in the river Delaware and its navigable tributaries, or at the wharves, piers, or bulkheads, or in the docks, slips and basins, extending into or on the said river and its navigable tributaries; for removing, from time to time, ships, vessels and boats, in order to accommodate and make room for others, or for admitting river craft to pass in and out of the docks, slips and basins," etc.

If the noise occasioned by motor boats, which are operated without mufflers or adequate device, interferes with the carrying out of the duties imposed upon the Commissioners or the rules for regulating the ships, vessels and boats in the Delaware river, and the duties of the Commissioners can be better performed by the enforcement of this Act of Assembly, it would be entirely proper for the Harbor Masters to bring such prosecutions as would result in the enforcement of the Act.

If, on the other hand, the noise emitted by such motor boats has no effect upon or connection with the enforcement of the rules for regulating, stationing and anchoring ships, vessels and boats in the Delaware river, or the discharge of the duties of the Commissioners, then the Harbor Masters should not attempt to enforce the provisions of this Act as a part of their official duties.

In the absence of information upon the subject as to whether the noise occasioned by such motor boats, unlawfully operated with-

out a muffler or adequate device, does effect the discharge of the duties of the Board of Commissioners of Navigation, the matter is submitted to the sound discretion and determination of the Board under these instructions.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

ILLNESS OF EMPLOYE.

The State Librarian is the judge of whether a law cataloguer in the library may draw his salary, when he is incapacitated by illness but pays a substitute to do his work.

Office of the Attorney General,
Harrisburg, Pa., September 24, 1913.

Hon. Thomas L. Montgomery, State Librarian, Harrisburg, Pa.

Sir: Sometime ago you inquired of the Governor whether you could carry Mr. J. Burns White, a law cataloguer on your pay roll, inasmuch as he had been incapacitated by illness for some time, and you stated "he has been paying a substitute, however, whose work has been satisfactory." The Governor has referred your letter to this Department for an opinion.

I find that the appropriation for preparing a law catalogue does not itemize the salary of law cataloguers, but is in general language:

> "For the payment of the salaries and expenses incident to the work of preparing a law catalogue of the State Library, and for the continuation of the regular cataloguing work of the Library, two years, the sum of five thousand eight hundred dollars ($5,800)."

The responsibility of determining who should do that work, and what salary should be paid rests with you. If you desire to retain Mr. J. Burns White, your cataloguer, who is now incapacitated by illness, there is no legal reason why you should not do so if he has been paying for a substitute, and the work of the substitute is satisfactory, as you state.

You are the judge as to whether the Commonwealth is getting the proper services for the money expended, and if so, the arrangement which you suggest, if approved by you, could not, for any legal reason, be criticised.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

APPROPRIATION.

The Gettysburg Battlefield Memorial Commission may use the appropriation of July 25th, 1913, for any of the purposes set out in said bill according to their discretion.

Office of the Attorney General,

Harrisburg, Pa., October 1, 1913.

George P. Morgan, Esq., Secretary Gettysburg Battlefield Memorial Commission, Philadelphia, Pa.

Sir: I have you favor of recent date, requesting an opinion concerning the appropriation to the Gettysburg Battlefield Memorial Association.

You ask to be advised whether the appropriation must be distributed among the several items, or whether it can be left to the judgment of the Commission to determine how the distribution should be made, or whether the Commission may eliminate any items in the appropriation entirely.

The Act approved July 25th, 1913 (No. 754), is entitled:

> "An Act making an appropriation to the Gettysburg Battlefield Memorial Commission for various purposes,"

This Act provides:

> "That the sum of fifty-five thousand dollars, ($55,000.00), or so much thereof as may be necessary, is hereby specifically appropriated to the Gettysburg Battlefield Memorial Commission, for the following purposes, namely:
>
> (1) For procuring or erecting in appropriate places on the site of the battle of Gettysburg, bronze statutes .....in memory of Generals Humphreys, Hays, Geary, Crawford and Gibbon.
>
> (2) For repairs to the Pennsylvania Memorial on the Battlefield of Gettysburg.
>
> (3) For the necessary correction of names on the tablets of said memorial.
>
> (4) For the printing and publication of the work of the Commission as well as the exercises at the dedication of the said memorial on Septeember twenty-seventh, one thousand nine hundred and ten.....
>
> (5) For the necessary expenses of the Commission ....."

The Governor approved the appropriation in the sum of twenty thousand dollars ($20,000.00). The Act of Assembly does not indicate how much was intended to be appropriated for each of the purposes set out in the Act.

I am advised by your letter that the cost of the statutes authorized would amount to thirty-five thousand dollars ($35,000.00). It is, therefore, apparent that there is not enough money appropriated

to carry out the legislative intention, as indicated by the items in the bill which the appropriation is to cover, and not even enough to procure and erect all of the statues. Therefore, a discretion as to the expenditure must be exercised, and I am of opinion that it is within the power of the Commission, in the effort to carry out, as far as may be, the intention of the legislature, to use and distribute the reduced appropriation according to its best discretion and judgment.

I am sending a copy of this opinion to the Auditor General.

Very truly yours,

JOHN C. BELL,
Attorney General.

STATE ARMORIES.

Armories are public buildings and subject to the building laws.

Office of the Attorney General,
Harrisburg, Pa., October 21, 1915.

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

Dear Sir: Answering you inquiry of October 16th, 1913, as to whether in the erection, construction and alteration of armories your Board is subject to the provisions of the Act of May 1, 1913, P. L. ———, No. 104, I beg to advise you that in the judgment of this Department armories are public buildings and, therefore, included within the provisions of that act.

The Act establishing the Armory Board provides that the armories are to be for the use of the National Guard of Pennsylvania, and that in them "shall be stored and safely kept all the property of the United States or of the Commonwealth issued to such organizations for military purposes." (Section 2, Act of May 11, 1905, P. L. 442).

Section 4 of the same act authorize the purchase of armory sites and provides, "said ground in each instance to be purchased in the name and for the use of the Commonwealth of Pennsylvania."

These provisions, as well as the general purpose of the act to provide for the safety and defense of the State and of its citizens, sufficiently indicate the public character of the buildings over which the Armory Board has jurisdiction.

To hold that those are not public buildings might result in their being taxable and liable to mechanics' liens, and to sale for the payment of the debts incurred on behalf of the National Guard of Pennsylvania, consequences which cannot be viewed as possible.

The fact that all the members of the public may not have a right to use the building is not important. It is the purpose for which it is used, and not merely the people who have a right to use it, which determines the character of the buildings.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

RE FEES, &c., FIRE MARSHALS.

Construing laws re Fire Marshal and answering five questions.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1913.

Hon. Joseph L. Baldwin, State Fire Marshal, Harrisburg, Pa.

Sir: This Department is in receipt of your communications of July 8th, September 5th and September 11th, 1913, asking to be advised:

First: Whether the fees specified in Section 12 of the Act of June 3, 1911, P. L. 658, are payable to all assistants of the State Fire Marshal, rendering services under said act, except those receiving a regular salary from the State.

Second: What, if anything, can be done where assistants to the State Fire Marshal, other than regular State appointees or employes, neglect to perform their duties.

Third: Whether chiefs of fire departments, burgesses, and presidents or chairmen of boards of supervisors in Allegheny County, reporting fires, are entitled to the compensation specified in the twelfth section of said act.

Fourth: Whether you have authority to proceed with the removal or repair of dilapidated buildings reported to your office, and upon investigation found to be especially liable to fire, and a menace to other property, and to pay for said removals or repairs out of the contingent fund appropriated to your department in the General Appropriation Bill of July 16, 1913, P. L.——.

Fifth: Whether marine insurance companies doing business within the Commonwealth of Pennsylvania are subject to the provisions of the Act of June 12th, 1913, P. L. ——, (No. 331), requiring insurance companies to report fires, and the amount of fire losses to you, etc.

In reply to your first inquiry you are advised that under the Act of June 3, 1911, P. L. 658, establishing the office of Fire Marshal, etc., a departmental force consisting of yourself, your chief assistant fire marshal, and first and second deputy fire marshals, stenographers and such other clerks and assistants as may be needed, is provided for, and the moneys necessary to pay the salaries of the members of said departmental force are specifically appropriated in the general appropriation bill.

It is provided in said Act that chief of the fire department in any county, city, borough, township, school district or other municipality or incorporated districts where such fire department is established, or where no such fire department exsits, then the burgess of any borough or president or chairman of the board of supervisors of any township or other municipality, or incorprated district, shall, by virtue of the office held by them, be assistants to you, and subject to the duties and obligations imposed by the act, and subject to your directions in the execution of its provisions.

The chief duties imposed by the act upon these assistants to you as State Fire Marshal relate to the reporting of fires, and the making of necessary investigations. These assistants are not paid a regular salary or compensation as are all the members of your departmental force, but by the twelfth section of the act it is provided that:

> "The assistants of the State Fire Marshal not receiving a salary for the performance of public duties shall receive upon the audit of the State Fire Marshal fifty cents for each report of each separate fire, etc."

In the opinion of this Department these fees are payable to any assistant not receiving a salary from the State for the performance of public duties.

Replying to your second question, you are advised that where the assistants herein referred to neglect to perform their duties you have no authority to compel performance by them, but under the third section of the act you may appoint individual citizens as assistants, who shall be subject to the same duties and obligations, and of course entitled to receive the same compensation, as assistants who are such by virtue of other offices held by them.

With reference to your third inquiry you are advised that it is provided in the fourteenth section of the act in question that said act "shall not be construed to repeal an act of the general assembly entitled 'an act to provide for the appointment of a fire marshal for Allegheny County' approved etc, ... it is further hereby declared to be the true intention and meaning of this act that the same shall not apply or be operative in any city or county of this Commonwealth where under existing laws, whether special or general, the position and duties of a fire marshal are provided for."

Allegheny County, and any other city or county where under existing laws a fire marshal is provided for, are exempt from the operation of the act, and chiefs of fire departments etc., in such exempt portions of the State are not required to make reports to you. One of the purposes of the act is the securing of accurate data with reference to fires and fire losses, and if the chiefs of the fire departments in the above described exempt portions of the State see fit to make, for their territories, the reports required from other portions of the State, it would be within the spirit and scope of the act to pay the compensation fixed therein for such reports.

In response to your fourth inquiry you are advised that although the contingent fund appropriated to your department is, according to the general appropriation bill, appropriated for the purpose, inter alia, of "the demolition and removal of old and dilapidated buildings etc", there is no authority in said act for the making of repairs to, or the demolition of, dilapidated buildings by you and your deputies and assistants.

By the fifth section you and your deputies and assistants are authorized to inspect buildings and premises, and whenever any building or structure is found to be especially liable to fire for want of repairs thereto, or by reason of age or its dilapidated condition, and is so dangerous as to endanger other property, you or your assistants have authority to order the same to be removed or repaired, if reasonably practicable; and whenever combustibles or explosive matters, or inflammable conditions are found in any building, you and your assistants are authorized to order the same removed.

When any such order is made by one of your assistants a method of appeal therefrom to you is provided, and a method of appeal from your final order to the Court of Common Pleas of the proper county is likewise provided. The penalty, however, for failure to comply with an order made under said section is liability to an action for a penalty of twenty-five ($25.00) dollars for each day's neglect of the order. The penalties provided in the act are to be recovered as debts are by law collected in any courts having jurisdiction of the parties. The action is to be brought, under your direction, in the name of the Commonwealth, and by the Attorney General or any district attorney, etc.

Turning now to your fifth inquiry, namely, whether marine insurance companies doing business within the Commonwealth of Pennsylvania are subject to the provisions of the Act of June 12, 1913, P. L.——, (Act No. 331), requiring insurance companies to report all fires, and the amount of fire losses on property within this State, you are advised that under the Act of June 1st, 1911, P. L. 559, entitled:

> "An act to provide for the incorporation of fire and marine insurance companies; and for the regulation of home and foreign fire and marine insurance companies,"

the incorporation of three different classes of insurance companies is provided for:

(a) Companies for the purpose of asking insurance on dwelling houses, stores, and all kinds of buildings and household furniture, and other property against loss or damage by fire, lightning, etc., which are ordinarily and popularly referred to as fire insurance companies.

(b) For making insurances upon vessels, boats, cargoes, goods, merchandise, freight and other property against loss or damage by all or any of the risks of lake, river, canal, and inland navigation and transportation, etc., ordinarily known as inland marine insurance companies, and

(c) For making insurance upon vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, banknotes, bills of exchange, and other evidence of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with marine risks, and risks of transportation and navigation, commonly known as ocean marine insurance companies.

The Act of June 12, 1913, requiring reports of fires and the amount of fire losses is confined in its operation to "every corporation or association, whether domistic or foreign, incorporated or authorized to transact the business of *fire insurance* within the Commonwealth of Pennsylvania."

You are accordingly advised that only such companies as are included in the first class (a) of insurance companies above mentioned are required to make reports to you under said act.

Very truly yours,

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

PYMATUNING SWAMP.

The Water Supply Commission may co-operate with the Conservation Association of the Shenango and Beaver Valleys to acquire by a member of the Conservation Association of waivers of damages to necessary land, but it is injudicious for the Commission to accept gifts to carry out the work in re conserving the waters of Pymatuning Swamp.

Office of the Attorney General,

Harrisburg, Pa., November 24, 1913.

Hon. Thomas J. Lynch, Secretary, Water Supply Commission of Pennsylvania, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your letter of October 8th, inquiring whether the Water Supply Commission of Pennsylvania may take advantage of offers of co-operation made by the Conservation Association of the Shenango and Beaver Valleys, in connection with the erection of a dam at the outlet of Pymatuning Swamp, and the establishment of a reservoir to conserve the waters thereof, provided for by the Act of July 25th, 1913, P. L. 1270.

So far as the question of the acquisition of land in Ohio by the association, or one of its members, is concerned, that act provides as follows (Section 8):

> "No land shall be acquired under the provisions of this act until there shall be filed with the commissioner satisfactory waivers of all damages from owners of lands in the State of Ohio to be submerged, or which may possibly be submerged through the operation of said dam and reservoir."

You are advised that there is no reason why the association or one of its members, may not acquire the land in Ohio which may be affected by the building of the dam, and file satisfactory waivers of damages. It would obviate any difficulty, provided the Association be not incorporated, if the title to the land be taken by an individual, so that no question may arise as to the sufficiency of the waiver.

As to your inquiry whether it would be lawful for the Water Supply Commission of Pennsylvania to accept contributions from persons likely to be benefitted by the construction and operation of the proposed reservoir, you are advised that it would be, in the opinion of this Department, injudicious for a public commission to accept money from private persons or corporations without the specific consent of the Legislature.

The work at Pymatuning Swamp, provided for in the Act of Assembly above mentioned, is intended to be a public enterprise, paid for by, and attended to through the officers of the State. If money were received by those officers, it could not be paid into the State

Treasury without an Act of the Legislature, and to permit the Commission to hold the money itself and apply it to the public work contemplated by the act, might render the Commission accountable to individuals for the expenditure of funds, and might result in confusion when the Commission renders its accounts to the State as to the fund from which payments were made. I conceive it to be much the best practice for State officers not to undertake the responsibility for the expenditure of private funds in the execution of public works, without express legislative sanction.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

BOARD OF VISITATION.

Under the Act of June 6, 1913, P. L. 452, amending the Act of Feb. 24, 1903, P. L. 8, the county board of visitation has authority to make monthly visits by not less than two of its members to (1) all institutions, societies and associations within the county having the custody of children committed to them; (2) all charitable, reformatory or penal institutions in the county supported and managed by the city or county, to which adults or minors have been committed; and (3) all charitable, reformatory or penal institutions in the county receiving their inmates from more than one county and being supported or managed, in whole or in part, by the Commonwealth, to which adults or minors have been committed. The purpose is to keep the court informed from time to time with reference to the manner in which children and adults committed by it are being cared for.

Office of the Attorney General,

Harrisburg, Pa., December 2, 1913.

Mr. Samuel E. Gill, Commissioner, Board of Public Charities, Pittsburgh, Pa.

Sir: This Department is in receipt of your communication under date of November 22nd, 1913, enclosing a letter addressed to you by Charles C. Cooper, President of the Board of Visitation of Allegheny County, with relation to the construction of the Act of June 6, 1913, P. L. 452, amending the Act of February 24, 1903, P. L. 8, entitled "An act providing for the appointment of a Board of Visitation for institutions, societies and associations caring for dependent, neglected, or delinquent children."

As I understand your communication, you desire to be advised upon two questions arising under the above mentioned amendatory statute, which may be stated as follows:

First: What charitable, reformatory or penal institutions are subject to the visitorial powers of the Board of Visitation, authorized by the said Act of 1903 to be appointed by the Court of Common Pleas in each county of the State?

Second: How frequently should visits be made?

Discussing these propositions in their order, it is to be observed that the original Act of 1903 provided for the appointment by the Court of Common Pleas of each county in the Commonwealth of a Board consisting of six or more reputable citizens to serve, without compensation other than reimbursement by the proper county for their actual and necessary expenses, whose duty it should be to visit, as often as once a year, "all institutions, societies and associations into whose care and custody dependent, neglected or delinquent children shall be *committed* under the provisions of the laws of this Commonwealth."

No particular time is fixed for the appointment by the Court of the Board of Visitation, nor does the Act specify how long the members thereof shall serve. In the absence of any provision for annual appointments, it would seem to be the legislative intent that, upon appointment of a Board by the Court, the members thereof should continue to serve indefinitely and that vacancies occurring upon the Board by reason of the death, resignation or removal by the Court of a member should be filled from time to time as such vacancies occur.

A careful reading of the amendment in the light of the title seems to indicate clearly that the purpose of the amendment is twofold: first, an extension of the powers of the Board of Visitation to additional classes of institutions, namely certain institutions to which *adults* as well as children are committed, and second, a limitation of the powers of the Board to institutions located *within the county* for which it has been appointed.

Under the original act, the Board of Visitation of Allegheny County, for instance, had power and authority to visit any institutions into whose care and custody dependent, neglected or delinquent children had been committed by the proper authorities of Allegheny County, no matter in what county the institution in question might be located. I understand that it has been the practice of the Board of Visitation, appointed by the Court of Common Pleas of Allegheny County, to visit institutions located outside of Allegheny County for the purpose of ascertaining how children committed by the Courts of Allegheny County were being maintained and treated in such institutions.

By the amendment, the visitorial powers of the Board are expressly limited to "institutions, societies and associations within the County." With reference to the additional classes of institutions, brought with-

in the jurisdiction of the Board by the amendment, the langauge of the amendatory act, after substantially repeating the provisions of the original act with reference to institutions to which dependent, neglected or delinquent children have been committed, is as follows:

> "And all charitable, reformatory or penal institutions, and all institutions within the county, which receive their inmates from more than one county and are supported or managed, in whole or in part, by the Commonwealth or any of the officers thereof; and all institutions within the county which are wholly supported and managed by any city, county, borough or poor district of the Commonwealth."

The language of the act is not free from obscurity. Under a literal interpretation, it could be held that this language include all charitable, reformatory or penal institutions located in the various counties of the Commonwealth, regardless of the fact whether any of the inmates thereof had been *committed* thereto under the provisons of the laws of this Commonwealth.

When, however, we consider the evident purpose and scope of the act and note the provisions for the making of reports by the Board from time to time to the Court of Common Pleas it seems manifest that the Boards of Visitation provided for by this Legislation are intended to be agencies of the Courts appointing them for the purpose of making investigations into the manner in which persons who have become in some legal manner subject to the jurisdiction of the courts and have been committed by them to charitable, reformatory or penal institutions are being maintained and cared for therein and for the purpose of reporting to the courts the results of such investigations to the end that the courts, in the performance of their judicial duties, may have such information before them as will enable them to discharge these duties in such manner as will best serve the welfare of the individuals coming within their jurisdiction and best protect the interests of society.

In this view of the purpose of the act it should be construed to apply only to those charitable, reformatory or penal institutions to which children or adults, or both, are *committed* by some legal authority under the provisions of some law of this Commonwealth as distinguished from those institutions in which children or adults are placed by their parents, guardians or friends without any legal commitment.

You are accordingly advised that, in the opinion of this Department, the Board of Visitation, heretofore appointed by the Court of Common Pleas of Allegheny County under the original Act of 1903 and now continuing in the performance of its duties under the amendment of 1913, has authority to visit and report upon.

(1) Any and all institutions, societies and associations within the county of Allegheny into whose care and custody dependent, neglected or delinquent children have been committed under the provisions of any law of this Commonwealth;

(2) Any and all charitable, reformatory or penal institutions within the county of Allegheny which are wholly supported and managed by the city of Pittsburgh or the county of Allegheny to which any persons, whether adults or minors, have been committed under the provisions of any law of this Commonwealth: for instance, institutions such as the Allegheny County Workhouse, Allegheny County Jail, Allegheny County Home at Woodville, the City Home at Marshalsea, etc.

(3) Any and all charitable, reformatory or penal institutions within the county of Allegheny, receiving their inmates from more than one county and being supported or managed, in whole or in part, by the Commonwealth, to which any persons, whether adults or minors, have been committed under the provisions of any law of this Commonwealth: for instance, such institutions as the Western Penitentiary.

In the second place, you are advised that, in the opinion of this Department, the Board is expected, and indeed required, by the amendment to make monthly visits to each institution coming under its jurisdiction, which visits are to be made by not less than two members of the Board. The original Act required visits to be made "as often as once a year." In that portion of the amendment which is a substantial re-enactment of the original act with relation to visits to institutions to which children have been committed, it is provided that visits shall be made "at least once a year." The amendment then proceeds to enlarge the classification of institutions to which the visitorial powers of the Board shall extend and enacts further that "such visits shall be made monthly by not less than two of the members of the Board who shall report to the Board," etc. I am of opinion that the phrase "such visits" must be construed to include visits to institutions to which children have been committed as well as visits to institutions to which adults have been committed.

In this particular, the language of the act is ambiguous and contradictory but it can hardly be supposed that the Legislature intended to provide for *annual* visits to institutions in which *children* are maintained and for *monthly* visits to jails and penitentiaries to which adult persons are committed.

If experience should demonstrate that it is practically impossible for the present Board of Visitation to make the monthly visits contemplated by the act, the membership of the Board may be increased by additional appointments by the Court, or, if this plan should be deemed inadvisable, the court, whose agent the Board seems to be,

would, in my opinion, have power to regulate the matter in such manner as will best accomplish the purpose of the act which, as above noted, is to keep the court informed from time to time with reference to the manner in which children and adults committed by it are being cared for in the various institutions to which they have been committed.

Very truly yours,

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

MAINTENANCE YORK COUNTY ALMS HOUSE.

The directors of the poor of York County are charged with the duty of providing for the maintenance of the poor in York County, and recommendations of the Commissioners of Public Charities as to York County Almshouse should be addressed to the directors of the poor of that county.

Office of the Attorney General,

Harrisburg, Pa., March 27th, 1914.

Bromley Wharton, Esq., General Agent and Secretary, Board of Public Charities, Philadelphia, Pa.

Sir: This Department is in receipt of your letter of February 27th, requesting an opinion an to whether the County Commissioners or Directors of the Poor of York County are bound to take steps to place the York County Almshouse in proper condition.

The Act of May 1, 1913, P. L. 149, Section 2, authorizes the Commissioners of Public Charities, whenever they find in an almshouse a condition which, in their judgment, is not conducive to the proper care of the inmates, to recommend to the officers "charged by law with the government of such institution," such changes as the Commissioners deem necessary and proper to correct the objectionable condition, and if their recommendations are not acted upon, the Commissioners may certify the facts, with their recommendation, to the District Attorney of the proper county, for proceedings by indictment or otherwise.

I understand that there are conditions in the York County Almshouse which, in the opinion of the Commissioners of Public Charities, require correction. The question is, what officers are "charged by law with the government of such institution"?

You are advised that the Directors of the Poor of York County are the officers referred to in the Act of 1913.

The erection of the York County Poorhouse is provided for by the Act of February 6, 1864, P. L. 65, which Act requires the citizens of York County to elect three Directors of the Poor and of the House of Employment for the County of York.

Section 4 gives these Directors, among other powers, the powers

> "to purchase, take and hold any lands and tenements within the said county of York, in fee simple, or otherwise, and erect suitable buildings thereon, for the reception, use and accommodation of the poor of their several townships; to provide all things necessary for the reception, lodging, maintenance and employment of the said poor."

Section 5 provides that the Directors of the Poor are to make an estimate of the probable expense of purchasing land, erecting and furnishing buildings, and maintaining the poor in York County for one year,

> "whereupon the Commissioners of York County shall, and they are hereby authorized and required to increase the county tax by one-fourth part of the sum necessary for the purpose aforesaid,"

and to borrow the remaining three-fourths, or, if necessary, to add the whole amount to the county tax.

Section 9 provides that the Directors shall, "from time to time, receive, provide for and employ" all poor persons entitled to relief.

Section 11 provides that the Directors shall visit the apartments in the House of Employment "and see that the poor are comfortably supported."

There have been a number of acts relating to the York County Poorhouse passed since the Act of 1804. We give herewith a complete list of these acts:

April 1, 1805, P. L. 203.
April 10, 1826, P. L. 321.
March 24, 1832, P. L. 171.
April 6, 1833, P. L. 205.
Feb., 14, 1838, P. L. 24.
April 15, 1845, P. L. 465, Sec. 20.
March 3, 1847, P. L. 206.
March 2, 1846, P. L. 74.
April 2, 1849, P. L. 321.
April 6, 1850, P. L. 378.

None of these acts substantially modifies the Act of 1804.

Of course, there has been general legislation applicable to poor persons in the various counties in the State, commencing with the Act of May 8th, 1876, P. L. 149, and ending with the Act of June

4th, 1879, P. L. 78, which latter act create poor districts and imposes the duty of governing almshouses therein upon the county commissioners, with the exception contained in Section 21, as follows:

> "This act shall not be construed to repeal any local act or acts under which poorhouses or homes for relief of the destitute have been erected, or are now managed or controlled."

At the time of the passage of the Act of 1879, a poorhouse had been erected and was being managed and controlled in York County under the provisions of the Act of 1804, and for that reason the Act of 1879 did not affect the government of the York County poorhouse. (See Commonwealth vs. Summerville, 204 Pa. 300, 1903).

Attention is called to the cases of Brown vs. Gahring, 18 Dist. Rep. 516, 1908, in which it was said by Wanner, J.:

> "An order of relief is also necessary in York County: vide Section 9 of the Act of Assembly of February 6, 1804, 4 Smith's Laws 113, under which Act a special system was established for the maintenance of the poor in the county of York, which is still in force. * * * * * All of the paupers of both the city and county of York are supported together in the same manner in the county almshouse, under the provisions of said Act of 1804,"

and Commonwealth ex rel vs. York County Commissioners, 19 Pa. Dist. Rep. 920, 1910, in which it was decided that no legislation has changed the method for the election of Directors of the Poor in York County provided by the Act of 1804.

It results from what has been said that the Act of 1804 is in full force and determines the question of the responsibility for the condition of the York County Almshouse.

Under the provisions of that act, as above quoted, it cannot be doubted that the duty of providing for the maintenance of the poor in York County rests upon the Directors of the Poor, nor can it be doubted that the duty to erect an adequate almshouse is necessarily implied from the obligation to maintain the poor.

You are therefore advised that such recommendations as the Commissioners of Public Charities may have to make concerning the condition of the York County Almshouse, should be addressed to the Directors of the Poor of that County.

Very truly yours,

JOHN C. BELL,
Attorney General.

CARE OF INSANE.

County officials are entitled to receive $2.00 per week from the State Treasury for each indigent insane person, whether criminal or not, maintained in the county institutions.

Office of the Attorney General,

Harrisburg, Pa., April 15, 1914.

Dr. Frank Woodbury, Secretary Committee on Lunacy of Board of Public Charities, Philadelphia, Pa.

Dear Sir: This Department is in receipt of your letter of March 19, 1914, requesting an opinion on the question of whether county authorities are entitled to charge the State of Pennsylvania at the rate of $2.00 per week for each insane criminal maintained in the County Insane Asylum.

The Act of May 25, 1897, P. L. 83, provides:

> "Any county, municipality, borough or township of this Commonwealth, which now has or may hereafter supply, erect and equip a suitable institution for the maintenance, care and treatment of its indigent insane, upon plans and specifications approved in writing by the Board of Public Charities, shall receive from the State Treasury the sum of one dollar and fifty cents per week for every indigent insane person of such county, municipality, borough or township so maintained."

The Act of May 13, P. L. 538, increased the amount of $1.50 mentioned in the Act of May 25, 1897, to $2.00.

Counties, therefore, are entitled to receive from the State $2.00 a week for every indigent insane person maintained in the county institutions. Your question is whether an insane criminal comes within the term "indigent insane person." Whatever might be our judgment on this question in the absence of authority, the decision of the Supreme Court in the case of Trustees of State Hospital, etc., vs Lycoming County, 239 Pa. 402, 1913, requires us to advise you that insane criminals, if they be also indigent, are within the Act of 1909.

In that case the question was whether the trustees of the State Hospital were entitled to recover from the counties the entire cost of maintaining criminal insane persons in the State hospitals. The Act of May 1, 1907, P. L. 153, imposes upon the counties the expense of maintaining indigent insane in State hospitals up to $1.75 per week, and charges the excess over $1.75 against the State.

The contention of the trustees of the State hospital was that criminal insane persons were not indigent insane persons, and that the counties, therefore, were liable for the entire cost of maintaining criminal insane persons in the State hospital.

The Court of Common Pleas of Dauphin County, in a careful opinion by Judge Kunkel, upon which opinion the judgment was affirmed, held that the county was liable only for $1.75. Judge Kunkel says, in the course of his opinion:

> "Manifestly by indigent persons is meant those who have not sufficient means to pay for their care and maintenance themselves, the cost of which therefore would fall upon the county or the poor districts in which they reside. The term 'indigent insane' used in the statute is broad enough to cover all indigent insane persons, whether they be criminal or not. The purpose of the statute was to relieve the local districts from the full cost of maintaining and treating these in insane hospitals who were without means to pay for themselves. It is quite clear, therefore, that insane criminals and such insane persons as are charged with crime, who are indigent, fall within the term 'indigent insane' and are not only within the letter of the statute, but also within its spirit."

By the Act of July 26, 1913, P. L. 1437, passed subsequent to this decision, an appropriation was made to refund to the several counties the sums which they had paid "for the care, treatment and maintenance of criminal insane patients in excess of the amounts for which said counties were severally liable."

This statute is practically a legislative declaration of its approval of the decision in the case mentioned, and it seems impossible to make a distinction in the meaning of the words "indigent insane" when used in statutes providing that the counties shall contribute to their support in State institutions, and those providing that the State shall contribute to their support in county institutions.

You are therefore advised that county officials are entitled to receive $2.00 from the State Treasury for each indigent insane person, whether criminal or not, maintained in the county institutions.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

MOTHERS' PENSIONS.

The trustees of mothers' assistance fund should purchase necessary stationery from $3,000 appropriation for expenses, which appropriation lapses, if not used, at end of appropriation period.

Office of the Attorney General,

Harrisburg, Pa., April 15, 1914.

Mrs. Charles Gilpin, Jr., Chairman, Trustees of Mothers' Assistance Fund, Philadelphia County, Philadelphia, Pa.

Madam: This Department is in receipt of your letter of April 8th, 1914, asking two questions relative to the appropriation made by the Act of April 29, 1913, P. L. 118, for the relief of indigent, widowed or abandoned mothers.

The first question is whether the trustees of the Mothers' Assistance Fund may use, to buy necessary stationery, the additional sum of $500, which the act allows for the first year "if necessary, for furnishings."

A prior clause of the act provides that the trustees shall provide among other things "suitable furnishings, stationery, and postage," and that the yearly expense of the trustees in cities of the first class shall not exceed $3,000.

You are advised that such stationery as you need should be purchased from the $3,000 allowed each year for expenses, and that the additional $500 for the first year may be used only for furnishings in the limited sense which excludes stationery, postage and other items of what may be called "current expense."

Your second question is as to the period for which the $3,000 is allowed.

The act was approved April 29, 1913, and the first money paid out was in February, 1914.

The act carries an appropriation of $200,000,

> "one-half of which amount shall be available the first year after approval, and the remainder the second year, or until another appropriation may be come available."

In view of this language, you are advised that the year to cover the expense of which the first $3,000 is appropriated, began on the date of the approval of the act, and the second $3,000 can be used only for expenses incurred after April 29, 1914. If, on April 29, 1914, the first $3,000 shall not have been used, it will lapse and revert into the State Treasury, except in so far as binding contracts may

have been made prior to April 29, 1914. Payments on such contracts may be made from the first $3,000 even after April 29, 1914.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

INSPECTORS OF WEIGHTS AND MEASURES.

Under section 2 of the Act of July 24, 1913, P. L. 960, inspectors of weights and measures have no jurisdiction in regard to automatic scales for the purpose of weighing persons only, or over the scales used by mining companies to weigh coal for the purpose of determining wages payable to miners.

Office of the Attorney General,
Harrisburg, Pa., July 7th, 1914.

James Sweeney, Esq., Chief of Bureau of Standards, Harrisburg, Pa.

Sir: This Department is in receipt of your letters of June 25th, 1914, requesting an interpretation of the third paragraph of Section 2 of the Act of July 24, 1913, P. L. 960. The paragraph in question is as follows:

> "The inspectors shall take charge of and safely keep the proper standards * * * Each inspector shall have power, within his respective jurisdiction, to test all instruments and devices used in weighing or measuring anything sold or to be sold, and seal the same, if found to be correct. Such test shall include all appliances connected or used with such instruments or devices. For the purpose of making such test, each inspector, at any reasonable time and without formal warrant, may enter upon any premises; and may, on any public highway, stop any vendor or dealer, or the agent or servant of any such vendor or dealer, or stop any vehicle used in delivering any commodity which is weighed or measured as delivered. He maw condemn and mark as condemned, or may seize any false or illegal instrument or device used, or intended to be used, in weighing or measuring. If he shall seize any such instrument or device, he shall retain possession thereof until it shall have been used as evidence in any prosecution under the laws of this Commonwealth relating to weights and measures or to the sale of commodities."

You ask, first, whether under this setion inspectors of weights and measures have authority to test automatic weighing scales used

solely for the purpose of obtaining the weight of persons, and second, whether they have authority to test scales used by mine companies for the purpose of weighing the coal produced by the miners and thereby fixing the amount of wages payable to the miners. The determination of these questions depends upon whether the scales in question may be said to be "used in weighing or measuring anything sold or to be sold." The authority to condemn and mark as condemned, or to seize, false or illegal instruments or devices used or intended to be used in weighing or measuring, is limited by the grant of power in the sentence just quoted.

That the act was intended to apply only to instruments and devices "used in weighing or measuring anything sold or to be sold," appears probable from a glance at the earlier acts on the subject.

The Act of April 15, 1845, P. L. 443, providing for the appointment of sealers of weights and measures, in Section 5, makes it the duty of the sealers to try and adjust beams, scales, weights and measures and in Section 6 penalizes makers, vendors or proprietors thereof who do not comply with the requirements of the sealers, or sell by false beams, scales, weights or measures "provided that the provisions of the 5th and 6th sections of this act shall not be so construed as to extend to such beams, scales, weights and measures, as shall not be used by the proprietors thereof, for the purpose of buying or selling the same." A reading of the proviso shows that the word "with" or "by" was omitted by accident after the word "selling." (Stolle vs. Gabel, 14 Phila. 616, 1879).

The Act of May 11, 1911, P. L. 275, which provides for the appointment of inspectors of weights and measures in counties, limits their power to the inspection of instruments used or employed "in determining the size, quantity, extent, area, or measurement of quantity, things, produce, articles for distribution or consumption, offered or submitted by any person or persons for sale, for hire, or award." Here too, as in the Act of 1845, there has been the accidental omission of a word, "of", before the word "things." Taking these three acts together, we see in each an expressed intention to limit the jurisdiction of the inspectors to such instruments as are used for weighing or measuring articles to be sold.

That scales intended to be used for the weighing of persons and which people pay to have their weight told by, well could be included within the act, is undeniable, and that scales upon which coal is weighed for the determination of the wages due miners, are within the mischief which the act was intended to remedy, is even more clear.

The statute however, is a penal statute and must be strictly construed, as similar statutes have been in other jurisdictions.

The English Statute prohibiting the use of false weights and measures was held not to include a false weighing machine (Thomas vs.

Stephenson, 2 Ellis & Blackburnm, 107, 1853). In New York, a statute like our Act of 1913, was held not to apply to canned goods nor to such articles as are usually sealed up in jars. City of New York v. Fredericks, 206 N. Y. 618, 1912. The Court said, per Bartlett, J.: "In no event can the Court resort to implication to read into a penal ordinance a prohibition which is not expressed therein."

In the case of Nance vs. Southern Railway Company, 63 Southeastern Reporter, 116 (N. C. 1908), the Court held that a statute providing that it should be a misdemeanor for any person to use, buy or sell by weights and measures which had not been passed by the standard keeper, did not apply to scales used by a railway company for weighing freight and thereby fixing the cost of transportation, saying per Connor, J.: "It is perfectly manifest from the original act, the amendments, and revisals, that the Legislature never intended to penalize the neglect to have weights and measures, used for purposes other than buying and selling, tested."

You are therefore advised that the inspectors have no jurisdiction in regard to automatic weighing scales for the purpose of weighing persons only or over scales used by mining companies to weigh coal for the purpose of determining the wages payable to miners.

Very truly yours,

MORRIS WOLF,
Third Deputy Attorney General.

COUNTY HISTORICAL SOCIETIES.

To entitle historical societies to the appropriation provided by the Act of 1901, it is not necessary that members pay $2 per year, but a membership of 100, who have each had a single membership fee of $2 is sufficient compliance with the act.

Office of the Attorney General,

Harrisburg, Pa., July 20th, 1914.

Hon. Thomas L. Montgomery, State Librarian, Harrisburg, Pa.

Dear Sir: Your favor of recent date addressed to the Attorney General, was duly received. You ask to be advised whether Section 2 of the Act of May 21, 1901, P. L. 274, applies only to societies in which the members pay $2.00 per year. The Act is entitled "An act to encourage County Historical Societies."

Section 2, is in part, as follows:

> "In order to entitle the said historical society to the said appropriation, the following conditions shall have been first complied with: The money shall be paid to the oldest society in each county, if there be more than one; it shall have been organized at least three years; incorporated by the proper authority, and have an active membership of one hundred persons, each of whom shall have paid into the treasury of said society a membership fee of at least two dollars for the support of the same."

The qualification in this section is that the society shall have an "active membership of one hundred persons, each of whom shall have paid into the treasury of the society a membership fee of at least $2.00 for the support of the same."

This language precludes the idea of an annual payment. The $2.00 is paid for a *membership* fee. A membership fee is a fee required as a prerequisite to becoming a member of an organization or association. Moreover, the language is that the society may be entitled to the appropriation when it has one hundred persons, "each of whom *shall have paid*" a membership fee of $2.00. This language seems to exclude the idea of continual annual payment.

I am therefore of opinion and so advise you that in order to entitle historical societies to the appropriaton provided by the said Act of 1901, it is not necessary that the members should pay $2.00 per year, but that a single membership fee of $2.00, paid by one hundred persons, complies with the Act of Assembly in that respect.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

GEIGERTOWN WATER CO.

There is no authority for the incorporation of a water company to serve parts of two townships.

Office of the Attorney General,

Harrisburg, Pa., August 12, 1914.

Hon. Thomas J. Lynch, Secretary, State Water Supply Commission, Harrisburg, Pa.

Sir: Sometime ago you left with this Department the application of the Geigertown Water Company for a charter, and asked its opin-

ion as to whether the purpose was one within the terms of the Act of April 29th, 1874, P. L. 73, and its supplements. The purpose stated in the charter is

> "Supplying water to the public in the town of Geigertown, a district comprised of a section of the eastern part of the township of Robeson and of an adjoining section of the western part of the township of Union in the County of Berks, and State of Pennsylvania; and the two sections taken together as one district do not exceed in area nine square miles."

The Act of April 29, 1874, P. L. 73, provides in section 2, paragraph 9, that corporations may be formed for the supply of water to the public. The application in question evidently is intended to come within this paragraph.

Section 34 of the same act, clause 2, provides:

> "Where such company shall be incorporated for the supply of water, they shall have power to provide, erect and maintain all works and machinery necessary or proper for the raising and introducing into the town, borough, city or district where they may be located, a sufficient supply of pure water."

The Act of May 16, 1869, P. L. 226, extended the Act of 1874, so as to provide for the incorporation of companies to supply storage or transportation of water and water power for commercial and manufacturing purposes.

Even in the absence of judicial construction, it would seem clear that the Act of 1874 limited the power of water companies to provide water, to the "town, borough, city or district where they may be located."

The Supreme Court has decided that this was the intention of the Legislature, saying, per Mr. Justice Mestrezat, in *Ely vs. White Bear Mountain Water Company, 127 Pa. 80, 1900:*

> "The act provides that water companies incorporated under its provisions shall have the power to supply water in the 'town, borough, city or district where they may be located.' This language clearly and expressly limits the authority of a water company to the municipal or quasi-municipal division in which it is located."

Does the application of the Geigertown Water Company limit the territory within which it is proposed to supply water to a "town, borough, city or district." It is evident that the purpose is not to limit the activity of the company to the town of Geigertown, if there is such a town, because the application proceeds to define the district where the water is to be supplied, as consisting of sections

of two adjoining townships, and the advertisement of the notice of the application for a charter for the water company declared that its purpose was to supply water to the public in "the village of Geigertown."

The question, therefore, is whether the Act of 1874 permits the incorporation of a company to supply water to a district consisting of parts of two townships. In other words, can such territory be considered a "district"? It is not a sub-division of the territory of the State to which any legal term may be applied. A "district" if used in a loose sense has no definite limit. It may embrace all or part of one or any greater number of townships, counties or even states. Obviously it was not intended to have any such unrestricted meaning, when used in the Act of 1874, and the Supreme Court has so held in *Ely vs. White Bear Mountain Co., Supra,* saying, per Mr. Justice Mestrezat:

> "The word 'district" used in the act, having no qualifying adjective to indicate its extent or meaning, is not to be construed as extending the territorial limits in which the corporation may supply water beyond those given it by the prior words used in that connection. It may embrace a township or a part of one of the political divisions mentioned immediately preceding it, but *not two or more of them."* (Underlining ours).

You, therefore, are advised that there is no authority for the incorporation of a water company to supply water in a district composed of parts of two townships, and since the application of Geigertown Water Company indicates that the purpose of the corporation is to supply water in such a territory, it should not be approved.

Very truly yours,

MORRIS WOLF,

Third Deputy Attorney General.

FEDERAL TAX.

In issuing certificates and licenses the Insurance Commissioner is performing a strictly governmental function and is an agent of the State. No tax can be placed on the State in issuing such certificates.

Office of the Attorney General,

Harrisburg, Pa., December 14, 1914.

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

Sir: This Department is in receipt of your favor of the 3rd inst.

in which you ask an opinion as to whether the various certificates of authority or licenses required to be issued by the Insurance Department under the Act of June 1, 1911, P. L. 607, must have attached thereto revenue stamps as required by the Act of Congress approved October 22, 1914.

The Act of Assembly to which you refer, establishing the Insurance Department, provides, in the fourth paragraph of Section 4, defining the duties of the Insurance Commissioner:

> "He shall furnish, when required for evidence in court, certificates under seal of the Department relative to the authority of a company, agent or broker to transact business in this Commonwealth, upon any particular date, and such certificate shall be competent evidence thereof; and he shall at the request of any person, and on payment of the fee, give certified copies of any charter, statement or record in his office whenever he deems it not prejudicial to public interest."

It further provides, in Section 13:

> "The Insurance Commissioner shall issue certificates of authority to insurance companies of other states and foreign governments and their agents, and to the agents of Pennsylvania companies, and he may renew the certificate of authority of any mutual assessment life or accident association and its agents, which is now lawfully doing business in this Commonwealth," etc.,

and in Section 14, in part as follows:

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

Like provisions in the Act require certain certificates to be furnished by insurance companies to the Insurance Commissioner.

Section 20 provides:

> "The Insurance Commissioner may issue to any suitable person a license to act as an insurance broker, to negotiate certificates of insurance or re-insurance," etc.

The Act of Congress approved October 22, 1914, provides in Section 5:

> "That on and after the first day of December, nineteen hundred and fourteen, there shall be levied, collected, and paid for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness,

> and other documents, instruments, matters, and things mentioned and described in Schedule A of this act or for or in respect of the vellum, parchment, or paper upon which such instruments, matters or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign or issue the same, or for whose use or benefit the same shall be made, signed or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule."

Section A imposes, among other things, certain specified taxes upon various kinds of certificates and contains this provision:

> "Certificates of any description required by law not otherwise specified in this act, ten cents."

Section 6 of the act imposes a penalty:

> "If any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax."

Section 15 provides, in part:

> "That it is the intent hereby to exempt from the stamp taxes imposed by this act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing or municipal capacity."

Your inquiry raises the question whether the certificates referred to are issued in the discharge of the governmental functions of the State.

The exemption in Section 15 of the Act of Congress "to State, county, town and other municipal corporations," although the Section refers only to "bonds, debentures and certificates of indebtedness," must be construed as a recognition of the well settled principle that the State and its subordinate sub-divisions are exempt from taxation by the Federal Government.

In the case of *So. Carolina vs. United States, 199 U. S. 437,* Mr. Justice Brewer said, page 453:

> "It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means em-

> ployed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

And on page 456 also said:

> "The exemption of the State's property and its functions from Federal taxation is implied from the dual character of our Federal system and the necessity of preserving the State in all its efficiency."

In the case of *United States vs. Railroad Company, 17 Wall, 322,* there was an attempt to collect a tax on money due from the railroad company to the City of Baltimore. The tax was not sustained. The Court said, page 327:

> *"The right of the states to administer their own affairs through their legislative, executive and judicial departments, in their own manner, through their own agencies is conceded by the uniform decisions of this court and by the practice of the Federal Government from its organization. This carries with it an exemption of those agencies and instruments from the taxing power of the Federal Government."*

In *Ambrosini vs. United States, 187 U. S. 1,* Chief Justice Fuller said:

> "The granting of the licenses was the exercise of a strictly governmental function, and the giving of the bonds was part of the same transaction. To tax the licenses would be to impair the efficiency of the State and municipal action on the subject, and assume the power to suppress such action. And considering license and bond together, taxation of the bond involves the same consequences. * * * *
>
> The general principle is that as the means and instrumentalities employed by the general government to carry into operation the powers granted to it, are exempt from taxation by the states, so are those of the states exempt from taxation by the general government."

In case of *Polock vs. Farmers Loan & Trust Company, 157 U. S. 429,* known as the "Income Tax Case", Mr. Chief Justice Fuller said, page 584:

> "As the States cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution, so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a State."

The Insurance Department is required by law as part of the duties in the administration of that department and in the regulation of insurance companies, agents and brokers, to issue certificates of authority and licenses.

In issuing such certificates and licenses, the Insurance Commissioner is performing a strictly governmental function and is an agent of the State. It necessarily follows that no tax can be constitutionally imposed upon the State in issuing such certificates.

The Act of Congress, however, provides that

> "There shall be levied, collected and paid * * * * by any person or persons, or party who shall make, sign or issue the same, *or for whose use or benefit the same should be made, signed or issued, the several taxes,*" etc.

The same principles which exempt the State from taxation also apply to the duties of the State officers in reference to the tax. The Federal Government cannot interfere with the instrumentalities or agencies of the State Government in carrying out its governmental function. The State officials are the agencies created by the State government to discharge the governmental duties. The Federal Government cannot by law impose any specific duties upon State officials with reference to the collection of the tax provided by the Act of Congress.

Whether the certificates or licenses of authority issued by your department are required to be stamped by the persons for whose benefit the same are issued is a matter which concerns the Federal Government, and the persons holding such certificates or licenses. It is no part of your official duty to require such certificates or licenses to be stamped or to affix or cancel such stamps.

If, however, such stamps are voluntarily furnished you, and in affixing or cancelling them you are not interfering with the discharge of your official duties to the State, I see no reason why as a matter of comity to the Federal Government, you may not affix and cancel such stamps, but if you do so it should be understood that it is upon this footing.

Very truly yours,

JOHN C. BELL,
Attorney General.

APPENDIX.

SCHEDULE A.—FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

In re pollution of Shenango River by Carnegie Steel Company,	In equity,	Use of name of Commonwealth sought. Time for hearing fixed but case continued indefinitely.
Elias B. Risser, Township Supervisor of South Lebanon Township, Lebanon County,	Quo warranto,	Allowed.
The Club Dei Laboratori Independente America (The Club of Independent Workers of America),	Quo warranto,	Time for hearing fixed but proceedings abandoned.
Jones and Laughlin Steel Company, et al.,	Quo warranto, under Act of June 9, 1891, P. L. 256.	Refused.
Isador Einstein, Justice of the Peace, Palmerton, Carbon County, Pa.,	Quo warranto,	Allowed.
Mutual Beneficial Society of Italian-American Musicians of Philadelphia,	Quo warranto,	Heard. Proceedings abandoned.
Railway Electric Light, Heat and Power Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Wyoming Electric Company,	Quo warranto,	Refused.
Woodside Park,	In equity,	Application for use of the name of the Commonwealth withdrawn.
North Rochester Electric Street Railway Company,	Quo warranto,	Application withdrawn.
Philadelphia & Western Railway Company,	Proceeding under Act of May 7, 1887, P. L. 94.	Allowed. Bill in equity filed in Dauphin County.
The Burgess and Town Council of the Borough of Norristown,	Mandamus,	Allowed. Petition filed in Montgomery County.
In re validity of charter of the City of Pottsville,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
North Rochester Electric Street Railway Company,	Quo warranto,	Proceedings continued indefinitely.
Clearview Coal Company,	In equity,	Use of the name of the Commonwealth allowed. Bill filed in Lackawanna County.
City of South Bethlehem,	Quo warranto,	Allowed. Suggestion filed in Northampton County.
M. Calvin Lewis, Justice of the Peace, Borough of Gaysport, Blair County,	Quo warranto,	After hearing proceedings discontinued.
Manhattan Club,	Quo warranto,	Allowed. Suggestion filed in Luzerne County.
Johnstown Water Company (in re petition of Elsie Croyle),	Quo warranto,	After hearing petition withdrawn.
Johnstown Water Company (in re petition of Amanda O'Connor),	Quo warranto,	After hearing petition withdrawn.

Roaring Run Stone Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Neshannock Stone Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Alton Coal Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Phoenixville, Valley Forge & Strafford Electric Railway Company,	Quo warranto,	After hearing, further proceedings continued indefinitely.
Counties Gas & Electric Company,	In equity,	Use of the name of the Commonwealth allowed. Proceedings to be instituted in Montgomery County.
Borough of Norristown,	Mandamus,	Use of the name of the Commonwealth allowed. Petition filed in Montgomery County.
In re Baseball Playing on Sunday in Borough of Galeton, Potter County,	In equity,	Use of the name of the Commonwealth refused.
Simon Gratz, et al., comprising the Board of Revision of Taxes for County of Philadelphia,	Mandamus,	Proceedings abandoned.
Lewis Coal Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Edri Coal Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Overholt Distilling Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Wilson Laundry Machinery Company,	Quo warranto,	Allowed. Suggestion filed in Dauphin County.
Philadelphia College and Infirmary of Osteopathy,	Quo warranto,	Heard. No action taken.

SCHEDULE B.

INSURANCE COMPANY CHARTERS APPROVED.

Canonsburg Mutual Fire Insurance Co., Canonsburg, Pa.,	May 29, 1914.
Everett Cash Mutual Fire Insurance Co., Everett, Pa.,	May 8, 1913.
Hanover Mutual Fire Insurance Co., Hanover, Pa.,	July 17, 1914.
Mutual Live Stock Insurance Co. of Elizabethtown, Elizabethtown, Pa.,	July 28, 1913.
United Life Insurance Company, Pittsburgh, Pa.,	December 1, 1913.

BANK CHARTERS APPROVED.

LOCATION.	APPROVED.
Carrick Bank (The), Carrick, Pa.,	February 26, 1913.
Citizens Bank of Derry, Pa., Derry, Pa.,	March 25, 1913.
Reamstown Exchange Bank, Reamstown, Pa.,	April 8, 1913.
Miners Bank of West Hazleton, Pa., (The), West Hazleton, Pa.,	April 30, 1913.
Linesville State Bank, Linesville, Pa.,	May 21, 1913.
Miners and Merchants Deposit Bank, Portage, Pa.,	May 29, 1913.
Merchants and Miners Bank, Borough of Paint, Pa.,	August 28, 1913.
Broad Street Bank, Philadelphia, Pa.,	September 23, 1913.
Dime Deposit Bank of Kulpmont, Pa. (The), Kulpmont, Pa.,	December 2, 1913.
Peoples' Bank of Oxford (The), Oxford, Pa.,	December 18, 1913.
Peoples' State Bank of Boswell, Pa., Boswell, Pa.,	December 10, 1913.
Peoples' State Bank of Red Lion, Red Lion, Pa.,	January 8, 1914.
Peoples' State Bank of Ford City, Pa., Ford City, Pa.,	March 4, 1914.
Citizens Bank of Northumberland, Pa., Northumberland, Pa.,	July 22, 1914.
North Side Bank of Lebanon, Pa. (The), Lebanon, Pa.,	August 11, 1914.
State Bank of Philadelphia, Philadelphia, Pa.,	October 21, 1914.
Peoples' Bank, Philadelphia, Pa.,	October 30, 1914.
Peoples' State Bank of Wyalusing, Pa., Wyalusing, Pa.,	November 19, 1914.
Snow Shoe Bank, Snow Shoe, Pa.,	November 19, 1914.
Olney Bank, Philadelphia, Pa.,	December 11, 1914.
State Bank of Tidioute, Tidioute, Pa.,	December 28, 1914.

SCHEDULE C.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
Philadelphia & Bristol Water Company.	C. S. 1911, ...	Paid.
Lake Carriers Oil Company, ...	C. S. 1911, ...	Discontinued.
Henry B. Pancoast Company, ...	Bonus 1911, ...	Verdict for defendant.
Bell Asbestos Mines Company, ...	C. S. 1911, ...	Paid.
Northern Electric Light & Power Company.	C. S. 1911, ...	Paid.
Brush Electric Light Company, ...	C. S. 1911, ...	Paid.
A. H. Geuting Company, ...	Bonus on increase	Pending.
Williamsport Rail Company, ...	Bonus on increase	Submitted to the Court Pending.
Williamsport Rail Company, ...	C. S. 1911, ...	Submitted to the Court Pending.
E. I. DuPont De Nemours & Company.	Interest on bonus	Pending.
Howard Gas Coal Company, ...	C. S. 1911, ...	Paid.
York Sanitary Milk Company, ...	C. S. 1909 (1 mo.) & 1910.	Paid.
Finance Company of Pennsylvania, ..	Tax on Shares 1909.	Paid.
American District Telegraph Company of Pennsylvania.	Gross receipts 1912 (6 mo.)	Submitted to the Court Pending.
The Penn Mutual Life Insurance Company.	Gross premiums, 1911 (6 mo.)	Submitted to the Court Pending.
The Penn Mutual Life Insurance Company.	Gross premiums, 1912 (6 mo.)	Submitted to the Court Pending.
The Penn Mutual Life Insurance Company.	Gross premiums, 1912 (6 mo.)	Submitted to the Court Pending.
New York & Pennsylvania Company,	C. S. 1909, ...	Paid.
New York & Pennsylvania Company,	C. S. 1910, ...	Paid.
New York & Pennsylvania Company,	C. S. 1911, ...	Paid.
New York & Pennsylvania Company,	C. S. 1912, ...	Paid.
Spring Brook Water Supply Company.	C. S. 1912, ...	Paid.
Norristown Insurance & Water Company.	Tax one-half dividends in excess of 12%, year 1910.	Pending.
Norristown Insurance & Water Company.	Tax one-half dividends in excess of 12%, year 1911.	Pending.
Erie Railroad Company, ...	C. S. 1912, ...	Paid.
The Delaware & Hudson Company, ..	C. S. 1911, ...	Paid.
Columbus & Erie Railroad Company,	C. S. 1912, ...	Paid.
Buffalo, Bradford & Pittsburgh Railroad Company.	C. S. 1912, ...	Paid.
Northwestern Mining & Exchange Company.	C. S. 1912, ...	Paid.
Blossburg Coal Company, ...	C. S. 1912, ...	Paid.
New York, Lake Erie & Western Coal & Railroad Company.	C. S. 1912, ...	Paid.
Jefferson Railroad Company, ...	C. S. 1912, ...	Paid.
Jefferson Railroad Company, ...	L. 1912, ...	Paid.
Nypano Railroad Company, ...	C. S. 1912, ...	Paid.
Wilkes-Barre & Eastern Railroad Company.	C. S. 1912, ...	Paid.
Erie & Wyoming Valley Railroad Company.	C. S. 1912, ...	Paid.
New York, Susquehanna & Western Coal Company.	C. S. 1912, ...	Paid.
Erie Land & Improvement Company,	C. S. 1912, ...	Paid.
Metropolitan Life Insurance Company.	Gross premiums, 1911.	Submitted to the Court Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
Metropolitan Life Insurance Company.	Gross premiums, 1912.	Submitted to the Court Pending.
Dupont Land Company, ...	L. 1911, ...	Submitted to the Court Pending.
American Lime & Stone Company, ..	Bonus on increase	Submitted to the Court Pending.
Custer City Chemical Company, ...	C. S. 1912, ...	Pending.
Wilkes-Barre & Hazleton Railroad Company.	L. 1901, ...	Submitted to the Court Pending.
Wilkes-Barre & Hazleton Railroad Company.	L. 1902, ...	Submitted to the Court Pending.
Wilkes-Barre & Hazleton Railroad Company.	L. 1903, ...	Submitted to the Court Pending.
Wilkes-Barre & Hazleton Railroad Company.	L. 1904, ...	Submitted to the Court Pending.
Wilkes-Barre & Hazleton Railroad Company.	L. 1905, ...	Submitted to the Court Pending.
John Baizley Iron Works Company,	L. 1908 & 1909, ..	Paid.
Western New York & Pennsylvania Railway Company.	L. 1910, ...	Paid.
Philadelphia, Baltimore & Washington Railroad Company.	L. 1910, ...	Paid.
Philadelphia & Baltimore Central Railroad Company.	L. 1910, ...	Paid.
Allegheny Valley Railway Company,	L. 1910, ...	Paid.
Pennsylvania Railroad Company, ...	L. 1910, ...	Paid.
Northern Central Railway Company,	L. 1910, ...	Paid.
Logan Valley Store Company, ...	C. S. 1912, ...	Paid.
Logan Valley Store Company, ...	Bonus on increase	Verdict for defendant.
Consolidated Telephone Companies of Pennsylvania.	L. 1907, ...	Discontinued.
Consolidated Telephone Companies of Pennsylvania.	L. 1908, ...	Discontinued.
Consolidated Telephone Companies of Pennsylvania.	L. 1912, ...	Discontinued.
Greensboro Gas Company, a Corporation.	C. S. 1912, ...	Paid.
United Cigar Stores Company, ...	Bonus, ...	Pending.
George B. Barrett Company, ...	C. S. 1912, ...	Discontinued.
G. J. Littlewood & Sons, Limited, ..	C. S. 1911, ...	Submitted to the Court Pending.
G. J. Littlewood & Sons, Limited, ..	C. S. 1912, ...	Submitted to the Court Pending.
The Penn Mutual Life Insurance Company.	Gross premiums, 1913 (6 mo.)	Submitted to the Court Pending.
Lehigh Valley Railroad Company, ..	L. 1912, ...	Paid.
American District Telegraph Company of Pennsylvania.	C. S. 1912, ...	Paid.
Alden Coal Company, ...	C. S. 1912, ...	Paid.
Speck-Marshall Company, ...	C. S. 1912, ...	Pending.
Dempseytown Gas Company, ...	C. S. 1912, ...	Judgment in favor of the Commonwealth.
Cambria & Clearfield Railway Company.	L. 1912, ...	Paid.
Cambria & Clearfield Railway Company.	L. 1913 (3 mo.), ..	Paid.
Northern Central Railway Company,	L. 1912, ...	Paid.
Belvidere Delaware Railroad Company.	L. 1912, ...	Paid.
Connecting Railway Company, ...	L. 1912, ...	Paid.
Harrisburg, Portsmouth, Mount Joy & Lancaster Railroad Company.	L. 1912, ...	Paid.
Philadelphia, Baltimore & Washington Railroad Company.	L. 1912, ...	Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
Delaware River Railroad & Bridge Company.	L. 1912, ...	Paid.
Western New York & Pennsylvania Railway Company.	L. 1912, ...	Paid.
Bellefonte Lime Company, ...	C. S. 1912, ...	Submitted to the Court Pending.
Valley Smokeless Coal Company, ...	C. S. 1912, ...	Paid.
Erie & Western Tranportation Company.	L. 1912, ...	Paid.
Columbia & Port Deposit Railway Company.	L. 1912, ...	Paid.
The Independent Refining Company, Limited.	C. S. 1912, ...	Judgment for defendant
Lehigh Coal & Navigation Company,	L. 1912, ...	Paid.
Lehigh Coal & Navigation Company,	C. S. 1912, ...	Paid.
Delaware, Lackawanna & Western Railroad Company.	C. S. 1912, ...	Paid.
New York, Chicago & St. Louis Railway Company.	L. 1911, ...	Paid.
Pittsburgh Wool Company, ...	C. S. 1913, ...	Discontinued.
Lehigh Valley Coal Company, ...	L. 1912, ...	Paid.
Pennsylvania & New York Canal & Railroad Company.	L. 1912, ...	Paid.
Geneva, Corning & Southern Railroad Company.	L. 1912, ...	Paid.
Lake Shore & Michigan Southern Railway Company.	L. 1912, ...	Paid.
Johnstown Water Company, ...	L. 1912, ...	Paid.
Beech Creek Railroad Company, ...	L. 1912, ...	Paid.
Bethlehem Steel Products Company,	C. S. 1912, ...	Paid.
Bell Asbestos Mines Company, ...	C. S. 1912, ...	Paid.
Colonial Collieries Company, ...	C. S. 1912, ...	Paid.
Brothers Valley Coal Company, ...	C. S. 1912, ...	Paid.
The Delaware & Hudson Company,..	C. S. 1912, ...	Paid.
Lehigh & Wilkes-Barre Coal Company.	C. S. 1912, ...	Paid.
American Ice Company of New Jersey.	C. S. 1912, ...	Paid.
Greensboro Gas Company, ...	C. S. 1911, ...	Verdict for defendant
Robesonia Iron Company, Ltd., ...	C. S. 1912, ...	Paid.
New York Central & Hudson River Railroad Company.	C. S. 1912, ...	Paid.
Midvalley Coal Company, ...	C. S. 1912, ...	Paid.
John T. Dyer Quarry Company, ...	C. S. 1912, ...	Submitted to the Court Pending.
Philadelphia Mortgage & Trust Company.	Tax on shares 1913	Paid.
Manufacturers Electric Company of Philadelphia.	C. S. 1912, ...	Paid.
The Penn Mutual Life Insurance Company.	Gross premiums, 1913 (6 mo.)	Pending.
Westmoreland Coal Company, ...	C. S. 1912, ...	Pending.
Spring Brook Water Supply Company.	C. S. 1913, ...	Paid.
Dupont Land Company, ...	L. 1912, ...	Paid.
Luzerne County Crushed Stone Company.	C. S. 1912, ...	Pending.
Massillon Stone & Fire Brick Company.	C. S. 1912, ...	Pending.
Massillon Stone & Fire Brick Company.	C. S. 1913, ...	Pending.
Buffalo & Lake Erie Traction Company.	C. S. 1912, ...	Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
Jamestown, Franklin & Clearfield Railroad Company.	L. 1912, ...	Paid.
Alden Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Buck Run Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Darkwater Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Upper Lehigh Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
J. S. Wentz & Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Midvalley Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Maryd Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Northern Coal & Iron Company, ...	C. S. 1912, ...	Submitted to the Court Pending.
Lackawanna Iron & Steel Company,..	C. S. 1912, ...	Submitted to the Court Pending.
Dodson Coal Company, ...	Coal tax 1913, ...	Submitted to the Court Pending.
Bergner & Engle Brewing Company,	C. S. 1913, ...	Paid.
Midland Improvement Company, ...	C. S. 1913, ...	Pending.
Crucible Coal Company, ...	C. S. 1913, ...	Pending.
Mill Creek Coal Company, ...	Coal tax 1913, ...	Pending.
Alliance Coal Mining Company, ...	Coal tax 1913, ...	Pending.
Oxford Coal Company, ...	Coal tax 1913, ...	Pending.
Wilkes-Barre Colliery Company, ...	Coal tax 1913, ...	Pending.
Colonial Collieries Company, ...	Coal tax 1913, ...	Pending.
Thomas Colliery Company, ...	Coal tax 1913, ...	Pending.
Harleigh-Brookwood Coal Company,	Coal tax 1913, ...	Pending.
Lehigh Coal & Navigation Company,	Coal tax 1913, ...	Pending.
Delaware, Lackawanna & Western Railroad Company.	Coal tax 1913, ...	Pending.
Coxe Brothers & Company, Inc., ..	Coal tax 1913, ...	Pending.
Hudson Coal Company, ...	Coal tax 1913, ...	Pending.
Scranton Coal Company, ...	Coal tax 1913, ...	Pending.
Dolph Coal Company, Ltd., ...	Coal tax 1913, ...	Pending.
Hillside Coal & Iron Company, ...	Coal tax 1913, ...	Pending.
Pennsylvania Coal Company, ...	Coal tax 1913, ...	Pending.
Northwest Coal Company, ...	Coal tax 1913, ...	Pending.
Forty Fort Coal Company, ...	Coal tax 1913, ...	Pending.
West End Coal Company & Melville Coal Company.	Coal tax 1913, ...	Pending.
Mount Lookout Coal Company, ...	Coal tax 1913, ...	Pending.
Lackawanna Coal Company, Ltd., ..	Coal tax 1913, ...	Pending.
Sterrick Creek Coal Company, ...	Coal tax 1913, ...	Pending.
St. Clair Coal Company, ...	Coal tax 1913, ...	Pending.
Lehigh & Wilkes-Barre Coal Company.	Coal tax 1913, ...	Pending.
Green Ridge Coal Company, ...	Coal tax 1913, ...	Pending.
Price-Pancoast Coal Company, ...	Coal tax 1913, ...	Pending.
Lehigh Valley Coal Company, ...	Coal tax 1913, ...	Pending.
Connell Anthracite Mining Company,	Coal tax 1913, ...	Pending.
Clearview Coal Company, ...	Coal tax 1913, ...	Pending.
Enterprise Coal Company, ...	Coal tax 1913, ...	Pending.
Plymouth Coal Company, ...	Coal tax 1913, ...	Pending.
Archbald Coal Company, ...	Coal tax 1913, ...	Pending.
Kingston Coal Company, ...	Coal tax 1913, ...	Pending.
Charles M. Dodson & Company, ...	Coal tax 1913, ...	Pending.
Harwood Coal Company, ...	Coal tax 1913, ...	Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
G. B. Markle Company, ...	Coal tax 1913, ...	Pending.
Susquehanna Coal Company, ...	Coal tax 1913, ...	Pending.
East Boston Coal Company, ...	Coal tax 1913, ...	Pending.
Shipman Koal Company, ...	Coal tax 1913, ...	Pending.
Lytle Coal Company, ...	Coal tax 1913, ...	Pending.
Mineral Railroad & Mining Company,	Coal tax 1913, ...	Pending.
Summit Branch Mining Company, ..	Coal tax 1913, ...	Pending.
O'Boyle, Foy Anthracite Coal Company.	Coal tax 1913, ...	Pending.
Philadelphia & Reading Coal & Iron Company.	Coal tax 1913, ...	Pending.
Spencer Coal Company, ...	Coal tax 1913, ...	Pending.
Wilkes-Barre, McTurk Coal Company.	Coal tax 1913, ...	Pending.
Hazle Mountain Coal Company, ...	Coal tax 1913, ...	Pending.
Moosic Mountain Coal Company, ...	Coal tax 1913, ...	Pending.
Mt. Jessup Coal Company, Ltd., ...	Coal tax 1913, ...	Pending.
Wilkes-Barre Anthracite Coal Company.	Coal tax 1913, ...	Pending.
The Raub Coal Company, ...	Coal tax 1913, ...	Pending.
Nagle Engine & Boiler Works, ...	C. S. 1911 & 1912,	Pending.
Nagle Engine & Boiler Works, ...	C. S. 1913, ...	Pending.
Union Stone Company, ...	C. S. 1911, ...	Pending.
Union Stone Company, ...	C. S. 1912, ...	Pending.
Union Stone Company, ...	C. S. 1913, ...	Pending.
Bessimer Coke Company, ...	C. S. 1912, ...	Pending.
Bessimer Coke Company, ...	C. S. 1913, ...	Pending.
Beaver County Light Company, ...	L. 1912, ...	Pending.
Beaver County Light Company, ...	C. S. 1912.	Pending.
Hector Coke Company, ...	L. 1912, ...	Pending.
Wilkes-Barre Railway Company, ...	C. S. 1912, ...	Pending.
Paper Manufacturing Company, Inc.,	C. S. 1912.	Pending.
Pottsville Water Company, ...	Tax on net income, 1912.	Pending.
Eastern Pennsylvania Light, Heat & Power Company.	C. S. 1912, ...	Pending.
Eastern Pennsylvania Railways Company.	C. S. 1912, ...	Pending.
Wilkes-Barre & Wyoming Valley Traction Company.	C. S. 1912, ...	Pending.
United States Pipe Line Company, ..	C. S. 1912, ...	Pending.
Keystone Telephone Company of Philadelphia.	C. S. 1912, ...	Pending.
United Traction Company, Reading,	C. S. 1912, ...	Verdict in favor of Commonwealth.
Pittsburgh Dry Goods Company, ...	C. S. 1912, ...	Verdict in favor of Commonwealth.
Edison Electric Illuminating Company, Lebanon.	C. S. 1912, ...	Verdict in favor of Commonwealth.
Winton Water Company, ...	C. S. 1912, ...	Pending.
Schuylkill Valley Traction Company,	C. S. 1913, ...	Pending.
Logan Coal Company, ...	C. S. 1912, ...	Pending.
South Fork Coal Mining Company, ..	C. S. 1912, ...	Pending.
Cherry River Boom & Lumber Company.	L. 1913, ...	Pending.
Cherry River Paper Company, ...	L. 1913, ...	Pending.
Scranton Vitrified Brick & Tile Manufacturing Company.	C. S. 1913, ...	Paid.
Scranton Vitrified Brick & Tile Manufacturing Company.	L. 1913, ...	Verdict for defendant.
The Miles Land Company, ...	C. S. 1913, ...	Appeal stricken off.
South Lincoln Land Company, ...	C. S. 1913, ...	Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1913.

Name.	Nature of Claim.	Remarks.
Penn Traffic Company, ...	C. S. 1912, ...	Pending.
Pennsylvania Heat, Light & Power Company.	C. S. 1912, ...	Pending.
Gimbel Brothers, Incorporated, ...	C. S. 1912, ...	Pending.
Philadelphia Electric Company, ...	C. S. 1912, ...	Pending.
The United Gas Improvement Company.	C. S. 1912, ...	Pending.
John B. Stetson Company, ...	C. S. 1912, ...	Pending.
Standard Underground Cable Company.	C. S. 1912, ...	Pending.
Keystone Coal & Coke Company, ...	C. S. 1912, ...	Paid.
Hudson Coal Company, ...	C. S. 1912, ...	Pending.
Mountain Coal Company, ...	C. S. 1912, ...	Pending.
Bell Telephone Company of Pennsylvania.	C. S. 1912, ...	Pending.
The Central District Telephone Company, formerly The Central District & Printing Telegraph Company.	C. S. 1912, ...	Pending.
Provident Life & Trust Company of Philadelphia.	Gross premiums, 1913 (6 mo.)	Pending.
Provident Life & Trust Company of Philadelphia.	Gross premiums, 1913 (6 mo.)	Pending.
Jersey Shore Water Company, ...	C. S. 1913, ...	Pending.
Reynoldsville Water Company, ...	C. S. 1913, ...	Pending.
York County Consolidated Water Company.	C. S. 1913, ...	Pending.
Punxsutawney Water Company, ...	C. S. 1913, ...	Pending.
Lindsey Water Company, ...	C. S. 1912, ...	Pending.
Lindsey Water Company, ...	L. 1912, ...	Pending.
Edison Electric Light Company of Philadelphia.	C. S. 1912, ...	Pending.
Norwich Lumber Company, ...	C. S. 1912, ...	Pending.
Goodyear Lumber Company, ...	C. S. 1912, ...	Pending.
Schuylkill Coal & Iron Company, ...	C. S. 1912, ...	Pending.
Pittsburgh Crucible Steel Company,..	L. 1913, ...	Pending.
Pittsburgh Coal Mining Company, ...	Coal tax 1913, ...	Pending.
Juniata White Sand Company, ...	C. S. 1913, ...	Pending.
Speck-Marshall Company, ...	C. S. 1913, ...	Pending.
The Provident Life & Trust Company of Philadelphia.	Gross premiums, 1914 (6 mo.)	Pending.
Lake Shore & Michigan Southern Railway Company.	C. S. 1912, ...	Paid.
Greenough Red Ash Coal Company,	Coal tax 1913, ...	Pending.
Pine Hill Coal Company, ...	Coal tax 1913, ...	Pending.
West Nanticoke Coal Company, ...	Coal tax 1913, ...	Pending.

SCHEDULE D.

LIST OF THE CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1913 AND 1914.

Commonwealth of Pennsylvania, Appellant, vs. Philadelphia Manufacturers' Mutual Fire Insurance Company. Reported in 242 Pa. 203,.....Affirmed.

Commonwealth of Pennsylvania, Appellant, vs. Highspire Distillery Company, Limited. Reported in 242 Pa. 199, ..Reversed.

Commonwealth of Pennsylvania, vs. Consolidated Dressed Beef Company, Appellant. Reported in 242 Pa. 163, ...Affirmed.

Commonwealth of Pennsylvania, vs. Dilworth, Porter & Company, Limited, Appellant. Reported in 242 Pa. 194,..Reversed.

Commonwealth of Pennsylvania, vs. Dilworth, Porter & Company, Limited, Appellant. Reported in 242 Pa. 194,..Reversed.

Commonwealth of Pennsylvania, vs. Dilworth, Porter & Company, Limited, Appellant. Reported in 242 Pa. 194,..Reversed.

Commonwealth of Pennsylvania, vs. Dilworth, Porter & Company, Limited, Appellant. Reported in 242 Pa. 194,..Reversed.

Commonwealth of Pennsylvania Ex rel. John C. Bell, Attorney General vs. The Reliance Safe Deposit and Trust Company, Appellant. Reported in 242 Pa. 177, ...Affirmed.

Commonwealth of Pennsylvania vs. The Fidelity and Deposit Company of Maryland, Appellant. Reported in 244 Pa. 67, Affirmed.

Appeal taken to U. S. Supreme Court.

State Highway Commissioner, Petitioner, vs. The President and Managers of The Chambersburg and Bedford Turnpike Road Company, Respondents, Appellants. Appeal of Respondents from order of Q. S. of Fulton County, January Sessions, 1913. Reported in 242 Pa. 171, ...Decree Affirmed

Commonwealth of Pennsylvania, ex rel. M. Hampton Todd, Attorney General, Appellant, vs. The Philadelphia Contributionship for the Insurance of Houses from Loss by Fire. Reported in 242 Pa. 209, ...Affirmed.

Commonwealth of Pennsylvania, vs. Lehigh Valley Railroad Company, Appellant. Reported in 244 Pa. 241, ...Affirmed.

Commonwealth of Pennsylvania, Appellant, vs. Barrett Manufacturing Company. Reported in 246 Pa. 301, ...Affirmed.

Commonwealth of Pennsylvania, ex rel. Thomas Ross, Appellant, vs. Robert McAfee, Secretary of the Commonwealth, ...Judgment of Non-Pros.

John Cadwalder, Jr., et al., Appellants, vs. Robert McAfee, Secretary of the Commonwealth, ...Judgment of Non-Pros.

Commonwealth of Pennsylvania, ex rel. M. Hampton Todd, Attorney General, vs. Traders' and Mechanics' Bank of Pittsburgh. Appeal of William C. Hagan, ...Reversed.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, Appellants, vs. City of Pottsville, a municipal corporation and F. Pierce Mortimer, et al. Reported in 246 Pa. 468,.....Affirmed.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Samuel M. Hyneman. Amicable action of Quo Warranto. Reported in 242 Pa. 244, ...Judgment of Ouster.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Thomas D. Finletter. Amicable action of Quo Warranto. Reported in 242 Pa. 266, ...Judgment of Ouster.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. William M. Stewart, Jr. Amicable action of Quo Warranto. Reported in 242 Pa. 267, ...Judgment of Ouster.

SCHEDULE D—Concluded.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Joseph P. McCullen. Amicable action of Quo Warranto. Reported in 242 Pa. 267, ...Judgment of Ouster.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. D. Webster Dougherty. Amicable action of Quo Warranto. Reported in 242 Pa. 268, ...Judgment of Ouster.

The Provident Life & Trust Company of Philadelphia, vs. Blakely D. McCaughn, et al. Assessors, and Simon G. Gratz, et al. members of the Board of Revision of Taxes of the City and County of Philadelphia, Appellants. Reported in 245 Pa. 370, ...Reversed.

Trustees of the State Hospital for the Insane at Danville, Pa., Appellant, vs. County of Lycoming. Reported in 239 Pa. 402, ...Affirmed.

Trustees of the State Hospital for the Insane at Danville, Pa. Appellant vs. County of Northumberland, ...Judgment of Non Pros.

Commonwealth of Pennsylvania vs. Isadore S. Grossman, and Joseph H. Reich, Appellants. Reported in 248 Pa. 11,Affirmed.

John C. Winston et al. Appellants, vs. Robert J. Moore, et al. County Commissioners for the City of Philadelphia, Defendants and Commonwealth of Pennsylvania, intervening defendant. Reported in 244 Pa. 447,.....Affirmed.

Henry Gerlach, Appellant, vs. Robert J. Moore, et al. County Commissioners for the city of Philadelphia, Defendants, and the Commonwealth of Pennsylvania, intervening defendant. Reported in 243 Pa. 603, ...Affirmed.

CASE ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA DURING THE YEARS 1913 AND 1914.

Commonwealth of Pennsylvania vs. C. W. Burtnett, Appellant. Argued at Philadelphia, October, 1914.

LIST OF CASES ARGUED IN THE SUPREME COURT OF THE UNITED STATES DURING THE YEARS 1913 AND 1914.

The Plymouth Coal Company, Plaintiff in Error, vs. The Commonwealth of Pennsylvania, David T. Davis, Inspector of Mines, Defendants in Error. Appeal from the judgment of the Supreme Court of Pennsylvania, reported in 232 Pa. 141. Argued at Washington, January 15, 1914. Reported in 232 U. S. 531, ...Reversed.

Joseph Patsone, Plaintiff in Error, vs. Commonwealth of Pennsylvania, Defendant in Error. Appeal from the judgment of the Supreme Court of Pennsylvania. Reported in 231 Pa. 46. Reported in 232 U. S. 138, ...Affirmed.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. A. W. Powell, Auditor General, and Robert K. Young, State Treasurer, Appellants. To be heard at Philadelphia, January Term, 1915.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Tradesmen's Trust Company, Appeal of George H. Sherwood. To be heard at May Term, 1915.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, Appellant, vs. Neva. R. Deardorff. To be heard at May Term, 1915.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Tradesmen's Trust Company. Appeal of Franklin Spencer Edmonds, et al. To be heard at May Term, 1915.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Tradesmen's Trust Company. Appeal of "The Hill School." To be heard at May Term, 1915.

CASES PENDING IN THE SUPERIOR COURT OF PENNSYLVANIA.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Tradesmen's Trust Company. Appeal of William Bryant. To be heard March Term, 1915.

Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General vs. Tradesmen's Trust Company. Appeal of Charles E. Kachline. To be heard March Term, 1915.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF THE UNITED STATES.

The Equitable Life Assurance Society of the United States, Plaintiff in Error vs. Commonwealth of Pennsylvania, Defendant in Error. Appeal from judgment of Supreme Court of Pennsylvania. Reported in 239 Pa. 288.

Thomas W. McComb, Plaintiff in Error vs. Commonwealth of Pennsylvania, Defendant in Error. Appeal from judgment of the Supreme Court of Pennsylvania. Reported in 227 Pa. 377.

The Fidelity and Deposit Company of Maryland, Plaintiff in Error vs. The Commonwealth of Pennsylvania, Defendant in Error. Appeal from judgment of Supreme Court of Pennsylvania. Reported in 244 Pa. 67.

SCHEDULE E.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1913 AND 1914.

Name of Defendant.	Nature of Claim.	Remarks.
Berlin Water Company, ...	C. S. 1911-L. 1911.	Paid.
Bickford Fire Brick Company, ...	C. S. 1911-L. 1911.	Paid.
George S. Dougherty Company, ...	C. S. 1911, ...	Paid.
Donora Brewing Company, ...	C. S. 1911, ...	Paid.
Dairy Block Apartment Company, ..	Bonus on Increase	Paid.
Hanover & McSherrystown Water Company.	C. S. 1910-1911,. L. 1910-1911,.....	Tax Paid.
Pittsburgh-Westmoreland Coal Company.	C. S. 1910-L. 1910.	Paid.
Pennsylvania Marble & Granite Company.	L. 1910-1911, ...	Partly Paid.
Meadville Telephone Company, ...	C. S. 1910-1911,.. L. 1910-1911,..... Gross Receipts, 1911-1912.	Paid.
Lyman Tire & Rubber Company, ...	C. S. 1911-L. 1911.	Paid.
Valley Smokeless Coal Company, formerly Valley Coal & Stone Company.	C. S. 1902-1910-1911. L. 1910-1911,.....	Paid.
West End Land Company, Pittsburgh.	C. S. 1911-L. 1911.	Paid.
F. C. Smith Company, Ltd., ...	C. S. 1898 to 1910.	Sheriff returns N. E. I.
Termon Land Company, ...	C. S. 1911-L. 1911.	Sheriff returns nihil habet.
Freeport Planing Mill Company, ...	C. S. 1903 to 1910.	Paid.
Westmoreland Printing & Publishing Company.	L. 1908-1909, ...	Tax re-settled and stricken off.
Johnstown Savings Bank, a Corporation.	.....	Praecipe filed but no statement.
Dollar Savings Bank, a Corporation,	.....	Praecipe filed but no statement.
Sunbury Bridge Company, ...	C. S. 1911-L. 1911.	Paid.
Central Amusement Company, ...	C. S. 1909-1910-1911. L. 1909, .	Sheriff returns N. E. I.
George E. Burrows Company, ...	C. S. 1909-1910-1911. L. 1909-1910-1911,	Judgment in favor of Commonwealth.
Frank Sweeney Company, Ltd., ...	C. S. 1907 to 1911.	Sheriff returns nihil habet.
Provident Silk Company, ...	Bonus on Increase.	Judgment in favor of Commonwealth.
Indian Creek Valley Railway Company.	L. 1911, ...	Tax Paid.
Kushequa Brick Company, ...	C. S. 1910-1911,.. L. 1910-1911, ...	Pending.
Howard Brick Company, ...	Bonus on Increase.	Paid.
Freeland Brewing Company, ...	Bonus, ...	Judgment in favor of Commonwealth.
Pittsburgh-Cambria Coal Company,..	Bonus, ...	Sheriff returns nihil habet.
Sykesville Clay Product Company, ..	Bonus, ...	Paid.
Watson Ordinance Company, ...	Bonus, ...	Sheriff returns nihil habet.

SCHEDULE E—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1913 AND 1914.

Name of Defendant.	Nature of Claim.	Remarks.
North Pittsburgh Realty Company,..	Bonus on Increase.	Paid.
Monongahela Valley Brewing Company.	Bonus on Increase.	Paid.
Joseph F. Mack Silk Company, ...	Bonus on Increase.	Paid.
Juniata Valley Electric Company,....	C. S. 1907 to 1911.	Sheriff returns nihil habet.
Boro. of Farrell, Mercer County, ...	Penalties imposed by State Commissioner of Health.	Pending.
Blair Clothing Company, ...	C. S. 1909, ...	Paid.
Erie Bill Posting Company, ...	C. S. 1910-L. 1910.	Paid.
Pottsville Brewing Company, ...	Bonus on Increase.	Sheriff returns nulla bona on execution.
Enterprise Contracting Company, ...	C. S. 1911, ...	Paid.
Erie & Central Pennsylvania Railway Company.	C. S. 1911, ...	Paid.
Burns & Burd Company, ...	C. S. 1909-1910-1911.	Claim withdrawn after suit brought.
Burr-Herr Company, ...	C. S. 1909, ...	Sheriff returns N. E. I.
Mercer Oil & Gas Company, ...	C. S. 1911, ...	Paid.
Penn Lime Products Company, ...	C. S. 1909-1910-1911-1912.	Paid.
A. G. Breitweiser Company, ...	C. S. 1910-1911,..	Pending.
G. L. Whitehead Coal Company, ...	C. S. 1911, ...	Judgment in favor of the Commonwealth.
Provident Realty Company, ...	C. S. 1910-1911,.. L. 1906-1910-1911,	Paid.
Blairsville Enamel Company, ...	Bonus, ...	Judgment in favor of the Commonwealth.
Williamsport & North Branch Railroad Company.	C. S. 1909-1911,.. L. 1910, ... G. R. 1910-1911,.	Partly Paid.
Waynesburg Improvement Company.	C. S. 1900 to 1909. L. 1900 to 1909,..	Paid.
Glendale Land Company, ...	C. S. 1910-1911, .	Judgment in favor of the Commonwealth.
Conshohocken, Chestnut Hill, Jenkintown & Bustleton Street Railway Company.	C. S. 1909, ... L. 1909, ... G. R. 1909-1910,.	Sheriff returns nihil habet.
Clarion & East Brady Electric Railway Company.	C. S. 1910, ...	Judgment in favor of the Commonwealth.
Moss Distilling Company, ...	Bonus, ...	Paid.
Freeport Planing Mill Company, ...	C. S. 1902, ...	Paid.
George E. Etter, Trustee, ...	Case stated, ...	Judgment in favor of the Commonwealth.
Pittsburgh & New Orleans Coal Company.	C. S. 1911, ... L. 1911, ...	Judgment in favor of Commonwealth.
Union Park Land Company, ...	C. S. 1911, ... L. 1911, ...	Paid.
Haltzell Furniture Company, ...	C. S. 1911, ...	Judgment in favor of the Commonwealth.
Conococheaqua Electric Light, Heat & Power Company.	C. S. 1912, ... G. R. 1912, (6 Mo.).	Paid.
Anthracite Lumber Company, ...	C. S. 1909-1910-1911-1912.	Paid.
Beaver Valley Country Club, ...	L. 1910-1911-1912,	Paid.

SCHEDULE E—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1913 AND 1914.

Name of Defendant.	Nature of Claim.	Remarks.
Afro-American Mercantile Association.	C. S. 1907-1908-1909-1910, L. 1912. Penalty,	Sheriff returns nulla bona to execution.
Bill Pritts Distillery Company, ...	C. S. 1911, ...	Paid.
Dunn Coal Company, ...	C. S. 1911-1912,..	Judgment in favor of the Commonwealth.
California Provision Company, ...	C. S. 1912, ...	Paid.
Charleroi Paving & Construction Company.	C. S. 1909 to 1912.	Judgment in favor of the Commonwealth.
American Mechanics Hall Association.	C. S. 1910-1911,..	Paid.
Brilliant Light Oil Company, ...	C. S. 1910-1911-1912.	Judgment in favor of the Commonwealth.
J. M. Poorbaugh Company, ...	L. 1910-1911-1912, C. S. 1909-1910-1911- 1912 -L. 1909.	Sheriff returns nulla bona to execution.
John Evans & Elizabeth McNally, ..	Case stated, ...	Judgment for the defendants.
Kittanning & Leechburg Railways Company.	C. S. 1909,..... G. R. 1910 (6 Mo.).	Pending.
Mechanicsburg Gas & Water Company.	C. S. 1909, ...	Paid.
Henricks Piano Company, Ltd., ...	C. S. 1906-1909-1910- 1911- 1912-1913.	Tax Paid.
Pottstown & Reading Street Railway Company.	C. S. 1907-1908-1909. G. R. 1907-1908-1909-1910,	Defunct.
Valley Iron Works, ...	1911.	Paid.
Citizens Water Company, Tower City.	C. S. 1905-1906-1907-1908-1909. L. 1905-1906-1907-1908-1909.	Pending.
Hillsdale Coal & Coke Company, ...	C. S. 1910-1911,.. L. 1910-1911, ...	Paid.
Hanover Electric Power & Heating Company.	C. S. 1906-1907-1908-1909-1910.	Pending.
Harrisburg & Cumberland Electric Railway Company.	C. S. 1901 to 1908,	Sheriff returns nihil habet.
International Coal Mining Company,	C. S. 1899 to 1909,	Company in hands of Trustee in bankruptcy.
Latrobe Ice & Provision Company,	Bonus, ...	Paid.
Monongahela Tie & Lumber Company.	C. S. 1908-1909-1910-1911.	Pending.
Union Park Land Company, ...	C. S. 1910-1912-1913. L. 1910, ...	Pending.
French Creek Railway Company, ...	C. S. 1898 to 1909,	Sheriff returns nihil habet.
Schuylkill Railway Company, ...	G. R. 1907-1908-1909.	Partly paid.
West End Land Company, Shippensburg.	C. S. 1911, ...	Pending.
West Land Company, Ltd., ...	C. S. 1906 to 1910,	Pending.
Pennsylvania Building Company, ...	C. S. 1909, ...	Pending.
High House Coal & Coke Company,..	C. S. 1905 to 1913, L. 1905 to 1913,	Pending.
Dale Light, Heat & Power Company,	C. S. 1912,..... G R. 1912 (6 Mo.).	Paid.
Boro. of Coudersport, Potter County,	Penalties imposed by the State Commissioner of Health.	Pending.

ACTIONS IN ASSUMPSIT AND TRESPASS BROUGHT AGAINST THE COMMONWEALTH OF PENNSYLVANIA.

H. W. Brown, et al., to the use of H. W. Brown and D. E. Brown, doing business as The Woodman Lumber Company, Plaintiffs.
Judgment in favor of Plaintiffs for $38,000, ...Paid.

William Phelps, claim against the State Treasurer for unclaimed deposit which had escheated.
Judgment in favor of the Plaintiff for $84.38, ...Paid.

Robert Stewart, claim for labor while in the employ of the Board of Public Grounds and Buildings, ...Pending.

D. L. Saul and Flora W. Saul, claim in an action of trespass for injuries sustained in the State Capitol Building, by Flora W. Saul, one of the Defendants, ...Pending.

Boyd L. Hunter, claim in an action of trespass for damages arising from the death of his son, Robert C. Hunter, while in the employ of the Commonwealth, ...Pending.

Michael Curran, claim for labor performed while in the employ of the State Highway Department, ...Pending.

SCHEDULE F.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
John Cadawalader, Jr., Joseph W. Catharine, Walter C. Douglas, Jr., James E. Gorman, Francis A. Lewis, Louis B. Runk, Samuel B. Scott, Lewis A. VanDusen and T. Henry Walnut, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Subsequently petition dismissed. On appeal to Supreme Court judgment of non-pros entered.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, vs. A. W. Powell, Auditor General of the State of Pennsylvania.	Peremptory mandamus awarded. Answer filed. Pending.
Commonwealth of Pennsylvania ex rel. Thomas Ross, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Subsequently petition dismissed. On appeal to Supreme Court judgment of non-pros entered.
Commonwealth of Pennsylvania ex rel. Max Aron, vs. Archibald W. Powell, Auditor General.	Alternative mandamus awarded. The Court adjudged the relator to be entitled to a warrant for the amount appropriated but no peremptory mandamus was directed to be issued.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General. vs. A. W. Powell, Auditor General, and Robert K. Young State Treasurer of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. An issue was framed and special verdict entered in favor of the Plaintiff. Peremptory mandamus awarded. Pending on appeal to the Supreme Court.

SCHEDULE F.—Continued.

MANDAMUS PROCEEDINGS—Continued.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General. vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Subsequently peremptory mandamus awarded.
William B. Wells, et al., and others who may wish to join in the proceedings as parties, Plaintiff, vs. James E. Roderick, Chief of the Department of Mines in Pennsylvania, Defendant.	Alternative mandamus awarded. Return of defendant filed. Pending.
Commonwealth of Pennsylvania ex rel. Indiana Normal School of Pennsylvania. vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Pending.
Commonwealth of Pennsylvania ex rel. Mary G. Brackney, vs. William H. Smith, Commissioner of Banking.	Alternative mandamus awarded. Return of defendant filed. Pending.

SCHEDULE G.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, vs. Greensboro Gas Company.	Bill and Answer filed. Pending.
Commonwealth of Pennsylvania, Plaintiff, vs. Johnstown Savings Bank, a Corporation, Herman Baumer, President, and W. C. Lewis, Treasurer, of said Corporation, Defendants.	Bill and Answer filed. Pending.
Commonwealth of Pennsylvania, Plaintiff, vs. Dollar Savings Bank, a Corporation, A. Wensel Pollock, President, Stephen C. McCandless, Treasurer, and C. L. Cole, Secretary of said Corporation, Defendants.	Bill and demurrer filed. Pending.
The Pennsylvania Cold Storage & Market Company, The Industrial Cold Storage & Warehouse Company, The Philadelphia Warehouse & Cold Storage Company, and The Wholesale Fish Dealers Protective Association of Philadelphia, vs. N. B. Critchfield, Secretary of Agriculture of the State of Pennsylvania, and James Foust, Dairy & Food Commissioner of the State of Pennsylvania.	Bill filed. Preliminary injunction awarded. Pending.
John A. Kohr, Plaintiff, vs. Nathan C. Schaeffer, et al., acting as and constituting the Bureau of Medical Education and Licensure of the Department of Public Instruction of the Commonwealth of Pennsylvania, Defendants.	Bill filed. Preliminary injunction awarded. Proceedings discontinued.
John F. Shafer, Plaintiff, vs. Nathan C. Schaeffer, et al., acting as and constituting the Bureau of Medical Education and Licensure of the Department of Public Instruction of the Commonwealth of Pennsylvania, Defendants.	Bill filed. Preliminary injunction awarded. Proceedings discontinued.
H. Leslie Lantz, Plaintiff, vs. Nathan C. Schaeffer, et al., acting as and constituting the Bureau of Medical Education and Licensure of the Department of Public Instruction of the Commonwealth of Pennsylvania, Defendants.	Bill filed. Preliminary injunction awarded. Proceedings discontinued.

SCHEDULE G—Continued.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Jesse O. Dillon, Plaintiff, vs. Nathan C. Schaeffer, et al., acting as and constituting the Bureau of Medical Education and Licensure of the Department of Public Instruction of the Commonwealth of Pennsylvania, Defendants.	Bill filed. Preliminary injunction awarded. Proceedings discontinued.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, and Nathan C. Scheaffer, et al., Members of the State Board of Education of the Commonwealth of Pennsylvania, Plaintiffs, vs. West Chester State Normal School, a Corporation, and Albert P. Hall, et al. Trustees of the said West Chester State Normal School, Defendants.	Bill filed and temporary injunction awarded. Bill dismissed under agreement of counsel filed.
Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, Plaintiff, vs. Philadelphia & Western Railway Company, a corporation organized under the laws of the State of Pennsylvania, Thomas Newhall and Edward B. Smith, Defendants.	Bill and answers filed. Pending.
Sallie H. Matlack, Marshall H. Matlack and T. L. Eyre, Plaintiffs, vs. West Chester State Normal School, a Corporation, and Albert P. Hall, et al. Trustees of the said West Chester State Normal School, and Nathan C. Scheaffer, et al., Members of the State Board of Education of the Commonwealth of Pennsylvania, and First National Bank of West Chester, Pennsylvania, a corporation, Defendants.	Bill and answers filed in Chester County. Proceedings discontinued.
Sallie H. Matlack, Marshall H. Matlack, Elisha G. Cloud, T. L. Eyre and Robert S. Gawthrop, vs. West Chester State Normal School, a Corporation, and Albert P. Hall, et al. Trustees of the said West Chester State Normal School, and Nathan C. Scheaffer, et al., Members of the State Board of Education of the Commonwealth of Pennsylvania, and First National Bank of West Chester, Pennsylvania, a corporation, Defendants.	Bill and answers filed in Chester County. Proceedings discontinued.
Peoples Coal Company, vs. Archibald W. Powell, Auditor General of Pennsylvania, and Robert K. Young, State Treasurer of Pennsylvania.	Bill and demurrer filed. Argued. Pending.

SCHEDULE G—Continued.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Frank H. Kaylor, Plaintiff, vs. Edward M. Bigelow, State Highway Commissioner, Defendant.	Bill and answer filed. Proceedings discontinued.
James Matthews, President of District No. 9, United Mine Workers of America, vs. James E. Roderick, Chief of Department of Mines of Pennsylvania.	Bill and answer filed. Bill dismissed.
Alexander Martin and Otto G. Haussmann, Complainants, vs. John M. Baldy, et al., Members of the Bureau of Medical Education and Licensure of the Department of Public Instruction of the Commonwealth of Pennsylvania, and together constituting said Bureau, John M. Baldy as President of said Bureau and Nathan C. Schaeffer as Secretary of said Bureau, Defendants.	Bill and demurrer filed in Philadelphia County. Judgment entered in favor of the Complainants.
Edward M. Bigelow, State Highway Commissioner, Complainant, vs. Central Pennsylvania Traction Company, Defendant.	Bill, answer and replication filed. Pending.
William Millington, William H. Welsh, Complainants, vs. James E. Roderick, P. C. Fenton, et al., Defendants.	Bill filed. Temporary injunction awarded. Pending.

SCHEDULE H.

QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
Isidor Einstein,	Allowed. Suggestions filed. Proceedings discontinued.
Valley Water Storage Company,	Allowed. Suggestion filed. Pending.
Railway Electric Light, Heat & Power Company.	Allowed. Decree of ouster.
The City of Pottsville, a municipal corporation, and F. Pierce Mortimer, Mayor, Harry K. Portz, et al., Councilmen, and F. S. Freiler, et al., Aldermen, Officers of said City of Pottsville.	Allowed. Suggestion, answer and demurrer filed. Judgment on the demurrer entered in favor of the defendants. Affirmed on appeal to the Supreme Court.
Neva R. Deardorff,	Allowed. Suggestion, return and demurrer filed. Judgment on the demurrer in favor of the defendant. Pending on appeal to the Supreme Court.
Alton Coal Company,	Allowed. Decree of ouster.
Neshannock Stone Company,	Allowed. Decree of ouster.
Roaring Run Stone Company,	Allowed. Decree of ouster.
Delaware Insurance Company of Philadelphia.	Allowed. Suggestion and answer filed. The Court directed the Company to close its business on or before November 15, 1915.
Lewis Coal Company,	Allowed. Decree of ouster.
Edri Coal Company,	Allowed. Decree of ouster.
Neva R. Deardorff,	Allowed. Suggestion, answer and replication filed. Pending.
Overholt Distilling Company,	Allowed. Decree of ouster.
The Wilson Laundry Machinery Company.	Allowed. Decree of ouster.

SCHEDULE I.

PROCEEDINGS INSTITUTED AGAINST INSURANCE COMPANIES, BUILDING AND LOAN ASSOCIATIONS, BANKS AND TRUST COMPANIES.

Name.	Result.
The Guardians of America, ...	Dissolved.
American Union Fire Insurance Company.	Dissolved.
Scranton Fire Insurance Company, ...	Dissolved.
The Traveler's Benefit Association, ...	Dissolved.
The Federal Health and Accident Company.	Dissolved.
Monongahela Insurance Company, ...	Dissolved.
Banker's Protective Life & Benefit Association.	Dissolved.
Manufacturers and Merchants Mutual Fire Insurance Company.	Dissolved.
Exchange Mutual Fire Insurance Company.	Dissolved.
Provident Mutual Fire Insurance Company.	Dissolved.
United States Merchants Mutual Fire Insurance Company.	Dissolved.
The Leathermen's Mutual Fire Insurance Company of Allentown.	Dissolved.
Blair County Trust Company, ...	Order to show cause, etc. Granted. Proceedings discontinued.
Farmers & Miners Bank of Marianna, ..	Dissolved. Receiver.
First Russian Slavish Bank, ...	Dissolved. Receiver.
Employer's Indemnity Company, ...	Dissolved.
Bradford Trust Company of Bradford, Pa.	Order to show cause, etc. Granted. Answer filed. Pending.
Keystone Indemnity Company, ...	Order to show cause, etc. Granted. Pending.
Dominion Trust Company of Pittsburgh, Pa.	Dissolved. Receiver.

SCHEDULE J.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1913			
Jan. 2,	L. B. Worden, Prothonotary:		
	Docket costs in Commonwealth cases adjusted since December 20, 1912, ...	$24 00	
			$24 00
6,	Beaver Valley Water Company:		
	Capital stock, 1911, ...	$1,000 00	
	Loans, 1911, ...	981 68	
	Interest, ...	18 50	
			2,000 18
7,	Forest Gas Company:		
	Capital stock, 1911, ...	$690 00	
			690 00
	Cambria Incline Plane Company:		
	Capital stock, 1909, ...	$460 00	
	Fees of office, ...	23 00	
			483 00
13,	White Haven Water Company:		
	Capital stock, 1908, ...	$25 00	
	Fees of office, ...	1 25	
			26 25
	Black Creek Improvement Company:		
	Capital stock, 1910, ...	$300 00	
	Fees of office, ...	15 00	
			315 00
20,	Pennsylvania Hard Vein Slate Company:		
	Capital stock, 1909, ...	$25 00	
	Interest, ...	3 75	
	Capital stock, 1910, ...	25 00	
	Interest, ...	2 13	
	Loans, 1909, ...	9 50	
	Interest, ...	14	
			65 52
20,	Provident Life & Trust Company of Philadelphia:		
	Capital stock, 1910, ...	$13,471 49	
	Fees of office, ...	717 36	
	Interest, ...	875 65	
			15,064 50
	American School of Art and Photography:		
	Capital stock, 1905, ...	$16 50	
	Capital stock, 1906, ...	16 50	
	Capital stock, 1907, ...	16 50	
	Capital stock, 1908, ...	16 50	
	Interest, ...	10 23	
	Fees of office, ...	3 30	
			79 53
22,	Waynesburg, Greencastle and Mercersburg Turnpike Road Company:		
	Capital stock, 1911, ...	$287 40	
			287 40
	Hanover & McSherrystown Water Company:		
	Capital stock, 1910, ...	$25 00	
	Capital stock, 1911, ...	25 00	
	Loans, 1910, ...	1,031 84	
	Loans, 1911, ...	1,148 00	
			2,229 84
28,	Union Heat & Light Company:		
	Loans, 1911, ...	$311 60	
	Interest, ...	5 75	
			317 35
30,	Pittsburg, Westmoreland Coal Company:		
	Capital stock, 1910, ...	$4,483 74	
	Loans, 1910, ...	7,882 33	
			12,366 07

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Jan. 30,	Donora Brewing Company:		
	Capital stock, 1911,	$781 89	
	Fees of office,	39 09	
			$820 98
Feb. 6,	Truman M. Dodson Coal Company:		
	Capital stock, 1910,	$25 00	
	Fees of office,	1 25	
			26 25
6,	Walnut Run Coal Company:		
	Capital stock, 1910,	$125 00	
	Fees of office,	6 25	
			131 25
6,	Walnut Run Coal Company:		
	Capital stock, 1911,	$125 00	
	Fees of office,	6 25	
			131 25
6,	Jersey Shore Electric Street Railway Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1911,	$110 00	
	Fees of office,	5 50	
			115 50
Feb. 6,	Walnut Run Coal Company:		
	Capital stock, 1910,	$125 00	
	Fees of office,	6 25	
			131 25
6,	Walnut Run Coal Company:		
	Capital stock, 1911,	$125 00	
	Fees of office,	6 25	
			131 25
6,	Jersey Shore Electric Street Railway Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1911,	$110 00	
	Fees of office,	5 50	
			115 50
6,	Standard Steel Works Company:		
	Loans, 1910,	$300 00	
	Fees of office,	15 00	
			315 00
	Loans, 1911,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
10,	Keystone Land Company:		
	Capital stock, 1910,	$250 00	
	Capital stock, 1911,	300 00	
	Loans, 1910,	21 31	
	Loans, 1911,	7 60	
			578 91
10,	Meadow Lands Coal Company:		
	Capital stock, 1910,	$1,498 50	
	Interest,	106 39	
			1,604 89
10,	Pittsburgh & Meadow Lands Coal Company:		
	Capital stock, 1910,	$5 00	
			5 00
10,	Mt. Equity Coal & Coke Company:		
	Capital stock, 1910,	$175 00	
	Capital stock, 1911,	175 00	
	Loans, 1910,	15 96	
	Loans, 1911,	15 96	
			39 92

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Feb. 10,	Brickford Fire Brick Company:		
	Capital stock, 1911,	$218 63	
	Loans, 1911,	905 92	
	Fees of office,	56 23	
			$1,180 78
10,	International Navigation Company:		
	Capital stock, 1910,	$41 47	
	Fees of office,	2 07	
			43 54
	Capital stock, 1911,	50 00	
	Fees of office,	2 50	
			52 50
10,	Williamsport Passenger Railway Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1910,	50 00	
	Fees of office,	2 50	
			52 50
10,	Madeira Hill Coal Mining Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1911,	50 00	
	Fees of office,	2 50	
			52 50
10,	Philadelphia & Bristol Water Company:		
	Capital stock, 1910,	$275 00	
	Fees of office,	13 75	
			288 75
	Capital stock, 1911,	$275 00	
	Fees of office,	13 75	
			288 75
10,	Peoples Street Railway Company of Nanticoke and Newport:		
	Capital stock, 1910,	$125 00	
	Fees of office,	6 25	
			131 25
	Capital stock, 1911,	$62 50	
	Fees of office,	3 12	
			65 62
10,	Washburn Crosby Company:		
	Capital stock, 1910,	$67 50	
	Fees of office,	3 37	
			$70 87
10,	Merion & Radnor Gas & Electric Company:		
	Loans, 1910,	$1,444 44	
	Fees of office,	72 22	
			1,516 66
10,	Johnstown Passenger Railway Company:		
	Loans, 1910,	$466 45	
	Fees of office,	23 32	
			489 77
	Loans, 1911,	$466 45	
	Fees of office,	23 32	
			489 77
11,	Philadelphia Locomotive Works:		
	Loans, 1911,	$261 78	
	Fees of office,	13 08	
			274 86
11,	Dunmore Gas & Water Company:		
	Capital stock, 1911,	$580 00	
	Fees of office,	29 00	
			609 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Feb. 11,	Consolidated Water Supply Company:		
	Capital stock, 1910,	$915 00	
	Fees of office,	45 75	
			$960 75
	Capital stock, 1911,	$915 00	
	Fees of office,	45 75	
			960 75
11,	Olyphant Water Company:		
	Capital stock, 1911,	$225 00	
	Fees of office,	11 25	
			236 25
11,	Lackawanna & Montrose Railroad Company:		
	Capital stock, 1910,	$26 50	
	Fees of office,	1 32	
			27 82
12,	Van T. Shepler Dry Goods Company:		
	Capital stock, 1911,	$200 00	
	Interest,	3 50	
			203 50
12,	Vandergrift Realty Company:		
	Capital stock, 1911,	$222 54	
	Interest,	7 79	
			230 33
13,	Thomas Meehan & Sons, Inc.:		
	Capital stock, 1910,	$17 00	
	Fees of office,	85	
			17 85
13,	Mountain Coal Company:		
	Capital stock, 1910,	$875 00	
	Fees of office,	43 75	
			918 75
	Capital stock, 1911,	$875 00	
	Fees of office,	43 75	
			918 75
13,	Western Union Telegraph Company:		
	Capital stock, 1910,	$1,950 00	
	Fees of office,	97 50	
			2,047 50
17,	Standard Ice Manufacturing Company:		
	Loans, 1910,	$700 00	
	Fees of office,	35 00	
			735 00
	Loans, 1911,	$700 00	
	Fees of office,	35 00	
			735 00
17,	Colonial Hotel Company:		
	Capital stock, 1911,	$250 00	
	Interest,	11 25	
			261 25
17,	Lackawanna Coal & Coke Company:		
	Capital stock, 1910,	$50 00	
	Fees of office,	2 50	
			52 50
	Capital stock, 1911,	$5 00	
	Fees of office,	25	
			5 25
19,	Pittsburgh-Westmoreland Coal Company:		
	Capital stock, 1910,	$343 75	
	Loans, 1910,	604 31	
			948 06

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Feb. 27,	Berlin Water Company:		
	Loans, 1911,	$49 40	
	Capital stock, 1911,	25 00	
	Interest,	44	
	Fees of office,	3 72	
			$78 56
27,	West End Land Company, (Pittsburgh):		
	Capital stock, 1911,	$350 00	
	Loans, 1911,	81 48	
	Interest,	13 07	
			444 55
Mar. 4,	West End Land Company, (Pittsburgh):		
	Fees of office on account, loans and capital stock, 1911,	$21 57	
			21 57
5,	Buffalo & Susquehanna Coal & Coke Company:		
	Capital stock, 1911,	$1,750 00	
	Fees of office,	87 50	
			1,837 50
5,	Buffalo & Susquehanna Railroad Company:		
	Capital stock, 1910,	$3,000 00	
	Fees of office,	150 00	
			3,150 00
	Capital stock, 1911,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
7,	Peale, Peacock & Kerr, Inc.:		
	Capital stock, 1910,	$151 45	
	Fees of office,	7 57	
			159 07
	Capital stock, 1911,	$341 24	
	Fees of office,	17 07	
			358 31
7,	Russell Coal Mining Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1910,	$83 66	
	Fees of office,	4 18	
			87 84
7,	Carbon Coal Mining Company:		
	Capital stock, 1910,	$16 00	
	Fees of office,	80	
			16 80
	Capital stock, 1911,	$10 00	
	Fees of office,	50	
			10 50
7,	Pleasant Valley Coal Company:		
	Capital stock, 1910,	$15 00	
	Fees of office,	75	
			15 75
10,	Baldwin Locomotive Works, now Philadelphia Locomotive Works.		
	Capital stock, 1910,	$338 61	
	Fees of office,	16 93	
			355 54
10,	New York & Pennsylvania Company:		
	Capital stock 1899 to 1908 inclusive,	$12,156 97	
	Interest,	1,341 30	
	Fees of office,	674 91	
			14.173 18

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Mar. 10,	Oarish Manufacturing Company:		
	Bonus, 1909,	$51 67	
	Fees of office,	2 58	
			$54 25
	Bonus, 1910,	$210 00	
	Fees of office,	10 50	
			220 50
10,	Brush Electric Light Company:		
	Capital stock, 1911,	$175 00	
	Fees of office,	8 75	
			183 75
10,	Edison Electric Light Company of Philadelphia:		
	Capital stock, 1911,	$2,218 00	
	Fees of office,	110 90	
			2,328 90
10,	Northern Electric Light & Power Company:		
	Capital stock, 1911,	$812 50	
	Fees of office,	40 62	
			853 12
10,	The Philadelphia Electric Company:		
	Capital stock, 1911,	$1,050 00	
	Fees of office,	52 50	
			1,102 50
10,	Pennsylvania Heat, Light & Power Company:		
	Capital stock, 1911,	$2,270 04	
	Fees of office,	138 50	
			2,908 54
11,	Pennsylvania Marble & Granite Company:		
	Loans, 1909,	250 00	
			250 00
11,	Annex Hotel Company:		
	Loans, 1911,	$1 00	
	Fees of office,	05	
			1 05
14,	Standard Talking Machine Company:		
	Capital stock, 1911,	$118 28	
	Fees of office,	5 91	
			124 19
14,	Pennsylvania Iron Works Company:		
	Capital stock, 1905,	$270 00	
	Capital stock, 1906,	270 00	
	On account, 1907,	110 00	
			650 00
20,	Meadville Telephone Company:		
	Capital stock, 1911,	$250 00	
	Loans, 1910,	139 95	
	G. R. 1911 to June 30,	102 56	
	G. R. 1911 to Dec. 31,	104 09	
			596 60
25,	Derry Block Apartment Company:		
	Bonus,	$83 34	
	Interest,	2 92	
	Com.,	4 17	
			90 43
25,	Tobyhanna Creek Ice Company:		
	Capital stock, 1909,	$242 50	
	Com.,	12 13	
			254 63
	Capital stock, 1910,	$242 50	
	Com.,	12 13	
			254 63
	Capital stock, 1911,	$242 50	
	Com.,	12 '3	
			254 63

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Mar. 25,	Trout Lake Ice Company:		
	Capital stock, 1909,	$195 50	
	Commissions,	9 78	
			$205 28
	Capital stock, 1910,	$195 50	
	Commissions,	9 78	
			205 28
	Capital stock, 1911,	$195 50	
	Commissions,	9 78	
			205 28
28,	Allegheny Water Company:		
	Loans, 1907-8-9-10,	$234 52	
	Commissions,	111 73	
			346 25
28,	George S. Daugherty Company:		
	C. S. 1911.		
	Interest,	$8 85	
	Commissions,	31 25	
			40 10
28,	Carnegie Natural Gas Company:		
	Capital stock, 1911,	$750 00	
	Commissions,	37 50	
			787 50
April 1,	Sharon Coke Company:		
	Capital stock, 1911,	$75 00	
	Commissions,	3 75	
			78 75
1,	National Tube Company of New Jersey:		
	Capital stock, 1911,	$80 00	
	Commissions,	4 00	
			84 00
1,	Youghiogheny Northern Railway Company:		
	Capital stock, 1910,	$875 00	
	Commissions,	43 75	
			918 75
1,	Carnegie Land Company:		
	Capital stock, 1911,	$500 00	
	Commissions,	25 00	
			525 00
1,	Pennsylvania Marble & Granite Company:		
	On account of loans, 1909,	$250 00	
			250 00
2,	Pittsburgh & Lake Erie Railroad Company:		
	Capital stock, 1910,	$127,143 65	
	Interest,	1,500 00	
	Commissions,	500 00	
			129,143 65
	Capital stock, 1911,	$163,679 02	
	Commissions,	500 00	
			164,179 02
2,	Eastern Pennsylvania Power Company:		
	Loans, 1911,	$228 84	
	Fees of office,	11 44	
			240 28
2,	Keystone Indemnity Company:		
	Capital stock, 1909,	$68 75	
			68 75

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 3,	Johnstown Passenger Railway Company:		
	Capital stock, 1910,	$500 00	
	Interest,	39 33	
	Fees of office,	25 00	
			$564 33
	Capital stock, 1911,	$1,500 00	
	Interest,	28 75	
	Fees of office,	75 00	
			1,603 75
4,	American Dredging Company:		
	Capital stock, 1911,	$175 00	
	Interest,	5 05	
	Fees of office,	8 75	
			188 80
4,	Tunnel Supply Company:		
	Capital stock, 1910,	$90 00	
	Interest,	7 18	
	Fees of office,	4 50	
			101 68
4,	Susquehanna Boom Company:		
	Capital stock, 1911,	$37 50	
			Paid by Credit.
4,	Susquehanna Traction Company:		
	Capital stock, 1909,	$87 50	
	Interest,	14 33	
	Fees of office,	4 37	
			106 20
4,	Union Electric Company:		
	Capital stock, 1911,	$125 00	
	Fees of office,	6 25	
			131 25
5,	Lancaster Water Filtration Company:		
	Loans, 1911,	$208 05	
	Interest,	5 40	
	Fees of office,	10 40	
			223 85
5,	Finance Company of Pennsylvania:		
	Tax on Shares, 1909,	$267 59	
	Fees of office,	11 32	
			278 91
5,	Pine Run Company:		
	Capital stock, 1910,	$50 00	
	Interest,	4 00	
	Fees of office,	2 50	
			56 50
5,	Philadelphia Securities Company:		
	Capital stock, 1910,	$56 00	
	Interest,	4 07	
	Fees of office,	2 50	
			56 57
5,	Plymouth Coal Mining Company:		
	Capital stock, 1911,	$125 00	
	Interest,	2 52	
	Fees of office,	6 25	
			133 77
5,	Atlantic Crushed Coke Company:		
	Capital stock, 1911,	$125 00	
	Interest,	2 02	
	Fees of office,	6 25	
			133 27

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 7,	Mt. Equity Coal & Coke Company:		
	Interest on capital stock, 1910-11, ...	$7 35	
	Interest on loans, 1910-11, ...	86	
			$8 21
7,	Susquehanna & New York Railroad Company:		
	Capital stock, 1911, ...	$865 15	
	Fees of office, ...	42 50	
			907 65
7,	Chapman Slate Company:		
	Capital stock, 1911, ...	$10 11	
	Fees of office, ...	49	
			10 60
7,	A. & P. Roberts Company:		
	Capital stock, 1911, ...	$5 08	
	Fees of office, ...	25	
			5 33
7,	Mauch Chunk Heat, Power & Electric Light Company:		
	Capital stock, 1909, ...	$35 43	
	Fees of office, ...	1 51	
			36 94
	Capital stock, 1910, ...	$32 67	
	Fees of office, ...	1 51	
			34 18
7,	Howard Gas Coal Company:		
	Capital stock, 1911, ...	$128 16	
	Fees of office, ...	6 25	
			134 41
7,	Buck Run Coal Company:		
	Capital stock, 1910, ...	$53 88	
	Fees of office, ...	2 50	
			56 38
	Capital stock, 1911, ...	$50 81	
	Fees of office, ...	2 50	
			53 31
7,	Parrish Coal Company:		
	Capital stock, 1911, ...	$254 62	
	Fees of office, ...	12 50	
			267 12
7,	John Hancock Ice Company:		
	Capital stock, 1910, ...	$43 62	
	Fees of office, ...	2 02	
			45 64
7,	American District Telegraph Company of Pennsylvania:		
	Capital stock, 1911, ...	$279 44	
	Fees of office, ...	13 75	
			293 19
7,	Edison Illuminating Company of Easton:		
	Capital stock, 1911, ...	$300 00	
	Fees of office, ...	15 00	
			315 00
7,	Black Creek Improvement Company:		
	Capital stock, 1911, ...	$304 85	
	Fees of office, ...	15 00	
			319 85
7,	Pencoyd & Philadelphia Railroad Company:		
	Capital stock, 1910, ...	$53 96	
	Fees of office, ...	2 50	
			56 46
7,	Scranton, Dunmore & Moosic Lake Railroad Company:		
	Capital stock, 1911, ...	$427 49	
	Fees of office, ...	21 00	
			448 49

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 7,	Altoona & Logan Valley Electric Railway Company:		
	Capital stock, 1911,	$150 00	
	Fees of office,	7 50	
			$157 50
7,	Philadelphia & Garrettford Street Railway Company:		
	Loans, 1911,	$114 65	
	Fees of office,	5 61	
			120 26
7,	Cambria Incline Plane Company:		
	Capital stock, 1910,	$494 88	
	Fees of office,	23 00	
			517 88
	Capital stock, 1911,	$471 96	
	Fees of office,	23 00	
			494 96
7,	Packer Coal Company:		
	Capital stock, 1911,	$127 54	
	Fees of office,	6 25	
			133 79
8,	Strong Realty Company:		
	Capital stock, 1910, balance,	$372 96	
	Interest,	13 22	
			383 08
8,	McKeesport Connecting Railroad Company:		
	Capital stock, 1910,	$166 66	
	Interest,	13 11	
	Fees of office,	8 33	
			188 10
8,	Philadelphia Brewing Company:		
	Loans, 1911,	$ 60	
	Interest,	02	
	Fees of office,	03	
			65
9.	Pocono Mountain Ice Company:		
	Capital stock, 1910,	$35 00	
	Interest,	2 75	
	Fees of office,	1 75	
			39 50
	Capital stock, 1911,	35 00	
	Interest,	66	
	Fees of office,	1 75	
			37 41
9,	Hooverhurst & Southwestern Railroad Company:		
	Capital stock, 1910,	$150 00	
	Interest,	11 62	
	Fees of office,	7 50	
			169 12
	Capital stock, 1911,	$175 00	
	Interest,	3 26	
	Fees of office,	8 75	
			187 01
9,	St. Clair Terminal Railroad Company:		
	Capital stock, 1910,	$1,000 00	
	Interest,	91 33	
	Fees of office,	50 00	
			1,141 33
	Capital stock, 1911,	$1,000 00	
	Interest,	39 66	
	Fees of office,	50 00	
			1,089 66

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 10,	L. B. Worden, Prothonotary, attorney fees in 139 Commonwealth cases adjusted since Jan. 2, 1913:		
	Fees of office,	$399 00	
			$399 00
10,	National Mining Company:		
	Capital stock, 1911,	$1,000 00	
	Interest,	39 66	
	Fees of office,	50 00	
			1,089 66
10,	Clearfield Bituminous Coal Corporation:		
	Loans, 1911,	$5 00	
	Interest,	13	
	Fees of office,	25	
			5 38
10,	Delaware, Susquehanna & Schuylkill Railroad Company:		
	Capital stock, 1911,	$1,500 00	
	Interest,	33 25	
	Fees of office,	75 00	
			1,608 25
11,	West Liberty Improvement Company:		
	Interest on capital stock, 1911,	$87 22	
			87 22
11,	Delaware, Lackawanna & Western Railroad Company:		
	Capital stock, 1910,	$55,000 00	
	Interest,	4,400 00	
	Fees of office,	500 00	
			59,900 00
	Capital stock, 1911,	$55,000 00	
	Interest,	1,100 00	
	Fees of office,	500 00	
			56,600 00
11,	Nineveh Coal & Coke Company:		
	Capital stock, 1909,	$37 50	
	Interest,	6 13	
	Fees of office,	1 87	
			45 50
	Capital stock, 1910,	$37 50	
	Interest,	2 93	
	Fees of office,	1 87	
			42 30
	Capital stock, 1911,	$37 50	
	Interest,	73	
	Fees of office,	1 87	
			40 10
14,	Bethlehem Steel Products Company:		
	Capital stock, 1910,	$118 00	
	Interest,	8 87	
	Fees of office,	5 90	
			132 77
	Capital stock, 1911,	$118 00	
	Interest,	1 91	
	Fees of office,	5 90	
			125 81
14,	Leechburg Coal & Coke Company:		
	Capital stock, 1909,	$10 00	
	Interest,	1 64	
	Fees of office,	50	
			12 14
14	The Autocar Service Company of New Jersey:		
	Bonus, 1910,	$72 94	
	Interest,	6 55	
	Fees of office,	3 64	
			83 13

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 15,	Hostetter Connellsville Coke Company:		
	Capital stock, 1910,	$1,250 00	
	Interest,	102 70	
	Fees of office,	62 50	
			$1,415 20
	Capital stock, 1911,	$1,750 00	
	Interest,	56 00	
	Fees of office,	87 50	
			1,893 50
15,	Dentz Run Coal Company:		
	Capital stock, 1911,	$125 00	
	Interest,	2 02	
	Fees of office,	6 25	
			133 27
15,	Pennsylvania Marble & Granite Company:		
	Loans, 1909, balance,	$90 04	
	Interest,	71 88	
	Fees of office,	47 00	
			208 92
16,	Schuylkill Railway Company:		
	G. R., 1907, to Dec. 31st, on account Lewis Coal Company,	$572 00	
			572 00
	Capital stock, 1910,	$25 00	
	Interest,	2 03	
	Fees of office,	1 25	
			28 28
16,	Coxe Brothers & Company, Inc.:		
	Capital stock, 1910,	$3,016 10	
	Interest,	235 75	
	Fees of office,	150 80	
			3,402 65
17,	Manufacturers Water Company:		
	Loans, 1910,	$21 13	
	Interest,	1 60	
	Fees of office,	1 05	
			23 79
21,	The Pullman Company:		
	Capital stock, 1910,	$3 72	
	Interest,	35	
	Fees of office,	20	
			4 27
21,	Robert Smith Ale Brewing Company:		
	Capital stock, 1911,	$512 50	
	Interest,	10 33	
	Fees of office,	25 62	
			548 45
22,	Wheatland Land Company:		
	Capital stock, 1911,	$125 00	
	Interest,	3 44	
			128 44
22,	Bethel & Mt. Aetna Telephone & Telegraph Company:		
	Loans, 1909,	$22 80	
	Loans, 1911,	43 70	
	Interest,	5 95	
	G. R., 1912 (to June 30),	56 19	
	Interest,	1 59	
			130 23

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 22,	Girard Trust Company:		
	Tax on shares, 1909,	$8,853 30	
	Interest,	1,892 41	
			$10,745 71
	Tax on shares, 1911,	$8,796 56	
	Interest,	848 84	
	Fees of office,	482 27	
			10,127 67
	Tax on shares, 1912,	$8,730 48	
	Interest,	481 25	
			9,211 73
24,	New York and Middle Creek Coal Field Railroad and Coal Company:		
	Capital stock, 1911,	$2,050 00	
	Interest,	46 46	
	Fees of office,	102 50	
			2,198 96
28,	New York and Pennsylvania Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1911,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1912,	$100 00	
	Fees of office,	5 00	
			105 00
28,	Diamond Coal Land Company:		
	Capital stock, 1911,	$162 50	
	Interest,	4 03	
	Fees of office,	8 12	
			174 65
28,	Cascade Coal & Coke Company:		
	Capital stock, 1911,	$150 00	
	Interest,	4 60	
	Fees of office,	7 50	
			162 10
28,	Philadelphia Life Insurance Company:		
	Capital stock, 1910,	$393 95	
	Interest,	33 22	
	Fees of office,	19 69	
			446 86
	Capital stock, 1911,	$1,100 28	
	Interest,	20 35	
	Fees of office,	55 01	
			1,175 64
28,	Scranton Gas & Water Company:		
	Capital stock, 1910,	$3,500 00	
	Interest,	287 00	
	Fees of office,	175 00	
			3,962 00
	Capital stock, 1911,	$5,500 00	
	Interest,	105 41	
	Fees of office,	275 00	
			5,880 41
29,	Juragua Iron Company:		
	Capital stock, 1911,	$115 50	
	Interest,	3 48	
	Fees of office,	5 77	
			124 75

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 29,	Easton Transit Company:		
	Capital stock, 1911,	$1,375 00	
	Interest,	34 37	
	Fees of office,	68 75	
			$1,478 12
29,	Cambria Steel Company:		
	Capital stock, 1910,	$3,706 43	
	Interest,	298 98	
	Fees of office,	185 32	
			4,190 73
	Capital stock, 1911,	$602 58	
	Interest,	12 05	
	Fees of office,	30 13	
			644 76
29,	Keystone Watch Case Company:		
	Capital stock, 1911,	$200 00	
	Interest,	6 03	
	Fees of office,	10 00	
			216 03
29,	Gallitzin Water Company:		
	Capital stock, 1911,	$25 00	
	Interest,	76	
	Fees of office,	1 25	
			27 01
29,	Gilpin Coal Company:		
	Capital stock, 1911,	$50 00	
	Interest,	1 53	
	Fees of office,	2 50	
			54 03
29,	Nescopec Coal Company:		
	Capital stock, 1911,	$500 00	
	Interest,	12 25	
	Fees of office,	25 00	
			537 25
29,	Upper Lehigh Supply Company, Ltd.:		
	Capital stock, 1910,	$50 00	
	Interest,	3 81	
	Fees of office,	2 50	
			56 31
	Capital stock, 1911,	$50 00	
	Interest,	85	
	Fees of office,	2 50	
			53 35
30,	Lehigh Valley Transit Company:		
	Loans, 1910,	$159 20	
	Interest,	13 44	
	Fees of office,	7 96	
			180 60
30,	F. A. Poth & Sons, Inc.:		
	Capital stock, 1911,	$700 00	
	Interest,	14 58	
	Fees of office,	35 00	
			749 58
30,	Huntingdon & Broad Top Mountain Railroad Company:		
	Capital stock, 1911,	$750 00	
	Interest,	15 62	
	Fees of office,	37 50	
			803 12
30,	Saltzburg Coal Mining Company:		
	Capital stock, 1911,	$300 00	
	Interest,	6 65	
	Fees of office,	15 00	
			321 65

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 30,	Pennsylvania Water & Power Company:		
	Loans, 1911,	$570 00	
	Interest,	12 06	
	Fees of office,	28 50	
			$610 56
30,	Cardiff Coal Company:		
	Capital stock, 1911,	$105 00	
	Interest,	3 22	
	Fees of office,	5 25	
			113 47
30,	Potter Gas Company:		
	Loans, 1910,	$213 00	
	Interest,	16 96	
	Fees of office,	10 65	
			240 61
	Loans, 1911,	$263 00	
	Interest,	5 52	
	Fees of office,	13 15	
			281 67
30,	Delaware, Lackawanna & Western Coal Company:		
	Capital stock, 1909,	$40 00	
	Interest,	89	
	Fees of office,	2 00	
			42 89
	Capital stock, 1910,	$250 00	
	Interest,	5 58	
	Fees of office,	12 50	
			268 08
	Capital stock, 1911,	$400 00	
	Interest,	8 93	
	Fees of office,	20 00	
			428 93
30,	Mountain Ice Company:		
	Capital stock, 1909,	$196 14	
	Fees of office,	9 80	
			205 94
30,	Mountain Ice Company:		
	Bonus, 1908,	$143 53	
	Fees of office,	7 18	
			150 71
30,	Atlantic Crushed Coke Company:		
	Loans, 1911,	$47 84	
	Interest,	1 00	
	Fees of office,	2 39	
			51 23
May 1,	Eastern Securities Company:		
	Capital stock, 1911,	$14 62	
	Interest,	33	
	Fees of office,	73	
			15 68
2,	Terman Land Company:		
	Capital stock, 1911,	$100 00	
	Loans, 1911,	45 60	
			145 60
2,	West Berwick Water Supply Company:		
	Loans, 1910,	$114 00	
	Interest,	9 10	
	Fees of office,	5 70	
			128 80

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 2,	Goodyear Lumber Company:		
	Capital stock, 1909,	$960 00	
	Interest,	138 40	
	Fees of office,	48 00	
			$1,146 40
	Capital stock, 1910,	$6,250 00	
	Interest,	112 50	
	Fees of office,	312 50	
			6,675 00
	Capital stock, 1911,	$6,150 00	
	Interest,	127 10	
	Fees of office,	307 50	
			6,584 60
2,	Pennsylvania Marble & Granite Company:		
	On account loans, 1910,	$250 00	
			250 00
2,	Welsbach Company:		
	Loans, 1906-7, 1900-11,	$1,173 06	
	Interest,	113 52	
	Fees of office,	64 32	
			1,350 90
6,	Great Southern Lumber Company:		
	Loans, 1911,	$338 58	
	Interest,	7 05	
	Fees of office,	16 92	
			362 55
6,	Keystone Indemnity Company:		
	Capital stock, 1910,	$68 75	
			68 75
6,	Bangor Electric Light, Heat & Power Company:		
	Bonus on increase,	$83 34	
			83 34
6,	Forest Gas Company:		
	Interest on capital stock, 1911,	$13 80	
			13 80
14,	Beaver Land Company:		
	Capital stock, 1910,	$13 75	
	Capital stock, 1911,	50 00	
	Loans, 1911,	48 64	
	Interest,	6 74	
			119 13
15,	York Sanitary Milk Company:		
	Capital stock, 1911,	$5 00	
	Interest,	08	
	Fees of office,	25	
			5 33
	Capital stock, 1909-10,	$131 25	
	Interest,	10 93	
	Fees of office,	6 56	
			148 74
15,	Pennsylvania Marble & Granite Company:		
	Loans, 1910, on account,	$250 00	
			250 00
16,	Joseph Wolf Land Company:		
	Capital stock, 1910,	$100 00	
	Interest,	2 75	
	On account capital stock, 1911,	1 75	
			104 50
16,	Spring Brook Water Supply Company:		
	Capital stock, 1912,	$100 00	
	Fees of office,	5 00	
			105 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 20,	Allegheny Valley Water Company:		
	Loans, 1907-8-9-10,	$500 00	
			$500 00
20,	Lyman Tin & Rubber Company:		
	Capital stock, 1911,	.....	
	Loans, 1911,	.....	
	Fees of office on same,	$10 15	
			10 15
20,	Ray Coal Company:		
	Capital stock, 1908,	$133 58	
	Interest,	29 83	
	Fees of office,	6 67	
			170 08
	Capital stock, 1909,	$162 40	
	Interest,	24 19	
	Fees of office,	8 12	
			194 71
	Capital stock, 1910,	$73 36	
	Interest,	6 50	
	Fees of office,	3 66	
			83 52
22,	Keystone Indemnity Company:		
	Capital stock, 1911,	$68 75	
			68 75
26,	L. B. Worden, Prothonotary, attorney fees in 80 Commonwealth cases adjusted since April 10, 1913,		240 00
26,	Sunbury Bridge Company:		
	Capital stock, 1911,	$450 00	
	Interest,	13 05	
	Loans, 1911,	201 40	
	Interest,	5 23	
	Fees of office,	32 57	
			702 25
29,	Pennsylvania Marble & Granite Company:		
	On account of loans, 1910,	$250 00	
			250 00
June 9,	Valley Smokeless Coal Company:		
	On account of capital stock, 1910,	$1,000 00	
			1,000 00
10,	Pennsylvania Iron Works Company:		
	Balance capital stock, 1907,	$137 50	
	Loans, 1910,	273 60	
	Interest,	88 65	
	Fees of office,	53 05	
			552 80
16,	Bryn Mawr Land Company:		
	Capital stock, 1908 (4 mos.),	$9 16	
	Capital stock, 1909,	30 25	
	Capital stock, 1910,	33 00	
	Capital stock, 1911,	36 30	
			108 71
18,	Pennsylvania Marble & Granite Company:		
	On account of loans, 1910,	$250 00	
			250 00
26,	Bryn Mawr Land Company:		
	Interest on capital stock 1908-11,		5 34
July 1,	Bessemer & Lake Erie Railroad Company:		
	Capital stock, 1909,	$14,729 17	
	Commissions,	500 00	
			15,229 17

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
July 1,	Bessemer & Lake Erie Railroad Company:		
	Capital stock, 1910,	$72,991 41	
	Commissions,	500 00	
			$73,491 41
	Capital stock, 1911,	$82,840 00	
	Commissions,	500 00	
			83,340 00
1,	H. C. Frick Coke Company:		
	Capital stock, 1911,	$48,725 28	
	Commissions,	500 00	
			49,225 28
1,	Union Railroad Company:		
	Capital stock, 1910,	$22,152 67	
	Commissions,	500 00	
			22,652 67
	Capital stock, 1911,	$15,532 50	
	Fees of office,	500 00	
			16,032 50
1,	Union Supply Company:		
	Capital stock, 1911,	$6,065 29	
	Commissions,	287 50	
			6,352 79
3,	North Pittsburgh Realty Company:		
	Bonus,	$200 83	
			200 83
3,	Hindman Realty Company:		
	Capital stock, 1910,	$112 82	
	Loans, 1910,	61 18	
	Capital stock, 1911,	124 11	
	Loans, 1911,	67 29	
			365 40
3,	National Ben Franklin Fire Insurance Company:		
	Capital stock, 1911,	$168 23	
	Interest,	5 72	
	Commissions,	8 41	
			182 36
7,	Whitall Tatum Company:		
	Loans, 1908,	$208 66	
	Commissions,	8 36	
			217 02
	Loans, 1909,	$193 90	
	Commissions,	8 27	
			201 17
	Loans, 1910,	$183 21	
	Commissions,	8 27	
			191 48
	Loans, 1911,	$151 12	
	Commissions,	7 12	
			158 24
			767 81
	Paid by credit on books of Auditor General,		665 61
	Balance,		102 20
7,	Buffalo & Lake Erie Traction Company:		
	Loans, 1911,	$1,583 47	
	Commissions,	79 17	
			1,662 64
9,	Highspire Distillery Company, Ltd.:		
	Bonus,	$250 00	
	Commissions,	12 50	
			262 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
July 9,	Columbus & Erie Railroad Company:		
	Capital stock, 1912,	$150 40	
	Commissions,	7 50	
			$157 90
9,	Erie Land & Improvement Company:		
	Capital stock, 1912,	$25 07	
	Commissions,	1 25	
			26 32
9,	Erie Railroad Company:		
	Capital stock, 1912,	$651 30	
	Commissions,	32 50	
			683 80
9,	Erie & Wyoming Valley Railroad Company:		
	Capital stock, 1912,	$250 54	
	Commissions,	12 50	
			263 04
9,	New York, Lake Erie & Western Coal & Railroad Company:		
	Capital stock, 1912,	$401 07	
	Commissions,	20 00	
			421 07
9,	Buffalo, Bradford & Pittsburgh Railroad Company:		
	Capital stock, 1912,	$100 27	
	Commissions,	5 00	
			105 27
9,	Nypano Railroad Company:		
	Capital stock, 1912,	$501 08	
	Commissions,	25 00	
			526 08
9,	Jefferson Railroad Company:		
	Capital stock, 1912,	$501 33	
	Commissions,	25 00	
			526 33
9,	Wilkes-Barre & Eastern Railroad Company:		
	Capital stock, 1912,	$376 00	
	Commissions,	18 75	
			394 75
11,	Standard Mirror Company:		
	Capital stock, 1910,	$288 54	
	Interest,	12 02	
	Commissions,	14 43	
			314 99
	Capital stock, 1911,	$296 28	
	Interest,	12 34	
	Commissions,	14 81	
			323 43
16,	Sykesville Clay Products Company:		
	Bonus,	$52 67	
	Interest,	25 28	
			77 95
22,	Northwestern Mining & Exchange Company:		
	Capital stock, 1912,	$50 14	
	Fees of office,	2 50	
			52 64
22,	Blossburg Coal Company:		
	Capital stock, 1912,	$125 33	
	Fees of office,	6 25	
			131 58
22,	New York, Susquehanna & Western Coal Company:		
	Capital stock, 1912,	$325 00	
	Interest,	87	
	Fees of office,	16 25	
			342 12

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
July 23,	Allegheny Valley Water Company:		
	On account loans, 1907-8-9-10,		$500 00
29,	Allegheny Valley Water Company:		
	On account loans for 1907-8-9-10,		500 00
31,	L. B. Worden Prothonotary, fees in 42 Commonwealth cases adjusted since May 26, 1913,		126 00
Aug. 1,	Monongahela Valley Brewing Company:		
	Interest on bonus in increase,		42 75
13,	Mercer Oil & Gas Company:		
	Capital stock, 1911,	$50 00	
	Loans, 1911,	7 60	
	Interest,	6 33	
	Fees of office,	2 88	
			66 81
13,	Consolidated Dressed Beef Company:		
	Capital stock, 1910,	$1,575 00	
	Interest,	63	
	Fees of office,	81 90	
			1,719 90
13,	Cherry Tree Iron Works:		
	Capital stock, 1906,	$5 50	
	Capital stock, 1907,	5 50	
	Capital stock, 1908,	5 50	
	Interest,	18	
	Fees of office,	82	
			17 50
13,	Valley Smokeless Coal Company:		
	Capital stock 1910, balance,	500 00	
	On account capital stock, 1911,	500 00	
			1,000 00
26,	North Pittsburgh Realty Company:		
	Interest on bonus,	$9 63	
	Fees of office,	10 00	
			19 63
Sept. 3.	New Kensington Distilling Company:		
	Capital stock, 1907,	$105 00	
	Capital stock, 1908,	150 00	
	Capital stock, 1909,	165 00	
	Capital stock, 1910,	200 00	
	Capital stock, 1911,	200 00	
	On account interest,	1 58	
	Loans, 1909,	15 20	
	Loans, 1910,	25 84	
	Loans, 1911,	38 38	
			901 00
10,	Keystone Indemnity Company:		
	Gross Premiums, 1909 to June 30,	$64 66	
	To Dec. 31,	67 73	
			132 39
15,	Enterprise Contracting Company:		
	Capital stock, 1911,	$85 00	
	Interest,	6 37	
	Commissions,	4 25	
			95 62
Oct. 2,	Erie Bill Posting Company:		
	Capital stock, 1910,	$2 11	
	Loans, 1910,	77	
	Fees of office,	4 12	
			7 00
3,	Joseph S. Mack Silk Company:		
	Bonus on increase,	$33 33	
	Interest,	2 81	
	Fees of office,	1 65	
			37 79

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Oct. 3,	Freeport Planing Mill Company:		
	Capital stock, 1903,	$25 00	
	Capital stock, 1904,	25 00	
	Capital stock, 1905,	25 00	
	Capital stock, 1906,	25 00	
	Capital stock, 1907,	25 00	
	Capital stock, 1908,	25 00	
	Capital stock, 1909,	25 00	
	Capital stock, 1910,	25 00	
	Interest,	33 70	
	Fees of office,	10 00	
			$243 70
9,	Allemania Insurance Company, et al.		
	Fees of office in Equity Proceeding in courts of Allegheny County,		90 00
14,	Keystone Indemnity Company:		
	Tax on Gross Premiums, 12 mos. ending December 31, 1910,		125 89
17,	Iron City Land Company:		
	Capital stock, 1910,	$165 00	
	Capital stock, 1911,	165 00	
	Capital stock, 1912,	150 00	
			480 00
20,	John Baigley Iron Works Company:		
	Loans, 1908-9,		650 00
22,	Somerset Electric Light, Heat & Power Company:		
	Loans, 1910,	$152 00	
	Loans, 1911,	133 00	
	Loans, 1912,	114 00	
	Interest,	5 05	
			404 05
28,	Williamsport & North Branch Railroad Company:		
	On account capital stock, 1909,		500 00
30,	Eastern Pennsylvania Power Company:		
	Capital stock, 1911, (from May 11),	$286 44	
	Interest,	18 24	
	Fees of office,	14 26	
			318 94
Nov. 10,	Pittsburgh & Lake Erie Railroad Company:		
	Capital stock, 1911, fees of office,		76 80
10,	N. C. Lane Company, Ltd.:		
	Capital stock, 1905-10, Inc.,	$99 00	
	Interest,	6 84	
	Fees of office,	4 95	
			110 79
18,	Pittsburgh-Buffalo Company:		
	Capital stock, 1911,	$5,550 00	
	Loans, 1911,	1,845 91	
			7,395 91
21,	Freeport Planing Mill Company:		
	Fees of office,		1 25
28,	Coxe Bros. & Company, Inc.:		
	Capital stock, 1911,	$14,326 25	
	Interest,	302 55	
	Fees of office,	500 00	
			15,728 80
28,	Lehigh Valley Coal Company:		
	Capital stock, 1910,	$26,250 00	
	Interest,	3,115 00	
	Fees of office,	500 00	
			29,865 00
	Capital stock, 1911,	$33,750 00	
	Interest,	2,075 62	
	Fees of office,	500 00	
			36,325 62

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Nov. 28,	Lehigh Valley Railroad Company:		
	Capital stock, 1909,	$68,718 66	
	Interest,	12,323 54	
	Fees of office,	500 00	
			$81,542 20
	Capital stock, 1910,	$82,890 18	
	Interest,	9,822 48	
	Fees of office,	500 00	
			93,212 66
	Capital stock, 1911,	$104,798 94	
	Interest,	6,445 13	
	Fees of office,	500 00	
			111,744 07
29,	Lehigh Coal & Navigation Company:		
	Capital stock, 1910,	$100,527 43	
	Interest,	12,264 34	
	Fees of office,	500 00	
			113,291 77
	Capital stock, 1911,	$111,607 13	
	Interest,	6,919 64	
	Fees of office,	500 00	
			119,026 77
29,	Lehigh & Wilkes-Barre Coal Company:		
	Capital stock, 1911,	$36,300 00	
	Interest,	2,232 00	
	Fees of office,	500 00	
			39,032 00
29,	Hillside Coal & Iron Company:		
	Capital stock, 1911,	$5,000 00	
	Interest,	300 00	
	Fees of office,	250 00	
			5,550 00
29,	Pennsylvania Coal Company:		
	Capital stock, 1911,	$42,227 02	
	Interest,	2,533 62	
	Fees of office,	500 00	
			45,260 64
Dec. 4,	Provident Realty Company:		
	Capital stock, 1910,	$22 00	
	Capital stock, 1911,	22 00	
	Loans, 1906,	11 00	
	Interest,	1 60	
	Loans, 1910,	11 70	
	Loans, 1911,	11 70	
	Fees of office,	3 92	
			83 92
4,	John Baizley Iron Works:		
	Loans, 1908-09, on account,		650 00
11,	Waynesburg Improvement Company:		
	Capital stock, 1900-09,	$479 17	
	Loans, 1900-09,	100 15	
	Fees of office,	28 96	
			608 28
17,	L. B. Worden, Prothonotary, attorney fees in 46 Commonwealth cases adjusted since July 31, 1913,		138 00
	Total for the year 1913,		$1,583,166 34

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1914, Jan. 5,	Moss Distilling Company:		
	Bonus on increase,	$251 50	
	Interest,	10 81	
	Fees of office,	12 57	
			$274 88
15,	Janus Manufacturing Company:		
	Capital stock, 1905-09,	$137 50	
	Loans, 1905-09,	132 00	
	Interest,	59 93	
	Fees of office,	13 47	
			342 90
19,	Meadville Telephone Company:		
	Capital stock, 1910,	$250 00	
	Loans, 1911,	139 96	
	Gross receipts to June 30, 1912,	109 29	
	Interest on capital stock, 1910-11; loans, 1910-11; G. R. 1911 (12 mos), and G. R. 1912, to June 30,	102 48	
	Fees of office,	54 79	
			656 52
23,	Erie & Central Pennsylvania Railway Company:		
	Capital stock, 1911; fees of office,		5 00
28,	Lehigh Coal & Navigation Company:		
	Capital stock, 1912,	$6,103 39	
	Interest,	10 17	
	Fees of office,	305 16	
			6,418 72
	Delaware, Lackawanna & Western Railroad Company:		
	Capital stock, 1912,	$6,303 00	
	Fees of office,	315 15	
			6,618 15
30,	Valley Smokeless Coal Company:		
	Capital stock, 1911, balance,	$1,000 00	
	Loans, 1911,	110 20	
			1,110 20
Feb. 5,	New Kensington Distilling Company:		
	Interest on capital stock, 1907 and 1908,	$10 99	
	Fees of office,	12 75	
			23 74
	Interest on capital stock, 1909,	$7 11	
	Fees of office,	8 25	
			15 36
	Interest on capital stock, 1910,	$8 60	
	Interest on capital stock, 1911,	8 60	
	Interest loans, 1909,	1 54	
	Interest loans, 1910,	3 31	
	Interest loans, 1911,	1 59	
		$23 64	
	Less amount previously paid,	1 58	
			22 06
19,	Allegheny Valley Water Company:		
	Loans, 1907-8-9-10, balance,		500 00
24,	West Run Coal Mining Company:		
	Interest on capital stock and loans, 1911,		16 09
March 4,	Keystone Indemnity Company:		
	Tax on gross premiums, 1911,		110 94
12	John Baizley Iron Works:		
	Balance loans, 1908, 1909,	$110 25	
	Fees of office,	61 36	
			171 61
16,	Valley Smokeless Coal Company:		
	Interest on capital stock, 1910,	$12 41	
	Interest on capital stock, 1911,	51 58	
	Interest loans, 1911,	4 83	
	Fees of office,	163 61	
			232 43

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Mar. 16,	Florence Grove Steeble, guardian of Morgant A. Schreiner, a lunatic. Maintenance and support of said lunatic in State Hospital for Insane, Southeastern District of Pennsylvania, to Dec. 1, 1913,		
23,	To amount received from Florence Grove Steeble, guardian of Margaret A. Schreiner, a lunatic. Maintenance and support of said lunatic in State Hospital for Insane, Southeastern District of Pennsylvania, Dec. 1, 1913, to March 1, 1914,		$164 40
25,	Curwensville Electric Company:		31 50
	Gross receipts, 6 mos., ended Dec. 31, 1900,	$8 80	
	Gross receipts, 12 mos., ended Dec. 31, 1902,	44 00	
	Gross receipts, 6 mos., ended June 30, 1903,	22 00	
	Gross receipts, 12 mos., ended December 31, 1904,	44 00	
	Gross receipts, 12 mos., ended December 31, 1905,	44 00	
	Gross receipts, 12 mos., ended December 31, 1906,	44 00	
	Gross receipts, 12 mos., ended December 31, 1907,	44 00	
	Gross receipts, 6 mos., ended December 31, 1908,	26 40	
	Gross receipts, 6 mos., ended June 30, 1909,	30 80	
	Interest,	48 42	
	Fees of office,	15 40	
			371 82
April 7,	To amount received from H. Wilson Stahlnecker, guardian of William Stanluf, a lunatic. Maintenance and support of said lunatic in State Hospital for Insane, Southeastern District of Pennsylvania from March 3, 1911, to March 1, 1914,		385 85
7,	Estate of Frederick W. Sayres, deceased, a lunatic. Maintenance and support of said lunatic in State Hospital for Insane, Southeastern District of Pennsylvania,		173 75
11,	Cecil Paper Company:		
	Capital stock, 1911,	$5 00	
	Interest,	50	
	Capital stock, 1912,	5 00	
	Interest,	22	
	Loans, 1911,	362 90	
	Loans, 1912,	362 54	
	Interest,	53 95	
			790 11
11,	Clinton Ice & Coal Company:		
	Capital stock, 1912, and 1913 to May 1,	295 53	
	Interest,	13 88	
			309 41
15,	Anthracite Lumber Company:		
	Capital stock, 1909-10-11-12,	140 00	
	On account interest,	3 80	
			143 80
21,	To amount received from Bell Asbestos Mines:		
	Capital stock, 1911,	$611 50	
	Interest,	41 98	
	Fees of office,	30 57	
			684 05
	Capital stock, 1912,	$600 00	
	Interest,	16 20	
	Fees of office,	30 00	
			646 20

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 21,	Enterprise Transit Company:		
	Capital stock, 1911,	$1,100 00	
	Interest,	99 55	
	Fees of office,	55 00	
			$1,254 55
21,	American District Telegraph Company of Pennsylvania:		
	Capital stock, 1912,	$77 25	
	Interest,	2 31	
	Fees of office,	3 86	
			83 42
21,	Federal Case Company of Philadelphia:		
	Capital stock, 1911,	$50 00	
	Interest,	4 51	
	Fees of office,	2 50	
			57 01
21,	American Ice Company of New Jersey:		
	Capital stock, 1911,	$244 50	
	Interest,	22 17	
	Fees of office,	12 22	
			278 89
	Capital stock, 1912,	$250 00	
	Interest,	7 08	
	Fees of office,	12 50	
			269 58
22,	Bethlehem Steel Company:		
	Loans, 1911,	$6,516 53	
	Interest,	552 81	
	Fees of office,	325 82	
			7,395 16
22,	Bethlehem Steel Products Company:		
	Capital stock, 1912,	$9 00	
	Interest,	11	
	Fees of office,	45	
			9 56
23,	Eastmere Water Company:		
	Capital stock, 1909,	$95 27	
	Capital stock, 1910-11,	175 00	
	Loans, 1909,	57 00	
	Loans, 1910,	47 50	
			374 77
23,	Conocheaqua Electric Light, Heat & Power Company:		
	Capital stock, 1912,	$50 00	
	Interest,	1 75	
	G. R., 1912 to December 31,	20 15	
	Interest,	1 25	
			73 15
23,	Colonial Collieries Company:		
	Capital stock, 1910,	$325 00	
	Interest,	46 80	
	Fees of office,	16 25	
			488 05
	Capital stock, 1911,	$425 00	
	Interest,	38 53	
	Fees of office,	21 25	
			484 78
	Capital stock, 1912,	$625 00	
	Interest,	13 12	
	Fees of office,	31 25	
			669 37
27,	Anthracite Lumber Company:		
	Interest on Capital stock, 1909-10-11-12 balance,	$3 20	
	Fees of office,	7 00	
			10 20

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 27,	Bethlehem Electric Light Company:		
	Capital stock, 1911,	$178 00	
	Interest,	14 28	
	Fees of office,	8 90	
			$201 18
27,	Mountain Supply Company:		
	Capital stock, 1910,	$125 00	
	Interest,	17 91	
	Fees of office,	6 25	
			149 16
	Capital stock, 1911,	$175 00	
	Interest,	15 02	
	Fees of office,	8 75	
			198 77
27,	Morris Run Coal Mining Company:		
	Capital stock, 1911,	$600 00	
	Interest,	51 60	
	Fees of office,	30 00	
			681 60
27,	Brothers Valley Coal Company:		
	Capital stock, 1910,	$625 00	
	Interest,	89 58	
	Fees of office,	31 25	
			745 83
	Capital stock, 1911,	$500 00	
	Interest,	45 66	
	Fees of office,	25 00	
			570 66
	Capital stock, 1912,	$200 00	
	Interest,	4 06	
	Fees of office,	10 00	
			214 06
27,	The Delaware & Hudson Company:		
	Capital stock, 1911,	$7,250 00	
	Interest,	346 79	
	Fees of office,	362 50	
			7,959 29
	Capital stock, 1912,	$7,125 00	
	Interest,	150 81	
	Fees of office,	356 25	
			7,632 06
28,	Manufacturers Water Company:		
	Capital stock, 1911,	$50 00	
	Interest,	4 28	
	Fees of office,	2 50	
			$56 78
28,	Nescopec Coal Company:		
	Capital stock, 1910,	$514 35	
	Interest,	72 95	
	Fees of office,	25 71	
			613 01
28,	Philadelphia & West Chester Traction Company:		
	Loans, 1911,	$138 85	
	Interest,	12 05	
	Fees of office,	6 94	
			157 84
28	Hollenback Coal Company:		
	Capital stock, 1909,	$1,200 00	
	Interest,	279 60	
	Fees of office,	60 00	
			1,539 60

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
April 28.	Capital stock, 1910,	$1,100 00	
	Interest,	157 66	
	Fees of office,	55 00	
			$1,312 66
	Capital stock, 1911,	$1,100 00	
	Interest,	100 46	
	Fees of office,	55 00	
			1,255 46
29,	Blumont Slate Company:		
	Capital stock, 1908,	$5 00	
	On account capital stock, 1909,	5 00	
	Capital stock, 1910,	5 00	
	Capital stock, 1911,	11 00	
	Capital stock, 1913,	13 31	
			39 31
29,	Sterling Coal Company:		
	Capital stock, 1911,	$750 00	
	Interest,	64 25	
	Fees of office,	37 50	
			851 75
29,	Midvalley Coal Company:		
	Capital stock, 1910,	$731 49	
	Interest,	105 09	
	Fees of office,	36 57	
			873 15
	Capital stock, 1911,	$1,526 79	
	Interest,	133 59	
	Fees of office,	76 33	
			1,736 71
	Capital stock, 1912,	$1,718 25	
	Interest,	40 37	
	Fees of office,	85 91	
			1,844 53
29,	Scranton Electric Company:		
	Capital stock, 1908,	$1,125 00	
	Interest,	318 93	
	Fees of office,	56 25	
			1,500 18
	Capital stock, 1909,	$2,750 00	
	Interest,	588 04	
	Fees of office,	137 50	
			3,475 54
30,	Robesonia Iron Company, Ltd.:		
	Capital stock, 1912,	$450 00	
	Interest,	10 57	
	Fees of office,	22 50	
			483 07
May 1,	Geneva, Corning & Southern Railroad Company:		
	Loans, 1910,	$1,044 22	
	Interest,	144 10	
	Fees of office,	52 21	
			1,240 53
	Loans, 1911,	$794 72	
	Interest,	62 91	
	Fees of office,	39 73	
			897 36
1,	New York, Chicago & St. Louis Railroad Company:		
	Loans, 1910,	$4,997 56	
	Interest,	699 65	
	Fees of office,	249 87	
			5,947 08

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 1,	New York, Chicago & St. Louis Railroad Company:		
	Loans, 1911,	$4,925 92	
	Interest,	79 53	
	Fees of office,	246 29	
			$5,251 74
1,	Jamestown, Franklin & Clearfield Railroad Company:		
	Loans, 1911,	$3,062 60	
	Interest,	247 04	
	Fees of office,	153 13	
			3,462 77
1,	Lake Shore & Michigan Southern Railway Co.:		
	Loans, 1910,	$11,428 02	
	Interest,	1,558 02	
	Fees of office,	500 00	
			13,486 04
1,	Lehigh Coal & Navigation Company:		
	Loans, 1911,	$22,288 75	
	Interest,	1,790 52	
	Fees of office,	500 00	
			24,579 57
	Loans, 1910,	$21,390 61	
	Interest,	3,112 33	
	Fees of office,	500 00	
			25,002 94
1,	Johnstown Water Company:		
	Loans, 1910,	$603 90	
	Interest,	85 04	
	Fees of office,	30 19	
			719 13
	Loans, 1911,	$943 28	
	Interest,	72 32	
	Fees of office,	47 16	
			1,062 76
1,	Altoona & Logan Valley Electric Railway Company:		
	Loans, 1911,	$870 56	
	Interest,	69 93	
	Fees of office,	43 52	
			984 01
1,	New York, Susquehanna & Western Railroad Company:		
	Loans, 1911,	$506 60	
	Interest,	47 78	
	Fees of office,	25 33	
			579 71
1,	Jefferson Railroad Company:		
	Loans, 1911,	$1,231 14	
	Interest,	116 13	
	Fees of office,	61 55	
			1,408 82
1,	Lehigh Valley Railroad Company:		
	Loans, 1910,	$24,853 81	
	Interest,	2,363 15	
	Fees of office,	1,360 84	
			28,577 80
	Loans, 1911,	$16,236 66	
	Interest,	1,317 87	
	Fees of office,	500 00	
			18,054 53
	Loans, 1912,	$16,342 04	
	Interest,	422 16	
	Fees of office,	500 00	
			17,264 20

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 1,	Pennsylvania & New York Canal Railroad Company:		
	Loans, 1910,	$6,718 24	
	Interest,	934 95	
	Fees of office,	335 91	
			$7,989 10
	Loans, 1911,	$7,488 52	
	Interest,	601 57	
	Fees of office,	374 42	
			8,464 51
1,	Lehigh Valley Coal Company:		
	Loans, 1910,	$574 06	
	Interest,	80 36	
	Fees of office,	28 70	
			683 12
	Loans, 1911,	$912 79	
	Interest,	73 32	
	Fees of office,	45 63	
			1,031 74
1,	Pittsburgh, Bessemer & Lake Erie Railroad Company:		
	Loans, 1911,	$1,716 65	
	Interest,	167 08	
	Fees of office,	85 83	
			1,969 56
1,	Bethlehem & Nazareth Passenger Railway Company:		
	Capital stock, 1910,	$50 00	
	Interest,	8 18	
	Fees of office,	2 50	
			60 68
	Capital stock, 1911,	$75 00	
	Interest,	6 27	
	Fees of office,	3 75	
			85 02
3,	Easton Gas Electric Company:		
	Capital stock, 1910,	$3 44	
	Interest,	42	
	Fees of office,	17	
			4 03
	Capital stock, 1911,	$1,111 11	
	Interest,	92 40	
	Fees of office,	55 55	
			1,259 06
4,	Locust Mountain Water Company:		
	Capital stock, 1911,	$575 00	
	Interest,	85 48	
	Fees of office,	28 75	
			689 23
	Capital stock, 1911,	$625 00	
	Interest,	54 37	
	Fees of office,	31 25	
			710 62
4,	Beech Creek Extension Railroad Company:		
	Loans, 1911,	$133 00	
	Interest,	10 75	
	Fees of office,	6 65	
			150 40
7,	Bangor Central Slate Company:		
	Capital stock, 1911,		29 36
11,	Eastmere Water Company:		
	Capital stock, 1909-10-11,	$49 13	
	Loans, 1909-10,	19 72	
	Fees of office,	18 73	
			87 58

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 11,	New York Central & Hudson River Railroad Company:		
	Capital stock, 1912,	$450 00	
	Interest,	68 85	
	Fees of office,	18 73	
			$486 37
11,	Lehigh Valley Transit Company:		
	Loans, 1911,	$1,701 60	
	Interest,	143 78	
	Fees of office,	85 08	
			1,930 46
11,	Potter Gas Company:		
	Capital stock, 1910,	$812 50	
	Interest,	118 35	
	Fees of office,	40 62	
			971 47
	Capital stock, 1911,	$1,312 50	
	Interest,	109 37	
	Fees of office,	65 62	
			1,487 49
13,	Beech Creek Railroad Company:		
	Loans, 1911,	$727 05	
	Interest,	61 31	
	Fees of office,	36 35	
			824 71
	Loans, 1912,	$661 24	
	Interest,	18 84	
	Fees of office,	33 06	
			713 14
14,	Keystone Indemnity Company:		
	Interest on capital stock, 1909-10-11,	$10 31	
	Interest on Gr. Premiums, 1909-10-11,	19 41	
	Fees of office,	28 77	
			58 49
18,	Johnstown Water Company:		
	Loans, 1912,	$905 40	
	Interest,	15 24	
	Fees of office,	45 27	
			965 91
18,	Jefferson Railroad Company:		
	Loans, 1912,	$1,233 02	
	Interest,	55 89	
	Fees of office,	61 65	
			1,350 56
22,	Westmoreland Coal Company:		
	Capital stock, 1912,	35,040 00	
	Interest,	125 16	
	Fees of office,	252 00	
			5,417 16
22,	Philadelphia Mortgage & Trust Company:		
	Tax on Shares, 1912,	$725 00	
	Interest,	68 27	
	Fees of office,	36 25	
			829 52
	Tax on shares, 1913,	$825 00	
	Interest,	34 92	
	Fees of office,	41 25	
			901 17
22,	Lehigh & Wilkes-Barre Coal Company:		
	Capital stock, 1912,	$3,603 49	
	Interest,	37 83	
	Fees of office,	180 17	
			3,821 49

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 22,	Pennsylvania & New York Canal & Railroad Company:		
	Loans, 1912,	$7,249 84	
	Interest,	128 08	
	Fees of office,	362 49	
			$7,740 41
22,	Lehigh Valley Coal Company:		
	Loans, 1912,	$829 94	
	Interest,	14 22	
	Fees of office,	41 49	
			885 65
22,	To amount recovered from the following lunatics for maintenance and support in State Hospitals for the Insane, at Norristown, etc., viz:		
	Jacob H. Davidheiser,	$102 50	
	Walker Y. Wells,	182 37	
	H. P. Wenner,	140 00	
	Chas. J. Ihrie,	1,787 72	
	Emma F. Anderson,	167 36	
			2,379 95
25,	Northern Central Railway Company:		
	Loans, 1910,	$1,993 97	
	Interest,	79 10	
	Fees of office,	99 70	
			2,172 77
	Loans, 1911,	$2,236 76	
	Interest,	171 71	
	Fees of office,	111 84	
			2,520 31
	Loans, 1912,	$2,272 58	
	Interest,	35 24	
	Fees of office,	113 63	
			2,421 45
25,	Pennsylvania Railroad Company:		
	Loans, 1910,	$49,022 96	
	Interest,	1,958 23	
	Fees of office,	500 00	
			51,481 19
	Loans, 1911,	$58,825 72	
	Interest,	4,515 88	
	Fees of office,	500 00	
			63,841 60
	Loans, 1910,	$2,387 99	
	Interest,	95 39	
	Fees of office,	119 40	
			2,602 78
	Loans, 1911,	$2,666 60	
	Interest,	204 71	
	Fees of office,	133 33	
			3,004 64
	Loans, 1912,	$2,666 60	
	Interest,	46 03	
	Fees of office,	133 33	
			2,845 96
25,	Belvidere Delaware Railroad Company:		
	Loans, 1911,	$496 48	
	Interest,	38 11	
	Fees of office,	24 82	
			559 41
	Loans, 1912,	$396 00	
	Interest,	6 84	
	Fees of office,	19 80	
			422 64

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 25,	Delaware River Railroad & Bridge Company:		
	Loans, 1911,	$1,086 54	
	Interest,	83 41	
	Fees of office,	54 33	
			$1,224 28
	Loans, 1912,	$1,094 50	
	Interest,	18 89	
	Fees of office,	54 73	
			1,168 12
25,	Connecting Railway Company:		
	Loans, 1911,	$1,691 50	
	Interest,	129 85	
	Fees of office,	84 58	
			1,905 93
	Loans, 1912,	$1,691 50	
	Interest,	129 20	
	Fees of office,	84 58	
			1,805 28
25,	Cambria & Clearfield Railway Company:		
	Loans, 1911,	$457 70	
	Interest,	35 13	
	Fees of office,	22 89	
			515 72
	Loans, 1912,	$656 70	
	Interest,	11 33	
	Fees of office,	32 84	
			700 87
	Loans, 1913, (3 mos.),	$185 13	
	Interest,	3 19	
	Fees of office,	9 26	
			197 58
25,	Harrisburg, Portsmouth, Mt. Joy & Lancaster Railroad Company:		
	Loans, 1911,	$1,179 05	
	Interest,	90 51	
	Fees of office,	58 95	
			1,328 51
	Loans, 1912,	$1,192 76	
	Interest,	20 58	
	Fees of office,	59 64	
			1,272 98
25,	Allegheny Valley Railway Company:		
	Loans, 1910,	$2,561 63	
	Interest,	98 33	
	Fees of office,	123 08	
			2,683 04
25,	Philadelphia, Baltimore & Washington Railroad Company:		
	Loans, 1910,	$20,769 95	
	Interest,	829 66	
	Fees of office,	500 00	
			22,099 61
	Loans, 1911,	$22,048 20	
	Interest,	1,692 58	
	Fees of office,	500 00	
			24,240 78
	Loans, 1912,	$23,183 50	
	Interest,	400 15	
	Fees of office,	500 00	
			24,083 65

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 25,	Philadelphia & Baltimore Central Railroad Company:		
	Loans, 1910,	$358 69	
	Interest,	10 33	
	Fees of office,	12 93	
			$281 95
	Loans, 1911,	$215 59	
	Interest,	16 55	
	Fees of office,	10 78	
			242 92
25,	Columbia & Port Deposit Railway:		
	Loans, 1911,	$791 00	
	Interest,	60 72	
	Fees of office,	39 55	
			891 27
	Loans, 1912,	$760 00	
	Interest,	10 37	
	Fees of office,	38 00	
			808 37
25,	Erie & Western Transportation Company:		
	Loans, 1910,	$99 50	
	Interest,	7 51	
	Fees of office,	4 98	
			111 99
	Loans, 1912,	$99 50	
	Interest,	1 36	
	Fees of office,	4 98	
			105 84
25,	Spring Brook Water Supply Company:		
	Capital stock, 1913,	$4,375 00	
	Fees of office,	218 75	
			4,593 75
27,	Tionesta Valley Railway Company:		
	Capital stock, 1911,	$1,250 00	
	Interest,	108 33	
	Fees of office,	62 50	
			1,420 83
27,	Manufacturer's Electric Company, (Philadelphia):		
	Capital stock, 1911,	$250 00	
	Interest,	22 50	
	Fees of office,	12 50	
			284 75
	Capital stock, 1912,	$350 00	
	Interest,	8 75	
	Fees of office,	17 50	
			376 25
28,	Lake Shore & Michigan Southern Railway Company:		
	Loans, 1911,	$7,125 78	
	Interest,	546 30	
	Fees of office,	356 28	
			8,028 36
	Loans, 1912,	$7,652 74	
	Interest,	151 76	
	Fees of office,	382 63	
			8,187 13
29,	Geneva, Corning & Southern Railroad Company:		
	Loans, 1912,	$902 18	
	Interest,	16 23	
	Fees of office,	45 10	
			963 51
29,	Bill Prittz Distilling Company:		
	Capital stock, 1911,	$50 00	
	Interest,	4 93	
	Fees of office,	2 50	
			57 43

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
June 1,	To amount received from or on account of Richard H. Lynn, an alleged lunatic, for the maintenance and support of said lunatic in Norristown Hospital for Insane,		$800 00
1,	To amount received from H. F. Holler, Prothonotary, Attorney fees in 133 Com'th cases adjusted since January 1, 1914,		399 00
8,	California Provision Company:		
	Capital stock, 1912; fees of office,		6 25
10,	Lake Shore & Michigan Southern Railway Company:		
	Capital stock, 1909,	$8,989 06	
	Interest,	1,917 66	
	Fees of office,	449 45	
			11,356 17
	Capital stock, 1910,	$10,091 28	
	Interest,	1,495 19	
	Fees of office,	500 00	
			12,086 47
	Capital stock, 1911,	$12,380 63	
	Interest,	1,166 48	
	Fees of office,	500 00	
			14,947 11
11,	Philadelphia & Reading Terminal Railroad Company:		
	Loans, 1910,	$664 66	
	Interest,	91 50	
	Fees of office,	33 23	
			789 39
	Loans, 1911,	$664 66	
	Interest,	51 95	
	Fees of office,	33 23	
			749 84
11,	Catawissa Railroad Company:		
	Loans, 1910,	$2,714 36	
	Interest,	374 58	
	Fees of office,	135 72	
			3,224 66
	Loans, 1911,	$2,714 36	
	Interest,	212 16	
	Fees of office,	135 72	
			3,062 24
11,	Shamokin, Sunbury & Lewisburg Railroad Company:		
	Loans, 1910,	$1,086 54	
	Interest,	149 58	
	Fees of office,	54 33	
			1,290 45
	Loans, 1911,	$1,086 54	
	Interest,	84 93	
	Fees of office,	54 33	
			1,225 80
11,	Reading & Columbia Railroad Company:		
	Loans, 1910,	$397 12	
	Interest,	54 67	
	Fees of office,	19 86	
			471 65
	Loans, 1910,	$396 37	
	Interest,	30 98	
	Fees of office,	19 82	
			447 17
11,	Perkiomen Railroad Company:		
	Loans, 1910,	$175 12	
	Interest,	24 11	
	Fees of office,	8 76	
			207 99
	Loans, 1911,	$355 82	
	Interest,	27 81	
	Fees of office,	17 19	
			401 42

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
June 11,	North Pennsylvania Railroad Company:		
	Loans, 1910,	$13,549 91	
	Interest,	1,865 37	
	Fees of office,	500 00	
			$15,915 28
	Loans, 1911,	$14,063 33	
	Interest,	1,099 28	
	Fees of office,	500 00	
			15,662 61
11,	Reading Belt Railroad Company:		
	Loans, 1910,	$257 60	
	Interest,	35 46	
	Fees of office,	12 88	
			305 94
	Loans, 1911,	$258 70	
	Interest,	20 22	
	Fees of office,	12 94	
			291 86
11,	Reading Company:		
	Loans, 1910,	$772 12	
	Interest,	106 04	
	Fees of office,	38 61	
			916 17
	Loans, 1911,	$8,859 48	
	Interest,	692 52	
	Fees of office,	442 97	
			9,994 97
11,	New York Short Line Railroad Company:		
	Loans, 1910,	$1,990 00	
	Interest,	273 95	
	Fees of office,	99 50	
			2,363 45
	Loans, 1911,	$1,990 00	
	Interest,	155 54	
	Fees of office,	99 50	
			2,245 04
15,	Estate of following lunatics for their maintenance and support in State Hospitals for the Insane:		
	Katherine Merrill,	$76 13	
	H. S. Glasser,	15 00	
	Oram Williams,	139 00	
			230 13
16,	Lehigh Coal & Navigation Company:		
	Loans, 1912,	$20,456 93	
	Interest,	351 17	
	Fees of office,	500 00	
			21,308 10
24,	From the estate of the following lunatics confined in State Hospitals for the insane, on account of maintenance and support, viz:		
	Margaret A. Schreiner,	$32 50	
	Walker Y. Wells,	32 50	
	Harry P. Wenner,	32 50	
			97 50
25,	To amount received from estate of Elizabeth Larkin, Jr., a lunatic confined in Norristown State Hospital, on account maintenance and support,		171 87
26,	To amount recovered from estate of Sarah E. Tenney, a lunatic confined in Norristown State Hospital, on account maintenance and support,		250 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
June 26,	The Provident Life and Trust Company of Pennsylvania Plaintiff:		
	Defts' costs on appeal,		$489 50
July 2,	Schenley Distilling Company:		
	Capital stock, 1911,	$300 00	
	Interest,	29 10	
	Fees of office,	15 00	
			344 10
2,	To amount recovered from estates of the following lunatics confined in State Hospitals for the Insane, as indigents, on account of maintenance and support, viz:		
	Julia Toolan,	$100 00	
	Rosie Brunner,	350 00	
	Owen Williams,	32 50	
	Reuben S. Yost,	500 00	
			1,182 50
3,	To amount received from American Mechanics Hall Association—C. S. 1910-11:		
	Fees of office,		1 35
6,	To amount received from United Traction Street Railway Company:		
	Capital stock, 1911,	$100 00	
	Interest,	9 46	
	Fees of office,	5 00	
			114 46
9,	To amount received from Sorosis Shoe Company of Pittsburgh:		
	Bonus, 1910,	$5 00	
	Interest,	84	
	Fees of office,	25	
			6 09
9,	Sorosis Shoe Company of Philadelphia:		
	Bonus, 1910,	$116 67	
	Interest,	19 60	
	Fees of office,	5 83	
			142 10
10,	To amount received from estates of persons confined in State Hospitals for the insane as indigents, viz:		
	Annabel L. Nesbit,	$56 78	
	George F. Sanders,	150 00	
			206 78
14,	To amount received from James D. Maher, Clerk, U. S. Supreme Court, case of Patsone vs. Commonwealth of Pennsylvania:		
	Fees of office,		20 00
15,	To amount received from West Branch Coal Company:		
	Capital stock, 1910,	$75 00	
	Interest,	11 83	
	Fees of office,	3 75	
			90 58
16,	To amount received from Alta Land Company:		
	Capital stock, 1910,	$110 00	
	Capital stock, 1911,	110 00	
	Capital stock, 1912,	110 00	
			330 00
20,	To amount received from Sayre Electric Company:		
	Capital stock, 1911,	$350 00	
	Interest,	33 54	
	Fees of office,	17 50	
			401 04

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
July 23,	To amounts recovered from estates of persons confined in State Hospitals for the insane as indigents, viz:		
	Charles Achterman,	$325 00	
	Cora C. Eberhart,	575 00	
	Mary A. Brennan,	500 00	
	Mary Stewart,	300 00	
			$1,700 00
30,	To amount received from Beaver Terrace Land Company:		
	Capital stock, 1910,	$55 00	
	Capital stock, 1911,	49 50	
			104 50
Aug. 13,	Alden Coal Company:		
	Capital stock, 1912,	$1,250 00	
	Interest,	61 04	
	Fees of office,	62 50	
			1,373 54
13,	Knickerbocker Ice Company:		
	Capital stock, 1908,	$5 00	
	Fees of office,	25	
	Capital stock, 1909,	5 00	
	Fees of office,	25	
			10 50
13,	Lackawanna Iron & Steel Company:		
	Capital stock, 1912,	$1,150 00	
	Interest,	45 23	
	Fees of office,	57 50	
			1,252 73
14,	To amounts received as follows:		
	Beaver Valley Country Club—		
	Loans, 1910,	$84 04	
	Loans, 1911,	81 84	
	Loans, 1912,	81 84	
	Fees of office,	12 39	
			360 11
14,	Jamestown, Franklin & Clearfield Railroad Company:		
	Loans, 1912,	$1,943 88	
	Interest,	78 73	
	Fees of office,	97 19	
			2,119 80
19,	Bolivar Coal & Coke Company:		
	Capital stock, 1911,	$168 75	
	Capital stock, 1912,	118 00	
			356 75
19,	Buffalo & Lake Erie Traction Company:		
	Capital stock, 1912,	$1,000 00	
	Interest,	37 50	
	Fees of office,	50 00	
			1,087 50
Sept. 1,	To amount received from Plymouth Coal Company, Plaintiff in U. S. Supreme Court Appeal:		
	Fees of office,		20 00
3,	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:		
	Dallas W. Rough, Danville Hospital,		100 00
	Harriet Deaner, Danville Hospital,		8 58
	Katie B. Phillips, Norristown Hospital,		1,100 00
	Wm. J. Kilpatrick, Norristown Hospital,		523 28
	W. Reuben Bean, Norristown Hospital,		495 08
	Laura F. Murray, Norristown Hospital,		55 70
	Louisa Frankenfield, Norristown Hospital,		35 78
	J. W. B. Stock, Norristown Hospital,		350 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Sept. 4,	To amounts received from Fort Pitt Hotel Company:		
	Capital stock, 1908,	$1,391 86	
	Interest,	335 80	
	Fees of office,	86 38	
			$1,814 04
	Capital stock, 1909,	$843 25	
	Interest,	177 08	
	Fees of office,	51 01	
			1,071 34
	Capital stock, 1910,	$699 26	
	Interest,	97 89	
	Fees of office,	39 85	
			837 00
	Capital stock, 1911,	$1,604 67	
	Interest,	161 45	
	Fees of office,	88 20	
			1,854 32
11,	To amounts recovered from estates of persons confined in State Hospitals for the Insane as indigents, viz:		
	David N. Welsh, Homeopathic Hospital, ..	$125 73	
	Mason H. Stewart, Warren Hospital, ...	19 19	
	Abram A. Hunsberger, Norristown Hospital,	32 46	
			177 38
14,	Ming Realty Company:		
	Capital stock, 1908. Fees of office,		325 00
18,	A. Overholt & Company:		
	Capital stock, 1910,	$6,250 00	
	Interest,	1,056 25	
	Fees of office,	312 50	
			7,618 75
	Capital stock, 1911,	$2,500 00	
	Interest,	275 00	
	Fees of office,	125 00	
			2,900 00
29,	Big Bend Coal Mining Company:		
	Capital stock, 1911,		199 95
29,	To amount received from J. G. Starry:		
	Refund of cash of removing debris in re Capital Park Extension,		6 65
Oct. 1,	To amount received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:		
	Joseph Carroll, Homeopathic Hospital, ...	$150 00	
	Anna Haine, Warren,	1 79	
	Anna Haine, Warren,	100 00	
	Lizzie McIlhain, Norristown,	1,043 92	
			1,295 71
6,	Greensboro Gas Company:		
	Capital stock, 1912,	$3,575 00	
	Interest,	180 53	
	Fees of office,	178 75	
			3,934 28
12,	To amount received from Dean Adjustible Steel Pilot Company:		
	Capital stock, 1910,	$50 00	
	Interest,	2 50	
			52 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Oct. 12,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:		
	Alice I. Upton, Warren Hospital, ...	$50 00	
	Eli Smith, Homeopathic Hospital, ...	277 93	
	Mary Newcome, Warren Hospital, ...	387 44	
	Elmer Hoffman, Homeopathic Hospital, ..	60 00	
			$775 37
12,	To amount received from Middletown & Swatara Consolidated Water Company:		
	Capital stock, 1909, ...	$5 40	
	Capital stock, 1910, ...	5 40	
	Loans, 1909, ...	352 90	
			363 70
22,	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:		
	Edward C. Boyle, Homeopathic Hospital,	$66 25	
	David M. Welsh, Homeopathic Hospital,	32 50	
	Michael G. Hughes, Warren Hospital, ...	49 29	
	Emma J. Weidner, Homeopathic Hospital, ...	121 43	
			269 47
26,	New York, Pittsburgh & Chicago Railroad Company:		
	Capital stock, 1911, ...	$90 00	
	Interest, ...	10 80	
	Fees of office, ...	4 50	
			105 30
28,	Williamsport & North Branch Railroad Company:		
	Balance, Capital stock, 1909, ...	$375 00	
	On account capital stock, 1910, ...	125 00	
			500 00
29,	To amounts recovered from estates of persons confined in State Hospitals for the Insane as indigents, viz:		
	George Blight, Homeopathic Hospital, ...	$573 80	
	Margaret Schreiner, Norristown Hospital,	32 50	
	Walker Y. Wells, Norristown Hospital,..	32 50	
	Emily Karst, Warren Hospital, ...	27 14	
			665 94
30,	To amount recovered from estate of Elizabeth A. Matchin, confined in Danville State Hospital for Insane as indigent persons, ...		1,000 00
Nov. 4,	To amount recovered from estates of persons confined in State Hospitals for Insane, as indigents, viz:		
	John E. Latshaw, Norristown Hospital,..	$200 00	
	Charles Breed, Warren Hospital, ...	16 07	
			216 07
4,	Franklin Sugar Refining Company:		
	Capital stock, 1910, ...	$15,750 00	
	Fees of office, ...	500 00	
			16,250 00
4,	Spreckels Sugar Refining Company:		
	Capital stock, 1910, ...	$500 00	
	Fees of office, ...	25 00	
			525 00
5,	To amounts received from Mutual Ice Company:		
	Capital stock, 1909, ...	$132 00	
	Interest, ...	29 04	
	Fees of office, ...	10 38	
			171 42

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Nov. 5,	Valley Iron Works:		
	Loans, 1911,	$34 50	
	Interest,	3 88	
	Fees of office,	1 72	
			$40 10
5,	Union Park Land Company:		
	Capital stock, 1911,	$175 00	
			175 00
5,	To amount recovered from estate of Cornelia Korb, an insane person confined in Warren State Hospital, as an indigent,		665 00
8,	Union Park Land Company:		
	Loans, 1910,	$17 10	
	Interest,	15 15	
	Fees of office,	9 60	
			41 85
13,	To amounts recovered from estates of persons confined in State Hospitals for the Insane as indigents, viz:		
	Edwin B. Dietz, Norristown Hospital,	$500 00	
	James D. Reeber, Homeopathic Hospital,	326 11	
	Martha M. Stevenson, Warren Hospital,	159 29	
	Emma J. Baker, Warren Hospital,	879 43	
			1,864 83
13,	Amount received from Taschko Dundoff:		
	Refund of the cost of removing debris, in re Capital Park Extension,		33 25
13,	Latrobe Ice & Provision Company:		
	Bonus on increase,	$39 00	
	Interest,	6 00	
			45 00
13,	Mechanicsburg Gas & Water Company:		
	Capital stock, 1909,	$360 00	
	Interest,	92 82	
	Fees of office,	18 00	
			470 82
16,	Scranton Vitrified Brick & Tile Manufacturing Company:		
	Capital stock, 1913,	$5 00	
	Fees of office,	25	
			5 25
17,	To amount received from Latrobe Ice & Provision Company:		
	Fees of office,		1 95
18,	Hillsdale Coal & Coke Company:		
	Capital stock, 1910,	$261 25	
	Capital stock, 1911,	287 37	
	Loans, 1910,	15 40	
	Loans, 1911,	16 94	
	Interest,	60 61	
	Fees of office,	29 04	
			670 61
25,	To amount received from H. F. Holler, Prothonotary, attorney fees in 62 Commonwealth cases, adjusted since June 2, 1914:		
	Fees of office,		186 00
30,	To amounts recovered from estates of persons confined in State Hospitals for the Insane as indigents, viz:		
	John E. Hoffman, Warren Hospital,	$40 36	
	Sarah L. Latchow, Warren Hospital,	267 01	
	George Schmidt, Warren Hospital,	432 86	
	James B. Salmon, Danville Hospital,	91 08	
			831 31

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Nov. 30,	Florala Saw Mill Company:		
	Capital stock, 1910,	$161 53	
	Interest,	31 98	
	Fees of office,	8 08	
			$201 59
Dec. 1,	Lake Shore & Michigan Southern Railway Company:		
	Capital stock, 1912,	$17,100 00	
	Fees of office,	500 00	
			17,600 00
4,	Dale Light, Heat & Power Company:		
	Capital stock, 1912,	$75 00	
	G. R. 1912, (to Dec. 31),	25 20	
	Interest on G. R.,	2 00	
	Fees of office,	5 00	
			107 20
9,	To amount received from estate of J. Wesley Klare, confined in Norristown State Insane Hospital as an indigent,		366 54
9,	Henricks Piano Company, Ltd.:		
	Capital stock, 1906,	$325 00	
	Capital stock, 1909,	205 65	
	Capital stock, 1910,	112 00	
	Capital stock, 1911,	115 25	
	Capital stock, 1912,	147 39	
	Capital stock, 1913,	166 14	
			1,071 43
14,	Penn Line Product Company:		
	Capital stock, 1909,	$166 14	
	Capital stock, 1910,	93 50	
	Capital stock, 1911,	93 50	
	Capital stock, 1912,	93 50	
	Interest,	26 74	
	Fees of office,	22 33	
			495 71
14,	To amount received from H. F. Holler, Prothonotary, costs paid by Plaintiff for printing Defendant's paper books in so-called "Full Crew Case" of Pennsylvania Railroad Company vs. Ewing, et al, constituting State Railroad Commission:		
	Fees of office,		325 00
14,	Amounts recovered from the estates of following persons confined in Norristown Insane Hospital as indigents, viz:		
	Margaret A. Schreiner,	$32 50	
	Walker Y. Wells,	32 50	
	William Stanley,	97 50	
	Wm. J. Kilpatrick,	32 50	
	Lizzie McSchair,	32 50	
			227 50
21,	The Bergner & Engel Brewing Company:		
	Capital stock, 1913,	$996 13	
	Fees of office,	49 80	
			1,045 93
21,	Amounts recovered from estates of following persons confined in State Hospitals for the Insane, as indigents, viz:		
	George Oldt, Warren Hospital,	$17 14	
	Matilda Tabey,	100 00	
	Emily Varst, Warren Hospital,	32 50	
	James D. Reber, Homeopathic Hospital,	32 50	
			182 14

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Dec. 25,	Keystone Coal & Coke Company:		
	Capital stock, 1909,	$5,000 00	
	Interest,	1,239 33	
			$6,488 33
	Fees of office,	$250 00	
	Interest,	3,750 00	
	Interest,	681 25	
			4,618 75
	Fees of office,	$187 50	
	Capital stock,	5,500 00	
	Interest,	664 58	
	Fees of office,	275 00	
			6,439 58
	Capital stock, 1912,	$7,000 00	
	Interest,	428 16	
	Fees of office,	350 00	
			7,718 16
22,	Valley Smokeless Coal Company:		
	Capital stock, 1912,	$200 00	
	Interest,	14 40	
	Fees of office,	10 00	
			224 40
23,	J. G. Curtis Leather Company:		
	Loans, 1907,	$143 83	
	Interest,	57 62	
	Fees of office,	7 19	
			208 64
23,	Miles Corson Company:		
	Loans, 1885 to 1908,	$182 78	
	Interest,	57 03	
	Fees of office,	9 14	
			248 95
23,	Petroleum Telephone Company:		
	Loans, 1901 to 1908,	$513 00	
	Interest,	151 34	
	Fees of office,	25 65	
			689 99
28,	To amounts recovered from estates of persons confined in the State Hospitals for the Insane as indigents, viz:		
	Ella B. Booth, Homeopathic Hospital, ..	$305 00	
	Rosie Brunner, Homeopathic Hospital, ..	65 00	
	Edwin B. Dietz, Norristown Hospital, ..	21 75	
			391 75
29,	Lebanon Valley Street Railway Company:		
	Capital stock, 1911,	$750 00	
	Interest,	93 83	
	Fees of office,	37 50	
			881 33
31,	H. F. Holler, Prothonotary, Attorney fees in 19 Commonwealth cases adjusted since November 25, 1914. Fees of office,		57 00
31,	Logan Valley Store Company:		
	Capital stock, 1911,	$36 93	
	Interest,	4 74	
	Fees of office,	1 85	
			43 52
	Capital stock, 1912,	$35 67	
	Interest,	2 94	
	Fees of office ,	1 78	
			40 39
	Total for the year 1914;		$742,909 25
	Grand total for years, 1913 and 1914,		2,326,075.59

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