

Commonwealth of Pennsylvania

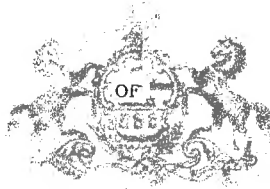
REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL



PENNSYLVANIA

FOR THE

TWO YEARS ENDING DECEMBER 31, 1916

FRANCIS SHUNK BROWN,
Attorney General.

HARRISBURG, PA.:
J. L. L. KUHN, STATE PRINTER.
1917.

REPORT OF THE ATTORNEY GENERAL

FOR THE

Two Years Ending December, 31, 1916.

Office of the Attorney General,

Harrisburg, Pa., January 1, 1917.

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 on December 31, 1916.

By an act approved May 6, 1915 (P. L. 279), the Attorney General's Department was reorganized and the power of the appointment of the Deputy Attorneys General was conferred upon the Governor. Pursuant to such power the Governor appointed as First Deputy Attorney General, Honorable William H. Keller, and as Deputy Attorneys General, the Honorables William M. Hargest, Joseph L. Kun, Horace W. Davis and Emerson Collins.

Under the authority vested in me, by the Act of 1915 before referred to, I have appointed the office staff of my predecessor to positions similar to those held prior to the passage of said act and have appointed Frank M. Hunter, Esq., as the additional Law Clerk provided for in said statute.

A system which had been followed for many years involved the employment of private counsel to represent the State in the prosecutions under the various penal statutes connected with the enforcement of the Fish, Game, Forestry, Food and other similar laws. This system not only involved large payments on the part of the Commonwealth for the services of such private counsel but detracted from the dignity which should be attached to prosecutions of that nature. A consideration of the several Acts of Assembly, and of the decisions of the courts, disclosed the law to be, that the district attorneys of the several counties are required, as part of the duties of their office, to act for the Commonwealth in all matters, in which the Common-

wealth is concerned, which arise in their respective counties, and in such cases as arise under the several departments of the State government, they are subject to the direction of the Attorney General.

The district attorneys of the several counties are, therefore, now called upon by the Attorney General to act for the State and its several departments in the prosecution of offenses under the Forestry, Fish, Game and other laws. In addition to the saving of a large amount of money, the practice has more than justified itself, as it establishes a uniformity of procedure, enables this department to systematize the prosecutions, and also, in many instances, renders valuable assistance to such district attorneys.

There was undertaken and completed an analytical index of the official opinions of this Department. The publication of such an index had never theretofore been undertaken. Prior to 1887 the opinions themselves were not published in a form available for distribution and, indeed, in many cases no effort seems to have been made to preserve copies thereof in the files of the office. In that year the system of printing the opinions of the Department as an appendix to the biennial report was originated and still obtains.

In 1887 the Attorney General endeavored to procure from available sources the opinions of the Department rendered before 1887, and such as were deemed of public importance were incorporated in the Department report for the years 1895-1896. The collection contains opinions rendered as early as 1874, but, of course, is by no means complete.

The purpose of the analytical index is to present in a concise way the questions involved in each opinion and the official disposition thereof, as well as a reference to the place where the opinion may be found as rendered. The index comprehends all available opinions of public interest given by this Department prior to December 1st, 1916, and it is assumed that the system adopted will be continued by the addition of supplements from time to time. No attempt was made to include in the index every opinion rendered by the Department. Many opinions are given orally or by letter, a reference to which will not be found therein. The opinions which are comprehended are those formal opinions of such public importance as to be incorporated in an appendix to the Department's biennial report.

A bill is now pending in your Honorable Body for the printing, binding and distribution of such a number of copies of this index as will be sufficient to supply officials having use for the same.

Almost immediately upon the assumption of my duties of office, complaints were presented alleging that certain streams of the Commonwealth were being polluted. These complaints continually increased in number and in their diversity until I was in possession of information which would seem to indicate that almost every stream

in this Commonwealth was being polluted. These complaints came from certain departments of the State, from individuals, from railroads, from sportsmen's associations and many other sources and were directed against tanneries, chemical works, paper mills, explosive factories, iron and steel factories, graphite and sand works, refining companies, hat factories, coal mines, and almost every kind of industrial establishment or operation within the State.

The subject grew to such proportions that I deemed it advisable to request the Commissioner of Fisheries to make a survey of the streams of this State. This survey covered a large part of the State and showed every stream within the survey—what manufacturing corporations and operations were located thereon, whether such corporations and operations were causing an affluent to go into the streams and if so the character of the same. This survey disclosed thousands of establishments and operations which were rendering the water fatal to fish and animal life, dangerous to human life and subversive to the moral and physical growth of the people of the Commonwealth.

There existed at that time and still do exist statutes under which the polluters of the streams could be prosecuted and subjected to fine. In certain instances these acts of assembly were invoked. Believing that prosecutions against these thousands of industries would not be a proper solution of the condition, I assumed the privilege of calling, in convention, representative interests and people of the Commonwealth to ascertain whether, by mutual effort, some solution, which would be fair to all, might be discovered. Approximately two thousand invitations were sent out from this office to individuals, to tanneries, chemical works, paper mills, mines and all other industrial establishments and operations, to chemists of repute and in fact to every one whose name presented itself to me as likely to be interested in the subject and whose ideas might be advantageous in solving the perplexing condition. The convention was given the widest publicity throughout the newspapers of the State so that persons, who for any cause failed to receive a special invitation, might nevertheless be acquainted with the proposed convention and attend if sufficiently interested. This convention met in the Assembly Hall of the House of Representatives on November 9, 1916, and was largely attended. Addresses were made by State officials and the views of the persons present secured. The question was discussed for a large part of the day and in the evening persons, chosen by the several classes of industries represented, met in my office in a further endeavor to arrive at some definite course of action which would result in the discontinuance of the pollution of the waters without driving industrial establishments out of the State. This evening meeting ended with the understanding that the different

classes of manufacturing and mining interests in the State would each assemble and endeavor to develop some thought which would solve the subject so far as each particular class of industry was concerned. If the persons polluting the streams cannot devise some method whereby such pollution shall cease, the question may be presented to your Honorable Body with the suggestion that a commission be created to study the subject and recommend such legislation as the result of their labors may dictate as the best possible solution of the conditions.

Pursuant to the authority vested in me, I reappointed John Hyatt Naylor, Esq., as Special Attorney 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 sufficient estates to pay, in whole or in part, for their maintenance therein, or, from persons who are legally liable for the support of such persons. I have, also authorized the employment of investigators whose duty it is to inquire into and ascertain the facts concerning the estates of lunatics and feeble-minded persons confined in the various institutions of the Commonwealth, as well as their relatives liable, under the law, to pay for their support. These investigators are rendering efficient service. Practically all of these cases confined in the institution for feeble-minded at Spring City coming from Philadelphia county have been investigated and many cases have been disclosed which resulted in collections being made. Approximately five hundred cases confined in Norristown and chargeable to Philadelphia county have been investigated disclosing about seventy-five cases in which the Commonwealth will eventually secure reimbursement. York county has been investigated and as a result about fifteen thousand (\$15,000.00) dollars has been collected from that county within the last year and there are outstanding collections of approximately the same amount.

Collections have been made in practically every county of the Commonwealth and from all State hospitals and most of the county institutions receiving State aid.

There are now approximately fifteen hundred cases in various stages of procedure and representing the number of cases from which reimbursement is payable, out of an examination of approximately seventy-five hundred inmates. This number is being continuously increased. There are now about one hundred and fifty cases that reimburse the Commonwealth regularly for current maintenance of insane and feeble-minded inmates.

Approximately one hundred audits have been attended at which the Commonwealth's claim has been presented and ordered paid. At least thirty guardians have been appointed during this period for lunatics who appeared, upon investigation, to have estates but in

which the relatives were either not willing to act or fraudulently desired to conceal the assets until the death of the lunatic. Letters of administration upon estates of deceased lunatics have been granted upon the Commonwealth's application in three cases. At least two hundred petitions for awards in payment of the Commonwealth's claims have been presented before the various courts of common pleas throughout the Commonwealth.

It is estimated that the cases now in hand will require at least five years for completion and will produce for the Commonwealth at least five hundred thousand (\$500,000) dollars.

The total receipts from this work to December 31, 1916, are \$139,293.37.

The collections by the Department during the last two years have been somewhat less than during preceding years. That is due largely to recent Acts of Assembly which impose stringent requirements upon the institution and prosecution of appeals from tax settlements, which requirements have materially lessened the number of appeals.

The Department has supervised the purchase of several Normal Schools and of a large number of turnpikes and has instituted numerous suits to recover from municipalities moneys for State-aid highway construction.

The following summary shows the formal opinions rendered by this Department during the last two years. These opinions constitute but a small percentage of the legal advice rendered by this Department, as hundreds of opinions are given to State officers and others orally and in a manner other than by formal opinion.

SUMMARY OF THE BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1915, TO
DECEMBER 31, 1916, INCLUSIVE.

Quo warranto proceedings in Common Pleas of Dauphin County, ...	40
Equity proceedings in Common Pleas of Dauphin County, ...	10
Actions in assumpsit instituted by the Commonwealth in the Common Pleas of Dauphin County, ...	28
Actions in ejectment brought by the Commonwealth of Pennsylvania, ...	3
Actions in trespass brought against the Commonwealth of Pennsylvania, defendant, ...	9

Orders to show cause, etc., against insolvent companies and associations, ...	10
Mandamus proceedings in Common Pleas of Dauphin County, ...	13
Appeals from the orders of the Public Service Commission of Pennsylvania, ...	15
Condemnation proceedings under Act of June 16, 1911, P. L. 1027, in relation to the Capitol Park Extension, ...	10
Appeals by Commonwealth from reports of viewers, ...	2
Cases argued in the Supreme Court of Pennsylvania, ...	26
Cases argued in the Superior Court of Pennsylvania, ...	3
Cases argued in the Supreme Court of the United States, ...	4
Tax appeals in the Common Pleas of Dauphin County, ...	77
Bridge proceedings under the Act of June 3, 1895, P. L. 130, and supplements, ...	6
Insurance charters approved by the Attorney General, ...	13
Bank charters approved by the Attorney General, ...	24
Applications for sewerage approved by the Attorney General, ..	176
Formal opinions rendered in writing, ...	248
Cases now pending in the Supreme Court of Pennsylvania, ...	9
Cases now pending in the Superior Court of Pennsylvania, ...	2

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

	Heard.	Refused.	Allowed.	Withdrawn.	Pending.	Continued indefinitely.
Quo warranto, -----	40	7	35	4	-----	3
Mandamus, -----	3	-----	1	-----	-----	2
Equity, -----	3	1	1	1	-----	-----

Proceedings under Act of May 23, 1895, P. L. 114, ...	3
Proceedings under Act of April 26, 1855, P. L. 331, ...	1
Proceedings under Act of May 31, 1907, P. L. 353, ...	1
Proceedings under Act of June 1, 1915, P. L. 701, ...	1

COLLECTIONS.

For 1915, ...	\$347,121 92
For 1916, ...	164,750 90
Total, ...	\$511,872 82

SPECIAL CASES.

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

Pittsburgh Bank for Savings and Central Trust Company of Pittsburgh.

In December of 1915 a precedent was established when, upon the failure of the Pittsburgh Bank for Savings, it was decided to place such bank in charge of an Examiner of the Banking Department as Receiver, and a Deputy Attorney General as attorney for the Receiver. This experiment has more than justified itself. The Receiver's fees were fixed at eighteen dollars per day and expenses, while the Deputy Attorney General in charge received no compensation additional to his salary and his expenses necessarily incurred in connection with such receivership. The liabilities of the bank at the time of its failure exceeded \$10,000,000. Four months after the bank was closed a dividend of fifty per cent., amounting over \$5,000,000 was declared and paid. Another dividend of twenty per cent. was declared in December of 1916. There will ultimately be paid out from ten to fifteen per cent. more. The total expenses from the inception of the receivership to August 1, 1916; including rent, clerical hire, stationery, postage, State and Federal tax, Receiver's fees and expenses; and the payment of the first dividend of \$5,000,000 was less than \$21,000, or on a basis of an expense of two-fifths of one per cent. Past receiverships show that like services under the old system by a private receiver and private counsel would have entailed an expense of from two to ten per cent., involving as a minimum \$100,000, with the more likely amount of \$250,000.

It is believed that the State banking system will be bettered if this method of liquidation is followed, as it is a service which may be properly rendered by the State and should be afforded to the citizens of the Commonwealth.

The same system was followed upon the closing of the Central Trust Company of Pittsburgh in September of 1916, and has resulted in the same economical liquidation. The liabilities of this bank approximated \$1,000,000. A fifty per cent. dividend was paid within three months after closing. The cost of liquidating this bank will compare favorably with that incurred in the Pittsburgh Bank for Savings.

The system followed in the liquidation of these two banks may be made permanent by the enactment of a statute giving the Commissioner of Banking powers similar to the Commissioner of Insurance, whereby in event of insolvency the Commissioner of Banking is made receiver, and for that purpose appoints a special deputy to be in immediate and active charge of the liquidation.

— 2000 10000000 00000000

10000000 00000000

Bucket Shops.

Early in 1915 it was brought to the attention of this Department that there were a number of bucket shops in the State of Pennsylvania and that to further their operations in the western part of the State, a spurious stock exchange was maintained in Pittsburgh known as the "Pittsburgh Consolidated Stock and Produce Exchange." This exchange was operated merely for the purpose of giving a semblance of legality to the many bucket shops connected with it and was the center of operation not only of bucket shops in the State of Pennsylvania, but also in many other states. This Department conducted an investigation extending over a period of some two months and on March 10, 1916, after proper preparation, with the aid of some forty officers of the Pennsylvania State Police, caused simultaneous raids to be made upon such stock exchange, as well as bucket shops operating in the counties of Allegheny, Butler, Westmoreland, Washington, Mercer, Lawrence and Indiana. As a result of such raids an action of quo warranto was brought against the Consolidated Stock and Produce Exchange of Pittsburgh, following which its charter was forfeited in the Dauphin County Court. All of the persons arrested in the said raid, including four or five directors of said exchange, with the exception of some eight or nine men, pleaded guilty and were sentenced under the Act of 1907, declaring bucket shopping illegal. On December 15, 1916, two alleged bucket shop operators in Lawrence County, who had not pleaded guilty, were tried in a trial conducted by one of the Deputy Attorneys General and such defendants found guilty. The cases involving the defendants arrested in one other bucket shop are as yet pending in Allegheny County and undisposed of. The result of this raid will largely tend to rid the State of Pennsylvania of bucket shops.

LEGAL ASPECTS OF COLLECTIONS OF MONEY DUE THE STATE FOR MAINTENANCE OF INSANE.

On June 1, 1915, the Governor approved an Act of Assembly fixing the liability of the estates of lunatics, feeble-minded persons, etc., and their relatives, to reimburse the Commonwealth. Prior to that time collections had been made under the Common Law. On May 8, 1916, the Supreme Court of Pennsylvania upheld the constitutionality of the Act of June 1, 1915, P. L. 661, and affirmed also the Commonwealth's right to recover at common law. These decisions are as follows:

Arnold's Estate, 243 Pa., 517.

Mansley's Estate, 253 Pa., 522.

Commonwealth, Appellant, v. Evans, 253 Pa., 524.

The constitutionality of the Act was also attacked before the Court of Common Pleas No. 5 of Philadelphia County, and there the constitutionality was upheld in an opinion by J. Willis Martin, P. J., in the following case:

In re Philip Duerr, 25 Dist. Rep., 406.

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

This case involved the constitutionality of Section 10 of the Act of July 7, 1913, P. L. 672, providing that moneys derived from registrations and license fees of motor vehicles should be paid into the State Treasury and specifically appropriating the same to the use of the State Highway Department.

This section was attacked as unconstitutional in that it was not a proper appropriation. The constitutionality of the act was sustained by the Court of Common Pleas of Dauphin County and also by the Supreme Court (249 Pa. 144).

Commonwealth vs. Westinghouse Air Brake Company.

This case involved the right of the State to tax the capital stock of a domestic corporation which was represented by the entire capital of a foreign corporation when the domestic corporation owned all of the property prior to the organization of a foreign corporation, and the foreign corporation was only organized for the convenience of using such property. The Court of Common Pleas of Dauphin County and the Superior Court held that under such circumstances the tax upon the capital stock of the domestic corporation could not be imposed.

Commonwealth vs. Penn Mutual Life Insurance Company.

The Commonwealth contends that dividends used by insured to pay premiums on insurance policies and applied by the company therefor, were "premiums received," within the meaning of the law taxing premiums. The Court of Common Pleas of Dauphin County and the Supreme Court held that these dividends were not received by the company in the sense of being paid to it, and therefore not taxable (252 Pa. 512).

ESCHEAT CASES.

The Columbia National Bank, Union Trust Company of Pittsburgh, and Germantown Trust Company, filed a Bill in Equity against the Attorney General, to restrain him from carrying out the provisions of the Act of June 7, 1915, P. L. 878, relating to escheats. The act was attacked as unconstitutional for various reasons. It was also attacked as not applying to national banks. The Court of Common Pleas of Dauphin County has sustained the act in every particular, and has decided that it includes national banks. Appeals will be taken to the Supreme Court.

Commonwealth vs. Metropolitan Life Insurance Company.

This case involved the same question as the Penn Mutual Life Insurance Company, and in addition the question as to whether or not money paid for the purchase of annuities was premiums received, within the statute taxing such premiums, and it was held that such money was not premiums received (254 Pa. 510).

Commonwealth vs. Alden Coal Company.

This case involved the constitutionality of the Act of June 27, 1913, P. L. 639, which imposed a tax upon anthracite coal and provided that fifty per centum of the amount received from said tax should be distributed to the counties from which anthracite coal is taken. The act was attacked on the ground that taxing anthracite coal was an illegal classification and that the distribution to the counties was unconstitutionally diverting the tax imposed. These contentions were sustained and the act declared unconstitutional (251 Pa. 134).

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

At the last report this case was pending on appeal in the Supreme Court of the United States. The question was whether the State had the power to impose a tax upon the premiums of foreign insurance companies received from residents of the State, but which were paid by sending the premiums by mail to agents outside of the State, or directly to the home office of the company; that is to say, where such payments represented premiums from business done in Pennsylvania.

The Supreme Court of Pennsylvania reversed the Court of Common Pleas of Dauphin County and sustained the contention of the Commonwealth.

The Supreme Court of the United States also sustained the contention of the Commonwealth (238 U. S. 143).

Fidelity and Deposit Company of Maryland.

This case arises on an appeal from the settlement of tax on premiums received by defendant, a foreign corporation, upon bonds given by United States government officials for the faithful performance of their duties. The tax was resisted because it was alleged that it was a tax upon Federal Government agencies and the Commonwealth's contention was sustained in the Court of Common Pleas of Dauphin County and the Supreme Court of Pennsylvania, and finally in the Supreme Court of the United States. (240 U. S. 319.)

A. B. CROWL vs. Commonwealth of Pennsylvania.

In this case Crowl was convicted in the courts of Erie County for selling ice cream containing less butter fat than fixed by the Pennsylvania statute. The constitutionality of the statute was attacked on the ground that the State could not arbitrarily fix a standard and prevent wholesome food from being sold below that standard.

The constitutionality of the act was sustained by the Superior Court of Pennsylvania and finally by the Supreme Court of the United States, but the case is not yet reported.

Edward S. Nolan vs. James Foust, et al.

In this case the constitutionality of section 16 of the cold storage act was attacked. This section fixes the time limits within which foods can be kept in cold storage and prevents their sale for food if kept for a longer period.

A bill in equity was filed to prevent the prosecution of the plaintiff from selling butter as food which had been kept beyond the statutory period. The Court of Common Pleas of Allegheny County has decided this section of the cold storage act unconstitutional and an appeal is now pending in the Superior Court.

American Druggists Fire Insurance Company vs. Insurance Commissioner.

The plaintiff in this case filed a bill in equity requiring the Insurance Commissioner to issue a license to it without its complying with the law, which requires any insurance company either to file a schedule of rates or to have a rating bureau file such a schedule for it. The act was attacked as unconstitutional and the case is now pending in the District Court of the United States for the Middle District of Pennsylvania.

Commonwealth ex rel. Francis Shunk Brown, Attorney General, vs. Albert S. Heck.

Mandamus in the Supreme Court to compel the President Judge of the 55th Judicial District to hear cases from the County of Clinton, in accordance with the Act of May 14, 1915, P. L. 498. Argued in the Supreme Court and the act declared unconstitutional. (251 Pa. 39.)

West Virginia Pulp and Paper Company vs. Public Service Commission.

Petition by Pennsylvania Railroad Company, et al. Intervening Appellees, to have the amendment of 1915 to the Public Service Company Law declared unconstitutional. Attorney General appeared for the Public Service Commission, argued the case and the constitutionality of the amendment was sustained. (61 Super. Ct. 555.)

Commonwealth ex rel. John C. Bell, Attorney General, vs. Susquehanna Boom Company.

In this case, after a Writ of Quo Warranto had issued and a verdict in favor of the relator been rendered and judgment of ouster rendered thereon, execution to be delayed, however, until the order of the Attorney General, an appeal was taken by the Defendant to the Supreme Court. Pending the appeal, the Health Officer of the City of Williamsport presented a petition setting forth that the removal of the dam in question would seriously affect the general health of the people of Williamsport. This was supported by affidavits of the county commissioners, city authorities, and various civic bodies, protesting against the removal of said dam. The Attorney General requested the State Commissioner of Health to make a survey of the situation and report as to the effect of the removal of the dam on the health of the community. The Commissioner of Health did so and reported that the removal of the dam would probably injuriously affect the health of the community, and might lead to a serious epidemic. A public hearing was thereupon fixed by the Attorney General, of which notice was given all parties and, after hearing such testimony as was presented on all sides, the Attorney General inquired of the parties asking for the removal of the dam, whether they could give assurances that another dam would be built if the present dam was removed, so as to keep the water at practically the same level. These assurances could not be given. The Attorney General having arrived at the conclusion that the best interests of the Commonwealth and of the people of the community affected would not be subserved by the removal of the dam, presented a motion in the Supreme Court for the withdrawal of the Quo Warranto proceedings, which was granted.

Commonwealth vs. Straban Township, Adams County.

Suit in assumpsit to recover moneys due for State-aid highway construction. Defendant raised the constitutional question as to whether the township was liable, because at the time the contract

was signed tax levy sufficient to pay the indebtedness and interest within thirty years was not made, although such levy was made before the township's proportion of the expenses was determined. The Court of Common Pleas of Dauphin County entered judgment in favor of the Commonwealth.

Danboro and Plumsteadville Turnpike Road Company vs. County of Bucks.

In the Court of Common Pleas of Delaware County. At the request of the State Highway Commissioner, the Attorney General intervened and filed a Brief, and argued in favor of a new trial, the Court below having held that the Act of June 2, 1887, P. L. 306, was repealed by the Act of May 31, 1911, P. L. 468. The Court granted a new trial. An appeal was taken by the County of Bucks to the Supreme Court. which is pending.

Commonwealth ex rel. Culver, District Attorney, vs Commissioners of Bradford County.

Mandamus in the Court of Common Pleas of Bradford County to compel the building of a county bridge. The Attorney General intervened as Appellee in the Supreme Court. Judgment of the lower court affirmed.

Saeger vs. Commonwealth.

In the Court of Common Pleas of Crawford County. Appeal from award of viewers for damages claimed on account of change of location of State highway. The Attorney General appeared for the Commonwealth and at the trial a non-suit was granted on the ground that the old road was not vacated. Motion to strike off non-suit was made and argued and rule discharged. An appeal is now pending in the Supreme Court.

In the Matter of the Franklin Film Manufacturing Company.

This case raised the important question of the nature and scope of the appeal given by the Motion Pictures Act of 1915 to the Court of Common Pleas from the decision of the Board of Censors.

The Board having condemned the film involved in the case, or rather ordered certain eliminations therefrom, an appeal was taken under the act to the Court of Common Pleas No. 2 of Philadelphia County. After a view of the film, the Court reversed the action of the Board and ordered the approval of the film. The Court held that the word "appeal" in the act must be given its technical meaning and that, therefore, the Court had the right to consider the entire matter *de novo*, and either approved or disapproved the film as it might determine.

The Commonwealth contended that the word "appeal" in the act was not to be given its technical meaning, but in view of the subject matter the Court was limited to the inquiry as to whether or not the Board had exercised its discretion reasonably and that the Court could not reverse the action of the Board unless it found that the Board had acted arbitrarily or oppressively or, in other words, had manifestly abused its discretion.

The case was appealed to the Supreme Court and the contention of the Commonwealth was upheld, the action of the Court of Common Pleas No. 2 being reversed.

Commonwealth of Pennsylvania vs. Crew-Levick Oil Company.

The question in this case involved the scope of the Mercantile License Tax Act of 1899. Inasmuch as the question was inherently involved in the application of the act for nearly fifteen years, it is rather curious that it was not raised earlier. The Mercantile Appraisers of Philadelphia assessed a tax against the defendant company for the year 1913, for "the whole volume gross" of its business transacted during that year. It appeared that a large proportion of the company's business consisted of shipments made to customers in

foreign countries, on orders taken there by the company's agents, and in some cases on orders sent directly by their customers in foreign countries to their home office in Philadelphia.

The company contended that as to the shipments to foreign countries, the imposition of the mercantile tax amounted to a regulation of foreign commerce and a tax on exports, without the authority of Congress and, therefore, in violation of the United States constitutional provision on the subject.

The Commonwealth contended that the tax is on the privilege of doing business in the State, and the fact that that business consists partly of sales made to customers in foreign countries does not make the tax on such business a regulation of commerce.

The contention of the Commonwealth was upheld by C. P. No. 4 of Philadelphia County. The Supreme Court of the State affirmed the lower Court.

Respectfully submitted,

FRANCIS SHUNK BROWN,
Attorney General.

OFFICIAL OPINIONS
OF THE
ATTORNEY GENERAL
FOR THE

TWO YEARS ENDING DECEMBER, 31, 1916.

FRANCIS SHUNK BROWN,
Attorney General.

OPINIONS TO THE GOVERNOR.

OPINIONS TO THE GOVERNOR.

TIME GOVERNOR MAY HOLD BILLS.

Where the day on which the Governor is required to return a bill submitted to him falls on Sunday, he may return it on the following Monday.

Office of the Attorney General,
Harrisburg, Pa., April 27, 1915.

Honorable Martin G. Brumbaugh, Governor of Pennsylvania, Harrisburg, Pa.

Sir: Answering your inquiry "whether or not when the tenth day after a bill reaches me falls on Sunday, I may have Monday for action upon that bill," I beg to advise you:

The Constitution of Pennsylvania provides, Article IV, Section 15:

"If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it," etc.

The rule without exception, is to exclude either the day on which it was received, or the last day in the computation.

The uniform rule also is to exclude Sunday. If the tenth day falls on Sunday, it would be excluded and you would have Monday within which to act.

"Where the day on which the Governor is required to return a bill submitted to him falls on Sunday, he may return it on the following Monday."

In re Computation of Time. 9 Colo. 632; 21 Pac. 475.

In other states having constitutional provisions similar to Pennsylvania it has been so ruled.

See:

Stinson vs. Smith, 8. Minn. 366.

Soldiers' Voting Bill, 45 N. H. 607.

Corwin vs. Comptroller-Gen., 6 S. Car. 390.

People vs. Rose, 167 Ill. 147; 47 N. E. 547.

State vs. Michael, 52 La. Ann. 936; 49 L. R. A. 218.

Follman vs. Insurance Co., 116 La. 723; 41 So. 49.

Very respectfully,

FRANCIS SHUNK BROWN,
Attorney General.

JOINT OR CONCURRENT RESOLUTIONS.

Not all joint or concurrent resolutions passed by the legislature must be submitted to the Governor for his approval, but only such as make legislation or have the effect of legislating, i. e., enacting, repealing or amending laws or statutes, or which have the effect of committing the State to a certain action or which provide for the expenditure of public money. Resolutions which are passed for any other purpose, such as the appointment of a committee by the legislature to obtain information on legislative matters for its future use or to investigate conditions in order to assist in future legislation, are not required to be presented to the Governor for action thereon.

The above principle applied to a number of joint and concurrent resolutions passed by the General Assembly at the Session of 1915.

Office of the Attorney General,
Harrisburg, Pa., June 9, 1915.

Honorable Martin G. Brumbaugh, Governor of Pennsylvania, Harrisburg, Pa.

Sir: Replying to your inquiry whether or not it is necessary for joint or concurrent resolutions of the Senate and House of Representatives to be presented to you and approved or disapproved by you, I beg to advise you as follows:

Section 26, of Article III, of the Constitution, relating to Legislation, provides:

"Every order, resolution or vote, to which the concurrence of both houses may be necessary, except on the question of adjournment, shall be presented to the Governor, and before it shall take effect be approved by him, or being disapproved, shall be repassed by two-thirds of both Houses, according to the rules and limitations prescribed in case of a bill."

This section came before the Supreme Court for construction in the case of *Commonwealth vs. Griest*, 196 Pa. 396, where it was held that joint resolutions of the General Assembly proposing amendments to the Constitution for submission to the electors of the state need not be presented to the Governor for his approval or veto. The Court, in its opinion at page 408, points out that "the third article of the Constitution is confined exclusively to the subject of *legislation*. It is entitled "Of legislation, and only purports to be an authorization and limitation of the legislation of the Commonwealth." It prescribes the manner in which the business of making laws must be conducted and the subjects with reference to which it may and may not be exercised. The opinion proceeds:

"It is perfectly manifest that the orders, resolutions and votes, which must be so submitted, are and can only be, such as relate to and are a part of the **business of legislation**, as provided for and regulated by the

terms of Article 3. These are the affairs that are the exclusive subjects of the article. They constitute the matters which are fully and carefully committed to that department of the government which is clothed with its whole legislative power. The things that are to be done by the two houses are legislative only, and hence, when orders, resolutions and votes are directed to be submitted to the Governor it is orders, resolutions and votes referring to matters of legislation only that are to be so submitted."

In the case of *Russ vs. Commonwealth*, 210 Pa. 544, the Supreme Court again called attention to the distinction recognized in the Griest case that a resolution requiring the approval of the Governor must relate to a matter in the nature of legislation. The Court said, page 551:

"By the resolution action was taken, committing the State to participation in the dedicatory exercises. It was sent to the Governor for his approval, because it must have been regarded by those who passed it as committing the State to it, and, if so, it was a matter in the nature of legislation. It is only such resolutions that require executive approval under Section 26, of Article III of the Constitution: *Commonwealth v. Griest*, 196, Pa. 396. If both houses had simply resolved to attend the exercises in a body, and to adjourn for a day for that purpose, it would have been no concern of the governor, and they could have gone with or without his approval; but if more was embodied in the resolution, amounting practically to an enactment authorizing special committees of the Senate and House to act on behalf of the State in making suitable the recognition which both branches of the Legislature had agreed upon, it was for the Governor to approve or disapprove."

The Courts of other states have adopted a similar rule of construction.

The Constitution of Maryland, Article XIV, provides:

"That the General Assembly propose constitutional amendments, each amendment being embraced in a separate bill, by three-fifths of all the members elected to each of the two houses, which shall be published by order of the Governor," etc.;

and in Section 17, Article II:

"To guard against hasty and partial legislation, every bill which shall have passed the House of Delegates and Senate shall be presented to the Governor before it becomes a law."

In the case of *Warfield vs. Vandiver*, 101 Md., 78, it was contended that under the provisions above quoted it was necessary to present a bill proposing a constitutional amendment to the Governor for his approval, but the Court held that a proposal to amend the constitution was not "legislation" and hence a bill proposing an amendment was not such a bill as must be presented to the Governor for his approval. "Legislation" refers to the making of laws and statutes in the ordinary acceptance of these terms.

In the case of *Ex parte Wolters*, 144 S. W. 531 (Texas) it appeared that the constitution of Texas contained a provision similar to those in the constitution of many other states that at a special session of the legislature there should be no "legislation" on subjects not designated by the Governor in the call for the special session. It was held that this did not preclude the appointment of an investigating committee to obtain information for future use on a subject not submitted by the Governor, because the word "legislation" has a well defined meaning and includes only the enactment, repeal and amendment of laws, the effect of the decision being that a resolution providing for the appointment of an investigating committee is not a law.

Mr. Buckalew, in his treatise upon the Constitution of Pennsylvania, page 94, says:

"In the practice of the Pennsylvania Legislature, bills and joint resolutions intended to have the effect of laws have been transmitted to the Governor for his approval, but concurrent resolutions, unless in exceptional cases, have not. The meetings of the two Houses in joint convention to perform any duty charged upon them by the Constitution or laws, the appointment of joint committees of investigation and other concurrent action of the two Houses, have been authorized and regulated by resolutions which had no executive sanction. Of course, no more concurrent resolution could appropriate money from the treasury or have any effect as a statute law."

I am therefore of opinion that not all joint or concurrent resolutions passed by the Legislature must be submitted to the Governor for his approval, but only such as make legislation or have the effect of legislating, i. e., enacting, repealing or amending laws or statutes or which have the effect of committing the State to a certain action, or which provide for the expenditure of public money. Resolutions which are passed for any other purpose such as the appointment of a committee by the legislature to obtain information on legislative matters for its future use or to investigate conditions in order to assist in future legislation, are not required to be presented to the Governor for action thereupon.

Considering now the specific joint and concurrent resolutions passed by the General Assembly at its last session, I beg to advise as follows:

Senate 971. A joint resolution providing for a commission to investigate and report the increase in the cost of anthracite coal alleged to be due to the tax imposed thereon, empowering said commission to issue subpoenas and providing for the attendance of witnesses and the penalty for failure to obey such subpoenas and making an appropriation for the cost and expense of said commission.

This resolution appropriates \$5000 for the payment of the costs and expenses of the Commission and therefore provides for the expenditure of public money. It therefore properly relates to legislation and must be presented to the Governor and be approved or disapproved by him.

Senate 1005. A joint resolution providing for the Branch Capitol Commission.

This resolution provides for the appointment by the Governor of three citizens to be called the Branch Capitol Commission, to consider the advisability of erecting an administration building in Philadelphia to house various departments of the State government: if the commission considers the plan feasible it shall report the result of its investigation to the next session of the General Assembly. It specifically provides that the members of the commission shall receive no compensation or expenses.

This resolution is for the sole purpose of obtaining information on legislative matters for future use. It is not strictly legislation and does not have to be presented to the Governor nor be approved or disapproved by him.

Senate 1075. A joint resolution providing for and regulating a commission to consider the practicability of establishing a brick manufacturing plant at the new penitentiary and making an appropriation.

This resolution provides for the appointment by the Governor of a commission of five (one of whom shall be a member of the Senate and one of whom shall be a member of the House), to consider upon and report as to the practicability of establishing a plant for the manufacture of brick on land purchased in Centre County for the new penitentiary. The effect of this resolution is only to investigate conditions or obtain information for future legislative use. It is not properly speaking, legislation and does not have to be presented to the Governor nor be approved or disapproved by him.

Senate 1479. A joint resolution authorizing the printing of the report of the Pennsylvania State Building Code Commission by the Industrial Board of the Department of Labor and Industry.

This resolution authorizes the Industrial Board of the Department of Labor and Industry to cause to be printed as a bulletin of said board the report of the Pennsylvania State Building Code Commission. The printing is to be done by the State Printer on the order of the Superintendent of Printing and Binding and on requisition of the Commissioner of Labor and Industry. The edition shall not exceed 5,000 copies and shall be distributed by the Industrial Board among citizens of the State so as to secure the widest circulation.

This resolution commits the state to the printing and distributing of the report of the Pennsylvania State Building Code Commission at the expense of the state. It is, therefore, a matter of legislation which might properly be passed by a bill or act of Assembly and must be presented to the Governor and be approved or disapproved by him.

Senate 1528.

This is a joint resolution requesting an effort on the part of the United States Government to obtain equal rights for Jews in Russia so that citizens of "Jewish persuasion" traveling under American passports in Russia may sojourn in that country unmolested. This is not properly a matter of legislation and the resolution need not be presented to the Governor nor be approved or disapproved by him.

House 1371. A joint resolution directing the Board of Public Charities to prepare and report to the Legislature at the opening of the next regular session a plan whereby the Commonwealth of Pennsylvania can support and care for all its dependent insane in institutions owned and controlled by it with a view to the establishment of this policy at the earliest possible date.

This resolution directs the Board of Public Charities to prepare and report to the next legislature a plan whereby the state can care for all its dependent insane in institutions owned and controlled by it instead of in county and municipal asylums. The purpose of this resolution is to obtain information on legislative matters for the use of future legislatures. It need not be presented to the Governor nor be approved or disapproved by him.

Concurrent Resolutions.

Resolution of the Senate concurred in by the House of Representatives May 20, 1915, directing the chief clerks of the Senate and House, respectively, to have the journals of the two houses of this session prepared and placed in the hands of the Superintendent of Public Printing within thirty days after the close of the session and directing the same to be printed.

chief

clerks respectively, within ninety days after the receipt of the copy. This is a matter of legislation respecting the journals of the two houses which are provided for in the Constitution Article II, Section 12, Article III, Section 12. It should, therefore, be presented to the Governor and be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 13, 1915, providing for the appointment by the Governor of a commission of five persons to continue the investigation of laws relating to the recording of deeds and mortgages, transfer of lands, etc., the expenses of which shall be limited to \$3000. This resolution in effect authorizes the commission to incur expenses to the amount of \$3000 and is, therefore, a matter of legislation and should be presented to the Governor and be approved or disapproved by him.

Resolution of the House of Representatives concurred in by the Senate May 17, 1915, directing the Secretary of the Commonwealth to have printed 5000 extra copies of Act No. 192, approved May 15, 1915, entitled "An act providing a system of government for boroughs, etc." The effect of this resolution will be to require the printing and publication of 5000 copies of the act referred to at the expense of the State. It is, therefore, a matter of legislation involving the expenditure of public money and should be presented to the Governor and be approved or disapproved by him.

Resolution of the House of Representatives concurred in by the Senate May 17, 1915, relating to the Semi-Centennial of the City of Scranton. This is not a matter concerning legislation and does not have to be presented to the Governor or be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 13, 1915, directing the printing of 1000 copies of the report of the committee appointed to investigate the working of civil service laws in cities of the first class. The effect of this resolution will be to require the printing of public documents at the expense of the State, and therefore the expenditure of public money. It is, therefore, a matter of legislation and should be presented to the Governor and be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 19, 1915, creating a commission composed of the Governor, Attorney General and Auditor General, known as the Economy and Efficiency Commission to investigate into the number, character, duties, and compensation of persons in the employ of the state government and the methods of disbursing and accounting for state funds, etc. Section 2 of the resolution provides for the expenditure of public funds for the purposes of the resolution. It is, therefore, within the constitutional requirement and should be presented to the Governor and be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 19, 1915, requesting the commutation of the sentence of death imposed on Leo M. Frank of Atlanta, Ga. This is not a matter of legislation and does not have to be presented to the Governor or be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 19, 1915, authorizing the Governor to appoint a committee of three citizens to revise and codify the laws relating to the mining of anthracite coal. The purpose of this resolution is to furnish information on legislative matters for the future use of the legislature. It is not, therefore, strictly a matter of legislation and need not be presented to or be approved or disapproved by the Governor.

Resolution of the House of Representatives concurred in by the Senate May 19, 1915, authorizing the creation of a commission to be known as the Teachers' Retirement Fund Commission. The resolution directs that the expenditures of the committee shall not exceed in the aggregate the sum of \$5000. It impliedly authorizes an expenditure not exceeding that amount. It therefore deals with the expenditure of public money and should be presented to the Governor and be approved or disapproved by him.

Resolution of the Senate concurred in by the House of Representatives May 18, 1915, providing for the printing of 3000 copies of the report of the Economy and Efficiency Commission. This will necessitate the expenditure of public funds and is, therefore, legislation. It should be presented to the Governor and be approved or disapproved by him.

Resolution of the House of Representatives concurred in by the Senate May 18, 1915, providing for the appointment of a joint Committee of the Senate and House of Representatives for the purpose of considering the subject of legislation and reporting to the general assembly methods for curing the defects therein now existing. The purpose of this resolution is to obtain information on legislative matters for future consideration. It is not properly legislation and should not be presented to the Governor or be approved or disapproved by him.

Resolution of the House of Representatives concurred in by the Senate April 28, 1915. This resolution authorizes the officers of the Commonwealth to compromise and adjust litigation instituted by the Attorney General on behalf of the Commonwealth in the Court of Common Pleas of Beaver County, June Term, 1910, No. 275, upon the terms set forth in said resolution. It commits the Commonwealth to certain action, is therefore legislation, and should be presented to the Governor and be approved or disapproved by him.

Respectively yours,

FRANCIS SHUNK BROWN,

eral.

RECALL OF BILLS DISAPPROVED BY THE GOVERNOR.

The Governor, having disapproved a bill within thirty days after adjournment of the General Assembly and having filed the same with the Secretary of the Commonwealth, has the power to recall such disapproval before the thirty days have expired.

Office of the Attorney General,
Harrisburg, Pa., June 15, 1915.

Honorable Martin G. Brumbaugh, Governor of Pennsylvania, Harrisburg, Pa.

Sir: Replying to your inquiry of recent date, relative to the recall of a bill disapproved by you, I beg to advise as follows:

The precise question is whether the Governor having disapproved a bill within thirty days after adjournment of the General Assembly and having filed the same with the Secretary of State, has the right to recall such disapproval before the thirty days have expired.

Article IV, Section 15 of the Constitution relative to the approval and veto of bills provides:

“.....If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall be a law, unless he shall file the same with his objections, in the office of the Secretary of the Commonwealth, and give notice thereof by public proclamation within thirty days after such adjournment.”

In Hind's Precedents, Vol. 4, Section 3521, appears the proposition “a vetoed message may not be returned to the President of the United States,” citing Congressional Record, 44 Cong., 1. Sess., 5664. President Grant returned a bill vetoed to the Senate, but before that body had acted upon it he sent a request that the bill be returned to him in order that he might sign it. An interesting discussion arose in the Senate as to the power of the President to recall a vetoed message which had been received by Congress, and it was generally held that the President had no such power. The best reason seems to have been given by Mr. Edmunds, namely: that the Constitution itself provided for the disposition to be made in case the President returns a bill vetoed—to proceed to vote upon it. It was concluded that the bill was then beyond the control of the President and that the only effect, and in fact the intended effect of the President's request was to destroy the persuasive force of the veto. The bill was accordingly passed over the veto in both Houses by large majorities.

The same reasoning would apply to a similar situation under the Constitution of this State, which provides in Article IV, Section 15, relative to the disapproval of bills presented to the Governor there-

under, that "if he (the Governor) shall not approve, he shall return it with his objections to the House in which it shall have originated, which House shall enter the objections at large upon their Journal and proceed to re-consider it," etc. In other words where a bill is returned to the Legislature while it is in session, the Legislature having then under the Constitution a specific duty to perform with reference thereto, it is not only beyond the possession, but also beyond control, of the Governor, so that he may not, as a matter of right, recall it, although the Legislature would undoubtedly have the same right to consent to a request of the Governor recalling a bill as a matter of courtesy, as the Governor frequently does in compliance with a request from the Legislature for the recall of a bill which has been sent to him.

The precise question here involved, namely: the recall of a "veto," has not been judicially determined but as to the recall of an "approval," it seems to have been decided on the question of possession and control, it having held that the Governor's approval is not complete until the bill has left his possession and control, and that prior to that time he may re-consider his action, erase his signature and veto; but after the bill has left his possession he cannot regain control, erase his signature and return the bill vetoed.

People vs. Hatch, 19 Ill. 283.

State vs. New London Bank, 79 Conn. 141.

People vs. McCullough, 210 Ill. 488.

Allegheny County vs. Warfield, 100 Md. 516.

State vs. Whisner, 35 Kan. 271.

In the first case cited, *People vs. Hatch*, a case in the Supreme Court of Illinois, it is an interesting circumstance that the martyred Abraham Lincoln appeared as one of counsel for the respondent, and the opinion of the Court no doubt reflects some of his sound and forceful logic and reasoning. The Court said, page 288:

"And why may not the Governor reconsider his act of approval of a bill while it is yet before him, as well as either House of the General Assembly? Does he require less time for reflection, or less opportunity to reconsider an inadvertent or an unadvised act? Is he more likely to be certainly right when he puts his name to a bill than the members of the other department of the government when they vote upon it? In the one case, the Executive acts without the aid of discussion and argument; in the other, the members vote with all the advantages of an interchange of opinion on the subject. The public good no more requires the act of one to be irrevocable than the other. There must be a time when this right to reconsider terminates—and the same rule applies in the one case as in the other—and that is, when the bill or law has passed from the custody or

control of the department or body seeking to reconsider. While within such control and custody, the right to reconsider is a necessary incident to the power to act. This right to reconsider is not peculiar to legislative bodies, but is common to all human transactions where there is a discretion to be exercised. An individual may erase his name from a deed, no matter how deliberately it may have been signed, at any time before delivery; and even courts of justice may reconsider their most solemn judgments while they are yet before them. And shall the approval of a law by the Executive be a solitary exception? Shall his name, once applied to a bill become irrevocable, although the pen is still in his hand, and the ink not yet dry?—even though it may have been placed there by mistake or fraud—inadvertently or unadvisedly? What great principle of public policy requires the adoption of such an iron rule in this solitary case, while in all other cases, whether of public or private concern, a party may reconsider and retract—may change his purpose and his decision, while the subject matter still remains before him? The time given by the Constitution to the Executive during which he may retain a bill, shows that it was expected that he would deliberate, consider and reconsider, so long as he chose to retain the bill, within the specified time, and the writing of his name upon it fifty times within that period cannot deprive him of that right, unless he permits the time given him for that purpose to elapse or by passing it beyond his control.”

Bearing in mind that the Governor's disapproval of a bill is essentially a legislative act (*Commonwealth vs. Barnett*, 199 Pa. 161), it must follow from this sound reasoning that until the status of a bill has become fixed whether by approval or disapproval, there is the *locus penitentiae*—the right to reconsider, the right to change the opinion previously expressed.

Has the status of a bill vetoed after adjournment of the General Assembly been unalterably fixed by filing the same in the office of the Secretary of the Commonwealth with the objections?

An examination of Article IV, Section 15 of the Constitution relative to the approval and veto of bills shows that in the case where the Legislature is still in session, if the Governor “shall not approve he shall return it (the bill), with his objections to the House in which it shall have originated, etc.” It is clear, therefore, that merely disapproving a bill would not act as a veto unless the same were returned to the proper House. In other words, there are in this instance two steps necessary to be taken by the Governor in order to make a veto effective—(1) disapprove the bill; (2) return it to the proper House.

With reference to the veto of bills within thirty days after the adjournment of the General Assembly, *three* steps are necessary—(1) disapproval; (2) that “he (Governor) shall file the same with his objections in the office of the Secretary of the Commonwealth;” (3) that he (Governor) “give notice thereof by public proclamation within thirty days after such adjournment.”

There can be no question that these three steps are as essential to make a veto effective after adjournment as the two steps above referred to are to make a veto effective while the General Assembly is in session. Suppose for instance, after having filed a bill with his objections in the office of the Secretary of the Commonwealth, the Governor determined not to complete the process of vetoing the bill and did not “give notice thereof by public proclamation within thirty days after such adjournment,” could it be said that the veto was nevertheless effective? I think not. There is no authority in logic or reason to give one of these Constitutional requirements greater force and effect than the other. The Constitution has provided the legislative process by which laws are to be made or bills passed by the Legislature disapproved, and it is unreasonable to assume that it is necessary to comply with some provisions and that others may be disregarded.

This Constitutional requirement has been consistently followed since the adoption of the Constitution, and it has been the universal custom for the Governor to make public proclamation of all bills vetoed after the Legislature has adjourned by reading, either in person or by a properly accredited representative, on the thirtieth day after the adjournment, in the rotunda of the Capitol, a proclamation substantially in the following form, which appears in all the Pamphlet Laws.

“A Proclamation by the Governor

In the name and by the authority of the
Commonwealth of Pennsylvania.

Executive Department.

A Proclamation.

I (name of Governor), Governor of the Commonwealth of Pennsylvania, have caused this proclamation to issue, and in compliance with the provisions of Article IV, Section 15, of the Constitution, do hereby give notice that I have filed in the office of the Secretary of the Commonwealth, with my objection thereto, the following bills passed by both Houses of the General Assembly, viz, Senate Bill No., etc. etc.”

It seems clear, therefore, that until the Governor has given notice of his disapproval "by public proclamation within thirty days after such adjournment," the status of the bill has not been completely and unalterably fixed and he may recall the veto within that period.

Respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE AUTOMOBILE LICENSE FEES.

The appropriation by the Act of July 7, 1913, of moneys received from automobile license fees continues as long as the said act which dedicates them remains in force. These fees should continue to be paid into the State Treasury and placed in a separate fund available for the State Highway Department on requisition of the Commissioner.

Fees received from licenses for traction engines, however, are provided for by the Act of June 8, 1915, P. L. 926, and can only be paid from the Treasury as specifically appropriated.

Office of the Attorney General,
Harrisburg, Pa., November 19, 1915.

Honorable Martin G. Brumbaugh, Governor of Pennsylvania, Harrisburg, Pa.

Sir: I have received your favor of even date, enclosing letter from the State Highway Commissioner, dated November 10, 1915, inquiring whether receipts from automobile licenses since June 1, 1915, are to be turned into the Treasury as general revenue, to be redistributed and appropriated as directed by the General Assembly, or whether they constitute a separate fund available for the use of the State Highway Department upon requisition of the State Highway Commissioner.

I beg to advise you that this very question was passed upon and decided by the Supreme Court in the case of *Commonwealth ex rel. Bell vs. Powell*, 249 Pa. 144. Section 10 of the Act of July 7, 1913, which was construed by the Supreme Court in that case reads as follows:

"The moneys derived from registrations and from license fees under the provisions of this act shall be paid by the State Highway Department into the State Treasury, for safe-keeping; and shall by the State Treasurer be placed in a separate fund, to be available for the use of the State Highway Department upon requisition of the State Highway Commissioner. All such moneys hereafter paid into the State Treasury are hereby specifically appropriated to the State Highway Department,

for the purpose of assisting in the construction, maintenance, improvement, and repair of State highways and State-aid highways, as described in the Act creating the State Highway Department, approved the thirty-first day of May, Anno Domini one thousand nine hundred and eleven. The Auditor General shall upon requisition, from time to time, of the State Highway Commissioner, draw his warrant upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making such requisition."

The Supreme Court in passing upon this section, said:

"In this instance the Legislature directed that after the collection by the State Highway Department, the fees should be paid into the State Treasury for safe-keeping, and should be placed in a separate fund, to be available for the use of the State Highway Department upon requisition of the State Highway Commissioner."

In answer to the suggestion that the Act offended against Section 15 of the Constitution, which provides that

"All other appropriations shall be made by separate bills, each embracing but one subject"—

the Supreme Court said:

"It has no application to a fund created for a special purpose and dedicated by the act under which such fund is to be created, to a particular use. *The appropriation of the fund so created continues as long as the act which dedicates it to a particular use, remains in force.*"

The Court further said:

"The Statute does not provide that the money derived from registration and license fees shall be paid into the State Treasury generally so as to become part of the general revenues of the Commonwealth. The State Treasury is merely made a depository for such fees. They are to be paid into it 'for safe-keeping' and are to be placed in a separate fund, available for the use of the State Highway Department. The Act then expressly appropriates or dedicates the fund to be thus created to the construction, maintenance, improvement and repair of the highways."

The Act of July 7, 1913, is a general Act, which continues in force until repealed. The Act contemplates the payment of annual license fees and appropriates the funds so received in accordance with the provisions of Section 10. The appropriation was not limited to the

license fees paid under the Act up to June 1, 1915, but embraced all license fees received under the Act as long as it was in force, and as stated in the opinion of the Supreme Court:

“The appropriation of the fund so created continues as long as the Act which dedicates it to a particular use, remains in force.”

I therefore beg to advise you that the moneys paid for automobile licenses which were received after June 1, 1915, no less than those received prior thereto, are to be paid by the State Highway Department into the State Treasury for safe-keeping, and shall by the State Treasurer be placed in a separate fund, to be available for the use of the State Highway Department upon requisition of the State Highway Commissioner and are to be expended for the purpose of assisting in the construction, maintenance, improvement and repair of State highways and State-aid highways, and that upon requisition from time to time of the State Highway Commissioner, the Auditor General is required to draw his warrant upon the State Treasurer for the amount specified in such requisition, not exceeding, however, the amount in such fund at the time of making such requisition.

I desire to call your attention, however, to the fact that fees received from licenses for traction engines and tractors, which were formerly included under the Act of July 7, 1913, are now provided for by the Act of June 8, 1915, P. L. 926. The language in this Act is different from that relating to automobiles generally. Section 12 provides as follows:

“The moneys derived from registrations and from license fees under the provisions of this act shall be paid by the State Highway Department into the State Treasury, for the purpose of building and maintaining the roads of the Commonwealth, and to be used as appropriated by the Legislature from time to time.”

I beg to advise you therefore, that receipts from license fees of traction engines and tractors must be paid into the State Treasury and cannot be withdrawn except as specifically appropriated by the Legislature for the purpose of building and maintaining the roads of the Commonwealth. License fees received from all other classes of automobiles are governed by Section 10 of the Act of July 7, 1913, above, and constitute a separate fund which is to be paid out for the purposes specified in said Act on Warrant drawn by the Auditor General upon requisition from the State Highway Commissioner.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

SPECIAL POLICEMAN.

There is legal authority for the appointment of a special policeman for the Pennsylvania Anti-Vice Society.

Office of the Attorney General,
Harrisburg, Pa., March 14, 1916.

Honorable Martin G. Brumbaugh, Governor of the Commonwealth,
Harrisburg, Pa.

Sir: Your favor of the 22nd inst. enclosing the application of the Pennsylvania Anti-Vice Society for the appointment of a special policeman, and asking for advice whether the law contemplates the appointment of special policemen for societies or associations of this sort, is at hand.

The Act of 25th of June, 1885, P. L. 167, 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.*"

The power given in the first section of the Act closely follows the title, authorizing the Governor to appoint a special policeman for such association organized "for any charitable purpose." The second section of the Act was amended by the Act of July 21, 1913, P. L. 901, which provides that the person so appointed as special officer or policeman shall take an oath which shall be filed in the office of the Secretary of the Commonwealth and such special officer or policeman shall have power to arrest, upon view, for the commission of any offense, "when such arrest is made in the interest of the association for which such special officer, or policeman, is appointed."

The objects of the Pennsylvania Anti-Vice Society which succeeds the Christian League of Philadelphia, Incorporated June 1, 1895, appear, from the application, to be as follows:

1. To promote public morality and to remove corrupting influences;

2. To confer and co-operate with Public Authorities in matters which may promote the moral welfare of the people, especially in the suppression of vice and immorality in public and private;

3. To suppress the publication, exhibition and sale of impure literature and indecent and demoralizing pictures;

4. To suppress public and private exhibitions or performances of an obscene, indecent, sacriligious or immoral nature, or such as might tend to corrupt morals;

5. To suppress gambling in all its forms;

6. To co-operate with other social, charitable or philanthropic organizations in furtherance of the purposes above enumerated."

Broadly considered, the work of promoting public morality and the suppression of vice in any form, because it tends to the moral uplift of the community, and because those engaged in that work are prompted by love for mankind, is charitable work.

In the case of *Little vs. Newburyport*, 210 Mass. 414, it is said:

"Charity in the legal sense 'is not confined to mere alms giving or the relief of poverty and distress, but has a wider signification, which embraces the improvement and promotion of the happiness of man.' The association carries on a work which is intended and adapted for the improvement and elevation of young men, not only to bring them under good influences, but to promote their moral, mental and physical welfare. * * * In its essence, though not giving charity in the narrow sense of that word, it is a benevolent or charitable institution within the meaning of those words in the statute."

Were the words "organized for any charitable purpose" intended by the Legislature to be used in a broad and comprehensive sense, or are they to be limited to almsgiving or to the furnishing of physical aid, shelter and assistance?

This Department has held, in an opinion given to the Governor, January 12, 1915, that the words "for any charitable purpose" do not include churches or other religious organizations, because the constitution and laws of Pennsylvania do not use the terms "religious" and "charitable" as synonymous.

But there seems to be no good reason why an organization such as this, formed for the promotion of moral welfare, should not be included in the term "for any charitable purpose."

Moreover, this seems to be the particular kind of a charitable organization which could well use the services of a special officer or policeman.

The Legislature, therefore, could not have intended to have included charitable organizations which dispense alms, and to have excluded those which would seem to specially need a special officer, when making provisions for the appointment of such officers.

In *Gallons vs. House of the Good Shepherd*, 158 Mich. 361, 24 L. R. A. (N. S.) 286, it was held that an institution organized for the purpose of moral reformation of girls and women and the preservation in the State of purity of girls and women whose virtue is exposed to danger, which

"clothes, feeds and instructs the inmates, requiring of them such labor in return as they can perform, and whose buildings and premises are erected and arranged for the purpose of detaining those it desires to detain,"

is held to be a public charitable institution.

However, the maintenance of a home is not essential to bring such institution within this category.

I am of the opinion that the language in the Act of Assembly, while not intended to cover religious institutions, is intended to provide for the associations of this character which are engaged in charitable work and where the services of a special officer or policeman is along the very lines of charitable endeavor for which the institution is organized.

Therefore, I have to advise you that this association is an association organized for charitable purposes within the meaning of this Act of Assembly, and is entitled to the appointment of a special officer or policeman.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

PAYMENT OF EXPENSES OF NATIONAL GUARD IN SUPPRESSING RIOT

Under the Act of April 9, 1915, P. L. 80, the expenses of the National Guard, when called upon by the Governor to suppress riot, are to be paid out of funds appropriated to the Adjutant General for that purpose. The warrants are to be drawn by the Governor upon the State Treasurer.

Office of the Attorney General,
Harrisburg, Pa., May 11, 1916.

Honorable Martin G. Brunbaugh, Governor of Pennsylvania, Harrisburg, Pa.

Sir: In reply to your inquiry of May 10, as follows:

"Will you be good enough to give me definite directions as to how under law I may proceed as Commander-in-Chief of the National Guard of Pennsylvania to make payment of all expenses incurred in the recent mobilization of the National Guard for service in western Pennsylvania,"

I beg to advise you that the Act of April 9, 1915, P. L. 80, Section 40, provides:

"When the National Guard or any portion thereof is ordered on active duty by the Governor and Commander-in-Chief, in repelling invasion, subduing insurrection, riot or disorder, within the State, or in furnishing quota of volunteers from the Commonwealth of Pennsylvania, under a call made by the President of the United States,

the payment of the troops and all other expenses incident to such service will be made by the Adjutant General, from funds obtained by warrant drawn by the Governor of the Commonwealth upon the State Treasurer, against appropriation made for such purpose."

and the Appropriation Act of June 18, 1915 (Page 275 of Appropriation Acts), Section 2, provides:

"For the purpose of placing at the disposal of the Governor of the Commonwealth, and making same available to replace or repair armory buildings owned by the Commonwealth, of Pennsylvania, and occupied by an organization or organizations of the National Guard, should such armory building be destroyed in whole or in part by fire, flood or storm; and to replace or repair military stores or supplies stored in such armory buildings, and destroyed, in whole or in part, in like manner; and to pay for transportation, pay officers and enlisted men, horse hire, subsistence and quartermaster stores, and other proper and necessary expenses incident to actual service rendered by the National Guard of Pennsylvania, under orders of the Governor, in repelling invasion, subduing insurrection, riot, or disorder, or in furnishing, the quota of volunteers from the Commonwealth of Pennsylvania under a call made by the President of the United States,—the sum of five hundred thousand dollars (\$500,000.00), or so much thereof as may be necessary, is hereby appropriated, for which the Governor is authorized to draw warrant upon the State Treasurer, duly approved by the Auditor General, as required by law, vouchers in detail for expenditures made to be filed with the Auditor General."

Pursuant to these Acts you will draw a warrant or warrants upon the State Treasurer, approved by the Auditor General, payable to the Adjutant General as such disbursing officer. Such warrant or warrants should be drawn in manner following:

"Pay to the order of the Adjutant General, Chief of Staff and disbursing officer, under General Order No. 16, Thirty Thousand and no 100 Dollars, on account of the amount appropriated for proper and necessary expenses incident to actual service rendered by the N. G. P. per Act approved June 18th, 1915, Section 2."

Vouchers, in detail, for expenditures made will be filed with the Auditor General.

Respectfully,

FRANCIS SHUNK BROWN,
Attorney General.

Electors of Pennsylvania in actual military service are entitled to vote in all elections irrespective of where they may be stationed. This publication is intended to set forth and explain the law relating thereto. Following in the order named are—(1) the Opinion of the Attorney General to the Governor of the Commonwealth; (2) a Resume of the Constitution and Statutory Law together with comments thereon; (3) Forms to be used in the conduct of the elections and for other procedure connected therewith; (4) the Act of August 25, A. D. 1864, P. L. 990, entitled:

“An Act to regulate elections by soldiers in actual military service.”

Specimens of the ballots to be used in the 1916 election are not appended hereto, as the ultimate form must await the expiration of the time limit within which changes may be made by the addition or withdrawal of parties or candidates.

Attention is called to the fact, however, that the ballots, when supplied, will have printed thereon only the names of candidates to be voted for throughout the State. The names of the candidates in the districts for Congress, State Senate and House of Representatives may be obtained from pamphlets which will be supplied to the election officers, and in voting for such officers, the voter will be required to write in the name of the candidate voted for in the blank space provided and designated for that purpose.

The ballot will differ from the usual, in that a space will be provided on the back in which the voter must write in the name of his (1) County; (2) City, Borough or Township and (3) Ward, the latter being required only where the voter resides in a city comprising more than one Congressional, Senatorial or Legislative District. This requirement is necessitated by the fact that in many cases voters from different election districts will vote at the same poll. The military election officers must see that each ballot is so marked before deposit in the ballot box.

In making up the poll books there must be two copies for each county represented in each company, so that in the return of one of these copies to the proper county, none other than the votes of electors of such county will appear.

While the law as hereinafter outlined should be carefully followed, these provisions are directed more to an orderly means for holding elections under unusual conditions, and as provided in Section 271 of the Act of 1864:

"No mere informality in the manner of carrying out, or executing, any of the provisions of this act, shall invalidate any election held under the same, or authorize the return thereof, to be rejected or set aside."

FRANCIS SHUNK BROWN,
Attorney General.

OFFICE OF THE ATTORNEY GENERAL,

Harrisburg, Penn'a.,

August 23, 1916.

Hon. Martin G. Brumbaugh,
Governor of Pennsylvania,
Harrisburg, Penna.

Sir: I am in receipt of your letter of the 3rd inst. asking substantially how to proceed to record the votes of electors of this Commonwealth in actual military service, under requisition of the President of the United States or by the authority of this Commonwealth, and absent from their place of residence on election day. You also inquire, whether the Act of August 25, 1864, P. L. 990 is in force and if so what duties it imposes on you; what compensation the commissioners therein provided for, receive, and from what fund should payment be made. Pursuant to your suggestion, that our registration and other election laws be examined in order to secure to Pennsylvania soldiers the right to vote, this Department has considered the subject in all its phases and I have caused to be prepared a resume of the constitutional and statutory law covering the entire subject. This resume shows in detail what soldiers are entitled to vote, and what qualifications are necessary, the appointment, duties, and compensation of the commissioners and from what fund payment should be made. It specifies your duties as well as those of the Secretary of the Commonwealth. It sets forth in an orderly way all the steps to be taken in the conduct of the election and indicates the method whereby detached soldiers may cast their ballots and have them counted. It contains all the forms necessary to effectuate the purpose of the act and I have also inserted certain recommendations which will aid the soldier in preparing his ballot as well as expedite the election officers in the performance of their duties. I have also discussed therein the several legal questions which have arisen and have indicated the proper course to be pursued in each case.

It seems unnecessary to repeat at length the contents of the accompanying resume, I desire to call your attention, however, to several matters of special interest, all of which are therein fully discussed.

The Act of August 25, 1864, P. L. 990 was passed pursuant to the Constitutional Amendment of 1864, which amendment was incorporated verbatim in the present constitution. The constitutionality of this statute has never been questioned. It has successfully been invoked during the Civil War, the Spanish American War, and the Anthracite Coal Strike in 1902, and you are advised, that its provisions are now in force with the exception of a part of Section 40 relative to the payment of the soldiers' tax and which will be later herein more fully discussed.

Two interesting questions arise as to the qualifications of voters.

First. Whether the laws requiring personal registration in first, second and third class cities, applies to elections held by soldiers in the field and

Second. What taxes must be paid by the soldiers in order to qualify them for voting purposes and by whom must payment be made.

Without repeating in detail, my reasons which you will find at length in the accompanying resume, I am of the opinion and you are now so advised, that the personal registration acts do not apply to elections held by soldiers in the field and absent from their places of residence. A contrary construction would operate to disfranchise every soldier absent from his residence and impute to the legislature an intention which the language of the registration acts, themselves, does not justify.

As to what taxes the soldier must pay in order to vote and by whom payment must be made, your attention is directed to Section 40 of the Act of 1864, which provides in effect that all private and non-commissioned officers may pay to the collector or county treasurer, a tax of ten cents and that they shall be exempt from all other poll or occupation taxes during their continuance in the service. Commissioned officers must pay the usual personal taxes. The section also provides payment may be made by any citizen of the election district of the soldier, whose taxes such citizen undertakes to pay. The Act of July 15, 1897, P. L. 276, makes it unlawful for any person to pay any occupation or poll tax assessed against any elector, without a written order signed by such elector. As stated in the resume, I am of the opinion and you are now advised that so much of the Act of 1864 as authorizes the payment of the poll or occupation tax without such written and signed order, is repealed by the said Act of 1897. This construction does not operate to disfranchise the

soldier. He may still sign an order authorizing some person at home to pay his taxes or he may send his taxes direct to the county treasurer or as stated in the contested election case of William H. Thomas, reported in 6 Lackawanna Legal News, 627, the soldier's wife may pay the taxes out of money belonging to her husband. The form of an order for payment of the soldiers' taxes has been prepared by this Department and has been furnished to the Secretary of the Commonwealth so that he may have a sufficient number printed and distributed among the soldiers in ample time to accomplish their purpose.

I have also suggested to the Adjutant General, that he cause the soldiers to be, at once, notified of their right to vote at the coming election, and to suggest that each soldier, desiring to exercise such right, should communicate with some one at his place of residence to see that he is properly assessed at least two-months before election as required by law. I am informed that the notice is in the course of transmission to the soldiers.

Your duty, relative to the appointment of the commissioners, is clear. The act provides you are to appoint a sufficient number, not exceeding one, to each regiment, as you deem necessary to accomplish the purpose of the act. The number necessary should be based on the number of military organizations in actual service in the field, as well as, at places of rendezvous within the State, and the proximity of such organizations to one another. These are facts which you may obtain from the Adjutant General. The resume shows what organizations are now in the field or at rendezvous, their number and location may be materially changed when you desire to make the appointments. I have stated in the resume, that there are several organizations in actual service not constituting a part of a regiment and I am of the opinion and you are now advised, that a commissioner may be appointed for each of these independent organizations as well as for each "regiment." The resume will show in detail, all the duties which are imposed on you in relation to the commissioners as well as your duty generally.

The commissioners receive no compensation for their services, but are allowed ten cents per mile in going to and returning from the places assigned to them. You are now advised that for the reasons appearing at length in the resume, the act of August 25, 1864, P. L. 990, itself, operates to appropriate the money necessary to pay this expense and that the commissioners are not required to wait for reimbursement until the next session of the legislature.

In order that no soldier, who is qualified and desires to vote, may be mistaken as to the officers to be filled and the names of the candidates, the Secretary of the Commonwealth is preparing for distribu-

tion, a pamphlet which will contain the names of all persons designated as presidential electors, as well as all elected candidates for the several officers to be filled. These names will be arranged by districts where necessary, and after each district will be designated, the territory limits included therein. In the case of legislative districts, the pamphlets will also show how many representatives each district may elect.

The Secretary of the Commonwealth is also preparing the form of a ballot which will be printed and distributed by him in sufficient numbers to be accessible to any soldier desiring to vote.

As before stated, all the phases of the subject have been covered in a detailed and orderly way in the accompanying resume, and if the provisions and recommendations, therein, contained are followed, every elector from this State in the actual military service in the field or at rendezvous will be given an opportunity to cast his ballot and have it duly recorded.

Faithfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE MILITARY VOTE.

- I. CONSTITUTIONAL PROVISIONS.
- II. PERSONS ENTITLED TO VOTE.
- III. QUALIFICATIONS OF VOTERS.
- IV. THE COMMISSIONERS.
- V. DUTY OF GOVERNOR.
- VI. DUTY OF SECRETARY OF THE COMMONWEALTH.
- VII. ELECTION NOTICES. CONDUCT OF ELECTION.
- VIII. ELECTIONS BY DETACHED VOTERS.
- IX. FORMS.

IN RE MILITARY VOTE.

I.

CONSTITUTIONAL PROVISIONS.

"Whenever any of the qualified electors of this Commonwealth shall be in actual military service, under a requisition from the President of the United States or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citi-

zens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election."

Constitution, Art. VIII, Sec. 6.

"For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of the State or of the United States, or on the high seas, nor while a student of any institution of learning, nor while confined in public prison."

Constitution, Art. VIII, Sec. 13.

"No person shall be qualified to serve as an election officer who shall hold, or shall, within two months have held, any office, appointment or employment in or under the government of the United States, or of this State or of any city or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the State; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law."

Constitution, Art. VIII, Sec. 15.

II.

PERSONS ENTITLED TO VOTE

Qualified electors of the Commonwealth in *actual military service* under requisition from President of the United States or by authority of the Commonwealth who are absent from their residence on legal or special election days are entitled to vote under the Act of August 25, 1864, P. L. 990.

Sec. 1, Act of 1864, P. L. 990.

Note. "*Soldiers in active military service*" include those at their respective places of rendezvous in the State under order of the Federal authorities, whether awaiting discharge or further orders, and are entitled to vote at their respective places of rendezvous, whether camp or armory, as well as those actually without the State and under the order of the Federal authorities or commander-in-chief. Soldiers at home on furlough must vote at their place of residence.

III.

QUALIFICATIONS OF VOTERS.

Every male citizen twenty-one years of age possessing the following qualifications shall be entitled to vote at all elections:

(1) He shall have been a citizen of the United States at least one month.

(2) He shall have resided in the State one year (or having previously been a qualified elector or native born citizen of the State he shall have removed therefrom and returned then six months), immediately preceding the election.

(3) He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

(4) If twenty-two years of age and upward, he shall have paid within two years, a State or County tax, which shall have been assessed at least two months and paid at least one month before the election.

Constitution, Art. VIII, Sec. 1.

Note. The soldier's service in the army does not cause him to lose his residence.

Constitution, Art. VIII, Sec. 13.

Two interesting questions arise as to the qualifications of electors:

(1) Does the Act of March 5, 1906, P. L. 63, as amended, requiring personal registration in third class cities and the Act of July 24, 1913, P. L. 977, requiring personal registration in first and second class cities, apply to elections held by soldiers in the field and absent from their places of residence.

(2) What taxes must be paid by the soldier in order to qualify him for voting purposes and by whom must payment be made.

These questions will be discussed seriatim.

As to personal registration, I am clearly of the opinion that a soldier does not have to comply with the personal registration acts in order to permit him to vote in the field. The constitutional amendment of 1864, the provisions, of which, were retained, verbatim, in the present constitution, provided, that soldiers shall have the right to vote under such regulations as the legislature may provide and the legislature has provided a complete and detailed method whereby soldiers in actual service and away from their places of residence may cast their ballots. The personal registration acts never contemplated the soldier vote, and to so construe the acts, would be to impute to

the legislature the requirement of an impossibility and an intent to disfranchise every soldier in actual service who is a resident of a first, second or third class city. The right of an elector to vote is one of the highest rights of citizenship and it should not be defeated by anything other than an insurmountable obstacle. Moreover, the title of the personal registration acts clearly indicate, that the legislature never contemplated their application to persons in actual military service. The title of the Act of 1906 says, it is an act

“—to provide for the personal registration of electors in cities of third class of this Commonwealth, to make such registration a condition of the right to vote in such cities, and to provide penalties for violation of its provisions.”

Likewise the Act of 1913, regulating personal registration in first and second class cities is entitled:

“An act to provide for the personal registration of electors and their enrollment as members of political parties in cities of first and second class in this Commonwealth, to make such registration a condition of the right to vote in such cities, etc.”

In other words, the intent of the legislature is to require personal registration as a condition precedent to the voting of citizens in their places of residence and therefore, has no application to the military vote where the election is held and the ballots are cast at a place other than the electors place of residence. It is a well settled rule, that the title of an act is a part thereof, and may be resorted to, in ascertaining the legislative intent. I am, therefore, of the opinion, that the soldiers need not personally register in first, second and third class cities and that on being challenged, he may establish his residence in the same manner as an elector, who is challenged at an election held at his place of residence in a borough or township.

(2) What taxes must be paid by the soldier in order to qualify him for voting purposes and by whom must payment be made.

Art. VIII, Sec. 1 of the Constitution provided, inter alia that if a citizen shall be twenty-two years of age and upwards in order to qualify him to vote, he must have paid within two years a State or county tax, which shall have been assessed at least two months and paid at least one month before the election.

Section 40 of the Act of August 25, 1864, P. L. 990 makes it the duty of the assessor to assess and return in the usual way a county tax of ten cents upon every non-commissioned officer and private and the usual taxes upon every commissioned officer, known to such assessors to be in the military service

of the United States or of this State. When the assessor omits any names, they must be added to the assessments and lists of voters, on application of any citizen of the district wherein the soldier might have voted were he not in such service. The non-commissioned officers and privates are made exempt from all other personal taxes during their continuance in the service. The assessor must, in each case of such assessed soldiers, without fee or reward therefor, give a certificate of the assessment to any citizen of the election district who may at any time demand the same. Upon the presentation thereof, to the tax collector of said district or the treasurer of the county, it is made the duty of such officer to receive the assessment tax from any person offering to pay the same for the soldier therein named and to endorse upon such certificate a receipt therefor. The said collector or county treasurer must receive the assessed tax from any person who may offer to pay the same for any of said soldiers, without requiring a certificate of assessment when the name of such soldier has been duly entered upon the assessment books and tax duplicates and he must give a receipt to such person specifically stating the name of the soldier whose tax is thus paid, the year for which it was assessed, and the date of the payment. The certificate and receipt, or the receipt alone, is prima facie evidence to any military election board of the due assessment of the tax and its payment. The election board, however, is not precluded from requiring other proof of the right to vote as specified by the act of 1864 or, by the general election laws.

If any of the assessors, collectors or treasurers neglect or refuse to perform their duties under this section, they are guilty of a misdemeanor and subject to fine.

The additional assessment, required by this section to be made in the City of Philadelphia, shall be made on application of any citizen of the election district or precinct thereof, upon the oath or affirmation of such citizen, to be administered by the assessor, that such absent soldier is a citizen of the election district or precinct wherein the assessment is required by such citizen to be made.

Sec. 40, Act of 1864, P. L. 990.

Note. It has been held in Philadelphia, that the assessment of a soldier may be made at any time and that it need not be on the days fixed for making the extra assessment. See Purdon, Vol. 2, Sec. 1374 footnote.

There is no doubt that this tax of ten cents provided by the above section for privates and non-commissioned officers, is a poll tax and the question arises whether the provisions of the above section authorizing the payment of such tax by a person other than the

elector without an order from said elector, comes within the prohibition contained in the Act of July 15, 1897, P. L. 276. Section 1 of this act makes it unlawful.

“—for any person or persons to pay or cause to be paid any *occupation or poll tax assessed against any elector*, except on written and signed order of such elector, authorizing such payment to be made, which written and signed order must be presented at least thirty days prior to the date of holding the election at which such elector desires to vote.”

Section 2 of the act makes it unlawful for any officer or other person authorized to collect taxes, to receive any such occupation or poll tax from any person other than the elector against whom the tax is assessed upon such order.

Section 3 makes it unlawful for any person to vote or attempt to vote at any election upon a tax receipt obtained in violation of the act.

As was stated by the court in contested election of William H. Thomas, 6 Lackawanna Legal News 227, the mischief which the act sought to remedy was the indiscriminate and wholesale payment of poll or occupation taxes by campaign committees of the several political parties. This was indulged in to such an extent, particularly in the large cities, that thousands of the lowest class of voters were dependent for their right to vote on the taxes so paid for them, and their votes were thus virtually controlled by those who held the receipts. This practice became so notorious that no one can pretend ignorance of it and it was beyond question that it dictated the passage of the act.

It is obvious, that the mischief could apply to persons in the military service as well as others and it is not difficult to conceive how the vote of the soldier might be influenced if another person voluntarily paid his taxes. As was stated in the Lackawanna case, his vote would be absolutely at the mercy of the person who held the tax receipt and who would be in a position to deliver it to the soldier or withhold it from him in accordance with how he would cast his ballot. The Act of 1864 being in this respect both within the letter of the Act of 1897 and within its spirit, I am of the opinion that so much of section 40 of the said Act of 1864 as empowers a person to pay the tax of a soldier without a written signed order from such soldier, is repealed by the Act of 1897 and any person so endeavoring to pay said tax or any person attempting to vote on a tax receipt so procured, is subject to the penalty which the Act of 1897 provides. It is to be noted that this construction does not operate to disfranchise the soldier. He may still sign an order authorizing some person to pay his taxes or he may send his taxes direct to the treasurer or as was

stated in the Lackawanna case, it is permissible under the act for the wife of the soldier to pay his taxes out of money belonging to him. There is ample time, therefore, for the soldier to have his taxes paid. The form of an order above required has been drafted by this Department and has been furnished to the Secretary of the Commonwealth, so that he may have a sufficient number printed and distributed among the soldiers in ample time to accomplish this purpose.

IV.

THE COMMISSIONERS.

(a) NUMBER, APPOINTMENT, QUALIFICATIONS, and VACANCIES—Governor appoints and commissions such number of qualified electors as he deems necessary to carry out the work, not exceeding one to each Pennsylvania regiment. Vacancies are to be filled by the Governor.

Sec. 24, Act of 1864, P. L. 990.

Note. "The Adjutant General states, there are at the present time in the Federal service the following Pennsylvania organizations."

- 9 Regiments of Infantry.
- 1 Regiment of Cavalry.
- 1 Regiment of Field Artillery.
- 1 Battalion Signal Troops.
- 3 Companies of Engineers.
- 2 Field Hospitals.
- 2 Ambulance Companies.
- 1 Division Headquarters.
- 3 Brigade Headquarters.

These are now located at El Paso, Texas, excepting two Battalions temporarily assigned to duty at a distance from El Paso at approximately one hundred and fifty miles.

The Adjutant General also states that there are now at rendezvous at Mount Gretna, one Regiment of Field Artillery and one Regiment of Infantry.

The question is presented, whether a commissioner may be appointed for each of the organizations not constituting a regiment or, whether the number is to be determined solely by the number of "regiments" in service; in the present case thirteen. I am of the opinion that the Governor may appoint a commissioner for each of the organizations not constituting a part of any regiment, for if this be not true, then in a contingency, where a regiment was not mustered into the Federal service but only some of these independent organizations e. g. the Signal Troops or Engineers, the men comprising these

organizations would practically lose their right to vote at any election occurring when they were in service, away from the place of residence. As before stated, the right of an elector to exercise his privilege, is one of the highest rights of citizenship and must not be prevented unless insurmountable obstacles stand in the way. I am of the opinion, therefore, that a commissioner may be appointed for each of the ten regiments of Infantry, one for the regiment of Cavalry, one for each regiment of Field Artillery and one for each separate military organization not constituting part of a regiment. Of course a lesser number may be appointed, if in the opinion of the Governor they are sufficient to perform the duties imposed by the act and more may be commissioned if additional regiments or special military units be subsequently mustered into the Federal service or under the authority of the Commander-in-Chief.

(b) *OATH OR AFFIRMATION.*

Before such commissioners can act they must take and subscribe an oath or affirmation, the form of which is prescribed by section 24 of the act, such oath or affirmation must be filed in the office of the Secretary of the Commonwealth.

Sec. 24, Act of 1864, P. L. 990.

(c) *COMPENSATION.*

The commissioners receive no salary, but are allowed ten cents per mile in going to and returning from the respective regiments or organizations to which they have been assigned.

Sec. 26, Act of 1864, P. L. 990.

Note. "The question is presented, whether there is any available fund from which to pay this money or whether a separate act of assembly will be required at the next session of the legislature. I am of the opinion that Sec. 26 of the act of August 25, 1864, P. L. 990 operates to appropriate the funds necessary for payment. The section after providing that the commissioners shall receive ten cents per mile in going to and returning from their respective regiments which is to be estimated by the usually traveled routes, proceeds to enact as follows:

"—and it is hereby made the duty of the Auditor General and the State Treasurer to audit and pay the accounts, therefor, in the same manner as other claims are now audited and paid by law."

In an opinion given by Attorney General Lear and reported in Attorney General Reports 1895-96, page 362, an appropriation made by law was defined to be a legal direction or authority to pay a sum, certain or limited to an amount, which it shall not exceed, made by

an Act of Assembly in a form and for a purpose not prohibited by the Constitution. In the opinion referred to, an act of assembly, after creating an office, fixed a certain salary and made it the duty of the financial officers of the Commonwealth to pay the salary annually. Under the foregoing definition, he held the salary might be paid without any other appropriation and that the language employed by the legislature itself, constituted an appropriation of the funds necessary for payment. To the same effect, was an opinion rendered to the State Treasurer and reported in Attorney General Reports 1895-96, page 339, where it was said that where the legislature fixes a certain sum and directs it to be paid to any one annually, the money necessary to pay it is to be appropriated by law, and that this rule applies to salaries and pensions which the State Treasurer can pay without warrant. It was doubted, however, whether the rule applied to traveling expenses where such traveling expenses could not be computed with any reasonable degree of accuracy.

In the case of the commissioners appointed to take the army vote, the amount expended by each commissioner can be definitely ascertained. The law says, the Governor shall apportion the work among the commissioners, that is, he shall assign commissioners to the respective organizations. It further provides such commissioners must go and return by the usual traveled routes and that they shall be allowed ten cents a mile in going to, and returning from such places. The amount, actually expended, can, therefore, be definitely ascertained and this coupled with the provision above quoted, which makes it the absolute duty of the financial officers to pay the amount computed as aforesaid, constitutes all the elements of an appropriation and I am of the opinion that the money needed can be paid out of the general fund and that it is not necessary for the commissioners to wait until the next legislature, in order to be reimbursed for the expenses which they shall have incurred.

The compensation of the commissioners appointed to hold election during the Spanish American War was not provided for until the next session of the legislature when a special appropriation was made to reimburse them for the expenses they had incurred. The records of the Secretary of the Commonwealth disclose the fact that commissioners were appointed in 1902, to record the votes of the soldiers on duty in the anthracite coal region and the records of the Adjutant General show that there were on the day of election, several companies which were in actual service and away from their places of residence on that day. The records of the Adjutant General's Department, the Auditor General's Department, and the State Treasurer's office fail to disclose how the expenses of the commissioners were paid. No act of Assembly appropriated specifically money for their expenses unless it was considered at that time that the Act

of 1864 was, itself, sufficient warrant to pay the money out of the general fund. I am of the opinion that the money cannot be paid from the Military Emergency Fund, as the taking of the vote is purely a civil matter, notwithstanding, it was occasioned by a military emergency.

(d) *DUTIES OF COMMISSIONERS.*

The Governor apportions the work among the commissioners (see section 24) and it is the duty of such commissioners,

(1) To deliver as far as practicable to the commanding officers of every company or part of a company.

(a) At least four copies of the Act of August 25, 1864, P. L. 990.

(b) At least four copies of extracts of election laws prepared by Secretary of Commonwealth pursuant to Sec. 23.

(c) At least two blank forms of poll books, tally lists and returns, entrusted to them and prepared by Secretary of the Commonwealth under Sec. 23.

(2) To make suitable arrangements for opening the polls prescribed by the act.

(3) To call on the judges of election as soon as practicable after the election and procure one poll book containing the election returns and to preserve the same from loss or alteration and to deliver it without delay to Secretary of the Commonwealth.

Sec. 25, Act of 1864, P. L. 990.

(e) *PENALTIES.*

Violation of oath or duty on the part of the commissioners is made perjury and subject to fine or imprisonment or both.

(f) *MILITARY OFFICERS TO ASSIST COMMISSIONERS.*

All officers of military organizations are to give the commissioners proper facilities to enable them to carry out the intent of the act.

Sec. 26, Act of 1864, P. L. 990.

(g) *FAILURE OF COMMISSIONERS TO REACH ANY COMPANY OR PART THEREOF, DOES NOT INVALIDATE THE ELECTION.*

Sec. 27, Act of 1864, P. L. 990.

V.

DUTIES OF GOVERNOR

It is the duty of the Governor to

(a) Appoint and commission under the great seal of the Commonwealth a sufficient number of qualified electors as commissioners, not exceeding one for each regiment in service to carry out the purposes of the act and to supply vacancies that may occur.

Sec. 24, Act of 1864, P. L. 990.

(Note). For number of commissioners see COMMISSIONERS.

(b) To apportion the work among the commissioners.

Sec. 24, Act of 1864, P. L. 990.

(c) In elections for electors of President and Vice-President to compare the return of the soldier vote laid before him by Secretary of the Commonwealth with the county return. In every case where the military returns have been received by the secretary at a period too late for their transmission to Prothonotary and their delivery by him to the Return Judge, the Governor must add to the county return, such military returns as are not contained in said county returns.

Sec. 21, Act of 1864, P. L. 990.

VI.

DUTIES OF SECRETARY OF COMMONWEALTH.

(a) He must cause to be printed.

1. A sufficient number of copies of the act.
2. A sufficient number of extracts from the election laws as he deems important to accompany the acts.
3. A sufficient number of blank forms of poll books with tally lists and returns as prescribed by sections 15 and 16 of the act.

Sec. 23, 1864, P. L. 990

4. All blank forms necessary to carry out the act and must prepare the form.

Sec. 38, Act of 1864, P. L. 990.

(b) He must forward the above printed material at the expense of the Commonwealth, in sufficient time before the election, by the commissioners or otherwise, as he deems most certain to insure delivery, to captain or commanding officer of each company, or in case of detached voters, to the officers in charge. These officers hold the

same until the day of election, when they are turned over to the judges of election. The Secretary must also include a sufficient number of postage stamps to defray expenses and postage on returns.

No election is to be invalidated because the Secretary caused the poll books to be delivered to the wrong person.

Sec. 23, Act of 1864, P. L. 990.

VII.

ELECTION NOTICES. CONDUCT OF ELECTIONS.

A—ELECTION PROCLAMATION.

When Sheriff issues his election proclamation, he must transmit copies immediately to field officers and senior captains in the service from his county or city.

Sec. 30, Act of 1864, P. L. 990.

B—POLLING PLACES.

A poll must be opened in each company composed in whole or part of Pennsylvania soldiers at some officer's quarters. All qualified voters of the company within one mile must vote thereat unless prevented by orders of commanders, proximity of enemy, etc., officers, other than company officers, and voters absent from their company or in a military or naval hospital or in any vessel or navy yard, may vote at polls convenient to them.

Ten or more voters unable to attend a regular polling place may open a poll and certify in a poll book, a proceeding of their election.

Sec. 2, Act of 1864, P. L. 990.

C—OPENING AND CLOSING OF POLLS.

Polls are to open as early as practicable and stay open at least three hours and until 7 P. M. if judges think necessary. Proclamation is to be made at opening of the polls and one hour before closing.

Sec. 3, Act of 1864, P. L. 990.

D—ELECTION OFFICERS, HOW CHOSEN—COMPENSATION.

On day of election the electors present at the polling places elect viva voce three present and qualified electors as judges. The judges then appoint two persons present and qualified to act, as clerks.

Sec. 4, Act of 1864, P. L. 990.

The election officers receive no compensation.

Sec. 29, Act of 1864, P. L. 990.

E—OATH OF ELECTION OFFICERS.

Judges and Clerks must take and subscribe the oath or affirmation prescribed by Secs. 5 and 15 of an act, which was printed in the poll book. Judges and Clerks may swear or affirm each other and the party so administering must certify the same.

Sec. 5, Act of 1864, P. L. 990.

F—POWERS AND RESPONSIBILITIES OF ELECTION OFFICERS.

The officers shall have the same powers and are subject to the same penalties as election officers conducting elections by citizens at their usual places of residence.

Sec. 28, Act of 1864, P. L. 990.

G—BALLOT BOXES.

The judges must prepare some suitable receptacle for the ballots.

Sec. 4, 1864, P. L. 990.

H—POLL BOOKS AND RETURNS.

Separate poll books are to be kept and returns made for the voters of each city and county. The poll books must name the company and regiment or organization and place, post or hospital where election is held. The county and township, city, borough, ward, precinct or election district of each voter must be indorsed opposite his name on the poll books. Each clerk must keep one of such books. The form of these books is prescribed by sections 15 and 16.

Sec. 7, Act of 1864, P. L. 990.

The poll book, tally list returns and all necessary blanks are prepared and furnished by Secretary of Commonwealth.

Secs. 23, 38, Act of 1864, P. L. 990.

I—ELECTION TO BE BY BALLOT.

The election must be by ballot and each ballot or "ticket" must have written or printed or partly written and partly printed, the names of all officers which may properly be voted for, for which the elector desires to vote.

Secs. 6, 8, Act of 1864, P. L. 990.

(Note). The Secretary of the Commonwealth is preparing a ballot to be used by the soldier and which will aid the elector as well as expedite the work of the election officers. A place will appear thereon, where the election officer or the elector may insert the residence of the voter. These ballots will be furnished by the Secretary in sufficient number to be accessible to all soldiers qualified to vote.

J—RECEPTION OF VOTES.

The voter personally delivers his ballot to one of the judges of election, who pronounces his name and who must be satisfied as to his right to vote. If no objection be made, and if the judges are so satisfied, the ballot is deposited in the ballot box, without the judges inspecting the names of the person voted for. The clerks, at the same time, must enter the name of the elector in the poll book of his county, ward, precinct, city, borough or township and also enter his county opposite his name.

Secs. 6, 9, Act of 1864, P. L. 990.

K—CHALLENGES.

Any voter may challenge whereupon the judge must swear or affirm the applicant and examine him as to his right and qualifications to vote in the place where he claims residence.

Sec. 6, Act of 1864, P. L. 990.

L—NUMBER OF VOTERS TO BE COUNTED.

When the polls close and before the boxes are opened, the number of votes cast must be counted, marked at the foot of the list of voters and certified in writing by the election officers.

Sec. 10, Act of 1864, P. L. 990.

M—BALLOTS CAST TO BE COUNTED AND PRESERVED.

The boxes are next to be opened. One of the judges takes the votes out, one at a time, and while the ticket remains in his hand, reads the names of the persons voted for. He then passes it on to the second judge, who examines it and who in turn, delivers it to the third judge. The third judge strings the vote for each county on a separate thread and preserves the same.

Sec. 11, Act of 1864, P. L. 990.

N—TALLY-LISTS.

Each clerk keeps a tally list for each county, and which constitutes part of the poll book.

Sec. 13, Act of 1864, P. L. 990.

O—REJECTION OF TICKETS.

When two or more tickets are found deceitfully folded or rolled together, neither ticket is to be counted.

If a ticket contains more than the proper number of names for the same office, it must be considered fraudulent, but only so far as the names designated for that office.

Sec. 12, Act of 1864, P. L. 990.

P—ENUMERATION OF VOTES.

When the tickets have been examined, the number of votes for each person in the county poll books must be enumerated under the inspection of the judges and recorded as provided in the form of the poll book.

Sec. 14, Act of 1864, P. L. 990.

Q—RETURNS, FORM OF.

A written return must be made in each poll book showing (a) the whole number of unrejected ballots cast for each office; (b) the name of each person voted for; (c) the number of votes given to each person, for each different office.

The return shall be certified as correct and signed by the judges and attested by the clerks. The form of the return and certificate appear in section 16 of the act.

Sec. 16, Act of 1864, P. L. 990.

R—DISPOSITION OF POLL BOOKS, TALLY LISTS, RETURNS AND BALLOTS BY ELECTION OFFICERS.

The judges put one of the poll books, with its tally list and return of each county or city, together with the ballots, in an envelope, and mail the envelope by the nearest post office or by express, as soon as possible, to the prothonotary of the court of Common Pleas of the city or county for which the poll book was kept and where the electors would have voted if they had not been in service.

The other poll book must be sealed in a directed envelope and delivered to one of the Commissioners if he calls for it within ten days. If not so called for, he mails or expresses it to the Secretary of the Commonwealth.

Sec. 17, Act of 1864, P. L. 990.

S—SECRETARY OF COMMONWEALTH TO CERTIFY COPIES OF RETURNS.

The secretary must preserve the poll books and on demand from the proper Prothonotary, he must certify a copy of the return of the city or county for which the demandant is Prothonotary.

Sec. 17, Act of 1864, P. L. 990.

T—DUTIES OF PROTHONOTARY.

The Prothonotary must deliver to the Return Judges, a certified copy of the returns received by him from the election officers of the Secretary of the Commonwealth.

Sec 18, Act of 1864, P. L. 990.

Note. The Prothonotary cannot be restrained from delivering the returns transmitted to him, though they are admitted to be forgeries.

Lawrence vs. Knight, 4 Phila. 355.

U—MEETING OF RETURN JUDGES.

The return judges must adjourn to meet on the third Friday after any general or Presidential election to count the soldier vote. When two or more counties are connected in the election, the meeting of the judges from each county must be postponed until the Friday following.

Sec. 19, Act of 1864, P. L. 990.

Note. An election will not be invalidated by the fact, that some of the return judges refused to meet at the proper time; or that those who did meet, met at another than the usual place because their duties were interfered with, by a disorderly riot.

Hulseman vs. Rome, 41 Pa. 396.

V—DUTIES OF RETURN JUDGES.

The return judges must include in their enumeration the vote so returned and must proceed in like manner in all respects as is provided by law, in cases where all the votes have been given at a usual place of election.

Sec. 20, Act of 1864, P. L. 990.

Note. When the returns are regular on their face, the return judges cannot go behind such returns and reject some of the votes as illegal and they may be compelled by mandamus to count the vote as cast.

Com. vs. Tree, 4 Phila., 362.

W—FRAUD OR ILLEGALITY IN RELATION TO SOLDIER'S VOTE.

The several courts of the Commonwealth have the same power to investigate and determine all questions of fraud or illegality as they have with regard to such questions when they arise from the voting of persons not in the military service.

Sec. 20, Act of 1864, P. L. 990.

X—RETURNS OF PRESIDENTIAL ELECTORS.

In elections for President and Vice-President of the United States, the Secretary of the Commonwealth must lay before the Governor, the returns received by him. The Governor must compare such returns with the county returns. In every case where the military returns shall have been received too late for their transmission to

the Prothonotary, so as to be delivered to the return judges, the Governor must add to the county returns all such military returns not contained in the county returns.

Sec. 21, Act of 1864, P. L. 990.

Y—ELECTION CONTESTS.

The military election is subject to contest the same as any other election. In contests, all returns bona fide forwarded in the manner provided, must be counted and estimated although they may not have arrived or been received by the proper officers, before the certificates of election were issued to the persons who appeared to have a majority. Such returns are subject to the same objections as those which are received in time to be counted at the regular meeting of the return judges held for counting the military vote.

Sec. 22, Act of 1864, P. L. 990.

Z—INFORMALITIES NOT TO INVALIDATE ELECTION.

No informality in executing the provisions of the act invalidates the election or authorizes the return to be rejected. Failure of the commissioners to reach any company or part of a company or failure of any company or part thereof to vote, does not invalidate any elections held.

Sec. 27, Act of 1864, P. L. 990.

No election is to be invalidated because the Secretary of the Commonwealth caused the poll books to be sent to the wrong person.

Sec. 23, Act of 1864, P. L. 990.

Z1—CERTAIN PROVISIONS OF ELECTION LAWS TO APPLY.

All provisions of the general election laws, so far as applicable, and not inconsistent with, or supplied by this act, apply to the elections held under the act.

Sec. 28, Act of 1864, P. L. 990.

VIII.

ELECTIONS BY THE DETACHED VOTERS.

(a) WHO MAY VOTE.

When any voters possessing qualifications of electors and in actual military service, and away from their place of residence, less than ten in number are members of companies of another State or for any sufficient cause shall be separated from their companies or shall be in any hospital, navy yard, vessel or on recruiting, provost or other duty, whether within or without the State, under such cir-

cumstances as to render it improbable that he or they will be unable to be present at the proper place of election on or before the day of election, said elector or electors may vote in the following manner.

Sec. 32, Act of 1864, P. L. 990.

(b) *MODE OF VOTING.*

A voter, before election day, must deposit his ballot properly folded in a sealed envelope, together with a written or printed, or partly written and partly printed statement, containing the name of the voter, the county, township or borough or ward of which he is a resident and written or printed authority to some qualified voter in the election district of which said voter is a resident, to cast the ballot contained in the envelope, for him, on the day of said election. The statement and oath must be signed by the voter and if he be a private, it must be attested by the commanding or some commissioned officer of the company of which he is a member, and of some commissioned officer of the regiment, if the voter be an officer. If in either case, no officers are conveniently acceptable, then the attestation may be made by any witness. There must also accompany said ballots, an affidavit of the voter taken by some officer, or in the absence thereof, before some other person duly authorized by the laws of this State to administer oaths, that he is a qualified voter in the election district in which he proposes to vote, that he is in the actual military service of the United States, or of this State, describing the organization to which he belongs, that he has not sent his ballots to any other person or persons than the one in such authority mentioned, that he will not offer to vote at any poll which may be open on said election day, at any place whatsoever and that he is not a deserter and has not been dishonorably discharged from the service and that he is now stationed at.....in the State of..... The sealed envelope containing the ballots, statement, authority and affidavit as aforesaid, must be sent to the proper person, having written or printed on the outside, across the sealed part thereof, the words "Soldiers ballot for..... township (borough or ward) in the county of....."

Sec. 33, Act of 1864, P. L. 990.

(c) *ELECTIONS IN HOSPITALS, ETC.*

In the case of qualified electors in any hospital, military or naval, or in any vessel or navy yard, the above statement and affidavits may be witnessed and made before any officer of the vessel, navy yard or other place in which the voter is, for the time being engaged.

Sec. 39, Act of 1864, P. L. 990.

(d) *DELIVERY AND COUNTING OF SUCH VOTES.*

The elector to whom such ballots are sent, must on election day, while the polls of the proper district are open, deliver the envelope so received unopened, to the proper election officer. This officer must open the envelope in the presence of the election board and if no objections are made, deposit the ballot therein contained, together with the envelope and accompanying papers, the same as other ballots are deposited. The Board must count and canvass the ballot the same as any other ballot. The person delivering the vote, may on demand of any elector be compelled to testify on oath, that the envelope so delivered to him is in the same state as when it was received, and that the same was not opened or the contents altered in any way by him or any other person.

Sec. 34, Act of 1864, P. L. 990.

(e) *CHALLENGES.*

The right of any person thus offering to vote, may be challenged for the same causes as if the voter were personally present.

Sec. 35, Act of 1864, P. L. 990.

(f) *PENALTIES FOR REFUSING TO RECEIVE SUCH VOTE.*

Any officer, who refuses to receive the envelope and deposit the ballot and canvass the same, and any elector who receives the envelope and neglects to present same to the officers of the election district endorsed on said envelope, subject to fine or imprisonment or both.

Sec. 36, Act of 1864, P. L. 990.

(g) *PENALTIES FOR FALSE SWEARING.*

Any person making a false affidavit touching any matter or thing provided in the act, guilty of perjury, subject to fine or imprisonment or both.

Sec. 37, Act of 1864, P. L. 990.

IX.

FORMS.

The Secretary of the Commonwealth must prepare and furnish all blanks necessary to carry out the act and must prepare the forms. See sections 23 and 28.

FORM OF RETURNS.

At an election held by the electors of Company....., of the regiment of Pennsylvania soldiers, at (naming the place where the election is held) there were (naming the number in words,

at length).....votes cast for the office of governor, of which A B had.....votes, C D had.....votes; for senator,.....votes were cast, of which E F had.....votes, G H had.....votes; for representatives,.....votes were cast, of which J K had.....votes, L M had.....votes; and in the same manner, as to any other officers voted for.

At the end of the return, the judges shall certify, in substance, as follows, giving, if officers, their rank and number of their regiment, if privates, the number of their regiment and company, viz:

A true return of the election, held as aforesaid, on the.....day of.....Anno Domini one thousand eight hundred and

A B, Captain company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

E D, company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

E F, company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

Judge of election.

Attest,

J K,

L M, Clerks.

FORM OF STATEMENT AND AUTHORITY TO BE USED BY DETACHED VOTERS AS PER SECTION 33 OF THE ACT OF 1864, P. L. 990.

This form does not appear in the act, but has been used and adapted at elections held. It is taken from Purdon's Digest, Vol. 2, Page 1373. Note.

I,....., do hereby state, that I am a qualified elector of the Commonwealth of Pennsylvania, now in actual military service, under the requisition of the President of the United States,.....and as such, absent from my place of residence, which is in.....in.....county, in the said Commonwealth of Pennsylvania; being in the.....regiment of.....soldiers, and being now in....., and for sufficient and legal cause separated from my proper company, on.....duty, under such circumstances as render it probable that I will be unable to join my said company, or to be present at my proper place of election on the.....day of.....

next, there being less than ten in number of such electors in the said
at..... And
 I, the said....., do
 hereby authorize and empower.....
 being a qualified voter in the election district aforesaid, of which I
 am a resident, to cast the ballots contained in the envelope hereof,
 for me, on the day of the election aforesaid.

Signed by me in witness thereof, at.....
 on the.....day of.....in the year one thousand
 nine hundred and.....

Attested by me, ...
of.....

FORM OR AFFIDAVIT TO BE USED BY DETACHED VOTERS AS PER SECTION 33 OF THE ACT OF 1864, P. L. 990.

The act does not prescribe the form of the affidavit but the following form has been used in prior elections. It appears in Purdon's Digest, Vol. 2, Page 1373, Note.

I the aforesaid.....,
 do swear that I am a qualified voter in the election district aforesaid, in which I propose to vote, that I am in the actual military service of the United States, in.....of the.....
 regiment of.....soldiers; that I have not sent
 my ballots to any other person or persons than the said.....
in the aforesaid authority
 mentioned; that I will not offer to vote at any poll which may be
 opened, on the aforesaid election day, at any place whatsoever; that
 I am not a deserter, that I have not been dishonorably dismissed
 from the service, and that I am now stationed at.....
in the state
 of.....

Sworn and subscribed by the said.....,
 before me, ...of.....in
 the.....regiment of.....soldiers

In witness whereof, I have hereunto set my hand, at.....
in the state of....., the
day of....., one thousand nine
 hundred.....

FORM OF CERTIFICATE OF OATH OF JUDGES AND CLERKS.

We, A B, C D and E F, judges of this election, and J K and L M, clerks thereof, do each severally swear (or affirm), that we will duly perform the duties of judges and clerks of said election, severally acting as above set forth, according to law, and to the best of our abilities, and that we will studiously endeavor to prevent fraud, deceit, or abuse, in conducting the same.

A B,
C D,
E F, Judges.

J K,
L M, Clerks.

I hereby certify, that C D, E F, judges, and J K and L M, clerks, were, before proceeding to take any votes at said election, first duly sworn, or affirmed, as aforesaid. Witness my hand this..... day of....., Anno Domini one thousand nine hundred and.....

A B, Judge of election.

I certify that A B, judge aforesaid, was also so sworn (or affirmed) by me. Witness my hand, the date before written.

J K, Clerk of election.

FORM OF POLL-BOOK.

Poll-book of the election, held on the Tuesday next following the first Monday in November, one thousand nine hundred and....., (or other election day, as the case may be), by the qualified electors of.....county (or city), State of Pennsylvania, in company....., of the.....regiment of Pennsylvania volunteers. (or as the case may be), held at (naming the place, post, or hospital), A B, C D and E F, being duly elected as judges of said election, were severally sworn, or affirmed, as per certificates herewith returned.

Number and names of the electors voting, and their county, city, borough, township, ward, or precinct, of residence:

No. 1. A B,.....county of....., township of.....

No. 2. C D,.....county of....., township of.....

It is hereby certified that the number of electors for.....
.....county, Pennsylvania, voting at this election,
amounts to.....

A B } Judges
C D } of
E F } election.

Attest:

J K,

L M, Clerks.

**FORM OF AUTHORIZATION TO BE USED BY A PERSON WHO
WISHES TO HAVE HIS OCCUPATION OR POLL TAX PAID
BY ANOTHER.**

I,....., do hereby
state, that I am a citizen of the Commonwealth of Pennsylvania,
now in actual military service, under a requisition from the Presi-
dent of the United States or by the authority of this Commonwealth,
and as such, absent from my place of residence, which is in.....
....., in..... county, in said
Commonwealth of Pennsylvania, being (here state whether non-com-
missioned officer, private or commissioned officer) in the.....
regiment, or other military organization of.....
soldiers and I, the said.....do
hereby authorize and empower.....
of the.....(here state borough, city, town or
township),.....county, to pay the tax provided
by Section 40 of the Act of August 25, 1864, entitled "An act to
regulate elections by soldiers in actual military service," or any
other poll or occupation tax, against me assessed, and to receive a
tax receipt for the same.

Signed by me at.....on the.....
day of.....in the year one thousand nine hundred
and sixteen.

Witness
.....of.....(here state military rank and
organization of witness.)

(N. B.) In order to enable an elector to vote, the tax must be
assessed at least two months and paid at least one month before the
election.

The voter, before depositing ballot in ballot box must fill in the following spaces:

County, ...
City, Borough or Township, ...
Ward, ...

The third line must be filled in if voter resides in a City comprising more than one Congressional, Senatorial or Legislative District.

No. 871.

AN ACT

To regulate elections by soldiers in actual military service.

Section 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That whenever any of the qualified electors of this Commonwealth shall be in any actual military service, under a requisition from the President of the United States, or by the authority of this Commonwealth, and as such, absent from their place of residence, on the days appointed by law for holding the general or presidential elections within this State, or on the days for holding special elections, to fill vacancies, such electors shall be entitled, at such times, to exercise the right of suffrage, as fully as if they were present at their usual places of elections, in the manner hereinafter prescribed, and whether, at the time of voting, such electors shall be within the limits of this State, or not; and the right of voting shall not be affected, in any manner, by the fact of the voter having been credited to any other locality than the place of his actual residence, by reason of the payment to him of local bounty by such other locality.

Section 2. A poll shall be opened in each company, composed, in whole or in part, of Pennsylvania soldiers, at the quarters of the captain, or other officer thereof, and all electors, belonging to such company, who shall be within one mile of such quarters, on the day of election, and not prevented by orders of their commanders, or proximity of the enemy, from returning to their company quarters, shall vote at such poll, and at no other place; officers, other than those of a company, and other voters, detached and absent from their companies, or in any military or naval hospital, or in any vessel, or navy yard, may vote at such other polls as may be most convenient

for them; and when there shall be ten, or more, voters at any place, who shall be unable to attend any company poll, or their proper place of election, as aforesaid, the electors present may open a poll, at such place as they may select and certify in the poll-book, which shall be a record of the proceedings at said election, substantially, in manner and form, as hereinafter directed.

Section 3. The polls shall be opened as early as practicable on said day, and remain open at least three hours, and, if necessary, in the opinion of the judges of the election, in order to receive the votes of all the electors, they may keep the polls open until seven o'clock in the afternoon of said day; proclamation thereof shall be made at, or before, the opening of the polls, and one hour before closing them.

Section 4. Before opening the poll, on the day of election, the electors present, at each of the places aforesaid, shall elect, *viva voce*, three persons, present at the time, and having the qualifications of electors, for the judges of said election, and the judges, so elected, shall then appoint two of the persons present, who shall be qualified, to act as clerks of said election; and the judges shall prepare boxes, or other suitable receptacles, for the ballots.

Section 5. Before any votes shall be received, said judges and clerks shall each take an oath, or affirmation, that he will perform the duties of judge, or clerk, (as the case may be), of said election, according to law, and to the best of his abilities, and that he will studiously endeavor to prevent fraud, deceit, or abuse, in conducting the same, which oath, or affirmation, any of the said judges, or clerks, so elected, or appointed, may administer to each other; and the same shall be in writing, or partly written and partly printed, and signed by said judges and clerks, and certified to by the party administering same, and attached to, or entered upon, the poll-book, and there signed and certified, as aforesaid.

Section 6. All elections shall be by ballot, and the judges of elections may, and upon challenge of any voter, shall examine, under oath, or affirmation, the applicant to vote, (which oath, or affirmation, any of said judges may administer), in respect to his right to vote, and his qualifications to vote in the particular ward, precinct, city, borough, township, or county of this State, in which he claims residence; and before receiving any vote, the judges, or a majority of them, shall be satisfied, that such applicant is a qualified voter of such place.

Section 7. Separate poll-books shall be kept, and separate returns made, for the voters of each city, or county; the poll-books shall name the company and regiment, and the place, post, or hospital, in which such election is held; the county and township, city, borough, ward, precinct, or election district of each voter shall be en-

dorsed opposite his name on the poll-books; each clerk shall keep one of said poll-books, so that there may be a double list of voters.

Section 8. Each ticket shall have written, or printed, or partly written and partly printed thereon, the names of all the officers which may properly be voted for, at said election, for which the said elector desires to vote.

Section 9. That the judges, to whom any ticket shall be delivered, shall, upon the receipt thereof, pronounce with an audible voice, the name of the elector, and if no objection is made to him, and the judges are satisfied that said elector is a citizen of the United States, and legally entitled, according to the constitution and laws of this State, to vote at said election, shall immediately put said ticket in the box, or other receptacle therefor, without inspecting the names of persons voted for; and the clerks shall enter the name of the elector on the poll-book of his county, ward, precinct, city, borough, or township, and county of his residence, substantially, in pursuance of the form hereinafter given.

Section 10. At the close of the polls, the number of voters shall be counted and set down at the foot of the list of voters, and certified and signed by the judges, and attested by the clerks.

Section 11. After the poll-books are signed, the ballot-box shall be opened, and the tickets, therein contained, shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name, or names, therein contained, for the several officers voted for, and then deliver it to the second judge, who shall examine the same, and pass it to the third judge, who shall string the vote for each county, upon a separate thread, and carefully preserve the same; the same method shall be pursued, as to each ticket taken out, until all the votes are counted.

Section 12. Whenever two or more tickets shall be found, deceitfully folded, or rolled together, neither of such tickets shall be counted; and if a ticket shall contain more than the proper number of names, for the same office, it shall be considered fraudulent, as to all of the names designated for that office, but no further.

Section 13. As a check in counting, each clerk shall keep a tally list for each county, from which votes shall have been received, which tally list shall constitute a part of the poll-book.

Section 14. After the examination of the tickets shall be completed, the number of votes for each person, in the county poll-books as aforesaid, shall be enumerated, under the inspection of the judges, and set down as hereinafter provided, in the form of the poll-book.

Section 15. The following shall be substantially the form of the poll-books, to be kept by the judges and clerks of the election, filling in the blanks carefully:

Poll-book of the election, held on the second Tuesday of October, one thousand eight hundred and , (or other election day, as the case may be), by the qualified electors of county, (or city), State of Pennsylvania, in company , of the regiment of Pennsylvania volunteers, (or as the case may be), held at (naming the place, post, or hospital), A B, C D and E F, being duly elected as judges of said election; and J K and L M, being duly appointed as clerks of said election, were severally sworn, or affirmed, as per certificates herewith returned.

Number and names of the electors voting, and their county, city, borough, township, ward, or precinct, of residence:

No. 1, A B, county of , township of .
No. 2, C D, county of , township of .

It is hereby certified that the number of electors for county, Pennsylvania, voting at this election, amounts to

A B, } Judges
C D, } of
E F, } election.

Attest:

J K,
L M, Clerks.

Form of certificate of oath of judges and clerks:
We, A B, C D and E F, judges of this election, and J K and L M, clerks thereof, do each severally swear, (or affirm), that we will duly perform the duties of judges and clerks of said election, severally acting as above set forth, according to law, and to the best of our abilities, and that we will studiously endeavor to prevent fraud deceit, or abuse, in conducting the same.

A B,
C D,
E F, Judges.

J K,
L M, Clerks.

I hereby certify, that C D, E F, judges, and J K and L M, clerks, were, before proceeding to take any votes at said election, first duly sworn, or affirmed, as aforesaid:
Witness my hand this day of ,
Anno Domini one thousand eight hundred and

A B, Judge of election,

I certify that A. B judge aforesaid, was also so sworn (or affirmed) by me. Witness my hand, the date before written.

J. K, Clerk of election,

Section 16. A return, in writing, shall be made in each poll-book, setting forth in words, at length, the whole number of ballots cast for each office, (except ballots rejected), the name of each person voted for, and the number of votes given to each person, for each different office; which return shall be certified as correct, signed by the judges, and attested by the clerks; such return shall be substantially as follows:

At an election held by the electors of company _____, of the _____ regiment of Pennsylvania soldiers, at (naming the place where the election is held) there were (naming the number in words, at length) _____ votes cast for the office of governor, of which A B had _____ votes, C D had _____ votes; for senator, _____ votes were cast, of which E F had _____ votes, G H had _____ votes; for representatives, _____ votes were cast, of which J K had _____ votes, L M had _____ votes; and in the same manner, as to any other officers voted for.

At the end of the return, the judges shall certify in substance, as follows, giving, if officers, their rank and number of their regiment, if privates, the number of their regiment and company, viz:

A true return of the election, held as aforesaid, on the _____ day of _____, Anno Domini one thousand eight hundred and _____

A B, Captain company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

C D, company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

E F, company A, one hundred and thirty-first regiment, Pennsylvania volunteers.

Attest,

Judge of election.

J K,

L M, Clerks.

Section 17. After canvassing the votes, in manner aforesaid, the judges shall put, in an envelope, one of the poll-books, with its tally list, and return of each city, or county, together with the tickets, and transmit the same, properly sealed up, and directed, through the nearest post office, or by express, as soon as possible thereafter, to the prothonotary of the court of common pleas, of the city, or county, in which such electors would have voted, if not in the military service aforesaid, (being the city or county for which the poll-book was kept), and the other poll-book, of said city, or county, enclosed in an envelope, and sealed as aforesaid, and properly directed, shall be delivered to one of the commissioners, hereinafter provided for, if such commissioner calls for the same in ten days, and if not so called for, the same shall be transmitted by mail, or by express, as soon as possible thereafter, to the secre-

tary of the commonwealth, who shall carefully preserve the same, and on demand of the proper prothonotary, deliver to said prothonotary, under his hand and official seal, a certified copy of the return of votes, so transmitted to, and received by, him, for said city, or county, of which the demandant is prothonotary.

Section 18. It shall be the duty of the prothonotary of the county, to whom such returns shall be made, to deliver, to the return judges of the same county, a copy, certified under his hand and seal, of the return of votes, so transmitted to him by the judges of the election, as aforesaid, or as officially certified by the secretary of the commonwealth, as aforesaid, to said prothonotary.

Section 19. The return judges, of the several counties, shall adjourn to meet at the places, now directed by law, on the third Friday, after any general or presidential election, for the purpose of counting the soldiers' vote; and when two or more counties are connected in the election, the meeting of the judges from each county, shall be postponed, in such case, until the Friday following.

Section 20. The return judges, so met, shall include, in their enumeration, the votes so returned, and thereupon shall proceed, in all respects, in the like manner as is provided by law, in cases where all the votes shall have been given at the usual place of election: *Provided*, That the several courts of this commonwealth shall have the same power and authority, to investigate, and determine, all questions of fraud or illegality, in relation to the voting of the soldiers, as are now vested in said courts, with regard to questions of fraud and illegality, arising from the voting of persons, not in military service, under the present laws relating thereto.

Section 21. In elections for electors of President and Vice President of the United States, it shall be the duty of the secretary of the commonwealth, to lay before the governor all returns, received by him, from any election, as aforesaid, who shall compare the same with the county returns, and add thereto all such returns as shall appear, on such comparison, not to be contained in said county returns, in every case, where said military returns, for such counties, shall have been received by said secretary, at a period too late for transmitting them to the proper prothonotary, in time for the action of the judges of the said counties.

Section 22. All said elections shall be subject to contest, in the same manner as is now provided by law; and in all cases of contested elections, all legal returns, which shall have been *bona fide* forwarded by said judges, in the manner hereinbefore prescribed, shall be counted and estimated, although the same may not have arrived, or been received by the proper officers, to be counted and estimated, in the manner hereinbefore di-

rected, before issuing the certificates of election, to the persons appearing to have a majority of the votes then received, and the said returns shall be subject to all such objections, as other returns are liable to, when received in due time.

Section 23. It shall be the duty of the secretary of the commonwealth to cause to be printed a sufficient number of copies of this act, with such extracts from the general election law, as shall be deemed important to accompany the same, and blank forms of poll-books, with tally lists and returns, as prescribed in this act, which, with the necessary postage stamps, to defray expenses and postage on returns, shall, in sufficient time, before any such election, be forwarded, by said secretary, at the expense of the commonwealth, by commissioners, or otherwise, as shall be deemed most certain to insure delivery thereof, to the captain, or commanding officer, of each company, or in case of detached voters, to the officer having charge of the post, or hospital, who shall retain the same until the day of election, and then deliver the same to the judges elected, as provided in this act: *Provided*, That no election shall be invalidated, by reason of the neglect, or failure, of the said secretary to cause the delivery of said poll-books to the proper persons, as aforesaid.

Section 24. That for the purpose of more effectually carrying out the provisions of this act, the governor shall have power to appoint and commission, under the great seal of the commonwealth, such number of commissioners, having the qualifications of an elector, in this state, as he shall deem necessary, not exceeding one to each regiment of Pennsylvania soldiers, in the service of this state, or of the United States, and shall apportion the work among the commissioners, and supply such vacancies as may occur in their number. Such commissioners, before they act, shall take and subscribe an oath or affirmation, and cause the same to be filed with the secretary of the commonwealth, to the following: "I

_____ appointed commissioner, under the act to regulate elections by soldiers in actual military service, do solemnly swear (or affirm), that I will support the constitution of the United States, and the commonwealth of Pennsylvania, and impartially, fully and without reference to political preferences, or results, perform, to the best of my knowledge and ability, the duties imposed on me by the said act; and that I will studiously endeavor to prevent fraud, deceit and abuse, not only, in the elections to be held, under the same, but in the returns thereof." And if any commissioner, appointed by, or under, this act, shall knowingly violate his duty, or knowingly omit, or fail, to do his duty, under this act, or violate any part of his oath, or affirmation, he shall be liable to indictment for perjury, in the proper county, and, upon conviction, shall

be punished by a fine, not exceeding one thousand dollars, or imprisonment in the penitentiary, at labor, not exceeding one year, or both, in the discretion of the court.

Section 25. It shall be the duty of such commissioners to deliver, as far as practicable, at least four of the copies of this act, and other extracts of laws, published as hereinbefore directed, and at least two blank forms of poll-books, tally lists and returns entrusted to them, as mentioned in the twenty-third section of this act, to the commanding officers of every company, or part of company, of Pennsylvania soldiers, in the actual military, or naval, service of the United States, or of this state; and to make suitable arrangements and provisions for the opening of polls, under this act; it shall also be the duty of said commissioners, as soon as practicable, after the day of election, to call upon the judges of the election, and procure one poll-book, containing the returns of the election, and safely to preserve the same, not only from loss, but from alteration, and deliver the same, without delay, to the secretary of the commonwealth.

Section 26. Said Commissioners shall receive, in full compensation for their services under this act, ten cents per mile, in going to and returning from their respective regiments, estimating the distance of travel by the usually traveled route; and it is hereby made the duty of the auditor general and state treasurer to audit and pay the accounts therefor, in the same manner as other claims are now audited and paid, by law; all commanding and other officers are requested to aid the commissioners, herein appointed, and to give them all proper facilities, to enable them to carry out the design and intention of this act.

Section 27. No mere informality in the manner of carrying out, or executing, any of the provisions of this act, shall invalidate any election held under the same, or authorize the return thereof, to be rejected or set aside; nor shall any failure, on the part of the commissioners, to reach or visit any regiment or company, or part of company, or the failure of any company, or part of company, to vote, invalidate any election which may be held under this act.

Section 28. The several officers, authorized to conduct such election, shall have the like powers, and they, as well as other persons, who may attend, vote, or offer to vote, at such election, shall be subject to the like penalties and restrictions as are declared or provided in the case of elections, by the citizens, at their usual places of election; and all of the provisions of the general election laws of this state, so far as applicable, and not inconsistent with the provisions of this act, nor supplied thereby, shall apply to all elections held under this act.

Section 29. No compensation shall be allowed to any judge or clerk, under this act.

Section 30. When the sheriff of any city or county shall issue his proclamation for an election, for a presidential, congressional, district, city, county or state election, under the laws of this state, he shall transmit, immediately, copies thereof, to the field officers and senior captains in the service aforesaid, from said city or county.

Section 31. The sum of fifteen thousand dollars, or so much thereof as may be necessary, is hereby appropriated from the general revenue, to be paid upon the order of the secretary of the commonwealth, to carry this law into effect.

Section 32. When any of the electors mentioned in the first section of this act, less than ten in number, shall be members of companies of another state or territory, or, for any sufficient and legal cause, shall be separated from their proper company, or shall be in any hospital, navy yard, vessel, or on recruiting, provost, or other duty, whether within or without this state, under such circumstances as shall render it probable that he, or they, will be unable to rejoin their proper company, or to be present at his proper place of election, on or before the day of the elections, therein mentioned, said elector, or electors, shall have a right to vote in the following manner.

Section 33. The voter, aforesaid, is hereby authorized, before the day of election, to deposit his ballot, or ballots, properly folded, as required by the general election laws of this State, or otherwise, as the voter may choose, in a sealed envelope, together with a written or printed, or partly written and partly printed, statement, containing the name of the voter, the county, township, borough or ward, of which he is a resident, and a written or printed authority, to some qualified voter in the election district, of which said voter is a resident, to cast the ballots, contained in said envelope, for him, on the day of said election. Said statement and authority to be signed by the said voter, and attested by the commanding, or some commissioned, officer of the company, of which he is a member, in the case of a private, and of some commissioned officer of the regiment, in the case of an officer, if any of such officers are conveniently accessible, and if otherwise, then by some other witness; and there shall also accompany said ballots, an affidavit of said voter, taken before some one of the officers aforesaid, and in the absence of such officers before some other person duly authorized to administer oaths, by any law of this state, that he is a qualified voter in the election district in which he proposes to vote, that he is in the actual military service of the United States, or of this state, describing the organization to which he belongs, that he has not sent his ballot to any other person or

persons, than the one in such authority mentioned, that he will not offer to vote at any poll, which may be opened on said election day, at any place whatsoever, and that he is not a deserter, and has not been dishonorably dismissed from the service, and that he is now stationed at _____, in the state of _____. Said sealed envelope, containing the ballots, statement, authority and affidavit as aforesaid, to be sent to the proper person, by mail or otherwise, having written or printed on the outside, across the sealed part thereof, the words, "soldier's ballot for _____ township, (borough or ward), in the county of _____."

Section 34. The elector, to whom such ballot shall be sent, shall, on the day of election, and whilst the polls of the proper district are open, deliver the envelope, so received, unopened, to the proper election officer, who shall open the same, in the presence of the election board, and deposit the ballots therein contained, together with the envelope, and accompanying papers, as other ballots are deposited, and said board shall count and canvass the same, in the same manner as other votes cast at said election; and the person delivering the same may, on the demand of any elector, be compelled to testify, on oath, that the envelope so delivered by him, is in the same state as when received by him, and that the same has not been opened, or the contents thereof changed, or altered, in any way, by him, or any other person.

Section 35. The right of any person, thus offering to vote at any such election, may be challenged, for the same cause, that it could be challenged, if he were personally present, and for no other reason or cause.

Section 36. Any officer of any general, or special, election, in this state, who shall refuse to receive any such envelope, and deposit such ballots, or to count and canvass the same, and any elector who shall receive such envelope, and neglect or refuse to present the same, to the officers of the election district, endorsed on the said envelope, shall be guilty of a misdemeanor, and on conviction thereof, shall be punished by imprisonment, in the state prison, not exceeding one year, and by fine not exceeding five hundred dollars, or either, or both, in the discretion of the court.

Section 37. Any person, who shall wilfully and corruptly make and subscribe any false affidavit, or make any false oath, touching any matter or thing provided in this act, shall be deemed guilty of wilful and corrupt perjury, and upon conviction thereof, shall be punished by imprisonment, in the state penitentiary, not exceeding five years, and by fine not exceeding one thousand dollars, or by either, or both, in the discretion of the court.

Section 38. That it shall be the duty of the secretary of the commonwealth to prepare the necessary blank forms, to carry out the provisions of this act, and to furnish the same for the use of the persons so engaged in the military service aforesaid.

Section 39. In case any qualified elector, in military service aforesaid, may be in any hospital, military or naval, or in any vessel, or navy yard, the statements and affidavits, in this act mentioned, may be witnessed by, and made before, any officer of the vessel, navy yard, or other place, in which said voter is, for the time being, engaged.

Section 40. It shall be the duty of every assessor, within this commonwealth, annually, to assess and return, in the manner now required by law, a county tax, of ten cents upon each and every non-commissioned officer and private, and the usual taxes upon every Commissioned officer, known by them to be in the military service of the United States, or of this state, in the army; and when any omission shall occur, the omitted names shall be added, by such assessors; to the assessments and lists of voter, on the application of any citizen of the election district, or precinct, wherein such soldier might, or would have a right to vote, if not in such service, as aforesaid; and such non-commissioned officers, and privates, shall be exempt from all other personal taxes, during their continuance in such service; and said assessors shall, in each and every case, of such assessed soldier, or officers, without fee, or reward, therefor, give a certificate of such regular, or additional, assessment, to any citizen of the election district, or precinct, who may, at any time, demand the same; and upon the presentation thereof, to the tax collector of said district, or the treasurer of the said county, it shall be the duty of such officer to receive said assessed tax, of, and from, any person offering to pay the same, for the soldier, or officer, therein named, and to endorse, upon such certificate, a receipt therefor, and it shall also be the duty of said collector, or county treasurer, to receive said assessed tax, from any person who may offer to pay the same, for any of said officers, or soldiers, without requiring a certificate of assessment, when the name of such person shall have been duly entered upon the assessment books, and tax duplicates, and give a receipt therefor, to such person, specially stating, therein, the name of the soldier, or officer, whose tax is thus paid, the year for which it was assessed, and the date of the payment thereof; which said certificate and receipt, or receipt, only, shall be *prima facie* evidence, to any election board, provided for by this act, before which the same may be offered, of the due assessment of said tax, against, and the payment thereof by, the soldier, or officer, therein named, offering the same, as aforesaid; but said election board shall not be thereby precluded from requiring other proof, of the right to vote, as specified by this act, or the general election laws of this commonwealth; and if any of said assessors, collectors, or treasurers, shall neglect, or refuse to comply with the pro-

visions of this section, or to perform any of the duties, therein enjoined upon them, or either of them, he, or they, so offending, shall be considered and adjudged guilty of a misdemeanor in office, and shall, on conviction, be fined, in any sum not less than twenty, nor more than two hundred, dollars: *Provided*, That the additional assessments, required to be made by the above section, in the city of Philadelphia, shall be made, on application of any citizen of the election district, or precinct, thereof, upon oath, or affirmation, of such citizen, to be administered by the assessor, that such absent soldier is a citizen of the election district, or precinct, wherein such assessment is required, by such citizen, to be made.

Section 41. This act shall not apply to the election of members of council, or to ward and division officers, in the city of Philadelphia.

HENRY C. JOHNSON,
Speaker of the House of Representatives.

JOHN P. PENNY,
Speaker of the Senate.

Approved—The twenty-fifth day of August, Anno Domini one thousand eight hundred and sixty-four.

A. G. CURTIN.

OPINIONS TO THE SECRETARY OF THE COM-
MONWEALTH.



OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

SCRANTON WORKERS' CO-OPERATIVE ASSOCIATION.

The fees for incorporating this association are \$25 and ten cents for each one hundred words contained in the articles of association. The Association may issue two classes of stock, permanent and ordinary, which must be stated in the articles of association. Such association must pay the usual bonus of one-third of one per cent. upon the amount of its authorized capital before it can be incorporated.

Office of the Attorney General,
Harrisburg, Pa., May 20, 1915.

John F. Whitworth, Esq., Corporation Clerk, Harrisburg, Pa.

Sir: I have your favor of the 12th inst. In re Scranton Workers Co-operative Association, asking (1) The amount of fees collectible by the State on incorporation of the above association, (2) Whether the articles should not state some amount in Clause IV where the capital stock is to vary from time to time and (3) Whether a bonus is not collectible on such amount under the Bonus Act of 1889.

(1). The act of April 27, 1871, P. L. 242, as amended by the Act of March 28, 1873, P. L. 53, fixing the fees of the Secretary of the Commonwealth, for the use of the State, providing that a fee of \$25.00 shall be charged for "instrument incorporating any company or association."

The Act of June 7, 1887, P. L. 365, which authorizes the incorporation of cooperative associations such as this, provides in Section 2 that the Secretary of State shall be paid for filing, recording and certifying such articles of association at the rate of ten cents for each one hundred words contained in said articles.

You are, therefore, advised that the fees collectible by the Secretary of the Commonwealth, for the use of the State, on the incorporation of said association, are \$25.00, and ten cents for each one hundred words contained in said articles.

(2). The Act of June 7, 1887, permits the issue by such cooperative association of two classes of stock, the one known as "permanent" which is not withdrawable when issued, and the other known as "ordinary" which may be repaid or withdrawn and may, therefore, vary from time to time. If the association elects to issue only "permanent" stock the Articles of Association should state the amount of its authorized capital. If both kinds of stock are provided for, the Articles should so state and set forth the amount of each class authorized.

(3) Cooperative associations incorporated under the Act of June 7, 1887, are not excepted from the provisions of the Act of May 2, 1899, P. L. 189, requiring the payment of a bonus of one-third of one per cent. upon the amount of the authorized capital stock of corporations thereafter created.

You are, therefore, advised that such bonus is collectible on the authorized capital stock of such cooperative association before it can be incorporated.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

CONSTITUTIONAL AMENDMENTS.

A resolution proposing a constitutional amendment must be passed twice by the legislature and duly advertised before it can be submitted to the people, and all resolutions for proposed amendments to the Constitution must retain their original substance from the time of introduction until submission to the people.

Senate resolution 1406, proposing an amendment to section 8 of art. ix, having in the session of 1915 been materially amended, both in phraseology and purpose, should not be advertised and printed on the official ballot for the 1915 November election.

Office of the Attorney General,
Harrisburg, Pa., June 23, 1915.

Hon. Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Dear Sir: I beg to acknowledge yours of the 18th, in which I am informed as follows:

“Two Joint Resolutions, proposing amendments to the Constitution, were passed at the Session of 1913, each purporting to amend section 8 of Article 9.

Both were duly advertised prior to the last election and again passed at the Session of 1915; but in the case of one of the amendments there are very material alterations, both in the wording of the proposed amendment and in the purpose thereof.

Shall this last mentioned Resolution, File of the Senate 1406, hereto attached, be advertised and printed on the Official Ballot for the coming November Election notwithstanding the changes in phraseology and purpose mentioned.”

I beg to advise you that this last mentioned resolution, File of the Senate 1406, should not be advertised and printed on the Official Ballot for the coming November Election, it not having been twice passed by the Legislature, advertised, etc., as required by the Constitution,

A Resolution proposing a constitutional amendment must be passed twice by the Legislature, duly advertised, before it can be submitted to the people, and all resolutions for proposed amendments to the Constitution must retain their original substance from the time of introduction until submission to the people.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

FIFTY PER CENT. CLAUSE JUDICIAL ACT OF JUNE 18, 1915, P. L. 1050,
DEFINED.

In determining whether a candidate has received a number of votes greater than one-half of the total number of votes cast for *such* office where there are two of more vacancies to be filled, it is proper to take the total number of votes cast for all of the candidates for *such* office and divide the total number by the number of vacancies to be filled.

The candidate must receive a number of votes greater than one-half of the total number cast for such office, determined as set out in the last preceding paragraph, and also a number greater than one-half of the number of ballots cast for "*any one candidate*, for any office in the political district or division within which the nomination is to be made," and, as hereinbefore stated, "any office" means such an office the jurisdiction of which is ordinarily limited to but includes the whole of such political district or division.

Office of the Attorney General,
Harrisburg, Pa., October 4, 1915.

Hon. Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: Your favor requesting an Opinion upon the Act of June 18, 1915, P. L. 1050, is at hand. You state that there are two Judges to be elected in the Court of Common Pleas, No. 2, of Philadelphia County, and that there were a number of candidates at the Primary Election; that there are three Judges to be elected to the Superior Court, and that there were a number of candidates at the Primary Election, and that you will soon have to construe this act of assembly in order to determine whether any of said candidates are the sole nominees.

You ask:

First: Whether in order to be a sole nominee a candidate must receive more than one-half of the total number of votes cast for all the candidates taken together, that is to say, in the case of Court of Common Pleas No. 2, of Philadelphia County, where two are to be

elected, whether the total number of votes cast for the offices of Judge of that Court is determined by taking one-half of the total votes for all of the candidates.

Second: Whether the additional requirement that in order to be the sole nominee, the candidate must receive a vote "greater than one-half of the number of ballots cast for any one candidate for any office in the political district or division within which the nomination is to be made," means that a candidate must receive more than fifty per cent. of the highest number of ballots cast *for any candidate* for any office, or whether it means that he must receive more than fifty per cent. of the ballots cast *for any office* at said election.

The Act provides:

"That whenever, at any primary, nominations are to be made of candidates to fill two or more vacancies, in any appellate or other court of record, composed of two or more judges, if any one or more of such candidates 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 for any one candidate for any office in the political district or divisions within which the nomination is to be made, then, and in such event, each of such candidates shall be the sole nominee for one of the respective vacancies in such office."

How are the number of "votes for such office" to be ascertained? There is no statutory requirement for a return of the number of votes cast for any particular office. The return is made of the votes cast for the candidate, and in practice no return of the number of votes cast for any particular office is made. In the absence of any return of the number of votes cast, the only recourse must be had to the next best method of ascertaining the number of votes.

In the case of Court of Common Pleas No. 2, of Philadelphia County, each voter was entitled to vote for two candidates and the total number of votes returned therefor is presumably twice the number of voters who cast the votes.

In the case of Superior Court, each voter was entitled to vote for three candidates and the vote returned for all the candidates would be presumably three times the number of ballots cast.

Therefore, the next best and the only method is to take the total number of votes of all the candidates for the office and divide it by the number of offices to be filled for the purpose of ascertaining the total number of votes cast for such office.

The next question is:

What is meant by the words "greater than one-half of the number of ballots cast *for any one candidate for any office.*" Is this language

intended to be a limitation upon the language which precedes it, namely, "a number of votes greater than one-half of the total number of votes cast for such office"?

It has been suggested that a candidate in order to be the sole nominee must receive more than one-half of the total number of votes cast for such office, and also a greater number than one-half of the ballots cast "*for any office*" at the same election, and that the intention of the Legislature was to relieve the candidate from any further contest when more than one-half of the electors who voted at the primary voted for such candidate, and that to construe the language literally to mean only "greater than one-half of the number of ballots cast *for any one candidate* for any office," puts no limitation whatever on the number of votes and is meaningless.

It has also been suggested that this was not the intention of the Legislature, but that the real reason for this language was that experience has shown that all the voters do not vote the non-partisan ballot and that, therefore, before a candidate may be the sole nominee, he shall not only have a greater number of votes than one-half the total number cast for such office, but also a greater number than one-half of the highest number of ballots cast for *any* office within the political district or division within which the nomination is to be made. This may have been the intention of the Legislature, but can this intention be gathered from the Act.

It is a well known principle of law that an act of assembly must be construed according to its reason and spirit and according to the intention of the Legislature, but it is equally well settled that the intention of the Legislature must, if possible, be gathered from the language of the statute itself, and wherever possible, effect must be given to all of the language used.

To construe this act of assembly to require a sole nominee to have more than fifty per cent. of the votes cast for the office for which he is a candidate and also a number greater than one-half of the ballots cast "*for any office*" one must eliminate the words "of any candidate." The language is not a number "greater than one-half of the number of ballots cast *for any office*", but it is "greater than one-half of the number of ballots cast *for any one candidate for any office.*" The Legislature seemed to use the expression advisedly, because in the first paragraph of the section, as it is amended, in referring to the situation where there is but one office to be filled, it provides "that any person who 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," shall be the sole nominee. So that, adhering to the language of the Act, it appears that the Legislature designedly made a dif-

ference in the requirements where there was only one person to be elected and where there was more than one person to be elected. The language "for any one candidate for any office" is not ambiguous. It is plain, and being plain, it cannot be disregarded in construing the statute. The expression "any one candidate" can only mean in that connection "*the candidate receiving the highest number of votes.*"

The second requirement of the Act of Assembly is that the sole nominee must have a number "greater than one-half the number of ballots cast for any one candidate for *any office in the political district or division within which the nomination is to be made.*" The words "any office" means such an office, the jurisdiction of which is ordinarily limited to but includes the whole of such political district or division.

The political division or district within which the nomination of the Superior Court Judges is to be made is the State of Pennsylvania. Inasmuch as there was no candidate for any other office voted for at the primaries "in the political district or division within which the nomination is to be made," to wit, the State, this requirement cannot apply to the present candidates for the Superior Court.

I, therefore, advise you:

First: That in determining whether a candidate has received a number of votes greater than one-half of the total number of votes cast for *such* office where there are two or more vacancies to be filled, it is proper to take the total number of votes cast for all of the candidates for *such* office and divide the total number by the number of vacancies to be filled.

Second: That the candidate must receive a number of votes greater than one-half of the total number cast for *such* office, determined as set out in the last preceding paragraph, and also a number greater than one-half of the number of ballots cast for "*any one candidate, for any office in the political district or division within which the nomination is to be made,*" and, as herein before stated, "any office" means such an office the jurisdiction of which is ordinarily limited to but includes the whole of such political district or division.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

ERIE JUDICIAL CONTEST.

There being but one person to be elected Judge of Erie County and he received more than one-half the total votes cast for such office, but not more than one-half the total number of ballots cast within the political district, i. e. Erie County, the candidate cannot be certified as the sole nominee for Judge of the County.

Office of the Attorney General,
Harrisburg, Pa., October 7, 1915.

Honorable Frederic A. Godcharles, Deputy Secretary of Commonwealth, Harrisburg, Pa.

Sir: Your favor of the 6th inst., asking to be advised how to certify the result of the primary election for the office of Judge of the Court of Common Pleas of the Sixth Judicial District composed of the County of Erie, is at hand.

I understand the facts to be as follows:

At the primary election recently held, nominations were made for one office of Judge of said district, for county offices in the County of Erie, and for the offices of Mayor and other offices in the third class cities of Erie and Corry, in said County of Erie. The nominations for Judge and for Mayor and other city offices were upon a non-partisan ballot. The nominations for the county offices were on a partisan ballot. Each voter participating in the election in the city of Erie was given two separate non-partisan ballots, one containing the names of the non-partisan candidates for nomination to the office of Judge for the Superior Court, and the names of non-partisan candidates for the office of Judge of the Court of Common Pleas of Erie County; the other ballot containing the names of non-partisan candidates for city offices. The voter, if entitled, was also given a party ballot.

In the city of Erie the total number of ballots cast for all candidates for the office of Mayor was 9,826, which was the highest number of non-partisan ballots cast for any city office. The total number of votes cast for the Clerk of the Court was 12,323, and for the candidates for County Commissioner 25,717, indicating, according to the rule adopted in the recent opinion given you, (each voter having had the right to vote for two candidates), 12,858 ballots cast for the office of County Commissioner.

The total number of votes cast for candidates to the office of Judge of the Court of Common Pleas of Erie County was 14,644, of which Uriah P. Rossiter received 7,759 and Joseph M. Force 6,881, four additional votes being cast for other candidates.

The County Commissioners certify:

"That the total number of voters who received ballots and voted at the said Primary Election held on Tuesday, September 21, 1915, in the said County of Erie was eighteen thousand three hundred fifty-eight (18,358). This includes the ballots cast for municipal candidates for Erie and Corry, third class cities within this district, and the computation was arrived at in the following manner: If voter cast non-partisan ballot only, he counts as one. If voter cast party ballot only, he counts as one. If voter cast all ballots he was entitled to, he counts as one. It is the voters that are counted."

The Act of Assembly approved June 18, 1915, P. L. 1050 in the first part of Section 13 provides:

"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."

Mr. Rossiter received more than fifty per cent. of "the total number of votes cast for such office" of Judge, and hence there is no question arising upon that provision of the act.

Concisely stated, your question is whether "the number of ballots cast in the political district or division within which the nomination is to be made" in this case includes the votes for the candidates for mayor in the Cities of Erie and Corry, or whether it is to be determined only by the highest number of ballots cast for any county office.

It has been suggested that this provision of the act of assembly was intended to mean the total number of ballots cast *for an office*, the jurisdiction of which is ordinarily limited to but includes the whole of such political district or division.

It must be noted, however, that the provision where *one* office is to be filled is "the number of ballots *cast in the political district or division*, etc.", whereas in the case where *two or more* candidates for judge are to be elected, the Legislature by the Act of 1915 changed the provision, and made the second requirement "a number greater than one-half of the number of ballots *cast for any one candidate for any office* in the political district or division within which the nomination is to be made", so that the same test cannot be applied to both cases.

In an opinion just rendered to your Department, I advised that the language of this statute, and that the words "for any one candidate for any office" which were inserted in the amendment, being plain, could not be disregarded, and that the Legislature, where *one* office was to be filled, prescribed a test different from that to be applied where *two or more* offices were to be filled. The Legislature, in the former case, did not say that the candidate should receive a number of votes greater than one-half of the number of ballots cast "*for any office*" in the political district or division within which the nomination is to be made, but declared that there should be a number "greater than one-half of the number of ballots cast in the political district", etc.

To construe the language "greater than one-half the number of ballots cast in the political district," etc. to mean that those ballots must be cast *for a candidate* to be elected in the political district, or *for an office*, the jurisdiction of which is ordinarily limited to but includes the whole of such political district or division, would be to read into the act of assembly something which is not there.

The certificate of the County Commissioners shows that there were 18,358 ballots cast in the county of Erie. The County of Erie is the political district or division within which the nomination for Judge is to be made. The fact that the total number of ballots is ascertained by the number of ballots cast for municipal candidates in the cities of Erie and Corry, which are within the political district, does not alter the situation. If the ballots cast for the municipal candidates are excluded from the computation then the result would not be a number *greater than one-half of the number of ballots cast in the political district.*"

I am, therefore, of opinion there being but *one* person to be elected to the office of Judge of Erie County, that though Uriah P. Rossiter received 7,759 votes, more than "one-half the total number of votes cast for such office", yet not having received more than one-half of 18,358, which was the total number of "ballots cast within the political district", to wit, the County of Erie, he is not entitled to be certified as the sole nominee for the office of Judge of the Sixth Judicial District composed of the County of Erie.

Respectfully,

FRANCIS SHUNK BROWN,
Attorney General.

WATER COMPANIES—RIGHT TO SUPPLY WATER IN ADJACENT
MUNICIPALITY—ACT OF MAY 20, 1901.

A corporation chartered to supply one municipal division with water cannot, by petition under the Act of May 20, 1901, P. L. 270, secure the right to supply water to the whole of an adjacent municipal division.

Office of the Attorney General,
Harrisburg, Pa., November 18, 1915.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: We have your letter of recent date, addressed to the Attorney General, transmitting a petition of citizens of the Borough of Cassandra, Cambria County, purporting to be filed under the Act of May 20, 1901, P. L. 270, for the purpose of securing the supply of water from the Benscreek Water Company.

As I understand the facts to be, the Borough of Cassandra was originally a part of Washington Township, Cambria County, and its present borough line adjoins the township of Portage. The Benscreek Water Company is a corporation of the State of Pennsylvania, created for the purpose of supplying water to the people in the township of Portage.

The Act of Assembly under which this petition is filed, provides:

"That any company heretofore incorporated or hereafter to be incorporated for the purpose of supplying water to the public in any town, borough or city, may, upon written request of the owners of a majority of the lots of land in any tract or district adjacent to such town, borough or city, have power and authority to extend its plant or works for the supply of water into such tract or district, with such rights and subject to such duties within such district as may have been conferred and imposed by its charter within the town, borough and city therein designated."

The petition sets out that the petitioners are a majority of the owners of lots of land in the Borough of Cassandra, and otherwise complies with the requirements of the Act of Assembly.

But does this Act of Assembly apply to this situation?

In Bly vs. White Deer Mountain Water Company, 197 Pa., 80, it is held

"Section 34 of the Act of April 29, 1874, which grants to water companies the power to supply water in 'the town, borough, city or district where they may be located,' limits the authority of a water company to the municipal or quasi-municipal division in which it is located. Neither the power of eminent domain granted

by the act of 1874, nor any other provision of the act of 1874, nor any provision of the acts of May 16, 1889, and July 2, 1895, give to water companies the power to supply water in territory adjacent to the municipal or quasi-municipal division in which they are located. A provision in the certificate of incorporation granting power to supply water in adjacent territory is wholly inoperative, and such a certificate should not have been approved by the Governor.

As a water company has no right to supply water in territory adjacent to the place in which it is located, it has no authority under its right of eminent domain to condemn and appropriate waters for such purposes; and if it attempts to do so, a landowner who is threatened with injury has a standing under the Act of June 19, 1871, P. L. 1360, in equity for an injunction to restrain such act."

It is true that the Act of 1901 was passed after this case was decided, but it is apparent that the Act of 1901 is not intended to cover a case of a corporation chartered to supply one municipal division, securing, merely by petition, the right to supply the *whole* of another municipal division. The language of the Act is that the corporation may extend its lines to supply a "tract or district". This does not mean another municipality. To put this construction on the Act would be to authorize the corporation, by merely filing a petition, to do that which it cannot secure the right to do by an original charter, that is, to supply two municipal or quasi-municipal divisions.

I therefore advise you that the right of Benscreek Water Company to supply the Borough of Cassandra cannot be secured in this proceeding.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ELECTION OF ALDERMEN.

Where the records of the Secretary of the Commonwealth show that a vacancy in the office of alderman exists, and the Secretary has a certificate of election made by the prothonotary and acceptance of the office by the person certified as elected, the secretary should transmit the commission to the Governor for his signature, and should not, upon a protest which alleges that the person elected is not properly qualified, attempt to determine questions of fact which might impeach the records of his own office or the regularity and legality of the certificate of the prothonotary.

Office of the Attorney General,
Harrisburg, Pa. December 7, 1915.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: Your favor of the 3rd inst. addressed to the Attorney General, is at hand.

You request an opinion upon the following facts:

The commission of William H. Hackman as Alderman of the 12th Ward of the City of Easton, will expire on the first Monday of December, 1915. The Prothonotary of Northampton County has duly certified to the Secretary of the Commonwealth, as required by law, the election of Asher Mutchler as Alderman of said Ward, and also the acceptance of said Asher Mutchler of said office.

That the records in your Department show that a vacancy will exist in said office and that the certificate of the election of Asher Mutchler and his acceptance are in regular form.

The said William H. Hackman has filed a protest upon the ground that Asher Mutchler is not qualified to serve in said office, for the reason that he has not resided within the 12th Ward of the City of Easton, for one year next preceding his election, and therefore, under Article V, Section 11 of the State Constitution, is not eligible.

He supports his petition by a certificate of the County Commissioner's clerk and by three ex parte affidavits, showing that said Asher Mutchler was not a resident of the 12th Ward of the City of Easton for one year preceding his election.

This raises the question whether the Secretary of the Commonwealth should transmit to the Governor for his signature, a commission to Asher Mutchler and whether the Governor should issue the same, or, in view of the protest, whether said commission should be withheld. This question being a matter which must be determined by the courts, the practical effect is whether the proceedings should be a mandamus to compel the Secretary of the Commonwealth to certify the commission to the Governor, or whether after the commission issues, it should be a quo warranto to test the right of Asher Mutchler to the office.

If the Secretary of the Commonwealth declined to issue this commission, he would be required to determine in the first instance, at least, not only the legal question involved in the construction of Article V, Section 11 of the Constitution, as applicable to this controversy, but he would also be required to determine the fact as to whether Mutchler was eligible for election to the office.

If the Secretary of the Commonwealth determined that Asher Mutchler was not eligible, he would then be in a position of coming to a determination which contradicted the records in his office.

The Secretary of the Commonwealth is not equipped to try and determine questions of fact.

I therefore advise you that, inasmuch as the certificate of election and the acceptance of Asher Mutchler to to the office of Alderman of the 12th Ward of the City of Easton, is regular, and inasmuch as the records of your office show that a vacancy is about to exist, you should issue the commission so that the matter may be tested in the courts by proper proceedings in quo warranto.

In coming to this conclusion I have not overlooked the opinions of this Department in Stidfole's case, 28 *Pa. Co. Ct.* 389, or Fox's case, 1st *Dist. Rep.* 513, and there is language in these opinions which might seem not to be in harmony with the opinion herein expressed, but when analyzed, the cases do not conflict.

In Stidfole's case, the records of the Secretary of the Commonwealth did not show that there was any vacancy to be filled by Stidfole's election, and therefore, withholding the commission, was not in any wise impeaching such records. Moreover, the question was a pure question of law as to how many justices of the peace the Borough of Tamaqua was entitled to.

In Fox's case there was also the pure legal question as to the number of justices of the peace the Borough of Shamokin was entitled to have, and no question of fact to be decided by the Secretary of the Commonwealth.

Where the records of the Secretary of the Commonwealth show a vacancy exists and he has the certificate of an election regularly made by the prothonotary of the county and the acceptance of the office by the person certified as elected, you should transmit the commission to the Governor for his signature and not attempt to determine questions of fact which might impeach not only the records of your own office, but the regularity and legality of the certificate of the Prothonotary of the county.

Very truly yours,

WILLIAM M. HARGEST.
Deputy Attorney General.

BOND OF RECORDER OF DEEDS OF ALLEGHENY COUNTY.

The Act of April 28, 1915, P. L. 198, in relation to bonds of certain officers in counties of over 800,000 and less than 1,500,000, repeals Sec. 7 of Act of March 18, 1775, 1 Sm. L. 424, and Sec. 3 of Act of March 14, 1777, 1 Sm. L., 443. The bond of the Recorder of Deeds of Allegheny County should be given in the sum of \$20,000 with approved security and should be deposited with the County Controller, who should give a certificate to the Secretary of the Commonwealth, who thereupon should transmit the Commission to the Governor.

Office of the Attorney General,
Harrisburg, Pa. December 23, 1915.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: In answer to your favor of the 16th inst. forwarding the letter of John A. Fairman, Recorder of Deeds of Allegheny County, in which you ask to be advised as to whether the bond which heretofore was required to be furnished by the Recorder of Deeds of that county in the sum of 600 pounds must also be furnished since the passage of the Act of April 28, 1915, P. L. 198, and you ask also to be advised what certificate must be filed in your office advising you of the filing of said bonds.

The Act of April 28, 1915, is entitled:

“An act relating to the bonds to be given by county officers, the amount and conditions thereof, the sureties for such bonds, the payment of the premiums therefor, and the recording and custody thereof, in counties having over eight hundred thousand and less than one million five hundred thousand inhabitants.”

It includes Allegheny County. It provides that the Recorder of Deeds shall give a bond of \$20,000. It sets out in terms the conditions of the bond and provides that:

“The custody of each of said bonds shall belong to the county controller of the proper county, except the bond of the county controller, the custody of which shall belong to the county commissioners of the proper county.”

It contains a repealer of “all acts or parts of acts, general, special or local, inconsistent with the provisions of this Act.”

By Section 7 of the Act of March 18, 1775, 1 Smith Laws 424, the Recorder of Deeds of the several counties of the province of Pennsylvania, were required to give bonds to the Governor of the province, which bonds were to be kept in the Secretary's office, and the condition thereof was contained in the Act.

By the Act of March 14, 1777, Section 3, 1 Smith's Laws, 443, the Recorder of Deeds of the several counties mentioned therein, of which the county of Westmoreland, then containing the territory now

included in the county of Allegheny, was required to give a bond in the sum of 600 pounds to the Speaker of the House of Assembly, which was subsequently changed by the Act of 12 March 1791, 3 Smith's Laws, 8, to the Commonwealth of Pennsylvania, and the custody of said bond was given to the Secretary of the Commonwealth.

These old Acts provided for the giving of bonds by the Recorder of Deeds, the conditions of the bond and the custody thereof. All of these matters are covered by the Act of April 28, 1915, the latter Act containing a repealer of all Acts or parts of Acts, "general, special or local, inconsistent with its provisions".

I am of the opinion the old Acts above referred to are repealed, in so far as they refer to the bonds given by the Recorder of Deeds, in counties having over 800,000 and less than 1,500,000 inhabitants, and that the giving of such bond the amount and the custody thereof, is controlled by the Act of April 28, 1915.

However, the Act of April 28, 1915, P. L. 198 does not in any way refer to recognizances. The Act of April 15, 1834, P. L. 549, specifically provides a form of bond which must be given by the sheriffs and coroners of the various counties and the same Act provides the form of recognizance which shall also be given by them. It has been held that the recognizances and the bond are distinct sureties, affording separate remedies.

Morris Estate, 4 Pa. 162.

Commonwealth vs. Lelar, 13 Pa. 22.

Commonwealth vs. Montgomery, 13 Pa. 519.

I am, therefore, of opinion that the Act of April 28, 1915, does not repeal the Act of April 15, 1834, in so far as the latter Act requires the Sheriff and Coroner to give a recognizance, and that you should require the recognizance to be taken as heretofore.

Concerning the other inquiry as to what certificate is necessary in order to justify the Secretary of the Commonwealth in transmitting a commission to the Governor, I have to advise you that inasmuch as the bond of the Recorder of Deeds is now to be given into the custody of the county controller of the proper county, a certificate should be required of the county controller showing that a bond with a proper surety company authorized to do business in the Commonwealth of Pennsylvania and approved by the Insurance Commissioner in the sum of \$20,000 has been delivered into his custody. Upon the receipt of such certificate you will be justified in transmitting to the Governor the commission for his signature.

Very truly yours,

WILLIAM M. HARGEST.

Deputy Attorney General,

OFFICIAL BOND.

In Allegheny County, one bond of \$10,000 covers the office of Clerk of the Courts of Oyer and Terminer, General Jail Delivery and of Quarter Sessions of the Peace, where the same official holds both offices.

Office of the Attorney General,
Harrisburg, Pa. December 23, 1915.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir Your letter of the 16th inst. enclosing letter of William R. Bailey, Clerk of the Courts of Allegheny County and asking to be advised whether the Clerk of the Court is required to file a bond of \$1,000 as Clerk of the court of Oyer & Terminer, as well as a bond in the amount of \$10,000 as clerk of the Quarter Sessions of the Peace, is at hand. Prior to the Act of April 28, 1915, P. L. 198, bonds of the Clerk of the courts of Oyer and Terminer as well as the Clerks of the Quarter Sessions of the Peace, were fixed by the Governor pursuant to the Act of April 14, 1834, P. L. 355, and I am advised that in the county of Allegheny the Governor has fixed \$1,000 for the Clerk of the Courts of Oyer and Terminer and \$10,000 for the Clerk of the Court of Quarter Sessions of the Peace.

The Act of April 28, 1915, relating to bonds given by county officers in counties having over 800,000 and less than 1,500,000 inhabitants provides in terms that the Clerk of the Courts of Oyer and Terminer and General Jail Delivery, and Quarter Sessions of the Peace, shall give a bond of \$10,000. It contains a repealer of all Acts "general, special or local, inconsistent with the provisions of this Act."

There is, therefore, no doubt but that the Act of 1834, in so far as it fixes the amount of the bond to be given by the Clerk of the Courts mentioned, is repealed as to counties having the population designated in the Act, and that one bond of \$10,000 covers both the office of Clerk of the Courts of Oyer and Terminer, General Jail Delivery and of Quarter Sessions of the Peace where the same official holds both offices.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BOND OF CLERK OF ORPHANS' COURT OF ALLEGHENY COUNTY.

The Register of Wills of Allegheny County, who is also Clerk of the Orphans' Court, must give separate bonds for the faithful performance of the duties of the two offices. The Act of April 28, 1915, P. L. 198, being silent as to the bond of the Clerk of the Orphans' Court, said bond should be given in accordance with the terms of the Act of April 14, 1834, P. L. 355.

Office of the Attorney General,
Harrisburg, Pa., December 23, 1915.

Hon. Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg,
Pa.

Sir: This Department is in receipt of your letter of the 18th inst. transmitting letter from E. N. Randolph, Chief Clerk to the Controller of Allegheny County, in reference to the bond of William Conner, Register of Wills and Clerk of the Orphan's Court elect of Allegheny County, and you ask to be advised whether William Conner shall give separate bonds as Clerk of the Orphan's Court and as Register of Wills, and if so, into whose custody his bond, as Clerk of the Orphan's Court, is to be given.

The Act of April 28, 1915, P. L. 198, relating to bonds given by county officers in counties over 800,000 and less than 1,500,000 inhabitants, nowhere refers to clerks of the Orphan's Court. It refers to clerks of the courts of Oyer and Terminer, General Jail Delivery and Quarter Sessions of the Peace, to Prothonotaries and to other county officers, but is silent as to the clerks of the Orphan's Court.

I am of opinion that it cannot include the bonds given by clerks of the Orphan's Court in counties to which it applies, and that the bonds of clerks of the Orphan's Court must be given as theretofore provided by law. The fact that William Conner has been elected Register of Wills, and is, by reason of holding that office, Ex-officio Clerk of the Orphan's Court, does not change the situation or relieve him of the duty of giving two bonds. He performs the duties of two offices and the law requires a bond for the faithful performance of the duties of each.

The Act applying to the giving of bonds by clerks of the Orphan's Court, is the Act of April 14, 1834, P. L. 355, which provides that the Governor shall fix the amount of such bonds, and I am advised that the Governor has heretofore fixed the amount of \$10,000 for the bond of the Clerk of the Orphan's Court of Allegheny County. Therefore, William Conner should give bond in that amount to the Commonwealth of Pennsylvania and deposit it with the Secretary of the Commonwealth as custodian thereof.

In this connection you submit a bond of William Conner, as Clerk of the Orphan's Court of the county of Allegheny, dated December

15, 1915, in the sum of \$10,000 with the American Surety Company of New York, as surety, which bond, as to form, is approved and hereby returned.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ELECTION OF DEMOCRATIC NATIONAL COMMITTEEMEN.

National Committeemen of the Democratic party must be elected at the state-wide primary election to be held May 16, 1916. The certificate of election should be forwarded to the State Committee.

Office of the Attorney General,
Harrisburg, Pa., March 2nd, 1916.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: Your favor of February 25th enclosing letter of Honorable A. Mitchell Palmer, requesting an opinion as to the method of electing and certifying National committeemen, is at hand.

The Act of July 12, 1913, P. L. 719, regulating the Primary elections provides in Section 1, in part, as follows:

"National committeemen shall be elected by the State committee of each respective party, unless the rules of the National party otherwise provide; in which case they shall be elected in the manner provided by the rules of the National party, and all State committeemen shall be elected by Senatorial districts."

I am advised by Mr. Palmer's letter that the National Democratic Convention of 1912 adopted the resolution which is in part:

"Committeemen who are hereafter to constitute the membership of the Democratic National Committee, and whose election is not provided for by law, shall be chosen in each State at such primary elections, and the service and authority of committeemen, however chosen, shall begin immediately upon the receipt of their credentials, respectively."

Section 7 of the Act of 1913 provides:

"The nomination petitions in the case of candidates for the office of President of the United States, Senator of the United States, member of the House of Representatives of the United States, for all State offices,

for the office of delegate or alternate delegate to a National party convention, *and for the office of member of the State or National committee*, shall be filed, at least four weeks prior to the primary, with the Secretary of the Commonwealth."

Under this rule and the Act of 1913 there seems to be no doubt that the National committeemen of the Democratic party must be elected at the state-wide primary election to be held May 16, 1916.

The Act of Assembly is silent as to the manner, and to whom the Secretary of the Commonwealth shall make the certificate of the election of National and State committeemen. In order that there may be some uniformity in making certificates of this kind, and because of the difference in the rules of the various parties I suggest that this certificate should be made and forwarded to the Chairman of the State Committee of the respective parties.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE NATIONAL DELEGATES.

There is nothing in the Uniform Primary Law of July 12, 1913, P. L. 719, that requires the Secretary of the Commonwealth to give any advance information with regard to the support of party choice for President to a candidate for delegate to the National Party Convention, but there is nothing in the Act which prohibits him from calling the candidate's attention to the requirement of the Act on this subject.

Office of the Attorney General,
Harrisburg, Pa., March 22, 1916.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: I have your favor of the 20th inst. with reference to the Uniform Primary Law of July 12, 1913, P. L. 719. You ask to be advised whether you should furnish to each candidate who files a petition for nomination as delegate or alternate delegate to a National party convention a copy of the statement set forth in paragraph (c) of Section 6 of the Act, in order to give him an opportunity to make the statement suggested by the Act, if he so desires. The clause of the Act referred to is as follows:

"Each candidate for election as delegate or alternate delegate to a National party convention may include, with his affidavit, the statement hereinafter set forth in this section; but his failure to include such

statement shall not be a valid ground, on the part of the Secretary of the Commonwealth, for refusal to receive and file his nomination petition. Such statement, if any be made, shall be in substantially the following form:

Delegate's Statement.

I hereby declare to the voters of my political party in the (here insert 'State of Pennsylvania' if a delegate or alternate delegate at large; otherwise insert (..... District')) that if elected and in attendance as a delegate to the National Convention of the party, I shall with all fidelity, to the best of my judgment and ability, in all matters coming before the convention, support that candidate for President of the United States who shall have received the highest number of votes cast in the (here insert 'State' if a delegate or alternate delegate at large; otherwise, insert District') by the voters of my party for said office at the ensuing primary, and shall use all honorable means within my power to aid in securing the nomination for such candidate for President.

.....
(Signature of candidate for delegate or alternate delegate.)

On the ballot used at a primary, after or under the name of each candidate for delegate or alternate delegate to a National party convention, shall appear the words, 'Promises to support popular choice of party in the (here insert 'State' if a delegate or alternate delegate at large; otherwise, insert (..... District') for President,' or 'Does not promise to support popular choice of party in the (here insert 'State' if a delegate or alternate delegate at large; otherwise insert District') for President' according as if the candidate included, or failed to include, the above statement with his affidavit."

There is nothing in the Act that requires you to give a candidate for delegate any advance information with regard to this subject, or to furnish to such candidate a copy of the statement contained in the Act, but on the other hand if you see fit to do so there is nothing in the Act which prohibits your calling the matter to his attention. If he files the statement above referred to there must appear on the ballot used at the primary, following his name, the words "Promises to support popular choice of party in the State (or..... District) for President." If he fails to include with his affidavit such statement you cannot refuse to receive and file his nomination petition, but in such case, following his name on the ballot, there must appear the words "Does not promise to support popular choice of party in the State (or..... District) for President." That is, a failure to file such a statement is deemed by the Act to be a refusal on the part of the candidate to *promise* to support the popular choice of the party in the State (or district) for President.

You also ask to be advised what action the law requires you to take "in certifying to the commissioners where the candidate for delegate makes no statement."

Section 9 of the Act provides, *inter alia*:

"In the case of each candidate for delegate or alternate delegate to a National party convention, the Secretary of the Commonwealth shall certify as to whether such candidate has included with his affidavit the statement provided for in subdivision (c) of section six of this act."

In all cases where the candidate has included with his affidavit the statement provided for in sub-division (c) of Section 6 of the Act it is your duty to certify to the County Commissioners that the candidate has included with his affidavit said statement. On the other hand, if the candidate has not included with his affidavit the statement provided for in sub-division (c) of Section 6 of the Act it is your duty to certify to the County Commissioners that he has not included with his affidavit said statement. You can do so in the following form:

I certify that
has (or has not) included with his affidavit the statement provided for in sub-division (c) of section six of the Act of July 12, 1913, P. L. 719.

In each case the ballot must be printed in accordance with the directions before given. All candidates who have filed said statement will have printed following their names, as shown on page 725 of the Pamphlet Laws of 1913:

"Promises to support popular choice of party in the State (or.....District) for President."

and those who have not filed such statement will have printed following their names, as shown on said page of the Pamphlet Laws:

"Does not promise to support popular choice of party in the State (or.....District) for President."

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

ELECTION RETURN.

The Secretary of the Commonwealth is advised to accept the correction of return of the Commissioners of Allegheny County in the votes for the delegates to the National Convention of the Democratic party.

Office of the Attorney General,
Harrisburg, Pa., June 3, 1916.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: Your favor of this date, as to whether the Secretary of the Commonwealth should accept the correction made by the communication of May 31, 1916, from the Commissioners of Allegheny County in the votes for the delegate to the National convention of the Democratic Party from the Thirtieth Congressional District, is at hand.

It appears that on May 26th the County Commissioners certified to the Secretary of the Commonwealth, on the form prepared by the Secretary of the Commonwealth, for that purpose, that the following votes had been cast for candidates for the office of delegate to the National Convention in the County of Allegheny for the Thirtieth Congressional District:

John J. Gallagher	633	votes.
E. N. Gay	449	"
W. L. Hankey	613	"
Martin F. Howley	635	"
John J. McKelvey	786	"
E. L. Stratton	323	"

The Secretary of the Commonwealth is in receipt of the following communication from the official paper of the County Commissioners:

"May 31st, 1916.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Dear Sir: Kindly change the return of votes of the *Democratic Party* cast for Delegates to the National Convention from the THIRTIETH (30th) CONGRESSIONAL DISTRICT to read as follows:

John J. Gallagher	642
E. N. Gay, ...	450
W. L. Hankey	613
Martin F. Howley	635
John J. McKelvey	786
E. L. Stratton	323

Yours respectfully,

(Sd) COUNTY COMMISSIONERS,

(SEAL)

Per W. S. McClatchey,
Chief Clerk,"

This is under the seal of the Commissioners of Allegheny County. This correction changes the result. It is suggested that because it is less formal than the original return, the Secretary of the Commonwealth should not receive it.

Section 16 of the Act of July 12, 1913, P. L. 719, provides in part:

“The county commissioners shall make the proper certification of returns of votes cast for the candidates of the various political parties for nomination
.....for the office of delegate and alternate delegate to a National party convention, and member of the National committee,” etc.

The communication of May 31st purports to be from the County Commissioners, signed by W. S. McClatchey, Chief Clerk. It is a direction to the Secretary of the Commonwealth to correct the return previously made.

I am of opinion and so advise you, that it is sufficiently formal to comply with the requirements of Section 16 of the Act of 1913, above quoted, and that you should receive it and make the correction therein indicated.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

SIMILARITY OF CORPORATE NAMES.

In determining whether a charter should be granted to a proposed corporation whose name is similar to that of another already existing and doing business in the same community, the State Department should consider not only whether confusion and inconvenience will occur in the collection and imposition of taxes and in the service of judicial process but also the effect of such similarity upon the public mind and upon the activities of the Federal government in this State, especially that of its postal service.

Office of the Attorney General,
Harrisburg, Pa., December 13, 1916.

Honorable Cyrus E. Woods, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: In the matter of the protest of the Sterling Coal Company against the application for a charter to the Sterling Smokeless Coal Company, because of a similarity of names, I beg to submit the following:

In considering the application of a proposed corporation its name becomes of vital importance when such name is similar to that of a corporation already in being, and when such proposed corporation intends to engage in the same or substantially the same business, within the same locality, as that transacted by the one already in existence the corporate name is of such importance as to constitute the sole ground for the refusal of a charter.

In the consideration of the similarity of corporate names, the State should consider not only whether such similarity would operate to disconcert it in its imposition and collection of taxes or produce uncertainty in the service of judicial process but also, and of equal importance, whether such similarity would produce confusion in the public mind, or hamper the activities of the Federal government, especially that of its postal service. To determine the question exclusively by its effect on the executive and judicial activities of the State is to make the criterion too narrow.

The government of a State exists for the benefit of its citizens and its officers are trustees for the public good. To approve the application of a proposed corporation, whose name is so similar to that of a corporation in existence as to create in the minds of the public an uncertainty as to the identity of the respective corporations, would be an inadequate exercise of the official duty and public trust. The corporation directly so injured may resort to the Courts, but the public cannot. It is the duty of the executive officials of the State to guard the interest of its citizens and they cannot escape that duty by its reference to the judiciary.

If the name of a proposed corporation is so similar to that of a corporation already created as to, in the judgment of the State Department, be or probably would be the cause of confusion in the minds of the public, the duty of the department is clear and the charter should not be granted. Whilst no decision has been discovered confirming the right of the public to object, in a court of law, to the similarity of corporate names, the duty of the State officers is all the more imperative to protect the public in the first instance and they are not relieved from that duty by referring the parties to the courts; perhaps after the public has been deceived and the corporation affected injured.

The courts of common pleas of this Commonwealth deem it their power and duty in creating corporations, not for profit, to guard the public from confusion, why then should the State limit itself solely to matters involving State bookkeeping and the service of judicial process.

In *Charter Hospital vs. Maternity Hospital*, 29 Pa. Super. Ct. 420, an application to amend the corporate name was refused because it was so similar to that of a corporation in existence as to confuse the public. The court on page 423, inter alia, said:

"The similarity of the name to that of another corporation having its hospital in the vicinity was a matter eminently proper for consideration by the court to whose sound legal discretion the application was addressed. This is not because any absolute vested right of the appellees would be infringed by the appellant's adoption of the proposed name, but *because of the tendency to confusion that might result.*"

This criterion, to my mind, is not inconsistent with prior opinions of this Department. It is true, statements appear in some opinions thereabout which would seemingly tend to the conclusion that the criterion was solely whether the similarity operated to mislead the State in its imposition and collection of taxes or in the exercise of judicial process. An examination of such opinions in their entirety, however, leaves no doubt that the effect upon the public mind was not to be ignored.

In the opinion of Attorney General Carson on the Registration of Foreign Beneficial Societies, reported in Attorney General's Reports, 1903-1904, page 183, 12 Dist. Rep. 355, it was decided that the insurance commissioner had the power to refuse registration under the Act of April 6, 1893, P. L. 7, to a foreign Fraternal Beneficial Society on the ground of the close similarity in its name and title to that of a society already registered in Pennsylvania. Mr. Carson, *inter alia*, said:

"The Commissioner of Insurance has a right to protect himself against liability to error in the transaction of the business of his principal, and to this end it is reasonable that he should require that his principal should do business under a name and title so far distinct and individual that no confusion may arise either in his own department or *in the public mind* as to the identity of the principal for whom he is acting."

In the opinion of Attorney General Bell, given on June 27, 1911, and reported in Attorney General's Reports 1911-1912, page 19, and in 20 Dist. Rep. 1009, it is, *inter alia*, said:

"The only thing that can be done by the Departments charged with the responsibility of considering and depositing of applications for charters is to require that the name of a proposed corporation shall differ from that of an existing corporation to such an extent as to render unwarranted an assumption either that the name of the proposed corporation would *reasonably be mistaken for that of the protestant*, or *would deceive the public*, or *be calculated to deceive the public*, or that confusion with reference to the identity of the two corporations would exist to the prejudice of the protestant."

It is fair to assume that the opinions of this Department, advising State officials to refuse the applications for charters solely because the name would conflict with that of a corporation already existing, in the collection of taxes and service of judicial process, were not meant as precedents that such facts constituted the sole criterion, but were meant to decide that those reasons were sufficient in themselves for refusal of letters patent. If, however, any opinions could be advanced as precedents for the proposition that the sole criterion is the effect upon the State department in the collection and imposition of taxes and in the service of judicial process, I am of the opinion that such a criterion is too narrow, and that the State Department should consider as well the effect of the similarity of names upon the public mind and upon the activities of the Federal government in this State, especially that of its postal service.

As to the case in hand, I beg to suggest that the name "Sterling Smokeless Coal Company" is sufficiently similar to "Sterling Coal Company" as to tend to the confusion of the public and to the Federal and State officials in the matters and things with which they have to do in the transaction of business therewith.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

OPINIONS TO THE AUDITOR GENERAL.

OPINIONS TO THE AUDITOR GENERAL.

MOTHERS' PENSIONS.

A pension cannot legally be paid to a mother of two children whom she is unable to support without assistance and whose husband is living—an inmate of an insane asylum.

Office of the Attorney General,
Harrisburg, Pa., January 18, 1915.

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

Sir: This Department is in receipt of your letter of December 18th, 1914, stating, in substance, that the Board of Trustees appointed for the County of Luzerne to carry into effect the provisions of the Mothers' Pension Act of April 29, 1913, P. L. 118, has recommended payment of a pension to Mrs. Sarah Strack, and asking to be advised whether, under the facts stated in your said letter and appearing from the record and recommendation of said board of Trustees, the said Mrs. Sarah Strack is within any of the classes of mothers to whom pensions may be granted under the provisions of said act. The material facts appearing from the record and recommendation of said Board of Trustees are that the said Mrs. Sarah Strack is the mother of two children whom she is unable to support in her own home without assistance, and that her husband is living, but has been an inmate of an insane asylum since September 28, 1911.

The question involved under your inquiry is whether it was the legislative intent, as expressed in the enactment of our Mothers' Pension law, to authorize the payment of a pension to a mother placed in the circumstances disclosed by the report and recommendation of the trustees in this case.

The main purpose of the act, 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."

By the first section the Governor is authorized to appoint boards of trustees in each county desiring to avail itself of the provisions of the Act, to whom

"shall be intrusted the carrying into effect the provisions of this act, to provide monthly payment, as approved by the trustees, to indigent, widowed, or abandoned mothers, for partial support of their children in their own homes."

. Under the act, payments are to be made jointly by the State and the county in which the pensioner resides. The language of the act is vague and its meaning consequently obscure in many particulars. Its real purpose and intent may be gathered only from a consideration of the entire act viewed in the light of its manifest purpose. When the act was passed and signed, it, of course, contained no punctuation. In preparing the law for publication in the Pamphlet Laws, it became the duty of the proper clerk in the office of the Secretary of the Commonwealth to so punctuate the act as to give expression to the intent of the legislature as he understood that intent from the language used. The language of that portion of the title, and of the first section of the act used to describe the classes or kinds of mothers intended to be included within the provisions of the act, as punctuated and printed in the Pamphlet Laws, reads as follows: "Indigent, widowed, or abandoned mothers." At first glance this language would seem to indicate three classes of mothers, viz: (a) "Indigent;" (b) "Widowed" and (c) "Abandoned."

If this construction be adopted, then the present applicant, Sarah Strack, would be included within the first classification, viz: "Indigent mothers." Under this construction, *any* mother who is *indigent* would be included within the act, although her husband is living and living with her and their children.

Again, any *widowed* mother or any *abandoned* mother, would be within the strict letter, but not the spirit, of the second and third classification, although she might not be indigent. Consideration of the results flowing from the adoption of this construction therefore indicates that the Legislative intent was not to provide pensions for *indigent* mothers, *widowed* mothers, and *abandoned* mothers, but rather to provide pensions for *widowed* or *abandoned* mothers who are indigent. Technical rules of construction and of punctuation are not to be applied where their application would overthrow the spirit, scope and purpose of the law, but I am of opinion that the proper construction of the language of the title and of the first section of this act would be to consider the adjective "indigent" as modifying the nominal phrase "widowed or abandoned mothers," rather than as modifying the noun "mothers."

It is not necessary, however, to decide the question you have raised upon technical rules of construction, for it is provided in the third section of the act that:

"The trustees shall in no case recommend payment to any widow (ed) or abandoned mother until they are thoroughly satisfied that the recipient is worthy in every way, and that, in order to keep her children in her own home, a monthly payment is necessary."

The word "widow" in the above quoted portion of this section should manifestly be read "widowed." An examination of the official copy of the act shows that the Pamphlet Laws agree with that copy, but it is clear that *all* widows are not intended to be included within the act, but only such widows as are the mothers of children whom they are unable to support in their own homes without assistance.

The word "indigent" does not appear in this section, but its place is supplied by a description of the kind of widowed or abandoned mothers entitled to the benefits of the act, viz: Those to whom monthly payments are necessary in order to keep their children in their own home. It is, therefore, perfectly clear, when the first section of the act is read in connection with the third, that no pension can be recommended or granted to any mother except a widowed or abandoned mother who is indigent.

The only question remaining is whether a mother whose husband is an inmate of an insane asylum is an "abandoned" mother, within the meaning of this act. Although the word "abandon" like the word "forsake" may be used to describe both good and evil action, and differs from the word "desert" which is generally used to describe unjustifiable conduct involving some breach of duty, yet, in my opinion, the word "abandoned" as used in this Act of Assembly is equivalent to the word "deserted" and is used to describe a mother whose husband, by his conscious act, has, in violation of his duty to support her and his children, deserted or abandoned her and them.

The present case necessarily appeals to the sympathies of the officials charged with the administration of the law, and if such cases had been foreseen, provision might have been made for the relief of mothers situated as is the present applicant, but it is our duty to construe the law as it is written, and you are accordingly advised that a pension cannot legally be paid under the act in question upon the within mentioned recommendation.

Very truly yours,

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

SALARIES—EMPLOYEES OF THE HOUSE OF REPRESENTATIVES.

Employees of the House of Representatives paid pursuant to the Act of April 12, 1905, P. L. 148, are entitled to salaries from the date on which the legislature convened.

Office of the Attorney General,
Harrisburg, Pa., February 2, 1915.

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

Sir: Your letter of this date is at hand. You state that you have a statement of the amounts due employees of the House of Representatives on account of salaries for the first month of the session of 1915, as provided by the Act of April 12, 1905, P. L. 148, and the Appropriation Act approved June 16, 1913, and that the amounts certified by the Speaker of the House of Representatives are computed from the date on which the House convened.

You ask to be advised whether the "employees of the House are entitled to be paid for their services from the date on which the Legislature convened or only from the dates on which they were elected or appointed."

On April 7, 1909, in two opinions to T. A. Crichton, Esq., Deputy Auditor General, Attorney General Todd passing upon a similar request with reference to the compensation due the Postmaster of the House of Representatives and the Clerk pro tempore of the Senate advised your department that the compensation was "to be reckoned from the beginning of the session." I concur in the reasoning and the conclusions reached in those opinions and, therefore, advise you that the employees of the House of Representatives, paid pursuant to the Act of April 12, 1905, P. L. 148, are entitled to be paid for their services from the date on which the Legislature convened.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

TRUST COMPANIES AS REAL ESTATE BROKERS.

A trust company dealing in real estate for a commission or other compensation is subject to the license tax imposed upon real estate brokers under the Act of May 7, 1907, P. L. 175.

The test consists in whether the corporation handles or deals in real estate for a commission or other compensation.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1915.

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

Sir: We have your inquiry of July 7, 1915, as to the liability of a trust company dealing in real estate under the Act of May 9, 1889, (P. L. 159), to assessment for a license tax as real estate broker under the Act of May 7, 1907, (P. L. 175).

The Act of May 9, 1889, is supplemental to the General Corporation Act of this State, of April 29, 1874, P. L. 73. The purpose of the supplemental act is merely to grant enlarged powers to those coming within its purview. Trust companies and other corporations of a similar character created subsequent to the Act of 1874 look to this act and its supplementing and amending acts, such as they may subsequently accept, for their corporate powers and restrictions, but the right of the State to tax such corporations and their business is not limited by such acts.

While it is true that the creation of a corporation under a particular act may be construed as a contract between the State and such corporation, yet the construction of such a contract is strictly against the corporation and liberal in favor of the State.

Packer vs. Sunbury & Erie Railroad Company, 19 Pa. 218.

Moreover, when the subject of the right of the State to tax a corporation appears, we find that Article IX, Section 3 of the Constitution of 1874 provides:

"The power to tax corporations and corporate properties shall not be surrendered or suspended by any contract or grant to which the State shall be a party."

In view of this express prohibition no corporation created since the adoption of the last Constitution could claim immunity from any form of lawful taxation sought to be imposed by the State, on the ground that by its charter such corporation was exempt from that particular tax.

A corporation or individual cannot resist a tax on the ground that it is being doubly taxed. As stated in *Commonwealth vs. Fall Brook Coal Co., 156 Pa. 488*:

"The legislature has the power to impose double taxation provided it is done in such manner as to secure

the uniformity which the Constitution requires; but an attempt to impose double taxation will not be presumed."

In this State, however, it has been repeatedly held that a tax upon property and a license tax upon the business rendered possible by the employment of that property, is not double taxation. Prior to the Act of April 14, 1905, (P. L. 161), a trust company acting as a real estate broker was held not to be liable for the license tax imposed on real estate brokers. This was decided definitely in the case of *Commonwealth vs. Real Estate Trust Company*, 211 Pa. 51. The case just cited, however, turned on the construction of the existing acts and as to whether these acts in providing for the tax on "any individual or co-partnership" included corporations. The Court held that the plain construction of the then existing acts precluded such interpretation and the case was decided not on the lack of power of the State to tax trust companies under such circumstances, but the fact that the State had not elected to do so. This case was decided on March 6, 1905, and at that session of the Legislature there was introduced and passed an amendment to the Act of June 7, 1901, in which the words "or corporations" were added to the amended act. The Act of April 14, 1905, appeared before the court in *Commonwealth vs. Samuel Black Co.*, 223 Pa. 74, in which the constitutionality of the act was sustained and the liability of a corporation paying the usual corporate taxes to the licensed tax imposed under this act was fixed. In this case it was contended in behalf of the corporation which by its charter was empowered to act as a real estate broker, that the application of the act of 1905 extended only to such corporations which prior to its passage were required to take out licenses. Answering this contention the Supreme Court, on page 76, says:

"Unquestionably when the Legislature provided that 'all merchandise brokers and real estate brokers, whether persons, firms or corporations', it intended by express terms to include corporations in the class that was required to pay a license fee to do business, and this is particularly true when we consider that the act of 1905 was passed immediately following the decision of the court in *Commonwealth vs. Trust Company*, 211 Pa. 51."

As was conceded in the case of *Commonwealth vs. Samuel Black Company* cited, the State has the right to compel the payment by a corporation of a license tax.

In *Commonwealth vs. Bailey et al*, 20. Pa. Super Ct. 210, it was expressly held that

"The fact that a corporation had paid the bonus required at the time of its incorporation and has annually paid the whole amount of the corporation tax

assessed upon the whole value of its capital stock and assets, does not relieve the corporation from the payment of the mercantile tax, if it engages in the business of buying and selling goods."

If, then, the act of 1905 rendered any corporation liable to the payment of the license tax provided therein, when such corporation acted as a real estate broker, there can be no doubt as to the similar effect of the Act of May 7, 1907. A trust company need not act as a real estate broker. It may, like an individual, acquire real estate in the regular course of its business and thereafter sell it, or during the term that it holds it collect rents from it. When, however, a corporation or an individual acts as a real estate broker, the act of 1907 applies. This act, in Clause F of Section 2, says:

Real estate brokers and agents are those who buy, sell or rent real estate, or collect rent therefrom, or negotiate loans upon real estate security, for a commission or other compensation.

Attention is called to the fact that the test depends on whether the person or corporation handles or deals in real estate *for a commission or other compensation*. The application of the act of 1907 is no broader or narrower than the act of 1905. It expressly provides that real estate brokers "whether persons, firms, limited partnerships or corporations," shall pay the tax as provided by it, and the full effect of the decision in the case of *Commonwealth vs. Samuel Black Co.* 223 Pa. 74 applies to the act of 1907.

As stated by Cunningham, Assistant Deputy Attorney General, in an opinion rendered to your Department July 9, 1907, the Act of May 7, 1907, (P. L. 175), merely enlarges the classification of brokers subject to a tax and changes the method of assessing it.

As it appears in Section 11 of this act, it is intended to supersede all license taxes theretofore required to be paid by those defined in the act.

I might well summarise by quoting *Eastman on Corporations*, Vol. 1, page 700, in which is correctly stated the answer to your inquiry:

Numerous other license taxes for State and local purposes exist in Pennsylvania, and corporations are subject to the payment of these equally with individuals if they engage in the businesses to which such licensed taxes relate respectively."

I, therefore, have to advise you that a trust company which handles or deals in real estate for a commission or other compensation, is subject to the license tax imposed on real estate brokers under the Act of May 7, 1907.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

BONUS TAXES.

A corporation which has bought properties and franchises of other corporations under section 5 of the Act of April 17, 1876, P. L. 30, is not required to pay again the bonus on capital stock upon which the vendor companies had paid. Upon a re-settlement of its accounts with the Auditor General, a credit for any such payment inadvertently made may be applied on its capital stock tax account.

The Act of March 30, 1811, §16, P. L. 145, providing for revision of settlements with the Auditor General and State Treasurer, requires that requests therefor must be made within twelve months. It is lawful to make the revision thereafter upon a request made within the twelve months after the settlement.

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

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

Sir: I have your favor of the sixth instant with reference to the settlement of bonus on capital stock of the Conewago Gas Company. From your letter I understand the facts to be as follows:

The Conewago Gas Company was incorporated with a capital stock of \$5,000.00 on which it paid bonus. In the month of January, 1913, it increased its capital stock to \$300,000.00 and on January 30, 1915, paid \$983.34 bonus on the increase.

During the same month the company bought the franchises and properties of three other gas companies which had paid bonus on a total capitalization of \$85,000.00, and notice of these acquisitions was filed in the office of the Secretary of the Commonwealth on January 24, 1913. On December 29, 1913, or one month less than a year after bonus amounting to \$983.34 had been paid on the increased capital stock, the Conewago Gas Company filed in your office a petition asking, in effect, for a re-settlement of the bonus so as to allow credit to the amount to \$283.34 for bonus paid on the three other gas companies, the properties and franchises of which it had acquired as above mentioned.

On June 24, 1914, a credit settlement was made, and on the books of the Department of the State Treasurer it appears that the company has a credit balance of \$283.33.

The Conewago Gas Company has asked that this credit balance \$283.33 on its bonus account be applied on its capital stock tax account. You inquire, first, whether the settlement of June 24, 1914, was lawful, having been made after one year from the date of payment of bonus on the increase; second, whether such re-settlement was properly made and the Gas Company is entitled to have the balance thus to its credit applied on its capital stock tax account.

The Act of April 17, 1876, (P. L. 30), Section 5, (p 33) amending the general corporation Act of 1874, provides;

"It shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act, its franchises and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist and the said property and franchises not inconsistent with this act shall thereafter be vested in the corporation so purchasing as aforesaid."

This act was construed by the President Judge of the Court of Common Pleas of Dauphin County in the case of *Commonwealth vs. Consolidated Telephone Companies*, 41 Pa. C. C. 17, and *Commonwealth vs. Matheson Automobile Company*, 41 Pa. C. C. 20, to relieve the purchasing company of paying bonus so much of the increase of capital stock as had already been paid to the Commonwealth by the corporations whose franchises and properties were purchased by such increase. These cases were not appealed by the Commonwealth, and until reversed should be followed by the Department.

I am, therefore, of the opinion that the Conewago Gas Company should not have been required to pay bonus on \$85,000, of increase representing the capital of the franchises and properties of the gas companies purchased by it on which bonus had already been paid.

The Act of March 31, 1811, (P. L. 145), Section 16, provides as follows:

"That the Auditor General and State Treasurer at the request of each other, or of the party, shall revise any settlements made by them except such as have been appealed from, or which by any other proceedings have been taken out of their offices, if such request be made within twelve months of the date of settlement; but after that time no settlement on which a final discharge has been granted shall be opened, but the same shall be quieted and finally closed."

While the credit settlement was not made until June 24, 1914, the request for the same was made on December 29, 1913, or one month less than twelve months after the payment of the bonus on increase on January 30, 1915. The Act of 1811 does not require that the settlements shall be revised within twelve months, but that the request for such revision be made within twelve months. The request in this case was within the time fixed by the Act of 1811 and it was, therefore, entirely lawful for you and the State Treasurer to make the settlement asked for.

I am of the opinion that the credit settlement as appearing on the books of your Department and the State Treasury, is in accordance with the law laid down by the President Judge of the Court of Common Pleas of Dauphin County. This being so, it will be entirely

proper for you to allow a transfer of the credit balance of \$283.33 appearing on its bonus account to be applied on its capital stock tax account, as requested.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

MOTHERS' PENSION ACT.

The Auditor General may estimate as accurately as possible the expenses and salaries of officers to be appointed to carry into effect the Mothers' Pension Act, so as to determine how much money may be apportioned to the counties under the provisions of the act.

Office of the Attorney General,
Harrisburg, Pa., August 3, 1915.

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

Dear General: Your letter of the 2nd inst. addressed to the Attorney General, relative to the Mothers' Pension Act of 1913, and supplement thereto, Act of June 18, 1915, providing for certain additional appointments by the Governor, and for the payment of salaries and expenses thereunder, was duly received at this Department.

You point out that the Act of June 18, 1915, appropriates the sum of \$100,000 in addition to the unexpended balance of the appropriation made for the same purpose at the session of 1913, to be apportioned among the various counties at the percentages therein provided, and further that the Act of 1915 provides that the Governor shall make certain appointments thereunder and that provision is made for the payment of salaries and for traveling and office expenses.

You advise that you have not as yet been notified of any appointments under the Act of 1915, and that you have no means of ascertaining the amount which will become payable on account of salaries of such officers when appointed, and of the expenses which may be incurred and charged to the appropriation, and that unless you are permitted to make an estimate of these expenditures you see no way of arriving at an apportionment to the several counties provided by the act.

It is manifest that the precise amount that will become payable and charged to the appropriation for salaries and for traveling and office expenses, cannot be determined until the end of the second year period, and it is certainly unreasonable to suppose that the apportionments to the various counties could not be made until after that time.

The object and purpose of these acts is to assist indigent, widowed or abandoned mothers in the partial support of their children in their homes, and it is important that this assistance be given where needed as early as possible, whereby it will be the more effective.

I am of the opinion, therefore, that it will be quite proper for you to make as accurate an estimate of such probable expenses as possible and deduct the same from the amount to be apportioned to the various counties under the acts, and any balance which would remain in your hands after the payment of the salaries and expenses referred to could thereafter be apportioned among the counties on the same basis.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

TAXATION—NATIONAL BANKS.

The Commonwealth has no right to tax such portion of the funds of a National Bank as is invested in the stock of a Federal Reserve Bank.

Office of the Attorney General,
Harrisburg, Pa., August 9, 1915.

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

Sir: I have received your favor of July 28, asking to be advised whether or not you have the right to tax such portion of the funds of a National Bank as is invested in the stock of a Federal Reserve Bank.

Federal Reserve Banks were created by the Act of Congress, approved December 23, 1913, and are an important instrumentality or factor in the endeavor of the Government of the United States to furnish a more elastic currency and to establish a more effective supervision of banking throughout the country. A reading of the act makes it clear that Federal Reserve Banks are not to be considered as purely private corporations. The Government of the United States is vitally interested and concerned in their establishment and welfare.

This is seen from the following excerpt from Section 2 of the act:

“Should the total subscription by banks and the public to the stock of said Federal Reserve Banks or any one or more of them, be, in the judgement of the organization committee, insufficient to provide the amount of capital required therefor, then and in that event the said organization committee shall allot to the *United States* such an amount of said stock as said committee shall determine.”

Under the provisions of the act it is not optional with National Banks to become stockholders of Federal Reserve Banks or not, as they see fit. The act provided that National Banks which did not within one year after the passage of the act become member banks of the Federal Reserve Bank System should forfeit all of their rights, privileges and franchises under the National Bank Act.

Besides, subscription to the stock of such Federal Reserve Banks is not open to the public generally. It was only in the event that the subscriptions by banks to the stock of such Federal Reserve Banks was in the judgment of the organization committee, insufficient to provide the amount of capital required therefor, that the committee was authorized to offer the stock in said Federal Reserve Banks to public subscription.

Section 7 of the act provides, *inter alia*, as follows:

"Federal Reserve Banks, including the capital stock and surplus therein, *and the income derived therefrom*, shall be exempt from Federal, State and local taxation, except taxes upon real estate."

This exemption from taxation applies not only to the Federal Reserve Banks, themselves, their capital and surplus, but also to the income derived therefrom, that is, to the stock and income or dividends therefrom, in the hands of the holders of such stock, and such portion of the funds of a National Bank or other holder of such stock, as is invested in the stock of a Federal Reserve Bank is therefore exempt from taxation by the Commonwealth or any local authority.

This is in line with the decisions of this State and the United States Supreme Court on the question of the taxation of the funds of corporations invested in United States securities.

In the case of *Commonwealth vs. Lackawanna L. and C. Co.* 129 Pa. 346, Judge McPherson filed the following conclusion of law, which was not questioned by the Commonwealth:

"So much of the defendant's capital stock as is invested in United States bonds is not taxable by the State." (page 349).

In *First National Bank vs. Commonwealth of Kentucky*, 9 Wallace, 353, the Supreme Court of the United States, through Mr. Justice Miller, said (Page 359):

"It has been established as the law governing this Court that the property or interest of a stockholder in an incorporated bank, commonly called a share, the shares in their aggregate totality being called sometimes the capital stock of the bank, is a different thing from the moneyed capital of the bank held and owned by the corporation. This capital may consist of cash, or of bills and notes discounted, or of real estate combined with them. The whole of it being the interest in

bonds of the Government, or in bonds of the States, or in bonds and mortgages. In whatever it may be invested it is owned by the bank as a corporate entity and not by the stockholders. A tax upon this capital is a tax upon the bank, and we have held that when that capital was invested in the securities of the Government it could not be taxed, nor could the corporation be taxed as the owner of such securities."

You are therefore advised that the Commonwealth has no right to tax such portion of the funds of a National Bank as is invested in the stock of a Federal Reserve Bank.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

MOTHERS' PENSION ACT.

Payments may not lawfully be continued under the Mothers' Pension Act of April 29, 1913, P. L. 118, to indigent mothers whose husbands are disabled, or to indigent mothers whose husbands have abandoned them, or to mothers without lawful husbands, even if they were on the pension roll before the adoption of the Act of June 18, 1915, P. L. 1038; and none of these classes fall within the groups of lawful beneficiaries under the later act.

Office of the Attorney General,
Harrisburg, Pa., August 10, 1915.

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

Sir: Replying to your inquiry of recent date, relative to the Act of June 18, 1915, P. L. 1038, which is an amendment to the Act of April 29, 1913, P. L. 118, commonly referred to as the "Mothers' Pension Act," I beg to advise you as follows:

The Act of 1913 provides that the beneficiaries thereunder shall be "indigent, widowed or abandoned mothers, for partial support of their children in their own homes." The amending Act of 1915 provides that the beneficiaries thereunder shall be "women who have children under sixteen years of age, and whose husbands are dead or permanently confined in institutions for the insane, when such women are of good repute, but poor and dependent on their own efforts for support, as aid in supporting their children in their own homes."

You asked to be advised,

First: Whether you may lawfully continue payments to indigent mothers whose husbands are disabled, to indigent mothers whose husbands have abandoned them, or to unfortunates who are mothers without any lawful husbands if they were on the pension roll prior to the adoption of the Act of 1915.

Second: Whether or not you are authorized to strike off from recommendations made by Boards of Trustees for new pensions since the adoption of the said Act, those who come within the classes cited in the first inquiry.

The real purpose of this legislation was undoubtedly to alleviate the condition of want and dependence of families which have permanently lost the usual and natural support furnished by the father and husband. It is rather difficult, therefore, to understand how the situation is affected by the *cause* of the condition.

A real case of abandonment by a father, for instance, has the same effect, so far as the ability of the mother to support her children is concerned, as the death of the father. And what if a husband is permanently confined in some other institution, than an insane asylum?

It must be assumed, however, that there were good and sufficient reasons for making the limitation in the Act of 1915, and it is, of course, our duty to interpret legislative acts in accordance with the intention as expressed therein,—in this case clearly expressed—and it is your duty to administer the law as so passed and interpreted.

If there could be any possible doubt as to the intention and purpose of the Legislature, it is removed by the title of the Act of 1915, which declares that it is an Act amending the Act of 1913, "by limiting the provisions of said Act to women whose husbands are dead or permanently insane, and who have children under sixteen years of age, etc."

You are therefore advised:

First: That you may not lawfully continue payments to indigent mothers whose husbands are disabled, to indigent mothers whose husbands have abandoned them, or to unfortunates who are mothers without any lawful husband, notwithstanding they were on the pension roll prior to the adoption of the Act of 1915.

Second: You are authorized, and it is your duty, to strike off from recommendations made by Boards of Trustees for new pensions, since the adoption of the Act of 1915, all those who come within the classes mentioned in your first inquiry.

In other words, the provisions of the Act of June 18, 1915, P. L. 1038, are limited in terms to "women who have children under sixteen years of age, and whose husbands are dead or permanently confined in institutions for the insane, when such women are of good repute, but poor and dependent on their own efforts for support, as aid in supporting their children in their own home," and others may not lawfully be designated as beneficiaries thereunder.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

DIXMONT HOSPITAL FOR THE INSANE.

In the absence of a specific agreement to the contrary, an architect's fee or commission must be based upon the cost of the actual work accomplished rather than on the contemplated cost of the buildings as indicated by the plans and specifications.

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

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

Sir: Answering your inquiry of this date relative to the payment of architects commissions due in connection with work done at the Dixmont Hospital for the insane, for which an appropriation of \$136,200.00 was made by the Act of July 25, 1915, for the "permanent improvement of the Main hospital building by the installation of fire proof floors and renewal of the heating appliances, plumbing and other fixtures," I beg to advise as follows:

You advise that the hospital authorities executed an agreement with a firm of architects for the preparation of plans and specifications and supervision of construction, for a fee or commission of five per centum of the cost "of the work done and materials furnished, under the designs and supervision of the architects," of which amount a portion was made payable "upon completion of the working plans and specifications and the remainder being paid from time to time in proportion to the amount of work done."

You further advise that upon the submission of proposals it was ascertained that the cost of the work contemplated would exceed the amount of the appropriation by more than \$100,000.00, and only half of the work was undertaken, and that the actual cost of the work done was about \$120,000.00, while the aggregate for the low bids amounted to more than \$240,000.00.

You advise that you have before you a requisition for the payment of the fee of the architects, in which demand is made for the payment of three per cent. of the aggregate of low bids submitted, and in addition two per cent. of the actual cost of the work accomplished, which would make a total of eight per cent. of the total cost of construction, and the question is whether or not you may make payment as requisitioned.

Aside from the fact that by the very terms of the arrangements made with the architects, their commission of five per cent. is to be based upon the cost "of the work done and materials furnished," it is my opinion that unless there is a specific agreement to the contrary, the architects fee in any case should be approved for payment on the agreed percentage only of the cost of the actual work accomplished, and should not be allowed on contemplated cost of structures, which exist only in the form of plans and specifications.

Architects must acquaint themselves with the amount of the appropriation available for the work in any case, and their plans and specifications ought to be prepared with a view to involve the expenditure of approximately such sum. Otherwise, plans and specifications could be readily drawn, which would, under the theory contended for, involve the payment of a sum for architects fees out of all fair proportion to the amount of money actually spent for the work.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

FINE UNDER SUNDAY LAW.

Under the Acts of May 15, 1850, P. L. 773, and April 26, 1855, P. L. 321, the prosecutor for a violation of the Sunday Law of April 22, 1794, 3 Sm. Laws, 294, is not entitled to one-half of the penalty imposed. The entire penalty is now payable to the Commonwealth for the use of the sinking fund.

Office of the Attorney General,
Harrisburg, Pa., August 25, 1915.

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

Sir: I have your inquiry of August 23, 1915, as to whether, under the Act of April 22, 1794, prohibiting the doing of business on Sunday, as amended by the Acts of May 15, 1850 and April 26, 1855, the prosecutor is entitled to one-half of the penalty imposed.

In an opinion given by the Honorable Hampton L. Carson, Attorney General, to your Department, on February 5, 1904, reported in 6 J. P. 140, it was determined in the affirmative.

It is with regret that I must disagree with the conclusion therein reached, and adopt rather the construction of this same act as placed upon it by the same Attorney General in an opinion rendered August 1, 1903, and reported in 6 J. P. 97.

The Act of April 22, 1794, fixes the penalty at four dollars. By the 6th section of the same act, one-half the penalty is payable to the prosecutor and one-half to the overseers of the poor of the county in which the prosecution is instituted.

The Act of May 15, 1850, (P. L. 773), provides, in Section 6:

That the penalty inflicted by the first section of the Act of Assembly entitled 'An act for the prevention of vice and immorality, etc,' shall hereafter be paid into the treasury of the Commonwealth of Pennsylvania for the use of the sinking fund."

While the above quoted portion mentions specifically Section 1, it does so only in determining the penalty as being that penalty which is provided by section 1, and in so far as it changes the disposition or distribution of the penalty, would affect any other section of the act in conflict with the express terms of the Act of 1850. The Act of 1850 does not indicate that that portion of the penalty theretofore payable to the overseers of the poor should be paid to the Commonwealth. It specifically provides that *the penalty* shall be so paid and *the penalty* includes not only the portion theretofore paid to the overseers of the poor, but also the portion paid to the prosecutor.

I would, moreover, call your attention to the fact that the Act of 1850 not only says where the penalty should be paid, but for what purpose; so, under that act the penalty theretofore divided between the overseers and the prosecutor for their respective uses, is now payable to the Commonwealth "for the use of the sinking fund."

The Act of April 26, 1855, (P. L. 321), merely changed the amount of the penalty from four dollars to twenty-five dollars.

In arriving at this conclusion, consideration has not only been given to the Acts of Assembly above enumerated, but also to the cases of *Allegheny County vs. Commonwealth*, 1 Monahan 119, and *Commonwealth of Pennsylvania vs. Allegheny County*, 63 (P. L. J. 119).

It is, therefore, my opinion that the prosecutor is not entitled to one-half the penalty imposed under the above mentioned acts.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

GENERAL APPROPRIATION BILL PUBLIC SERVICE COMMISSION.

The Auditor General may pay, from the appropriation to the Public Service Commission in the general appropriation bill, for the services of experts rendered before May 31, 1915, on requisition issued after that date.

Office of the Attorney General,
Harrisburg, Pa., September 24, 1915.

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

Dear Sir: I have your favor of July 28 asking to be advised whether you should permit payments under contracts made by the Public Service Commission with Morris Knowles and Benjamin F. Shuck, respectively, to be charged to the appropriation for 1913, they having been contracted for before the 31st of May, 1915, and the valuations being those required in cases coming before the Public Service Commission prior to May 31, 1915.

An examination of the contracts submitted with your inquiry shows that they were entered into on May 26, 1915, the said Morris Knowles being employed as an expert civil engineer and the said Benjamin F. Shuck being employed as an expert accountant, in the investigation of the property, plant and equipment and the books and accounts, respectively, of the Springfield Consolidated Water Company which the Public Service Commission has had under way for some time and which is still incomplete and pending.

This investigation or inquiry was not specially ordered or authorized by the Legislature nor was any sum of money specifically appropriated to this object. The work was taken up under the general powers and authority conferred on the Public Service Commission by the Public Service Company Law, approved July 26, 1913 (P. L. 1374), and the appropriation of 1913 referred to in your inquiry, is part of the General Appropriation Act, approved July 15, 1913, (P. L. 755), appropriating moneys for the *ordinary expenses* of the several Departments of the Commonwealth for the *two fiscal years* beginning June 1, 1913, found in the Pamphlet Laws, Page 819, as follows:

“Section 50. For the payment of salaries and all other expenses necessary to carry into effect the provisions of House of Representatives bill number one hundred and eighty three, known as the The Public Service Company Law, conditioned upon its passage by the General Assembly and approval by the Governor, the sum of four hundred thousand dollars (\$400,000), or so much thereof as may be necessary.”

As pointed out in your letter the General Appropriation Act of 1915, in line with all General Appropriation Acts of recent years, provides that the funds therein given are specifically appropriated to the several objects thereafter named for the two fiscal years commencing on the first day of June, one thousand nine hundred and fifteen, *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 fifteen*—thereby evidencing recognition on the part of the Legislature that bills had been incurred in the regular administration of some of the Departments of the State Government which had not been paid out of the funds appropriated for the two previous years.

Section 9, of Act IV of the Public Service Company Law provides:

“The Commission shall have power to employ during its pleasure and at such rates of compensation as it may determine, such officers, experts, engineers, statisticians, accountants, inspectors, clerks and employees

as it may deem necessary to carry out the provisions of this Act or to perform the duties and exercise the powers conferred upon the Commission."

And in Section 10:

"*****The salaries hereinbefore mentioned, and the salaries of all other officers, agents, *appointees and employees* of the Commission shall be payable monthly."

The investigation on which Messrs. Knowles and Shuck have been employed by the commission, as Civil Engineer and Accountant, respectively, is part of the general duties imposed upon or authority reposed in the commission by the Act of Assembly creating it and will form part of the work to be performed by the commission in the regular pursuit of its labors after June 1, 1915. It cannot therefore be considered as a separate item or contract which the commission was ordered or authorized to undertake separate and apart from its general or ordinary functions.

I am familiar with the opinions of former Attorneys General permitting payments to be made out of appropriations granted by a preceding Legislature, provided contracts had been awarded and entered into or work begun and prosecuted before the close of the fiscal year when otherwise such appropriations would have merged into the general fund. In nearly all such cases, however, the appropriations thus saved from merging into the general fund were special appropriations, for a specific purpose, for the fulfillment of which contracts had been made or work commenced, but for lack of time had not been completed within the biennial period. (See opinion of Hon. M. Hampton Todd, Official Report 1906, Page 103, and of Hon. John C. Bell, Official Report 1911, Page 39).

There is a clear distinction between such cases and items in the general appropriation to a Department or Commission incidental to the conduct of its ordinary business.

For bills so *incurred* and remaining unpaid the succeeding general appropriation act makes specific provision as a part of the regular expenses of administration for the next two years.

I am therefore of the opinion that no payments can be made by you to be charged against the appropriation of 1913, on account of the contract made by the Public Service Commission with Morris Knowles and Benjamin F. Shuck, respectively, beyond what was earned at the close of the fiscal-year ending May 31, 1915.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

Where a national bank collects and remits for steamship tickets in the same manner as it collects and remits a draft, it is not subject to taxation under the act of May 7, 1907, P. L. 175.

The State of Pennsylvania cannot tax a national bank under the act of 1907 if it is exercising powers conferred by the United States government.

Office of the Attorney General,
Harrisburg, Pa., September 28, 1915.

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

Sir: Sometime ago you enclosed a communication from the Mercantile Appraiser of Fayette County, and asked whether the First National Bank of Perryopolis, Fayette County, was liable for a broker's license under the Act of May 7, 1907, (P. L. 175), "on the steamship tickets which they sell, and for which they get a commission or brokerage of \$2.00 on each."

The delay in answering your letter has been, in large part, occasioned by correspondence with the Secretary of the Treasury, and with the bank, in the effort to ascertain exactly what the transaction was. We find the facts to be as follows:

Upon an application to the bank by one of its customers for a steamship ticket the bank officers fill out an application to the steamship company for such ticket. This application is forwarded by the bank to the steamship company, which company puts a certificate of approval upon said application, which thereupon becomes in effect a ticket, and the steamship company mails the same to the bank for delivery to the applicant, upon payment of the price of the ticket. The bank delivers the ticket and makes the collection in the same manner as the bank would collect a draft made on one of its customers. Its charge for this service is of the same nature as for the collection of a draft. The bank remits on the same day that the collection is made to the steamship company, just as in the collection of a draft, note or any other item sent for collection, deducting its charge from the remittance.

It is questionable whether this transaction is within the Act of May 7, 1907, (P. L. 175), but it is unnecessary to decide this question, because Section 5136 of the Revised Statutes of the United States gives to banks

"All such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; * * * * by buying and selling exchange, coin, and bullion," etc.

and the Comptroller of the Currency, interpreting this statute, has decided that the transaction is within the powers conferred by the Act of Congress above cited.

The State of Pennsylvania cannot tax a national bank under the Act of 1907 if it is exercising powers conferred by the United States Government, for to do so would be to tax a Federal agency which the State of Pennsylvania is prohibited from doing.

I am, therefore, of opinion that in so far as the First National Bank of Perryopolis, Pa., is collecting and remitting for steamship tickets in the manner above indicated it is not subject to taxation under the Act of May 7, 1907, (P. L. 175).

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

PAY OF ARCHITECT—INDUSTRIAL HOME FOR WOMEN, MUNCY.

The Commission under the Act of July 25, 1913, providing for the establishment of the home, had the right to fix the compensation of the architect, and was not bound by the rates fixed by the Board of Public Grounds and Buildings.

The Auditor General as an auditing officer is bound by the law of ordinary and reasonable prices unless these prices are fixed by Acts of Assembly or other authority given by law to some other body to fix them, but is not required to approve charges which he has good reason to believe are grossly unreasonable and excessive.

Office of the Attorney General,
Harrisburg, Pa., September 29, 1915.

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

Sir: I beg to acknowledge yours of today, requesting,

First: That I advise your office whether or not you are legally bound to make payment on contracts with architects for State work at the price fixed by Boards of Trustees of purely State institutions, or whether you may, as heretofore, refuse to make settlements in any amount above five per cent. upon the contracts which have never been submitted to you or approved by you.

Second: Whether or not, in my opinion, you are, as auditing officers, bound only by the rule of reasonable and fair prices, notwithstanding contracts made by Boards of Trustees, Commissions, etc.

I beg to advise you as to the matter in hand, compensation of the architect of the Industrial Home for Women, situated at Muncy, the Act of July 25, 1913, providing for the establishment of that home, etc., authorizes the commission thereby created to:

"cause to be prepared plans and specifications for said Industrial Home," etc.,

and further provides:

"The Commission may employ such other persons as it may deem necessary to secure the speedy and economical construction of the said Industrial Home and the improvement of the said site. The compensation of all persons employed or appointed by the Commission shall be fixed by the Commission."

Under this authority the commission has a right to fix the compensation of its architect, and unless the six per centum therein agreed upon is excessive and grossly unreasonable there is no legal reason why it should not be paid. The commission is not bound by the resolution of the Board of Public Grounds and Buildings limiting commissions to be paid to architects for State work to five per cent. of the cost of the work.

As to your second inquiry, as auditing officers, you are bound by the law of ordinary and reasonable prices, unless, of course, these prices are fixed by Acts of Assembly or other authority given by law to some other body to fix them.

Even though authority be given by Acts of Assembly to a commission to fix compensation of architects, prices, etc., you are not required as auditing officers to approve charges which you have good reason to believe are grossly unreasonable and excessive.

To all laws giving powers to boards, commissions and public officials to fix compensation, prices, etc., there is the necessary implication that good judgment will be used and that the compensation, prices, etc., be fair and reasonable, and if in the performance of your duties they should appear otherwise, you should disapprove.

If I have not fully answered your inquiry, please command me.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

TAX APPEALS—PRACTICE.

The Act of April 9, 1913, P. L. 48, does not require separate reports and petitions for settlement of tax to be filed with the Auditor General and State Treasurer,—they are to be filed with the Auditor General and brought to the attention of the State Treasurer before action thereon.

The State Treasurer must act on a petition for settlement even in case the petition is refused by the Auditor General.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1915.

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

Sir: Your favor of recent date addressed to the Attorney General concerning the interpretation of the act, entitled "An act regulating appeals from tax and other public accounts settlements of the fiscal officers of the Commonwealth," approved April 9, 1913, (P. L. 48), is at hand.

You ask—

"First—Does the act require the facts in said petition filed prior to appeal to be called to the attention of the Auditor General and the State Treasurer?"

The second section of said act provides:

"On any appeal from a tax or other public accounts settlement of the fiscal officers of the Commonwealth, no facts shall be admitted in evidence that were not brought to the attention of said fiscal officers in the report filed, or in an application under oath for resettlement prior to said appeal, etc."

The facts, of course, must be brought to the attention of the State Treasurer as well as the Auditor General, but that does not mean that separate reports or separate petitions for resettlement must be filed both in the office of the State Treasurer and the Auditor General. The reports are filed in the office of the Auditor General only. The petition for resettlement should be filed there also.

The Act of March 30, 1811, which authorizes the settlement of public accounts provides in the third section:

"That when any public account is examined and adjusted, entered in the books of the office and signed by the Auditor General, it shall be submitted, together with the vouchers and all other papers and information appurtenant thereto, to the State Treasurer for his revision and approbation."

Therefore, the petition for a resettlement may be brought to the attention of the State Treasurer just as the report and other papers relating thereto are brought to his attention in making an original settlement.

Your second inquiry is: "Does the second section of the said act require the action of both the Auditor General and the State Treasurer upon all petitions presented to the fiscal officers whether the prayer therein be granted or refused?"

The section of the Act just quoted provides:

"That when *any* public account is examined and adjusted, it shall be submitted * * * to the State Treasurer for his revision and approbation."

It requires the action of the State Treasurer to make a settlement of a public account. His revision and approbation are also required for a resettlement.

The Act of April 9, 1913, provides for facts to be "brought to the attention of said fiscal officers" in an application under oath for resettlement.

I am, therefore, of opinion that it requires also the action of the State Treasurer upon a petition for resettlement even though the resettlement be refused because upon such petition for a resettlement the State Treasurer and the Auditor General might not agree and it would be the duty "to lay the account and vouchers and all other papers appurtenant thereto, before the Governor" for his decision, as provided by the fifth section of the Act of March 30, 1811, as in the case of an original settlement.

I return the form which you have presented to be used in case a resettlement is refused, with the approval of this Department.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

POWER OF THE AUDITOR GENERAL TO ASSIGN DUTIES TO A DEPUTY.

Power to sit as a member of the Military Board is judicial and not ministerial in character and cannot be delegated by the Auditor General to a deputy.

The signing by the Auditor General of warrants drawn by the Adjutant General after they have been approved by the Military Board is a ministerial duty and can be delegated to a deputy under the provisions of Act of May 13, 1915, P. L. 306.

Office of the Attorney General,
Harrisburg, Pa., November 29, 1915.

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

Sir: Your letter of November 12, 1915, addressed to the Attorney General, was duly received. You propound two questions:

First—Whether under the Act of 1895, (P. L. 135), Section 1, the Deputy Auditor General may, in the absence or inability of the Auditor General, sit as a member of the Military Board,

Second—Whether the Auditor General may, under the Act of 1915, (P. L. 306), designate and empower the persons named therein to sign the vouchers of the Military Board.

The duties of the Military Board are defined in Section 36 of the Act of April 9, 1915, (P. L. 80). It is required "to audit and adjust all claims incident to the organization, discipline, maintenance and service of the National Guard." After the approval by the Military Board endorsed thereon, such claim shall be paid by warrant drawn by the Adjutant General upon the State Treasurer, approved by the Auditor General. It is well settled that where a duty "implies judgment and discretion and partakes so much of a judicial character, that it cannot be delegated to a person who is himself a deputy."

McMasters vs. Carothers, 1 Pa. 324.

"Discretionary or judicial powers may not in the absence of statutory authority be delegated; but ministerial duties, except where there is a statutory prohibition, may be delegated."

29 Cyc. 1433

23 A. & E. Encycl. of Law, 365

Dillon on Municipal Corporations, Vol. 1, Sec. 244.

The power to "audit and adjust all claims incident to the organization, discipline, maintenance and service of the National Guard" necessarily includes duties requiring judgment and discretion and therefore of a judicial nature. They cannot be delegated unless the delegation is authorized by statute.

The Act of May 13, 1915, (P. L. 306). provides:

"That the Auditor General is hereby authorized to empower the deputy auditor general, the assistant deputy auditor general, the chief clerk, the chief clerk of the Bureau of Corporations, the two assistant chief corporation clerks, the chief clerk in the Bureau of Collections from county officers and the chief clerk and assistant chief clerk and warrant clerk in the Bureau of Accounts and Expenditures, to do such official acts as the Auditor General may designate."

and the very fact that the various clerks are herein mentioned indicates that it was not the intention of the Legislature to authorize the Auditor General to delegate his judicial powers. The apparent purpose of this Act of Assembly was to give the Auditor General full con-

trol of the disposition of the work of his Department. A delegation of judicial powers should not be presumed and legislation to that effect should be clear and specific.

Answering your first question, I am of opinion that the Auditor General cannot depute any of his assistants to sit upon the Military board.

But under Section 36 of the Military Code, which has been quoted, the duty of auditing and adjusting the claims incident to the organization, discipline and maintenance of the National Guard, is upon the Military Board and when the warrant is drawn it must be approved by the Auditor General.

I am of the opinion that this can fairly be regarded as a ministerial duty, and therefore, answering your second question, I advise you that the Auditor General may designate and empower any of his assistants to sign in his name the vouchers of the Military Board.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

ROBERT MORRIS MONUMENT COMMISSION.

The Commission has the right to pay five artists the sum of \$500 each for plaster models exhibited in competition, and the models become the property of the State.

Office of the Attorney General,
Harrisburg, Pa., November 30, 1915.

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

Sir: Replying to your letter of recent date, asking to be advised whether the Robert Morris Monument Commission created under the Act of June 14, 1911, (P. L. 937), has the right to pay five artists the sum of \$500.00 each for plaster models exhibited in competition, I beg to advise as follows:

The Act of Assembly creating the Commission, in which we must find its powers, provides:

"They shall have authority to select and decide upon the design for the said monument, or memorial structure, and the material out of which it shall be constructed."

With reference to the authority of the Commission to make contracts, the same section provides that it "shall have full power to make contracts for its construction and erection."

A strict reading of the Act, therefore, would seem to limit the power of the Commission with respect to the making of contracts to such as provide for the "construction and erection" of the proposed monument.

I understand, however, that as a practical matter it is not possible to induce artists and sculptors of note to submit models in a competition unless some provision is made for payment for their services, so that it became necessary for the Commission to pass a resolution on May 1, 1915, which was as follows:

"That of the artists who submitted sketches and designs for the Morris Monument five of the best competitors should be selected to prepare models in plaster to be installed at the School of Industrial Arts and that each artist should receive the sum of \$500.00 for his model so submitted."

Five artists were accordingly selected to enter a second competition by the submission of a model by each and of these one was chosen as the successful one in the competition.

The Commission must have such powers as are reasonably necessary to carry out the purposes of its appointment and if, as it appears, and presumably there was no alternative, it became necessary for the Commission to offer a prize of \$500.00 to each of five artists who were invited to submit models in plaster, the making of such a contract must be regarded as a necessary incident to the right of the Commission to contract for the construction and erection of the memorial structure. It should be added, however, that on the payment of this sum to each of the artists the plaster models prepared by them should become the property of the State for such disposition thereof as the proper authorities may determine.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE SIGNING OF WARRANTS BY SUPERINTENDENT OF PUBLIC INSTRUCTION.

Under the provisions of the school code and the general appropriation act of 1915, the Superintendent of Public Instruction may sign one warrant to cover a number of items to separate payees instead of drawing and signing a separate warrant for each payee.

Office of the Attorney General,
Harrisburg, Pa., December 15, 1915.

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

Sir: The Attorney General has referred to me your favor of the 7th inst., suggesting the adoption of a plan by which the Superintendent of Public Instruction could be relieved of the physical labor of signing four or five thousand warrants every year in favor of the several school districts and county superintendents, and asking the opinion of this Department as to the legality of the proposed plan.

Section 1002 of the Schol Code of 1911, (P. L. 359), imposes the following duty on the Superintendent of Public Instruction:

"He shall sign all orders on the State Treasurer for the payment of such moneys to the treasurer of the several districts as they may be entitled to receive from the State and all other moneys to be paid out of the appropriation for public school purposes."

In the General Appropriation Act of 1915, Page 83, appears the following clause:

"The remainder of the amount hereby appropriated shall be paid on warrant of the Superintendent of Public Instruction, drawn in favor of the several districts of the Commonwealth."

It will be noted that in neither of these Acts is there a specific direction that the Superintendent of Public Instruction shall draw a *separate* warrant or order to the treasurer of each school district, or other payee. I can see no legal objection to the Superintendent of Public Instruction embracing in an order or warrant upon the State Treasurer, a number of items, provided the name of the payee, the amount of the payment and such other information as now appears on a separate warrant are specifically set forth in the order or warrant embracing more than one item.

He should, of course, not draw such order or warrant for a larger amount than has been designated as available by the State Treasurer, nor include therein more items than could be conveniently handled by the State Treasurer, or more than the State Treasurer could draw separate checks to payees named in said order on the same day. Dupli-

cates of such order or warrant should be retained by the Auditor General and separate checks drawn by the State Treasurer to each of the payees embraced in said order or warrant.

I beg to advise you that if such a plan is adopted it will not conflict with the provisions of the School Code or the General Appropriation Act above quoted.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

NATIONAL BANKS ARE INCLUDED IN ESCHEAT LAW.

The Act of June 7, 1915, P. L. 878, relating to the escheats of deposits of money and property and to dividends and profits, applies to National Banks with the same force and effect as to other institutions.

Office of the Attorney General,
Harrisburg, Pa., December 27, 1915.

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

Sir: You have requested an opinion as to whether the Act of June 7, 1915, (P. L. 878), relating to escheats of money or property, applies to National Banks with the same force and effect as to other banking institutions.

That Act provides:

"That every person, bank, safe-deposit company, trust company and corporation, organized or doing business under the laws of Pennsylvania, except mutual saving fund societies not having a capital stock represented by shares, which receive or has received deposits of moneys, shall make a report to the Auditor General, under oath, the month of January of each year hereafter, of such deposits of money which shall have not been increased or decreased, or, if not increased or decreased, on which interest shall not have been credited in the pass-book at the request of the depositor, within fourteen or more consecutive years next preceding the first day of said month."

It also requires a report from all banks and other corporations of all dividends declared and not paid for three or more consecutive years.

And in Section 7 provides for escheats of deposits which have not been increased or decreased or which shall not have been credited with interest in the pass book at the request of the depositor for seventeen years, and for the escheat of dividends or profits which shall remain unpaid for six years.

The Act contains complete machinery for carrying out the escheat and also for the payment back to the persons or legal representatives, if found, after such escheat has been effected.

Escheat is the method by which the title to property vests in the sovereign for want of heirs of the owner. It is a part of the common law of England and it was adopted particularly in those colonies known as proprietary, of which Pennsylvania was one. It is not only part of the common law of Pennsylvania, but has been part of the statute law since September 29, 1787.

The sovereignty over land and other property within the domain of the states has never been surrendered to the Federal Government, and therefore property, including bank deposits, which happen to be in the possession of a National bank which is created by, and operates under, a franchise given by Federal statute, if escheated at all must be escheated to the State. The Act applies to every bank "organized and doing business under the laws of this Commonwealth." It has been suggested that this language does not include National Banks. I do not think the suggestion is tenable. National banks are not organized under the laws of the Commonwealth and are not doing business under the laws of the Commonwealth, in so far as the right to do business is concerned, but in a broader sense they are doing business under the laws of the Commonwealth.

This is clearly pointed out by Mr. Justice Miller in the case of *First National Bank vs. Kentucky*, 9 Wall. 353; 19 L. Ed. 701, wherein he says, page 362:

"The salary of the federal officer may not be taxed; he may be exempted from any personal service which interferes with the discharge of his official duties, because those exemptions are essential to enable him to perform those duties. But he is subject to all the laws of the State which affect his family or social relations, or his property, and he is liable to punishment for crime, though that punishment be imprisonment or death. So of the banks. They are subject to the laws of the State, and are governed in their daily course of business far more by the laws of the State than of the nation. All their contracts are governed and construed by State laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on State law. It is only when the State law incapacitates the banks from discharging their duties to the government that it become unconstitutional."

The evident intention of the Legislature in the passage of the Act of 1915, was to include all banks, and I am of opinion that the language used includes national banks.

A deposit in a national bank is not the property of the Federal government, or of the bank, but is the property of the depositor. The bank is merely a stake holder or trustee. When the depositor dies the deposit passes to his estate and to his heirs or legatees. If he dies without heirs or legatees a National Bank would acquire no more rights to the deposit than any other bank.

The State, as the sovereign, has the right to determine how long a time shall elapse before property within its confines or which belonged to its citizens, and has no known owner, shall escheat to it, and a National bank, doing business within the State of Pennsylvania, is upon precisely the same basis with reference to that determination, as any other banking institution or corporation.

I therefore advise you that the Act of June 7, 1915, P. L. 878, relating to escheats of deposits of money and property and to dividends and profits, applies to National Banks with the same force and effect as to other institutions.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE TAX ON NATIONAL BANKS.

The Act of June 4, 1915, P. L. 828, providing for a State tax on the sale or transfer of the stocks of banks, embraces national banks, and is not unconstitutional, in that it is not even a tax upon the shares themselves, and certainly not a tax upon the bank or the capital thereof, but upon the sale or transfer of the shares,

Office of the Attorney General,
Harrisburg, Pa., December 29, 1915.

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

Sir: Your favor of recent date, requesting an opinion of the Attorney General as to whether the Act of June 4, 1915, P. L. 828, applies to the sales or transfers of stock of National Banks, is at hand.

The Act to which you refer is entitled

“An act to provide revenue by imposing a State tax upon sales or agreements to sell or memoranda of sales of stock, and upon deliveries or transfers of shares or certificates of stock in domestic or foreign corporations, etc.”

It provides, in part

"That a State tax of two cents on each one hundred dollars of the face value, or fraction thereof, is hereby imposed upon all sales or agreements to sell or memoranda of sales of stock, and upon any and all deliveries or transfers of shares or certificates of stock in any domestic or foreign corporation * * * made on or after the date when this act takes effect, etc."

It also provides for the affixing of adhesive stamps to the stock certificate surrendered for transfer or to the bill or memorandum of sale effecting or evidencing the transfer of such certificate.

It is apparent from a consideration of the whole act that the tax imposed is upon the sales or transfers of the stock and not upon the stock itself.

It has been suggested that any attempt to bring the shares of national banking associations within the provisions of this act would be unconstitutional. This suggestion may have its origin in the general principle which first found expression in the case of *McCulloch vs. State of Maryland*, 4 Wheat. 316, that the Bank of the United States and its capital was exempt from state taxation. But there is a distinction between taxing the bank as a bank or the capital of the bank, and taxing the shares into which the capital is divided in the hands of the holders, or the transfer or sale of those shares.

The distinction is clearly pointed out by Mr. Justice Miller in the case of *First National Bank vs. Ky.*, 9 Wall. 353, 19 L. Ed. 701, in which he says:

"In the several recent decisions concerning the taxation of the shares of the National Banks, as regulated by Section 40 and 41 of the Act of Congress of June 3d, 1864 13 Stat. at L. 111), it has been established as the law governing this court that the property or interest of a stockholder in an incorporated bank, commonly called a share, the shares in their aggregate totality being called sometimes the capital stock of the bank, is a different thing from the moneyed capital of the bank held and owned by the Corporation. This capital may consist of cash, or of bills and notes discounted, or of real estate combined with these. The whole of it may be invested in bonds of the government, or in bonds of the States, or in bonds and mortgages. In whatever it may be invested it is owned by the bank as a corporate entity, and not by the stockholders. A tax upon this capital is a tax upon the bank, and we have held that when that capital was invested in the securities of the government it could not be taxed, nor could the Corporation be taxed as the owner of such securities.

On the other hand we have held that the shareholders, or stockholders, by which is meant the same thing, may be taxed by the States on stock or shares so

held by them, although all the capital of the bank be invested in federal securities, provided the taxation does not violate the rule prescribed by the Act of 1864."

In this case it was not only contended that the tax could not be imposed upon the shareholders, but also that the State of Kentucky could not impose upon the bank the duty of collecting the tax. As to the last contention, the Court said:

"If the State cannot require of the Bank to pay the tax on the shares of its stock it must be because the Constitution of the United States, or some Act of Congress, forbids it. There is certainly no express provision of the Constitution on the subject."

and the statute of the State of Kentucky which taxed the shares of the shareholder and required the officers of the bank to collect the tax, was sustained.

Even if there were no Act of Congress exempting from taxation transfers of the shares of stock in the hands of the holders, the State would have the right to impose such tax.

But Section 41 of the Act of June 3, 1864, (13 Stat. at L. 111, 4th U. S. Comp. Stat., Section 9784), provides:

"Nothing herein shall prevent all the shares in any association from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the association is located; but the Legislature of each State may determine and direct the manner and place of taxing all the shares of national banking associations located within the State, subject only to the two restrictions, that the taxation shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State, and that the shares of national banking associations owned by non-residents of any State shall be taxed in the city or town where the bank is located, and not elsewhere."

This Act of Congress specifically permits taxation on the shares of National Banks, and certainly does not prohibit the taxation of the transfer of such shares.

And in the last National Banking Act, known as the Federal Reserve Act, 38 Stat. at L., 4th U. S. Comp. Stat. Section 9791, Congress, while careful to exempt state taxation on the federal reserve banks, including the capital and surplus therein, and the income derived therefrom, did not exempt from taxation the shares of such bank or the transfer or sale thereof. The Act of June 4, 1915, (P. L. 828), includes

"all deliveries or transfers of shares or certificates of stock in any domestic or foreign corporation, co-partnership association, or joint-stock company."

This language certainly embraces national banks, and this tax being a tax upon the sale or transfer of the shares, not even a tax upon the shares themselves, and certainly not a tax upon the bank or the capital thereof, I am of opinion that there is no constitutional or other prohibition against the power of the state to impose the tax; that all transfers and deliveries of the shares of national banks are within the scope of said Act of Assembly, and therefore taxable.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

APPROPRIATIONS.

The Auditor General has no authority to keep a general advancement account and to make therefrom advancements to the various departments, bureaus and commissions of the State government, for urgent items of expense.

Office of the Attorney General,
Harrisburg, Pa., January 19, 1916.

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

Sir: I have given careful consideration to the matters referred to in your favor of October 26, 1915, as supplemented by your letters of November 15 and December 1 and brief of December 6.

The query upon which you request my opinion is as follows:

"It is contemplated to advance each Department, Bureau, Institution or Commission, a sufficient sum for its petty urgent items, chargeable to the advancement account; this advancement will not be from any *particular divisional part of its appropriation*, but simply an advancement and when accounted for by the recipient will at that time be charged on the books of the Auditor General and State Treasurer to the *particular portion of the appropriation* for which it was spent, and may be, in part, chargeable to all the separate portions of its appropriation, and the total amount accounted for would be credited to the advancement account, which would at all times quickly indicate those funds unaccounted for, which is necessary and essential in order to comply strictly with the legislation on the subject, recently enacted.

I have talked with a number of the heads of Departments, such as the Highway, Health, School and others, all of whom are very much taken with the idea, and are anxious to operate thereunder.

As Attorney General, can you see any legal objection to such a system, and would you authorize its adoption?"

Article III, Section 16 of the Constitution provides:

"No money shall be paid *out of the Treasury* except upon appropriations made by law, and on warrant drawn by the proper officers in pursuance thereof."

The Act of May 11, 1909, (P. L. 519), provides:

"It shall be unlawful for any officer of this Commonwealth to authorize the payment of any money, by warrant or otherwise, *out of the State Treasury, or for the State Treasurer to pay any money out of the State Treasury, except in accordance with the provisions of an act of Assembly setting forth the amount to be expended and the purpose of the expenditure*; and it shall also be unlawful for any officer of this Commonwealth to authorize the payment of any money, by warrant or otherwise, *out of the State Treasury, or for the State Treasurer to pay any money out of the State Treasury, in excess of the amount thus specifically appropriated.*"

The Act of April 23, 1909, (P. L. 146), as amended by the Act of June 2, 1915, (P. L. 726), provides:

"That hereafter when any appropriation is made to any department, bureau, commission, board of trustees, overseers, managers and other persons in charge of institutions owned and controlled by the State in whole or in part, and which are known as State and semi-State institutions, or other branch of the government of this Commonwealth which is intended for expenses of such a nature as to make it impracticable for said department, bureau, commission, * * * etc., 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, * * * etc., to make requisition upon the Auditor General, from time to time, for such sum or sums of the appropriation as may be necessary 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. Said department * * * etc., shall, whenever required by the Auditor General, file specifically itemized vouchers, in such form as may be prescribed by him, accounting for all money expended out of said advance. All balances in the hands of said department, * * * etc., at the end of the appropriation period, for which expenses have not been incurred, shall be returned to the State Treasurer before any

advance is made out of any succeeding appropriation for the same purpose; Provided, however, That the funds so advanced shall be deposited, in the name of the Commonwealth of Pennsylvania, by the officer or institution to whom or which said advancement is made, in a depository approved by the Board of Revenue Commissioners, and the name of such bank or depository certified to the State Treasurer: And provided further, That the advancement shall never, in any case, exceed the amount of the bond of the officer or individual having control of the disbursement from the funds so advanced."

This is the Act which is presented as authority for the advancement system suggested in your letter. I call your attention, however, to the fact that the Act provides that the department, etc., shall make requisition "for such sum or sums of the appropriation as may be necessary to meet such expenses" and that the Auditor General, after the approval of the requisition by himself and the State Treasurer, shall draw his warrant upon the State Treasurer for such sum or sums "to be paid out of the appropriation as in the discretion of the Auditor General may be necessary."

This is a clear direction that the advancement is to be made and paid out of the specific appropriation to such department, etc. Without such a provision, the Act would be in conflict with Article III, Section 16, of the Constitution above quoted.

The question then arises, what constitutes the appropriation out of which the advancement is to be made? Is it the sum of all the items of appropriation to a department, bureau, commission, etc., or does each separate item appropriated to the department, bureau or commission, for a specific purpose, constitute an appropriation within the language of the Act, out of which an advancement may be made as provided by the Act?

The word "Appropriation" is defined by Webster as

"The act of setting apart or assigning to a particular use or person, in exclusion of all others; application to a special use or purpose, as of money to carry out some public objects."

This definition has been quoted with approval in

State ex rel. Davis vs. Eggers, 16 L. R. A. (N. S.) 630 (Nev.),
Clayton vs. Berry, 27 Ark. 129,
Proll vs. Dunn, 22 Pac. 143 (Cal.),
Shattuck vs. Kincaid, 49 Pac. 758 (Ore.),
Kelley vs. Sullivan, 201 Mass. 34.

The Century Dictionary uses almost the same language adding:

“Specifically, an act of a legislature authorizing money to be paid from the treasury for a special use.”

Similar definitions have been given by the Courts of various states:

“Appropriation, as applicable to the general fund in the treasury, may perhaps be defined to be an authority from the legislature given at the proper time and in legal form, to the proper officers to apply sums of money out of that which may be in the treasury in a given year to specified objects or demands against the State.”

Ristine vs. State, 20 Ind. 328; *Menefee vs. Askew*, 107 Pac. 159, (Okla.)

“An ‘appropriation’ of State funds is a setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that specific object and for no other.”

Jobe vs. Caldwell, 93 Ark. 503; 125 S. W. 423.

“A specific appropriation is an act by which a named sum of money has been set apart in the treasury and devoted to the payment of a particular demand. The fund upon which a warrant must be drawn must be one the amount of which is designated by law and therefore capable of definitive exhaustion.”

Stratton vs. Green, 45 Cal. 149.

“To constitute an appropriation under the provisions of the Constitution, an Act must set apart from the public revenue a definite sum of money for the specific object in such a manner that the State officials are authorized to use the amount so set apart, and no more, for that object.”

State vs. Holmes, 123 N. W. 884 (N. Dak.)

“The Legislature could, if it saw fit, name a fund for each separate salary or item of expense, but, howsoever the original funds may be subdivided by the appropriation bill, the appropriation is exhausted as to each separate item as the money necessary to its discharge is paid out by the Treasurer; that is, the appropriated funds for any one item are not applicable to the payment of any other item in the whole list, so that after all the specific items govern the disbursements and not the subdivided funds as designated in the Act.”

Shattuck vs. Kincaid, 49 Pac. 758, (Oregon.)

These authorities hold that payments under an appropriation are limited to the uses and purposes no less than the objects or persons named in the bill and it would therefore seem that each separate item of an appropriation to a department, bureau, commission, &c., specific in amount and for a definite purpose, constitutes a separate and distinct appropriation in the amount and for the purpose stated in the bill, at least to the extent that it can only be used by the department or other donee for the specific purpose named in said item and that any portion remaining unexpended for that purpose at the end of the biennial period, in the absence of specific direction to the contrary, lapses into the general fund.

This view is in harmony with Article IV, Section 16 of our Constitution, which provides:

"The Governor shall have power to disapprove of any item or items of any bill, making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the Executive veto."

This recognizes the right of the Legislature to include several distinct items in one appropriation bill, provided they relate to the same subject, Article III, Section 15) and that each separate or distinct item is to all intents and purposes a separate appropriation which may be approved or disapproved by the Governor without affecting the other items of appropriation.

In *Commonwealth vs. Barnett*, 199 Pa. 174, where the question involved was the constitutional right of the Governor to approve the appropriation to public schools contained in the general appropriation bill of 1899, to the amount of \$10,000,000 and disapprove it, as to \$1,000,000, the Supreme Court said:

"The legislature had full control of the appropriation in both its aspects and the plain intent of this section was to give the Governor the same control as to disapproval, over each subject and each amount. A contrary construction would destroy the usefulness of the constitutional provision. If the legislature by putting purpose, subject and amount inseparably together and calling them an item, can coerce the Governor to approve the whole or none, then the old evil is revived which this section was intended to destroy. No better illustration is needed than is afforded by the case in hand. Section 8 of the act of May 13, 1899, appropriated for the public schools \$11,000,000 for the two years of 1899 and 1900, provided that 'out of the amount received by the city of Philadelphia there shall

be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of three thousand dollars to the Philadelphia School of Design for Women for their corporate purposes, and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city,' etc. In this portion of the section alone there are included four distinct and severable parts, each of which is an 'item' within the purpose, intent and meaning of the constitutional provision under consideration, namely the public schools, the Teachers' Institute, the School of Design for Women and the Teachers' Annuity and Aid Association. The public schools being objects of appropriation by the express mandate of the constitution, the only question before the Governor as to them was the amount, but the other three items presented the double consideration of the beneficiary and the amount."

So in the appropriation to the Highway Department of June 18, 1915 (Appropriation Acts 1915 page 301) it was enacted that the sum of \$8,400,000.00, or so much thereof as might be necessary, was appropriated to the State Highway Department for the two fiscal years beginning June 1, 1915, for the following purposes:

1. For the maintenance and improvement of State highways, etc., \$6,000,000.00.
2. For the payment of the expenses, costs and awards in the purchase of turnpikes forming parts of State highway routes, etc., \$300,000.00.
3. For the payment of the Commonwealth's share in the expense of constructing and maintaining State-aid highways, \$500,000.00.
4. For the rebuilding, repair, and maintenance of the National or Cumberland Road, \$100,000.00.
5. For the payment of a portion of the deficiency caused during the years 1913 and 1914, in carrying out the laws of Pennsylvania relative to the construction, maintenance and repair of roads in townships of the second class, \$1,500,000.

In passing upon this bill the Governor approved the second item in the sum of \$250,000 in stead of \$300,000, and the fourth item in the sum of \$50,000 instead of \$100,000, and withheld approval from the remainder of said two items.

Under the decisions above quoted each item in this bill is so far separate and distinct that the State Highway Department can only use the money appropriated in a specific item for the purpose set forth in said item, and to that extent, at least, each item constitutes a separate appropriation.

The Act of April 23, 1909, P. L. 146, as amended by the Act of June 2, 1915, P. L. 726, permits a department of the State government, under certain circumstances, to make requisition upon the Auditor

General for a sum *out of the appropriation* to meet the expenses in connection therewith and permits the Auditor General to draw his warrant upon the State Treasurer for such sum *to be paid out of said appropriation*. It does not authorize the drawing of a requisition for a general amount, part of which may be charged to one item of appropriation and part to another, the amount chargeable to each not being determinable until the vouchers are filed, for such an advancement is not a payment out of any appropriation, but a payment generally on account of all of said appropriations or items of appropriation, the amount to be charged to each being indefinite until the vouchers and receipts therefor are filed. It is true that in this way a department may have several advancements instead of one and that the bookkeeping and accounts of the Auditor General's Department may be somewhat more complicated in consequence. On the other hand, the plain letter of the statute requires that the department shall make requisition for an advancement out of a specific appropriation and that the advancement shall be paid out of a specific appropriation. There is no authority of law for making an advancement except this Act, and the advancement must be made in strict compliance with the Act, which requires that it shall be advanced against a definite appropriation and paid out of and charged against such definite appropriation when made.

Nor can I admit the correctness of the contention that such an advancement is not a payment out of the State Treasury because it is deposited in the name of the Commonwealth by the officer or institution to whom said advancement is made, in a depository approved by the Board of Revenue Commissioners and the name of the bank certified by the State Treasurer. These are safeguards for the purpose of seeing that none of the advancements so made to said department, board or bureau shall be misappropriated. The money is none the less paid out of the State Treasury proper the moment that it is paid by the State Treasurer over to such department, board or bureau. The State Treasurer cannot check upon said amount, nor is it subject to his direction and control, and in my judgment, his bond would not be liable for misappropriation of said advancement in the hands of the officer in charge of the department or bureau to whom advanced. Though it is still the property of the Commonwealth, it is no longer in the Treasury and both Article III, Section 16 of the Constitution and the Act of May 11, 1909, P. L. 519, forbids the payment of money "*out of the Treasury*" except upon lawful appropriation.

The Act of June 2, 1915, contemplates a payment by the State Treasurer, out of the State Treasury, by way of advancement against a specific appropriation and it cannot be held that money has been paid out of the State Treasury and is at the same time in the State Treasury; that it has been paid out of an appropriation and has not been

paid out at all. Except for the Act of June 2, 1915, there would be no warrant in law for any such advancement. That act requires that the advancement shall be paid out of the appropriation made to a department, bureau, etc. If there is more than one appropriation to such department, board or bureau, the advancement will have to be made out of and charged against a particular and specific appropriation or item of appropriation and the fund so advanced cannot be used for any other purpose than the particular purpose set forth in the item of appropriation.

You are therefore advised that the proposed method of drawing a general advancement, keeping account of it in the nature of an advancement account, and charging it against specific items of appropriation only when the vouchers are returned, is not in conformity with law, and could not legally be put in force.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE MERCANTILE APPRAISER.

Appraisements and assessments made by a Mercantile Appraiser regularly appointed are valid, even though he was removed within a short time of his appointment and a new appraiser named by a recently elected Board of County Commissioners.

The question as to whether the County Commissioners had a legal right to remove the appraiser appointed by the outgoing commissioners not decided.

Office of the Attorney General,
Harrisburg, Pa., January 22, 1916.

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

Sir: This Department is in receipt of your favor of January 11, 1916, in which you request an opinion as to whether or not assessments made by a mercantile appraiser who has been appointed since the first of January 1916, in the place of one previously appointed and removed, are valid.

As I understand, the facts which prompt your inquiry are: on December 17, 1915, Harry B. Hoffman was regularly appointed Mercantile Appraiser by the County Commissioners of Dauphin County for the year 1916, and on January 5, 1916, a new Board of County Commissioners having taken office, the appointment of Harry B. Hoffman was recalled before he had entered upon the duties of his office.

and Herman D. Long appointed in his place. A similar situation exists in Allegheny County and in at least four other counties of the State.

The Act of May 2, 1899, P. L. 184, provided, in part, in Section 3, as follows:

“For the purpose of carrying into effect the provisions of this act, the appointment of mercantile appraisers shall be made annually, on or before the thirtieth day of December of each year, by the county commissioners.”

The appointment of Harry B. Hoffman was made under the provisions of this section.

The State is not concerned as to who the Mercantile Appraiser is, but is concerned with the validity of the assessments made, and I understand your inquiry to refer only to the validity of the assessments.

Section 4 of Article VI of the Constitution of Pennsylvania, provides in part:

“Appointed officers, other than judges of the courts of record and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed.”

This constitutional provision has been held to apply to the office of Collector of Delinquent Taxes of the City of Philadelphia,—*Houseman vs. Commonwealth*, 100 Pa. 222; to the office of Collector of Delinquent Taxes of the County of Allegheny, where the collector was appointed by the County Treasurer and removed by the successor to the County Treasurer,—*Commonwealth vs. Connor*, 207 Pa. 263; to the office of Treasurer of a school board,—*Commonwealth vs. Sulzer*, 198 Pa. 502, to the office of Highway Commissioner of the City of Harrisburg,—*Commonwealth ex rel. Attorney General vs. Lynch*, 8 Dist. Rep. 347; and to various other officers.

There is, however, a class of cases of which *Commonwealth vs. Black*, 201 Pa. 433, is one in which it is held that this provision of the Constitution does not refer to “subordinate ministerial agents or employees,” but I do not think a mercantile appraiser comes within the latter class. His duties are defined by law; he is required to make assessments upon which an important class of taxation is based and must exercise judgment and discretion in so doing. He exercises more judgment and discretion in making the assessments than a collector in collecting the taxes, and I am of opinion that he is an “appointed officer” within the meaning of the constitutional provision just mentioned, who can be removed at the pleasure of the appointing power.

However, it is not necessary to decide whether a mercantile appraiser can be removed in order to sustain the validity of the assessments to which you refer.

It is a familiar rule of law that the acts of defacto officers are valid so far as they affect the public or third persons. In the case of *Kingsbury vs. Ledyard*, 2 W. & S. 37, an attempt was made to question the authority of a tax collector said to have been illegally appointed. The Court said:

“As against and as respects all other persons, the appointment by the commissioners gives authority de facto and de jure.”

and declined to decide the validity of his appointment.

In *Krickbaum's Contested Election*, 221 Pa. 521, it is said:

“A defacto officer is one who is in possession of an office and discharging its duties under color of authority, and by ‘color of authority’ is meant authority derived from an election or appointment, however irregular or informal, so that the incumbent be not a mere volunteer.”

Mr. Justice Potter said:

“He performed the duties of the office with apparent right, and under claim and color of an appointment, even though it be granted that he was acting under a mistaken authority. But he was in the exact sense of the term an officer de facto. Now the validity of the acts of officers of election who are such de facto only, so far as they affect third persons, and the public, is nowhere questioned.”

This principle applies to all other classes of officers. Therefore, I am of the opinion that even though it might be subsequently decided that Herman D. Long was illegally appointed to the office of Mercantile Appraiser of Dauphin County, the assessments and appraisments made by him would be valid.

This conclusion, of course, applies also to the other counties.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

PRISON LABOR COMMISSION—APPROPRIATION.

The entire appropriation of 1915 for the purchase of material, equipment and machinery, etc., in the penitentiaries, reformatories and other correctional institutions, known as the manufacturing fund, should not be turned over to the Prison Labor Commission, but the custody should be retained by the fiscal officers of the State, and should be disbursed as are other funds.

Office of the Attorney General,
Harrisburg, Pa., January 28, 1916,

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

Sir: In answer to your communication of the 25th inst. relative to the payment of the appropriation of \$75,000 under the Act of June 1, 1915, P. L. 658, creating the Prison Labor Commission, I beg to advise you as follows:

Your inquiry, in effect, is for the purpose of ascertaining whether or not the entire appropriation may be paid over to the Commission on direct requisition which has been made.

The appropriation referred to is made by section 5 of the Act "for the purchase of material, equipment and machinery to be used in the penitentiaries, reformatory and other correctional institutions," and is "to be known as the manufacturing fund."

The claim that the entire appropriation should be paid over to the Commission is based largely on the provision in Section 6 of the Act as follows:

"The receipts from sales of manufactured articles sold as aforesaid * * * * shall not be turned into the State Treasury, but shall be credited to the manufacturing fund created by section 5 and used for the purchase of further material, equipment, machinery and supplies. * * * *"

It is obvious that the custody and control of the public funds should at all times be retained by the usual fiscal officers of the State, unless there be, in a specific instance, a clearly expressed direction to the contrary.

Your attention is called to the concluding provision in Section 6 of the Act, as follows:

"And the Commission shall make a full report of the product, sales, receipts and disbursements of such industries to the Auditor General of the Commonwealth."

It is difficult to understand the object of this latter requirement if the fund is not in the Commonwealth, so that there would be nothing to audit.

Your attention is also directed to Section 8 of the Act referring to the payment to dependents of prisoners of certain amounts credited to them for labor performed in which you will note it is provided

that the relief referred to "shall be paid upon the order of the Prison Labor Commission to the person or persons establishing such dependency, etc."

If the entire fund were to be in the custody and under the control of the Commission, payments thereout would be made by them directly. The provision that payments be made "upon the order" of the Commission clearly indicated that the fund itself is to be in the custody and under the control of others—the fiscal officers of the State.

The conclusion is, that the intention of the Legislature as expressed in the Act, reading all the provisions thereof, as one must do to properly gather such intention, was, that a special fund of \$75,000 be set apart in the State Treasury for the use of the Prison Labor Commission to be designated as the manufacturing fund of the Commission; that receipts from sales of manufactured articles should not be turned into the State Treasury generally, to be mingled with the other funds of the State, but should "be credited to the manufacturing fund" referred to. Subject to these provisions, however, the fund must at all times be subject to the usual provisions relative to the disbursement of public funds as in other cases.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

TRUST COMPANIES.

Trust companies, which have filed their reports, are subject to the penalty prescribed in the Act of June 13, 1907, P. L. 640, if they fail to pay the tax due the Commonwealth within the time specified in the act.

Office of the Attorney General,
Harrisburg, Pa., February 4, 1916.

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

Sir: Your favor of recent date, addressed to the Attorney General, is at hand.

You ask to be advised whether the penalty of fifty per centum mentioned in the Act of June 13, 1907, P. L. 640, applies to a trust company which has filed a proper report and has received a copy of the account settled thereupon but which has neglected to pay the tax within forty days.

The Act of 1907 established a new method for ascertaining the value for taxation of the shares of trust companies by providing that the capital stock, surplus and undivided profits be added together

and divided by the number of shares. The Act provides that the Auditor General, having fixed the value of the shares by the method therein provided, and settled an account according to law, shall transmit a copy of such settlement to the company. It thereupon becomes the duty of the President, Secretary and Treasurer of the company to post the same in a conspicuous place, and the Auditor General is required to hear any shareholder upon the subject of the valuation of such shares of stock at the Auditor General's office within a period of thirty days from the date of the settlement.

The Act then provides:

"It shall be the duty of every such company within a period of forty days after the date of such settlement by the Auditor General, at its option to pay the amount of said tax to the State Treasurer from its general fund, or collect the same from its shareholders and pay over to the State Treasurer; Provided that if any such company shall fail or refuse to make such report, or to pay such tax, at the time hereinbefore specified, or shall make any false statement in such report, or shall fail or refuse by its officers to appear before the Auditor General upon notice, as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the Auditor General, he shall, after having ascertained the actual value of each share of the capital stock of such company from the best information he can obtain, add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect the same from such company."

The question involved here is—whether this Act of Assembly imposes the penalty for the mere failure to pay the tax. The language is that the Auditor General shall

"After having ascertained the value of each share of the capital stock of such company *from the best information he can obtain, add thereto fifty per centum as a penalty assess the tax as aforesaid,*" etc.

It may be suggested that this language contemplates the imposition of a penalty where no report has been filed, because after the filing of a report the Auditor General has the information and does not have to obtain it elsewhere. It may also be suggested that the language "add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect," etc. contemplates a case where there has been no previous settlement of tax, and the Act of Assembly having theretofore provided for the assessment upon filing the report, this clause only relates to a situation where there is no report filed.

Thus construed, the statute would have to be read: "that if such company failed or refused to make report *and* to pay such tax at the time hereinbefore specified."

What justification can there be for construing or changing the "or" to "and." As this proviso plainly reads there are five different situations in which the penalty attaches:

1. Failure to make report.
2. Failure to pay the tax.
3. Making a false statement in the report.
4. Failure to appear before the Auditor General upon notice.
5. Failure to produce books before the Auditor General.

The disjunctive "or" is used to separate each situation to which the penalty attaches. If the "or" is read "and" in one place, why should it not be read "and" throughout the sentence. If there is any justification for reducing the five requirements to four, the same justification might apply to reduce them to three or even to one. Moreover, the suggestion that the language permitting the Auditor General to ascertain the actual value of the capital stock from the best information he can obtain, applies only to situations where the report has not been filed, is not tenable. The Auditor General is not bound by the reports. If he is not satisfied with the report he may go outside of it and ascertain the value of the shares "from the best information he can obtain." In the case of *Commonwealth vs. Union Trust Company of Pittsburgh*, 237 Pa. 353, Mr. Justice Elkin, in construing this Act of Assembly, said page 356:

"The report which the Act requires the trust company to make is intended to furnish a basis upon which the Auditor General shall fix the taxable value of the shares, but it is not conclusively binding upon him. He may or may not be satisfied with its correctness, and if he is not, it is his duty to make further inquiry."

It seems, therefore, that the language authorizing the Auditor General to ascertain the actual value of the shares of the capital stock "from the best information he can obtain, add fifty per centum thereto," etc., applies not only to cases where reports have *not* been filed, but to cases where reports have been filed which contain false statements, and to cases where the Auditor General may not be satisfied with the reports and has directed either the appearance of the officers or the production of the books. Thus interpreted, it offers no argument to sustain a construction that the penalty cannot be imposed where a proper report has been filed and there is only a failure to pay within the time specified. The Act of Assembly has specified the time of payment as forty days after the date when the settlement is made by the Auditor General.

The case of *Commonwealth vs. Clairton Steel Co.* 229 Pa. 246, construed the Act of July 15, 1897, P. L. 292, which relates to the taxation of banks. That Act provided that:

"In case any bank or savings institution shall * * * * collect annually from the shareholders thereof said tax of four mills * * * * and pay the same into the State Treasury, on or before the first day of March, in each year."

it shall be exempt from taxation upon its holdings. The Union Savings Bank of Pittsburgh held the bonds of the Clairton Steel Company. If it had paid its tax prior to the first of March, it would have been exempt from taxation on those bonds and the Clairton Steel Company in turn would have been exempt from any taxation thereon. For some reason, however, it failed to report until the second day of March. The Auditor General promptly settled the tax and mailed the settlement to the bank which was received by it on the fourth day of March, and the tax was immediately sent and turned into the State Treasury on the sixth of March, but the Supreme Court held that the exemption was conditioned upon the payment of the tax on or before the first of March and that as the Union Savings Bank did not comply with this condition there was no exemption.

The same principle applies to the imposition of the penalty under the Act of 1907. In the one case an exemption is obtained by payment within a certain period; in the other case, a penalty is imposed for failure to pay within a certain period. The Legislature has fixed five conditions, for the failure to perform any one of which, a penalty of fifty per centum attaches. The language is clear and, in order to construe the Act of Assembly so that the penalty will not attach for failure to pay where there has been a proper report filed, the language of the Act of Assembly must be changed and other language substituted therefor. In my opinion this cannot be done by so interpreting the statute. It may be that hardships will result from this construction, but if so they are hardships which the Legislature has imposed and we are not at liberty to interpret an Act of Assembly to fit any particular case or to exclude any corporations from its operation.

I, therefore, advise you that the penalty of fifty per centum provided in the Act of 1907 applies to trust companies which have filed their reports, if they fail to pay the tax within the time specified in that Act.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General

STATE HOSPITAL FOR THE INSANE AT DANVILLE—APPROPRIATIONS.

The Auditor General may pay from the appropriation for installing six-inch high pressure fire main pipes, fire hydrants, stand pipes and pumps in building, for the cost of installing the necessary boilers, where it appears that the pumps cannot be operated without them, and that such installation is necessary to carry out the plain purpose of the appropriation.

Office of the Attorney General,
Harrisburg, Pa., March 11, 1916.

Honorable C. E. Willock, Deputy Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 8th inst. inquiring whether any portion of the appropriation of \$15,000 made to the Trustees of the State Hospital for the Insane at Danville, Pa. "for installing six-inch high pressure fire main pipes, fire hydrants, stand-pipes, and pumps in buildings, with hose connections," (Appropriation Acts 1915, p. 153) can legally be used for the installation of boilers necessary to make said fire protection system effective.

It appears from your letter and the accompanying papers that one of the two boilers now in use at this Hospital has been condemned by the Boiler Inspector on account of its age and general condition, and that the other, while not wholly unsatisfactory, does not have sufficient capacity to run the new steam pumps; that \$10,500 of the appropriation have been expended in installing the fire main pipes, hydrants, stand-pipes and pumps and that two boilers of 150 H. P. each necessary to complete the plant and make it effective can be purchased and installed out of the balance of the appropriation.

The purpose of the legislature was evidently to install in the Hospital a complete and working high pressure fire protection system—without proper boilers such a system would be ineffective and useless. The pumps which are expressly provided for in the appropriation cannot be worked without boilers; they are a necessary part of the plant or system, and while not expressly referred to in the appropriation, must have been contemplated by the Legislature as a necessary part of the system. It could not have been intended to install an otherwise complete plant and then have it useless for lack of necessary boilers.

You are, therefore, advised that you may legally approve a warrant drawn for the cost of installation of the two boilers necessary for the completion of this plant, provided the amount is within the appropriation.

Yours very truly,

WM. H. KELLER,
First Deputy Attorney General.

COMPENSATION FOR EMPLOYEES OF THE COMMONWEALTH.

The appropriation Act of 1915, page 64, appropriates the sum of \$15,000 directly for compensation for injury or death to employees of the Commonwealth and not for the purchase of insurance to cover such injuries.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1916.

Honorable A. W. Powell, Auditor General, Harrisburg, Penna.

Sir: Your favor of the 3rd inst., submitting the first requisition for an advancement of \$1,000, to the State Workmen's Insurance Fund, is at hand. You asked to be advised whether the payments should be made directly out of this fund as compensation for injury to or death of employees of the Commonwealth. This raises the question as to whether or not the appropriation is intended to purchase insurance, or whether it is an appropriation made directly for compensation for injuries or death.

There is nothing in the Workmen's Compensation Act or in the appropriation itself that indicates in any way that this appropriation is intended to purchase insurance in the State Insurance Fund. There is no authority for the Bureau of Workmen's Compensation to assess the State on an appropriation or its pay roll, nor is there any authority to pay any portion of the appropriation of \$15,000 for such assessment. The appropriation is: (Appropriation Act of 1915, page 64).

"To the State Workmen's Insurance Fund for injury to or death of employees of the Commonwealth, under the Workmen's Compensation Act of 1915 the sum of \$15,000."

This is a direct appropriation of \$15,000 for compensation for injuries or death.

The requisition, which follows the language of the appropriation, seems to be in proper form and is, therefore, returned to you approved.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General

REPAIR AND RECONSTRUCTION OF PUBLIC BUILDINGS.

The words "fire, flood or storm" used in Appropriation Act No. 743, P. L. 474, Sec. 2, may be so construed as to include "any other unforeseen and unavoidable cause." Such was the evident intentment of the act.

Office of the Attorney General,
Harrisburg, Pa., March 23, 1916.

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

Sir: I beg to acknowledge yours of the 22nd inst., as follows:

"Appropriation Act No. 743. (P. L. 274) Sec. No. 2.

Under this Act and Section the Armory Board of the State of Pennsylvania is desirous of making certain expenditures for extraordinary repairs and reclaiming of an armory at Scranton to prevent its total loss by reason of mine caves, which are at least largely superinduced by the action of waters and floods during the winter and spring season. They justify under the wording 'should such armory building be destroyed in whole or in part by fire, flood or storm,' as found in said Section, claiming that these words are merely special phrases indicating the general term of 'Unavoidable Accidents or Acts of God.'

This Department requests your advice as to whether or not we have the authority to approve a warrant drawn upon this fund by the Governor, upon request of the Armory Board, the same to be used for the purpose I have above cited; all to be vouched in detail for expenditure as required by law."

By said Act the Legislature intended the placing of the said appropriation at the disposal of the Governor, to replace and repair armory buildings owned by the Commonwealth and occupied by an organization of the National Guard, should said armory buildings be destroyed in whole or in part, regardless of the cause, which might produce the injury, and the words "fire, flood and storm" are simply indicative of the kind of causes intended to be covered, and it would be no violation to the rules of construction to read into the Act, after the words "fire, flood and storm," the words "any other unforeseen and unavoidable cause." The primary object is to restore or repair such armory buildings when destroyed or injured, and any unexpected, unforeseen and unavoidable accident which results in injury to such a building, requiring either restoration or repair, are fairly within the intentment of the Act.

You are clearly within your right to approve a warrant drawn upon the fund by the Governor upon request of the Armory Board, the same to be used for the purposes you have mentioned.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE ESCHEATS.

The Auditor General, under the provisions of the Act of June 7, 1915, P. L. 878, would not be justified in employing additional clerks and paying salaries for additional clerk hire out of the appropriation, whereby a deficiency would be created, but the duties imposed by the Escheat Act should be done along with the other duties of his office.

The Escheat Act of 1915 repeals the Act of 1847, P. L. 222, in so far as it is inconsistent therewith, the purpose of the Act of 1915 being to provide a complete and comprehensive system for the escheat of moneys held by persons and corporations to which it applies.

Office of the Attorney General,
Harrisburg, Pa., April 7, 1916.

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

Sir: Your letter of the 23rd ult. requesting an opinion upon several propositions relating to the Act providing for escheats, approved June 7, 1915, P. L. 878, is at hand.

1. Section 5 of this Act provides:

"The Auditor General shall prepare and keep an alphabetical index of the names of all persons which shall appear upon such reports, which index shall contain a reference to the reports from which said names are derived."

You state that the number of reports filed is about 20,000 and the number of items, as far as you can judge, will aggregate about 100,000, and that no provision was made in the general appropriation law for sufficient clerks and employes to carry out this requirement imposed upon you.

The Legislature appropriated, by the General Appropriation Act approved June 16, 1915, a definite sum for clerk hire. The Appropriation Act was passed after the Escheat Act. The Legislature is presumed to have known of the duties imposed by it upon you by the Escheat Act when it made the appropriation for clerk hire. There is no reason why the duties imposed by the Escheat Act should be given preference over the other duties imposed by law upon your office.

I am therefore of opinion that the duties imposed under the Escheat Act should be done along with the other duties of your office, but that you are not justified in employing additional clerks and paying the salaries for additional clerk hire out of the appropriation, especially to carry out the work imposed by this Act, and thereby create a deficiency in your Department for which you must depend upon a subsequent Legislature to provide.

2. Section 6 of the Escheat Act above referred to provides:

"When any particular deposit of money or property received for storage or safe keeping, or held for the benefit of another, dividend, profit, debt, or interest on

debt, shall be first reported to the Auditor General, he shall notify the person entitled thereto of such fact by mail, so far as possible; and shall publish forthwith, once a week for four consecutive weeks, in one or more general newspapers, having the largest circulation, published in the city or county in which such corporations * * * may be located, and the largest periodical, if any, designated by rules of court for the publication of legal notices, a true and accurate statement containing the names, addresses, and amount of money or character of property belonging to such persons, or for whose benefit the same is held."

You ask to be advised whether this section is mandatory and requires you, after the completion of the docket, and index provided for in Section 5, to proceed to give notices by mail and publication as provided in this Section, although no funds are appropriated for carrying out the duties imposed.

The general appropriation Act of 1915 makes an appropriation of \$16,000 to your Department "for the expense of postage," etc. There is no provision for the publication of the notices.

I am of opinion that you should comply with the sending of notices by mail, using your appropriation for postage for that purpose as far as the same may reach, along with the other matters of your Department requiring the expenditure of postage.

As to the publication, I am of opinion that it is your duty to make the publication, if possible. That is to say, if the newspapers are willing to print it with the understanding that they must rely upon the next Legislature to make good the deficiency.

In the case of *Commonwealth vs. Griest*, 196 Pa. 396, which construed the duty imposed upon the Secretary of the Commonwealth to publish proposed amendments to the Constitution, it is said, page 414:

"Two other questions arose upon the hearing in the court below and they are brought before us by the appeal. The first of them is, that as no appropriation was made of moneys from the public treasury to defray the cost of publication in the newspapers, the Secretary of the Commonwealth could not lawfully make the publication. We do not consider that this question is of any serious force, *because, in the first place, it does not appear, and is not averred, that any newspapers have refused to make the publication without being paid or secured for the cost, or even that any of them have been asked to make the publication.* The Secretary is not therefore able to say that he cannot make the publication for the reason stated, and hence such inability cannot be set up as a bar to the enforcement of the act proposing the amendments. *It was at least his duty to try to make the publication before he could be heard to say that it could not be done.* But, in the next place, the

mandate of the constitution is upon him and he must obey it in terms. If it is utterly impossible for him to obey it literally, he can make that clear to the court, stating the reasons, and then it would be for the court to determine in a proper proceeding whether the publication can be made or not. In the third place, it is not to be assumed that the State will not pay, or cannot be made to pay, by judicial decree, the necessary cost of carrying out a peremptory order which has been officially promulgated by the State legislature, in strict conformity with the requirements of the State Constitution. Indeed it is not possible to conceive that the State legislature would be so derelict to its manifest duty, as to refuse to make the necessary appropriation to pay for the execution of its own order. Or even if it did so refuse, can it be seriously doubted that a way would be found by means of a judicial proceeding, to enforce the clear monetary liability of the Commonwealth to defray the necessary expense in question."

I therefore advise you that it is your duty to make the publication with the understanding that the newspapers must rely upon the subsequent appropriation to pay therefor.

3. You ask to be advised whether the Escheat Act of 1915 repeals the Act of 1847, P. L. 222. The Escheat Act of 1915 is intended to provide a complete and comprehensive system for the escheat of moneys held by the persons, corporations, to which it applies. It covers the same subject as the Act of 1847. It, however, does not cover all of the classes of corporations covered by the Act of 1847. It specifically excepts mutual savings fund societies not having capital stock represented by shares which are probably included within the term "savings institutions" in the Act of 1847. The Act of March 6, 1847, is specifically repealed, so far as it is supplied by or inconsistent with the Act of 1915.

Without prolonging the discussion, I am of opinion and so advise you, that the Act of 1915 repeals the Act of 1847 with reference to any kind of corporation within the scope of the Act of 1915, and of course it follows that as to such corporations, it repeals the provision that publication shall be required of "unclaimed dividends and profits amounting to less than \$5.00 or unclaimed deposits or balances amounting to less than \$10.00."

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

TAXATION OF TRUST COMPANIES.

The duty of the Auditor General to impose the penalty for non-payment of tax by trust companies, within forty days from date of settlement, is mandatory. The Act of June 13, 1907, P. L. 640, gives him no discretion to remit, reduce or waive the penalty.

Office of the Attorney General,
Harrisburg, Pa., April 12, 1916.

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

Sir: Your favor addressed to the Attorney General, asking for a construction of the Act of June 13, 1907, relating to taxation of trust companies, is at hand. The facts upon which this request is based I understand to be as follows:

A trust company filed a proper report on July 6, 1915. A settlement was made July 19, 1915, at the same amount as the appraisal by the officers of the company; a copy of the settlement was mailed to the company July 29, 1915. The company, however, failed, through the oversight of its Treasurer, to make payment of the amount of the tax until January 28, 1916, upon which date it paid the exact amount of the tax. On February 16, 1916, the Auditor General settled a penalty of fifty per centum against the trust company, which was approved by the State Treasurer, and transmitted such settlement to the company as a demand for payment. On February 24, 1916, the Treasurer of the company paid into the State Treasury the sum of \$63.15, being interest at twelve per centum upon the tax.

You ask to be advised whether the Auditor General has the right to remit or reduce the penalty under the circumstances, and you suggest that perhaps the word "shall" contained in the Act may be read "may."

The Act of 1907, P. L. 640, provides for the payment of the tax upon the shares of trust companies:

"Within a period of forty days after the date of such settlement by the Auditor General,"

and further provides:

"That if any such company shall fail or refuse to make such report, or to pay such tax, at the time hereinbefore specified, or shall make any false statement in such report, or fail or refuse by its officers to appear before the Auditor General upon notice, as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the Auditor General, *he shall*, after having ascertained the actual value of the capital stock of such company, from the best information he can obtain, add thereto fifty per centum as a penalty, assess the tax as aforesaid, and proceed according to law to collect the same from such company."

In the opinion of this Department furnished you February 4, 1916, construing this Act of Assembly we held that:

"The penalty of fifty per centum in the Act of 1907 applies to trust companies which have filed their reports, if they failed to pay the tax within the time specified in that Act."

We therein referred to the case of *Commonwealth vs. Clairton Steel Company*, 229 Pa. 246. This case construed the Act of July 15, 1897, P. L. 292, taxing the shares of banks, and it turned upon whether the provision with reference to the time of payment was mandatory. In that Act it is provided that if a bank or savings institution pay the tax into the State Treasury on or before the first of March:

"Such bank or savings institution shall not be required to make any report to the local assessor or county commissioners of its personal property owned by it in its own right for purposes of taxation, and shall not be required to pay any tax thereon."

On March 2nd, 1905, the bank forwarded its report to the Auditor General. Settlement was promptly made and mailed to the bank and received by the bank on March 4th. The bank sent its check on March 6th. The bank owned in its own right bonds of the Clairton Steel Company, which company claimed that the bank was exempt from taxation and, therefore, the bonds were not held so as to require the corporation to pay any tax on them. The Court said:

"The language of the proviso granting the exemption as to the time when the stock tax shall be paid is without ambiguity, and, therefore, is not open to construction. * * * We are not at liberty to disregard the time fixed by the Act of 1897, on or before which the stock tax must be paid in order to obtain exemption."

The same language may be applied to this Act. The Act fixes "a period of forty days after the date of such settlement by the Auditor General" for the payment of the tax. If the Auditor General may construe the direction to add a penalty for failure to pay the tax to be optional with him, he may also construe the imposition of the penalty for any other purpose to be optional. I do not think that the word "shall" with reference to the duty of the Auditor General should be read "may." An option of payment within forty days is given by the Act itself. Penalties are imposed for failure to do certain things—among which is the payment within forty days. There is nothing in the context which would lead to the conclusion that these penalties were only to be imposed by the Auditor General in his discretion. They seem to be legislative penalties which it is made the duty of the Auditor General to impose when the facts warrant such imposition.

If the time limit fixed by the Act of July 15, 1897, is mandatory, as is decided in *Commonwealth vs. Clairton Steel Company, supra*, the same reasoning applies to make the time limit for payment in this Act mandatory.

I am, therefore, of opinion that the duty put upon the Auditor General in the proviso above cited, of imposing the penalty of fifty per centum for failure to pay the tax under the Act of June 13, 1907, within forty days, is mandatory and does not give him discretion to waive such penalty as he may see fit.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE PAYMENTS BY COUNTIES, ETC., FOR CONSTRUCTION OF HIGHWAYS.

The money received by the Commonwealth from various counties, boroughs or townships under the provisions of the Act of June 5, 1913, P. L. 417, permitting such municipal divisions to contribute a portion of the cost of reconstruction or improvement of State Highways, may be applied by the fiscal officers to the credit of the State Highway Construction Fund on the books of the State Treasurer and paid out in the same manner and under the same arrangement as is now effective in the operation of that portion of highway funds designated as State-aid.

Office of the Attorney General,
Harrisburg, Pa., April 13, 1916.

Hon. C. E. Willock, Deputy Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 12th inst., inquiring whether there is any reason why receipts to the Commonwealth from various counties, boroughs, or townships, made under the provisions of the Act of June 5, 1913, P. L. 417, permitting them to contribute a portion of the cost of reconstruction or improvement of State highways should not be applied by the fiscal officers to the credit of the Highway Construction Fund on the books of the State Treasurer.

In an opinion already given the State Highway Commissioner, this Department has ruled that the share of the State for such reconstruction or improvement must be paid from State Highway, as distinguished from State-aid highway, funds.

The purpose of this Act was evidently to permit the various counties, boroughs and townships of the State to relieve the Commonwealth through its State Highway Department of a portion of the cost of reconstruction of certain sections of State highway within their

respective limits. The money thus contributed is not given by these various governmental divisions to the Commonwealth generally but is to be applied to a specific purpose, namely, the reconstruction and improvement of certain State highways and is to be expended by the State Highway Commissioner in the same manner as provided by the Act of May 31, 1911, P. L. 468. While the money is paid into the Treasury of the Commonwealth, it does not become the Commonwealth's money generally, but is received as ear-marked for a definite purpose, namely, as part payment on account of the contracts entered into by the State Highway Commissioner for the reconstruction of said State highways, upon the application and agreement of the counties, etc., so contributing. The State Treasury is therefore merely an agent for receiving and paying out the money in accordance with the agreement between the State Highway Commissioner and the respective counties, boroughs and townships.

There is, therefore, no valid reason why the money thus received should not be applied by the fiscal officers to the credit of the State Highway Construction Fund on the books of the State Treasurer and paid out in the same manner and under the same arrangement as is now effective in the operations of that portion of highway funds designated as State-aid.

Very truly yours,

WM. H. KELLER,
First Deputy Attorney General.

AUTOMATIC SLOT-MACHINES.

Automatic slot-machines for selling candy and other commodities, fixed at one permanent place and operated continuously by dropping coins into them, are within the Mercantile License Tax Act of May 2, 1899, P. L. 184, taxing retail vendors of goods.

A retail dealer is one who buys to sell again at a permanent store or place of business.

Office of the Attorney General,
Harrisburg, Pa., April 17th, 1916.

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

Sir: Your favor of the 11th inst., addressed to the Attorney General, is at hand. You ask whether the sales made by automatic slot-machines throughout the State are within the Act of May 2, 1899, P. L. 184, imposing a mercantile license tax upon retail vendors of goods.

I understand that there are automatic machines for the sale of chewing gum, candies and other commodities by which, when a certain sum of money is put in a slot, the machine releases a package or certain quantity of the commodity to the purchaser, and that these slot-machines are placed in public or semi-public places such as railroad stations, lobbies of theatres, etc., and are not connected with the sale, at retail, of other goods.

I also understand that your Department has always ruled that where these slot-machines are located in a store, or connected with other sales of merchandise, at retail, the sales automatically made by such machines are to be included in the sales made at the place of business and, therefore, this opinion does not deal with automatic machines connected with the sale of other merchandise.

The Act of Assembly provides, in part:

"That from and after the passage of this Act, each retail vender of or retail dealer in goods, wares and merchandise shall pay an annual mercantile license tax of two dollars, and all persons so engaged shall pay one mill additional on each dollar of the whole volume, gross, of business transacted annually."

In *Norris Brothers vs. Commonwealth*, 27 Pa. 494, Mr. Justice Black defined a retail dealer as:

"Not one who buys to keep, or makes to sell, but one who buys to sell again."

And Attorney General Elkin in an opinion to the Auditor General of February 14, 1910, said:

"To be a dealer, therefore, within the meaning of the new as well as the old mercantile tax law, there must be a permanent store or warehouse or place of business in which the sales are made."

I understand the distinction which Attorney General Elkin then drew to be between "a fixed and permanent place of business" and businesses such as a butcher who sells the meat "from a stall of a public market or from the butcher's wagon" or "farmers selling their own produce, or occupying a stall or sidewalk, or part thereof, in any of the markets of a city of the first class."

Those who own or operate these automatic slot-machines are certainly "retail venders of or retail dealers in goods, wares and merchandise." The slot-machine is not moved from place to place. It is fixed at one permanent place—such as a railroad station, and remains there as long as business justifies it. It may be that it remains in a single place for several years. The slot-machine does not operate periodically but operates continuously. It sells automatically to those who drop the coins in it, and at all hours. It certainly has

some of the incidents of a permanent place of business attached to it and I am of opinion that it is within the Act of Assembly above referred to as that Act has been interpreted both by this Department and the Courts.

Yours very truly,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE CORPORATIONS MAKING RETURNS.

The Auditor General has the authority to grant an extension of 30 days' time to a corporation to file its annual report, but, having granted one extension, has no right or authority to grant any further extension.

Office of the Attorney General,
Harrisburg, Pa., May 1, 1916.

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

Sir: Your letter of the 13th inst., addressed to the Attorney General, is at hand.

You ask to be advised whether you have the power to grant an extension of time for filing the report of the Venango Oil and Land Company beyond the 31st day of March.

The Act of June 2, 1915, P. L. 730, further amending the 20th Section of the Revenue Act of June 7, 1879, changes the time for making reports of corporations and requires them to be made "annually on or before the last day of February, for the calendar year next preceding."

It provides:

"The Auditor General may, upon proper cause shown, extend the time of filing returns for a period not exceeding thirty days."

The Legislature having fixed the time within which reports shall be filed, and having provided a penalty for the failure to file reports, gave the Auditor General the power, upon proper cause shown, to extend the time of filing for a period not exceeding thirty days. Having given this power of extension, it is apparent that the Legislative intention was that there should be no further extension, and I am therefore of opinion that inasmuch as you have already extended the time of filing the report of the Venango Oil and Land Company until March 31, 1916, you have no right to grant any further extension.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General

IN RE SALARY OF APPOINTED STATE OFFICERS.

Where the Governor fills a vacancy in the head of a State department between sessions of the Senate, the appointee is entitled to the salary attached to the office, but is not entitled, in addition thereto, to receive the salary of any subordinate position he may have held prior to his appointment.

Office of the Attorney General,
Harrisburg, Pa., May 3, 1916.

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

Sir: This Department is in receipt of your favor of April 25, making the following inquiry:

"Charles Johnson, late Insurance Commissioner, resigned some time in the month of March. Upon the 31st day of March the Governor commissioned Samuel W. McCulloch, of the County of Dauphin, Acting Insurance Commissioner of Pennsylvania.

"We have the requisition of Honorable Samuel W. McCulloch for the payment of his salary for the month of April at the rate of \$625.00 per month, being the rate allowed by the Act of Assembly to the Insurance Commissioner.

"You are respectfully requested to advise this Department whether or not, in your opinion, we have the authority to honor the requisition and pay Mr. McCulloch the salary allowed to the Insurance Commissioner under the circumstances I have above stated."

The Act of June 1, 1911, P. L. 607, provides *inter alia*, as follows:

"Section 2. There shall be an Insurance Commissioner for the Commonwealth, appointed by the Governor, with the advice and consent of the Senate, who shall hold office for the term of four years from the first Monday of May, until his successor is appointed and qualified. * * *

"Section 3. The Commissioner shall, with the approval of the Governor, appoint a Deputy Commissioner, who shall perform the duties attached by law to the office of principal during the absence or inability of his principal." * * *

It will be noted that under this Act the Insurance Commissioner is to be appointed by the Governor, while the Deputy Commissioner is to be appointed by the Insurance Commissioner.

Mr. Johnson, while Insurance Commissioner, appointed Samuel W. McCulloch Deputy Commissioner, and on March 31, 1916, he was commissioned Acting Insurance Commissioner by the Governor.

Mr. McCulloch is not now performing the duties of Insurance Commissioner by virtue of his appointment as Deputy, but under his commission from the Governor. In this respect the case is different from *People vs. Hopkins*, 1 Thompson & Cooke (N. Y.) 195. In that

case the relator was Deputy Superintendent of the State Insurance Department and, under the law, as such Deputy was to possess the powers and perform the duties attached to the office of principal, during a vacancy in such office and during the absence or inability of his principal. On May 13, 1872, the Superintendent resigned his office, *creating a vacancy, which continued* until November 20, during all of which time the Deputy performed the duties of Superintendent. It was held—that during the vacancy relator remained Deputy, and he was not during such time entitled to the salary of Superintendent.

On the other hand in *Dickins vs. United States*, 1 *Court of Claims Rep. No. 9*, Dickins held the office of Secretary of the Treasury *ad interim*, by appointment of the President, and it was held that he was entitled to the salary of the Secretary of the Treasury.

A similar question was presented to the Attorney General of the United States, and a like ruling made by him.

Opinions of the Attorney General, Vol. 4, 122.

He who has the commission is entitled to the emoluments of the office unless his authority is revoked by proper proceedings.

State vs. Clark, 52 *Mo.* 508.

The incumbent of an office is *prima facie* entitled to the lawful compensation thereof so long as he holds the office.

Sleigh's Case, 9 *Court of Claims Rep.* 369.

I have been able to find no decisions of the Courts of this State or rulings of this Department on precisely the same point, but there have been several opinions rendered which may throw some light on the question.

In 1890 Attorney General Kirkpatrick rendered an opinion with reference to the right of the Deputy Clerk of the Orphans' Court, upon the death of the Clerk of said Court, to receive for his own use and benefit the fees accruing to said office. The Act of February 12, 1874, P. L. 43, provides:

"That whenever the office of * * * clerk of the orphans' court * * * shall become vacant by death, resignation or otherwise, it shall be lawful for the principal deputy of such officer to discharge the duties imposed by law upon his principal until the appointment and qualification of his successor."

Attorney General Kirkpatrick held that the principal deputy so acting, in the case of the death of his principal, is entitled to receive for his own use and benefit the fees accruing for services rendered by him, so long as the vacancy remains unfilled.

Opinions of the Attorney General, page XVIII.

In 1903 Attorney General Carson ruled that where an act creating a Bureau of Mines was repealed by that creating the Department of Mines, the duties of the chief of the Bureau, his assistant and messenger, being subsequently performed by the same persons as officers of the Department, and an appropriation had previously been made for the salaries of the officers and employes of the *Bureau* until a future time, that such persons were entitled to such salaries until such future time.

Opinions of Attorney General, page 173.

It appearing then that Samuel W. McCulloch is performing the duties of Insurance Commissioner under appointment to that office made by the Governor between sessions of the Senate, I advise you that he is entitled to the salary appropriated by law to the office of Insurance Commissioner, and that his requisition for the same should be honored. He is not entitled, however, to receive, in addition, salary as Deputy from the time his appointment as Acting Insurance Commissioner went into effect.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

CORPORATION REPORTS.

Under the Acts of June 2, 1915, P. L. 728, and June 2, 1915, P. L. 730, corporations have the right to file their reports with the Auditor General up to the last day of March. Reports so filed should be accepted, and the appraisal made thereon without adding a penalty.

Office of the Attorney General,
Harrisburg, Pa., June 5th, 1916.

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

Sir: Your favor of May 19th, addressed to the Attorney General, was duly received. You ask to be advised what action you should take with reference to the reports of corporations which are filed during the month of March without receiving from the Auditor General any extension of time, and you specifically ask—

1. Whether you should appraise and value the Capital Stock, without reference to the report, and attach a penalty of 10 per cent. to your appraisal, or
2. Whether you should accept the report, make the assessment thereon, and add a penalty of 10 per cent. or

3. Whether you should accept the report and make the appraisal thereon without adding a penalty.

The Legislature of 1915 has not left the matter altogether clear. There are two Acts passed on June 2nd. The first (P. L. 728), amends the twenty-second section of the Revenue Act of 1879, as amended in 1889. The second (P. L. 730) amends the twentieth section of the Revenue Act of 1879, as amended in 1889 and subsequently.

The latter Act provides, *inter alia*:

"Provided, That if the Auditor General and State Treasurer, or either of them, is not satisfied with the appraisal and valuation so made and returned, they are hereby authorized and empowered to make a valuation thereof, based upon facts contained in the report herein required, or upon any information within their possession or that shall come into their possession, and to settle an account on the valuation so made by them for the taxes, penalties and interest due the Commonwealth thereon, with the right to the company dissatisfied with any settlement so made against it to appeal therefrom in the manner provided by law; and, *in the event of the neglect or refusal of the officers of any corporation, company, joint-stock association or limited partnership, to make the report and appraisal to the Auditor General as herein provided on or before the last day of March following the month of February in which said report is due to be filed*, it shall be the duty of the Auditor General and State Treasurer to estimate a valuation of the capital stock of such defaulting corporation, company, joint-stock association or limited partnership, and settle an account for taxes, penalty and interest thereon, from which settlement there shall be no right of appeal."

This provision seems to give to corporations the right to file their reports up to and including the last day of March. It seems to refer to the failure to file any report, in which event there shall be an estimated settlement with the penalty attached, but the penalty under this provision cannot be imposed until the failure has been completed—that is until after the last day of March.

The other Section (P. L. 728), provides:

"That, if the said officers of any such limited partnership, joint-stock association, or corporation shall neglect or refuse to furnish the Auditor General, on or before the last day of March in each and every year, with the report and appraisal as aforesaid, as required by law, it shall be the duty of the accounting officers of the Commonwealth to add ten per centum to the tax of said limited partnership, joint-stock association, or corporation for each and every year for which such report and appraisal were not so furnished," etc.

This latter provision also extends to the corporation the right to file reports "on or before the last day of March in each and every year," and it makes it the duty of the accounting officers to impose the ten per centum only when the reports "were not so furnished."

I am, therefore, of opinion that you should receive all reports which are presented during the month of March and make the appraisal and valuation upon them, but that no penalty attaches to corporations which have filed their reports on or before the last day of March.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE SALARY OF MINE INSPECTORS.

A mine inspector is a State Officer and candidates therefor can be voted for only in even numbered years. An inspector whose term would otherwise have expired on December 31, 1915, continues in office until his successor is elected, and during such period is serving by virtue of his original election. He cannot receive the benefit of the Act of June 3, 1915, P. L. 790, increasing the salary of mine inspectors.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1916.

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

Sir: Your favor of the 13th inst., asking an opinion as to whether Benjamin Maxey, Mine Inspector of the Eighth District, is entitled to the increase of salary as provided by the Act of June 3, 1915, P. L. 790, is at hand.

That Act provides that

"On and after the passage of this Act, the salary of Mine Inspectors of this Commonwealth shall be \$3,500 per annum," etc.

Benjamin Maxey was a Mine Inspector of the Eighth District whose term of three years expired on the 1st of January, 1916. The Supreme Court in the case of *Lamb's Nomination Petition*, 251 Pa. 102, held that

"The office of Mine Inspector is a State office and candidates therefor can be voted for only in an even numbered year."

Judge Little, of the Court of Common Pleas of Susquehanna County, on May 26, 1916, held as follows:

"It appearing to the Court that the legal term of Benjamin Maxey, Mine Inspector, expired December 31, 1915, and the Supreme Court having recently held that the election for Mine Inspector in November, 1915, was a nullity, because the office of Mine Inspector is a State office, and that the elections of candidates therefor must be held in even numbered years;"

The Court thereupon appointed the said Benjamin Maxey, of Forest City, Mine Inspector "to serve as such until his successor is duly qualified and elected."

On March 3, 1916, we gave you an opinion that a Mine Inspector was a public officer, within the meaning of Section 13 of Article 3 of the Constitution, which provides that

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

The schedule attached to the amendments of the Constitution and adopted on November 2, 1909, provides:

"In case of officers elected by the people, all terms of office fixed by the Act of Assembly at an odd numbered year shall each be lengthened one year."

Section 11 of the Act of June 8, 1901, P. L. 535, provides:

"Each of said Mine Inspectors shall hold office for the term of *three* years from the first Monday of January immediately succeeding his election to said office, *and until his successor is duly elected and qualified.*"

Benjamin Maxey was therefore in office "until his successor is duly elected and qualified," and there being no election at which his successor could be elected, even though his term would otherwise expire December 31, 1915, his successor cannot be elected until the appropriate election.

I cannot agree with Judge Little in his conclusion that "the legal term of Benjamin Maxey, Mine Inspector, expired December 31, 1915." His legal term did not expire until his successor was elected and qualified. Judge Little purports to have appointed him to a new term. There was no vacancy to which he could be appointed. He was still in office at the time the appointment was made. The appointment, in my opinion, is a nullity, and has no effective force.

I am, therefore, of opinion that he is serving as Mine Inspector under his election which occurred prior to the passage of the Act of 1915, increasing the salaries of Mine Inspectors, and not under the

appointment of the Court of Common Pleas of Susquehanna County, and therefore is not entitled to the increase of salary under the Act of 1915.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE POWERS OF STATE TREASURER TO INVESTIGATE ACCOUNTS
APPROVED BY THE AUDITOR GENERAL.

The State Treasurer has power to summon witnesses and to compel the production of books and documents relating to an account transmitted to him by the Auditor General for his approval, even though the report made by a corporation has been received and filed by the Auditor General.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1916.

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

Sir: Your favor of the 14th inst. is at hand.

You ask whether, under the Act of 1811 and its supplements, conferring equal powers of investigation upon the State Treasurer and Auditor General, the State Treasurer has the right to require the corporation to supply additional information where he is not satisfied with the report of the corporation and the record transmitted to him, and desires such additional information before accepting or rejecting the valuation fixed by the Auditor General.

Section 2 of the Act of 1811 provides:

"That to enable the Auditor General to examine and adjust the public accounts, he is hereby invested with power to compel all persons in the receipt or possession of public moneys to render to him their accounts, and to enforce the attendance **** at his office of such persons, whether party or witnesses, whom he may deem necessary to examine in the investigation of any public account, and to administer all necessary oaths or affirmations; and the Auditor General is hereby also invested with power to compel the exhibition or delivery to him **** of all official or public books, accounts, documents or papers, which have any relation to, or connection with any public account, and *which he may deem necessary in the investigation and adjustment of the same.*"

Section 3 of the same Act provides:

"That when any public account is examined and adjusted, entered in the books of the office and signed by the Auditor General, it shall be submitted, together with the voucher and all other papers and information appertenant thereto, to the State Treasurer for his revision and approbation, *and in order that the State Treasurer may be enabled to revise and examine the accounts so submitted to him, he is hereby invested with power similar to those vested in the Auditor General by this Act.*"

"Similar" is often used to denote sameness in all essential parts:

Commonwealth vs. Fontain, 127 Mass, 452, 454.

The Auditor General is given power to compel the attendance of witnesses, and also the production at his office of "books, accounts, documents and papers", in order to enable him to adjust the account. The State Treasurer is required to "revise and examine" the account submitted to him, and for that purpose he is "invested with similar powers to those vested in the Auditor General."

The Auditor General may be satisfied with a report and not call for the production of additional information. The Treasurer, in performing his duty of revision and examination, may desire additional information. If he cannot require either the attendance of witnesses of the production of books, accounts, documents or papers, he would not have "powers similar to those vested in the Auditor General."

I am, therefore, of opinion that notwithstanding a report of a corporation may have been received and filed by the Auditor General and a valuation fixed by him thereon, the State Treasurer, in performing his duty of revision and examination of such an account, has power to either require the attendance at his office of witnesses, or the production of "books, accounts, documents or papers" which have any relation to or connection with such accounts.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General

IN RE STATE TAXES.

A scire facias to revive and continue the lien of a judgment is not an original writ within the meaning of the Act of April 6, 1830, and is not taxable for State purposes.

Office of the Attorney General,
Harrisburg, Pa., June 27, 1916.

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

Sir: Some time ago you requested an opinion of this Department as to whether a scire facias to revive and continue the lien of a judgment is taxable for State purposes.

Section 3 of the Act of April 6, 1830, provides that

"The prothonotaries of the courts of common pleas ***shall demand and receive on every original writ issued out of said courts *** the sum of fifty cents."

The words "original writ" used in this Act of Assembly do not refer to what was known as an "original writ" at common law, and, as described by Blackstone, which was the mandatory writ issued in the King's name necessary to give the courts jurisdiction.

3 *Blackstone's Commentaries*, 271.

It is rather used in the sense of being the first writ or process to compel the appearance or bring the party into Court. Just what is an original writ in this latter sense is not always easy of definition.

"An 'original writ' means the first process or initiatory step taken in prosecuting a suit. It issues on the application of a party. In England this writ is the praecipe."
Welsh vs. Haswell, 11 Vt. 85, 88.

In the case of *Hollister vs. United States*, 145 Federal, 773, 779, it is held:

"A writ of scire facias on a forfeited recognizance is a judicial writ founded upon and to be proved by the record of the Court taking it. Decisions of State courts are numerous and conflicting as to whether it is the commencement of a civil action or a continuation of some other original proceeding, whether it performs the function of a writ only, or those of a writ and declaration, and whether the plea goes to the record on which it is founded. But, as the decisions of the Supreme Court of the United States are clear and controlling on these questions, the long list of State cases to which our attention is called need not be considered for the purpose of extracting a rule for our government. In *Winder vs. Caldwell*, 14 How. 434, 14 L. Ed. 487, it is said:

"A scire facias is a judicial writ used to enforce the execution of some matter of record on which it is usually founded; but, though a judicial writ, or writ of execution, it is so far an original that the defendant may plead to it. As it discloses the facts on which it is founded, and requires an answer from the defendant, it is in the nature of a declaration, and the plea is properly to the writ."

In *United States vs. Payne*, 147 U. S. 687, 37 L. Ed. 332, it is said:

*"While a scire facias to revive a judgment is merely a continuation of the original suit a scire facias upon a recognizance *** it is as much an original cause as an action of debt upon a recognizance, or a bill in equity to annul a patent."*

This last citation draws the distinction between the scire facias to revive a judgment and other kinds of writs of scire facias. When a judgment has been secured the parties are in Court, and the scire facias does not bring them into Court anew. Its purpose is simply to revive and continue the lien of the judgment already obtained.

I am, therefore, of opinion that such a scire facias is not an original writ within the meaning of the Act of Assembly above referred to, and is not taxable.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE LICENSE TAX ON CARNIVAL COMPANIES.

A carnival company which contracts to give performances in return for a percentage of the profits earned, is not exempt from the payment of the license tax laid by the Act of May 20, 1913, P. L. 229.

Office of the Attorney General,
Harrisburg, Pa., July 6, 1916.

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

Sir: Your recent letter asking for an opinion as to the license tax upon a carnival company is at hand.

I understand from the communication of Harry Beeson that a carnival company is about to give performances in Fayette County for some local organization such as the Order of Moose, and receive as payment a percentage of the receipts, and that the carnival company claims that it should not pay the license because it is playing for a charitable organization.

The Act of May 20, 1913, P. L. 229, includes "all buildings, tents or enclosures used wholly or partly for dramatic or theatrical or operatic or vaudeville performances, or tragedies or comedies or farces, or for the exhibition of trained animals, or of circuses or menageries or museums, or wild west shows."

Section 2 of this Act provides that "it shall be unlawful to give any exhibition open to the public, with or without charge, in any buildings, tents, or enclosures, or any part of the premises connected therewith," of any such performances, "until and unless an annual license or licenses for the building or buildings, tent or tents, or enclosure or enclosures or any part thereof, so to be used for such amusement, exhibition or performance, shall have been obtained from the city or county Treasurer."

Section 5 of the Act fixes the amount of license to be paid to the City or County Treasurer, and Section 22 provides that the Act shall not apply "to any exhibition or performance given by any agricultural or zoological societies, or any exhibition of the products or arts or handicraft given by any society or association having charge of the same; nor shall it apply to any single or occasional exhibition, performance or contest given by any church or charitable association, society, public or private schools, or any institution of learning."

It is apparent that a carnival playing for some local beneficial organization is not within the exception enumerated in Section 22. It may be doubtful whether such organization could be designated as a charity, even if all charities were exempt, but it is not necessary to decide this question because the Act itself has defined what performances are exempt. In any event, the carnival company is not donating its services to charity; it is receiving pay by securing a percentage of the receipts. There is no charity of any kind so far as the carnival company is concerned, whatever may be said of the object of the organization which employs the carnival company.

I am therefore of opinion that a carnival company is not exempt from the payment of the license under this Act of Assembly which gives performances or entertainment upon a percentage basis, even for a strictly charitable organization if such organization is not within the exemption of Section 22.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ENTRY OF SATISFACTION OF MORTGAGE BY THE RECORDER
OF DEEDS.

A Recorder of Deeds has no authority to enter satisfaction of a mortgage by virtue of a mere receipt signed by the mortgagee which acknowledges payment and directs the Recorder to enter satisfaction. A formal letter or power of attorney must be duly executed, acknowledged, stamped and recorded in order to give him such authority.

Office of the Attorney General,
Harrisburg, Pa., July 21, 1916.

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

Sir: I am in receipt of your letter of the 21st inst., transmitting a communication from counsel for the Recorder of Deeds of Mercer County, inquiring as to whether or not the recorder may legally satisfy mortgages of record by virtue of a form of authorization submitted and said to be in use in Butler County.

It appears that the object in view is to avoid payment of the fee of fifty cents which would otherwise be required on the recording of a formal power of attorney and of the federal tax of twenty-five cents chargeable to such powers.

The form is an acknowledgment of the receipt of the amount of the mortgage, with the addition of the statement "and — hereby authorize the recorder of said county to enter this receipt and satisfaction upon the margin of the record of said mortgages," with the form of acknowledgment attached to the effect that the person executing the same had "acknowledged the above *satisfaction* to be his act and deed," etc.

The Act of May 28, 1715, Section 9, 1 Sm. 95, regulating the satisfaction of mortgages provides for the entering of satisfaction by mortgage "upon the margin of the record of such mortgage" recorded in the office for the recording of deeds.

It has been held that the recorder has

"no power to enter satisfaction by virtue of his office; he may do so when authorized by letter of attorney or by virtue of order of court under certain Acts of Assembly."

Water and Gas Co. vs. Jenkyn, Recorder, 20 Pa. C. C. 102.

Unless, therefore, the mortgagee appears in person, as required by the Act of 1715 and "enter satisfaction upon the margin of the record," there is no authority in any one else to satisfy a mortgage, excepting by virtue of a formal letter or warrant of attorney, duly executed, acknowledged, stamped and recorded, in which case the fee of fifty cents must be collected, under Section 4 of the Act of April 6, 1830, P. L. 274, which provides:

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

This charge must, of course, be collected in addition to the legal charge for the satisfaction of the mortgage.

You are respectfully advised, therefore, that the proposed method of satisfying mortgages is invalid and if used would be ineffectual. and the recorders should be so advised.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

TAXATION—CORPORATE LOANS—BONDS HELD BY TRUSTEES.

Under the Act of June 17, 1913, P. L. 507, obligations issued by private corporations to a resident trustee for a non-resident person or corporation are liable to State taxation.

Obligations issued by a private corporation to a resident trustee for a public charity are not liable to State taxation.

Obligations issued by domestic corporations to a non-resident trustee for a resident of Pennsylvania are not liable to State taxation.

Office of the Attorney General,
Harrisburg, Pa., July 21, 1916.

L. Floyd Hess, Esq., Asst. Deputy Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 17th inst., asking to be advised whether obligations issued by private corporations are liable to State taxation under the following conditions:

First: When issued to a resident trustee for a non-resident person or corporation.

Second: When issued to a resident trustee for a public charity.

Third: When issued by domestic corporations to a non-resident trustee for a resident of Pennsylvania.

The taxation of obligations of private corporations for State purposes, is regulated by section 17 of the Act of June 17, 1913, P. L. 507, which provides as follows:

"That all scrip bonds or certificates of indebtedness issued by any and every private corporation, incorporated under the laws of this Commonwealth * * * are hereby made taxable in the year one thousand nine hun-

dred and fourteen, and annually thereafter, for State purposes, at the rate of four mills on each dollar of the nominal valuation thereof."

Preliminary to a discussion of these several propositions it is to be noted, that the provisions of the Act of 1913 above quoted, differ from the language of prior statutes taxing similar obligations, in that the prior legislation confined the tax to obligations issued to and held by residents of this Commonwealth. (Act of June 30, 1885, P. L. 193, Sec. 4) and to obligations held by persons or corporations "as trustees * * for the use, benefit or advantage of any other person" (Act of June 8, 1891, P. L. 229). The act of 1913 omits these qualifying clauses and imposes the tax on all obligations issued by private corporations regardless of how they may be held, so that if such obligations are to be exempted from the tax, some constitutional provision, either State or Federal, must appear, which would operate to exempt them, or, some rule or policy of law must have existed at the time the act was passed rendering them immune from taxation, which rule or policy the legislature indicated no intent to disturb. With these general observations in mind, the several propositions will be considered seriatim.

First: Are obligations issued by private corporations to a resident trustee for a non-resident person or corporation taxable?

There is no State or Federal constitutional objection to the imposition of such a tax, nor does any rule of law or policy appear, exempting obligations so held. On the contrary, the courts of this State have uniformly decided, that obligations so held may be taxed and that the situs of such obligations is the residence of the trustees, see *Guthrie v. Railway*, 158 Pa. 433 and *Com. v. Philadelphia Mortgage and Trust Co.*, 15 Dauphin 96.

I am, therefore, of the opinion that such obligations are taxable.

Second: Are obligations issued by private corporations to trustees for public charities taxable?

There is no constitutional objection, either State or Federal, to taxing obligations so held. The question remains, whether there was in existence at the time the act was passed, any rule of law or policy which exempted them.

In *General Assembly v. Gratz* 139 Pa. 497, it was held that the Act of June 1, 1889, P. L. 420, imposing a tax upon certain personal property therein referred to held by any one "as active trustee for the use, benefit or advantage of any other person" did not operate to tax funds held in trust for charitable or religious objects in which no particular individual or person had any legal or equitable rights, the beneficiaries being selected from year to year at the discretion of the trustees, out of indefinite classes of persons. This decision rested upon the ground that public charities of the State

had been "justly regarded as one of its chief glories" and that the act should not be construed to tax funds held for their benefit or for charitable objects in the absence of a legislative intent to the contrary clearly appearing.

In *Mattern v. Canevin*, 213 Pa. 588, the court decided, that a mortgage held for a religious or charitable institution was exempt from the tax imposed by the Act of June 8, 1891, P. L. 229, on the reasoning of the court in *General Assembly v. Gratz* supra.

This policy of the law—the exemption of obligations and funds held by trustees for charitable institutions and charitable objects—must be presumed to have been in the mind of the Legislature, when it passed the Act of 1913 and in absence of any language in the act conveying a legislative intent to change that policy, the act must be construed so as to leave it undisturbed.

I am, therefore, of the opinion that obligations held by resident trustees for religious and charitable institutions and objects are not taxable.

There is no inconsistency between this conclusion and the conclusion on the first proposition. In both cases, the nature of the legal ownership is involved. If the trustee be found to hold the obligations in trust for a non-resident person or corporation, the tax should be imposed; if the trustee be found to hold the obligations for a public charity, then the policy of the law referred to, applies. In both instances the question is to be determined by the nature of the trusteeship and the interest of the beneficiary is material only for the purpose of determining that question.

Third: Are obligations, issued by domestic corporations to a non-resident trustee for a resident of Pennsylvania, liable to the tax?

The solution of this question is not without difficulty. A matured deliberation has, however, lead to the conviction that obligations so held are not taxable under the Act of 1913 and this, not for the reason that there is any constitutional objection to the imposition of such a tax, for none seems to exist, but because the cases uniformly hold that the situs of intangible property held in trust, so far as its taxability is concerned, is the residence of the trustee and also that the tendency of the courts is to render immune from taxation at the owners domicile intangible personal property which has acquired a situs for taxation in another jurisdiction. In other words, obligations held by a non-resident trustee for a resident beneficiary are taxable at the domicile of the trustee and the courts will not construe taxation statutes of the domicile of the beneficiary, to embrace his interest in such obligations unless the Legislature has included them by express language or necessary implication. See *Dorr v. City of Boston* 72 Mass, 131; *Anthony v. Caswell*

15R. I. 159; *Com v. West India Oil Refining Co.*, 36 L. R. A., N. S. 295 and note. No such intent appears in the Act of 1913 and I am therefore, of the opinion that the bonds so held by the non-resident trustee are immune.

Summarizing, you are advised,

First, that obligations issued by private corporations to a resident trustee for a non-resident person or corporation are liable to State taxation.

Second, that obligations issued by a private corporation to a resident trustee for a public charity are not liable to State taxation.

Third, that obligations issued by domestic corporations to a non-resident trustee for a resident of Pennsylvania are not liable to State taxation.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE COLLATERAL INHERITANCE APPRAISEMENT.

The thirteenth section of the Act of May 6, 1887, P. L. 79, prohibits an attorney appointed to make an appraisement of an estate for collateral inheritance tax purposes from accepting any fee or reward for performing any services for the administrator of the estate which such attorney is to appraise.

Office of the Attorney General,
Harrisburg, Pa., August 3, 1916.

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

Sir: This Department is in receipt of your letter of the 28th ultimo, asking to be advised whether an attorney appointed to make an appraisement of an estate for the purpose of collecting the collateral inheritance tax is prohibited from performing any service for the administrator and receiving compensation therefor from said administrator, under the provisions of Section 13 of the Act of May 6, 1887 (P. L. 79,) providing

"It shall be a misdemeanor in any appraiser, appointed by the register to make any appraisement in behalf of the Commonwealth, to take any fee or reward from any executor, or administrator, legatee, next of kin, or heir of any decedent; and for any such offense the register shall dismiss him from such service, and, upon conviction in the quarter sessions, he shall be fined not exceeding five hundred dollars and imprisoned not exceeding one year, or both, or either, at the discretion of the court."

The obvious intention of this section is to prevent a person from representing the Commonwealth in the appraisal of an estate for the collateral inheritance tax, and at the same time represent the parties interested in the estate on which the tax is to be imposed.

You are accordingly advised that the above quoted Section operates to prohibit an attorney appointed to make an appraisal of an estate for collateral inheritance tax purposes from accepting any fee or reward for performing *any* services for the administrator of the estate which such attorney is to appraise.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

CONDITIONAL SALES.

The 50-cent tax upon original writs under the Act of April 6, 1830, P. L. 272, is not demandable on conditional sales filed in the office of the prothonotary and recorded and indexed under the Act of June 7, 1915, P. L. 866.

Office of the Attorney General,
Harrisburg, Pa., August 10, 1916.

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

Sir: I have received your favor of the 3rd inst. enclosing letter received from the Prothonotary of Bradford County, asking whether the fifty cent State tax under the Act of April 6, 1830, P. L. 272, is due on conditional sales filed in his office, as required by the Act of June 7, 1915, P. L. 866.

Section 3 of the Act of April 6, 1830, P. L. 272, provides:

"The prothonotaries of the courts of common pleas * * * of this Commonwealth, shall demand and receive on every 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; on every writ of certiorari issued to remove the proceedings of a justice or justices of the peace or aldermen, the sum of fifty cents; on every entry of a judgment by confession or otherwise, where suit has not been previously commenced, the sum of fifty cents; and on every transcript of a judgment of a justice of the peace or alderman, the sum of twenty-five cents."

The Act of June 7, 1915, P. L. 866, relating to conditional sales of goods or chattels, attached to real property or chattels real, provides in Section 5:

"Such contracts, or all of the terms required by section four hereof, shall be recorded, and shall be notice from the date of such recording in the miscellaneous docket and indexed in the judgment index, the name of the conditional vendee in the column of defendants, and the name of the conditional vendor in the column of plaintiffs, in the prothonotary's office of the county wherein such real property or chattels real is situate."

The meaning of the words "original writ" was considered by Deputy Attorney General Hargest in an opinion rendered your Department on June 2, 1910, as follows:

"The terms as used in the Act of 1830 means the first process or judicial instrument by which the Court commands something, therein mentioned, to be done."

I am of opinion under this construction, with which I entirely agree, that the recording of the contract referred to in the Act of June 7, 1915, is not an original writ.

Nor does it constitute the entry of a judgment by confession or otherwise. The direction that notice of filing of the contract shall be given by recording and indexing in the judgment index does not make it a judgment in the accepted sense of the term or within the meaning of the Act of 1830.

I am, therefore, of the opinion, and so advise you, that the fifty cent State tax under the Act of April 6, 1830, P. L. 272, is not demandable on conditional sales filed in the Prothonotary's office under the Act of June 7, 1915.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

BONUS ON CAPITAL STOCK.

Prior to the Act of June 15, 1911, P. L. 956, a claim for bonus on capital stock of a corporation was discharged by a judicial sale of the property and franchises of the corporation from which the bonus was due.

Office of the Attorney General,
Harrisburg, Pa., September 15, 1916.

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

Sir: On July 24 you wrote the Attorney General concerning a bonus settlement against the Northwestern Pennsylvania Railroad Company, stating that you were in doubt about the correctness of the settlement, and asked to be advised in reference thereto.

The facts I understand to be as follows:

The Northwestern Pennsylvania Railroad Company was formed February 24, 1911, by the merger of a company of the same name having a capital of \$1,500,000 and the Crawford & Erie Railway Company, having a capital of \$350,000, making a total authorized capital of the present company of \$1,500,000.

The Northwestern Pennsylvania Railroad Company which existed previous to the merger was a reorganization after judicial sale by receivers of the Meadville & Conneaut Lake Traction Company. The latter company was incorporated May 30, 1906, with a capital of \$5,000 which capital was increased to \$1,000,000, June 23, 1906. The Commonwealth claims bonus on \$995,000 of the Meadville & Conneaut Lake Traction Company, which bonus was never paid. The sale was made by virtue of the decree of the Circuit Court of the United States for the Western District of Pennsylvania, on February 7, 1911.

The merger into the present company occurred on February 24, 1911, under the provisions of the Act of April 8, 1861. The question is whether the claim of the Commonwealth, which was a valid claim against the Meadville & Conneaut Lake Traction Company survived the judicial sale and followed the franchises and property of the Meadville & Conneaut Lake Traction Company and now exists as a valid claim against the present Northwestern Pennsylvania Railroad Company.

I find that Deputy Attorney General Snodgrass, on January 26, 1893, in an opinion upon a similar state of facts, 2 *Chester County Reports* 90, said:

"In my opinion purchasers of the franchises in question took them without any liability for the balance of bonus referred to. If the Commonwealth had any lien upon the franchises for such bonus, it was discharged by the judicial sale which, in this case, was at the suit of the Commonwealth herself."

We adopt this opinion. There is no Act of Assembly prior to the Act of June 15, 1911, (P. L. 955), which would give the Commonwealth a lien in this case.

I am therefore of opinion that the bonus settlement was erroneously made and that it should be re-settled and stricken off.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BANKS AND TRUST COMPANIES—REPORTS—PENALTIES.

Under the Acts of June 15, 1897, P. L. 292, and June 13, 1907, P. L. 640, a penalty may be legally imposed on banks and trust companies failing to file their reports at the time prescribed in the acts.

At the top of the forms sent out by the Auditor General, upon which banks and trust companies were to make their reports, was the statement, "For the year ending June 20, 1916." Held, that this was an invitation to banks and trust companies to make their reports at the close of business on June 20th. That it would be inequitable to impose a penalty if reports were not filed on June 20, but were filed within a few days thereafter.

Office of the Attorney General,
Harrisburg, Pa., September 15, 1916.

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

Sir: Some time ago you requested the opinion of this Department as to whether under the Act of June 15, 1897, (P. L. 292), and the Act of June 13, 1907, (P. L. 640), banks and trust companies whose reports are not filed on or before June 20th, are liable to the imposition of the penalty prescribed in those Acts without regard to the date when such report may have been prepared, sworn to or mailed.

About the time of your request, counsel for the Quaker City National Bank wrote this Department the facts with reference to its report. I am advised that these facts are typical of a number of others. They are in brief, as follows:

The Quaker City National Bank at the close of business on June 20, 1916, prepared the report on the form which had been used for a number of years, showing capital, surplus and undivided profits, for the year ending June 20, 1916, which report was executed and immediately forwarded to the Auditor General and received at his Department June 21st. The Auditor General raised some question as to receiving the report on the 21st and indicated that it was not on the form prescribed for the year 1916. He furnished the bank the form for the year 1916, whereupon another report upon that form was made and received at the Auditor General's office about the first of July. The reports for other years were transmitted as follows: for 1910, 1911 and 1912 on June 21st; 1913, June 20th; 1914, June 24th; 1915, June 23d, and no question has heretofore been raised about the imposition of any penalty because they were not filed on or before the 20th day of June.

I find that at the top of the form of report which the Auditor General has prepared, there is the following:

"Report of; Address;
For the year ending June 20, 1916,"

We are, therefore, called upon to determine

- (1) Whether the Act of Assembly imposes this penalty, and

(2) Whether, in view of the facts above stated, it should be imposed for failure to file a report on or before June 20, 1916.

As to the first proposition, the provision is identical in each act. The requirement of the Act of June 13, 1907, is

"That from and after the passage of this act, every company incorporated under * * * commonly known as title insurance, or trust companies, shall, *on or before the twentieth day of June* in each and every year, make to the Auditor General a report in writing, verified by the oath or affirmation of the president, secretary, or treasurer, setting forth the full number of shares of the capital stock subscribed for or issued by such company, and the actual value thereof * * * Provided, That if any such company *shall fail or refuse to make such report*, or to pay such tax at the time hereinbefore specified * * * or shall fail or refuse by its officers to appear before the Auditor General upon notice, as aforesaid, or shall fail or refuse to produce its books for examination when required to do so by the Auditor General, he shall, after having ascertained the actual value of each share of the capital stock of such company from the best information he can obtain, *add thereto fifty per centum as a penalty, assess the tax as aforesaid* and proceed according to law to collect the same from such company."

The Act of 1897 is identical, except that the words "bank or savings institution having capital stock" are used in place of the word "company." This Act fixes the penalty for failure to file the report at the time prescribed.

Commonwealth vs. Clairton Steel Co., 229 Pa. 246.

I am of opinion that under the Act a penalty may be legally imposed when the report is not filed *on or before the 20th day of June*.

(2) In view, however, of the facts above stated, which are typical of those of other companies, should it be imposed at this time?

The Act of March 30, 1811, 5 *Smith's Laws*, 228, gives the Auditor General the general power to make settlements and he is required thereby to make such settlements "*according to law and equity*." Upon the form sent out, in bold type is the statement that it is a report "for the year ending June 20, 1916." In small type is this note: "Should the bank or savings institution decide not to pay the tax before March 1, 1916, it may ignore the paragraph reference to the election, and fill out the statement of facts and execute the affidavit. The report, without the election, should be filed not later than June 20, 1916."

If the report is to be "for the year ending June 20, 1916," it is apparent that it could not be filed in the Auditor General's office, as the law requires, "on or before the 20th day of June." The year would

not end until June 20th had ended. The form of the report, therefore, was an invitation to the banks and trust companies to make up their report at the close of business on June 20th. They could not comply with the instructions upon this form and make a report for the year ending June 20, 1916, and also have it on file on that day.

It would be unthinkable that banks and trust companies which have endeavored to comply with the instructions given by the Auditor General and filed their report on June 21, 1916, or even a day or two later "for the year ending June 20, 1916," should be penalized therefor, because the report was not filed on or before the 20th day of June.

Therefore, while a strict construction of the Act of Assembly may justify the imposition of the penalty for failure to file the report on or before June 20th, I am of opinion that owing to the wording of the form as above indicated, it would be inequitable to impose any penalty upon banks or trust companies which filed their reports promptly "for the year ending June 20, 1916," even though they were not received until a few days thereafter.

I also suggest that at the head of the form for future years there should be in large type—"This report must be filed on or before June 20, 191 a penalty of fifty per cent. will be imposed for failure to do so" instead of the words "For the year ending June 20, 191 ."

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

CAPITAL STOCK REPORTS.

The Auditor General may extend the time for the filing of reports of all corporations included within the scope of the Act of June 2, 1915, P. L. 730, for a period of thirty days after March 31. He may, in his discretion, grant such extension so as to cover reports which have been filed within that time without extension previously granted.

If penalties have been imposed under opinion of the Attorney General's Department, May 1, 1916 (19 Dauphin County Reports, page 193), resettlements should be made.

Office of the Attorney General,
Harrisburg, Pa., September 16, 1916.

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

Dear Sir: In your letter of August 31st, asking to be advised whether a penalty of ten per cent. should be imposed for failure to file reports on or before March 31st, you state that a corporation, composing a system, filed its report on the 23d of April, without an

extension previously granted by the Auditor General, and that you, acting upon a former opinion, took the position that the reports should be received for information only, and made an estimated settlement to which a penalty of ten per cent. was added.

The Act of June 2, 1915, (P. L. 730), further amending the twentieth Section of the Revenue Act of June 7, 1879, provides that every corporation within its terms is required

“to make annually, on or before the last day of February, for the calendar year next preceding, a report in writing to the Auditor General, on a form or forms to be prescribed and furnished by him.”

The Section concludes with a number of provisos. The first proviso authorizes the Auditor General and State Treasurer, if not satisfied with the appraisement and valuation, to make a valuation based upon the facts contained in the report or upon any information within their possession. It further provides:

“In the event of the neglect or refusal of the officers of any corporation, company, joint stock association or limited partnership, to make the report and appraisement to the Auditor General as herein provided, on or before the last day of March following the month of February, in which said report is due to be filed, it shall be the duty of the Auditor General and State Treasurer to estimate a valuation of the capital stock,” etc. The second proviso is

“That if any corporation, company, joint stock association or limited partnership shall certify to the Auditor General that its fiscal year closes, not upon the 31st day of December, but upon some other date, and that it reports to the United States Government as of such other date, that such corporation may, in the discretion of the Auditor General, be permitted to make the returns herein provided within sixty days after such date, subject in all other respects to the provisions of this act. *The Auditor General may upon proper cause shown extend the time for filing returns for a period not exceeding thirty days.*”

The third proviso provides against any hiatus in making reports because of the change of the date fixed by this Act.

In an opinion given you on May 1, 1916, you were advised that the language “the Auditor General may, upon proper cause shown, extend the time for filing returns for a period not exceeding thirty days,” did not give him power to extend the time in the case for filing the report of the Venango Oil and Land Company beyond the 31st of March. We then considered that this language was contained in, and a part of, the proviso above quoted, and referred only to that class of corporations whose fiscal year did not end on the 31st day of December.

Upon careful reconsideration, I am of opinion that although this language appears to be a part of the proviso, the Legislature did not intend to give only a sixty day period for the filing of reports to corporations whose fiscal year ends the 31st day of December, but to give corporations whose fiscal year does not end on the 31st day of December the same sixty day period and also confer upon the Auditor General the right to extend the time an additional thirty days with respect to them.

It seems to me that the Legislature must have intended that the discretion of the Auditor General should be used with reference to all corporations. There is no good reason for granting an extension to the one class and not to all. I think that, although this language is physically a part of one of the provisions, it should be made to apply to all corporations covered by the Act.

I therefore advise you that you should disregard the opinion given you on May 1st, and if any penalties have been inflicted following that opinion, resettlements should be made. I also advise you that the Auditor General may extend the time for the filing of the reports of all corporations included within the scope of the Act of June 2, 1915, (P. L. 730), for a period of thirty days after March 31st, and that he may, in his discretion, grant such extension so as to cover the reports which have been filed within the time, although no extension was previously given.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

TAX ON GROSS RECEIPTS OF HYDRO-ELECTRIC COMPANIES.

Water or water power companies which generate electric current and sell the same to electric light companies, but do not themselves engage in the business of electric lighting, are not taxable upon their gross receipts.

Office of the Attorney General,
Harrisburg, Pa., September 27, 1916.

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

Sir: Some time ago you requested an opinion of this Department as to whether "corporations of the sort known as hydro-electric companies are liable for the tax on gross receipts" imposed by Section 23 of the Act of June 1, 1889, (P. L. 420).

The facts, as I understand them, are as follows:

These companies are incorporated for the storage and transportation of water and water power for commercial and manufacturing purposes, which water power they use to generate electric current which they sell to electric light companies.

I understand the companies to which you refer are incorporated under the provisions of Section 34 of the Act of April 29, 1874, (P. L. 73), and the Act of July 2, 1895, (P. L. 425).

The Act of 1895 provides that:

“Corporations organized * * * for the purpose of supplying water power to the public, and other corporations owning or controlling water power, may develop electric power for commercial purposes by means of water power, and shall have authority to supply current and power to the public,” etc.

The Act of June 1, 1889, (P. L. 420), provides, among other things, in Section 23:

“Every railroad company, pipe line company, conduit company, steamboat company, canal company, slack water transportation company, street passenger railway company, * * * and every telephone or telegraph company * * * and every express company * * * and every electric light company, and every palace car and sleeping car company * * * shall pay to the State Treasurer a tax of eight mills upon the dollar upon the gross receipts of said corporation * * * received * * * from the business of electric light companies,” etc.

In the case of Commonwealth against various electric light companies, reported in *Volume 5, Dauphin Reporter* 89, the Court held that a corporation incorporated as an electric light company was liable to tax upon its gross receipts derived from the business of supplying power or heat, and that therefore

“amounts received from the sale of steam, electric supplies, such as lamps, drop lights, etc., and amounts received from the sale of scrap and other materials should be included in gross receipts of corporations formed for the purpose of supplying light, heat or power by means of electricity, and are taxable as such under the provisions of the act of June 1, 1889, P. L. 432.”

This case was affirmed in *204 Pa 249*. Water companies and water power companies are not among the classes of corporations mentioned in Section 23 of the Act of 1889 which are required to pay a tax on gross receipts. It does not appear from anything before me that water and water power companies actually do electric lighting.

They sell the electric current generated by the water power to corporations which do the lighting. They are neither incorporated for, nor engaged in, the business of electric lighting.

If such water or water power companies engage in electric lighting, they may be taxable, but, on the other hand, I am of opinion, and constrained to so advise you, that if water and water power companies do not in fact engage in the business of electric lighting, they are not taxable on their gross receipts.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ESCHEAT.

The estate of a non-resident who died intestate and without issue, but is survived by a widow as well as collateral heirs does not escheat to the Commonwealth; and the fact that the widow subsequently died without issue but leaving collateral heirs after the real estate of her deceased husband had been set apart to her under the Act of April 1, 1909, P. L. 87, would not cause an escheat.

Office of the Attorney General,
Harrisburg, Pa., September 27, 1916.

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

Sir: Your recent letter requesting an opinion as to whether an escheat has occurred in the estate of J. K. Adams, deceased, is at hand.

The facts, as I understand them, are as follows:

J. K. Adams, a resident of the State of New York, died intestate and without issue, February 16, 1913, leaving a widow and collateral heirs, and real estate situate in this State of a value of \$5,000 or less.

Pursuant to proceedings regularly instituted, the real estate was set apart to the widow under the Act of April 1, 1909, (P. L. 87). The widow subsequently died without issue, seized of the real estate, and survived by collateral heirs who were not of the blood of her husband.

An information in escheat has been filed, claiming that the widow took the estate by descent; that therefore, her heirs cannot inherit it, and that the heirs of J. K. Adams cannot inherit because she held the estate in fee and they are not of the heirs of the last tenant.

This contention is more ingenious than sound. Property escheats to the Commonwealth when a person dies seized of real or personal estate "without heirs or known kindred." If the widow had a de-

feasible estate which would not pass to her heirs upon her death, it certainly would have gone back through her to the heirs of her husband, but the Act of April 1, 1909, (P. L. 87), provides that the estate which she takes up shall go to her "absolutely," and in *Gwynn's Estate*, 239 Pa. 238, it is said:

"The act makes no distinction as to the absolute character of the title between personal property and real estate. The plain purpose of the act is to give the widow an absolute title to whatever claim of property, real or personal, she may choose to take."

In *Styer's Estate*, 42 C. C. 623, where a man died without issue, leaving a widow and collateral heirs, and the widow died before the appraisement of the real estate was made, the husband's administrator was directed to appraise the same to the value of \$5,000 for her estate.

In *Buckland's Estate*, 239 Pa. 608, a husband who survived his wife died before the appraisement, and the Court held that his administrator might proceed to have the appraisement made in accordance with the provisions of the Act.

We think further discussion is unnecessary. In any event, the estate of J. K. Adams, with his heirs, and also his wife's heirs in existence, does not escheat to the Commonwealth of Pennsylvania and you should not proceed upon the information filed therefor.

Very truly yours,

WILLIAM M. HARGEST.

Deputy Attorney General.

IN RE TAX ON SHENANGO FURNACE COMPANY.

The Shenango Furnace Company owns all of the capital stock of the Shenango Steamship and Transportation Company. The steamship company paid a capital stock tax on \$25,000 on its tangible assets in Pennsylvania, and did not pay a tax on \$625,000 on its tangible assets located outside this State. On the question as to whether the furnace company is liable for a tax on the proportion of the value of the shares of the steamship company represented by the tangible assets outside the State, to wit, \$625,000, the Attorney General held, the question is so doubtful that the furnace company should be so taxed and the matter thus submitted to the court.

Office of the Attorney General,
Harrisburg, Pa., October 14, 1916.

L. Floyd Hess, Esq., Assistant Deputy Auditor General, Harrisburg,
Pa.

Dear Sir: Your favor of recent date enclosing the papers in the case of the Shenango Furnace Company, and asking to be advised

what should be the attitude of the Department with reference to deductions of the capital stock of the Shenango Steamship and Transportation Company, is at hand.

The facts, as I understand them, are as follows:

The Furnace Company, incorporated by this State for manufacturing purposes January 23, 1906, owned a line of steamships on the Great Lakes. It subsequently had the Steamship and Transportation Company incorporated by the Commonwealth of Pennsylvania, which took over the steamships. It owns all of the stock of the steamship company. The Transportation Company was taxed in Pennsylvania on its tangible assets in the sum of \$25,000.00 and was exempted from taxation on tangible assets in the sum of \$625,000.00. The manufacturing company was taxed on the proportion of the value of the shares of the steamship company represented by the tangible assets outside of the State; that is to say, \$625,000.00. It is contended by the company that the fiction *mobilia sequuntur personam* should not be applied because the tangible assets are located elsewhere than in Pennsylvania; that this case is ruled by *Commonwealth vs. Westinghouse Air Brake Company*, and that under the Act of January 3, 1868, (P. L. 1318), and the decisions in the case of *Commonwealth vs. Fall Brook Coal Co.*, 156 Pa. 489, and *Commonwealth vs. Lehigh Coal and Navigation Company*, 162 Pa. 603, the tangible assets of the Transportation Company outside of the State should not be used as a basis of taxation. It does not appear that the \$625,000.00 of tangible assets of the Transportation Company acquired a situs for taxation, elsewhere than at the domicile of the corporation, but in any event they were not taxed.

The determination of this question is somewhat difficult. The Act of 1868 provides that

"The shares of stock held by any stockholder in any institution or company incorporated under the laws of this State, which in its corporate capacity is liable to and pays into the State Treasury the tax on capital stock * * * shall not be taxable in the hands of said stockholder personally, for state, county or local purposes."

This exemption applies to corporations as well as to individuals owning such stock.

The Act of June 1, 1889, (P. L. 420), in its first section, referring to the taxation of personal property, provides that the shares of corporations. "except shares of stock in any corporation or limited partnership liable to capital stock tax imposed by the 21st Section of this Act or relieved from the payment of tax on the capital stock by said section," shall be returned for taxation. But this section has been repealed by the Act of June 17, 1913, (P. L. 507), which requires

the return for taxation of personal property enumerated in it, to be made to the local Assessors and it relieves the holders of capital stock which have paid a tax or been relieved from the payment of a tax, from making any return to the local Assessors.

In the case of *Commonwealth vs. Fall Brook Coal Co.*, 156 Pa. 488, the right of the Commonwealth to tax the capital stock of the Fall Brook Railway Company, which was owned by the Fall Brook Coal Company, was involved. The Coal Company was a domestic corporation and the railway company a corporation of both Pennsylvania and New York. Three million, five hundred thousand dollars (\$3,500,000.00) of the capital stock of the railway company was invested in Pennsylvania, and one million, five hundred thousand dollars (\$1,500,000.00) in New York. The railway company paid to the Commonwealth of Pennsylvania its tax on \$3,500,000.00 and the Coal Company paid its tax on \$375,000.00, which did not include the capital stock of the railway company. The railway company paid in New York a capital stock tax on \$1,500,000.00. The Auditor General assessed against the Coal Company a tax on the \$3,500,000.00 represented by the capital of the railway company owned by it and on which the railway company had already paid the tax. This case was decided against the right of the Commonwealth upon the proposition stated by the Court on Page 499:

"The shares of stock in the Fall Brook Railway Company are not taxable in the hands of their holders because they have already paid the State tax through the corporation, and are excepted in express words from the liability to taxation in the hands of the holder by the first section of the act of 1889."

In the case of *Commonwealth vs. the Lehigh Coal and Navigation Company*, 162 Pa. 603, the question of double taxation was also the determining proposition. The opinion starts out—

"This case raises but one question; it is whether shares of stock on which a State tax has been paid by the corporation issuing them are liable to be again taxed in the hands of the holder."

The Court relieved the corporation from taxation on the principle only of double taxation, which was not, in terms, authorized. If the Shenango Steamship and Transportation Company had paid a capital stock tax upon all of its property, then these cases would be authority for the proposition that the furnace company could not be taxed on its holdings in the capital stock of the Transportation Company. But no such tax has been paid. The steam boats of the Transportation Company move from place to place and probably pay no tax anywhere, at least it does not appear that any has been paid.

It must also be remembered that we are dealing with exemptions, and when an exemption is claimed the taxable must show himself within the law permitting the exemption. It is not so much the authority to tax, as the exemption from taxation, which is here involved. It may be said that there is no statutory authority in terms to allow deductions based on the proportion which the capital stock represented by property in the State bears to that represented by property outside of the State, but apportionment has long since become a principle of the taxing law of the Commonwealth, and it must be applied upon equitable principles.

Mr. Justice Elkin, in the case of *Commonwealth vs. Mortgage Trust Company*, 222 Pa. 163, said, page 184:

"The established practice is to treat taxes of this character as apportionable when the decisions or necessities of the case so require."

In *Eastman on Corporations*, Vol. 2, page 669, it is said:

"In such a case, the reason for exempting the shares of stock or capital invested therein from taxation; i. e., that the capital represented thereby has been taxed as a whole to the corporation, fails, except as to so much of the shares and capital invested therein as represents the capital stock on which the corporation has actually paid a capital stock tax, or been exempted, as a manufacturing company, from the payment of tax. Hence it would seem that the proper method would be to exempt from taxation only that proportion of the shares and capital invested therein which the capital on which the company pays a capital stock tax, or from the payment on which it is exempted as a manufacturing corporation, bears to the entire value of the capital stock.

"The same holds true, as well, as to domestic corporations having part of their capital stock invested without the State, and it would seem that the same method should be adopted in allowing deductions on account of capital invested in their shares."

In a former communication you were advised that in the case of the *Commonwealth vs. Girard Trust Company*, that company endeavored to escape taxation on a large part of its capital which was invested in the business of other corporations paying a capital stock tax. It had only been allowed deductions for the investment in such corporations in the proportion in which said corporations paid upon their capital stock, but this argument did not appeal sufficiently to the Court of Common Pleas of Dauphin County to justify its discussion by that Court. I do not think that the recent case of *Commonwealth vs. Westinghouse Air Brake Company* is conclusive of the matter. I am not unmindful of the contention that when the

Commonwealth has had the opportunity to tax the Transportation Company and does not avail herself of it, she should not then tax her shares in the hands of the furnace company.

As I said at the outstart, this problem is not easy of solution and should be determined by the Court.

Therefore I am of opinion that the Shenango Furnace Company should be taxed upon so much of the capital stock of the Steamship and Transportation Company as represents the \$625,000.00 tangible assets outside of the State of Pennsylvania.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE TAX ON CORPORATE LOANS.

Under the Act of June 17, 1913, P. L. 507, it is better administrative practice to impose a tax upon obligations issued by a domestic corporation to a non-resident trustee for a resident of Pennsylvania. To this extent the opinion given by the Attorney General's Department July 21, 1916 (2 Dep. Rep. 1666), is reversed.

Office of the Attorney General,
Harrisburg, Pa., November 9, 1916.

Mr. L. Floyd Hess, Assistant Deputy Auditor General, Harrisburg, Pa.

Sir: Referring to the opinion to you under date of July 21, 1916, by the undersigned, in which you were advised, inter alia, that obligations issued by domestic corporations to non-resident trustees for residents of Pennsylvania are not liable to taxation under the Act of June 17, 1913, P. L. 507, I beg to advise that after a further consideration of the matter, it has been determined that the ruling, as a matter of policy at least, is inadvisable.

It appears that in the case of *Commonwealth vs. Lehigh Valley Railroad Company*, 129 Pa. 429, which has been called to the attention of the writer since the opinion referred to was rendered, the Supreme Court, by its action in sustaining a tax, which included as one of the items therein a tax on bonds held by individual trustees, non-residents of Pennsylvania, inferentially at least adopted a different view, although the particular question was not then raised. The tax in that case was under the Act of June 30, 1885, P. L. 193, Section 4, which Act taxed obligations held by persons or corporations

"as trustees * * * for the use, benefit or advantage of any other person."

The Act of 1913 provides that:

“All scripts, bonds, * * * are hereby made taxable.”

This Act is broader than the former Acts and non-resident trustees are not within the exceptions mentioned in the section.

There is another case—*Commonwealth vs. Buffalo and Lake Erie Traction Co.*, reported in 233 Pa. 79,—which, while not directly in point or decisive of the question, is nevertheless, persuasive of the view that obligations so held are taxable.

The question in that case arose under the Act of June 8, 1891, P. L. 229, imposing a tax of four mills upon the nominal value of all bonds “owned, held or possessed” by residents of this State, and it was held that, notwithstanding the bonds in question were transferred and delivered as collateral security to residents of the State of New York and were there held during the year for which the tax was charged, they were nevertheless “owned, held or possessed” by the transferors who were residents of the State of Pennsylvania and they were, therefore, liable to taxation under the Act.

Of course, there is a difference between bonds pledged as collateral security for a loan and bonds held by a trustee. In the former case, as the Court pointed out, the pledgor still owns the bonds in the popular sense of the term, having merely deposited them for a special purpose. On the other hand, in the latter case, it is the trustee who is the legal owner of the bond and who has the right to exercise all the incidents of ownership relative thereto. True, he may be under some obligation to pay the proceeds over to another and perhaps under the reasoning of the last cited case, the beneficial owner of the bond may be said to be the owner thereof in the popular sense of the term.

As indicated in the opinion heretofore rendered, the question is a close and difficult one, but it has been concluded under the circumstances that until the courts pass upon the question to the contrary, it is better administrative policy to impose the tax on this class of obligations.

You are advised, therefor, that the ruling heretofore made to the contrary, is reversed.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

DEPARTMENT OF HEALTH—APPROPRIATION.

The appropriation of 1913 to the Department of Health carries the sum of \$920,000 and also any balance unexpended from the appropriation of 1911.

Office of the Attorney General,
Harrisburg, Pa., November 20, 1916.

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

Sir: Your favor of the 17th inst., addressed to the Attorney General, is at hand. You ask to be advised whether the appropriation of \$970,000 to the Department of Health, which the Governor reduced to \$920,000, is the total amount of that appropriation, or whether there is, in addition to that sum, the further appropriation of the unexpended balance of the appropriation made to the Department of Health, for the same purposes, for the two years ending May 31st, 1915.

The item to which you refer is found on page 69 of Appropriation Acts of 1915 and is as follows:

"For the payment of the cost of diphtheria antitoxin, and other products for free distribution for the poor; for the employment of such special and assistant engineers, stream and sanitary inspectors, and such other employes as may be necessary; for the fees and necessary traveling expenses of the county medical inspectors and rural health officers; for the necessary traveling expenses of the Commissioner of Health, his assistants, and other employes; for the maintenance of the Bureau of Vital and Morbidity Statistics; for the maintenance of laboratories and experimental station; for educational work and for the payment of all other necessary expenses of the Department of Health in supervising epidemics of diseases and in protecting the public health, two years, the sum of nine hundred and seventy thousand dollars (\$970,000), and in addition thereto, any balance remaining unexpended of the appropriation made to the Department of Health for the same purposes for the two years ending May thirty-first, one thousand nine hundred and fifteen, by the provisions of the General Appropriation Act, approved July sixteenth, one thousand nine hundred and thirteen."

The Governor, after quoting this paragraph in full, said:

"This item is approved in the sum of \$920,000. I withhold my approval from the remainder of said item."

An examination of the vetoes and partial vetoes by the Governor shows that the word "item" as used by him refers to the money item, expressed by the definite figures in the various appropriations vetoed either in whole or in part.

The Legislature appropriated the sum of \$970,000, in bulk, for the purposes mentioned in the paragraph above quoted, and, in addition thereto appropriated the unexpended balance from the appropriation made to the Department of Health for the two preceding years. The veto of the Governor indicates plainly that he intended to reduce the item of \$970,000 by cutting therefrom the sum of \$50,000. There is nothing in the language to indicate that he intended to cut off the indefinite amount of the unexpended balance which was also appropriated to the Department of Health by that paragraph.

I am, therefore, of opinion and so advise you, that the foregoing paragraph in the appropriation bill carries not only the \$920,000 but also "any balance remaining unexpended of the appropriation made to the Department of Health for the same purposes for the two years ending May thirty-first, one thousand nine hundred and fifteen, by the provisions of the General Appropriation Act, approved July sixteenth, one thousand nine hundred and thirteen."

Very truly yours,

WILLIAM M. HARGEST.
Deputy Attorney General.

IN RE MERCANTILE LICENSE TAX.

A piano dealer living in Maryland, hauling pianos into this State and selling them here is engaged in interstate commerce and is not liable to pay the mercantile license tax imposed by the Act of May 2, 1889, P. L. 194.

Office of the Attorney General,
Harrisburg, Pa., December 7, 1916.

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

Sir: This Department is in receipt of your letter enclosing communication of W. F. Skinner, Treasurer of Franklin County, asking whether a piano dealer is liable for a mercantile license tax.

I understand the facts to be as follows:

A piano dealer living in Hagerstown, Maryland, hauls pianos in a wagon into Franklin County, Pennsylvania, in the neighborhood of Waynesboro; leaves the instruments at the homes of people on approval two or three weeks, and later on effects a sale. He has no place of business and does not sell directly from the wagon. After hauling the piano from Maryland into Pennsylvania he leaves it, for a stated period, on approval, in the house of the subsequent purchaser.

Your inquiry involves the question as to whether or not he is engaged in interstate commerce, and whether a mercantile license tax upon this business would be the imposition of a tax upon interstate commerce.

It is settled that the State has no power to impose the tax upon interstate commerce, but just what fact constitutes a tax upon such commerce is not always easy of determination.

The purpose of the tax is immaterial if it be a burden upon interstate commerce.

In the case of *Kirkmeyer vs. State of Kansas*, 236 U. S. 568; 59 L. Ed. 721, a liquor dealer living in Leavenworth, Kansas, where the sale of liquor was prohibited, maintained an office and warehouse in a small town on the Missouri side of the Missouri river, connected by a bridge with Leavenworth. He filled orders for liquors from Kansas customers by deliveries from such warehouse in his own horse-drawn wagon. He was arrested for carrying on an illegal liquor trade in Leavenworth, but the Supreme Court of the United States held that his business was interstate commerce and protected from State interference.

In the case of *Rossi vs. Commonwealth of Pennsylvania*, 238 U. S. 62; 59 L. Ed. 1201, Rossi, a resident of Ohio, took orders for liquors in Lawrence County, Pa., and delivered the liquor from his residence in Ohio to the purchaser in Pennsylvania. Mr. Justice Pitney, in delivering the opinion of the Court, said:

“Thus the sale was negotiated in Pennsylvania, but contemplated and required for its fulfilment a transaction in interstate commerce, which afterwards took place, with the resulting delivery in Pennsylvania.”

In the Rossi case the orders were taken before the interstate shipments were made, but in the matter we are now considering the interstate part of the transaction occur before the sale. I think this makes no difference in principle. The piano was in Maryland and to effect its sale in Pennsylvania required it to be brought from one state to the other. Therefore, the sale involved interstate transportation.

There can be no doubt that a mercantile license tax is imposed upon the business which a merchant does. The Act of May 2, 1889, P. L. 194, authorizing this tax provides that

“Each retail vender of or retail dealer in goods, wares and merchandise, shall pay an annual mercantile license tax of two dollars and all persons so engaged shall pay one mill additional on each dollar of the whole volume, gross, of business transacted annually.”

This tax, therefore, is upon the business, and if the business in question was interstate commerce, the tax is directly upon it.

I am therefore of opinion and so advise you, that such business is not liable for a mercantile license tax.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE AMATEUR THEATRICAL SOCIETY LIABLE TO LICENSE TAX.

A society, incorporated as a first class corporation, and devoted to amateur theatrical performances for which an admittance fee is charged, although the society is not incorporated for profit is liable for the State license tax of \$500 as required by the Act of May 20, 1913, P. L. 229.

Office of the Attorney General,
Harrisburg, Pa. December 19, 1916.

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

Sir: I have just examined the memorandum of opinion given you by the solicitor for the City Treasurer of Philadelphia, relative to the liability of the Stage Society of Philadelphia, operating the Little Theatre, in that City, for a license tax of Five Hundred Dollars, for the year 1915, under the Act of May 20, 1913, P. L. 229, and regret to advise that I must dissent therefrom.

Exemption is claimed by the Society under the 22nd Section of the Act, which provides:

"This Act shall not apply to any exhibition or performance given by any agricultural or zoological societies, duly chartered under the laws of this Commonwealth, or any exhibition of the products of art or handicraft given by any society or association having charge of the same; nor shall it apply to any single or occasional exhibition, performance, or contest given by any church or charitable association, society, public or private schools, or any institution of learning."

The facts appear to be that the Society is a corporation of the first class (i. e. not for profit), organized under the laws of this Commonwealth, that the object of the Society is to promote the study of the drama and art of stage-craft by amateur actors, who do not receive any salary for their services.

It appears, however, that the Society has quite an extended program for the theatrical season, which it advertises through the usual channels, publishes a scale of prices for admission tickets and sells

them, much the same as the usual commercial theatre. It is said that the income derived from the sale of tickets is used to defray the expenses of operating the theatre and that no profit is derived therefrom.

It is a well known rule of construction that exemptions or exceptions are to be strictly construed. Taxation is the rule and exemption is the exception.

By the 22nd Section of the Act above quoted, there are three general classes of exemptions or exceptions.

The Act does not apply to:

1st. "Any exhibition or performance given by any agricultural or zoological societies chartered under the laws of this Commonwealth.

The performances at the Little Theatre do not come within this class.

2nd. "Any exhibition or the products of art or handicraft given by any society or association having charge of the same."

The performances at the Little Theatre do not come within this class.

It follows, therefore, that in order to be exempted from the payment of the license tax under the Act, the performances at the Little Theatre must come within the remaining provision of the Section that it shall not apply to

"Any single or occasional exhibition, performance, or contest given by any church or charitable association, society, public or private schools, or any institution of learning."

While the character of the State Society of Philadelphia, is such as is perhaps contemplated by the language of the Section just quoted. It cannot be said with any degree of reasonableness that this society which arranges as it does, a theatrical program for an entire season, and advertises the same through the usual channels by pamphlets or leaflets and through paid advertisements in the newspapers offering for sale and in fact selling admission tickets at the usual prices for plays produced, with more or less regularity, throughout the theatrical season, is a society which gives a "single or occasional" performance, which the Legislature, in making the provision, intended to exempt.

It may be that an organization, such as the one in question, which does not derive profit from its operations, ought to be exempted from the payment of the tax, but that is a matter for legislative con-

sideration. The question of profit or no profit is not the test. The exemption applies only to "any single or occasional" exhibition, performance, etc.

It follows that the Stage Society, of Philadelphia, operating the Little Theatre, is liable for the tax, and you are so advised.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

OPINIONS TO THE STATE TREASURER.

OPINIONS TO THE STATE TREASURER.

CUSTODY AND MANAGEMENT OF THE STATE WORKMEN'S INSURANCE FUND.

The Auditor General is not required to countersign receipts given by the State Treasurer for payments made to the latter on account of the State Workmen's Insurance Fund.

The moneys paid into the fund are not State funds and the warrants issued by the State Treasurer thereon need not be countersigned by the Auditor General. The Act of June 2, 1915, P. L. 762, is intended to provide a complete system for the payment of moneys out of the fund.

Approval of a banking institution as a State depository by the Board of Revenue Commissioners and the Banking Commissioner is sufficient to justify the deposit therein of moneys for the State Workmen's Insurance Fund. Such deposit should be made in the name of, and the bond required should be made to run to the "State Treasurer, Custodian of State Workmen's Insurance Fund" and not to the Commonwealth.

Office of the Attorney General,
Harrisburg, Pa., December 9, 1915.

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

Sir: Your favor of the 4th inst., requesting an opinion of this Department as to the method of depositing and disbursing the State Workmen's Insurance Fund, is at hand.

This Fund is created by and is to be administered under the provisions of the Act of June 2, 1915, P. L. 762.

This Act provides in Section 4, as follows:

"The State Treasurer shall be the custodian of the Fund; and all disbursements therefrom shall be paid by him, upon vouchers authorized by the Board and signed by any two members thereof, except as herein-after provided in sections twenty-two and twenty-three. He may deposit any portion thereof not needed for immediate use as other State funds are lawfully deposited, and the interest thereon shall be collected by him and placed to the credit of the Fund."

Section 11 provides, *inter alia*:

"If at the expiration of any year there shall be a balance remaining, after deducting such disbursements, the unearned premiums on undetermined risks, and the percentage of premiums paid or payable to create or maintain the surplus provided in section nine of this act, and after setting aside an adequate reserve, so

much of the balance as the Board may determine to be safely distributable shall be distributed among the subscribers in proportion to the premiums paid by them, etc."

Section 12 provides, *inter alia*:

"The Board may invest any of the surplus or reserve belonging to the Fund in such securities and investments as are authorized for investment by savings banks * * * The State Treasurer shall pay all vouchers drawn on the Fund for the making of such investments, when signed by two members of the Board, upon delivery of such securities or evidences of indebtedness to him, when there is attached to such vouchers a certified copy of the resolution of the Board authorizing the investment. The said Board may, upon like resolution, sell any of such securities."

Section 17 provides:

"All premiums shall be payable to the State Treasurer, who shall issue an appropriate receipt therefor; and such receipt, together with the certificate of the Board specified in section sixteen hereof, shall be the evidence that the applicant has become a subscriber to the Fund and is insured therein."

Section 18, among other things, provides for a refund to the subscriber of the premium paid by such subscriber.

Section 23 provides among other things:

"That the Board shall * * * issue such warrant or warrants as may be necessary to pay the sums therein agreed upon. Such warrant or warrants shall be signed by a member of the said Board, or an agent appointed by the said Board for this purpose."

and provides also that when an award is made,

"the State Workmen's Insurance Board shall, from time to time, until such award is modified, reversed, or terminated, issue such warrant or warrants as may be necessary to pay the sums therein lawfully awarded against the said Fund. Such warrant or warrants shall be signed by a member of the State Workmen's Insurance Board, or by an agent appointed by the Board for that purpose, etc."

Section 24 provides in part:

"All payments to employes, dependents of deceased employes, physicians, attorneys, investigators, and others entitled to be paid out of the Fund, shall be made by the State Treasurer, on a warrant of the Board as aforesaid."

(1) Your first question is whether the receipts issued by the State Treasurer for payments made to him for the use of the Fund, should be countersigned by the Auditor General.

The Act of June 2, 1915, P. L. 762, providing for the creation and administration of the State Insurance Fund, is one of seven acts intended to constitute a complete system to carry into effect Workmen's Compensation in Pennsylvania.

It is a familiar rule that while repeals by implication are not favored, such principle is relaxed where it is apparent that the later act is intended to cover the whole subject matter and to constitute in itself a separate and distinct scheme.

Section 17, heretofore quoted, provides that the State Treasurer "shall issue an appropriate receipt" for the premiums, which receipt, together with the certificate of the Board, shall be evidence that the applicant has become a subscriber to the Fund. There is nothing in the Act which requires the Auditor General to countersign such receipt.

Section 8 of the Act of April 10, 1849, P. L. 644, provides in part:

"That no receipt for money paid into the State Treasury shall be good or available in law unless countersigned by the auditor general, to whom all receipts for money paid into the treasury shall be presented."

The language of the Act of 1915 apparently conflicts with the language of the Act of 1849.

In *Commonwealth vs. Powell*, 249 Pa. 144, it has been determined that there is nothing in the Constitution to prevent the Legislature from providing a new or different system for the payment and disbursement of State funds.

Therefore, answering your first inquiry, I am of the opinion that even assuming the Workmen's Insurance Fund was State money and went into the State Treasury, the Auditor General is not required to countersign the receipts given by the State Treasurer, under the Act of April 10, 1849, for payments made to the latter for the State Workmen's Insurance Fund.

(2) Your second inquiry is whether the Acts of May 29, 1891, P. L. 132, and April 29, 1909, P. L. 281, are applicable to payments made from the State Insurance Fund.

The first Act of 1891 provides in part:

"That from and after the passage of this act all warrants for the payment of appropriations of moneys from the State Treasury that are not drawn by the Auditor General in pursuance of the provisions of the Act" of

March 30, 1811, "shall be presented to the Auditor General to be charged and countersigned by him before the same shall be paid by the State Treasurer, etc."

The Act of 1909 provides:

"That every warrant drawn by the Auditor General upon the State Treasurer shall be transmitted by the Auditor General to the State Treasurer, who shall, thereupon, make payment to the person, persons, firm, or corporation named as payee or payees in the warrant; and said warrant shall be retained by the State Treasurer, to be filed by him as a voucher in the office of the Auditor General. And every warrant drawn by any other officer of the Commonwealth, who now is, or may hereafter be, by law, authorized to draw warrants upon the State Treasurer, shall first be transmitted to the Auditor General, for his counter signature; and shall thereafter be paid by the State Treasurer, in the same manner as hereinbefore prescribed in the case of warrants drawn by the Auditor General."

This inquiry involves a consideration of the character of the State Workmen's Insurance Fund. Does the Fund constitute State moneys; is it deposited in the State Treasury? The Fund is called the State Workmen's Insurance Fund; it is created by the premiums paid by those who become subscribers to it. This Fund is not a payment made to the State in satisfaction of any debt or obligation due to the State; it is a Fund created through the machinery provided by the State for the purpose of enabling the State to further the efficient administration of Workmen's Compensation. No part of the Fund belongs to the State. In Section II it is provided that at the expiration of any year after the Fund has been administered and all necessary payments made and the surplus set aside—

"so much of the balance as the Board may determine to be safely distributable shall be distributed among the subscribers in proportion to the premiums paid by them."

and in Section 18 there is a similar provision for the return of the excess premium to the subscriber.

The State Treasurer is designated, in Section 4, as "the custodian of the Fund." In Section 12 he is designated as the "custodian" of the securities purchased by the money in the Fund. The Act of Assembly nowhere requires the money to be deposited in the State Treasury.

Answering your second inquiry, I am of opinion that the funds cannot be considered as deposited in the State Treasury, and therefore the Act of 1891 relating to the appropriations of moneys from the State Treasury, does not apply, and that the Act of April 25,

1909, refers to warrants drawn by the Auditor General or by other officer of the Commonwealth upon State funds, and that the Act of 1915, is intended to prescribe an exclusive scheme or system in itself for the payment of moneys out of the Fund, and therefore, the Act of 1909, does not refer to payments out of the Workmen's Compensation Fund.

(3) You also ask to be advised whether the Act of February 17, 1906, P. L. 45, applies to the administration of this Fund.

Section 4, of the Act of 1915, provides that the State Treasurer

"may deposit any portion thereof not needed for immediate use as other State funds are lawfully deposited, and the interest thereon shall be collected by him and placed to the credit of the Fund."

This direction seems to be clear. State funds are deposited under the provisions of the Act of February 17, 1906, P. L. 45, and therefore, I am of opinion that in so far as its provisions are not in conflict with any of the provisions of the Act of 1915, the deposit of the State Workmen's Insurance Fund is governed by the Act of 1906.

I also advise you that when the Board of Revenue Commissioners and the Banking Commissioner have approved a banking institution as a State depository, such approval is sufficient to justify the deposit of the State Workmen's Insurance Fund therein without any special approval by the said officers for that purpose.

I also advise you that the bond should not run to the Commonwealth, but should run to the "State Treasurer, Custodian of the State Workmen's Insurance Fund," and that the Fund should not be deposited to the credit of the Commonwealth, but to the credit of the "State Treasurer, Custodian of State Workmen's Insurance Fund."

Answering your inquiry as to whether the money belonging to this Fund is to be taken into account in keeping within the maximum deposit as fixed by Section 4, of the Act of 1906, I have to advise you that Section 4 of that Act relates to State moneys only, and that the money belonging to this Fund should not be taken into consideration in fixing the maximum deposit of State funds.

You also ask to be advised as to whether this Fund must be deposited in one of the six active depositories, as provided by Section 8 of the Act of 1906. That Section provides that

"The Revenue Commissioners and the Banking Commissioner, or a majority of them, shall designate two banks or trust companies in Dauphin County, two banks or trust companies in Philadelphia County, and two banks or trust companies in Allegheny County, to

be known as active depositories, in which shall be deposited a sufficient amount of the daily receipts of the State Treasury to transact the current business of the Commonwealth."

This plainly refers to the moneys belonging to the State which go into the State Treasury, and in my opinion it would not control the deposit of the State in Workmen's Insurance Fund, that is to say, that banks which have been selected as State depositories under the provisions of the Act of February 17, 1906, may be used as the active depository for the State Workmen's Insurance Fund and that such Fund is not limited to the active depositories as provided by Section 8 of said Act.

I herewith submit to you a form of the bond to be given you as custodian of the State Workmen's Insurance Fund.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

INSURANCE OF EMPLOYES OF "GOVERNMENTAL AGENCIES" CREATED BY THE STATE.

The Workmen's Compensation Act of 1915 distinguishes between the Commonwealth proper and "governmental agencies created by it" as employers of labor.

The provision in the General Appropriation Act making appropriation to the State Insurance Fund to cover compensation claims of employees of the Commonwealth does not provide for the insurance of employees of "governmental agencies" having the power of employment and discharge of subordinates. Such agencies are bound to insure their own employees and to pay for the same out of their ordinary receipts or appropriations.

Office of the Attorney General,
Harrisburg, Pa., December 9, 1915.

Honorable Robert K. Young, Chairman, State Workmen's Insurance Board, Harrisburg, Pa.

Sir: I have your favor of the 2nd inst. requesting an opinion as to whether "under the State Workmen's Compensation Act of 1915, agencies of the State government which receive separate appropriations and have the power of employment and discharge of subordinates (such, for instance, as Boards or Commissions managing Hospitals for the Insane and similar institutions) are bound under the provisions of said act to insure their employees, or whether such employees are to be insured under said act as employees of the Commonwealth."

Section 305 of the Workmen's Compensation Act of June 2, 1915, P. L. 736, provides, *inter alia*, as follows:

"Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the Bureau from such insurance."

Section 103 of said Act defines the word "employer" as follows:

"The term 'employer' as used in this act is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it."

A clear distinction is recognized in this definition between the Commonwealth and governmental agencies created by the Commonwealth. The act treats such governmental agencies as separate employers not included in, or embraced under, the term, Commonwealth. The same distinction is maintained with regard to *employees* of governmental agencies of the Commonwealth.

In Section 302 (a) of the Act it is provided:

"It shall not be lawful for any officer or agent of this Commonwealth, or for any county, city, borough or township therein, or for any officer or agent thereof, or for any other governmental authority created by the laws of this Commonwealth, to give such notice of rejection of the provisions of this article to any employee of the State or of such governmental agency."

thus recognizing the existence of employees of governmental agencies separate and distinct from employees of the Commonwealth itself, and of any county, city, borough or township of the Commonwealth.

In the General Appropriation Act of 1915 (Appropriation Act page 64) there is the following appropriation:

"To the State Workmen's Insurance Fund to pay compensation for injury to, or death of, employees of the Commonwealth, under the Workmen's Compensation Act of one thousand nine hundred and fifteen, the sum of fifteen thousand dollars."

It will be noted that this appropriation is limited strictly to compensation for injuries to, or death of, employees of the Commonwealth, and that no provision is made that it or any part of it shall be used to pay compensation for injuries to, or death of, employees of governmental agencies of the Commonwealth,

As the same Legislature which made this appropriation enacted the Workmen's Compensation Act, and was fully conversant with the definition of the word "employer" contained in it, and the various persons and authorities affected thereby, it is reasonable to infer that in making the appropriation above referred to (a sum not more than enough to pay for the compensation of the employes proper of the Commonwealth, as distinct from those connected with its various agencies under separate management and control) the Legislature intended that the employes of such agencies or institutions should be separately insured by those employing them and in charge of their direction and control out of the funds belonging to, or appropriated to, them.

I beg to advise you, therefore, that the appropriation of \$15,000.00 to the State Workmen's Insurance Fund to pay compensation for injuries to, or death of, employes of the Commonwealth is limited to employes proper on the pay-roll of the Commonwealth and its Departments, and does not include employes of governmental agencies of the State which receive separate appropriations, and have the power of employment and discharge of subordinates. Under the Act they are bound to insure their own employes and to pay for the same from their ordinary receipts or out of the funds appropriated for their maintenance.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE ADVANCES TO HEADS OF DEPARTMENTS.

The State Treasurer is justified in accepting from the head of a department, when a requisition is made to him for an advancement, a certificate of the amount which has been expended by that department out of former advancements, although vouchers for such expenditures may not at that time have been audited. The State Treasurer may treat such certificate as a sufficient assurance of the proper expenditures of moneys advanced.

Office of the Attorney General,
Harrisburg, Pa., March 8, 1916.

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

Sir: I beg to acknowledge your communication of the 17th ult., in which you direct my attention to the Act of June 2, 1915, P. L. 76, and particularly to that part thereof which provides as follows:

"That the advancement shall never in any case exceed the amount of the bond of the officer or individual having control of the disbursements from the funds so advanced."

I have, as you are aware, given this matter much consideration, both personally and in consultation with yourself, the Auditor General and the Commissioners of Highways and Health.

The object of this Act is the protection of the Commonwealth against loss through default of its officials, and it can be fairly assumed that the Legislature had in mind the operations of the several Departments of the Commonwealth and did not intend to hinder or obstruct them in the transaction of their business. I assume that the only two Departments which would be seriously affected by literal construction of this Act would be Highways and Health, in the conduct of which large amounts of money are involved and in which it would be impracticable for their respective Commissioners to produce to you at the time of their respective requisitions, vouchers for all moneys which they had previously expended.

In the usual course of business, some of these items would be in the hands of the Executive Controller, some in the hands of the Governor, and some with the Auditor General, and whilst the moneys had been expended, these expenditures had not been duly vouched.

I am, therefore, of opinion, and so advise you, that you will be justified to accept from the head of a Department, when a requisition is made to you for an advancement, a certificate from him of the amount which he has expended out of former advancements, although the vouchers for such expenditures may not at that time have been audited, and that you can treat such certificate as a sufficient assurance of the proper expenditures of moneys advanced and to regulate your further advances by the amount which he so certifies to you has been expended.

I repeat the assumption that the object of the Act of June 2, 1915, was for the protection of the Commonwealth against default of its officials. It was not intended to hinder or obstruct the business of these Departments and the difficulty of strict application to such Departments as Health and Highways could not have been fully appreciated.

The object being protection, I am of the opinion that a bond of \$100,000.00 from the Commissioner of Health and from the Commissioner of Highways, would be sufficient security for the Commonwealth, and that you would be justified to advance to the heads of these Departments reasonable sums in excess of that amount should there appear to be an exigency, or reasonable necessity for such advance.

I again express the thought that all moneys of the Commonwealth with the exception of probably petty cash, should be kept in the State Treasury and that all disbursements should be made directly thereout upon vouchers from the several Departments. We have the anomalous condition of a banking department in each State Department, for which there is just about as much reason as there would be for the foreman of each Department of a large manufacturing establishment paying the bills, etc., of that department out of the moneys under his control, instead of payment by the treasurer of the corporation, as is universally done.

If I have not fully answered your request, please command me further.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

GRATUITY TO MRS. E. L. DRAKE.

The State Treasurer may pay to the administratrix of Mrs. E. L. Drake the amount of the gratuity which has accrued at her death, under provision of Act of April 8, 1873, P. L. 557.

Office of the Attorney General,
Harrisburg, Pa., July 12, 1916.

Mr. Thomas A. Crichton, Cashier, Treasury Department, Harrisburg, Pa.

Dear Sir: This department is in receipt of your letter of recent date relative to the claim of the administratrix of the estate of Mrs. E. L. Drake, deceased.

The question involved arises under the act of April 8, 1873, P. L. 557, entitled "An act to grant an annuity for the relief of E. L. Drake and wife."

It is interesting to note that the bounty was given to Drake as stated in the preamble to the act, because he had discovered "large quantities of petroleum" in the State, which discovery had "greatly stimulated various industries" and had also "added directly to the revenues of the Commonwealth more than one million dollars," etc., and that Drake was in "indigent circumstances and helpless from disease," etc.

Sec. 1, of the act provided for an annuity of fifteen hundred dollars to E. L. Drake for and during the term of his natural life, and

“—from and after the death of said Drake, in case his wife shall survive him, a sum of fifteen hundred dollars per annum shall be paid to her so long as she shall remain his widow.”

By Section 2, of the act, State Treasurer was directed to pay

“—in equal semi-annual payments, the above mentioned sum. The first semi-annual payment to be made on the thirtieth day of May, Anno Domini one thousand eight hundred and seventy-three.”

You advise that E. L. Drake died some years ago and that his widow had been drawing “the annuity” since. You further advise the widow died on May 17, 1916 and inasmuch as a semi-annual payment would not have been payable until May 30, you ask to be advised, whether the amount of the gratuity accrued at the date of the death of Mrs. Drake, may be paid to her administratrix.

Without entering into a lengthy discussion of the distinction between a technical annuity and a direction to pay, as a gratuity, a certain annual sum, it is sufficient to say that the bounty created by the act of 1873 does not constitute such annuity notwithstanding it is so designated in the statute. The law in this state is well settled that annual sums given as gratuities, may be apportioned, see Bayard’s Estate 7 D. R. 279; Power’s Estate 10 D. R. 165; Kemble’s Estate 12 D. R. 231 and Warley’s Estate 22 D. R. 790. While these cases all concerned the apportionability of annual gratuitous sums given by wills, the reasoning of the courts applies with equal force to the interpretation of the acts of April 8, 1873, and the act of 1915 above referred to.

The express purpose of the legislation was to provide for the maintenance and support of the beneficiaries. It has been held in New Jersey, that even where an annuity was created by a deed (in which case the rule as to non-apportionability would peculiarly apply) nevertheless, as the manifest purpose of the obligation was to furnish support to the annuitant, an apportionment would be decreed irrespective of the age or relation of the annuitant to the guarantor. In re Lackawanna Iron and Coal Company 37, N. J. Eq. Cas. 26.

These departures from the old common law rule of non-apportionability of annuities, a rule which has not always been properly understood and, therefore, frequently misapplied, have been dictated by considerations of justice and humanity which the Commonwealth may well follow. Even in England, where the old rule originated, as did all our common law, it was eventually regarded as so opposed to modern ideas of right and justice, that it was abolished by legislative enactment. See cases cited.

You are respectfully advised, that you may lawfully pay to the administratrix of the estate of the widow of E. L. Drake, the amount of the gratuity which had accrued at the date of her death.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE DEPOSIT OF SECURITIES BY INSURANCE COMPANIES.

1. Under the Act of June 1, 1911, P. L. 602, the State Treasurer should receive from the Insurance Commissioner the securities referred to in the act, keep them safe and return them to the owner upon a proper certificate from the Insurance Commissioner.

2. The State Treasurer has no power to return such securities to the Insurance Commissioner to be by him delivered to the company owning the same, but such return should be made direct by the State Treasurer to the proper company.

3. When a company proposes to substitute securities, it is the duty of the Insurance Commissioner to determine their value, and a written statement from the Commissioner certifying that the securities to be substituted are equal in value to those sought to be withdrawn, is a sufficient warrant for the State Treasurer to return the securities requested.

4. When a company desires to have all of its securities returned, the State Treasurer should make such return only upon a certificate of the Insurance Commissioner expressly stating that he is satisfied that the securities are subject to no liability and are not required to be longer held by any provision of law for the purpose of original deposit.

5. In the case of a foreign insurance company, the certificate should state that the company has ceased doing business in the Commonwealth and is under no obligation to policy holders or other persons in this Commonwealth or in the United States for whose benefit such deposit was made.

Office of the Attorney General,
Harrisburg, Pa., November 29, 1916.

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

Sir: This department is in receipt of your communication of the 14th inst. asking for a construction of the Act of June 1, 1911, P. L. 602, entitled:

"An act authorizing insurance and surety companies to make a deposit of certain securities with the Insurance Commissioner, to enable them to do business in other States or with the United States Government; and requiring the State Treasurer to hold all deposits, so made, in the name of the Commonwealth."

An examination of the law and departmental practice prior to the passage of the Act of 1911 will aid the proper disposition of the several questions raised by your inquiry.

By the Act of April 6, 1868, P. L. 65, a system was established whereby companies, incorporated in this State and desiring to do business in other states, could deposit securities with the Auditor General or other public officer" in such amounts and for such purposes as the laws of those states, in which it was sought to do business, required. It provided that if such officer was satisfied that the securities so deposited were worth the amount required, he should receive and *hold the same* or those given in exchange therefor, and, from time to time, certify to such other states, the fact, that the company had made a deposit and that he was satisfied that the securities were worth the sum designated by the laws of such other states. Provision was further made for the substitution of securities and for their withdrawal when no liability remained against the company. I understand, the practice which obtained under the Act of 1868 was as follows: Originally, the Auditor General received and *held in custody* under the trusts imposed by the act, the securities designated, and that he had the absolute administration of the provisions of the statute. In 1873, upon the creation of the Insurance Department, the Auditor General discontinued the receipt and custody of the securities, and all the powers and duties were assumed and discharged by the Insurance Commissioner, who not only received the securities, but held them in custody and made return to the company when, in his judgment, it was entitled thereto.

From a comparison of the two Acts, it is apparent that the Legislature had the Act of 1868 in contemplation when it passed the Act of 1911. The language of the first section of both statutes is identical, excepting for those changes which were the object of the subsequent legislation. It seems to have been the intent of the Act of 1911 to enlarge the classes of corporations entitled to the benefits of the act; to sanction the practice which had obtained under the Act of 1868 by expressly providing that the Insurance Commissioner, instead of the Auditor General, should receive the securities and issue the certificates contemplated by the act. Of equal importance was the intent of the Legislature to change the law relating to the custody of the securities by providing that the State Treasurer, instead of the Insurance Commissioner, should act as the custodian of the securities, the section, *inter alia*, providing:

"The Insurance Commissioner, shall, upon receipt of any deposit made under this act, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same, in the name of the Commonwealth, in trust, for the purposes of this act and who shall, at all times, be responsible for their custody and safe keeping."

It follows that the duties and responsibilities of the State Treasurer, under the act, are confined to the receiving, safe keeping and proper return of the securities placed in his custody by the Insurance Commissioner for the purposes of the statute.

You further ask whether your practice of returning the securities to the Insurance Commissioner on his demand, to be by him delivered to the owning company instead of your returning them direct to such company is permissible and may be continued in view of the provision in Section 1 of the Act of 1911, that

"A company making the deposit shall be entitled, from time to time, to demand and receive, from the State Treasurer, on written order of the Insurance Commissioner, a whole or any portion of any security so deposited upon deposit with him in lieu thereof other securities of at least equal value."

While departmental construction of doubtful language of a statute is entitled to great weight, (Endlich on Interpretation of Statutes, Par. 360), yet that usage is not conclusive, especially when it is of recent origin as in this case, since it could not have existed prior to 1911. The act expressly provides, that the company shall be entitled to demand and receive the securities "from the State Treasurer" on the written order of the Insurance Commissioner, and it is further provided in section two that the Insurance Commissioner may authorize the State Treasurer to deliver the securities not to the Commissioner but

"* * * to return to such company the whole or any portion of the securities of such company held by him in deposit."

The State Treasurer is constituted the custodian not only for the benefit of those policy holders in states in which the depositing company does business, but he is also custodian for the benefit of the company making the deposit. It appears, therefore, that the Act not only contemplates but indeed expressly provides that the State Treasurer should return the securities to the companies depositing them.

You further ask whether, in the case of substitution, the State Treasurer is bound to himself determine the value of the securities proposed to be substituted or whether he may accept the written statement of the Insurance Commissioner as to such values.

The act expressly provides that the Insurance Commissioner shall determine the value of the original securities. It being his duty to determine the value of such original securities, it is obvious, in the absence of any provision to the contrary, that it is his duty also to determine the value of the securities proposed to be substituted. This construction is substantiated by another portion of Section 1 of the Act, which provides:

"And if such Insurance Commissioner is satisfied that such securities are worth the required amount, it shall be his duty to receive the same or *those given in exchange therefor*, as hereinafter provided aforesaid."

Section two of the act provides, inter alia that the Insurance Commissioner may authorize the State Treasurer to return to the company the whole or any portion of the securities of such company held by him on deposit.

"* * if the Insurance Commissioner shall be satisfied that the security so asked to be returned is *subject to no liability and not required to be longer held by any provision of law or for the purpose of the original deposit* and that he may, in like manner, return, to the trustees or other representatives for the purpose of an Insurance Company of a foreign government, any deposit by such company, *if it shall appear that such company has ceased to do business in this Commonwealth and is under no obligations to policyholders or other persons in this Commonwealth or in the United States for whose benefit such deposit was made.*"

You ask whether you may return the securities upon the certificate of the Insurance Commissioner that *one* of the conditions mentioned above exists with reference to a particular company or whether *all* the above enumerated requirements must affirmatively appear. When it is desired to withdraw all the securities, the Commissioner should certify that he is

"Satisfied that the securities are subject to no liability and are not required to be longer held by any provision of law or for the purpose of the original deposit."

In the case of foreign insurance companies, the certificate of the Insurance Commissioner should state that

"The company has ceased to do business in this Commonwealth and is under no obligations to policyholders or other persons in this Commonwealth or in the United States for whose benefit such deposit was made."

In other words, a compliance with all the conditions of the act should appear and the certificate of the Insurance Commissioner should be in the language of the statute. Where, however, a portion of the securities only are sought to be withdrawn, without a substitution being made, the certificate of the Commissioner should state that the securities, whose return is requested, are not required to be held by any provision of law or for the purpose of the original deposit, and that the securities remaining in your hands, are sufficient to meet all liabilities. A certificate, stating that such securities are subject to no liability, would be erroneous so long as any liabilities in fact existed. The sole reason for permitting the return is that the remaining securities afford sufficient protection.

Specifically answering your questions, you are respectfully advised—

First: Under the Act of June 1, 1911, P. L. 602, the trusts imposed upon the State Treasurer are to receive from the Insurance Commissioner the securities contemplated by the act, to keep them safe and to return them to the owner upon a proper certificate from such Insurance Commissioner.

Second: That you have no power to return such securities to the Insurance Commissioner to be, by him, delivered to the company owning the same, but that such return should be made by you, direct to the proper company.

Third: When a company proposes to substitute securities, it is not your duty, but the duty of the Insurance Commissioner, to determine the value of the securities, and a written statement from the Commissioner certifying that the securities proposed to be substituted are equal in value to those sought to be withdrawn is a sufficient warrant for you to return the securities requested.

Fourth: Where a company desires to have all of its securities returned, you should make such return only upon a certificate of the Insurance Commissioner expressly stating that he is satisfied that the securities are subject to no liability and are not required to be longer held by any provision of law or for the purpose of the original deposit. In the case of a foreign insurance company the certificate should state that the company has ceased to do business in the Commonwealth and is under no obligation to policy holders or other persons in this Commonwealth or in the United States for whose benefit such deposit was made.

Where a company desires to have returned to it, without substitution, securities in excess of those required for the protection of the persons contemplated by the act, in other words, a portion of its securities, you are justified in returning such securities upon a certificate from the Insurance Commissioner, stating that the securities remaining in your hands are not required to be held by any provision of law or for the purpose of the original deposit, and that the securities remaining in your hands, after such proposed return, will be sufficient to meet all existing liabilities.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

**OPINIONS TO THE INSURANCE
COMMISSIONER.**



OPINIONS TO THE INSURANCE COMMISSIONER.

IN RE REBATES OF INSURANCE PREMIUMS.

The first section of the Act of July 12, 1913, P. L. 745, must be construed so as to forbid absolutely the specific forms of discrimination mentioned therein, and to forbid all other inducements provided they are "not specified in the policy." The rebate of the agent's commission in case a policy is sold to a stockholder of the company falls within the absolute prohibition and even though a rider be attached to the policy setting forth the amount of the rebate and the consideration therefor, such rebate would constitute a violation of the said Act of 1913.

Office of the Attorney General,
Harrisburg, Pa., September 21. 1916.

Hon. J. D. O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: Your favor of the 8th inst. addressed to the Attorney General, is at hand. You enclose a copy of a proposed rider to be attached to the policies of the Republic Casualty Company of Cleveland, Ohio, and ask whether, if that rider were made part of the contract it would be in violation of the Act of July 12, 1913, (P. L. 745).

The proposed rider contains a copy of Article VI of the By-laws of the Company, which is in part as follows:

"In the event that any stockholder of this company shall place insurance therewith in any of the lines written by the company on the persons of such stockholder or on any business in which such stockholder is pecuniarily interested. The rates charged such stockholder for such insurance shall be the same as the rates charged of patrons of the company, less the agent's commission, which otherwise would be paid by the company for such insurance."

The rider also contains this provision:

"The insured herein is a stockholder in this company, and in pursuance of said by-law the premium herein stipulated is at the regular rate charged other policy holders of \$....., less the credit of \$....., provided for by said by-law."

The Act of June 1, 1911, (P. L. 567), entitled:

"An Act to provide for the incorporation of casualty insurance companies, and for the regulation of home

and foreign casualty insurance companies, and providing penalties for the violation of any of the provisions of this Act."

provides in Section 1 for the incorporation of casualty insurance companies with various kinds of purposes, including both insurance against injury to, and death of, persons, and injury to property.

Section 18 provides:

"Companies of other States and foreign governments, organized to transact any of the classes of insurance *mentioned in the first section of this Act*, in order to be licensed to do business in this Commonwealth must have a paid up and safely invested capital," etc.

The Act of July 12, 1913, (P. L. 745), entitled:

"An Act relating to the issuing of policies of insurance; prohibiting the giving or offering or receiving of rebates or inducements of any kind not specified in the policy, with certain exceptions," etc.

It provides in Section 1:

"That no insurance company, association, or society, by itself or any other party, and no insurance agent, solicitor, or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or on any policy or agents commission thereon, or earnings, profit, dividends, or other benefit founded, arising, accruing or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for service of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this Commonwealth, now or hereafter to be written, *which is not specified in the policy*. Provided, That nothing in this section shall be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium."

This Act of Assembly was intended to prevent all rebating of any kind. It includes a casualty company as well as every other kind of insurance company, and the language last quoted "which is not specified in the policy," refers to "any other valuable consideration or inducement."

This provision prevents, in terms, the giving of

- (a) Any rebate of or part of the premium,
- (b) Any rebate of the agents commission,
- (c) Any part of the earnings, profit, dividends, or other benefit accruing on the policy,

- (d) Any advantage in the date or age of the policy,
- (c) Any paid employment or contract for services.

These are definite and distinct prohibitions. Then follows the general clause "or any other valuable consideration or inducement, to or for insurance on any risk in this Commonwealth, now or hereafter to be written, which is not specified in the policy."

The foregoing itemized matters are prohibited definitely and in terms, whether mentioned in the policy or not, and if there is any other valuable consideration or inducement not within the itemized prohibitions set out, it is also prohibited, unless it is specified in the policy. The language "or any other valuable consideration or inducement" is indefinite and general, and if there is any such consideration or inducement not covered by the prohibited matters theretofore mentioned, such inducement must be specified in the policy, and if so specified, may be permitted.

"Not specified in the policy" was not intended to mean that the law may be abrogated entirely by including in the policy contract any or all of the restrictions thrown around the business of insurance by this law. If rebating may be legalized by providing for it in the policy, it would have been unnecessary for the Legislature to say that "nothing in this section shall be construed to prevent the taking of bona fide obligation with legal interest in payment of any premium," or to specifically authorize industrial life insurance companies to return to policyholders paying premiums direct to the company, the commission which otherwise would be paid to agents, or to permit certain Pennsylvania life insurance companies to give options for stock in connection with policies of insurance for a specified time, as is done in this same section.

If these things could be done by a provision of the policy, it was not necessary to except them out of the provision prohibiting the giving of rebates.

If this proviso were construed to permit any rebates or agents commissions, earnings, profits or dividends to be given to any one insured, provided it be specified in the policy, the whole intention of the Act would be nullified. The intention of the Legislature was to provide against all special inducements of every kind. It was not intended to permit inducements to be given with impunity merely by inserting them in the policy contract to one insured, while denying the same inducements to another.

By inserting such provision in the policy makes the agreement no less discriminatory. It is quite as secret as it would be if not inserted. No one but the insured sees the policy after it is issued.

The rider which is intended to be attached to the policy of the Republic Casualty Company says in terms that the premium to a stockholder is less than the premium in the same class to another insured by the amount of the agent's commission. That is to say, the stockholder receives a rebate to the extent of the agent's commission.

I am of opinion that such a rider is in violation of this Act of Assembly.

Attention has been called to Section 11 of the Act of July 7, 1913, (P. L. 698), which is an Act providing a standard provision in policies of "health or accident or accident and health insurance."

This Section prohibits "discrimination between individuals of the same class in the amount of premiums or rates charged for any policy of insurance covered by this Act."

If the Republic Casualty Company intends to attach this rider to policies of health or accident insurance, or health and accident insurance, this Section would also prohibit a discrimination between stockholders and between persons of the same class who were not stockholders. If the policy is not intended to be attached to either accident or health insurance, this provision does not apply.

In any event, however, I am of opinion that the rider gives a rebate, favor or advantage to stockholders which is not given to others of the same insurable class, and is therefore in violation of the Act of July 12, 1913, above referred to.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

GENERAL TRUST COMPANY—INSURING OF LIVES.

The Insurance Department may not license the General Trust Company to transact the business of insuring lives, without said company complying with the law requiring capital of at least \$200,000 invested in accordance with the Act of Assembly of June 1, 1911, or a capital of \$100,000, and a surplus of \$200,000 so invested.

Office of the Attorney General,
Harrisburg, Pa., September 29, 1915.

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

Sir: I have your letter of the 3rd instant requesting an opinion as to whether the Insurance Department can properly license the General Trust Company to transact the business of insuring lives, etc.,

without the capital of the company being paid up and invested as required by the Act of June 1, 1911, (P. L. 591). The facts as presented to me, are as follows:

The East End Life Insurance and Improvement Trust Company of Pittsburgh was incorporated by Act of Assembly, approved April 1, 1873, (P. L. 710). By section 3 power was given the company, *inter alia*, "to make all kinds of insurance upon life or lives." Letters-patent were issued by the Governor, April 30, 1872, and the corporate title was changed to "Liberty Improvement Bank," on June 1, 1874, by decree of the Court of Common Pleas of Allegheny County, and on April 15, 1890, by decree of the Court of Common Pleas No. 2 of Allegheny County, to "Home Life and Investment Company," and on June 2, 1909, to "Union National Life Insurance Company," by certificate, under the Act of April 22, 1903, (P. L. 251).

On May 8, 1914, a judgment was entered against the corporation in the Court of Common Pleas No. 1 of Philadelphia County, and in due course by special *fi. fa.* under the Act of April 7, 1870, (P. L. 58), the Sheriff of Philadelphia County levied upon the franchises, charter and property rights of the Union National Life Insurance Company and sold the same to Jacob Liffman, et al.

The purchasers reorganized the corporation under the Act of June 20, 1911, (P. L. 1093), with the present title "General Trust Company," and fixed the capital stock at \$200,000, all of which was issued as fully paid stock, in payment for the franchises, charter and property purchased as aforesaid, in accordance with the following provisions of said Act:

"The said stock thus issued by the said new corporation may consist wholly of common stock, or partly of common stock and partly of preferred stock; and the whole, or any part thereof, may be issued as fully paid stock, in payment or part payment for the property so purchased."

The question now is, whether this company can be licensed by your Department to transact the business of insuring lives without complying with the requirements of the Act of June 1, 1911, (P. L. 581), which provides that joint stock companies incorporated thereunder to insure lives, must either have a capital of not less than \$200,000 or a capital of \$100,000 and in addition thereto a net surplus of not less than \$200,000, (Section 14) and in Section 8:

"As soon as the entire amount of the authorized capital of a joint stock company incorporated under this Act has been paid in, certificates shall be issued therefor to the persons entitled to receive the same, which certificates shall be transferrable at any time upon the books of the company; and the president or secretary

of the company shall notify the Insurance Commissioner that the capital of the company has been paid in, and that it is ready to commence business. Upon receipt of which notice the Insurance Commissioner shall, in person, or by deputy or examiners, examine the company; and, in case he finds that it has complied with the provisions of this Act, and is possessed of funds, invested in the manner herein specified, equal to the amount of its capital, he shall issue to said company a certificate showing that it has been organized in accordance with the provisions of this Act, and that it has the requisite amount of capital for the transaction of business in the Commonwealth, which certificate shall empower the company to issue policies, and otherwise transact the business of insurance for which it was organized."

The investments permitted are set forth in section 16 and are limited to real estate, ground rents and mortgages, loans and certain bonds therein specifically set forth. No provision is made for considering the supposed value of its franchises and charter as a valid security or investment for such purposes.

The business of insuring lives is one which is under the special care and protection of the State. In the ordinary course of the business, payments by the insured are expected to run for a long period of years, and the company is ordinarily only called upon to pay in accordance with its policy upon the death of the insured. For this, and many other reasons which it is not necessary to advert to here, the State exercises the closest supervision over this class of business and has forbidden the insuring of lives by any individual or partnership or association other than a legally incorporated company subject to the examination and supervision of the Insurance Department. (Act of June 1, 1911, P. L. 581, Sec. 307).

Does the Act of June 1, 1911, (P. L. 581), apply to this company, which was originally incorporated April 1, 1872? I have no doubt that it does. The company received its charter subject to the provisions of the amendment to the Constitution of 1857, which provides that:

"The Legislature shall have power to alter, revoke or annul any charter of incorporation heretofore conferred by or under any general or special law whenever in their opinion it may be injurious to any citizens of the Commonwealth; in such manner, however, that no injustice may be done to the corporators."

Subsequently the Legislature saw fit to establish the Insurance Department, and gave to it full supervision and control over all companies carrying on the business of insuring lives, and thereafter this

company held its charter subject to the provisions of such acts of assembly governing the business of insuring lives as the Legislature of the Commonwealth saw fit to enact.

At the time the franchises, charter and property rights of the Union National Life Insurance Company were levied upon by the Sheriff of Philadelphia County and sold to the re-organizers of the General Trust Company, it was insolvent and could not have continued to transact the business of insuring lives within the State of Pennsylvania. If the re-organizers of such an insolvent insurance company by following the above provisions of the Act of June 20, 1911, (P. L. 1092), can be permitted to engage in the business of insuring lives by arbitrarily fixing the value of the corporate franchises purchased by them at \$200,000 and issuing to themselves all of said stock as fully paid stock, in payment for such franchises and charter rights, the result would be that an insolvent insurance company, which is unable to continue the business of insuring lives under the laws of the Commonwealth, by a mere re-organization and arbitrary or even fictitious valuation of its property rights, could, without the investment of any additional money or capital, carry on the business of insuring lives, although it has no money with which to pay or meet any losses incurred in such business.

The proposition needs only to be stated to show its absurdity. The Act of June 20, 1911, (P. L. 1092), does not repeal and is not inconsistent with the Act of June 1, 1911, (P. L. 581), so far as relates to the incorporation and licensing of corporations for the purpose of insuring lives.

You are, therefore, advised that the General Trust Company can only exercise the privileges and powers granted to it in the original Act of incorporation subject to and in compliance with the terms of the Act of Assembly creating the Insurance Department and its supplements, and the cognate Acts relating thereto, and that before authorizing it to engage in business as a life insurance company, it must satisfy you in accordance with the provisions of the Act of June 1, 1911, that it has a capital of at least \$200,000 invested in the manner set forth in said Act, or a capital of \$100,000 and a surplus of \$200,000 so invested.

Practically the same question was presented by Hon. Samuel W. McCulloch, former Insurance Commissioner, to Attorney General Todd, in 1910, with reference to this same company, under its title, Union National Life Insurance Company, and the opinion herein given is in conformity with the opinion then delivered by Attorney General Todd, (Report of Attorney General 1909-1910, page 119).

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYERS' MUTUAL LIABILITY INSURANCE ASSOCIATIONS.

Under the Act of June 2, 1915, P. L. 771, providing for "the incorporation and regulation of employers' mutual liability insurance association," it is not necessary for each subscriber personally to sign and acknowledge the articles of association, but he may do so by an attorney-in-fact.

Opinion of Attorney General, May 20, 1903, 12 Dist. R. 722, disapproved.

Office of the Attorney General,
Harrisburg, Pa., October 26, 1915.

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

Sir: This Department is in receipt of your inquiry of October 14, 1915 asking whether, under the Act of June 2, 1915, (P. L. 771), "to provide for the incorporation and regulation of employers' mutual liability insurance associations," etc., each subscriber must personally sign and acknowledge the articles of association or may do so by an attorney-in-fact.

In a prior opinion given by this department in 1903 to the Commissioner of Banking and reported in 28 Co. Ct. Rep. 187, it was held that a corporator could not sign the articles of incorporation by an attorney-in-fact. We must disagree with the conclusions arrived at in that opinion for the reasons hereinafter given.

In 2 *Corpus Juris*, 431 the general rule as to what may be done by an agent is stated as being

"Whatever a man may do himself he may do through an agent. This rule, however, is subject to certain exceptions, as there are acts of so peculiarly personal a nature that their performance cannot be delegated, such as making a will or contracting a marriage; and another instance is that an agent cannot perform by a sub-agent the acts which he has been appointed to perform in person. So also there are many acts regulated by statute which, because of their nature or the requirements of the statute, must be done personally, and cannot be delegated; but it has been held that unless the intention is plainly apparent from the statute the authority may be delegated, the courts applying the maxim, *Qui facit per alium facit per se*."

In short, if the act is not of a personal nature and not plainly prohibited, it may legally be done by a properly authorized attorney-in-fact.

In *Machen on the Modern Law of Corporations*, section 131, it is held that articles of incorporation may be signed by an agent or attorney. To quote:

"The English Court of Appeal has held that a signature by agent or attorney complies with the statute, and that the agent's authority may be oral merely and

need not appear of record. But in that case the instrument was signed personally by seven other persons—the minimum number prescribed by the statute—so that in strictness the only question before the court was whether the signature by attorney was a binding subscription to the number of shares written after the name; for even if the doubtful signature had been rejected, the instrument still being signed by the requisite number of persons, the incorporation would have been valid. New York Court of Appeals has gone even further and held that some of the minimum number of subscribers required by the statute may sign by attorney and that the authority of the agent, although not apparent of record, will be presumed. Statutes sometimes provide that the instrument shall be executed and acknowledged like a deed of real estate; and in that case, of course, no execution by proxy could avail unless the power of attorney were under seal and recorded.”

The cases above referred to are

Whitley Partners, 32 Ch. D. 337, and
New York, Lackawanna, etc. Ry. Co., 99 N. Y. 12; *I. N. E.* 27.

Both of these cases amply support the text, and are founded in good reason. It is possible for the corporator to acquaint the agent or attorney with all of the facts to which he is to certify and when so informed, there is no reason why he cannot perform this formal act with as full effect and in as strictly legal manner as the member himself. It must, of course, be understood that the power-of-attorney must authorize him to perform such acts and should be duly acknowledged.

It might be added that, aside from the opinion already referred to and which we are at the present time forced to disagree with, there is no authority cited in any text book or decision that has come to our knowledge disagreeing with the conclusions reached herein.

The New York and English cases above cited sustained the validity of a subscriber to a certificate of incorporation signing by his attorney-in-fact. The right of such attorney-in-fact to also acknowledge the certificate has not been directly passed upon by any appellate Court.

In the case of *Dannebrog Gold Quartz Mining Company vs. Alment, et al.*, 26 Cal. 286, this question was raised, but not directly decided. It was shown that the certificate of incorporation, which under the statute was required to be signed and acknowledged by at least three subscribers, had been in fact signed by three and acknowledged by two. The third signer acknowledged it by his attorney-in-fact. The lower Court held such acknowledgment invalid.

The upper Court, on appeal, did not decide whether it was a valid acknowledgment or not, but merely said that its validity could be questioned by no one except the State of California, at the instance of the Attorney General, and in that the State had not objected to the form of acknowledgment the lower Court should be reversed.

If articles of incorporation can be signed by an attorney-in-fact the same reasoning would apply to an acknowledgment by an attorney-in-fact, possessed of the information to which he makes the acknowledgment. The general rule, as stated in *1 Corpus Juris*, 789, is:

“The statutes sometimes require that the grantor or obligor shall acknowledge in person, but in the absence of such a requirement an acknowledgment may be made by a duly authorized agent or attorney.”

This principle conforms to the long established doctrine in Pennsylvania that deeds may be acknowledged by an attorney-in-fact. Stripped of all technicalities, it is the acknowledgment of the principal made by one acting for the principal, on account of some cause preventing such act by the principal.

In the early case of *Fulweiler vs. Baugher, et al.* 15 S. & R. 45, the acknowledgment was objected to as having been made by an agent or attorney for the principal. The Supreme Court, in dismissing the objection, says:

“But the acknowledgment is objected to. There are some cases to be found, where much strictness would seem to be required in the forms of those conveyances by attorneys. But in *Coombe's Case*, 9 Co. Rep. 76, 77, the court put it on the ground that the act is good, if it appears that he did it as attorney, and that it is immaterial whether it is stated. The principal, by his attorney, does the act, or the attorney, as attorney for the principal, does the act; the difference is form and nothing but form.”

See also note in *41 L. R. A. (N. S.)* 823, in which are cited cases from all states in which the general rule above given is followed.

The present act provides in Section 3:

“The subscribers to said articles of agreement shall acknowledge the same before some person empowered to take acknowledgments of deeds.”

As quite apparent, there is no more strictness as to the requirement *before whom* the acknowledgment shall be taken than in the case of deeds. In the absence of any apparent prohibition it cannot be seen why there should be more strictness as to *who should make* the acknowledgment than is permitted under the law of this state in the case of the acknowledgment of deeds.

We have to advise you, therefore, that subject to the execution and acknowledgment by each of the subscribers of a proper Power of Attorney, it would be a full and sufficient compliance with this act to permit the articles of agreement to be signed and acknowledged by such attorney-in-fact.

As above indicated, the Power of Attorney to be executed by the incorporator must contain a verified statement of all the facts to which the attorney-in-fact is required to sign and acknowledge on behalf of the incorporator. It must also give him full authority to perform these two acts, and must be properly acknowledged by the incorporator. All of these Powers of Attorney should be attached to and constitute a part of the articles of association, so that there need be no implication of the authority of the attorney-in-fact to sign and acknowledge them.

Accompanying this opinion is a form of affidavit and Power of Attorney which is approved by this Department, and required to be used for the purposes of the Act of June 2, 1915.

I would suggest that copies of this be prepared by yourself, so that the same may be furnished to those applying for the same.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

UNLAWFUL ISSUE OF SURETY BONDS.

One David Barlow issued surety bonds under the name of the Keystone Bonding Company. There is no company of that name authorized to do surety business in Pennsylvania. Held, such business is unlawful and that David Barlow is guilty of a misdemeanor.

Office of the Attorney General,
Harrisburg, Pa., November 18, 1915.

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

Sir: This Department is in receipt of your communication of the 9th inst., asking to be advised whether certain contracts therein referred to, issued by one David Barlow under the name of "The Keystone Bonding Company," are in violation of the provisions of the Act of June 1, 1911, (P. L. 667), providing for the incorporation of casualty insurance companies and for the regulation of home and foreign insurance companies, etc.

You state that David Barlow is an officer of the NuBone Corset Company, a New Jersey Corporation having its executive office at Corry, Pa., and that the said Barlow bonds all employees of the cor-

poration, signing the bonds "The Keystone Bonding Company, by David Barlow;" that there is no corporation authorized to do a casualty insurance or bonding business in this State under the name of Keystone Bonding Company.

The Act of Assembly referred to provides, as already stated, for the incorporation of casualty insurance companies for many purposes, inter alia, for "guaranteeing the fidelity of persons holding places of public or private trust," "to insure against loss by burglary or theft or by both," and for a long list of casualties specifically set out in Section 1 of the Act, made completely comprehensive by paragraph "Eleven" of said section as follows:

"To insure against loss by any other casualty not included under the foregoing heads, except life, fire, marine or title insurance, which may be a proper subject of insurance."

Sections 2, 3 and 4 of the Act provide for the manner and form of the incorporation of such companies thereunder.

Section 5 requires a certain certificate to be made to the Insurance Commissioner, after one-half of the proposed capital has been subscribed and twenty per cent. thereof has been paid in.

Section 6 requires approval by the Insurance Commissioner and by the Attorney General of the Articles of Agreement before certification to the Governor.

Section 8 requires examination of the assets of such a company after the entire amount of authorized capital has been paid before policies may be issued or business otherwise transacted by the company.

Section 14 provides for the minimum amount of capital required by companies organized for one or the other of the purposes of casualty insurance mentioned in the first section of the Act, inter alia, that "companies organized to guarantee the fidelity of persons and contracts of suretyship must have a capital of at least two hundred and fifty thousand dollars."

Section 19 restricts the investment of the capital and funds of such companies and Section 20 otherwise regulates the investment of such funds.

Section 21 restricts the holding of real estate by such companies.

Section 22 regulates the payment of dividends.

There are other restrictive features in the Act to which it is unnecessary to refer, to indicate that it is the clear object and purpose of this legislation to safeguard the public in entering into contracts for casualty insurance by requiring incorporation, certain minimum capital, certain State supervision and control, etc., as they have been previously protected and safeguarded by similar legislation relating to fire, life and other forms of insurance.

To effectuate this purpose of the Act there was incorporated therein, Section 32, as follows:

“No person, partnership or association, shall issue, sign, or in any manner execute any policy of insurance, contract or guarantee against loss by any of the casualties provided for in this Act without authority expressly conferred by a charter of incorporation given according to law. Provided, nothing herein contained shall prevent any one from becoming and being accepted as personal surety or guarantor.”

According to the form of the contract issued by the said David Barlow as the Keystone Bonding Company, copy of which is submitted by you, the said “Keystone Bonding Company of Corry, Pa., as surety binds itself to pay the NuBone Corset Company, a New Jersey Corporation, as employer having its executive office in the city of Corry, Pa., such pecuniary loss as the latter shall sustain of money or other personal property by any act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, misapplication or negligence, directly or through connivance with others, on the part of any of the employes of the employer named in the schedule attached” to the agreement under the terms and conditions therein fully set forth, there being so attached over one hundred names of such employes with residences indicating that they are scattered all over the United States. The agreement also contained provision for the addition of other names of employes under like condition.

The contract also provides for total minimum premiums to be paid by the Corset Company to “The Keystone Bonding Company,” in a certain sum named, with the unusual provision that the Bonding “Company’s” total liability thereunder, in any one year, shall not exceed forty per cent. of the premiums received by “it” in that year, by virtue thereof.

— It also appears that the contract of suretyship is issued by the said Barlow after application made by prospective employes of the Corset Company on printed blank forms, which you have also submitted, in which the applicant is required to give full detailed information as to his or her status and condition and as to the ownership of property and in other respects similar to application forms in general use by casualty companies.

This holding out by the said Barlow as “The Keystone Bonding Company,” a myth and a phantom, is undertaking as such company to act as surety for persons employed by the corset company throughout the country who apply to him by formal written application, as above referred to, in consideration of certain premiums paid to him, excludes the case from the provision of Section 32 of the Act that nothing therein contained “shall prevent anyone from becoming or being accepted as personal surety or guarantor.”

You are advised that the making, executing or issuing of such contracts by the said David Barlow, under the name of "The Keystone Bonding Company," or otherwise, is a violation of the provisions of the Act of June 1, 1911, (P. L. 567), above referred to, and he is subject to the penalty provided by Section 32 of the Act for such violation.

You also call attention to the fact that the same David Barlow, under the name of "The Keystone Bonding Company" has entered into another agreement with the said NuBone Corset Company as appears by copy thereof submitted with your letter of inquiry, whereby the so-called "Keystone Bonding Company" "does guarantee the NuBone Corset Company on goods in transit by parcel post addressed to any post office within the United States, and "guarantees the safe delivery of goods contained in each package * * * and in case of loss of said package or any part of the contents thereof by fire, theft or from any cause whatsoever," that the said Bonding Company "will reimburse the said NuBone Corset Company therefor" under the terms and conditions therein set forth, excluding a certain schedule of charges for such undertaking.

For the reasons given with reference to the bonding of the employees above referred to, you are advised that the making, execution and issuance of this latter agreement, or other similar agreements, by the said David Barlow as "The Keystone Bonding Company," is also in violation of the said Act of Assembly and he is subject to a like penalty therefor.

Your attention is further directed to Section 1 of the Act of February 4, 1870, (P. L. 14), which provides:

"That it shall be unlawful for any person, partnership, or association, to issue, sign, seal, or in any manner execute any policy of insurance, contract or guaranty, against loss by fire or lightning, without authority expressly conferred by a charter of incorporation, given according to law; and every such policy, contract, or guaranty, hereafter made, executed or issued, shall be void."

You are accordingly further advised that in so far as the latter contract purports to guarantee the Corset Company against loss of parcel post shipments by fire, the issuance and signing of the said contract in that respect is also a violation of the Act of 1870 and the said David Barlow is subject to the penalty provided in section 2 of the said Act therefor.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

TAX ON INSURANCE PREMIUMS.

The settlement against the liquidating receiver of a fire insurance company, for tax on gross premiums, should be made on the basis of giving credit for premiums paid for re-insurance.

Office of the Attorney General,
Harrisburg, Pa., January 26, 1916.

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

Sir: Your favor, requesting an opinion as to the right to tax premiums received from insurance companies where there has been reinsurance, is at hand. The facts which give rise to this request, I understand to be as follows:

You are, pursuant to a decree of the Dauphin County Court, liquidating, as Receiver, the affairs of the American Union Fire Insurance Company. This company had a contract with the Warsaw Fire Insurance Company under which the latter company assumed one-half of the liability of all outstanding policies and received premiums for this reinsurance, and the Warsaw Fire Insurance Company has paid all taxes upon the premiums thus received from the American Union Fire Insurance Company.

You ask to be advised whether in liquidating the American Union Fire Insurance Company, you must pay the tax upon all of the premiums received without any deduction for reinsurance. I note that you also state that the insurance companies of other states will accept a settlement of taxes due in such states with deductions for reinsurance, if such settlement is made in this State.

The Act of June 28, 1895, (P. L. 408), which re-enacts without change the 24th section of the Act of June 1, 1889, (P. L. 433), requires a report showing "the entire amount of premiums and assessments received by such company or association during the preceding six months, whether said premiums or assessments were received in money or in the form of notes, credits or any other substitute for money" and requires the payment of "a tax of eight mills on the dollar upon the gross amount of said premiums and assessments received from business transacted within this Commonwealth."

This act allows no deductions for reinsurance, but a later Act of May 8, 1899, (P. L. 258), relates especially to reinsurance and the transaction of business by fire and marine insurance companies or associations. Its first section relates only to foreign fire insurance companies or associations, but the second section relates to all fire insurance companies.

It provides in Section 6, as follows:

"In case any such company or companies shall effect reinsurance with any other company or companies of this State, or licensed to do business in this State,

the said company so effecting reinsurance shall be entitled to deduct from the gross premium licensed by it the amount of tax it would otherwise be required to pay upon said insurance."

It is manifest that the word "licensed" in the latter part of this sentence is a misprint and should be "received."

Even as so read the section is awkward and there is apparently a clerical error or omission.

"A mere clerical error in an act of assembly, which involves a mistake and a manifest absurdity apparent on the face of the act, may be corrected by the courts from the context, in order to carry out the clear purpose of the legislature."

County of Lancaster vs. Frey, 128 Pa. 593.

It is clear that the section was intended to authorize a deduction from the tax upon the gross premiums received by an insurance company of the amount of the tax upon the premiums representing reinsurance. This seems now to be the policy of the Commonwealth.

It finds a clearer expression in the Act of June 1, 1911, (P. L. 607), establishing an insurance department, which provides in Section 16, with reference to foreign insurance companies:

"That companies, in making such report, may deduct from the gross premiums received * * * all premiums actually paid for reinsurances, where the same are effected in companies duly licensed to do business in this Commonwealth."

It is not to be presumed that foreign insurance companies would be exempt from taxation on the premiums representing reinsurance and our own companies be required to pay the tax thereon. Moreover, to include in the tax on gross premiums a tax on the premiums paid for reinsurance, would be to impose a tax upon such premiums twice. The Warsaw Fire Insurance Company has paid the tax upon the premiums which it received for reinsuring the risks of the American Union Fire Insurance Company, and while double taxation is not unconstitutional, it must have clear legislative authority to support it.

I am therefore of opinion that the settlement against you, as Receiver, for the taxes due from the American Union Fire Insurance Company should be made upon the basis of giving credit to the American Union Fire Insurance Company for the premiums paid for reinsurance to the Warsaw Fire Insurance Company.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General,

PENN MUTUAL LIFE INSURANCE COMPANY.

The right, for an additional consideration, to add to its contract of life insurance a monthly payment during a disability period is within the charter powers of the Penn. Mutual Life Insurance Company, without acceptance of the Act of June 1, 1911, P. L. 581.

Office of the Attorney General,
Harrisburg, Pa., February 3, 1916.

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

Sir: Your favor of the 28th ult. addressed to the Attorney General, is at hand. You ask to be advised whether the Penn Mutual Life Insurance Company may make a contract for an annuity in a contract of life insurance without formally complying with the Act of June 1st, 1911, (P. L. 581). The facts which give rise to your request I understand to be as follows:

The Penn Mutual Life Insurance Company extended the provisions of its life insurance contract in 1915 so as to provide a waiver on the part of the company of the premium in the event of permanent or total disability of the insured, and the question was then raised whether, because of this waiver by the company, it was required to accept the provisions of the Act of June 1st, 1911, (P. L. 581). Your Department was then advised that it was not necessary for the Penn Mutual Life Insurance Company to accept the provisions of that Act. The company now desires, in addition to the waiver of the premium in the event of permanent or total disability, to add to its life insurance contracts, in consideration of an additional payment, a further agreement to pay a monthly annuity during the continuance of the disability period, and you ask whether, because of this additional agreement, it is necessary for the company to accept the Act of June 1st, 1911, (P. L. 581).

As I understand, the contract which the company desires to make is, in effect, combining a contract for an annuity with a life insurance contract.

The Penn Mutual Life Insurance Company was chartered by a special act of the Legislature of February 24, 1847, which provides, *inter alia*, as follows:

"That the company shall have the power to insure the respective lives of its members and others, and to make every and all insurance appertaining to or connected with life risks, of whatsoever kind or nature, and to receive and execute trusts, to make endowments, and to grant and purchase annuities"

The Act of June 1st, 1911, (P. L. 581), which is entitled:

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

provides in the fourteenth section as follows:

"Companies heretofore organized in this Commonwealth to insure lives may also insure against disability, accident or sickness; and companies heretofore organized under the provisions of the act of April twenty-eight, one thousand nine hundred and three, having a capital of not less than three hundred thousand dollars, may be authorized to transact life insurance and personal accident and sickness, as specified in section one of this act, by filing with the Insurance Commissioner a resolution of the board of directors or trustees; duly approved by the stockholders or members at a meeting specially called for that purpose, accepting the provisions of this act, and agreeing to be governed thereby as fully as though organized hereunder."

If the contract which the Penn Mutual Life Insurance Company desires to attach to its life insurance contract is a contract granting an annuity it already has the charter right to make such contract without acquiring it under the Act of 1911. If the contract were to be considered health or accident insurance, it would probably not come within its present charter powers, and to secure such right would have to accept the Act of 1911.

Primarily the contract is one of life insurance. This Department has already determined that the waiver by the company of the right to demand a premium in the event of permanent or total disability of the insured, does not give the life insurance contract the incidents of health or accident insurance, so as to require acceptance of the Act of 1911. I do not think that the additional inducement added to the life insurance contract, of granting a monthly annuity to the insured during his disability period, which inducement is made part of a life insurance contract, would have the effect of taking the contract out of the class which the Penn Mutual Life Insurance Company has already the right, under its charter, to make.

The Act of 1911 provides that companies heretofore organized to insure lives only may, by accepting the act, secure the right to insure against disability, accident or sickness. The Penn Mutual Life Insurance Company has the right to make "every insurance appurtenant to or connected with life risks" and also the right "to grant and purchase annuities."

I am, therefore, of opinion that the life insurance contract which the Penn Mutual Life Insurance Company proposes to make by adding, for an additional consideration, a monthly annuity during a disability period comes within its charter powers, and it is not necessary for that company in order to make such contract to secure other powers by the acceptance of the Act of June 1st, 1911, P. L. 581.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE WORKMEN'S COMPENSATION INSURANCE.

Under the Act of June 2, 1915, the Commissioner of Insurance has full supervisory control over insurance policies under the Workmen's Compensation Act. He cannot prescribe the form of the policy as to its mere phraseology, but he can require one that conforms in substance to the express requirements of the act, and interdict one whose terms are in palpable violation of its inhibitions. *O'Neil vs. Insurance Company*, 166 Pa., 72, distinguished.

The Commissioner cannot require that some general system of merit rating, adopted by him, shall be applied to all risks within the classification to which it may be applicable, and refuse to permit the writing of such risks at a flat rate without merit rating, but the schedule and basis rate are expressly subject to his approval, and cannot be lawfully applied until so approved.

Office of the Attorney General,
Harrisburg, Pa., February 23, 1916.

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

Sir: There was duly received your communication of recent date requesting an opinion upon the following questions:

"1st. As to whether the Insurance Commissioner has the authority, under Act 341 of the laws of 1915, to approve or disapprove policies of insurance against liability under Article III of said Workmen's Compensation Act of 1915, particularly with respect to the following:

(a) As to whether the policy is drawn to comply with the requirements of Sections 1, 2 and 3 of the said Act 341.

(b) As to the limitation of the coverage or insurance to insurance only against liability for compensation under the Workmen's Compensation Act of 1915, in other words, to disapprove any policy form which purports to give for the premium approved by the Commissioner under Section 4 of said Act 341, as adequate for the benefits provided under the Workmen's Compensation Act, insurance against liability other than liability—6—1917

bility for compensation and to require a policy form which does limit the liability to the benefits required to be paid under the said Act.

2nd. As to whether the Insurance Commissioner has the power under the said Act 341, to disapprove of any system of schedule or merit rating, under which an insurance company will inspect and rate its own risks, without any regulations whatever, or may the Insurance Commissioner require that schedule rating shall be applied only after an impartial inspection and rating of risks has been made.

3rd. Should the Insurance Commissioner approve of a general system of schedule or merit rating, may he require that the system approved shall be applied to all risks within the classifications to which the same is applicable and refuse to permit the writing of such risks at a flat rate without any schedule or merit rating."

Taking up these questions in the order in which they are above stated, I respectfully advise you as follows:

1st. (a) Section 1 of the Act of June 2, 1915, P. L. 769, and cited above as Act No. 341, specifies certain covenants that every policy of insurance against liability arising under Article III of the Workmen's Compensation Act shall contain, and the construction to be placed thereon, and the effect thereof. Section 3 of said Act No. 341 further forbids that any such policy shall contain certain limitations against the liability of the insurer and the effect upon the policy where such forbidden limitation is contained therein. In a subsequent section it is provided that

"The Commissioner of Insurance shall have the power to suspend or revoke the license of any insurance association or corporation which violates any of the provisions of this act."

The effect of this last provision is to invest the Commissioner with full supervisory control over such associations and corporations. While he is not clothed with the express power to disapprove of a policy that offends against the specific requirements of Sections 1 and 3, or to approve of one drawn in compliance therewith, such power may be fairly implied. He cannot prescribe the form of a policy as to its mere phraseology, but he can require one that conforms in substance to the express requirements of said Act, and interdict one whose terms are in palpable violation of its inhibitions. For an insurer to issue a policy omitting a stipulation prescribed in Section 1, or containing a limitation forbidden under Section 3, would be an infraction of the Act of which the Commissioner is charged with the duty of taking notice, and for which violation he is armed with the plenary power to suspend or revoke the license of the insurer executing such unlawful contract.

This ruling does not conflict with the principle enunciated in the case of *O'Neil vs. Insurance Company*, 166 Pa. 72. That decision rested on the doctrine that the Legislature could not delegate to the Insurance Commissioner the power to prescribe the standard form of policies of insurance. Statutory regulation of the insurance business is, however, a well recognized constitutional exercise of the power of the State in the public interest. The Legislature, by the said Act, has prescribed certain things that every contract for insurance against liability arising under the Workmen's Compensation Act shall or shall not contain, and for the Commissioner to approve or disapprove of such a policy, to the end that it may conform to such express statutory demands, is not an exercise of a delegated legislative power to prescribe its form, but is wholly an exercise of an executive function for the enforcement of the Act.

I am therefore of the opinion that the Commissioner of Insurance has the power under said Act to approve of a policy of insurance drawn in compliance with Sections 1 and 3 of said Act, and to disapprove of one at variance therewith, to the extent that the provisions of the policy shall be appropriate to the Act's specific requirements, and for the enforcement of his authority to this end the power to revoke the license of an offending insurer could be invoked.

1st. (b) It is provided in Section 4 of the said Act No. 341, that:

"The State Workmen's Insurance Fund, and every insurance association and corporation which insures employers against liability for compensation under the Workmen's Compensation Act of 1915, shall file with the Commissioner of Insurance its classification of risks and premiums, together with basis rate and schedule or merit ratings, if a system of schedule or merit rating be in use; none of which shall take effect until the Commissioner of Insurance shall have approved the same as adequate for the risks to which they respectively apply. The Commissioner of Insurance may withdraw his approval of any premium rate or schedule made by the State Workmen's Insurance Fund, or any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves."

It is further provided in said Section, that:

"On and after January first, one thousand nine hundred and sixteen, neither the State Workmen's Insurance Fund nor any insurance association or corporation may issue, renew, or carry beyond anniversary date, any insurance for compensation under the Workmen's Compensation Act of 1915, at premium rates which are less than those approved by the Commissioner of Insurance for such carrier as adequate for the risks to which they respectively apply."

As appears from its title, the scope of this Act is limited to "insurance against liability arising under Article three of the Workmen's Compensation Act of 1915." The jurisdiction of the Commissioner, under the Act to approve a premium rate, is restricted to the approval of one for insurance against liability "for compensation under the Workmen's Compensation Act of 1915." Such rate so to be approved takes into consideration solely the risk for compensation. A power to approve a rate to cover a further and other risk and liability cannot be implied. He cannot lawfully, in pursuance of said Act, approve of one for insurance operating as a blanket coverage against both the definite liability under the Workmen's Compensation Act, and also the possible or contingent risks and liabilities that may arise under the common law. His power to approve a rate is exhausted in the approval of one for insurance against compensation and cannot be extended to the approval of one for insurance against that risk commingled with some other liability.

To permit a carrier at the rate approved as adequate for the statutory risk under the Workmen's Compensation Act to cover, at said rate, any additional common law liability, would be manifestly unsound and would make such rate one for something different than that for which it had been approved. Such additional hazard must carry its own insurance, separate and distinct from that against compensation. To mix the two would be to invite confusion, and would not serve or promote the ends sought by this whole body of statutes providing for Workmen's Compensation and insurance against liability therefor. It is too plain to require argument or lengthy discussion, that the premium rates to be filed with the Commissioner in pursuance of Section 4 of said Act, and which are subject to his approval, are such, and such alone, as relate and apply to the liability arising under Article III of the Workmen's Compensation Law, and that such rate cannot cover or be mixed with one which covers any other liability. The coverage contemplated by the Act is absolutely restricted to compensation, and cannot lawfully be mingled with one against another or more extended liability.

Since, as above held, the Commissioner is without authority to approve of a rate for a mixed liability, it follows that no policy of insurance against compensation should further purport to cover other liability. One offending in this respect would call for the Commissioner's disapproval. It would have been idle and vain for the Act to clothe him with complete jurisdiction to pass upon the adequacy of a rate for a specific risk, and yet withhold from him the authority to disapprove of a policy which, in effect, sets at naught the approved rate by embracing insurance against a liability additional to that for which the rate had been alone approved as adequate. Although the express power to disapprove of such a policy is not be-

stowed, it may, and indeed must necessarily be implied. To hold the contrary would be to open the door wide to a complete nullification of his authority over the rate. The power to approve the rate of insurance and subsequently to withdraw such approval, is of the very essence of the power to approve or disapprove a policy as to the requirement that its coverage shall be strictly limited to the specific risk and liability for which the rate was approved. As stated above, the Commissioner has no power to prescribe the form of a policy as to its mere wording, that being a matter for the insurer to adopt, but he has the power to *require* it to conform to the law.

I am, therefore, of the opinion that the Commissioner of Insurance has the power under said Act No. 341 to approve or disapprove of a contract or policy of insurance in respect to its coverage, and to require a policy form providing for a coverage limited to a liability for compensation under the Workmen's Compensation Act of 1915.

2nd. It is provided in Section 4 of said Act No. 341 that the State Workmen's Insurance Fund and every insurance association or corporation insuring against liability for compensation under the Workmen's Compensation Act shall file with the Commissioner of Insurance its "schedule or merit ratings if a system of schedule or merit rating be in use," which shall not become effective until approved by him. It is further provided in the second paragraph of said Section:

"That if the Commissioner of Insurance shall have previously approved a system of schedule or merit rating, filed with him by the State Workmen's Insurance Fund or any insurance association or corporation, it may apply the same to risks subject thereto."

These provisions, in effect and intent, place the whole system of schedule or merit rating steadily under the Commissioner's control and supervision. No such system can be applied or become effective without his approval. This is tantamount to the power to regulate the same. The inspection or rating of risks necessary to be made to enable him to approve intelligently the adequacy of any system of merit rating is a matter for his determination and within his sound administrative discretion. He may approve such system in any case where in his judgment it is adequate to the risks to which it applies, or he may disapprove of it if it fails therein, or he may withdraw his approval of any schedule if, in his judgment, it is "inadequate to provide the necessary reserves." If a company under a system of merit rating could inspect and rate its own risks without any regulation whatever, it would take from the Commissioner that control over the adequacy of such system with which he is specifically clothed by the Act.

The conclusion is clear that the Commissioner has the power to disapprove of any system of schedule or merit rating whatever, and that it can only be lawfully applied where it has had his approval.

3rd. The Act does not expressly charge the Commissioner with the duty of approving "a general system of merit rating." In effect, however, he possesses the power to establish a *general system*, since none filed by an insurer is effective without his approval. Through the potent instrumentality of this broad authority he can mould all systems to accord with a certain prescribed standard by withholding approval from any that fails to measure up thereto. Whether a system of complete uniformity in such ratings or a more flexible method would better further the purpose of the law, is an administrative and not a legal proposition.

The Act, however, only makes it obligatory upon an insurer to file its "schedule or merit ratings * * * * if a system of schedule or merit rating be in use." The concluding clause of paragraph 2 of Section 4 of said Act providing as follows:

"Any reduction from the basis rate filed with and approved by the Commissioner of Insurance, on account of the application of such system of schedule or merit rating, shall be clearly set forth in the insurance contracts or the indorsements attached thereto,"

further indicates that insurance may be either upon a basis rate or with reductions therefrom under a system of merit rating.

As above pointed out, the Commissioner is not directly charged by the Act with the duty of establishing a general system of merit rating, his power to that end being only such in practical result. No schedule or merit rating can be lawfully applied by any insurer until the same has first been duly approved by the Commissioner who may thereby, in the way noted, bring it into complete conformity with a general system thereof, but it is not mandatory upon an insurer to use schedule or merit rating.

I am, therefore, of the opinion that the Commissioner of Insurance can not require that some general system of merit rating adopted by him, shall be applied to all the risks within the classification to which it may be applicable and refuse to permit the writing of such risks at a flat rate without merit rating. Under the Act, insurance may be either at a flat rate without merit rating, or with reductions from the basis rate under a system of schedule or merit rating but the basis rate and the merit rating are expressly subject to the approval of the Commissioner who thus exercises substantial supervision over both such methods of insurance.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE FIDELITY INSURANCE.

The business of making or issuing for a consideration contracts guaranteeing the fidelity of persons in such manner, as to amount to an insurance thereof, is a violation of the provisions of the Act of June 1, 1911, P. L. 567.

Office of the Attorney General,
Harrisburg, Pa., March 22, 1916.

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

Sir: This Department is in receipt of your communication of recent date, transmitting therewith draft of proposed contract between David Barlow and the NuBone Corset Company, and requesting an opinion as to the right and authority of an individual to engage in the business of guaranteeing the fidelity of persons for a consideration. There is involved in the question a consideration of the applicability of the Act of June 1, 1911, P. L. 567.

Substantially the same question was presented by you to this Department in your communication of November 9, 1915, and the matter was disposed of by a full and detailed opinion rendered to your Department under date of November 18, 1915, and it was pointed out therein that:

“It is the clear object and purpose of this legislation (referring to the Act of 1911) to safeguard the public in entering into contracts for casualty insurance by requiring incorporations, certain minimum capital, for the states supervision and control, etc., as they had been previously protected and safeguarded by similar legislation relating to fire, life and other forms of insurance.”

You were advised:

“that the making, executing or issuing of such contracts by the said David Barlow, under the name of ‘Keystone Bonding Company’ or otherwise, is a violation of the provisions of the said Act of 1911.”

As I understand it, the same Barlow now proposes to drop the mythical title “Keystone Bonding Company” and enter into substantially the same kind of a contract in his own name as an individual and makes the claim, *inter alia*, that he may legally do so under the proviso in Section 32 of the Act, providing that nothing therein

“contained shall prevent any one from becoming and being accepted as personal surety or guarantor.”

It is entirely unnecessary to enter upon a discussion of the possible technical meaning of the words “personal surety or guarantor.” They must be considered as having been used in the ordinary, common and usual sense, and must be given such meaning.

The proviso above referred to simply means that it shall not apply to the usual and ordinary cases where one person becomes surety or guarantor for another for personal considerations and not as a business proposition.

The NuBone Corset Company sells its merchandise through agents and representatives scattered throughout the country and the contract proposed to be executed by Barlow is to guarantee the fidelity of such agents and representatives.

The form of the proposed contract is as follows:

"For and in consideration of the annual payment of \$2.00 each, I hereby guaranty, to the extent of \$200 each, and no more, the payment, within thirty days of their respective dates, of any and all bills and accounts contracted or accruing on or after.....by the several representatives of the NuBone Corset Company, a corporation under the laws of Pennsylvania, named in the schedule hereto attached, with the said company. This guaranty shall be a continuing guaranty. I hereby waive notice of the time or times, amount or amounts, of any and all sales or shipments of any goods or merchandise to, or on account of, the said representatives, or any of them, and any and all releases on account, and of any and all defaults by the said representatives, or any of them, in the payment of any such bills or accounts; and I hereby waive and consent to the extension of time of payment of any or all such bills or accounts."

Provision is also made therein for the addition of "other representatives" and that Barlow "will guarantee the accounts of such newly appointed representatives" on the conditions therein contained. The form of contract also provides that the term thereof "shall continue so long as the said NuBone Corset Company, or its said representatives, shall pay in advance," and Barlow "shall accept the said annual payment of \$2.00 each for any or all representatives guaranteed" thereby. The form also provides that "the amount guaranteed may also, on written application, be increased or decreased by mutual agreement in writing."

Such a contract comes neither within the express words of the above proviso or its obvious intendment.

The Brief of private counsel attacking the Constitutionality of the Act has been considered with interest, but it is unnecessary to discuss the question in this opinion. It will, of course, be the duty of this Department to uphold the Constitutionality of the Act if the question should be raised.

Very truly yours,

• JOSEPH L. KUN,
Deputy Attorney General.

IN RE FOREIGN LIFE INSURANCE COMPANY.

A president of a foreign life insurance company doing business in Pennsylvania may lawfully contract with the company for a commission on premiums upon all business secured by him, while receiving a salary as president, provided the contract does not operate to the detriment of Pennsylvania insurants in the company, or tend to defeat the Commonwealth in the imposition or collection of taxes. If the contract operated to the detriment of Pennsylvania insurants or to defeat the imposition or collection of taxes, it would be the duty of the Insurance Commissioner to refuse to permit the company to do business in this State while the contract continued in force.

Office of the Attorney General,
Harrisburg, Pa., August 11, 1916.

Hon. J. D. O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of the 27th ult., asking to be advised, whether it is legal for the President of a Foreign Life Insurance Company, doing business in this State, to make a contract with a company, whereby he receives a commission of from 25% to 80% of the premiums upon all business secured by him, when he receives a salary from the company, as its President.

A domestic corporation is expressly prohibited from making such a contract, under the Act of June 1, 1911, P. L. 581, but there is no similar statute in this State relative to foreign corporations. If, however, such a contract operated to the detriment of Pennsylvania insurants in such company, or tended to defeat the Commonwealth in the imposition or collection of taxes, it would be your duty under section 4 of the Act of June 1, 1911, P. L. 605, to refuse to permit such company to do business in this State while the contract continued in force.

The matter is one for you to determine and your action will, of course, depend upon the facts existing in each particular case. If, in any case, you find, that the contract does not operate to the detriment of Pennsylvania insurants in the company, and that it tends, in no respect, to defeat the Commonwealth in the imposition and collection of taxes, you would have no power, on that account, to refuse to permit the company to do business in this State. The advisability of making such a contract would then be a question exclusively for the officers and stockholders of the foreign corporation to consider, and its legality should be raised in the State of the company's origin, where, under specific laws, or the general supervisory powers of its insurance department, it may be prohibited.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE SALE OF LIFE INSURANCE.

1. The Act of June 7, 1915, P. L. 895, does not prohibit the soliciting and selling of life insurance to former business associates until ninety days have elapsed since the agent left his former employer or business and entered the insurance business, but it does make it unlawful for the insurance company to pay a commission or other compensation or benefit to an agent under such circumstances or for the agent to receive any compensation, commission or benefit.

2. The said act applies to agents who are duly licensed and in good standing and producers of life insurance, when the insured or beneficiary is employed by the same corporation as the agent.

Office of the Attorney General,
Harrisburg, Pa., November 20, 1916.

Hon. J. D. O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 4th inst., requesting to be advised as to the construction to be placed on the Act of June 7, 1915, P. L. 885.

Said Act provides as follows:

"Section 1. Be it enacted, &c., That from and after the passage of this act, it shall be unlawful for any person, firm, corporation, insurance agent, broker, solicitor, or representative to pay or cause to be paid any commission or compensation whatsoever, to any attorney, partner, clerk, servant, employe, or any other person, howsoever hired or employed by or with any insured or any beneficiary named in any policy of life insurance; and it shall be unlawful for any attorney, partner, clerk, servant, employe, or any other person, howsoever hired or employed by or with any insured or any beneficiary named in any policy of life insurance, to receive, directly or indirectly, any commission, compensation, or other benefit because or by reason of any such life insurance being placed, sold, or solicited on the life or for the benefit of their respective clients, employers, or masters, or any of them; and it shall be unlawful for any attorney, officer, clerk, servant, or employe of any corporation, partnership, joint-stock company, or individual to receive directly or indirectly, any commission, compensation, or benefit because or by reason of any life insurance being placed, sold, or solicited on the life or for the benefit of any attorney, officer, clerk, servant, or employe of the same corporation, partnership, joint-stock company, or individual, whether or not any such attorney, partner, officer, clerk, servant, or employe, or other person hired or employed by or with the insured or any beneficiary named in any policy of life insurance, be duly licensed by the proper authority in the Commonwealth, to place, sell, or solicit life insurance.

Section 2. Every such attorney, partner, officer, clerk, servant, or employe, or other person hired or employed, or continuing to be hired or employed in the

relation aforesaid, within ninety days before or after the placing, selling, or soliciting of life insurance on the life or for the benefit of their respective clients, partners, officers, employers, masters, or person in the relation aforesaid, or any of them, shall be under the provisions of this act; and every person, firm, or corporation participating in the payment or receipt of any compensation or benefit in violation of this act shall be guilty of a misdemeanor and for conviction thereof shall be liable to a fine of not less than fifty dollars, nor more than five hundred dollars, payable to the Commonwealth, and imprisonment of not less than thirty days nor more than six months, at the discretion of the court."

You ask to be advised:

(1) Whether the intent and scope of this act is to prohibit the soliciting and selling of life insurance to former business associates until ninety days have elapsed since the agent left his former employer or business and entered the insurance business.

(2) Whether the intent and scope of the act prohibits the soliciting and selling of life insurance and receiving commissions or other benefits, when the insured or beneficiary is employed by the same corporation as the agent who is duly licensed and of good standing and a producer of life insurance.

The Act of June 7, 1915, P. L. 885 was apparently passed for the purpose of making more stringent the provisions of the law against rebating or the giving of inducements for taking out insurance.

It was found that these laws were being circumvented by the insured having some officer, agent, or clerk, in his or its employ appointed an agent or representative of the insurance company, to whom a commission was apparently paid for the business thus secured, but which commission or part of it, was in reality paid back to the insured, thus reducing the cost of insurance and being in effect a rebate.

The purpose of the present law was to stop or prevent this and similar practices.

It does not prohibit the selling or soliciting of life insurance to one's present or former business associates, but renders it unlawful to pay or receive a commission if the agent soliciting or securing the insurance is in the employ of the insured, or was in such employ within ninety days of the placing, selling or soliciting of such life insurance.

The period of ninety days was evidently fixed in order to prevent the evasion of the act by the alleged agent resigning from his employment just before the insurance is taken out and re-entering such employ immediately after, or some similar method of circumvention,

In order to be effective the act had to be general and its provisions were therefore made to apply to regular agents, duly licensed and of good standing, as well as to those who were specially contemplated by the Act.

You are therefore advised:

(1) That while the act does not prohibit the soliciting and selling of life insurance to former business associates until ninety days have elapsed since the agent left his former employer or business and entered the insurance business, it does make it unlawful for the insurance company to pay a commission or other compensation or benefit to an agent under such circumstances or for an agent to receive any compensation, commission or benefit under the conditions forbidden in the Act.

(2) That the Act applies to agents who are duly licensed and of good standing and producers of life insurance.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

**OPINIONS TO THE STATE HIGHWAY
DEPARTMENT.**

OPINIONS TO THE STATE HIGHWAY DEPARTMENT.

SURETY FOR TOWNSHIP TREASURER.

Under the Act of July 22, 1913, P. L. 915, there is no authority to elect a trust company or a national bank as a township treasurer.

Under the Act of June 26, 1895, P. L. 343, a surety or trust company, duly qualified, may become sole surety for a township treasurer.

Office of the Attorney General,
Harrisburg, Pa., March 19, 1915.

Mr. Joseph W. Hunter, First Deputy Highway Commissioner, Harrisburg, Pa.

Dear Sir: Your favor of the 5th inst. addressed to the Attorney General was duly received. You asked to be advised whether a Trust Company or Surety Company may become sole surety for a Township Treasurer; whether a Trust Company or a National Bank has the right to act as a Township Treasurer, and if so, whether such Treasurer may give its own bond in lieu of a bond with two sureties.

The Act of July 22, 1913, P. L. 915, provides in Section 5, in part, as follows:

"The supervisors of each township shall meet at the place where the auditors of the respective townships meet to perform their official duties on the first Monday of December, one thousand nine hundred and thirteen, and yearly thereafter,—shall organize as a board by electing one of their number as a chairman, and 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."

In Section 9 it provides:

"The treasurer appointed by the board of township supervisors shall be required to give bond, with at least two sufficient sureties, to be approved by the auditors of the township, conditioned that the said treasurer shall well and truly account for and pay over all moneys collected or paid by the State according to the provisions of this act, and received by *him* for road purposes, according to law."

The word "*him*" runs through this section. It has been usual and customary to have an individual as a Township Treasurer. The law always heretofore contemplated an individual treasurer. There is

nothing in the language of this Act that would indicate any change in this custom. The language of this Act using the word "person" and the word "him" indicates that no change in the law is authorized, and no such change would be authorized without specific language indicating such intent.

I am, therefore, of opinion, that under the Act of July 22, 1913, there is no authority to elect a Trust Company or a National Bank as a Township Treasurer. This disposes of the question as to whether such Trust Company or National Bank, if elected, can give its own bond.

Upon the other question whether an individual treasurer may give the bond of a Trust Company or Surety Company, I have to advise you that by the Act of June 26, 1895, P. L. 343, it is provided that wherever bond is by law required to be given with a surety or sureties, it shall be a full compliance with the requirements of law, if such bond shall be executed by a Company qualified to act as surety.

Therefore, a Surety Company can become the sole surety upon the bond of a Township Treasurer, and a Trust Company, if it is qualified to act in that capacity, may also become sole surety upon such bond.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

DISTRIBUTION OF MONTHLY BULLETINS OF AUTOMOBILE LICENSES ISSUED.

The Highway Commissioner can distribute said bulletin free of charge to "mayors, burgesses, police magistrates, chiefs of police, aldermen and justice of the peace, and to other applicants on a payment of a nominal fee.

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

R. J. Cunningham, Esq., State Highway Commissioner, Harrisburg,
Pa.

Sir: This Department is in receipt of your communication of the 11th inst. making inquiry as to the effect of Paragraph 39, Section 19, Act 102, P. L. 1915, on Section 11, Act 385, P. L. 1913, which is the Act of July 7, 1913, P. L. 672, in the matter of the distribution free of charge of your monthly Bulletins of automobile licenses issued.

The second paragraph of Section 11 of the Act of July 7, 1913, P. L. 672, (page 678) provides:

"The State Highway Commissioner shall issue printed monthly bulletins, giving name and address of each applicant for license, together with the number of license issued to said applicant; and shall furnish same, free of charge, to mayors, burgesses, police magistrates, chiefs of police, aldermen, and justices of the peace, and shall furnish at a nominal fee said bulletin to all other applicants for the same."

Paragraph 39 of Section 19 of the Act of April 28, 1915, (Act 102) provides:

"Bulletins in pamphlet form, issued by the Highway Commissioner, *other than of automobile licenses*, and not more than ten thousand copies at one issue. The State Librarian may requisition three hundred copies; the Legislative Reference Bureau ten copies, and the Commissioner of Highways, the remaining number."

You will note that by the provision of the latter Act just quoted, Bulletins of automobile licenses are excepted by the words "other than of automobile licenses."

The distribution of monthly Bulletins of automobile licenses is not, therefore, in any way affected by the Act of 1915, and you are not permitted to furnish same free of charge, except to those persons specifically mentioned in Section 11 of the Act of 1913, to-wit: to "mayors, burgesses, police magistrates, chiefs of police, aldermen, and justices of the peace." You are required to furnish such Bulletins to other applicants "at a nominal fee," but not otherwise.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

BRIDGES ON STATE HIGHWAY ROUTES.

By the Act of May 31, 1911, P. L. 468, the Highway Commissioner must build all bridges along State highway routes which it was the duty of the township authorities to build or maintain at the time of the approval of the act, and it is not the duty of the Highway Commissioner to build, repair or maintain any bridge which it was the duty of the county to build, repair or maintain at the time of the passage of the said act.

Office of the Attorney General,
Harrisburg, Pa., June 2, 1915.

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg,
Pa.

Sir: I have received your favor of the 21st ult. requesting instructions as to the maintenance and construction of bridges on State Highway routes.

In order to understand the situation with regard to bridges, it is necessary to keep in mind the different kinds of public roads now existing by law.

As at present provided by the laws of the State, there are four classes of public roads, exclusive of turnpikes, (1) Township Roads; (2) County Roads; (3) State-aid Highways; and (4) State Highways.

Township Roads comprise the ordinary public roads in townships, which are laid out and maintained under the law by the township supervisors.

County Roads are provided for by the Acts of Assembly of June 26, 1895, P. L. 336, May 2, 1911, P. L. 244, and May 21, 1913, P. L. 287.

By the express provisions of these Acts, County roads constructed or improved thereunder or by virtue thereof are subject to the control and supervision of the County Commissioners, and the duty and expense of maintaining and keeping them in repair devolve upon the County, and the township authorities are relieved from all duty and responsibility in connection with their care, maintenance and repair.

What is now known as State-aid Highways were created under the Act of April 15, 1903, P. L. 188, providing for the co-operation by the State with the several counties and townships in the improvement of public highways and the maintenance of such improved highways.

It will be noted that Section 18 of the Act provided as follows:

"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 a part of a road, and which might properly be built, according to existing laws, by the township or townships; but shall not include causeways or bridges which should properly be built by a county, or adjoining counties, or by the State."

This was followed by the Act of May 1, 1905, P. L. 318, Section 19 of which was practically a re-enactment of Section 18 of the Act of 1903.

The Act of May 31, 1911, P. L. 468, repeals both of these Acts, but provides for the same object in Sections 21 to 63, inclusive, and denominates such highways, in the construction and maintenance of which the State has contributed a part of the cost or expense, "State-aid Highways."

Section 34 of this Act defines a State-aid Highway as follows:

"A 'state-aid highway,' as the term is used in this act, shall be construed to mean only such highway as is improved with the aid and co-operation of the State with county and township, or with county or township for

ough or incorporated town, either or severally, as the case may be, according to the terms and provisions hereof; but shall not include any causeway or bridge which should properly be built by the county or by the State, under existing laws."

State Highways are such as are taken over by the State Highway Department under the Act of May 31, 1911, P. L. 468, or other Acts of Assembly, and are under the exclusive authority and jurisdiction of the State Highway Department. They are distinguished, however, from State-aid Highways, provided for in the same Act, which are improved and maintained at the joint expense of State, counties and townships respectively.

Section 34 of the Act defines the term "highway," as used in the Act of May 31, 1911, as follows:

"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 a part of a road, and which has been or might properly be built according to any existing laws, by the townships of the Commonwealth."

In addition to the roads which have been opened, laid out and maintained as free public roads, there are roads which were formerly turnpikes but which have been abandoned or condemned, and thus have become free roads.

The Act of June 2, 1887, P. L. 306, relating to the condemnation of turnpikes imposed upon the proper townships, etc., the burden of repairing and maintaining such roads.

The Act of April 20, 1905, P. L. 237, transferred the liability for the maintenance and repair of such roads from the township to the county.

The Act of April 25, 1907, P. L. 104, amended the Act of 1905 by extending its provisions to any road abandoned by a turnpike company, or formerly owned by a turnpike company, which has since been dissolved.

The Act of May 10, 1909, P. L. 499, repealed the Act of 1905 and the amending Act of 1907, and again made the township liable.

The Act of May 3, 1909, P. L. 378, provided that on the dissolution of a turnpike company the maintenance of the turnpike should rest upon the township.

The Act of March 15, 1911, P. L. 21, repealed the Act of May 10, 1909, and again placed upon the county the responsibility for the maintenance and repair of such condemned or abandoned turnpikes.

Such abandoned and condemned turnpikes, since the Act of March 15, 1911, are therefore to be considered as county roads and not as township roads.

A bridge in the line of a road or highway is ordinarily to be considered as a part of such road or highway, but by reason of the expense of the erection and maintenance of certain bridges being greater than a township or adjoining townships could reasonably bear, it has early been the policy of the Commonwealth under certain circumstances to impose the building and maintenance of such bridges upon the county to the relief of the townships. Thereafter, although all the rest of the road or highway is a township road under the care and supervision of the township authorities, the bridge is a county bridge under the care and supervision of the County Commissioners. By the Act of June 13, 1836, P. L. 560, Section 35, it was provided as follows:

“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.”

In addition to county bridges proper, various laws were enacted providing for county assistance in building township and other bridges. (An example of these Acts is the Act of March 27, 1903, P. L. 74). These Acts expressly provide, however, that the rendering of such county assistance does not make them county bridges and that they shall thereafter be maintained, kept in repair and rebuilt, when necessary, by the respective township or townships, and that the county shall in no event, be liable for the same.

The Act of April 28, 1899, P. L. 91, authorized and empowered the County Commissioners, however, with the approval of the Court, to enter such a bridge upon the records as a county bridge whenever it should appear that the care, maintenance and responsibility of said bridge is greater than it is reasonable that the township or townships should bear, and thereafter the bridge should be a county bridge the same as if it had originally been so entered on record.

Various other Acts of Assembly (April 13, 1843, P. L. 221, May 5, 1876, P. L. 112, May 8, 1876, P. L. 131, April 19, 1895, P. L. 39, April 11, 1903, P. L. 164 and April 23, 1903, P. L. 289, *inter alia*) provide for the repair and rebuilding of County bridges by the County authorities, the condemnation and taking of toll bridges as

County bridges, the reconstruction as County bridges of abandoned toll bridges, the construction of County bridges over railroads and the erection of joint county bridges.

These Acts, therefore, make a clear distinction between bridges which must be built and maintained by township authorities, and County bridges which must be built and maintained by the respective counties. Any bridge located on a township road, therefore, is a township bridge unless it has, under the provisions of the Acts of Assembly before referred to, become a county bridge. All bridges located and constructed on county roads (and since the Act of March 15, 1911, P. L. 21, this includes abandoned and condemned turnpike roads) are county bridges.

The Acts of Assembly of April 15, 1903, P. L. 188, May 1, 1905, P. L. 318 and May 31, 1911, P. L. 468, evidently had these distinctions in view when the sections above quoted were enacted.

By the Act of May 31, 1911, P. L. 468, it is therefore the duty of the State Highway Commissioner to build all bridges along State Highway routes taken over by the Commonwealth which it was the duty of the township authorities at the time of the approval of the Act to build or maintain, and it is not the duty of the State Highway Commissioner to build, repair or maintain any bridge which it was the duty of the County Commissioners of the respective counties to build, repair or maintain at the date of the approval of the Act. The fact that this construction may lead to a division of the care and responsibility for the maintenance and improvement of the roads and certain bridges, respectively, along State highways, as pointed out by Judge Orvis, in the case of Commonwealth ex rel. Fortney vs. Centre County Commissioners, 24 District Reports, 266, cannot be permitted to nullify or set aside the plain language of the Act of Assembly. Besides the responsibility is no more divided than was the case when a bridge along a township road was under the laws before referred to constructed and entered as a County bridge. Since the passage of the Act of May 31, 1911, the State Highway Department is responsible for the care, maintenance and improvement of all such highway routes as are set forth in the Act or its amendments, which have been taken over by the Department, including all bridges which, at the date of said enactment, were strictly township bridges. The responsibility for the care, repair and maintenance of county bridges along said highways remains the same as before the passage of the Act, upon the respective counties.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE HIGHWAYS.

The Act of May 31, 1911, section 5, P. L. 468, makes a distinction between county roads and township roads. All township roads and abandoned and condemned turnpikes are directed to be taken over by the State Highway Department before June 1, 1912. County roads are to be taken in whole or in part from time to time as conditions permit. Notice in writing to county officers of the intention so to do must be given. The work must be uniformly done.

Section 10 regulates State highway routes running through boroughs. If such highway has not been improved in a manner equal to the standards of the State Highway Department, the department is authorized, with the consent, express or implied, of the borough councils, to improve or reconstruct the same at the expense of the Commonwealth. There is no obligation upon the department until after notice to the borough authorities of an intention to take over any such road.

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

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg,
Pa.

Sir: I have your favor of the 7th inst. asking for an opinion as to whether or not it is obligatory on the part of the State Highway Department to take over *at any fixed time* those portions of State Highway routes that have previously been built by County Commissioners, and known as "County Roads;" also whether or not it is obligatory on the State Highway Department to take over *at any specified time* those portions of highway routes running through boroughs.

Section 5 of the Act of May 31, 1911, P. L. 468, which provides for the taking over by the State Highway Department from the several counties and townships of the highways embraced in the State Highway routes described in said Act, makes a clear distinction between county roads and township roads. Under the Act all township roads and abandoned and condemned turnpikes were specifically directed to be taken over by the State Highway Department before the first day of June, one thousand nine hundred and twelve. This provision did not apply, however, to county roads, which are governed by the preceding clause "said highways are to be taken over in whole or in part, from time to time, as circumstances and conditions will permit."

You are, therefore, advised that as to county roads which have been built and maintained, or at the passage of the Act of 1911 properly ought to have been maintained, by the respective counties, such highways are to be taken over by you, in whole or in part, from time to time, as circumstances and conditions will permit, and there is no fixed time that it is obligatory on the part of your Department to take them over.

Before taking over any such highway you must, of course, give notice in writing, as required by the Act, to the proper officers of the county of your intention so to do, and of the date when the Department will assume the maintenance and care of such roads. After this has been done it is the duty of your Department to maintain the roads so taken over.

The Act does provide that, so far as conditions will allow, the work of maintenance, repair and construction of State Highways is to be commenced and carried on equally and uniformly in the several counties.

With reference to the State Highway routes running through boroughs you are governed by Section 10 of the Act of May 31, 1911.

That section specifically provides that the Act shall not be construed as including or in any manner interfering with roads, streets and highways in the cities, boroughs or incorporated towns of the Commonwealth. If such road, street or highway, within the limits of a borough or incorporated town, forms a part or section of a State Highway route, and has not been improved or reconstructed in a manner equal to the standards of the State Highway Department, you are authorized, by and with the consent of the Borough Councils, to improve or reconstruct such unimproved section or sections at the expense of the Commonwealth.

This consent may either be evidenced by an express ordinance or resolution of the Councils agreeing to such action, or it may be inferred under the Act from the failure of Councils to file objections, in writing, with your Department within sixty days after you have notified, in writing, the proper authorities of said borough of your intention to take over such road, street or highway, or any part thereof under the provisions of said Act.

Unless and until you give the proper borough authorities notice in writing of your intention to take over for reconstruction and maintenance any such road, street or highway, or parts thereof, within said borough under the provisions of said Act, there is no obligation on you to reconstruct or maintain the same. Such action is to be taken by you, at your discretion, when the failure to take over such road, street or highway would leave an unimproved gap in a continuous improved State highway.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

WATER COMPANY PIPES—STATE HIGHWAY.

The State Highway Commissioner has the right to require a water company to remove its pipes from under the improved portion of a road and relocate them under the unimproved portion in such manner and condition as not to injure the road, and the expense of such relocation must be borne by the water company.

Office of the Attorney General,
Harrisburg, Pa., September 23, 1915.

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg,
Pa.

Sir: I have your favor of the 8th inst. requesting an opinion as to your right to require a water company to remove its pipes from under the improved portion of a State-aid highway and re-locate them in such portion of the highway as is not improved.

I note that the pipes now laid by the company are old and constructed of wood; that they leak and are subject to constant repair, which causes decomposition of the limestone placed on the road.

A similar question was presented to Attorney General Bell by your predecessor in office, Hon. E. M. Bigelow, who requested advice as to whether the State, through the State Highway Department, has the power to compel the re-location or removal of water pipes, gas pipes or other structures in the surface or subsoil of any of the State highways where the present location of such structures, by reason of the change of grade or re-alignment of any of said highways, or other changed conditions, interferes with the safe or convenient construction or improvement of said highway, in accordance with the plans and specifications prepared by the State Highway Department under and pursuant to the provisions of the Act of May 31, 1911, P. L. 468. He was advised that your Department has the power to compel the re-location of water pipes, etc., in State highways when required for the proper construction of the road.

In his opinion the Attorney General said:

"It results, from what has been said, that any franchise or privilege granted to lay gas pipes, water pipes, or other structures in the surface or subsoil of any of the state's highways, was at the time of the grant, is now and at all times will be subject to the State's exercise of her police power. This police power is a continuing power, hence the grantees of such franchise have no vested rights or continuous easement in respect to the location or use of such structures, but such easements are subject always to the superior right of the State to require a change in the location or in the mode and manner of the enjoyment of the easement or privilege, at any time as changed circumstances or conditions may make necessary or proper in the interest of the public safety,

convenience or general welfare." Citing Decisions of the Supreme Court of Pennsylvania and of the United States, in support of such statement.

(Attorney General's Report 1911-12, page 228).

And, as pointed out in the opinion, the company can recover no compensation for the expenses incurred or injuries sustained in and about such re-location.

The same principles have been recognized in the recent cases of *Keystone Telephone Company vs. Philadelphia and Reading Railway Company*, 56 Pa. Super. Ct. 384, and *Grand Trunk Western Railroad Company, vs. South Bend* 227 U. S. 554.

By the Act of May 31, 1911, P. L. 468, Sections 21 to 36 inclusive, provision is made for the construction, maintenance and repair of State-aid highways. In section 22 of said Act it is provided:

"Such roads to be at all times under the authority and supervision of the State Highway Department."

I am, therefore, of opinion that the ruling of Attorney General Bell with reference to State highways, is also applicable to State-aid highways and that upon proper occasion you have the right to require a water company to remove its pipes from under the improved portion of the road and re-locate them under the unimproved portion in such manner and condition as not to injure the road, and that the expense of such re-location must be borne by the water company.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE RAILWAYS ON PUBLIC HIGHWAYS.

Any act on the part of the supervisors of a township which tends to narrow a public road, or to render its use for its entire width by the public dangerous or impossible is ultra vires.

A street railway, which occupies a State highway with its tracks, may be compelled by the State Highway Department at any time to place its tracks at the grade established by that department, and if it fails to do so, the railway company can be indicted; and for its abuses of the powers and usurpation of public rights an action of quo warranto would lie against it. To make it conform to the lawful conditions under which it took a portion of the public road for its tracks, a suit in equity may be maintained against it.

Office of the Attorney General,
Harrisburg, Pa., January 6, 1916.

Hon. Robert J. Cunningham, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of December 23, 1915. The matter which you present is that of a street

railway company occupying a road which is now a part of the State Highway System. It appears that this company occupies the road under the grant of township supervisors and the nature of its occupancy is such that the road has been narrowed so that the part opened and in use by the public is less than that to which the road was originally opened. You also state that the street railway company, in occupying this road, maintain their tracks above the level of the roadway, so that that portion of the road occupied by it cannot be used and traveled over with safety by the public.

It further appears that certain conditions imposed by the supervisors in their original grant have been left unperformed by the street car company; in some instances on their claiming releases from such conditions and in other instances on the grounds of the impossibility of their performance.

Your inquiry is as to the rights of a street railway company so occupying the public road, and the remedies available to the Commonwealth where such occupancy narrows the road or otherwise amounts to a public nuisance.

The legal aspect presented is not so much that of the rights of this company and the Township, but the Company and the Commonwealth. It is hornbook law that in this state local political divisions, whether municipal or quasi-municipal, hold their streets and roads merely as public trustees, not for the citizens only, but for all the inhabitants of the Commonwealth. Except in so far as constitutional limitations prohibit, the Legislature may, therefore, modify, abridge or enlarge their use without the consent, or even against the will of such divisions.

City of Harrisburg vs. Railway Company. 1 Pearson 298.

By the Act of May 14, 1889, which is merely a re-enactment of the constitutional provision of 1874, no street-railway may locate its tracks upon any street or road without the consent of the local authorities. The right of local authorities to grant such permission is different in the case of townships than that of boroughs or cities. In the latter the municipal corporation has, aside from the rights of the Commonwealth, almost exclusive jurisdiction over its streets. They may extend or abridge them, widen or narrow them, and any property owner injured may look only to such municipality. In townships, however, while the supervisors or other township officers are the local authorities referred to in the Constitution of 1874, and Act of 1889, yet they do not have the control possessed by municipalities. As stated by Mr. Justice Williams in *Pennsylvania Railroad Company vs. Montgomery County Passenger Railway*, 167 Pa. 71:

"Cities and boroughs possess the necessary power over their streets to enable them to authorize their use by a street railway. Townships do not possess municipal powers, and under existing laws their control over the public roads is limited."

Township supervisors can lay out, abandon, or alter township roads only under the direction of the Court of Quarter Sessions, and not under their own discretion or initiative. When a road is once established, whether it has in the first instance been one laid out under the order of the Court, or is a prescriptive road covered by the Act of April 21, 1846, P. L. 416, the rights and powers of Supervisors in themselves to alter its width, length or location, have been repeatedly denied by the Courts of this state.

As stated in *McMurtie vs. Stewart*, 21 Pa. State 322:

"When the order to open is executed by the supervisors, the whole width of it is to be taken as devoted to the public use, and though it may not at first be entirely cleared out, that may be done afterwards. When a track has once been made on which the public can pass, the power to make another location is gone."

Again, in *Furniss vs. Furniss*, 29 Pa. 15, it is held:

"No agreement between supervisors and owners of land through which a public road passes can give validity to a change of the route of such road differing from that reported by the viewers. The authority under the order to open a road is exhausted by the action of those to whom it is directed."

The foregoing cases are cited in support of the position which we take, namely, that the Supervisors were without power to enter into any valid agreement, which in its effect narrowed or limited the portion of this road which could be used by the public.

Any political subdivision, that is townships, boroughs or cities, when granting permission to street-railways to occupy their roads or streets, may impose such conditions as they see fit.

Allegheny vs. Street Railway Company, 159 Pa. 411.

As stated in *Plymouth Township vs. Chestnut Hill and Norristown Railway*, 168 Pa. 181:

"The railway company must take such consent upon such conditions as the local authorities may impose, or not at all."

In the present case the consent in the first instance was given on condition that, with the exception of a small portion of the road, there was to be a sixteen foot clear roadway, and in addition the company was to take care of all slides, and to keep the drains open at all times. The company has maintained a position that aside from

the agreements these conditions were impossible of fulfillment, particularly as to the width of roadway. Their attitude is that in maintaining it to the designated width they would be compelled to retain dangerous curves, and keep the track in dangerous proximity to the west bank. This contention is disposed of in the case of *Commonwealth vs. Erie and North-East Railroad Company*, 27 Pa. 355, in which the Court says:

"If the powers given to the corporators cannot be executed without disregarding the restrictions with which they are coupled, they cannot be executed at all. A prohibition, exception or reservation in a charter, must therefore stand in full force, though it destroy or make nugatory all the powers given to the company."

Again—

"Municipal consent to the occupation of the streets of a municipality by a railroad company upon condition, and the condition broken, is no consent at all."

See also:

Millcreek Township vs. Erie Rapid Transit Company, 216 Pa. 132.

By the subsequent agreements entered into the Supervisors attempted to give away public rights, and the company, consistent with its uniform course, attempted to free itself of its obligations. The duty of this company to maintain the whole of the road, including the portions occupied by its tracks, fit for public travel is discussed later. Such duty, however, under the common law and its franchise, is no less than the duties discussed in the case of *Snow et al vs. Deerfield Township*, 78 Pa. 181. In that case a railroad which constructed its tracks on a public road was obligated under the Act of February 19, 1849, to construct a new road. The township authorities attempted to release the railroad company from this obligation in consideration of the payment of a sum of money to the township. The Court in discussing the case says:

"It was an agreement by the township wholly to release the railroad company from all responsibility and liability for the construction and repair of this and all other roads made necessary by the obstructions, or occupancy, or injury caused by the building of the railroad, and to perform this duty on the part of the township. Now, clearly this was a contract beyond the scope of the powers of the commissioners who made the agreement on behalf of the township. They could not release the railroad company from its public duty and its liability to the public for neglect or non-performance of the duty. The whole contract was *ultra vires*, and compelled the township to assume a liability to the public which was specially imposed by law upon the railroad company."

Aside from all duties imposed on this street railway company in its franchise to maintain its tracks in condition so that the public might use them, and to preserve the width and condition of the balance of the road, it has long been recognized as the common law in this state that such duty is inseparable from the use of a public highway.

The whole attitude of this company has been one of indifference to the effect which the prescence of their railway has on the balance of the road. As stated in *Commonwealth vs. Erie and North-East Railroad Company, supra*:

"If, for instance, the railroad be made above the level of the street, they must grade the rest of the street also, if that will make it better for public accommodation. They cannot say to the city authorities, We have destroyed your street, and rendered it impassable; but we have not impeded its free use, because you can restore it again to a tolerable condition, at your own expense. Neither does it make any difference whether it be a main thoroughfare or an unimportant by-street, for this act of incorporation protects all alike."

The portion of the act referred to reads as follows:

"The said railroad shall be so constructed as not to obstruct or impede the free use of any public road, street, lane or bridge, now laid out, opened or built."

The requirement in that act was no greater than the common law duty upon street-railway companies to preserve the streets they occupy in fit condition for public use.

In the case of *Reading vs. United Traction Company, 215 Pa. 250*, the rule is stated:

"The municipality, as the agent of the state, has charge of the streets, that it must maintain and keep them in proper repair, and when the state permits this charge, as to a portion of a street, to be committed to another, it must be understood as imposing upon such party the responsibility that formerly rested upon the municipality, unless in the grant or in the municipal consent thereto, of the right to use a portion of the street, such responsibility is expressly withheld and its imposition continued upon the municipality."

It will be noted here, that to relieve a street-railway company from this duty it must be expressly stated *in the grant*.

Again in the same case:

"It is recognized with substantial uniformity that a railway company, whether general or passenger, is bound to keep the portions of streets occupied by its

right of way in good condition, even in the absence of any express contract or statutory direction to that effect."

In the case of *Harrisburg vs. Railway Company, Supra*, the Court, commenting upon the effect of the Act of 1861, says:

"But the act of 1861 gave the virtual use of a portion of each of these streets to the railroad company. True, the public have certain limited rights on the track of the road. It is required to be made at grade with the street, and therefore may be passed over at pleasure. Many vehicles travel upon its rails, but must give way at all times and under all circumstances to the cars of the company, which has measurably an exclusive enjoyment of so much of the public street. Who then must keep that portion of the street so occupied in repair in the absence of all statutory provision? As we conceive, it must be done by the railroad company. From the very nature of the enjoyment, the duty devolves upon it. The Legislature has taken the control of that portion of the highway from the city authorities and given it to another corporation, to be used in a method peculiar to itself. All of the streets not so occupied must be kept in repair by the city. If the track of the railroad company becomes so deep and ponderous that it cannot be crossed with safety, the company may be indicted."

In the present case the company has denied its liability to continue any improvements which it undertook to make in the first instance. Its attitude has also negatived its intention to improve its road-bed in view of changing conditions. It can be stated here as a positive legal conclusion that irrespective of any agreement on its part to do so, when the state undertakes to pave or improve this road it can compel this company to pave its tracks with a pavement reasonably corresponding with that adopted by the State.

Reading vs. Union Traction Company; 202 Pa. 571.

In this case the Court quotes from Mr. Justice Mitchell's opinion in *Philadelphia vs. Street Passenger Railway Company*, 169 Pa. 269:

"The duty to repair, where it exists, extends to the replacement of an old pavement by a new one of different and improved kind * * * the company is bound to keep pace with the progress of the age in which it continues to exercise its corporate functions."

In the Reading case the Court uses an expression which is very appropriate to this phase of the present case:

"Certainly no contract was made between the city and the company designated to stand as an obstacle in the path of progress, corporate or municipal."

In conclusion I beg to advise you:

First: That any act on the part of the Supervisors of this township which tended to narrow this road, or to render its use, for its entire width as laid out, by the public dangerous or impassable was *ultra vires*.

Second: The present company is undoubtedly occupying this road in disregard of the conditions under which permission to occupy it was granted.

Third: At any time that the State Highway Department sees fit it may be compelled to place its tracks at the grade adopted by the Highway Department, and to pave between them and to the edge of the ties on either side, with pavement conforming to that adopted by the State Highway Department.

Fourth: In its present manner of maintaining its tracks it is maintaining a public nuisance.

For the latter offense this company can be indicted. For its abuse of its powers and usurpation of public rights an action in quo warranto would lie against it. To make it conform to the lawful conditions under which it took a portion of this road for its tracks an action in equity may be maintained against it.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE AUTOMOBILE LICENSES.

The owner of an automobile, who has taken out a license under the provisions of the Act of July 7, 1913, P. L. 672, can operate any motor vehicle and is not confined to the particular car registered in his name. Every paid operator, employe of an owner or custodian of a motor vehicle, must take out a license, and all other persons, except the owner, paid operator, employe or custodian, operating a car must have a card issued by the State Highway Department, authorizing him to operate a machine.

Office of the Attorney General,
Harrisburg, Pa., January 10, 1916.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner,
Harrisburg Pa.

Sir: I have your favor of the sixth instant requesting an opinion on the following question:

“Must a State Highway Engineer, or a State Highway Superintendent who individually owns a motor vehicle and who is granted a license to operate the same

under Section 3 of the act of July 7, 1913, P. L. 672, take out a driver's license, under Section 9, first and third paragraphs of the same act, in order that he may be entitled to operate a motor vehicle furnished him by the State?"

Section 3 of the Act of July 7, 1913, provides, inter alia, as follows:

"Application for registration of motor vehicles shall be made to the State Highway Department * * * The said application shall be made upon a blank provided for the purpose by the State Highway Department. It shall be signed by the owner or owners in case of joint ownership, and be verified by oath or affirmation. Upon receipt of the application and the proper fee, the State Highway Department shall, except as hereinafter provided, register the said motor vehicle in a book to be kept for that purpose; and shall issue to the owner or owners a registration certificate *which shall entitle the holder or holders to lawfully operate any motor vehicle*, showing the name and address of the owner or owners, the name, type, horse power and manufacturer's number of the motor vehicle, and the registration number thereof," etc.

Section 9 of the same Act provides, inter alia, as follows:

"Every person desiring to operate a motor vehicle as a paid operator, or who is an employe of the owner or custodian thereof, shall first obtain a driver's license. Application for license shall be made upon a blank furnished by the Highway Department, and shall contain the full name of the applicant, with his place of residence; and shall state that said applicant is over eighteen years of age, and is qualified to operate a motor vehicle. It shall be signed by the applicant and verified by oath or affirmation.

Upon receipt of the application and fee of two dollars (\$2), the State Highway Department shall issue to the applicant a driver's license and badge. * * * Every person other than a paid operator, owner, custodian, or employe, desiring to operate a motor vehicle, shall make application to the State Highway Department, upon a blank furnished by the Department, for a license card, which shall be furnished free from charge to the applicant, and which shall expire upon the thirty-first day of December of the year in which it was issued."

These sections above quoted provide a complete system for the licensing of owners and operators of motor vehicles. The third section provides that the owner of a motor vehicle who holds a registration certificate shall be entitled "to lawfully operate any motor vehicle." The first paragraph of the 9th Section provides for the

issuing of a driver's license to a paid operator, an employe of the owner or custodian of a motor vehicle, and the third paragraph of the same section provides for the issuing of a license card to all other persons except the owner, paid operator, custodian or employe. In none of these cases does the law limit the holder of the certificate or license to the operation of any one particular motor vehicle. An owner of a motor vehicle who holds a registration certificate may, therefore, lawfully, under Section 3, operate any motor vehicle, and not only the motor vehicle owned by him.

You are, therefore, advised that a State Highway Engineer or a State Highway Superintendent who individually owns a motor vehicle and who has been granted a license to operate the same under Section 3 of the Act of July 7, 1913, P. L. 672, is not required to take out a driver's license under Section 9 of the same Act, in order that he may be entitled to operate a motor vehicle furnished him by the State. A State Highway Engineer or State Highway Superintendent who does not himself own a registered motor vehicle is, however, required to take out a driver's license before he can operate a motor vehicle belonging to the State.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE APPORTIONMENT OF APPROPRIATION FOR REPAIR OF STATE
AID HIGHWAYS.

The money to be expended for the maintenance and repair of State-aid highways may be used wherever it may be needed for such purpose. It need not be apportioned among the several counties in proportion to their mileage of township and county roads as is required in the case of money expended for the construction of such highways.

Office of the Attorney General,
Harrisburg Pa., March 1, 1916.

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg, Pa.

Sir: I have received your favor of the 24th ult. inquiring whether it is necessary for you to apportion so much of the appropriation of 1915 as is set apart by your Department for the *maintenance and repair* of State-aid highways among the several counties of the Com-

monwealth according to the mileage of the township and county roads in the respective counties, as is provided by the Act of May 31, 1911, P. L. 468, Sec. 27, with reference to appropriations for the *construction* of State-aid highways.

The Act of June 18, 1915 (Appropriation Acts p. 301) appropriates to your Department

"For the payment of the Commonwealth's share in the expense of constructing and maintaining State-aid highways, as provided in the act of May thirty-first, one thousand nine hundred and eleven, the sum of five hundred thousand dollars (\$500,000)."

Section 29 of the Act of May 31, 1911, provides:

"The work of maintaining and repairing all State-aid highways improved under the provisions of this act, or which shall have been previously reconstructed by State-aid *shall be done by the State Highway Department*; and fifty per centum of the cost thereof shall be paid by the several townships wherein such roads may lie," etc.

Section 27 of the same Act provides, *inter alia*, as follows:

"The State aid authorized by the provisions of this act in the construction of State-aid highways shall be ratably apportioned among the several counties of the Commonwealth by the State Highway Commissioner, according to the mileage of township and county roads in the respective counties, and the said amounts or apportionments shall remain in the State Treasury until applied for in accordance with the provisions of this act," etc.

It will be noted that this provision requiring the apportionment of State-aid under the Act of May 31, 1911, among the several counties of the Commonwealth in proportion to the mileage of township and county roads in the respective counties, is limited to State-aid authorized for the *construction* of State-aid highways. As the section relating to the work of maintaining and repairing such roads when built follows almost immediately thereafter, it would seem that the clause in section 27 providing for the apportionment of State-aid funds was intentionally limited to such funds as were authorized for the *construction* of State-aid highways and was not meant to apply to funds appropriated for the maintenance and repair of such roads when constructed, and naturally so, for while the cost of building roads may properly be apportioned in the first instance, the cost of their maintenance and repair depends to some extent on matters beyond the control of the Department and cannot be accurately apportioned per mile irrespective of the actual conditions on the ground, and the wear and tear to which the roads are subjected.

Sound policy requires that roads built by the aid of the Commonwealth be maintained in reasonably good repair irrespective of the number of miles of township or county roads in the district, and to allow roads already built by State-aid to fall into neglect because the funds apportioned to one county were exhausted while surplus funds remained for the maintenance of such roads in other counties would be unwise and short-sighted.

In the appropriation for 1915 above quoted, no division or separation of the \$500,000 appropriated has been made between the work of constructing and the work of maintaining State-aid highways. In the interests of economy the roads already built by State-aid should be kept in reasonably good repair and condition, and if there is not sufficient money to do both, necessary repair and maintenance of such highways should have precedence over new construction.

Out of the appropriation of \$500,000 you should therefore set aside a sufficient sum to cover a liberal estimate of the cost of maintaining and repairing State-aid highways already built for the period of two years from June 1, 1915, and this sum can be applied by you generally to the maintenance and repairs of such State-aid highways as may require the same and need not be apportioned among the several counties in proportion to their mileage of township and county roads. Care should of course be taken that such repairs be made in keeping with the requirements of travel and that an undue amount be not spent in one section to the disadvantage of another, but that the whole appropriation be expended in such manner as to keep the entire system of State-aid highways as far as possible in reasonably good order and condition.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE HIGHWAY DEPARTMENT.

The department should not enter into contracts for the expenditure of more money than remains of the appropriation for building of roads plus the respective shares due the Commonwealth by the several counties, boroughs, townships, etc. A record should be kept of the counties which have not received their full apportionment of roads, so that the deficiency can be made up from the next appropriation.

Office of the Attorney General,
Harrisburg, Pa., March 30, 1916.

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg,
Pa.

Sir: I have received your favor of the 22nd inst. with reference to the appropriation to your Department for the construction of State-aid Highways.

Section 27 of the Act of May 31, 1911, (P. L. 468), provides:

"The State aid authorized by the provisions of this act in the construction of State-aid highways shall be ratably apportioned among the several counties of the Commonwealth by the State Highway Commissioner, according to the mileage of township and county roads in the respective counties, and the said amounts or apportionments shall remain in the State Treasury until applied for in accordance with the provisions of this act; Provided, however, That if, in any case, the amounts or apportionments so apportioned shall not be applied for before the first day of March in each year, the same shall thereupon be ratably allotted to such county or counties as have made application requiring the expenditure of sums, in the improvement of State-aid highways, greater than the amount of their apportionment."

From the statement of the State-aid apportionment enclosed with your communication it appears that if all the counties of the Commonwealth had received only their proportionate amount of such State-aid there would be a balance available for State-aid highway construction at this time of \$913,792.17.

It appears from said statement, however, that previous to your induction into office as State Highway Commissioner State-aid highway contracts had been entered into in various counties in excess of the amount apportioned to them. Whether this was done by reason of the fact that certain counties had not availed themselves by March 1 of each year of their apportionment in accordance with the provisions of the Act above cited, and these amounts were again apportioned among those which had applied for sums in excess of their apportionment, or whether it was due to some error on the part of the Department or circumstances beyond its control, I have no knowledge or information. The fact remains, however, that previous to your assuming office, contracts were entered into in sixteen counties of the Commonwealth to the amount of \$522,369.89, over and above the amounts coming to them on an apportionment under Section 27 of the Act of 1911. As a matter of fact, therefore, instead of having \$913,792.17 available for State-aid highway construction you have only \$391,422.28.

Various counties throughout the Commonwealth which have not received their full share of State-aid apportionment are calling upon you to enter into contracts for the full amount of their respective apportionments. The contracts you have already entered into on behalf of your Department will practically exhaust the actual balance available for contract. You ask me to advise you whether you are correct in refusing to enter into contracts with counties, townships or boroughs in excess of the balance actually remaining for such construction, namely, \$391,422.28.

The error, if any, with regard to this matter was not of your making; it nevertheless presents a condition which is necessarily controlling upon you. You should not enter into any contracts for the expenditure of moneys beyond the sums in the Treasury which have been appropriated for and are available for such construction, plus the respective shares due the Commonwealth by the several counties, boroughs, townships, etc. on account of State-aid contracts.

If, therefore, by reason of contracts having been entered into before you assumed office in excess of the apportionment above referred to, you have only \$391,422.28 available, you should not enter into any contract for State-aid highway construction in excess of that amount.

A record, however, should be kept of the various counties which have not received their full apportionment so that subsequently the deficiency in such apportionment can be made good out of a subsequent appropriation by the Legislature before counties which have received their full apportionment, or a sum in excess thereof, receive further moneys for State-aid highway construction.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE STATE HIGHWAYS.

Under the provisions of the Act of June 5, 1913, P. L. 417, the State Highway Department is not permitted to reconstruct or improve as a State-aid highway any section of a State highway route lying within the limits of a borough. Such section of a State highway when constructed with bricks or other permanent paving material must thereafter be maintained at the expense of the borough, but when not "permanently paved" the State Department must pay 50 per cent. of the cost and expense of maintenance, to be paid out of State-aid highway funds.

Office of the Attorney General,
Harrisburg, Pa., April 10, 1916.

Hon. R. J. Cunningham, State Highway Commissioner, Harrisburg,
Pa.

Sir: I have your letter of the 30th ult, asking to be advised upon the following questions which have arisen in connection with State-aid highway construction carried on by your Department:

"First. Under act of May 31, 1911, is this Department permitted to reconstruct or improve as a State-aid highway any section of a State Highway route lying within the limits of a borough?

Second. Does the application of a borough for reconstruction or improvement of a section of State Highway within the borough as a State-aid highway, constitute the specific consent on the part of the borough for the State Highway Department to take over said section for construction purposes.

Third. If, under the supplement of June 5, 1913, a section of State Highway route within a borough is reconstructed in the same manner as a State-aid highway, is this Department liable for any share of the expense of maintaining same?

Fourth. If this Department is liable for fifty per centum (50%) of such maintenance, when said section in a borough has been reconstructed as a telford water-bound macadam road, shall the said State's share of maintenance be paid out of State-aid funds.

Fifth. Is the State Highway Department wholly liable for the subsequent maintenance of a section of State Highway route reconstructed or improved as a State-aid highway in any county or township under the provisions of the Supplement of act of May 31, 1911, dated June 5, 1913."

Let me at the outset call your attention to the fact that the Act of June 5, 1913, (P. L. 417), does not provide for State-aid highway construction. Its purpose was to permit counties, townships and boroughs to aid in the re-construction or improvement of certain sections of *State highways* passing through their limits *in the same manner as State-aid highways*, that is, by contributing a part of the cost of such reconstruction or improvement, but the Act specifically provides in Section 3 that the sections so improved or reconstructed shall be and remain State highways, and they do not in consequence lose their character as State highways and become State-aid highways for any purpose.

Taking up your questions in their order, I beg to advise you—

First—Your only warrant for the construction of State-aid highways in boroughs, is found in Section 30 of the Act of May 31, 1911, (P. L. 468). That section, *inter alia*, provides:

"Where a portion of a highway traversing one or more townships, and for the improvement and maintenance of which *as a State-aid highway*, according to the provisions of this act, application has been made by said township or townships, shall lie within the limits of or traverse any borough or boroughs * * * and where the failure of said borough or boroughs * * * to improve the said highway would leave a break or unimproved section in a continuous improved highway, it shall be lawful," etc.

And

“Boroughs or incorporated towns shall only receive aid from the State, as aforesaid, in cases where failure to receive such aid would prevent a continuous improvement of an important *State-aid highway*.”

It will be noted that not only is no authority given to construct a State-aid highway within a borough upon the line of a State highway route, but the Act specifically provides that such State-aid highway within a borough shall only be constructed where it connects with a State-aid highway in an adjoining township, and the failure to receive such aid would prevent a continuous improvement of an important *State-aid highway*.

Your Department, therefore, is not permitted to reconstruct or improve as a State-aid highway any section of a State highway route lying within the limits of a borough.

Second—The application of a borough for the reconstruction or improvement of a section of State highway within the borough, under the Act of June 5, 1913, P. L. 417, in the same manner as a State-aid highway (which I understand is what your question refers to), would, in my opinion, evidence the consent of the borough for the State Highway Department to take over said section of State highway for construction purposes.

Before your Department takes over such section of State highway within the borough for construction purposes, you should however, formally comply with the provisions of Section 10 of the Act of May 31, 1911, which provides that you shall notify the proper authorities of the borough of your intention to take over such street or highway, or any part thereof, under the provisions of said Act for the purpose of improvement and reconstruction at the expense of the Commonwealth.

Third—If a section of State highway within a borough has been reconstructed in the same manner as a State-aid highway under the Act of June 5, 1913, your Department is subject to the provisions of Section 10 of the Act of May 31, 1911, with regard to the maintenance of such street. If the street has been reconstructed with bricks or other permanent paving material, it must thereafter be maintained wholly at the cost and expense of the borough. On the other hand, if it has been reconstructed or improved as a telford, water-bound macadam road, or other construction not coming within the term “permanent paving material,” your Department must pay 50% of the cost and expense of maintaining said street or highway.

Four—The State’s share of such maintenance should be paid out of State Highway funds and not out of State-aid highway funds. This applies also to its share of the cost of the original improvement or reconstruction.

Fifth—Under existing laws, the State Highway Department is wholly liable for the subsequent maintenance of a section of State highway route reconstructed or improved under the provisions of the Act of June 5, 1913, in the same manner as a State-aid highway by the aid or assistance of a county or township, or county and township.

Very truly yours,

WM. H. KELLER,
First Deputy Attorney General.

STATE HIGHWAY DEPARTMENT.

The department is advised relative to State-aid construction in townships and counties.

Office of the Attorney General,
Harrisburg, Pa., April 13, 1916.

Honorable R. J. Cunningham, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 11th inst., inquiring whether the opinion given your Department this day, relative to State-aid construction in boroughs on State Highway routes, applies as well to State-aid construction in townships and "especially to the payment of the State's proportion of the cost and as to the funds from which such payment is to be made." I beg to advise you:

First: That existing legislation does not authorize you to build State-aid highways in townships on State highway routes.

Second: That townships and counties may, under the Act of June 5, 1913, P. L. 417, contribute to the cost of reconstruction and improvement of State Highways in townships, in the same manner as provided for State-aid highways.

Third: That the entire cost of *maintenance and repair* of such State highways reconstructed by the aid of townships and counties, or townships or counties, must be paid by the State.

Fourth: That the State's share of each reconstruction and maintenance must be paid out of State highway, as distinguished from State-aid highway, funds.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE HIGHWAYS.

The Act of June 5, 1913, P. L. 417, provides that counties, townships, boroughs or incorporated towns may by application to the State Highway Department agree to pay their respective shares of the cost of reconstructing or improving State highways, and county commissioners and township supervisors may lawfully pay for the same in the manner provided by the Act of May 31, 1911, P. L. 468.

Office of the Attorney General,
Harrisburg, Pa., April 14, 1916.

Honorable R. J. Cunningham, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 7th inst. asking to be advised whether or not the supplement to the Sproul Bill, approved June 5, 1913, authorizes the expenditure of money on the part of county commissioners and township supervisors in the joint improvement of State highway roads.

The Act of June 5, 1913, P. L. 417, specifically provides that the several counties, townships, boroughs or incorporated towns of the Commonwealth, may make application to the State Highway Department for the reconstruction of State highways, or any portion thereof, in the same manner as State-aid highways, and agree to pay their respective shares of the total cost of said reconstruction or improvement as provided in Section 22 of the Act of May 31, 1911, P. L. 468, or upon such other terms and conditions as to the sharing of the total cost as may be agreed upon between the State Highway Commissioner and such county, township, borough or incorporated town, and they are authorized to incur indebtedness in the proportions agreed upon, and to pay their respective shares of the cost thereof in the manner provided by the Act of May 31, 1911.

This Act has never been declared unconstitutional by the Courts and your Department and other governmental agencies of the Commonwealth, including County Commissioners and Township Supervisors, have the right to and should proceed on the presumption that it is constitutional until it has been declared otherwise by the Courts.

I desire, in addition, to call your attention to several recent decisions of our Supreme and Superior Courts, which uphold the right of the Legislature to control the highways of the Commonwealth and declare who shall or may be responsible for their improvement and repair.

In the case of *Somerset Township Supervisors vs. Somerset County Commissioners*, 251 Pa. 164, (affirming the decision of the Superior Court in *Winters vs. Koontz*, 60 Super. Ct. 134) the Acts of April 20, 1905, P. L. 237 and April 25, 1907, P. L. 104, which shifted the

responsibility for the maintenance and repair of abandoned and condemned turnpikes from the respective townships to the several counties of the Commonwealth were held to be constitutional.

In *Allegheny County Commissioners' Case*, 61 Super. Ct. 591, the Superior Court held:

"It is admitted that all the highways in the Commonwealth are within the grasp of legislative control. Cities have no vested right in their highways, their business, charter rights, corporate powers or corporate existence: *Commonwealth vs. Moir*, 199 Pa. 534. *The construction, supervision, and maintenance of highways may be taken from one municipality and given to another as the legislature may deem proper.* * * * Early in our history counties have had the exclusive control of sections of highways in each bridge they constructed thereon. Within recent years, under the county road act, they may take over portions of township roads, reconstruct and maintain them. They have been charged with the cost, supervision, and maintenance of condemned turnpikes and toll bridges and the supervision and maintenance of abandoned turnpikes. They have been authorized to construct bridges entirely within municipalities connecting streets therein and over streams forming the boundaries between counties. The State highways have taken a large percentage of roads from local control."

It would seem that if the Legislature can shift the entire responsibility for the care and maintenance of certain public roads from one governmental agency of the Commonwealth to another, it can also authorize those governmental agencies to contribute to the State Highway Department a part of the cost of the improvement or reconstruction of such highways, which is in effect all that the Act of June 5, 1913 does.

I beg to advise you that in my judgment the Act of June 5, 1913, does legally authorize the expenditure of money on the part of county commissioners and township supervisors in the joint improvement of State highway roads within their respective limits.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

AUTOMOBILE TAG CONTRACT.

The Highway Department may let the contract to the Prison Labor Commission for furnishing automobile tags for 1917, and may waive the requirement of a bond and the deposit with the bid of a certified check in double the amount of the bid.

Office of the Attorney General,
Harrisburg, Pa., July 7, 1916.

Mr. Joseph W. Hunter, First Deputy Highway Commissioner, Harrisburg, Pa.

Sir: I beg to acknowledge receipt of your letter of June 28th. You advise that among the bids received by you for furnishing automobile tags for the year 1917 was one from the Prison Labor Commission of Pennsylvania; that an objection was raised by the representative of another bidder, to the reading of the bid of the Commission, because of its failure to comply with the requirement of the specifications under which bidders were invited to submit with their bid a certified check for \$2,000 or cash for that amount. You ask to be advised whether, under the circumstances, you are justified in awarding the contract to the Prison Labor Commission, which is the lowest bidder, and if the contract is so awarded, whether or not you may waive the requirement as to the furnishing a bond in double the amount of the bid, which is another one of the requirements of the specifications under which bids were invited.

The requirement of a certified check or cash with the bid and the subsequent filing of a bond in double the amount is obviously for the purpose of assuring the good faith of the bid and the ability of the successful bidder to perform the contract. However, the Prison Labor Commission like the State Highway Department, being a State agency, the deposit of a check and giving of a bond would add nothing toward the good faith of its bid or its ability to perform its contract. In fact, ultimate liability on any bond that it might furnish would fall on the Commonwealth itself.

You are advised, therefore, that if the only failure or omission of the Prison Labor Commission of Pennsylvania to comply with the requirements of the specifications under which bids were invited was a failure to accompany its bid with a certified check or cash in the sum of \$2,000, the State Highway Commissioner is justified in awarding the contract for furnishing tags for the year 1917 to the said Commission. You are also advised that the requirement of the bond in double the amount of the bid may be waived.

I desire to add by the way of suggestion that in view of this innovation in State contracts caused by the enactment of the law creating the Prison Labor Commission and of the importance to the

Highway Department of receiving these tags in time as required, both your Department and the Prison Labor Commission should be satisfied that this proposed contract can be promptly and efficiently fulfilled.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE STOLEN AUTOMOBILE.

Theft of an automobile is not such a casualty as was intended to be covered by the Act of May 14, 1915, P. L. 524, relating to automobiles and trucks of the State Highway Department damaged or destroyed by fire or "other casualty" and which are to be covered by the State Insurance Fund.

Office of the Attorney General,
Harrisburg, Pa., October 4, 1916.

Honorable Frank B. Black, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your letter of the 23rd ult. requesting to be advised whether under the provisions of the Act of May 14, 1915, P. L. 524, the phrase "or other casualty" appearing in said Act will cover theft, collision or any other damage sustained with respect to automobiles and trucks of the State Highway Department.

The Act of May 14, 1915, creates a fund

"For the rebuilding, restoration and replacement of any structures, buildings, equipment, or other property owned by the Commonwealth of Pennsylvania and damaged or destroyed by fire or other casualty."

Section 5 of the Act provides that

"Whenever loss or damage by fire or other casualty shall occur to any structure, building, equipment, or other property owned by the Commonwealth of Pennsylvania, the department, board of trustees, overseers, commissioners, or other branch of the State government having control or custody thereof, shall make report of such loss or damage to the Superintendent of Public Grounds and Buildings; setting forth specifically the use and character of the structure, building, equipment, or other property damaged or destroyed, the original

cost thereof, the estimated amount of the loss or damage, and cost of restoration, rebuilding, or replacement, and such other data and information as may be required by the said Superintendent of Public Grounds and Buildings, who shall make such examination and investigation as may be necessary and report the result thereof to the Board of Commissioners of Public Grounds and Buildings."

Section 7 of the Act provides:

"That from and after the adoption and approval of this act, it shall be unlawful for any department, bureau, commission, or other branch of the State government; or any board of trustees, overseers, managers, or other person or persons, or custodians of State property; to purchase, secure, or obtain any policy of insurance on any property owned by the Commonwealth, the term of which policy of insurance shall extend beyond the thirty-first day of December, A. D. one thousand nine hundred and twenty," etc.

The word "casualty" is defined in The Century Dictionary as "Chance, or what happens by chance; accident; contingency. An unfortunate chance or accident."

In *McCarthy vs. New York & Erie R. R. Co.*, 30 Pa. 247, the word "casualty" was said to be synonymous with "accident" and "misfortune."

As commonly understood, however, "theft" is not a casualty.

It is true that by the Act of June 1, 1911, P. L. 567, casualty insurance companies are empowered to insure against "loss by burglary or theft, or both." A careful reading of the Act of May 14, 1915, in its entirety, however, leads me to believe that it was not the intention of the Legislature in the creation of the insurance fund, above mentioned, to provide against loss by burglary or theft. The use of the words "*damaged or destroyed*" by fire or other casualty, tends to confirm this view, for stolen property is not, strictly speaking, either damaged or destroyed. It may be recovered intact and uninjured.

I am of the opinion, therefore, upon consideration of the whole Act of 1915, that theft of an automobile is not such a casualty as was intended to be covered by the Act.

The Act applies to the State Highway Department and covers all property of the Commonwealth. This includes automobiles and trucks purchased for the use of your Department. The fund is intended to cover the replacement of such property damaged or destroyed by any casualty, such as fire, explosion, collision, etc. If an automobile or truck belonging to the Commonwealth, in the control or custody of the State Highway Department, is damaged or destroyed by fire, explosion, collision, or other accident or casualty, you will be entitled to have it replaced out of the insurance fund

created by the Act of 1915, by complying with its provisions. If you deem it necessary to provide against the *theft* of such automobiles and trucks, you will have to take out a special policy of insurance covering such risks, the prohibition in the Act of 1915 against obtaining a policy of insurance being necessarily limited to the kinds of insurance provided for by the fund which it created.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

OPINIONS TO THE COMMISSIONER OF BANKING.

OPINIONS TO THE COMMISSIONER OF BANKING.

TITLE INSURANCE COMPANY.

A title insurance company, incorporated under the twenty-ninth section of the Act of 1874, is not required to accept the Act of May 9, 1889, P. L. 159, requiring \$125,000 paid up capital, and such company, which has accepted said act, and does not desire to exercise the privileges granted thereunder may withdraw such acceptance. A title insurance company is subject to the supervision of the Commissioner of Banking.

Office of the Attorney General,
Harrisburg, Pa., May 4, 1915.

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

Sir: I am in receipt of your communication of recent date raising certain questions in relation to the Title Guaranty Company, Pittsburgh, Penna., in which you state that you desire to be advised:

1. As to whether or not a corporation, chartered under the twenty-ninth section of the act of 1874 for the insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, is required to accept the act of May 10, 1889, supplementary thereto, calling for \$125,000.00 capital.
2. Whether or not a corporation having filed its acceptance can withdraw the same, surrendering its rights to accept deposits and do a general trust business, confining its business exclusively to title insurance.
3. Whether or not a corporation of this character, not subject to the act of 1889, and acting solely under the act of 1874, being known as a Title Company, is subject to the supervision of this Department according to the act of February 11, 1895, creating a Banking Department, defining its duties, etc.

Your questions have been answered in the order in which they have been stated, as follows:

First: The act of May 9, 1889, P. L. 159, confers upon title insurance companies created under the 29th section of the corporation act of 1874, a great many additional rights and powers: to hold property in trust, to act as receivers, guardians, etc., become sureties, to receive and hold on deposit certain property, etc.

It is provided by the second proviso in the 13th section of the act that

“Before *exercising* any of the *powers hereby conferred*, each such corporation shall have a paid up capital of not less than one hundred and twenty-five thousand dollars * * * * shall file in the office of the Secretary of the Commonwealth a certificate of its acceptance hereof * *

* * * *”

There is nothing in this Act which makes it mandatory upon a corporation chartered under the 29th Section of the Act of 1874, doing a title insurance business to accept the Act of May 9, 1889. This is a supplementary act “conferring” certain additional rights and powers upon all such title insurance companies that desire to “exercise” such powers and under the proviso above referred to, such companies before “exercising” the powers “conferred” by the Act of 1889, are required to have a certain capital and are also required to “accept” the terms of this Act.

Any title insurance company incorporated under the 29th Section of the Act of 1874, which does not desire to exercise any of the powers conferred by the Act of 1889, is not obliged to accept its terms.

Second: Inasmuch as the acceptance of the terms of the Act of 1889 is required of such corporations only which intend to “exercise” the powers “conferred” thereby, and the clear purpose and intention of the Act is that it shall operate on all such corporations which shall “exercise” the powers conferred, there is no reason why a corporation having filed its acceptance of the Act, should not be permitted to withdraw the same, thereby surrendering its right to exercise any of the powers conferred by the Act; providing that there are not outstanding any rights of persons who may have dealt with the company while it exercised any of the powers conferred by the Act of 1889, if any were exercised, and no persons are prejudiced by such withdrawal of acceptance.

Third: Section 1 of the Act of February 11, 1895, creating a Banking Department, provides:

Section 1. Be it enacted, &c., That there is hereby established a separate and distinct department to be known as the Banking Department, the Commissioner of which said Department shall take care that the laws of this Commonwealth in relation to banks and banking companies, co-operative banking associations, trust, safe deposit, real estate, mortgage, title insurance, guarantee, surety and indemnity companies, and all other companies of a similar character, savings institutions, saving banks, provident institutions and every other corporation having power and receiving money on deposit, and to mutual savings funds, building and loan associations and bond and investment companies incorporated,

or which may hereafter become incorporated, under the laws of this State, or incorporated under the laws of any foreign State, and authorized under the laws of this State to transact business herein, shall be faithfully executed; and also that the greatest safety to depositors therein and other interested persons shall be afforded; and the said Commissioner of Banking and said Department shall be charged with the supervision of all of said corporations for said purposes * * * * *

As noted, this section provides that the Banking Commissioner shall take care that the laws of the Commonwealth in relation to the companies referred to therein shall be faithfully executed, and there are three enumerated classes of such companies.

The first includes "title insurance" companies, "and all other companies of a similar character"; the second class enumerates "savings institutions, savings banks, provident institutions, and every other corporation having power and receiving money on deposit"; then follows the third class, "mutual savings funds, building and loan associations, and bond and investment companies."

The Act of 1889 specifically provides that the Commissioner of Banking shall have supervision over inter alia "title insurance" companies. It is clear that the Act means title insurance companies as such without regard to any other powers of such company, for in the same clause containing the designation "title insurance" there appear specifically named "banks, trust, safe deposit, surety and indemnity" and other companies. "Title insurance" companies must be regarded therefore as having been designated specifically as such without regard to any banking or the usual trust company powers.

Furthermore, the Commissioner is charged with taking "care that the laws of this Commonwealth in relation to" the various designated companies "shall be faithfully executed; and also that the greatest safety to depositors therein and *other interested persons* shall be afforded * * * * *". The manifest intention of the Act cannot be restricted therefore to affording "greatest safety to depositors" for the Act is as much concerned with the safety of "*other interested persons*." By its own terms the purpose of the Act is not limited to protecting "depositors" and therefore its operation cannot be limited to such corporations "having power and receiving money on deposit."

It follows that a "title insurance" company not subject to the Act of 1889 and acting solely under the Act of 1874, is subject to the supervision of the Banking Department under the Act of February 11, 1895, creating the Department.

Respectfully,

FRANCIS SHUNK BROWN,

Attorney General

FULL-PAID STOCK ASSOCIATION.

The issuance of full-paid and prepaid stock by a building and loan association must not be either the predominating business nor even an equal business with that of its issuance of instalment stock.

A ruling by the banking department to the effect that no building and loan association may issue as full-paid or prepaid stock more than one third of its total outstanding stock regardless of the amount paid in on the instalment stock, should not be considered arbitrary.

It is irregular for a building and loan association to issue any full-paid or prepaid stock, the interest or dividend on which is guaranteed, irrespective of whether the same is earned or not.

Office of the Attorney General,
Harrisburg, Penna., September 23, 1915.

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

Sir: I have your letter of September 3, 1915, asking:

First—Whether a building and loan association in this State may issue more full-paid stock than installment stock and if not to what extent full-paid stock may be issued.

Second—As to whether or not the promise of a fixed rate of interest or dividend on full-paid stock is lawful and if not in what manner the rate of profits in this class of stock should be determined.

Answering your first inquiry, I have to advise that in an opinion of the Hon. John P. Elkin, Attorney General, given on this same subject on September 21, 1899, it was held:

“The primary and principal business of building and loan associations incorporated under the Act of 1874 must be the issuing of installment stock. Full-paid and prepaid stock may be issued to a limited extent as incidental to the principal business of the association issuing the same; that is to say, where the best interests of those holding installment stock will be saved by issuing a sufficient amount of full-paid or prepaid stock to enable the association to meet the demands of borrowing members, it may be done without violating any charter rights.

The issuance of full-paid and prepaid stock should not at any time be permitted to become the principal business of the association, and at no time should there be more prepaid and full-paid stock issued than there is installment stock outstanding.”

The soundness of this opinion was evidenced by its practical adoption by the Supreme Court of this State in 1906, when in the case of *Folk vs. State Capital Savings Association*, 214 Pa. 529, it was held that the issuance of full-paid stock was lawful,

“provided that the issue is incidental to the main business of the association, and is intended to provide a fund from which loans may be made to the holders of installment stock. To this extent and for this purpose, its issue is within the implied powers of such association.”

It is doubtful if the Supreme Court could have expressed in much stronger language the fact that the issuance of full-paid stock must not be either the predominating business of a building and loan association nor even an equal business with that of its issuance of installment stock. No technical definition of the word "incidental" is necessary. However, Words and Phrases, Vol. 4, page 3493, gives the following definition, quoting from *Thomas vs. Harmon*, (N. Y.) 46 Hun. 75-77,

"Belonging to or pertaining to; following; depending upon another thing as more worthy; something necessarily pertaining to or depending on another, which is termed the principal."

It is, therefore, absurd to argue that an issue of one kind of stock which exceeds that of another kind of stock is incidental to the latter.

It is difficult to determine what definite proportion of full-paid stock is permissible. This is a matter which, after due deliberation, you should decide upon and promulgate as a rule of your Department. Under the general powers conferred upon the Commissioner of Banking by the Act of February 11, 1895, P. L. 4, the Commissioner of Banking is authorized to exercise supervision over building and loan associations as well as other banking institutions, and to require them to conduct their business upon a sound and substantial basis, so that the best interest of the shareholders, depositors and the public generally may be conserved thereby.

See Opinion of John P. Elkin, Attorney General, under date of July 19, 1899.

A ruling by your Department to the effect that no building and loan association may issue as full-paid or prepaid stock more than one-third of its total outstanding stock, regardless of the amount paid in on the installment stock, should not be considered arbitrary. That or any other reasonable regulation which would conform to the Court's opinion in *Folk vs. State Capital Savings Association*, supra, could be set as a fixed standard.

In making such a ruling, you should consider the practice which has grown up in several associations and work out some method which, without undue disturbance or injury to those now having a preponderance of full-paid or prepaid stock, could effectively correct the present clearly irregular issuance of this class of stock.

Summarizing this point I have, therefore, to advise that it is not permissible for a building and loan association to have more full-paid stock than installment stock, and that the extent of full-paid stock permissible is subject to such regulation by you as will maintain that stock in an incidental relation to the installment stock.

Answering your second inquiry would say that under the authority of *Folk vs. State Capital Savings Association*, supra, it would be illegal for a building and loan association to issue any full-paid or prepaid stock, the interest or dividend on which was guaranteed, irrespective of whether the same were earned or not. The rate of dividend payable on this class of stock cannot exceed that earned and credited to the straight installment stock and may be such amount less as the association by its bylaws may determine.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

BUILDING AND LOAN ASSOCIATIONS—INSURANCE.

The Commissioner of Banking has power to determine whether or not a building and loan association, in its advertising or in the manner in which it may lead the public to act, is engaging in operations which are dangerous or unauthorized.

A building and loan association does not have the power to insure the lives of its members so that upon the death of a member his shares of stock are matured.

Office of the Attorney General,
Harrisburg, Pa. February 15, 1916.

Honorable Wm. H. Smith, Commissioner of Banking, Harrisburg,
Pa.

Sir. I have before me your inquiry of January 31, 1916, asking as to the right of supervision and control of your Department over insurance funds which are maintained and operated in more or less direct connection with certain building and loan associations in this State.

The condition to which your communication refers is that where members in a certain building and loan association become members of a supposedly independent trust or informal association, and by reason thereof pay monthly into such fund an amount which is determined by the age of the member and the amount of the loan carried by them in the association. The object of this arrangement is to protect such member in his relation to that particular building and loan association in event of his sickness or death. To this end the fund procures insurance upon the life and health of each member, and in event of his death collects the amount of such policy and pays to the association sufficient to mature his stock. In like manner during his sickness the dues are paid by the fund from moneys received from the insurance company for that purpose. Certain of these funds after payment to the association of sufficient to mature the members' stock in the Building and Loan

association, appropriate the remainder to the use of the fund, while in others such remainder is paid over to the estate of the deceased member.

It is the accepted law of this State that a building and loan association does not have the power to insure the lives of its members whereby upon the death of such member the shares of stock are matured. *See opinion of Attorney General Carson—Attorney General's Opinions 1905, page 150.* The present arrangements, while professedly independent of the associations with which they are connected, are in fact mere subterfuges, resorted to to avoid the conclusions of this opinion. While pretending to be a voluntary association of certain of the members of the particular building and loan associations, it is a fact that the officers and those in control of such funds without exception are one or more of the executive officers of the building and loan associations, or so closely under the control and connected therewith as to make apparent the close affiliation. This nominal separation of the two propositions may be sufficient to satisfy the law in respect to relieving the association of the charge of ultra vires acts. The power, however, which you have in reference to the supervision of a building and loan association, is not curtailed by that test. Section 9 of the Act of February 11, 1895, P. L. 4, authorizes the Commissioner of Banking to act when he

"shall have reason at any time to conclude that such corporation is in an unsound and unsafe condition to do business, or that its business or manner of conducting the same is injurious and contrary to the interest of the public."

The matter therefore resolves itself into the question,

First. Are such funds in themselves injurious and contrary to the interests of the public?

Second. Are they connected with or a part of the manner of doing business of such building and loan associations?

As to the first proposition, it is obvious that this opinion could not cover all of the objectionable features appearing in each one of these funds. Certain objections however, are common to all of them and the first objectionable feature is the want of proper understanding on the part of members of such fund or trust that in belonging to it they are merely carrying insurance on their lives or health and are paying a substantial per centage more than they could procure the same insurance from any reputable company. Another objection is that these funds or trusts are administered by one or a few persons who claim immunity from an examination of

their affairs by your Department, who are not subject to such regulations as are imposed upon legally appointed fiduciaries or legally constituted associations or corporations, and who give no bond or security for the proper and honest conduct of their affairs. They are responsible to no one except the individual members who could only obtain redress by resort to the courts, and at an expense which it is only too apparent the individual member would not feel justified in assuming.

Unhappily, also, as is within the knowledge of yourself and this Department, the control of such an unsupervised fund makes more secure the employment of dishonest and improper tactics, and within the last year upon the death of one trustee it was found that he had during his lifetime embezzled and appropriated the whole of the fund.

Unquestionably, every one of these funds are maintained at the profit and to the interest of those who control them and in many instances we find the trustee either acting as agent for a particular insurance company, or closely affiliated with it.

Now as to the second proposition, it is unquestionable that the very fact that these funds are in a manner connected with the particular building and loan association, adds to their viciousness and the probability that the members thereof are under the belief that the particular funds are subject to the same State control and supervision as the affairs of the building and loan association itself. The fact of this connection has developed in different ways. As before stated, practically all of the funds are dominated and controlled by one or more officers of the association. The literature respecting such funds is sent out together with the literature of the association, and advertising and other publicity work of the two are carried on in common, so that in the popular mind their control and their integrity is not differentiated. Remittance for the fund is made at the same time as dues to the association, some of the latter even having columns in the members' pass book for entry of the insurance payments.

Surely any manner of conducting a business which will lead the public to infer that these particular funds are subject to State supervision, when they in fact deny such right of supervision, creates a condition which is most obviously contrary to the interest of the public.

Many other instances showing the close connection between the particular building and loan associations and their particular funds, may be cited. Among those are some in which classes of stock are distinguished by whether or not the member of the association is a member of the fund.

The particular evil which is the subject of your communication, is only one of many which are insiduously creeping into some building and loan associations. It has a tendency to depart from the mutuality upon which building and loan association laws are grounded, and to substitute therefor various alluring inducements to attract the public and which, if closely analyzed and their results considered, would be found to be of a dangerous nature and a potential reason for the instability of many associations which are being guided along such channels.

In our opinion, your power in the premises is not limited to whether certain acts are performed by the officials of a building and loan association acting in such capacity. Under the Act of 1895 you can and should go farther and determine whether or not a building and loan association in its advertising, or in the manner in which it may lead the public to act, is engaged in operations which are dangerous, pernicious or unauthorized, and if, after notification from you, such practices are not discontinued, it is the opinion of this Department that such associations should be proceeded against by quo warranto, or in such other manner as will effectively limit their activities to the intended scope of the laws under which they were created.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

BRANCH OFFICES OF TRUST COMPANIES.

Trust companies incorporated under the Act of April 29, 1874 P. L. 75, and its supplements may lawfully maintain sub-offices or sub-agencies for the restricted purpose of receiving and paying out moneys, providing a full report of the operations is made to the principal place of business at the close of the day, the assets transferred thereto and the liabilities reported; but they may not maintain branch offices in the strict sense of the term for the transaction of their general business.

Office of the Attorney General,
Harrisburg, Pa. March 22, 1916.

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

Sir: Answering your communication of recent date relative to the legality of so-called branch offices maintained by Trust Companies, I beg to advise you as follows:

The question is whether Trust Companies incorporated under the General Incorporation Act of 1874 and its supplements, may open and maintain branch offices.

The Banking Act of April 16, 1850, P. L. 477; prohibits the establishing, maintaining, keeping or continuing, directly or indirectly, any branch or agency for the transaction of banking business.

"Section 50. Each and every bank in this Commonwealth, or any other State, is hereby prohibited from establishing, maintaining, keeping or continuing, directly or indirectly, in the name of one or more individuals, in any manner or by any device whatever, either for its own sole benefit and profit of its officers or any of them, in whole or in part, any branch or agency for the transaction of banking business, or the issuing out of or circulation of its notes at any other place than that fixed and named in its charter for its location and the transaction of its business, without the express authority of an act of assembly of this Commonwealth to do so," etc.

Penalties are provided for infractions of this prohibition.

Section 1 of the same Act provides:

"Every banking corporation hereafter created by any special act of the general assembly, and every bank hereafter re-chartered, or the charter of which shall be hereafter extended or renewed by any such act of assembly, shall be subject to the provisions of this act."

Of course, it has been held that this act relates to banks of issue only.

First National Bank of Clarion vs. Gruber, 87 Pa. 468.

While the Savings Banks Act of May 20, 1889, P. L. 246, contains no such direct prohibition, it was ruled by Attorney General Hensel—

"That no authority exists for banks incorporated under that act to establish branch offices or agencies."

See Branch Office, 4 Dist. Rep. 54.

This was a sound ruling and is a necessary implication from Section 10 of the Act, which provides:

"It shall be lawful for any such savings fund with the approval in writing under the seal of the Auditor General, to change its location within the limits of any city or town wherein it may be established; and in effecting such change of location, such corporation owning a banking house and lot may purchase such additional plot as the corporation may require, and such banking house and lot previously owned and occupied shall be sold."

In *Western Saving Fund Society*, 27 Pa. C. C. 526, Attorney General Elkin, without making any reference to the opinion of Attorney General Hensel, or to any particular acts of assembly, ruled:

"It is clear to me that a banking institution, incorporated under the laws of our State, must have a fixed place for the transaction of its business. It is also apparent that it was the intention of the legislature to confine the business of such banking institution to one place. I cannot find any authority for a bank with its location fixed undertaking to widen the scope of its banking privileges by creating one or several branch offices at different points, either in the city or the county where the principal banking institution is located. It is my opinion that such institution does not have this privilege conferred upon it by our acts of assembly."

These rulings with reference to banking institutions, strictly speaking, are undoubtedly sound.

It is claimed, however, that Trust Companies incorporated under the General Incorporation Act of 1874 and its supplements, not being banking institutions in the technical sense of the term, are not subject to the prohibitory provisions of the banking laws of the State or the rulings made thereunder.

It must be conceded that trust Companies incorporated under the Act of 1874, and its supplements, are not subject to the express restrictions or prohibitions in the banking laws of 1850 and 1889, above referred to, and there is no further restrictive legislation referring to the subject matter under consideration. However, it was ruled by Attorney General Hensel in *Branch Office 4 Dist. Rep. 54*, that:

"While no such express prohibition occurs in the Act of 1874, and its supplements, authorizing an incorporation of trust companies and defining their powers, I am likewise of the opinion, and advise you, that even a trust company, doing a quasi banking business, such as receiving deposits and paying out moneys, has no right to establish branches within even the municipal limits of a city and county which it has designated in its charter as the location of its place of business. For manifest reasons, the entire business of such companies should be brought within the whole view and supervision of the State's officers. If they were permitted to scatter their branches widely over the extended territory of a city like Philadelphia, such supervision would be practically impossible. The assets would be scattered and dispersed, their liabilities be unknown and undefined. I can conceive that certain persons at certain places might be designated, during certain hours of the day, to receive and pay out moneys for a trust com-

pany located in another part of the same city, providing a full report of the operations of the day were made to the principal place of business at the close of the day, the assets transferred thereto and the liabilities reported, so that, in effect, the business at the sub-office, or sub-agency, would be actually the business of the main office transacted, for convenience, at another place, but immediately related to it, just as a messenger, officer or counsel of the trust company might transact certain of its business outside of its main office; but whenever such an office became in fact, or within the contemplation of the law, a 'branch' establishment, I am of the opinion that it ought not to be permitted."

Following the suggestions in this opinion (rendered in the year 1894) and basing the right to do so thereon, a number of trust companies in the City of Philadelphia and elsewhere have opened so-called branch offices for the restricted purpose indicated therein. Accordingly, the ruling should not be stricken down and such offices should not be declared to be illegally maintained, unless the ruling is plainly and palpably erroneous and unsound.

See Harrison's Estate, 250 Pa. 129.

Furthermore, the absence of legislative action on the subject matter during all these years may properly be regarded as legislative sanction of the view expressed in said ruling.

The Acts of 1850 and 1889 do not apply to trust companies and the Act of 1874 contains no such express or implied prohibition. Furthermore, Section 3 of the Act of 1874, provides, with reference to certificates for the incorporation of corporations of the second class, that, *inter alia*, it

"shall be acknowledged by at least three of the subscribers thereto before the Recorder of Deeds of the county in which the *chief operations* are to be carried on, or in which the *principal office* is situated," etc.

This use of the words "chief operations" and "principal office" suggests the implication and inference that other operations of corporations might be carried on elsewhere and there might be other than a "principal office." It follows, therefore, that the suggestion of Attorney General Hensel is not only not erroneous and unsound, but the restriction therein imposed rests on the broad ground of public policy—considering the policy of the State with reference to banking institutions and applying that policy to trust companies doing a quasi banking business.

You are accordingly advised that Trust Companies incorporated under the general incorporation Act of 1874, and its supplements, may lawfully maintain sub-offices or sub-agencies for the restricted

purpose of receiving and paying out moneys, providing a full report of the operations is made to the principal place of business at the close of the day, the assets transferred thereto and the liabilities reported; but they may not maintain branch offices in the strict sense of the term for the transaction of their general business.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

DEPARTMENT OF BANKING.

The American Express Company may file with the Commissioner of Banking a bond for \$100,000 and secure exemption from the provisions of the Act of June 19, 1911, P. L. 1060.

Office of the Attorney General,
Harrisburg, Penna., May 8, 1916.

Honorable William H. Smith, Commissioner of Banking, Harrisburg, Penna.

Sir: Your letter of the 25th ult., addressed to the Attorney General, relative to the proposal of the American Express Company to file an exemption bond of \$100,000.00, under the Act of June 19, 1911, P. L. 1060; has been referred to me for reply.

The Act, as indicated by its title, is "to provide for licensing and regulating private banking" and does not apply to any express company or telegraph company receiving money for transmission, excepting in case such company engages in the sale of steamship tickets.

This appears from Section 8 of the Act which provides that the provisions of the Act shall not apply, *inter alia*,

"(Three). To 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."

By engaging in the sale of steamship tickets, therefore, such companies become subject to the provisions of the Act.

The purpose of the Act is to safeguard and secure the public in its dealings with the various kinds of companies therein referred to and there is provision made for the examination of the assets and liabilities of the applicants and for the filing of bonds to be ap-

proved by the Board referred to in the Act. There is a further provision in Section 8 of the Act, which gives rise to the particular inquiry in this case, and that is that the provisions of the Act "shall not apply

(Four). to any individual, partnership or unincorporated association, who would otherwise be required to comply with the provisions of this Act, who shall file with the Commissioner of Banking a bond in the sum of \$100,000.00, approved by the Board as to form and sufficiency for the purpose and condition as in the first section prescribed where the business is conducted in the city of the first or second class; and if conducted elsewhere in the State, such bond shall be in the sum of \$50,000.00, etc."

The question is whether the filing of a bond by the American Express Company in the sum of \$100,000.00 will relieve it from the operation of the Act, so that it may sell steamship tickets from its offices throughout the State, or whether it will be necessary to file such an exemption bond for each of its offices.

There may be some question as to whether or not the affirmative action of the Board, granting a license under the Act would give the right to the licensee to engage in such business at more than one place in the Commonwealth, but this is not now presented for determination.

Section 8 of the Act, clearly expresses the intention of the Legislature to exempt certain persons, associations and corporations from the provisions of the Act as therein referred to, the language of the first portion of the Section being:

"The foregoing provisions (referring to the provisions for the licensing and bonding of the persons, corporations, and associations therein referred to) shall not apply."

and then reference is made to different classes of persons, firms, partnerships, corporations and unincorporated associations, which are exempt on various grounds. It is the individual, partnership, corporation and unincorporated associations, which, in each instance, is exempted from the provisions of the Act, and not the place or places conducted by them.

It appears, therefore, that inasmuch as Section 8 of the Act referred to provides that it shall not apply, inter alia, to an unincorporated association (which I understand is the character and status of the American Express Company) which shall file with the Commissioner of Banking a bond in the sum of \$100,000.00, approved by the Board, etc., the filing of such bond would necessarily exempt it from the

provisions of the Act, and it would be entirely immaterial that such company conducted a number of offices throughout the State for the transaction of its business, and you are accordingly so advised.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

BANKING DEPARTMENT.

Where directors of a corporation under the supervision of the Banking Department do not acknowledge letters from the Commissioner of Banking in matters which require correction, the Attorney General's Department will attempt to obtain a proper remedy.

Office of the Attorney General,
Harrisburg, Pa., May 10, 1916.

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

Sir: This Department is in receipt of your inquiry of April 25, 1916, in which you ask as to

First—The power of the Commissioner of Banking to require acknowledgment from the individual directors of any corporation to communications forwarded to such corporation by the Commissioner of Banking;

Second—Your right to summon either before your Department or the Attorney General's Department, the directors of any corporation.

The inquiry, of course, limits itself to such corporations as are under the supervision of the Commissioner of Banking and which appear to you to be in an unsound and unsafe condition to do business, or to be conducting their business in a manner which is unsafe and unauthorized, or injurious and contrary to the interests of the public.

Section 7 of the Act of February 11, 1895, creating the Banking Department, pertains to corporations not having capital stock and doing business exclusively for the benefit of depositors. This section provides that when it appears to the Commissioner of Banking that "such corporation has committed any violation of its charter, or law, or is conducting its business and affairs in an unsound and unsafe manner," he shall direct the discontinuance of such practice and strict conformity with the law. No provision is made in this section for a hearing before the Attorney General, but merely

authorizes the Commissioner of Banking to communicate the facts complained of to the Attorney General, who shall forthwith institute such proceedings as the nature of the case may require.

Section 9 of the same Act, pertains to corporations with or without capital stock, and while generally directed to the same end, authorizes the Commissioner of Banking to act when it appears to him that such corporation is in "an unsound and unsafe condition to do business, or that its business or manner of conducting the same is injurious and contrary to the interests of the public." This section provides for like communication to the Attorney General, unless the Commissioner of Banking deems the immediate appointment of a temporary receiver necessary, in which case the corporation is to be notified and a hearing had before the Attorney General prior to the placing of such receiver in charge.

The action of the Attorney General under either section in instituting proceedings, particularly when asking for a receiver, or proceeding for the dissolution of the corporation, is most drastic, and its effect on a corporation could not be other than detrimental, did such corporation desire to continue in business, or resume business.

For that reason, it has been the uniform practice of both the Banking and Attorney General's Departments, to resort to every reasonable means to correct abuses by other than court proceedings.

One condition which is found in too many corporations, and to which you rightly object, is that where directors neglect their duty and entrust the entire management and operation of the corporation to one or a few individuals. The folly of such negligence has on many occasions been brought home to such directors when serious irregularities, and in some instances embezzlement, developed. When directors have permitted the affairs of the corporation to reach such a stage, it is but natural that the one or few in control take it upon themselves to represent such corporation, even before the Banking Department.

Your refusal to countenance such methods is not only commendable but necessary, as the duty imposed upon you by law is that of looking beyond the directors to those whom they represent. When, therefore, the directors of a building and loan association or any other corporation decline to individually acknowledge communications from yourself or to individually appear before your Department or the Attorney General's Department when requested so to do by you, it is more than *prima facie* evidence that such directors are negligent in their duty and unmindful of the relation of trust which they bear towards those whom they represent. It is fair to assume, therefore, that such corporations are conducting their business in a manner which is unsafe and unauthorized and certainly injurious and contrary to the interest of the public.

I have, therefore, to advise you that, where directors of a corporation under the supervision of your Department decline to acknowledge communications from you or to appear before your Department or the Attorney General's Department in reference to matters which appear to you to require correction, this Department will consider such action as warranting the institution of proper proceedings for the removal of such officers or the appointment of a receiver, or both.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE SAVINGS AND LOAN ASSOCIATIONS.

A savings and loan company fixed the par value of its capital stock of \$5.00 per share. Loans in multiple of \$25.00 are made to stockholders, upon which a fee of 5 per cent. is charged. No interest is charged. The loans are repaid in twenty weekly installments. Dividends are paid to stockholders.

Held: Such companies are either savings institutions or loan companies and the 5 per cent. fee charged, which amounts to 27 per cent. per annum, is illegal unless the company comply with the provisions of the Act of June 17, 1915 P. L. 1012.

Office of the Attorney General,
Harrisburg, Pa., October 9, 1916.

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

Sir: This Department is in receipt of your inquiry of the 3rd inst. in which you ask for an opinion as to the legality of the method of doing business of certain savings or loan associations in this State. These associations are generally foreign corporations and their method of doing business, while varying in certain particulars, consists essentially in the elements given in the following example:

Stock is fixed at a par value of say \$5.00 per share and on such basis is paid for at the rate of \$1.25 per week. This stock may be surrendered at any time to the association and the paid-in value refunded to the holder. Loans in multiples of \$25.00 are made only to stockholders, although no definite amount of stock is required for

any particular loan, which may be as large as \$1,500.00. No interest is charged on the loan so made, but a fixed fee of 5% of the loan, which is called "investigation fee," or something similar, is deducted from it. The face of the loan is then paid back by twenty equal payments, extending over a period of twenty weeks. In the particular instance which you cite and which is here illustrated, the 5% deducted constitutes a rate of interest in excess of 27% per annum, and in this case we understand approximately 12% per annum is paid in dividends to the stockholders.

The 5% fee charged by this association, whether it is designated as an "investment fee," or otherwise, is a charge against the borrower and as such would not be effective to disguise its real purpose. It is an interest charge, whether so designated or not, and unless there is statutory warrant for the placing of such a charge by the name given, we are of the opinion that the courts would look beyond this subterfuge or device and regard it as an interest charge.

These associations, while essentially carrying out the purposes contemplated by the Co-operative Banking Act of May 18, 1893, P. L. 89, are, of course, not organized in compliance with this Act, nor do they conduct their business in compliance with it, in that the Act requires an equal division in the profits among the depositors and borrowers on the basis of 50% to each class.

Such associations are either savings institutions or loan companies and as such come within the Act of June 27, 1839, P. L. 515, which provides, in part, as follows:

"It shall not be lawful for the said Philadelphia savings institution, or for any other savings institution or loan company within this Commonwealth, to charge or receive as interest, commission, or otherwise, from any person or persons, either directly or indirectly, for any loan or discount more than at the rate of six per cent. per annum on the sum loaned or discounted."

The Act further provides a penalty of \$100 for each violation, which penalty shall be recoverable against any member, director or officer of such institution.

The question may present itself as to whether or not the Act of June 17, 1915, P. L. 1012, relating to the loaning of money and charging interest in excess of 6%, abridges the terms of this Act. The Act of 1915 would not have that effect unless the association seeking its protection had complied with the latter Act by making application and obtaining a license, and even then they would not be permitted to lend money in sums exceeding \$300. In lending money in sums greater than \$300.00 they not only come under the Act of 1839, but also violate the provisions of the Act of 1915.

We have, therefore, to advise you that unless these loan companies are licensed under the Act of 1915 and operate in compliance with this provision, they are not legally empowered to do business in the manner in which you state and that aside from the usual civil remedy, there is a penal action against them under the Act of 1839, referred to.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

BRANCH OFFICES OF TRUST COMPANIES.

Trust companies may maintain sub-offices or agencies for receiving and paying out moneys providing a full report of the operations is made to the principal place of business at the close of the day, the assets transferred and the liabilities reported thereto. The fact that it may be inconvenient to comply with these conditions is no excuse for non-compliance.

Office of the Attorney General,
Harrisburg, Pa. October 19, 1916.

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

Sir: This Department is in receipt of your inquiry of the 3rd inst. in which you ask the right of a certain trust company which maintains a so called sub-office to wait until the succeeding day before transferring the assets from such sub-office to the principal place of business and entering such transactions.

As a reason for this delay, it appears that this particular sub-office is kept open to a later hour than the main office and also that the distance of such sub-office from the main office would render the transfer of assets on that day impractical and inconvenient.

In both the opinion of Attorney General Hensel, reported in 4 Dist. Rep. 54, and that of Deputy Attorney General Kun, given to you under date of March 22, 1916, reported in 25 Dist. Rep. 376, the legality of such sub-offices is affirmed only when "a full report of the operations is made to the principal place of business at the close of the day, the assets transferred thereto and the liabilities reported."

Neither expediency nor inconvenience can justify a departure from these restrictions and unless they are adhered to such trust companies are doing business in a manner unauthorized and unwarranted by law and which, as you state, interferes with a proper and careful examination by your Department,

If the sub-offices cannot be maintained according to law and the requirements of your Department, made in compliance therewith as declared by the opinions heretofore referred to, the usual remedies are open to you as provided by the Act of February 11, 1895, P. L. 4.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE STATE BANKS.

A new State bank organized to take over a National bank must pay a bonus upon the entire authorized capital stock, in that the National bank was not organized under the laws of this State nor had any bonus previously been paid by it.

Office of the Attorney General,
Harrisburg, Pa., October 19, 1916.

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

Sir: This Department is in receipt of your inquiry of the 18th inst., in which you state that a new State bank is now being organized for the purpose of taking over a National Bank. You ask whether this new corporation will be required to pay bonus on its entire authorized capital or only upon the excess above the capital of the National Bank to be taken over.

You are advised that the Act of May 28, 1913, P. L. 357, "Relating to the payment of bonus on the incorporation, merger or consolidation of banks and trust companies," is effective only as to institutions which have previously been incorporated under the laws of the State of Pennsylvania. The National bank was not incorporated under the laws of this State nor had any bonus previously been paid by it, and the new State bank will, therefore, be required to pay bonus on its entire authorized capital.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

**OPINIONS TO THE SUPERINTENDENT OF
PUBLIC INSTRUCTION.**

OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

RIGHT TO REQUIRE TEACHERS TO DO PROFESSIONAL READING.

School directors or the district superintendent have the legal right to require teachers in their employ to do professional reading, and to undergo tests that the reading has been done.

Office of the Attorney General,
Harrisburg, Pa., May 27, 1915.

Dr. Nathan C. Schaeffer, State Superintendent of Public Instruction,
Harrisburg, Pa.

Dear Sir: Answering your inquiry of this date:

"Has either the Board of School Directors or the District Superintendent the legal right to require the teachers in their employ to do professional reading, and to satisfy themselves by a written or oral test that said teachers have carefully and intelligently read the prescribed book or books?"

The District Superintendent has the right to see and it is his duty "to see that in every district there shall be taught the several branches required by this Act (School Code of 1911) as well as such other branches as the board of school directors may require" (Sec. 1149, Act of May 18, 1911—School Code, P. L. 371; and "in case the board of school directors shall fail to provide competent teachers to teach the several branches required in this Act it shall be the duty of the district superintendent to notify the board of school directors, in writing, of its neglect and in case provision is not made forthwith for teaching the branches aforesaid to report such fact to the Superintendent of Public Instruction, whose duty it shall be to withhold any order for such district's share of the State appropriation until the County or district superintendent shall notify him that competent teachers of the branches aforesaid have been employed. And in case of neglect or refusal by the board of school directors to employ such competent teachers as aforesaid for one month after receiving notice from the county or district superintendent that such teachers have not been provided, such district shall forfeit absolutely its whole share of the State appropriation for the year." (Sec. 1150 of Act of May 18, 1911—P. L. 371).

Under these provisions the board of directors and the district superintendent would have the right, and it would be their duty, to require of the teachers such professional (the profession of teaching), reading and study as would enable them to maintain proper efficiency for the service. Any other conclusion would be a confession that teaching was the one profession or science incapable of progress or development; of course the requirement of professional reading must be reasonable and appropriate to the character of the teaching required. Sufficient time should be allowed for such reading and study before an examination thereabout, and such examination should be conducted with absolute fairness and impartiality, and if in writing, the question should be plainly put and easily understood and the teachers should be known by numbers and not by names.

I can appreciate the possible distrust of teachers in such a requirement and the examination thereon. It could very easily be made the means of injustice to those whom the board or the district superintendent might desire to discharge, irrespective of competency, which should be the only test, though I confess I would be slow to believe that in the profession of teaching, one so vital to the welfare of a people, there should be any motive of those having to do with the instruction of youth that was not absolutely altruistic.

To summarize, subject to the above limitations, "the board of school directors or the district superintendent have the legal right to require the teachers in their employ to do professional reading, and to satisfy themselves by a written or oral test that said teachers have carefully and intelligently read the prescribed book or books."

I beg to suggest that in the event of any case of dispute between the board or the district superintendent and the teachers as to the kind of reading and examinations, it would not be amiss in the interests of that harmony, which should prevail if the interests of the children are to be first considered, that the course of reading, etc. should first be submitted to and approved by you, etc.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

CHILD LABOR LAW.

The following opinion answers nineteen questions raised in regard to the interpretations of the Act of May 13, 1915, P. L. 286 (The Child Labor Law). A complete syllabus would be almost as extended as the opinion. The questions raised are numbered and the answer to each will be found concisely stated in the corresponding paragraph of the opinion following.

Office of the Attorney General,
Harrisburg, Pa. January 3, 1916.

Mr. Millard B. King, Director of the Industrial Education, Department of Public Instruction, Harrisburg, Pa.

Sir: I am in receipt of your communication of recent date, asking an opinion upon the following questions arising under the Act of May, 13, 1915, P. L. 286, and known as the Child Labor Law, namely:

(1) What type of a certificate shall be issued to children employed in domestic service and on the farm?

(2) When a child enters domestic service in a private home, other than that of her parents, does that home become an establishment within the meaning of this act?

(3) Is the district in which the child is employed responsible for the education of that child, or the district in which the child resides?

(4) Can children residing in Pennsylvania, and employed in adjoining States, be compelled to attend the continuation schools in the district in which they reside, or can a child residing in New Jersey and employed in Pennsylvania, be compelled to attend a continuation school in the district in Pennsylvania in which such minor is employed?

(5) Does the proviso at the end of Section 3, exempt the school district from the necessity of establishing continuation schools?

(6) Can a minor be employed from six to eight o'clock in the morning, and from four to eight o'clock in the evening on any day in which the regular schools are in session, provided he attends regularly the public schools?

(7) Cigar manufacturers have asked if minors under sixteen may be permitted to pack and band cigars.

(8) Should an employer notify the school authorities as to the name and location of a school in which said minor will be in attendance, and the hours which he will attend that school without consultation with the school authorities?

(9) Does the prohibition of minors under eighteen operating or managing a hoisting machine apply to the operation of a passenger elevator?

(10) Can a minor be employed in a wholesale liquor house where liquors are dispensed, or in a grocery store which sells bottled liquors?

(11) Is Section 6 to be construed as to bar a boy over sixteen from delivering or collecting packages for a mercantile firm after eight o'clock at night?

(12) Does the term "public place" under Section 7, include a department store, hotel or railway or sub-station, news-stand on street?

(13) May a publisher sell newspapers or other publications to a boy under the age of twelve?

(14) If a boy under twelve should purchase the papers or publications from another party, other than the publisher, would the publisher be liable for violation of the law?

(15) What kind of an employment certificate should be issued to a minor who will be employed before and after school hours?

(16) What type of a certificate should be granted a newsboy, or boy in a street trade?

(17) Who should pay for the physical examination of an applicant for a certificate of physical fitness?

(18) How many absences from continuation schools should a minor be allowed before his employment certificate is revoked?

(19) May a district superintendent, supervising principal, or secretary of the board of school directors authorized to issue employment certificates, deputize and authorize in writing, a school official not connected with the public school system, to issue certificates?

In reply to the foregoing, I beg leave to advise you as follows:

(1) The Act of May 13, 1915, P. L. 286, by the first section thereof, specifically exempts from its provisions "children employed on the farm, or in domestic service in private homes." It follows that the requirements of this Act in relation to employment certificates do not apply in the case of a minor employed "on the farm or in domestic service in private homes."

(2) Employment on a farm or in domestic service in a private home other than that of the minor's parent, does not come within the provisions of the said Act of May 13, 1915, P. L. 286. The exception of domestic service in private homes and work on a farm from the scope of the Act, is not limited to such service rendered in the home or on the farm of the minor's parent, but embraces such service and work wherever rendered.

(3) The third section of said Act clearly requires that the district of the place of employment is charged with the duty of providing and maintaining the continuation school contemplated and provided for thereunder. Said section in reference thereto provides as follows:

"The school aforesaid may be conducted in the establishment where said minor is employed, or in a public school building, or in such other place, either in the dis-

trict in which said minor is employed or in any joint school authorized by section eighteen hundred and one (1801) of article eighteen (18) of an act, approved May the eighteenth, nineteen hundred and eleven (1911), entitled 'An act to establish a public school system in the Commonwealth of Pennsylvania, together with the provisions by which it shall be administered, and prescribing penalties for the violation thereof; providing revenue to establish and maintain the same, and the method of collecting such revenue; and repealing all laws, general, special or local, or any parts thereof, that are or may be inconsistent therewith,' as the board of school directors of the school district in which said minor is employed may designate: Provided, however, That such school shall be within reasonable access to said place of employment. Any school aforesaid shall be part of the public school system of the school district wherein said minor is employed, or of the school district or districts where said minor attends."

This plainly imposes the maintenance of the continuation school upon the district where the minor is employed. The concluding clause in the above quoted portion of this section of the Act, namely: "or of the school district or districts where said minor attends," refers to a joint school that might be established by districts where minors are employed.

(4) The Act contains no specific provision covering the case of a resident minor between the ages of fourteen and sixteen who may be employed in another State. It may fairly be presumed, however, that there was no legislative intention either to subject such a minor to any disability over that of one both residing and engaging in employment in this State, or to afford him any advantage over that enjoyed by one residing and employed in the State. The Act should be construed to give equality to both such classes as to their right to engage in employment and opportunity to continue their education while employed. It would meet the spirit and purpose of the Act to issue an employment certificate for a minor residing in Pennsylvania but employed in another State, provided such minor would duly attend a continuation school in the district of his residence, or such other place within reasonable access of his place of employment as the school authorities of the place of his residence might provide and designate: Provided, however, that the hours and nature of his employment in the foreign State would not be in conflict with the other provisions of the Act. The school authorities before issuing an employment certificate in such a case, should be thoroughly informed as to the nature and hours of his employment and the matter could thereafter be kept steadily in their control by the power to cancel the certificate. A minor of such age can be lawfully employed only in pursuance of a proper

employment certificate, and where that would be withheld, his attendance upon the schools of his district can be enforced in pursuance of the general school act.

The Act is also silent as to the case of non-resident minors employed in this State. No minor between fourteen and sixteen years of age can be lawfully employed except in accordance with the conditions imposed by said Act. No exception is made for non-residents who may be employed in this State. Their employment would be subject to like restraints with those of residents. The offense in such case would go to the employer, who is within the jurisdiction of the State. It is not to be presumed, however, that it is the intention of the Act that non-resident minors here employed shall be educated in continuation schools maintained by this State. That duty remains for the State of their residence.

In an opinion by Deputy Attorney General Hargest, *37 Co. Ct. Rep. 155*, it was held that under the Act of April 29, 1909, P. L. 283, minors residing out of the State but employed in Pennsylvania, should have employment certificates issued by the school authorities of the district where they were employed. Under the present Act it would be the proper practice for the school authorities of a district in which a non-resident minor between fourteen and sixteen years of age, may be employed, to issue for him an employment certificate under which it would be lawful for him to be employed at such work and during such hours as permitted by the Act, to minors of that age, but such non-resident minor would not be required to attend a continuation school.

(5) The concluding proviso of Section 3 provides as follows:

“Provided, That this Section shall not be effective in any school district until there has been established, within said school district in which said minor is employed, or within reasonable access to said place of employment in an adjoining district, such a school.”

This does not relieve a school district where minors of the age mentioned in said section are employed from the duty of establishing and maintaining a continuation school. The sole purpose of this proviso was to exempt an employer of such a minor from liability for failure of the minor to attend a continuation school where none existed in the district of his employment, or within reasonable access to the place of employment. The proviso was put in the Act to afford a reasonable time for the institution of continuation schools, but was not intended to operate to permit an indefinite postponement of their establishment. The Act clearly intends that a district where such minors are employed shall proceed as promptly as possible to provide a continuation school to serve the beneficent ends contemplated.

(6) Where a minor between fourteen and sixteen years of age is in attendance upon a regular school during its usual and customary hours, it would not be unlawful to employ him during the other hours of the day, not earlier than six o'clock in the morning or later than eight o'clock in the evening, provided an employment certificate be duly issued for him and that the nature of the employment is one permitted to such a minor under said Act, and provided further that the hours of school attendance and work do not exceed the maximum number prescribed in the fourth section of the Act, namely: fifty-one hours in any one week and nine hours in any one day. In such a case the attendance at the regular school would more than compensate for the schooling required in the continuation school provided for in Section 3. The purpose of this latter section will be fully fulfilled and abundantly effectuated where a minor who is employed during hours other than those of the regular school session attends such school during its ordinary period.

(7) The first paragraph of Section 5 enumerates various employments forbidden to minors under sixteen years of age. The purpose of this is to safeguard such minors against dangerous, unhealthful or morally unwholesome occupations. Being penal in nature and in derogation of the common law right to contract for labor, this provision of the Act must receive a strict construction. Only those occupations can be construed to be excluded thereunder as are so excluded in express terms or by clear and necessary implication. The presumption would be against the exclusion.

The occupation of "packing and banding cigars" is not expressly forbidden. The only occupation kindred to it which is mentioned in this section of the Act is "stripping, assorting or manufacturing tobacco." It cannot be fairly presumed that this was intended to include the work of packing and banding cigars, and it may therefore be concluded that to "pack and band cigars" is not an employment forbidden by the act to a minor under sixteen years of age.

(8). In regard to the notification by the employer of a minor for whom an employment certificate has been issued as to the continuation school attended by such minor, the third section of the Act provides as follows:

"Every person who shall employ any said minor shall notify the officer by whom the employment certificate, as hereinafter provided for the said minor, shall have been issued, within four days after said minor shall have entered his employment, of the name and location of the school at which said minor should be in attendance, and of the hours which said minor should attend said school during the continuance of said employment."

There is no requirement that the employer shall consult upon this matter with the school authorities. He will have complied with the law in this respect by notifying the officer by whom the certificate was issued. Such consultation generally would nevertheless be in furtherance of the harmonious relations and co-operation which should subsist between employers and school authorities and the practice thereof should be encouraged.

(9) Under the second paragraph of Section 5, certain employments of a hazardous nature are not permitted for minors under eighteen years of age. Among them is that of "the operation or management of hoisting machines." As was pointed out above, this section of the Act being penal in nature and in derogation of the common law right of the freedom to contract for labor, must be given a strict construction. An elevator is not a hoisting machine in the ordinary and accepted usage and meaning of the term "hoisting machine." An elevator is such a common and distinctive type of vehicle that it may reasonably be inferred that had it been the legislative intention to forbid its operation by a minor, under the said provisions of the Act, it would have been so forbidden *eo nomine*, and not left to a mere presumption or implication arising from the general term of "hoisting machine." As held above, the exclusion of any employment from those permitted to minors must be express and not presumptive.

For these reasons it may be concluded that the operation of a passenger elevator is not forbidden to a minor, under eighteen years of age, in pursuance of the second paragraph of Section 5 of said Act.

(10) The question here is—"Can a minor be employed in a wholesale liquor house where liquors are dispensed, or in a grocery store which sells bottled liquors?"

In accordance with the rules of construction applied in the interpretation of the Act in answer to the sixth and ninth foregoing inquiries, it may further be concluded that the third paragraph of Section 5, reading as follows:

"No minor shall be employed or permitted to work in, or in connection with, any saloon or bar-room where alcoholic liquors are sold,"

does not prohibit minors from employment in a wholesale liquor house, or in a grocery store which sells bottled liquors.

It may be here noted that under the fourth paragraph of Section 5 of the Act, power is vested in the Industrial Board of the Department of Labor and Industry to forbid minors under eighteen years of age working in occupations other than those specifically mentioned in said section, as being dangerous or injurious to health or morals, as the same may be from time to time so determined and declared by said Board. This power could be exercised in such employments

as have been hereinbefore considered, such as packing and banding cigars, operating elevators, and employment in wholesale liquor houses.

(11) It would not be unlawful under Section 6 of the Act for a minor over sixteen years of age to deliver or collect packages for a mercantile establishment after eight o'clock P. M. Said section relates solely to messengers for a telephone, telegraph or messenger company.

(12) Section 7 of the Act makes it unlawful for male minors of certain ages therein specified and all female minors to sell or distribute newspapers, magazines, periodicals or merchandise, or carry on certain trades, "in any street or public place." The question here submitted is as to what places are embraced under the term "public places" as used in the Act. It is a familiar rule in the construction of a statute that a general word which follows a specific word of the same nature takes its meaning from the specific word and is presumed only to comprehend things of the same genus as that imported by the specific one. The more general word is restricted to a sense analogous to the less general.

Endlich on Interpretation of Statutes, Sec. 400-408.

Numerous authorities might be cited in support of this principle of *ejusdem generis*.

Allen's Appeal, 81 Pa. 302.*

Pardee's Appeal, 100 Pa. 408.

Corry vs. Corry Chair Co., 18 Super. Ct. Rep. 271.

Beechwood Improvement Co.'s Appeal, 12 Dist. Rep. 430.

"Public places," theatres or churches do not include streets or roads. "Public places," streets or roads, do not include theatres or churches.

Covan vs. City of Brooklyn, 5 N. Y. Supp. 758.

Under this rule of interpretation it must be presumed that the term "public places" as used in the seventh section of the said Act is restricted and limited to places of the genus and character of a street, such as a public park or public square, and that it was not intended to embrace or extend to stores, hotels, theatres or railway stations. These places are under private control and vendors of newspapers or merchandise can only ply their trade therein by the permission of the owners. A news-stand on the street would fall within the act and no male minor under the age designated in Section 7 and no female minor could lawfully be employed at such stand.

(13) A mere sale of newspapers to a minor under twelve years of age would not be a violation of the Act. It would be unlawful,

however, to sell newspapers to a minor under twelve years of age with the intent and for the purpose of having such minor sell them in the streets.

(14) A publisher would not violate the Act who sold newspapers to a person who thereupon re-sold them to a minor under twelve years of age, who then vendd them on the streets.

(15) Section 11 provides for two classes of employment certificates, namely—general employment certificates, which permit minors between the ages of fourteen and sixteen years to work the entire year, and vacation employment certificates, which permit them to work on any day except those they are required to attend school under the school laws. A literal reading of this section would require a general employment certificate for such a minor engaged in any employment on any day in which, in pursuance of the compulsory provisions of the school law, he must attend school, even though his employment fell outside the school hours. But it would be consistent with the spirit of the Act and its purpose subserved if the provisions relating to vacation employment certificates be construed to mean that they may be issued for and entitle a minor to work on any day *or portion thereof* in which he is not required to be in attendance upon a school, provided the work is of a nature permitted to such minor under the Act and the hours of work and school do not exceed those prescribed in Section 4. It is probable that in many instances a minor who might fail to pass the mental test prescribed for a general employment certificate, but who could qualify to receive a vacation one, could be well and beneficially employed before and after his regular school hours. To deprive him of the right of such employment would be to impose an unnecessary restriction and one which would work mischief rather than good.

In view of the fact that his employment would not interfere with his regular school attendance, there could be no purpose in forbidding it. Under the intent of the Act a vacation employment certificate may be lawfully issued for a minor between fourteen and sixteen years of age during the days he is required to be in attendance upon school under the school laws, which will entitle him to work before and after school hours provided the employment be of a nature permitted to him by the Act, and the hours of work be strictly subject to the limitations prescribed in the Act.

(16) The inquiry "What type of a certificate should be granted a newsboy, or a boy in the street trade," is too general to admit of a definite opinion thereon. As appears by Section 11, employment certificates are only issued to minors between fourteen and sixteen years of age. For such a minor employed in any establishment as a newsboy, or in a street trade such as those mentioned in Section 7 of the Act, either a general or vacation certificate should be issued,

depending upon the facts of each particular case. As above held, for those regularly in school, a vacation certificate could be lawfully issued where the employment would fall outside the hours of school attendance and within the hours permitted for work for such minor. Under Section 7 no female minor is permitted to sell newspapers or articles of merchandise in any street or engage in occupation performed therein and, therefore, no employment certificate could be issued to her for such employment.

It is a matter of common knowledge that many newsboys and those plying street trades are not in the employ of any one, but work for themselves. In such cases, apparently, there is no provision for employment certificates, as the Act contemplates the issuance of such certificates only where the minor is to enter in the employment of some prospective employer who signs a statement of his intention to employ such minor.

It is confidently to be expected and strongly to be urged that the municipal authorities of the State will enact appropriate ordinances for the due regulation of the occupation of newsboys and trades plied on the streets and diligently co-operate with the school authorities and the Department of Labor and Industry for the enforcement of the salutary provisions of this Act.

(17) Section 14 requires a certificate of the physical fitness of a minor, signed by a physician and approved by the school board before any employment certificate can be issued for him. The Act being silent as to who shall bear the cost of this required physical examination, it follows that it must be borne by the applicant for the employment certificate for whose benefit it is issued.

(18) When and to what extent absences from a continuation school would justify the revoking of an employment certificate is an administrative rather than a legal question. No time is fixed by the Act. It is unlawful under Section 3 of the Act for any person to employ a minor between fourteen and sixteen years of age unless he attend a continuation school at least eight hours a week for every week of employment period. When the minor ceases to attend the school as prescribed, the employer cannot longer lawfully continue him in employment. Where a minor without reasonable cause absents himself from a continuation school and persists in such conduct, it would be the duty of the employer to discharge him forthwith and of the school officials to cancel the employment certificate. No specific number of hours can be laid down as the measure requisite for the revocation of the certificate. This question can be best met and treated as specific cases arise from time to time.

(19) Section 9 of the Act designates the officials who shall issue employment certificates, being a "district superintendent" or "super-vising principal" in public school districts having such officials and

in districts having no such superintendent or principal, then the "Secretary of the Board of School Directors of that district." It further authorizes any of these officials, so empowered to issue certificates, to deputize "any other school official to act in his stead for the purpose of issuing such certificates." The "any other school official" who may be so deputized must be a *public* school official.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYMENT OF MINORS—EMPLOYMENT CERTIFICATES.

It is not necessary for a minor between the age of fourteen and sixteen years to have an employment certificate when employed on a farm or in domestic service in private homes. When employed in domestic service rendered in other than private homes, a certificate is required.

Office of the Attorney General,
Harrisburg, February 1, 1916.

Mr. Millard B. King, Director of Industrial Education, Department of Public Instruction, Harrisburg, Pa.

Sir: In answer to your communication of recent date, wherein an opinion is requested upon the question, "whether or not a minor employed on a farm or in domestic service should have an employment certificate," I beg leave to advise you as follows:

The Child Labor Act of May 13, 1915, P. L. 286, excepts from its provisions minors "employed on the farm or in domestic service in private homes." It follows that any law that may have governed the employment of minors engaged in such labor, remains unchanged by this act and continues in force in so far, at least, as it relates to minors thus employed. The law as to farm labor and domestic service in private homes now stands precisely as it stood before the passage of the above mentioned act of 1915.

Prior to the said act of 1915, employment certificates had been the subject of various legislation. It appears, however, that none of it expressly provided for such certificates for those employed on the farm or in domestic service. The act of May 29, 1901, P. L. 322, providing for employment certificates, only related to certain kinds of labor other than farm or domestic. The Act of May 2, 1905, P. L. 352, extended the regulation of child labor, but excluded from its provisions, and from the term "establishment," as therein defined, "domestic, coal-mining or farm labor,"—the regulation of the employment of minors in or about coal mines being the subject of other and later acts dealing solely therewith.

The Act of April 29, 1909, P. L. 283, still further widened the statutory regulation of the employment of minors and provided for employment certificates in certain cases and kinds of labor. Section 7 thereof required such certificates for minors between fourteen and sixteen years of age, employed in the occupations enumerated or classified in Sections 3 and 4 of the Act, but farm or domestic labor is not included among the industries or classes of labor mentioned in said Sections 3 and 4, nor can any intent to include such labor be fairly presumed therefrom.

There has, in fact, been complete legislative silence as to any specific requirement for such certificates for minors employed on the farm or in domestic service. In every act providing for or requiring employment certificates in which such labor was mentioned, it was only mentioned for the sole purpose of expressly excluding it from the provisions of the act.

Turning from the labor acts to those relating to the schools, we find in these latter nothing relating to employment certificates specifically applying to farm and domestic labor. Section 1416 of the Act of May 18, 1911, P. L. 309, being the general school code, provides as follows:

"The provisions of this act requiring regular attendance shall not apply to any child, between the ages of fourteen and sixteen years, who can read and write intelligently and is regularly engaged in any useful and lawful employment or service during the time the public schools are in session, and who holds an employment certificate issued according to law."

Inasmuch as neither at the time of the passage of this Act, nor since, has there been any law requiring or providing for the issuing of employment certificates for minors employed on the farm or in domestic service in private homes, the provision of Section 1416 which reads "and who holds an employment certificate issued according to law," must necessarily be construed as inoperative and not applicable in the cases where minors are employed in such labor, but only applicable where they are engaged in other employments. The other provisions, however, contained in said section as a prerequisite to the permitting of exemption from compulsory attendance at school, namely: that the minor "can read and write intelligently and is regularly engaged in any useful and lawful employment or service during the time the public schools are in session," apply to minors employed on the farm or in domestic service in private homes equally with those otherwise employed.

Section 1421 of the said School Act, forbidding any person employing a minor between fourteen and sixteen years of age during the school period without "an employment certificate issued according to law," is also inapplicable to minors employed on the farm or in

domestic service in private homes, for the same reason, namely: that the law has nowhere made provisions for such certificates for minors engaged in such work.

It is not to be presumed that the Legislature by its silence as to employment certificates for minors employed on the farm or in domestic service, intended to exclude all minors between fourteen and sixteen years of age from such employment, or to forbid any of them exemption from the compulsory provisions of the school law in pursuance of Section 1416 thereof. The more reasonable inference is that, as the vast majority of such minors engaged at such labor are so engaged thereat in their own homes, the requirement of an employment certificate has been deemed inexpedient and unnecessary. The fact that in the said Act of 1901 and also in that of 1915, farm and domestic labor was expressly excepted from their provisions, clearly indicates a settled legislative intent and purpose to relieve minors so employed from the necessity of having such certificates. Under the Act of 1915, however, a minor between fourteen and sixteen years of age employed in domestic service elsewhere than in private homes, would require an employment certificate.

The requirement of an employment certificate is purely a statutory matter. It is only requirable in the cases and classes and kinds of employment where expressly provided for by some act. Such requirement cannot arise from a mere presumption. It must be in pursuance of some specific enactment. Where a certificate is lawfully required, the employment of a minor without one is made a penal offense. Any statutory provision requiring one is therefore to be given a strict construction and the scope of the requirement to be held only to reach and embrace the extent that is clearly set out in the statute. As there is no act expressly prescribing or providing for an employment certificate in the case of a minor employed on the farm or in domestic service in private homes, the conclusion follows that none is required. The construction here placed upon the law in this matter is in harmony with the practice commonly pursued by those charged with the duty of enforcing the law governing employment certificates.

Inasmuch as under the ruling here made, a minor between fourteen and sixteen years of age employed "on the farm or in domestic service in private homes," may be entitled to exemption from the compulsory provisions of the school law under Section 1416 thereof without an employment certificate, it is respectfully urged that the school authorities vigilantly enforce the other provisions of said section, constituting the right to such exemption, namely: that such minor "can read and write intelligently and is regularly engaged in any useful and lawful employment or service during the time the public schools are in session."

For the reasons given, I am therefore of the opinion, and so advise you, that an employment certificate is not required for a minor between fourteen and sixteen years of age, employed on the farm or in domestic service in private homes, but is requirable under the Act of 1915, in the case of domestic service rendered in other than "private homes."

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYMENT OF MINORS.

Minors between the ages of fourteen and sixteen years may be employed in a bowling alley in a Y. M. C. A. where such bowling alley is not open to the public.

Office of the Attorney General,
Harrisburg, Pa., February 29, 1916.

Mr. Millard B. King, Director of Industrial Education, Department of
Public Instruction, Harrisburg, Pa.

Sir: I am in receipt of your communication of recent date, requesting an opinion upon the following question, namely: Whether a minor between fourteen and sixteen years of age may be lawfully employed "as a pin boy or attendant in a bowling alley in a Y. M. C. A."

This question arises under Section 5 of the Act of May 13, 1916, P. L. 286, and known as the Child Labor Law, wherein it is provided that "no minor under sixteen years of age shall be employed or permitted to work * * * in a public bowling alley." The word "public" fixes and determines the extent of the scope of the act's exclusion of minors from this form of employment. "Public" denotes something that is not limited or restricted to any particular class but that is open to and usable by all the people at large.

The use of a bowling-alley in a Y. M. C. A. is ordinarily limited and restricted to the members of such organization. The public are commonly not free to resort to it upon the mere condition of paying a fixed charge, as in the case of a public one. Had it been the legislative intention to forbid the employment of minors of said age in all bowling alleys, the qualifying designation of "public" would not have been added. The intent and the effect of that is to narrow the restriction to bowling-alleys of a strictly public character and that one maintained by some organization such as a Y. M. C. A. for its own exclusive uses, is not within the purview of the Act.

The construction here placed upon this section of the Act is not inconsistent with the purpose thereof, namely: to safe-guard the health and morals of minors. It would be difficult to see how any harmful results would be likely to flow to a minor from an employment as an attendant, during proper hours, in a Y. M. C. A. bowling-alley. It may be added, however, that if a Y. M. C. A. bowling-alley should be open to the public generally, who would be admitted to its use upon payment of a charge therefor, then such bowling-alley would partake of the nature of a public one and the employment therein of minors under sixteen years of age would be unlawful.

I therefore advise you that it would not be unlawful for a minor between fourteen and sixteen years of age to work or be employed in a bowling-alley in a Y. M. C. A. where such bowling-alley is not open to the public, but its use is limited and restricted to the members of such association. The hours of such work must, in all cases, be in strict conformity with the provisions of Section 4 of said Act.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

SCHOOL DISTRICT INDEBTEDNESS.

Until appropriate legislation is enacted to carry into effect the constitutional amendment of section 15, article 9 (adopted in November, 1913), raising the debt limit of municipalities from 7 to 10 per centum of the assessed valuation of their taxable property, a school district cannot increase its indebtedness to an amount in excess of 7 per centum of the assessed valuation of the taxable property therein.

School District Indebtedness, 23 Dist. 917, followed.

The Act of May 14, 1915, P. L. 493, was passed to validate proceedings held under the Act of April 20, 1874, P. L. 65, and sets forth no method for holding the election contemplated by the constitutional amendment.

Office of the Attorney General.

Harrisburg, Pa., March 21. 1916.

Doctor Nathan C. Schaeffer, Superintendent of Public Instruction,
Harrisburg, Pa.

Sir: This Department is in receipt of your favor enclosing letter from the Solicitor of the School District of the Borough of Sykesville, Jefferson County, Pennsylvania, and requesting an opinion as to whether the said School District has authority under Section 15, Article IX of the Constitution to increase its indebtedness to an amount not exceeding ten per centum of the assessed value of taxable property therein, provided three-fifths of the votes cast at a public election are in favor of such increase of indebtedness.

The Act of June 4, 1915, P. L. 844, amending Section 506 of the School Code of 1911, provides:

"That the total indebtedness of such school district, including the indebtedness of any sub-school or ward school district therein, if any, shall never exceed seven per centum upon the assessed value of the taxable property for school purposes therein."

Section 15, Article IX of the Constitution (amendment of November 4, 1913), provides:

"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, 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."

In an opinion rendered by Attorney General Bell to your Department on May 7, 1914 (Opinions of the Attorney General 1913-1914, page 266), he advised you that the amendment to the Constitution of November 4, 1913, was applicable to school districts, but that until appropriate legislation for carrying into effect the part of the amendment above quoted is 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.

Since that opinion, no legislation has been enacted for the purpose of carrying the clause of the amendment above quoted, into effect.

The Act of May 14, 1915, P. L. 493, referred to in the letter enclosed with your communication is not, strictly speaking, a statute enacted for carrying into effect the provisions of the amendment to the Constitution before referred to. Its purpose was rather to validate certain elections and proceedings theretofore had under the Act of April 20, 1874, P. L. 65, purporting to have been held in pursuance of the amendment of Section 15, Article IX of the Constitution. It sets forth no method or machinery for holding the election contemplated by the Constitutional amendment.

Until, therefore, appropriate legislation is enacted for the purpose of carrying into effect the constitutional amendment of Section 15, Article IX, you are advised that the School District of the Borough of Sykesville, Pennsylvania, cannot increase its indebtedness to an amount in excess of seven per centum of the assessed valuation of the taxable property therein.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE INSPECTION BY THE PUBLIC OF PLANS AND SPECIFICATIONS
FOR SCHOOL BUILDINGS.

Plans and specifications for school buildings which are filed with the State Board of Education in accordance with a regulation promulgated by it, are not public records, but the board may upon proper request inquire as to the purpose of one desiring to inspect said plans and if the purpose be, in its judgment, a proper one, it may permit such inspection.

Office of the Attorney General,
Harrisburg, Pa., June 27, 1916.

Dr. J. George Becht, Secretary, State Board of Education, Harrisburg, Pa.

Sir: I have your favor of the 15th inst., requesting an opinion as to how far the State Board of Education may permit an examination of its files of plans and specifications for school buildings that have been submitted to it by School Boards for approval.

Section 615 of the Pennsylvania School Code of May 18, 1911, P. L. 309, provides:

"After the organization of the State Board of Education provided for in this act, no public school buildings shall be contracted for, constructed, or reconstructed, in any school district of the second, third, or fourth class, until their plans and specifications have been submitted to the State Board of Education, and any recommendations concerning the same by the State Board of Education have been laid before the board of school directors."

Under this section the Board has adopted a regulation which provides that duplicate plans and specifications shall be submitted, one copy of which is to remain on file in the office of the Board.

The School Code does not require that a copy of the plans and specifications shall be filed with the Board. This is done only in pursuance of a reasonable regulation of the Board. The plans and specifications, therefore, do not become such public records as any citizen of the State has a *right* to inspect and examine upon request. The Board may, however, in its discretion, and for a proper cause, permit such plans and specifications to be examined. It has a right, in the first instance, to inquire as to the purpose or object of the person desiring such inspection and, if satisfied that the object is a proper one, may permit such inspection.

The instances cited by you in your conversation with me—such as a taxpayer in the district desiring to see the plans and specifications for the purpose of finding out whether the building is being erected in accordance therewith, or to determine whether there has been a fraudulent substitution of plans and specifications, are, in my judgment, proper objects and such as, in the discretion of the Board, would justify such an examination.

The Architect who prepared the plans and specifications has, in my opinion, no right to object to such examination if allowed by the Board.

In the case of *Windrim vs. The City of Philadelphia*, 9 Philadelphia 550, it was held that when plans are furnished by an architect and he receives a premium offered for the accepted plan by the city or its officers, the plan, and not the idea, becomes the property of the city. A custom among architects to retain such plans binds no one else.

In *Wright vs. Eisl*, 83 New York Supplement, 887, it was decided that where an architect prepared plans and specifications for a client, for which he was paid a certain fee, and filed such plans and specifications with the building department of the city in which the residence was constructed, he thereby published the same, and had no further property rights in them sufficient to entitle him to recover for the subsequent use thereof in the construction of another building by a third person.

The Court said in that case:

“When the latter has permitted the work to be filed in a public office as a step in furnishing the basis on which he is to receive compensation from his work, we are of opinion that, under the authorities cited above, the plaintiff has published his work to the world, and can have no exclusive right in the design or in its reproduction.”

The fact that the Architect in his contract with the School Board may reserve the right to or property in his plans and specifications cannot, in my opinion, interfere with the authority of the Board to file and retain a copy of the plans and specifications among its records. The contract of the School Board with the Architect will be presumed to have been entered into by him with full knowledge of the regulation of your Board, and a compliance with them will be understood to have been acquiesced in by the Architect.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

INCREASE OF INDEBTEDNESS OF SCHOOL DISTRICTS.

Under the provisions of the Act of June 5, 1915, P. L. 846, which carries into effect section 15 of article 9 of the Constitution, so far as it relates to municipalities, a school district may increase its indebtedness for purposes specified in the School Code and its amendments, to an amount in excess of seven per centum (7%) but not exceeding ten per centum (10%) of the assessed valuation of taxable property therein, if said increase shall have been assented to by three-fifths of the electors voting at a public election.

Office of the Attorney General,
Harrisburg, Pa., July 5, 1916.

Doctor Nathan C. Schaeffer, Superintendent of Public Instruction,
Harrisburg, Pa.

Sir: On March 21, 1916, an opinion was rendered your Department on the question as to whether a school district has authority, under Section 15, Article IX of the Constitution, to increase its indebtedness to an amount not exceeding ten per centum (10%) of the assessed valuation of taxable property therein, provided three-fifths of the votes cast at a public election are in favor of such increase of indebtedness.

In that opinion it was stated:

“No legislation has been enacted for the purpose of carrying the clause of the amendment above quoted into effect.”

My attention has been called to the Act of June 5, 1915, P. L. 846.

“An Act relating to the indebtedness of municipalities and *providing for carrying into operation Section 15 of Article IX* of the Constitution of Pennsylvania, so far as it relates to municipalities.”

In Section 3 of this act it is provided:

“Any of the said municipalities 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 have been or may hereafter be provided by law for the increase of indebtedness by municipalities with the assent of the electors.”

In an opinion rendered you by Attorney General Bell on May 7, 1914 (Opinions of Attorney General 1913-1914, P. 266), this amendment (Section 15, Article IX) was so construed as to include school districts within the term “Municipality.” He said:

"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 the 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 agree with that construction.

The Act of June 5, 1915, P. L. 846, provides for carrying into operation Section 15 of Article IX, *so far as it relates to municipalities.*

As this amendment to the Constitution relates to counties and municipalities, and the Act of June 5, 1915, is limited to municipalities, it would seem that the Act does not apply to counties; that as to them the Act fails to carry into effect and operation the provisions of the amendment, but that it applies to all other forms of municipalities mentioned in Section 8 of Article IX, including school districts.

The word "said" used in connection with "municipalities" in Sections 3 and 4 of the Act of June 5, 1915, as well as in the amendment itself, refers, in my opinion, to municipalities "*other than Philadelphia*" and is not limited to such municipalities as have constructed or acquired waterworks, subways, etc. For, as pointed out by Attorney General Bell in the opinion before referred to, the amendment of 1913 has a two-fold purpose. The first part provides that certain obligations shall be excluded from the indebtedness of a municipality in ascertaining its borrowing capacity; the second, that the indebtedness of a municipality may be increased from seven to ten per centum provided three-fifths of the electors voting at an election held for that purpose consent. There is nothing in the clause relating to this part of the amendment which limits its provisions to debt incurred for purposes which may be excluded from the indebtedness of a municipality in ascertaining its borrowing powers as set forth in the first part of the amendment.

Nor do I think that this constitutional authority to borrow money beyond seven per centum is negated by the provisions of the Act of June 4, 1915, P. L. 844.

By the school code of 1911 school districts were authorized to incur indebtedness for certain specified purposes, not exceeding seven per centum of the assessed value of taxable property for school purposes, but it was expressly 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.*"

The Act of June 4, 1915, was passed simply to eliminate this italicized provision. In the mean time the amendment to the Constitution (Section 15, Article IX) was adopted, and the Act of June 5, 1915, P. L. 846, above referred to, was passed subsequently. If this amendment and this Act include school districts, and in my opinion

they do, then under the conditions provided in the amendment and the Act carrying it into effect, the debt of a school district could be increased beyond the seven per centum limit.

I beg to advise you, therefore, that under the provisions of the Act of June 5, 1915, which carries into effect Section 15 of Article IX of the Constitution, a school district can increase its indebtedness, for purposes specified in the School Code and its amendments, to an amount in excess of seven per centum (7%), but not exceeding ten per centum (10%) of the assessed valuation of taxable property therein, if said increase of indebtedness shall have been assented to by three-fifths of the electors voting at a public election, held in such manner as is provided by law for the increase of indebtedness by municipalities with the assent of the electors.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE FREE PUBLIC LIBRARY.

A public school board may make an annual contribution to a free public library and section 2510 of the Act of May 18, 1911, P. L. 309, known as the School Code, does not violate the provisions of section 3, article 3 of the Constitution, nor section 7, article 9, of the Constitution, especially where the agreement between the School Board and the free library places the controlling voice in the management and operation of the library in the School Board.

Office of the Attorney General,
Harrisburg, August 26, 1916.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: I am in receipt of your letter of the 4th inst. requesting an opinion as to whether it is legal for the School Board of Pottsville to make an annual contribution to the Free Public Library of that city.

I have examined carefully the proposed agreement between the School Board and the Pottsville Free Public Library and also note that since the incorporation of the Pottsville Free Public Library in May, 1911, the School District has contributed the sum of \$3,500 annually towards the maintenance and support of said Library.

I further note that under the proposed agreement, which you have submitted to me, it is the intention of the Free Library Association to convey, in fee simple, to the School District of Pottsville the site

for a library building to be used for a free public library and that the Carnegie Corporation proposes to donate to the School District of the City of Pottsville the sum of \$45,000.00 for the construction and furnishing of a library building on said site, on condition that the School District shall pledge itself, by resolution, to contribute to the support and maintenance of said free public library not less than \$4,500 annually and that an annual tax shall hereafter be levied sufficient in amount to comply with said requirement.

I further note that under the proposed agreement the library is to be managed and controlled by a board of fourteen trustees, one of whom shall be, *ex-officio*, the Superintendent of Schools for the City of Pottsville, seven of whom shall be composed of the Board of School Directors of the School District of the City of Pottsville and six of whom shall be citizen trustees, who shall be elected by the Pottsville Free Library Association.

The warrant for this action on the part of the School Board is found in Section 2510 of the School Code of May 18, 1911, P. L. 309:

"Instead of establishing or maintaining a separate public school library, any board of school directors may, by two-thirds vote, join with or aid any individual or association in the maintenance, or the establishment and maintenance of a free, public non-sectarian library, under such written agreement as it may determine, which agreement shall be entered in full in its minutes. Such agreement shall specify the manner, terms, and conditions agreed upon, for the aiding, establishment, maintenance, or management of such joint library."

Objection is made that this section of the act is unconstitutional as in violation of Section 3 of Article III, and Section 7 of Article IX of the Constitution, respectively.

These sections read as follows:

Section 3, Article III—

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

Section 7, Article IX—

"The General Assembly shall not authorize any city, county, borough, township or incorporated district to be come a stockholder in any company, association or corporation, or to obtain or appropriate money for, or loan its credit to, any corporation, association, institution or individual."

Taking these objections up in their order, we find that since 1864 the establishment and maintenance of free public libraries have been provided for in connection with public schools,

The Act of May 5, 1864, P. L. 826, entitled:

“An act to promote the establishment of District and School libraries,”

enacts, in Section 4:

“Any person over twelve years of age, and resident in the proper district, whether contributor, or not, to the library, shall be entitled, without charge, to the use of the books thereof, according to the rules and regulations thereof,”

thus providing that while the library is to be under the management of the board of school directors, as trustees, its advantages are not limited to the children in attendance on the public schools, but may be enjoyed by any person over twelve years of age, resident within the district.

This was followed by the Act of June 28, 1895, P. L. 411, entitled:

“An act for the establishment of free public libraries in the several school districts in the Commonwealth, except in cities of the first and second class.”

It will be noted that the libraries provided for by this Act are not public school libraries, but are free public libraries to be established in the several school districts of the Commonwealth. This is shown by the first section, which provides for the establishment and maintenance of—

“Such public library for the general use of the residents in the district.”

By the terms of this act the school board are not the trustees of the library, but the trustees are to be elected by the School Board, with the exception of the president and treasurer of the Board and superintendent of schools of the district who are to be members *ex officio*; and by Section 5 public libraries established under the provisions of this Act are to be under the general supervision and subject to the inspection of the State Librarian.

By the Act of March 30, 1897, P. L. 10, which is a supplement to the Act of 1895, it is provided:

“That in any school district, except cities of the first and second class, wherein there is or shall hereafter be established, otherwise than under the provisions of the act to which this is a supplement, a free non-sectarian public library, the school directors, board or organization having control of the common schools of said district may, instead of establishing another public library and providing for its government, extend aid to such library on such terms as to control and management

as shall be agreed upon between the managers thereof and the school authorities, and for that purpose may levy the taxes provided for in the act to which this is a supplement in the manner provided therein."

The Act of May 11, 1901, P. L. 180, amends the Act of 1895, so as to permit the Board of School Directors to act as trustees of the library upon resolution duly passed by a majority of the Board.

The Act of April 2, 1903, P. L. 133, which is a supplement to the Act of 1895; provides for the joint establishment by an adjoining township and borough of a free non-sectarian public library by the joint action and at the joint expense of the school authorities of the several districts.

This was the state of the law on this subject at the date of the approval of the School Code, which by Chapter XXV did little more than codify and re-enact the sections just quoted; section 2510 being practically a re-enactment of the provisions of the Act of 1897 above mentioned.

During all these years the provisions of these several acts of Assembly have never been, to my knowledge, successfully questioned. The public has understood that the establishment and encouragement of such libraries formed a part of the educational system of this State and the subject has always been digested under the title "Common Schools," and both lawyers and the general public were familiar with the fact that the management of free public libraries has for nearly fifty years been committed to the charge and control of the school directors of the several districts.

This being the state of the public mind, I am of the opinion that the title of the Act of May 18, 1911, commonly called the "School Code," entitled:

"An act to establish a public school system in the Commonwealth of Pennsylvania, together with the provisions by which it shall be administered, and prescribing penalties for the violation thereof; providing revenue to establish and maintain the same, and the method of collecting such revenue; and repealing all laws, general, special or local, or any parts thereof, that are or may be inconsistent therewith."

with its various articles, to wit: "Article XXV—Public School Libraries" was sufficient notice of the intention of the Legislature to deal with the subject of free public libraries. In any event, if it was not, then the previous acts relating to the subject, which are expressly repealed by the School Code, would still be in force, for if an act of assembly in its title does not give sufficient notice of its intention to deal with a certain subject it certainly does not give sufficient notice either of its intention to repeal previous laws on the same subject,

I am, therefore, of the opinion that Section 2510 of the School Code does not violate the provisions of Section 3, Article III of the Constitution.

Nor do I think that the Act violates the provisions of Section 7, Article IX of the Constitution, above referred to. In this connection I have given careful consideration to the case of *Wilkes-Barre City Hospital vs. Luzerne County*, 84 Pa. 55, which is cited as authority for such objection. In that case an act of assembly authorizing a private incorporated hospital to make requisitions upon a county for the payment of its charges for the support of patients under its treatment, even though they be paupers, was held unconstitutional.

The Supreme Court in its opinion said:

"The hospital exercises no municipal function, but takes as a private institution by a mere act of appropriation. It is under no obligation to open its doors to municipal inspection or visitation, and cannot be controlled or called to an account for the moneys drawn upon requisition—once paid the money is beyond the control of the county. Thus its expenditures may be lavish, and the public funds are liable to be misdirected or squandered, without check, through extraordinary charges and unfair requisitions."

I am of the opinion that the facts in that case are not at all similar to those involved in the present question.

It will be remembered that it is the intention to donate the site for the library building to the School District of Pottsville not to the library corporation; that the donation of the Carnegie Corporation of New York for the erection of the building is to the School District, not to the library corporation. We have, therefore, a library building built by the School District, out of funds donated to it, on a lot of ground belonging to it, so that the library building and lot of ground are the property of the School District. The appropriation made by the School District is, therefore, for the support and maintenance of the library conducted and maintained on its own property.

By the terms of the agreement the School Directors have the controlling voice in the management and operation of the library. They in no wise become stockholders in any corporation nor are they appropriating money nor loaning the credit of the School District to any corporation.

The facts in the present case are at least as strong as in the case of *Commonwealth vs. Pittsburgh*, 183 Pa. 202, where it was held that a city may appropriate money to a committee of private citizens appointed by the chamber of commerce, and ratified by the city coun-

cils, to defray the expenses of having surveys for a ship canal made, and for securing information as to whether such a canal would be practicable, and would be a benefit to the city; or the case of the *Commonwealth vs. Walton*, 182 Pa. 373, where it was held that the councils of a city might appropriate moneys to a corporation organized to create a fund to pension its members who are policemen; or the case of *Commonwealth vs. Barker*, 211 Pa. 610, upholding an ordinance of a city appropriating money to a firemen's relief association.

In *Firemen's Relief Association vs. Scranton*, 217 Pa. 585, the plaintiff corporation was a voluntary association over which the municipality had no control or supervision. This is referred to in the following extracts from the opinion of the Court:

"But there is serious question as to the right of the municipality to appropriate public funds to the support of an association over which it has no control or supervision. * * * * *

There does not appear to have been any provision in either charter or by-laws giving the city any voice in, or control over, the management of the association. * * * *

The funds appropriated by the city could therefore, be used for purposes other than the relief of firemen or ex-firemen, and for the benefit of persons to whom the city owed no duty other than such as was due to every citizen. * * * *

There is a plain distinction in this respect between membership in a voluntary association, such as this, and that of a paid fire department, organized and controlled by the city authorities. In the latter case the membership, the discipline and the management are subject to the regulation of the city. The benefits can be confined to those who have actually rendered service to the city. It is this feature only which distinguishes the payment of such a benefit from the bestowal of a gift or gratuity, which is prohibited by section 7, article IX, of the constitution. * * * *

A city may lawfully appropriate money for the purchase of fire engines even though to be used by a voluntary private fire company.

Dillon on Municipal Corporations, Sec. 303

The purpose of the constitutional provision is stated in *Brode vs. Philadelphia*, 230 Pa. 434, where the present Chief Justice in referring to the case of *Walker vs. Cincinnati*, 21 Ohio State 14, quotes from the opinion of the Ohio Supreme Court, as follows:

"The mischief which this section interdicts is a business partnership between a municipality or sub-division of the State and individuals or private corporations or associations. It forbids the union of public and private
21—6—1917

capital or credit in any enterprise whatever. In no project originated by individuals, whether associated or otherwise, *with a view to gain* are the municipal bodies named permitted to participate in such manner as to incur pecuniary expense or liability."

This citation is specially apposite in view of the fact that the Constitution of the State of Ohio contains a similar provision.

Wheeler vs. Philadelphia, 77 Pa. 338, p. 351.

Brode vs. Philadelphia, 230 Pa. 434, p. 449.

As pointed out by Chief Justice Sterrett in *Commonwealth vs. Walton*, 182 Pa. 373.

"No strictly legitimate municipal purpose was intended to be prohibited," p. 376,

and if councils

"Were satisfied, as they doubtless were, that the distribution of the fund would be better effected through the agency of the association than by an agency of their own creation they had a right to so provide."

The establishment of free, non-sectarian public libraries has been for years considered by the Legislature proper function of public school administration as part of the educational system of the State. It has been so recognized and has become the settled policy of this Commonwealth. The appropriation of moneys by a school district for the support of such a library, particularly where it is built and owned by the school district and is in the control of the school district through a majority of the trustees, cannot be held to be a diversion of public funds simply because a minority of the board of trustees represents a corporation not for profit, which generously contributes moneys for the aid and maintenance of the library carried on in the building owned by the school district.

I am, therefore, of the opinion that it is legal for the School District of Pottsville to make an annual appropriation to the free public library of that city under the conditions proposed.

I am not entirely certain that the amendment of the sixth clause of the charter of the Pottsville Free Public Library is in accordance with the agreement entered into between the Library and the School District. It seems to me that the amendment should contain some clause recognizing the right of the library to be managed by a board of trustees, which shall include the Board of School Directors and the Superintendent of Schools, in addition to the six citizen trustees to be elected by the corporation.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

APPROPRIATIONS.

The appropriation to the school district of Philadelphia for the Teachers' Institute, the Philadelphia School of Design and the Teachers' Annuity and Aid Association are to be paid on warrant of the Superintendent of Public Instruction in favor of the school district of Philadelphia, and are to cover the two years beginning the first Monday in July, 1915.

Office of the Attorney General,
Harrisburg, December 12, 1916.

Doctor Nathan C. Schaeffer, Superintendent of Public Instruction,
Harrisburg, Pa.

Sir: I am in receipt of your favor of the 5th inst, inquiring—

(1) To whom shall be drawn the warrants covering the appropriations in the General Appropriation bill for 1915 for the Teachers' Institute of Philadelphia, the Philadelphia School of Design for Women and the Teachers' Annuity and Aid Association?

(2) Whether the said appropriations for these objects are to be paid annually or biennially.

(1) Section 8 of the General Appropriation bill of 1915 (Appropriation Acts 1915, P. L. 81), reads as follows:

"For the support of the public schools and normal schools of this Commonwealth, for the two fiscal years commencing on the first Monday of July, one thousand nine hundred and fifteen, the sum of sixteen million dollars (\$16,000,000): Provided, The city of Philadelphia shall be entitled to a proper portion of this appropriation, including not only its pro rata as provided by existing laws regulating the distribution to the several counties, but also there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of ten thousand dollars to the Philadelphia School of Design for Women, for their corporate purposes; and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city."

After certain directions as to the payment of moneys for the education of teachers in State Normal Schools, for salaries of county superintendents and for promoting and maintaining schools of agricultural education, manual training, etc., it concludes:

"The remainder of the amount hereby appropriated shall be paid on warrant of the Superintendent of Public Instruction, drawn in favor of the several districts of the Commonwealth, in amounts designated by the State Treasurer, and whenever he shall notify the Superintendent of Public Instruction in writing that there are sufficient funds in the State Treasury to pay for the same."

The language of the Appropriation Act of 1913 (P. L. 755) was as follows:

"For the support of the public schools and normal schools of this Commonwealth, for the two fiscal years commencing on the first Monday of July, one thousand nine hundred and thirteen, the sum of sixteen million dollars (\$16,000,000): Provided, The city of Philadelphia shall be entitled to a proper portion of this appropriation, including not only its pro rata as provided by existing laws regulating the distribution to the several counties, but also the sum of seventy-two thousand dollars, or so much thereof as may be necessary, for the education of teachers in the Philadelphia Normal School for Girls and the Philadelphia School of Pedagogy for Young Men, and out of the amount received by the city of Philadelphia there shall be paid the sum of three thousand dollars to the Teachers' Institute of said city; the sum of ten thousand dollars to the Philadelphia School of Design for Women, for their corporate purposes; and the sum of ten thousand dollars to the Teachers' Annuity and Aid Association of said city."

Under this Act, the entire appropriation to the City of Philadelphia, including the sums set apart for the institutions named above, was paid the school district of Philadelphia.

While the language of the Act of 1913 is somewhat different from that of 1915, I can find nothing in the latter Act to evidence an intention on the part of the Legislature to make any change in the method of payment.

The Act says:

*"The city of Philadelphia shall be entitled to a proper portion of this appropriation, including not only its pro rata. . . * * * etc., but also, etc."*

The words indicate that the items following the words "but also" are to be paid in the same manner and to the same authority as the item following the words "not only," and this view is strengthened by the concluding words of the section, which provide that after the payment of the moneys appropriated for the education of teachers in normal schools, for the salaries of county superintendents and for the encouragement and promotion of schools for agricultural education, manual training, etc., the remainder of the amount appropriated is to be paid on warrant of the Superintendent of Public Instruction, *drawn in favor of the several districts of the Commonwealth.*

Furthermore, I have grave doubts whether the general appropriation bill furnishes any warrant or authority for the payment or appropriation of money to such incorporated associations directly, and **not through the channels of a School District.**

I am of the opinion, therefore, and so advise you that the items of three thousand dollars for the Teachers' Institute of Philadelphia; ten thousand dollars for the Philadelphia School of Design for Women; and ten thousand dollars for the Teachers' Annuity and Aid Association of Philadelphia, should be paid on warrant of the Superintendent of Public Instruction, drawn in favor of the school district of Philadelphia, but ear-marked or designated so as to show the purpose for which they are respectively to be applied.

(2) The appropriation of sixteen million dollars for the support of public schools and normal schools of this Commonwealth, is specified to be for the two fiscal years, commencing on the first Monday of July 1915. There is nothing in any of the items following which provides that a different rule shall apply to them or that the appropriations for their benefit were intended to be annual instead of biennial.

You are therefore advised that the appropriations to the school district of the City of Philadelphia for the Teachers' Institute of that city (\$3000); the Philadelphia School of Design for Women (\$10,000); and the Teachers' Annuity and Aid Association of Philadelphia (\$10,000), are to cover the two fiscal years beginning on the first Monday of July, 1915.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

APPROPRIATION.

The State Board of Education may expend a part of its appropriation for the purpose of equalizing educational advantages in different parts of the Commonwealth in the public high schools, not exceeding however the maximum sum fixed in the School Code.

Office of the Attorney General,
Harrisburg, December 21, 1916.

Dr. Nathan C. Schaeffer, President, State Board of Education, Harrisburg, Pa.

Sir: I have received your favor of the 12th inst., inquiring whether any part of the appropriation of one million dollars, contained in Section 8 of the General Appropriation Act of 1915 (Page 81), which is directed to be set apart and paid over to the State Board of Education when and as may be required by it, for the purpose of encouraging, promoting, organizing and maintaining schools of agricultural education, manual training, domestic science, and such other

vocational and practical education as the needs of the Commonwealth may require, and for the purpose of equalizing educational advantages in the different parts of the Commonwealth, as provided for in sections 905 and 907 of the School Code, can be used for the purpose of equalizing educational opportunities in the public high schools of the Commonwealth.

In Section 1713 of the School Code it is provided:

“From the annual appropriations in aid of high schools, a high school of the first class shall receive, each year, a sum not exceeding eight hundred dollars; a high school of the second class, a sum not exceeding six hundred dollars; a high school of the third class, a sum not exceeding four hundred dollars. * * * * If the appropriation is insufficient to pay the maximum amounts, as above specified, then the appropriation shall be distributed to the schools of the respective grades in such a manner that each school shall receive its pro rata share thereof.”

The General Appropriation Act of 1915 sets apart, out of the sixteen million dollars appropriated for the support of public schools, the sum of \$450,000 “for the encouragement and support of township and borough high schools, including joint high schools maintained by two or more townships, or by a borough and one or more townships.” You advise me that this amount, \$225,000 per year, is only sufficient to pay about forty per cent. of the maximum amounts provided for high schools in the section of the School Code just quoted.

Ordinarily, where there is a special appropriation to a department or bureau for a definite object or purpose, and a general appropriation to the same department or bureau, constituting a general fund for the conduct of the business of such department or bureau, it is not permissible, to divert any part of the general fund to the particular object or purpose for which a special appropriation has been made, it apparently being the intent of the Legislature that the sum expended for such object or purpose should be limited to the amount specially appropriated for it.

Where, however, there is a discretion given to the department or bureau permitting the expenditure of additional moneys out of any general fund, for any of the objects or purposes for which a special appropriation has been made, in such case the intent of the Legislature to limit the amount spent for such special object or purpose to the sum specifically appropriated therefor is negatived.

In the present case while the appropriation for the encouragement and support of township and borough high schools is limited to \$450,000 for the two fiscal years beginning the first Monday of July,

1915, there is further set apart, to be paid over to the State Board of Education, the sum of one million dollars for the purpose of encouraging, promoting, organizing, and maintaining schools of agricultural education, manual training, etc., *and for the purpose of equalizing educational advantages in the different parts of the Commonwealth*, as provided for in Sections 905 and 907 of the School Code.

By Section 905 of the School Code it is made the duty of the State Board of Education "to equalize, through special appropriations for this purpose, or otherwise, the educational advantages of the different parts of this Commonwealth," and by Section 907 "to encourage and promote agricultural education, manual training, domestic science, and such other vocational and practical education as the needs of the Commonwealth may from time to time require."

In the appropriation above mentioned the State Board of Education is given discretion in deciding when and how and for what uses this fund of one million dollars shall be expended and is limited only to the objects or purposes set forth in the Act, which correspond with Sections 905 and 907 of the School Code.

The very purpose of the appropriation seems to have been not only to provide for the promotion and maintenance of agricultural and vocational training schools, but also to establish a fund which the State Board of Education could use at its discretion in equalizing school conditions in various parts of the Commonwealth, which the Legislature was unable to determine and provide for in advance.

If, therefore, the State Board of Education determines that, for the purpose of equalizing educational advantages in the different parts of the Commonwealth, a portion of the million dollars appropriated for that purpose should be spent in equalizing the educational advantages in the public high schools of the Commonwealth, such discretion is lawfully exercised and the money may be expended for such purposes, not exceeding, however, the maximum sums fixed in the School Code. This discretion should not be arbitrarily exercised and the amount thus expended should not exceed what may be fairly applied to this purpose, keeping in mind the other objects set forth in the appropriation, viz, the encouragement, promotion, organization and maintenance of schools for agricultural education, manual training, domestic science and such other vocational and practical education as the needs of the Commonwealth require, and the equalizing of educational advantages generally in the different parts of the Commonwealth.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

OPINIONS TO THE COMMISSIONER OF HEALTH.

OPINIONS TO THE COMMISSIONER OF HEALTH.

REVENUE STAMPS.

It is not necessary to affix revenue stamps to containers shipped by the Department of Health. There is no Federal power to tax governmental agencies of the State.

Office of the Attorney General,
Harrisburg, Pa., June 17th, 1915.

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

Sir: Your favor of the 15th, addressed to the Attorney General, is at hand.

The facts are, as I understand, that at the Sanatoria exclusively controlled and operated by the State, through your Department, food supplies and other articles are received in crates, cartons, and other containers. That these containers are charged against the State, and the cost of them credited again to the State when the shipper receives them empty. They are, therefore, returned by the Sanatoria to the shipper. The Railroad Companies include in their first shipment the charges for returning the empty containers and, therefore, in returning them the State pays no express or freight charges.

That the Pennsylvania Railroad Company has notified the Sanatoria that these containers cannot be received for shipment without the necessary revenue stamps being furnished by the State.

The Pennsylvania Railroad Company cannot make such demand. To require the State to furnish the revenue stamps for the shipment of these containers back to the shipper is taxing the governmental agencies of the State. There is no power in the Federal Government so to do, and the Act of Congress requiring the Internal Revenue Stamps cannot be so construed.

I, therefore, advise you that you are not required to furnish Revenue stamps for the shipments in question.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General,

COATESVILLE WATER SUPPLY.

The Commissioner of Health may act upon the application of the borough for a change of water supply, although a source of supply had been previously approved.

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

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

Sir: I have received your favor of the third instant, inquiring as to whether you can lawfully consider and act upon the application of the Borough of Coatesville for a change of source of water supply in place of the one which has already been considered and approved by your Department.

I beg to advise you that in my judgment there is nothing in the Act of April 22, 1905, P. L. 260, which prevents a borough or other municipality from legally adopting another source of water supply from that previously selected, even after such selection has been considered and approved by the Commissioner of Health. Of course, before such new source of supply can be finally adopted, it will have to be considered and approved by you.

You can therefore lawfully consider and act upon the application received from the Borough Council of Coatesville.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

DEPARTMENT OF HEALTH.

The Commissioner of Health is advised to confer with the accounting officers in regard to a return to the State Treasury of an appropriation not immediately needed by him, with the right to draw on the same when it becomes necessary.

Office of the Attorney General,
Harrisburg, Pa., March 1, 1916.

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

My dear Dr. Dixon: I have yours of recent date, in which you inform me that you have a large sum in your deficiency fund which has not been paid out because the work under contract has not been satisfactorily completed, and you suggest that it be paid into the State Treasury so as to reduce the amount of the State funds which you have on hand, with the understanding that it be returned to you upon request when needed.

I beg to advise you that there is no legal reason why any moneys paid to you by the State Treasurer upon any account, and for which you have not immediate need, should not be returned to the State Treasury, and by you received therefrom upon request, as needed. I beg to suggest that you confer with the Auditor General and State Treasurer as to the proper course of procedure thereabout.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

DEPARTMENT OF HEALTH—APPROPRIATION.

The cost of medical inspection of the public schools cannot be paid from the appropriation of \$920,000 to the Department of Health for overcoming epidemics of disease, etc.

Office of the Attorney General,
Harrisburg, Pa., December 18th, 1916.

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

Sir: This Department is in receipt of your favor of the 9th instant, in which you state that the appropriation for the medical inspection of the pupils of the public schools, in accordance with the provisions of the School Code—\$190,000 (Appropriation Acts 1915, page 69), has been exhausted, and inquire whether you have a right to make the "remainder of the medical school inspections out of the general fund."

Strictly speaking, there is no "general fund" appropriated to the Department of Health. The appropriation in the General Appropriation Bill is divided into ten distinct sections or divisions, and the moneys appropriated are set apart and limited for the purposes set forth in these sections or divisions, respectively.

Under the sub-title "Dispensaries" appears the following:

"For the payment of the cost of diphtheria antitoxin, and other products for free distribution for the poor; for the employment of such special and assistant engineers, stream and sanitary inspectors, and such other employes as may be necessary; for the fees, and necessary traveling expenses of the county medical inspectors and rural health officers; for the necessary traveling expenses of the Commissioner of Health, his assistants, and other employes; for the maintenance of the Bureau of Vital and Morbidity Statistics; for the maintenance of laboratories and experimental station; for

educational work and for the payment of all other necessary expenses of the Department of Health in supervising epidemics of diseases and in protecting the public health, two years, the sum of nine hundred and seventy thousand dollars (\$970,000), Reduced by Governor to \$920,000), and in addition thereto, any balance remaining unexpended of the appropriation made to the Department of Health, for the same purposes for the two years ending May thirty-first, one thousand nine hundred and fifteen, by the provisions of the General Appropriation Act, approved July sixteenth, one thousand nine hundred and thirteen."

I presume this is the "general fund" to which you refer, as the only other appropriations to the Department of Health were the deficiency appropriations of February 18, 1915 (Appropriation Acts 1915, page 5) and the Appropriation Act of June 18, 1915, (Appropriation Acts 1915, page 184), for the maintenance of tuberculosis sanatoria, dispensaries, etc.

Where the Legislature has divided an appropriation to a Department of the State government among certain divisions or bureaus of that Department, it is not permissible to use the funds appropriated to one division or bureau for the work of another, no matter how necessary or meritorious that work may be, in the absence of some provision specifically authorizing such action.

Similarly when the Legislature, in its appropriation to a Department or bureau, has specified how much money shall be used for a particular purpose or object committed to that department or bureau, the sum which may be expended on that account is limited to the amount thus appropriated for it, in the absence of some discretionary power given the head of the department or bureau authorizing the use of an additional amount, if necessary, from some general, contingent or special fund placed at his disposal for such contingencies.

The Act of May 11, 1909, P. L. 519, provides that the appropriation act must specify the *amount* to be expended and the purpose of the expenditure.

The purposes for which the appropriation of \$920,000 which you designate as the "general fund," may be used are specifically set forth in the paragraph quoted above. While these purposes include the fees and traveling expenses of County medical inspectors and rural health officers, and the traveling expenses of yourself and assistants and employes and are by no means limited to the work of your department in connection with dispensaries, nevertheless they are largely concerned with overcoming epidemics of diseases and providing for emergencies in connection with the protection of the public health. They are not, in my judgment, broad enough to

include the cost of medical inspection of pupils of the public schools in accordance with the provision of the School Code, which is specially provided for by the immediately following section or division:

“For the medical inspection of the pupils of the public schools, in accordance with the provisions of the School Code, the sum of two hundred and twenty-five thousand dollars (\$225,000) (Approved in the sum of \$190,000) or so much thereof as may be necessary.”

You are, therefore, advised that the cost of such medical inspection of pupils in the public schools cannot be paid out of the fund of \$920,000 appropriated for the purposes set forth in the section of the General Appropriation Bill first quoted.

If expenses have been incurred on this account in excess of the amount appropriated by the Legislature and approved by the Governor, the only course open is to secure a deficiency appropriation covering this excess from the next Legislature, or the passage of a bill authorizing such transfer of funds.

Very truly yours,

WM. H. KELLER,
First Deputy Attorney General.

OPINIONS TO COMMISSIONER OF LABOR AND
INDUSTRY.

OPINIONS TO COMMISSIONER OF LABOR AND
INDUSTRY.

LABOR AND INDUSTRY.

Inspectors in the Department of Labor and Industry may be allowed the price of meals, eaten elsewhere than at their residences, if necessary.

Office of the Attorney General,
Harrisburg, Pa., March 1st, 1915.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: This Department is in receipt of your letter of this date. You ask to be advised whether the Commissioner of Labor and Industry has authority "to allow inspectors their meals in their places of residence in cases where in the judgment of the Commissioner it would be in the interests of efficiency and economy so to do." You also state that the value of the time consumed in going to their own residences for meals is greater than the price of the meals.

The Act of June 2nd, 1913, P. L. 396, creating your department, provides in Section 5, in terms:

"The Commissioner of Labor and Industry shall establish and maintain branch offices in the cities of Philadelphia and Pittsburgh, and in such other cities of the Commonwealth as he may deem advisable. Such branch offices shall, subject to the supervision and direction of the Commissioner of Labor and Industry, be in immediate charge of such officers or employees as the said Commissioner may designate; and the reasonable and necessary expenses of such offices shall be paid as are the other expenses of the said Department of Labor and Industry."

The appropriation to your department, among other things, includes the item "For the payment, for two years, of the incidental and traveling expenses of the Commissioner, inspectors, and other officers of the department, incurred in the discharge of their duties," etc.

If it adds to the efficiency of your department to allow inspectors the price of their meals, which are eaten elsewhere than at their own residences, I am of opinion that you have the authority to make such allowances.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.
(339)

DEPARTMENT OF LABOR AND INDUSTRY.

Under section 11 of the Act of June 2, 1913, P. L. 396, the Department of Labor and Industry in the Bureau of Statistics and Information has the right to require industrial establishments to state the amount of daily wages paid in making reports of accidents to employees and to collect information concerning the wages paid by manufacturing, commercial and other business interests of the State.

Office of the Attorney General,
Harrisburg, Pa., March 16, 1915.

Hon. A. R. Houck, Chief, Bureau of Statistics and Information,
Harrisburg, Pa.

Sir: Your favor of recent date was duly received. You ask to be advised whether the Bureau of Statistics and Information in the Department of Labor and Industry is authorized to require industrial establishments to state the amount of daily wages paid in making reports of accidents to employees, and also whether it is authorized to collect information concerning the daily wages paid in industrial establishments.

The Act of June 2, 1913, P. L. 395, creating the Department of Labor and Industry and the Bureau of Statistics and Information, contains in Section 11 the following:

"It shall be the duty of said bureau to keep in touch with labor in the Commonwealth, especially in relation to commercial, industrial, physical, educational, social, moral, and sanitary conditions of wage-earners of the Commonwealth, and to the productive industries thereof; also, to collect, assort, publish, and systematize the details and general information regarding industrial accidents and occupational diseases, their causes and effects, and the methods of preventing and remedying the same, and of providing compensation therefor; * * * This Bureau shall also be required to collect, compile, and publish annually, the productive statistics of manufacturing, commercial, and other business interests of the State."

This language in terms, gives the Bureau the right to "collect, assort, publish and systematize details and general information regarding industrial accidents." It cannot comply with this provision fully without ascertaining the wages paid those who suffer accidents.

The other language above quoted, authorizing the Bureau to "collect, compile and publish annually, the productive statistics of manufacturing, commercial, and other business interests of the State," cannot be complied with fully without ascertaining the wages paid in such establishments.

I am therefore of opinion that under the authority of Section 11 of said Act of Assembly you have the right to require information both concerning the wages paid to those who suffer accidents in industrial establishments, and also concerning the wages paid by manufacturing, commercial and other business interests of the State.

Very truly yours,

WM. M. HARGEST,
Second Deputy Attorney General.

BELL TELEPHONE COMPANY'S SCHEDULE.

So long as an employe is not required or permitted to work more than six days in any one calendar week beginning with Sunday, and is not required or permitted to work more than fifty-four hours in any one calendar week beginning with Sunday, or more than ten hours in any one day of twenty-four hours, the Women's Labor Act of July 25, 1913, P. L. 1024, is sufficiently complied with, although the employer's proposed schedule provides for one day of rest in each calendar week, so that women employees may have a maximum number of Sundays off duty.

Office of the Attorney General,
Harrisburg, Pa., August 9, 1915.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: Answering your communication of recent date, in which you refer to the communication from the Bell Telephone Company in which an opinion is requested as to the validity of certain schedules of employment therein proposed, I beg to advise as follows:

The Female Labor Act of July 25, 1913, provides for one day of rest in every seven consecutive days. The existing regulations of the telephone company, as stated, provides that under no conditions are female employes required to work more than six days, or more than fifty-four hours in any calendar week, or more than ten hours in any one day. It is also stated that the normal duty for telephone operators does not exceed eight hours, and in some cases seven hours, depending upon the period of the day the duty commences.

It must be borne in mind that the telephone industry differs somewhat from other industries in that its operations must go on without cessation, night and day, and seven days per week. The work to be performed is a matter over which the company has no control, and it is in duty bound to provide at all times an adequate operating force to handle whatever volume of traffic the public may originate at any given period.

It is further stated that the volume of traffic on Sundays is seldom more than one-half of the traffic on week days, and this makes it feasible for the company to so plan its affairs as to ask Sunday duty of any given individual operator not more frequently than every other Sunday, and quite often not more frequently than one Sunday in three, or one Sunday in four. Accordingly, different sets of employees work on different Sundays.

Apparently the only feasible plan under which telephone operators could work no more than six consecutive days in any seven, as literally required by the Act, and could have a seventh day entirely free from duty, would be the condition under which one set of employees, consisting quite often of half the force, would work all the Sundays and each individual operator of this portion of the force would get the same week day off duty each week. The remainder of the force would never, or seldom, work Sundays, and would therefore practically have Sunday as their day off duty each week.

It is true that if the humane feature of the Act were alone to be considered, one would be obliged to conclude that the Act ought to be literally followed and that it made no difference on what day of the week the day of rest fell, that the only object sought to be accomplished was that each female employe should have one day of rest in every seven consecutive days. However, I feel that there is a *human* element, as well as a humane element, involved. In other words, one cannot disregard the fact that Sundays mean much to these young women and that it is a day on which they look after their social and religious activities, as they very properly should.

Undoubtedly, the legitimate object and purpose of the Act of Assembly is to provide for the health, comfort and happiness of women employes. While, however, the Act in words requires one day of rest in seven consecutive days, the schedule proposed by the telephone company provides for one day of rest in each calendar week, so that the operators may have a maximum number of Sundays off duty.

So long as an employe is not required nor permitted to work more than six days in any one calendar week, beginning with Sunday, and is not required or permitted to work more than fifty-four hours in any one calendar week, beginning with Sunday, and is not required or permitted to work more than ten hours in any one day (of twenty-four hours), the Female Labor Act of July 25, 1913, P. L. 1024, is sufficiently complied with in object, purpose and spirit, and so all legislation of this character must be considered and the question arising thereunder determined.

Very truly yours,

FRANCIS SHUNK BROWN,

Attorney General.

PUBLICATION OF RULES OF INDUSTRIAL BOARD.

Section 15 of the Act of June 2, 1913, P. L. 596, does not make it mandatory upon the Industrial Board to cause its rules and regulations to be published in a daily newspaper prior to their taking effect.

Office of the Attorney General,
Harrisburg, Pa., August 18, 1915.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: We have your inquiry of August 16, 1915, as to whether the rules and regulations of the Industrial Board must be published in a daily newspaper before they shall take effect.

The situation presenting itself, and which prompts the present inquiry, as we understand it, is that at the present time the Board has prepared and is ready to publish standards and regulations on boilers. These regulations embrace over 100 pages of printed matter which would use, in space, many pages of the daily newspaper, and which would cost this State a large amount of money for their publication in such daily newspapers.

The facts are that the various rules, regulations and standards of the Industrial Board are of interest to those concerned in the manufacture, installation, operation and employment in and about the places in which the apparatus covered by them is used. They are, in a sense, technical and would be without meaning or interest to the great mass of the people.

In keeping, however, with the spirit of the law that no man shall be compelled to suffer for an offense, the knowledge of any prohibition against which could only be obtained with great difficulty, if at all, it has been the practice of the Board to supply printed copies of all of its rules and regulations to those asking for the same. The manner of distributing the rules and regulations of the Board is not unlike that employed in reference to statutes enacted by the Legislature of this State. They are issued in pamphlet form. No attempt has ever been made, nor would there be reason in it, to publish in daily newspapers or other current periodicals the voluminous enactments of a State Legislature. Such a system would be an obvious waste of money with no resulting good. The same would apply were there a requirement making it mandatory upon the Industrial Board to so publish its rules and regulations.

However, the mere fact of unnecessary expense, or lack of reason for the requirement, would not relieve the Board of the duty of such publication if the statute made it mandatory upon the Board to so publish them and predicated the right to enforce such rules and regulations only upon such publication.

The question, therefore, presents itself as to whether the second sentence in Section 15 of the Act of June 2, 1913, P. L. 396, in so far as publication in a newspaper is concerned, is mandatory or merely directory.

The question as to whether a statutory provision is directory or mandatory has appeared before the courts of this State many times. Several rules are now accepted for guiding the Court in determining which of the two classes a particular statute comes under. In the case of *Lancaster County vs. Lancaster City*, 160 Pa. 411, the lower Court's opinion was approved in a per curiam opinion by the Supreme Court. The portion of the statute which the lower Court construed provided "that the commissioners of Lancaster County shall open an account with the City of Lancaster," etc., and thereafter provided in view of the keeping of that account how reimbursement should be made from the county to the city. The Court says, in part:

"It was argued, however, that, even if a right of action is given by the statute, the keeping of the account mentioned in section 3 is a condition precedent, and as no such account is shown to have been kept, no recovery can be had in the present suit. Doubtless the act does contemplate the keeping of a formal account, and such an account ought to be kept, but we think the provision is directory merely, and that the failure to keep it will not prevent a recovery. It is not always easy to determine whether a provision is mandatory or only directory, but there are two good rules which are often of much assistance in deciding this question. The first is referred to in *Bladen vs. Phila.*, 60 Pa. page 466; 'Where the words are affirmative and relate to the manner in which power or jurisdiction vested in a public office or body is to be exercised, and not to the limits of the power or jurisdiction itself, they may and often have been construed to be directory.' See also *Pittsburgh vs. Coursin*, 74 Pa. 401; *Dewhurst v. Allegheny*, 95 Pa. 442; *Hersberger v. Pittsburgh*, 115 Pa. 86; *Cusick's Election*, 136 Pa. 470; *Potter's Dwar. St.*, p. 222, note 29. The other side of the rule is approved in *Norwegian St.* 81 Pa. 353-4, in the following language: 'There is a class of cases which hold that whether a statute is to be regarded as directory or not, is made to depend upon the employment or failure to employ negative words which import that an act should be done in a particular manner or time and not otherwise.' Perhaps Lord Mansfield's rule in *Rex. v. Loxdale*, 1, Burr, 445, is a better one (and this is the second rule we have in view), that 'whether a statute is mandatory or not depends on whether the thing directed to be done is the essence of the thing required.'

The latter and better rule as above referred to, was followed in the case of *Carbaugh vs. Sanders*, 13 Super. Ct. 361, in which it is held:

"A direction contained in the statute though couched in merely permissive language, shall not be construed as leaving compliance optional where the good sense of the entire enactment requires its provisions to be deemed compulsory."

It will be seen from these cases that the words "may" or "shall" have no magic in them which, in themselves, make a provision in a statute, either directory or mandatory. The question is, is the thing directed to be done the essence of the thing required. Applying this rule to Section 15, we have, in the first sentence, the provision that all rules and regulations of the Board "*shall be distributed to all applicants.*"

The second sentence, and the one in question, is as follows:

"Every rule or regulation adopted by the Board shall be promptly published in bulletins of the Department of Labor and Industry, and in such daily newspapers as the Board may prescribe, and no such rule or regulation shall take effect until thirty days after such publication."

Now, does the publication mentioned in the last line refer to the publication by bulletin, or the publication in a newspaper, or by both? There is no requirement as to any particular newspaper. The Board may prescribe a daily newspaper and if it is given the permission to select, it would require very strong language to lead to the conclusion that though given the discretion as to which of a given number, it must select one or more of that number.

With the elimination of the clause "and in such daily newspaper as the Board may prescribe," we have the sentence left as follows:

"Every rule or regulation adopted by the Board shall be promptly published in bulletins of the Department of Labor and Industry, and no such rule or regulation shall take effect until thirty days after such publication."

Would the sentence as it now stands present the essence of the thing required? In our opinion, it would. The rules and regulations of the Board would be such that those interested in them could gain no value from a cursory reading or inspection of them. They must be preserved for the purpose of reference when any matters which they concern are taken up. Their publication in a newspaper would render them in improper form for preservation, so that, to serve

their function there would therefore be the necessity of every person concerned with such rules and regulations to procure them in the bulletin form.

The publication of the rules in a daily newspaper would, out of the total number of papers issued and in view of the expense of such publication, bring the rules and regulations to an inconsequential number of persons interested.

The portion of the sentence appearing with the one clause omitted, however, would furnish at the least expense to the State, in permanent form, all of the rules and regulations to every person interested therein and so known to the Board, or who made application therefor, and so considered it is my opinion that publication is mandatory. For the reasons above given and guided by the rule adopted in the case of *Lancaster County vs. Lancaster City*, viz: "Whether the thing directed to be done is the essence of the thing required," I am of the opinion that it is not mandatory upon the Industrial Board to cause its rules and regulations to be published in a daily newspaper prior to their taking effect.

I would suggest, however, that the Board adopt, as a uniform practice, the insertion of a notice in a limited number of newspapers and periodicals, every time an important bulletin, such as the present one, is issued. This notice need be only a few lines in length, and would not only serve to promote a wider distribution of the bulletins, but would also be a proper and essential compliance with even that portion of the Act above discussed calling for newspaper publication.

Very truly yours, .

HORACE W. DAVIS,
Deputy Attorney General.

TELEGRAPH AND TELEPHONE OPERATORS.

The prohibition of law that no female shall be employed for more than six days in any one week is mandatory.

Office of the Attorney General,
Harrisburg, Pa. August 27, 1915.

Honorable John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Your favor of the 21st inst. is at hand.

You forward the letter of two telegraph and telephone operators, of the Pennsylvania Railroad Company and request an opinion based

upon their letter as to whether the Act of July 25, 1913, P. L. 1024, regulating the labor of women, is mandatory, in so far as it prohibits working more than six days in any one week.

The Act provides, in unmistakable terms, 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,” etc.

The Department has heretofore interpreted this law as liberally as possible, so as not to work hardship, and we have considered this request with reference to the facts stated in the letter submitted with your request, viz,—that “this provision of the law will ultimately close this line of work to women,” with a view, if possible, to finding some method for so construing it as not to work such result.

We are unable so to do. The language is plain. There is no room for any other construction. The prohibition that “no female shall be employed **** for more than six days in any one week,” is mandatory. We are not permitted to deviate from the plain letter of the statute. The appeal for relief, if the hardship exists as indicated in the letter which you submit, must be made to the Legislature, but as long as the law stands as now written, I advise you that it is unlawful to permit women to work in any establishment more than six days in any one week.

I return herewith the letter of Messrs. Amend and Luther.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

FEMALE LABOR.

It is contrary to the spirit as well as to the letter of the Act of July 25, 1913, P. L. 1024, for any establishment to give to its female employes (who have worked in such establishment for the full time permitted by the act) work to be taken home and done at night and delivered next morning.

Such work is work done in connection with the establishment, and is therefore unlawful within the meaning of the Act of 1913.

Office of the Attorney General,
Harrisburg, Pa. October 27, 1915.

Dr. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: I have your favor of the 16th inst. enclosing letters from Henry C. Thompson, Jr., Esq., of Philadelphia, requesting an opinion as to

whether it is a violation of the Act of July 25, 1913, P. L. 1024, for female employes who are paid by the piece, after working nine hours in an establishment, to take home work with them to do in the evening and deliver at the establishment the next morning.

The purpose of the Act of July 25, 1913, was to protect the public health and welfare by regulating the employment of females in certain establishments with respect to their hours of labor and the conditions of their employment. The term "establishment" is defined to mean "any place within this Commonwealth where work is done for compensation of any sort to whomever payable," providing that it shall not apply to work in private homes and farming. Section 3 of the Act provides that 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 purpose of the law evidently was to put such safeguards around the employment of women in establishments as to prevent their being exhausted by their labor, and thereby injured in health, to the consequent injury of the race.

Under the provisions of the act a woman may be employed for six days in the week for nine hours each day. This is all the work she may do in, or in connection with, any establishment. In addition to the work in such establishment she may do household work or other work in her own home, provided it is not in connection with the establishment in which she is employed during the week, and provided that when she is employed or permitted to work in or in connection with more than one establishment, the aggregate number of hours during which she shall be employed or permitted to work in or in connection with such establishments shall not exceed the number of hours prescribed for any one week or any one day.

The act not only forbids her employment in an 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, but forbids her *being permitted to work in connection with* any establishment beyond the time limited above.

I am, therefore, of the opinion that it is contrary to the spirit, as well as to the letter of the act for any establishment to give its female employes, who have worked in such establishment for the full time permitted by the act, work to be taken home and done at night and delivered at the establishment the next morning. I advise you that such work is work done in connection with the establishment and is, therefore, unlawful.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

MATTRESSES.

Under the Acts of May 1, 1913, P. L. 134, and May 14, 1915, P. L. 510, the names of both the maker and vendor must be set forth upon the tag attached to mattresses, and in case of more than one vendor, the names of all in succession must be set forth on the tag as well as the name of the maker.

Office of the Attorney General,
Harrisburg, Pa. October 27, 1915.

Dr. John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: I have your favor of the 16th inst. enclosing letter from the Sterns & Foster Company, of Lockland, Ohio, requesting an opinion as to whether under the Act of May 14, 1915, P. L. 510, amending the Act of May 1, 1913, P. L. 134, it is necessary that the names and addresses of both the manufacturer and the vendor shall appear on the label attached to a mattress.

By Section 3 of the Act of May 1, 1913, it was provided that the muslin or linen tag which must be affixed to the mattress should contain a statement in the English language setting forth, inter alia, the name and address of "*the manufacture or vendor thereof, or both.*" The form of tag set forth in Section 6 of the act made provision for the insertion of the name and address of both the maker and the vendor. In passing upon these provisions the Attorney General's Department in an opinion rendered to you, on February 9, 1914, by J. E. B. Cunningham, First Deputy Attorney General, construed them as follows:

"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 violation of the act responsibility may properly be fixed."

I am of the opinion that the wording of the act justified such a construction.

In *Sutherland on Statutory Construction*, Sec. 252, it is said:

"The popular use of 'or' and 'and' is so loose and so frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context."

The word "or" has been read "and" in the following cases:

Foster vs. The Commonwealth, 8 W. & S. 77;
Gibson vs. Tyson, 5 Watts, 34;
Murry vs. Keyes, 35 Pa. 384;
Shoffstall vs. Powell, 1 Grant, 19;
Toomey vs. Hughes, 25, W. N. C. 66.

By the Act of May 14, 1915, the Act of 1913, was amended so as to require that the tag should set forth:

"The name and address of the maker, vendor or successive vendors."

It will be noted that in the amendatory act the word "or" does not appear between "maker" and "vendor", but only between "vendor" and "successive vendors." The Legislature evidently intended to change the Act of 1913 in this respect, or to clear up any doubt that may have existed as to its construction.

As amended the act requires that the name and address of the maker of the mattress shall appear on the tag, that the name and address of the vendor shall appear on the tag, and if there is more than one vendor, that the names and addresses of the successive vendors shall appear on the tag.

In enacting the amendment it was evidently the purpose of the Legislature to provide that when the mattress was in the hands of a customer it should contain the names and addresses of the manufacturer and every vendor through whose hands it has passed until it reaches the customer, so that the responsibility for any violation of the provisions of the act could be fixed upon any and every person who had anything to do with either the manufacturer or the sale of the mattress. If the mattress tag contains only the name of the manufacturer and he is not a resident of the State, it might be a very difficult matter to fix upon any vendor the responsibility for the sale. On the other hand, if merely the vendor's name appears on the tag, it would be extremely difficult to discover the manufacturer who was responsible for the illegal mattress.

In view of the change in the wording of the Act of 1915, as well as the fact that the form of tags provided for in the amended act contains spaces for the name and address of both maker and vendor, I advise you that the name and address of both the maker and vendor must be set forth in the tag, and in case there is more than one vendor that the names of all of the vendors in succession must be set forth on the tag, as well as the name of the maker.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

CHILD-LABOR LAW.

Children's working certificates obtained under acts of 1909 and 1911 are valid after January 1, 1916, subject to all the other provisions of the Act of 1915, such as compulsory attendance of continuation schools and the prohibition against employment of more than fifty-one hours per week, including school attendance, etc.

Legislation, like the Act of May 13, 1915, P. L. 286, relating to the employment of children, cannot always be enforced strictly according to the letter, but should be interpreted and applied with the fullest measure of sound discretion and judgment, always mindful of basic principles and of the useful ends desired to be accomplished.

Office of the Attorney General,
Harrisburg, Pa., November 4, 1915.

Honorable John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: Supplementing and in enlargement of my opinion of October 26, 1915, answering your inquiry of September 29, 1915, whether children's working certificates which were obtained before January 1st, 1916, would be valid after that date, I beg to advise you:—

The Act of May 13, 1915, P. L. 286, relating to the employment of children is to take effect January 1st, 1916, and repeals all prior laws inconsistent therewith. It provides for a different form of certificate and for two classes of certificates and different method and requirements for the obtaining thereof. Section 8 of the Act provides:

“Before any minor under sixteen years of age shall be employed, permitted, or suffered to work in, about or in connection with, any establishment, or in any occupation, the person employing such minor shall procure and keep on file, and accessible to any attendance officer, deputy factory inspector, or other authorized inspector or officer charged with the enforcement of this act, an employment certificate as hereinafter provided, issued for said minor.”

A strict construction of this provision would undoubtedly make it apply to children who have obtained certificates under the Acts of 1909 and 1911.

This Act of 1915 was passed in line with other advanced legislation seeking to safeguard and develop the youth of the State in their health comfort and intelligence, and should not be so construed as to produce a result to the injury and disadvantage of many of those intended to be so benefited. Legislation of this kind, cannot always be enforced strictly according to the letter thereof, but should be interpreted and applied with the fullest measure of sound discretion and judgment, always mindful of basic principles and of the useful ends desired to be accomplished.

Many thousands, (approximately fifty thousand), of minors throughout the State in conformity with the Acts of 1909 and 1911, have obtained working certificates thereunder and are now engaged in useful occupations and are learning useful trades. These children quit school and took up new courses of practical labor and study, in full reliance on the law as it then was and in the reasonable belief that it would so continue until their attainment of the age of sixteen, and many of them, doubtless, were forced by their economic condition so to do. All of these minors will, during the course of the next year or two, have attained the age where they will have passed beyond the operation of the Act of 1915. It is obvious that to require these minors to return to the regular schools, in many cases but for short periods, little if any advantage would result to them intellectually, and less practically, inasmuch as by reason of their absence from school they could do little more than review without advancement some of the studies they have already covered, and at the same time they would lose, because of the interruption, the benefit of their work in their chosen trades or vocations.

Then again, the families of these minors in the same full reliance on the then law of the State and in the expectation that it would so continue, have arranged and shaped their affairs in accordance with their new conditions. Many have moved into new industrial centers, and many have bought homes under the beneficent Building and Loan Association installment plan, or have otherwise incurred continuing obligations, partly at least, in reliance upon the continual employment of their children.

The true legislative intent was not to bring about sudden chaos in the lives of these children and their parents and it is unwise to so apply the law as to produce such an undesirable condition.

Furthermore, while the impelling influence in determining the proper application of this legislation must always be the sincere regard for the welfare of the children affected, I am not unmindful of the fact that many industries of the Commonwealth have based their business upon the continuation of the employment of these children who were properly employed under the then law of the State, and the sudden withdrawal of many thousands of such children from industrial service would work a hardship which should be avoided if it can be done without positive harm to the children, and this can be easily accomplished by the proper co-operation of all having to do therewith.

One of the distinguishing features of the new Act is the provision for the compulsory attendance of children employes in so-called continuation schools, the purpose underlying this legislation being

to continue the education of children already in industry and to provide for the further instruction of those leaving school after January 1, 1916, and entering industrial life.

This situation, as already indicated, calls for the application of a broad, administrative discretion, and having due regard for the general policy of the State and for the interest and welfare of all concerned, you may, as I have heretofore advised you, consider children's working certificates obtained under Acts of 1909 and 1911, valid after January 1, 1916, provided, of course, that the minors holding them are to be subject to all the other provisions of the Act of 1915, such as the compulsory attendance of continuation schools and the prohibition against employment of more than fifty-one hours per week, including school attendance, etc.

Very truly yours,

FRANCIS SHUNK BROWN,

Attorney General.

IN RE HOURS OF LABOR FOR CHILDREN.

It is lawful under the Act of May 3, 1915, P. L. 286 (effective January 1, 1916), for a minor between the ages of 14 and 16 years, under employment in any establishment, to work a week and attend school a week, alternately, provided the hours of school attendance under such arrangement be not less than the minimum prescribed in section 3 of said act, namely: Eight hours for each week of the entire period of employment, and that the hours of work shall in no day or week exceed the hours prescribed under the provision of section 4 of the said act.

Office of the Attorney General,
Harrisburg, Pa., December 1, 1915.

Honorable John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: I am writing in answer to your communication of recent date, "relative to the employment of minors at the Cambria Steel Company, Johnstown, Pa." Your inquiry is based upon certain correspondence accompanying your communication, wherein it appears that the Cambria Steel Company has in its employ a number of boys between the ages of fourteen and sixteen years who work one week and attend a manual training school a week, alternately, and that this Company is willing to continue such program of work and school provided it will be legal to do so under the new Child Labor Law.

An opinion applicable to this specific case cannot be ventured until the facts are disclosed in somewhat fuller detail than can be gathered from the above communication, such as the proposed hours of school attendance, the hours of work during the week of work, and whether such school meets the approval of the State Superintendent of Public Instruction, etc.

I shall, however, state my opinion upon the general proposition raised by your inquiry, namely: whether it will be lawful under the Act of May 13, 1915, P. L. 286, for a minor between the ages of fourteen and sixteen years, employed in any establishment, to work a week and attend school a week, alternately.

Section 3 of said Act provides in part as follows:

"It shall be unlawful for any person to employ any minor between fourteen and sixteen years of age, unless such minor shall, during the period of such employment, attend, for a period or periods, equivalent to not less than eight hours each week, a school approved by the State Superintendent of Public Instruction."

The plain purpose of this legislation was to secure to minors who are employed in any establishment in some gainful occupations, school advantages and the opportunity of continuing their education. The Act is to be steadily interpreted in the informing light of that beneficent purpose and given that liberal construction as may best promote its salutary ends. In arriving at the intent of such statute, the strict letter must always yield to such reasonable interpretation as will best conform to its spirit and effect the object to be accomplished. It might well be contended that even under a literal reading the above quoted portion of this Act does not require that the eight hours of school prescribed for each week of employment shall necessarily fall within each week of work. It may fairly be read to mean that there must be eight hours of school attendance FOR each week, but not necessarily IN each week, of the employment period. This construction wholly accords with the purpose and intent of the statute and manifestly admits of many practical and substantial advantages to a child pursuing his school course.

To insist that the eight hours of schooling must always literally fall within each week of work night, and in many cases would prevent the best possible educational results. Quite commonly, more fruitful schooling could be had by a minor who would be permitted to attend school an entire week and then return to work for a week, and so on alternately, than where the same number of school hours would be broken and scattered throughout two weeks. The sound administrative discretion and experience of the school authorities charged with the duty of supervising the proper schools to meet the

requirements of this Act should be trusted to work out and apply such flexible division of the hours of work and school as would most effectively promote the child's educational welfare.

It is unnecessary to say that the number of hours of school attendance under such an arrangement as is here proposed must be the full equivalent of the number prescribed by the Act, namely: at least eight hours for every week of the entire period of employment. It is fair to presume, however, that where a minor could work one week and then attend school the next, and so on alternately, he would probably attend school during its usual and customary hours. He would **thus gain** substantially in time of school attendance over the minimum amount prescribed in the Act. To so construe this statute as to deny him this advantage in cases where his employer and the school authorities were willing that such division of the time of work and school should be allowed, and be practicable in operation, would be to defeat in a measure the purpose of the Act. It may therefore confidently be contended that such is not its intent and that so narrow a construction should be rejected.

Furthermore, it appears that the liberal interpretation here urged is in harmony with that given to this Act by the State Department of Education. There was recently issued a bulletin prepared by the Industrial Division of the Bureau of Vocational Education at the direction of the State Board of Education, being Bulletin 5—1915. On page 14 thereof is the following relating to this subject:

"Each pupil attending a continuation school may attend for a period of eight hours on one day per week, or on two days of four hours each, or on four days of two hours each, or, if advisable, all of the schooling may be given continuously, provided the total number of hours' schooling received by each minor in the continuation school be equivalent to eight hours per week for the number of weeks which the common schools are in session."

In an opinion under date of November 14, 1915, construing another phase of this same law, it was pointed out that legislation of this kind—

"should be interpreted and applied with the fullest measure of sound discretion and judgment, always mindful of basic principles and of the useful ends desired to be accomplished."

This rule may be invoked to guide us in reaching a conclusion upon the question here submitted.

You are therefore advised that it will be lawful under the Act of May 3, 1915, P. L. 286, which is to become effective on January 1, 1916, for a minor between the ages of fourteen and sixteen years under em-

ployment in any establishment to work a week and attend school a week, alternately, provided the hours of school attendance under such arrangement be not less than the minimum prescribed in Section 3 of said Act, namely: eight hours for every week of the entire period of employment, and that the hours of work shall in no day or week exceed the hours prescribed therefor under the provisions of the fourth section of said Act.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYMENT AGENCY.

A person who keeps a boarding house for sailors, and in connection therewith engages in the business of providing masters or owners of vessels with seamen, receiving no fee from the sailors so directed to such owners or masters, but receiving a consideration or fee from such owners or masters for each seaman so supplied, is an employment agent within the meaning of the act of June 7, 1915, P. L. 888.

To take such case from the provisions of the act, it must be clearly shown that the work of so assisting such employers to secure employes is strictly that of a bureau or department maintained by some person, firm, corporation or association for the purpose of obtaining help for themselves.

The business of an employment agent carried on in Pennsylvania by a non-resident is subject to said act equally with that of a resident.

Office of the Attorney General,
Harrisburg, Pa., December 7, 1915.

Honorable John Price Jackson, Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There has been referred to me your communication of November 13, 1915, to Attorney General Brown, requesting an opinion to a question raised in a certain communication to you of November 12, 1915, of Mr. Jacob Lightner, Director of the Bureau of Employment, and transmitted with yours.

From this said communication of the Director of the Bureau of Employment, it appears that the said Bureau "obtained the names and addresses of several individuals in Philadelphia who keep boarding houses for sailors, and who provide masters, agents and owners of sailing vessels with seamen. It appears they do not receive or charge any fee to the sailors for directing them to such masters, agents or owners, but they do receive from the masters, agents and owners of such vessels, a certain consideration or fee for each man

supplied," and there further appears in said communication, a request for "a ruling on this matter embracing non-residents of the State who keep boarding houses within our State limits; also a ruling on residents of our State, who keep boarding houses for sailors, and provide vessels with seamen whether the boarding house keeper runs a regular employment or not."

It further appears that the attorney of the said parties contends that they are not within the provisions of the hereinafter mentioned act and that they reside in New Jersey.

The question here arises under the Act of June 7, 1915, P. L. 888. Section 2 thereof provides as follows:

"The term 'employment agent', as used in this act, shall mean every person, co-partnership, association or corporation engaged in the business of assisting employers to secure employes, and persons to secure employment, or of collecting and furnishing information regarding employers seeking employes, and persons seeking employment; Provided, That no provision of any section of this act shall be construed as applying to agents procuring employment for school teachers exclusively; nor to registries of any incorporated association of nurses; nor to departments or bureaus maintained by persons, firms, or corporations or associations, for the purpose of obtaining help for themselves, where no fee is charged the applicant for employment."

This Act, by its second section, provides its own definition of the term "employment agent", and in its construction such legislative definition must govern. According to this definition, an employment agent includes every person, co-partnership, association or corporation "engaged in the business of assisting employers to secure employes, and persons to secure employment, etc." This definition is very comprehensive. From the application of the Act, however, under the proviso of the second section thereof, three classes are excepted, namely:

First—Agents procuring employment for school teachers exclusively;

Second—Registries of any incorporated association of nurses, and

Third—"Departments or Bureaus maintained by persons firms or corporations or associations, for the purpose of obtaining help for themselves, where no fee is charged the applicant for employment."

As a general proposition it would seem that under the provisions of the Act, a party is an "employment agent" who keeps a boarding house for sailors, and further, in connection therewith, engages in the business of providing masters or owners of vessels with seamen, receiving no fee therefor from the sailors so directed to such masters or owners, but receiving some consideration or fee from the masters,

agents or owners of the vessels for each seaman so supplied. Whether the sailors so directed to or provided with employers are boarders in the boarding house of the parties so directing them to the owners of vessels, is immaterial; whether the business of keeping the boarding house is incidental to that of providing owners of ships with seamen, or the latter incidental to the former, is also immaterial. In either case it is engaging in the business of assisting employers to secure employes, and persons to secure employment, and fulfills the definition of an "employment agent", as laid down in the Act.

It is contended, however, that this present case falls within the said proviso, excepting from the application of the Act "departments or bureaus maintained by persons, firms, corporations or associations, for the purpose of obtaining help for themselves, etc." The facts, so far as they appear, do not apparently warrant such conclusion, but they are not set forth in the above mentioned communication of the Director of the Bureau of Employment with sufficient fullness to admit of a definite opinion.

The said proviso only extends to a department or bureau maintained by persons, firms, etc., for the purpose of obtaining help for themselves. This department or bureau is, in fact, a part of such party's business, maintained by and for himself. Its service in obtaining help is limited to that of the party maintaining it. If it undertook to assist employers generally to secure employes, it would not be within the proviso, but be the work of an employment agent and subject to the provisions of the act. Only in a clear case could the benefit of the said proviso exempting a person from the provisions of the act, be extended. A proviso, engrafted upon a preceding enactment taking special cases out of the general enactment, is always to be strictly construed. It takes no case out of the enacting clause which is not fairly within the terms of the proviso.

Folmer's Appeal, 87 Pa. 133.

In conclusion, would say that owing to the lack of a sufficiently full and detailed statement of the facts in the case mentioned in the said communication of the Director of the Bureau of Employment, a definite opinion therein cannot be safely ventured.

Upon the general proposition, however, I am of the opinion that a person who keeps a boarding house for sailors and in connection therewith engages in the business of providing masters or owners of vessels with seamen, receiving no fee from the sailors so directed to such owners or masters, but receiving a consideration or fee from such owner or master for each seaman so supplied, is an "employment agent" within the meaning of the said act.

To take such case from the provisions of the act, it must be clearly shown that the said work of so assisting such employers to secure employes, is strictly that of a bureau or department maintained by some person, firm, corporation or association, for the purpose of obtaining help for themselves.

The business of an employment agent carried on in this State by a non-resident, is subject to said law equally with that of a resident.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT OF FEMALE LABOR OVERTIME.

Where an establishment is necessarily shut down in consequence of the break down of an outside power plant, from which source such establishment obtained and upon which it was dependent for its power, the time lost by reason thereof can be lawfully made up by overtime work by a female employee therein.

Office of the Attorney General,
Harrisburg, Pa., December 7, 1915.

Mr. Lew R. Palmer, Chief, Bureau of Inspection, Department of Labor and Industry, Harrisburg, Pa.

Sir: There has been referred to me your communication of November 19, 1915, to Attorney General Brown, relative to the subject of "over-time" on account of break down of machinery, and requesting an opinion in said matter. •

The question submitted is—"where a concern obtained electric power from an outside source and owing to a break-down in the central power station their power was shut off for something like five hours, which time they desired to make up by working overtime;" whether overtime work by female employes to make up lost time in such case, is lawful under the Act of July 25, 1913, P. L. 1024.

The third section of said Act, after fixing the maximum number of hours of labor per day and per week, and days per week, permitted to any female employe in any establishment, and permitting certain overtime work in weeks in which a holiday occurs, further provided for overtime employment "to make up time lost in the same week in consequence of the alteration, repairs, or accidents to machinery or plant upon which she was employed and dependent for employment."

The purpose of this proviso was to relieve in a measure the employer and employe from the loss that otherwise would be sustained from a shut-down of a plant for alteration or repairs, or by reason of an accident to machinery or plant. It gives, upon the terms and within the limits prescribed by the Act, an opportunity to make up time so lost by overtime work. It is manifestly in the interest of both parties, enabling the employer to regain in whole or in part some portion of the lost time of his operation and likewise affording to the employe the privilege of making up her lost hours of employment and wages therefor.

The Act strictly guards against the abuse of this provision by limiting such overtime to the week in which the shutdown occurred and the maximum hours of work permitted in such case.

The question here is whether the cause above stated as the occasion of the shut-down in the present case, comes within the meaning of "accidents to machinery or plant," as this clause is used in the Act. The shut-down of the plant in the case stated was due to lack of power, which came from an outside power station which had broken down. In effect, the power plant was a part of the plant in question and necessary to the latter's operation. While the accident primarily befell the former, its results extended to and affected the latter. When the power that drives machinery fails, the machine stops. There has befallen it the loss of the force that drives it. Power is as vital to a machine as any of its parts, and its interruption as effectual in stopping the machine as would be the break-down of the machine itself. While the power in such a case as the present one originated *outside* the plant, yet the electrical energy which drove its machinery was that which came *into* the plant, thereby becoming a part thereof and upon which its machinery depended, to run. When an accident deprived it of its power, such accident reached the plant. To hold where a machine breaks down that it would be an accident for which the lost time thereby occasioned may be made up by overtime work, but that an accident which deprived the machine of the power upon which it was dependent to operate, is not such an accident as permits overtime work to make up the lost time ensuing in such case, would be to give the portion of the Act here under consideration an altogether unreasonable construction. There is no apparent purpose to be effectuated by such a narrow interpretation. Such a case as the present one is both within the reason and purpose of the said provision of the Act, and it is fair to presume that it was intended to apply in such a contingency.

I am therefore of the opinion that in the case mentioned, namely: "When an establishment was necessarily shut down in consequence of the break down of an outside power plant, from which source such establishment obtained and upon which it was dependent for its

power, that the time lost in such establishment by reason thereof can be lawfully made up by overtime work by a female employe therein, in pursuance of and in accordance with the provisions of the third section of the said Act, which permits overtime work to make up lost time occasioned by "accidents to machinery or plant."

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

MATTRESSES.

It is not a violation of the Act of May 1, 1913, P. L. 134, to sell unlabeled and uncertified second-hand mattresses to those who will use the filling of the mattresses for making horse collars, saddles, carriage cushions, etc.

Office of the Attorney General,
Harrisburg, Pa., December 8, 1915.

Mr. Lew R. Palmer, Chief, Bureau of Inspection, Department of Labor and Industry, Harrisburg, Pa.

Sir: There has been referred to me your communication of November 19, 1915, to Attorney General Brown, requesting an opinion upon the following question, namely: "Whether or not a person can sell second-hand mattresses to dealers who wish to purchase these mattresses and use the filling for making horse or mule collars, saddles, carriage cushions, etc., and for other than bedding purposes," without sterilizing and labeling such mattresses in accordance with the provisions of the Act of May 1, 1913, P. L. 134.

The first section of said Act provides as follows:

"That the term 'mattress,' as used in this act, shall be construed to mean any quilted pad, mattress, mattress pad, bunk quilt, or cushion, stuffed or filled with wool, hair, or other soft material, except feathers, to be used on a couch or other bed for sleeping or reclining purposes."

It will be observed that this section defines the term "mattress" as used and employed in the Act. Where there is a statutory definition of any term, such definition governs in the construction and application of the statute. A "mattress" as used in the above Act, is "to be construed to mean" such a one as is "to be used on a couch or other bed for sleeping or reclining purposes." It follows that a mattress is only within the meaning, intent and scope of this Act where it is to be so used aforesaid, namely: "on a couch or other bed

for sleeping or reclining purposes." If the article is to be otherwise used, then the sale thereof would not fall within the provisions of the Act, for it would not be a "mattress" as defined therein. This statute is a penal one and therefore to be construed strictly. Imposing stringent restrictions and regulations upon the manufacture and sale of mattresses and a penalty for any violation of its provisions, it can only be held to extend to an article clearly within the definition of a "mattress" as the same is therein defined. Having made its own definition of its subject matter, the Act must be limited in its scope and effect to the exact thing which fulfills that definition.

The rule of construction by which the above conclusion is reached is a familiar one. A definition furnished by an act is as much a part of the act as any other portion thereof and the construction of the act is governed by such legislative definition.

Endlich on Interpretation of Statutes, Section 365;
Commonwealth vs. Curry, 4 Pa. Super. Ct. 356.

I am of the opinion that it would not be a violation of the said Act to sell an unlabeled second-hand mattress where the same is not one "to be used on a couch or other bed for sleeping or reclining purposes," but is expressly sold to be used, and in fact, upon the sale thereof, is used for such a purpose as above mentioned.

I would further, however, advise that it would be the safer practice where a party proposes to sell an unlabeled second-hand mattress for such a special use as above mentioned, that such mattress be first taken or torn apart by the vendor, to the end that the sale would be clearly only that of the materials of which it had been fabricated. There should at least in such a sale as is above proposed, be something to show its special nature. This would leave no doubt as to the bona fide character of the sale as being for a special purpose and safe-guard the transaction against deception, which might be possible where the article still retained the form of a mattress and might be continued to be used thereafter as it had been theretofore, namely; as a "mattress" within the meaning of the Act.

I would respectfully beg leave further to say, however, that no specific case has been here stated or submitted by you and that an opinion upon a hypothetical or general question is hazardous.

I would suggest for your consideration that it would be safer for you to refrain from answering inquiries of a general or hypothetical character, but only act from time to time upon some specific case as it may arise.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT AGENCIES.

The one who has paid to an employment agent a fee and without fault on his own part failed to secure employment is the proper party to make collection thereof, as provided in section 13 of the Act of June 7, 1915, P. L. 888.

Where an employment bureau investigator has collected such a fee and forwarded it to the Commissioner of Labor and Industry, it should be returned to the employment agents, to be by them promptly paid to the persons entitled thereto. Employment agents should be fully instructed as to the requirements of the act.

Office of the Attorney General,
Harrisburg, Pa., January 12, 1916.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: I beg leave to advise you in answer to your communication of recent date to the Attorney General, wherein an opinion was requested concerning certain cases arising under the Act of June 7, 1915, P. L. 888, regulating the business of employment agents, etc.

The material facts in the cases stated in your said communication are alike and substantially as follows: Certain parties applied to employment agents for the purpose of obtaining employment, paying the employment agents a fee for such services. Upon reporting to the designated and prospective employers to whom they were referred by the employment agents they failed to obtain employment, there being no work for them. The employment agents subsequently failed to refund to said parties the fees which had been paid them by said parties. Thereupon an "Employment Bureau Investigator" of the Department of Labor and Industry collected the sum of money from these employment agents which had been paid them as afore-said as fees by said parties, but being unable thereafter to locate the said parties and pay them this money, he forwarded it to the Director of the Employment Bureau in whose hands it now remains.

Section 13 of said Act provides as follows:

"If any person fails, through no fault of his own, to obtain employment from the employer to whom he has been referred by any employment agent, or, after having been engaged by an employer, is not permitted by said employer to enter upon such employment, the whole amount paid by such person to the employment agent as a fee, or for transportation or other expenses, shall be refunded to him on demand."

Under this provision to entitle one seeking employment to the refund of the fee, the failure to obtain employment from the employer to whom he had been directed by the employment agent must be without fault on his own part, and he must further make demand upon the employment agent for the refunding of the fee. Presumably in

the present cases these essential prerequisites to the repayment of the fee were fulfilled and complied with. If not, the right to such refund would have fallen. There can be no recovery of the fee in such a case as the one under consideration save in strict compliance with the provisions of said Section 13.

The above statute establishes a new system governing employment agencies. It provides methods for its enforcement and prescribes remedies and penalties for its violation. Under Section 3 of the Act an application for a license as an employment agent must be accompanied by a bond to the use of the Commonwealth conditioned, *inter alia*, "upon the faithful observance by the employment agent of the provisions of this act" and "any person aggrieved may bring an action for the enforcement of said bond in any court of competent jurisdiction." Under Section 7 the license issued an employment agent may be revoked for a violation by him of any of the provisions of the Act. Section 15, empowers the Commissioner of Labor and Industry or his deputy to inspect the business of an employment agent. Section 21 makes a violation of the Act a misdemeanor, and in certain cases authorizes the Commissioner to collect penalties as debts of like amount are collected.

There is nothing in the Act, however, whereby the Commissioner of Labor and Industry or his deputy is charged with the duty or directed to collect the fee that had been paid to an employment agent and which fee becomes refundable in pursuance of Section 13. Nor can such duty or power be implied. It is a general rule that the methods prescribed in a statute for its enforcement are exclusive of all other remedies to that end. *Mack vs. Wright*, 180 Pa. 472. *Turnpike Company vs. Martin*, 12 Pa. 361.

The person who paid the fee, and without fault on his own part failed to obtain the employment to which he was directed, is the proper party to make such collection, the Act specifically providing that in such case the fee "shall be refunded to him on demand" by the employment agent. The failure or refusal of an employment agent to refund the fee in a due case would constitute a violation of the Act and subject him to the penalties therein specifically provided for the violation thereof.

There is nothing in this Act relating to the disposition of such money as is now in the hands of the Director of the Bureau of Employment or making him the custodian of such a fund. There is no warrant in law for its payment into the State Treasury. Once there it could only be paid out in pursuance of some statute. This money lawfully belongs to the parties who paid it to the employment agents. Diligent effort should be made to locate them and to pay them the same. Failing in that, it would seem that the only practicable solution would be to repay it to the employment agents, with the dis-

tinct and express warning and understanding that should the said parties to whom it belongs appear, it be promptly paid them. In case the employment agents thereupon failed or refused to so refund it, the appropriate remedies provided in the Act could be invoked.

I would further respectfully suggest that all employment agents to whom licenses are issued be fully instructed as to the requirements of Section 13 and impressed with the necessity of its faithful observance.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE EMPLOYMENT OF MINOR TO MANUFACTURE CIGARS.

Under the provisions of the Child Labor Act of May 13, 1915, P. L. 286, the term prohibiting the employment of minors under sixteen years "in stripping, assorting or manufacturing tobacco" does not necessarily forbid the employment of such minors from "manufacturing cigars," but vigilance should be exercised to see that in such work the minor be rigidly excluded from working in any way in the work or process of manufacturing the tobacco, but this does not modify the requirements as to hours of labor and school attendance.

Office of the Attorney General,
Harrisburg, Pa., February 1, 1916.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: I am in receipt of your communication of recent date, requesting an opinion as to whether a minor between fourteen and sixteen years of age may be lawfully employed in manufacturing cigars.

This question arises under the first paragraph of Section 5, of the Child Labor Act of May 13, 1915, P. L. 286, in pursuance of which the employment of minors under sixteen years of age is forbidden, *inter alia*, "in stripping, assorting or manufacturing tobacco."

It is contended in the particular case upon which your inquiry is based that "manufacturing tobacco" is something distinct and separate from "manufacturing cigars," that the latter process is simply "the assembling of manufactured tobacco." The question here, therefore, turns in a measure at least upon one of fact and for its conclusive determination would require full and exact knowledge of the manufacturing of tobacco and its products.

The term "manufacturing" is well understood and must be presumed to have been used in the act in its ordinary and accepted usage and meaning. It is frequently used to denote each of the successive steps by which some raw material is converted into its final usable form or forms. Each of these intermediate processes is a distinct manufacture in and of itself.

"Raw materials may be and often are subjected to successive processes of manufacture, each one of which is complete in itself, but several of which may be required to make the final product * * * The steel spring of a watch is made ultimately from iron ore, but by a large number of processes or transformations, each successive step in which is a distinct process of manufacture, and for which the article so manufactured receives a different name.

The material of which each manufacture is formed, * * * * is not necessarily the original raw material * * * * but the product of a prior manufacture; the finished product of one manufacture thus becoming the material of the next in rank."

Tide Water Oil Co. vs. United States, 171 U. S. Supreme Court Rep. 210.

"Ordinarily, the fact that an article in the process of manufacture takes a new name is indicative of a distinct manufacture."

United States vs. Dudley, 174 U. S. Supreme Ct. Rep. 669.

Assuming that the contention advanced in this present case is well founded, namely: that "Manufacturing tobacco" is a manufacturing process complete in itself and something separate and apart from "manufacturing cigars" and that in business understanding there is a well defined distinction between manufacturing tobacco and manufacturing cigars, there still remains the question whether the plain legislative intent in the above quoted portion of Section 5 of said Act, does or does not embrace the work of manufacturing cigars as well as manufacturing tobacco. If the Act had said "manufacturing tobacco or any of its products," the case would be free from doubt. Presumably the Legislature was familiar with the subject about which it was legislating. The inference may, therefore, be well urged that it intended to go no further in its prohibition of the employment of such minors in this class of work than that implied or imported by the literal meaning of "stripping, assorting or manufacturing tobacco," and to stop short of extending the prohibition to the products into which manufactured tobacco may be further manufactured for its several uses. The fact that cigars are made wholly

of tobacco is not conclusive of the question. Had the employment of minors been forbidden in manufacturing "lumber," it could not have been presumed that this also forbade their employment in manufacturing the various products into which lumber is in turn manufactured.

As was pointed out in a former opinion construing other provisions of Section 5 of said Act, these provisions being in derogation of a common law right and their violations made a misdemeanor, must be given a strict construction. Any exclusion of an employment thereunder must be clear, specific and express and nothing left to presumption.

Without a fuller statement and knowledge of the facts relating to the subject under discussion, a definite and final opinion cannot be safely ventured. Under the assumption that there is a clear and well recognized distinction between "manufacturing tobacco" and "manufacturing cigars," I am of the opinion that it would not be unlawful under Section 5, of said Act for a minor between fourteen and sixteen years of age to be employed in making cigars out of tobacco which had been fully manufactured for that purpose, in the mere assembling of the manufactured tobacco into the form of a cigar. Vigilance should be exercised, however, to see that in such work the minor be rigidly excluded from working in any way in the work or process of manufacturing the tobacco. Moreover, the hours of the employment of such minors must be strictly limited to those prescribed in Section 4 of said Act and their attendance upon continuation schools should be enforced in pursuance of the provisions of said Act.

Under the last paragraph of Section 5 of said Act, power is vested in the Industrial Board of the Department of Labor and Industry, to declare and determine other occupations than those specifically enumerated in said section as dangerous or unwholesome, and forbid the employment of minors therein. Should it appear wise to this Board to forbid the employment of minors in the making of cigars, the power to do so could therefore be invoked in pursuance of this provision in the Act.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYMENT AGENTS—ACT OF JUNE 7, 1915.

If the Seamen's Boarding House Keepers' Association, of the City of Philadelphia, conducts the business of an employment agent for profit, as such employment is defined in the Act of June 7, 1915, P. L. 888, it is subject to the provisions of said act.

Office of the Attorney General,
Harrisburg, Pa., February 2, 1916.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: Your communication of recent date to the Attorney General in re "Seamen's Boarding-House Keepers' Association, Inc." requesting an Opinion was duly received.

As I understand, the question involved is:

Whether or not the said Association is subject to the provisions of the Act of June 7, 1915, P. L. 888, regulating the business of employment agents.

It appears that the said Association was incorporated under an Act of Assembly approved March 23, 1865, P. L. 613, the purposes, as set forth in the preamble of the Act, being:

"Whereas, It has become necessary in large cities to provide for and furnish vessels engaged in the merchant service, sailing from the port of Philadelphia, the best and most competent class of seamen, to facilitate merchants and masters of vessels in obtaining a safe and reliable crew; to use every proper and lawful means to surrender seamen deserting from any vessel in the river Delaware to the owners or consignees of said vessel, and to protect masters of vessels, and seamen themselves, from imposition by irresponsible shipping houses of the city of Philadelphia," etc.

The first section of said Act erected certain persons into a corporation, with the right to hold certain real estate, etc., and the second and concluding section thereof gave to said corporation "all the rights and privileges necessary for the purpose of the corporation hereby constituted."

Section 1 of the said Act of 1915 provides as follows:

"That no employment agent shall hereafter conduct business for profit unless licensed to do so in accordance with the provisions of this act."

Section 2 defines the term "employment agent," as used in the Act, to mean

"Every person, co-partnership, association or corporation engaged in the business of assisting employers to secure employes, and persons to secure employment, or of collecting and furnishing information regarding employers seeking employes, and persons seeking employment,"

with certain exceptions thereto not relevant to the question here involved.

This Act is an exercise of the police power of the State, and is kindred in nature with a large body of legislation regulating various industries and occupations. The regulations provided for thereunder are reasonable and apply uniformly to all engaging in the said business of an employment agent.

It is a well recognized principle of legislation that grants of franchises are made and accepted in subordination to the *police power* of the State. The Legislature cannot bargain away such power.

Pennsylvania Railroad vs. Braddock Electric Railway,
152 Pa. 116.

There is nothing in the legislative grant to the above mentioned association in the said Act erecting it into a corporation by which it is exempted from legislative control, or made immune from the police power of the State. It took its charter under the twenty-sixth section of the first Article of the State Constitution as amended in 1857, which declares:

"That the legislature shall have power to alter, revoke, or annul any charter of incorporation hereafter conferred by or under any general or special law," etc.

The power to annul a charter of a corporation clearly embraces the lesser power to regulate the business of such corporation. An Act of Assembly requiring every insurance company to file with the Insurance Commissioner a copy of its charter was held to apply to a corporation previously incorporated in pursuance of an Act of Assembly.

"Independent of the constitutional principle already cited, which gives full authority to the Legislature to change, modify, or repeal the charter of this company, another equally potent exists, the *police power of the State*. This is incident to every government. Persons and property of all kinds are subject to general restraints and burdens, in order to secure the welfare and prosperity of the State at large. The interests of the few must yield to the wants of the many."

Commonwealth of Pennsylvania vs. The Hock Mutual Beneficial Association of Philadelphia, 10 Phila. 554.

In Cooley's Constitutional Limitations, 7th Ed. page 836, the principle is discussed of the right to subject private corporations to new regulations as, from time to time, demanded by the general welfare.

"Although these charters are to be regarded as contracts, and the rights assured by them are inviolable, it does not follow that these rights are at once, by force of the charter-contract, removed from the sphere of State regulation, and that the charter implies an undertaking, on the part of the State, that in the same way in which their exercise is permissible at first, and under the regulations then existing, and those only, may the corporators continue to exercise their rights while the artificial existence continues. * * * * the rights and privileges which come into existence under it are placed upon the same footing with other legal rights and privileges of the citizen, and subject in like manner to proper rules for their due regulation, protection, and enjoyment."

The New York Court of Appeals held that a corporation incorporated under an Act of Assembly was subject to a municipal ordinance requiring licenses for persons engaged in peddling milk in the city, the Court in their opinion saying, in part:

"The act of the Legislature, by incorporating this association, did not create a privilege to sell milk in Syracuse. Any member of the association might do that as an individual as well as a corporator. The act or business of selling milk being lawful in itself, needs no legislative leave. Nor to attain the object of furnishing Syracuse with good milk was it needful that a corporate body should be created. There are certain advantages supposed to be reached in doing any business in a corporate capacity. It was to obtain these that the privilege to act as a corporation was sought for and granted. The act did not so much give the right or privilege to sell, as it declared the purpose for which the corporation was sought, and awarded to it the right to do as a corporation that which any natural person might do without. The franchise given is to sell milk as a corporate body. The mere coming together as corporators gave the persons making the association no more right as a corporate body, within the bounds of the city, than every one of them already had as an individual. As a private corporation, created and formed to carry on a business already lawful, it is, merely as such, as much and as lawfully affected by the lawful ordinances of the city as a natural person."

People, Ex rel. Larrabee vs. Mulholland, 82 N. Y. 324.

The reasoning employed, and principles stated, in this last quoted case are applicable to the one under consideration.

I am, therefore, of the opinion that the said Association if it conducts the business of an employment agent, for profit, as such employment is defined in the Act of June 7, 1915, P. L. 888, would be subject to the provisions of the said Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE BOILER INSPECTION—REPORTS—DEPARTMENT OF LABOR AND
INDUSTRY.

Reports of the inspection of boilers used in a plant for generating electricity and steam in collieries, but which are not a part of any particular mining operation, need not be forwarded to the State Department of Labor and Industry, as these are not within the provisions covered by the Act of May 2, 1905, P. L. 352.

Office of the Attorney General,
Harrisburg, Pa., February 16, 1916.

Mr. William Lauder, Secretary, Industrial Board, Department of
Labor and Industry, Harrisburg, Pa.

Sir: Your communication of recent date to the Attorney General requesting an opinion, in re "Inspection of Boilers," was duly received.

In the correspondence enclosed with your communication, the facts in the particular case occasioning this request for an opinion are set forth as follows:

A certain company is operating

"power and boiler plants which generate electricity and steam primarily for use in the various Company collieries which are not in all cases a part of any particular and distinct mining operation. In some instances a very small proportion of the power generated (under one per cent.) is used for other Company purposes than coal mining. However, as stated above, the plants are maintained primarily for coal mining purposes."

It further appears that inspection of the boilers in these plants has always been made in conformity with the Anthracite Mining Laws.

The question now raised and here submitted is whether copies of the reports of the inspection of these boilers are required to be forwarded to the Department of Labor and Industry in pursuance of Section 19 of the Act of May 2, 1905, P. L. 352.

In reply to the foregoing, I beg leave to advise you as follows:

The said Act of May 2, 1905, P. L. 352, by its first Section, defined the term "establishment" as therein used, as meaning "any place

within this Commonwealth, other than where domestic, coal mining or farm labor is employed." It follows, of course, that this Act does not relate to coal mining, and that the requirement of the 19th Section thereof that copies of the reports of the inspection of "boilers used in generating steam or heat in any establishment" be sent to the Department of Labor and Industry, does not apply to boilers used in the work of coal mining.

It is not material in the determination of the question here under consideration that in some instances, as above stated, certain of the aforesaid power plants are not part of any particular or distinct mining operation. Inasmuch as they are maintained and used to generate electricity and steam for coal mining purposes, they are in fact integral parts of coal mining operations. Their purposes and use are for the carrying on the work of coal mining. That a small amount (less than one per cent.) of the power generated in these plants is used for other than coal mining purposes is inconsequential, and insufficient, within the meaning of the law, to impress upon these plants a use and purpose other than that for coal mining, for which they are primarily maintained. *De minimis non curat lex.*

I am, therefore, of the opinion that the inspection of the boilers in the above mentioned plants is not governed by the said Act of May 2, 1905, and that copies of the reports of their inspection are not required to be forwarded to the Department of Labor and Industry, in pursuance of the provisions of the 19th Section of said Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

WORKMEN'S COMPENSATION BOARD.

The Board is advised as to what constitute the "average daily wage" and "working days" under the provisions of the Workmen's Compensation Act.

Office of the Attorney General,
Harrisburg, Pa., February 17, 1916.

Hon. Harry A. Mackey, Chairman of the Workmen's Compensation Board, Harrisburg, Pa.

Dear Sir: I beg to acknowledge your communication of the 3rd inst., in which you state:

I am directed by the Workmen's Compensation Board to request that you furnish the Board with an opinion involving your interpretation of Section 309 of the Pennsylvania Workmen's Compensation Act, with particular reference to that section of the clause involving the de-

termination of what constitutes a day's wages, or the method of computing the same in continuous employments, and in that respect we desire an opinion from you as to the meaning of the words:

"and using as a basis of calculation his earnings during so much of the previous six months as he worked for the same employer."

In other words, will you kindly indicate to us your opinion as to what number of days ought to be used as the divisor to determine the daily average wages from the gross earnings for the given period, of the employe.

To be more explicit, in taking the total earnings of the employe during that period indicated in the Act, ought we to divide that gross sum by the actual number of days worked by the employe to earn that sum? Or, should we use the total number of working days in that period of employment?

To find the "average daily wage" in continuous employment, I advise the following method:—

1. Take total earnings for six months preceding the accident or so much thereof as employe has worked for the same employer.

2. Subtract from said "total earnings" all earnings for overtime.

3. Divide remainder thus obtained by number of "working days."

Note: "Working days" shall be construed to mean total number of days in the period of employment covered, according to the calendar, less:

(a) Sundays.

(b) Legal holidays.

(c) Half holiday for each week.

(d) Days employe was prevented from working through no fault of his own.

For "average daily wage" multiply above result by $5\frac{1}{2}$.

I have considered all probable cases and contingencies in many kinds of employment and am of opinion that this method complies with the language and the spirit of the Act, and in my judgment does justice to both employer and employe.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

EMPLOYMENT OF MINORS.

Under section 5 of the Act of May 13, 1915, P. L. 286, a minor between sixteen and eighteen years of age may be employed as water boy in a railroad track repair gang.

Section 5 of the Act of May 13, 1915, does not forbid the employment of minors under eighteen years of age by railroads or railways generally, but only in the cases specifically mentioned in the act.

Office of the Attorney General,
Harrisburg, Pa., May 10, 1916.

Hon. John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: I am in receipt of your communication of the 27th ultimo, with the accompanying correspondence, requesting an opinion upon the following questions, viz:

First: Whether it is unlawful to employ a minor between sixteen and eighteen years of age "as water boy in a track repairing gang."

Second: Whether minors between sixteen and eighteen years of age are prohibited from work "upon a railroad or railway" generally in pursuance of the fifth Section of the Child Labor Law of 1915, or whether the railroad or railway occupations forbidden to minors of the said age thereunder are limited to such as are therein specifically enumerated.

These questions both arise under the fifth Section of the Child Labor Act of May 13, 1915, P. L. 286. In reply thereto I respectfully advise you as follows:

First: Under the second paragraph of Section 5 of said Act certain employments are forbidden to minors under eighteen years of age, among them being that of "track-repairing." In previous opinions relating to this statute I have held that the provisions of Section 5 thereof must be given a strict construction as being in derogation of a common law right. Only those employments are forbidden thereby as are forbidden in express terms or by necessary implication. To construe the term "track repairing" as implying or including the work of carrying water to men engaged at track repairing would be to give an unwarranted extension to the meaning and import of said term as used in the Act. The fact that such work is not kindred in nature with the several occupations specifically forbidden to minors of the said age shows that it is not violative of the spirit of the Act to hold this employment lawful for them. I accordingly advise you that it would not be unlawful under Section 5 of said Act for a minor between sixteen and eighteen years of age to be employed "as a water boy in a track repair gang."

Second: The second paragraph of Section 5 of said Act provides, inter alia, that:

"No minor under eighteen years of age shall be employed or permitted to work * * * at switch-tending, at gate-tending, at track-repairing, as a brakeman, firearm, engineer, or motorman or conductor, upon a railroad or railway."

The determination of the question here submitted depends upon whether the clause "upon a railroad or railway" simply applies and relates to the occupations specifically mentioned or whether its effect is to extend inhibition to all employment in general upon a railroad or railway. The former interpretation is plainly the true one. The said clause is merely descriptive of the enumerated occupations, and evidently put there to leave no doubt as to the kind of brakeman, fireman, etc., to which this provision of the Act is applicable. Had it been the legislative intention to exclude minors of said age from every form of employment upon a railroad or railway, it would have been unnecessary and purposeless to enumerate specific railroad or railway occupations. The clause "upon a railroad or railway" would have been sufficient to effect such end. It is a familiar principle in the construction of statutes that "as exceptions strengthen the force of a general law, so enumeration weakens as to things not enumerated."

Endlich on the Interpretation of Statutes, 398.

A reading of the entire fifth Section of the Act confirms the conclusion here reached. Under the first paragraph of said Section there are set forth certain employments forbidden to minors under sixteen years of age, among them being work "upon any railroad, steam, electric or otherwise." If the said clause in the second paragraph of said section here under consideration, and which reads "upon any railroad or railway" had been intended to exclude minors under eighteen years of age from all employment in general upon railroads or railways, then the above quoted provision from the first paragraph making it unlawful for any minor under sixteen years of age to be employed in any work upon any railroad would have been superfluous.

I am, therefore, of the opinion that minors between sixteen and eighteen years of age are not forbidden employment generally upon railroads or railways in pursuance of the provisions of the second paragraph of Section 5 of said Act, but that the railroad or railway occupations forbidden thereunder to minors of the said age are limited to such as are therein expressly mentioned or specifically enumerated.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE SECURITY FOR INJURED WORKMEN.

Where an employer has elected not to be governed by the provisions of the Workmen's Compensation Law and to act as his own insurer, the Workmen's Compensation Board has no legal authority to receive bonds or other securities upon a deposit as collateral security for compliance with the Act of June 2, 1915, P. L. 762, for the payment of compensation to injured employees; nor has the State Treasurer any power or authority to accept these bonds for safe-keeping.

Office of the Attorney General,
Harrisburg, May 13, 1916.

Hon. Harry A. Mackey, Chairman, Workmen's Compensation Board,
Harrisburg, Pa.

Sir: I have your favor of the 8th inst., requesting my opinion upon the following matter:

The Workmen's Compensation Board received from a corporation employer, which had been exempted by the Bureau of Workmen's Compensation from insuring payment of compensation to its employees and their dependents, fifteen bonds of the denomination of \$1,000, each as collateral security for its compliance with the provisions of the Workmen's Compensation Act of 1915, and the payment of the compensation therein provided for to its injured employees, etc.

These bonds were lodged by the Workmen's Insurance Board with the Assistant Cashier of the Treasury Department. The State Treasurer claims that there is no authority in law imposing upon him the duty of safe-keeping these bonds, and requests that they be recalled from his possession and that he be relieved of the responsibility of their safe-keeping. You ask to be advised whether the position taken by the State Treasurer is correct.

The Workmen's Compensation Act of 1915 nowhere provides that the State Treasurer shall be the custodian of any funds or securities received in connection with the administration of the Bureau of Workmen's Compensation or the Workmen's Compensation Board.

By the Act of June 2, 1915, P. L. 762, creating the State Workmen's Insurance Fund, it is provided that the State Treasurer shall be the custodian of the State Workmen's Insurance Fund and that all premiums accruing to the Fund shall be payable to the State Treasurer, who shall issue an appropriate receipt therefor, and all securities and investments of the Fund shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, but the Workmen's Compensation Board has nothing to do with the administration of the State Workmen's Insurance Fund and the bonds in question were not received as premiums in that Fund, nor are they held as securities or investments of that Fund.

I beg to advise you further that in my judgment the Workmen's Compensation Board has no legal authority to receive bonds or other securities upon a deposit of this character. Section 305 of the Workmen's Compensation Act provides as follows:

"Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance

company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the Bureau from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the Bureau, showing his financial ability to pay such compensation, whereupon the Bureau, if satisfied of the applicant's financial ability, shall by written order make such exemption. The Bureau may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no longer able to pay compensation, shall revoke its order granting exemption; in which case the employer shall immediately subscribe to the State Fund, or insure his liability in a mutual association or company, as aforesaid.

If an employer shall fail to comply with the provisions of this section the Bureau shall, by registered mail, or in such other manner as the rules and regulations of the Bureau shall provide, serve upon such employer a notice to forthwith comply with such provisions; and if such employer does not, within thirty days thereafter, insure his liability as aforesaid, or satisfy the Bureau of his financial ability to pay compensation as aforesaid, or does not terminate his acceptance of article three of this act in the manner provided in section three hundred and four of the said article, such employer shall be liable for compensation under article three of this act to any employe injured thereafter, or to his personal representative, or for damages under article two of this act, at the option of such employe or his personal representatives: Provided, That such option be exercised by the employe and written notice given to the employer within thirty days after the accident: And provided, further, That until the expiration of the said thirty days from the giving of the notice by the Bureau, the employer shall be liable only for compensation under article three of this act, and that, if he shall terminate his acceptance under section three hundred and four of article three of this act, he shall be liable only for compensation under article three of this act until such termination of acceptance shall become effective."

This Section authorizes the Workmen's Compensation Bureau to exempt certain employers from taking out insurance to pay compensation upon their making application to the Bureau and showing their financial ability to pay such compensation, provided the Bureau is satisfied with the applicant's financial ability. There is no provision authorizing the Bureau or Board to require the deposit of bonds or other securities as collateral security for an exempted employer's ability to pay such compensation. The remedy prescribed in the Act is that if the employer appears to be no longer able to pay the

compensation, the Bureau shall revoke its order granting exemption and the employer must thereafter immediately insure his liability or be subject to liability as set forth in the section quoted above. No provision whatever is made for the deposit of securities to insure the solvency of exempted employers, or as to the use that could be made of such securities in case of default in payment of compensation, or as to who shall be custodian of such securities.

I beg to advise you, therefore, that the State Treasurer has no power or authority to accept these bonds for safe-keeping and that his action in refusing to be responsible for them was entirely proper and legal.

I am further of the opinion that there is no existing legal authority for your Board to require or accept the deposit of such bonds as collateral, and that there is no one who can legally be charged with and held responsible for their safe-keeping.

I would therefore advise that the bonds be returned to the owner.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

SURPLUS OF STATE WORKMEN'S INSURANCE FUND.

Until the surplus fund of the State Workmen's Insurance Fund reaches the sum of \$100,000, the board must set aside at least five per cent. of all premiums collected, for the purpose of creating a surplus, though it may, in its discretion, set aside a larger percentage.

After the surplus fund reaches the sum of \$100,000, however, the board may set aside five per cent of the premiums or less, but must not set aside a greater percentage.

Office of the Attorney General,
Harrisburg, Pa., May 23, 1916.

Hon. R. K. Young, Chairman, State Workmen's Insurance Board,
Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 11th inst. directing attention to Section 9 of the Act of June 2, 1915, P. L. 762:

"The Board shall set aside five per cent. of all premiums collected, for the creation of a surplus, until such surplus shall amount to one hundred thousand dollars; and thereafter they may set apart such percentage, not exceeding five per centum, as in their discretion they may determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the Fund, and to guarantee the solvency of the Fund,"

and inquiring whether the State Workmen's Insurance Board is limited in the creation of the surplus fund provided for in said Section to the setting aside at five per cent. of the premiums collected, no more and no less.

The purpose of this provision of the Act is to create in connection with the State Workmen's Insurance Fund a surplus large enough to cover the catastrophe hazard of all subscribers to the Fund and to guarantee the solvency of the Fund. The administration of the affairs of the Fund is committed to the State Workmen's Insurance Board (Section 3) and the Board is directed to fix the premiums of insurance at such an amount as shall be adequate to enable them to pay all sums which may become due and payable to the employers of subscribers under the Workmen's Compensation Act of 1915 and to create and maintain the surplus provided for in Section 9 and to provide an adequate reserve sufficient to carry all policies and claims to maturity. (Section 6).

Even without the authority contained in Section 9, I am of the opinion that the Board would have had the right, and in the careful administration of the affairs of the Fund it would have been the part of wisdom, to set aside a reasonable surplus to meet catastrophe hazards and to insure the solvency of the Fund.

The Act requires the Board to set aside five per cent. of all premiums collected for the creation of such surplus until it amounts to one hundred thousand dollars, but it does not enjoin the Board from setting aside more than five per cent. of the premiums as long as the surplus is less than one hundred thousand dollars, and if in the administration of the Fund the Board comes to the conclusion that five per cent. is not sufficient to cover catastrophe hazards and to guarantee the solvency of the Fund they may, after paying the claims accruing under their policies and providing for an adequate reserve, set aside such amount in excess of five per cent. of the premiums, as they deem necessary and advisable for the ends in view as above stated until the surplus amounts to one hundred thousand dollars.

After the surplus amounts to \$100,000 the percentage is limited to not more than five per cent., and the very fact that the Act specifically provides that the Board thereafter may not set apart more than five per cent., but only such percentage not exceeding five per cent., as they may deem necessary to maintain the surplus sufficiently large to cover the purposes of its creation, leads also to the conclusion that until the surplus amounts to \$100,000 the Board must set aside at least five per cent., but may, at their discretion, set aside more if they deem it advisable to do so.

You are therefore advised:

First: That the Board must set apart five per cent. of all premiums collected for the creation of a surplus until such surplus amounts to \$100,000.

Second: That in their discretion, the Board may set aside a larger percentage than five per cent. until the surplus fund amounts to \$100,000.

Third: That after the surplus fund amounts to \$100,000 the Board may, at their discretion, set apart five per cent. or less, but not more than five per cent., of the premiums collected for the purpose of maintaining said surplus fund.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

REVENUE STAMPS.

It is not necessary to attach internal revenue stamps to policies of the State Workmen's Insurance Board, that being a Governmental agency, and not subject to tax.

Office of the Attorney General,
Harrisburg, Pa., June 28, 1916.

Hon. Robert K. Young, Chairman, State Workmen's Insurance Board,
Harrisburg, Pa.

Sir: In reply to your inquiry of the 27th instant as to whether or not policies of insurance issued by the State Workmen's Insurance Board under the Act of June 2, 1915, P. L. 762, are required to have attached or affixed thereto internal revenue stamps under the Act of Congress to increase internal revenue, passed by the Sixty-third Congress, reported in Revised Statutes of the United States, Volume 38, part 1, page 745, I beg to advise you as follows:

Your Board is created by the Act of 1915 above referred to, in Section 2 thereof, which reads as follows:

"The State Workmen's Insurance Board is hereby created consisting of the Commissioner of Labor and Industry, the Insurance Commissioner and the State Treasurer."

The Act was passed to supplement the Workmen's Compensation Act of 1915, and the Workmen's Insurance Fund created is stated in Section 3 to be for the "purpose of insuring such employers against liability under Article III of the Workmen's Compensation Act of 1915, and of assuring the payment of the compensation therein provided."

There can be little doubt that the State Workmen's Insurance Board is an agency or instrumentality of the State and as such is not subject to any tax imposed by Congress. *See 37 Cyc. 717*, and cases cited.

You are respectfully advised that the Act of Congress referred to is not applicable to policies of insurance issued by the State Workmen's Insurance Board in administering the Workmen's Insurance Fund under the Act of June 2, 1915, P. L. 762, and it is not necessary to attach such internal revenue stamps thereto.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE SURETY BONDS GIVEN BY EMPLOYERS EXEMPT FROM CARRY-
ING WORKMEN'S COMPENSATION INSURANCE.

Under section 305 of the Workmen's Compensation Act of 1915, the board may exempt an employer from carrying insurance if it is "satisfied of the applicant's financial ability" to pay compensation and it may receive surety bonds as an additional guaranty. However, if the board is not satisfied of the employer's financial ability it has no authority to accept the bond of a surety company and exempt the employer.

Office of the Attorney General,
Harrisburg, Pa., June 30, 1916.

Hon. Harry A. Mackey, Chairman, Workmen's Compensation Board,
Harrisburg, Pa.

Sir: I have your favor of the 22nd inst. requesting an opinion as to the right of the Workmen's Compensation Board to require and accept surety bonds from individual and corporate employers applying for the privilege of carrying their compensation liability without insurance, under Section 305 of the Workmen's Compensation Act of 1915, P. L. 736.

Section 305 of said Act provides:

"Every employer liable under this act to pay compensation shall insure the payment of compensation in the State Workmen's Insurance Fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the Bureau from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the Bureau, showing his financial ability to pay such compensation, whereupon the Bureau, if satisfied of the applicant's financial ability, shall by written order make such exemption. The Bureau may, from time to time, require further statements of the financial ability of such employer, and, if at any time such employer appear no

longer able to pay compensation, shall revoke its order granting exemption; in which case the employer shall immediately subscribe to the State Fund, or insure his liability in a mutual association or company, as aforesaid.

If an employer shall fail to comply with the provisions of this section the Bureau shall, by registered mail, or in such other manner as the rules and regulations of the Bureau shall provide, serve upon such employer a notice to forthwith comply with such provisions; and if such employer does not, within thirty days thereafter, insure his liability as aforesaid, or satisfy the Bureau of his financial ability to pay compensation as aforesaid, or does not terminate his acceptance of article three of this act in the manner provided in section three hundred and four of the said article, such employer shall be liable for compensation under article three of this act to any employe injured thereafter, or to his personal representative, or for damages under article two of this act, at the option of such employe or his personal representatives: Provided, That such option be exercised by the employe and written notice given to the employer within thirty days after the accident: And provided, further, That, until the expiration of the said thirty days from the giving of the notice by the Bureau, the employer shall be liable only for compensation under article three of this act, and that, if he shall terminate his acceptance under section three hundred and four of article three of this act, he shall be liable only for compensation under article three of this act until such termination of acceptance shall become effective."

The primary purpose of the insurance feature of the Act is to insure to the injured employe or his dependents in case of death, the compensation provided by the Act.

If the Bureau is satisfied that the employer has sufficient financial ability to warrant his being exempted from carrying such insurance, they may exempt him. If his condition becomes such that they are not *satisfied* of his ability to pay such compensation, they must revoke the exemption and thereupon he must insure as provided in the Act or suffer the consequences set forth therein.

The Board has no authority to *substitute* any other method or course of action for that directed in the Act, but there is no provision in the statute which forbids their requiring or accepting additional guaranties that the employer will be able to fulfill the requirements of the Act and pay the compensation provided by the Act if liable to do so.

There is therefore, in my opinion, no objection to your requiring and accepting in such cases as you deem advisable, surety bonds to the Commonwealth of Pennsylvania for the use of all parties interested,

guaranteeing the ability of employers whom you have exempted from taking out liability insurance under the Act, to carry out the provisions of the Act and pay such compensation as may be payable by them under the provisions of said Act.

This is, however, only an additional safeguard and should not interfere with the express directions of the Act that if the employer appear no longer able to pay compensation, the Bureau shall revoke its order granting exemption, in which case the employer must insure or suffer the consequences prescribed in the Act.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE STRIKING OFF COMPENSATION JUDGMENT.

Under the Act of June 2, 1915, P. L. 736, known as the Workmen's Compensation Act, if the agreement as to compensation be disproved, or after hearing, be disallowed, a certificate to that effect may be filed with the Prothonotary, and it shall be his duty to strike off such judgment. If the compensation is modified, a certificate to that effect may be filed, when the judgment will be modified in accordance with the certificate. It is important that the claim-petition and award be filed.

Office of the Attorney General,
Harrisburg, Pa., June 30, 1916.

Hon. Harry A. Mackey, Chairman, Workmen's Compensation Board,
Harrisburg, Pa.

Sir: I have your favor of the 21st inst. inquiring as to the proper procedure under the Workmen's Compensation Act of June 2, 1915, (P. L. 736), where a successful claimant after his award by a Referee which either stands unappealed from or has subsequently been sustained by the Board, desires to file a lien with the Prothonotary so as to preserve his priority.

Section 429 of the Workmen's Compensation Act provides, in part, as follows:

"Wherever, after an accident, any employe or his dependents shall have entered into a compensation agreement with his employer, or shall file a claim-petition with the Board, he may file a certified copy thereof with the prothonotary of the court of common pleas of any county. The prothonotary shall enter the amount stipulated in any such agreement or claimed in any such petition as a judgment against the employer. If the agreement be approved by the Board, or com-

compensation awarded as claimed in the petition, the amount of compensation stipulated in the agreement or claimed in the petition shall be a lien, as of the date when the agreement or petition was filed with the prothonotary."

It is provided later on in said Section that if the agreement be disapproved, or after hearing, compensation shall be disallowed, a certified copy of the disapproval of the agreement or disallowance of compensation, may be filed with the Prothonotary and it shall be his duty to strike off such judgment.

It is further provided that if a different amount than the sum claimed be allowed, or the agreement or award be subsequently modified, a certified copy of such award or modified award shall be filed with the Prothonotary, who shall make such modification of the record as shall be appropriate.

In all these cases, the important and necessary papers to be filed consist of the claim-petition and the award.

If the claim-petition is not filed in the Prothonotary's office until after the award of the Referee or the approval of the Board, the procedure is nevertheless the same. All that need be done in such case is to file in the office of the Prothonotary a certified copy of the claim-petition and a certified copy of the award of the Referee, or of the action of your Board in the matter, as the case may be.

If the action of your Board is not self explanatory and needs reference to the award of the Referee to make it complete, then there should be filed a certified copy of both the Referee's award and the Board's action thereon.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE CORPORATIONS EMPLOYING THEIR OWN STOCKHOLDERS.

The provisions of the fourteenth section of the Act of June 2, 1913, P. L. 396, providing for the safety of employees, etc., applies to a business operated by a corporation whose employees are its own stockholders and are paid for their labor by dividends in lieu of wages.

Office of the Attorney General,
Harrisburg, Pa., September 21, 1916.

Mr. Lew R. Palmer, Chief Inspector, Department of Labor and Industry, Harrisburg, Pa,

Dear Sir: I am in receipt of your communication of recent date, requesting an opinion as to whether a corporation where all the persons

working for it are its stockholders, is subject to the provisions of the 14th Section of the Act of June 2nd, 1913, (P. L. 396), creating the Department of Labor and Industry, etc.

Said section of said Act provides, in part as follows:

"All rooms, buildings and places in this Commonwealth where labor is employed, shall be so constructed, equipped and arranged, operated and conducted, in all respects, as to provide reasonable and adequate protection for the life, health, safety and morals of all persons employed therein,"

the section further empowering the Industrial Board to make rules for carrying into effect and enforcing said provisions.

As a general proposition the relation of employer and employe is not changed by reason of the employer being a corporation and the employe a stockholder therein. Many employes are stockholders of the corporations employing them. Nor would it change such relation if all the employes were stockholders of such corporation and the sole owners of its stock. The "rooms, buildings and places" where "labor is employed" in such cases would be within the scope of said section of said Act.

Presumably, however, your question is intended to raise the further inquiry as to whether the Act applies in a case where all the laborers working for an incorporated company are stockholders of the company and are not paid wages directly or in the ordinary way but depend for recompense for their services upon the gain or income which may accrue to or rise from the stock which they own in such company.

Such laborers would work for and be the employees of the corporation, a distinct entity. As between them and the company, the accustomed relation of master and servant would obtain in every respect save the manner in which they would be paid for their services. The method of payment in such a case would differ from the ordinary method of payment in form rather than in substance. Labor of that kind is clearly labor employed. It would be rendered to the corporation; it would be subject to its direction and control and it would not be gratuitous. In lieu of receiving wages in the usual way, the laborer would look for an equivalent compensation in an increased yield or enhanced value of his stock. The statutory provision in question is applicable to "all the rooms, buildings and places * * * where labor is employed" whatever may be the terms or conditions or manner of its employment therein.

The conclusion here reached is in harmony with the principle followed in *Manderschied Sons Company Petitioners vs. Oliver*, 146 Iowa 168. There the business was incorporated, the owners of the stock being engaged in the services of the company. It was held that under the statute they must be listed as "employees," the Court saying:

"True they were the practical owners of the business. But they must be deemed either as principals or as servants. Of their own volition, they were not principals. They had chosen to incorporate, and they put forward the corporation as the principal, and thereby protected themselves from liability as such. They became employes of the corporation and drew salaries therefrom."

The end sought by the foregoing section of said Act is to protect the "life, health, safety and morals" of persons employed at labor. There is no apparent reason why labor of the kind here under consideration should not enjoy the benefits of said statute which from its nature is to be given that liberal construction as will best advance its remedial purposes.

I, therefore, advise you that in my opinion Section 14 of said Act of June 2nd, 1913, (P. L. 396), extends to all such cases as above stated.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE WORKMEN'S COMPENSATION.

An employe was injured February 8 and was entitled to compensation for disability from February 22 to April 26. On June 14 a compensation agreement was entered into under the terms of which he was to receive \$69.30. On June 15, the employe died.

Held: The execution of a compensation agreement between the parties created the relation of debtor and creditor between them, and the personal representatives of the deceased are entitled to receive the said sum and to administer it in the same manner as other assets.

Office of the Attorney General,
Harrisburg, Pa., October 26, 1916.

Mr. Paul N. Furman, Chief of Bureau of Statistics and Information,
Department of Labor and Industry, Harrisburg, Pa.

Sir: In answer to your communication of recent date, addressed to the Attorney General, inquiring as to the disposition of compensation which was agreed to be paid to one Joe Modina, of Ralphton, now deceased, I beg to advise as follows:

It appears from the full correspondence on the subject, which you have submitted, that Modina, an employe of the Quemahoning Coal Company, was injured on February 8th, last. Owing to the fact that the accident was not reported until June 7th, the State Workmen's

Insurance Fund did not enter into an agreement with Modina until June 14th, when it was agreed by the Fund to pay Modina the sum of \$69.30, compensation covering the period from February 22d to April 26th, inclusive, in full settlement. On the day following the execution of the agreement, to-wit, on June 15th, Modina was killed by accident. The amount of compensation not having been paid to Modina in his lifetime, the question of its disposition now arises.

There is nothing in the Workmen's Compensation Act of 1915 which provides for the disposition of compensation under the circumstances in this case, so that the question must be disposed of according to the well recognized rules of law.

When, on June 14, 1916, the State Workmen's Insurance Fund agreed with the deceased to pay him the sum of \$69.30, as compensation conceded to be due him under the Act, there was established between the Fund and the deceased the relationship of debtor and creditor. The amount so due the decedent was collectible by him for his own use and could have been disposed of by the decedent by will or testament in like manner as he could have disposed of any other personal property. Under this view, the amount of the compensation is legally payable to the personal representatives of the deceased, to be administered with any other property of the decedent under the laws of the State.

There is nothing in the Escheat Act of 1915 which would warrant the conclusion that it was intended to include within the purview thereof any such moneys as a sum due, as in this instance, by the State Workmen's Insurance Fund. In any event, the question of escheat would not now be pertinent.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE PRESENCE OF MINORS IN BOWLING ALLEYS.

Under the Act of April 18, 1905, P. L. 212, it is unlawful for the licensed keeper of a public bowling alley to allow or permit a minor under eighteen years of age to be present in such place as a patron, frequenter, loiterer or in other similar manner, but said act does not make the employment of a minor under eighteen years of age unlawful in such place. The Act of May 13, 1915, P. L. 266, makes it unlawful to employ a minor under age of sixteen years in a public bowling alley.

Office of the Attorney General,
Harrisburg, Pa., November 21, 1916.

Mr. Lew R. Palmer, Chief Inspector, Department of Labor and Industry, Harrisburg, Pa.

Sir: I am in receipt of your communication of the 3rd inst., requesting an opinion as to the provisions of the Act of April 18th, 1905, (P. L. 212), and the Act of May 13th, 1915, (P. L. 286), as the same may relate to the "employment of minors in bowling alleys." In reply thereto, I beg to advise you as follows:

The said Act of 1905 makes it unlawful for any

"licensed keeper, proprietor, owner or superintendent of any public pool rooms, billiard room, bowling saloon or tenpin alley, in this Commonwealth, knowingly to allow or permit any person under the age of eighteen years to be present in such public pool rooms, billiard room, bowling saloon or tenpin alley,"

and makes a violation of the Act a misdemeanor.

Under the fifth section of the said Act of 1915, the employment of a minor under sixteen years of age is forbidden, inter alia, "in a public bowling alley."

The meaning and the effect of this provision of the Act of 1915 admit of no doubt.

Both from its title and its text it is plain that the purpose of the said Act of 1905 was to prevent minors under the age of eighteen years from patronizing, frequenting or loitering in the several places designated in the Act, and that it was not intended thereby to regulate the employment of minors in such places. I am of the opinion that the term "to be present in," as used in the Act, is to be construed as intended to mean present as a patron, frequenter, loiterer or other like way, and that it was not intended to operate to make it unlawful for such minor to be present in such place as an employee.

It is fair to conclude that if it had been the intention to forbid the employment of minors in the places named in the act, such intent would have been expressed in direct terms and not left to a mere inference from the making it unlawful "*to allow or permit*" them "*to be present*" therein. The scope of an act should be held within the limits

of its manifest purpose and not by construction extended to include something else. A statutory intent to abridge the right to labor can not be presumed; it must be couched in express terms or arise from necessary implication. Statutes which take away, change or diminish a common law right should be strictly construed.

Endlich on the Interpretation of Statutes, 127.

The Legislature in enacting the above-quoted provision of said Act of 1915 is presumed to have been familiar with any then existing law covering the subject of the employment of minors in public bowling alleys, and it must therefore have been the legislative interpretation of the said Act of 1905 that it did not prevent the employment of minors under eighteen years of age in such bowling alleys, for if it did, the enactment of the said provision of 1915 would not only have been useless but misleading.

The mischief sought to be remedied by these acts was not the same. There is nothing in the earlier inconsistent with the later one, and hence the former is not repealed by the latter. The foregoing provisions of said acts are not in conflict and both remain in full force, each to effectuate its own distinct and plainly intended object.

You are accordingly advised that in pursuance of the said Act of 1915, it is unlawful for a minor under sixteen years of age to be employed in a public bowling alley, and that in pursuance of said Act of 1905 it is unlawful for the licensed keeper of a public bowling alley to allow or permit a minor under eighteen years of age to be present in such place as a patron, frequenter, loiterer or in other like way or manner, but that the said Act of 1905 did not make the employment of a minor under eighteen years of age unlawful in such place.

It may be noted that while the Act of 1915 specifically charges the Commissioner of Labor and Industry with the duty of enforcing it, he is not so charged by the Act of 1905.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

OVERTIME EMPLOYMENT OF FEMALES DURING HOLIDAY SEASON.

1. Under the provisions of the Act of July 25, 1913, P. L. 1024, as amended by Act of June 1, 1915, P. L. 710, the three days on which a female may be employed two hours overtime during a week in which a holiday occurs, are not confined to the calendar week in which the holiday comes but may be any three days of the "seven consecutive days" within which such holiday falls.

2. Such overtime employment must not, however, operate so as to cause such employe to work more than fifty-four hours within any seven consecutive days.

3. Females under the age of twenty-one years may be employed after nine o'clock in the evening during three days in a week in which a holiday is observed, provided that the maximum hours of employment do not exceed fifty-four in such week.

Office of the Attorney General,
Harrisburg, Pa., December 12, 1916.

Hon. William Lauder, Secretary of the Industrial Board, Department of Labor and Industry, Harrisburg, Pa.

Sir: Your communication of the 7th inst. was duly received, wherein an opinion was requested in reference to overtime employment permitted to female employes in an establishment in holiday weeks, together with a copy of the Minutes of the Industrial Board in reference to said subject.

As I understand, the legal questions involved in the inquiry of the Industrial Board and upon which it asks to be advised are as follows:

1. Whether, in pursuance of the Female Labor Law of 1913, the overtime employment of females allowed in the week in which a legal holiday occurs may lawfully be performed, in an establishment observing such holiday, in the calendar week preceding the calendar week in which the holiday falls, provided the three days on which said overtime work is done are all within seven days of such holiday.

The specific case, it appears, occasioning this inquiry arises in reference to Christmas which in this year, 1916, occurs on Monday, the first working day of the calendar week. Certain establishments desire to have their female employes work overtime in the calendar week preceding the one in which Christmas comes, such overtime work to begin on or after December 19th and so within seven days of Christmas Day. It is manifest that in certain kinds of business, such as the retail mercantile, the days on which there would be the chief need of overtime work are prior to Christmas as the stress of work in such establishments precedes and not follows that holiday.

Section 3 of the Act of July 25th, 1913, (P. L. 1024), as amended by the Act of June 1st, 1915, (P. L. 710), and known as the "Female Labor Law," provides, inter alia, 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."

It will be seen that the determination of the question under consideration turns upon the construction of the term "week" as used in the Act. Inasmuch as the said Act furnishes its own definition of that term, such definition must govern in the construction of the Act, as it is a well settled rule that the Legislature may prescribe the meaning of any term as used in a statute.

Endlich on Interpretation of Statutes, 365.

Section 1 of said Act of 1913 provides, inter alia, as follows:

"The term 'week' when used in this act shall mean any seven consecutive days."

This legislative definition of "week" must accordingly be read into that term wherever it is found in the Act. The term "week" as therein used is consequently to be understood as meaning "any seven consecutive days," and not necessarily seven days coincident with the seven days of the calendar week. This statutory week, as defined by the Act, may possibly extend into and be part of two calendar weeks. If this meaning of week be kept steadily in mind in construing the foregoing provision relating to overtime work, the conclusion will be readily reached that the days on which such overtime work may be done are not confined or limited to the calendar week in which a holiday occurs, but may be any three of the "seven consecutive days" within which the holiday in question falls.

It may be presumed, moreover, that if it had been the legislative intention to limit the overtime work permitted in a week in which a holiday occurs to the actual calendar week in which the holiday comes, such intent would have been expressed in plain terms. That a "week" is defined as it is in the Act clearly points to the inference that the more flexible rule as here interpreted was intended. This conclusion is not at variance with the spirit of the Act or the purpose of the said provision relating to overtime work.

I, therefore, conclude that, in pursuance of the above quoted provision of Section 3 of said Act, the three days on which a female em-

ploye, in an establishment, may be employed overtime for two hours a day, during a week in which a holiday occurs and is observed by such establishment, are not confined or limited to the calendar week in which such holiday falls, but may be any three days that are within seven days of the holiday in question. Hence, in the particular case upon which this inquiry is based, the overtime work for the Christmas holiday in the year 1916, may begin on December 19th in any establishment that observes that holiday.

2. It will be noted, however, that while the said Act allows the ordinary maximum of ten hours per day to be increased to the extent of two hours per day for three days in a holiday week, it expressly forbids that the maximum of fifty-four hours of work per week may be increased as a consequence of such overtime employment. The holiday overtime can not enlarge the weekly maximum number of hours of lawful employment. The inhibition in relation thereto, as set out in the final clause of the above quoted provision of Section 3, is plain and positive and reads as follows:

“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.”

It follows from this provision that in the practical application of the provision permitting overtime work in weeks in which holidays occur, it becomes pertinent to inquire and determine what are “the maximum hours per week specified in this act,” since the overtime work can not lawfully result in any increase of such permitted maximum of weekly hours of labor.

The portion of Section 3 of the Act above quoted fixes the weekly maximum number of hours of work by forbidding the employment of any female in any establishment for “*more than fifty-four hours in any one week.*” It has been hereinbefore pointed out that the word “week,” as defined by the Act, means “any seven consecutive days.” Applying this definition to the word “week” in the clause just quoted, which limits to fifty-four the hours of work “in any one week,” leads to the conclusion that no female may be lawfully employed in any establishment more than fifty-four hours *in any seven consecutive days*. When we read, as we must, the legislative definition of “week” into the provision relating to overtime work, we must likewise adopt and apply the same definition of that term in the construction of the foregoing provision which restricts the hours of work permitted in any one week. Within the limits of *any seven consecutive days*, the hours of employment must not exceed fifty-four. No division of days or time can lawfully override or nullify that statutory limitation. To hold otherwise would make it possible for a female within the limits

of *some* consecutive seven days to work more than fifty-four hours, which would be contrary not only to the express language but to the spirit and purpose of the Act.

Hence, in the particular case under consideration, while it would be lawful, as above stated, for any establishment which observes Christmas to have its female employes work overtime two hours per day for three days in the calendar week preceding Christmas, on or after December 19th, it would be unlawful, under said Act, if the hours of employment by reason of such overtime work or otherwise would exceed fifty-four in *any seven consecutive days*, that being a "week" as defined by the Act. For example—if from December 19th to December 23rd, inclusive, such female employe worked fifty-four hours that would exhaust her permissible limit for any seven consecutive days within which the days from December 19th to December 23rd fall, and consequently in such case she could not lawfully work on either December 18th or 24th, for if she did her hours of employment would exceed fifty-four in a "week," viz—*any seven consecutive days*.

3. The question as to whether the provision allowing overtime work in weeks in which holidays occur, permits a female employe under twenty-one years of age to work after nine o'clock P. M., has been previously ruled by this Department. In an opinion under date of December 18, 1913, Deputy Attorney General Hargest advised the Commissioner of Labor and Industry that the said 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."

Report and Official Opinions of the Attorney General, 1913-1914, page 248.

In accordance with the foregoing, I am, therefore, of the opinion, and so advise you, that in pursuance of the provisions of Section 3 of the said Act the three days on which a female employe may be employed two hours overtime during a week in which a holiday occurs and is observed by an establishment employing her, are not confined to the calendar week in which the holiday comes, but may be any three days of the "seven consecutive days" within which such holiday falls, but that such overtime employment shall not operate to cause any such employe to work more than fifty-four hours within any seven consecutive days. Consequently, in effect, although the three days of overtime employment may come in the calendar week preceding the one in which a holiday occurs, if they be within seven days of such holiday, yet the total hours of employment throughout the entire

calendar week in which the overtime work in such case is performed, can not lawfully exceed fifty-four. As above stated, the question relating to females under twenty-one years of age working this overtime after nine o'clock P. M. has been previously decided by this Department.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

**OPINIONS TO THE COMMISSIONER OF
FISHERIES.**

OPINIONS TO THE COMMISSIONER OF FISHERIES.

IN RE SUMMARY CONVICTIONS.

In summary proceedings where the defendant is convicted and prior to having served his sentence the sentence is reversed, or the defendant discharged on habeas corpus, he may be rearrested and retried where,

1. the Justice or other trial officer had no jurisdiction,
2. the information was not sufficient to sustain a conviction, or
3. such reversal or discharge was occasioned by improper procedure such as an insufficient record or transcript, etc.

Office of the Attorney General,
Harrisburg, Pa., December 14, 1915.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of November 29, 1915. In this you state that certain defendants in Wayne County were arrested on an Information drawn under the Act of May 5, 1909, (P. L. 408; after a summary hearing they were found guilty and sentenced. Thereafter, on habeas corpus proceedings, they were released in that the prosecution should have been instituted under the Act of May 22, 1889, (P. L. 1). In other words—the facts, if fully developed at the hearing, were not sufficient to sustain a conviction under the Act, with the violation of which the defendants were charged.

You ask if after a judgment in a summary proceeding a defendant is discharged on appeal or by writ of habeas corpus, whether he may again be arrested and summarily tried upon the same facts.

Where, in a summary proceeding, a defendant is convicted and thereafter the conviction is reversed, the matter presented involves either—first, the jurisdiction; second, the procedure; or third, the substance of the prosecution.

The doctrine of former jeopardy is often improperly applied to such actions. Former jeopardy is only applicable to felonies, and in this state is strictly applied only to crimes the punishment of which is capital. By analogy, however, the Courts uniformly extend the general principles of former jeopardy to all criminal and penal actions under which the defendant might be sentenced to imprisonment, if convicted. There are no well marked rules for applying the doctrine so adopted. In order, therefore, to properly inform you it is necessary to cite cases under which the plea of former acquittal or conviction has been held to be inapplicable.

Summary convictions are principally distinguished from the ordinary criminal action in that the former are triable by a Justice of

the Peace or other proper official on an information made by the prosecutor, while the latter are triable before a Court and Jury of twelve upon an Indictment found by a Grand Jury.

While there is a marked paucity of decisions or other authority on the effect of former acquittal or conviction in summary proceedings, yet the decisions bearing on such a plea in the trial of misdemeanors may be readily applied to summary convictions by likening the indictment in the former to the information in the latter.

As stated in *12 Cyc.* 278:

"The accused is estopped to plead a prior conviction where his conviction has been reversed for error on an appeal or writ of error brought by himself, although he has served a part of his term of imprisonment."

This rule was followed in the case of *Pennsylvania vs. Huffman, Addison 140*. In this case the defendant was charged in the Indictment with having forged a receipt, for the use of "Hugh Brison." On the trial of the case the receipt offered in evidence showed the man's name to be "Hugh Prison." The Defendant was convicted of forging the name of "Hugh Prison," but on motion the judgment was arrested. Thereafter a new Indictment was returned, in which the name was properly spelled. The Defendant pled former conviction. The Court in over-ruling the plea stated:

"On the merits, Huffman has been convicted of a forgery, though not of the forgery stated in the indictment on which he was tried. On the former indictment and verdict, no judgment could be given, because the verdict did not find the offense laid in the indictment; and because that indictment for forging the note stated in it, could be no bar to another indictment, for forging the note given in evidence. The error is apparent on the record. And to say now, that this is an indictment for the same offense would be, in fact, saying, that we ought to have given judgment on the former indictment."

This case is referred to in *Sadler on Criminal Procedure in Pennsylvania, page 336*, in which the rule is stated:

"The former conviction must have been upon an indictment sufficient to sustain the judgment."

In the case of *Commonwealth vs. Zepp, 3 Clark, 255*, a defendant was tried on an Indictment charging him with violation, in 1840, of an Act which was not passed until 1842, and Defendant was acquitted. Thereafter a new indictment was returned giving the correct date of the offense as 1845. The Defendant's plea of former acquittal was over-ruled for the reason that the first Indictment was not sufficient to have sustained a conviction.

In the case of *Commonwealth vs. Allen*, 24 Pa. C. C. Rept. 65, it was held that where a defendant is discharged on an insufficient indictment the law has not had its end, and that he may again be indicted and tried.

Again in the case of *Commonwealth vs. Eagles, et al.*, 7 W. N. C. 324, it was held:

“To support the plea of *autrefois acquit*, in an indictment for larceny, the defendant must show affirmatively that in the former trial his liberty was in legal jeopardy. If it appear that the Court had no jurisdiction; or that there was clear error, which would necessarily have required a reversal of the sentence on a writ of error; or that an Act of Assembly under which the defendant was tried was clearly and palpably unconstitutional, the plea of former trial and acquittal is not maintainable in bar of a second indictment in the Quarter Sessions for the same offense.”

In considering the last excerpt, however, it must be borne in mind that any error which would justify a re-trial after acquittal, must be more than an error of procedure. If the justice had jurisdiction and the information was directed to the proper act of Assembly and sufficient to sustain a conviction, re-arrest and trial after acquittal would be only justified by the clearest error or fraud and collusion in the prosecution.

In the case which you present, I would advise that the defendants may be re-arrested under an information charging them with the violation of the proper act. It would be well if you would call to the attention of this Department the particulars in each case in which a re-arrest and re-trial is thought necessary, but for your general guidance in this matter would advise that in summary proceedings where the defendant is convicted and prior to having served his sentence the sentence is reversed, or the defendant discharged on habeas corpus, he may be re-arrested and re-tried, where

1. The justice or other trial officer had no jurisdiction.
2. The information was not sufficient to sustain a conviction.
3. Such reversal or discharge was occasioned by improper procedure such as an insufficient record or transcript, etc.

The first and second reasons are also sufficient to justify a re-arrest and re-trial of the defendant even where the defendant on the hearing was acquitted.

Where an information is sufficient, and the procedure otherwise correct, the record or transcript may in most instances be amended as to formal defects.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE CLOSING OF CERTAIN STREAMS BY THE COMMISSIONER OF FISHERIES.

Under the provisions of section 30, of the Act of May 1, 1909, P. L. 353, the Commissioner of Fisheries, after having forbidden fishing in any stream for a time, may re-open such stream at his discretion.

The questions to be submitted to persons petitioning the Commissioner for the closing of any stream as provided by section 23 of said act should be prepared by the Commissioner.

Office of the Attorney General,
Harrisburg, Pa., March 15, 1916.

Honorable Nathan R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of recent date asking to be advised relative to the construction and effect of Section 20 of the act of May 1st, 1909, P. L. 353, regulating the catching and sale, and the encouragement of the propagation of fish, and providing for the protection of the waters of the Commonwealth from improper, wasteful and destructive fishing, etc.

Section 20 of the act provides:

"That the Commissioner of Fisheries is authorized to set aside, at his discretion, such small streams as he may judge best as nursery streams, in which fishing shall be prohibited at all times in the year; said streams to be posted by the Department of Fisheries, at the outlet by a conspicuous notice, and also at intervals of three hundred yards: Provided, That before such streams shall be so designated and set aside, the owner or owners shall first give their consent in writing. If after any stream has been set aside, under the provisions of this section, any person fishing therein, shall, on conviction thereof as provided in section twenty-seven of this act, be subject to a penalty of twenty dollars."

You will note by the proviso contained in this section that before the Commissioner of Fisheries may designate and set aside streams as nursery streams in which fishing shall be prohibited, "the owner or owners shall first give their consent in writing."

You also ask whether any stream so set aside as a nursery stream may again be opened to the public for fishing, or whether it will be closed permanently.

There is nothing in the act making any specification as to the time for which such nursery streams should be closed for fishing, and you are advised that inasmuch as the original setting aside of such nursery stream is at the discretion of the Commissioner of Fisheries a reasonable construction of the act would lead to the conclusion that the Commissioner of Fisheries could, at his discretion, open such stream again for fishing after the objects for which it had been closed were accomplished.

Your other inquiry refers to Section 23 of the same act, which provides:

"That whenever at least two hundred citizens, in any county, shall, in writing, certify to the Commissioner of Fisheries that any stream or waters in the said county is nearly depleted of fish, and has been restocked, and asking that it or they be closed to fishing for a period, the said commissioner shall forward to said petitioners and others a blank form, setting forth questions regarding the condition of said stream or waters, which forms must be filled out and returned to the Department of Fisheries; and if the answers on said forms are of such a character as to convince the Commissioner of Fisheries that the petition should be granted, he is hereby authorized to prohibit all fishing in such streams or waters for a period of three years from the time of restocking: Provided, The said Commissioner of Fisheries shall first give public notice of such closing by posting such streams or waters with notices of such prohibition, and the period thereof, and publishing the same in two newspapers, published in the county where such stream or waters are located, for a period of three consecutive weeks, one time in each week. Any person catching and killing or fishing for any fish from any stream or waters closed under the provisions of this section, shall, on conviction thereof as provided in section twenty-seven of this act, be subject to a penalty of twenty dollars."

The requirements provided by this section should be followed strictly, and as they are not at all ambiguous or uncertain there should be no difficulty in so doing. So far as the preparation of a set of questions is concerned "regarding the condition of said stream or waters" as this is a matter that is somewhat technical and depends peculiarly upon a knowledge of the subject matter of streams and waters with reference to fishing therein these questions should be such as in the judgment of the Commissioner of Fisheries would be best calculated to develop the information with reference to which your Department might ultimately take action. Accordingly such questions should be prepared by the Department of Fisheries and not by the Department of the Attorney General.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

OPINIONS TO THE DEPARTMENT OF MINES.

OPINIONS TO THE DEPARTMENT OF MINES.

ANTHRACITE COAL MINES.

Article 12, Rule 20, of the Anthracite Coal Mine Act of June 2, 1891, P. L. 176, providing for "constant attendance" of the engineer of the hoisting machinery, does not require the maintenance of an engineer in constant charge of the hoisting machinery when the regular work at the mine is suspended, the few employees then being afforded a safe and convenient means by the traveling-way.

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

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

Sir: I am in receipt of your communication of March 29, 1915, in which you request an official interpretation of Rule 20, Article 12 of the act of June 2, 1891.

The said rule is found on page 197 of the Acts of 1891, and reads as follows:

"An engineer who has charge of the hoisting machinery by which persons are lowered or hoisted in a mine, shall be in constant attendance for that purpose during the whole time any person or persons are below ground, and he shall not allow any person or persons, except such as may be deputed by the owner, operator or superintendent, to handle or meddle with the engine under his charge or any part of its machinery."

The facts which form the basis of your inquiry I understand to be as follows:

The Lehigh Coal and Navigation Company owns and operates No. 2 Shaft, at Nesquehoning, Carbon County, Pennsylvania. When in operation the said shaft employs about five hundred men, a majority of whom are hoisted and lowered in the mine by the hoisting machinery. On account of depression in business work in this shaft was suspended for four days, and during this suspension the only men who entered the mine were the foreman, seven assistant foremen and four loader bosses, whose duties were to inspect the workings and make emergency repairs. They entered the mine and returned by a traveling way having a lawful pitch and length as prescribed by Rule 17 of said act (P. L. 197). During this temporary suspension of work the hoisting machinery was not in operation. The company had established a rule that during such suspension of work the engineer in charge of said machinery should not report for duty.

The engineers in charge of the hoisting machinery construe Rule 20 so as to require the company to employ an engineer whenever and so long as persons are employed in the mine. On the other hand, the company claims that during a suspension of work the hoisting machinery is not necessary to lower or hoist men, and to hoist coal, and that the few persons required to visit the mine during such temporary suspension can safely use the traveling way.

The company does not use the hoisting machinery for lowering and hoisting employes except before work begins in the morning, at the noon hour, and at the end of the day's work. During working hours the traveling way is the usual means of ingress and egress, the hoisting machinery being employed in hoisting coal to the surface.

I cannot construe the said Rule 20 literally so as to require the company to maintain an engineer in constant charge of the hoisting machinery when the regular mine labor is suspended. It would be unreasonable to require an engineer to remain in charge of the hoisting machinery, through the entire working day, during a suspension of labor, and when no coal is being hoisted to the surface.

The few officials and employes, whose presence is required in the mine during a temporary suspension of labor in order to inspect the workings and to make necessary repairs, can and should use the traveling way, which is in daily use during working hours for the ingress and egress of employes. This way affords a safe and convenient entrance to and exit from the mine.

I therefore construe the words "engineer who has charge of the hoisting machinery" to mean the engineer who, during the regular hours of labor and while the mine is in regular operation, has been placed in charge of the hoisting machinery, and by the terms of the said rule he is required not only to be in constant attendance, but he should not allow any person, except such as are deputed by the owner or operator, to handle or meddle with the engine or machinery in his charge.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE STATE PENSIONS.

A Mine Inspector is not such an employe as contemplated by the Act of June 13, 1915, P. L. 973, providing for the retirement of State employes, under certain conditions, with half pay, and that act does not apply in that a Mine Inspector is a State officer elected for a definite term.

Office of the Attorney General,
Harrisburg, Pa., June 13, 1916.

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

Sir: This Department is in receipt of your communication of May 31st, 1916, in which you asked whether a Mine Inspector in the Anthracite Coal region is such an employe as contemplated by the act of June 13, 1915, P. L. 973, providing for the retirement of State employes, under certain conditions, with half pay.

The act referred to provides for the retirement of State employes on half pay,

“except State employes whose retirement has been or shall be otherwise provided for.”

As this Act is the first one providing for the pensioning of State employes, this provision must refer to such acts as limit the duration or tenure of a position by a State employe. Therefore, it would apply only to those occupying subordinate positions whose term of employment would be indefinite or during good behavior.

In the case of *People vs. City of Buffalo*, 11 N. Y. Suppl. 314, the following definition was used:

“Among lexicographers the definition given by Professor Whitney in the Century Dictionary of the word ‘employe seems to me to be the most lucid and comprehensive. It is as follows: ‘One who works for a salary or wages, applied to any one working, but usually only to clerks, workman, laborers, etc., and but rarely to the higher officers of a corporation or government, or to domestic servants.’

As used in Laws 1890, c. 388, requiring municipal corporations to pay weekly every employe engaged in its business, it does not include a clerk in the mayor’s office, the secretary and treasurer of the park commission, a member of the fire department, a school teacher, and a patrolman on the police force.”

See *Words and Phrases*, Vol. 3, page 2375.

Another definition which is applicable to the present case is that used in *State Ex Rel. Kane v. Johnson*, 275 S. W. 399; 123 Mo. 43.

“An officer is distinguished from the employe in the greater importance, dignity, and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to be

called to account as a public officer for misfeasance or nonfeasance in office, usually, though not necessarily, in the tenure of his position."

Gauged by these two definitions, we find that a State Mine Inspector in the Anthracite region has been expressly decided to be a State officer.

See *Lamb's Nomination Petition*, 251 Pa. 102, affirming the opinion of Judge Koch, as reported in 11 *Schuykill* 306.

The office of a State Mine Inspector is elective; the incumbent is required to take an oath as to the manner of performance of his duties and holds office for a limited period of time. His retirement is specifically provided for by law and upon re-election he holds office under a new term and not as a continuance of the former one.

Attorney General Carson, in an opinion under date of February 13, 1903, given to an Anthracite Coal Mine Inspector; and reported in 12 *Dist. Rep.* 320, stated:

"The vacancy that will occur through the expiration of your term must be filled by election as prescribed by the Act of June 8, 1901, P. L. 535. A candidate must qualify in the manner prescribed by the Act. The fact that you were qualified as a candidate for your present term does not dispense with the necessity of qualifying in like manner for a new election."

I have, therefore, to advise you that the act of June 14, 1915, does not apply to State officers elected or appointed for a definite term, and, therefore, cannot apply to an Anthracite Coal Mine Inspector.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE USE OF HARVEY AUTOMATIC SAFETY GATES IN COAL MINES.

It is lawful to use Harvey Automatic Safety Gates in coal mines in this State, although they are operated from the engine room instead of from the landings, provided they are approved by the inspectors and otherwise meet the requirements of the Act of June 9, 1911, P. L. 756.

Office of the Attorney General,
Harrisburg, Pa., August 10, 1916.

Mr. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 9th inst., requesting an opinion as to whether or not the Harvey Automatic Safety Gates can be legally used in the coal mines of this State.

You advise that the Harvey Gate is practical and very satisfactory and has been approved by twenty-seven of the thirty bituminous inspectors and is favorably looked upon by the other three inspectors in that region, but that the latter have not consented to its use because it is not operated precisely in the way referred to in the act of June 9, 1911, P. L. 756.

Paragraph 3, Section 1, Article VIII of the act provides:

"All shafts shall be provided with safety gates controlled by the cage at the top and intermediate landings, said gates to be approved by the inspector."

You further advise that the operation of the Harvey Gate is controlled from the engine room and was patented after the act of 1911 was passed, to-wit: in the year 1913.

It is perfectly obvious that the object of the act of Assembly is to protect human life, or, as stated in the title of the act—

"To provide for the health and safety of persons employed in and about the bituminous coal mines of Pennsylvania, etc."

The reference in the portion of the act above quoted to the control of safety gates "by the cage at the top and intermediate landings," must be regarded merely as descriptive of appliances and apparatus then known to be safe and efficient. It is in no sense a mandatory provision. To hold otherwise would put a handicap and bar on improvement.

You are advised that under the act of Assembly, safety gates are subject to the approval of the inspectors and that they may lawfully approve the Harvey Automatic Safety Gate, notwithstanding it is controlled from the engine room instead of by the cage at the top and intermediate landings, if the gate otherwise fully meets the requirements of the act of assembly and the rules and regulations of your Department.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

TESTING OF SCALES IN COAL MINES.

Under the Act of June 1, 1883, P. L. 52, the check-weighman has authority to test the scales when he thinks they should be tested, provided he does not interfere with the working of the mine.

Office of the Attorney General,
Harrisburg, Pa., August 24, 1916.

Honorable James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 7th inst, requesting to be advised as to whether the check-weighman provided for under the act of June 1, 1883, P. L. 52, has the authority to test the scales when he thinks they should be tested, provided he does not interfere with the working of the mine.

The act of June 1, 1883, P. L. 52, entitled:

"An act to protect miners in the bituminous coal regions of this Commonwealth."

provides in Section 3, *inter alia*, as follows:

"That at every bituminous coal mine in this Commonwealth, where coal is mined by weight or measure, the miners or a majority of those present at a meeting called for that purpose, shall have the right to employ a competent person as check-weighman, or check-measurer as the case may require, who shall be permitted at all times to be present at the weighing or measurement of coal, also have power to weigh or measure the same, and during the regular working hours to have the privilege to balance and examine the scales, or measure the cars: Provided, That all such balancing and examination of scales shall only be done in such way, and in such time, as in no way to interfere with the regular working of the mines. And he shall not be considered a trespasser during working hours while attending to the interests of his employers. And in no manner shall he be interfered with or intimidated by any person, agent, owner or miner."

This section expressly gives the check-weighman authority, during regular working hours, to balance and examine the scales, provided it is done in a way and in such time as not to interfere with the regular working of the mines. The purpose of this clause evidently is to test the scales to see if they weigh correctly. That this is the intention is seen from the latter part of the section:

"When differences arise between the check-weighman or check-measurer and the agent or owners of the mine, as to the uniformity, capacity or correctness of scales or cars used, the same shall be referred to the mine inspector of the district where the mine is located, whose

duty it shall be to regulate the same at once; and in the event of said scales or cars proving to be correct, then the party or parties applying for the testing thereof to bear all costs and expenses thereof; but if not correct then the owner or owners of said mine to pay the costs and charges of making said examination."

Under these provisions the check-weighman has the authority to test the scales when he thinks they should be tested, provided he does not interfere with the working of the mine. If the agent or the owner of the mine is not satisfied of the correctness of the check-weighman's test, or if the check-weighman and the agent or owner of the mine cannot agree as to the correctness of the scales, the matter shall then be referred to the mine inspector of the district whose duty it shall be to decide the matter and, in the event of the scales proving correct, the party applying for the test by the mine inspector is required to bear the costs and expenses thereof; if not correct, the owner of the mine shall pay the costs and charges of making the examination.

You are, therefore, advised that the check-weighman, under the act of June 1, 1883, has the authority to test the scales when he thinks they should be tested, provided he does not interfere with the working of the mine.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

COAL MINE BLASTING.

Under the proviso in paragraph 1, section 9, article 4, of the Act of June 9, 1911, P. L. 756, the "common practice" of blasting coal from the solid, which is allowed, must have been a practice prevailing at the time of the passage of the act, general, uniform and common to all the mines of any given district.

Paragraph 2, section 14, article 4, of the act, providing that certain blasting shall be done when all workmen are out of the mine, extends to all bituminous coal mines in which such blasting is done.

Office of the Attorney General,
Harrisburg, Pa., August 29, 1916.

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

Sir: There was duly received your communication of the 18th ult., to the Attorney General, requesting an opinion upon the following questions:

(1) What would constitute "common practice" under the proviso in the first paragraph, 9th Section, Article IV, of the act of the 9th day of June, A. D. 1911, P. L. 756, relating to bituminous coal mines in Pennsylvania, and which said proviso reads as follows:

"Provided, however, That in districts in which it has been the common practice to blast coal from the solid, said practice or method may be continued, notwithstanding anything to the contrary herein contained."

In reply thereto, I advise you that in my opinion a "common practice," within the meaning of the act, must have been a practice prevailing at the time of the passage of the act, general, uniform and common, to all the mines of any given district. It must have constituted the common and ordinary usage of such district. It could not be presumed from isolated instances.

"Common" is defined as frequent, usual, customary, habitual.

State v. O'Conner, 49 Me. 594-96.

Cited in "Words and Phrases, Judicially Defined," Vol. 2, page 1310.

In the sense in which here used, "Practice" is defined by the Century Dictionary as : "Frequent or customary performance; habit; usage; custom."

In the case under consideration it would not be sufficient to constitute a "common practice" of blasting from the solid, if that had been the method of merely one mine of the district, however long continued, or if merely the usage of some of the mines. To come within the permission of the act the practice in question must have been the common method or usage of the district. In short, the term "common practice," as used in the act, must be understood as intended to mean literally and precisely what it says. It is so apt in itself to express the legislative intention as to render a definition of it unnecessary.

This said proviso must be given a strict construction. It excepts certain cases from the general provision of the act. It is a settled rule in the interpretation of statutes that a proviso taking cases out of the general enactment must be given a strict construction and only such cases are to be held as coming within such proviso as are plainly and clearly within it.

Folmer's Appeal, 87 Pa. 133.

Whether the practice of blasting from the solid in any particular instance would measure up to the test of amounting to the "common practice" of the district would depend upon the facts.

(2) Does the second paragraph in Section 14, Article IV, of said Act, which reads as follows:

“In all mines in which coal is blasted from the solid, all holes shall be fired when all the workmen are out of the mine, except the shot-firers and other persons delegated by the mine foreman to safeguard property,”

apply to all bituminous coal mines in which coal is blasted from the solid or only to such thereof in which explosive gas is generated?

A careful reading of the entire Section 14, leads to the conclusion that the provision of the above quoted second paragraph of said Section is not limited in its scope to those mines in which explosive gas is generated, but extends to all bituminous coal mines in which coal is blasted from the solid. The fact that the first paragraph of said section expressly applies to mines or portions of mines in which explosive gas is generated, is insufficient to raise a necessary implication that the second paragraph thereof is to be narrowed in its application to mines or portions of mines in which such gas is generated. If it had been the legislative intent thus to narrow the extent of this second paragraph, it may be presumed such intent would have been voiced in express terms and not left to inference. We must take the enactment as we find it, and not read something into it which is not there.

To hold that this section contains provisions dealing exclusively with mines generating explosive gases and also provisions extending to other mines, would not render the section peculiar in this respect. The 9th section, for example, embraces certain provisions relating solely to mines in which gas is generated, and also others applicable to mines without regard to whether gas is generated in them or not. Moreover, it may be noted that the first paragraph of *Section 14* is not itself limited in all its provisions to mines or portions of mines in which gas is generated. The provision thereof requiring “miners who are permitted by this Act to fire their own shots, to visit and examine the places where shots have been fired,” etc., extends to mines other than those in which gas is generated.

The Act is to be interpreted in the light and in the furtherance of its purposes. One of these is to safeguard the miner against the recognized hazards of blasting from the solid. A literal rather than a restricted meaning of this second paragraph of Section 14 would the more fully tend to serve that purpose, and it would be unsafe to depart from its plain import. To imply a limitation upon it might defeat, in some cases, the purpose of the Act.

We yield the letter to save the spirit of a statute, but where the letter accords with the spirit we may safely hold strictly to such letter.

It has been held in the interpretation of Statutes that:

“We have no right to narrow the construction so as to give the words a less comprehensive operation than they

clearly import upon their face. * * * * It is dangerous to give scope for making a construction against the express words where it is not certain that the meaning of the lawmakers is not opposed to them."

The Reimer Harrow Co. vs. Rosenberger, 40 L. I. 382.

"We think it is always unsafe to depart from the plain and literal meaning of the words contained in legislative enactments out of deference to some supposed intent or absence of intent, which would prevent the application of the words actually used to a given subject."

City of Pittsburgh vs. Kalchtaler, 114 Pa. 547.

I am, therefore, of the opinion, and so advise you, that the provision of the second paragraph of Section 14, Article IV of said Act, is not limited to bituminous coal mines or portions thereof in which explosive gas is generated, but extends to all bituminous mines in which coal is blasted from the solid.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE CERTIFICATES OF EXAMINATION OF MINE INSPECTORS.

The certificate given by the Board of Examiners to candidates for Mine Inspector evidencing their qualifications should be filed with the County Commissioners to the proper district.

Office of the Attorney General,
Harrisburg, Pa., October 12, 1916.

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

Sir: Your favor of the 4th inst. is at hand. You ask to be advised whether candidates for the office of Mine Inspector in the Anthracite Coal Region shall file certificates issued by the Mine Inspectors Examining Board with the County Commissioners or with the Secretary of the Commonwealth, and you state that the Commissioners of Northumberland County have refused to accept for filing the certificate of qualification of Mine Inspector B. I. Evans, claiming that it should be filed with the Secretary of the Commonwealth, inasmuch as the Mine Inspector is a State officer.

There is no difficulty about this question. The Act of June 8, 1901, P. L. 535, provides in Article II, for the examination, by a Board of Examiners, of candidates for the office of Inspector, and

further provides that such Board of Examiners shall give to each candidate a certificate showing that he has passed a successful examination.

Section 7 of that Article provides for the election of Mine Inspectors and Section 8 provides:

"Candidates for the office of mine inspector shall file with the county commissioners a certificate from the mine examining board, as above set forth, before their names shall be allowed to go upon the ballot as provided by the county commissioners for the general election; and the name of no person shall be placed upon the official ballot except such as has filed the certificate as herein required; and no persons shall be qualified to act as such mine inspector unless such certificate has been previously filed with the county commissioners of his county."

The Act of June 1, 1915, P. L. 648, amending Section 7 of the Act of May 3, 1909, which in turn amended the Act of June 8, 1901, above referred to, also provides that when a new district is erected the Judge or Judges, in whom is vested the power of appointing a Board of Examiners for that district, shall appoint a qualified person as inspector, but that

"Said appointee shall be one of the persons who shall have filed with the commissioners of that county, in the judge or judges of whose court is vested the appointing power for that district, a certificate from the Board of Examiners of said district showing that he has passed a successful examination before the said Board, and is qualified for the position of Inspector."

The plain letter of this statute requires the certificates given by Board of Mine Examiners to be filed with the Commissioners of the proper county. The mere fact that a Mine Inspector is a State officer is no justification for setting aside the plain letter of the law. The law must be followed. If it is necessary to file an additional certificate with the Secretary of the Commonwealth for the purpose of certifying the name of an inspector upon the official ballot, that may be done, but the certificate which the statute requires to be filed with the County Commissioners must be filed there.

I, therefore, advise you that the Commissioners of Northumberland County should not refuse to accept and file the certificate of qualification of Mine Inspector B. I. Evans, if he belongs in that district.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

COLLIERY.

The Chief of the Department of Mines is advised as to whether Hazleton Colliery No. 1 of the Lehigh Valley Coal Company could legally close slope No. 8, and not hoist or lower miners therein.

Office of the Attorney General,
Harrisburg, Pa., November 1, 1916.

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

Sir: Some time ago you asked the opinion of this Department whether the Hazleton Colliery No. 1, of the Lehigh Valley Coal Company, could legally close Slope No. 8, and not hoist or lower miners therein.

Upon receipt of your request, a hearing was fixed for October 25, 1916, at eleven o'clock, at this Department, which was attended by the Superintendent of that Colliery, by Roger J. Dever, Esq., and Thomas Kennedy, President of that District of the United Mine Workers of America.

As I understand the facts, they are as follows:

The Slope No. 8, runs from the surface to the first level of the mine. Slope No. 1 runs from the surface past the first level to other lower levels, and these two slopes are about 75 feet apart. A number of miners are required to pass Slope No. 8 to reach Slope No. 1, going to and from their work. It appears from your last printed report, that sixty persons are employed inside of Slope No. 8, and one hundred and twelve persons are employed inside of Slope No. 1.

Rule 17 of Article 12 of the Act of June 2, 1891, P. L. 176, 197, provides:

"Not more than ten persons shall be hoisted or lowered at any time in any shaft or slope, and whenever any five persons shall arrive at the bottom of any shaft or slope in which they are regularly hoisted or lowered, they shall be furnished with an empty car or cage and be hoisted, except, however, in mines where there is a traveling way having an average pitch of fifteen degrees, or less and not more than 1000 feet in length."

I understand this mine does not have a "traveling way, having an average pitch of 15 degrees or less." There is no other provision of the law bearing directly upon the question as to whether or not the persons should be hoisted at this slope,

The Act provides that if "*persons are regularly hoisted or lowered*" at this slope, they shall be furnished with an empty car and hoisted whenever five persons arrive at the bottom of the slope.

The question therefore arises as to whether or not persons have been "regularly hoisted or lowered" at Slope No. 8. This is a question of fact for you, as Chief of the Department of Mines, to determine. We have nothing from which we could find the fact and

it is not the province of this Department to settle such questions of fact. If this slope has been continuously used for a certain period of time in the ordinary course of the business of this colliery for the purpose of hoisting or lowering miners, it would come within the province of the law as a slope "in which persons are regularly hoisted and lowered."

If, however, persons are only hoisted and lowered spasmodically at irregular intervals, or because there is some obstacle to their being hoisted or lowered elsewhere for the time being, then it would not be considered a slope "in which persons are regularly hoisted or lowered."

You are therefore advised that it is your duty to determine whether persons have been regularly hoisted and lowered at this slope and if they have been, then the Lehigh Valley Coal Company would have no right to discontinue the hoisting and lowering of miners who work at the slope.

If, on the other hand, slope No. 8 is not a slope at which miners have been regularly hoisted or lowered, the company are under no legal obligation to hoist and lower them.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

HOURS OF LABOR FOR HOISTING ENGINEERS IN MINES.

Under the Act of April 20, 1911, a hoisting engineer whose duty it is from time to time to hoist men and boys out of the mines, and also from time to time to hoist coal from mines, may lawfully be employed for a period of eight hours only out of each day, even though such engineer be engaged on certain days exclusively in the hoisting of coal.

Office of the Attorney General,
Harrisburg, Pa., November 14, 1916.

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

Sir: Your favor of recent date asking to be advised concerning the hours of labor of an engineer at an anthracite coal mine, is at hand.

No precise question seems to be stated by you but I assume from the papers submitted that you want to be advised particularly as to whether the law is violated by requiring an engineer to work for a longer period than eight hours in any one day if, during that period, he does not lower men and boys, also hoist men and boys and coal from the mine.

The Act of Assembly of April 29, 1911, provides, in part, as follows:

"That on and after the passage of this Act no person engaged as hoisting engineer at or about the anthracite coal mines of this Commonwealth, part of whose duties it is to lower men and boys into, and hoisting them and coal from, the said mines, shall be engaged for a longer period than eight hours each day of twenty-four hours."

This Act of Assembly must be construed to carry out the legislative intention. It is not difficult to arrive at that intention. The language "part of whose duties it is to lower men and boys into, and hoist them and coal from, the said mines" does not refer to the precise duty which is performed during any period of eight hours.

This language applies to the duty or work which the engineer is *employed* to perform. The purpose of this Act of Assembly is to protect the lives of the miners and the property of the mines. It would do violence to the intention of the law to say that an engineer who was engaged in a particular day in hoisting coal only, might work for fifteen hours; but if he were engaged the next day in lowering men and boys, and also hoisting them and coal, he could then only work eight hours. The fifteen hours service on the previous day might entirely unfit him to perform the eight hours service in a way to protect the persons and the property which he was required to lower or hoist. If his employment is to hoist men and boys into, and to hoist men and boys and also coal out of, the mines, it makes no difference whether he only lowers and hoists men and boys one day or only hoists coal another day.

In either event, the statute provides that a hoisting engineer so employed shall not be engaged for a longer period than eight hours out of each day of twenty-four hours.

On the other hand, if an engineer is employed to hoist coal only and his work consists in hoisting coal only, and he does not hoist or lower men or boys, the statute is not violated if he remains at work longer than eight hours.

I therefore advise you that a hoisting engineer whose duty it is from time to time to lower men and boys into mines, and to hoist men and boys out of the mines, and also from time to time to hoist coal from the mines, can only be engaged for a period of eight hours out of each day, even though in any particular day of eight hours service he may not be required both to lower men and boys, and to hoist men and boys and also coal.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO BOARD OF GAME COMMISSIONERS

OPINIONS TO BOARD OF GAME COMMISSIONERS.

PENALTIES.

Special game deputies who are informers in prosecutions are not entitled to one-half the penalties recovered for violations of the fish laws.

Office of the Attorney General,
Harrisburg, Pa., June 8, 1915.

Dr. Joseph Kalbfus, Sec'y., Board of Game Commissioners, Harrisburg, Pa.

My Dear Doctor: Your letter of the 7th inst., addressed to the Attorney General, has been referred to me for reply.

You inquire whether, under the provisions of the Act of April 21, 1915, (No. 77) your special deputies will be entitled to one-half of the penalties recovered for infraction of the Fish Laws.

The Act of May 29, 1901, P. L. 302, Section 36, provided that one-half of every fine recovered for violation of the provisions of the Act should be paid to the informer, and the other half to the County Treasurer to be transmitted to the Fish Commissioners. This Act, however, was repealed by the Act of May 1st, 1909, P. L. 353, which provides in Section 27 that "the whole of said fines shall be paid over forthwith to the treasurer of the county, etc.," to be transmitted to the "Commissioner of Fisheries for the benefit of the Commonwealth."

The Act of April 21, 1915, neither relates to, nor does it effect, the disposition of fines, but simply makes it the duty of the officers of Forestry, Fish and Game Departments to enforce the laws of all these Departments as therein provided.

You are advised, therefore, that your special deputies will not be entitled to a division of such penalties as they may recover for the violations of the Fish Laws.

You are further advised that so far as the pay of constables for services rendered in enforcing the Fish Laws is concerned, the Act of March 22, 1899, P. L. 17, makes constables ex-officio fire, game and fish wardens, and provides in Section 4, of the Act, for the payment to them of a fee of ten dollars upon the arrest and prosecution of any offender to conviction.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

GAME LAWS.

The Game Commission is advised to notify Sheriffs who release unlawfully prisoners who have violated the game laws, that they will be proceeded against by the Game Commission for the recovery of such portion of the fine imposed on the prisoner as may be due at the time of the illegal discharge.

Office of the Attorney General,
Harrisburg, Pa., June 30, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.

Sir: Answering your inquiry of the 28th, as to the right of County Commissioners to direct the discharge of a prisoner sentenced in default of fine imposed for violation of game laws.

While the particular Act to which you refer is that of May 1, 1909, P. L. 325, as amended by the Act of May 9, 1913, P. L. 193, yet the facts are applicable to a summary conviction by an alderman or justice of the peace under any of the game laws of this State.

Under these Acts which provide for a fine, and in default of payment of this fine for a sentence of imprisonment for a day for each dollar of fine imposed, and in which an alderman or justice of the peace has original jurisdiction, a commitment cannot be interfered with or the prisoner discharged, except upon an order of the Court of Quarter Sessions obtained after a reversal of the conviction, or by an order of the Court of Common Pleas under the Insolvent Debtors Acts for the discharge of the prisoner after he has served an imprisonment of at least three months where the fine exceeds fifteen dollars.

See *Johnson's Petition*, 2 Dis. Rep. 700.

Commissioners have, in times past, assumed to exercise the authority of ordering the discharge of prisoners committed for non-payment of fine or costs. The absolute want of any such authority is clearly set forth in the case of *Crawford County vs. Barr*, 92 Pa. 359, as stated by Justice Trunkey in this case:

"County Commissioners have no power to discharge a prisoner or to remit fines, forfeitures and costs. If Courts have sanctioned their acts in paying costs out of County funds, where a party was committed solely in default of payment of costs, that does not authorize their interference when there has been a conviction and sentence for a criminal offense."

See also *Schwamblé vs. The Sheriff*, 22 Pa. 18.

The action by the sheriff in releasing a prisoner sentenced for default of payment of fine, such release being made only on the order of the County Commissioners, is not so much the fault of the as-

sumption of authority by the Commissioners as the dereliction of the sheriff in permitting the release of the prisoner without proper warrant of law.

As stated in *Kuhn vs. North*, 10 S. & R. 399.

"The sheriff acts in all cases at his peril, and is answerable for any mistakes. Infinite inconvenience would arise if it were not so."

The action of the sheriff in releasing any prisoner without an order of the Court and before the prisoner has served a day for each dollar of fine imposed renders the sheriff and securities on his recognizance liable for the amount of the fine.

See *Walberton et al vs. Commonwealth*, 7 S. & R. 272.

In instances which have heretofore occurred where the sheriff has illegally released prisoners committed for non-payment of fine imposed under the various game laws of this State, you should direct such sheriffs to rearrest the prisoners so released. As stated in *Schwamblé vs. The Sheriff* above cited:

"The person convicted having been discharged from prison by the deputy sheriff by the direction of the County Commissioners without payment of fine was lawfully retaken by the sheriff."

We, therefore, advise you to notify the various sheriffs that in event of illegal discharge of prisoners by them, they may be proceeded against by your Commission for the recovery of such portion of any fine as may be due at the time of the illegal discharge.

Respectfully yours,

HORACE W. DAVIS,
Deputy Attorney General.

GAME LAWS.

Under the Act of April 21, 1915, No. 77, it is the duty of the officer of the State who observes a violation of the game, fish or forestry laws to report the fact to the proper Commission so that prosecutions may be brought to enforce the same.

Office of the Attorney General,
Harrisburg, Pa., July 16, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.

Sir: Answering your inquiry as to the duty of your Commission under the act of April 21, 1915, No. 77), I beg to advise you as follows:

The act provides that

"It shall be the duty of each forester and forest ranger in this Commonwealth to enforce all the laws relating to forestry, fish and game; it shall be the duty of every game protector, deputy game protector and special deputy game protector commissioned in this Commonwealth to enforce all the laws relating to fish, game and forestry; it shall be the duty of every fish warden or deputy fish warden commissioned in this Commonwealth to enforce all the laws relating to game, fish and forestry, under the direction of that department or commission into whose care the interests of these several subjects have been entrusted."

The act further provides that all prosecutions for violations of laws relating to forestry, fish and game, shall be brought under the direction of the proper department into whose special care the interests of these several subjects have been entrusted.

It was not contemplated that the individuality of the several commissions should be in any way affected, and the subordinates under the Commission are still under the management, direction and control of the respective commissioners.

The purpose of the act is to make it the duty of the officials of each commission therein named, in case they observe the infraction of any laws relating to the subjects over which the other commissioners have jurisdiction, to forthwith act to enforce the laws relating thereto, and inasmuch as the act specifically provides that prosecutions shall be under the direction of the proper department, it is manifestly the duty of such official to advise through his own commissioner the proper department having jurisdiction of the subject matter. In other words, while it is still primarily the duty of the officials of each department to enforce the laws relating to such department, the act makes it the duty of such officials who incidentally, in the course of the performance of their prescribed duties, observe any infraction of laws relating to the other departments, to enforce the same.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

DOGS FOR HUNTING.

While it is unlawful for an unnaturalized foreign-born resident to own a dog, the Game Commission is advised to use discretion in the enforcement of the act, and not to molest those who have dogs which are harmless to game.

Office of the Attorney General,
Harrisburg, Pa., August 17, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg,
Pa.

Sir: We are in receipt of your inquiry of August 11, 1915, as to whether in a prosecution under the Act of June 1st, 1915, it is necessary to prove that the defendant had or intended to use the dog for hunting game.

The Act of June 1st, 1915, (P. L. 644), is similar in purpose and phraseology to the Act of May 8, 1909, (P. L. 466), making it unlawful for an unnaturalized foreign born resident to own or possess shot guns or rifles. The present Act makes it unlawful for any unnaturalized foreign born resident "to hunt for or capture or kill, any wild bird or animal, etc." and in the next clause provides "and to that end, it shall be unlawful for any unnaturalized foreign born resident within this Commonwealth to either own or be possessed of a dog of any kind." From this phraseology the impression could readily be obtained that the ownership or possession of a dog would only be unlawful where it was used to the end of hunting for wild birds or animals. Such construction, however, would be incompatible with the reasonable interpretation of Sections 3 and 4 of the Act. The correct interpretation of this Act, however, can be had from the Act of 1909, cited above, which in its first sentence is identical with the present act, except that the former refers to "a shot gun or rifle of any make," and the latter refers to "a dog of any kind."

In the case of *Commonwealth vs. Maloof*, 49 Superior Court, 581, the Court held that it was a violation of the act of May 8, 1909, for an unnaturalized foreign born resident to own or possess a shot gun or rifle, even though it was used only in a shooting gallery of which he was the proprietor.

To quote the opinion of the Court, in part:

"The principal contention is that, because the rifles in question were used as an incident to the business of conducting a shooting gallery, and it not appearing that they were kept for any other purpose, the defendant is not within the meaning of the provisions of the act of 1909, and for these reasons the court below arrested the judgment against the defendant.

To arrive at this conclusion we must take out material words of the act of 1909, as it specifically declares, 'It shall be unlawful for any unnaturalized foreign-born resident within this Commonwealth to either own or be possessed of a shot gun or rifle of any make.'

Again,

"Inasmuch as the words of the act clearly include this defendant; and the business in which they were used at the time not being exempted, and the guns being of the kind defined in the act and were in his personal possession and control, must determine our disposition of the judgment."

We would, therefore, advise that the use, or intended use, of a dog owned or possessed by an unnaturalized foreign born resident is not material in a conviction under the Act of 1915. The only question of fact upon which a Justice of the Peace has to decide is whether the defendant is the owner or possessor of the dog.

This Act was directed to that class of residents of this Commonwealth who are, to a greater or less extent, unfamiliar with our language, our customs and laws. To allow them to possess the instrumentalities for the destruction of game or other wild life would be merely encouraging them, at least permissibly, in the more serious infraction of the game laws of the State. For that reason the act was drawn to prohibit the possession by such persons of hunting or such other dogs as were liable to injure or destroy game or other wild life.

Such an act must necessarily be broadly drawn, in order to permit the correction of the evil sought to be remedied. Acts, so drawn, frequently by their phraseology cover facts which were never intended to be covered by them. This act was not intended to authorize a constable or other officer to go into a foreigner's home and take a lap dog or a child's puppy and arrest the owner of the house. The utmost good sense, as well as fairness and honesty, are essential in the enforcement of this act. Game wardens and other officers of this State should be cautioned that this act must not be used as a means of oppression or senseless prosecution, but that it should be enforced in all cases where it is really intended to apply, and in those only, and not for the purpose of mulcting fines and costs from foreigners.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

DOGS.

The Act of June 1, 1915, prohibiting the ownership or possession of dogs by unnaturalized foreigners applies to any dog in the State owned or possessed by such foreigner.

SUPPLEMENTAL OPINION.

Office of the Attorney General,
Harrisburg, Pa., August 25, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg,
Pa.

Sir: Supplementing my Opinion to you, under date of August 17, 1915, in reference to the scope of the Act of June 1, 1915, prohibiting the ownership or possession of dogs by unnaturalized foreign born residents, beg to state that that portion of Opinion contained on the last page and suggesting the course to be pursued in the enforcement of the Act, was advisory only. It had nothing to do with the construction of the scope of the Act.

Stripped of all suggestion and explanation, I wish you to understand that the Act of June 1, 1915, applies to any dog in this State, which is owned, possessed, or under the control, of any unnaturalized foreign born resident of this State. The age of the dog, the purpose for which it is kept, used or intended, or the possibility of injury to game from such dog, is immaterial.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

DOG LICENSES.

An Act of Assembly which had been repealed is not revived by a later Act of Assembly which extended its provisions to Crawford County. There is no valid and existing special act for the taxing of dogs in Crawford County.

Office of the Attorney General,
Harrisburg, Pa., September 29, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg,
Pa.

Sir: We have your favor of September 10, 1915, stating that the Commissioners of Crawford County refused to supply tags for dog license as provided under the general dog license acts of this State, on the grounds that this subject was covered by a special Act of Assembly, pertaining to Crawford County.

You asked whether a general act of Assembly repeals a special Act without advertisement. This question cannot be generally answered as there are certain subjects upon which special Acts are repealed by general statutes without advertisement, but generally such cannot be done.

However, in the present case the correctness of the position assumed by the Commissioners of Crawford County turns on another element, viz, whether prior to the passage of the Act of May 26, 1893, there was really any special Act covering the licensing of dogs in Crawford County. The status of the Acts pertaining to the licensing of dogs in Crawford County are substantially as follows:

On May 20, 1857, an Act was approved "for the protection of sheep and taxing of dogs in the county of Blair," (1857—P. L. 603).

On May 31, 1859, an Act was approved "to repeal an Act for the protection of sheep and taxing of dogs in the county of Blair."

In the body of this latter Act reference is made to the Act of May 20, 1857, and the Act of 1859 concludes "be and the same is hereby repealed." (1859—P. L. 192).

On February 27, 1861, an Act was approved "to extend the provisions of an Act for the protection of sheep and taxing of dogs in the county of Blair to the County of Crawford."

After reciting the Act and the date of its passage to wit, May 20, 1857, the body of the Act of 1861 concludes "be and the same is hereby extended to the County of Crawford."

We, therefore, have the proposition of an Act attempting to amend an Act previously repealed. There is an accepted principle of law that in the absence of a Constitutional provision prohibiting the same, an Act repealing a repealing Act immediately revives the original Act. The Act of 1861, however, contains no repeal of the Act of 1859. The latter Act appears on the statute books of this State as valid and unaffected, and as such the Act of 1857 is a nullity and was defunct and nonexistent at the time of the passage of the amended Act of 1861.

The question presented is novel in this State, but there appears, however, to be several cases in point cited in other States. In the case of *Newark vs. Mt. Pleasant Cemetery Company*, 58 N. J. L. 168, the Court says in its opinion:

"It would seem to be impossible to contend that there could be a valid amendment to a nonexistent and defunct statute."

See also:

Commonwealth vs. Smith, 52 Ind. 420.

State vs. Harrison, 67 Ind. 71.

State vs. Benton, 33 Nebraska 823.

Railroad Company vs. City of East St. Louis, 134 Ill. 656.

The latter case holds:

"A statute purporting to amend a section of a prior Act after its repeal is invalid and abortive. The later is not in existence and is not subject of amendment."

The Act of 1861 does not re-enact the provisions of the Act of 1857, but merely undertakes to extend the latter Act to Crawford County. There being at that time no such Act as the Act of May 20, 1857, there could be no extension of its provisions to any county.

The Act of 1857 was passed upon by the Luzerne County Court in the case of *Sisson vs. Commissioners*, decided in 1 Luzerne Legal Reg. 56. In this case, however, no mention is made of the repealing Act of 1859, which has quite probably escaped the notice of those who have been acting under the provisions of the former Act.

I have, therefore, to advise you that there is no valid and existing special Act of Assembly covering the taxing of dogs in Crawford County.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

HUNTING ON FOREST RESERVES.

The Commissioner of Forestry could not permit any person to hunt on a Forest Reserve without a license. This applies to forest rangers and other employees of the Forestry Department.

Office of the Attorney General,
Harrisburg, Pa., September 29, 1915.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.

Sir: I have your favor of September 10, 1915, directed to the Attorney General, asking:

First: Whether the Commissioner of Forestry has a right, under Section 5 of the Act of April 17, 1913, P. L. 85, to permit the owners or lessees of land immediately adjacent to and connected with the State Forest Reserves to hunt upon the latter.

Second: Whether Forestry Rangers and other employes of the Forestry Department have the right to hunt upon Forestry lands without securing a license, under the Act of April 17, 1913.

The powers and duties of the Commissioner of Forestry are conferred by Section 3 of the Act of February 25, 1901, (P. L. 11), as stated by Honorable John P. Elkin, Attorney General, in opinion dated October 15, 1901, 10 Dist. Rep. 676. This Act confers upon the Forest Reservation Commission very general powers in reference to the management and control of lands purchased by the State for forestry purposes. However, in this opinion, while concluding that the Commission has the right to grant temporary permission to use the water on the reserves he states:

"I doubt whether it would be within the power of the Commission to grant any permanent water rights to persons or corporations."

There is no question but that the Commissioner of Forestry and the Forest Reservation Commission do not have the powers of an owner or lessee over the State Forest Reserves, but that they are rather officers in control and in control only to the extent expressly designated by statute or necessarily implied therefrom.

The Section of the Act of 1901, above quoted, states that the Commissioner of Forestry

"shall have immediate control and management, under the direction of the Forest Reservation Commission, of all forest lands already acquired, or which may hereafter be acquired by the Commonwealth, but the *power* so conferred upon said Commissioner of Forestry shall not extend to the enforcement of the laws relating to public health or the protection of fish and game."

In looking at the power thus conferred we find an expressed reservation in which there is taken away from the Commissioner of Forestry the enforcement of the laws pertaining to public health and those pertaining to fish and game. While the meaning of the word "enforcement" would naturally be considered as that of enforcing the laws, the reading of the whole section gives it a broader significance. The enforcement of laws would be a duty which the Commissioner of Forestry would share equally with any private citizen, in so far as the institution of any prosecution under them is concerned. The proviso, however, is directed to a limitation upon his *powers* so that it would appear that in conferring powers upon him there is a limitation as to any power which has to do with either the public health or fish and game.

If this is a proper construction of this portion of the section mentioned, he has not the power to grant exemption from any of the provisions of the Game laws such as an owner, mentioned in the 5th Section of the Act of 1915, would have, and it is to such a construction as this that the direct meaning of the Section of the Act of 1901 quoted would conduce.

In further support of this position, I would refer you to Section 5 of the Act of 1913, in which is set forth the limitations upon which the right to hunt without a license is based. In the first place no person is exempt from such license, except the bonafide owner or lessee of cultivated lands, who resides thereon. The right to hunt on such lands is a necessary incident to the protection of the cultivated portions of such lands from game which might damage them and it is but reasonable and proper that such owner or lessee could go upon lands immediately adjacent where the game sought by him lived or sought refuge after feeding upon or destroying his crops.

While State Forest Reserves are, of course, connected with privately owned land, yet the extent of the former does not make all portions of them immediately adjacent. The ownership or control of a tract of land is not the only element necessary in permitting the owner or lessee of land connected therewith to hunt upon it. It means not only being connected therewith but "immediately adjacent." While the expression "immediately adjacent" is somewhat relative and indefinite, yet it would be obvious that land owned by a single individual and say several miles in width, would not all be "immediately adjacent" to the land of some person abutting upon one side of it.

The Commissioner of Forestry, if possessed of any rights to grant permission to an abutting owner to hunt upon the State Forest Reserves, could give permission for that portion only of the State Forest Reservation "immediately adjacent" to such person's property and in applying this term to the conditions as presented in your letter, it is doubtful whether land as far away as a half mile from such privately owned land would be considered immediately adjacent.

However, following the construction of the first sentence of Section 3 of the Act of February 25, 1901, as outlined above, the reservation contained in it takes away from the Commissioner of Forestry the power to grant any immunity or privilege connected with the game laws of this State and that, therefore, he could not permit any person to hunt upon the State Forest Reservation without a license.

Answering your second inquiry, would state that the Act of April 17, 1913, (P. L. 85), in Sections 1 and 2 makes the Act applicable to "any person" and under the express phraseology of this Act, the necessity of procuring a license applies to *every* person, except such as are expressly excepted in the Act.

Section 5 of this Act excepts from its provisions any owner or lessee of cultivated land or any member of his family, who resides on such land. No exemption is made for any employe of such owner or lessee and in the absence of any such exemption, the Forest Rangers and other employes of the Forestry Department have no more right to hunt without a license than would the officers of the Game Commission, which are admittedly not exempt.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

TAXATION OF DOGS.

The Act of May 25, 1893, P. L. 136, with its amendments and supplements, regulates the taxation of dogs in Warren County.

Office of the Attorney General,
Harrisburg, Pa., May 10, 1916.

Hon. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of May 2, 1916, asking as to whether the special Act of March 31, 1864, (P. L. 154), or the general Act of May 26, 1893, (P. L. 136), regulates the taxation of dogs in Warren County.

A similar subject was covered as to Crawford County in an opinion rendered by myself to you, under date of September 29, 1915. The facts in this case are similar.

The Act of March 31, 1864, extended to Warren County the provisions of the Act of May 20, 1857, (P. L. 603), regulating the taxation of dogs in Blair County. Prior to such extended Act, however, the Act of 1857 had been repealed by the Act of March 21, 1859, (P. L. 192).

At the time of the passage of the Act of 1864 there was, therefore, no valid or existing Act which could be so extended, nor was there at that time or subsequently passed any Act repealing the repealing Act of 1859.

Based on these reasons and the authority cited in the opinion as above referred to, I have to advise you that the Act of May 25, 1893, (P. L. 136), together with its amendments and supplements, regulates the taxation of dogs in Warren County.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

OPINIONS TO THE BUREAU OF STANDARDS.

OPINIONS TO THE BUREAU OF STANDARDS.

SALES PER PACKAGE.

If hams or other commodities are sold per package as such, "the quantity of the contents must be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count," as required by section 7 of the Act of July 24, 1913, P. L. 965. If they are wrapped merely for sanitary purposes and are not so sold, but in each instance are weighed, though with the container, covering or wrapper, of which the purchaser is fully aware, the act does not apply.

Office of the Attorney General,
Harrisburg, Pa., June 15, 1915.

Mr. James Sweeney, Chief of the Bureau of Standards, Department of Internal Affairs, Harrisburg, Pa.

Sir: Replying to your inquiry under date of the 11th inst., relative to the application of the Act of July 24, 1913, (P. L. 965), to wrapped hams, bacon and other commodities, I beg to advise as follows:

It is apparent that the object of the act is to protect purchasers against fraud and deception as to the quantity or amount of the commodity purchased.

Section 7 of the Act provides:

"If in package form, the quantity of the contents shall be plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count: Provided, however, That reasonable variations shall be permitted; and tolerances and also exemptions as to small packages shall be established by rules and regulations made by the Chief of the Pennsylvania Bureau of Standards."

Your specific question is "under the provision of that section do hams and bacon covered with paper or cloth, or sold in wrappings of any kind constitute a package within the meaning of the law?"

The answer to this question suggests itself very readily when it is borne in mind that the object of this legislation is to protect persons in the purchase of commodities "in package form," in other words, where commodities are sold per package, or by the package as such, as of a given weight or quantity, without weighing or measuring. In such case the law provides that "the quantity of the contents shall be plainly and conspicuously marked on the outside of the package in

terms of weight, measure or numerical count," obviously, so that the purchaser will in that way be advised and know the quantity of the contents received. The term "package form" was accordingly intended to apply to such commodities as are put up in artificially determined sizes or quantities, fixed by the manufacturer or merchant, and intended to pass as such.

Section 1 of the Act provides "that the word 'commodity,' as used in this Act shall be taken to mean any tangible personal property sold or offered for sale." Hams and bacon, therefore, would come under this broad definition of the term "commodity," but whether the sale of hams and bacon covered with paper or cloth, or sold in wrappings of any kind, would be a sale "in package form," would depend on whether or not they were sold per package as such or by separate and individual weight. You do not state the facts on this point necessary to specifically determine the question, but if I understand correctly, hams and bacon so covered or wrapped are not sold per package as such, the weights of the hams and bacon not being uniform, but are in each instance sold by weight per ham or bacon as wrapped, of which the purchaser is fully aware.

I am therefore of the opinion that as to hams and bacon covered with paper, cloth or other wrapping and so sold, the Act does not apply, and in such case, it is not necessary that the quantity of the contents be marked on the outside of such package. The words "in package form" were similarly construed in reference to the same subject matter in the case of *State vs. Swift & Co.*, 120 N. W. 1127 (Neb).

The reasoning in this opinion applies to all other commodities referred to in your communication. If they are sold per package as such, "the quantity of the contents must be plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count," as the Act provides; if they are wrapped merely for sanitary purposes and are not so sold, but in each instance are weighed, though with the container, covering or wrapper, of which the purchaser is fully aware, the Act does not apply.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

WEIGHTS AND MEASURES.

The Sealer of Weights and Measures is without authority to specify the type of scales, weights or measures that may be used, the duty being under the Act of Assembly to see that the scales, weights and measures conform to the standard tests prescribed by the act.

Office of the Attorney General,
Harrisburg, Pa., September 23, 1915.

Mr. James Sweeney, Chief of Bureau of Standards, Harrisburg, Pa.

Sir: Answering your inquiry of recent date I beg to advise you as follows:

You ask to be advised

"If the Chief of the Bureau of Standards is vested with authority to issue regulations or specifications regarding the type of commercial scale, weight or measure that should be used in weighing or measuring commodities in the State of Pennsylvania, other than that specifically stated in the Act of Assembly relative to tolerance."

The Act of Assembly referred to is the Act of July 24, 1913, (P. L. 960), and it provides for the appointment of county and city inspectors of weights and measures, prohibits vendors from giving false and insufficient measures, etc., the obvious purpose of which is to protect the public against fraud.

Accordingly the Act in Section 2 provides for standard tests of weights and measures, and inasmuch as it is impossible for weights and measures to be absolutely accurate in every respect the same section provides that the Inspectors named under the Act "shall be furnished by the Chief of the Bureau of Standards of this Commonwealth with full specifications of tolerances and allowances to be used by them in the performance of their duties."

A somewhat similar provision is made in Section 7 of the Act of July 24, 1913, (P. L. 445), relating to the sale of the commodities therein referred to "in package form" and for the same reason. The provision is:

"That reasonable variations shall be permitted; and tolerances and also exemptions as to small packages shall be established by rules and regulations made by the Chief of the Pennsylvania Bureau of Standards."

While, therefore, the Chief of the Bureau of Standards may furnish the Inspectors "with full specifications of tolerances and allowances to be used by them in the performance of their duties" there is nothing in the act of assembly which authorizes the Chief of the Bureau to

issue regulations or specifications regarding the *type* of commercial scales, weights or measures which may be used in weighing or measuring commodities in the State of Pennsylvania.

The Inspectors, under the Act, have no authority to concern themselves with reference to the *type* of any scale, weight or measure used and their sole duty is to ascertain whether such scales, weights or measures conform to the standard tests as prescribed by the Act, subject to the tolerances and allowances specified by the Chief of the Bureau of Standards thereunder.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

**OPINIONS TO THE PUBLIC SERVICE
COMMISSION.**

OPINIONS TO THE PUBLIC SERVICE COMMISSION.

YORK RAILWAYS COMPANY.

Under the Act of July 2, 1901, P. L. 603, authorizing any corporation organized for profit to acquire the shares of stock and securities of any other corporation and exercise all the rights of ownership, a street railway and electric light company has the right to acquire the stock and securities of a light, heat and power company, and it is not thereby engaging in a business other than that expressly authorized by its charter, forbidden by article 16, section 6, of the Constitution, nor is it engaging in any other business than that of common carriers, forbidden by article 17, section 5, of the Constitution.

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

A. B. Millar, Secretary, Public Service Commission, Harrisburg, Pa.

Sir: In the matter of the application of the York Railways Company, et al, to the Public Service Commission, No. 209, Application Docket 1914, for certificates of public convenience, in which you desire an official opinion whether the said application can properly be granted by the Commission under the provisions of the Constitution of the State, (See letter of William N. Trinkle, Esq., to Hon. John C. Bell, Attorney General, January 7, 1915), I assume your inquiry to be, whether in view of Article 16, Section 6, of the Constitution, which is:

"No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business."

and of Article 17, Section 5, which is:

"No incorporated company doing the business of a common carrier shall, directly or indirectly prosecute or engage in mining or manufacturing articles for transportation over its works, nor shall such company directly or indirectly engage in any other business than that of common carriers, or hold or acquire lands, freehold or leasehold, directly or indirectly, except such as shall be necessary for carrying on its business; but any mining or manufacturing company may carry the products of its mines and manufactories on its railroad or canal not exceeding fifty miles in length."

the York Railways Company, a street railway company, a Pennsylvania corporation, has the legal right to "purchase, acquire, take and hold the absolute ownership or controlling right, title and interest" in a Light, Heat and Power Company of this or of any other State.

The Act of July 2, 1901, (P. L. 603), provides:

"Section 1. Be it enacted, etc., That hereafter any corporation, organized for profit, created by general or special laws, may purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by, any other corporation or corporations of this or any other State, and while the owner of said stock may exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

Section 2. All acts or parts of acts, general or special, inconsistent herewith, be and the same are hereby repealed."

Street railway companies and electric light companies are corporations engaged for profit and hence are included in said Act, and the Railway Company is thereby empowered to purchase and hold the stock of the Light, Heat and Power Company "and while owners of the stock may exercise all the rights, powers and privileges of ownership including the right to vote thereon," unless it is prohibited by the Constitutional provisions above cited.

It is held by the Supreme Court in *Commonwealth vs. New York, etc. R. Co.* 132 Pa. 607, and 139 Pa. 457:

"It must not be forgotten, however, that controlling real estate, by means of the ownership of a majority of the stock of such corporation, is a very different matter from holding the title to such real estate. The one is legalized by the act of 1869; the other is forbidden by the act of 1855."

Article 17, Section 5, of the Constitution, which prohibits an incorporated company doing business of a common carrier from engaging in any other business than that of a common carrier, and Article 16, Section 6, which prohibits a corporation from engaging in any business other than that expressly authorized by its charter, do not prevent such an incorporated company from acquiring and holding a controlling interest in the stock, etc., of another company engaged in another business.

The Supreme Court in that case makes a clear distinction between *control* of another company *by the holding of a majority of its stock*, and the *direct holding of title, etc.*, of the property itself, and thereby engaging in its business.

The Supreme Court of the United States in *Pullman Car Co. vs. Missouri Pacific Co.*, 115 U. S. 597, held:

"The Missouri Pacific Company has bought the stock of the St. Louis, Iron Mountain and Southern Company, and has effected a satisfactory election of directors, but this is all. It has all the advantages of a control of the road, but that is not in law the control itself, practically it may control the company, but the company alone controls its road. In a sense, the stockholders of a corporation own its property, but they are not the managers of its business or in the immediate control of its affairs. Ordinarily they elect the governing body of the corporation, and that body controls its property. Such is the case here. The Missouri Pacific Company owns enough of the stock of the St. Louis, Iron Mountain and Southern to control the election of directors, and this it has done. The directors now control the road through their own agents and executive officers, and these agents and officers are in no way under the direction of the Missouri Pacific Company. If they or the directors act contrary to the wishes of the Missouri Pacific Company, that company has no power to prevent it, except by the election, at the proper time and in the proper way, of other directors, or by some judicial proceeding for the protection of its interest as a stockholder. Its rights and its powers are those of a stockholder only. It is not the corporation, in the sense of that term as applied to the management of the corporate business or the control of the corporate property."

The distinction drawn in the cases cited appears to be narrow if the prohibitive Acts (in *Commonwealth vs. New York etc., R. Co.* and the *Pullman Company vs. Missouri Pacific Co.* cases) had been construed as to the intention of its framers instead of by the letter, but they control the question you have submitted to me, and I therefore advise you that the York Railways Company has the right to acquire, hold, etc., the stock, bonds, etc., of a Light, Heat and Power Company, and that by such acquisition, holding, etc.:

(1) It is not engaging in a business other than that expressly authorized by its charter forbidden by Article 16, Section 5 of the Constitution, and,

(2) It is not directly or indirectly engaging in any other business than that of common carriers, forbidden by Article 17, Section 5 of the Constitution.

Respectfully submitted,

FRANCIS SHUNK BROWN,
Attorney General.

CORPORATIONS.

The York Railways Company is empowered by law to purchase, hold, etc., the stock and bonds of another corporation, and so control it, without violating the prohibition of article 16, section 6, and article 17, section 5 of the Constitution of Pennsylvania. And may purchase and control such stock and bonds by the use of money in hand or from that realized from loans created by it upon its own property.

Office of the Attorney General,
Harrisburg, Pa., March 18, 1915.

Hon. Samuel W. Pennypacker, Chairman, Public Service Commission,
Harrisburg, Pa.

Sir: In answer to your memorandum inquiries of yesterday:

(1) Under the Constitution has the Corporation the right to borrow money to invest in the stock of another Corporation doing another kind of business?

(2) Does the fact that the mortgage provides that the moneys are to be used for the construction of a power plant to supply electricity for another business, affect your opinion?

I am of opinion:

1. That the Act of July 2, 1901, P. L. 603, empowers a Corporation, (such as the York Railways Company which is involved in your inquiries) to purchase, hold etc., the stocks, bonds, etc., of another Corporation and so control it, and as the courts have decided that such purchase and control, etc., are not engaging in or doing business, such acquisition is not within the prohibition of Article 16, Section 6 and Article 17, Section 5 of the Constitution of Pennsylvania.

See Act and cases in my opinion to the Commission March 12, 1915.

If the right to purchase, control, etc., is thus unfettered, the Corporation can adopt the usual methods of accomplishment of that object by the use of money in hand or that realized from loans created by it upon its own property.

If the Legislature had intended to limit the power of a Corporation to buy stock, etc., of another Corporation, it would have been easy to have provided that the purchase moneys should be restricted to surplus, undivided profits, etc., of the buying Corporation, but I do not find any specific restriction, or any intimation thereof, and certainly none from which such a restriction could fairly be inferred.

2. The mortgage mentioned in your second inquiry is referred to on Page 3 of the application of the York Railways Company, as follows:

"Of the total authorized bond issue of \$10,000,000 aforesaid, there have been issued by York Railways Company bonds aggregating \$4,475,000 all of which are now

outstanding; the \$5,525,000 of said bonds remaining in the Treasury are to be issued under the terms of the said Mortgage for the purpose of acquiring or constructing, equipping or furnishing a power plant or plants for supplying current for light, heat or power for or to said Railways Company and for or to any or all companies which now or hereafter may be controlled by it, or for extending, improving, adding to or bettering such plant or plants."

The bonds above referred to as "remaining in the Treasury" cannot be used for the "purpose of acquiring, constructing, equipping or furnishing a power plant or plants for supplying current for light, heat and power * * * * for or to any or all companies which now or hereafter may be controlled by it" or "for extending, improving, adding to or bettering such plant or plants."

Such use would be engaging in and doing business prohibited by Article 16, Section 6, and Article 17, Section 5, of the Constitution.

See cases cited to opinion of March 12, 1915.

I remain,

Respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

PUBLIC SERVICE COMMISSION—RATES.

The Commission does not have the power to prevent a proposed change of rates becoming effective after thirty days have elapsed from the filing of a rate schedule, pending a hearing as to the reasonableness of the rates, but it may by a rule or order require the giving by the company of a certificate of payment in excess or prior rates.

Office of the Attorney General,
Harrisburg, Pa., July 12, 1916.

Hon. William D. B. Ainey, Chairman, Public Service Commission,
Harrisburg, Pa.

Sir: I have your favor of the 5th inst. requesting an opinion as to the power of the Public Service Commission to prevent a proposed change of rates from going into effect until the hearing thereon can be ended, a sufficient examination of the testimony and the record be made and a conclusion reached, even though it requires a longer period of time than the thirty days fixed by the Act.

I have in this connection given careful consideration to the opinions respectively submitted to your Board by Commissioner Penny, packer and your former counsel, Mr. Trinkle, upon the subject,

There can be no question that the Public Service Company Law gives the Commission power and authority to supervise and regulate all Public Service Companies and this includes.

“the power to inquire into and regulate the * * * rates, fares, tolls or charges of any and all Public Service Companies,” (Article V, Section 1)

nor will the general principle be questioned that where a power or authority is given it carries with it or includes in it as an incident all the powers which are necessary, or proper, or usual, as means to effectuate the purpose for which it was created.

Story on Agency, Section 97.

Williams vs. Getty, 31 Pa. 464.

Or, that wherever a power is given by statute, everything necessary to the making it effectual is given by implication.

Endlich on Interpretation of Statutes, Sections 418-19.

Commonwealth vs. Conyngham, 66 Pa. 99.

But when the statute creating a power limits its exercise to a prescribed method or manner, no authority to transcend those limits will be implied. The power of the Commission to supervise and regulate the rates of Public Service Companies may be divided into two heads: (1) with respect to existing rates, (2) with respect to proposed changes of rates.

(1) As to existing rates the Commission may, upon its own motion or upon complaint, examine into the rates charged by Public Service Companies and, *after hearing*, determine whether such rates are unjust or unreasonable and determine and prescribe by a specific order the maximum just and reasonable rates to be thereafter demanded and charged. (Article V, Section 3).

No authority is given the Commission to change, suspend, or modify such existing rates until after hearing and determination by the Commission, and it is provided, (Article II, Section 1, Clause f) that after such rate has been determined by the Commission it may not be changed or discontinued by the company, directly or otherwise, within a period of three years after such determination without application to and the approval of the Commission, of which application thirty days prior notice shall be given to the public.

(2) With respect to proposed changes from existing rates, the Act provides:

“It shall be the duty of every Public Service Company * * * to make no change in any tariff or schedule, which shall have been filed or published or posted by any public service company in compliance with the preceding sections, except after thirty days’ notice to the Commission and to the public, posted and published in the man-

ner; form and places required with respect to the original tariffs or schedules, which shall plainly state the exact changes proposed to be made in the tariffs or schedules then in force, and whether an increase or decrease, and the time when the proposed changes will go into effect; and all such changes shall be shown by filing, posting, and publishing new tariffs or schedules, or shall be plainly indicated upon the tariffs or schedules in force at the time, and kept open to the public inspection: Provided, That the Commission may, in its discretion, and for good cause shown, allow changes in such tariffs or schedules upon less than thirty days' notice herein specified, or upon other conditions: And provided further, That no rate, practice, or classification which shall have been determined by the Commission shall be changed or discontinued by the public service company, directly or through any change in classifications, rules, regulations, contracts, or practices, within a period of three years after such determination, without application to and the approval of the commission of which application thirty days' prior notice shall be given in the said tariffs or schedules to the public: And provided further, That it shall be the duty of every public service company, when required by the commission, to issue to its shippers, consumers, or other patrons a certificate or other evidence of payments made by them to it in excess of the prior established rate, of an increase in which rate notice has been given to the commission and the public as aforesaid." (Article II, Sec. 1, Clause f).

Reparation for unreasonable rates, whether existing or changed, is provided for by Article V, Section 5, as follows:

"If, after hearing, upon complaint or upon its own motion, the Commission shall determine that any rates which have been collected, or any acts which have been done or omitted to be done, or any regulations, classifications, or practices, which have been enforced for, or in relation to, any service rendered after this act becomes effective, by any public service company complained of, were in violation of any order of the commission, or were unjust and unreasonable or unjustly discriminatory, or unduly or unreasonable preferential; or, in like manner, shall find that the rates so collected are in excess of the rates contained in the tariffs or schedules of any such public service company on file or posted, and in effect and applicable at any time the said service was rendered,—the commission shall, upon petition, have the power and authority to make an order for reparation, awarding and directing the payment to any such complainant, petitioner, within a reasonable time specified in the order, of the amount of damages sustained in consequence of said unjust, unrea-

sonable, or unlawful collections, acts or commissions, regulations, classifications or practices, of such public service company: Provided, That such damages have been actually sustained by such complainant petitioner."

It will be noted that no express authority is given the Commission to suspend the proposed rates or extend the time when the new rates become effective beyond the thirty day period fixed by the law.

If complaint is made and a hearing be had and a determination made within thirty days that the proposed rates are unreasonable, the Commission may issue its order that the proposed rates are unjust and unreasonable and refuse to permit the proposed change or increase.

If the hearing and determination cannot be completed within thirty days, the new rates, nevertheless, become effective, but the Commission may, by general law, or special order, require the company to furnish its shippers or patrons a certificate of other evidence showing payments made by them in excess of the prior established rate.

This course protects the company if the new rates are, upon the hearing, determined to be reasonable and at the same time furnishes the public a means of redress if the rates are determined to be unreasonable.

On the other hand there would be no practicable method of reimbursing the company if the old rates were continued until the hearing was completed and then it was determined by the Commission that the new rates, as proposed, were just and reasonable; and a suspension of the new schedule until such determination might thus prove disastrous to the company, which is expressly authorized to

"demand, collect and receive fair, just and reasonable rates, fares, tolls and charges." (Article III, Section 1)

The language used in Article V, Section 4,

"After such hearing and investigation, *whether completed before or after such change goes into effect*, the commission may make such order in reference to the new rate as would be proper in a proceeding initiated after the same had become effective."

leads to the conclusion that at the expiration of the time fixed by the Act, viz, thirty days, the new rate goes into effect, unless in the meantime, the hearing has been completed and a determination has been made adverse to the new schedule, and that protection to the interests of the public is secured in those provisions of the Act which permit the Commission to require the issuing of certificates of payment in excess of the prior established rate and to make orders of reparation,

While ample power is given the Commission to supervise and regulate the rates of public service companies after hearing, either on its own motion or on complaint filed, the right to suspend rates pending such hearing is not expressly given, but on the contrary a different method of procedure is provided in the Act; such right of suspension is neither necessary nor incidental to the powers of supervision and regulation given the Commission and will therefore, not be implied.

I, therefore, advise you that the Public Service Commission does not, under the law as it now exists, have the power to prevent a proposed change of rates becoming effective after thirty days have elapsed from the filing of such schedule, pending a hearing as to the reasonableness of the new rates, but that it may, by general rule, or special order, require the company to furnish its patrons a certificate or other evidence of payments made by them in excess of the prior established rate pending such hearing and determination.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

**OPINIONS TO BOARD OF PUBLIC GROUNDS AND
BUILDINGS.**

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

PAYMENT FOR THE OAKLEY PAINTINGS.

The Superintendent of Public Grounds and Buildings is advised that payments to Miss Oakley on account of her contract for paintings in the Capitol must be made with the consent of the surety on her bond.

Office of the Attorney General,
Harrisburg, Pa., April 17, 1916.

Hon. Samuel B. Rambo, Superintendent Public Grounds and Buildings, Harrisburg, Pa.

Sir: Your favor of the 12th inst. addressed to the Attorney General, in reference to the contract with Miss Violet Oakley, for the paintings for the Senate Chamber, in the Supreme and Superior Court Rooms, is at hand.

You ask to be advised whether the payment of \$10,000 due under the terms of the contract, April 1, 1916, should be paid without the consent of the surety upon Miss Oakley's bond.

The contract provides for certain paintings for the Supreme and Superior Court Rooms, and five paintings for the walls of the Senate Chamber, and provides among other things, that Miss Oakley

"will wholly and completely finish in accordance with the terms of this contract, that portion of said work which is to be placed in the panels of the Senate Chamber aforesaid, on or before the first day of January, A. D. 1915, unless prevented by illness or other unavoidable necessity."

The contract calls for the payment of \$93,335.50, of which, I understand, \$30,000 has already been paid, according to the terms thereof. I understand that Miss Oakley has not delivered or finished the portion of the work which is to be placed in the panels of the Senate Chamber. A bond in the sum of \$50,000 has been given with the American Bonding Company of Baltimore, as surety, for the faithful performance of this contract. The sum of \$10,000, due April 1, 1916, appears to be as a first payment on account of the pictures to be placed in the panels of the Supreme and Superior Court Rooms, but the bond for \$50,000 is given for the performance of the whole contract. The failure to "wholly and completely finish that portion of the work which is to be placed in the panels of the Senate Chamber on or before January 1, 1915," is a breach of this contract, unless

Miss Oakley was "prevented by illness or other unavoidable necessity" from completing the paintings to be installed in the Senate Chamber. There is no suggestion that illness or unavoidable necessity has prevented the delivery of the work for the Senate Chamber at the time fixed.

It appears, therefore, that Miss Oakley is in default. If the \$10,000 due April 1, 1916, were paid, and for any reason Miss Oakley would be prevented from further completing the pictures, and the surety be called upon to make good any loss to the Commonwealth, it might well raise the objection to the recovery to the extent of the \$10,000 paid after this default. The American Bonding Company of Baltimore should be immediately notified of the default.

I therefore advise you that no further payments should be made without the consent of the surety.

If the American Bonding Company of Baltimore consents to the payment, then it is a matter which rests in the discretion of the Board of Public Grounds and Buildings, whether the payment of \$10,000 due on April 1, 1916, should be made until Miss Oakley fulfils that portion of her contract which was to be completed by January 1, 1915.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE CONSTRUCTION OF PUBLIC BUILDINGS DAMAGED BY FIRE.

In 1915 the Legislature made an appropriation of \$20,000 for the erection of additions and improvements to the power house in the State Institution for Feeble-Minded of Western Pennsylvania. No appropriation was made for improvements in the laundry plant. Since that time both have been damaged by fire.

The Attorney General advised that the Board of Commissioners of Public Grounds and Buildings may lawfully erect a new and somewhat different power house, applying thereto the insurance money received on the old one and the appropriation of \$20,000; but that in the reconstruction of the laundry plant the board was justified in restoring the plant as it was before the fire.

Office of the Attorney General,
Harrisburg, Pa., March 23, 1916.

L. W. Mitchell, Esq., Sec'y., Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Sir: Your favor of the 10th inst., addressed to the Attorney General, is at hand. The Board of Commissioners desire to be advised whether it may authorize the construction of a new Laundry

building and power house in the State Institution for Feeble-Minded of Western Pennsylvania, at Polk, Venango County. The facts I understand to be as follows:

On October 16, 1915, the laundry building and equipment and power house and contents at the Institution were damaged by fire. After the fire, and following instructions from the Superintendent of Public Grounds and Buildings, \$5,358.13 was expended for temporary repairs to building, \$949.09 and \$6,623.19 for repairs to laundry machinery. The laundry building and power plant which were damaged and which have been temporarily repaired are both inadequate for the present needs of the institution and it appears that it would be a matter of economy to change the power plant from a gas consuming to a coal consuming plant.

From estimates made by J. E. Woodwell, consulting engineer, and submitted to the Board of Commissioners of Public Grounds and Buildings by the Trustees, it appears that the cost of building and equipping the laundry sufficient for the present needs of the institution would be \$68,716.70; that there is a balance of an appropriation for laundry equipment amounting to \$7,861.40 and that the insurance collected and turned over into the Insurance Fund of the State amounts to \$5,000, making the funds available of \$12,861.40, which would leave a deficit of \$55,855.30. The cost of construction of an adequate power house and equipment is reported as \$37,439.09, of which there are funds available, from appropriation \$20,000, and amount received from insurance and turned over into the Insurance Fund \$12,946.85, making \$32,946.85, which would leave a deficit of \$4,502.24.

The precise question is whether the Board of Public Grounds and Buildings are authorized to rebuild the power house and laundry buildings, with their equipments, larger and greater than the one destroyed, or whether under the law they must substantially restore the buildings destroyed without enlargement.

The Act of May 14, 1915, P. L. 524, is entitled

"An Act creating a fund for the purpose of rebuilding, restoring, and replacing buildings, structures, equipment, or other property of the Commonwealth of Pennsylvania, damaged or destroyed by fire or other casualty, and regulating the placing of insurance thereon, and providing penalties for any violation of the provisions of this Act,"

and provides for the creation of an insurance fund.

Section 5 provides, in part:

"Whenever loss or damage by fire or other casualty shall occur to any structure, building, equipment, or other property owned by the Commonwealth of Pennsylvania, the department, board of trustees, overseers,

commissioners or other branch of the State Government having control or custody thereof, shall make report of such loss or damage to the Superintendent of Public Grounds and Buildings; setting forth specifically the use and character of the structure, building, equipment, or other property damaged or destroyed, the original cost thereof, the estimated amount of the loss or damage, and cost of restoration, rebuilding or replacement, and such other data and information as may be required by the said Superintendent of Public Grounds and Buildings; who shall make such examination and investigation as may be necessary and report the result thereof to the Board of Commissioners of Public Grounds and Buildings; whereupon the Board of Commissioners of Public Grounds and Buildings may, in its discretion, authorize the rebuilding, restoration or replacement of the property damaged or destroyed; and, for that purpose, is hereby authorized to have plans and specifications prepared, and contracts executed, and to supervise the erection, construction or replacement thereof, under the supervision of the Superintendent of Public Grounds and Buildings; or duly authorized agent of the Board of Public Grounds and Buildings; *such rebuilding, restoration, or replacement to be in substantial accord with the original character, use and purpose of the property damaged or destroyed, etc."*

This is an Insurance statute. The controlling thought in insurance practice concerning the restoration of property damaged or destroyed is that the property should be restored as nearly as may be to its former condition. This idea seems to be carried out in this legislation. The title of the Act indicates that insurance for the purpose of "rebuilding, restoring and replacing buildings, structure and equipment." The language of Section 5 limits such rebuilding, restoration and replacement, "to be in substantial accord with the original character, use and purpose of the property damaged or destroyed." To rebuild a different kind of power plant and laundry is not "rebuilding, restoration and replacement in substantial accord with the original character, use and purpose of the property damaged or destroyed," and I do not think such change in size and character comes within the contemplation or intent of the Legislature in the passage of the Act above referred to.

If a new or different kind of power house and laundry building is to be erected that is a matter for the Legislature.

However, as to the power plant, the Legislature of 1915 had indicated that there should be a change, and appropriated the sum of \$20,000 for the purchase of engines and dynamos and for an erection of an addition to the power plant to accommodate such engines and dynamos. The Legislature having indicated such a change, I am of opinion that there is abundant authority for the Board of

Public Grounds and Buildings, under the circumstances, to use such an amount as it would take to rebuild, restore or replace the old building and add to it the appropriation of \$20,000.00.

The Board of Public Grounds and Buildings is not limited to the amount of insurance recovered for the old building, but are justified in making such expenditures as would be required to restore the old building. The Legislature having authorized an expenditure for additions, and the fire having occurred since the appropriation was made, I do not think that the Board of Public Grounds and Buildings is required to restore the buildings destroyed by fire and put these additions to such restored buildings. The Board can use its discretion in rebuilding such building or in building a new power building on such plans as are fitted to the present needs of the institution, provided, however, that the cost of such new power house and equipment will not exceed the amount which will be required to restore the old building and equipment plus the \$20,000 appropriation for new building and equipment.

As to the laundry and equipment the Legislature has not made any appropriation for a change of size or style of that building. The report shows that the Cost of building a new building and equipment is \$55,855.30, more than the balance of an appropriation for laundry and equipment and more than the Insurance fund. It is apparent that, although in estimating the cost of restoration the Board is not bound by the amount of Insurance recovered, the contemplated new building is of such different style and character that it would not be within the intention of the Legislature of May 14, 1915, authorizing the "rebuilding, restoration or replacement in substantial accord with the original character."

I, therefore, specifically advise you as to the power house and equipment, the Legislature having authorized alterations and additions, you are justified in building a new and even somewhat different power house within the appropriation made therefor, plus the cost of restoration of the old.

But the Legislature having given no such authority with reference to the laundry and equipment, you are not justified in expending out of the Insurance fund such a sum as would build a laundry of an entirely different size, character and equipment from that destroyed by fire.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OFFICIAL BOND.

The cost of the bond for the Superintendent of Construction for the new buildings of the Eastern Pennsylvania State Institution at Spring City should be paid out of the appropriation to the Board of Public Grounds and Buildings.

Office of the Attorney General,
Harrisburg, Pa., April 29, 1916.

Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: We have your favor addressed to the Attorney General asking to be advised as to whether the premium on the bond of the Superintendent of Construction for the new buildings of the Eastern Pennsylvania State Institution at Spring City, Pa., should be paid out of the appropriation to that institution, or out of the appropriation to the Board of Public Grounds and Buildings.

The Act of July 2, 1895, P. L. 422, provides for the appointment by the Board of Public Grounds and Buildings of a Superintendent of Construction, "in connection with the expenditure of each and every fund appropriated by Legislative act for the building of State institutions."

Such Superintendent of Construction is

"required to give a bond to the State in such amount as the said Board of Commissioners shall deem sufficient security for the faithful performance of his duties."

The Act of April 23, 1909, P. L. 141, provides:

"It shall be the duty of the Board of Public Grounds and Buildings to procure, from the corporation or corporations, authorized by law to act as sureties in the Commonwealth of Pennsylvania, good and sufficient bonds * * * * in the case of all State officers and employees required by statute to give bonds to the Commonwealth for the performance of their official duties; and the cost of said bonds shall be paid for by the said Board of Public Grounds and Buildings out of the specific appropriation to be made to said Board in the General Appropriation bill for that purpose."

The General Appropriation Act contains a specific item to the Board of Public Grounds and Buildings "for the payment of the cost for procuring various bonds required by statute, to be given by State officials and employees for the faithful performance of their duties."

The appropriation to the Eastern Pennsylvania State Institution for Feeble-minded and Epileptic at Spring City does not contain any item for bonds.

I, therefore, am of opinion that the cost of the bond of the Superintendent of Construction for the new buildings at that institution should be paid out of the appropriation to the Board of Public Grounds and Buildings.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

INSURANCE—STATE HOSPITAL FOR CRIMINAL INSANE AT FARVIEW.

The Act of May 14, 1915, P. L. 524, construed as to the placing of insurance upon buildings of the hospital.

Office of the Attorney General,
Harrisburg, Pa., June 14, 1916.

Honorable Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: You recently enclosed a letter from Messrs. Platt, Yungman & Company concerning the insurance on the State Hospital for the Criminal Insane at Farview, and asked for a construction of the Act of May 14, 1915, P. L. 524.

The facts I understand to be as follows:

The State Hospital for the Criminal Insane at Farview had \$401,605 Insurance in force on May 14, 1915, the date of the passage of the Act. The Hospital increased this amount during 1915 by \$20,000, and in April 1916 by an additional \$6,500, making an increase of \$26,500 since the passage of the Act. It is suggested by Messrs. Platt, Yungman & Company that it is proper

“To renew the insurance which is existing for the full term of one (1) year and to effect insurance which may be required on new or additional properties for the full term of one (1) year, and no change need be made in that amount until the expiration of the policies in February, March, April and August, 1917, at which time the renewals must be reduced to an amount not in excess of eighty per cent (80%) of the amount which is now being renewed.”

Section 7 of this Act of Assembly provides:

“That, from and after the adoption and approval of this act, it shall be unlawful for any department * * * or any board of trustees, overseers, managers, or other person or persons, or custodians of State property; to purchase, secure, or obtain any policy of insurance on any property owned by the Commonwealth, the term of which policy of insurance shall extend beyond the thirty-first day of December, Anno Domini one thousand nine hundred and fifteen, to purchase, obtain, or

secure any such policy of insurance for any amount in excess of the amount of insurance outstanding at the date of the approval of this act, after deducting from such amount twenty per centum thereof for each calendar year which shall have elapsed from and after the thirty-first day of December, Anno Domini one thousand nine hundred and fifteen, to the date of purchasing, securing, or obtaining such insurance."

Two things are required by the act—

First: That after the passage of the act no insurance, the term of which shall extend beyond the thirty-first day of December, 1920, shall be purchased, and

Second: That when any insurance is purchased after the passage of the act the aggregate of all the insurance shall be measured by twenty per cent. deduction for each calendar year which has elapsed after December 31, 1915.

The purpose of this act is to have the State carry its own insurance. No provision is made for insuring new buildings erected since the passage of the act, and I am advised that the fund created by this act is amply sufficient to protect all such new buildings. It seems to have been the intention of the Legislature that the fund was to provide for insurance upon all new buildings and to gradually reduce the insurance upon all old buildings until December 31, 1920, when the fund would be able to carry all insurance upon all of the properties of the Commonwealth.

I think it was also the intention of the Legislature—and the Act must be so construed—that the amount of insurance outstanding at the date of the approval of the Act should not be increased and, beginning one year after December 31, 1915, the amount should gradually be decreased.

Applying these principles to this case I am of opinion that there was no authority to take \$20,000 additional insurance in 1915 and \$6,500 further additional insurance in April 1916, and that such increase of insurance should be cancelled. When the insurance which was upon the property at the date of the passage of the act expires, it should be renewed by deducting from the aggregate twenty per cent. of \$401,605 or \$80,321 for each year which has elapsed after December 31, 1915; that is to say—any insurance which expires during the year 1916 may be renewed for the full sum of \$401,605, because no calendar year has elapsed after the thirty-first of December, 1915, but the renewal of so much as is in excess of eighty per cent. of this amount should be for one year only; and insurance which expires during the year 1917 should be renewed so that the aggregate shall not amount to more than \$321,284; any insurance which expires during the year 1918 should be renewed so that the aggregate

shall not amount to more than \$240,963; any insurance which expires during the year 1919 should be renewed so that the aggregate shall not amount to more than \$160,642; and any insurance which expires during the year 1920 may be renewed so that the whole amount shall expire December 31, 1920, the period fixed when the fund shall carry all the insurance upon State property.

Very truly yours;

WILLIAM M. HARGEST,

Deputy Attorney General.

BONDS OF OFFICIALS.

Where a Treasurer of a State institution, who is primarily responsible to the Commonwealth, gives a bond for the faithful performance of his duties, it is not necessary that other bonds to cover the disbursement of the same sums should be given by subordinate officers or employees.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1916.

Honorable Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

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

You ask for a construction of the Act of May 28, 1915, P. L. 626, requiring State officials and employees who receive and disburse public moneys, to give bond.

It appears that some boards of trustees of State institutions, in addition to requiring the Treasurer to give bond, also requires bonds from subordinate officials or employees.

I understand the facts which call forth your request to be as follows:

The State Hospital at Warren, Pa., requires both the clerk and the treasurer of the hospital, in the regular routine business, to be bonded in the sum of \$10,000 each, and the steward and the accountant are also required to be bonded. In the case of the State Normal School at Clarion, Pa., the Board of Trustees have required the registrar to be bonded. I assume that this is in addition to the bond given by the treasurer.

The Act of Assembly provides:

“That from and after the passage of this Act, every such State official and employe, and every State official or employe who may hereafter be appointed, who shall

receive and disburse public moneys, and shall be required to make a good and sufficient corporate bond to the Commonwealth, conditioned that he will well and truly account for and pay out, according to law, all moneys received by him in the performance of his official duties; and the amount, when not otherwise provided by law, and character of each bond, and the sufficiency of the surety, shall in all cases be approved by the Attorney General."

The purpose of this Act of Assembly is to protect the Commonwealth in the disbursement of its funds. Where a treasurer of the institution, who is primarily responsible to the Commonwealth, gives a bond for the faithful performance of his duties, it is not necessary for the protection of the Commonwealth that other bonds to cover the disbursements of the same sums should also be given by subordinate officers or employees.

I am, therefore, of opinion that the Act of Assembly contemplates only the giving of the bond by the official who accounts to the Auditor General and State Treasurer for the moneys which are paid to the institution, and that any other bonds which the institution sees fit to require are not contemplated by this statute, or to be paid for by your Department.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

**OPINIONS TO SUPERINTENDENT OF PUBLIC
PRINTING AND BINDING.**

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

PUBLIC PRINTING CONTRACTS.

A contractor for State printing having partially performed his contract and part of his work not having been paid for, the contract price of which was \$40,000, sustained a total loss of his plant by fire. Thereafter the Superintendent of Printing and Binding refused to agree that the contractor might have the rest of the work done elsewhere at contract prices, and had it done by printers of his own selection at market prices, which amounted to a much larger sum than the contract price: Held, that his action excused the contractor from any further performance of his contract; and the Commonwealth had no right to deduct from the amount due under the contract for the work performed any part of the cost of having the rest of the work done elsewhere.

The Act of February 7, 1905, P. L. 1, has no application to such a case.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1915.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and
Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of December 21, 1914, asking in substance to be advised whether the proper State officers, in settling the account of the representatives of Charles E. Aughinbaugh (who was awarded the contract for State Printing and Binding for the period of four years beginning July 1, 1909), against the Commonwealth for printing and binding ordered prior to July 1, 1913, and executed and delivered to and accepted by, the Commonwealth subsequent to that date and prior to April 8th, 1914, should deduct from the amount due said Aughinbaugh under his contract for said accepted work the difference between the cost to the Commonwealth of having certain other printing and binding also ordered prior to said first day of July 1913, but not executed by the said Aughinbaugh for reasons hereinafter stated and the amount which the Commonwealth would have paid the said Aughinbaugh under his said contract for said work if the same had been done by him at his contract prices.

The material facts stated in your communication and developed at the hearing of this matter before this Department, are as follows: Under the provisions of the Act of February 7, 1905, P. L. 1, entitled:

"An act to create the department of public printing
and binding, to carry out the provisions of section 12

(465)

article III of the constitution in relation to the public printing and binding, and the supply of paper and other materials therefor."

Charles E. Aughinbaugh was awarded the contract for State printing and binding for the period of four years beginning July 1, 1909, and gave to the Commonwealth a bond in the sum of \$16,000 with the Security Trust Company of Harrisburg, Pa., and The Empire State Surety Company, as sureties thereon, conditioned, inter alia, that the said Aughinbaugh should faithfully perform said work in the manner prescribed in said act of assembly.

This contract, which provided for the execution of the State printing and binding at 80 $\frac{1}{8}$ per centum below the maximum rates fixed in the schedule forming a part of said act of 1905, was duly performed down until the 8th day of April, 1914, upon which date the Aughinbaugh printery was destroyed by fire. The contract for State printing and binding for the four years commencing July 1, 1913, was awarded to another contractor, but a considerable amount of printing and binding which had been ordered under the said Aughinbaugh contract prior to July 1, 1913, remained unexecuted during the early part of the year 1914. Subsequent to July 1, 1913, and prior to April 8, 1914, the representatives of the said Aughinbaugh executed and delivered and the Commonwealth accepted a quantity of printing and binding for which there is now due from the Commonwealth a balance in the sum of about \$40,000. On the said 8th day of April, 1914, the Aughinbaugh printing establishment was totally destroyed by fire, and the unfinished printing and binding then in process of execution for the Commonwealth was destroyed in part and the remainder damaged to such an extent that it was useless.

The managers of the Aughinbaugh printery did not claim to be excused from the full performance of the contract with the Commonwealth by reason of said fire, but proposed to have the printing and binding, ordered by the Commonwealth but not executed and delivered prior to said fire, done elsewhere for them, and to deliver the same to the Commonwealth at contract prices.

The Superintendent of Public Printing and Binding, being of opinion that under the plans proposed by the representatives of said Aughinbaugh, it would be impossible for them to have the printing and binding in question done within such a period of time as would meet the necessities of the Commonwealth, notified the managers of said Aughinbaugh printery that he would have the unexecuted portion of their contract performed by other printers of his own selection and under his supervision and control. With the consent of the State officers designated in the 9th section of said act of 1905, or a majority of them, the Superintendent of Public Printing and Binding had the said printing and binding originally ordered from

the said Aughinbaugh but not delivered prior to said fire executed at the expense of the Commonwealth by printers of his own selection, at current market prices for such work. The cost to the Commonwealth for the execution of the unperformed portion of the said Aughinbaugh contract at said current market prices, will amount to about \$47,964, whereas the execution of this work at the contract prices specified in the Aughinbaugh contract, would have amounted to only about \$9,735.

The question involved in your inquiry is whether, in settling for that portion of the work performed by the Aughinbaugh representatives and delivered to the Commonwealth prior to the date of said fire, the fiscal officers of the Commonwealth should deduct from said claim which, as above stated, amounts to about \$40,000, the excess of the market prices for the portion of the contract unperformed by Aughinbaugh over the contract prices for the same work.

In your communication you refer to section 9 of said act of 1905, in which section it is provided:

“That it shall be the duty of said Superintendent of Public Printing and Binding to receive and take charge of all the reports made to the Governor by the heads of departments, and have the same printed by the contractor or contractors, and delivered to the proper departments. He shall also arrange all matter to be printed for the Legislature, or either branch thereof, and supervise the printing and binding of the same, causing it to be done in a prompt and workmanlike manner; and whenever the contractor or contractors fail to comply with his or their contract, either in quality of work or in such manner as shall occasion inconvenience to the Legislature, or either branch thereof, or detriment to the public interest, the said Superintendent may reject the work altogether, and, with the advice and consent of the Governor, Auditor General and State Treasurer, employ another printer to execute such part of the work, and charge any excess of cost to the contractor or contractors.”

In my opinion this section has no application to the facts of the present case. It is evidently intended to apply to cases where the contractor tenders what he alleges to be finished work for acceptance by the Superintendent, but which work is defective in quality, or has been unreasonably delayed in execution. In such cases the Superintendent is authorized to reject the work and, with the advice and consent of the State officers mentioned, employ another printer to execute the work and charge any excess of cost to the contractor.

All of the work actually tendered by the contractor prior to the fire was accepted and no tender was made of the work damaged by the fire. It therefore becomes necessary to dispose of the matter

upon general principles of law. It is unnecessary to consider the rights of the Commonwealth against the sureties on the contractor's bond, because the Commonwealth has it within its power to protect itself in settling with the contractor.

We have here then a case of non-performance by the contractor of a part of his entire contract. What occasioned the non-performance? The contractor, after the fire, tendered performance within a time which he claimed would be a reasonable time, but the representatives of the Commonwealth, being of opinion that the performance tendered by the contractor was of such a character that the necessary activities of the Commonwealth would be unduly delayed, refused to permit the contractor to proceed with the work and took the execution of the balance of the contract out of his hands. In my opinion this action upon the part of the State officers excused the contractor from complete performance of his contract.

"It is a sound principle that he who prevents a thing being done shall not avail himself of the non-performance he has occasioned."

United States vs. Peck, 102 U. S. 64.

I am, therefore, of opinion that, under the circumstances of this case, the proper fiscal officers of the Commonwealth would not be justified in deducting from the amount due under the Aughinbaugh contract for work executed and delivered to the Commonwealth prior to the date of said fire any amount whatever by reason of the increased cost to the Commonwealth of securing performance of that portion of the Aughinbaugh contract which remained unperformed at the date of said fire.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE PRINTING OF LEGISLATIVE BILLS.

The forms on which legislative bills and calendars shall be printed is provided for by the Act of 1911 and may not be changed until such change is authorized by legislative action.

Office of the Attorney General,
Harrisburg, Pa., February 22, 1916.

Hon. A. Nevin Pomeroy, Superintendent Public Printing and Binding, Harrisburg, Pa.

Sir: Answering your letter of recent date, relative to the form of legislative bills and calendars, as referred to in communications addressed to you by W. Harry Baker, Secretary of the Senate, I beg to advise you as follows:

The inquiry is based on the suggestion that it would be advisable to have the legislative bills printed the same size and style as the advance Acts are now printed. The thought is, as I understand it, that if this could be done, there would not only be a great saving to the State in the way of purchasing paper and on account of the fact that in many cases the bills would not have to be reset for the Pamphlet Laws, but it would also result in a great convenience to the Senators and Members and all others who handle these bills. Undoubtedly, the suggestion is a very meritorious one. Unfortunately, however, the Public Printing and Binding Act of May 11, 1911, P. L. 210, provides in Section 8 thereof (being an amendment of Section 25 of the Act of February 7, 1905) specifically and in detail for the size of the pages, form, size of type, etc., of legislative bills and calendars, and Section 15 of the same Act (being an amendment of Section 42 of the Act of 1905) specifically provides (page 226) for the manner of payment for printing, folding, tipping, sewing and delivery of such legislative bills and calendars, based, of course, on their production under Section 8 of the same Act above referred to.

Obviously, therefore, in the absence of any discretionary power in the Department of Public Printing and Binding or elsewhere, given either in this Act or by any subsequent legislation, there would be no authority to change the mandate of the Legislature, notwithstanding it might be desirable and advantageous to do so.

There is nothing in the Act of 1911 giving any authority to your Department to alter the terms and conditions under which the printing and binding therein provided for is to be done and paid for, and there has been no subsequent legislation on the subject.

You are accordingly advised that the form of legislative bills and calendars as provided for by the Act of 1911, may not be changed, but will have to be printed and produced in accordance with the terms of the Act until a change is authorized by legislative action.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

CONTRACT FOR PRINTING.

The contract for State printing cannot be extended beyond its expiration, with the consent of the contractor. A new contract in accordance with the Act of Assembly must be let.

Office of the Attorney General,
Harrisburg, Pa., December 14, 1916.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

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

You ask to be advised whether, by agreement with the contractor, you have any power to extend the present contract for printing which expires July 1, 1917, to January 1, 1918, under the present law relating to that subject.

The Act of February 7, 1905, P. L. 3, which was amended by the Act of May 11, 1911, P. L. 210, provides:

*"That on the fourth Tuesday of February, one thousand nine hundred and five, and on the fourth Tuesday of February in every fourth year thereafter, the Superintendent of Public Printing and Binding hereinafter provided for, shall receive proposals for executing the public printing and binding for the term of four years, from the first day of Tuesday following * * * * * and the said Superintendent of Public Printing and Binding shall, at twelve o'clock meridian on said day, open all proposals received," etc.*

This is a positive legislative direction fixing, not only the day on which the proposals are to be received, but the day upon which the contract is to begin, and the term of that act.

This language leaves no room for doubt or construction. There is no authority to extend that act without violating the Act, because, if such extension were made the new contract would not begin on every fourth year after one thousand nine hundred and five.

I am, therefore, of opinion that, without further legislative authority, the present contract for printing cannot be extended, even with the consent of the contractor.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE ADJUTANT GENERAL AND
STATE ARMORY BOARD.**

OPINIONS TO THE ADJUTANT GENERAL AND STATE ARMORY BOARD.

SCRANTON ARMORY.

The cost of building a new foundation for the Scranton Armory should be charged to the appropriation for the erection and completion of armories, and not to the appropriation for repairs and maintenance.

Office of the Attorney General,
Harrisburg, Pa., August 30, 1915.

Hon. Benjamin W. Demming, Secretary Armory Board, Harrisburg, Pa.

Dear Sir: Your favor of the 20th inst., addressed to the Attorney General is at hand.

You ask to be advised whether the necessary work to be done to protect the Scranton Armory can be paid out of the appropriation for the erection of armories.

The facts, as I understand them, are as follows:

There was a serious cave-in or subsidence of the surface of the ground in the city of Scranton, on part of which ground the Scranton Armory is located, which sinking did considerable damage to said armory; that in order to make the armory building safe it will be necessary to sink one or more shafts, run a driveway to a point below the foundations of the Armory and, if conditions then permit, to erect supports of concrete or other material and to shore up the drill shed and armory building, and also place the Armory building in safe and habitable condition; that the expense of this work will amount to somewhere between twenty-five and fifty thousand dollars, the largest portion of which will be for the construction of supports and subterranean foundations which do not now exist, and are not now a part of the Armory Building.

I also understand that the Armory Board desires, if possible, to pay this extraordinary expense out of the appropriation for the erection of armories and I note from your letter that it has been the practice to pay out of the appropriation for erection, for items of extraordinary expenditure in connection with armories and that if this payment is made out of your appropriation for maintenance and repairs, "it would mean a decided deficiency in the appropriation for the support and maintenance of some forty-five other armories located in various parts of the State for the two fiscal years ending May 31, 1917."

At first blush this would seem to be within the category of repairs, but the work which has to be done consists of new foundations and new supports for the building which are no part of the present structure. Your present appropriation for repairs is designated "for the purpose of managing and caring for armories heretofore erected or provided, and to be erected or provided, for the two fiscal years beginning June 1, 1915, and to cover necessary repairs and contingent expenses in the maintenance of armories, premiums for fire insurance, title insurance, etc."

"Repair * * * * does not mean to make a new thing, but to re-fit, make good or restore an existing one."

Todd vs. Inhabitants of Rowley, 90 Mass. 51, 56.

"Repair a building means to replace it as it was, or to restore it after dilapidation, not to enlarge or elevate it by raising it from one to two or more stories or to extend its sides."

Douglas vs. Com'th. 2 Rawle 262.

It has also been held that altering or repairing did not even include putting a lightning rod on a house.

Drew vs. Mason, 81 Ill. 498.

And it has also been held that "repair" does not mean "reconstruction."

Tarrehe vs. City of Keokuk, 111 Ia. 310, 82 N. W. 773.

I am, therefore, of the opinion that the large portion of this expenditure for additional new subfoundations and supports, which were no part of the original building, are not strictly within the term "repairs" as used in the appropriation for that purpose.

Moreover, inasmuch as there is but \$120,945.00 appropriated for "the managing, and caring for armories * * * * and to cover the necessary repairs and contingent expenses in the maintenance of armories, premiums of fire insurance, title insurance, advertising for bids, actual traveling expenses of members of the Armory Board of the State of Pennsylvania, clerical and general expenses of the Board and expenses of inspection of armories," it would seem that the Legislature never intended that item to cover anything beyond the ordinary repairs which were likely to be needed and which could be foreseen, to the forty or more armories to which it applies. It was not intended to cover expenses made necessary by an unusual and unexpected occurrence.

It is apparent that the conditions require prompt action in order to protect the armory property from further damage. The work to be done must be paid for out of some appropriation, either for erecting and completing armories, or the appropriation for maintenance and repairs.

From what has heretofore been said, I am of opinion and so advise you, that the expenditure for this purpose should be charged to the appropriation for the erection and completion of armories and not to the appropriation for repairs and maintenance.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE APPOINTMENT OF U. S. ARMY OFFICER TO NATIONAL GUARD.

There is nothing in the Constitution or laws of Pennsylvania which would prevent an officer of the U. S. Army accepting an appointment and commission as an officer of the National Guard of Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., April 25, 1916.

General Thomas J. Stewart, Adjutant General, Harrisburg, Pa.

Sir: Your favor of this date, addressed to the Attorney General, is at hand.

You state that the Governor desires to appoint Captain Charles C. Allen, of the United States Army, Colonel of the First Infantry, National Guard of Pennsylvania, and that the War Department will grant permission to Captain Allen to accept the appointment and commission in the National Guard of Pennsylvania, providing that neither the Constitution nor the laws of this State render it illegal for an officer of the United States Army to be commissioned as an officer of the National Guard of Pennsylvania, and that the War Department desires an opinion of this Department upon this subject.

I have to advise you that there is nothing in the Constitution or laws of the Commonwealth of Pennsylvania which makes it incompatible for an officer of the United States Army to be appointed and commissioned as an officer of the National Guard of Pennsylvania.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE STATE BOARD OF VETERIN-
ARY EXAMINERS AND STATE VETERINARIAN.**

OPINIONS TO THE STATE BOARD OF VETERINARY EXAMINERS AND STATE VETERINARIAN.

VETERINARY MEDICINE.

All the provisions of the Act of May 5, 1915, P. L. 248, apply alike to the practice of veterinary medicine, veterinary surgery and veterinary dentistry. The act is one "regulating the practice of veterinary medicine, including veterinary surgery and veterinary dentistry or any branch thereof." The practice of castration of domestic animals is a branch of veterinary surgery, and the Act of May 5, 1915, P. L. 248, is a complete regulation of the entire subject-matter, all prior acts being therein expressly repealed. Any person legally engaged in the practice of castration of domestic animals at the time of the passage of the Act of 1915 is entitled to continue such practice upon application to the Board of Veterinary Medical Examiners, paying the fee and conforming to the requirements of the act. As to persons not heretofore engaged in this practice, all the provisions of the Act of 1915 apply. If it was not so intended, it must be remedied by future legislation. Under section 22, the Board of Veterinary Medical Examiners may appoint agents to carry on prosecutions under the act.

Office of the Attorney General,
Harrisburg, Pa., September 23, 1915.

Dr. J. W. Sallade, Secretary Pennsylvania State Board of Veterinary Medical Examiners, Auburn, Pa.

Sir: This Department is in receipt of your several inquiries relative to the Act of May 5, 1915, P. L. 248, regulating the practice of veterinary medicine, etc.

In answer to your first inquiry, to wit, "How can the Board regulate veterinary dentistry," you are advised as follows:

The title of the Act is:

"An act regulating the practice of veterinary medicine, including veterinary surgery, and veterinary dentistry, or any branch thereof," etc.

Section 2 of the Act provides:

"* * * The term 'veterinary medicine' includes veterinary medicine, veterinary surgery, and veterinary dentistry or any branch thereof."

And Section 4 provides:

"'Veterinarian' includes a veterinary physician or veterinary surgeon or veterinary dentist."

You will note that the regulation of the practice of veterinary dentistry is specifically provided for by this Act.

Section 26 of the Act provides that the Act shall go into effect on the first day of September, 1915, and Section 11 of the Act provides that thereafter

“* * * no person shall practice veterinary medicine or assume to use the title of veterinarian or the title of doctor of veterinary medicine, unless he shall” comply with the provisions of the Act as therein provided.

You are, therefore, advised that all the provisions of this Act of Assembly apply alike to the practice of veterinary medicine, veterinary surgery and veterinary dentistry.

Relative to your second inquiry, you are advised as follows: as already indicated, the Act of Assembly is one regulating the practice of veterinary medicine, including veterinary surgery and veterinary dentistry, *or any branch thereof.*” It is obvious that the practice of castration of animals is clearly a branch of veterinary surgery. Moreover, the Act of 1915 seems to be a complete and comprehensive regulation of the entire subject matter therein referred to, inasmuch as all the previous Acts of Assembly relating to the same subject matter are therein repealed.

An examination of the repealed Acts shows that the Act of May 29, 1901, (P. L. 36), in section 1 thereof, amended Section 4 of the Act of 1889, (P. L. 28), as follows:

“Provided, That nothing in this Act shall apply or be taken or construed to apply to persons who practice castration of domestic animals and no other form of veterinary medicine or surgery.”

The same exception was made by Section 10 of the Act of May 16, 1895, (P. L. 79).

Inasmuch as these Acts are repealed by the Act of 1915 and the latter Act does not include the same exemption or exception, the Act of 1915 applies to persons who practice castration of domestic animals.

However, Section 10 of the Act provides that

“Any persons who, at the time of the passage of this Act, shall be legally licensed to practice veterinary medicine shall be entitled to a license to continue such practice upon making application to the Board and pay proper fee and conform to its requirements.”

This provision, so far as it applies to persons who practiced castration of domestic animals heretofore must not be construed literally. Inasmuch as such persons were specifically exempted from the requirement to register under the prior Acts of Assembly repealed, they had the legal right to engage in such practice without formal registration of any kind at the time of the passage of the Act of 1915, and

therefore and person who was legally engaged in the practice of castration of domestic animals at the time of the passage of the Act of 1915, is entitled to receive a license to continue such practice under the Act upon making application to the Board and paying proper fee and conforming to its requirements. As to persons, however, not heretofore engaged in this practice, all the provisions of the Act of 1915 apply for the reasons above set forth and if it was not intended that this Act should be so comprehensive it must be remedied by future legislation.

Answering your third inquiry as to whether or not the Act permits your Board to appoint agents to carry on prosecutions in the various counties of the State, your attention is called to Section 22 of the Act, which provides that

“* * * the Board or its legally authorized agent, acting for the Commonwealth of Pennsylvania, shall be the prosecutor in all such cases.”

You are advised that under this Section your Board may appoint agents to carry on prosecutions under the Act.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE VETERINARY PROSECUTION.

Under the Act of May 5, 1915, P. L. 248, the State Board of Veterinary Medical Examiners need not pass on each case of violation of the law, but may appoint an agent and give such agent general authority to become prosecutor for violations of the act and also authority to collect fines and penalties recovered for violation thereof.

Office of the Attorney General;
Harrisburg, Pa., February 10, 1916.

Dr. J. W. Sallade, Secretary, State Board of Veterinary Medical Examiners, Auburn, Pa.

Sir: I have your favor of the 2nd inst. inquiring as to whether the agent of the State Board of Veterinary Medical Examiners, holding a general authorization, may proceed to prosecute flagrant cases of violation of the Act of May 5, 1915, (P. L. 248), without submitting the evidence to the Board and receiving special authorization to proceed.

By Section 24 of the Act of May 5, 1915, *supra*, it is provided, *inter alia*:

"The Board or its legally authorized agent, acting for the Commonwealth of Pennsylvania, shall be the prosecutor in all such cases. All fines and penalties for violation of this act shall be for the use of the Commonwealth, and shall be paid to the Board or its duly authorized agent, and by the Board paid into the State Treasury."

The Act of 1915 is much broader in this respect than the Act of April 18, 1905, (P. L. 209). In that Act it was provided with respect to violation of the provisions thereof:

"Said State Board of Veterinary Medical Examiners shall be the prosecutor in all such cases."

The Act of 1915 does not require that the Board, as a Board, shall pass upon each case of violation of the law and order prosecution, but permits such prosecution to be brought by its duly authorized agent.

I beg to advise you, therefore, that the Board may appoint an agent and give such agent general authority to become prosecutor for violations of the Act, and also authority to collect fines and penalties recovered for violation thereof, and when such authority has been given the agent thus duly authorized may institute prosecutions for violation of the Act without submitting the evidence to your Board and receiving special authorization to proceed.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE MEAT INSPECTION--GLASS CASES.

The State Livestock Sanitary Board, under the Act of May 28, 1915, P. L. 587, has the right to make any regulation which may be necessary to protect the public health, and may compel dealers in meat to protect it by placing it within glass cases.

Office of the Attorney General,
Harrisburg, Pa., February 16, 1916.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: Your favor of recent date, addressed to the Attorney General, is duly received. You ask to be advised whether the State Livestock Sanitary Board can enforce a regulation requiring meats to be placed in glass cases.

The Act of May 28, 1915, P. L. 587, provides in Section 9 that

“It is unlawful in an establishment to permit any meat or meat-food product to be touched or handled by any person other than the owner, lessee, or manager of an establishment, or other than the agent or employe of such owner, lessee, or manager, or to permit any meat or meat-food product to be exposed to insects, animals or fowls.”

Section 20 provides that the Act shall be enforced by the Livestock Sanitary Board and

“To that end it may adopt and promulgate such rules and regulations as it may deem necessary. So far as practicable the regulations of the meat hygiene service of the United States Department of Agriculture shall be included in the rules and regulations of the Board.”

This Act is an Act for the protection of the public health. It must be reasonably construed to effectuate that purpose. It prohibits meat and meat-food products from being exposed to insects, animals and fowls. The Board has the right to make any regulation which will carry out the purpose of the Act. It has no right to make regulations which will be broader in scope than the terms of the Act. If there is no other satisfactory method, in the judgment of the Livestock Sanitary Board, by which meat and meat-food products may be protected from exposure to insects, animals or fowls, then a regulation requiring meats and meat-food products to be placed or confined in a glass case would be reasonable and sustainable under the language of this Act.

If, on the other hand, wire netting or any other protection is adequate to prevent meat and meat-food products from being exposed to insects, animals or fowls, then the Board cannot require a glass case.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General,

**OPINIONS TO THE DAIRY AND FOOD
COMMISSIONER.**

OPINIONS TO THE DAIRY AND FOOD COMMISSIONER.

MANUFACTURE OF FLOUR.

It is not lawful to manufacture flour in Pennsylvania by a process which bleaches the flour and produces nitrous acid and nitrates, for shipment to other States, but not for consumption or sale in Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., August 20, 1915.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: I beg to acknowledge yours of August 6th requesting my opinion as to the right of a flour manufacturing company to manufacture flour in Pennsylvania by a process which bleaches the flour and produces nitrous acid and nitrates, for shipment to Virginia, North and South Carolina, Florida, and Georgia, but not for sale or consumption in Pennsylvania.

Whilst the primary object of this and similar acts is the protection of the people of Pennsylvania, and whilst such flour might be put in packages marked "not for sale in Pennsylvania," and whilst possibly none of it ever would be offered for sale here, yet the Act of May 13, 1909, is absolutely prohibitive. That Act makes it unlawful to manufacture, sell, offer for sale, etc., such flour in this State.

Knowing as I do the high character of your inquirers, I have no doubt that they would see to it that as far as lay within their power, none of the flour so manufactured would be sold or used in this State.

It is unfortunate that this Company should be deprived of the opportunity to employ labor, etc., within this Commonwealth to manufacture an article which is legally saleable in other states, and which would not, in fact, and could not legally, be sold and used here, and should be compelled to go into those states, erect mills, etc., etc., there and thus deprive our State of an active industry, but the language of the law is so plain that the opinion which I have herein given you is inevitable.

I remain,

Yours very truly,
FRANCIS SHUNK BROWN,
Attorney General.

BLEACHED FLOUR MAY NOT BE MANUFACTURED OR SOLD IN PENNSYLVANIA.

Flour which is bleached by the "chlorine method" is "adulterated" within the meaning of the Act of May 13, 1909, P. L. 520, if it either (a) adds ingredients deleterious to health, or (b) conceals damage or inferiority, (c) deceives or misleads the purchaser, (d) makes the flour better or of a greater value than it is.

The said act forbids not only the sale of such products, but "having in possession with intent to sell." Accordingly, adulterated flour may not be manufactured in this State for sale outside.

Office of the Attorney General,
Harrisburg, Pa., October 21, 1915.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Your favor of recent date, requesting an opinion "as to whether flour bleached by the chlorine method can be sold in Pennsylvania," is at hand.

I understand a reputable flour mills company of this State desires to make flour and bleach the same by what is known as the "chlorine method," and that such flour is not for consumption in this State but for sale outside of the State of Pennsylvania; that it is an open question whether this method of bleaching adds "ingredients deleterious to health."

Section 1 of the Act of May 13, 1909, P. L. 520, makes it unlawful "to manufacture, sell, offer for sale, expose for sale, or *have in possession with intent to sell, any article* of food which is adulterated or misbranded within the meaning of this Act."

There is no doubt that flour is food, within the definition of the Act.

Section 3 provides that an article of food shall be deemed to be adulterated, among other things, "if it be mixed, colored, or changed in color, coated, polished, powdered, stained or *bleached*, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or *if by any means it is made to appear better or of greater value than it is.*"

It is also deemed to be adulterated if it contains "any added ingredients deleterious to health." The Act prohibits a number of chemicals in food in any quantities but I am not advised that the chlorine method includes any of them. It may be an open question as to whether this method would add "ingredients deleterious to health."

What is the purpose of the bleaching? Why should flour be bleached? Such bleaching manifestly does not increase the food value of the flour, although it may not decrease it.

There is nothing before me by which I can determine as a fact the effect of the bleaching upon the flour or upon the purchaser thereof, but, if in fact bleaching by the chemical process, either (a) adds in-

gredients deleterious to health, or (b) conceals damage or inferiority, or (c) deceives or misleads the purchaser or (d) makes the flour appear better or of greater value than it is, such bleaching would adulterate the flour within the meaning of the Statute.

Being thus adulterated, can it be sold for shipment outside of the State of Pennsylvania? The Act prohibits not only the sale of it, but "*having in possession with intent to sell*" any article adulterated or misbranded, within the meaning of the Act.

Very recently the Attorney General advised you that it was the violation of this statute "to have in possession with intent to sell," flour bleached by nitrous acid and nitrates, although the flour was intended for shipment to other States and not for sale and consumption in Pennsylvania.

The Oleomargarine Act contains the same language; that is to say, it prohibits "having in possession with intent to sell" colored oleomargarine, and it has uniformly been interpreted to prevent the shipment of colored oleomargarine from Pennsylvania into other states.

I therefore advise you that "having in possession with intent to sell" flour bleached by the chlorine method if such bleaching "adulterates" the flour as above indicated, is a violation of the Act of Assembly above mentioned, even though the sale of such flour is to be affected and the shipment made to other states and that such flour is not for consumption in Pennsylvania.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General,

IN RE PURE FOOD LAWS.

If after purchase and analysis of a bottle of catsup from the shelves of a store of a retail merchant in Pennsylvania, such catsup is found to violate the pure food laws of this State, such laws may be enforced even though the catsup has been shipped from Rochester, New York, and is sealed and labeled in conformity with the National Food and Drugs Act of June 30, 1906. *McDermott vs. Wisconsin*, 228 U. S. 115, explained.

Office of the Attorney General,
Harrisburg, November 19, 1915.

Hon. James Foust, Dairy & Food Commissioner, Harrisburg, Pa.

Sir: Your favor of recent date was received. You propound the following question:

"If a box containing two or more dozen bottles of catsup, properly sealed and labeled in conformity with the National Food and Drugs Act of June 30, 1906, and

shipped from another state to a retail merchant in Pennsylvania, is opened and the bottles placed upon the shelves of the store for sale, and upon purchase by an agent of this Department and on analysis, the catsup is found to violate the Pure Food laws of this State, can the Pennsylvania laws be enforced?"

With your request you submit a copy of a letter of the State Food and Drug Commissioner of Indianapolis and an opinion of the Attorney General of Indiana; all to the effect that there can be no interference with a grocer who sells to his customer a single bottle of catsup, if it complies with the National Food and Drug Act, even though it violates the laws of the State, when such bottle of catsup was a part of a shipment from another state and originally packed in a larger case or box.

Your inquiry and the correspondence submitted are the result of a misconstruction of the case of *McDermitt vs. Wisconsin*, 228 U. S. 115, 57 *Lawyers Edition*. 754. The impression prevails since the opinion in that case, that a State cannot enforce its pure food laws against single, sealed packages of food misbranded or adulterated according to State laws, if such single packages comply with the provisions of the National Food and Drugs Act of June 30, 1906, (34 St. at Large, 768, Chapter 3915, U. S. Comp. Stat. Supp. 911, page 1354). This impression is not justified by the decision itself. The precise questions in that case were,

First. Whether the word "package" as used in the Food and Drugs Act was limited to "original package" as understood in interstate commerce, or whether it included the goods upon the shelves of a local merchant for sale.

Second. Whether the Wisconsin law, which required the goods to contain the exclusive labels provided by that statute, and, in effect, prohibited the labels required under the National Food and Drugs Act, was beyond the power of the State to enforce.

The plaintiff in error, a retail merchant in Oregon, Wisconsin, was convicted of violating the Wisconsin statute because he had in his possession with intent to sell and offered for sale, "Karo Corn Syrup" which was not labeled according to the Wisconsin law providing that "the mixture or syrups designated in this section *shall have no other designation or brand than herein required,*" etc. He had purchased from wholesale grocers in Chicago twelve half gallon tin cans of Karo Corn Syrup, the shipment being made in wooden boxes containing the cans, and when the goods were received at the store, the cans were taken from the original boxes and placed on the shelves for sale, at retail. The cans were labeled in accordance with the National Pure Food and Drugs Act. That Act provides, as stated in the opinion of *McDermott vs. Wilson*, page 130:

"And as to food, if it shall be labeled or branded so as to deceive or mislead a purchaser, or purport to be a foreign product when not so, or, if the contents of the *package* as originally put up shall have been removed in whole or in part, and other contents placed in such *package*; or, if the *package* fail to bear a statement of the label as required, or, if in *package* form and the contents are stated in terms of weight or measure, and they are not plainly and correctly stated on the outside of the *package*; or, if the *package* containing it or its label contain any design or device regarding the ingredients or the substances contained therein which are false or misleading in character, the food shall be deemed misbranded."

The Court, speaking through Mr. Justice Day, said:

"That the word 'package' or its equivalent expression, as used by Congress in sections 7 and 8 in defining what shall constitute adulteration and what shall constitute misbranding within the meaning of the act, clearly refers to the immediate container of the article which is intended for consumption by the public, there can be no question. *And it is sufficient, for the decision of these cases, that we consider the extent of the word 'package' as thus used only, and we therefore have no occasion, and do not attempt, to decide what Congress included in the terms 'original unbroken package,' as used in the second and tenth sections, and 'unbroken package' in the third section.* Within the limitations of its right to regulate interstate commerce, Congress is manifestly aiming at the contents of the package as it shall reach the customer, for whose protection the act was primarily passed, and it is the branding upon the package which contains the article intended for consumption itself which is the subject matter of regulation. Limiting the requirements of the act as to adulteration and misbranding simply to the outside wrapping or box containing the packages intended to be purchased by the consumer, so that the importer, by removing and destroying such covering, could prevent the operation of the law on the imported article yet unsold, would render the act nugatory and its provisions wholly inadequate to accomplish the purposes for which it was passed."

The Court also said, page 135:

"In the view, however, which we take of this case, it is unnecessary to enter upon any extended consideration of the nature and scope of the principles involved in determining what is an *original package*. For, as we have said, keeping within its Constitutional limitations of authority, Congress may determine for itself the character of the means necessary to make its purpose effectual

in preventing the shipment in interstate commerce of articles of a harmful character, and to this end may provide the means of inspection, examination, and seizure necessary to enforce the prohibitions of the act."

And on page 136:

"To determine the time when an article passes out of interstate into state jurisdiction for the purpose of taxation is entirely different from deciding when an article which has violated a Federal prohibition becomes immune. The doctrine (of original package) was not intended to limit the right of Congress, now asserted, to keep the channels of interstate commerce free from the carriage of injurious or fraudulently branded articles, and to choose appropriate means to that end. The legislative means provided in the Federal law for its own enforcement may not be thwarted by state legislation having a direct effect to impair the effectual exercise of such means."

The Court held that Congress could employ the means to keep interstate commerce free from misbranded articles, even to an inspection on the shelves of a retail grocer after the goods had been removed from the "original package," as known in interstate commerce.

The Court also held that a State statute which interfered with such supervisory power over the avenues of commerce was an excessive and illegal exercise of the State's power.

This is the full extent to which the case of *McDermott vs. Wisconsin* goes.

There is no Pennsylvania pure food statute which excludes, or requires the obliteration of, any labels placed on foods under the United States Food and Drugs Act, nor is there any Pennsylvania statute which interferes with the inspection by the Federal authorities of goods either in original packages, or upon the shelves of retail merchants.

The precise question, then, is whether a Pennsylvania statute may be enforced even if its provisions go farther than the Federal law, but do not interfere with the operation of the Federal statute.

Referring again to the much discussed case of *McDermott vs. Wisconsin*, it is seen that the Court was careful to say in terms that the regulations of Congress would not prevent enforcement of similar regulations by a State for the protection of its people.

Mr. Justice Day said, page 131:

"While these regulations are within the power of Congress, it by no means follows that the state is not permitted to make regulations, with a view to the protection of its people against fraud or imposition by impure food

or drugs. This subject was fully considered by this court in *Savage v. Jones*, 225 U. S. 501, 56 L. Ed. 1182, 32 Sup. Ct. Rep. 715, in which the power of the state to make regulations concerning the same subject matter, reasonable in their terms, and not in conflict with the act of Congress, was recognized and stated, and certain regulations of the state of Indiana were held not to be inconsistent with the food and drugs act of Congress."

Again, on pages 133, 134:

"Conceding to the state the authority to make regulations consistent with the Federal law for the further protection of its citizens against impure and misbranded food and drugs, we think to permit such regulation as is embodied in this statute is to permit a state to discredit and burden legitimate Federal regulations of interstate commerce, to destroy rights arising out of the Federal statute which have accrued both to the government and the shipper, and to impair the effect of a Federal law which has been enacted under the Constitutional power of Congress over the subject."

The essence of the decision is found in these words, pages 132-134;

"To require the removal or destruction before the goods are sold of the evidence which Congress has by the Food and Drugs Act, as we shall see, provided may be examined to determine the compliance or non-compliance with the regulations of the Federal laws, is beyond the power of the State. The Wisconsin Act which permits the sale of articles subject to the regulations of interstate commerce only upon condition that they contain the exclusive labels required by the statute is an act in excess of its legitimate power."

The question you propound is practically settled by the case of *Savage vs. Jones*, 225 U. S. 501, 56 L. Ed. 1182.

That was a suit to restrain the State chemist of Indiana from enforcing an act of that state relating to concentrated commercial feeding stuffs. It was alleged that the Indiana Act which required certain labels to be affixed to the package, disclosing in part the ingredients and also required certain stamps purchased from the State chemist should be attached as an inspection fee, interfered with interstate commerce and also because Congress had legislated upon the subject by the National Food and Drugs Act, its jurisdiction was exclusive, and therefore the Indiana Act could not be enforced as to packages received from outside the State and sold by the importing purchaser in the same packages.

The Court held that the Act was not an unconstitutional regulation of interstate commerce, and also, as stated in the syllabus in 56 Law. Ed. 1183, that:

"Congress did not by the passage of the Food and Drugs Act of June 30, 1906, for the prevention of adulteration and misbranding of foods and drugs when the subject of interstate commerce, preclude the enactment of the Indiana Act prohibiting sales of concentrated commercial feeding stuffs *in the original packages*, unless there be a compliance as to inspection and analysis and the disclosure of ingredients * * * * and with its incidental provisions for the filing of a certificate, for registration, and for labels and stamps."

Mr. Justice Hughes, writing the opinion of the Court, said, page 524:

"The State cannot, under cover of exerting its police powers, undertake what amounts essentially to a regulation of interstate commerce, or impose a direct burden upon that commerce." (Citing many authorities).

"But when the local police regulation has real relation to the suitable protection of the people of the State, and is reasonable in its requirements, it is not invalid because it may incidentally affect interstate commerce, provided it does not conflict with legislation enacted by Congress pursuant to its Constitutional authority." (Citing many authorities).

And on page 526, quoting from *Plumly vs. Mass*, 155 U. S. 461, he said:

"Such legislation may, indeed, directly, or incidentally affect trade in such products transported from one state to another state. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of Congress to regulate commerce among the several states."

Again, on page 529:

"The object of the Food and Drugs Act is to prevent adulteration and misbranding, as therein defined. It prohibits the introduction into any state from any other state 'of any article of food or drugs which is adulterated or misbranded, within the meaning of this act.' The purpose is to keep such articles 'out of the channels of interstate commerce, or, if they enter such commerce, to condemn them while being transported or when they have reached their destinations, provided they remain unloaded, unsold or in original unbroken packages.'"

And on page 532:

"Can it be said that Congress, nevertheless, has denied to the state, with respect to the feeding stuffs coming from another state and sold in the original packages, the power the state otherwise would have to prevent imposition upon the public by making a reasonable and

non-discriminatory provision for the disclosure of ingredients, and for inspection and analysis? If there be such denial it is not to be found in any express declarations to that effect. Undoubtedly Congress, by virtue of its paramount authority over interstate commerce, might have said that such goods should be free from the incidental effect of a state law enacted for these purposes. But it did not so declare."

In the case of *Simpson vs. Sheperd*, 230 U. S. 352, 57 D. Ed. 1511, the Court said:

"State inspection laws and statutes designed to safeguard the inhabitants of a state from fraud and imposition are valid when reasonable in their requirement, and not in conflict with Federal rules, although they may affect interstate commerce in their relation to articles prepared for export, or by including incidentally those brought into the state and held for sale in the original imported packages."

If the State can, as decided in *Savage vs. Jones*, require an additional label disclosing ingredients and also stamps covering cost of inspection *to be attached to the original package*, without unconstitutional interferences with interstate commerce, or with the operation of the National Food and Drugs Act, it certainly can enforce its own laws when food in violation thereof is offered for sale by a citizen of the State to other citizens of the State, even though the food was imported from another State.

It is therefore clear that the pure food statutes of the State of Pennsylvania which do not interfere with the labeling provided by the National Food and Drugs Act, or with the inspection of the Federal authority under that Act, do not even incidentally interfere with interstate commerce.

There is another consideration. The enforcement of the pure food laws of the State practically begins where the Federal control ends.

In the case of *McDermott vs. Wisconsin*, it is said in the opinion, page 136:

"To make the provisions of the act effectual, Congress has provided not only for the seizure of the goods while being actually transported in interstate commerce, but has also provided for such seizure after such transportation and while the goods remain 'unloaded, unsold or in original and unbroken packages.' The opportunity of inspection enroute may be very inadequate. The real opportunity of government inspection may only arise when, as in the present case, the goods as packed have been removed from the outside box in which they were shipped, and remain, as the act provides, 'unsold.' It is enough, by the terms of the act, if the articles are unsold, whether in original packages or not."

The Pennsylvania statutes usually contain the language making it illegal to "sell, offer for sale, expose for sale or have in possession with intent to sell," any adulterated or misbranded article of food.

The Federal statute follows the goods from another state into Pennsylvania and on the shelves of the retail merchant. When the goods get upon the shelves of the retail merchant the State inspection begins. There is no conflict of authority. The enforcement of Pennsylvania laws against goods on shelves of a retail merchant, is not even an incidental control of interstate commerce, nor is it any interference with Federal inspection.

I am aware that this opinion does not appear to be in harmony with the case of *Corn Products Refining Company vs. Weigle*, 221 *Federal Reporter*, 998, and the decree entered in that case which is before me, but not reported, certainly is not in harmony with this opinion, but there is no case in the United States Supreme Court which has gone to the length of the case just quoted, and, as I understand the decisions of that Court, the case of *Corn Products Refining Company, vs. Weigle* has gone farther than any other case in that it completely ousts State inspection of goods that were once in interstate commerce, if such goods happen to be labeled in conformity with the National Food and Drugs Act, and prevents the operation of any State statute upon such goods, even as between the retail resident dealer and the resident consumer of the State. I cannot agree that the passage of the National Food and Drugs Act has such sweeping effect in destroying the police power of the State.

Therefore, specifically answering your inquiry, I am of opinion that after purchase and analysis of a bottle of catsup from the shelves of a store of a retail merchant in Pennsylvania, such catsup is found to violate the pure food laws of this State, such laws may be enforced, even though the catsup has been shipped from another state and is sealed and labeled in conformity with the National Food and Drugs Act of June 30, 1906.

I return herewith the correspondence submitted with your request.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General,

SALE OF OLEOMARGARINE.

A merchant, holding a license to sell oleomargarine at retail, cannot take orders therefor in cities and towns, other than the one designated in his license, and subsequently fill such orders by delivering the oleomargarine from his licensed place of business.

Office of the Attorney General,
Harrisburg, Pa., February 3, 1916.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Your favor of January 25, requesting an opinion of this Department as to whether a merchant holding a license to sell oleomargarine at retail, can take orders for the product in cities and towns other than the one designated in the license, and fill such orders by delivering the product by vehicle or otherwise, is at hand.

The oleomargarine law of May 29, 1901, which was amended by the Act of June 5, 1913, P. L. 412, provides in Section 1

"That no person, firm, or corporation shall, by himself, herself, or themselves, or by his, her or their agent or servant, nor shall any officer, agent, servant or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell, oleomargarine * * * * unless such person, firm or corporation shall have first obtained a license and paid a license fee as hereinafter provided."

Section 2 provides, in part:

*"That any person, firm, or corporation, and any agent of such person, firm or corporation, desiring to manufacture, sell or offer or expose for sale, or have in possession with intent to sell, oleomargarine, butterine, or any similar substance not made or colored so as to look like yellow butter, shall make application for a license so to do in such form as shall be prescribed * * * * which application, in addition to other matters which may be required to be stated therein by the said Dairy and Food Commissioner, shall contain an accurate description of the place where the proposed business is intended to be carried on * * * if the said application is satisfactory to said Dairy and Food Commissioner * * * * he shall issue to the applicant or applicants a license authorizing him, her, or them to engage in the manufacture or sale of oleomargarine * * * * such license shall not authorize the manufacture, sale, exposing for sale or having in possession with intent to sell, oleomargarine, butterine, or any similar substance, at any other place than that designated in the application and license."*

Strictly construing the second section just quoted, it would seem to require a license not only from every person, firm or corporation engaged in the sale or manufacture but also from every agent of

such person, firm or corporation, but the language of the first section indicates that when the license is obtained by a person, firm or corporation, such license shall authorize the agents, servants and employes thereof to manufacture and sell oleomargarine.

Under the provisions of this law it is clear that both the person and the place are licensed. It is also clear that oleomargarine could not be sold by an unauthorized person at an authorized place, or by an authorized person at an unauthorized place. In order to bring the sale within the terms of the statute, it must be made by a person who has been licensed, through himself or his agent, and from a place which has been licensed. The license issued to a person, firm or corporation, does not authorize an itinerant business in oleomargarine. This Act must be construed to carry out the Legislative intent. Manifestly one of the purposes of the Act was to have the oleomargarine business under the inspection and supervision of the Dairy and Food Commissioner. If a license were a roving commission to permit taking of orders in other cities and towns other than one designated in the license, it would make inspection or supervision by the Dairy and Food Commissioner extremely difficult.

If such a scheme could be followed, one person might take out one license for an entire county and transact his business by means of traveling agents taking orders therefor, or even extend such business into other counties.

It might be an unreasonable construction to hold that every clerk of a retail dealer who has a license to sell oleomargarine, must be also licensed because the Act says that every agent of such person, firm or corporation desiring to manufacture, sell, offer or expose for sale, oleomargarine, shall make an application for a license so to do. Where a clerk or employe, in the regular course of his business is taking orders for other goods and along therewith, and as incident to such business takes orders for oleomargarine to be delivered with the other products, such transaction may fairly be covered by the retailer's license. On the other hand, it would be just as unreasonable, and do violence to the Legislative intent, to say that under this statute, a license to sell oleomargarine at retail, would permit the agents of the holder of the license to travel around in other cities and towns for the purpose of obtaining orders, even though the orders were to be filled by subsequent delivery from the place licensed. No such legislative intention can be gathered from this statute. The language is:

"Such licenses shall not authorize the manufacture or sale * * * at any other place than that designated in the application and license."

To be more specific: If a retail merchant, who holds a retail oleomargarine license, has regular clerks taking orders for groceries, and orders for oleomargarine are taken along with other orders, by such regular clerk or employe and the oleomargarine is marked and set apart and the name placed on each package, in the place licensed, and delivered as and when the other goods are delivered, such a transaction would be within the license of the retail dealer.

It may be that there are retail dealers in cities whose regular trade extends into outlying districts. In such instances sales made, as above indicated, on orders taken in such territory, would be within the license.

But I am of the opinion that a license to sell oleomargarine at retail does not give the holder thereof the right to send agents and canvassers to take orders, especially for oleomargarine, into territory into which the business of such retailer would not ordinarily extend, particularly into other cities and towns in which there are other similar licenses.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General,

GLAZED CANDY.

In the light of Judge McConnell's opinion in *Commonwealth vs. Kuhn*, the Dairy and Food Commissioner is advised to revise forbidding the glazing of candy. Prosecutions should not be begun for such acts unless the Commonwealth can prove that glazing the candy affects it in the way forbidden by the Act of May 13, 1909, P. L. 520.

Office of the Attorney General,
Harrisburg, Pa., October 3, 1916.

Hon. James Foust, Dairy & Food Commissioner, Harrisburg, Pa.

Sir: As requested by you, I have carefully considered Judge McConnell's charge to the jury in the case of *Commonwealth vs. W. S. Kuhn, et al*, charged, in the Court of Quarter Sessions of Westmoreland County, with selling glazed candies in violation of the Act of May 13, 1909, P. L. 520. You asked to be advised as to what should be the attitude of your Department with reference to such candy.

Judge McConnell directed the jury to find the defendant not guilty, holding that the glazing of candy is not forbidden by this Act of Assembly; that there was no evidence that the glazing in question

reduced, lowered or injuriously affected the quality, strength or purity of the candy; that any substance had been substituted wholly or in part or that it was

“mixed, colored, changed in color, coated, polished, powdered, stained or bleached, whereby damage or inferiority is concealed, so as to mislead the purchaser.”

or that it was by any means “made to appear better or of greater value than it is.”

Section 3 of this Act of Assembly defines when food, which includes candy, shall be deemed to be adulterated, in part, as follows:

“First: If any substance has been mixed or packed with it, so as to reduce or lower or injuriously affect its quality, strength or purity.

Second: If any substance has been substituted, wholly or in part, for the article.

Fourth: If it be mixed, colored or changed in color, coated, polished, powdered, stained or bleached, whereby damage or inferiority is concealed, or so as to deceive or mislead the purchaser; or if by any means, it is made to appear better or of greater value than it is.”

Fifth: If it contains any * * * * “other added ingredients deleterious to health. * * * *”

In prosecutions for the violation of this statute, the same burden is upon the Commonwealth as in all other cases, viz:—that the Commonwealth shall make out its case beyond any reasonable doubt; that is to say, the Commonwealth must show, beyond any reasonable doubt, that the defendant sold candy which was adulterated in some one of the particulars prohibited in this section.

In this section it is provided that

“in the manufacture of confectionery the use of alcohol shall be permitted as it may be found in customary alcoholic tinctures or extracts used for flavoring purposes only, and as a solvent for glazes.”

This language seems to recognize that glazes were used on candies at the time of the passage of the Act and permits the use of alcohol as a solvent for them.

I am advised that resinous glazes are perhaps the only kind in which alcohol is used as a solvent. It, therefore, appears that such glazes are not prohibited. It follows that they are permitted unless they

(a) “reduce or lower or injuriously affect the quality, strength or purity;”

(b) coat the candy "whereby damage or inferiority is concealed or so as to deceive or mislead the purchaser;"

(c) make the candy "to appear better or of greater value than it is," or

(d) add "ingredients deleterious to health."

I do not agree with Judge McConnell that the word "mixed," as used in this statute would mean

"that there should be a physical mixture, or it may be a chemical change would take place by the mixing, a change of its essential nature."

A glaze is irremovably attached to and becomes part of the candy. If such glaze is proven to

"reduce or lower or injuriously affect the quality, strength or purity"

of the candy, I am of the opinion that placing it upon the candy would be "mixing" it with the candy within the meaning of the first paragraph of Section 3.

If, by applying the glaze, the candy is "coated," "whereby damage or inferiority is concealed," or if it is "made to appear better or of greater value than it is," or an ingredient deleterious to health is added, it is a violation of the fourth and fifth paragraphs of Section 3 of this Act.

But all of those matters must be affirmatively proven by the Commonwealth before there can be a conviction.

If the glaze which is applied is not deleterious to health, even though it does not have any food value, it perhaps would not reduce or lower or injuriously affect the quality, strength or purity of the candy. If the coating does not conceal "damage or inferiority or does not deceive or mislead the purchaser," but is used, as was proved in this case to the satisfaction of the court, for the purpose of finishing, preserving and protecting it, there could be no conviction. If the coating does not make the candy "appear better or of greater value than it is," there can be no conviction.

In any case the Commonwealth would have to prove affirmatively that applying the glazes *does* affect the candy in one of the ways prohibited in this section, and, unless such proof can be produced, I advise you that prosecutions should not be begun.

I am advised that, to a large degree at least, the impurities or deleterious substances which were formerly contained in glazes have been eliminated. This, however, is a matter for chemical investigation and I suggest that the matter, in the light of Judge McConnell's charge to the jury and this opinion, be submitted, under your supervision, to your chemists.

I have before me your revised Rule No. 14, which states that

“the use of resinous glazes on chocolates or confectionery is not permitted for the reason that resins have no nutritive or diatetic value,” etc.

In view of the decision above referred to and of this opinion, I think that rule should again be revised.

Very truly yours,

WM. M. HARGEST.
Deputy Attorney General,

OPINIONS TO THE COMMISSIONER OF
FORESTRY.

OPINIONS TO THE COMMISSIONER OF FORESTRY.

CHILD LABOR LAW.

The provision in section 1 of the Child Labor Law of May 13, 1915, P. L. 286, that this act "shall not apply to children employed on the farm or in domestic service in private homes," must be construed with reference to the general purposes of the statute. The employment of young people at the State forest nurseries in the light and easy work of keeping young seeding trees free from weeds falls within the exception.

Office of the Attorney General,
Harrisburg, Pa., September 16, 1915.

Hon. Robert S. Conklin, Commissioner of Forestry, Harrisburg, Pa.

Sir: Answering your inquiry of recent date relative to the employment by the Department of Forestry of "young people to do light work in the forest nurseries," I beg to advise you as follows:

Section 1 of the Act of May 15, 1915, P. L. 286, popularly known as the "Child Labor Law," provides that the act "shall not apply to children employed on the farm, or in domestic service in private homes."

You state that the nurseries, where you have been accustomed to employ young people to do light work, are "small areas of ground in which you sow tree seeds; that the young seedling trees must be tended carefully and kept free from weeds, and that this work is very light and easy."

Under familiar rules of construction the provision of an Act of Assembly must be construed and interpreted with reference to its intent and purpose, as well as to its subject matter.

The Act of Assembly in question was passed, as indicated by its title, "to provide for the health, safety and welfare of minors," etc., and forbids the employment of minors in unhealthy, unsafe and dangerous occupations and places, and in such as tend to interfere with their welfare and development.

Accordingly the provision of the act that it "shall not apply to children on the farm" must not be construed too strictly, but must be interpreted rather with reference to the subject matter under consideration and the general purposes of the act as already indicated.

It is my opinion that the employment of young people at the forest nurseries, where your Department sows tree seeds, for the

purpose of keeping them free from weeds, which work is really agricultural in character, falls within the exception provided in Section 1 of the Act above quoted.

You are advised, incidentally, that Section 26 of the act provides that it shall take effect on January 1st, 1916.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE FOREST FIRE WARDEN.

The Act of June 3, 1915, P. L. 797, imposes no condition as to citizenship for appointment as a Local Forest Fire Warden, and there is nothing in the act to prohibit the appointment of an alien to that position.

Office of the Attorney General,
Harrisburg, Pa., August 3, 1916.

Mr. George H. Wirt, Chief Forest Fire Warden, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of the 21st ult., asking substantially whether a person, not a citizen of the United States or of Pennsylvania, may be appointed to the office of Local Forest Fire Warden, which office was created by the Act of June 3, 1915, P. L. 797.

Citizenship, although often expressly required by statute or the Constitution, is not, in the absence of such requirement, an absolute necessary qualification for office. *29 Cyc. 1377.*

No Constitutional provision exists prohibiting the appointment of an alien to the office of local forest fire warden and the determination of the question, therefore, rests upon the construction of the Act of 1915.

An examination of the statute discloses the fact, that it affirmatively legislates on the subject of the qualifications of such wardens, section 401 providing as follows:

"Qualifications—a person appointed a local forest fire warden shall be chosen expressly by reason of his physical fitness, sobriety, honesty and ability to perform the duties herein required."

It is to be noted, that these qualifications are moral, mental and physical, and involve in no degree the necessity of citizenship.

Expressio unius est exclusio alterius is a rule of construction which, as applied in this particular instance, means that the legislature having expressly enumerated the qualifications for the office, others are not necessarily to be added.

I find no other provisions of this act which would operate to make an exception to this rule and you are, therefore, advised, that you may in your discretion appoint a person, not a citizen of the United States or of the State of Pennsylvania to the office of Local Forest Fire Warden,

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

**OPINIONS TO PENITENTIARIES AND PRISON
LABOR COMMISSION.**

OPINIONS TO PENITENTIARIES AND PRISON LABOR COMMISSION.

DELIVERY OF PRISONER SENTENCED TO ELECTROCUTION.

It is the duty of the keeper of the Philadelphia County Prison to deliver a prisoner in his custody who has been sentenced to death by electrocution to the Warden of the Western Penitentiary upon proper notice.

Office of the Attorney General,
Harrisburg, Pa., March 4, 1915.

Hon. John Francies, Warden Western Penitentiary, North Side,
Pittsburgh, Pa.

Sir: Your favor of the 27th inst. enclosing a letter from A. Lincoln Acker, Sheriff of Philadelphia County, is at hand.

You ask to be advised whose duty it is to deliver one James Boyd, sentenced to death by electrocution and now confined in the County Prison of Philadelphia, to the Western Penitentiary, Centre County, Pennsylvania.

By the Act of March 30, 1831, P. L. 228, and its supplement of April 14, 1835, P. L. 232, the Inspectors of the "Philadelphia County Prison" are the custodians of prisoners confined in said prison. By the Act of May 1, 1861, P. L. 528, the Inspectors of the County Prison "have full power to treat prisoners, sentenced to be hanged, and who are not executed after an imprisonment of six months, as other convicts are, who are sentenced to confinement and labor."

The Supreme Court in the case of *Keim vs. Saunders*, 120 Pa. 121, and *Saunders vs. Perkins*, 140 Pa. 102, have decided that the Sheriff has no custody or control of the Philadelphia County Prison.

Section 4 of the Act of June 19, 1913, P. L. 528, provides for the infliction of the death penalty for murder of the first degree, on the grounds of the new Western Penitentiary, in Centre County, and that upon receipt of the warrant commanding such convict to be executed in said Penitentiary "the said Warden shall by written notice under his hand and seal, duly notify the officer having the custody of such convict to deliver such convict to the custody of such warden, and it shall be the duty of such officer to forthwith cause such delivery to be made."

I am, therefore, of opinion and so advise you that the prisoner referred to is not in the custody of the Sheriff of Philadelphia County, but is in the custody of the keeper of the Philadelphia County

Prison, whose duty it is to deliver him to you, as the Warden of the Western Penitentiary, upon receipt of the notice referred to in Section 4 of the Act of 1913.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

PAROLE OF PRISONERS.

Where a prisoner released on parole under the Act of June 19, 1911, P. L. 1055, while on parole commits a felony, he must, under section 10, serve out the period of his parole on the first sentence after the expiration of the period of imprisonment imposed by the second sentence, less any commutation thereon.

The Act of June 3, 1915, P. L. 788, amending section 10 of the Parole Act of June 19, 1911, P. L. 1055, does not apply to a prisoner actually serving a sentence on June 3, 1915, the date of its passage.

Office of the Attorney General,
Harrisburg, Pa., September 10, 1915.

John M. Egan, Esq., Parole Officer, Western Penitentiary, Pittsburgh, Pa.

Sir: Your favor of the 4th instant, requesting an opinion is at hand.

The facts I understand to be as follows:

Harry Bevilhimer was sentenced September 25, 1911, under the Indeterminate Sentence and Parole Act of June 19, 1911, P. L. 1055, to undergo an imprisonment of not less than six months, nor more than three years, for larceny and receiving stolen goods.

On June 1, 1912, after serving 8 months and 6 days he was released on parole, for 2 years, 3 months and 24 days. However, on September 16, 1912, during the period of parole, he was convicted of larceny and sentenced to imprisonment in the Western Penitentiary, for not less than five nor more than nine years.

On June 3, 1915, Section 10 of the Parole Act of June 19, 1911, was amended.

You ask to be advised,

1. Whether Bevilhimer shall first serve the full maximum sentence imposed while he was on parole, or be compelled to first serve the two years, 3 months and 24 days of his original sentence.

2. Whether he is eligible to parole after he has served the minimum five years of his subsequent sentence plus the 2 years, 3 months and 24 days forfeited commutation of his original sentence.

The Act of June 3, 1915, amending Section 10 of the Parole Act of June 19, 1911, was passed after the second sentence of Bevilhimer. It is apparent that that Act cannot apply to him, because he was already serving some sentence at the time the Act was approved, and as to him it would probably be regarded as an *ex post facto* law and its application would be unconstitutional! *Commonwealth vs. Kalck*, 239 Pa. 533.

Section 10 of the Act of June 19, 1911, P. L. 1055, provides:

"If any convict released on parole, as provided for in this Act, shall during the period of parole, be convicted of any crime punishable by imprisonment under the laws of this Commonwealth, such convict shall, in addition to the penalty imposed for such crime committed during the said period, *and after the expiration of the same*, be compelled, by detainer and remand as for an escape, to serve in the penitentiary to which said convict had been originally committed, the remainder of the term (without commutation) which such convict would have been compelled to serve but for the commutation authorizing said parole, and if not in conflict with the terms and conditions of the same, as granted by the Governor."

Under this Act of Assembly it is apparent that a convict originally sentenced to the Penitentiary must, when sentenced thereto, during the period of his parole and after the expiration of the *second sentence* be compelled "to serve in the penitentiary to which said convict had been originally committed the remainder of the term."

However, the Act of 1915 makes two classifications and provides:

(a) A convict sentenced to any place of confinement other than a penitentiary shall serve the remainder of his first term *after* the expiration of the term of imprisonment imposed for the offense committed during the period of parole.

(b) But a convict sentenced to a penitentiary shall *first* serve the remainder of the term originally imposed before beginning the sentence imposed during the period of parole.

This Act has been the subject of much discussion because, if the term "penalty" should be construed to mean the "maximum sentence" it would lead to the absurd result that after a prisoner has served the period of imprisonment for the second offense, he should be released on parole until the expiration of the whole sentence and then be returned to serve out the forfeited commutation of the first sentence.

The language of the Act is that "in addition to the *penalty*" for the second offence, the convict shall "*by detainer and remand*" be compelled to serve the remainder of the term. Obviously he is to be *detained* at the end of the period of imprisonment. He would not be compelled by detainer when he was at large on parole.

It is hardly possible that the legislature intended that a prisoner should serve the period of parole and then return to the penitentiary to serve the forfeited commutation on a former sentence. It might easily happen that a prisoner would be discharged on parole with five year's commutation and live during that time an upright life but be compelled at the expiration of five years to return to prison. Moreover, the fact that the prisoner would be required to return would tend to prevent the reformation at which the law aimed. It cannot therefore be possible that such a construction is within the reason and spirit of the law, even if the word "penalty" were construed to mean maximum sentence.

As was said by Mr. Justice Brewer in the *Church of the Holy Trinity vs. United States*, 143 U. S. 457—

"It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."

I am, therefore, of the opinion that the word "penalty" used in the Act means the period of imprisonment and not the maximum sentence.

Therefore, answering the first question, I advise you that Bevilhimer is within the provision of Section 10 of the Act of June 19, 1911, and not within the provisions of the amendment thereof, approved June 3, 1915, and is compelled to serve out the period of parole on the first sentence after the expiration of the period of imprisonment imposed by the sentence of September 16, 1912.

There is nothing in the Parole Act of 1911 which prohibits the granting of a parole upon the second sentence. That matter is left to the discretion of the Board of Inspectors of the penitentiary.

Specifically answering the second inquiry, I am of opinion that if Bevilhimer, in the judgement of the Board of Inspectors, after he has served five years, or any further period of his second sentence, should be recommended to be released on parole, before he is released on that parole, must be "by detainer and remand" compelled to serve the two years, three months, and twenty-four days forfeited commutation of his original sentence.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

DISCHARGE OF PRISONER.

A prisoner, paroled under a former sentence, and sentenced on a second offense during the period of commutation, must serve the commutation allowed in the first sentence in addition to serving the second sentence.

Office of the Attorney General,
Harrisburg, Pa., September 15, 1915.

Robert J. McKenty, Esq., Warden Eastern Penitentiary, Philadelphia, Pa.

Sir: Your letter of the 9th inst. addressed to the Attorney General, requesting an opinion as to whether John Walsh, a prisoner in the Eastern Penitentiary may be legally discharged, is at hand.

From your communication I understand the facts to be:

On December 4, 1904, John Walsh, alias Armond Stevens, was sentenced to a term of five years and six months for receiving stolen goods. On September 27, 1908, he was discharged under the Commutation Act approved May 11, 1901, P. L. 166. Having received one year, eight months and fifteen days commutation, his maximum term would have expired June 12, 1910. Under the name of Michael Wells he was again sentenced March 23, 1909, during the period of commutation, to a term of ten years for burglary. This sentence, allowing three years and seven months commutation, expired August 23, 1915.

I understand also that the prisoner claims that he should have been discharged August 23, 1915, because

(a) The Act of Assembly approved May 10, 1909, repealed the Act of May 11, 1901.

(b) The commutation of one year, eight months and fifteen days ran concurrently with the commitment of March 23, 1909.

As to the first contention, if it be correct, this prisoner could not take advantage of it because he was sentenced on March 23, 1909, before the approval of the Act on May 10, 1909 (P. L. 495).

This Act in its first section provides:

"That whenever any person *shall* be convicted," etc. The entire act is altogether prospective in its terms. It was not intended to relate the sentences theretofore imposed. Moreover, this Department has heretofore held that the Act of May 11, 1901, P. L. 166, was not repealed by the Act of May 10, 1909, P. L. 495—(Opinions of the Attorney General 1911-1912, page 311).

There is therefore nothing in the prisoner's first contention that the Act of May 11, 1901, is repealed by the Act of May 10, 1909.

His second contention that the commutation of one year, eight months and fifteen days ran concurrently with the commitment of March 23, 1909, is answered by the language of the Act of Assembly

itself. Section 4 of the Act of 1901, provides that the Governor shall annex a condition that if any convict be convicted of any felony during the period of his parole he shall

*"In addition to the penalty which may be imposed for such felony committed in the interval, as aforesaid, 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."*

and Judge Staake, in the Court of Quarter Sessions of Philadelphia, in the case of Commonwealth ex rel. David Stiers vs. the Warden of the Eastern Penitentiary, has held—

"We can find no authority in the law for a concurrent service which, by reason of such concurrent service would effectually relieve the relator from the service under the conviction of 1905."

I am therefore of the opinion that this prisoner must serve the one year, eight months and fifteen days commutation which he received under the sentence of December 12, 1904, in addition to the period of imprisonment imposed on March 23, 1909.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

PAROLE OF PRISONER INTO CUSTODY OF OFFICERS OF ANOTHER STATE.

Where a prisoner confined in the penitentiary is charged with crime in another State, the Board of Inspectors may parole him into the custody of the officers of said State, or may parole him under such rules and regulations as it shall in its discretion deem proper and give him an opportunity to go voluntarily to such State for trial.

Office of the Attorney General,
Harrisburg, Pa., December 22, 1915.

Mr. John M. Egan, Parole Officer, Western Penitentiary, Pittsburgh, Pa.

Sir: Your favor of recent date, addressed to the Attorney General, was duly received. You ask to be advised whether William Harris, a prisoner, sentenced on March 28, 1910, and whose minimum sentence expired March 28, 1913, may be paroled into the custody of a Maryland officer, or given conditional freedom and an opportunity to voluntarily go to Maryland for trial.

You state that there is a warrant, issued March 2, 1910, by the President Judge of Frederick County, Maryland, charging one William Johnson with murder and that it is alleged that Harris is the William Johnson named in the warrant, but that there is a doubt as to the identity of the prisoner and that he is willing to go into the State of Maryland for trial. You also state that the Board of Inspectors is anxious to ascertain whether it may grant Harris conditional freedom and give him an opportunity to go to Maryland to stand trial.

The Act of May 10, 1909, which was in force at the time Harris was sentenced, relating to the parole of convicts, provides in Section 9:

"If it shall appear to either of the said Boards of Inspectors, upon an application by a convict for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the law, then said board shall recommend to the Governor that such convict be released on parole, subject to such rules and regulations for such convict as the said board may prescribe, until the expiration of the maximum limit of the sentence imposed on such convict.

The ninth section of the Act of June 19, 1911, contains the same provisions, so it is not necessary to decide which Act applies.

This provision of the law puts the whole matter in the discretion of the Board of Inspectors, and the Board may make such rules and regulations for this particular convict as it sees fit.

The fact that Harris is charged under the name of William Johnson with having committed murder in Maryland prior to his sentence to the Penitentiary, there being serious doubt, as appears from your letter, of his identity, will not prevent the Board of Inspectors from paroling him if, in their opinion, there is a reasonable probability that he will live and remain at liberty "without violating the law" subsequent to his parole.

There is perhaps no precedent for paroling a prisoner into the custody of an officer of another State for the purpose of being taken to such State for trial and to be returned in the event of his acquittal, but there is nothing in the law which prohibits such parole, and it is a comity which probably should exist. If the Board of Inspectors determined that Harris should be released on parole, then under its power to release him, "subject to such rules and regulations *for such convict* as the Board may prescribe," the Board may, in my opinion, parole him into the custody of a Maryland officer with the understanding that in the event of his acquittal on the charge of murder pending against him, he shall be subject generally to the rules governing prisoners on parole from the Western Penitentiary.

If, on the other hand, the Board of Inspectors feels that the circumstances warrant the recommending of Harris on parole, giving him permission to voluntarily go to Maryland for trial, it has authority to make such rule with respect to Harris.

In the latter event, he would probably be regularly extradited if he did not voluntarily go into the State of Maryland for trial:

In other words, having regard to the fact that there is a commitment issued by a court of competent jurisdiction in the State of Maryland lodged with the Western Penitentiary, and the comity which should exist between the States in relation thereto, the Board may either parole Harris and give him an opportunity to voluntarily go to Maryland for trial, or may parole him into the custody of a Maryland officer, as above indicated.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE CONVICT LABOR.

The Act of June 1, 1915, P. L. 656, delegates the entire matter of supervision of employment and compensation for the inmates of the penitentiaries to the Prison Labor Commission and the officials of the penitentiary have no further authority or jurisdiction in the matter.

Office of the Attorney General,
Harrisburg, Pa., January 11, 1916.

Thomas B. Foley, Esq., Secretary & Treasurer, Western Penitentiary,
Pittsburgh, Pa.

Dear Sir. In answer to your letter of recent date addressed to the Attorney General, in which you inquire whether it is permissible for the Board of Inspectors and Warden of the Western Penitentiary to engage the inmates of your institution in the various employments therein referred to, and against what funds wages shall be charged, I beg to advise you as follows:

The Act of June 1, 1915, P. L. 656, by which various Acts theretofore in force relating to the same subject matter were repealed, provides for a new system of employment and compensation for the inmates of the Eastern Penitentiary, Western Penitentiary, Pennsylvania Industrial Reformatory at Huntingdon, and for such other correctional institutions as shall be hereafter established by the Commonwealth, as the title indicates.

The administration of the Act is delegated thereby to the Prison Labor Commission therein provided for, which Commission shall perform the duties therein specified as provided by Section 2 of the Act "with reference to the regulation and supervision of the labor of inmates of the penitentiaries and reformatory and other correctional institutions," etc.

Under Section 3 of the Act the determination of the amount, kind and character of the machinery to be erected in each of the penitentiaries and the industries to be carried on therein is to be determined by the Commission.

Under Section 7 of the Act the rate of wages to be paid to inmates is to be regulated at the discretion of the Commission or such persons as they may designate, and under Section 10 all wages paid under the provisions of the Act shall be charged to the manufacturing fund, which is under the control, of the Commission, as provided for in Section 5 of the Act.

You are advised, therefore, that it is the intendment of the Act of 1915 to delegate the entire matter of supervision of employment and compensation for the inmates in the institution above referred to, to the Prison Labor Commission, so that the officials of these institutions have no further authority or jurisdiction in the premises.

The question which you raise should accordingly be referred to the Commission for advice and determination.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

EMPLOYMENT AND COMPENSATION OF PRISONERS IN CORRECTIONAL INSTITUTIONS.

Inmates of correctional institutions employed in the manufacture or repair of shoes, clothing, machinery, etc., and in the operation of printing shops are entitled to compensation under the Act of June 1, 1915, P. L. 655.

Convicts employed in the manufacture and preparation of materials for the new Western Penitentiary are entitled to compensation.

Convicts continuously employed in administrative work are entitled to compensation. If the management of a correctional institution be so arranged that the inmates take turns in doing administrative work, compensation need not be allowed.

The limitation in the Act of June 1, 1915, that inmates of correctional institutions shall not be employed more than eight hours a day and shall not be employed on Sundays and holidays, does not apply to such work as must necessarily be done every day in the year.

Office of the Attorney General,
Harrisburg, Pa., February 16, 1916.

Mr. John D. Dorris, Secretary, Prison Labor Commission, Philadelphia, Pa.

Sir: Your communication of recent date, addressed to this Department, asking to be advised with reference to employment, compensation, etc., under the Act of June 1, 1915, P. L. 656, under which your Commission was created, was duly received.

While your letter refers to inquiries made by the Board of Inspectors of the Western Penitentiary, this opinion must be regarded as applying as well to the Eastern Penitentiary and to the Huntingdon Reformatory, or to any correctional institutions hereafter established by the Commonwealth.

You will note that in the opinion rendered to Thomas B. Foley, Esq., Secretary and Treasurer of the Western Penitentiary, under date of January 11, 1916, of which you have been advised, it was held that the entire matter of the supervision of employment and compensation of the inmates in the institutions referred to was delegated to the Commission, and that the officials of these respective institutions have no further authority or jurisdiction in the matter.

Your first and second inquiries may be considered together. You ask to be advised whether it is permissible to engage the inmates of these institutions in the manufacture and repair of shoes and clothing for their own wear, without compensation, and whether those engaged in the repair of the buildings and property of the institutions and the mending of the machinery and fixtures therein are to be compensated.

The answer to these inquiries, as well as the others contained in your communication, does not depend entirely upon a technical construction and interpretation of the Act, but upon a thorough understanding of the object and purpose of this legislation.

It is because the State recognized the depressing effects of inactive confinement that labor in prisons was heretofore provided for at all, and the Legislature in passing the Act of 1915, creating the Prison Labor Commission, took advanced ground on the subject, in line with other progressive legislation, by providing not only for the humane employment of the State's prisoners, but as well for a most judicious system of compensation—calculated to promote and develop the willingness, industry and good conduct of such prisoners, and to inculcate in them a realization of their duty to their dependents by providing in Section 8 of the Act that certain portions of the earnings of such prisoners shall constitute a fund for the relief of such dependents.

The object of all this new correctional legislation is, of course, reform in the broadest sense of the word. The wholesome employment of the State's prisoners, and the provision for a reasonable compensation therefor must tend to develop the industry of such prisoners and their willingness to be useful, and in the last analysis there is the regard for the welfare of the general body politic in which these inmates must eventually take their places.

Legislation of this kind should accordingly be given the broadest possible construction and interpretation so as to effectuate the legislative intent. It cannot be assumed that it was intended to compensate those who were employed at some labor, and not compensate those employed at other labor. Such a construction would be so clearly unjust and against the obvious legislative intent and true purpose of the legislation considered broadly, that it ought not to be adopted unless clearly expressed in the Act, or it is necessarily and unavoidably implied.

The language of the Act in Section 1 is:

"That all persons sentenced to the Eastern or Western Penitentiary, or to the Pennsylvania Industrial Reformatory at Huntingdon, or to any other correctional institution established by the Commonwealth, who are physically capable of such labor, may be employed at labor not to exceed eight hours each day, other than Sundays and public holidays. Such labor shall be for the purpose of the manufacture and production of supplies for such institution," etc.

It is to be noted that the labor is not to be limited to "manufacture," but includes also labor employed in the "production" of supplies for such institutions, etc.

You are advised, therefore, that in view of the obvious intendment of this legislation as hereinbefore fully explained, your Commission may properly determine that inmates engaged in the manufacture of or repairing shoes, clothing, machinery, fixtures, etc., are entitled to

compensation under the terms of the Act, the amount of wages, of course, to be fixed under Section 7 thereof. The same reasoning applies to your inquiry relative to the operation of a printing shop which you state is imperative, and you are so advised.

Relative to your inquiry concerning the continuation of the employment of convicts in the manufacture and preparation of materials for the new Western Penitentiary and the construction of its buildings, your attention is directed to Section 1 of the Act, which provides that the labor of inmates therein referred to

“Shall be (inter alia) for the preparation or manufacture of building material for the construction or repair of any State Institution or in the work of such construction or repair, etc.,” etc.

Accordingly, compensation must be provided for convicts engaged in such work.

Relative to your inquiry about prisoners assigned to cooking, dish washing, cleaning, scrubbing, etc., which you advise is classed as administrative labor, you are advised as follows: A prisoner engaged in cooking is certainly employed in producing supplies for the institution quite as essential as another engaged in making shoes and clothing. Under the view of the subject matter taken in this opinion, there is no reason why such prisoners should not be compensated for such employment. The whole subject matter is one however, which, subject to the limitations pointed out herein, calls for a broad and judicious consideration by your Commission. If certain prisoners are continuously engaged in cooking, dish washing, etc., it would be manifestly unfair and discouraging to them to have them do this work without compensation, while their fellow prisoners are receiving compensation for other work which perhaps is not so distasteful. If, however, a system were arranged whereby inmates would take turns in doing such administrative work, your Commission could properly determine that no compensation would be allowed for such work. In other words, your Commission should avoid even the semblance of any discrimination between inmates of the institution, and all should be given so far as possible equal opportunities, the difference in the rate of compensation as provided in Section 7 of the Act to be—

“based both upon the pecuniary value of the work performed and also on the willingness, industry, and good conduct of such prisoner.”

As to the limitation in Section 1 of the Act that inmates are to be employed for not more than eight hours every day, other than Sundays and holidays, you point out that certain current duties such as cooking, dish washing, boiler-firing, etc., are indispensable every day

in the year. Such a limitation is subject to the provision well recognized in law that it must give when necessity requires it. Arrangement should be made by your Commission to provide for doing such work in shifts or otherwise so that the limitation prescribed in the Act will be conformed to as nearly as it is possible to do so.

The same reasoning with reference to compensation applies to the prisoners assigned to farm work and you are so advised.

Your several inquiries as to the fund from which wages for these various employments may be drawn is answered by Section 10 of the Act which provides:

“All wages under the provisions of this Act shall be charged to the manufacturing fund provided for in section 5 of this Act.”

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

APPROPRIATION TO THE PRISON LABOR COMMISSION.

The Act of June 1, 1915, P. L. 656, makes an appropriation of \$75,000 to the Prison Labor Commission, to be known as the manufacturing fund.

Office of the Attorney General,
Harrisburg, Pa., January 21, 1916.

Mr. John E. Hanifen, Chairman, Prison Labor Commission, Philadelphia, Pa.

Sir: You have requested an opinion as to whether the Act of June 1, 1915, P. L. 656, makes an appropriation of \$75,000 to the Prison Labor Commission, to be known as the Manufacturing Fund.

I am advised that the Auditor General has expressed a doubt as to whether this Act can be construed to carry such appropriation.

I assume this doubt is occasioned by the fact that the language used by the Legislature in making appropriations is practically uniform, well understood and rarely departed from. The phrase generally used is “the sum of \$. is hereby specifically appropriated,” etc.

Section 5 of the Act of Assembly under discussion, uses no such language. It provides:

“For the purchase of material, equipment, and machinery to be used in the penitentiaries, reformatory and other correctional institutions, as aforesaid, a *special*

appropriation of seventy-five thousand dollars shall be made to the Prison Labor Commission, to be known as the manufacturing fund."

The doubt as to whether this is a specific appropriation is strengthened by the very next section, in which the Legislature used the apt words, as follows:

"The sum of eight thousand dollars, or so much thereof which may be necessary, is hereby specially appropriated to the Prison Labor Commission," etc.

The question then arises as to whether the language "a special appropriation of Seventy-five thousand dollars shall be made" as contained in Section 5, has the effect of actually appropriating that sum.

This question must be decided by an examination of the whole Act of Assembly with a view to ascertaining the legislative intent. The Act is entitled:

"An Act providing a system of employment and compensation for the inmates of the Eastern Penitentiary, etc., and making an appropriation therefor."

It provides in Section 1 that all persons sentenced to any correctional institution are to be employed. It designates the character of the employment; provides in Section 2 for a Prison Labor Commission, and gives to such Commission authority to employ "such clerks or other employes as are necessary for the proper conduct of its business," and also gives the Prison Labor Commission the immediate right to determine the amount, kind and character of machinery to be erected in the penitentiaries and other correctional institutions and the power to arrange the sale of the materials produced by the prisons; provides that the receipts from the sales of manufactured articles are not to be turned into the State Treasury, but credited to the Manufacturing Fund. In short, it establishes a complete system for employment of prisoners and others confined in penal or correctional institutions and for compensation for such employment.

The Legislature is not to be presumed to have done a vain thing. If Section 5, which provides that "a special appropriation of seventy-five thousand dollars shall be made" intended that such appropriation be made either by a subsequent Legislature, or subsequently by the same Legislature, it was a vain thing, because such legislative declaration would not in any event be binding either upon the same or a subsequent Legislature. Moreover, without an appropriation to carry the system provided for by this Act of Assembly into effect, it was a useless and vain thing to pass the Act of Assembly.

Furthermore, the appropriation of \$8000, or so much thereof as may be necessary "for the purpose of paying salaries of clerk hire, traveling expenses and contingent expenses," which is in apt lan-

guage, is also a vain thing if there be no money appropriated to permit the Prison Labor Commission to carry out the duties imposed on it, because if there is no money to enable the Commission to perform its duties, there is no occasion for clerk hire and other employees.

An inspection of the Act of Assembly itself shows that it was to be immediately operative and not to depend upon the will of a subsequent Legislature. Its very title indicates that it does provide a system of employment and compensation and makes an appropriation for such employment.

Section 6, in which the sum of eight thousand dollars is aptly appropriated, in referring to the receipts from the sales of manufactured articles, provides that the same "shall not be turned into the Treasury but shall be credited to the Manufacturing Fund created by Section 5."

If the Legislature had intended that the language used in Section 5 was to refer to some subsequent appropriation, it would not have said that such fund had already been created by Section 5.

Section 7 provides that "*Hereafter* an account shall be kept by the proper officers of the Western Penitentiary," etc., and Section 10 provides:

"All wages paid under the provision of this act shall be charged to the manufacturing fund provided for in section five of this act."

Moreover, the word "shall" does not always indicate something to be done in the future. It is just as often used in a mandatory sense referring to the present as well as the future.

Therefore, although the language used is somewhat unapt, I am of opinion, and so advise you, that Section 5 of the Act of Assembly constitutes an appropriation of \$75,000 to the Prison Labor Commission, to be known as the Manufacturing Fund, within Section 16 of Article III of the Constitution, and that in disbursing said appropriation the State Treasurer and the Auditor General will not come within any of the penalties of the Act of May 9, 1909, P. L. 519, making it a misdemeanor for any officer of the Commonwealth to authorize to be paid, or for the State Treasurer to pay any money out of the State Treasury except in accordance with the provisions of an Act of Assembly, specifying the amount and purpose of the expenditure.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE APPLICATION FOR PAROLE.

The Act of June 19, 1911, P. L. 1055, is silent as to the effect of the lodgment of a detainer upon a prisoner's application for parole, but the granting of a parole should not excuse him from answering the charge upon which the detainer is based, and the prisoner should not be released until after notice is given and an opportunity had to take him into custody to answer such charge.

Office of the Attorney General,
Harrisburg, Pa., March 14th, 1916.

Dr. Charles D. Hart, Secretary Parole Board, Eastern Penitentiary,
Philadelphia, Pa.

Sir: Your favor of the 7th inst., addressed to the Attorney General, is at hand.

You asked to be advised whether a detainer, lodged against an applicant for parole, prevents the Board from taking action upon such application until the detainer is withdrawn, or whether the prisoner may be recommended for parole provided notice thereof be given to the party lodging such detainer.

The Parole Act of June 19, 1911, P. L. 1055, provides in Section 8 that at each meeting of the Board of Inspectors, *"every prisoner confined in such penitentiary upon an indeterminate sentence, whose minimum term of sentence will expire within three months, shall be given an opportunity to appear before such Board and apply for his or her release on parole."*

Section 9 of the Act also provides:

"If it shall appear to the Board of Inspectors of any penitentiary in which a convict is imprisoned, upon an application by a convict for release on parole, that there is a reasonable probability that such applicant will live and remain at liberty without violating the law, then said board shall recommend to the Governor that such convict be released upon parole," etc.

Section 10 of the Act provides for serving of the remainder of the term in the event that the paroled prisoner is convicted of an offense committed during the period of parole.

The language "if it shall appear to the Board of Inspectors * * * that there is a reasonable probability that such applicant will live and remain at liberty without violating the law," clearly refers to violations of the law after the period of parole. The purpose of parole is to aid in the reformation of the prisoner. The fact that a detainer is lodged based upon a charge for an offense committed prior to the imprisonment may influence the Board in its determination as to whether the applicant will remain at liberty without violating the law, but there is nothing in the statute which justifies the refusal to parole if the Board of Inspectors, notwithstanding the fact

that a detainer has been lodged, should be of opinion that there is a reasonable probability that the applicant will remain at liberty without violating the law in the future.

However, the fact that a parole is to be granted should not excuse the prisoner from answering the charge upon which the detainer is based, and the prisoner should not be released until notice is given and an opportunity had to take him into custody to answer such charge.

Yours very truly,

WM. M. HARGEST,
Deputy Attorney General.

SALE OF PRODUCTS OF PRISON LABOR.

Under Section 1 of the Act of June 1, 1915, P. L. 656, the Prison Labor Commission may sell the products of manufacture referred to in said act to any and all departments of the Commonwealth or of any county thereof, for the operation and maintenance of which the money of the Commonwealth or of any county is directly paid. Such products may also be sold to institutions owned, managed or controlled by the Commonwealth or by any county.

Office of the Attorney General,
Harrisburg, Pa., March 21, 1916.

John E. Hanifen, Esq., Chairman Prison Labor Commission, Real Estate Trust Building, Philadelphia, Pa.

Sir: This Department is in receipt of your communication of recent date in which you ask to be advised as to the meaning of the following excerpt from Section 1 of the Act of June 1, 1915, P. L. 656:

Such labor shall be for the purpose of the manufacture and production of supplies for said institutions (meaning Eastern and Western Penitentiaries and Huntingdon Reformatory), or for the Commonwealth or for any county thereof, or for any public institution owned, managed and controlled by the Commonwealth, or for the preparation and manufacture of building material for the construction or repair of any State institution," etc.

You state specifically that you would like to know what Departments of the Commonwealth are embraced in the words "for the Commonwealth"; also whether the county jails are included in the words "for any county thereof"; also whether institutions now receiving large appropriations as you state—such as hospitals, homes,

sanatoria and those listed as semi-state institutions like the Glen Mills Reform School, may be considered as among those to which your Commission may sell the products of manufacture under the Act.

You are respectfully advised that the words "for the Commonwealth or for any county thereof" comprehend and embrace any and all Departments of the Commonwealth or of any county thereof, and that your Commission may, under the act, manufacture and produce supplies for any and all such Departments of the Commonwealth or any county thereof, for the operation and maintenance of which the money of the Commonwealth or of any county thereof is directly paid. This would, of course, include the county jails.

So far as producing supplies for institutions in the State is concerned, the Act provides, as you will note in the above quotation from Section 1 thereof, that such supplies may be manufactured and produced for, inter alia, "any public institution owned, managed and controlled by the Commonwealth"; so that, the matter is not to be entirely determined by the question of appropriations made to institutions, but depends rather on the ownership, management and control thereof. This you can, of course, readily ascertain by inquiry into the facts in each case.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE PAROLE ACT.

The Act of May 10, 1909, P. L. —, has no application to prisoners sentenced prior to June 30, 1909, and a prisoner sentenced before that time is not entitled to apply for a parole under the Parole Act passed since that date. He should be required to serve the commutation of his first sentence forfeited by his conviction and sentence for a crime committed after his release and after the Parole Acts of 1909 and 1913 became effective.

Office of the Attorney General,
Harrisburg, Penna., May 1, 1916.

Mr. John W. McKenty, Parole Officer, Eastern Penitentiary, Philadelphia, Penna.

Sir: Some time ago you forwarded a letter of Herbert Welsh, Prisoner B-4876, addressed to the Governor, requesting that his name be taken from the commutation sheet which indicated the date of his discharge as September 22, 1915.

The facts, as I understand, are:

Welsh was sentenced December 7, 1905, to four years in the Philadelphia County Prison, and received one year and one month commutation, but within the four year period from the date of the sentence, had committed burglary and was sentenced therefor April 22, 1909, to ten years in the Eastern Penitentiary. His ten year sentence allowing commutation, expired September 22, 1915. Upon the theory that he is entitled to a parole at the expiration of he period of imprisonment, and so that he would not be held for the commutation which was given him upon the four year sentence, he asks that his name be withdrawn from the commutation sheet which was signed by the Governor on June 22, 1915, and specified his discharge on September 22, 1915. He desires that to be done so that he may apply for parole under the Act of 1913, and if paroled he would be released from prison much earlier than if required to serve the commutation period under the former sentence. In an opinion given to Dr. Hart, Secretary of the Board of Inspectors of the Eastern State Penitentiary, August 5, 1909, 37 Pa. C. C. Rep. 60, we held that the parole Act of May 10, 1909, had no application to prisoners sentenced prior to the 30th day of June, 1909, the day when the Act took effect. We see no reason to change the opinion then expressed, with reference to the later parole Acts. This sentence was imposed April 22, 1909, before the parole Act was in effect.

I am, therefore, of the opinion and so advise you, that Herbert Welsh is not entitled to apply for parole under the parole Acts passed since he was sentenced, but should be required to serve the commutation of the first sentence forfeited by his conviction and sentence within the period of four years from December 7, 1905.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE EXPENSE FOR BOOKS, STATIONERY AND POSTAGE IN WESTERN PENITENTIARY.

The expense for books, stationery and postage for inmates of the Western Penitentiary may be classed as an expense of "keeping" the prisoners as distinguished from "maintenance of" the prisoners and may be charged to the various counties.

Office of the Attorney General,
Harrisburg, Pa., April 28, 1916.

T. B. Foley, Secretary, Western Penitentiary, Pittsburgh, Pa.

Sir: Some time ago you submitted to this Department the letter of John Francies, Warden, addressed to the Board of Inspectors,

calling attention to the fact that the appropriation for the purchase of books and stationery for the period ending May 31, 1917, was nearly exhausted and asking to be advised whether, when the appropriation is exhausted, the expense of such books, stationery and postage might be charged to the counties as an item of maintenance.

The appropriation under the Act of 1915 "for books and stationery for prisoners" was \$500. In 1913, \$2500 was appropriated for books and stationery. The letter of Mr. Francies states that the prison population has increased during the last two years, which has accounted for the approaching deficiency in that item, and I learn from the statements submitted that the item has been consumed in the purchase of books, subscription to papers, and for the purchase of paper and envelopes, inks, pencils, pens and postage for the prisoners, and for the use of the penitentiary business. Undoubtedly, stationery is necessary for the routine business of the Penitentiary, and books, postage and stationery are also necessary for the use of the prisoners. It would be unthinkable if prisoners should be kept without permitting them to write letters, or to occupy their minds by reading books, magazines or papers, under proper restrictions. The expenditures for these purposes can clearly be considered "expenses of keeping the convicts."

The Act of April 23, 1829, P. L. 341, provides, in Section 9, "that the expenses of maintaining and keeping the convicts in said Eastern and Western Penitentiaries, shall be borne by the respective counties in which they shall be convicted."

Section 5 of the Act of February 27, 1833, P. L. 55, repeals so much of section 9 of the Act of April 23, 1829, above quoted "as relates to the maintenance of convicts."

The earlier Act used the term "Maintaining and keeping" convicts; the later Act repeals the provision as to maintenance.

This Department held, in an opinion given Mr. Francies October 15, 1913, 42 Pa. C. C. Rep. 193, that

"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."

That opinion reviewed the opinions of this Department, showing that the construction, alteration and repairs of various kinds to the buildings, were all considered maintenance.

It is difficult to determine what would be considered keeping the prisoners chargeable to the counties, and what should be considered maintenance not so chargeable, but I think that books and stationery

for the use of the prisoners, for which \$500 was appropriated would be considered in the same category with clothing or medicines to be furnished to the prisoners personally.

Therefore, I am of opinion that the cost of books and stationery is a proper item for the keeping of the prisoners, chargeable to the counties.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

HOUSING OF LIVE STOCK WESTERN PENITENTIARY.

It is lawful for the Inspectors of the Western Penitentiary to erect buildings for the housing of live stock acquired by the penitentiary under provisions of the Act of April 4, 1913, P. L. 44, at the expense of the counties comprising the prison district, when such course will be beneficial and result in a saving to the counties in the cost of keeping the prisoners sent from them.

Office of the Attorney General,
Harrisburg, Pa., June 13, 1916.

Mr. Thomas B. Foley, Secretary of the Board of Inspectors of the Western Penitentiary of Penn'a., Pittsburgh, Penn'a.

Sir: This Department is in receipt of your inquiry of the 6th inst., in which you state:

"There are at present at the New Western Penitentiary at Centre County, a large number of horses, cattle, hogs, etc., which are continually increasing in number, and which are the property of the Counties comprising the Western Penitentiary prison district of Pennsylvania. The accommodations for housing and caring for this stock are inadequate.

In view of the fact that this stock is the property of the Counties, (not the State) and the profits arising therefrom accrue to the benefit of the Counties, would it be legal to erect, at the expense of the Counties comprising the Western Penitentiary prison district, buildings in which to house and protect this stock, charging the same to the 'Maintenance Account' which is paid by the Counties?"

The large number of horses, cattle, hogs, etc., which you mentioned, were acquired pursuant to the Act of April 4, 1913, P. L. 44, the preamble and first Section of which read as follows:

"Whereas, The board of inspectors of the Western Penitentiary, under authority of law, have purchased a farm of about four thousand acres in Centre County, in connection with the new Western Penitentiary; and

Whereas, It is proper and economical to farm said land, and thereby decrease the cost to the several counties of the maintenance of convicts; therefore,

Section 1. Be it enacted, etc., That the Board of Inspectors of the said Western Penitentiary are hereby authorized to purchase such farming implements and livestock as may be necessary, from time to time, for the purpose of farming the tract of land connected with the said Western Penitentiary in Centre County, and charge the cost of the same to the several counties in the Western Penitentiary District, in proportion to the number of convicts from each county in the said Western Penitentiary District."

The purpose of acquiring this livestock, as set out in the Act above quoted, is to assist in reducing the expense of keeping the inmates of the penitentiary and thereby lessening the amount required to be paid for that purpose by the respective counties from which such inmates are sent. This purpose must be distinguished from that of a general plant equipment necessary to house and guard the prisoners. This, it has always been the law and policy of the State, to supply. An analogy might occur which is in fact not applicable. For instance, the provision of adequate kitchens is necessary to prepare the food, which is a part of the maintenance of the prisoners. Why, therefore, would the construction of a kitchen not be a charge against maintenance? This distinction between that and the providing of adequate barns and stables for livestock is that the presence of livestock is in no wise an essential and primary element in the operation of the penitentiary system, and by the Act of 1913, is recognized and permitted only for the purpose of reducing the cost to counties.

Attorney General Elkin, in an opinion dated December 20, 1895, given to the Secretary of the Board of Public Charities, extended the word "maintenance" to include items of expense incurred for horses, cows, etc. The excerpt from his opinion pertinent to the present inquiry, is as follows:

"It is necessary to farm these lands, and this cannot be done without farm hands, horses, farming utensils and such other appliances as are useful and necessary in the cultivation of lands. * * * * * The trustees have a right to expend moneys in the purchase of food, and it is no stretch of legal interpretation to say that they can incur expense in that which produces the food. The result is the same in both instances. This being my view of the law, I can see no objection to including items of expense incurred for horses, cows, harness, wagons, carts, garden seeds, etc., which are necessary and useful in the cultivation of the lands in the term 'maintenance,' as used in the Act of Assembly."

That opinion is applicable to the present case in that in justifying the purchase of farming utensils and stock, under the term "maintenance," the right to house and protect stock so purchased would certainly follow where they are specifically directed to be purchased. It would be an absurdity to say that the Act of 1913, authorized only the purchase of livestock and not the expenditure of such moneys as were necessary to properly care for the livestock and its increase. Under such an interpretation the very purpose of the Act would be defeated.

While it would unquestionably be proper to build such stables or barns from State money, if the same were so appropriated by the Legislature, yet your inquiry must be predicated on the lack of such appropriation, and with no funds otherwise available, the proper care and protection necessary to conserve this livestock, purchased at the expense of the counties, would warrant an expenditure, on behalf of the counties, of a sufficient amount to furnish adequate barns and stables for such livestock.

The Board of Inspectors in the exercise of a sound discretion must determine whether this expenditure is beneficial to the counties and will serve to reduce the cost of maintenance. If not, the surplus of livestock should be disposed of.

This opinion is in line with that of Third Deputy Attorney General Morris Wolf, who, under date of October 15, 1913, Attorney General's Reports, 1913-1914, page 325, stated that the opinions of this Department have uniformly shown

"A tendency to interpret the word 'maintenance' liberally and reasonably."

I have, therefore, to advise you that it would be legal to erect buildings for the housing of this livestock at the expense of the counties comprising the Western Penitentiary Prison District if, and when, the Board of Inspectors determine that such course would be beneficial and result in a saving to these counties in the cost of keeping the prisoners sent from them.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

PRISON LABOR COMMISSION.

There is no legal authority for the employment of prisoners, except as specifically authorized by the Act of June 1, 1915, P. L. 656.

Office of the Attorney General,
Harrisburg, Pa., June 17, 1916.

Honorable John E. Hanifen, Chairman of Prison Labor Commission,
Real Estate Trust Building, Philadelphia, Penna.

Sir: Replying to your inquiry of recent date, addressed to the Attorney General, inquiring whether or not the Commission may undertake to manufacture and supply half hose for troops of foreign governments, I beg to advise as follows:

If you will refer to an opinion previously rendered to you by this Department, you will note that it was therein pointed out that under the Act of June 1, 1915, P. L. 656, creating your Commission, the employment of persons sentenced to the correctional institutions referred to, is restricted to the purposes set forth in Section 1 of the Act as follows:

"Such labor shall be for the purpose of the manufacture and production of supplies for said institutions, or for the Commonwealth or for any county thereof, or for any public institution owned, managed and controlled by the Commonwealth, or for the preparation and manufacture of building material for the construction or repair of any State institution, or in the work of such construction or repair, or for the purpose of industrial training or instruction, or partly for one and partly for the other of such purposes, or in the manufacture and production of crushed stone, brick, tile, and culvert pipe, or other material suitable for draining roads of the State, or in the preparation of road building and ballasting material."

You are advised, therefor, that however beneficial the doing of other work might be in the way of preventing idleness and increasing the funds of your Commission, there is no legal authority to employ the prisoners except as specifically authorized by the Act above quoted.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

WAGES OF PRISONERS.

The Prison Labor Commission is advised as to the disposition of moneys earned by prisoners.

Office of the Attorney General,
Harrisburg, Pa. December, 20, 1916.

Mr. John E. Hanifen, President, Prison Labor Commission, Philadelphia, Pa.

Sir: In answer to your inquiry relative to the payment of wages earned by prisoners employed under the provisions of the Act of June 1, 1915, P. L. 656, creating your Commission, I beg to advise you as follows:

The pertinent provisions of the Act are:

"Section 8. Three-fourths of the amount credited to each prisoner, or the entire amount if the prisoner so wishes, shall constitute a fund for the relief of any person or persons dependent upon such prisoners, and shall be paid upon the order of the Prison Labor Commission to the person or persons establishing such dependency to the satisfaction of said board, at such time and times as said board may order.

"Section 9. In case a prisoner has no person or persons dependent upon him, the sums so credited shall be deposited for the benefit of such prisoner, under the rules and regulations of the Prison Labor Commission; and the sum so credited shall be paid to the said prisoner,—one-third on discharge of prisoner, one-third in three months after his discharge, and the balance in six months after his discharge.

"Section 10. All wages paid under the provisions of this Act shall be charged to the manufacturing fund provided for in Section Five of this Act."

It appears that it was contemplated that the sums earned by the prisoners employed should, from time to time, be set aside to their credit and for their benefit, to be disbursed as provided by the Act.

It is suggested, therefore, that the Prison Labor Commission adopt a rule or regulation under which an accounting may be made at regular period,—for instance, every month or quarterly, to ascertain the amount earned by the prisoners employed during that period, and when so ascertained, a direct requisition may be drawn by the Commissioner to the Auditor General for the payment of the sums so earned to the treasurer or corresponding fiscal officer of the institution, for the benefit of the employed prisoners as appears by the requisition on which the names of the prisoners and the amounts earned by them individually should appear as part thereof. This plan is suggested for the reason that it seems that it is already the practice of the treasurers of the several correctional institutions to keep the funds and accounts of their prisoners.

In order to carry out the provisions of Section 8 of the Act, above quoted, referring to payments to persons dependent upon a prisoner, it is suggested that proper data be obtained from the prisoners as to any such dependents by the warden or other officer of the institution, which should be transmitted to the Commission, whose duty appears to be to satisfy itself on the question of such dependency, which may be done by affidavits or formal hearing. When the Commission has been so satisfied, it should order the treasurers or other fiscal officers of the several institutions holding the funds of said prisoners to make payments to the dependents from time to time as the circumstances in each case may warrant.

Referring now to the question of payment of sums earned to the prisoners on their discharge, as provided in Section 9 of the Act, above quoted, there is a hiatus in the provisions, in that, while the Act provides for the payment to prisoners who have "no person or persons dependent" upon them, it makes no provision for payment to prisoners who have dependents, of the balance remaining to their credit after the dependents have been paid the share or proportion they are entitled to under the Act; furthermore, there is no provision for the disposition of any sums which may have been earned by life prisoners.

The omission must be supplied by reasonable construction. There is no reason to suppose that it was intended that a prisoner having no dependents should have the entire sum earned by him paid to him on his discharge and thereafter as provided by the Act, and that a prisoner who has dependents who have received under the provisions of the Act, three-fourths or more of the amount earned by such prisoner, should not have paid over to him on his discharge and thereafter, the balance of the fund remaining to his credit. The balance due such prisoner should therefore be disbursed in the same manner as the sums credited to other prisoners, to wit: One-third of such balance should be paid on the discharge of such prisoner; one-third three months thereafter, and the balance six months after his discharge.

As to money earned by and credited to life prisoners, the Commission would be justified in adopting a regulation that the entire fund earned, or in case the prisoner has dependents, the balance thereof should be payable to the person or persons, as the prisoner may, by formal direction to the treasurer of the institution holding his money, designate.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

TERMS OF CONVICTS.

The Board of Inspectors of the Eastern Penitentiary is advised as to the terms of imprisonment of two convicts.

Office of the Attorney General,
Harrisburg, Pa., December 26, 1916.

Dr. Charles D. Hart, Secretary Board of Inspectors, Eastern Penitentiary, Pittsburgh, Pa.

Sir: Your favor of the 6th inst. addressed to the Attorney General was referred to me.

You state that on November 30, 1910, you received George O'Gorek, sentenced from Dauphin County for not less than three years, six months, and not more than fourteen years, for felonious entry, to be computed from November 28, 1910. His minimum sentence expired May 28, 1914, on which date he was released on parole, with ten years and six months to serve until final discharge, or until recommended for a pardon.

While on parole he committed the crime of felonious entry and was returned to the Eastern Penitentiary from Dauphin County, with a term of not less than two and not more than four years. The sentence was dated March 24, 1914, and the commitment stated that the sentence was to commence and to be computed from that date.

You ask whether the sentence should be computed from that date in view of the violation of the parole.

The first section of the Act of June 3, 1915, P. L. 788, amending Section 10 of the Act of June 19, 1911, provides: .

"If any convict, released on parole as provided for in this Act, shall, during the period of parole, be convicted of any crime punishable by imprisonment under the laws of this Commonwealth, and sentenced to any place of confinement other than a penitentiary, such convict shall, in addition to the penalty imposed for such crime committed during the said period, and after the expiration of the term, be compelled, by detainer and remand as for an escape, to serve in the penitentiary to which said convict had been originally committed the remainder of the term (without commutation) which such convict would have been compelled to serve but for the commutation authorizing said parole, and if not in conflict with the terms and conditions of the same as granted by the Governor; *but, if sentenced to a penitentiary then the service of the remainder of the said term originally imposed shall precede the commencement of the term imposed for said crime.*"

This act is plain. It requires O'Gorek to serve ten years and six months the remainder of the term originally imposed upon him before he served the second sentence.

It conflicts with the language of the commitment which requires the second sentence to begin and to be computed from March 24, 1915, but the commitment must be read in connection with the Act of Assembly. In a situation such as O'Gorek's, that commitment must necessarily be upon the condition that O'Gorek is not required under the Act of Assembly to first serve the remainder of any previous term.

In the very nature of things the judges do not have before them the fact as to whether a particular prisoner has violated a former parole. He may have been sentenced from another county. In this case it happens that both sentences were from Dauphin County; but notwithstanding that fact the commitment cannot set aside the plain letter of the statute and must be read in connection with it. When so read it results in requiring O'Gorek to serve the remainder of the first term before he begins his service under the second commitment. There is nothing in the statute which justifies the construction that the second sentence should run concurrently with the remainder of the first.

You also state another case, as follows:

On April 9, 1907, a prisoner by the name of Bruno Prizzeumti was sentenced from Dauphin County for eighteen years for the crime of murder in the second degree, which sentence was commuted March 30, 1907. Under the Act of June 19, 1913, he was released on parole October 21, 1913, after having served one-third of his sentence. He had a term of eleven years, five months and nine days to serve on parole until final discharge was granted, or until he was recommended by the Board of Inspectors for a pardon. While on parole he was convicted in the courts of Chester County for the crime of inciting to riot and trespass, and was sentenced to the Chester County jail for a term of six months. Upon the completion of that term on November 8, 1914, he was returned to the Eastern Penitentiary.

You ask whether he is required to serve the full remainder of the original term without any parole.

The Act of June 3, 1915, amending Section 10 of the Act of June 19, 1911, seems to be plain. It provides that after the expiration of the sentence

"to any place of confinement other than a penitentiary such convict shall, in addition to the penalty imposed for such crime committed during the said period, and after expiration of the same, be compelled, by detainer and remand, as for an escape, to serve in the penitentiary to which said convict had been originally committed the remainder of the term (without commuta-

tion) which such convict would have been compelled to serve but for the commutation authorizing said parole," etc.

The words "without commutation" mean that there is to be no further release upon parole; and the full remainder of the term of the first sentence must be served.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

MISCELLANEOUS OPINIONS.

MISCELLANEOUS OPINIONS.

PENNSYLVANIA ORAL SCHOOL.

The Commission to transfer Pennsylvania Oral School to the Commonwealth is advised to present to the Legislature in the form of a bill the difficulties as to the title of land of said school.

Office of the Attorney General,
Harrisburg, Pa., March 15, 1915.

Hon. Isaac Johnson, Chairman Commission to transfer Pennsylvania Oral School to the Commonwealth, Media, Pa.

Sir: On the 9th inst. you requested the Attorney General to advise the Commission appointed to take over the Oral School "whether this is such a title as is contemplated by the statute creating it."

The Act of May 8th, 1913, P. L. 163, is entitled:

"An Act providing for an examination of the Pennsylvania Oral School for the Deaf, at Scranton, Lackawanna County, Pennsylvania; providing for the transfer, under certain conditions, of the said Oral School for the Deaf to the Commonwealth," etc.

In Section 1 it is provided for a commission:

"Who shall investigate and examine the said school, together with all the buildings, ground, equipment, affairs and accounts of said school, said commission shall ascertain the indebtedness of said school, of whatsoever nature, and shall ascertain what, if any, liens, there may be of record against said school, including said buildings and grounds, and, what, if any, claims there may be against said school, including all buildings, grounds, and equipment, and whether said school is in good repair, and whether there is ground adjacent and belonging thereto sufficient for the proper maintenance of said school. *If said commission shall ascertain that said school is in good repair and is fully equipped and in proper condition to accommodate pupils, and that there is sufficient ground as aforesaid, and that the total of all claims, debts, and liens against said institution, including all buildings, equipment and grounds does not exceed the sum of thirty thousand dollars, said commission shall have authority, and is hereby directed, to accept said school, including all said buildings, grounds, and equipment, in the name of this Commonwealth.*"

It will be noted that the word "title" does not anywhere appear in this statute. The Commission is apparently, at least not in terms,

neither authorized nor directed to examine into the question of title. In this respect this Act of Assembly is unusual and peculiar. The Commonwealth, even in the coal regions, has been accustomed to taking the whole title to lands which it purchases, where it is possible so to do. On the other hand the act may have been drawn advisedly, it being a matter of common knowledge that the surface title of lands underlaid with coal is separate from the mining rights.

The Brief of Title submitted shows that only "the surface or right of soil" is conveyed. The deed contains this provision:

"The intent of this deed being to convey this described surface of land for the uses and purposes of an institution for the oral education of deaf mutes, to be erected thereon and for no other purpose. It being distinctly understood that perverting it to any other use shall work a forfeiture and annulment of this deed, excepting and reserving to the said Pennsylvania Coal Company, their successors and assigns, all the coal and other minerals, under, in or upon said land."

It will be noted that there are two serious limitations on the title to this property:

First: That the property must be used as an institution for the oral education of deaf mutes and no other purpose.

Second: That the surface only is conveyed, and there is no title whatever to the sub-soil.

As a strict legal proposition I am of opinion that the Act of May 8th, 1913, P. L. 163 does not limit your Commission to accepting the school with a good title to the surface of the land only on which it is located.

The question of policy is an entirely different matter. It is to say whether the Commonwealth should take the title to lands which it does not completely control, and to which it gets only the surface right, limited, in addition, to a particular use.

This latter question, however, is not one of law, but one of policy for the Commission to determine. I have no doubt the Commission has already considered the other suggestions made in the letter of Hon. Morris Wolf, then Third Deputy Attorney General, to you of January 11th, 1915, repeated in a letter of Mr. Hoke, Private Secretary to the Attorney General, addressed to Mr. Wharton, in a letter of February 14th, 1915, which need not here again be referred to.

My advice is that the facts as they are, and the authority to take title to the property as it is, should be presented to the Legislature in the form of a bill, etc., etc.

Yours respectfully,

FRANCIS SHUNK BROWN,
Attorney General.

OPIUM PURCHASES.

The exemption in section 1 of the Harrison Opium Act of Congress of December 17, 1914 (H. R. 6282), of the "officers of State governments or of counties and municipalities lawfully engaged in making purchases of such drugs for State, county or municipal hospitals or prisons," does not include the superintendent and other persons attached to State hospitals, they not being officers of the State government. The proper officers of the State government, being exempted by the act, may make such purchases for State institutions.

The Office of the Attorney General,
Harrisburg, Pa., March 19, 1915.

Miss Fannie A. Dougherty, Supt., Cottage State Hospital, Philipsburg, Pa.

Dear Miss Dougherty: Your favor of the 10th inst. addressed to the Attorney General is at hand. You inquire whether as officials of a State Hospital, you are exempt from the provisions of the Act of Congress, entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute or give away opium or coca leaves, their salts, derivatives or preparations, and for other purposes.

This Act known as the "Harrison Act" provides "That officers of any State Government or of any county or municipality therein, who are lawfully engaged in making purchases of the above named drugs for State, county or municipal hospitals or prisons, shall not be required to register and pay the special tax as herein required."

This language exempts only officers of any State Government or of any county or municipality therein. The Superintendent and other persons attached to State Hospitals are not officers of State Government, and therefore the Act, in my opinion, does apply to them.

If it is desirable to have purchases of the drugs mentioned in the Act made by proper officers of the State Government for your institution, such purchases could be made by the proper State officials and they would not be within the terms of the Act.

Very truly yours,

Wm. M. HARGEST,
Second Deputy Attorney General.

UNDERTAKERS' LICENSES.

Under the Acts of June 7, 1895, P. L. 167, and April 24, 1905, P. L. 299, a licensed undertaker may lawfully have branch offices in any part of the State. The State Board of Undertakers should, in such cases, issue duplicate licenses for "conspicuous" display, as required by the act.

Office of the Attorney General,
Harrisburg, Pa., April 26, 1915.

Francis H. Thole, Esq., Counsel for State Board of Undertakers,
Philadelphia, Pa.

Sir: Your communication of recent date propounding certain questions relating to the construction of certain portions of the Act creating the State Board of Undertakers and the amendments thereto has been duly considered. The questions are as follows:

1. May a licensed undertaker lawfully have branch offices in the county designated in his license?

2. May a licensed undertaker lawfully have branch offices throughout the State of Pennsylvania?

3. Is it lawful for the State Board of Undertakers to issue a duplicate, or duplicates, of a license so that the licensee shall be enabled to display said license in a conspicuous place in the branch office or offices?

The State Board of Undertakers was created by the Act of June 7, 1895, P. L. 167. By the Act of April 24, 1905, P. L. 299, the operation of the Act was extended from cities of the first, second and third classes to the whole Commonwealth. Some other amendments were also made, not necessary to consider in the present inquiry.

Inquiries 1 and 2 may be answered together.

1-2. These questions arise by reason of the following language of Sections 5 and 6 of the Act as amended.

Under Section 5 of the Act as amended, it was the duty of any person, persons or corporations engaged in the business of undertaking, etc., to cause within one year after the passage of the act,

"His, her, their or its name or names, residence and
place of business, to be registered with said Board * **"

Section 6 of the Act as amended, provides for the licensing of persons or corporations thereafter to engage in the said business of undertaking, for the registration of persons receiving such license, and that such person, persons or corporation

"Shall display said license in a conspicuous place in
the *office or place* of such licensee."

The amendments did not affect the quoted language in these two sections, being the same as in the original Act of 1895.

It is necessary to understand the nature and purpose of the Act creating the State Board of Undertakers, in order to answer these inquiries.

The purpose of the Act, according to its title, is

“To provide for the better protection of life and health by diminishing the danger from infectious and contagious diseases * * * *”

Section 6 of the Act provides for licensing of persons who engage in this business, who are

“Possessed of skill and knowledge of said business of undertaking and have a reasonable knowledge of sanitation, preservation of dead, disinfecting the bodies of deceased persons, the apartment, clothing and bedding in cases of death from infectious or contagious diseases.”

The validity of the Act was considered and upheld in *Commonwealth v. Hanley*, 15 Superior Court, 271. The Court said, at page 278,

“The regulation of such a business, by requiring those who engage in it to have that skill and knowledge, the possession and use of which will result in diminishing the dangers from such diseases and the lack of which may result in the spread of them, is clearly a legitimate exercise of police power.”

The primary object and main purpose, therefore, of this legislation is to safeguard the health of the citizens of the State by licensing only such persons to engage in this business who possess the necessary knowledge, skill and ability to do so as required by law.

The Act does not impose a tax on the business of undertaking, and its operation is in no wise affected by the amount of business done, or the number of places where it is done.

The designation of the place of business, residence, etc., required by the Act is a mere administrative incident necessary for keeping proper records and statistics.

It is not the place that is licensed, but it is the person of demonstrated ability who is licensed.

Section 6 of the Act of 1895 as amended by the Act of 1905, (there being no change in the amendment with respect to this language) provides, that after due examination of the applicant, etc., “the Board shall issue to said applicant or applicants, upon payment of a fee of twenty-five dollars, a license to practice said business of undertaking and shall register such applicant or applicants as duly licensed undertakers.”

The license “to practice said business of undertaking,” is not restricted by the Act to any particular city, county or place. It is a license to practice the business of undertaking in any part of the State.

"A license issued by a State to pursue a certain calling enables the licensee to pursue such calling in any county of the State."

25 Cyc. 624. *Citing Latta vs. Williams*, 87 N. C. 126.

Furthermore, Section 8 of the Act of 1895, which is not affected by the amendments contained in the Act of 1905, provides:

"Section 8. Every such license shall specify by name the person, persons or corporation to whom it is issued and shall designate the particular place or *places* at which the business shall be carried on."

In my opinion, therefore, a licensed undertaker may lawfully have branch offices in any part of the State.

3. Relative to the third inquiry, inasmuch as it is necessary for undertakers to "display a license in a conspicuous place in the office or place of business of such licensee," there is no reason why the State Board of Undertakers should not issue duplicate or duplicates of the original license for that purpose. It is my opinion that it is lawful for the State Board of Undertakers to do so. Indeed, a licensed undertaker, having the right, under this opinion, to have branch offices, it would be necessary in such case for the Board to issue duplicate licenses for "conspicuous" display as required by the Act.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

WORKMEN'S COMPENSATION ACT.

The Workmen's Compensation Bill is not in conflict with the treaty with Italy, by which it is provided that each nation shall afford the nationals of the other that form of protection granted by any State or national law which establishes a civil responsibility for injuries or for death caused by negligence or fault, and gives to relatives or heirs of the injured party the right of action, which right shall not be restricted on account of the nationality of such relatives or heirs, since the right to recover compensation under the bill is not predicated on negligence or fault, but compensation is provided for, regardless of the cause or circumstances of the injury; nor does the proposed bill offend against the 14th Amendment of the Federal Constitution, which provides that no State shall deny to any person in its jurisdiction the equal protection of the laws.

Office of the Attorney General,
Harrisburg, Pa., May 5, 1915.

Hon. William J. Bryan, Secretary of State, Washington, D. C. /

Sir: The Governor has referred to me your letter of April 20, 1915, in which he is informed that "the Department is of the opinion that

the proposed Compensation Act, now under consideration of the Legislature, is violative of the provisions of the Treaty of February 25, 1913, between the United States and Italy," in that

"it apparently discriminates against alien dependent widows and children not residents of the United States as compared with residents, in the matter of the amount of compensation to be paid; discriminates against alien dependents not residents of the United States, as compared with residents, in the matter of computing future installments of compensation, by providing for the payment of such alien dependents of less amounts than are to be paid to residents, and also discriminates against alien non-resident widowers, parents, brothers and sisters as compared to resident relatives of the degrees mentioned."

I beg to assure you that in compliance with your request, careful consideration has been given your views thereabout, but I respectfully beg leave to differ from your conclusions.

Article III of the proposed Act provides:

"Section 301. When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of Article III of this Act, compensation for personal injury to or for the death of such employee by an accident in the course of his employment shall be made in all cases by the employer without regard to negligence, according to the schedule contained in Section 306 and 307 of this Article; provided that no compensation shall be made when the injury or death be intentionally self-inflicted, but the burden of proof of such fact shall be upon the employer," etc.

Article III of the proposed Act also provides:

"Section 310. Compensation under this article to alien dependent widows and children, not residents of the United States, shall be the same in amount as is provided in each case for residents, except that, at any time within one year after death of the injured employee, the employer may, at his option, commute all future installments of compensation to be paid to alien dependents not residents of the United States by paying to such alien dependents two-thirds of the total amount of such future installments of compensation. Alien widowers, parents, brothers and sisters not residents of the United States shall not be entitled to any compensation."

The Treaty between the United States and Italy provides:

"The citizens of each of the High Contracting Parties shall receive in the States and Territories of the other the most constant security and protection for their per-

sons and property and for their rights, including that form of protection granted by any State or national law which establishes a civil responsibility for injuries or for death caused by negligence or fault and gives to relatives or heirs of the injured party a right of action, which right shall not be restricted on account of the nationality of said relatives or heirs; and shall enjoy in this respect the same rights and privileges as are or shall be granted to nationals, provided that they submit themselves to the conditions imposed on the latter."

The proposed Workmen's Compensation Act is in no sense violative of the rights secured by this treaty. It provides that citizens of Italy residing in the United States shall be protected in respect of their rights, including that form of protection granted by State or national law which establishes a civil responsibility for injuries or death caused by "negligence or fault." The right to recover compensation under the proposed Act is not predicated on "negligence or fault," but compensation is provided for regardless of the cause or circumstances of the injury, except where the injury is intentionally self-inflicted, hence the Act does not come within the purview of the treaty.

And further, acceptance of the provisions of the Act is not compulsory, and anyone who does not elect to accept them may sue for full damages in the same manner as heretofore for any injuries sustained.

The proposed Act provides for an elective system of compensation for injuries sustained. It denies to no one any subsisting rights, it merely provides a simpler, surer and more convenient method of enforcing those rights, for those who elect to take advantage of its provisions, and it imposes certain limitations in exchange for benefits conferred, amongst which limitation is the denial to alien widows, parents, brothers and sisters not residents of the United States of the right to receive compensation under the Act. And in respect of these persons it may be said that it would be obviously unfair to impose on employers the obligation to conduct investigations in obscure parts of foreign countries to protect himself from the claims of alleged dependent parents, brothers and sisters, who were not in fact in any way dependent, whereas wives and minor children require no proof as a rule, one way or the other.

If an alien workman has dependent parents, brothers or sisters in the home country it will be a comparatively simple matter for him to decline to accept the provisions of the Act and retain for himself and for his survivors the rights which he now has.

The proposed Act does not offend against the Fourteenth Amendment to the Constitution of the United States, which provides:

“Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Supreme Court of the United States laid down the true rule for classification such as is made by this Act, in the case of *Jeffrey Manufacturing Company v. Blagg*, 235 U. S. 571, (1915) where it upheld the Ohio Workmen's Compensation Act, which established a plan that all employers having five or more employes may enter on equal terms, and contained a provision abolishing the defense of contributory negligence as to such employers who do not come into the plan, because the defense is not abolished as to those having less than five employes, and because it did not deem the classification unreasonable

Mr. Justice Day said, page 576:

“This Court has many times affirmed the general proposition that it is not the purpose of the Fourteenth Amendment in the equal protection clause to take from the States the right and power to classify the subjects of legislation. It is only when such attempted classification is arbitrary and unreasonable that the court can declare it beyond the legislative authority. *Lindley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 78, and previous cases in this court cited on page 79. That a law may work a hardship and inequality is not enough. Many valid laws from the generality of their application necessarily do that, and the legislature must be allowed a wide field of choice in determining the subject-matter of its laws; what shall come within them, and what shall be excluded.”

See

McGovern v. Philadelphia & Reading R. R. Co. 235 U. S. 389.

Deni v. Pennsylvania R. R. Co. 181 Pa. St. Rep. 525.

Maiorano v. B. & O. R. R., 213 U. S. 268.

Mudhall v. Fallon, 176 Miss. 266.

I am clearly of opinion, and beg respectfully to submit that the proposed Workmen's Compensation Act does not violate the provisions of the said Treaty.

Respectfully,

FRANCIS SHUNK BROWN,

Attorney General.

BUILDING COMMISSION STATE INDUSTRIAL HOME FOR WOMEN AT
MUNCY.

The Commission is advised to ask for new bids for buildings where the amount of the bid exceeds the amount available for building purposes.

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

George Quintard Horwitz, Esq., Chairman Building Commission,
State Industrial Home for Women, 601 West End Trust Building,
Philadelphia, Pa.

Sir: I have received your favor of the 1st inst. inquiring as to the necessity of advertising for new bids for the erection and construction of buildings at Muncy, Pa. I understand from your letter that the Commission originally advertised for the erection and construction of one administration building and four cottages. The bids did not provide for the construction of each building as a separate unit but were of four classes: The first, for the general construction of the buildings; the second, for plumbing; the third, for heating and ventilation, and the fourth for electrical equipment. The aggregate amount of the lowest bidders for the four proposals was \$214,073.00, while the amount available in the judgment of the Commission for the erection of buildings at this time, is only \$180,000.00. The Commission has therefore deemed it best to omit one of the cottages planned and ask for new bids.

If I have correctly stated the facts in connection with the matter, I beg to advise you that it will be necessary for your Commission to advertise for new bids for the construction of the Administration Building and three cottages. I would not advise asking the contractors to submit new bids for the reduced number of buildings without first advertising anew.

Very truly yours,
FRANCIS SHUNK BROWN,
Attorney General.

NANTICOKE STATE HOSPITAL.

The moneys received from care and maintenance of patients belongs to the maintenance fund, must be so reported to the Auditor General, and cannot be used for building new additions to the hospital.

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

Thomas D. Shea, Esq., Wilkes-Barre Pa.

Sir: I have your favor of the 6th inst. making the following inquiry:

"Is it legal for the Board of Trustees of the Nanticoke State Hospital to use the funds received from patients for care and services rendered for the purpose of erecting a necessary addition to the hospital building?"

I beg to advise you that such action would not be legal. The moneys received from patients for care and services rendered belong to maintenance account, and must be reported as such to the Auditor General, and cannot be used for the erection of new buildings, which belong to construction account.

In making settlement with the Auditor General for moneys appropriated for the maintenance of the hospital, the Auditor General will have to take into account the moneys received from patients for their care and service, and can only allow the hospital the money appropriated for maintenance or such part thereof as may be needed after applying to such expenses, moneys received from patients, as aforesaid.

Section 3 of the Act of June 14, 1911, P. L. 933, does not give the Board of Trustees power or authority to use money belonging to maintenance account for construction or building account.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

PENNSYLVANIA STATE LUNATIC HOSPITAL, HARRISBURG.

The trustees of the hospital have authority to grant permission to the City of Harrisburg to construct a terra cotta sanitary sewer through the grounds of the hospital, if they deem it advisable and for the best interests of the hospital.

Office of the Attorney General,
Harrisburg, Pa., September 23, 1915.

Dr. H. L. Orth, Superintendent Pennsylvania State Lunatic Hospital,
Harrisburg, Pa.

Dear Sir: Your favor of the 11th inst. to this department asking to be advised whether the Board of Trustees of the Pennsylvania State Lunatic Hospital has authority to grant the city of Harrisburg, permission to construct a terra-cotta pipe sanitary sewer through the grounds of the hospital for the purpose of draining certain sections of the city of Harrisburg, has been duly received.

Your letter states that the line selected is the natural course of the stream which drains the large watershed surrounding the grounds of the hospital, and is the only available depression in the neighborhood which could be utilized for the purpose.

The Act of April 14, 1845, P. L. 440, entitled "An act to establish an asylum for the insane poor of this Commonwealth to be called the Pennsylvania State Lunatic Hospital and Union Asylum for the Insane," provided for the appointment by the Governor, by and with the advice and consent of the Senate, of nine persons to be trustees of said institution,-

"who shall be a body politic and corporate by the name and style of the 'Trustees of the Pennsylvania State Lunatic Hospital and Union Asylum for the Insane,' and shall manage and direct the concerns of the institution and make all necessary by-laws and regulations not inconsistent with the constitution and laws of the Commonwealth, and shall have power to receive, hold, dispose of and convey all real and personal property conveyed to them by gift, devise or otherwise, for the use of said institution ———. The said trustees shall have charge of the general interests of the institution."

By the Act of April 11, 1848, P. L. 535, the name of the asylum was changed to "Pennsylvania State Lunatic Hospital."

An examination of the deeds to the property occupied by the hospital shows that all deeds on record are to the Pennsylvania State Lunatic Hospital, as grantee.

The power given to the trustees by the Act of April 14, 1845, to dispose of and convey the real and personal property conveyed to them for the use of the institution includes the power to grant an easement through the grounds of the hospital such as is desired by the city of Harrisburg, if the trustees deem it advisable and for the best interest of the institution to do so.

Higgins vs. Sharon Borough, 5 Super Ct. 92.

Wentz's Appeal, 106 Pa. 301.

McCreary vs. Bomberger, 151 Pa. 223.

Guss vs. Windle, 15 Dist. Reps. 324.

You are, therefore, advised that the trustees have authority to grant the permission asked for if in their judgment they deem it advisable and for the best interest of the hospital that it be so granted.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

POWERS OF BOARD OF PUBLIC CHARITIES.

The Act of May 1, 1913, P. L. 149, conferring additional powers upon the Board of Public Charities, is remedial in its nature and is sufficiently broad in its scope to enable the board to proceed for the correction of objectionable conditions in a city jail; particularly where the city jail is also used as a county jail.

Office of the Attorney General,
Harrisburg, Pa., November 11, 1915.

Honorable Francis J. Torrance, President of the Board of Public Charities, 1112 Bessemer Building, Pittsburgh, Pa.

Sir: I am writing you in answer to the questions submitted in your communication of the 3rd inst. to Attorney General Brown, as to whether the Board of Public Charities has any power under the Act of May 1, 1913, P. L. 149, in the case of such a prison as the Johnstown City Jail.

I can find no judicial construction of this Act covering this point. The statute, however, being remedial in its nature, should be given such liberal construction as will best effectuate its purposes. One purpose of this law was to clothe the Board of Public Charities with the power and charge it with the duty of securing proper conditions in "any jail, prison, penitentiary or almshouse." To exclude a city lockup from its remedial scope is to that extent, to limit one of the Act's plain purposes and most beneficent provisions.

I gather from your communication that to some extent as a matter of convenience, this city jail is used in lieu of the county jail. Such use would add force to the argument that this prison is within the scope and contemplation of the said act.

It is my opinion that under and in accordance with the provisions of the above mentioned Act, the Board of Public Charities has the power to proceed for the correction of objectionable conditions in such a prison as the one in question.

Even though under a stricter construction of said statute it might be held otherwise, I can nevertheless see no valid objection to the Board bringing the facts in this case to the attention of the District Attorney for such action as he may deem proper.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

PRISONERS.

Under the Act of April 9, 1915, P. L. 76, an officer making an arrest is required to furnish a certificate stating the charge only, when the giving thereof would not imperil the arrest or tend to permit an escape. He need furnish only one such certificate.

Office of the Attorney General,
Harrisburg, Pa., October 1, 1915.

Captain George F. Lumb, Deputy Superintendent State Police, Harrisburg, Pa.

Sir: Your favor addressed to the Attorney General was duly received. You ask to be advised:

First: Whether under Section 1 of the Act of April 9, 1915, P. L. 76, it is the duty of an officer to furnish the certificate mentioned in said act after he has delivered the prisoner to the custody of a jailor or warden.

Second: Whether, when a single certificate has been furnished, the duty under the law has been discharged.

You call attention to the fact that, in cases of strikes or riots, a number of persons, intending to interfere with the officers of the law, might line themselves up and demand certificates, thereby keeping an officer engaged in furnishing certificates and prevent the performance of his duty in suppressing a riot, and where a number of arrests had been made, as is frequently the case, an entire detachment of police might be thus handicapped and harassed in the performance of their duty.

Section one of the act referred to provides:

"That upon the arrest of any person, with or without a warrant, in this Commonwealth, charged with crime, in order to preserve and protect his, her or their rights, and to *facilitate the entry of bail* for his, her or their appearance before a magistrate, coroner, judge, or the Court of Quarter Sessions, and Oyer and Terminer, it shall be the duty of the sheriff, coroner, constable, police, or other official making the arrest, or having charge of the prisoners or prisoner, upon application made therefor either by counsel or a citizen, to issue, without cost to the applicant, a certificate stating the name of the prisoner or prisoners, and the charge upon which he, she or they have been arrested and imprisoned, and the amount of bail demanded, if the same has been fixed, so that bail may be entered as authorized by law."

Section 2 of the said act makes it a penalty if any person so required "refuse to issue a certificate as specified in section one, immediately upon demand therefor."

This statute, like all other statutes, must be construed according to its reason and spirit. The object of it, as stated in the statute

itself, is "to facilitate the entry of bail" for a prisoner, and to that end to secure a certificate "stating the name of the prisoner and the charge upon which he has been arrested."

Your first inquiry is:

Who is required to issue the certificate?

The language of the act is that "it shall be the duty of the sheriff, constable, police or any other officer making the arrest, *or* having charge of the prisoner or prisoners, upon application" to issue such certificate.

Reading this language strictly it might indicate that any person who has made an arrest, even after he has delivered the prisoner into custody, and without reference to the time which has elapsed between the arrest and the delivery over to the jailor, may at any time, upon demand, be required to immediately give a certificate. This would be an unreasonable requirement. An officer may have delivered over the prisoner and may also have surrendered or disposed of his warrant, and not have the information upon which to issue the certificate required.

The certificate is to be issued "*immediately upon demand.*" The evident intention of the legislature was that the officer having charge of the prisoner, at the time of the demand, shall be required to make the certificate. There would be no reason to require an officer who had arrested a prisoner to make the certificate, after he had delivered the prisoner into the custody of a warden or jailor.

Therefore, answering your first inquiry, I am of opinion that an officer is only required to furnish the certificate referred to in the act of assembly when he has the prisoner in charge and when the giving of such certificate would not imperil the arrest or tend to permit an escape. In other words he is only required to honor such an application when made at a proper time and place.

Second: The act of assembly in the first section requires the officer, upon application, to issue *a certificate*, and in the second section the penalty is imposed for failure "to issue *a certificate.*" It would be unreasonable, and not within the intention of the Legislature, to so construe this act that repeated certificates for the same prisoner might be demanded. One certificate would carry out the purpose of the act, namely "to facilitate the entry of bail," as well as a dozen.

Therefore, answering your second inquiry, I advise you that when the officer has issued one certificate he has performed the duty imposed upon him by the statute.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE CAPITOL PARK COMMISSION.

Under section 5 of the Act of June 16, 1911, P. L. 1027, providing for the extension of Capitol Park in Harrisburg, the record of all proceedings before the Commission must be kept in a minute book and be open at all times to public inspection; but the general discussions of the Commission, memoranda of estimates, appraisements, advices and other guides, which it is necessary for the Commission to have to enable it to properly perform its duties, are in no sense part of the "proceedings" and a request for their inspection may be refused.

Office of the Attorney General,
Harrisburg, Pa., November 17, 1915.

Honorable Spencer C. Gilbert, President, Capitol Park Extension
Commission, Harrisburg, Pa.

Sir: I am in receipt of your letter of recent date, asking to be advised as to the right of the public to examine the records of your Commission. The question as I understand arises by reason of a request, or rather a demand made upon the Commission for leave to examine all the records of the Commission as well as all the appraisements in the possession of the Commission, which right is claimed under Section 5 of the Act of June 16, 1911, P. L. 1027, providing for the extension of Capitol Park and for the appointment of your Commission.

The portion of said Section 5 pertinent to this inquiry provides:

"The said Commission shall cause to be kept a full, fair and accurate record of all its proceedings, properly indexed and open to the inspection of the public."

You advise that a record of all the proceedings of the Commission are kept in a minute book which contains a full, fair and accurate record of all the proceedings taken before the Commission and that this minute book or record of proceedings has always been open to the inspection of the public as provided by the Act.

You further advise, however, that there are other matters pertaining to the work of the Commission, consisting largely of memoranda of estimates, not official records but in the nature of guides to help the Commission in its work of determining valuations.

The Act, as already indicated, requires the Commission to keep a record "of all its proceedings" and it is this record that must be open to the inspection of the public.

There have been many definitions of the word "proceedings," none better, however, than that given in the case of *Beers vs. Haughton*, 9 Pet. (34 U. S.) 329, 368.

"'Proceedings', both in common parlance and in legal acception, imply action, procedure, prosecution."

In other words, the "proceedings" of your Commission, as contemplated by the Act, are all the actions and steps formally taken by the Commission or before it in acquiring title to property for the Capitol Park, and of such proceedings I understand you do keep a full, complete and accurate record which has always been open to the public.

The general discussions of the Commission, memoranda of estimates, appraisements, advices and other guides which it is necessary for the Commission to have, to enable it to properly perform its duties under the Act, are in no sense part of the "proceedings" referred to in Section 5. To hold that all such data is open to the public for their use would not only prejudice the work of your Commission, but absolutely destroy and nullify the purposes for which such data has been obtained.

You are accordingly advised that while a record of all the "proceedings," as defined herein, of the Commission is open to the inspection of the public under Section 5 of the Act, you may properly decline a request to examine other records including appraisements which may be in your possession.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

REDUCTION OF INSURANCE ON STATE PROPERTY.

The manner of reducing the insurance now carried on Normal Schools which are the property of the Commonwealth, in accordance with the provisions of the Act of May 14, 1915, P. L. 524, is a matter for the decision of the Board of Trustees of such schools. The only requirement of said act is that the insurance be reduced 20 per cent. each year.

Office of the Attorney General,
Harrisburg, Pa., December 24, 1915.

W. S. Hertzog, Esq., Principal State Normal School, California, Pa.

Sir: Your favor of the 16th inst., addressed to the Attorney General is at hand. As you are now carrying \$230,000 worth of insurance, nearly all of which expires and must be renewed within the next two months, and as the policies run for three years, you ask to be advised whether, in complying with the Act of May 14, 1915, P. L. 524, you shall deduct 20% from the face of each policy, or 20% of the whole amount of the insurance, or cancel annually 20% of the whole amount of the insurance.

Section 7 of the Act of Assembly to which you refer makes it unlawful after the passage of the Act.

1. "To purchase, secure, obtain any policy of insurance on any property owned by the Commonwealth, the term of which policy shall extend beyond December 31, 1920."

2. Purchase, obtain, secure any policy of insurance for an amount in excess of the amount of insurance outstanding at the date of the approval of this Act, after deducting from such amount 20% thereof for each calendar year, which shall have elapsed from and after December 31, 1915, to the date of purchasing, securing or obtaining such policy of insurance."

It is plain from this language that in renewing the insurance which expires within the next two months, you must renew it for an amount which is 20% less than the amount now carried. Whether the 20% deducted is made by canceling certain policies, or reducing all of the policies that much, is a matter of policy for your Board to determine. The only requirement of the law is that you must not insure in any amount in excess of 80% of the amount carried at the time of the approval of the Act of May 14, 1915, and in renewing the policies for the amount of insurance, less 20% of the amount now carried, they must be so renewed that another 20% of the amount now carried shall expire December 31, 1916, and an additional 20% expire each year until December 31, 1920.

Probably it would be more satisfactory to make 20% of the amount for which the policies are to be renewed run for one year, 20% to run for two years, and the balance to run for three years, and when it becomes necessary to again renew the three year policy, the same arrangement can be made. This, however, is only a suggestion and the method is entirely within the judgment of the Board of Trustees, provided the insurance is reduced 20% each year.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BOND OF TREASURER OF STATE COLLEGE.

The Treasurer of State College is not a State official or a State employe, and the cost of his bond as Treasurer should not be paid by the Superintendent of Public Grounds and Buildings.

Office of the Attorney General,
Harrisburg, Pa., December 30, 1915.

Honorable Samuel C. Todd, Executive Controller, Harrisburg, Pa.

Sir: Your communication of recent date, advising that the Superintendent of Public Grounds and Buildings has forwarded to your Department, for your approval, two bills for the payment of pre-

miums on bonds of the Treasurer of State College with a request that the same be paid from the appropriation to the Board of Public Grounds and Buildings, and asking to be advised whether or not payment may be made as requested, has been received.

The appropriation to the Board of Public Grounds and Buildings reads as follows:

“For the payment of the cost of procuring various bonds required by statute, to be given by State officials and employes for the faithful performance of their duties, for two years, the sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary.”

(Appropriation Acts—1915, Page 48).

The question is whether or not the Treasurer of State College is a State official or a State employe within the meaning of the Acts of April 23, 1909, P. L. 141, and May 20, 1915, P. L. 626, under which the Superintendent of Public Grounds and Buildings is required to pay the cost of bonds of all State officials and employes and also the cost of bonds of treasurers of purely State institutions.

The present State College was incorporated by Act of 1855, P. L. 46, under the title of “Farmers’ High School of Pennsylvania.” The name of the institution was subsequently changed to that of “Pennsylvania State College.” The legislation relative to this institution will be found in Volume 4 of Stewart’s Purdon’s Digest, 13th Edition, at pages 4438 et seq.

Pennsylvania State College since 1857 has been in receipt of appropriations of varying amounts for maintenance, etc., and since 1889 has been in receipt of appropriations from the Federal Government, which are sent to the State Treasurer by virtue of the Act of 1891, P. L. 94, and by him transferred to the Treasurer of the College as required by the Act of Congress approved August 30, 1890.

Pennsylvania State College is a semi-State institution, somewhat like a State Normal School, whose property is not held in the name of the Commonwealth although partly supported by the State, which has some control over its affairs. The cost of the bonds of treasurers of the State Normal Schools are paid out of the appropriations to the schools for maintenance, etc.

You are accordingly advised that the Treasurer of the Pennsylvania State College is neither a State official nor a State employe, and the cost of the bond of such treasurer should not be paid by the Superintendent of Public Grounds and Buildings under the Acts of 1909 and 1915 but should be paid out of the appropriation to the College (Appropriation Acts—1915, No. 703, Page 253).

Very truly yours,

JOSEPH L. KUN,

Deputy Attorney General.

IN RE PRACTICE OF DENTISTRY.

Under the provisions of the Act of May 3, 1915, P. L. 219, all dentists, whether in practice five years prior to the passage of the act, or whether admitted within five years, or after the passage of the act, are required to be registered annually with the Dental Council before January 1, of the succeeding year, and also with the Prothonotary of the Court of Common pleas. This certificate must be displayed in a conspicuous place in the office, otherwise they may be adjudged guilty of a misdemeanor.

The widow of a deceased dentist cannot manage an office without being registered as a dentist, even though she employs registered dentists.

Office of the Attorney General,
Harrisburg, Pa., January 5, 1916.

Dr. Alexander H. Reynolds, Secretary State Board of Dental Examiners, Philadelphia, Pa.

Dear Sir: I am in receipt of your communication of recent date asking to be advised relative to portions of the Act of May 3, 1915, P. L. 219, which amends several sections of the Act of May 7, 1907, P. L. 161, regulating and defining the powers and duties of the Dental Council and the State Board of Dental Examiners; regulating and limiting the practice of dentistry; and prohibiting the practice by and employment of unlicensed persons; etc.

Your specific inquiries are as follows:

1. Does the proviso in the latter part of Section 5 exempt anyone from registering with the Board of Examiners each year.
2. Does Section 6 prevent the widow of a dentist from continuing the practice of the deceased husband, managing it herself and employing a registered man to do the actual work?

A careful reading of the Act of Assembly in question discloses that it is intended to be as the title of the amended Act indicates, a comprehensive regulation of the practice of dentistry in the State of Pennsylvania. It is an Act "Regulating and defining the powers and duties of the Dental Council and the State Board of Dental Examiners; providing for appointment of examiners; defining qualifications of applicants for examination; condition of granting licenses, regulating and limiting the practice of dentistry; prohibiting practice by or employment of, unlicensed persons, and providing punishment therefor; and disposition of fees and fines, and fixing the appropriation to the Dental Council."

Accordingly, Section 2 of the Act defines in detail the qualifications of applicants for examination, and also provides for the licensing of practitioners, and it is quite clear that the intentment of the Act is that a person, whether applying for a license to practice dentistry, or

already lawfully engaged in such practice, shall register with the Board of Dental Examiners, as appears from the following paragraphs in Section 2 of the Act.

Paragraph 6 of Section 2, provides:-

"The Board of Dental Examiners shall keep a book of registration at the office of the board, in which shall be registered the names and addresses of each person *duly qualified under existing laws, or who may hereafter become qualified*, to conduct the practice of dentistry in Pennsylvania."

Paragraph 7 of Section 2, provides:

"And it shall be the duty of *all persons now qualified and engaged in the practice of dentistry*, or who shall hereafter be licensed by the Dental Council to engage in such practice, in this Commonwealth, *to be registered* with the said Board of Dental Examiners as practitioners, on or before the first day of January, one thousand nine hundred sixteen, and thereafter to register with said Board of Dental Examiners, in like manner, annually, on or before the first day of January of each succeeding year. * * * *

Paragraph 10 of Section 2, provides:

"Any person who shall practice dentistry *without having been registered* in accordance with the provisions of this act shall be guilty of a misdemeanor." * * *

Now, referring to Section 5 of the Act, in which the proviso, the subject of your inquiry, is contained, it appears that it simply carries out the thought expressed in Section 2 of the Act, requiring "all persons now qualified and engaged in the practice of dentistry, or who shall" after the passage of the Act "be licensed by the Dental Council to engage in such practice," to display his or her license and certificate of registration "in a conspicuous place where he or she practices, in such manner as to be easily seen and read," and also providing for the registration of the license in the office of the Prothonotary of the Court of Common Pleas of the proper county.

The Section ends with the proviso:

"Provided, This act shall not affect the right of any person to practice dentistry, who is entitled to do so under the provisions of an Act of Assembly in force, or who shall have conducted the actual, lawful practice of dentistry in this Commonwealth for five years continuously, preceding the passage of this Act."

It is a familiar rule of construction of statutes, that a statute must be so read and construed as to give all the provisions thereof force and effect. So that, in construing the proviso just quoted, it must

be read in conjunction with all the provisions in the Act relating to registration, above referred to. These, as already indicated, provide for registration by "each person duly qualified under existing laws, or who may hereafter become duly qualified to conduct the practice of dentistry in Pennsylvania," as stated in Paragraph 6 of Section 2; and as stated in Paragraph 7 of the same Section, it is the duty of "all persons now qualified and engaged in the practice of dentistry, or who shall hereafter be licensed by the Dental Council to engage in such practice" * * * to "be registered * * * *"

It is obvious, therefore, that the duty to register with the Board of Dental Examiners applies alike to all persons who are engaged in the practice of dentistry in the State of Pennsylvania, whether "now qualified and engaged in the practice * * * * or who shall hereafter be licensed by the Dental Council to engage in such practice," in this State.

The proviso in Section 5 must be construed, therefore, to relate to qualifications, exempting those therein referred to from satisfying the Dental Council with reference to qualifications which may be required of other persons before they may be licensed to practice in this State. In other words, as the proviso reads, the Act "shall not affect the right of any person to practice dentistry, who is entitled to do so under the provisions * * * * " as therein referred to; but there is nothing in the Act which exempts any person from the duty of registering as practitioners with the Board of Dental Examiners annually as provided in Paragraph 7 of Section 2 of the Act.

Referring now to your second inquiry, your attention is called to the following language of Section 6 of the Act, which provides, *inter alia*:

"* * * * A person shall be deemed to be engaged in the practice of dentistry within the meaning of this Act, who * * * * or who is manager, proprietor or conductor of a place for performing dental operations; * * * *"

There is nothing in the Act which exempts a widow of a deceased dentist, or any other person, from the provisions of this Section of the Act, and you are advised that it applies alike to all persons therein referred to.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

COMMERCIAL FERTILIZERS—TRADE NAMES.

Adding the figures "1916" to the trade name does not make such trade name for a fertilizer a new brand, and manufacturers who have sold fertilizers under such brand must pay the graded fee prescribed by section 3 of the Act of May 1, 1909 (P. L. 344).

Office of the Attorney General,
Harrisburg, Pa., January 10, 1916.

Hon Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: Your favor of the 5th inst. addressed to the Attorney General, is at hand. You ask for an opinion upon the following facts:

A number of manufacturers of commercial fertilizer which have heretofore registered brands under distinct trade names, in conformity with Section 3 of the Act of May 1, 1909, P. L. 344, have amended their trade names by simply adding the figures "1916" as a part of the name formerly registered and have tendered a fee of \$15.00 for registration, instead of a fee based upon the tonnage of the brand registered "during the last preceding year," claiming that the addition of the figures "1916" makes a new and distinctive trade name.

The Act of May 1, 1909, P. L. 344, which regulates the manufacture and sale of commercial fertilizer, provides in Section 3, in part, as follows:

"In addition to the statement required by Section two of this act, every manufacturer or importer of commercial fertilizers shall, on or before the first day of January of each year, or before offering them for sale in this commonwealth, file annually with the Secretary of Agriculture an affidavit showing the amount of each brand of fertilizer, having a distinct trade-name, sold within the Commonwealth during the last preceding year; and if the said amount shall be one hundred tons or less, he or they shall pay or cause to be paid to the Secretary of Agriculture the sum of fifteen dollars for each and every brand of such commercial fertilizer, having a distinct trade-name, sold within the State during the last preceding year; and if the said amount shall exceed one hundred tons, and be less than five hundred tons, he or they shall pay the sum of twenty dollars, as aforesaid; and if the said amount shall be five hundred tons or more, he or they shall pay the sum of thirty dollars, as aforesaid. If such manufacturer or manufacturers, importer or importers, shall not have made any sales within the Commonwealth during the preceding year, he or they shall pay the sum of fifteen dollars upon each such brand, as aforesaid."

There is nothing distinctive about the figures "1916." If by appending "1916" to an otherwise distinctive trade-name would make the trade-name again distinctive, then changing the figures each year

would make the same trade-name distinctive every year, and the provisions of the section which I have just quoted would be completely nullified. There would be no such thing as paying more than \$15.00 for any brand.

It is apparent, without further discussion, that adding the figures "1916" to a name cannot make it a distinctive trade-name for a fertilizer so as to be considered a new brand, and any such brand which was sold in the State of Pennsylvania heretofore must pay the graded fees prescribed by Section 3 of the Act of May 1, 1909, even though the words "1916" may be added to the name.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

REGISTRATION OF NURSES.

Graduate nurses who have been registered in any other State of the United States may be registered in Pennsylvania without examination if, in the judgment of the Board of Examiners for Registration of Nurses, the requirements of the laws of the States from which they come are equal to the requirements of the laws of Pennsylvania.

Nurses who are registered in other States, but who are not graduate nurses, cannot be registered in this State, without examination.

Office of the Attorney General,
Harrisburg, Pa., January 20, 1916.

Dr. Albert E. Blackburn, Secretary State Board of Examiners for
Registration of Nurses, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 18th inst. as to whether the Pennsylvania State Board of Examiners is authorized to register by reciprocity nurses registered in the State of Arkansas who are not graduate nurses, and also, in view of the fact that the State of Arkansas registers as nurses certain persons who are not graduates, whether your Board can register nurses registered in the State of Arkansas who are graduate nurses, and you state that practically the same question arises with regard to nurses registered in the State of Michigan.

I beg to advise you that the only provision for your registration of nurses who have been registered in other states, without examination, is found in the Act of June 4, 1915, P. L. 809, amending the Act of May 1, 1909, P. L. 321, which is, inter alia, as follows;

"Provided, That a graduate nurse registered in any State of the United States, where the requirements for registration, in the judgment of the registration board for nurses of this State, are at least equal to the requirements of law for such nurses in Pennsylvania, may, at the discretion of the board, be registered without examination, upon application in writing on forms provided by the Board, and upon the payment of a fee of ten dollars."

You will notice that this authority is restricted to graduate nurses. Your Board may, therefore, at its discretion, register, without examination, graduate nurses who have been registered in any state of the United States where the requirements for registration, in the judgment of your Board, are at least equal to the requirements of law for such nurses in Pennsylvania. You have no authority to register, without examination, nurses who have been registered in other states, but who are not graduate nurses. Before, therefore, a registered nurse from another State may be registered by your Board, without examination, her credentials would have to show that she was a graduate nurse.

The Board has the right to register graduate nurses registered by other States, without examination, and refuse to register, without examination, non-graduates, even though registered in other states.

Yours very truly,-

WILLIAM H. KELLER,
First Deputy Attorney General.

APPROPRIATIONS.

The Panama-Pacific Exposition Commission may spend the sum of twenty-five hundred dollars from its appropriation for expense of the Second Pennsylvania Regiment to the Exposition.

Office of the Attorney General,
Harrisburg, Pa., February 4, 1916.

Mr. Chester P. Ray, Executive Officer Panama-Pacific Exposition Commission, Philadelphia, Pa.

Sir: Your favor of the 29th ult., addressed to the Attorney General, was duly received. You ask to be advised whether the Pennsylvania Panama-Pacific Exposition Commission may out of the unexpended appropriation in its hands appropriate Two thousand five hundred dollars to the Second Pennsylvania Regiment for its participation in the exercises at the Panama-Pacific International Exposition, at San Francisco.

The Pennsylvania Panama-Pacific Exposition Commission was created by Joint Resolution approved June 14, 1911, P. L. 950. It is entitled:

"A Joint Resolution to provide for the participation of the State of Pennsylvania in the Panama-Pacific International Exposition, to be held in San Francisco, California * * * * * and providing for the appointment of a commission, and making an appropriation to defray the expenses of the same."

The Resolution provides, *inter alia*:

"The said commission shall organize within thirty days after their appointment, *and make the necessary arrangements for the proper representation of this Commonwealth at said exposition*, including 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."

An appropriation of fifty thousand dollars to defray the expenses of the commission was made by that resolution.

Further appropriations were made by the Act of July 25, 1913, P. L. 1268, and by the Act of June 18, 1915, Appropriation Acts page 282, both "for the purpose of carrying out the provisions of" the Joint Resolution above referred to.

By Joint Resolution approved June 1st, 1915, P. L. 671, the Legislature

"Approve of the participation of the Second Regiment Infantry, National Guard of Pennsylvania, in the Panama-Pacific Exposition, and authorize the payment to such officers and enlisted men of said regiment as participate in said exposition, under the direction of the proper military authorities of the Commonwealth of Pennsylvania, the same per diem pay of officers and men, and such allowance, in connection with the annual encampment, as are paid from State funds."

I am advised that pursuant to that Resolution a battalion of one hundred and seventy-four officers and men of the Second Regiment participated in the exercises at the Panama-Pacific International Exposition on Pennsylvania Day and upon other occasions, and I assume that such participation was deemed by the Panama-Pacific Exposition Commission to be "necessary for the proper representation of this Commonwealth at said exposition." I am advised that the difference between the actual expenses of the battalion and what was received under the Resolution of June 1st, 1915, amounts to approximately eight thousand dollars.

The language of the original Resolution authorizes the commission to "make the necessary arrangements for the proper representation of this Commonwealth at said Exposition." The presence of a battalion of Pennsylvania Infantry upon the celebration of Pennsylvania Day seems to have been considered by those having the determination of such matter an "arrangement necessary for the proper representation of this Commonwealth at said exposition."

I am, therefore, of opinion that the appropriation of two thousand five hundred dollars out of the unexpended balance in the hands of the Commission to the Second Pennsylvania Regiment toward the deficiency in the cost and expense of sending its battalion to the said exposition is within the terms of the Resolution, and that the Panama-Pacific Exposition Commission have the power to make such appropriation.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE APPROPRIATIONS.

Where a special appropriation has been made for a specific purpose as the renting of offices for the referees of the Workmen's Compensation Bureau, the rent of such offices must be paid out of that appropriation rather than out of the appropriation to cover the renting of offices generally for any department.

A specific appropriation shall, however, be strictly construed and only such items be brought under it as are within its scope. All other items should be charged to the general appropriation.

Office of the Attorney General,
Harrisburg, Pa., February 14, 1916.

Hon. Samuel C. Todd, Executive Controller, Harrisburg, Pa.

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

You ask to be advised whether the office fixtures, supplies and rent for the offices of the Workmen's Compensation Board and the referees of said Board, as well as the telephone rentals and messages, are to be charged against the appropriation made to the Workmen's Compensation Bureau, or against the appropriation made to the Board of Public Grounds and Buildings.

The Act of June 7, 1911, P. L. 700, provides:

"That whenever any department, board or commission of the State Government cannot be properly and adequately accommodated with offices and rooms in the

Capitol buildings, the Board of Commissioners of Public Grounds and Buildings shall have power and authority to contract in writing for; and rent, proper and adequate offices or rooms, outside of the said Capitol buildings, for such department, board, or commission."

An appropriation is made to the Department of Public Grounds and Buildings, *inter alia*:

"For the purchase of any article of furniture, furnishings, stationery, supplies, fuel, or any other matters or things, and for the payment of any repairs, alterations or improvements," (not included in the schedule).

"For the payment of rental charges for telephone service, and other patented leased office devices, the cost of toll and long distance telephone messages and telegrams for the Legislature, the several departments, boards, and commissions of the State Government, and Executive Mansion."

"For the payment of the cost of general supplies, including stationery, supplies, furniture, fuel, repairs, alterations or improvements and other matters needed by the Legislature, the several departments, boards, and commissions of the State Government." (included in the schedule).

"For the payment of the rent of offices and rooms outside of the Capitol building when necessary for the accommodation of any department, board, or commission of the State Government, in accordance with the act approved the seventh day of June, Anno Domini, nineteen hundred and eleven."

If there were nothing else upon the subject, it would be plain that the payment of the charges above referred to should be made out of the appropriations to the Department of Public Grounds and Buildings, but Section 16 of the Act of June 2, 1915, P. L. 758, providing for the administration of the Workmen's Compensation Act of 1915, says in part:

"The expenses of procuring places for hearings, and establishing permanent offices for Referees, shall be paid as other expenses of the Department of Labor and Industry are paid."

and in the General Appropriation Act of 1915, the appropriation to the Bureau of Workmen's Compensation is, *inter alia*:

"For the expenses of procuring places for hearings and establishing permanent offices; for Referees and for the incidental contingent expenses; for postage, telegraphing, expressage."

I think that the principles which apply to the construction of general and special statutes, must be applied in this case,

The Act providing for the administration of the Workmen's Compensation Act, especially imposes upon the Workmen's Compensation Bureau, the duty of paying the expenses of procuring places for hearings, and of establishing permanent offices, as other expenses of the Department of Labor and Industry are paid, and there is an appropriation to the Workmen's Compensation Bureau especially to pay such expenses and also for postage, telegraphing and expressage.

. The general duty imposed upon the Board of Public Grounds and Buildings to procure offices, and the general appropriation made for that purpose and for the purpose of furnishing supplies and paying telephone and telegraph messages, cannot be construed to cover matters which have been specifically covered and for which a more specific appropriation has been made by the same Legislature. That is to say,—where the appropriation has been made for a specific purpose, such as the renting of offices for the referees of the Workmen's Compensation Bureau, the rent of such offices must be paid out of that appropriation rather than out of the appropriation to cover the renting of offices generally for any department.

The appropriation for the specific purpose, however, should be strictly construed and only such items should be brought under it as are clearly within its scope. All other items should be charged to the general appropriation.

Applying these principles, it appears that the renting of places for hearings and of the permanent offices for the Workmen's Compensation Bureau and for "postage, telegraphing and expressage" of the Workmen's Compensation Bureau, should be charged to the appropriation of \$80,000 made to that Bureau.

That appropriation does not cover office fixtures and supplies. The language "expenses of procuring places for hearings and establishing permanent offices for referees," would have to be very liberally construed to include the total cost of furnishing such offices with furniture and supplies. I do not think it is susceptible of such construction.

I am therefore of opinion that the telegraph messages which are mentioned in the general appropriation to the Department of Public Grounds and Buildings, but not mentioned in the specific appropriation to the Workmen's Compensation Bureau, and the bills for office fixtures and supplies, should be charged to the proper items in the appropriation made to the Department of Public Grounds and Buildings.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

PILOTS—DELAWARE RIVER.

The master of an outward-bound vessel through the River Delaware and Delaware Bay may choose any pilot, licensed under the laws of Pennsylvania or any of the States bordering on these waters.

Office of the Attorney General,
Harrisburg, Pa., February 16, 1916.

Mr. George S. Sproul, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Sir: By your recent letter, addressed to the Attorney General, you ask to be advised whether the master or commander of an *outward-bound* vessel, under the law subject to pilotage, has the right to decline the services of the first Pennsylvania pilot offering himself and select another pilot governed by the laws of the same state.

Section 5 of the Act of June 8, 1907, P. L. 469, amends the twenty-first section of the Act of March 29, 1903, but it re-enacts the following language:

"That the pilot who shall first offer himself to any *inward-bound* vessel or ship shall be entitled to take charge thereof."

There appears to be no Act of Assembly with reference to outward-bound vessels. Section 4236 of the Revised Statutes, (March 2nd, 1837, c. 22, 3rd U. S. Comp. Stat. 1913, Section 7982) provides:

"It shall and may be lawful for the master or commander of any vessel coming into or going out of any port situate upon the waters which are the boundary between two states, to employ any pilot duly licensed or duly authorized by the laws of either of the states bounded on the said waters to pilot said vessel to or from the said port; any law, usage or custom to the contrary notwithstanding."

The power of Congress over the subject of pilotage is exclusive when it has been exercised.

Cooley vs. Board of Wardens, 12 Howard 299.

The State may, however, regulate pilotage where Congress has not legislated on the subject.

The Act of Congress, above referred to, came before the Supreme Court of Pennsylvania in the case of *Flanigen vs. The Washington Insurance Company*, 7 Pa. 306. The Court there said:

"Taking, then, all the acts as *in pari materia*, which, since the act of Congress, we deem ourselves bound to do, we have come to the conclusion that there is nothing in the statutes which makes it obligatory on the owner or master of a vessel, whether engaged in the foreign or coasting trade, to employ a pilot."

The vessel in that case was outward-bound.

As to incoming vessels the decisions are not uniform with respect to the duty to take the first pilot who offers himself.

In the case of *The South Cambria*, 27 Fed. Rept. 525, the District Court for the District of Delaware held that the master of the vessel was not required, because of the Act of Congress of March 2, 1837, to take the first pilot who offered himself. To the same effect is *The Alsen*, 14 Fed. Rept. 174; *The Clymene*, 12 Fed. Rept. 346, but the case of *The Barnwell*, 69 Fed. Rept. 228, decides that whether "a vessel bound up the Delaware river to Philadelphia is obliged to accept the first available pilot who offers his services, and if she refuses to take him, and takes one who at the time was further away, he nevertheless is liable to the former for his fees."

In the case of *The Abercorn*, 26 Fed. Rept. 877, the District Court there held that the master had the right to employ a Washington pilot instead of an Oregon pilot, but said:

"As between the Oregon pilots, doubtless, the regulations compelling the master of a vessel to take the pilot out of the river that brought him in is valid and binding; but the state cannot compel a vessel in the Columbia river to take an Oregon pilot under any circumstances, or to pay him half or any pilotage, if the master prefers to and does take a Washington pilot."

In the case of *Virden vs. The Belle Hooper*, 28 Fed. 928, Judge Butler held that under the Delaware Act, the first Delaware pilot has the right to pilot out to sea, and that the Act of Congress conferring upon the master the privilege of electing to take another, a Pennsylvania pilot, did not stand in libellant's way because the master did not avail himself of the privilege.

But this question is not complicated by any Pennsylvania statute with reference to outward-bound vessels. The Act of Congress is the only applicable legislation.

I am, therefore, of opinion, and so advise you, that the master of an outward-bound vessel through the river Delaware and Delaware Bay may choose any pilot licensed either under the laws of the State of Pennsylvania or any of the states bordering on these waters.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General

OSTEOPATHIC PHYSICIANS.

A student in a College of Osteopathy, who cannot speak nor write the English language, should not be admitted to examination before the Board of Osteopathic Examiners. His examination cannot be taken through an interpreter.

Office of the Attorney General,
Harrisburg, Pa., February 15, 1916.

Dr. O. J. Snyder, President, Board of Osteopathic Examiners, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 2nd inst. You state that there is in the Philadelphia College of Osteopathy a Russian, who can neither write nor speak the English language sufficiently to make himself understood, who is taking the course prescribed under the Act of June 1, 1915, P. L. 687. You ask for an opinion as to whether the Board may employ an interpreter in examining such applicant, who cannot express his knowledge in the English language.

The Act of June 1, 1915, is an amendment of the Act of March 19, 1909, P. L. 46. In Section 5 of the Act of 1909 it is provided that examinations before your Board shall be conducted in writing, in accordance with rules and regulations prescribed by said Board, and that the examination papers and reports shall be kept for reference and inspection for a period of not less than five years. While there is no positive requirement that the examination papers shall be submitted in the English language I am of the opinion that this is necessarily implied.

The Public School Code of 1911, Article XVI, Section 1607, requires the teaching of the common English branches. The Child Labor bill of May 13, 1915, P. L. 286, requires that a minor within the provisions of the Act shall have completed a certain course of study in the English language. By the Act of May 31, 1893, P. L. 188, the records in the various counties of the State are required to be kept in the English language. All of these acts recognize that the English language is the official language of the Commonwealth.

A knowledge of the language sufficient to read and write it is necessarily implied by Section 12 of the Act of March 19, 1909, which provides:

"Osteopathic physicians shall observe and be subject to all State and municipal regulations relating to the control of contagious diseases, the reporting and certifying of births and deaths, and all matters pertaining to public health, the same as physicians of other schools, and such reports shall be accepted by the officers or department to whom the same are made."

Our state and municipal regulations relating to the control of contagious diseases are published in the English language. It would be impossible for an osteopathic physician to understand the state and municipal regulations relating to those diseases, or to make report and certify as to births and deaths, in the English language unless he had such knowledge thereof as to enable him to read and write in English.

You are, therefore, advised that an applicant should not be admitted to examination under the Act of June 1, 1915, nor licensed as an osteopathic physician, who cannot read and write the English language sufficiently to understand and answer the examination papers in that language, and to be able to read and understand the rules and regulations promulgated by the Department of Health, or the proper municipal authorities.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

WORKMEN'S COMPENSATION—TREATMENT OF INJURED EMPLOYEES—
HAZLETON HOSPITAL.

Under the Workmen's Compensation Act of 1915 the Hazleton Hospital is justified in making a reasonable charge against the employer of an injured employe for treatment during the first fourteen days after disability. If treatment is given beyond that period, the hospital may charge the injured employe a reasonable sum for the same, if the injured employe is not within the classes excepted by section 9 of the act creating the hospital.

Office of the Attorney General,
Harrisburg, Pa., February 17, 1916.

Mr. Walter Lathrop, Superintendent and Surgeon, State Hospital for Injured Persons of the Middle Coal Field of Pennsylvania, Hazleton, Pa.

Sir: I beg to acknowledge your communication of February 11th, requesting my opinion regarding the rendering of bills to Coal Companies and others for treatment of injured miners, or employes of railroads and workshops, under the new Compensation Law, and whether this can be done in view of the Act creating the hospital. I advise you: The Act of June 14, 1887, P. L. 399, creating this hospital, provides:

“Section 9. That this hospital shall be specially devoted to the reception, care and treatment of persons injured in and about the mines, workshops and railroads, and all other laboring men: Provided, however,

That no patient shall be admitted for treatment in said hospital to the exclusion of the classes herein stated, and who have not contracted injuries in or at the coal mines embraced within the territorial limits of the fourth inspection district of the anthracite coal fields of Pennsylvania."

"Section 10. The trustees of said hospital may, from time to time, charge any patient, other than the classes named in section nine of this Act, an amount sufficient to cover the cost of treatment."

The purpose underlying the establishment of the hospital was to see that adequate medical and surgical treatment and care were given to persons injured in that locality with preference to persons employed in and about coal mines, workshops and railroads, and all other laboring men. It was primarily intended to afford free treatment to persons injured in and about mines who were too poor to pay for the proper medical attention and was in aid or relief of such persons, because as matters then stood, they would have to go without such treatment unless they were able to pay for it themselves.

By the Workmen's Compensation Act of 1915, it is provided in Section 306: (e)

"During the first fourteen days after disability begins the employer shall furnish reasonable surgical, medical, and hospital services, medicines and supplies, as and when needed, unless the employe refuses to allow them to be furnished by the employer. The cost of such services, medicine, and supplies shall not exceed Twenty-five dollars, unless a major surgical operation shall be necessary; in which case the cost shall not exceed Seventy-five dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employe may procure the same, and shall receive from the employer the reasonable cost thereof within the above limitations. If the employe shall refuse reasonable surgical, medical, and hospital services, medicines and supplies, tendered to him by his employer, he shall forfeit all right to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal."

The hospital was not established for the relief of employers who, by the present law, are required to furnish at their expense reasonable surgical, medical and hospital services to their injured employes during the first fourteen days after disability, and the Hospital is fully justified in making a reasonable charge sufficient to cover the cost of treatment against the employer, in accordance with the provisions of the Act just quoted, for surgical, medical and hospital services, medicines and supplies furnished the injured employe during the first fourteen days after disability.

This covers the liability of the employer. If the hospital is required to furnish care and services beyond that period, it may charge the injured person a reasonable sum for the same if he is not within the classes excepted by Section 9 of the Act as quoted above. Within the excepted classes, services rendered such employe after the first fourteen days following his injury, must be given free.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE REPORTS OF TRAINING SCHOOLS FOR NURSES.

The State Board of Examiners for the Registration of Nurses may require that a training school approved by it shall report the names of pupils dismissed for cause after finishing the probationary period and the specific cause of such dismissal.

Office of the Attorney General,
Harrisburg, Pa., March 1, 1916.

Dr. Albert E. Blackburn, Secretary Pennsylvania State Board of Examiners for Registration of Nurses, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 24th ult., inquiring as to whether your Board has the right to ask training schools to set forth in a report of their graduates and the activities of their schools, the names of nurses dismissed for cause after finishing the probationary period, and the specific cause for such dismissal.

The Act of June 4, 1915, P. L. 809, amending the Act of May 1, 1909, P. L. 321, provides that it shall be the duty of your Board to prepare and make a report for public distribution at intervals regulated by its By-laws, of all training schools or combinations of training schools that are approved by the Board as possessing the necessary requirements for giving pupil-nurses a full and adequate course of instruction.

The law also requires that applicants for examination for registration as nurses *shall satisfy your Board that they are of good moral character* and have graduated from a training school for nurses which gives at least two years course of instruction or have received instruction in different training schools or hospitals for periods of time, amounting to at least a two years course and then graduated,

and that during said period of at least two years, they have received practical and theoretical training in surgical and medical nursing.

The information called for in the proposed reports might be of use to the Board in passing upon the moral character and period of instruction of such dismissed nurses, should they subsequently apply to be registered by your Board, on both of which matters the Board must be *satisfied* before registering an applicant.

It is entirely proper in my opinion, therefore, that you should make inquiry of the various training schools for nurses, which are approved by your Board as aforesaid, as to the number of their pupils, the pupils graduated, and the pupils dismissed for cause after finishing a probationary period, with the specific cause for such dismissal. This information should, of course, be for the private use of your Board in determining whether applicants have fulfilled the legal requirements as to their course of instruction and are of good moral character, and should not be printed or divulged in your public reports.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE APPLICATION FOR LICENSE TO PRACTICE AS OSTEOPATH
WITHOUT EXAMINATION.

Where an application for a license to practice Osteopathy in Pennsylvania without examination was not presented to the State Board of Osteopathic Examiners, until after January 1, 1912. The fact that the applicant had received a license to practice in Missouri prior to that time and when Missouri and Pennsylvania reciprocated in the issuing of such licenses, would not entitle him to receive a license to practice in Pennsylvania without examination.

Office of the Attorney General,
Harrisburg, Pa., March 1, 1916.

Dr. O. J. Snyder, President, Board of Osteopathic Examiners, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 24th inst, asking to be advised on the following facts:

Dr. J. T. Penrose holds a license to practice Osteopathy in the State of Missouri, issued on January 29, 1907. He sent to another Osteopathic physician in this Commonwealth, on November 30, 1910, his application for a Pennsylvania license under the reciprocity

clause contained in Section 10 of the Act of March 19, 1909, P. L. 46. The application was dated November 30, 1910, but was not presented to your Board until February 17, 1916, by reason of the fact that Dr. Penrose had not made up his mind whether he desired to practice in this State or not. At the time the application was signed, Pennsylvania reciprocated with the State of Missouri in the issuance of such licenses, but on January 1, 1912, these relations were terminated on account of advanced legislative requirements for licensure in this State going into effect. You desire to be advised whether Dr. Penrose, under the circumstances, is entitled to have a Pennsylvania license issued to him through reciprocity, without examination.

You also desire to be advised whether physicians who had received licenses to practice Osteopathy in the State of Missouri, while that State and this State were on a basis of reciprocity, and had the same educational requirements, are entitled to demand the same privileges of reciprocity after January 1, 1912, when such relations were severed on account of the higher educational qualifications required by this State.

Section 10 of the Act of March 19, 1909, P. L. 46, as amended by the Act of May 11, 1911, P. L. 241, provides as follows:

"Applicants examined and licensed by the State Boards of Osteopathic Examiners of other States, on the payment of a fee of twenty-five dollars to the State Board of Osteopathic Examiners, and filing in the office of the State Board of Osteopathic Examiners a copy of said license, certified by the affidavit of the president or secretary of such board, showing also that the standard of requirements adopted by said board of examiners is substantially the same as is provided by section eight of this act, *may*, without further examination, receive a license conferring on the holder thereof all the rights and privileges provided by section eleven of this act.

Candidates for license to practice osteopathy in this State, who present their applications and undergo examinations *after the first day of January, Anno Domini one thousand nine hundred and twelve*, shall be obliged to present to the State Board of Osteopathic Examiners one of the following credentials, satisfactory to the said board, covering their preliminary education prior to their beginning the study of osteopathy in some legally incorporated reputable osteopathic college, to-wit: A diploma of graduation from a reputable college or university granting the degrees of bachelor of arts or science or equivalent degree; or 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; or a certificate of having passed

examination for admission to the freshman class of a reputable literary or scientific college or university; or a certificate of having passed an equivalent examination conducted by a certified examiner for the State of Pennsylvania, to be appointed by the State Superintendent of Public Instruction, and, for other States, to be approved by the State Superintendent of Public Instruction of Pennsylvania; said certified examiner being privileged to accept credentials from reputable and recognized preliminary schools, for any subjects included in the preliminary examinations; Provided, however, that nothing contained in this act shall be construed to affect the right of those qualified to register, under the provisions of this act, and who are so registered in one county at the time of the approval of this act, from registering with the prothonotary in any other county or counties in which he or she desires to practice, and it shall be mandatory on their part to so register."

The requirements referred to in Section 10 of the Act of 1909 are set forth fully in Section 8 of said Act, and provision is made therein that after January 1, 1912, a longer period of study and higher course of instruction shall be required.

It will be noted by the amendatory Act of 1911 the word "shall" was changed to "may" so that thereafter your Board was no longer *required* to issue licenses to persons who had been examined and licensed by other States having substantially the same standard or requirements, but that the matter of establishing such reciprocal privileges was left to the discretion of your Board.

The purpose of the Act of 1909, and its amendment of 1911, seems evidently to have been to raise the standard of requirements for admission to practice Osteopathy in this State.

The Legislature had the right to grant reciprocal privileges to licenses from other States, and it had the right to revoke them whenever it saw fit to do so. No license of another State acquired any right under the Act of 1909 which the Legislature could not revoke or take away at any time before the license was granted by your Board. I understand from your inquiry that the educational requirements of the State of Missouri at the time Doctor Penrose was licensed and even now are not substantially the same as the qualifications required of applicants in this State after January 1, 1912. That being the case no authority is given your Board to grant licenses, without examination; to persons who have been examined and licensed by the State Board of Examiners of Missouri, and as Doctor Penrose's application was not presented to your Board until February 17, 1916, when reciprocity was no longer in force between the two States, you cannot issue a license to him to practice Osteo-

pathy in the State of Pennsylvania under the provisions of Section 10 of the Act of 1909, as amended by the Act of 1911, but he will have to be examined and have a license issued in the usual way if he desires to practice in this State.

You are also advised that the mere fact that a person receives a license to practice Osteopathy in the State of Missouri, at a time when Missouri and Pennsylvania reciprocated in the issuing of such licenses, would have no effect whatever on his right to receive a license without examination in Pennsylvania, unless he applied for and received the same during the period that such reciprocity was in force. In other words when Pennsylvania established on January 1, 1912, a higher educational standard and no longer continued reciprocal licensing relations with Missouri, it thereby abrogated the right of all physicians in Missouri to secure a license by reciprocity in Pennsylvania who had not previously applied therefor.

I return herewith the application and papers enclosed with your letter.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

POWERS OF COMMISSION FOR CONSTRUCTION OF STATE INDUSTRIAL HOME FOR WOMEN.

It is within the power of the Commission appointed for the selection of a site and the construction of a State industrial home for women, to enter into a contract, to cultivate and farm a portion of the land purchased.

Office of the Attorney General,
Harrisburg Penna., March 11, 1916.

George Q. Horwitz, Esq., President, Commission for Selection of Site and Construction of a State Industrial Home for Women, Philadelphia, Penna.

Sir: I have your favor of the 7th inst. addressed to the Attorney General, enclosing a form of contract made by the Commission with J. R. Yeagle. You request from this Department an opinion as to whether you have the right to make this contract, and if so, desire the approval of the form of the contract. The question is whether your Commission has the power to make a contract to cultivate and farm the land purchased.

While there is nothing in the Act of Assembly creating your Commission, which, in terms, authorizes you to cultivate the property acquired, yet Section 1 of the Act provides in part,

“Part of the acreage shall be land that is arable or may be made so, to the end that so far as practicable the food for the inmates of the Industrial Home may be produced on such land,”

and you are authorized to purchase no less than one hundred and no more than five hundred acres.

It is not to be presumed that the Legislature in directing the purchase of arable land to the end that it be used for raising food, would intend that while the buildings are being erected, the land should not be used and deteriorate for lack of cultivation.

The purpose of your Commission is to purchase a suitable site, as well as to erect buildings. When a suitable site has been purchased, it is within the scope of your Commission to keep the site in proper condition, just as much as it is to put the proper buildings thereon.

I am, therefore, of the opinion that you have the power to enter into the contract, copy of which you submit, and the form of the contract I approve. It is our custom usually to approve all of the copies of the contract of this kind, but inasmuch as you have only sent me one, I return this with my approval.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

CONTRACTS FOR SUPPLIES FOR PENNSYLVANIA STATE LUNATIC HOSPITAL.

The Pennsylvania State Lunatic Hospital may make contracts for supplies for a shorter period than one year if, in the judgment of the Board of Trustees, for good business reasons, such contracts should be made.

Office of the Attorney General,
Harrisburg, Pa., March 29, 1916.

Mr. George W. Reily, Treasurer, Pennsylvania State Lunatic Hospital, Harrisburg, Pa.

Sir: Your favor of the 24th inst. is at hand.

You ask for an opinion as to whether or not the Pennsylvania State Lunatic Hospital could let its contracts for supplies for a period less than one year.

I find no act of assembly which refers to the letting of contracts by the State Lunatic Hospital at Harrisburg, except the Act of July 5, 1883, P. L. 190. A careful examination of this Act shows that it does not apply to present appropriations. It is entitled "An Act making appropriations to the Pennsylvania State Lunatic Hospital, at Harrisburg, Pennsylvania." It made appropriations for the two fiscal years beginning June 1, 1883; it contained provisos for the letting of contracts. The language of the proviso is as follows:

"That the superintendent shall, as soon as practical after the passage of this act, for two successive weeks and yearly thereafter, for the same length of time, commencing on the first Monday in April, advertise in three newspapers of general circulation for bids to furnish all needed supplies for the year beginning June first, next ensuing."

While this language "yearly hereafter" is broad enough to provide for the method to be used in the future, it is evident that it cannot refer to any other years than those included in the appropriation. There is nothing in the title of the Act which gives any notice that it is intended to establish a practice for the letting of future contracts. It may be that this construction leaves the Trustees of the Pennsylvania State Lunatic Hospital without any legislation with reference to the letting of contracts, and it would probably be well to follow as nearly as practicable the methods which you have heretofore pursued.

However, specifically answering your inquiry, I advise you that you may make contracts for a lesser period than one year if, in the judgment of the Board of Trustees, for good business reasons, contracts for a lesser time should be made.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE TITLE TO ISLANDS.

Title to islands in the great rivers of the State of Pennsylvania cannot be acquired by settlement, and it is not for the best interests of the State to allow the ownership of the islands in the navigable highways to be acquired by private individuals.

Office of the Attorney General,
Harrisburg, Pa., March 30, 1916.

Mr. James H. Craig, Deputy Secretary of Internal Affairs, Harrisburg, Pa.

Sir: Some time ago you transmitted to me an order for the appraisal of an island in the Susquehanna river within the limits of Fulton Township, Lancaster County, known as "Catfish Island," which Howard Frylye desired to purchase.

It appears that Mr. Frylye made an application for a warrant for this island on June 19, 1915, and attached to the application is an affidavit of John T. Steiner, who says that "for the past twenty-two or twenty-three years he has been in undisputed possession of an island in Fulton Township, Lancaster County, Pa., known as Catfish Island, containing about 1.16 acres; that he has improved and cultivated said island, that on June 10, 1915, by written transfer, he transferred and signed to Howard Frylye, Fulton Township, Lancaster County, Pa., all his right, title and interest in said island and his right to apply for a warrant to survey said land."

There is also attached a letter of Frylye, which says:

"I want to add that Mr. John Steiner has had possession of the island, has built a small house upon it, and has farmed it for the last twenty-two or twenty-three years. He has been in undisputed possession all of that time."

It is the settled law of this Commonwealth that no title to islands in the great rivers of the State of Pennsylvania can be acquired by settlement.

In *Johns vs. Davidson*, 16 Pa. 513, it is said:

"Title to islands lying within the river Susquehanna, or its branches, could not be acquired by actual settlement and improvement."

There is, however, an Act of March 6, 1793, which directed the sale of certain islands in the Susquehanna or its branches, if the improver within two years after the passage of that Act obtained a warrant and had a survey made, but there is now no general Act of Assembly allowing settlers of islands in the Susquehanna river to acquire title.

In the case of *Fisher vs. Haldeman*, 20 Howard, 186, the Supreme Court of the United States, after reviewing the Pennsylvania au-

thorities, recognized this doctrine as the settled law of Pennsylvania, and declined to recognize the rights of a settler based upon a half century's occupation.

Moreover, I think it is not for the best interests of the State to allow the ownership of the islands in the great navigable highways of the State to be acquired by private individuals.

For these reasons I decline to sign the order of appraisement which, with the accompanying papers, is herewith returned.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE WESTERN HOSPITAL FOR THE INSANE.

Under the Act of June 18, 1915, P. L. 1055, the Building Commission of the Western State Hospital for the Insane may select any site for said hospital, provided it lies west of the Allegheny Mountains. It is not necessary that the county in which said site lies shall be wholly west of the mountains.

Under said act, the site selected shall not contain more than five hundred acres.

Under said act, the commission may do such grading, quarrying, gardening, etc., as is necessary to put the site in condition for the construction of buildings but none of the money appropriated by said Act may be used for any purposes excepting those specifically mentioned in the act.

Office of the Attorney General,
Harrisburg, Pa., May 3, 1916.

Mr. Francis J. Torrance, President, Board of Public Charities, 1112
Bessemer Building, Pittsburgh, Pa.

Sir: In answer to your letter of recent date, relative to the selection of a site for a State Hospital for the Insane, to be known as the Western State Hospital for the Insane, as provided by the Act of June 18, 1915, P. L. 1055, I beg to advise you as follows:

The first section of the Act provides, inter alia, that the Building Commission of the Western State Hospital for the Insane, therein referred to—

“shall select and purchase a site within the Commonwealth, west of the Allegheny Mountains,” etc.

You state that several sites have been submitted which are in Cambria County, Westmoreland County and Fayette County; that the Allegheny Mountains, or their spurs, are in all of these Counties, and you desire to be advised whether you could locate the institution in any of these Counties.

The direction in the Act as already indicated is, that the Commission is to select and purchase a site "west of the Allegheny Mountains." There is no provision that the site is to be located in a county entirely west of the Allegheny Mountains.

Accordingly, you are advised that the Commission may select a site at any place in the State west of the Allegheny Mountains, and it would be immaterial that the Allegheny Mountains or their spurs ran through the same county in which the site is selected, provided the site is "west" of the mountains.

Your next inquiry, relative to the size of the site the Commission is to purchase, must be answered in the negative. The words in Section 1 of the Act referring to the matter are "containing not more than 500 acres." This language is very plain. It seems there is no discretion in the Commission to purchase a much larger site. I would advise, therefore, that the Commission has no authority to purchase a site which has upwards of 2,000 acres.

Your next inquiry is whether your Commission has power to devote part of the money appropriated under the Act for the purchase of a site, etc., to the immediate construction of temporary buildings and whether you could do the work of grading, grubbing, quarrying, gardening and putting the place in shape generally for the final construction of the permanent buildings.

The Act provides simply for a Commission to select and purchase a site and to have prepared plans and specifications for the Hospital therein contemplated, subject to the approval of the Board of Public Charities. There is no appropriation in the Act for the cost of construction which is covered by Section 3 of the Act, providing that

"When the General Assembly shall make an appropriation for the construction of the buildings * * * the said Commission shall appoint a superintendent of construction, etc."

In the first section of the Act appears the sentence—"The cost of said site shall not exceed fifty thousand (\$50,000.00) dollars." There is, however, no appropriation of \$50,000 in the Act.

The appropriation is covered by Section 7 of the Act, as follows:

"To provide for the purchase and improvement of the site for the Western State Hospital for the Insane, the preparation of plans and specifications for the building of said hospital, and the traveling and incidental expenses of the Commission, the sum of forty thousand (\$40,000) dollars, or so much thereof as may be necessary, is hereby specifically appropriated."

While there is no appropriation for the construction of buildings in this Act, you are advised that the words in Section 7 of the Act just quoted—"to provide for the purchase and improvement of the

site, etc.," are broad enough to warrant the Commission to do the work of grading, grubbing, quarrying, gardening and putting the place in shape generally for the final construction of the buildings, as you suggest, and you would have authority to construct temporary buildings for the housing of such workmen as would be engaged in this work.

However, the appropriation of \$40,000 made by Section 7 of the Act, may not be used excepting for the purposes therein provided, to wit: the purchase and improvement of the site, the preparation of plans and specifications for the building of the hospital, and the traveling and incidental expenses of the Commission, so that there is no fund available at this time to pay for the construction of buildings for hospital use.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

APPROPRIATIONS.

Under the Act of June 18, 1915, P. L. 1038, which provides that one-half of a certain appropriation made for two years shall be available the first year, and the remainder the second year, the portion of the first half which is not expended during the first year may be expended the second year along with the second half.

Office of the Attorney General,
Harrisburg, Pa., May 11, 1916.

Miss Helen Glenn, State Supervisor of the Mothers' Assistance Fund,
Harrisburg, Pa.

Madam: In answer to your letter of recent date, inquiring as to the availability, during the second year, of the unexpended balance of one-half of the amount of the appropriation for Mothers' assistance available during the first year after the approval of the Act, I beg to advise you as follows:

The Act of June 18, 1915, P. L. 1038, making provision for assistance to dependent mothers, as therein referred to, provides at the end of Section 2 thereof that upon the passage and approval of the Act 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, and further

" * * * * 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."

Your question is:

"If a county has not spent half of its appropriation during the first year, will the remainder of the first year's money be available the second year?"

The obvious purpose of the provision of the Act above quoted is to guard against an improvident administration of the fund by the Trustees, so that at least as much of the amount appropriated shall be available during the second year as during the first year—in other words, so that all or a greater portion of the appropriation shall not be entirely spent during the first year of the two year appropriation period. The provision must be regarded as a restriction as to the amount that may be expended during the first year, to wit, not more than one-half of the appropriation.

There is nothing in the Act, however, to indicate that it was intended that the same restriction should apply to the second appropriation period. The language is not that the "other half" shall be available during the second year. The language as you will note is "and the *remainder* the second year," etc. "The remainder" means, of course, the unexpended balance, or in plain language what is left of the appropriation.

You are accordingly advised that the meaning of the language in the Act as quoted is that not more than one-half of the appropriation may be used during the first year of the appropriation period, but what ever remains of the appropriation, notwithstanding that it may be more than one-half thereof, may be used during the second year or until another appropriation may become available as provided by the Act.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General

CAPITOL PARK EXTENSION COMMISSION.

The Commission is advised as to the manner of paying awards made by the Commission in payment of lands taken by condemnation.

Office of the Attorney General.
Harrisburg, Pa., June 2, 1916.

Honorable Samuel C. Todd, Secretary Capitol Park Extension Commission, Harrisburg, Pa.

Sir: In answer to your communication of recent date, requesting an opinion as to the manner of the payment of awards made by your

Commission in condemnation proceedings under the Act of June 16, 1911, P. L. 1027, in cases where no appeal has been taken by the owners, I beg to advise you as follows:

You state that your Commission is ready to disburse the awards to those legally entitled, but that you desire to be assured that both the Commonwealth, which is paying the money for the property taken, and the Commission, which may be held responsible for the proper distribution of the funds, will be fully protected.

I assume that all the provisions of the Act of Assembly, such as notice of entry and possession of the lands in question, by posting an advertisement in the daily papers, as required by the Act, have been fully complied with and that the awards in question have been made strictly in conformity with the Act.

The only reference in the Act to the manner of payments to be made thereunder appears in Section 7, as follows:

“ * * * * 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.”

It would appear that under this provision the proper practice is for the Commission to draw a voucher or vouchers in favor of those legally entitled to the award, for presentation to the Auditor General, who, in turn, should draw warrants therefor to be paid by the State Treasurer. In other words, it seems to be contemplated that the payments shall be made directly by the State Treasurer to those entitled thereto. I assume, however, from the statement in your communication that “the amount of the award has been paid to the Capitol Park Extension Commission by the State Treasurer,” that it has been your practice to draw the amount of the award and that you have made the payments to those entitled. In cases where there are a large number of owners, this plan is probably more feasible because it avoids a multiplicity of vouchers and warrants.

In either case, however, whether the payment is made directly by the State Treasurer to the owners, or the payment is made through your Commission, there is no special provision in the Act as to the manner of making such payment. It would appear, therefore, that the Commission should simply take the ordinary usual and reasonable precautions by requiring the usual proofs of ownership, supported by affidavits when necessary, before making payments to those apparently entitled thereto in a particular case and to receive from the payees proper receipts and acquittances as evidences of such payments.

Referring to your suggestion of the possible deduction from the award of costs incurred in each case, I beg to call your attention to the fact that such deduction may be made only in case an appeal has been taken and the “applicant or applicants fail to obtain a final

judgment for a sum exceeding the sum originally awarded by the Commission," as provided in Section 2 of the Act. In all other cases, costs are to be paid by the State Treasurer, as provided in Section 7, in the portion thereof above quoted.

Referring to the award of \$5500 made by your Commission in the matter of the condemnation of the Cunningham property at No. 137 North Fourth Street, in which case you advise that besides possible unpaid taxes there are mortgage and judgment liens against the property amounting to over \$7000, without interest or costs, I suggest that you receive a written authorization from the owner of the property that the total amount of the award be used to discharge the tax claims and the liens; then if you receive satisfactory written assurances from the judgment creditors and mortgagees that they will satisfy the judgments and discharge the liens on the payment to them of their pro rata shares of the amount that you may have for distribution, you may make payment to them accordingly on the satisfaction by them of their respective liens of record. If, however, they will come to no such agreement, or there is any dispute about the validity of any of the liens or the amount due thereon, it will become the duty of the Auditor General, upon the petition of your Commission to the Court of Common Pleas of Dauphin County, to draw a warrant for the amount of the award on the State Treasurer for payment into court and distribution among the parties entitled thereto, as provided in Section 4 of the Act.

Very truly yours,

JOSEPH L. KUN.

Deputy Attorney General.

BUREAU OF MEDICAL EXAMINATION AND LICENSURE.

One who fails at a special examination is entitled to a second examination, provided he applied for the same after the expiration of six months and within two years after his first examination.

The Bureau cannot establish a rule which will limit any final examination to one trial.

Office of the Attorney General,
Harrisburg, Pa., June 13, 1916.

Doctor J. M. Baldy, President, Bureau of Medical Education and
Licensure, Philadelphia, Pa.

Sir: I have your favor of the 2nd inst. with reference to the application of Doctor L. E. Zins, of Chicago, Ill., for a second examination.

It appears that Doctor Zins, who is a resident of the State of Illinois, which State does not have reciprocal relations with this State, took an examination before your Board for a license to practice medicine in Pennsylvania. The examination taken by him was what is known as a bedside examination, which is permitted at the discretion of the Board by Section 6 of the Act of June 3, 1911, P. L. 639, as amended by the Act of July 25, 1913, P. L. 1220. On this examination he failed. He has now applied for an opportunity to take a second examination in July of this year, but his application has been refused on the ground that his examination was a special one established under the rules of your Bureau and that no provision is made therein for a second examination.

Section 6 of the Act of June 3, 1911, as amended, provides, *inter alia*:

"The examinations conducted by the said bureau shall be written in the English language, but may at its discretion, be by oral or practical laboratory or bedside examinations, or both. * * * * In case of failure at any final examination, the applicant shall have, after the expiration of six months and within two years, the privilege of a second examination by the bureau, without the payment of an additional fee."

Section 2 of the same Act provides that the Bureau

"shall have authority to make rules and regulations for the transaction of its business, and for registration of all physicians of this Commonwealth, and for conducting examinations of applicants; said rules to be printed and published in pamphlet form, for public distribution."

Under this authority you have established the following rule with reference to examinations:

"Special Examinations. A practical examination at the bedside may be held for applicants ineligible to reciprocity because of licensure before the days of State examinations and for applicants graduated from extinct schools and for men who graduated ten or more years prior to January 1, 1913."

While this rule does not provide that this examination shall be limited to a single trial, it has been so construed by your Bureau, and as it was under this provision that Doctor Zins was examined, you have refused to permit him a second trial.

You ask to be advised:

"(1) Is the limitation of this examination to one trial, legal under the Act?"

"(2) If not, can we in any way establish a similar one which will hold legally and limit it to one trial?"

While, as above stated, your Bureau is given authority to make rules and regulations for the transaction of its business and for the registration of physicians, and for conducting examinations of applicants, you have no authority to make a rule or regulation contrary to an express provision of the Act of Assembly.

As above set forth, the Act distinctly provides that in case of failure at any final examination, the applicant shall have, after the expiration of six months and within two years, the privilege of a second examination by the bureau, without the payment of an additional fee.

This provision of the law applies to all final examinations, whether they are written, oral, practical laboratory, or bedside examinations, and no rule or regulation can be adopted by your Bureau contrary to the provision of the law just quoted.

Any applicant for a final examination who fails at his first examination, no matter what manner of examination it may be, is, by the plain provision of the law, entitled to a second examination without the payment of an additional fee, if he applies after the expiration of six months and within two years after such first examination.

You are therefore advised:

(1) That the Special Examinations provided for by the rules of the Bureau (page 13), as above quoted, if final examinations, cannot be legally limited to one trial.

(2) That your Bureau cannot establish a rule which will limit any final examination to one trial.

I beg to advise you that in my opinion Doctor Zins is entitled to a second examination, provided he applied for the same after the expiration of six months, and within two years, after his first examination.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE BONUS ON CAPITAL STOCK.

When a foreign corporation, after having capital invested and after having done business within the State, decides to be incorporated as a Pennsylvania corporation, it is required to pay the bonus imposed by the laws of Pennsylvania upon the amount of the capital stock which the Commonwealth authorizes it to have, and is not entitled to off-set against such bonus the amount of bonus which, as a foreign corporation of the same name, it paid on account of capital or property which is employed in Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., June 14, 1916.

L. Floyd Hess, Esq., Secretary Board of Public Accounts, Harrisburg, Pa.

Sir: Recently you asked the Attorney General this question:

"Is a corporation incorporated under the laws of a foreign State, and operating in this State, and paying a bonus upon its capital stock employed here, upon being domesticated, exempt from payment on the bonus paid to the Secretary of the Commonwealth before charter issues, upon so much thereof as has been previously paid by it while operating under its foreign charter."

I undersand the question arises with reference to the intended incorporation of the Petroleum Telephone Company, by the State of Pennsylvania.

A "Petroleum Telephone Company" was incorporated by the State of West Virginia on June 4, 1900, and constructed and has been operating since March 14, 1902, a plant at Oil City, Venango County, Pennsylvania, and vicinity. It now desires to become a domestic corporation, under the Act of June 9, 1881, P. L. 89, and claims that it should not pay bonus upon its entire capital stock, but only upon the difference between the capital stock of the Pennsylvania corporation, and the amount of the capital which the foreign corporation has previously employed in the State, and upon which it has paid bonus.

It does not appear how this question comes before the Board of Public Accounts, but inasmuch as the question is now before the Secretary of the Commonwealth, it may be answered through the medium of the Board of Public Accounts.

The solution is not difficult when the nature of bonus is considered.

"A bonus is the consideration for the grant of a privilege or franchise."

Commonwealth vs. Danville, Bessemer Co., 207 Pa. 302, 306.

Commonwealth vs. Erie & Western Transportation Co.
107 Pa. 112.

The bonus is the consideration paid to the State for the granting of a charter."

Commonwealth vs. Bailey, Banks & Biddle, 20 Super. Ct. 210.

Commonwealth vs. American Steel Hoop Co. 226 Pa. 6, 8.

In re York Silk Mfg., Co. 188 Fed. 735, 738.

Balt. & Ohio R. R. Co., vs. Maryland, 88 U. S. 456.

22 Lawyers Ed. 678.

It is contended by counsel for the intended corporation that no new corporation is formed and that the Petroleum Telephone Company of West Virginia, may become the Petroleum Telephone Company of Pennsylvania, "without losing its entity or identity."

This contention is fully answered by considering the control which Pennsylvania has over the Petroleum Telephone Company of West Virginia. It can only impose a tax upon the real estate or the tangible personal property in Pennsylvania. It cannot tax the bills or accounts receivable of the corporations even though they were physically in the State.

Com. vs. G. W. Ellis Co., 237 Pa. 328.

Com. vs. Curtiss Publishing Co., 237 Pa. 333.

It cannot impose the duty of requiring the corporation to collect the tax upon its obligations due from its own Pennsylvania citizens if its treasurer happens to live out of the State.

Com. vs. Barrett Mfg. Co. 246 Pa. 301.

The corporation is permitted to do business in the State of Pennsylvania but without any control by the State over its charter powers. It has its home office in West Virginia. It has no attributes of a corporation of Pennsylvania. It exercises some of the sovereign powers of West Virginia granted to it, but none of the sovereign powers of Pennsylvania.

It seems preposterous to say that a corporation of West Virginia may surrender its property to a corporation of Pennsylvania of the same name and that there is no change of "entity or identity." The bonus for which this corporation asks credit was not paid as a consideration for any franchise given by the State of Pennsylvania. It was paid pursuant to the Act of May 8, 1901, P. L. 150, which is entitled:

"An Act providing for the raising of revenue for State purposes by imposing upon certain foreign corporations * * * a bonus of one-third of one per centum upon the capital actually employed in Pennsylvania."

This bonus is not for a franchise because the foreign corporation gets no franchise from the Commonwealth of Pennsylvania, but it is the condition upon which a foreign corporation may do business in the

State. It is only imposed upon the capital actually employed in the State, which has been construed to mean tangible property used in the State.

Com. vs. Mountain Ice Co. 16 Dauphin Rep. 38.

When a foreign corporation becomes a corporation of the State of Pennsylvania under the Act of June 9, 1881, P. L. 89, it is a new creature. It could not sue or be sued in its old entity. It is a corporation created under a general law because the Act of 1881 is a general law. It therefore comes within the provisions of the Act of May 3, 1899, P. L. 169, which provides:

"That all corporations hereafter created *under any general or special law of this Commonwealth* * * * * shall pay to the State Treasurer for the use of the Commonwealth, a bonus of one-third of one per centum upon the amount of capital stock which said company is authorized to have, and a like bonus upon any subsequent increase thereof, and a like bonus shall be paid by all such companies heretofore incorporated upon any increase of their capital stock hereafter authorized."

The imposition of the bonus upon domestic corporations is not upon their property as in the case of foreign corporations, but it is upon "the amount of capital stock which said company is *authorized to have.*"

When the State of Pennsylvania confers upon the Petroleum Telephone Company, a franchise to have a certain amount of capital stock, a bonus is to be exacted for that franchise and is measured by the amount of the capital stock.

Attention has been called to the opinion of Deputy Attorney General Stranahan, *In the Matter of the Sherman Manufacturing Company*, 7 *Dauphin Rep.* 294, which in effect overruled the opinion of Hon. C. W. Stone, Secretary of the Commonwealth, 7 *Dauphin Rep.* 293. These opinions do not bear upon this question. They refer to the payment of 10 per centum of the capital stock and the giving notice under the Act of June 9, 1881, P. L. 89, but the opinion of Deputy Attorney General Stranahan, even upon the questions of notice, is overruled by Attorney General Carson, in, *In Re Metal Edge Box Company*, 7 *Dauphin Rep.* 296.

The same question was involved there, as here, viz: the creation of a Pennsylvania corporation to take the place of a foreign corporation under the Act of June 9, 1881, P. L. 89. Attorney General Carson says:

"This in my judgment, is the creation of a Pennsylvania corporation and not the adoption or naturalization of a foreign corporation. The Act itself requires

a distinct renunciation of a foreign charter and of all privileges not enjoyed by corporations of this class under the laws of this Commonwealth."

and after quoting the bonus Act of May 3, 1899, which is hereinabove quoted, he says:

"It is clear that both the Act of April 29, 1874, and the Act of June 9, 1881, are general laws of this Commonwealth. There is no exception made in favor of corporations domesticating—if that be the proper phrase—under the latter Act. Compliance with the terms of the Act of 1881 constitute the creation of a Pennsylvania corporation under a general law of the State, and this brings the corporation entirely within the terms of the Act of May 3, 1899.

It is no answer to this to assert that a foreign corporation, while it was a foreign corporation, paid a bonus under the Act of May 8, 1901, P. L. 150."

That it was a revenue Act, as the title distinctly shows—an Act providing for raising of revenue for State purposes by imposing upon certain corporations—a bonus of one-third of one per cent. upon the capital actually employed in Pennsylvania, and requiring the filing of certain reports in the office of the Auditor General. The bonus exacted under the Act of 1899 is not for the purposes of revenue, nor is it a tax; it is a price paid for the charter, a compensation to the Commonwealth for privileges conferred on the corporation by its charter."

We adopt the language of that opinion.

I, therefore, advise you that the Petroleum Telephone Company, when incorporated by the Commonwealth of Pennsylvania, is required to pay the bonus imposed by the laws of Pennsylvania upon the amount of the capital stock which the Commonwealth of Pennsylvania authorizes it to have, and is not entitled to off-set against such bonus the amount of bonus which a foreign corporation of the same name paid on account of capital or property which it employed in Pennsylvania.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

MOTHERS' PENSIONS.

Sections 6, 7 and 8 of the Act of 1913, P. L. 118, are still in force. A pension may not be granted to the mother of an unborn child.

Office of the Attorney General,
Harrisburg, Pa., June 21, 1916.

Miss Helen Glenn, State Supervisor of Mothers' Assistance Fund,
Harrisburg, Pa.

Madam: Replying to your letter of recent date, addressed to the Attorney General, relative to the Mothers' Pension Act of 1915, P. L. 1038, and its effect upon Sections 6, 7 and 8 of the Act of 1913, P. L. 118, I beg to advise you as follows:

The Act of 1915, by its title and by the terms thereof, is an amendment of the Act of 1913, but amends only such sections thereof which are specifically referred to, to-wit, Sections 1 to 5 inclusive. You are advised, therefore, that Sections 6, 7 and 8 of the Act of 1913 are still in full force and effect.

Referring to your other question as to whether or not a pension may be granted to a mother for an unborn child, I beg to direct your attention to Section 1 of the amending Act of 1915, which provides for the granting of monthly pensions as approved by the trustees:

*"To women who have children under sixteen years of age, and whose husbands are dead or permanently confined in institutions for the insane, when such women are of good repute, but poor and dependent on their own efforts for support, as aid in supporting their children in their own homes * * **"

You are accordingly advised that a pension may not be granted to a mother for an unborn child.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

STATE FIRE MARSHAL.

The appropriation for the salaries of Deputy State Fire Marshals cannot be used for the payment of fees and mileage of assistants.

There is no fund available for payment of fees and mileage of assistants.

Office of the Attorney General,
Harrisburg, Pa., June 28, 1916.

Mr. Charles D. Wolfe, Acting State Fire Marshal, Harrisburg, Pa.

Sir: Your communication of January 19, 1916, directed to the Governor, has been referred to this Department for reply. The subject of your communication may be briefly summarized as follows:

There are now some twenty-five hundred assistants to the State Fire Marshal, under Section 3 of the Act of June 3, 1911, P. L. 658. You have heretofore been paying the fees and mileage of such assistants from your contingent fund, as appropriated by the last Legislature, which in amount was \$10,000, and which is now exhausted.

Appropriations were also made by the Legislature of 1915 for the salaries of four special Deputy State Fire Marshals, and twenty-five Deputy State Fire Marshals; in that no third and fourth special Deputy State Fire Marshals were appointed, and that only eleven out of the possible eighteen Deputy State Fire Marshals were appointed, you asked whether the surplus left in these two funds, viz, \$12,000, and \$21,000.00, respectively, may be used in paying the fees and mileage of the assistants in view of the exhaustion of your contingent fund.

Section 3 of the Act of June 3, 1911, P. L. 658, designates who shall be assistants to the State Fire Marshal. Section 4 of this Act prescribes the duties of such assistants, which includes the reporting of fires.

Section 12 of the same Act provides for the compensation of such assistants at fifty cents for each report, or a sum not to exceed three dollars per day for time employed, together with fifteen cents per mile traveled.

The question resolves itself into two propositions:

First: Can the unexpended balance to which you refer be diverted to the payment of these assistants.

Second: If not, what authority is there for the present payment out of the other funds now in the Treasury of the Commonwealth.

As to the first proposition the appropriation mentioned is for salaries of deputies. The Act recognizes the distinction between deputies and assistants, not only in so naming them and prescribing their powers and duties, but in compensating the former through salaries and the latter through fees contingent upon the amount of services rendered.

It has been the uniform practice of this Department to strictly construe appropriation Acts making specific appropriations.

See *Attorney General Reports, 1893-94, Page 55.*

Under this rule it has been held that an Act appropriating a certain sum for the maintenance of four hundred inmates of an institution was unavailable to pay the maintenance of more than four hundred inmates, even though the aggregate cost did not exceed the amount appropriated.

Chief Justice Gibson, in *Commonwealth vs. Canal Commissioners*, 2 P. & W 517, says:

“Nor may the public funds be intercepted in the hands of the proper officers, or diverted from objects to which they have been appropriated.”

This position, viz, that funds specifically appropriated may not be diverted, has been uniformly held by this Department, (see *Attorney General Reports 1893-94*, page 37; also 1889-90, page 90.

I have, therefore, to advise you that no matter what the balance may be remaining unexpended in the two items referred to, such balance having been provided for the *salaries* of deputies, cannot be diverted to and used for the payment of fees and mileage of assistants.

Second: The question now arises as to whether there is authority for the payment of these fees and expenses out of any moneys in the Treasury not otherwise specifically appropriated.

In sustaining such a view it would be necessary to consider Sections 3, 4 and 12 of the Act of June 3, 1911, as continuing appropriations; that is, an Act by which in the creation of an office, together with its duties and the attaching of a fixed compensation therefor, an appropriation is made which does not require distinct action by the Legislature in addition thereto. Such an appropriation was held by Attorney General Lear to be within Section 16 of Article 3 of the Constitution in that by legislative enactment some limited amount was designated to be paid to some limited class, or an individual therein, for definite services. (See *Attorney General Reports, 1895-96*, page 99, 362.)

While it is quite probable that such an Act would meet the requirements of the Section of the Constitution referred to, yet under the legislative practice which has developed in this Commonwealth in past years, and as supported by the Act of 1909 and other acts pertaining to the manner in which appropriations shall be made and payments thereunder authorized, it is believed that a more strict rule must be followed. If an Act creating an office and fixing a salary thereto is a sufficient appropriation, then the Act of the Governor in vetoing an item directed to that Department which in its effect would deny payment to such office, would be a nullity and there would be no power in the Governor to curtail the expenses of a particular Department for offices authorized within the same, except by vetoing a bill creating such offices or, if previously passed, procuring the passage of a repealing Act.

Such a condition would be entirely inconsistent with uniform practice of this Commonwealth in giving the Governor in his veto the ultimate discretion as to the amount and manner of expenditure of the State's funds by Legislative appropriation. The converse of that proposition, viz, that no Act creating offices and fixing the emoluments thereof, can be effective without distinct action by the Legislature making appropriation for such payments, has been and now is practiced in this State.

The situation is rather analogous to that which arose under the bounty Act of July 25, 1913, P. L. 1036. By Section 4 of that Act the Auditor General was directed to draw a warrant in favor of the county, paying said bounties, to be paid by the State Treasurer out of the funds which accumulated in his hands from the fees for hunters' licenses.

The appropriation Act of July 25, 1913, P. L. 1284, appropriating \$50,000 was insufficient to reimburse the counties for all the moneys so paid by them, and in an opinion rendered by Deputy Attorney General Cunningham (Attorney General Reports 1913-14, page 298) the Secretary of the Board of Game Commissioners was advised that the several counties were legally liable to the persons presenting proper certificates and that the counties thus paying said bounties must look to subsequent legislative action for their reimbursement.

The duties imposed upon the Chief of the Fire Department in any county, city, borough, etc., or upon the Burgess of any borough, or President or Chairman of the Board of Supervisors in any township, by Section 3 of the Act of June 3, 1911, as aforesaid, are not discretionary; they are mandatory. Without allowing any compensation, the Legislature had a right to impose these duties upon these respective officers.

In the same Act however the Legislature saw fit to provide that they should receive certain fees and mileage for performing these duties, but in providing the money to cover these duties, sufficient was not appropriated. A burden rests upon these officers to perform the duties just the same.

The next Legislature should, by appropriate action, transfer funds from the one account or item of the State Fire Marshal's Department to another and thus promptly relieve the situation, or a deficiency appropriation bill can be passed. Until such action by the Legislature I must therefore, advise you that no funds are available from which these assistants can be paid their fees and mileage.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

OFFICIAL BONDS.

The bond of the Treasurer who handles the money of a State institution is sufficient, and it is unnecessary to bond subordinate officers to him.

Office of the Attorney General,
Harrisburg, Pa., July 6, 1916.

Mr. Oscar L. Swartz, Steward, State Hospital for Insane, Norristown, Pa.

Sir: Your letter of the 30th ult., addressed to the Attorney General, in reference to the payment of premiums on bonds for officials of your institution, has been received. You advise that from time to time such employees of your institution as the steward, the male resident physician, the female resident physician, and the storekeeper have been obliged to present bonds to the Board of Trustees for the faithful performance of their duties; that the steward receives the cash from miscellaneous sales and private patients and deposits them to the credit of the State; that the resident physicians hold the valuables and such moneys as may be found on the persons of the patients when admitted to the Institution; that the storekeeper has charge of the general stock-room wherein you have about \$15,000 worth of stock.

You also advise that the Auditor General has referred you to Act No. 269, page 626, P. L. 1915, and that he has cautioned you to be "careful in expending funds for premiums on surety bonds except for those who handle money, that is, the treasurer."

It was ruled in an opinion rendered by the Attorney General on the 20th ult., to Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, that the Act of Assembly referred to "contemplates only the giving of bond by the official who accounts to the Auditor General and State Treasurer for the moneys which are paid to the institution and that any other bonds which the institution sees fit to require are not contemplated by this statute or to be paid for by" his Department.

This is based on the language of the Act which provides for the bonding of State officials or employees "who shall receive and disburse public moneys," and on the language of the special appropriation to the Board of Public Grounds and Buildings, in the General Appropriation Act of 1915, No. 429, page 48, which provides for the payment of the cost of procuring various bonds "required by statute to be given by State officials and employees for the faithful performance of their duties," etc.

You are advised, therefore, that the only official of your institution required and authorized to be bonded under the Act of Assembly above referred to is the one who receives and disburses the public

moneys, and it is only the premium for such bond that may be paid out of the special appropriation to the Board of Public Grounds and Buildings for the payment of the cost of procuring bonds.

It is, of course, entirely proper for your Board of Trustees to require bonds of such employees and subordinates who, in the judgment of the trustees, hold such positions of trust which require them to be bonded. This is a matter, as to which the Board of Trustees must exercise their own sound judgment and discretion. The premiums for such bonds, however, cannot be paid out of the special appropriation to the Board of Public Grounds and Buildings as already indicated, but will have to be paid out of the appropriation to your institution.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

RE EMPLOYMENT AND PAY OF TWENTY-FIVE DEPUTY STATE FIRE
MARSHALS.

Office of the Attorney General,
Harrisburg, Pa., August 23, 1916.

Hon. G. Chal Port, State Fire Marshal, Harrisburg, Pa.

Sir: Your communication of July 20, 1916, to the Auditor General, has been referred by him to this Department. The matter which you present is the exhaustion of the fund from which the traveling expenses of ten deputy state fire marshals have been paid, and you ask for advice as to how such expenses can be met, with the alternative of the serious crippling of your Department if no such provision can be made.

The Act of June 3, 1911, (P. L. 658), provides for a chief assistant fire marshal and a first and second deputy fire marshals. This Act does not create the offices of deputy state fire marshals. The only warrant in law for the appointment of deputy state fire marshals is an appropriation made during the session of 1915, as the same appears on page 43 of the Appropriation Acts, which specifies as follows:

"For the payment of the salaries of twenty-five Deputy State Fire Marshals, two years, the sum of seventy-five thousand dollars (\$75,000)."

It is apparent that this appropriation is a sufficient warrant for their appointment and, as such, has been acquiesced in by the Attorney General, Auditor General and State Treasurer since the last session of the Legislature.

Your attention is called to the fact that neither this appropriation nor any other act of assembly fixes the amounts to be paid such deputy state fire marshals and, in the absence of such limitation, it is discretionary with yourself as to whether their salaries shall be uniform or otherwise. While it is true that you have been paying these ten on the basis of Fifteen hundred dollars per year each, there is no legal reason why you could not pay ten at the rate of Twenty-four hundred dollars per year each, and fifteen at the rate of Nine hundred dollars per year each.

This fund, however, could not be used for the payment of the traveling expenses of these deputies, as such, but, as outlined above, the strict letter of the law would be observed by your increasing the salary of each of these deputy state fire marshals and allowing them to pay their traveling expenses from their salaries.

The procedure outlined does not conflict with Article III, Section 13 of the Constitution of this State, in that it does not involve a law increasing salaries after appointment, but merely the increase of salary within the limit permitted by the law under which the appointments were made. Likewise, there would be no conflict with the Act of May 11, 1909, (P. L. 519), in that the payments so made would be in accordance with an act of assembly setting forth the amount to be expended and the purpose of such expenditure.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

BUREAU OF MEDICAL EDUCATION AND LICENSURE.

Act of June 3, 1911, P. L. 639, re examination of applicants for license to practice medicine is construed.

Office of the Attorney General,
Harrisburg, Pa., August 23, 1916.

Dr. John M. Baldy, President, Bureau of Medical Education and
Licensure, Philadelphia, Pa.

Sir: I have received your favor of the 14th inst. requesting my opinion as to the construction of the following clause in the Act of June 3, 1911, (P. L. 639), as amended by the Act of July 25, 1913, (P. L. 1220):

"In case of failure at any final examination, the applicant shall have after the expiration of six months and within two years, the privilege of a second examina-

tion by the bureau, without the payment of an additional fee. In case of failure in a second final examination, the applicant must enter *de novo*, and only after a year of postgraduate study approved by the bureau, and qualify under the conditions obtaining at the time of this application."

You ask to be advised whether the words "and qualify under the conditions obtaining at the time of this application," apply to the preliminary educational requirements as well as to the requirements of medical study and education.

At the time of the passage of the Act of June 3, 1911, the preliminary educational requirements consisted of "a general education of not less than a standard four years' high school course, or its equivalent—all of which have been received before admission to the second year of medical study."

This was changed by the amendment of July 25, 1913, so as to provide: "a general education of not less than a standard four years' high school course or its equivalent, *and not less than one year of college credits in chemistry, biology and physics—all of which have been received before admission to medical study.*"

Section 6 of the Act, as amended, provides for two kinds of examinations, partial and final.

Partial examinations may be taken in certain branches during the applicant's course of medical study and if found proficient the applicant is exempted from further examinations in said subjects at the final examination.

If the applicant fails at his final examination he is entitled to a second examination after six months and within two years—but if he fails in his second final examination, he must enter *de novo*, and only after a year of postgraduate study approved by the bureau, and must qualify under the conditions obtaining at the time of this application.

The preliminary requirements are intended to establish a standard of education for admittance to a medical school and entry upon the study of medicine. This is seen from the requirement "all of which shall have been received before admission to medical study."

In the concrete case submitted with your inquiry, X began the study of medicine when the preliminary educational requirements were as fixed by the Act of June 3, 1911. He failed at both his final examinations—In the meantime, the Act of July 25, 1913, was passed, which makes a year of college credits in chemistry, biology and physics, a prerequisite to entering upon the study of medicine, to complete which the student will have to attend a medical college for four years. As pointed out before, by the terms of the Act, this year of college credits must have been received before admission to medical study. If he is required before taking his new final examination to

qualify under the preliminary educational conditions obtaining at the time of his new application, he must not only take a year of postgraduate study approved by the Bureau, and pass a new final examination under the conditions as to medical study and examination then obtaining, but he must first of all go back and take a year of college credits in chemistry, biology and physics and then enter anew a medical college and take a four years full course. I cannot believe that this was the legislative intent.

The clause provides: (1) that the applicant must enter *de novo*, that is—that all credits obtained by him on former partial examinations are eliminated and he must take the entire examination anew; (2) that he must take a year of postgraduate study approved by the Bureau before being examined anew—the use of the word “*post-graduate*” seems to negative any intention of requiring him to take over again a four years undergraduate medical course; (3) and that he must qualify under the conditions obtaining at the time of this application, which, reasonably interpreted, refers to the conditions obtaining with reference to the study of medicine as distinguished from the preliminary requirements for such study.

I am of opinion, therefore, and so advise you, that the clause in question does not refer to the preliminary educational requirements for entry upon the study of medicine, but only to the conditions obtaining at the time with reference to medical education, instruction and examination.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

BOARD OF EXAMINERS OF PUBLIC ACCOUNTANTS.

The term actual traveling expenses in the appropriation to the above board covers the hotel expenses and incidental expenses of the board, when absent from home on official business. The words “and incidental expenses not exceeding \$300” in said appropriation refers to office rent, etc., and does not relate to actual traveling expenses. The moneys which the board received from their predecessors in office is available for any expenses of the board authorized by law.

Office of the Attorney General,
Harrisburg, Pa., November 10, 1916.

Mr. Frank Wilbur Main, Secretary of Penna. State Board of Examiners of Public Accountants, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of the 3rd inst., together with a supplemental letter of Benjamin Frank Nead, Esq.,

Treasurer of the Board, asking for a construction of the provisions of the Act of June 4, 1915, (P. L. 839), amending Section 2 of the Act of March 29, 1899, entitled—

“An Act to establish a board for the examination of accountants, to provide for the granting of certificates to accountants, and to provide a punishment for the violation of this act,”

as amended by the Act of April 27, 1909, (P. L. 256).

The inquiries of yourself and Mr. Nead raise three questions:

First—Whether the phrase “actual traveling expenses” includes hotel accommodations of the members of the Board while upon official business.

Second—Whether the provisions of the Act of 1915, limiting the expenditures of the Board to \$300 per annum, relates to the actual traveling expenses of the members of the Board, or whether it is confined to “expenses incident to such examination, for office rent, stationery, printing and clerk hire.”

Third—Whether an amount turned over to your Board by the board appointed under the Act of 1909, is available for your use. These questions will be considered seriatim.

As to the meaning of the phrase “actual traveling expenses,” as used in the said Act of 1915, you are advised that it is not limited to transportation expenses, but includes money actually spent for hotel accommodations and incidental expenses while the members of the Board are absent from home on official business. I am not unmindful of an opinion rendered by Attorney General Kirkpatrick and reported in Attorney General's Reports 1887-1888, page 72, in which it was held that the phrase “actual traveling expenses” did not include hotel expenses. In that case, however, an act of assembly allowed a mine inspector, an officer whose duties continually necessitate his traveling about, a definite salary, while in the case under consideration, the members of your Board who do not so continually travel, must serve without compensation. It is not to be presumed that the Legislature intended that its officers and agents should serve the Commonwealth at a financial loss to themselves, and in the absence of the clearest language no intent is to be inferred that they are to pay any expenses connected with their official duties out of their private funds.

I am of the opinion, therefore, that the Act of June 4, 1915, (P. L. 839), authorizes the payment out of available funds of the actual traveling expenses, including hotel accommodations and incidental expenses, which your Board find it necessary, while absent from home in the performance of their official duties, to incur.

The legislative intent in the Act of June 4, 1915, (P. L. 839), as to the application of the phrase "a sum not exceeding \$300 per annum," is somewhat vague. A mature deliberation, however, has led to the conclusion that it is confined to the "expenses incident to such examination, for office rent, stationery, printing and clerk hire" and does not relate to the "actual traveling expenses of the members of the Board." It is never to be presumed that the Legislature intended to enact an absurdity—(Endlich on Interpretation of Statutes, Paragraph 264). To hold that all the expenses of the members of the Board, their traveling expenses, as well as the cost of conducting examinations, should not exceed \$300, would, in the opinion of this Department, be such an absurdity. Under the Act the Board must hold an examination once a year in the Cities of Philadelphia and Pittsburgh and to expect that this could be accomplished and that all the expenses incident to such examinations, as well as the regular conduct of the business of the Board, should not exceed in cost the amount of \$300, would be expecting an impossibility.

You are advised, therefore, that your Board may incur the actual traveling expenses to such an amount as may be necessary and is not limited to \$300, but that the expenses incident to such examination, exclusive of such traveling expenses and inclusive of office rent, stationery, printing and clerk hire, must in no event exceed \$300 per annum.

As to your third inquiry, you are advised that the money turned over to the Board by their predecessors in office, appointed under the Act of 1909, is available for the purpose authorized by law. The money was available to the former members of the Board and as there is nothing in the Act to the contrary, there appears no good reason why it should not be at the disposal of the present Board to meet its legal expenses. It is pertinent to note, however, that the said Act of 1915 provides that—

"if any surplus above said expenses shall remain at the end of the year, it shall be paid into the Treasury of the Commonwealth."

This means that the amount which your Board has received from their predecessors is available only until the end of the year and if there is any remainder, it must be paid into the Treasury of the Commonwealth.

Specifically answering your questions, you are advised as follows:

First—The term "actual traveling expenses" as used in the Act of June 4, 1915, (P. L. 839), includes amounts actually expended by the members of the Board for hotel accommodations and incidental expenses while absent from home on official business.

Second—The provision of the said Act of 1915, limiting the expenditures of your Board to \$300 per annum, means the expenses of the Board “incident to such examinations, for office rent, stationery, printing and clerk hire” and does not operate to limit the amount of “actual traveling expenses.”

Third—That the moneys which your Board has received from their predecessors in office appointed under the amendment of April 27, 1909, (P. L. 256), is available for any expenses incurred by your Board which is authorized by law, but that any balance of said sum over and above such expenses, must be paid into the State Treasury at the end of the year.

Very truly yours,

FRANCIS SHUNK BROWN.

Attorney General.

IN RE CONDEMNED BUILDINGS.

When a State Fire Marshal condemns a building and orders it vacated, removed or destroyed, the occupant or tenant, the terms of whose lease requires him to make repairs, should have notice as well as the owner in order to permit the tenant to appeal so as to show that the dangerous features as to the building could not be removed by the proper repairs. The extraordinary powers conferred upon a fire marshal must not be permitted to improperly interfere with contractual relations.

Office of the Attorney General,
Harrisburg, Pa., October 19, 1916.

Hon. G. Chal. Port, State Fire Marshal, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of the 17th inst. in which you ask to be advised as to the “liability of the owner or lessee in a case where a building under lease is condemned and order issued for altering the hazardous condition.” The circumstances, as we understand them, which make this question material are principally where an order has been served on the landlord and the tenant prevents or attempts to prevent him from entering upon the premises for the purpose of complying with such order.

Section 5 of the Act of June 9, 1911, (P. L. 658), provides that where a building is determined to be in such condition as makes it subject to an order by the State Fire Marshal for its removal or repair “such order shall forthwith be complied with by the owner or occupant of such premises or building.” Throughout this section the terms “owner” or “occupant” are treated in the alternative and under this Act it is optional with yourself to treat either one as responsible for the condition,

Your practice has been to serve such notice on the owner and, with but few exceptions, the occupant has assisted in permitting the owner to forthwith comply with such order. This practice has developed from the fact that the objectionable conditions usually existed prior to the beginning of the term of the lease. Whether that fact exists in each case or not is immaterial in so far as the duty is on one or the other of them to comply with a proper order made by you. In case you should make this order upon the owner and the occupant would resist the owner's entering upon the premises for the purpose of complying with it, the occupant by such action not only states that the owner does not have the right to make the repairs, but is not under obligation to do so, and thereby fixes upon himself the responsibility and expense of compliance with any order which you may subsequently make upon him.

We would advise you when making an order upon the owner of a building or premises, to serve a copy of such order upon the occupant with directions that he permit the owner to immediately enter said premises for the purpose of complying with the order, and that he notify you of his consent thereto. When the order is for the removal or destruction of the building the occupant should particularly be made a party, so that he may be given the right of appeal for the purpose of showing that the dangerous condition may be remedied by repairing, for the reason that the extraordinary powers given to you must be guarded so that they may not be made a vehicle whereby the owner may dispossess a tenant prior to the termination of his lease, or otherwise improperly interfere with their contractual relations.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE HOSPITAL SERVICES RENDERED TO EMPLOYEES OF HOSPITALS
INSURED IN THE STATE FUND.

1. Under section 20 of Act No. 340 (June 2, 1915), creating the State Workmen's Insurance Fund, an employer insured therein who files proper notice of an accident to his employe is discharged from liability for the payment of compensation, but is not discharged from the duty of providing reasonable medical and hospital services. This liability remains primarily upon the employer and he is entitled to be reimbursed only for his actual expenses for such services and supplies.

2. A hospital which is insured in the State Fund and which provides medical and surgical services and supplies for its own injured employes is entitled to reimbursement only for such monies as have been expended on account of the particular accident over and above the regular cost of maintenance of the institution.

Office of the Attorney General,
Harrisburg, Pa., December 9, 1916.

Dr. H. W. Mitchell, Superintendent State Hospital, Warren, Pa.

Sir: This Department is in receipt of your several favors of the 6th and 23rd ult. relative to reimbursement by the Workmen's Compensation Fund to hospitals for treatment given by them to their own injured employes. You inquire whether the hospitals have a right to expect reimbursement upon a modest per diem basis for the care given such of their own injured employes as might be given bed treatment and nursing following an injury.

The Workmen's Compensation Act of June 2, 1915, (P. L. 736), in Section 306 (e) provides:

"During the first fourteen days after disability begins the employer shall furnish reasonable *surgical, medical, and hospital services*, medicines and supplies, as and when needed, unless the employe refuses to allow them to be furnished by the employer. The cost of such services, medicines, and supplies shall not exceed twenty-five dollars, unless a major surgical operation shall be necessary; in which case the cost shall not exceed seventy-five dollars. If the employer shall, upon application made to him, refuse to furnish such services, medicines, and supplies, the employe may procure the same, and shall receive from the employer the reasonable cost thereof within the above limitations."

This is a primary duty imposed upon the employer, which rests upon him continuously and of which he has not been relieved by any subsequent legislation.

In the Act of June 2, 1915, (P. L. 762), creating the State Workmen's Insurance Fund, it is provided by Section 20 that a subscriber to the Fund who, within seven days after knowledge or notice of an accident to an employe in the course of his employment, shall have filed with the Workmen's Insurance Board a true statement of such knowledge or a true copy of such notice, shall be discharged from all

liability for the *payment of compensation* for the personal injury or death of such employe by such accident, and such compensation shall be paid out of the Fund.

This Act, therefore, relieves the employer, who is a subscriber to the State Fund, of all liability for the payment of *compensation* for personal injury or death, provided the requirements of the Act are complied with. It is provided in this section however—

“That nothing in this section shall discharge any *employer* from the duty of supplying the medical and surgical services, medicine, and supplies required by section three hundred and six of The Workmen’s Compensation Act of 1915; And provided further, That any subscriber who has supplied such services, medicines, and supplies shall be reimbursed therefor from the Fund.”

thus holding the employer primarily responsible for supplying medical and surgical services, medicine and supplies required by Section 306 of the Workmen’s Compensation Act and imposing upon the Workmen’s Compensation Fund only the duty of reimbursing the employer.

The policy of insurance issued by the State Workmen’s Insurance Fund reads as follows:

“THE STATE WORKMEN’S INSURANCE FUND HEREBY INSURES, subject to the conditions hereinafter specified (Name of Employer), * * * * against liability under Article III of Act 338 of the Laws of 1915, known as ‘The Workmen’s Compensation Act of 1915,’ and under any amendments thereof, heretofore or hereafter adopted.”

INCLUDING liability to furnish medical and other treatment and care of injured employes as required by Section 306-E of the Act.

AND ASSURES to all employes of the insured employer whose remuneration is included in the payroll upon which the premium of this policy is computed, the payment to the persons entitled thereto of compensation for accidental injuries or accidental death, sustained in the course of employment, at the rates and for the amounts provided in Article III of the Workmen’s Compensation Act of 1915.

* * * * *

This policy is to be construed by reference to the Workmen’s Compensation Act of 1915, and as heretofore or hereafter amended, which shall in all cases govern as to its construction and meaning.”

There is, therefore, nothing in the policy which attempts to change the provisions of the laws above quoted, or to impose upon the Insurance Fund any higher duty than that required by the Acts of As-

sembly above referred to. The duty of the Insurance Fund, under these Acts, with reference to subscribers who have complied with the law, is—

1. To pay the compensation for personal injury or death to the injured employe or his dependents in accordance with the Workmen's Compensation Act of 1915.

2. To reimburse the employer for moneys expended by him in supplying reasonable surgical, medical and hospital services, medicines and supplies.

The word "reimburse" is generally defined to mean "to pay back."

Philadelphia Trust Company vs. Audenreid, 83 Pa. 257.

It does not mean the same as "to pay." It contemplates a return of money which has been previously expended. It does not contemplate the payment of the monetary value of services for which no payment has been or is to be made. For example—the duty is imposed on the employer to furnish reasonable surgical, medical and hospital services, medicines and supplies during the first fourteen days after disability. If an employer takes an injured employe to his own home and cares for him there, furnishing him nursing and other attention from his own household, although the value of such services rendered by members of his family might reasonably be worth twenty-five dollars, the Insurance Fund would not be required in such case to do anything except to pay back to the employer the moneys actually expended by him in such care and nursing, and he could not charge the Fund the value of the nursing rendered by his household or by persons not especially employed for that service.

The situation is not altered by reason of the fact that a hospital may be the employer. In such case the State Insurance Fund is only required to reimburse the hospital for the moneys actually paid by it in the care and nursing, medical and hospital supplies furnished its employe considered separate and apart from what it would have had to pay had no such accident occurred. For example—if an injured employe is accustomed to board and lodge in the hospital, it is put to no additional expense by reason of his injury unless it is required to furnish him special food which it would not have furnished to him otherwise, or extra laundry or bedding which it would not have otherwise furnished, and such medicines, dressings and hospital supplies as were used in his case. If the injured employe is treated and cared for by physicians and nurses who are regularly employed and receive no additional compensation for such treatment, the Hospital is put to no additional expense. On the other hand, if an extra nurse has to be called in for his particular case and money paid to that nurse, the Hospital would be entitled to reimbursement for such payment,

The whole matter comes down to the question—what has the hospital, under such circumstances, paid with regard to the surgical, medical and hospital treatment of the injured employe which it would not have expended in the ordinary maintenance of the hospital, irrespective of his particular injury. For whatever it has thus expended, due to his injury alone and outside of its regular staff of employes and its regular cost of maintenance, it is entitled to be reimbursed. If it has made no such expenditures it is entitled to receive nothing by way of reimbursement from the State Insurance Fund.

The compensation due such employe is on a different footing. At the end of two weeks such compensation begins and is payable by the Fund directly to the injured employe, if the Hospital has complied with the provisions of the law with respect to notice, and the hospital is relieved from any liability for the payment of such compensation to the injured employe.

I trust that this reply is sufficiently explicit to cover your inquiry. As before stated, the liability of the Fund to reimburse the hospital depends on whether the Hospital has been called upon to pay or expend, with special reference to the Hospital treatment of its injured employe, any moneys which it would not have expended had he not been so treated and as to such moneys, and such alone, it is entitled to be reimbursed.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE TRAVELING EXPENSES OF STATE OFFICIALS AND EMPLOYES.

1. The State should in no event pay more for the traveling expense of its officials than those which are incurred between Harrisburg and the place to which such official may be called on official business.

2. In no event can an official be reimbursed for expenses incurred in traveling on the State's business in a greater sum than the actual amount paid out by him on account of such travel which amount is to be measured by the extra expenditure to which he has actually and in fact been put by reason of the travel on the State's account.

The following opinion discusses a number of particular cases illustrating the application of the above principles.

IN RE TRAVELING EXPENSES OF STATE OFFICIALS AND EMPLOYES:

Commonwealth of Pennsylvania,
Department of the Attorney General,
Harrisburg, Pa., December 15, 1916.

Inquiries from several Departments have been received as follows:

For what part of the expenses incurred in traveling on the business of the State may an official claim reimbursement in cases where such official resides at some place other than Harrisburg?

It would be difficult to formulate any single rule or set of rules which would be readily and definitely applicable to every possible case of that kind. Unless otherwise specifically provided, the heads of the various departments and bureaus of the State government and all subordinates therein, are presumed to reside at Harrisburg. Consequently, whenever such official or employe is called elsewhere in the performance of an official duty, he is presumed to be entitled to his traveling expenses from Harrisburg to the point of duty and return. It is a matter of common knowledge, however, that many State officials retain their homes away from Harrisburg. The expenses of the travel between their homes and Harrisburg is one admittedly to be paid by themselves. It is a personal burden to be borne for exercising the privilege of residing at the place of their own choice, instead of at the seat of the government whose servants they are. If, however, the official place of duty is designated or fixed by law at some place other than Harrisburg, the location so fixed or designated would be the point from which to compute the traveling expenses in such case.

As above stated, the traveling expenses of a State official called by official business to some place away from the Capitol, are presumed to be those between Harrisburg and such place. That presumption, however, cannot prevail if, in fact, such official on such trip actually pays a less sum. Then the fact governs and he is entitled to reimbursement by the State only to the extent of the actual outlay for expenses occasioned by such trip.

Expenses can be lawfully paid only if necessarily incurred in the performance of the work of the State and *actually paid*. It is not sufficient to entitle one to reimbursement therefor if they be simply presumptively payable.

Various phases of the question under consideration can perhaps be made more clear by stating cases with the conclusions severally reached therein, as follows:

1. Would an official who resides away from Harrisburg and carries to and performs at his home certain State work, be entitled to any more liberal rule than the ordinary one in computing to what traveling expenses he would be entitled, where he goes from his home directly to some place other than Harrisburg in the performance of an official duty?

The answer must be a negative one. It is probably true, as urged, that in the performance of certain kinds of work, such, for example, as the preparation of opinions, better service can sometimes be rendered at home than in the office in the Capitol. That is all, however, purely a personal matter. The advantage of work in the privacy of the home or the private office over the public one provided by the State, would be equally secured if the official in question maintained his actual home at Harrisburg. That he does maintain it elsewhere is no concern of the State, and imposes on it no obligation to bear any expense by reason thereof. To hold otherwise would be an invitation to scatter the government to as many places as the personal desires or convenience of its corps of officials might lead.

2. Would an official who resides at Johnstown for example and is called to Pittsburgh on official business, and goes thereto directly from Harrisburg and returns therefrom directly to Harrisburg by the way of his home, be entitled to all the traveling expenses incident to the trip from Harrisburg to Pittsburgh and return?

The answer in such a case is in the affirmative. The fact that his actual home to which he was accustomed to return lay on the line of his travel on his aforesaid official trip, would be immaterial. He actually paid in the performance of the State's business traveling expenses from Harrisburg to Pittsburgh and return. The fact and the presumption would here accord.

3. Would an official residing at Johnstown and called to York by official duty who starts for York from his home at Johnstown be entitled to compute his traveling expenses from Johnstown to York, or only from Harrisburg to York, and York back to Harrisburg?

The latter would be the rule in such case. In no case is the State liable for more traveling expenses than those by the shortest route from Harrisburg to the point of official duty, and where an official goes continuously from point to point on official business without returning to Harrisburg, it is his duty to go by the shortest feasible route consistent with the due and proper dispatch of his work.

4. Would an official residing at Johnstown and called to Pittsburgh by official duty who starts for Pittsburgh from his home at Johnstown and returns from Pittsburgh to Johnstown, and later returns from Johnstown to Harrisburg, be entitled to traveling expenses from Harrisburg to Pittsburgh and Pittsburgh back to Harrisburg, or only from Johnstown to Pittsburgh and Pittsburgh to Johnstown?

The latter would be the rule. He would in such case be entitled to his traveling expenses only from Johnstown to Pittsburgh and Pittsburgh back to Johnstown. That would cover all he actually paid in traveling expenses on account of his official call to Pittsburgh. He went to Johnstown for personal reasons and at his own personal expense, and must so return to Harrisburg therefrom, and his said official trip, together with the expenses incident thereto, began at Johnstown and ended there. He would have gone to Johnstown had no official duty summoned him to go farther.

5. In such a case as the one last mentioned, if the official in question, residing at Johnstown and called while in Johnstown to Pittsburgh on official business, starts for Pittsburgh from Johnstown and on his return trip goes directly to Harrisburg without stop-off at Johnstown, for what part of his traveling expenses would he be entitled to reimbursement by the State?

Plainly, he would be entitled only to his expenses between Johnstown and Pittsburgh and return between those points. All that he actually paid out in traveling expenses over and above what he would have paid if not thus called to Pittsburgh, is the portion of his expenses from Johnstown to Pittsburgh and return. Here the fact governs and not the presumption. In both this case and the one immediately preceding, one true test in determining the answer of the question under consideration is: What has an official actually paid on account of traveling on the State's business over and above what he would have paid in traveling expenses if he had not been called upon to take the official trip in question?

That precisely measures all that he actually paid in the State's service in excess of what he would have paid out as a purely personal expense. As a matter of good faith with the State more than that should not be claimed and more than that should not be allowed.

6. Would an official residing at Philadelphia and called to Lancaster by official business who goes from Harrisburg to Lancaster and thence on to Philadelphia, or likewise goes from Philadelphia to Lancaster and thence on to Harrisburg, be entitled to receive from the State any part of his traveling expenses on such trip?

In such a case there would clearly be no valid claim for any *rail-road expenses*. Such party would in such instance actually pay out

nothing for the item of railroad fare over and above what he would have paid if not called to Lancaster on official business. If, however, he went from Harrisburg to Lancaster and returned directly to Harrisburg, or went from Philadelphia to Lancaster and returned therefrom to Philadelphia, he would be entitled to reimbursement for all his expenses to the extent of the expenses between Harrisburg and Lancaster and return. In a case similar to this, however, if Lancaster were nearer to the home of said party than Harrisburg and he went to Lancaster from his home and returned thereto therefrom, he would be entitled only to the amount of the expenses between his home and Lancaster. There the actual expense would be less than the presumptive expense from Harrisburg to Lancaster, and the actual always governs where it is less than the presumptive.

7. If an official residing at Scranton and called from Harrisburg to Sunbury on official business at a time when he would not have gone to his home in Scranton, proceeds on to his home at Scranton from Sunbury, he would be entitled to his traveling expenses from Harrisburg to Sunbury and return. The trip home in such case would be merely incidental to his official trip. The public business and not the private purpose was the occasion of such trip to Sunbury and return, and for that part thereof he would be entitled to remuneration by the State.

The guiding and controlling principles in all the foregoing cases are:

1. That the State in no event pays more for the traveling expenses of its officials than those between Harrisburg and the place to which such official may be called on official business, and,

2. That in no event can such official be reimbursed for expenses incurred in traveling on the State's business in a greater sum than the *actual* amount paid out by him on account of such travel, *and which is to be measured by the extra expenditure to which he has actually and in fact been put by reason of the travel on the State's account.*

Whatever loss such rule may entail upon an official is an incident to his residing elsewhere than at the seat of government, a matter entirely of his own election and one evidently carrying with it some countervailing advantage, as it is always within his own control to make his presumptive residence at Harrisburg also his actual one. His failure to do so imposes no obligation upon the State to pay anything additional on account of his traveling expenses on official business and no obligation when he in fact pays less than he would have paid if residing at Harrisburg to pay anything beyond his actual outlay.

Another phase of this question of traveling expenses is raised as to what may be lawfully claimed or paid where an official goes to some place on official business in his own motor car. It is conceivable that in some instances by so doing he would expedite the public business. The rational rule in such a case would be to allow such party for the use of his own conveyance an amount equal to the minimum railroad fare between Harrisburg and the point to which he went on such official duty. He would not lawfully be entitled to more, though the expenses of the operation of his vehicle might be more and the State could not equitably pay less than what it would have been called upon to pay if he had traveled by rail. The use of automobiles should be permitted in cases where teams are required to reach some point of official duty, wherever practicable, as tending to promote rapid service. Where automobiles are so used, the official would be entitled to be reimbursed for the actual cost of their hire. An official using his own motor car to reach points not accessible by railroad, and where the hiring of a motor car or other vehicle would be necessitated would be entitled to charge for his own car on the basis of the cost of hiring such conveyance. Between points, however, which can readily be reached by railroad it would be unwise to permit or encourage officials owning cars to collect more for their use between such points than the railroad fare. This would all, of course, be subject to the foregoing stated rules in cases where an official resides away from Harrisburg.

As a general proposition, State officials should in traveling upon the business of the Commonwealth exercise the same prudence that a sensible man exercises in traveling on his own private business. Wherever practicable the departments should provide mileage books for use of its heads or subordinates when engaged in traveling for the State. In respect to all the foregoing it may be noted that where the shortest route between Harrisburg and the point of duty would require a materially longer time to travel than some longer route between these points, it would be proper in such instance for an official to go by the longer route in distance and the shorter in time.

The officials and employes of Pennsylvania, when going about the State on its business, are entitled to travel in a manner consistent with their reasonable comfort and its due dignity, and so as to best advance and expedite the Commonwealth's work.

All expense accounts should be fully itemized and accompanied by proper receipts and vouchers. Everything should be explicitly set forth and nothing left to inference. All doubt should be resolved in favor of the Commonwealth. Expenses can be allowed only in pursuance of legislative authority. There can, therefore, be no item in an expense account of doubtful validity. If fairly doubtful it should neither be claimed nor paid.

The foregoing opinion is not to be construed as intended to reflect upon what has been done in any case, but simply as a guide for the future.

It is quite probable that in the performance of the State's business by its officials certain exigencies or contingencies may arise from time to time wherein the proper traveling expenses lawfully chargeable and allowable are not specifically covered in the foregoing opinion. In all such cases it may be confidently trusted that officials will continue to exhibit that same good faith with the State in rendering their expense accounts as this Department is informed has heretofore characterized them.

This opinion, is in general, in harmony with the rulings and decisions of the Auditor General.

FRANCIS SHUNK BROWN,
Attorney General.

IN RE ADMINISTERING OF ANESTHETICS BY A TRAINED NURSE.

It is not illegal for a nurse who has been trained in the administration of anesthetics to administer such as may be prescribed by a physician, under and in accordance with his orders and directions. The trained nurse may so act without assuming any of the functions of the physician.

Office of the Attorney General,
Harrisburg, Pa., December 27, 1916.

Dr. J. M. Baldy, President of Bureau of Medical Education and Licensure, Philadelphia, Pa.

Sir: I have your favor of the 14th instant in which you request the opinion of this Department on the following question:

"A physician sees a patient, examines her and determines that it is necessary that an anesthetic be administered for the purpose of the performance of an operation or for other reasons. He instructs the nurse to administer the anesthetic. Is this action on the part of the nurse illegal in the State of Pennsylvania?"

The question arises in connection with the practice of medicine and surgery.

By the Act of June 3, 1911, P. L. 639, Section 1, it is provided:

"That on and after January first, nineteen hundred and twelve, it shall not be lawful 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 medicines and surgery, or to sign any death certificate, or to hold himself or herself forth as able to do so, excepting those hereinafter exempted, unless he or she has first fulfilled the requirements of this act and has received a certificate of licensure from the Bureau of Medical Education and Licensure created by this act, which license shall be properly recorded in the office of the Superintendent of Public Instruction at Harrisburg."

This section of the law contains within it practically everything that is included in the practice of medicine and surgery—which has been defined to consist in three things:

"First, in judging the nature, character and symptoms of the disease; second, in determining the proper remedy for the disease; and third, in giving or prescribing the application of the remedy to the disease."

Underwood v. Scott, 23 Pac. 942 (Kansas).

These are not the functions of a nurse. The Act of May 1, 1909, P. L. 321, which provides for the examination and registration of nurses, with the purpose in view of safeguarding the public from insufficiently trained and incompetent nurses expressly provides (Section 9):

"Nor shall anything herein contained be considered as conferring any authority to practice medicine, or to undertake the treatment and cure of disease."

The question submitted to this Department, therefore, is in effect, whether the administration of an anesthetic by a nurse, acting under the orders and direction of a physician or surgeon, amounts to the practice of medicine by such nurse.

There are many things that a nurse may lawfully do in the field of medicine and surgery, when acting under the direction and supervision of a physician or surgeon, which she could not do of her own initiative or independent of a physician's orders or instruction.

For example, she may administer drugs of all types, narcotics and stimulants; give hypodermic injections of morphia, hypodermoclysis and enemas; take the temperatures and pulse of the patient and give prescribed remedies in case of collapse or undue excitement; give baths and massage; place dressings and bandages, and apply salves, prepare saline solutions to be injected into the blood vessels under certain conditions and many other duties peculiarly within the ministrations of the nurse in the sick room.

The prescribing of these various things is the duty of the physician; but under his orders and direction, the nurse may lawfully administer

them—otherwise her usefulness would be very largely curtailed, if not wholly destroyed. The nurse may not assume the place of the physician and practice medicine and surgery, but she assists him in his practice, and in some respects serves as eyes, hands and feet for the physician—she is a human instrument used and employed by the physician in the treatment and cure of disease.

An anesthetic is a substance capable of producing temporary loss or impairment of feeling or sensation.

“Anesthetize” is defined in the Century Dictionary: “To bring under the influence of an anesthetic agent, as chloroform—render insensible; especially to pain.”

Anesthetics are used in the practice of medicine and surgery largely in connection with surgical operations for the purpose of rendering the patient insensible to pain.

Whether an anesthetic shall be used in a given case and what particular anesthetic shall be employed is a question for the physician and surgeon alone. To determine these questions comes within the practice of medicine.

But there is nothing in the law which places the administration of anesthetics on a different or higher plane than any other drug. The physician must prescribe it, and directs its administration, but the trained nurse, acting under his orders and directions may administer it without assuming any of the functions of the physician. From the very nature of the case, the nurse generally acts more directly under the supervision of the physician in the administration of anesthetics than she does with respect to most drugs which are frequently, if not usually, administered during the absence of the physician, but in accordance with his directions.

I take it that your inquiry presupposes that the nurse has had training in administering anesthetics and is competent to do so.

It must be remembered that all these Acts for the examination and licensing or registration of physicians, nurses, etc., are not intended to protect these several professions against competition, but are in exercise of the police power of the State to protect the public against incompetent and unskilled practitioners, and should be construed solely with that end in view.

You are accordingly advised that it is not illegal for a nurse who has been trained in the administration of anesthetics to administer such anesthetic as may be prescribed by a physician, under and in accordance with his orders and directions.

Very truly yours,

WM. H. KELLER,
First Deputy Attorney General.

APPENDIX.

SCHEDULE A.—FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

Jenkins Township Electric Light, Heat & Power Company, ...	Quo warranto, ...	Refused.
In re Estate of John Milton Colton, deceased, ...	Proceedings under Acts of 1855, P. L. 331, and 1895, P. L. 114.	Allowed.
Consumers' Electric Company of Pittston, ...	Quo warranto, ...	Refused.
Perkiomen Valley Traction Company, ...	Quo warranto, ...	Refused.
Clinton Cement Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Atlantic School of Osteopathy, ...	Mandamus, ...	Application not pressed.
Northern Institute of Osteopathy, ...	Mandamus, ...	Not pressed.
East Berlin Railway Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Adams County.
Aughwick Water Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Deep Well Water Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Lykens Water Company, ...	Quo warranto, ...	Refused.
Thompson Hudson, Justice of the Peace, Hopewell Borough, Chester County, ...	Quo warranto, ...	Allowed. Suggestion filed in Chester County.
Commonwealth of Pennsylvania vs. Bell Telephone Company of Pennsylvania, ...	In equity, ...	Use of name of Commonwealth allowed. Bill filed in Montgomery County.
Rumsey Electric Company, Ltd., ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Pittsburgh Nail & Wire Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Lackawanna Iron & Coal Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
United States Claims Association, ...	Quo warranto, ...	Heard. Proceedings continued indefinitely.
In re Estate of Henry A. Trexler, deceased, ...	Proceedings under Act of 1855, P. L. 331.	Allowed.
Industrial Electric Company of Bangor, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Delaware Water Gap Electric Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Dolaburne Power Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Tri-Borough Gas Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.

In re Estate of Pauline E. Henry, deceased, ...	Proceedings under Act of 1895, P. L. 114.	Allowed.
Sinking Spring Electric Light, Heat & Power Company, ...	Quo warranto, ...	Heard. Proceedings not pressed.
Cambria & Clearfield Railway Co., et al, and The Pennsylvania Railroad Company, ...	Proceedings under Act of May 31, 1907, P. L. 353.	Heard. Application withdrawn.
Paupack Telephone Company, ...	Quo warranto, ...	Application withdrawn.
City of Beaver Falls, ...	Quo warranto, ...	Use of name of Attorney General as relator allowed. Suggestion filed in Beaver County.
Stanffer Electric Light and Power Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Lebanon County.
North Londonderry Township Electric Light & Power Co., ...	Quo warranto, ...	Allowed. Suggestion filed in Lebanon County.
Rexmont Electric Light & Power Company, ...	Quo warranto, ...	Heard. Application withdrawn.
Frank Berger and Philip Schwartz, Justices of the Peace, Old Forge Borough, Lackawanna County, ...	Quo warranto, ...	Allowed. Suggestion filed in Lackawanna County.
Citizens Avoca Light, Heat & Power Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Woodland Land Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Susquehanna Boom Company, ...	Quo warranto, ...	Heard. Proceedings on motion of Attorney General discontinued in the Supreme Court.
Seranton White Cross Milk Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
In re Estate of James F. Hope, deceased, ...	1895, P. L. 114.	Allowed.
Asher Mutchler, Alderman, Twelfth Ward, City of Easton, Northampton County, ...	Proceedings under Act of May 23, Quo warranto, ...	Allowed. Suggestion filed in Northampton County.
Western Theological Seminary of the Presbyterian Church in United States of America, ...	Proceedings under Act of 1915, P. L. 702.	Attorney General accepts service of notice of decree.
Piedmont Electric Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Garden City Electric Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Lackawannock Electric Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
The Pittston Heat, Power & Light Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.

SCHEDULE A—Continued.

Pittston Electric Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Electric Company of Exeter, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Consumers' Electric Company of Hughestown, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Consumers' Electric Company of the City of Pittston, ...	Quo warranto, ...	Allowed. Suggestion filed in Dauphin County.
Lancaster & Berks Railway Company, ...	Quo warranto, ...	Heard. Application withdrawn.
Bruno Terkoski, Township Treasurer, Newport Township, Luzerne County, ...	Quo warranto, ...	Refused.
In re Carey Piper, ...	In equity, ...	Use of name of Commonwealth refused.
Commissioners of Allegheny County, ...	Mandamus, ...	Use of name of Commonwealth allowed. Petition filed in Allegheny County.
Manor Turnpike Road Company, ...	Quo warranto, ...	Refused.
Wyoming Valley Water Company, ...	Quo warranto, ...	Heard. Application withdrawn.
John V. Kosek, Mayor of Wilkes-Barre, ...	Quo warranto, ...	Refused.
Jonas Fischer, Mayor of Williamsport, ...	Quo warranto, ...	Allowed. Suggestion filed in Lycoming County.
Johnstown, Indiana & Westmoreland Turnpike Company, ...	Quo warranto, ...	Allowed. Suggestion filed in Cambria County.
Louis Pfeil, William R. Conrad, William Wiegand and Frederick Rupert, Members of the Town Council of the Borough of Tamaqua, ...	Quo warranto, ...	Allowed. Suggestion filed in Schuylkill County.
William Horne, Member of the Town Council, Middle Ward, Borough of Tamaqua, ...	Quo warranto, ...	Allowed. Suggestion filed in Schuylkill County.
John John, Member of the Town Council, South Ward, Borough of Tamaqua, ...	Quo warranto, ...	Allowed. Suggestion filed in Schuylkill County.
Charles Bischoff, Member of the Town Council, North Ward, Borough of Tamaqua, ...	Quo warranto, ...	Allowed. Suggestion filed in Schuylkill County.
Charles P. Hewes, ...	In equity, ...	Application withdrawn.
Roseto Electric Light, Heat & Power Company, ...	Quo warranto, ...	Proceedings not pressed.

SCHEDULE B.
BANK CHARTERS APPROVED.

NAME AND LOCATION.	APPROVED.
Farmers Deposit Bank of Cresson, Cresson, ...	January 13, 1915.
Twenty-Second Street Bank, Philadelphia, ...	January 27, 1915.
Farmers and Mechanics Bank, Northumberland, ...	March 8, 1915.
Bank of Pennsylvania, Philadelphia, ...	March 11, 1915.
Ruthenian Bank, Philadelphia, ...	May 11, 1915.
Citizens' Bank of Wind Gap, Wind Gap, ...	August 16, 1915.
Bosak State Bank, Scranton, ...	October 11, 1915.
Bank of East Falls, Philadelphia, ...	November 9, 1915.
Peoples Bank, Farrell, ...	November 9, 1915.
Cameron County Bank, Emporium, ...	December 15, 1915.
Citizens' State Bank, Salisbury, ...	February 29, 1916.
Peoples Bank (The), Carnegie, ...	March 7, 1916.
Path Valley Bank, Dry Run, ...	March 29, 1916.
Bank of Curry (The), Curry, ...	May 23, 1916.
Keystone Bank, Harrisburg, ...	July 25, 1916.
South Philadelphia State Bank, Philadelphia, ...	August 3, 1916.
Mont Alto State Bank (The), Mont Alto, ...	September 7, 1916.
State Bank of Roulette (The), Roulette, ...	September 7, 1916.
Lehigh Dime Bank of Lehigh, Pa. (The), Lehigh- ton, ...	September 20, 1916.
Drovers' and Merchants' Bank, Philadelphia, ...	November 10, 1916.
Saint Thomas Bank (The), Saint Thomas, Pa., ...	November 15, 1916.
Hazleton Slavonic Bank (The), Hazleton, ...	November 28, 1916.
Sheraden Bank, Pittsburgh, ...	December 6, 1916.
Sons of Italy State Bank of Philadelphia (The), Phil- adelphia, ...	December 14, 1916.

INSURANCE COMPANY CHARTERS APPROVED.

Allegheny County Indemnity Co., Pittsburgh, ...	December 16, 1915.
Eureka Casualty Company, Philadelphia, ...	December 3, 1915.
Eureka Mutual Insurance Company, Philadelphia, ...	December 2, 1915.
Laundry Owners Mutual Liability & Insurance Associa- tion, Pittsburgh, ...	December 16, 1915.
Miners Mutual Fire Insurance Co., Shamokin, ...	April 6, 1915.
Mutual Compensation Insurance Co. of Pennsylvania, Philadelphia, ...	December 13, 1915.
Manufacturers Casualty Insurance Co., Philadelphia, ..	December 20, 1915.
Power City Mutual Fire Insurance Co., Hazleton, ...	February 2, 1915.
Pennsylvania Manufacturers Association Casualty In- surance Co., Philadelphia, ...	October 29, 1915.
Pennsylvania Mutual Liability Association, Huntingdon, Pennsylvania Bituminous Mutual Association, Hunting- don, ...	December 16, 1915.
Republic Casualty Company, Pittsburgh, ...	November 1, 1916.
Wyoming County Grange Mutual Fire Insurance Co., Tunkhannock, ...	July 27, 1916.
	June 1, 1916.

SCHEDULE C.

LIST OF TAX APPEALS FILED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1915 AND 1916.

Name.	Nature of Claim.	Remarks.
Robeson Iron Company, Ltd., ...	C. S. 1913, ...	Paid.
Dilworth, Porter & Company, Ltd., ..	C. S. 1912, ...	Pending.
Dilworth, Porter & Company, Ltd., ..	C. S. 1913, ...	Pending.
Northern Coal & Iron Company, ...	C. S. 1913, ...	Pending.
Rock Run Coal Company, ...	C. S. 1913, ...	Account resettled, ap- peal discontinued.
Ellsworth Collieries Company, ...	C. S. 1913, ...	Pending.
Metropolitan Life Insurance Com- pany,	Gross premiums, 1913.	Verdict for defendant.
Metropolitan Life Insurance Com- pany,	Gross premiums, 1914.	Verdict for defendant.
Hanover Opera House Company, ...	C. S. 1913, ...	Pending.
Harrisburg Light & Power Company,	G. R. 1914 (6 mo. ended Dec. 31.)	Submitted to the Court.
American Connellsville Coal & Coke Company,	Bonus, ...	Pending.
Keystone Telephone Company of Philadelphia, ...	G. R. 1914 (6 mo. ended Dec. 31.)	Pending.
Susquehanna Dye Works, ...	C. S. 1913, ...	Tax resettled and strick- en off.
Schuylkill Coal & Iron Company, ...	C. S. 1913, ...	Pending.
Welsh Mountain Mine & Kaolin Manufacturing Company,	C. S. 1913, ...	Submitted to the Court. Pending.
American Deposit & Trust Company,	Tax on shares, 1912, '13, '14, & 1915.	Submitted to the Court. Pending.
Semet-Solvay Company, ...	C. S. 1913, ...	Submitted to the Court. Pending.
Birdsboro Stone Company, ...	C. S. 1913, ...	Pending.
B. B. & B. Truck Company, ...	C. S. 1913, ...	Pending.
Shenandoah Light, Heat & Power Company,	G. R. 1914 (6 mo. ended Dec. 31.)	Pending.
Blair County Trust Company, Al- toona,	Account for ex- penses of exami- nation of State Banking Dept. as provided by Sec. 4, Act of 1895, P. L. 4, and supple- ment thereto of 1901, P. L. 345.	Pending.
Altoona & Logan Valley Electric Railway Company,	Loans, 1914, ...	Pending.
David Berg Distilling Company, ...	C. S. 1914, ...	Pending.
J. Frank Boyer Plumbing & Heat- ing Company,	C. S. 1914, ...	Pending.
Mutual Union Brewing Company, ...	C. S. 1914, ...	Pending.
Pottsville Water Company, ...	Tax on excess net annual income, 1914.	Paid.
The Investment Land Company, ...	Loans, 1914, ...	Judgment entered for defendant by agree- ment of counsel.
Northern Anthracite Coal Company, .	Anthracite Coal Tax, 1913.	Verdict for defendant.
Hannis Distilling Company, ...	C. S. 1914, ...	Submitted to the Court. Pending.
Lehigh & New England Railway Company,	Loans 1914, ...	Submitted to the Court. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1915 AND 1916.

Name.	Nature of Claim.	Remarks.
The Lehigh & Hudson River Railway Company, ...	Loans 1914, ...	Submitted to the Court. Pending.
Public Ledger, ...	Loans 1914, ...	Submitted to the Court. Pending.
Lower Merion Township, Montgomery County, ...	Loans 1904, ...	Submitted to the Court. Pending.
Lower Merion Township, Montgomery County, ...	Loans 1914, ...	Submitted to the Court. Pending.
Metropolitan Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Andrews & Hitchcock Iron Company, ...	C. S. 1914, ...	Submitted to the Court. Pending.
Warren & Chautauqua Gas Company, ...	C. S. 1913, ...	Paid.
The Prudential Insurance Company of America, ...	Gross premiums, 1915.	Verdict for defendant.
The Mutual Life Insurance Company of New York, ...	Gross premiums, 1915.	Verdict for defendant.
The Equitable Life Assurance Society of the United States, ...	Gross premiums, 1915.	Verdict for defendant.
The Colonial Life Insurance Company of America, ...	Gross premiums, 1915.	Verdict for defendant.
John Hancock Mutual Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
The Northwestern Mutual Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
The Pacific Mutual Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Manhattan Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Phoenix Mutual Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Aetna Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Union Central Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Continental Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
The Baltimore Life Insurance Company of Baltimore City, ...	Gross premiums, 1915.	Verdict for defendant.
Connecticut General Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
New York Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
New England Mutual Life Insurance Company, ...	Gross Premiums, 1915.	Verdict for defendant.
The Germania Life Insurance Company, ...	Gross premiums, 1915.	Verdict for defendant.
Pottsville Water Company, ...	Tax on excess net annual income, 1913.	Pending.
Wabash, Pittsburgh Terminal Railway Company, ...	Loans 1914, ...	Submitted to the Court. Pending.
Wabash, Pittsburgh Terminal Railway Company, ...	Loans 1915, ...	Submitted to the Court. Pending.
Wabash, Pittsburgh Terminal Railway Company, ...	Loans 1916 (to Sept. 1.)	Submitted to the Court. Pending.
Pittsburgh Crucible Steel Company, ...	Loans 1914, ...	Submitted to the Court. Pending.
William Swindell & Bros., Inc., ...	C. S. 1914, ...	Submitted to the Court. Pending.
The Shenango Furnace Company, ...	C. S. 1914, ...	Submitted to the Court. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1915 AND 1916.

Name.	Nature of Claim.	Remarks.
Ellwood Sand Company, ...	C. S. 1913, ...	Submitted to the Court. Pending.
Chapman Decorative Company, ...	C. S. 1914, ...	Pending.
Acme Tea Company, ...	C. S. 1914, ...	Account resettled and paid.
Pittsburgh Window Glass Company, ...	C. S. 1913, ...	Pending.
Pittsburgh Window Glass Company, ...	C. S. 1914, ...	Pending.
Hazlewood Savings & Trust Com- pany, ...	C. S. 1916, ...	Submitted to the Court. Pending.
David Berg Distilling Company, ...	C. S. 1913, ...	Pending.
American Gas Company of New Jer- sey, ...	C. S. 1914, ...	Pending.
American Gas Company of New Jer- sey, ...	Loans 1914, ...	Pending.
Chapman Decorative Company, ...	C. S. 1915, ...	Pending.
Hannis Distilling Company, ...	C. S. 1915 (14 mo.)	Pending.
Columbus & Erie Railroad Company, ...	C. S. 1913, ...	Paid.
Buffalo, Bradford & Pittsburgh Rail- road Company, ...	C. S. 1913, ...	Paid.
Erie & Wyoming Valley Railroad Company, ...	C. S. 1913, ...	Paid.
Jefferson Railroad Company, ...	C. S. 1913, ...	Paid.
William Swindell & Bros., Inc., ...	C. S. 1915 (14 mo.)	Submitted to the Court. Pending.

SCHEDULE D.

LIST OF THE CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1915 AND 1916.

- 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, Appellants. Reported in 249 Pa. 144, ... Affirmed.
- Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, Appellant, vs. Neva R. Deardorff, ... Discontinued.
- Alexander Martin and Otto G. Haussmann 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, Appellants. Reported in 249 Pa. 253, ... Affirmed.
- Commonwealth of Pennsylvania, Appellant, vs. Westinghouse Air Brake Company. Reported in 251 Pa. 12, ... Affirmed.
- Commonwealth of Pennsylvania vs. Westinghouse Air Brake Company, Appellant. Reported in 251 Pa. 12, ... Affirmed.
- Commonwealth of Pennsylvania, Appellant, vs. Wilkes-Barre & Hazleton Railroad Company. Reported in 251 Pa. 6, ... Reversed.
- Commonwealth of Pennsylvania, Appellant, vs. The Penn Mutual Life Insurance Company. Reported in 252 Pa. 512, ... Affirmed.
- Commonwealth of Pennsylvania, Appellant, vs. The Penn Mutual Life Insurance Company. Reported in 252 Pa. 512, ... Affirmed.
- Commonwealth of Pennsylvania, Appellant, vs. The Penn Mutual Life Insurance Company. Reported in 252 Pa. 512, ... Affirmed.
- Commonwealth of Pennsylvania vs. John T. Dyer Quarry Company, Appellant. Reported in 250 Pa. 589, ... Affirmed.
- Commonwealth of Pennsylvania vs. Williamsport Railroad Company, Appellant. Reported in 250 Pa. 596, ... Affirmed.
- Commonwealth of Pennsylvania vs. Alden Coal Company, Appellant. Reported in 251 Pa. 134, ... Reversed.
- James Matthews, President of District No. 9, United Mine Workers of America, Appellant, vs. James E. Roderick, Chief of Department of Mines in Pennsylvania, ... Non Prosd.
- Commonwealth of Pennsylvania, Appellant, vs. Metropolitan Life Insurance Company. Reported in 254 Pa. 510, ... Affirmed.
- In re Estate of Janet Rutherford Marshall, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 248 Pa. 579, ... Affirmed.
- Commonwealth of Pennsylvania vs. St. Clair Coal Company, Appellant. Reported in 251 Pa. 159, ... Reversed.
- Commonwealth of Pennsylvania ex rel. Francis Shunk Brown, Attorney General, vs. Albert S. Heck. Reported in 251 Pa. 39. Petition for Mandamus, ... Dismissed.

- Commonwealth of Pennsylvania, Appellant, vs. DuPont Land Company. Reported in 254 Pa. 446, ... Affirmed.
- Commonwealth of Pennsylvania vs. Plymouth Coal Company, Appellant, ... Judgment for Defendant.
- In the matter of the Franklin Film Manufacturing Corporation. Appeal by State Board of Censors. Reported in 253 Pa. 422, ... Reversed.
- Commonwealth of Pennsylvania vs. Pottsville Water Company, Appellant. Reported in 254 Pa. 451, ... Affirmed.
- In re Estate of Walter Clarence Arnold, a lunatic. Appeal of Commonwealth of Pennsylvania. Reported in 253 Pa. 517, ... Reversed.
- In re Estate of John Mansley, a weak-minded person. Appeal of Commonwealth of Pennsylvania. Reported in 253 Pa. 522, ... Reversed.
- Commonwealth of Pennsylvania, Appellant, vs. William B. Evans. Reported in 253 Pa. 521, ... Reversed.
- Commonwealth of Pennsylvania, Appellant, vs. A. J. Baum, Committee of Jane Marshall, a lunatic. Reported in 250 Pa. 469, ... Reversed.

CASES ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA DURING THE YEARS 1915 AND 1916.

- West Virginia Pulp & Paper Company, New York & Pennsylvania Company, The D. M. Bare Paper Company and The York Haven Paper Company, Appellants, vs. The Public Service Commission of Pennsylvania, Appellee, The Pennsylvania Railroad Company, Huntingdon & Broad Top Mountain Railroad Company, Philadelphia, Baltimore & Washington Railroad Company and West Jersey & Seashore Railroad Company, Intervening Appellees.
Reported in 61 Super. Ct. Rep. 555. Sur Rule to Show Cause why Appeal should not be quashed, ... Refused.
- Commonwealth of Pennsylvania vs. B. M. Dickinson. (Appeal of Joseph Kalbfus.) Reported in 62 Super. Ct. Rep. 468, ... Reversed.
- Commonwealth of Pennsylvania, Appellant, vs. S. E. Weber. Reported in 66 Super. Ct. Rep. 180, ... Appeal quashed.

CASES ARGUED IN THE SUPREME COURT OF THE UNITED STATES DURING THE YEARS 1915 AND 1916.

- The Equitable Life Assurance Society of the United States, Plaintiff in Error, vs. The Commonwealth of Pennsylvania, Defendant in Error. Appeal from Judgment of Supreme Court of Pennsylvania. Reported in 238 U. S. 143, ... Affirmed.
- Thomas W. McComb, Plaintiff in Error, vs. The Commonwealth of Pennsylvania, Defendant in Error. Appeal from Judgment of Supreme Court of Pennsylvania. Reported in 239 U. S. 650, ... Dismissed.
- 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 240 U. S. 319, ... Affirmed.
- A. B. Crowl, Plaintiff in Error, vs. The Commonwealth of Pennsylvania, Defendant in Error. Appeal from Judgment of Supreme Court of Pennsylvania. Reported in 242 U. S. 153, ... Affirmed.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth of Pennsylvania, Appellant, vs. John E. Joos, a resident of the City of Pittsburgh, Allegheny County, Pennsylvania.

John E. Joos, a resident of the City of Pittsburgh, Allegheny County, Pennsylvania, Appellant, vs. Commonwealth of Pennsylvania.

Commonwealth ex rel. Trustees of Mothers' Assistance Fund of Philadelphia County, Appellants, vs. Archibald W. Powell, Auditor General.

Commonwealth of Pennsylvania vs. H. Homer Matter, Appellant.

West Virginia Pulp & Paper Company, The D. M. Bare Paper Company, and York Haven Paper Company, Appellants, vs. The Public Service Commission of the Commonwealth of Pennsylvania, Appellee, and The Pennsylvania Railroad Company, Huntingdon & Broad Top Mountain Railway Company, Philadelphia, Baltimore & Washington Railroad Company and West Jersey & Seashore Railroad Company.

Commonwealth of Pennsylvania vs. Crew-Levick Company, Appellant.

President and Managers of the Danboro & Plumsteadville Turn Pike Road Company, and Commonwealth of Pennsylvania, Intervening Appellee, vs. County of Bucks, Appellant.

President and Managers of the Doylestown & Danboro Turn Pike Road Company, and Commonwealth of Pennsylvania, Intervening Appellee, vs. County of Bucks, Appellant.

Frank B. Strafford vs. Franklin Paper Mills Company. Appeal of Commonwealth of Pennsylvania.

CASES NOW PENDING IN THE SUPERIOR COURT OF PENNSYLVANIA.

Edward S. Nolan vs. Edward P. Jones, Jennie Hamison and James Foust, and Union Storage Company, a Pennsylvania Corporation, Appellants.

H. W. Allison vs. E. M. Bigelow, State Highway Commissioner.

CASES NOW PENDING IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF PENNSYLVANIA.

American Druggists' Fire Insurance Company, Plaintiff, vs. Charles Johnson, Insurance Commissioner of the Commonwealth of Pennsylvania, Defendant.

SCHEDULE E.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF
DAUPHIN COUNTY DURING THE YEARS 1915 AND 1916.

Name of Defendant.	Nature of Claim.	Remarks.
Peter Magaro, ...	Maintenance of wife confined in State insane hospital.	Paid.
Kushequa Brick Company, ...	C. S. & L. 1912, 1913.	Judgment in favor of the Commonwealth. Execution.
Cuthbert Downer Sailor & Ruth Sailor, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
John W. Keast, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Paid.
The Township of Straban, Adams County, H. C. Wagoner, P. W. Grube and John W. Wolford, Supervisors.	Recovery of State-aid Highway Construction Funds.	Paid.
The County of Washington, ...	Recovery of State-aid Highway Construction Funds.	Suit discontinued.
The Township of Snow Shoe, Center County, Rush Quick, M. B. Conway, George W. Witherite, Supervisors.	Recovery of State-aid Highway Construction Funds.	Pending.
The Township of Great Bend, Susquehanna County, William Newman, J. A. Mayo, and William Humphrey, Supervisors.	Recovery of State-aid Highway Construction Funds.	Pending.
The Township of Great Bend, Susquehanna County, William Newman, J. A. Mayo, and William Humphrey, Supervisors.	Recovery of State-aid Highway Construction Funds.	Pending.
Shenandoah & Mahanoy Gas Company.	C. S. 1906 to 1912, inc., penalties.	Pending.
Smethport Railroad Company, ...	C. S. 1912, 1913, 1914.	Judgment in favor of Commonwealth.
Charles E. Porter, Frank C. Porter, Wm. H. Porter and Kitty L. McHale, heirs-at-law of Ephraim Porter, deceased.	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
Joseph A. Mandour, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
H. G. Hinkle, Inc., & American Fidelity Company, ...	Suit on bond for failure to complete State Highway contract.	Pending.
Dollar Savings Bank, ...		Paid.
J. L. Hoffman, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
John H. Farrell, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.

SCHEDULE E.—Continued.

Name of Defendant.	Name of Claim.	Remarks.
William Jennings, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
Charles Sauermilch, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Discontinued.
John Headley, ...	Penalty under Sec. 5, Act of 1911, P. L. 658.	Pending.
North Broad Street Realty Company, ...	C. S. 1915 (14 mo.)	Affidavit of defense filed. Pending.
Borough of Ridgway, Elk County, ...	Recovery of State-aid Highway Construction Funds.	Partly paid.
Borough of Blossburg, Tioga County, ...	Recovery of State-aid Highway Construction Funds.	Partly paid.
J. J. Geisinger, ...	Claim of State Highway Dept.	Pending.
The Reynolds Company, Inc., ...	C. S. 1915. Bonus.	Paid.

ACTIONS IN ASSUMPSIT AND TRESPASS BROUGHT AGAINST THE COMMONWEALTH OF PENNSYLVANIA, DEFENDANT.

- Peter C. Kuhn, claim in an action of trespass on account of injuries received while in the service of the Commonwealth, ... Pending.
- Charles H. Sorge, claim in action of trespass on account of injuries received in a collision with an automobile of the State Highway Department, ... Pending.
- Maude Watts and O. H. Watts, claim in an action of trespass on account of injuries received in an accident which occurred on a State Highway, ... Pending.
- O. H. Watts, claim in an action of trespass on account of injuries received in an accident which occurred on a State Highway, ... Pending.
- Olive Lutz and E. D. Lutz, claim in an action of trespass on account of injuries received in an accident which occurred on a State Highway, ... Pending.
- E. D. Lutz, claim in an action of trespass on account of injuries received in an accident which occurred on a State Highway, ... Pending.
- J. P. Swearingen, in his own right and in the right of his minor son, James Edgar Swearingen, claim in an action of trespass on account of injuries sustained by the latter upon a State Highway through the negligence of certain officers and employees of the Commonwealth, ... Pending.
- John E. Joos, a resident of the City of Pittsburgh, Allegheny County, claim in an action of assumpsit on a contract with the Mercantile Appraiser of Allegheny County.
Judgment in favor of the plaintiff. Affirmed by Supreme Court on appeal.
- William C. Dietrich, claim in an action of trespass brought in Allegheny County on account of injuries received while traveling on a State Highway, ... Pending.

George W. Pawling, claim in an action of assumpsit on a contract for the erection of a sun parlor for the Pennsylvania State Lunatic Hospital at Harrisburg, ... Pending.

Francis J. Boas, claim in an action of assumpsit on a contract with the State Commissioner of Health for the erection and construction of sewage disposal plant and water works for State Tuberculosis Sanitorium at Hamburg, ... Pending.

Emma Lorah, claim in an action of trespass for damages sustained by the death of a son who was Assistant Range Master in the Ninth Regiment, N. G. P., and was accidentally killed while at target practice at the rifle range of said regiment, ... Pending.

CONDEMNATION PROCEEDINGS TO DETERMINE AMOUNT OF DAMAGES FOR THE TAKING OF LAND BY THE COMMONWEALTH OF PENNSYLVANIA IN CONNECTION WITH THE CAPITOL PARK EXTENSION.

H. Homer Matter, Plaintiff, ... Pending.
 Philip B. Broude, Plaintiff, ... Pending.
 Morris A. Rosenberg, Plaintiff, ... Pending.
 George P. Cooper and Edward N. Cooper, Plaintiffs, ... Pending.
 Honora C. Ryan, Executrix of the will of Josiah P. Ryan, deceased, and the heirs of said decedent, Plaintiffs, ... Pending.
 Henry G. Walter, Plaintiff, ... Pending.
 Luther C. Shammo, Plaintiff, ... Pending.
 William Glancey, et al., Plaintiffs, ... Pending.
 Helen M. Lee, Plaintiff, ... Pending.

SCHEDULE F.

MANDAMUS PROCEEDINGS DURING THE YEARS 1915 AND 1916.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania ex rel. N. R. Beamer, S. M. Keagy and S. McEiholtz, Commissioners of the County of Adams, vs. R. K. Young, State Treasurer of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Judgment in favor of plaintiffs.
Commonwealth of Pennsylvania ex rel. F. Shunk Brown, Attorney General, for the use of Stephen Howard Houselton, vs. Cyrus E. Woods, Secretary of the Commonwealth.	Alternative mandamus awarded. Judgment in favor of plaintiff.
Frederick S. Drake, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Court directed respondent to certify next four highest candidates for judge in C. P. No. 2, Philadelphia County, at primary election, to be printed on official ballot as candidates at general election.
Commonwealth of Pennsylvania ex rel. William Casey, Milton Weller and Charles Bercaw, Commissioners of Northampton County, vs. R. J. Cunningham, State Highway Commissioner of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Judgment in favor of defendant.

SCHEDULE F.—Continued.

Name of Party.	Action Taken.
Commonwealth ex rel. Francis Shunk Brown, Attorney General, vs. Murray G. Livingston, Chief Inspector of Weights and Measures of the City of Pittsburgh.	Alternative mandamus awarded. Proceedings discontinued at cost of respondent.
D. G. Martin, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Peremptory mandamus refused.
John F. Smith, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Peremptory mandamus refused.
William N. Yates. vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania. Commonwealth ex rel. Trustees of Mothers' Assistance Fund of Philadelphia County, vs. Archibald W. Powell, Auditor General.	Alternative mandamus awarded. Answer of respondent filed. No judgment. Case stated in mandamus. Judgment in favor of plaintiff. Appeal to Supreme Court now pending.
Commonwealth of Pennsylvania ex rel. Francis Shunk Brown, Attorney General, vs. Albert F. Heess, Clerk of the Courts of Sullivan County.	Alternative mandamus awarded. Pending.
Commonwealth of Pennsylvania ex rel. Francis Shunk Brown, Attorney General, vs. George Irvin, J. Gilbert Edge, Joseph H. Baugh, Supervisors of Caln Township, Chester County.	Alternative mandamus awarded. Discontinued.
Commonwealth of Pennsylvania ex rel. Francis Shunk Brown, Attorney General, vs. Frank M. Lodge, Charles W. Schooley and Albert K. Nesbit, Commissioners of Fulton County.	Alternative mandamus awarded. Judgment in favor of plaintiff.

SCHEDULE G.

LIST OF EQUITY CASES DURING THE YEARS 1915 AND 1916.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania ex rel. Samuel G. Dixon, Commissioner of Health, vs. County of Washington.	Temporary injunction awarded and made permanent.
Uriah P. Rossiter, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Bill filed and dismissed at cost of plaintiff.
Abraham Fischer, a taxpayer of the City of Williamsport, Pennsylvania, vs. The Public Service Commission of Pennsylvania, W. D. B. Ainey, et al, Commissioners thereof.	Bill and answer filed. Pending.
Commonwealth of Pennsylvania ex rel. Francis Shunk Brown, Attorney General. vs. State Capitol Building & Loan Association.	Bill, answer and replication filed. Pending.
Water Supply Commission of Pennsylvania, Plaintiff, vs. Erie Lighting Company, Defendant.	Bill filed. Pending.
Columbia National Bank, a corporation organized under the Banking Laws of the United States, Plaintiff, vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania, Defendant.	Preliminary injunction awarded. Demurrer filed. Pending.
Union Trust Company, a corporation organized under the Banking Laws of the United States, Plaintiff, vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania, Defendant.	Preliminary injunction awarded. Demurrer filed. Pending.
Germantown Trust Company, vs. A. W. Powell, Auditor General of Pennsylvania.	Bill and demurrer filed. Pending.
Commonwealth of Pennsylvania, Plaintiff. vs. Perry Iron Company, Defendant.	Bill filed. Pending.
Union Casualty Insurance Company, a corporation of the Commonwealth of Pennsylvania, vs. The Commonwealth of Pennsylvania, Robert K. Young, State Treasurer, and J. Denny O'Neil, Insurance Commissioner of said Commonwealth of Pennsylvania, Defendants.	Bill filed. Pending.

SCHEDULE H.

QUO WARRANTO HEARINGS DURING THE YEARS 1915 AND 1916.

Name of Party.	Action Taken.
Philadelphia College and Infirmary of Osteopathy.	Allowed. Suggestion filed in Dauphin County. Pending.
Hurwitz Deposit Bank of Wilkes-Barre.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Clinton Cement Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Aughwick Water Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Pittsburgh Nail & Wire Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Rumsey Electric Company, Ltd.	Allowed. Suggestion filed in Dauphin County. Pending.
Deep Well Water Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Lackawanna Iron & Coal Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Industrial Electric Company of Bangor.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Tri-Borough Gas Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Doloburne Power Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Delaware Water Gap Electric Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Woodland Land Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Scranton White Cross Milk Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
The Consolidated Stock & Produce Exchange of Pittsburgh, Pennsylvania.	Allowed. Suggestion filed in Dauphin County. Decree of ouster entered and afterwards revoked. Receiver appointed.
Lackawannock Electric Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Electric Company of Exeter.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Pittston Electric Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
The Pittston Heat, Power & Light Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Piedmont Electric Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.

SCHEDULE H.—Continued.

Name of Party.	Action Taken.
Garden City Electric Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Citizens' Avoca Light, Heat & Power Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Home Title & Trust Company, Duquesne.	Allowed. Suggestion filed in Dauphin County. Pending.
Pennsylvania State Bank, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Discontinued.
Merchants Bank, McKeesport.	Allowed. Suggestion filed in Dauphin County. Pending.
Blair County Trust Company, Altoona.	Allowed. Suggestion filed in Dauphin County. Pending.
Germantown Avenue Bank, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Pending.
Tri-County Banking Company, Pottstown.	Allowed. Suggestion filed in Dauphin County. Pending.
Guarantee Title & Trust Company, Pittsburgh.	Allowed. Suggestion filed in Dauphin County. Discontinued.
Italian Exchange Trust Company, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Discontinued.
Manayunk Penny Savings Bank of Philadelphia.	Allowed. Suggestion filed in Dauphin County. Pending.
Dime Savings Bank, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Pending.
American Deposit & Trust Company, Pittsburgh.	Allowed. Suggestion filed in Dauphin County. Pending.
Castle Shannon Savings & Trust Company.	Allowed. Suggestion filed in Dauphin County. Pending.
Mortgage Banking Company, Pittsburgh.	Allowed. Suggestion filed in Dauphin County. Pending.
State Mutual Savings Fund & Trust Company, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Pending.
Dime Savings Fund & Trust Company, Philadelphia.	Allowed. Suggestion filed in Dauphin County. Pending.
Crafton Trust Company.	Allowed. Suggestion filed in Dauphin County. Pending.
Consumers' Electric Company of Hughtown, Pennsylvania.	Allowed. Suggestion filed in Dauphin County. Pending.
Consumers' Electric Company of the City of Pittston, Luzerne County, Pennsylvania.	Allowed. Suggestion filed in Dauphin County. Pending.

SCHEDULE I.

PROCEEDINGS INSTITUTED AGAINST INSURANCE COMPANIES,
BUILDING AND LOAN ASSOCIATIONS, BANKS AND TRUST COM-
PANIES, DURING THE YEARS 1915 AND 1916.

Name.	Result.
The Prudential Mutual Fire Insurance Company of Wilkes-Barre.	Dissolved.
Pennsylvania State Building & Loan Association of Philadelphia, Pa.	Dissolved. Receiver.
Pittsburgh Bank for Savings.	Dissolved. Receiver.
York County Mutual Livestock Insurance Company.	Dissolved. Receiver.
The Home Building & Loan Association of Harrisburg.	Dissolved. Receiver.
Sterling Mutual Fire Insurance Company.	Dissolved.
Textile Mutual Fire Insurance Company.	Dissolved.
Central Mutual Fire Insurance Company.	Dissolved.
Pension Mutual Life Insurance Company, Pittsburgh.	Dissolved.
Union Casualty Insurance Company of Philadelphia.	Dissolved.

SCHEDULE J. SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1915.		
Jan. 4.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	David N. Welch, Homeopathic Hospital,	\$32 50
	Wilhelmina Lentz, Homeopathic Hospital,	158 57
	Wilhelmina Lentz, Norristown Hospital,	462 05
	Benjamin W. Tyson, Norristown Hospital,	259 29
		\$912 41
8.	Amount received from Edison Electric Illuminating Company, Lebanon:	
	Capital stock, 1910, -----	750 00
	Interest, -----	136 58
	Fees of office, -----	37 50
		924 08
	Capital stock, 1911, -----	875 00
	Interest, -----	109 46
	Fees of office, -----	43 75
		1,028 21
	Capital stock, 1912, -----	750 00
	Interest, -----	46 58
	Fees of office, -----	37 50
		834 08
8.	Amount received from United Traction Company, Reading:	
	Capital stock, 1910, -----	4,213 54
	Interest, -----	744 95
	Fees of office, -----	210 68
		5,169 17
	Capital stock, 1911, -----	7,000 00
	Interest, -----	875 70
	Fees of office, -----	350 00
		8,225 70
	Capital stock, 1912, -----	6,069 00
	Interest, -----	376 28
	Fees of office, -----	303 45
		6,748 73
	Amount received from International Text Book Company:	
	Interest, capital stock, 1910, -----	86 58
	Fees of office, -----	24 05
		110 63
12.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Alma M. Mason, Warren Hospital, -----	250 00
	Mary Newsome, Warren Hospital, -----	32 50
	Martha M. Stearnson, Warren Hospital,	32 50
	Emma J. Weidner, Rittersville Hospital,	32 50
	Laura A. Wilson, Warren Hospital, -----	454 64
	Angeline Fry, Norristown Hospital, -----	411 90
	Curtis R. Dunmore, Danville Hospital, -----	1,000 00
	George J. Webster, Norristown Hospital,	1,075 25
		3,289 29
	Amount received from Pittsburgh Dry Goods Company:	
	Capital stock, 1910, -----	\$1,000 00
	Interest, -----	188 00
	Fees of office, -----	50 00
		1,238 00
	Capital stock, 1911, -----	1,000 00
	Interest, -----	128 00
	Fees of office, -----	50 00
		1,178 00

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1915.	Capital stock, 1912, ----- 1,140 00 Interest, ----- 187 14 Fees of office, ----- 57 90	1,384 14
14,	Amount recovered from estate of James B. Salmon, confined in Danville Hospital as an indigent, ----- 32 50	32 50
18,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Edward C. Boyle, Rittersville Hospital, 65 00 Charles Breed, Warren Hospital, ----- 32 50	97 50
	Total, -----	\$31,172 44
	The above amount was collected during the period extending from January 1, 1915, to January 19, 1915, during the term of Honorable John C. Bell, Attorney General.	
21,	Amount received from Haltzell Furniture Company: Capital stock, 1911, ----- 50 00	50 00
25,	Amount received from persons confined in State Hospitals for the insane as indigents whose estates are sufficient to pay for their maintenance, viz: Arabella McConnell, Warren Hospital, --- 200 00 J. Wesley Klare, Norristown Hospital, --- 32 50 Ellen C. Bright, Harrisburg Hospital, --- 46 07	278 57
27,	Amount received from H. Wein: Fine imposed on a summary conviction in Allegheny county for violation of provisions of act of April 22, 1794, ---- 25 00	25 00
28,	Amount received from Phoenix Silk Manufacturing Company: Loans, 1909, ----- 5 00 Loans, 1910, ----- 5 00 Loans, 1911, ----- 5 00	15 00
	Paper Manufacturing Company, Inc.: Capital stock, ----- 100 00 Interest, ----- 6 83 Fees of office, ----- 5 00	111 83
Feb. 2,	Amount received from Hector Ooke Company: Loans, 1911, ----- \$2 66 Interest, ----- 34 Fees of office, ----- 13	3 13
	Loans, 1912, ----- 2 66 Interest, ----- 18 Fees of office, ----- 13	2 97
4,	Amount received from Bessemer Coke Company: Capital stock, 1912, ----- 712 50 Interest, ----- 45 82 Fees of office, ----- 35 63	793 45

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1915.	Capital stock, 1913, -----	3,000 00
	Interest, -----	72 30
	Fees of office, -----	150 00
		3,222 30
5.	Amount recovered from estates of various persons confined in the State Hospital for the Insane, at Warren, viz:	
	Catharine Brandon, -----	175 30
	Laura Dixon, -----	44 56
	Joseph Leidwanger, -----	720 71
	Emily Andrews, -----	1,446 49
	Emily Andrews, -----	1,066 67
		3,453 73
5.	Amount received from Wilkes-Barre Railway Company:	
	Capital stock, 1911, -----	71 55
	Interest, -----	9 41
	Fees of office, -----	3 58
		84 54
	Capital stock, 1912, -----	8 55
	Interest, -----	58
	Fees of office, -----	43
		9 56
11.	Amount received from Dempseytown Gas Company:	
	Capital stock, 1912, -----	100 00
	Interest, -----	7 00
	Fees of office, -----	5 00
		112 00
13.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John Wortz, Danville Hospital, -----	25 00
	Victor J. Snyder, Rittersville Hospital, -----	500 00
	Michael Leonard, Rittersville Hospital, -----	750 00
		1,275 00
17.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Cornelia Korb, Warren Hospital, -----	32 50
	Lewis D. Schleicher, Rittersville Hospital, -----	176 50
	Wesley Koch, Norristown Hospital, -----	1,919 08
		2,128 08
26.	Amount received from Custer City Chemical Company:	
	Capital stock, 1908, -----	184 63
	Interest, -----	73 21
	Fees of office, -----	9 23
		267 07
	Amount received from Custer City Chemical Company:	
	Capital stock, 1912, -----	55 00
	Interest, -----	5 49
	Fees of office, -----	2 75
		63 24
Mar, 2.	Amount received from Pittsburgh and New Orleans Coal Company:	
	Capital stock, 1911, -----	82 50
	Interest, -----	5 72
	Capital stock, 1912, -----	127 49
	Interest, -----	8 87
	Fees of office, -----	10 49
		285 07

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1915.		
2.	Amount received from Robeson Iron Co., Ltd.: Capital stock, 1913, ----- Interest, ----- Fees of office, -----	625 00 5 52 31 25
		661 77
4.	Amount received from Isadore S. Grossman, et al., defendants, being cost of printing Commonwealth's paper books in Supreme Court Appeal of Commonwealth vs. Grossman, et al., -----	48 00
		48 00
4.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: William F. McComb, Warren Hospital, Martha M. Steamson, Warren Hospital, Emily Kast, Warren Hospital, Rosie Brunner, Rittersville Hospital, James D. Reber, Rittersville Hospital, Margaret A. Schreiner, Norristown Hospital, -----	200 00 32 50 32 50 32 50 32 50 32 50
		362 50
9.	Amount received from Norwich Lumber Company: Capital stock, 1912, ----- Interest, ----- Fees of office, -----	643 24 29 48 32 16
		704 88
9.	Amount received from Goodyear Lumber Company: Capital stock, 1912, ----- Interest, ----- Fees of office, -----	580 44 26 41 29 02
		635 87
10.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Walker Y. Wells, Norristown Hospital, Lizzie McIlhair, Norristown Hospital, Blanche L. Wolfe, Norristown Hospital, James B. Salmon, Danville Hospital, -----	32 50 32 50 250 00 32 50
		347 50
22.	Amount received from York Haven Water & Power Company: Capital stock, 1910, ----- Interest, ----- Fees of office, -----	1,500 00 284 66 75 00
		1,859 66
22.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Maude A. Henderson, Harrisburg Hospital, ----- Joseph Cuthbert, Norristown Hospital, William Stanley, Norristown Hospital, J. Wesley Klare, Norristown Hospital, Sarah A. Kindy, Norristown Hospital, Charles Breed, Warren Hospital, Edward Stoltz, Warren Hospital, Clementine Loeb, Warren Hospital, Emma J. Weidner, Rittersville Hospital, -----	35 00 850 07 32 50 32 50 9 43 25 00 90 00 500 00 32 50
		1,607 00

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1915.		
24,	Amount received from H. F. Hollar, Prothonotary, attorney fees in 32 Commonwealth cases adjusted since December 31, 1914:	
	Fees of office, -----	96 00
		96 00
26,	Amount received from West End Land Company, Shippensburg:	
	Capital stock, 1911, fees of office, -----	8 66
		8 66
26,	Amount received from The Bell Telephone Company of Pennsylvania:	
	Capital stock, 1912, -----	22,500 00
	Interest, -----	1,807 50
	Fees of office, -----	500 00
		24,807 50
26,	Amount received from The Central District Telephone Company, formerly The Central District & Printing Telegraph Company:	
	Capital stock, 1912, -----	21,000 00
	Interest, -----	1,687 00
	Fees of office, -----	500 00
		23,187 00
April 2,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Hannah E. Smith, Harrisburg Hospital, -----	369 18
	Ira K. Smith, Harrisburg Hospital, -----	72 14
	Edwin B. Dietz, Norristown Hospital, -----	32 50
	Isaac Dewalt, Warren Hospital, -----	800 00
		1,273 82
7,	Amounts recovered from estates of persons confined in Norristown State Hospital for Insane, as indigents, viz:	
	Henry A. Weinrich, -----	250 00
	Francis A. Kulp, -----	387 18
	William Kerr, -----	100 00
		737 18
16,	Amount received from Union Park Land Company:	
	Capital stock, 1910, -----	118 75
	Interest, -----	12 60
	Capital stock, 1912, -----	175 00
	Interest, -----	14 55
	Capital stock, 1913, -----	175 00
	Interest, -----	5 95
	Loans, 1910, -----	5 70
	Interest, -----	60
	Fees of office, -----	23 72
		531 87
19,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	David M. Welch, Rittersville Hospital, -----	65 00
	George Denig, Harrisburg Hospital, -----	662 15
	Margaret Shiel, Norristown Hospital, -----	300 00
		1,027 15
28,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Catharine A. Collins, Norristown Hospital, -----	202 79
	Sarah E. Collins, Norristown Hospital, -----	2,250 00
	George D. Reeder, Norristown Hospital, -----	94 54
	Laura Dixon, Warren Hospital, -----	20 11
	Edith Burke, Polk Hospital, -----	600 00
		3,167 44

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
May 3.	Amount received from Industrial Cold Storage and Warehouse Co.:	
	Capital stock, 1906, -----	1,625 00
	Interest, -----	97 50
	Fees of office, -----	86 13
		1,808 63
	Capital stock, 1907, -----	1,625 00
	Interest, -----	97 50
	Fees of office, -----	86 13
		1,808 63
	Capital stock, 1908, -----	1,625 00
	Interest, -----	97 50
	Fees of office, -----	86 13
		1,808 63
13.	Amount received from West Penn Steel Company:	
	Bonus, -----	549 50
	Interest, -----	32 97
	Fees of office, -----	27 47
		609 94
17.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John Houck, Norristown Hospital, -----	164 72
	William Watson, Norristown Hospital, -----	168 48
	Susanna Root, Warren Hospital, -----	207 50
		540 70
19.	Amount received from Imperial Window Glass Company:	
	Bonus on increase, 1910, -----	287 94
	Interest, -----	54 62
	Fees of office, -----	17 13
		359 69
19.	Amount received from Pressed Steel Car Company:	
	Loans, 1900, -----	3 80
	Loans, 1901, -----	3 80
	Loans, 1902, -----	3 80
	Loans, 1903, -----	3 80
	Loans, 1904, -----	3 80
	Loans, 1905, -----	3 80
	Loans, 1906, -----	3 80
	Loans, 1907, -----	3 80
	Loans, 1908, -----	3 80
	Loans, 1909, -----	1,247 00
	Interest, -----	357 39
	Fees of office, -----	62 35
	Loans, 1910, -----	1,247 00
	Interest, -----	279 70
	Fees of office, -----	62 35
	Loans, 1911, -----	285 00
	Interest, -----	43 69
	Fees of office, -----	14 25
		3,632 93
24.	Amount received from Industrial Cold Storage and Warehouse Company:	
	Capital stock, 1909, -----	1,625 00
	Capital stock, 1910, -----	610 00
	Interest, -----	122 51
	Fees of office, -----	30 50
		763 01

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Capital stock, 1911, -----	1,000 00
	Interest, -----	147 66
	Fees of office, -----	50 00
		1,197 66
26,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Elizabeth Bobb, Rittersville Hospital, -----	350 00
	William E. Shupe, Dixmont Hospital, --	190 72
	Anna Belle Bennet, Dixmont Hospital, --	27 01
	Mary Magaro, Harrisburg Hospital, ---	150 00
		717 73
June 1,	Amount received from Industrial Cold Storage and Warehouse Company:	
	Interest on capital stock, 1909, -----	483 71
		483 71
7,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Elizabeth Matchin, Danville Hospital, --	65 00
	Curtis R. Dunmore, Danville Hospital, -----	100 00
	Sarah B. Worman, Norristown Hospital, -----	82 79
	Susan Keisel, Warren Hospital, -----	250 00
	James Adams, Adams County Home, ----	286 87
	Mary L. Meals, Harrisburg Hospital, ---	1,000 00
		1,784 66
10,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Willis Hyman, Warren Hospital, -----	229 77
	Augustine Roberts, Danville Hospital, -----	59 29
	Susan Rishel, Danville Hospital, -----	17 50
	Irvin Umstead, Norristown Hospital, --	118 07
	Moses E. Stein, Rittersville Hospital, --	116 04
	George E. Cleavis, Rittersville Hospital, -----	15 50
		556 17
24,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	William Watson, Norristown Hospital, --	8 83
	Edwin B. Dietz, Norristown Hospital, ---	26 21
	Walker T. Wells, Norristown Hospital, -----	26 21
	J. Wesley Klare, Norristown Hospital, --	26 21
	Margaret A. Schreiner, Norristown Hospital, -----	26 21
	William Stanley, Norristown Hospital, -----	26 21
	Blanche L. Wolfe, Norristown Hospital, -----	15 00
	Lizzie McIlhair, Norristown Hospital, --	26 21
	Wesley Koch, Norristown Hospital, -----	58 71
	John Houck, Norristown Hospital, -----	26 21
	Emma J. Weidner, Rittersville Hospital, -----	32 50
	Edward C. Boyle, Rittersville Hospital, -----	65 00
	Rosie Brunner, Rittersville Hospital, ---	26 21
	James D. Reber, Rittersville Hospital, --	32 50
	Elizabeth Matchin, Danville Hospital, --	32 50
	James B. Salmon, Danville Hospital, ---	32 50
	Emily Karst, Warren Hospital, -----	32 50
	Ira K. Smith, Harrisburg Hospital, -----	32 92
	Michael Miller, Danville Hospital, -----	277 85
	Emma Knoble, Danville Hospital, -----	300 00
		1,130 49

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
28.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Alice Loose, Harrisburg Hospital, ----- 92 50 E. Howell Headley, Norristown Hospital, ----- 317 09	409 59
29.	Amount received from the Equitable Life Assurance Society of the United States: Fees of office, ----- 20 00	20 00
29.	Amount received from Carlisle Gas and Water Company: Loans, 1906, ----- 66 16 Interest, ----- 25 61	91 77
	Gross receipts, 1905 (to Dec. 31), ----- 57 23 Interest, ----- 23 47	80 70
	Gross receipts, 1906 (12 mo.), ----- 118 61 Interest, ----- 48 64	167 25
	Gross receipts, 1907 (12 mo.), ----- 124 66 Interest, ----- 51 13	175 79
July 6.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Ellen M. Cooper, Warren Hospital, ----- 633 98 George D. Reeder, Norristown Hospital, ----- 26 21 Anna E. Thomas, Norristown Hospital, ----- 856 23 Mary L. Meals, Harrisburg Hospital, ----- 32 92	1,549 34
9.	Amount received from John T. Dyer Quarry Co.: Capital stock, 1912, ----- 1,990 00 Interest, ----- 209 15 Fees of office, ----- 107 15	2,306 30
9.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Emma Fennimore, Norristown Hospital, ----- 273 27 Henry S. Sliker, Norristown Hospital, ----- 50 00 Eda Conklin, Danville Hospital, ----- 399 03 Maria A. Bacon, Warren Hospital, ----- 932 35	1,654 65
13.	Amount received from Westinghouse Air Brake Co.: Capital stock, 1908, ----- 4,965 67 Interest, ----- 1,673 88 Fees of office, ----- 326 49	6,856 34
14.	Amount received from The Equitable Life Assurance Society of the United States: Gross premiums, 1906, 1907, 1908, 1909, 1910, ----- 98,566 13 Interest, ----- 26,940 72 Fees of office, ----- 1,000 00	126,506 85
14.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Alice I. Upton, Warren Hospital, ----- 630 81 Elizabeth Tibbott, Dixmont Hospital, ----- 272 71	903 52

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
17.	Amount received from Williamsport Rail Co.: Capital stock, 1911, ----- Interest, ----- Fees of office, -----	65 87 8 45 17 64
		91 96
19.	Amount received from The Equitable Life Assurance Society of the United States: Interest, balance, -----	1,905 19
		1,905 19
20.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: R. G. Colkitt, Dixmont Hospital, ----- Anna May Harner, Norristown Hospital, ----- Mary P. Styer, Norristown Hospital, -----	111 95 369 77 450 00
		931 72
23.	Amount received from William Baeder & Co.: Capital stock, 1911, -----	10 00
		10 00
26.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Melvin Hays, Dixmont Hospital, ----- Elizabeth M. Colbert, Rittersville Hospital, -----	300 00 371 43
		671 43
26.	Amount received from Wilkes-Barre and Hazleton Railroad Company: Loans, 1901 (7½ mo.), ----- Loans, 1902, ----- Loans, 1903, ----- Loans, 1904, ----- Loans, 1905, ----- Interest, ----- Fees of office, -----	26 55 95 76 129 96 129 96 129 96 59 84 25 60
		597 63
Aug. 9.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Lydia A. McMillan, Dixmont Hospital, ----- Ernestine Hottensen, Homeopathic Hospital, ----- Laura Dixon, Warren Hospital, ----- Sophia Reed, Homeopathic Hospital, -----	190 00 600 00 19 50 9 29
		818 79
81.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Ludwig Trein, Norristown Hospital, ----- Cornelia Korb, Warren Hospital, ----- Minnie Huntley, Dixmont Hospital, ----- Elizabeth Gerhart, Norristown Hospital, ----- David N. Welch, Homeopathic Hospital, ----- Isaac Dewalt, Warren Hospital, -----	38 26 65 00 1,432 41 1,300 00 9 71 32 50
		2,877 88
Sept. 23.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Curtis R. Dunmore, Danville Hospital, ----- Elizabeth Matchin, Danville Hospital, ----- John Houck, Norristown Hospital, ----- Wesley Koch, Norristown Hospital, ----- Margaret A. Schreiner, Norristown Hospital, ----- J. Wesley Klare, Norristown Hospital, -----	65 00 32 86 28 24 28 24 28 24 28 24

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Anna E. Thomas, Norristown Hospital, 9 21 Edwin B. Dietz, Norristown Hospital, --- 28 24 Ludwig Trein, Norristown Hospital, --- 28 24 Walker Y. Wells, Norristown Hospital, 28 24 James D. Reber, Rittersville Hospital, 32 84	337 59
15,	Amount received from H. F. Holler, Prothonotary, attorney fees in- 43 Commonwealth cases adjusted since March 24, 1915: Fees of office, ----- 129 00	129 00
23,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Mary L. Mcals, Harrisburg Hospital, -- 32 86 Edward C. Boyle, Rittersville Hospital, 32 84 Rosie Brunner, Rittersville Hospital, --- 32 84 Jennie C. Black, Somerset Co. Home, -- 120 58 William Stanley, Norristown Hospital, -- 28 24 William Watson, Norristown Hospital, 28 24 Mary P. Styer, Norristown Hospital, -- 20 74 Emma Fennimore, Norristown Hospital, 86 35 Cornelia Korb, Warren Hospital, ---- 32 86	415 55
28,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Blanche Wolfe, Norristown Hospital, --- 15 00 Elma Nacc, Norristown Hospital, ---- 50 00 Emma J. Weidner, Rittersville Hospital, 32 84 Mary E. Clinger, Warren Hospital, ---- 819 31	917 15
28,	Amount of costs recovered from estate of Morgan W. Kline, a lunatic confined in Harrisburg State Hospital: Fees of office, ----- 9 48	9 48
30,	Amount recovered from estate of Mary Magaro, an indigent insane person confined in Harrisburg State Hospital, ----- 125 00	125 00
Oct. 5,	Amount received from Pittsburgh Steel Co.: Loans, 1910, ----- 2,795 84 Interest, ----- 648 91 Fees of office, ----- 139 79	3,584 54
	Loans, 1908, ----- 6,395 13 Interest, ----- 2,100 80 Fees of office, ----- 319 76	8,815 69
	Loans, 1909, ----- 5,825 63 Interest, ----- 1,543 79 Fees of office, ----- 291 28	7,660 70
8,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: James B. Salmon, Warren Hospital, --- 32 86 Elizabeth Eberwein, Norristown Hospital, ----- 692 92	725 78

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
11.	Amount received from Lehighton Water Supply Co.: Loans, 1911, ----- 497 80 Interest, ----- 87 12 Fees of office, ----- 24 89	609 81
12.	Amount received from Gimbel Bros., Inc.: Capital stock, 1910, ----- 3,500 00 Fees of office, ----- 175 00	3,675 00
18.	Amount received from Westinghouse Air Brake Co.: Capital stock, 1909, ----- 4,242 75 Interest, ----- 1,188 68 Fees of office, ----- 212 14	5,643 57
18.	Amount received from Westinghouse Air Brake Co.: Capital stock, 1910, ----- 4,720 46 Interest, ----- 1,071 54 Fees of office, ----- 236 02 Capital stock, 1911, ----- 6,234 93 Interest, ----- 1,025 65 Fees of office, ----- 311 75	6,028 02 7,572 33
19.	Amount received from Westinghouse Electric and Manufacturing Co.: Capital stock, 1910, ----- 2,282 18 Interest, ----- 491 81 Fees of office, ----- 114 11	2,888 10
21.	Amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Adolph Briber, Dixmont Hospital, ----- 109 70 Robert Lacey, Norristown Hospital, ----- 3 57 Amanda Nelson, Warren Hospital, ----- 500 00	613 27
27.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Charles J. Loan, Norristown Hospital, ----- 233 10 Annie Nicoin, Norristown Hospital, ----- 1,500 00 George G. Nice, Norristown Hospital, ----- 800 00 John S. McKnight, Norristown Hospital, ----- 1,113 55	3,646 65
Nov. 9.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Catharine Brandon, Warren Hospital, ----- 63 50 Elizabeth M. Colbert, Homeopathic Hospital, ----- 65 94 Philip Aldinger, Harrisburg Hospital, ----- 128 56 Laura Dixon, Warren Hospital, ----- 19 79 Charles C. Otto, Danville Hospital, ----- 817 50	1,095 29
10.	Amount received from John W. Keast: Penalty under Act of 1911 (P. L. 658), ----- 50 00	50 00
17.	Amount received from Kittanning and Leechburg Railways Co.: Capital stock, 1909, ----- 350 00 Interest, ----- 104 30	

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Gross receipts, 1916, -----	234 96
	Interest, -----	65 31
	Fees of office, -----	29 24
		783 81
17,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Peter Schumacher, Warren Hospital, --	300 00
	George D. Reeder, Norristown Hospital, --	28 24
	Effe Pierce, Warren Hospital, -----	740 00
		1,068 24
24,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John K. Gillespie, Homeopathic Hos- pital, -----	899 84
	George Blight, Homeopathic Hospital, --	130 34
	Jacob Lonnerstadter, Norristown Hospi- tal, -----	1,536 08
	Emily Vogt, Norristown Hospital, -----	197 50
	Hannah Nace, Norristown Hospital, ----	1,771 63
	John Benner, Norristown Hospital, -----	1,096 78
		5,632 17
Dec. 1,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Laura A. Wilson, Warren Hospital, ----	89 64
	Margaret M. Haas, Harrisburg Hospital, --	1,224 36
	Louisa Williams, Warren Hospital, ----	205 10
		1,519 10
1,	Amount received from Bethlehem Steel Co.:	
	Capital stock, 1911, -----	18 48
	Interest, -----	3 34
	Fees of office, -----	92
		22 74
2,	Amount received from Mountain Coal Co.:	
	Capital stock, 1912, -----	750 00
	Interest, -----	87 50
	Fees of office, -----	37 50
		875 00
2	Amount received from Winton Water Co.:	
	Capital stock, 1910, -----	125 00
	Interest, -----	30 10
	Fees of office, -----	6 25
		161 35
	Capital stock, 1911, -----	400 00
	Interest, -----	73 84
	Fees of office, -----	20 00
		493 84
	Capital stock, 1912, -----	400 00
	Interest, -----	48 12
	Fees of office, -----	20 00
		468 12
6,	Amount received from Schuylkill Valley Traction Co.:	
	Capital stock, 1913, -----	724 68
	Interest, -----	59 79
	Fees of office, -----	36 23
		820 70
6,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Victor J. Snyder, Homeopathic Hospital, --	130 00
	Fritz Hinters Kirk, Harrisburg Hospital, --	844 50
	Rose L. Allen, Danville Hospital, -----	25 00
		999 50

[SCHEDULE J—Continued.

[SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
8,	Amount received from Schuylkill Valley Traction Co.:	
	Bonus on increase, -----	937 50
	Interest, -----	464 06
	Fees of office, -----	70 07
		1,471 63
15,	Amounts recovered from estates of persons confined in State Hospital for the insane, as indigents, viz:	
	William Seifert, Warren Hospital, -----	273 80
	William A. Storey, Warren Hospital, --	197 79
	Isaac Devat, Warren Hospital, -----	32 86
	Amanda Bear, Harrisburg Hospital, --	40 00
	Maude Henderson, Harrisburg Hospital, --	12 30
	Fritz Hinters Kirk, Harrisburg Hospital, --	65 07
	Harry A. Stees, Harrisburg Hospital, --	131 77
	Edith Burke, Polk Hospital, -----	200 00
	Wesley Koch, Norristown Hospital, -----	30 45
	John S. McKnight, Norristown Hospital, --	30 45
	James B. Salmon, Danville Hospital, --	32 50
	John Gillespie, Danville Hospital, -----	32 50
	Curtis R. Dunmore, Danville Hospital, --	32 50
		1,111 99
15,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Mary E. Clinger, Warren Hospital, -----	32 50
	Charles A. Hart, Warren Hospital, -----	25 00
	Clara Weaver, Harrisburg Hospital, --	637 04
	Elma Nace, Norristown Hospital, -----	50 00
	Charles J. Loan, Norristown Hospital, --	30 45
	Elizabeth Matchin, Danville Hospital, --	32 50
		807 49
16,	Amount received from Beaver County Light Co.:	
	Capital stock, 1911, -----	610 43
	Interest, -----	125 51
	Fees of office, -----	35 85
		771 79
	Capital stock, 1912, -----	1,375 00
	Interest, -----	160 88
	Fees of office, -----	68 75
		1,604 63
	Loans, 1911, -----	175 75
	Interest, -----	31 20
	Fees of office, -----	8 79
		215 74
	Loans, 1912, -----	993 23
	Interest, -----	116 11
	Fees of office, -----	49 66
		1,159 00
20,	Amount received from Freeland Brewing Co.:	
	Interest on bonus on inc. capital stock, -----	59 10
	Fees of office, -----	7 50
		66 60
22,	Amounts recovered from estates of persons confined in State Hospital for the insane, as indigents, viz:	
	Margaret A. Haas, Harrisburg Hospital, --	32 50
	James P. Neff, Harrisburg Hospital, -----	28 76
	William H. Gass, Harrisburg Hospital, --	65 36
	Mary L. Meals, Harrisburg Hospital, -----	32 50
	Elizabeth Tibbott, Dixmont Hospital, --	65 36
	Ludwig Trein, Norristown Hospital, --	30 45
	John Houck, Norristown Hospital, -----	30 45

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Margaret A. Schreiner, Norristown Hospital, -----	30 45
	Emma Fennimore, Norristown Hospital, -----	30 45
	William Stanley, Norristown Hospital, -----	30 45
	John H. Heck, Homeopathic Hospital, -----	149 00
	Andrew C. Seem, Homeopathic Hospital, -----	16 07
	George Blight, Homeopathic Hospital, -----	32 50
	Rosie Brenner, Homeopathic Hospital, -----	32 50
	Sarah M. Bennett, Warren Hospital, -----	42 36
	Louisa Williams, Warren Hospital, -----	23 24
	Isaac Devat, Warren Hospital, -----	32 50
		704 90
	Total for the year 1915, -----	\$347,121 92
1916.		
Jan. 7,	Amount received from Kushequa Brick Co.:	
	Capital stock, 1910, -----	3 37
	Capital stock, 1911, -----	3 37
	Interest, -----	1 08
	Loans, 1910, -----	190 00
	Interest, -----	43 13
	Loans, 1911, -----	190 00
	Interest, -----	30 33
	Interest on judgment, -----	17 14
	Fees of office, -----	19 33
	Fees of office, -----	14 40
		512 15
12,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Sarah Lehrman, Harrisburg Hospital, -----	25 00
	Elizabeth M. Colbert, Homeopathic Hospital, -----	32 50
	George E. Cleaver, Homeopathic Hospital, -----	30 00
	James Roy Jones, Homeopathic Hospital, -----	6 50
	Edwin B. Dietz, Norristown Hospital, -----	30 45
	J. Wesley Klarc, Norristown Hospital, -----	30 45
	Blanche Wolfe, Norristown Hospital, -----	15 00
	Elizabeth Megargee, Norristown Hospital, -----	28 24
	Mary P. Styer, Norristown Hospital, -----	22 95
	James D. Reeder, Norristown Hospital, -----	30 45
	William Watson, Norristown Hospital, -----	30 45
	Dallas W. Rough, Danville Hospital, -----	100 00
	Charles C. Otto, Danville Hospital, -----	32 50
	Susan Keisel, Wernersville Hospital, -----	80 00
	Alice I. Upton, Warren Hospital, -----	41 21
	Charles Breed, Warren Hospital, -----	63 21
		598 91
13,	Amount received from Bellefonte Lime Co.:	
	Capital stock, 1912, -----	250 00
	Interest, -----	18 75
	Fees of office, -----	19 44
		282 19
14,	Amount received from Bethlehem Steel Co.:	
	Capital stock, 1910, -----	103 41
	Interest, -----	24 89
	Fees of office, -----	5 17
		133 47
20,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Robert Morrow, Norristown Hospital, -----	40 00

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Ellen Mitton, Norristown Hospital, ----	58 69
	Jacob Milleisen, Harrisburg Hospital,--	36 04
	Mary Carey, Warren Hospital, -----	300 00
		434 73
26,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Thomas E. Stine, Homeopathic Hospital, ----	65 35
	Jane Sillaman, Danville Hospital, -----	476 61
	Minnie Huntley, Dixmont Hospital, ----	65 36
	Wesley Koch, Norristown Hospital, ----	5 71
	Sophia Hauf, Norristown Hospital, ----	58 69
	Morgan W. Kline, Harrisburg Hospital, ----	904 43
	Hannah E. Smith, Harrisburg Hospital, ----	2 58
	Laura Wilson, Warren Hospital, -----	32 50
	Rose L. Allen, Warren Hospital, -----	25 00
		1,636 23
Feb. 4,	Amount received from Union Natural Gas Cor- poration:	
	Interest on loans, 1903, -----	114 91
	Fees of office, -----	70 86
		185 77
	Interest on loans, 1907, -----	204 09
	Fees of office, -----	125 85
		329 94
	Interest on loans, 1908, -----	197 96
	Fees of office, -----	122 07
		320 03
	Interest on loans, 1909, -----	179 67
	Fees of office, -----	113 71
		293 38
	Interest on loans, 1910, -----	160 20
	Fees of office, -----	98 79
		258 99
	Interest on loans, 1911, -----	128 89
	Fees of office, -----	79 48
		208 37
9,	Amount received from Haltzell Furniture Co.:	
	On account capital stock, 1911, -----	94 80
		94 80
9,	Amount received from Union Stone Co.:	
	Capital stock, 1911 (balance), -----	90 00
	Capital stock, 1912 (balance), -----	115 00
	Capital stock, 1913 (balance), -----	140 00
		345 00
16,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Ellen Lemhan, Norristown Hospital, ----	30 45
	Ellen Lemhan, Norristown Hospital, ----	120 00
	E. Howell Headley, Norristown Hospital, ----	58 69
	Joseph Schenk, Homeopathic Hospital, ----	147 50
	Emma J. Weidner, Homeopathic Hos- pital, -----	45 42
	Lillie M. Repsher, Homeopathic Hospital, ----	1,551 27
	James D. Reber, Homeopathic Hospital, ----	13 57
	Daniel Y. Levan, Harrisburg Hospital,--	76 08
	Annie M. Munshown, Harrisburg Hos- pital, -----	451 24
	Alice C. Loose, Harrisburg Hospital, ----	98 64
	Sarah Dougherty, Jefferson Co. Home,	120 84
	Lawrence E. Craven, Danville Hospital, ----	75 00
		2,788 70

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
18,	Amount received from Haltzell Furniture Co.: Capital stock, 1911 (balance), ----- Interest, ----- Fees of office, -----	59 58 37 86 10 47
		107 91
26,	Amount received from Union Stone Co.: Interest on capital stock, 1911, 1912, 1913, ----- Fees of office, -----	26 33 17 25
		43 58
29,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: H. Frank Robinson, Wernersville Hos- pital, ----- George G. Nice, Wernersville Hospital, --- Louisa Girsh, Norristown Hospital, ---- Annie E. Nicom, Norristown Hospital, --- Henry A. Romeike, Norristown Hospital, -- Louisa F. Daubert, Norristown Hospital, -- Bertha C. Fackler, Norristown Hospital, -- Emma B. Titlow, Norristown Hospital, --- John H. Heck, Homeopathic Hospital, ---	700 00 25 72 10 00 30 45 58 69 247 16 52 15 58 69 15 00
		1,197 86
Mar. 3,	Amount received from Kittanning & Leech- burg Railways Co.: Interest on loans, 1909, -----	4 11
		4 11
6,	Amount received from Ontario Dyeing Co.: Bonus on increase, 1910, ----- Interest, ----- Bonus on increase, 1911, ----- Interest, ----- Bonus on increase, 1912, ----- Interest, ----- Loans, 1910, ----- Interest, ----- Loans, 1911, ----- Interest, ----- Loans, 1912, ----- Interest, ----- Loans, 1913, ----- Interest, -----	327 28 93 27 21 88 4 86 31 23 4 68 104 50 29 78 104 50 22 99 114 00 17 10 114 00 9 68
		999 76
15,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Victoria K. Elder, Lancaster Hospital, ----- Emma Pennimore, Norristown Hospital, --- Louisa F. Daubert, Norristown Hospital, --- Ellen Mitton, Norristown Hospital, ---- Merit M. Missimer, Norristown Hospital, -- William Watson, Norristown Hospital, --- Ludwig Trein, Norristown Hospital, ---- Charles J. Loan, Norristown Hospital, --- Lewis L. Ham, Homeopathic Hospital, --- Rena Jerzey, Homeopathic Hospital, ---- Curtis R. Dunmore, Danville Hospital, --- Elizabeth Matchin, Danville Hospital, --- Charles C. Otto, Danville Hospital, ---- James B. Salmon, Danville Hospital, ---- Olara Weaver, Harrisburg Hospital, ---- Morgan W. Kline, Harrisburg Hospital, -- Sarah Lehrman, Harrisburg Hospital, --- Effe Pierce, Warren Hospital, ----- Mary E. Olinger, Warren Hospital, ----- John Rodgers, Dixmont Hospital, -----	280 01 33 18 33 18 33 18 23 47 33 18 33 18 33 18 250 00 50 00 3 93 32 50 32 50 32 50 65 36 10 46 20 00 32 86 32 50 50 00
		1,115 17

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
22.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Amelia Fitzgerald, Norristown Hospital,	178 55
	Elma Nace, Norristown Hospital, -----	191 19
	John Houck, Norristown Hospital, -----	33 18
	William Stanley, Norristown Hospital, ..	33 18
	Margaret A. Schreiner, Norristown Hospital,	33 18
	George D. Reeder, Norristown Hospital,	33 18
	Annie Nicom, Norristown Hospital, -----	33 18
	Clara E. Goldy, Norristown Hospital, ..	58 69
	J. Wesley Klare, Norristown Hospital, ..	33 18
	John E. Potts, Dixmont Hospital, -----	65 36
	Elizabeth M. Colbert, Homeopathic Hospital, -----	32 50
	Rosie Brunner, Homeopathic Hospital, ..	32 50
	John R. Gillespie, Homeopathic Hospital, -----	32 50
	Alice I. Upton, Warren Hospital, -----	20 12
	George G. Nice, Wernersville Hospital,	26 00
		836 49
27.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Blanche Wolfe, Norristown Hospital, ---	15 00
	Ellen Lenihan, Norristown Hospital, ---	33 18
	John J. O'Donnell, Norristown Hospital,	55 00
	Robert M. Cooper, Jr., Norristown Hospital, -----	1,358 22
	Mary Meals, Harrisburg Hospital, -----	32 50
	Elizabeth Moyer, Harrisburg Hospital, ..	106 43
	George Blight, Homeopathic Hospital, ..	32 50
		1,632 83
28.	Amount received from The Fidelity & Deposit Company of Maryland:	
	Fees of office, -----	20 00
		20 00
April 4.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Christian F. Jordan, Warren Hospital,	136 60
	Henrietta Zeigler, Warren Hospital, ---	9 29
	E. H. Headley, Norristown Hospital, --	33 18
	Lydia Farringer, Norristown Hospital,	225 20
	Walker Y. Wells, Norristown Hospital, ..	33 18
	Richard Miller, Norristown Hospital, ---	20 00
	Melvin Hays, Dixmont Hospital, -----	65 36
	John E. Potts, Dixmont Hospital, -----	32 50
	Elizabeth Tibbott, Dixmont Hospital, --	32 50
	Maria Gilson, Warren Hospital, -----	13 43
		601 24
11.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Sophia Haut, Norristown Hospital, -----	33 18
	William H. Straw, Harrisburg Hospital,	910 31
	William Greather, Warren Hospital, ---	98 94
	Minnie Huntley, Dixmonth Hospital, ---	32 50
	Louisa Williams, Warren Hospital, -----	20 10
		1,095 03
20.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Edwin B. Dietz, Norristown Hospital, ..	33 18
	John S. McKnight, Norristown Hospital,	33 18

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

No.	Name.	Amount.
	Mary P. Styer, Norristown Hospital, --	25 68
	Mary P. Gillespie, Norristown Hospital, --	585 43
	J. M. Zimmerman, Danville Hospital, --	137 65
	Martha A. Wilhelm, Danville Hospital, --	49 00
	John Rodgers, Dixmont Hospital, -----	50 00
	Alice Loose, Harrisburg Hospital, -----	32 50
	Mina E. Robbins, Warren Hospital, -----	11 76
		958 38
20.	Amount received from The Fidelity & Deposit Company of Maryland: Tax on gross premiums, 1909—Fees of office, -----	17 64
		17 64
2.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Philip Duerr, Norristown Hospital, -----	39 87
	Eliza M. Percy, Norristown Hospital, --	91 87
	John J. Loose, Norristown Hospital, -----	49 39
	Laura Aramant, Norristown Hospital, --	1,913 31
		2,094 44
3.	Amount received from Silvex Company: Bonus, -----	342 78
	Interest, -----	9 59
	Capital stock, 1914, -----	80 83
	Interest, -----	7 30
		440 50
11.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Edwin B. Dietz, Norristown Hospital, --	5 71
	Clara E. Goldy, Norristown Hospital, --	32 50
	Harry C. Young, Harrisburg Hospital, --	150 00
	Mary Van Wic, Danville Hospital, -----	266 89
	Ella McConnell, Danville Hospital, -----	97 86
	Rose L. Allen, Danville Hospital, -----	12 50
		565 46
17.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Sarah Lehrman, Harrisburg Hospital, --	15 00
	Franklin Koontz, Norristown Hospital, --	395 04
	James M. Daly, Norristown Hospital, --	66 04
	Catherine Brandon, Norristown Hospital, -----	63 50
	Sarah J. Smith, Homeopathic Hospital, --	650 00
	Joseph Kohl, Homeopathic Hospital, --	1,350 00
	Agnes M. Sickinger, Homeopathic Hospital, -----	113 51
		2,653 09
19.	Amount received from York County Consolidated Water Company: Capital stock, 1913, -----	60 00
	Fees of office, -----	3 00
		63 00
24.	Amount recovered from estate of Bertolet Scherer, confined in Pennsylvania State Lunatic Hospital as an indigent, -----	40 00
		40 00
31.	Amount received from G. J. Littlewood & Sons, Ltd.: Capital stock, 1911 and 1912, -----	422 40
	Interest, -----	54 78
	Fees of office, -----	19 86
		417 04

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
June 1,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Sarah M. Bennett, Warren Hospital, ---	42 36
	Cornelia Korb, Warren Hospital, -----	68 50
	Frank K. Zentinger, Warren Hospital, ---	398 00
	Nancy A. Faith, Dixmont Hospital, -----	166 43
	John A. Turner, Norristown Hospital, ---	91 87
	James Magill, Norristown Hospital, -----	625 00
	Henry A. Romeike, Norristown Hospital, ---	210 00
	Sarah E. Ammerman, Danville Hospital, ---	200 00
	Ralph A. Rohrer, Harrisburg Hospital, ---	44 64
		1,846 80
7,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Susan Sophia Mitchell, Warren Hospital, ---	255 00
	B. I. Brode, Harrisburg & Schuylkill Haven Hospital, -----	2,058 24
	Sampson F. Scott, Harrisburg & Schuylkill Haven Hospital, -----	896 76
		3,210 00
8,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Jacob Harter, Warren Hospital, -----	520 00
	George B. Mourtou, Warren Hospital, ---	30 72
	B. I. Brode, Schuylkill Haven Hospital, ---	26 29
	Sampson F. Scott, Schuylkill Haven Hospital, -----	26 29
	Lucy Hirbine, Danville Hospital, -----	582 50
	John A. Turner, Norristown Hospital, ---	538 82
	Eliza M. Percy, Norristown Hospital, ---	31 19
	Clara E. Goldy, Norristown Hospital, ---	31 19
	Maria E. Heckman, Homeopathic Hospital, -----	50 80
		1,837 80
9,	Amount received from Standard Wire Cloth & Screen Company:	
	Bonus on increase, -----	73 28
	Interest, -----	6 80
		80 08
19,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Yetta Zeigler, Warren Hospital, -----	32 86
	Bertha C. Fackler, Norristown Hospital, ---	31 19
	Robert M. Cooper, Jr., Norristown Hospital, -----	50 00
	Ellen Lenihan, Norristown Hospital, ---	31 19
	William Watson, Norristown Hospital, ---	31 19
	Phillip Duerr, Norristown Hospital, -----	31 19
	Charles J. Loan, Norristown Hospital, ---	31 19
	Ludwig Trein, Norristown Hospital, -----	31 19
	Blanche L. Wolfe, Norristown Hospital, ---	15 00
	Ellen Mitton, Norristown Hospital, -----	31 19
	John H. Heck, Allentown Hospital, -----	15 00
	Levi B. Bruner, Danville Hospital, -----	347 97
	Charles C. Otto, Danville Hospital, -----	32 86
	Ellen Hoffman, Homeopathic Hospital, ---	120 00
		832 02
20,	Amount received from United States Pipe Line Company:	
	Capital stock, 1910, -----	2,724 40
	Interest, -----	749 21
	Fees of office, -----	138 22
		3,612 83

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Capital stock, 1911, -----	2,224 40
	Interest, -----	476 02
	Fees of office, -----	111 22
		2,811 64
	Capital stock, 1912, -----	2,224 40
	Interest, -----	341 00
	Fees of office, -----	111 22
		2,676 62
22,	Amount received from Tioga County Creamery Co.:	
	Capital stock, 1912, -----	78 37
	Interest, -----	13 32
		91 69
23,	Amount received from Traders Real Estate Co.:	
	Capital stock, 1912, -----	278 50
	Capital stock, 1913, -----	273 75
	Capital stock, 1914, -----	272 82
	Loans, 1912, -----	76 00
	Loans, 1913, -----	76 00
	Loans, 1914, -----	89 30
	Interest, -----	105 88
		1,172 25
23,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John S. McKnight, Norristown Hospital,	31 19
	Elizabeth Megargee, Norristown Hospital,	81 58
	Adolph Warren Lutz, Norristown Hospital,	143 13
	E. Howell Headley, Norristown Hospital,	31 19
	Margaret A. Schreiner, Norristown Hospital,	31 19
	Joshua Oliver Diller, Norristown Hospital,	850 00
	Franklin Koontz, Norristown Hospital,	31 19
	William Stanley, Norristown Hospital,	31 19
	Louisa F. Daubert, Norristown Hospital,	31 19
	Annie E. Nicom, Norristown Hospital, --	31 19
	Philip Duerr, Norristown Hospital, ---	25 89
	Walker Y. Wells, Norristown Hospital,	31 19
	Mary C. Ard, Danville Hospital, -----	557 95
	James B. Salmon, Danville Hospital, --	32 86
	Elizabeth Matchin, Danville Hospital, --	32 86
	George F. Schlosser, Harrisburg Hospital, -----	298 39
	Thos. F. Stein, Homeopathic Hospital,	32 50
	Nancy A. Faith, Dixmont Hospital, ---	32 86
		2,337 54
29,	Amount received from Altoona Foundry & Machine Co.:	
	Capital stock, 1910, -----	262 89
	Interest, -----	82 91
	Fees of office, -----	16 60
		362 40
	Capital stock, 1911, -----	50 00
	Capital stock, 1912, -----	50 00
	Capital stock, 1913, -----	50 00
	Capital stock, 1914, -----	50 00
	Interest, -----	10 00
		210 00

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
29,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	J. Wesley Klare, Norristown Hospital,--	31 19
	Lillie M. Repsher, Allentown Hospital,--	195 58
	Charles H. Forney, Harrisburg Hospital,--	8 21
	Louisa Williams, Warren Hospital, ----	20 10
	Maria Gilson, Warren Hospital, ----	13 43
	Melvin Hays, Dixmont Hospital, ----	65 36
	John E. Potts, Dixmont Hospital, ----	32 86
	Elizabeth Tibbott, Dixmont Hospital, --	32 86
		399 59
30,	Amount received from Williamsport Wire Rope Co.:	
	Capital stock, 1912, ----	255 44
		255 44
30,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Ralph A. Rohrer, Harrisburg Hospital,--	32 86
	Alice M. Brader, Allentown Hospital, --	324 53
	Newton Heaton, Norristown Hospital, --	375 00
	George D. Reeder, Norristown Hospital,--	31 19
	Lillie Rawn, Norristown Hospital, ----	590 87
	John Schwab, Norristown Hospital, ----	110 00
	John Umstead, Norristown Hospital, ---	200 00
		1,664 45
July 6,	Amount received from Tragle Cordage Co.:	
	Capital stock, 1913, ----	250 00
	Interest, ----	24 54
		274 54
6,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	James M. Duncan, Harrisburg Hospital,--	837 18
	Fannie C. Hoffman, Harrisburg Hospital,--	1,134 21
	John E. Fickes, Harrisburg Hospital, --	131 14
	Margaret M. Haas, Harrisburg Hospital,--	65 36
	Enos M. Cassel, Norristown Hospital,--	175 00
	Kate Evans, Dixmont Hospital, ----	742 25
	John R. Gillespie, Homeopathic Hospital,--	32 75
	Elizabeth M. Colbert, Homeopathic Hospital,--	32 75
		3,150 64
11,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Christiana W. Kinzie, Norristown Hospital,--	26 79
	Helma Alexander, Norristown Hospital,--	582 40
	Lena Weiner, Norristown Hospital, ----	21 70
	Robert R. Miller, Danville Hospital, ---	456 43
	Julia O'Brien, Danville Hospital, ----	100 00
	Margaret E. Crouse, Danville Hospital,--	30 00
	Mary L. Meals, Harrisburg Hospital, --	32 86
	Mary E. Clinger, Warren Hospital, ----	32 86
	Rosie Brunner, Homeopathic Hospital,--	32 75
	George Blight, Homeopathic Hospital,--	32 75
		1,348 54
14,	Amount received from Farmers Ferry Co.:	
	Gross receipts, 1915, ----	5 69

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
17,	Amount received from Manufacturers Gas Co.:	
	Capital stock, 1910, -----	1,450 00
	Interest, -----	399 91
	Fees of office, -----	72 50
		1,922 41 ¹
	Capital stock, 1911, -----	250 00
	Interest, -----	54 77
	Fees of office, -----	12 50
		317 27
17,	Amount received from Warren and Chautauqua Gas Company:	
	Capital stock, 1911, -----	1,200 00
	Interest, -----	262 92
	Fees of office, -----	60 00
		1,522 92
	Capital stock, 1913, -----	1,000 00
	Interest, -----	95 50
	Fees of office, -----	50 00
		1,145 50
20,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	William H. Gass, Harrisburg Hospital, -----	1,369 32
	Thomas E. Stine, Homeopathic Hospital, -----	32 75
	Ella McConnell, Danville Hospital, -----	32 86
	Martha M. Stevenson, Warren Hospital, -----	163 57
	John Mansley, Norristown Hospital, -----	628 11
	Walter C. Arnold, Norristown Hospital, -----	629 64
	Mary P. Gillespie, Norristown Hospital, -----	31 19
	Mary P. Styer, Norristown Hospital, -----	23 69
	Eliza M. Percy, Norristown Hospital, -----	764 78
		3,675 91
	Fees of office in suits of Commonwealth vs. John Mansley and Walter C. Arnold, -----	141 00
		141 00
26,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Alice I. Upton, Warren Hospital, -----	18 04
	Clara Weaver, Harrisburg Hospital, -----	32 86
	Sarah Pottleiger, Harrisburg Hospital, -----	100 00
	Minnie Hutley, Dixmont Hospital, -----	32 86
	Edwin J. S. Minnich, Homeopathic Hospital, -----	32 50
	Mary Dotterer, -----	92 78
		309 04 ¹
28,	Amount received from H. F. Holler, Prothonotary, attorney fees in 55 Commonwealth cases which were won:	
	Fees of office, -----	165 00
		165 00
28,	Amount received from Slate Belt Electric Street Railway Co.:	
	Capital stock, 1910, -----	125 00
	Interest, -----	19 29
	Fees of office, -----	6 25
		150 54
	Capital stock, 1911, -----	162 50
	Interest, -----	15 97
	Fees of office, -----	8 12
		186 59
	Gross receipts, 1915, -----	363 73
		363 73

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
31,	Amount received from Cameron Telephone Co.:	
	Gross receipts, 1915, -----	2 26
	Interest, -----	04
		2 30
Aug. 2,	Amount received from Pottsville Water Co.:	
	Tax on excess net annual income, for 1911, -----	7,357 47
	Interest, -----	621 71
		7,979 18
	Tax on excess net annual income, for 1912, -----	9,879 42
	Interest, -----	1,580 71
		11,460 13
	Tax on excess net annual income, for 1913, -----	7,458 46
	Interest, -----	748 08
		8,206 54
	Tax on excess net annual income, for 1914, -----	8,597 57
	Interest, -----	447 93
		9,045 50
	Fees of office, -----	22 00
		22 00
14,	Amount received from American District Telegraph Co. of Pennsylvania:	
	Gross receipts, 1912, -----	219 54
	Interest, -----	42 80
	Fees of office, -----	10 97
		273 31
14,	Amount received from Youngwood Coal and Coke Co.:	
	Bonus, -----	3 33
	Interest, -----	11
		3 44
15,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents:	
	Lena Foust, Danville Hospital, -----	331 78
	Florence J. Cawley, Danville Hospital, -----	58 21
	Rose L. Allen, Danville Hospital, -----	16 00
	Mary A. Albright, Harrisburg Hospital, -----	200 00
	Alice C. Loose, Harrisburg Hospital, -----	32 86
	Clinton Schaffer, Homeopathic Hospital, -----	20 00
	Edwin J. B. Minnich, Homeopathic Hospital, -----	32 85
	Susan Kissel, Wernersville Hospital, -----	80 00
	Samuel C. Huyett, Wernersville Hospital, -----	315 76
	Bridget Sweeney, Norristown Hospital, -----	168 06
	John A. Turner, Norristown Hospital, -----	31 19
		1,286 71
24,	Amount received from Universal Sanitary Mfg. Co.:	
	Capital stock, 1912, -----	53 54
	Capital stock, 1913, -----	550 00
	Loans, 1912, -----	380 00
		983 54
24,	Amount received from Wagner Hardware Co.:	
	Capital stock, 1912, -----	140 20
	Loans, 1912, -----	19 00
	Interest, -----	27 54

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
24,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Fan Long, Dixmont Hospital, -----	200 15
	Bertha C. Fackler, Norristown Hospital, -----	500 00
	Josephine Weinstein, Norristown Hospital, -----	205 00
	Ellen Mitton, Norristown Hospital, -----	725 00
	Charles M. Smith, Warren Hospital, -----	465 00
	Sarah Kilmer, Harrisburg Hospital, -----	1,305 07
		3,400 22
29,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Katie Ida Houck, Harrisburg Hospital, -----	347 39
	Geo. H. Brearley, Norristown Hospital, -----	312 26
	John E. Potts, Dixmont Hospital, -----	800 00
	John H. Heck, Homeopathic Hospital, -----	15 00
	Alfred Fluck, Norristown Hospital, -----	17 64
		1,492 29
30,	Amount received from Wyandotte Silk Co.:	
	Capital stock, 1912, -----	200 00
	Capital stock, 1913, -----	200 00
	Capital stock, 1914, -----	200 00
	Loans, 1914, -----	89 30
		689 30
Sept. 13,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Yetta Ziegler, Warren Hospital, -----	32 86
	Martha M. Stevenson, Warren Hospital, -----	32 86
	Laura A. Wilson, Warren Hospital, -----	32 86
	Effie E. Pierce, Warren Hospital, -----	32 50
	Stanley Edwards, Dixmont Hospital, -----	1,018 24
	Edwin H. Albright, Harrisburg Hospital, -----	20 47
	Agnes M. Bard, Harrisburg Hospital, -----	1,678 18
	Wm. H. Gass, Harrisburg Hospital, -----	65 36
	Ella McConnell, Danville Hospital, -----	32 86
	Chas. C. Otto, Danville Hospital, -----	32 86
	Elizabeth A. Matchin, Danville Hospital, -----	32 86
	Louisa F. Daubert, Norristown Hospital, -----	34 38
	Wm. J. Collins, Sr., Norristown Hospital, -----	70 39
	Geo. D. Reeder, Norristown Hospital, -----	34 38
	Annie E. Nicom, Norristown Hospital, -----	34 38
	Christiana R. Kinzie, Norristown Hospital, -----	34 38
	Ellen Mitton, Norristown Hospital, -----	34 38
	James M. Daly, Norristown Hospital, -----	65 57
	Josephine Weinstein, Norristown Hospital, -----	25 00
	John O'Donnell, Norristown Hospital, -----	47 94
	Ludwig Trein, Norristown Hospital, -----	34 38
	Wm. Watson, Norristown Hospital, -----	34 38
	Lillie Rawn, Norristown Hospital, -----	34 38
	Mary P. Gillespie, Norristown Hospital, -----	34 38
	Bertha C. Fackler, Norristown Hospital, -----	34 38
	Bridget Sweeney, Norristown Hospital, -----	34 38
	John A. Turner, Norristown Hospital, -----	34 38
	Eliza M. Percy, Norristown Hospital, -----	34 38
	Clara E. Goldy, Norristown Hospital, -----	34 38
		3,702 13

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
21.	Amount received from Wrightsville Light and Power Co.:	
	Gross receipts, 1915 (to June 30th), -----	24 39
	Gross receipts, 1915 (to Dec. 30th), -----	24 78
		49 17
21.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Melvin Hays, Dixmont Hospital, -----	32 86
	Sarah J. Comstock, Dixmont Hospital, -----	75 00
	Katherine K. Beatty, Homeopathic Hospital, -----	416 68
	Amelia Hines, Norristown Hospital, -----	62 48
	Franklin Koontz, Norristown Hospital, -----	34 38
	William Stanley, Norristown Hospital, -----	34 38
	Margaret A. Schreiner, Norristown Hospital, -----	34 38
	Blanche L. Wolfe, Norristown Hospital, -----	15 00
	James B. Salmon, Danville Hospital, -----	32 86
	Robert R. Miller, Danville Hospital, -----	32 86
	Benneville I. Brode, Schuylkill Haven Hospital, -----	26 29
	Sampson F. Scott, Schuylkill Haven Hospital, -----	26 29
		823 46
18.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John S. McKnight, Norristown Hospital, -----	34 38
	Walker Y. Wells, Norristown Hospital, -----	64 83
	J. Wesley Klare, Norristown Hospital, -----	34 38
	R. M. Cooper, Jr., Norristown Hospital, -----	50 00
	Philip Duerr, Norristown Hospital, -----	34 38
	Charles J. Loan, Norristown Hospital, -----	34 38
	Emma Fennimore, Norristown Hospital, -----	65 57
	Charles M. Smith, Warren Hospital, -----	32 86
	Maria Gilson, Warren Hospital, -----	13 43
	Louisa Williams, Warren Hospital, -----	20 10
	Mary E. Olinger, Warren Hospital, -----	32 86
		417 17
18.	Amount received from White Deer Telephone Co.:	
	Gross receipts, 1914, -----	23 09
	Interest, -----	2 69
		25 78
25.	Amount received from Wayne Cooperation Association:	
	Capital stock, 1913, -----	5 00
	Capital stock, 1914, -----	5 00
	Capital stock, 1915, -----	5 83
		15 83
27.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Elizabeth Tibbott, Dixmont Hospital, -----	32 86
	James P. Seasholtz, Harrisburg Hospital, -----	211 14
	Daniel J. Oldham, Harrisburg Hospital, -----	132 15
	Ellen Lenihan, Norristown Hospital, -----	34 38
	Guy R. Bowen, Schuylkill Haven Hospital, -----	75 00
	James M. Duncan, Harrisburg Hospital, -----	32 86
		518 39
Oct. 5.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Emma L. Ginther, Norristown Hospital, -----	475 19

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Chas. A. Achterman, Norristown Hospital, -----	1,285 61
	Ralph A. Rohrer, Harrisburg Hospital, -----	32 86
	Alice I. Upton, Warren Hospital, -----	20 21
6,	Amount received from city of Erie school district:	1,813 87
	Loans, 1913 and 1914, -----	2,882 40
10,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	2,882 40
	Mary C. Fenton, Norristown Hospital, -----	500 00
	Amanda Linker, Norristown Hospital, -----	64 28
	Wm. M. Johnson, Warren Hospital, -----	150 00
	Mary Bengele, Dixmont Hospital, -----	380 81
	John E. Potts, Dixmont Hospital, -----	32 86
	John L. Morrison, Dixmont Hospital, -----	161 20
	Wm. H. Gass, Harrisburg Hospital, -----	32 86
	Salome Oswald, Harrisburg Hospital, -----	550 00
	Mary L. Meals, Harrisburg Hospital, -----	32 86
	Margaret M. Haas, Harrisburg Hospital, -----	32 86
11,	Amount received from Westmoreland Grocery Co.:	1,937 73
	Capital stock, 1914, -----	1,450 00
	Loans, 1914, -----	59 85
11,	Amount received from Enon Valley Borough School District:	1,509 85
	Loans, 1912, -----	1 33
	Loans, 1913, -----	1 33
	Loans, 1914, -----	1 33
	Loans, 1915, -----	3 23
	Interest, -----	08
12,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	7 30
	Geo. H. Killinger, Polk Hospital, -----	2,657 82
	Annie S. Elgin, Warren Hospital, -----	83 95
	Nancy A. Faith, Dixmont Hospital, -----	32 86
	Allen B. Anderson, Harrisburg Hospital, -----	1,094 29
	Daniel W. Bordner, Harrisburg Hospital, -----	32 86
	James F. Seasholz, Harrisburg Hospital, -----	32 86
	Rosie Brunner, Rittersville Hospital, -----	32 86
13,	Amount received from city of Erie school district:	3,967 50
	Loans, 1913 and 1914, -----	1,202 80
16,	Amount received from Wind Gap borough (Northampton county):	1,202 80
	Loans, 1915, -----	2 28
16,	Amount received from Harmony township school district (Forest county):	2 28
	Loans, 1915, -----	22 80
	Interest, -----	10
16,	Amount received from St. Clair school district (Allegheny county):	22 90
	Loans, 1914, -----	3 80
	Loans, 1915, -----	139 34
		143 14

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
18.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Calvin T. Kraft, Harrisburg Hospital, --	85 36
	James F. Seasholtz, Harrisburg Hospital, -----	32 86
	Mary F. Boyer, Norristown Hospital, --	256 29
	Emma Guillian, Norristown Hospital, --	100 00
	Mary P. Styer, Norristown Hospital, --	26 88
	Sarah J. Comstock, Dixmont Hospital, -----	32 86
	Edwin J. S. Minnich, Allentown Hospital, -----	32 86
	Elizabeth M. Colbert, Allentown Hospital, -----	32 86
	John R. Gillespie, Allentown Hospital, --	32 86
	Lizzie S. Smith, Warren Hospital, -----	600 00
	Lena Poust, Danville Hospital, -----	65 72
		1,298 55
19.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Thomas E. Strine, Allentown Hospital, -----	32 86
	Cora C. Eberhardt, Norristown and Allentown Hospitals, -----	1,428 42
	Ella M. Berkemyer, Norristown and Allentown Hospitals, -----	587 50
	Wm. J. Collins, Sr., Norristown Hospital, -----	34 38
		2,083 16
20.	Amount received from Youngwood Cemetery Co.:	
	Capital stock, 1909, -----	38 75
	Capital stock, 1910, -----	39 32
	Capital stock, 1911, -----	43 25
	Loans, 1910, -----	12 10
	Loans, 1911, -----	13 31
	Interest, -----	34 90
		178 63
23.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John L. Morrison, Dixmont Hospital, --	65 71
	Hannah C. Deardorff, Harrisburg Hospital, -----	1,723 76
	Clara Weaver, Harrisburg Hospital, --	32 86
		1,822 33
24.	Amount received from Warren County Telephone and Telegraph Company:	
	Capital stock, 1913, -----	6 25
	Capital stock, 1914, -----	8 25
	Gross receipts, 1913, -----	12 32
	Gross receipts, 1914, -----	11 60
	Gross receipts, 1915, -----	6 46
		44 88
25.	Amount received from Dupont Land Co.:	
	Capital stock, 1913, -----	5 00
	Interest, -----	1 38
		6 38
	Capital stock, 1915, -----	5 83
	Interest, -----	12
		5 95
27.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	E. Howell Headley, Norristown Hospital, -----	34 38

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	Mary Kern, Allentown Hospital, -----	36 70
	Mary Geary, Polk Hospital, -----	579 93
	John M. Cochrane, Wernersville Hospi- tal, -----	238 85
		889 86
31,	Amount received from Gregg-William D. Rogers Co.:	
	Capital stock, 1915 (14 mos.), -----	5 83
	Interest, -----	27
		6 10
Nov. 2,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Sarah Kilmer, Harrisburg Hospital, ---	65 72
	Elizabeth Moyer, Harrisburg Hospital, ---	200 00
	Minnie Huntley, Harrisburg Hospital, ---	32 86
	Mary Miller, Harrisburg Hospital, ---	99 64
	Benjamin Oursler, Harrisburg Hospital, ---	3,443 77
		3,841 99
6,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Charles A. Shirk, Harrisburg Hospital, ---	900 00
	Margaret Yerkes, Norristown Hospital, ---	900 00
	Elizabeth Davison, Danville Hospital, ---	470 00
	Rose L. Allen, Danville Hospital, -----	16 00
		2,286 00
6,	Amount received from Union Park Land Co.:	
	Capital stock, 1915 (14 mos.), -----	145 83
	Interest, -----	1 90
		147 73
10,	Amount received from Mercer Iron and Coal Co.:	
	Capital stock, 1915 (14 mos.), -----	787 50
	On account loans, 1915, -----	12 50
		800 00
10,	Amount received from Straban township (Adams county), on account State-aid high- way construction, balance, -----	1,540 00
		1,540 00
10,	Amount received from borough of Ridgway (Elk county), on account of State-aid high- way construction, -----	2,000 00
		2,000 00
15,	Amount received from West Reading Motor and Hardware Co.:	
	Capital stock, 1914, -----	84 37
	Interest, -----	4 36
		88 73
15,	Amount received from Provident Realty Co.:	
	Capital stock, 1912, -----	22 00
	Interest, -----	3 22
		25 22
	Capital stock, 1913, -----	20 00
	Interest, -----	2 93
		22 93
	Capital stock, 1914, -----	17 50
	Interest, -----	1 48
		18 98
	Loans, 1912, -----	10 64
	Interest, -----	1 59
		12 23
	Loans, 1913, -----	10 64
	Interest, -----	1 54
		12 18
	Loans, 1914, -----	8 93
	Interest, -----	78
		9 71

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
20.	Amount received from South Lincoln Land Co.:	
	Capital stock, 1913, -----	125 00
	Interest, -----	15 91
	Fees of office, -----	7 05
		147 96
20.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Emily M. H. Ellis, Norristown Hospital, -----	60 00
	Benjamin Irgang, Norristown Hospital, -----	500 00
	Alice C. Loose, Harrisburg Hospital, -----	32 86
	Annie S. Elgin, Warren Hospital, -----	19 50
	Martin W. Crammer, Warren Hospital, -----	327 87
	Carmella DeBlase, Blockley Hospital, -----	54 86
	Henrietta Koehler, Woodville Hospital, -----	248 29
		1,243 38
20.	Amount received from borough of Ridgway, Elk Co.:	
	On account State-aid highway construction, -----	500 00
		500 00
22.	Amount received from The Reynolds Co.:	
	Bonus, -----	26 17
		26 17
22.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Walter Clarence Arnold, Norristown Hospital, -----	215 55
	Elizabeth Megargee, Norristown Hospital, -----	65 57
	Emma B. Tetlow, Norristown Hospital, -----	1,000 00
	Charles H. Lewis, Spring City Hospital, -----	550 00
	Julia O'Brien, Danville Hospital, -----	17 50
	Mary J. Van Dyke, Danville Hospital, -----	517 16
	Geo. P. Bogar, Harrisburg Hospital, -----	27 03
		2,422 81
23.	Amount received from Mercer Iron and Coal Co.:	
	Capital stock, 1915 (14 mos.), -----	15 75
	Balance, loans, 1915, -----	101 90
	Interest, -----	2 29
		119 94
24.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Cora C. Eberhart, Allentown Hospital, -----	32 86
	Solomon C. Kelso, Brookville Hospital, -----	550 00
	Sarah Lehrman, Harrisburg Hospital, -----	38 58
		621 44
27.	Amount received from Huntingdon and Clearfield Telephone Co.:	
	Loans, 1914, -----	1,897 63
		1,897 63
Dec. 1.	Amount received from Grand Five and Ten Cent Stores Co.:	
	Capital stock, 1915 (14 mos.), -----	46 67
	Interest, -----	81
		47 48
1.	Amount received from Active Real Estate Co.:	
	Capital stock, 1915 (14 mos.), -----	5 83
	Penalty, -----	58
	Interest, -----	16
		6 57

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
5.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Hannah E. Bitting, Norristown Hospital, -----	716 31
	Mary Chapman Fenton, Norristown Hospital, -----	500 00
	Elizabeth Emma Jacoby, Norristown Hospital, -----	8 48
	Alvin Ulrich, Harrisburg Hospital, -----	350 00
	John H. Heck, Allentown Hospital, -----	15 00
		1,589 79
6.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Thomas W. Barr, Warren Hospital, -----	948 48
	Andrew Watson, Wernersville Hospital, -----	130 41
	Wm. J. A. Brewster, Norristown Hospital, -----	120 20
	Annie E. Nicoin, Norristown Hospital, -----	32 18
	John S. McKnight, Norristown Hospital, -----	32 18
	Tilghman Myers, Norristown Hospital, -----	500 00
	Chas. C. Otto, Danville Hospital, -----	32 50
	Samuel S. Miller, Lancaster Hospital, -----	143 85
		1,948 78
7.	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Elizabeth Megargee, Norristown Hospital, -----	32 18
	Margaret A. Schreiner, Norristown Hospital, -----	32 18
	Ludwig Trein, Norristown Hospital, -----	32 18
	Lillie Rawn, Norristown Hospital, -----	32 18
	Ellen Mitton, Norristown Hospital, -----	32 18
	Walker Y. Wells, Norristown Hospital, -----	32 18
	Thos. Powers, Norristown Hospital, -----	151 91
	Clara E. Goldy, Norristown Hospital, -----	32 18
	Eliza M. Percy, Norristown Hospital, -----	32 18
	John A. Turner, Norristown Hospital, -----	32 18
	Bridget Sweeney, Norristown Hospital, -----	32 18
	Bertha C. Fackler, Norristown Hospital, -----	32 18
	Wm. Watson, Norristown Hospital, -----	32 18
	Henrietta Koehler, Woodville Hospital, -----	26 00
	Lena Lavin, Spring City Hospital, -----	15 00
	Laura Ryan, Spring City Hospital, -----	4 00
	Margaret Doyle, Spring City Hospital, -----	35 00
	Morris Kutcher, Spring City Hospital, -----	8 00
	Mary Adams, Spring City Hospital, -----	7 67
	Angelo Restanco, Spring City Hospital, -----	11 31
	Margaret Dougherty, Spring City Hospital, -----	6 43
	Herman Weiss, Spring City Hospital, -----	4 00
	Susan Morrison, Spring City Hospital, -----	13 50
	Marion Growler, Spring City Hospital, -----	5 00
	Chas. K. Rodearmel, Spring City Hospital, -----	16 00
	Fred Zimmerman, Spring City Hospital, -----	14 84
	Hannah Blasband, Spring City Hospital, -----	50 00
	Geo. Wagner, Spring City Hospital, -----	7 00
		761 82
7.	Amount received from borough of Ridgway, Elk county, on account of State-aid highway construction, contract No. 83, -----	500 00
		500 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
12,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Blanche L. Wolfe, Norristown Hospital, ---	15 00
	Lena Weimer, Norristown Hospital, ---	51 35
	Chas. J. Loan, Norristown Hospital, ---	32 18
	Robert M. Cooper, Norristown Hospital, ---	50 00
	Mary Chapman Fenton, Norristown Hospital, ---	32 18
	Louisa F. Daubert, Norristown Hospital, ---	32 18
	Christina R. Kinzie, Norristown Hospital, ---	32 18
	Stephen McGowan, Norristown Hospital, ---	763 39
	Elizabeth A. Matchin, Danville Hospital, ---	32 50
	Sampson F. Scott, Schuylkill Haven Hospital, ---	26 00
	Benneville I. Brode, Schuylkill Haven Hospital, ---	26 00
		1,092 96
19,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Margaretta P. Yewdall, Norristown Hospital, ---	9 72
	Margaretta P. Yewdall, Norristown Hospital, ---	32 18
	Samuel Hoyle, Norristown Hospital, ---	40 52
	Ellen Lenihan, Norristown Hospital, ---	32 18
	Philip Duerr, Norristown Hospital, ---	32 18
	Mary P. Gillespie, Norristown Hospital, ---	32 18
	Emma Fennimore, Norristown Hospital, ---	32 18
	J. Wesley Klare, Norristown Hospital, ---	32 18
	Stephen McGowan, Norristown Hospital, ---	32 18
	Andrew Watson, Wernersville Hospital, ---	25 97
	Lena Poust, Danville Hospital, ---	32 50
	Ella McConnell, Danville Hospital, ---	32 50
	Clara Baldauf, Warren Hospital, ---	284 32
	Mary E. Clinger, Warren Hospital, ---	32 50
	Melvin Hays, Dixmont Hospital, ---	32 50
	Sarah J. Comstock, Dixmont Hospital, ---	32 50
	Isaac Anderson, Mercer County Home, ---	14 57
	Rosie Brunner, Allentown Hospital, ---	32 49
	Elizabeth M. Colbert, Allentown Hospital, ---	32 49
	Edwin J. S. Minnich, Allentown Hospital, ---	32 49
	Harry K. Bassett, Spring City Hospital, ---	32 00
	Carmela De Blase, Blockley Hospital, ---	52 29
		944 62
20,	Amount received from Doubleday Hill Electric Co.:	
	Capital stock, 1913, -----	476 26
		476 26
22,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Franklin Koontz, Norristown Hospital, ---	52 18
	Wm. Stanley, Norristown Hospital, ---	32 18
	Mary McGrory, Norristown Hospital, ---	550 00
	Lizzie Doersam, Norristown Hospital, ---	325 96
	Robert R. Miller, Danville Hospital, ---	32 50
	Julia O'Brien, Danville Hospital, ---	17 50
	Mary Scholl, Danville Hospital, ---	139 80
	James B. Salmon, Danville Hospital, ---	32 50
	Anna A. Mertz, Allentown Hospital, ---	575 63

SCHEDULE J—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
	John R. Gillespie, Allentown Hospital,	32 49
	Owen Williams, Allentown Hospital, ---	32 49
	Chas. M. Smith, Warren Hospital, -----	32 50
	Louisa Williams, Warren Hospital, -----	20 10
	Wm. D. P. Lay, Wernersville Hospital, ---	1,200 00
	John E. Potts, Dixmont Hospital, -----	32 50
	Nancy A. Faith, Dixmont Hospital, ---	32 50
	Rebecca Motz, Harrisburg Hospital, ---	239 94
		3,360 77
26,	Amount received from Advance Amusement Co.:	
	Bonus, -----	8 58
	Interest, -----	24
		8 82
26,	Amount received from McKeesport and Yough- logheny Railroad Co.:	
	Loans, 1910, -----	1,420 86
	Loans, 1911, -----	1,424 84
		2,845 70
27,	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Chas. K. Rodearmel, Spring City Hospi- tal, -----	5 00
	Margaret Doyle, Spring City Hospital, ---	9 46
	Morris Kutcher, Spring City Hospital, ---	2 00
	Geo. Wagner, Spring City Hospital, ---	4 00
	Alice Scott, Spring City Hospital, -----	7 00
	Susan Morrison, Spring City Hospital, ---	6 00
	Lottie Weikel, Spring City Hospital, ---	10 00
	T. Parry Tyson, Norristown Hospital, ---	67 04
	David H. Bliem, Norristown Hospital, ---	1,200 00
	H. Frank Robinson, Wernersville Hospi- tal, -----	156 41
	Elizabeth Tibbott, Dixmont Hospital, --	32 50
	Thos. E. Stine, Allentown Hospital, -----	32 49
	Minnie Huntley, Dixmont Hospital, -----	32 50
	Catherine Brandon, Warren Hospital, --	5 50
		1,569 90
	Total for the year 1916, -----	\$164,750 90
	Grand total for years 1915 and 1916, -----	\$511,872 82



INDEX.

	A.	Page.
ADAMS, J. K.		
Estate not escheated under Act of 1909, ...		174
ADJUTANT-GENERAL, OPINIONS TO.		
United States Army Officer may accept appointment and commission as officer of National Guard of Pennsylvania, ...		475
ADVANCES TO DEPARTMENTS.		
State Treasurer; acceptance of certificate of amount to be expended, ...		196
AGRICULTURE, OPINIÓN TO SECRETARY OF.		
Commercial Fertilizers; adding figures "1916" to trade name does not make such a new brand, ...		565
ALDEN COAL COMPANY.		
Anthracite Coal; unconstitutionality of Act to tax, ...		xi
AMERICAN DRUGGISTS FIRE INSURANCE COMPANY v. INSURANCE COMMISSIONER.		
Licensing of without filing schedule of rates, ...		xiii
AMERICAN EXPRESS COMPANY.		
Filing of bond to secure exemption from provisions of Act of June 19, 1911, ...		285
AMERICAN UNION FIRE INSURANCE COMPANY.		
Tax on gross premiums; settlement should be made on basis of giving credit for premiums paid for re-insurance, ...		221
ANESTHETICS.		
Trained nurse; administering by, ...		619
APPROPRIATIONS.		
Adjutant General; payment of expenses of National Guard in suppressing riot, ...		18
Advances to Departments; acceptance by State Treasurer of certificates of amounts to be expended, ...		196
Auditor General has no authority to keep an account from which to make advance payments for urgent items of expense for departments, bureaus, etc., ...		122
Danville Insane Hospital; payment by Auditor General for installing fire apparatus, such installation being necessary to carry out purpose of appropriation, ...		137
Eastern Penna. State Institution, Spring City; cost of bond for Supt. of Construction to be paid out of appropriation to Board of Public Grounds and Buildings, ...		458
Education, State Board of; may expend part of appropriation to equalize educational advantages in different parts of Commonwealth, ...		325
Escheat Act of 1915; Auditor General not justified in paying hire of additional clerks, ...		130

	Page.
APPROPRIATIONS—(Continued).	
Feeble-Minded Institution of Western Pennsylvania; restoration of power house damaged by fire, ...	454
Fire Marshal; appropriation for salaries of deputies cannot be used for payment of fees and mileage of assistants, ...	597
Fire Marshal; appointment of twenty-five deputies, ...	602
Health Commissioner; return to State Treasury when not immediately needed, ...	332
Health Department; appropriation of 1913, ...	181
Highway Department; suit against Auditor General and State Treasurer to test constitutionality of Act appropriating moneys derived from registrations and license fees of motor vehicles, ...	ix
Mothers' Assistant Fund; portion not used in first half of period available for use in second half, ...	587
Motor license fees to Highway Department, ...	13
Panama-Pacific Exposition Commission; payment of expenses of Second Pennsylvania Regiment to Exposition, ...	567
Prison Labor Commission; entire appropriation of 1915 for purchase of materials, etc., for prisons not to be turned over to, ...	132
Prison Labor Commission; Act of 1915 provides for Manufacturing Fund, ...	523
Public Accountants, Board of; traveling expenses covers hotel and incidental expenses of Board when absent from home on official business, ...	605
Public buildings, reconstruction of; definition of words "fire, flood or storm" in Act No. 743, ...	139
Public Service Commission; Auditor General may pay for services of experts out of appropriation, ...	105
School District of Philadelphia; to be paid on warrant of Supt. of Public Instruction, ...	323
Seranton Armory; cost of new foundation to be charged to appropriation for erection and completion of armories, ...	473
State-aid highways; apportionment to counties, ...	257
Superintendent of Public Instruction may sign one warrant to cover a number of items to separate payees, ...	116
Western State Hospital for Insane; appropriations to be used only for purposes specifically mentioned in act, ...	585
Workmen's Compensation Bureau; payment out of specific appropriation for rental of offices for referees, ...	569
Workmen's Insurance Fund; appropriation of 1915 for compensation for injury or death and not for purchase of insurance, ...	138
Workmen's Insurance Fund; insurance of employes of governmental agencies not provided for, ...	194
ARCHITECTS.	
Dixmont State Hospital; fees must be based on cost of actual work accomplished, ...	103
Muncy Industrial Home for Women; fixing compensation, ...	109
ARMORY BOARD, OPINION TO.	
Seranton Armory; cost of new foundation to be charged to appropriation for erection and completion of armories, ...	473

ASSUMPSIT.

Institution of actions in Common Pleas of Dauphin County; Schedule E, ...	636
Actions brought against the Commonwealth; Schedule E, ...	637

AUDITOR GENERAL.

Capital stock reports; extension of thirty days after March 31st for filing, ...	170
Carnival companies; not exempt from license tax laid by Act of 1913, ...	158
Collateral inheritance tax appraisement attorney to receive no fee or reward from administrator of estate which he is to appraise, ...	164
Commonwealth ex rel, v.; Suit to test constitutionality of Act appropriating to State Highway Department moneys derived from registrations and license fees of motor vehicles, ...	ix

AUDITOR GENERAL, OPINIONS TO.

Advancement account for payment of urgent items of expense; no authority to keep, ...	122
Automatic slot machines; under Mercantile License Tax Act of 1899, ...	146
Banks and trust companies; penalty for failure to file reports within prescribed time, ...	168
Bonds held by trustees; taxation of, ...	161
Bonus on capital stock; claim against corporation discharged by judicial sale of property and franchises, ...	166
Conditional sales; fifty cent tax on original writs not demandable on, ...	165
Conewago Gas Company; payment of bonus tax, ...	96
Corporations; not to be granted extension of thirty days time to file annual report, ...	148
Corporation reports, acceptance of, ...	151
Danville Insane Hospital; payment from appropriation for installing fire apparatus, ...	137
Dixmont Hospital for Insane; architect's fees must be based on cost of actual work accomplished, ...	103
Escheat Act; not justified in paying salaries of additional clerks, ...	140
Escheat law; National Banks included in, ...	117
Escheat of estate of non-resident, dying intestate and without issue, and survived by widow and collateral heirs, ...	174
Health Department; appropriation of 1913, ...	181
Highways; money received from counties, boroughs and townships may be applied to credit of State Highway Construction Fund, ..	145
House of Representatives; employees entitled to salaries from date when legislature convened, ...	92
Hydro-electric companies, generating electric current for electric light companies but not engaged in business of electric lighting, not taxable on gross receipts, ...	172
Mercantile Appraiser; validity of appraisements although removed within short time of his appointment, ...	129
Mercantile license tax; dealer living in Maryland and hauling pianos into this State and selling them engaged in interstate commerce and not liable to tax, ...	182
Military Board; power to sit as member of not to be delegated to deputy, ...	111
Mine Inspectors; increase of salary of, ...	153
Mothers' Pensions; not to be paid to mother of two children, whom she is unable to support when husband is in insane asylum, ...	89
Mothers' Pensions; estimating expenses and salaries of officers to carry Act into effect, ...	98

AUDITOR GENERAL, OPINIONS TO—(Continued).

Mothers' Pensions; non-payment to mothers whose husbands are disabled, or to indigent mothers whose husbands have abandoned them, or to mothers without lawful husbands, ...	101
Muncy Industrial Home for Women; fixing compensation of architect, ...	100
National Bank; funds invested in stock of Federal Reserve Bank not to be taxed, ...	99
National Bank; not to be taxed under Act of 1907 if exercising powers conferred by United States Government, ...	108
National banks; tax upon sale or transfer of shares of stock, ...	119
Obligations issued by a domestic corporation to a non-resident trustee for a resident in Pennsylvania; imposition of a tax upon, ...	179
Official appointed between sessions by Governor to receive salary attached to office but not salary attached to any subordinate position he may have held, ...	149
Prison Labor Commission; entire appropriation of 1915 for purchase of material, etc., for prisons not to be turned over to, ...	132
Public buildings, reconstruction of; defining words "fire, flood or storm" in Appropriation Act, 743, ...	139
Public Service Commission; payment for services of experts from appropriation to, ...	105
Recorders of Deeds not authorized to satisfy mortgage by virtue of mere receipt signed by mortgagee, ...	106
Robert Morris Monument Commission; right to pay artists for plaster models exhibited in competition, ...	114
Seire facias to revive or continue lien of a judgment not an original writ within meaning of Act of 1830 and not taxable for State purposes, ...	157
Shenango Furnace Company; taxability on assets held outside of State to be submitted to court, ...	175
State Treasurer; power to investigate accounts approved by, ...	155
Sunday Law; entire fine for violation of, payable to Commonwealth, ...	104
Superintendent of Public Instruction may sign warrant to cover a number of items to separate payees, ...	116
Tax appeals; separate reports and petitions for settlement not to be filed with Auditor General and State Treasurer, ...	111
Theatrical Society, amateur, incorporated as first class corporation, though not for profit, liable to license tax. Little Theatre, Phila., ...	182
Trust companies dealing as real estate brokers; subject to license tax, ...	93
Trust companies subject to penalty for failure to file reports prescribed by Act of 1907 if they fail to pay tax within specified period, ...	133
Trust companies; Act of 1907 mandatory upon for imposition of penalty for non-payment of tax, ...	143
Workmen's Insurance Fund; appropriation of 1915 made for compensation for injury or death and not for purchase of insurance, ...	138

AUGHINBAUGH, CHARLES E.

Public Printing and Binding; partial failure to perform contract after total loss of plant by fire, ...	465

AUTOMATIC SLOT MACHINES.

Taxation under Mercantile License Tax Act of 1899, ...	146

AUTOMOBILE LICENSES.

Bulletins of, monthly; distribution by Highway Commissioner, ...	240
Owner may operate any motor vehicle,* but every paid operator, employee, owner or custodian must have license, ...	255

B.

BACON.

Packages to be plainly and conspicuously marked, ... 435

BALDY, J. M., OPINIONS TO.

Medical Education and Licensure; cannot establish rule limiting final examination to one trial, ... 590

Medical Education and Licensure; construing re-examination of applicants for license to practice medicine, ... 603

Medical Education and Licensure; administration of anesthetics by a trained nurse, ... 619

BANK CHARTERS APPROVED.

Schedule B, ... 629

BANK FOR SAVINGS, PITTSBURGH.

Liquidation of, ... vii

BANKS AND BANKING.

American Express Company; filing bond to secure exemption from provisions of Private Banking Act, ... 285

Auditor General has no right to tax funds of National Bank invested in stock of a Federal Reserve Bank, ... 99

Bank Charters Approved; Schedule B, ... 629

Bonus; payment of by State Bank organized to take over National Bank, ... 292

Columbia National Bank; Act of June 7, 1915, relating to escheats declared constitutional, ... x

National Bank not to be taxed under Act of 1907 if exercising powers conferred by United States Government, ... 108

National banks included in Escheat Law, ... 117

National bank may become sole surety for township treasurer, but cannot be elected as, ... 239

Penalty for failure to file reports within prescribed time, ... 168

Pittsburgh Bank for Savings; liquidation of, ... vii

Proceedings instituted by Attorney General against banks, Schedule I, Sub-offices and sub-agencies; trust companies may maintain for restricted purpose of receiving and paying out moneys, ... 281

Tax upon sale or transfer of shares of stock, ... 119

Workmen's Insurance Fund; State depository of; approval by Board of Revenue Commissioners and Banking Commissioner, ... 189

BANKING COMMISSIONER, OPINIONS TO.

American Express Company; filing of bond to secure exemption from provisions of Act of June 19, 1911, ... 285

Bonus; payment of by State Bank organized to take over National Bank, ... 292

Building and Loan Associations; power to determine whether operations are dangerous or unauthorized; do not have power to insure lives of members so that stocks mature at their death, ... 278

Directors of corporation; failure to acknowledge letters from Commissioner, ... 287

Full paid stock association; issuance of building and loan association stock not to be predominating business, ... 276

Savings and Loan Associations; fee of 5 per cent. illegal unless company complies with provisions of Act of 1915, ... 289

Title Guaranty Company, Pittsburgh; withdrawal of acceptance of Act of 1889. Subject to supervision of Department, ... 273

	Page.
BANKING COMMISSIONER, OPINIONS TO—(Continued).	
Trust companies; maintaining sub-offices or sub-agencies for restricted purpose of receiving and paying out moneys, ...	281
Trust companies; sub-offices or agencies for receiving and paying out money, maintaining of, ...	291
BARLOW, DAVID.	
Keystone Bonding Company; issuance of surety bonds held a misdemeanor, ...	217, 231
BELL TELEPHONE CO.	
Schedule of hours of work, ...	341
BENSCREEK WATER COMPANY.	
Chartered to supply one municipal division cannot secure right to supply whole of adjacent municipal division, ...	70
BEVILHIMER, HARRY.	
Commission of felony during period of parole, ...	512
BLACKBURN, ALBERT E., OPINIONS TO.	
Nurses, Board of Examiners for Registration; registration without examination of registered nurses from any other State, ...	566
Nurses, Pennsylvania State Board of Examiners for Registration of; requiring training school to report names of pupils dismissed for cause, ...	577
BOARDS.	
Charities, State Board of; correction of objectionable conditions in jail, ...	555
Charities, Public; advised that Building Commission of Western State Hospital for Insane may select any site west of Allegheny Mountains, ...	585
Dental Examiners; registration of all dentists annually, ...	562
Education; plans and specifications for school buildings are not public records, but inspection may be permitted, ...	312
Industrial; not mandatory to publish rules and regulations in daily newspaper, ...	343
Livestock Sanitary Board; protection of meat within glass cases, ...	482
Military; Auditor General not to delegate to Deputy power to sit as member of, ...	111
Navigation, Board of Commissioners of; master of outward-bound vessel may choose any licensed pilot, ...	572
Nurses, Examiners for Registration of; registration of without examination if registered in another State, ...	566
Nurses, Examiners for Registration of; requiring training school to report names of pupils dismissed for cause, ...	577
Osteopathic; non-presentation of application to practice until after January 1, 1912, ...	575, 578
Osteopathic Examiners; student who cannot speak or write English not to be admitted for examination, ...	574
Public Accountants; traveling expenses cover hotel and incidental expenses of Board when absent from home on official business, ...	605
Undertakers; branch offices may be had by licensed in any part of State, ...	546
Veterinary Medical Examiners; provisions of Act of 1915, apply alike to veterinary medicine, surgery and dentistry, ...	479
Veterinary Medical Examiners; appointment of general agent to prosecute violations of Act of 1915, ...	481

BOARDS—(Continued).

Workmen's Compensation Board has no authority to receive bonds or other securities from employer who has elected to act as his own insurer, ...	375
Workmen's Insurance Fund; appropriation to does not provide for insurance of employes of governmental agencies, ...	194
Workmen's Insurance Fund; not necessary to attach revenue stamps to policies, ...	380

BOARD OF EDUCATION, STATE, OPINION TO.

School Buildings; plans and specifications for, not public records but Board may permit inspection, ...	312

BOILER INSPECTION.

Reports concerning plant for generating electricity and steam in collieries need not be forwarded to Dept. of Labor and Industry, ...	371

BONDS.

American Express Company; filing bond to secure exemption from provisions of Private Banking Act, ...	285
Clerk of Court of Oyer and Terminer and Quarter Sessions; one bond to cover both offices, ...	76
Eastern Penna. State Institution, Spring City; cost of bond for Supt. of Construction to be paid out of appropriation to Board of Public Grounds and Buildings, ...	458
Keystone Bonding Company; issuance by David Barlow held a misdemeanor, ...	217
Norristown State Hospital; bond of treasurer being sufficient, not necessary to bond subordinates, ...	601
Recorder of Deeds, Allegheny County; filed with County Controller, ..	74
Register of Wills and Clerk of Orphans' Court, Allegheny County, to give separate bonds, ...	77
Treasurer of State College; cost of not to be paid by Superintendent of Public Grounds and Buildings, ...	560
Warren State Hospital; Treasurer need not give additional bond to cover disbursements made by subordinate officers or employes, ...	461

BONUS.

Conewago Gas Company; having bought properties and franchises of other corporations not to pay bonus on capital stock upon which vendor companies had already paid, ...	96
Claim for discharged by judicial sale of property and franchises of corporation, ...	166
Petroleum Telephone Company; not allowed an off-set on bonus already paid on capital in Pennsylvania, ...	593
Scranton Workers' Co-operative Association, payment before incorporation, ...	61
State Bank organized to take over National Bank; payment of, ...	292

BOROUGHs.

Highway routes running through; Highway Commissioner may improve or reconstruct at expense of State, ...	246
State-aid Highways; Highway Commissioner not permitted to reconstruct or improve section of route lying within, ...	261
State highways; agreement to pay share of cost of reconstructing or improving, ...	265

BOWLING ALLEYS.

Minors; employment in, ...	388

	Page.
BRIDGES.	
Culver v. Commissioners of Bradford County; mandamus to compel building of, ...	xv
Highway routes; building of by Highway Commissioner, ...	241
BUCKET SHOPS.	
Prosecution, ...	viii
BUCKS COUNTY.	
Danboro and Plumsteadville Turnpike Road Company vs., ...	xv
BUILDING AND LOAN ASSOCIATIONS.	
Banking Commissioner has power to determine whether operations are dangerous or unauthorized. Cannot insure lives of members so that stock matures at their death, ...	278
Full paid or pre-paid stock, issuance of, ...	276
Proceedings instituted by Attorney General against, Schedule I, ...	643
BULLETINS.	
Automobile licenses, monthly; distribution by Highway Commissioner, ...	240
BUREAUS.	
Medical Education and Licensure; cannot establish rule limiting final examination to one trial, ...	590
Medical Education and Licensure; re-examination of applicants for license to practice medicine, ...	603
BRYAN, WILLIAM J., OPINION TO.	
Workmen's Compensation Act not in conflict with treaty with Italy as to responsibility for injuries or death, ...	548
BUSINESS IN DEPARTMENT.	
Summary of, ...	v
C.	
CALIFORNIA STATE NORMAL SCHOOL.	
Manner of reducing insurance matter of decision for Board of Trustees, ...	559
CAMBRIA STEEL CO.	
Minor; attendance at school and employment in alternate weeks, ...	353
CANDY.	
Glazing of prohibited, ...	499
CAPITOL PARK EXTENSION.	
Condemnation proceedings in connection with; Schedule E, ...	638
Minute book of proceedings to be kept and to be open for public inspection, but request for inspection of memoranda of appraisements, etc., may be refused, ...	558
Paying awards made in payment of lands taken by condemnation, ..	588
CARNIVAL COMPANIES.	
Not exempt from payment of license tax laid by Act of 1913, ...	158
CATFISH ISLAND.	
Purchase of by Howard Fryle, ...	584
CATSUP.	
Violation of Pure Food Laws; original packages, ...	489
CENTRAL TRUST COMPANY, PITTSBURGH.	
Liquidation of, ...	ii
CHARITIES, STATE BOARD OF, OPINION TO.	
Jail; correction of objectionable conditions in, ...	555
Western State Hospital for Insane; Building Commission may select any site west of Allegheny Mountains, ...	585

	Page.
CHARTERS.	
Bank; approved by Attorney General; Schedule B, ...	629
Benscreek Water Co.; chartered to supply one municipal division cannot secure right for whole of adjacent municipal division, ...	70
Employers Mutual Liabilities Insurance Associations; subscribers need not personally sign and acknowledge articles of association, ...	214
Insurance Company; approved by Attorney General, Schedule B, ...	629
Penn Mutual Life Insurance Company; had power to add to contract a monthly payment during a disability period, ...	223
Scranton Workers' Co-operative Association; payment of bonus before incorporation, ...	61
Sterling Coal Company and Sterling Smokeless Coal Company; duty of Secretary of the Commonwealth in determining similarity of names, ...	83
CHECK-WEIGHMAN.	
Scales; authority to test, ...	410
CHILD LABOR.	
Bowling Alleys; employment of minors in, ...	309, 388
Cigars; employment of minors under sixteen in manufacture of, ...	365
Employment certificates; not necessary for minor between the age of fourteen and sixteen when employed on a farm or in domestic service, ...	306
Employment of minor as water boy in a railroad track repair gang, ..	373
Nurseries; employment of children falls within exception of Act of 1915, ...	505
Public Instruction, Superintendent of; Answers to nineteen questions, School; attendance at and employment in establishment in alternate weeks, ...	297
Working certificates obtained under Acts of 1909 and 1911, valid after Jan. 1, 1916, ...	353
	351
CHILDREN.	
Unborn child; pension may not be granted to mother of, ...	597
CIGARS.	
Minors under sixteen; employment of in manufacture, ...	365
COATESVILLE WATER SUPPLY.	
Action of Commissioner of Health upon application to change, ...	332
COLLATERAL INHERITANCE TAX.	
Attorney making appraisement of estate not to receive fee or reward from administrator, ...	164
COLLECTIONS.	
Schedule J, ...	644
COLUMBIA NATIONAL BANK.	
Escheats; Act of June 7, 1915, declared constitutional, ...	x
COMMERCIAL FERTILIZERS.	
Adding figures "1916" to trade name does not make such a new brand, ...	565
COMMUTATION AND PAROLE.	
Bevilhimer, Harry; Western Penitentiary; commission of felony while released on parole, ...	512
Detainer; effect of lodgment of upon prisoner's application for parole, ...	526
Harris, William; Western Penitentiary; parole of prisoner charged with crime in another State, ...	516
O'Gorek, George; Eastern Penitentiary; commission of felonious entry while on parole, ...	537

COMMUTATION AND PAROLE—(Continued).

Prisseumti, Bruno; Eastern Penitentiary; conviction of inciting to riot and trespass while on parole, ...	538
Walsh, John; Eastern Penitentiary; sentenced on second offense during period of commutation, ...	515
Welsh, Herbert; Eastern Penitentiary; Act of May 10, 1909, does not apply to prisoners sentenced prior to June 30, 1909, ...	528

COMMISSIONS.

Capitol Park Extension; minute book of proceedings to be kept and to be open for public inspection; but request for inspection of memoranda of appraisements, etc., may be refused, ...	558
Capitol Park Extension; paying awards made in payment of lands taken by condemnation, ...	588
Game; notifying sheriffs as to unlawful release, ...	422
Industrial Home for Women; within power to enter into contract to cultivate and farm portion of land purchased, ...	581
Muncy Industrial Home for Women; may ask for new bids when amount of bid exceeds sum available for building purposes, ...	552
Navigation, Board of Commissioners of; master of outward-bound vessel may choose any licensed pilot, ...	572
Panama-Pacific Exposition; payment out of appropriation of expenses of Second Pennsylvania Regiment to Exposition, ...	567
Pennsylvania Oral School; transfer to Commonwealth, ...	543
Prison Labor; entire appropriation of 1915 for purchase of material, etc., for prisons not to be turned over to, ...	132
Prison Labor; Highway Commissioner may let contract to, ...	267
Prison Labor; delegation to of supervision of employment and compensation for convict labor, ...	518
Prison Labor; employment and compensation of prisoners in correctional institutions, ...	520
Prison Labor; appropriation of Act of 1915, to be known as the Manufacturing Fund, ...	523
Prison Labor; sale of manufactures to any departments or in any county of Commonwealth, ...	527
Public Service; payment for services of experts out of appropriation, ...	105
Public Service; does not have power to prevent change of rates becoming effective after thirty days from filing of a rate schedule, ..	445
Revenue Commissioners; approval of banking institution as depository for Workmen's Insurance Fund, ...	189
Robert Morris Monument; payment to artists for plaster models exhibited in competition, ...	114
Soldiers' Vote; powers, compensation and duties of, ...	30
Western State Hospital for Insane; selection of any site west of Allegheny Mountains, ...	585
Workmen's Insurance Fund; appropriation to does not provide for insurance of employes of governmental agencies, ...	194

CONDEMNATION PROCEEDINGS TO DETERMINE AMOUNT OF DAMAGES FOR TAKING LAND IN CONNECTION WITH CAPITOL PARK EXTENSION.

Schedule E, ...	638

CONDITIONAL SALES.

Fifty cent tax on original writs not demandable by Auditor General, ..	165

CONEWAGO GAS COMPANY.

Payment of bonus, ... 96

CONNER, WILLIAM.

Separate bonds as Register of Wills and Clerk of Orphans' Court,
Allegheny County, ... 77

CONSTITUTIONAL AMENDMENTS.

Senate Resolution 1406, not to be advertised and printed on official
ballot for 1915 November election, ... 62

CONSTITUTIONALITY OF STATUTES.

Anthracite coal; June 27, 1913; unconstitutional, ... xi

Cold Storage Act; section declared unconstitutional, ... xii

Escheat Law of June 7, 1915; sustained, ... x

Insurance companies; Act requiring filing of schedule of rates before
being licensed; pending, ... xiii

Judge; mandamus to compel hearing of cases from Clinton County;
Act of May 14, 1915, unconstitutional, ... xiii

Lunatics; fixing liability of estates; June 1, 1915, held constitutional, ix

Motor vehicles; appropriating to Highway Department moneys de-
rived from registration and licenses; June 7, 1913; held constitu-
tional, ... ix

Public Service Company; amendment of 1915 constitutional, ... xiii

Pure Food Law; constitutional, ... xii

Transfer of shares of stock; Act of June 4, 1915, not unconstitutional, 119

CONTRACTS.

Automobile tags; Highway Commissioner may let contract to Prison
Labor Commission, ... 267

Fidelity of persons; issuance in violation of provisions of Act of
June 1, 1911; David Barlow; NuBone Corset Company, ... 231

Foreign life insurance company; president may make contract for
commission on premiums if not detrimental to Pennsylvania insur-
ants, ... 233

Industrial Home for Women; within power of Commission to enter
into to cultivate and farm portion of land purchased, ... 581

Lunatic Hospital, Harrisburg; supplies; making of for period shorter
than one year, ... 582

Penn Mutual Life Insurance Company; right to add to contract a
monthly payment during a disability period, ... 223

Public Printing, contractor for; partial failure to perform work after
total loss of plant by fire, ... 465

Public Printing; contract not to be extended beyond expiration, ... 470

Road building; Highway Department not to exceed appropriation plus
shares due Commonwealth by counties, townships, etc., ... 259

CORPORATIONS.

American Druggists Fire Insurance Company; licensing of without
filing schedule of rates, ... xiii

Annual reports; Auditor General not to grant extension of thirty days
time for filing, ... 148

CORPORATIONS.

Banking Commissioner; failure of directors to acknowledge letters,.. 287

Benscreek Water Co.; chartered to supply one municipal division can-
not secure right for whole of adjacent municipal division, ... 70

Bonus on capital stock; claim discharged by judicial sale of property
and franchises of corporation, ... 166

	Page.
CORPORATIONS—(Continued).	
Building and Loan Association; issuance of full paid or prepaid stock,	276
Building and Loan Associations; Banking Commissioner has power to determine if operations are dangerous or unauthorized. Cannot insure lives of members so that stock matures at their death, ...	278
Capital stock reports; Auditor General may extend time for filing for thirty days after March 31, ...	170
Coal companies; rendering of bills to under Workmen's Compensation Law for treatment of injured employes, ...	575
Columbia National Bank, Union Trust Company of Pittsburgh and Germantown Trust Co. Escheat Act of 1915 declared constitutional,	x
Conewago Gas Company; having bought properties and franchises of other corporations, not required to pay again bonus on capital stock upon which vendor companies had paid, ...	96
Crew-Levick Oil Company; scope of Mercantile License Tax Act of 1899, ...	xvi
Employers Mutual Liabilities Insurance Associations; not necessary for subscribers personally to sign and acknowledge articles of association, ...	214
Employees as stockholders; application of Act of June 2, 1913, ...	384
Equitable Life Assurance Association of the United States; taxation of premiums, ...	xi
Escheat Act of 1915 complete system for escheat of money held by persons or corporations to which it applies, ...	130
Fidelity and Deposit Company of Maryland; taxation of premiums, ..	xii
Foreign life insurance company; president may make contracts for commission on premiums if not detrimental to Pennsylvania insurers, ...	233
Hydro-electric companies; not taxable on gross receipts if not engaged in electric lighting; though selling current to electric light companies, ...	172
Insurance companies; deposit of securities with State Treasurer, ...	200
Insurance; re-sale of life insurance by former employes, ...	234
Metropolitan Life Insurance Co., taxation of dividends, ...	xi
National Bank; funds invested in stock of Federal Reserve Bank not subject to taxation, ...	99
National Bank not to be taxed under Act of 1907 if exercising powers conferred by United States Government, ...	108
National Banks included in Escheat Law, ...	117
National Banks; tax upon sale or transfer of shares of stock, ...	119
National Bank may become sole surety for township treasurer; but cannot be elected as, ...	239
Obligations issued by private corporations to resident trustees for non-resident persons or corporations liable to taxation, ...	161
Penn Mutual Life Insurance Co., taxation of dividends, ...	x
Petroleum Telephone Company, foreign corporation, not allowed offset on bonus already paid, as such foreign corporation on capital in Pennsylvania, ...	593
Reports; acceptance by Auditor General when filed before last day of March, ...	151
Savings and Loan Associations; fee of 5 per cent. illegal unless company complies with provisions of Act of 1905, ...	289
Scranton Workers' Co-operative Association, payment of bonus before incorporation, ...	61

CORPORATIONS—(Continued).

Secretary of the Commonwealth; determining similarity of names; Sterling Coal Company and Sterling Smokeless Coal Company, ...	83
Shenango Furnace Company; taxability on assets held outside of State to be submitted to court, ...	175
Street railway may be compelled to place its tracks at grade established by Highway Department and may be indicted for failure to do so, ...	249
Street railway and electric light companies have right to acquire stock and securities of light, heat and power companies, ...	441
Taxation of obligations issued by a domestic corporation to a non-resident trustee for a resident of Pennsylvania, ...	179
Theatrical Society, amateur, corporation of first class but not for profit, liable to license tax; Little Theatre, Philadelphia, ...	184
Title insurance companies subject to supervision of Banking Commissioner; withdrawal or acceptance of Act of 1889, ...	273
Trust companies dealing as real estate brokers subject to license tax, ...	93
Trust companies subject to penalty prescribed by Act of 1907 for failure to file reports if tax is not paid within specified period, ...	133
Trust companies; Act of 1907 mandatory upon Auditor General to impose penalty for non-payment of tax, ...	143
Trust company may become sole surety for township treasurer; but cannot be elected as, ...	239
Trust companies; may maintain sub-offices or sub-agencies for restricted purpose of receiving and paying out moneys, ...	281
Water companies; Highway Commissioner may require to remove pipes under improved portions of roads and relocate them under unimproved portions, ...	248
Westinghouse Air Brake Co., taxation of capital stock, ...	x

COTTAGE STATE HOSPITAL.

Opium Act, Harrison; purchases of drugs under, ...	545

COUNTIES.

State-aid highways; apportionment of appropriations, ...	257
State Highways; agreement to pay share of costs of reconstructing or improving, ...	265

CREW-LEVICK OIL COMPANY.

Mercantile License Tax Act of 1899, scope of, ...	xvi

CROWL, A. B., COMMONWEALTH v.

Ice cream; prosecution for sale of, ...	xii

CULVER v. COMMISSIONERS OF BRADFORD COUNTY.

Bridge; mandamus to compel building of, ...	xv

CUNNINGHAM PROPERTY.

Capitol Park Extension Commission; paying awards made in payment for lands taken by condemnation, ...	588

D.

DAIRY AND FOOD COMMISSIONER, OPINIONS TO.

Candy; glazing of prohibited, ...	499
Catsup; shipped from New York; violation of Pure Food Laws, ...	489
Flour; legality of bleaching process, ...	487-488
Oleomargarine; merchant cannot take orders in cities and towns other than one designated in his license, ...	497

	Page.
DANBORO AND PLUMSTEADVILLE TURNPIKE ROAD COMPANY.	
Bucks County v., ...	xv
DEMOCRATIC NATIONAL COMMITTEEMEN.	
Method of electing and certifying by Secretary of the Commonwealth,	78
DENTAL COUNCIL AND BOARD OF DENTAL EXAMINERS.	
All dentists to be registered annually by, ...	562
DENTISTS.	
Registration of annually by Dental Council and Dental Examiners, ..	562
DIXMONT HOSPITAL FOR INSANE.	
Architect's fees must be based on cost of actual work accomplished, ..	103
DOGS.	
Hunting, use of in, ...	425
Ownership or possession of by unnaturalized foreigners prohibited, ...	427
Taxation in Crawford County, ...	427
Taxation of in Warren County, ...	432
DOUGHERTY, MISS FANNIE A., OPINION TO.	
Cottage State Hospital; Harrison Opium Act, purchases of drugs under, ...	545
DRAKE, MRS. E. L.	
Claim of administratrix for gratuity, ...	198
F.	
EDUCATION.	
Free Public Library; school board may make annual contribution to,	316
Industrial; employment certificates not necessary for a minor between the age of fourteen and sixteen employed on a farm or in domestic service, ...	306
Industrial; minors between age of fourteen and sixteen may be employed in a Y. M. C. A. bowling alley, ...	309
School buildings; plans and specifications for not public records, but Board of Education may permit inspection, ...	312
School District; increase of indebtedness, ...	310
State Board of; may expend part of appropriation to equalize educational advantages in different parts of Commonwealth, ...	325
Teachers; right of school directors or district superintendents to require professional reading, ...	295
ELECTIONS.	
Constitutional amendments; Senate Resolution 1406 not to be advertised and printed on official ballot for 1915 November election, ...	62
Democratic National Committeemen; method of electing and certifying by Secretary of Commonwealth, ...	78
Erie Judicial contest; sole candidate not receiving more than one-half the total of ballots cast in district cannot be certified as sole nominee,	67
Fifty per cent. clause in Judicial Act of June 18, 1915; method of determination, ...	63
Mutchler, Asher; Alderman, Easton; transmission of commission to Governor, ...	71
National Party Convention; giving by Secretary of the Commonwealth of advance information as to party choice for President to candidate for delegate, ...	79
National Party Convention, Democratic; acceptance by Secretary of the Commonwealth of return of Commissioners of Allegheny County as to election of delegates, ...	82
Qualifications of voters in U. S. Military Service, ...	26
Vote of Pennsylvania soldiers in military service of United States.	20

	Page.
EMPLOYERS MUTUAL LIABILITY INSURANCE ASSOCIATIONS.	
Not necessary for subscribers personally to sign and acknowledge articles of association, ...	214
EMPLOYMENT AGENCY.	
Boarding house for seamen, in connection with providing masters or owners of vessels with seamen, ...	356
Fee; payment of to agent who has failed to secure employment, ...	363
Seamen's Boarding House Keepers' Association defined as, ...	368
EMPLOYMENT CERTIFICATES.	
Not necessary for minor between the age of fourteen and sixteen employed on a farm or in domestic service, ...	306
EQUITABLE LIFE ASSURANCE ASSOCIATION OF THE UNITED STATES.	
Taxation of premiums of foreign insurance companies, ...	11
EQUITY CASES.	
Schedule G, ...	640
ESCHEAT.	
Adams, J. K., resident of New York, estate of, ...	174
Auditor General not justified in paying hire of additional clerks in carrying out provisions of Act of June 7, 1915, ...	140
Columbia National Bank, Union Trust Company of Pittsburgh and Germantown Trust Co. Act of June 7, 1915, relating to escheats declared constitutional by Dauphin County Court, ...	x
National banks included in, ...	117
EXECUTIVE CONTROLLER, OPINIONS TO.	
Capitol Park Extension Commission; payment of awards made in payment of lands taken in condemnation, ...	588
State College, Treasurer of; cost of bond not to be paid by Superintendent of Public Grounds and Buildings, ...	560
Workmen's Compensation Bureau; payment of rental of offices for out of appropriation made for that specific purpose, ...	569
EXPENSES.	
Public Accountants, Board of, traveling expenses, ...	605
Traveling; opinion addressed to several Departments on various phases of payment of, ...	614
F.	
FAIRMAN, JOHN A.	
Recorder of Deeds, Allegheny County; custody of bond, ...	74
FARVIEW CRIMINAL INSANE HOSPITAL.	
Placing of insurance upon buildings, ...	459
FEEBLE-MINDED INSTITUTION OF WESTERN PENNSYLVANIA.	
Power House; applying insurance money received from destruction of old one to erection of new, ...	454
FEES.	
Automobile license; available for Highway Department, ...	13
Commercial fertilizers; adding figures "1916" to trade name does not make such a new brand, and manufacturers must pay fee, ...	565
Dixmont State Hospital for Insane; architect's fees to be based upon cost of actual work accomplished, ...	103
Employment Agencies; payment of fee to agent who has failed to secure employment, ...	363
Motor vehicles; Com. ex rel v. Auditor General and State Treasurer to test constitutionality of Act appropriating fees to Highway Department, ...	ix

	Page.
FEES—(Continued).	
Savings and Loan Associations; fee of 5 per cent. illegal unless company complies with provisions of Act of 1915, ...	289
Seranton Workers' Co-operative Association; payment of bonus fees, ..	61
FEMALE EMPLOYEES.	
Holiday season; hours of labor during, ...	390
Hours lost by break down of power plant may be lawfully made up by overtime work, ...	359
Telegraph and Telephone Operators; days of employment in week, ...	346
Work; taking home to be done at night, ...	347
FERTILIZERS.	
Adding figures "1916" to trade name does not make such a new brand,	565
FIDELITY AND DEPOSIT COMPANY OF MARYLAND.	
Taxation of premiums, ...	xii
FINES AND PENALTIES.	
Banks and trust companies; failure to file reports within prescribed time, ...	168
Capital stock reports; resettlements to be made if penalties have been imposed on corporations for failure to file reports, ...	170
Sunday Law; entire fine payable to Commonwealth, ...	104
Trust companies subject to penalty for failure to file reports prescribed by Act of 1907 if tax is not paid within specified period, ...	133
Trust companies; Act of 1907 mandatory upon Auditor General to impose penalty for non-payment of tax, ...	143
FIRE MARSHAL, OPINIONS TO.	
Deputy State Fire Marshals, employment of, ...	602
Notice to occupant or tenant and owner of condemned building to permit of an appeal, ...	608
Salaries of Deputy Fire Marshals; appropriation for cannot be used for payment of fees and mileage of assistants, ...	597
FIRE WARDEN.	
Appointment of alien as Local Forest Fire Warden, ...	506
FISHERIES, COMMISSIONER OF.	
Pollution of streams, ...	ii
FISHERIES, OPINIONS TO COMMISSIONER OF.	
Reopening of stream for fishing, ...	400
Summary Convictions; reversal of sentence, rearrest and retrial, ...	397
FIRST NATIONAL BANK OF PERRYOPOLIS, FAYETTE COUNTY.	
Not subject to taxation under Act of 1907, ...	108
FLOUR.	
Bleaching of; legality of process, ...	487-488
FOODS.	
Candy; glazing of prohibited, ...	499
Catsup; original packages; violation of Pure Food Laws, ...	489
Flour; legality of bleaching process, ...	487-488
Oleomargarine; merchant cannot take orders in cities and towns other than one designated in his license, ...	497
FOREST RESERVES.	
Hunting upon without license not permitted, ...	429
FOREST FIRE WARDEN, OPINION TO.	
Alien; appointment of as Local Forest Fire Warden, ...	506
FORESTRY, OPINION TO COMMISSIONER OF.	
Nurseries; employment of children within exception of Child Labor Law of 1915, ...	505

FRANKLIN FILM MANUFACTURING COMPANY.

Motion Pictures Act of 1915; construction of word "appeal,"	xvi

G.

GAME COMMISSION, OPINIONS TO.

Dogs for hunting; use of, ...	425
Dogs; no Act for taxing of in Crawford County, ...	427
Dogs; prohibition of ownership or possession of by unnaturalized foreigners, ...	427
Dogs; taxation of in Warren County, ...	432
Forest Reserves; no hunting upon without a license, ...	429
Game Deputies; not entitled to half the penalties recovered for violation of the fish laws, ...	421
Sheriffs; unlawful release of prisoners violating game laws, ...	422
Violation of Game Laws; duty of State officer to report to Commission, ...	423

GAME LAWS.

Commission should notify sheriffs as to unlawful release of prisoners, ...	422
Dogs for hunting; use of, ...	425
Dogs; no Act for taxing of in Crawford County, ...	427
Dogs; prohibition of ownership or possession of by unnaturalized foreigners, ...	427
Dogs; taxation of in Warren County, ...	432
Special Game Deputies; not entitled to half penalties recovered for violation of, ...	421
Violations of; duty of State officer to report, ...	423

GENERAL INSURANCE COMPANY.

Not to be licensed without compliance with Act of June 1, 1911, as to amount and investment of capital, ...	210

GERMANTOWN TRUST COMPANY.

Escheat Act of 1915 declared constitutional, ...	x

GILBERT, SPENCER C., OPINION TO.

Capitol Park Extension Commission; minute book of proceedings to be kept and be open for public inspection, but request for inspection of memoranda of appraisements, etc., may be refused, ...	558

GLENN, MISS HELEN, OPINIONS TO.

Mothers' Assistant Fund, Supervisor of; part of appropriation not used in first half of period available for second half, ...	587
Mothers' Assistance Fund; pension may not be granted to mother of an unborn child, ...	597

GOVERNOR, OPINIONS TO.

Automobile license fees; appropriation by Act of 1913 to Highway Department, ...	13
Bill, Legislative; power to recall disapproval, ...	9
Legislation; only such joint or concurrent resolutions as make legislation or have the effect of legislation need be submitted to Governor for approval, ...	2
Legislation; return of a bill on Monday when required day falls on Sunday, ...	1
National Guard; payment of expenses of suppressing riot to be paid out of funds appropriated to Adjutant General, ...	18
Pennsylvania Anti-Vice Society; legal authority for appointment of special policemen, ...	16
Vote of Pennsylvania soldiers in military service of the United States, ...	20

	Page.
H.	
HAMS.	
Packages to be plainly and conspicuously marked, ...	435
HARRIS, WILLIAM.	
Parole by Western Penitentiary into custody of officers of another State, ...	516
HARVEY AUTOMATIC SAFETY GATES.	
Lawful to use in coal mines of State, ...	408
HAZLETON COLLIERY NO. 1.	
Closing of Slope No. 8, ...	416
HAZLETON HOSPITAL.	
Workmen's Compensation; making reasonable charge against employes for treatment of injured employe during first fourteen days of disability, ...	575
HEALTH, OPINIONS TO COMMISSIONER OF.	
Appropriation; return of to State Treasury when not immediately needed, ...	332
Coatesville Water Supply; action upon application to change, ...	332
Medical Inspection of Public Schools; cost cannot be paid from appropriation for overcoming epidemics of disease, etc., ...	333
Revenue Stamps; not necessary to affix to containers, ...	331
HEARINGS BEFORE ATTORNEY GENERAL.	
Summary of, ...	vi
Schedule A, ...	626
HECK, ALBERT S., COMMONWEALTH v.	
President Judge, 55th Judicial District; mandamus to compel hearing of cases from Clinton County, ...	xiii
HERTZOG, W. S., OPINION TO.	
California State Normal School; manner of reducing insurance matter of decision for Board of Trustees, ...	559
HESS, L. FLOYD, OPINION TO.	
Public Accounts, Secretary Board of; foreign corporation, deciding to incorporate as Pennsylvania corporation, not allow an off-set on bonus, which as a foreign corporation, it paid on capital employed in Pennsylvania; Petroleum Telephone Co., ...	593
HIGHWAY COMMISSION, OPINIONS TO.	
Automobile, stolen; not covered by State Insurance Fund, ...	268
Automobile tags; letting contract to Prison Labor commission, ...	267
Automobile licenses; owner can operate any motor vehicle and is not confined to particular car registered in his name; but every paid operator, employe, owner or custodian must take out license, ...	255
Bridges along highway routes, building of, ...	241
Bulletins; free distribution to mayors, burgesses, etc., ...	240
Borough; Commissioner not permitted to reconstruct or improve as a State-aid highway section of route lying within a borough, ...	261
Contracts for building roads not to exceed appropriation plus shares due Commonwealth by counties, etc., ...	259
County and township roads, distinction between; routes running through boroughs; work on, ...	246
State-aid highways; apportionment of appropriation for repair of, ..	257
State-aid highways; not authorized to build in townships, ...	264

	Page.
HIGHWAY COMMISSION, OPINIONS TO—(Continued). —	
State highways; agreement by counties, townships, boroughs and incorporated towns to pay shares of cost of reconstructing or improving, ...	265
Street railway, occupying State highway, may be compelled to place tracks at grade established by Department, ...	249
Township treasurer; no authority to elect trust company or national bank as, ...	239
Water company pipes; right to require company to remove from under improved portion of road and relocate under unimproved portion, ..	248
HIGHWAYS.	
(See Roads and Highways).	
HOFFMAN, HARRY B.	
Validity of appraisements as Mercantile Appraiser of Dauphin County, ...	129
HOISTING ENGINEERS.	
Hours of labor in mines, ...	417
Mines; Act of 1891 does not require constant charge, ...	405
HOLIDAY SEASON.	
Female employes; hours of labor during, ...	390
HORWITZ, GEORGE Q., OPINIONS TO.	
Industrial Home for Women; within power of Commission to enter into contract to cultivate and farm portion of land purchased, ...	581
Muncy Industrial Home for Women; asking for new bids when amount of bid exceeds sum available, ...	552
HOSPITALS AND OTHER INSTITUTIONS.	
Anesthetics; administration of by trained nurse, ...	619
Cottage State Hospital; purchase of drugs under Harrison Opium Act, ...	545
Danville Insane Hospital; payment by Auditor General for installing fire apparatus, ...	137
Dixmont; architect's fees to be based on cost of actual work accomplished, ...	103
Farview Criminal Insane Hospital; placing of insurance upon buildings, ...	459
Hazleton Hospital justified in making reasonable charge against employer for treatment of injured employe during first fourteen days of disability, ...	575
Industrial Home for Women; within power of Commission to enter into contract to cultivate and farm portion of land purchased, ...	581
Muncy Industrial Home for Women; fixing compensation of architect, ...	109
Muncy Industrial Home for Women; Commission may ask for new bids when amount of bid exceeds sum available for building purposes, ...	552
Lunatic Hospital, Harrisburg; making of contracts for supplies for period shorter than one year, ...	582
Nanticoke State Hospital; moneys received for care and maintenance of patients to be reported to Auditor General and not used for additions to hospital, ...	552
Norristown State Hospital for Insane; bond of treasurer being sufficient, not necessary to bond subordinates, ...	601
Pennsylvania State Lunatic Hospital, Harrisburg; trustees have authority to grant City of Harrisburg permission to construct sanitary sewer through grounds, ...	553

	Page.
HOSPITALS AND OTHER INSTITUTIONS—(Continued).	
Warren State Hospital; Treasurer need not give additional bond to cover disbursements made by subordinate officers or employes, ...	461
Warren State; Workmen's Insurance Fund; services to employes insured in, ...	610
Western State Hospital for Insane; Building Commission may select any site west of Allegheny Mountains, ...	585
HOURS OF LABOR.	
Bell Telephone Co.; schedule of, ...	341
Female employes; time lost by break down of power plant may be lawfully made up by overtime work, ...	359
Female employes during holiday season, ...	390
Hoisting engines in mines, ...	417
Hoisting engines in mines; "constant attendance" not required, ...	405
Prisons; employment of inmates, ...	520
Schools; attendance at and employment in establishment in alternate weeks, ...	353
Telegraph and Telephone Operators, ...	346
HYDRO-ELECTRIC COMPANIES.	
Gross receipts; not taxable on if not engaged in electric lighting, though selling current to electric light companies, ...	172
I.	
INDUSTRIAL BOARD.	
Rules and regulations; not mandatory to publish in daily newspaper, ...	343
INDUSTRIAL BOARD, OPINIONS TO.	
Boilers used in plant for generating electricity and steam in collieries; reports of inspection need not be forwarded to Department of Labor and Industry, ...	371
Christmas week; hours of labor for female employes, ...	390
INDUSTRIAL EDUCATION, DIRECTOR OF, OPINION TO.	
Child Labor Law; Answers to nineteen questions, ...	297
INDUSTRIAL ESTABLISHMENTS.	
Commissioner of Labor and Industry has right to require statement of amount of daily wages, etc., ...	340
INDUSTRIAL HOME FOR WOMEN.	
Within power of Commission to enter into contract to cultivate and farm portion of land purchased, ...	581
INSANE.	
Indigent; collections for maintenance of, ...	iv
Maintenance of; Legal aspect, ...	ix
INSANE, NORRISTOWN STATE HOSPITAL FOR.	
Bond of treasurer being sufficient, not necessary to bond subordinates, ...	601
INSANE, WESTERN STATE HOSPITAL FOR.	
Building Commission may select any site west of Allegheny Mountains, ...	585
INSPECTION, BUREAU OF, OPINIONS TO.	
Bowling alley; unlawful for keeper to permit minor to be present as patron, etc., ...	388
Labor and Industry; making up of overtime by female employe when there has been a breakdown of power plant, ...	359
Mattresses; no violation to sell unlabeled and uncertified second-hand mattresses to those who use filling for making horse collars, etc.,...	361
Safety of employes; provisions of Act of 1913 applicable to business operated by corporation whose employes are its own stockholders, ...	384

INSPECTORS.

Labor and Industry; allowance of price of meals eaten elsewhere than at residences, ...	339
Mines; retirement, Act of 1915 does not apply to, ...	407
Mines; certificate given by Board of Examiners to be filed with County Commissioners, ...	414

INSURANCE.

Automobile, stolen, not covered by State Insurance Fund; Highway Department, ...	268
American Druggists Fire Insurance Company; licensing of without filing schedule of rates, ...	xiii
American Union Fire Insurance Company; settlement for tax on gross premiums should be made on basis of giving credit for premiums paid for re-insurance, ...	221
Barlow, David; issuance of contracts guaranteeing fidelity of persons in violation of provisions of Act of June 1, 1911, ...	217, 231
Building and Loan Associations cannot insure lives of members so that their stock matures at their death, ...	278
California State Normal School; manner of reducing matter for decision of Board of Trustees, ...	559
Charters Approved by Attorney General; Schedule B, ...	629
Contract for commission on premiums; president of foreign life company may make when not detrimental to Pennsylvania insureds, ..	233
Employers Mutual Liability Insurance Associations; not necessary for subscribers personally to sign and acknowledge articles of association, ..	214
Equitable Life Assurance Association of the United States; taxation of premiums, ...	xi
Farview Criminal Insane Hospital; placing of upon buildings, ...	459
Fidelity and Deposit Company of Maryland; taxation of premiums, ..	xii
General Insurance Company not to be licensed without compliance with Act of June 1, 1911, as to amount and investment of capital, ..	210
Government agencies; General appropriation to Workmen's Insurance Fund does not provide for insurance of employes of, ...	194
Metropolitan Life Insurance Co., taxation of dividends, ...	xi
Penn Mutual Life Insurance Co., dividends, taxation of, ...	x
Penn Mutual Life Insurance Company; right to add to contract a monthly payment during a disability period, ...	223
Proceedings instituted by Attorney General against companies; Schedule I, ...	643
Rebates on premiums forbidden, ...	207
Re-sale of life insurance by former employe, ...	234
State Treasurer; deposit of securities of insurance companies, ...	200
Title Insurance companies subject to supervision of Banking Commissioner; withdrawal of acceptance of Act of 1889, ...	273
Workmen's Compensation; Insurance Commissioner has supervisory control over policies, ...	225
Workmen's Compensation Board; exemption of employer from carrying of, ...	381
Workmen's Insurance Fund; appropriation of 1915 not for purchase of, ...	139
Workmen's Insurance Fund; approval of banking institution as depository for, ...	189
Workmen's Insurance Fund; setting aside of surplus, ...	378

	Page.
INSURANCE—(Continued).	
Workmen's Insurance Fund; not necessary to attach revenue stamps to policies, . . . ;	380
Workmen's Insurance Fund; Warren State Hospital; services rendered to employes insured, ...	610
INSURANCE COMPANY CHARTERS APPROVED.	
Schedule B, ...	629
INSURANCE COMMISSIONER, OPINIONS TO.	
American Union Fire Insurance Company; settlement for tax on gross premiums should be made on basis of giving credit for premiums paid for re-insurance, ...	221
Barlow, David; issuance of surety bonds under name of Keystone Bonding Company held a misdemeanor, ...	217
Barlow, David; contracts violating fidelity of persons violation of Act of June 1, 1911, ...	231
Employers Mutual Liability Insurance Associations; not necessary for subscribers personally to sign and acknowledge articles of association, ...	214
Foreign life insurance company; president may make contract for commission on premiums not detrimental to Pennsylvania insurants, ...	233
General Insurance Company not to be licensed without compliance with Act of June 1, 1911, as to amount and investment of capital, ...	210
Penn Mutual Life Insurance Company; right to add to contract a monthly payment during a disability period, ...	223
Rebates on premiums forbidden, ...	207
Resale of life insurance by former employe, ...	234
Workmen's Compensation insurance; supervisory control over, ...	225
INSURANCE COMPANIES, PROCEEDINGS AGAINST.	
Schedule I, ...	643
INTERNAL AFFAIRS, OPINION TO DEPUTY SECRETARY.	
Islands in navigable rivers; not for best interests of State to allow ownership to be acquired by private individuals, ...	584
ISLANDS.	
Navigable rivers; acquirement of ownership by private individuals, ...	584
ITALY, TREATY WITH.	
Workmen's Compensation Act not in conflict with, ...	548
J.	
JOHNSON, ISAAC, OPINION TO.	
Pennsylvania Oral School; transfer to Commonwealth, ...	543
JUDGES.	
Eric judicial contest; sole candidate not receiving more than half the total of ballots cast in district cannot be certified as sole nominee, ...	67
Heck, Albert S.; mandamus to compel hearing of cases from Clinton County, ...	xiii
Fifty per cent. clause in Judicial Act of June 18, 1915; method of determination, ...	63
K.	
KEYSTONE BONDING COMPANY.	
Issuance of surety bonds held a misdemeanor, ...	217

L.

LABOR AND INDUSTRY, OPINIONS TO DEPARTMENT OF.

Bell Telephone Company; schedule of work, ...	341
Boiler Inspection; reports concerning plant for generating electricity and steam in collieries need not be forwarded to Department, ...	371
Bowling Alleys; employment of minors in, ...	388
Child Labor Law; working certificates obtained under Acts of 1909 and 1911, valid after Jan. 1, 1916, ...	351
Child Labor; arrangement for employment in establishment and attendance at school in alternate weeks, ...	353
Cigars; employment of minors in manufacture of, ...	365
Corporation whose employes are its own stockholders; Application of Act of 1913, ...	384
Employment agency; the keeping of boarding house for sailors and engaging in business of providing masters or owners of vessels with seamen construed as employment agency, ...	356
Employment Agencies; payment of fee to agent who has failed to secure employment, ...	363
Female employes; taking of work home to be done at night, ...	347
Female employes; hours lost by breaking down of power plant, made up by overtime work, ...	359
Female employes; hours during holiday season, ...	390
Industrial Board; not mandatory to publish rules and regulations in daily newspaper, ...	343
Industrial Establishments; right to require statement of amount of daily wages, etc., ...	340
Inspectors; allowance of price of meals eaten elsewhere than at their residences, ...	339
Mattresses; what must be set forth upon tags, ...	349
Mattresses; sale of unlabeled and uncertified second-hand mattresses, where filling is to be used for making horse collars, etc., not a violation of Act of 1913, ...	361
Minors; employment as water boy in a railroad track repair gang, ..	373
Modina, Joe; payment of Workmen's Compensation to, ...	386
Seamen's Boarding House Keepers' Association of Philadelphia defined as employment agency, ...	368
Telegraph and Telephone Operators; days of employment, ...	346

LATHROP, WALTER, OPINION TO.

Hazleton Hospital; making reasonable charge against employer of injured employe for treatment during first fourteen days of disability, ...	575

LEGISLATION.

Bills and calendars; form of not to be changed unless authorized by legislative action, ...	468
Governor; return of bill on Monday when required day falls on Sunday, ...	1
Governor has power to recall disapproval of bill before thirty days have expired, ...	9
House of Representatives; employes entitled to salaries from date when session convened, ...	92
Resolutions, joint or concurrent; only such as have the effect of legislating need be submitted to Governor for approval, ...	2

	Page.
LEHIGH COAL AND NAVIGATION CO.	
Hoisting engineers; Act of 1891 does not require constant charge, ..	405
LEHIGH VALLEY COAL CO.	
Hazleton Colliery No. 1; closing of Slope No. 8, ...	416
LICENSES.	
American Druggists Fire Insurance Company; filing of schedule of rates, ...	xiii
Automatic slot machines taxable under Mercantile License Tax Act of 1899, ...	146
Automobile; every paid operator, employe, owner or custodian must have, ...	255
Automobile, monthly bulletins of; distribution by Highway Commissioner, ...	240
Brokers; First National Bank of Perryopolis, Fayette County, not liable to, ...	108
Carnival companies; not exempt from tax laid by Act of 1913, ...	158
Dogs; no Act for taxing in Crawford County, ...	427
Fees from licensing of motor vehicles appropriated to Highway Department, ...	13
Forest Reserves; hunting upon without license prohibited, ...	429
General Insurance Company; not to be licensed without compliance with Act of June 1, 1911, as to amount and investment of capital, ...	210
Medicine; re-examination of applicants for license to practice, ...	603
Mercantile; dealer in Maryland, hauling pianos into Pennsylvania and selling them, engaged in interstate commerce and not liable to, ..	182
Motor vehicles; suit to test constitutionality of Act appropriating to Highway Department moneys derived from registration of, ...	ix
Oleomargarine; merchant cannot take orders in cities and towns other than one designated in his license, ...	497
Osteopathic; applicant not presenting application before January 1, 1912, cannot practice without, ...	578
Pilot; master of outward bound vessel through Delaware River and Bay may choose, ...	572
Steamship tickets; American Express Company, ...	285
Theatrical Society, amateur, corporation of first class but not for profit, liable to, Little Theatre, Philadelphia, ...	184
Trust companies dealing as real estate brokers subject to tax, ...	93
Undertakers; branch offices may be had by licensed in any part of State, ...	546
LITTLE THEATRE, PHILADELPHIA.	
Liability for theatrical license tax, ...	184
LIVESTOCK SANITARY BOARD.	
Protection of meat within glass cases, ...	482
LUNATIC HOSPITAL, HARRISBURG.	
Contracts for supplies; making of for period shorter than one year, ..	582
Trustees have authority to grant City of Harrisburg permission to construct sanitary sewer through grounds, ...	553

M.

MAIN, FRANK WILBUR, OPINION TO.

Public Accountants, State Board of Examiners; actual traveling expenses cover hotel and incidental expenses of board when absent on official business, ...	605

	Page.
MANDAMUS PROCEEDINGS.	
Schedule F, ...	638
MATTRESSES.	
Sale of to those who will use filling for making horse collars, etc., not a violation of Act of 1913, ...	361
Tags; what must be set forth upon, ...	349
MAXEY, BENJAMIN, MINE INSPECTOR, EIGHTH DISTRICT.	
Salary not to be increased during term of office, ...	153
McCULLOCH, SAMUEL W., DEPUTY INSURANCE COMMISSIONER.	
Appointed Insurance Commissioner by Governor between sessions to receive only salary as Chief and not as Deputy also, ...	149
MEAT.	
Protection of; by Livestock Sanitary Board within glass cases, ...	482
MEDICAL EDUCATION AND LICENSURE.	
Examinations; cannot establish rule limiting final examination to one trial, ...	590
Applicants for license to practice medicine; re-examination of, ...	603
MERCANTILE APPRAISER.	
Validity of appraisements although removed within short time of ap- pointment, ...	129
MERCANTILE LICENSE TAX.	
Piano dealer; resident of Maryland, hauling pianos into Pennsylvania and selling, engaged in interstate commerce and not liable to, ...	182
METROPOLITAN LIFE INSURANCE COMPANY.	
Dividends, taxation of, ...	xi
MILITARY.	
Vote of soldiers in U. S. Service, ...	20
MILITARY BOARD.	
Auditor General; power to sit as member of not to be delegated to deputy, ...	111
MINES, OPINIONS TO DEPARTMENT OF.	
Blasting; Act of 1911 extends to all bituminous coal mines in which blasting is done, ...	411
Check-weighman; authority to test scales in mines, ...	410
Harvey Automatic Safety Gates; lawful to use in mines of State, ..	408
Hazleton Colliery No. 1; closing of Slope No. 8, ...	416
Hoisting engineer; hours of labor, ...	417
Hoisting engineers; Act of 1891 does not require maintenance of an engineer in constant charge, ...	405
Inspectors; certificate given by Board of Examiners to be filed with County Commissioners, ...	414
Mine inspector; not such an employe as is contemplated by retirement, Act of 1915, ...	407
MINES AND MINING.	
Anthracite coal; unconstitutionality of Act to tax; Alden Coal Co.,...	xi
Blasting; Act of 1911 extends to all bituminous coal mines in which blasting is done, ...	411
Boilers in collieries; report of inspection of need not be forwarded to Dept. of Labor and Industry, ...	371
Check-weighman; authority to test scales, ...	410
Harvey Automatic Safety Gates; lawful to use in coal mines of State,	408
Hazleton Colliery No. 1; closing of Slope No. 8, ...	416
Hoisting engineers; Act of 1891 does not require constant charge, ...	405

	Page.
MINES AND MINING—(Continued).	
Hoisting engineers; hours of labor in mines, ...	417
Inspectors; certificate given by Board of Examiners to be filed with County Commissioners, ...	414
Inspectors; continue in office until successors are elected, and cannot receive increase in salary, ...	153
MINORS.	
Minors may be employed in Y. M. C. A. bowling alley, ...	309
MITCHELL, H. W., OPINION TO.	
Warren State Hospital; Workmen's Insurance Fund; services rendered to employes insured in, ...	610
MORTGAGES.	
Non-satisfaction of by Recorder of Deeds by virtue of mere receipt signed by mortgagee, ...	160
MOTION PICTURES.	
Franklin Film Manufacturing Company; construction of word "Appeal" in Act, ...	xvi
MOTHERS' PENSIONS.	
Appropriation not used in first half of period available for use in second half, ...	587
Auditor General to estimate expenses and salaries of officers appointed to carry Act into effect, ...	98
Auditor General not to pay to mother of two children, whom she is unable to support when husband is in insane asylum, ...	89
Non-payment to mothers whose husbands are disabled, or to indigent mothers abandoned by husbands, or to mothers without lawful husbands, ...	101
Pension may not be granted to mother of unborn child, ...	597
MOTOR VEHICLES.	
Appropriation to Highway Department of moneys derived from registration and license fees; suit against Auditor General and State Treasurer to test constitutionality of Act, ...	ix
Appropriation of license fees to Highway Department, ...	13
Automobile stolen not covered by State Insurance Fund; Highway Department, ...	268
License; owner not confined to car registered in his name, but every paid operator, employe, owner or custodian must have license, ...	255
Tags; letting contract to Prison Labor Commission; Highway Commissioner, ...	267
MUNCY INDUSTRIAL HOME FOR WOMEN.	
Architect; fixing compensation of, ...	109
Commission may ask for new bids when amount of bid exceeds fund available for building purposes, ...	552
MUTCHLER, ASHER.	
Alderman, Easton; transmission by Secretary of Commonwealth of commission to Governor, ...	71

N.

NANTICOKE STATE HOSPITAL.

Moneys received for care and maintenance to be reported to Auditor General and not used for additions to hospital, ...	532

	Page.
NATIONAL GUARD.	
Expenses in suppressing riot to be paid out of funds appropriated to the Adjutant General, ...	18
United States Army Officer may accept appointment and commission as officer of, ...	475
NATIONAL PARTY CONVENTION.	
Secretary of the Commonwealth; giving of advance information to candidate for delegate as to support of party choice for President, ...	79
Secretary of the Commonwealth; acceptance of correction of return of Commissioners of Allegheny County, ...	82
NAVIGABLE RIVERS.	
Islands in; not for best interests of State to allow ownership to be acquired by private individuals, ...	584
NAVIGATION, BOARD OF COMMISSIONERS OF.	
Pilot; master of outward bound vessel may choose any licensed, ...	572
NOLAN, EDWARD S., v. FOUST.	
Cold Storage Act; section held unconstitutional, ...	xii
NORMAL SCHOOL, CALIFORNIA.	
Manner of reducing insurance matter of decision for Board of Trustees, ...	559
NORRISTOWN STATE HOSPITAL.	
Bond of Treasurer being sufficient, not necessary to bond subordinates, ...	601
NUBONE CORSET COMPANY.	
Issuance by David Barlow, officer of, of surety bonds in name of Keystone Bonding Company held a misdemeanor, ...	217
Issuance of contracts guaranteeing fidelity of persons in violation of provisions of Act of June 1, 1911, ...	231
NURSES.	
Anesthetics; administering of, ...	619
Pupils dismissed for cause; reporting names by training school to State Board of Examiners, ...	577
Registration without examination if registered in other States, ...	566
NURSES, STATE BOARD OF EXAMINERS FOR REGISTRATION OF, OPINIONS TO.	
Pupils dismissed for cause; reporting names by training school to, ...	577
Registration without examination if registered in any other State,....	566
O.	
OAKLEY PAINTINGS.	
Payments by Supt. of Public Grounds and Buildings to be made with consent of surety on her bond, ...	453
O'GOREK, GEORGE.	
Term of in Eastern Penitentiary, ...	537
OLEOMARGARINE.	
Merchant cannot take orders in cities and towns other than one	
Term of in Eastern Penitentiary, ...	537
OPIUM ACT, HARRISON.	
Cottage State Hospital; purchase of drugs under, ...	545
ORTH, H. L. OPINION TO.	
Pennsylvania State Lunatic Hospital, Harrisburg; authority to grant City of Harrisburg permission to construct sanitary sewer through grounds, ...	553

	Page.
OSTEOPATHIC EXAMINERS, BOARD OF, OPINIONS TO.	
Non-presentation of application to practice until after January 1, 1912,	578
Student who cannot speak or write English not to be admitted to examination, ...	574
P.	
PANAMA-PACIFIC EXPOSITION COMMISSION.	
Payment of expenses of Second Pennsylvania Regiment to Exposition out of appropriation, ...	567
PAROLE.	
(See Commutation), ...	512
PENITENTIARY, EASTERN, OPINIONS TO.	
O'Gorek, George; term of imprisonment of, ...	537
Parole; lodgment of detainee upon prisoner's application for, ...	526
Prisoner under sentence of death; delivery by keeper of Phila. County Prison to Warden of Western Penitentiary, ...	511
Prizzeumti, Bruno; term of imprisonment of, ...	537
Walsh, John; time to be served upon commission of second offense during period of commutation, ...	515
Welsh, Herbert; not entitled to apply for parole, when sentenced prior to June 30, 1909, ...	528
PENITENTIARY, WESTERN, OPINIONS TO.	
Bevilhimer, Harry; commission of felony during parole, ...	512
Books, stationery and postage to be classed as expenses of "keeping" as distinguished from "maintenance" of prisoners, ...	529
Boyd, James; delivery of prisoner sentenced to death to Warden of Western Penitentiary, ...	511
Harris, William; parole into custody of officers of another State, ...	516
Live stock; lawful for Inspectors to erect building for housing of, ..	531
Prison Labor Commission; delegation to of supervision of employment and compensation for inmates of penitentiaries, ...	518
PENN MUTUAL LIFE INSURANCE CO.	
Dividends not taxable, ...	x
Right to add to contract a monthly payment during a disability period, ...	223
PENNSYLVANIA ANTI-VICE SOCIETY.	
Special policeman for; legal authority for appointment of, ...	16
PENNSYLVANIA ORAL SCHOOL, OPINION TO COMMISSION.	
Transfer of to Commonwealth, ...	543
PENNSYLVANIA RAILROAD COMPANY.	
Health Dept.; not necessary to affix revenue stamps to containers, ..	331
Telegraph and Telephone Operators; days of employment in week, ...	346
West Virginia Pulp and Paper Company; amendment of 1915 to Public Service Company Law held constitutional, ...	xiii
PENNSYLVANIA STATE LUNATIC HOSPITAL, HARRISBURG.	
Contracts for supplies; making of for period shorter than one year, ..	582
Trustees have authority to grant City of Harrisburg permission to construct sanitary sewer through grounds, ...	553
PENSIONS.	
Mine Inspectors; retirement, Act of 1915 does not apply to, ...	407
May not be granted to mother of unborn child, ...	597

PETROLEUM TELEPHONE COMPANY.

Bonus; not allowed an off-set on bonus already paid, as a foreign corporation, on capital in Pennsylvania, ... 593

PHILADELPHIA SCHOOL OF DESIGN.

Payment from appropriation to be made on warrant of Supt. of Public Instruction, ... 323

PILOT.

Licensed; master of outward-bound vessel may choose, ... 572

PITTSBURGH BANK OF SAVINGS.

Liquidation of, ... vii

PITTSBURGH CONSOLIDATED STOCK AND PRODUCE EXCHANGE.

Maintenance of bucket shops, ... viii

POLICE, STATE, OPINION TO DEPUTY SUPERINTENDENT.

Officer making arrest required to furnish certificate stating charge only, ... 556

POLLUTION OF STREAMS.

Measures to arrest, ... ii

POTTSVILLE, SCHOOL BOARD.

Free Public Library; making annual contribution to, ... 316

POWELL, A. W., COMMONWEALTH ex rel v.

Suit to test constitutionality of Act appropriating to State Highway Department moneys derived from registration and license fees of motor vehicles, ... ix

PRISON LABOR COMMISSION, OPINIONS TO.

Automobile tags; Highway Commissioner may let contract to, ... 267

Convict labor, delegation to of supervision of employment and compensation for, ... 518

Correctional Institutions; employment and compensation of prisoners, ... 520

Manufactures; sale of in all departments and counties of Commonwealth, ... 527

Manufacturing Fund; appropriation by Act of 1915, ... 523

Moneys earned by prisoners; disposition of, ... 535

Prisoners; to be employed only as specifically authorized by Act of 1915, ... 534

PRISONS.

Appropriation of 1915 for purchase of material, etc., not to be turned over to Prison Labor Commission, ... 132

Books, stationery and postage; may be classed as expense of "keeping" as distinguished from "maintenance of" prisoners, ... 529

Charities, State Board of; correction of objectionable conditions in jail, ... 555

Convict labor; delegation to Prison Labor Commission of supervision of employment and compensation for inmates of, ... 518

Employment and compensation of inmates of, ... 520

Felony; commission of by prisoner during parole, Bevilhimer, Harry, ... 512

Harris, William; parole by Western Penitentiary into custody of officers of another State, ... 516

Manufactures; sale by Prison Labor Commission in any department or in any county of the Commonwealth, ... 527

Moneys earned by prisoners; disposition of by Prison Labor Commission, ... 535

Notifying sheriffs as to unlawful release of prisoners, ... 422

O'Gorek, George, Bruno; term of imprisonment of, ... 537

	Page.
PRISONS—(Continued).	
Parole; lodgment of detainer upon prisoner's application for, ...	526
Philadelphia County; duty of keeper to deliver prisoner under sentence of death to Warden of the Western Penitentiary, ...	511
Police, State; delivery to jailor or warden certificate mentioned in Act of 1915, ...	556
Prisoners; to be employed only as specifically authorized by Act of 1915, ...	534
Prizzeumti, Bruno; term of imprisonment of, ...	537
Walsh, John; time to be served upon commission of second offense during period of commutation, ...	515
Welsh, Herbert; not entitled to apply for parole when sentenced prior to June 30, 1909, ...	528
Western Penitentiary; lawful for Inspectors to erect buildings for housing of live stock, ...	531
PRUZZEUMTI, BRUNO.	
Term of in Eastern Penitentiary, ...	537
PUBLIC ACCOUNTS.	
Foreign corporation, deciding to incorporate as Pennsylvania corporation, not allow an offset on bonus already paid on capital in Pennsylvania; Petroleum Telephone Co., ...	593
PUBLIC ACCOUNTANTS, STATE BOARD OF, OPINION TO.	
Traveling expenses covers hotel and incidental expenses of Board when absent from home on official business, ...	605
PUBLIC GROUNDS AND BUILDINGS, OPINIONS TO BOARD OF.	
Eastern Penna. State Institution, Spring City; cost of bond for Supt. of Construction to be paid out of appropriation to Board of Public Grounds and Buildings, ...	458
Fairview Criminal Insane Hospital; placing of insurance upon buildings, ...	459
Feeble-minded Institution of Western Pennsylvania; Application of insurance money received from destruction of power house to the erection of a new one, ...	454
Oakley Paintings; payments for to be made with consent of surety on bond, ...	453
Treasurer of State Institution need not give additional bond to cover disbursements by subordinate officers or officials, ...	461
PUBLIC INSTRUCTION, OPINIONS TO SUPERINTENDENT OF.	
Appropriations; State Board of Education may expend part to equalize educational advantages in different parts of Commonwealth, ...	325
Child Labor Law; Answers to nineteen questions, ...	297
Employment Certificates; not necessary for minor between the age of fourteen and sixteen when employed on a farm or in domestic service, ...	306
Free Public Library; school board may make annual contribution to, ...	316
Indebtedness of School Districts; increase of, ...	314
Minors between the age of fourteen and sixteen may be employed in bowling alley in a Y. M. C. A., ...	309
Philadelphia School District; payments from appropriation to be made on warrant of Supt. of Public Instruction, ...	323
School Buildings; plans and specifications for, not public records but Board may permit inspection, ...	312
School District; increase of indebtedness, ...	310
Teachers; right of directors or district superintendent to require professional reading, ...	295

PUBLIC OFFICERS.

Auditor General not required to countersign receipts given by State Treasurer for payments made on account of State Workmen's Insurance Fund, ...	189
Auditor General; right to sit as member of Military Board not to be delegated to deputy, ...	111
Bond of treasurer who handles moneys of State institution sufficient, Clerk of Court of Oyer and Terminer and Quarter Sessions; one bond to cover both offices, ...	601
District Attorneys; under direction of Attorney General in prosecution of various offenses, ...	76
Forestry, Commissioner of; should not permit any person to hunt on forest reserves without a license, ...	i
Game Laws; unlawful release of violators of, ...	429
Governor; duty of in connection with voting of Pennsylvania Soldiers in U. S. Military service, ...	422
Mercantile Appraisers; validity of appraisements although removed within short time of appointment, ...	34
Mine Inspectors; continue in office until successors are elected and cannot receive increase in salary during terms, ...	129
Official appointed between sessions by Governor to receive salary attached to office but not salary attached to any subordinate position he may have held, ...	153
Recorder of Deeds, Allegheny County; bond should be deposited with County Controller, ...	149
Recorder of deeds not authorized to satisfy mortgage by virtue of mere receipt signed by mortgagee, ...	74
Register of Wills and Clerk of Orphans Court, Allegheny County, to give separate bonds, ...	160
Sealer of Weights and Measures; without authority to specify type of scales, but duty is to see that they conform to standard tests, ..	77
Secretary of the Commonwealth; duty of in connection with voting of Pennsylvania soldiers in U. S. Military Service, ...	437
State Treasurer has no authority to accept bonds from an employer who has elected not to be governed by provisions of the Workmen's Compensation Law, ...	34
State Treasurer; power to investigate accounts approved by Auditor General, ...	375
Superintendent of Public Instruction may sign one warrant to cover a number of items to separate payees, ...	155
Township treasurer; trust company or national bank may become sole surety for, ...	116
	239

PUBLIC PRINTING AND BINDING, OPINIONS TO SUPERINTENDENT OF.

Contract for printing not to be extended beyond expiration, ...	470
Contractor for State printing; partial failure to perform contract after total loss of plant by fire, ...	465
Legislative bills and calendars; form of not to be changed unless authorized by legislative action, ...	468

PUBLIC SERVICE COMMISSION, OPINIONS TO.

Rates; Commission has no power to prevent change of becoming effective after thirty days from filing of a rate schedule, ...	445
York Railways Company; right to acquire stock and securities of a light, heat and power company, ...	441

PUBLIC SERVICE COMMISSION.

West Virginia Pulp and Paper Company v.; amendment of 1915 to law constitutional, ...	xiii

Q.

QUAKER CITY NATIONAL BANK.

Penalty for failure to file report within prescribed time, ...	168

QUEMAHONING COAL COMPANY.

Modina, Joe, employe of; payment of Workmen's Compensation to, ..	386

QUO WARRANTO HEARINGS.

Schedule H, ...	641

R.

RAY, CHESTER P., OPINION TO.

Panama Exposition Commission; payment of expenses of Second Pennsylvania Regiment to Exposition out of appropriation, ...	567

RAILWAYS.

Street railway may be compelled to place its tracks at grade established by Highway Department, ...	249

Street railway has right to acquire stock and securities of a light, heat and power company, ...	441

REAL ESTATE BROKERS.

Trust companies dealing as, subject to license tax, ...	93

REILLY, GEORGE W., OPINION TO.

Lunatic Hospital, Harrisburg; making of contracts for supplies for shorter period than one year, ...	582

RETIREMENT ACT.

Mine Inspector not such employee as is contemplated by, ...	407

REVENUE STAMPS.

Health Dept. need not affix to containers, ...	331

Workmen's Insurance Board; not necessary to attach to policies, ...	380

REPUBLIC CASUALTY COMPANY OF CLEVELAND, OHIO.

Rider attached to policies gives a rebate which is forbidden by Act of July 12, 1915, ...	207

REYNOLDS, ALEXANDER H., OPINION TO.

Dental Examiners, State Board of; all dentists to be registered annually by Dental Council, ...	562

ROADS AND HIGHWAYS.

Appropriation; apportionment to counties for repair of State-aid highways, ...	257

Auditor General and State Treasurer may apply to State Highway Construction Fund moneys received from counties, boroughs and townships under Act of June 5, 1913, ...	145

Contracts not to exceed appropriation plus shares due Commonwealth by counties, townships, etc.; Highway Department, ...	259

Counties, townships, boroughs and incorporated towns; agreement to pay shares of reconstructing or improving State highways, ...	265

County and township roads, distinction between, ...	246

Danboro and Plumsteadville Turnpike Road Co. v. Bucks Co., ...	xv

Highway Commissioner not permitted to reconstruct or improve as a State-aid highway section of route lying within borough, ...	261

Highway Commissioner not permitted to build State-aid highways in townships along State highway routes, ...	264

Highway routes running through boroughs, ...	246

	Page.
ROADS AND HIGHWAYS—(Continued).	
Saeger v. Commonwealth; change of location of highway, ...	xv
Straban Township, Adams County; suit in assumpsit to recover moneys due for State-aid highway construction, ...	xiv
Street railway may be compelled to place its tracks at grade estab- lished by Highway Department, ...	249
Water company pipes; removal and relocation required by Highway Commissioner, ...	248
ROBERT MORRIS MONUMENT COMMISSION.	
Payment to artists for plaster models exhibited in competition, ...	114
S.	
SAEGER v. COMMONWEALTH.	
State Highway; change of location, ...	xv
SAFETY GATES.	
Mines; lawful to use in, ...	408
SAILORS.	
Boarding house for; construed as employment agency, ...	356
SALARIES.	
Auditor General not justified in paying to additional clerks to carry out purposes of Escheat Act of 1915, ...	140
Deputy Fire Marshals; appropriation for cannot be used for payment of fees and mileage of assistants, ...	597
House of Representatives; employes entitled to salaries from date when Legislature convened, ...	92
Mine Inspectors; cannot receive increase during term, ...	153
Mothers' Pension Act, officers appointed under, ...	98
Official appointed between sessions by Governor to receive salary at- tached to office and not that attached to any subordinate position he may have held, ...	149
SAVINGS AND LOAN ASSOCIATIONS.	
Fee of 5 per cent. illegal unless company complies with provisions of Act of 1915, ...	289
SCALES.	
Sealer of Weights and Measures; without authority to specify type of, but duty is to see that they conform to standard tests, ...	437
SCHEDULES.	
A. Formal Hearings before Attorney General, ...	626
B. Bank and Insurance Charters Approved, ...	629
C. Tax Appeals Filed in Common Pleas of Dauphin County, ...	630
D. Cases Argued in Supreme and Superior Courts of Pennsylvania, and U. S. Supreme Court; and cases pending in said courts, ..	633
E. Actions in Assumpsit Instituted in Common Pleas of Dauphin County, ...	656
Condemnation Proceedings to Determine Amount of Damages for taking Land in Connection with Capitol Park Extension, ..	638
F. Mandamus Proceedings, ...	638
G. Equity Cases, ...	640
H. Quo Warranto Hearings, ...	641
I. Proceedings instituted against Insurance Companies, Building and Loan Associations, Banks and Trust Companies, ...	643
J. Collections, ...	644

SCHOOLS.

Appropriation; expending part to equalize the educational advantages in different parts of Commonwealth, ...	325
California State Normal; manner of reducing insurance matter for decision of Board of Trustees, ...	559
Children's Working Certificates subject to provisions of Act of 1915, as to compulsory attendance at continuation schools, ...	351
Free Public Library; making of annual contribution to, ...	316
Indebtedness, increase of, ...	310
Indebtedness of districts; increase of, ...	314
Medical Inspection in; cost cannot be paid from appropriation for overcoming epidemics of disease, etc., ...	333
Pennsylvania Oral; transfer to Commonwealth, ...	543
Philadelphia; payments to district to be made on warrant of Supt. of Public Instruction, ...	323
Plans and specifications for buildings are not public records, but inspection may be permitted, ...	312
Teachers; right of directors or district superintendents to require professional reading, ...	295
Training schools for nurses; reporting names of pupils dismissed for cause, ...	577

SCIRE FACIAS.

Not an original writ and not taxable for State purposes, ...	157

SCRANTON ARMORY.

Cost of new foundation should be charged to appropriation for erection and completion of armories, ...	473

SEAMEN'S BOARDING HOUSE KEEPERS' ASSOCIATION, PHILADELPHIA.

Employment agency, defined as, ...	368

SECRETARY OF THE COMMONWEALTH, OPINIONS TO.

Bailey, William R., Clerk of Court of Allegheny County, Oyer and Terminer as well as of Quarter Sessions of the Peace; one bond to cover both offices, ...	76
Benscreek Water Co.; chartered to supply water to one municipal division cannot secure right for whole of adjacent municipal division, ...	70
Conner, William; separate bonds as Register of Wills and Clerk of Orphans' Court, Allegheny County, ...	77
Constitutional amendments; Senate Resolution 1406 not to be advertised and printed on official ballot for 1915 November election, ...	62
Democratic National Committeemen; method of electing and certifying, ...	78
Eric Judicial contest; sole candidate not receiving more than one-half total of ballots cast in district cannot be certified as sole nominee, ..	67
Fairman, John A., Recorder of Deeds, Allegheny County; filing of bond; custody of, ...	71
Fifty per cent. clause in Judicial Act of June 18, 1915; method of determination, ...	63
Mutchler, Asher; Alderman, Easton; transmission of commission to Governor, ...	71
National Convention of Democratic Party; acceptance of correction of return of Commissioners of Allegheny County, ...	82
National Party Convention; candidates for delegate; giving of advance information as to support of party choice for President, ...	79

SECRETARY OF THE COMMONWEALTH, OPINIONS TO---(Continued).

Scranton Workers' Co-operative Association, payment of bonus before incorporation, ...	61
Sterling Coal Company and Sterling Smokeless Coal Company; similarity of names, ...	83

SHEA, THOMAS D., OPINION TO.

Nanticoke State Hospital; moneys received for care and maintenance of patients to be reported to Auditor General and not used for additions to hospital, ...	552

SHENANGO FURNACE COMPANY.

Taxability on assets held outside of State to be submitted to court, ..	175

SNYDER, O. J., OPINION TO.

Osteopathic Examiners, Board of; student who cannot speak or write English not to be admitted to examination, ...	574
Osteopathic Examiners; non-presentation of application to practice until after January 1, 1912, ...	578

SOLDIER VOTE.

Act of August 25, 1864, ...	47
Commissioners, number, appointment, qualifications, and duties of, ..	30, 33
Conduct of elections, ...	35
Constitutional Provisions, ...	24
Detached voters, elections by, ...	40
Forms, ...	42
Governor, opinion to, ...	21
Notices, election, ...	35
Persons entitled to vote, ...	25
Qualifications of voters, ...	26
Secretary of the Commonwealth, duties of, ...	34

SPECIAL CASES.

Discussion of, ...	vii

SPRING CITY, EASTERN PENNA. STATE INSTITUTION.

Cost of bond for Supt. of Construction to be paid out of appropriation to Board of Public Grounds and Buildings, ...	458

SPOUL, GEORGE S.

Navigation, Board of Commissioners of; master of outward bound vessel may choose any licensed pilot, ...	572

STANDARDS, OPINIONS TO BUREAU OF.

Hams or other commodities; contents to be plainly and conspicuously marked on outside of package, ...	435
Scales, weights and measures; Sealer of Weights and Measures without authority to specify type of, but must see that they conform to standard tests, ...	437

STATE-AID HIGHWAYS.

Counties, townships, boroughs and incorporated towns may agree to pay shares of cost of reconstructing or improving State Highways, Highway Commissioner not to contract for expenditure of more money than remains in appropriation plus shares due Commonwealth from counties, etc., ...	265
Highway Commissioner not permitted to reconstruct or improve section lying within borough, ...	259
Townships; Commissioner not permitted to build in townships along State Highway routes, ...	261
	264

	Page.
STATE COLLEGE.	
Treasurer not a State official or employe; cost of bond not to be paid by Superintendent of Public Grounds and Buildings, ...	560
STATE INSURANCE FUND.	
Automobile, stolen not covered by; Highway Department, ...	268
STATE TREASURER.	
Commonwealth ex rel v.; Suit to test constitutionality of Act appropriating to State Highway Department moneys derived from registrations and license fees of motor vehicles, ...	ix
Power to investigate accounts approved by Auditor General, ...	155
STATE TREASURER, OPINIONS TO.	
Advances to departments; acceptance of certificate as to amount expended, ...	196
Drake, Mrs. E. L., claim for gratuity, ...	198
Governmental agencies created by State; insurance of employes of, ..	194
Insurance companies, deposit of securities of, ...	200
Workmen's Insurance Fund; custody and management of, ...	189
STATISTICS AND INFORMATION, OPINIONS TO BUREAU OF.	
Industrial establishment; right to require statement of amount of daily wages, ...	340
STATISTICS AND INFORMATION.	
Modina, John; Quemahoning Coal Company; payment of compensation to personal representatives of deceased, ...	386
STEAMSHIP TICKETS.	
American Express Company; license, ...	287
STERLING SMOKELESS COAL COMPANY.	
Secretary of Commonwealth; similarity of name with that of Sterling Smokeless Coal Co., ...	83
STERLING SMOKELESS COAL COMPANY.	
Secretary of Commonwealth; similarity of name with that of Sterling Coal Co., ...	83
STOCK AND PRODUCE EXCHANGE, PITTSBURGH CONSOLIDATED.	
Maintenance of bucket shops, ...	viii
STRABAN TOWNSHIP, ADAMS COUNTY.	
State-aid Highway construction; suit in assumpsit to recover, ...	xiv
STRACK, MRS. SARAH.	
Auditor General not to pay mothers' pension to, ...	89
STREAMS, POLLUTION OF.	
Measures to arrest, ...	ii
SUB-OFFICES.	
Trust companies; may maintain for restricted purposes of receiving and paying out moneys, ...	281
Trust Companies; maintaining for receiving and paying out moneys, ..	291
SUMMARY CONVICTIONS.	
Reversal of sentence; rearrest and retrial, ...	397
SUNDAY LAW.	
Fine for violation of payable to Commonwealth, ...	104
SUPERIOR COURT OF PENNSYLVANIA.	
Cases argued in; Schedule D, ...	634
Cases pending in; Schedule D, ...	635
SUPREME COURT OF PENNSYLVANIA.	
Cases argued in; Schedule D, ...	633
Cases pending in; Schedule D, ...	635

SWARTZ, OSCAR L., OPINION TO.

Norristown State Hospital for Insane; bond of Treasurer being sufficient, not necessary to bond subordinates.....	601

SUSQUEHANNA BOOM COMPANY, COMTH. EX REL., ATTORNEY GENERAL v.

Dam, removal of, ...	xiv

SYKESVILLE BOROUGH, JEFFERSON COUNTY.

School District; increase of indebtedness, ...	310

T.

TAX APPEALS FILED IN COMMON PLEAS OF DAUPHIN COUNTY.

Schedule C, ...	680

TAXATION.

Amateur theatrical company liable to theatrical license, Little Theatre, Philadelphia, ...	184
Anthracite coal; Alden Coal Co., ...	xi
Appeals filed in Common Pleas of Dauphin County, Schedule C, ...	680
Appeals; separate reports and petitions for settlement not to be filed with Auditor General and State Treasurer, ...	111
Automatic slot machines under Mercantile License Tax Act of 1899, ...	146
Bonus; claim for discharged by judicial sale of property and franchises of corporation, ...	166
Bonus; payment of by State Bank organized to take over National Bank, ...	292
Carnival companies not exempt from license tax laid by Act of 1913, ...	158
Conditional sales; tax on original writs not demandable, ...	165
Conewago Gas Company; payment of bonus tax, ...	96
Dogs; no Act for taxing of in Crawford County, ...	427
Dogs; in Warren County, ...	432
Domestic corporation; imposing tax upon obligations issued to a non-resident trustee for a resident of Pennsylvania, ...	179
Fidelity and Deposit Company of Maryland; premiums, ...	xii
Governmental agencies of the State, no federal power to tax, ...	331
Gross premiums; American Union Fire Insurance Company; settlement should be made on basis of giving credit for premiums paid for re-insurance, ...	221
Hydro-electric companies; not taxable on gross receipts if not engaged in electric lighting, though selling current to electric light companies, ...	172
Mercantile License Tax; dealer in Maryland, hauling pianos into and selling them in Pennsylvania engaged in interstate commerce and not liable to, ...	182
Mercantile License Tax Act of 1899; scope of; Crew-Levick Oil Co., ...	xvi
Metropolitan Life Insurance Co.; dividends, ...	xi
National Bank; funds invested in stock of Federal Reserve Bank not subject to, ...	99
National Bank not to be taxed under Act of 1907 if exercising powers conferred by United States Government, ...	108
National banks; sale or transfer of shares of stock, ...	119
Obligations issued by private corporations to resident trustees for non-resident persons or corporations liable to, ...	161
Penn Mutual Life Insurance Co.; dividends, ...	x
Petroleum Telephone Company; not allowed an off-set on bonus already paid as a foreign corporation on capital in Pennsylvania, ...	593

	Page.
TAXATION—(Continued).	
Premiums of foreign insurance companies; Equitable Life Assurance Association of the United States, ...	xi
Scire facias to revive or continue lien of a judgment not an original writ and not taxable for State purposes, ...	157
Shenango Furnace Company; taxability on assets held outside of State to be submitted to court, ...	175
Trust companies dealing as real estate brokers subject to license, ...	93
Trust companies; Act of 1907 mandatory upon Auditor General to impose penalty for non-payment of tax, ...	143
Westinghouse Air Brake Co.; taxation of capital stock, ...	x
TEACHERS INSTITUTE OF PHILA.	
Payment from appropriation to be made on warrant of Supt. of Public Instruction, ...	323
TELEGRAPH AND TELEPHONE OPERATORS.	
Days of employment in week, ...	346
THEATRICAL LICENSE TAX.	
Amateur company, corporation of first class, but not for profit, liable to; Little Theatre, Philadelphia, ...	184
THOLE, FRANCIS H.; OPINION TO.	
Undertakers, State Board of; licensed undertaker may have branches in any part of State, ...	546
TITLE INSURANCE COMPANY, PITTSBURGH.	
Subject to supervision of Banking Commission; withdrawal of acceptance of Act of 1889, ...	273
TORRANCE, FRANCIS J., OPINIONS TO.	
Charities, Board of Public; correction of objectionable conditions in a jail, ...	555
Charities, Board of Public; Building Commission of Western State Hospital for Insane may select any site west of Allegheny Mountains, ...	585
TOWNSHIPS.	
State Highways; agreement to pay share of cost of reconstructing or improving, ...	265
State-aid highways; Highway Commissioner not authorized to build along State Highway routes, ...	264
Supervisors; may lay out, abandon or alter township roads only under direction of Court of Quarter Sessions, ...	249
Treasurer; National Bank or Trust Company may become sole surety for; cannot be elected as, ...	239
TRAVELING EXPENSES.	
Opinion addressed to several Departments on various phases of payment of, ...	614
TRESPASS.	
Actions brought against the Commonwealth, Schedule E, ...	637
TRUST COMPANIES.	
Auditor General; Act of 1907 mandatory for imposition of penalty for non-payment of tax, ...	143
Central Trust Company, Pittsburgh; liquidation of, ...	vii
Germantown Trust Co.; Escheat Act of 1915 declared constitutional, ...	x
License tax; subject to when dealing as real estate brokers, ...	93
Penalty for failure to file reports prescribed by Act of 1907; subject to if tax is not paid within specified period, ...	133
Penalty for failure to file reports within prescribed time, ...	168

INDEX.

713

Page.

TRUST COMPANIES—(Continued).

Proceedings instituted by Attorney General against, Schedule I, ...	643
Sub-offices may be maintained for restricted purposes of receiving and paying out moneys, ...	281
Sub-offices or agencies for receiving and paying out money; maintaining, ...	291
Township treasurer; becoming sole surety for, but cannot be elected as, Union Trust Company; Act of June 7, 1915, relating to cheats declared constitutional, ...	239
	x

U.

UNDERTAKERS, OPINION TO STATE BOARD.

Branch offices; licensed under may have in any part of State, ...	546

UNITED STATES ARMY.

Officer of; may accept appointment and commission as an officer of the National Guard of Pennsylvania, ...	475

UNITED STATES SECRETARY OF STATE, OPINION TO.

Workmen's Compensation Act not in conflict with treaty with Italy as to responsibility for injuries or death, ...	548

UNITED STATES SUPREME COURT.

Cases argued in; Schedule D, ...	634
Cases pending in; Schedule D, ...	635

V.

VENANGO OIL AND GAS CO.

Auditor General not to grant extension of thirty days time for filing annual report, ...	148

VETERINARY MEDICAL EXAMINERS, OPINIONS TO.

General Agent to prosecute violations of Act; appointment of, ...	481
Livestock Sanitary Board; protection of meat within glass cases, ...	482
Veterinary medicine, surgery and dentistry; provisions of Act of 1915, apply alike to, ...	479

W.

WAGES.

"Average daily wage" construed, ...	372

WALSH, JOHN.

Time to be served in Eastern Penitentiary upon commission of second offense during period of commutation, ...	515

WARREN STATE HOSPITAL.

Treasurer need not give additional bond to cover disbursements by subordinate officers or employes, ...	461
Workmen's Insurance Fund; services rendered to hospital employes insured in, ...	610

WATER COMPANIES.

Pipes; removal and relocation of required by Highway Commissioner, ...	248

WEIGHTS AND MEASURES.

Sealer without authority to specify type of, but duty is to see that they conform to standard tests, ...	437

WELSH, HERBERT.

Parole; not entitled to apply for when sentenced prior to June 30, 1909, ...	528

	Page.
WESTERN STATE HOSPITAL FOR INSANE.	
Building Commission may select any site west of Allegheny Mountains, ...	585
WESTINGHOUSE AIR BRAKE CO.	
Taxing capital stock of domestic corporation, ...	x
WEST VIRGINIA PULP AND PAPER COMPANY v. PUBLIC SERVICE COMMISSION.	
Public Service Company Law; amendment of 1915 constitutional, ...	xiii
WOMEN AND TEACHERS' ANNUITY AND AID ASSOCIATION.	
Payment from appropriation to be made on warrant of Supt. of Public Instruction, ...	323
WORDS AND PHRASES DEFINED.	
"Actual traveling expenses," Public Accountants, Board of, ...	607
"Appeal" in Motion Pictures Act defined; Franklin Film Manufacturing Co., ...	xvi
"Appropriation;" keeping of advancement account by Auditor General, ...	124, 125
"Average daily wage" defined, ...	372
"Commodity;" packages of hams, bacon and other commodities, ...	435
"Employer," Workmen's Insurance Fund; governmental agencies, employees of, ...	194
"Fire, flood or storm," reconstruction of public buildings, Appropriation Act No. 743, ...	139
"Greater than one-half of the number of ballots cast for any one candidate for any office,"	64, 68
"Highway" and "State-aid highway;" building of bridges by Highway Commissioner, ...	242
"Indigent, widows, or abandoned mothers," Mrs. Sarah Strack, ...	90
"Organized for any charitable purposes," defined not to include churches or other religious organizations. Appointment by Government of special policeman for Pennsylvania Anti-Vice Society, ...	16
"Original package;" catsup, sale of, ...	489
"Original writ;" non-taxability of scire facias to revive and continue lien of a judgment, ...	157
"Original writ;" taxation of conditional sales, ...	165
"Premiums received;" Metropolitan Life Insurance Co., ...	xi
"Premiums received;" Penn Mutual Life Insurance Co., ...	x
"Retail dealer;" taxation of automatic slot machines, ...	146
"Soldiers in active military service,"	25
"Tract or district;" Benscreek Water Company, ...	71
"Week;" holiday season, ...	391
"Within ten days." When required day returning a bill falls on Sunday Governor may return it on Monday, ...	1
WORKMEN'S COMPENSATION.	
Act not in conflict with treaty with Italy as to responsibility for injuries or death, ...	548
Executive Controller; payment of rental of offices for out of appropriation for that specific purpose, ...	569
Governmental agencies created by State, insurance of employees of, ..	194
Hazleton Hospital justified in making charge against employer for treatment of injured employe during first fourteen days of disability, ...	575
Insurance Commission has supervisory control over insurance policies, ...	225

INDEX.

WORKMEN'S COMPENSATION BOARD, OPINIONS TO.

"Average daily wage" and "working days" construed, ...	372
Bonds or other securities as collateral security for compliance with Act of 1915; no legal authority to receive, ...	375
Employer; exemption from carrying of insurance, ...	381
Judgment; striking off of upon failure to agree as to compensation, ..	383
Securities; Board has no authority to receive from employer who has elected to act as his own insurer, ...	375

WORKMEN'S INSURANCE FUND.

Appropriation of 1915 made for compensation for injury or death and not for purchase of insurance, ...	138
Custody and management of, ...	189
Governmental agencies; General Appropriation Act does not provide for insurance of employees of, ...	194
Revenue stamps; not necessary to attach to policies, ...	380
Surplus; setting aside five per cent. of premiums for creation of, ...	378
Warren State Hospital; services to employees insured in, ...	610

WORKMEN'S INSURANCE FUND, OPINIONS TO.

Revenue stamps; not necessary to attach to policies, ...	380
Surplus; setting aside five per cent. of premiums for creation of, ...	378

Y.

YOUNG, ROBERT K., STATE TREASURER, COMMONWEALTH v.

Suit to test constitutionality of Act appropriating to State Highway Department moneys derived from registrations and license fees of motor vehicles, ...	ix

YORK RAILWAYS COMPANY.

Right to acquire stock and securities of a light, heat and power company, ...	441