

Commonwealth of Pennsylvania

REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

PENNSYLVANIA

FOR THE

TWO YEARS ENDING DECEMBER 31, 1918

FRANCIS SHUNK BROWN,
Attorney General.

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REPORT OF THE ATTORNEY GENERAL

FOR THE

Two Years Ending December 31, 1918.

Office of the Attorney General,
Harrisburg, Pa., Jan. 1, 1919.

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

I have the honor to submit a report and summary of the official business transacted by the Attorney General during the two years ending December 31, 1918.

The following changes were made in the Department Staff during this period:

Honorable Horace W. Davis resigned as Deputy Attorney General, on December 18, 1917, to engage in business in New York City; Honorable Emerson Collins was assigned to the position made vacant by his resignation, and Honorable Harry K. Daugherty and Honorable Edmund K. Trent were appointed to fill the vacancies then existing. Richard W. Williamson, Esq., was appointed Special Attorney to collect the moneys due the Commonwealth for the support of the indigent insane in place of John Hyatt Naylor, Esq.

The subjoined summary makes reference only to the formal and official opinions rendered during this biennial period. These constitute but a small part of the advisory work done by the Department. Legal advice to the heads of State Departments and other State Officers, not requiring the deliverance of formal opinions was given daily and constantly by way of oral opinions and informal correspondence.

Nor does the summary contain any reference to the informal hearings held before the Attorney General as legal advisor to the Governor and heads of Departments, on such subjects as the extradition of persons arrested for crimes committed outside the State, the revocation of Commissions of Notaries Public, the institution of

insolvency proceedings against banks, insurance companies and building and loan associations and the conduct of such proceedings, the grant of letters patent and charters of incorporation, the use of the name of the Commonwealth in quo warranto and mandamus proceedings and similar matters.

These informal hearings, held not only at Harrisburg, but also at Philadelphia and Pittsburgh, in order to accommodate the parties interested, far outnumbered the formal hearings reported in the Summary.

During this period, at the request of the Auditor General, this Department has examined and passed upon the titles and conveyances for numerous tracts of land purchased by the Commonwealth for the use of the following institutions, boards and commissions:

- Western State Hospital for the Insane.
- State Institution for the Feeble-Minded of Eastern Pennsylvania.
- State Institution for the Feeble-Minded of Western Pennsylvania.
- State Hospital for the Insane at Norristown.
- State Hospital for the Insane at Warren.
- Pennsylvania Industrial Reformatory at Huntingdon.
- Pennsylvania State College.
- Valley Forge Park Commission.
- Washington Crossing Park Commission.
- The Military Board.

Condemnation proceedings were also instituted in behalf of the Western Penitentiary, Valley Forge Park Commission, Washington Crossing Park Commission, and the Capitol Park Extension Commission.

Acting in conjunction with the Attorney General of New Jersey for the Joint Commission for the elimination of toll bridges across the Delaware River between the States of New Jersey and Pennsylvania, the Department attended to the details of the purchase and conveyance of the Trenton-Delaware Bridge and completed arrangements for the purchase of the Point Pleasant-Delaware Bridge.

On behalf of the State Board of Education, the Department prepared agreements for the purchase of the following State Normal Schools and attended to the details incident to the examination of the titles and the conveyances of the properties:

- Millersville State Normal School, Millersville.
- Cumberland Valley State Normal School, Shippensburg.
- Keystone State Normal School, Kutztown.
- East Stroudsburg State Normal School, East Stroudsburg.

These are in addition to the following Normal Schools purchased during the biennial period, 1915-1916:

Clarion State Normal School, Clarion.

Bloomsburg Literary Institute and State Normal School,
Bloomsburg, Pa.

Slippery Rock Normal School, Slippery Rock.

On behalf of the State Highway Commissioner, the Department prepared the agreements and necessary conveyances for the purchase of the following turnpikes, and attended to the details incident to their transfer:

From Whom Purchased.	County	Length —Miles.
Wrightstown & Newtown Turnpike Road Co.,	Bucks,	6.1
Centreville & Pineville Turnpike Road Co.,	Bucks,	3.75
Lahaska & New Hope Turnpike Road Co.,	Bucks,	5
Buckingham & Doylestown Turnpike Road Co.,	Bucks,	5
Lancaster Avenue Improvement Co.,	{ Chester,	14
	{ Delaware,	
	{ Montgomery,	
Berks & Dauphin Turnpike Road Co.,	{ Dauphin,	34.5
	{ Lebanon,	
	{ Berks,	
Mt. Pleasant & Donegal Turnpike Road Co.,	{ Westmoreland,	8.32
	{ Fayette,	
	{	
Duncansville, Newry & Leamansville Turnpike Road Co.,	Blair,	4
The Cornwall Turnpike Co.,	Lebanon,	3.9
Danborough & Plumsteadville Turnpike Road Co.,	Bucks,	2.5
Waynesburg, Greencastle & Mercersburg Turnpike Road Co.,	{ Fulton,	36.21
	{ Franklin,	
	{	
Cheltenham & Willow Grove Turnpike Co.,	Montgomery,	6.34
Hatboro & Warminster Turnpike Road Co.,	{ Montgomery,	4.5
	{ Bucks,	
	{	
Quakertown & Spinnerstown Turnpike Road Co.,	Bucks,	36
Philadelphia & West Chester Turnpike Road Co.,	Delaware,	8.4
Lancaster, Elizabethtown & Middletown Turnpike Road Co.,	Lancaster,	17.25
Lancaster & Williamstown Turnpike Road Co.,	Lancaster,	12
York & Gettysburg Turnpike Co.,	{ York,	16
	{ Adams,	
	{	
York & Maryland Line Turnpike Co.,	York,	17
Susquehanna & York Borough Turnpike Co.,	York,	10
York & Liverpool Turnpike Co.,	York,	6
Manheim & Lancaster Turnpike,	Lancaster,	9.5
Lancaster & Susquehanna Turnpike,	Lancaster,	3
Waynesburg, Greencastle & Mercersburg Turnpike Road Co.,	Adams,	3.
Lewistown & Kishacoquillas Turnpike Road Co.,	Mifflin,	5.5

These are in addition to the following turnpikes acquired during the biennial period, 1915-1916:

From Whom Purchased.	County	Length —Miles.
The Harrisburg, Carlisle & Chambersburg Turnpike Road Co.,	Franklin,	10.1
West Kishacoquillas Valley Turnpike Co.,	Mifflin,	5
Somerset & Johnstown Plank Road Co.,	Somerset,	5.7
Centre & Kishacoquillas Turnpike Co.,	Centre,	7
Northern Boulevard Co.,	Lackawanna,	1.4
Roaring Brook Turnpike Co.,	Lackawanna,	2.9
Benscreek & North Ford Road Co.,	Somerset,	2.5

The results of the collections on account of the maintenance of the indigent insane, have measured up to the estimated figures as contained in my last report. The receipts for the year ending December 31, 1917, were \$135,781.44
 For the year ending December 31, 1918, 183,978.04

Making a total for the two years of \$319,759.48

The total collections from October 31, 1915, to December 31, 1918, amount to \$427,618.35.

The entrance of the United States into the great World War, on April 6, 1917, brought with it many new and perplexing questions for both State and Nation, which largely increased the work of this Department and required the charting of new ways without the help of previous ruling or precedent to guide it. The principle which I adopted in the solution of these problems was the fullest measure of co-operation with the Federal Government possible under the laws of the Commonwealth. Wherever an Act of Congress or of the State Legislature, an order or regulation issued pursuant to law, was capable of two constructions, I adopted whenever possible that which, in my judgment, tended to aid and assist the Government of the United States in the prosecution of the great task before it and permitted no narrow or illiberal view which might have a tendency to hinder or delay the fullest co-operation. This Department held frequent personal conferences and had extended correspondence with the Federal officials during all this time, covering all the activities of the war, and with special reference to the employment of labor, the conservation of food, the distribution of fuel, the agencies of transportation and the successful administration of the Selective Service Law, all in such a manner as to meet with the hearty approval of the Federal authorities. With respect to those laws of the Commonwealth wisely adopted for the safeguarding and protection of women and children in their employment and hours of labor and for the safety of the workers in coal mines and of the public in the transportation of passengers and freight, I agreed with the President of the United States in his declaration that the exigencies of the situation were not such as to require their repeal or virtual abrogation, but I directed that they should be enforced intelligently and not oppressively, in conformity with the spirit of the laws, but not using them to harass or punish employers who were honestly and in good faith endeavoring to observe them under the abnormal conditions consequent on the war.

Immediately upon the promulgation of the rules and regulations for the administration of the Selective Service Law prescribed by the President of the United States, at the request of the Provost Marshal General, I assisted the Governor in the selection and nomina-

tion of fit and proper persons to be appointed by the President as members of Local and District Draft Boards, and also in the organization of Legal Advisory Boards throughout the Commonwealth. With this end in view I wrote a personal letter to all the judges and law officers of the Commonwealth requesting their active co-operation not only in the naming of the Boards, but in the performance of the duties incident to the work of such advisory boards, to the end that every man within the draft age might have competent legal advice and assistance without charge or expense. I am glad to be able to report that in this respect I received the full and free co-operation and help of the Bench and Bar of the State.

During the actual working and operation of the Draft Law, I was in constant touch and frequent conference with the Adjutant General and Major Wm. G. Murdock, who had been commissioned by the President, under the direction of the Governor, as disbursing officer and to assist the Adjutant General, with reference to the many and intricate duties devolving upon them in the performance of their work under the Selective Service Law.

In connection with the taking of the vote of Pennsylvania electors in the actual military service of the United States, in 1918, difficulties were encountered not contemplated nor provided against in the Act of August 25, 1864 (P. L. 990), entitled "An act to regulate elections by soldiers in actual military service."

In the first place, after full conference with the Adjutant General of the Army, it was learned that the Military Command had decided that conditions abroad were such as to forbid the taking of the soldier vote in France and England by Commissioners as provided in the Act of 1864, or in any manner while on active duty at the front. This of necessity restricted the operation of the Act of 1864 to soldiers in camps and cantonments in this country.

Secondly, it was apparent that the Act of 1864 had been enacted under conditions of muster and enrollment widely different from those in force in 1918.

During the Civil War, soldiers from Pennsylvania were largely enrolled and mustered into military units and organizations distinctively Pennsylvanian and designated accordingly, while under the Selective Service Law of 1917, this was not the case, and soldiers from this State were assigned to military organizations composed in part of soldiers from other States, without much regard to the State from which they came. It was impossible, therefore, to appoint a commissioner for each regiment of Pennsylvania soldiers as provided by the Act of 1864, but bearing in mind the Constitutional provision (Art. VIII, Sec. 6) that electors of the Commonwealth in actual military service, under a requisition from the President of the United States, or by authority of this Commonwealth, may exercise the right of

suffrage in all elections by the citizens as fully as if they were present at their usual places of election, I deemed it proper to construe the statutory provisions liberally, to the end that voters in the military service of the United States should not thereby be deprived of their Constitutional right of suffrage, and accordingly advised that a commissioner be appointed for every 1,200 to 1,500 Pennsylvania soldiers, or fraction thereof, in the different camps or cantonments in this Country, that number approximating as nearly as possible to the number of soldiers in a regiment at the passage of the Act of 1864.

The difficulties thus developed in the practical working of the Act of 1864 under modern conditions call for the enactment of legislation which will permit the taking of the soldier vote by some method less burdensome and cumbersome and more practicable than that provided under the Statute now in force.

The following summary shows the formal opinions rendered by this Department, during the last two years and the formal hearings before the Attorney General:

Summary of the Business of the Attorney General's Department from January 1, 1917, to December 31, 1918, Inclusive.

Quo Warranto proceedings in Common Pleas of Dauphin County,	14
Equity proceedings in Common Pleas of Dauphin County,	8
Actions in Assumpsit instituted by the Commonwealth,	98
Actions in Assumpsit brought against the Commonwealth,	7
Actions in Ejectment brought by the Commonwealth of Pennsylvania,	10
Actions in Trespass brought against the Commonwealth of Pennsylvania, defendant,	24
Actions in Trespass brought by the Commonwealth of Pennsylvania, plaintiff,	1
Proceedings against insolvent companies and associations,	8
Mandamus proceedings in the Common Pleas of Dauphin County,	13
Proceedings for the satisfaction of certain mortgages covering property in the Capitol Park Extension zone,	7
Cases argued in the Supreme Court of Pennsylvania,	41
Cases now pending in the Supreme Court of Pennsylvania,	5
Cases argued in the Superior Court of Pennsylvania,	10
Cases now pending in Superior Court of Pennsylvania,	1
Cases argued in the Supreme Court of the United States,	1
Cases now pending in the Supreme Court of the United States,	1
Cases argued in the United States Court of Appeals,	1
Cases argued in the District Court of the United States,	1
Tax appeals in Common Pleas of Dauphin County,	99

Bridge proceedings under the Act of June 3, 1895, P. L. 130, and supplements,	6
Insurance charters approved by the Attorney General,	5
Bank charters approved by the Attorney General,	33
Formal opinions rendered in writing,	236

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

	Heard.	Allowed.	Refused.	Discontinued.	Abandoned.
Quo Warranto,	24	16	3	3	2

Equity proceedings,	1
Proceedings under Acts of April 26, 1855, P. L. 328, and May 23, 1895, P. L. 114,	9

COLLECTIONS.

For 1917,	\$327,708 41
For 1918,	252,758 76
Total,	\$580,467 17

SPECIAL CASES.

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

ESCHEAT CASES.

In the biennial report for 1915-16, page X, reference was made to the bills in equity filed against Auditor General Powell by the Columbia National Bank and the Union Trust Company, both of Pittsburgh, and the Germantown Trust Company, to restrain him from carrying into effect the provisions of the Escheat Act of June 7, 1915, P. L. 878.

This act was attacked as unconstitutional and as not applying to National Banks. The Dauphin County Court sustained the act and decided that it included National Banks. Appeals were taken to the

Supreme Court in 1917, and the latter Court remanded the cases to the Dauphin County Court for retrial. (See 260 Pa. 181.) The latter Court sustained the contention of the Commonwealth and upheld the constitutionality of said act, and appeals were again taken to the Supreme Court and will be heard in Philadelphia the week of January 13, 1919.

In re Commonwealth ex rel. Trustees of Mothers' Assistance Fund of Philadelphia County vs. Powell, Auditor General.

This was a proceeding in Mandamus to compel the Auditor General of Pennsylvania to pay a mother's pension to the mother of four children whose father had disappeared and remained unheard of for a period of more than seven years.

The Court below held that there was a presumption of the death of the Appellant's husband, and that his wife or widow was entitled to such pension. The Supreme Court, in 256 Pa. 470, reversed the judgment of the lower Court, holding that the word "death," as used in the Act of 1913, P. L. 118, must be given its natural and ordinary meaning, and that no award should be made upon a presumption of the death arising from a mere absence for seven years.

In re Schwarzschild and Sultzberger Company of America.

This case involved the payment of bonus by a foreign corporation under the Act of May 8, 1901, P. L. 150. The Supreme Court decided, in 259 Pa. 130, that such bonus should have as its basis the capital of property actually employed within the State, and that the bonus should not be based upon the proportionate value of the company's stock here employed.

In re Harrisburg Light and Power Company.

This case involved tax on gross receipts per Act of June 1, 1889, P. L. 420. The case is reported in 262 Pa. 238. The question involved was whether or not the defendant company was taxable on all its

gross receipts from all its business, including receipts from steam heating, or only upon such receipts as were derived from the business transacted and authorized to be transacted by it as an electric light company. The lower Court as well as the Supreme Court, decided that the company was liable only for the tax on such of its receipts as were derived from the business which it was authorized to transact as an electric light company.

Noecker, Appellant, vs. Woods, Secretary of the Commonwealth.

In this case the Supreme Court (see 259 Pa. 160) reversed the Dauphin County Court and held that the Act of April 24, 1917, P. L. 95, designating the several judicial districts of the Commonwealth and providing for the election and commissioning of judges learned in the law therefor, was unconstitutional on the ground that it was not passed at the next session of the Legislature succeeding a decennial census.

In re Commonwealth ex rel. Daniel F. Lafean vs. Snyder, Auditor General, and Kephart, State Treasurer.

This was a Mandamus proceeding to compel the payment of the salary of the State Banking Commissioner where the Senate had rejected the nomination to that office by the Governor, and the latter subsequently, after the adjournment of the Senate, had filled the vacancy thus created by granting the rejected nominee a commission to the same office until the end of the next session of the Senate.

The Dauphin County Court awarded the Mandamus as prayed for and the Supreme Court, in an opinion reported in 261 Pa. 57, upheld the validity of the Governor's appointment to fill the vacancy until the end of the next session of the Senate.

In re Semet-Solvay Company.

This case involved tax on capital stock. The defendant is a manufacturing corporation chartered under the laws of this State and is engaged in manufacturing not only in Pennsylvania but in other States, in some of which it owns and operates plants. The Account-

ing Officers of the Commonwealth, in valuing its capital stock, included the company's bank deposits in banks in the other States in which it did business in connection with which the deposits were used, and certain cash in the hands of its Superintendents in those States, its bills receivable for services rendered, and for goods sold and payable outside of the State.

The Dauphin County Court held that the capital stock represented by the bank deposits and by the bills receivable is taxable in this State, and that such capital stock is not exempt from taxation under the proviso to the Act of June 8, 1893, P. L. 353. The Supreme Court affirmed the judgment of the Court below. (See 262 Pa. 234.)

Stratford vs. Franklin Paper Mills Co.

In this case the defendant company refused or neglected to file with the Auditor General annual reports on capital stock and corporate loans for year 1914 as required by law. The Company subsequently became insolvent and went into the hands of a receiver. The auditor appointed by the Court to make distribution of the assets of the company held that the State was not entitled to the taxes claimed, notwithstanding the fact that the accounting officers of the Commonwealth had estimated and settled in the regular way accounts for such taxes. The Court of Delaware County upheld the report of the auditor, but the Supreme Court, in the case reported in 257 Pa. 163, decided that where the taxing authorities had general power to tax the subject matter, an assessment made in manner and form authorized by law, cannot be attacked collaterally. The fact that the corporation was insolvent and in the hands of a receiver did not limit or affect the right of the Commonwealth's taxing officers to assess the tax.

In re Van Beil's Estate. Otto's Estate.

In these cases the Supreme Court in 257 Pa. 155, decided that in appraising the clear value of an estate subject to collateral inheritance tax in Pennsylvania, the sums paid as New Jersey transfer tax upon stocks and bonds should first be deducted.

In re Frank Hoffman, a Weak-Minded Person.

The Supreme Court in this case, reported in 258 Pa. 343, held that where the cost of maintaining a lunatic in a State institution had been partly paid by the State and partly by the county poor district, and the county poor district had been reimbursed in full by the lunatic's estate for the expenditures so made by it, the funds remaining in the hands of the guardian where they were less than the amount paid by the State for the lunatic's support, should be awarded to the Commonwealth under the Act of 1915, P. L. 661.

Commonwealth vs. Wormser, Appellant.

In this case the Supreme Court held that the Act of 1915, P. L. 286, regulating the employment of minors does not contravene the bill of rights of this State or the fifth amendment to the Constitution of the United States. It also held that the provisions of said act that children under the age of sixteen should not be employed in factories at night, is a reasonable exercise of police power and that there is nothing incompatible with personal rights in the regulation that no minor shall be employed to work in any establishment unless an employment certificate had been issued as provided by said act. Reported in 260 Pa. 44.

Daugherty et al., Constituting the Town Council of the Borough of Gettysburg vs. Black, State Highway Commissioner.

This proceeding was a Mandamus to compel the State Highway Commissioner to maintain a borough street which had formerly been a turnpike and formed part of a State highway route, and had been condemned by the Commonwealth, under the provisions of Section 9, of the Act of May 31, 1911, P. L. 468. The Court below refused the writ because the Commissioner had not elected to reconstruct such portion of the highway as ran through the borough in accordance with the provisions of Section 10 of the Act of 1911, and the Supreme Court affirmed the judgment of the Court below. The case decided that the duty of maintaining so much of a condemned turnpike forming part of a State highway route as lies within a borough, rests on

the borough and not on the State where the State Highway Commissioner has not taken the same over for improvement under the provisions of Section 10 of the Act of 1911. Reported in 262 Pa. 230.

In re Estate of Margaretta Smith, Deceased.

The Supreme Court decided that under the Collateral Inheritance Tax Acts of 1887, P. L. 79, and 1905, P. L. 258, the appraiser in determining the clear value of the real estate is not restricted to the consideration of what the property would bring at public sale, but may take into consideration the price which the property would bring at private sale, and other evidence tending to legitimately affect the value of the land. Reported in 261 Pa. 51.

Commonwealth ex rel. District Attorney, Appellant and Commonwealth of Pennsylvania, Intervening Appellant.

vs.

Dickey et al., Commissioners of Clinton County.

This was a mandamus proceeding to compel the County Commissioners to rebuild a bridge destroyed by flood. The bridge was originally built by the County Commissioners and paid for out of the county rates and levies. This bridge was subsequently destroyed by flood and another bridge erected by the County Commissioners. In that proceeding reference was made to the fact that the bridge had been duly entered as a county bridge, in accordance with the Act of 1836, but the records themselves were missing. It was held that the fact that a record was missing which would conclusively show such bridge to be a county bridge, was not material, and that the mandamus should be awarded as prayed. Reported in 262 Pa. 121.

In re Estate of T. Morris Knight, Deceased.

The Supreme Court decided that the clear value of a decedent's estate taxable under the Collateral Inheritance Tax Law of 1887, P. L. 79, can only be ascertained after the payment of the federal tax imposed by Act of Congress of September 8, 1916. Reported in 261 Pa. 537.

In re Estate of Isaac W. Hildebrand, Deceased.

In this case the Supreme Court decided that the \$500 widow's exemption granted by the Act of June 7, 1917, P. L. 447, is not subject to the direct inheritance tax imposed by Act of July 11, 1917, P. L. 832. Reported in 262 Pa. 112.

Joos vs. Commonwealth.

This case was in connection with the publication of the mercantile lists in the County of Allegheny outside of the cities of Pittsburgh and Allegheny, under Section 12 of the Act of April 22, 1846, P. L. 486. The present suit was authorized by Act of 1915, P. L. 241, whereby the plaintiff was entitled to recover whatever might be legally due him as publisher of a German newspaper in which had been published by direction of the mercantile appraiser, a list of the County of Allegheny for the year 1885. It was held that the authority of mercantile appraisers to order such publication will be implied. Reported in 257 Pa. 221.

Nolan vs. Jones.

In this case the Superior Court sustained the constitutionality of the Cold Storage Act of May 16, 1913, P. L. 216. Reported in 67 Superior Court 430. Affirmed by the Supreme Court January 4, 1919. Not yet reported.

Commonwealth vs. Fulton.

This case is based upon the Act of May 13, 1909, P. L. 520, commonly known as the Pure Food Act. The Superior Court decided that a person might be convicted for violation of said act in selling as an article of food an article used for and entering into the composition of, and intended for use as an ingredient in the preparation of food, described as canning compound, which was adulterated in that it contained a large portion of boric acid. Reported in 70 Superior Court 95.

Commonwealth ex rel., Attorney General vs. Grove, et al., Commissioners of Centre County.

This was a mandamus instituted by the Attorney General to compel the repair of two bridges located along a State highway route. The bridges formed part of a turnpike which had been condemned by the County of Centre prior to the passage of the Act of May 31, 1911, and the duty of maintaining them rested on the county at the passage of said act. The Supreme Court affirmed the court below and held that the duty of maintaining county bridges located upon a State highway rested upon the county, and that it was immaterial whether the bridge became a county bridge by proceedings under the Act of April 13, 1836, or reverted to the county on condemnation of a turnpike. Reported in 261 Pa. 504.

State Hospital for the Middle Coal District of Pennsylvania vs. Lehigh Valley Coal Company.

This was a case stated on an action in assumpsit brought in the Court of Common Pleas of Luzerne County, to recover for the actual cost of medical, surgical and hospital services rendered employes of the defendant company under the provisions of the Workmen's Compensation Act. The Court of Common Pleas of Luzerne County entered judgment in favor of the plaintiff and appeal was taken by the defendant to the Superior Court, which is now pending.

In re Petition of Ellen K. Watson, H. C. Shaw, et al., for the Appointment of Viewers in Connection with the Improvement of State Highway Route No. 72.

This was a proceeding instituted in the Court of Quarter Sessions of Allegheny County to recover damages in connection with the change of grade in a State highway, although no land of the petitioners was taken. The Commonwealth filed exceptions to the report of viewers on the ground that it was not liable for damages for the improvement of a State highway, unless land was actually taken. The Court of Quarter Sessions dismissed the exceptions and approved the report. On appeal to the Superior Court, the judgment of the Court below was reversed, and it was held that the Commonwealth

is not liable for damages in the improvement of a State highway under the Act of May 31, 1911, unless land has actually been taken. Not yet reported.

Ida Collins vs. Commonwealth.

H. C. Swift vs. Commonwealth.

These were actions in trespass brought in accordance with Special Acts of Assembly passed in 1917, authorizing suits against the Commonwealth to recover damages for injuries alleged to have been suffered from the failure to maintain in proper repair State highways of the Commonwealth. The Collins case was brought in Somerset County, and the Swift case in Bedford County. In both of them judgments were recovered against the Commonwealth. On appeal to the Supreme Court, the judgments were reversed and the Supreme Court held that in the absence of a general statute assuming such liability, the Commonwealth was not liable for the torts or neglects of its officers and agents, and that the enabling acts under which the suits were brought were unconstitutional and in violation of Article 3, Section 7, forbidding special legislation. The cases are not yet reported, but they are of considerable importance to the State inasmuch as twenty-four similar suits were authorized by the Legislature in 1917. These cases decide that all such special acts are unconstitutional and that if the Commonwealth is to be held liable for damages resulting from negligence in the repair of its State highways, such liability must be assumed by general Act of Assembly applicable to all persons.

In re Pension Mutual Life Insurance Company

and

In re Union Casualty Insurance Company.

These cases were of the greatest importance to the State inasmuch as there was established through them the principle of priority of jurisdiction of State Courts in the matter of the liquidation of domestic corporations under supervision of the State Insurance Department.

In the Pension Mutual case, a suggestion was filed by the Insurance Commissioner under the Act of June 1, 1911, P. L. 599, in the Dauphin County Court (Commonwealth Docket 1916, No. 103) for the dissolution and liquidation of the company under the act. On December

18, 1916, certain non-resident stockholders procured the appointment of a receiver in the United States District Court at Pittsburgh without advising the Court of the action pending in the Dauphin County Court. On the following day, December 19, 1916, the Dauphin County Court heard the case, ordered the dissolution of the company and its liquidation by and under the direction of the Insurance Commissioner, under the Act of 1911 cited. The Attorney General promptly asked the District Court at Pittsburgh to vacate its appointment of the Federal receiver, which it did. The liquidation of the company has been proceeding since under the direction of the Insurance Commissioner.

The Union Casualty case presented more difficulties. The suggestion by the Insurance Commissioner was filed in the Dauphin County Court November 15, 1916 (Commonwealth Docket, 1916, No. 113). The Court granted the rule to show cause including a temporary restraining order. The company appeared on November 29, 1916, the return day, filed an answer and made application for continuance. The Court fixed the hearing for December 19, 1916.

On December 18, 1916, a non-resident stockholder actively identified with the company joined in the filing of a bill in the United States District Court at Philadelphia, praying for the appointment of a receiver. The company simultaneously filed an answer admitting the facts. The United States Court at once appointed a temporary receiver who immediately took possession of the assets. No notice had been given either to the Insurance Commissioner or to the Attorney General. The District Court was either not advised of the proceedings pending in the Dauphin County Court or considered it immaterial.

On the following day, December 19, 1916, the District Court proceeded to a hearing and found the company to be insolvent and ordered its dissolution and the liquidation of its affairs under direction of the Insurance Commissioner under the Act of 1911 cited. The temporary receiver, appointed by the United States Court the day before, refused to turn over the assets to the Insurance Commissioner. On December 20, 1916, the Attorney General asked the United States Court to revoke the appointment of the temporary receiver on the ground that the State having begun proceedings to liquidate its own insolvent corporation under its own State statutes, the jurisdiction of the State Court was exclusive and could not be disturbed by any subsequent action in the United States Court.

The case was argued and the United States District Court held it until February 1, 1917, when it filed an opinion sustaining the appointment of the Federal receiver and on the following day, February 2, 1917, the Court formally dismissed the petition of the Insurance Commissioner and Attorney General and made the appointment of

the Federal receiver permanent. The Federal receiver had, in the meantime, retained possession of the assets of the company, opposing all interference by the Insurance Commissioner.

On February 7, 1917, the Attorney General filed an appeal in the United States Circuit Court of Appeals for the third circuit as of March term, 1917, No. 2227.

On July 24, 1917, the Circuit Court of Appeals in an opinion by Judge Woolley reversed the District Court, whereupon the appointment of the Federal receiver was vacated and the assets ordered to be turned over to the Insurance Commissioner who has since proceeded with the liquidation of the corporation under the State statutes.

The case is reported in 245 Fed. 261.

In re Manor Turnpike Road Company, No. 172, Commonwealth Docket 1917.

This was a mandamus proceeding directed to the Attorney-General, requiring him to show cause why the Lancaster Automobile Club should not have leave to institute quo warranto proceedings in the name of the Commonwealth of Pennsylvania against the Manor Turnpike Road Company, and an alternative writ of mandamus was granted and the issuance of the writ waived and service accepted by the Attorney General, who, on October 17, 1917, filed his answer and return. On February 8, 1918, petition for mandamus was dismissed by the Court. The Lancaster Automobile Club, on petition filed was subsequently permitted by the Court to file exceptions to the order dismissing the petition in the case, but no further action has been taken.

In re Pittsburgh Life and Trust Company.

These proceedings grew out of an attempt by Clarence F. Birdseye, a promoter of New York City, and his associates, Kellogg Birdseye and George F. Montgomery, to secure possession and control of the assets of The Pittsburgh Life and Trust Company, a life insurance company with assets valued at \$24,000,000, by a clever manipulation of the securities of the company, and without the payment by them of any of their own money.

Through quiet negotiations with the directors of the company they secured options for the purchase of a majority of the stock at a price considerably above its real value, and having secured control

of the company, used its assets to secure the money needed to pay for the stock. Once in control of the assets, they immediately removed the quick assets to New York City, disposed of them, and by a series of complicated interlocking transactions conveyed a large part of the company's real estate consisting of two large office buildings in New York City, valued on the company's books at about \$7,000,000, to Clarence F. Birdseye, or his nominees. The actual effect of these operations was to bankrupt the company.

Before the transaction was completely effected, however, the Insurance Commissioner learned of it and immediately made an investigation. As soon as he had uncovered sufficient details of the transaction, he had the Attorney General's Department bring insolvency proceedings in the Court of Common Pleas of Allegheny County, and upon his being appointed receiver, he at once took over the affairs of the company, assumed possession of its property in this State and through the Attorney General's Department brought proceedings in New York State to enjoin the disposition of the property and money which had been located there and to secure its return to the company, which matters are still pending at this writing.

By the permission of the Court and with the assistance of the Attorney General, he also effected an arrangement for the reinsurance of the policy holders of the company by the Metropolitan Life Insurance Company, subject to a small lien against the policy. This plan of reinsurance has been accepted by a large majority of the policy holders, about five-sixths of those in force when the receiver was appointed.

The Attorney General also filed a bill in equity in the Common Pleas Court of Allegheny County, in which the Insurance Commissioner was plaintiff, against the former directors of the Pittsburgh Life & Trust Company, wherein it was sought to recover the payments made to these directors by Birdseye on account of the purchase of their stock, and also to recover all the losses which the Pittsburgh Life & Trust Company had suffered through the acts of its directorate.

When this case was called upon the equity trial list, the defendants proposed to pay four hundred thousand dollars in settlement, this being approximately the amount which they, the defendants, and the other majority stockholders had received from Birdseye. The Attorney General believed that this settlement was for the best interests of all concerned in the administration of the estate, and especially to the interest of the policy holders, in that this substantial amount went to them or to reduce the lien against the re-insured policies. The Allegheny County Court at first refused to permit the settlement, but later made an order authorizing that it be entered into. From this order the minority stockholders took an appeal to the Supreme Court, where the case is now pending.

Upon discovery of the fraud, the Attorney General also caused to be instituted criminal proceedings against the persons responsible for its perpetration. Informations were made against Birdseye, his son, Kellogg Birdseye, G. F. Montgomery, Wm. B. MacQuestion, and one Watson, charging them with conspiracy to wreck the Pittsburgh Life & Trust Company. Indictments were presented to the grand jury of Allegheny County and true bills were returned. A requisition was immediately asked of Governor Brumbaugh for the return of the defendants to Allegheny County for trial. The extradition papers were granted and were presented to Governor Whitman of New York. The two Birdseyes, Montgomery and Watson contested their extradition before the Governor of New York. Extradition was granted, directing that the Birdseyes, Montgomery and MacQuestion be turned over to the Allegheny County authorities. Extradition was refused as to Watson. The defendants took out writs of habeas corpus in the United States District Court for the Southern District of New York. After lengthy hearings these writs were dismissed, whereupon the relators took appeals to the Supreme Court of the United States. These cases were argued in April, 1918, and the Court remanded the defendants to the Pennsylvania authorities, whereupon they appeared in Pittsburgh and entered bail for their appearance. Their cases were listed for trial in Quarter Sessions Court of Allegheny County in the Fall of 1918, but were postponed on account of the influenza epidemic until March, 1919, at which time they will be tried.

At the same time that information was made against Birdseye and his confederates, the Attorney General's Department also caused to be presented an information against the former directors of the Pittsburgh Life & Trust Company, charging them with conspiracy, which was sworn to by the Insurance Commissioner, and an indictment found thereon by the grand jury of Allegheny County. This indictment is also pending.

The Pittsburgh Bank for Savings.

The expectations expressed in the Supplemental References in the last Report of the Attorney General were fully realized. The creditors were paid 82½% within approximately two years from the time the bank closed, the total amount paid the depositors and creditors being \$8,883,615.29. The total expenses of the Receivership for salaries, rents, postage, stationery, etc., were \$36,274.85, the total paid on account of taxes, sheriff's costs, commissions, etc., was \$21,425.34, representing a cost of liquidation of approximately one-half of one per cent. In the face of that, there was earned during the receivership the sum of \$324,445.88.

The Central Trust Company of Pittsburgh.

The Central Trust Company of Pittsburgh was closed on practically the same basis with the same relative conclusion, the creditors in this instance having been paid 87-2-10%. Those responsible for the wrecking of the Central Trust Company were finally brought to trial in January, 1919, and found guilty under indictment for conspiracy.

County of Philadelphia vs. Commonwealth of Pennsylvania.

This is an action brought in the Court of Common Pleas No. 5, of Philadelphia County, under the Special Act of June 22, 1917, P. L. 636, authorizing suit against the Commonwealth for the moneys advanced for the payment of expenses incident to the conduct of the primary elections for the years 1911, 1912, 1913 and 1914. The case was tried before Honorable William H. Staake without a jury, and is now awaiting a decision at his hands.

Ten ejectment suits were instituted and successfully conducted by the Commonwealth on behalf of State Capitol Park Commission. They are Nos. 6, 7, 8, 9, 86, 87, 88, 89, 90 and 91, Commonwealth Docket, 1917.

This department brought twenty-one suits against various towns, ships and boroughs of the Commonwealth, beginning with No. 50 Commonwealth Docket, 1918, to recover amounts due the Commonwealth by these municipalities on account of State-aid highway maintenance. Several of these suits have been adjusted, but the majority are still pending.

The following cases had been argued in the Appellate Courts, but had not been decided at the time of my last report. The decisions are as follows:

In re Commonwealth vs. Westinghouse Air Brake Co., appellant.
Affirmed. 251 Pa. 12.

Nolan vs. Foust, Dairy and Food Commissioner, appellant.
Reversed. 67 Superior Court, 430.

In re Saeger, appellant vs. Commonwealth. Affirmed. 258 Pa. 239.

Danboro & Plumsteadville Turnpike Road Company vs. Bucks County, appellant. Affirmed. 258 Pa. 391.

Doylestown & Danboro Turnpike Road Company vs. Bucks County, appellant. Affirmed. 258 Pa. 399.

Commonwealth vs. Crew Levick Company, appellant. Affirmed. 256 Pa. 508. Reversed by the United States Supreme Court, 245 U. S. 292.

Respectfully submitted,

FRANCIS SHUNK BROWN,
Attorney General.

SCHEDULE A.—FORMAL HEARINGS, BEFORE THE ATTORNEY GENERAL.—1917-18.

William Reid, Mine Inspector 6th District of Anthracite Coal Region, comprising the County of Columbia,	Quo Warranto,	Refused.
Pennsylvania Water & Power Company,	Quo Warranto,	Application filed, but not pressed, same matters being involved in equity suit pending in Supreme Court.
Bradford Power Company,	Quo Warranto,	Allowed, suggestion filed in Dauphin County.
Northern Pennsylvania Power Company,	Quo Warranto,	Allowed, suggestion filed in Dauphin County.
Farm Lands Development Company,	Quo Warranto,	Allowed, suggestion filed in Dauphin County.
Chemung Land Company,	Quo Warranto,	Allowed, suggestion filed in Dauphin County.
Historical Publishing Company,	Quo Warranto,	Application filed. Proceedings discontinued.
Pine Hill Water Company,	Quo Warranto,	Refused.
United Natural Gas Company,	Quo Warranto,	Application filed. Proceedings discontinued.
Cosmopolitan Club of Pittsburgh,	Quo Warranto,	Refused.
In re Estate of Bridget Comber, deceased,	Proceedings under Acts of 1855, P. L. 328 and 1895, P. L. 114.	Attorney General accepts copy of adjudication in Orphans' Court of Philadelphia County.
Independent Hose Company of Stowe Township, Allegheny County, a corporation, and West End Land Company, a corporation, vs. John G. Peters, Frank Bobinger and J. B. Thompson, Trustees,	Proceedings under Act of May 23, 1895, P. L. 114.	Use of name of Commonwealth allowed in proceedings in Allegheny County.
Wilkes-Barre Motor Transit Company,	Quo Warranto,	Allowed.
Falls Ferry Company of Falls, Pennsylvania,	Quo Warranto,	Allowed. Suggestion to be filed in Wyoming County.
In re Estate of Henry Rigby, deceased,	Proceedings under Acts of 1855, P. L. 328 and 1895, P. L. 114.	Attorney General accepts notice of proceedings in Orphans' Court of Philadelphia County.
Pennsylvania Power Company,	Quo Warranto,	Application filed. Not pressed.
Magnesia Covering Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
In re Estate of Sarah A. Todd, deceased,	Proceedings under Acts of 1855, P. L. 328 and 1895, P. L. 114.	Attorney General joins in proceeding in the Orphans' Court of Cumberland County.

Dale Light, Heat and Power Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
Lawrence Power Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
Steelton Planing Mill Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
In re Estate of David Anson, deceased,	Proceedings under Act of May 23, 1895, P. L. 114.	Attorney General accepts notice of adjudication in Orphans' Court of Philadelphia County.
Lancaster and Susquehanna Turnpike Road,	Quo Warranto,	Application filed. Proceedings discontinued.
Central Broadheads Power Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
In re Estate of Elliott Cresson, deceased,	Proceedings under Acts of 1855, P. L. 328 and 1895, P. L. 114.	Attorney General joins in proceedings in the Orphans' Court of Philadelphia County.
York and Maryland Line Turnpike Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
In re Estate of Elizabeth L. Clark, deceased,	Proceedings under Act of May 23, 1895, P. L. 114.	Attorney General joins in the proceedings in the Orphans' Court of Philadelphia County.
In re Estate of Alfred Bamber, deceased,	Proceedings under Act of May, 23, 1895, P. L. 114.	Attorney General consents to award of the Orphans' Court of Philadelphia County.
In re Presbytery of Pittsburgh,	Proceedings under Act of May, 23, 1895, P. L. 114.	Attorney General accepts notice of proceedings in Court of Common Pleas of Allegheny County.
Ella J. Mountz vs. Pittsburgh, Bessemer and Lake Erie Railroad Company,	Proceeding in Equity,	Application for leave to join the Attorney General as party plaintiff filed, and subsequently withdrawn.
Twenty-second Street Bank of Philadelphia,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
Ruthenian Bank,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
Lancaster County Insurance, Trust and Safe Deposit Company,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.
Penn Treaty Beneficial Association,	Quo Warranto,	Allowed. Suggestion filed in Dauphin County.

SCHEDULE B.

BANK CHARTERS APPROVED DURING THE YEARS 1917 AND 1918.

NAME AND LOCATION.	APPROVED.
State Bank of Beaver Falls, Beaver Falls,	January 29, 1917.
The Citizens State Bank, Lock Haven,	January 22, 1917.
Bank of Erie, Erie,	February 15, 1917.
Pennsylvania State Bank, Philadelphia,	March 24, 1917.
Hungaro-Russian Slavonic State Bank, Johnstown,	May 21, 1917.
The Citizens' Bank of Palmerton, Pa., Palmerton,	May 23, 1917.
The Dormont Bank, Dormont,	June 20, 1917.
Union Deposit Bank, South Fork,	July 12, 1917.
Safe Deposit Bank, Tarentum,	July 26, 1917.
Commercial Bank of Scranton, Scranton,	July 31, 1917.
Oxford Bank of Frankford, Philadelphia,	September 11, 1917.
Ickesburg State Bank, Ickesburg,	Oct 22, 1917.
Morrellville Deposit Bank, Johnstown,	November 22, 1917.
Farmers and Miners Bank of Jacksonville, Jacksonville, ..	December 3, 1917.
Bank of South Williamsport, South Williamsport,	December 20, 1917.
Peoples Bank of Unity, Unity,	January 2, 1918.
Union Bank of Nanty Glo, Nanty Glo,	January 3, 1918.
The Slovak State Bank, Uniontown,	January 14, 1918.
Farmers Bank of York, York,	February 20, 1918.
The Grove City State Bank, Grove City,	March 12, 1918.
Peoples State Bank of New Kensington, New Kensington, ..	March 18, 1918.
The Mahantongo Valley Bank, Uniontown, Pillow P. O. .	April 16, 1918.
Colver Bank, Colver,	April 26, 1918.
State Bank of Klingerstown, Klingerstown,	June 19, 1918.
York Haven State Bank, York Haven,	July 1, 1918.
Imperial State Bank, Imperial,	July 11, 1918.
Day and Night Bank, Pittsburgh,	August 12, 1918.
Silver Creek State Bank, New Philadelphia,	August 22, 1918.
Bedford County Bank, Pleasantville,	August 27, 1918.
East Prospect State Bank, East Prospect,	October 8, 1918.
The Hastings Bank, Hastings,	October 18, 1918.
Farmers' Bank of Egypt, Egypt,	December 11, 1918.
Columbus State Bank of Philadelphia, Philadelphia, ...	December 31, 1918.

INSURANCE COMPANY CHARTERS APPROVED.

American Re-Insurance Company, Huntingdon, Pa.,	March 15, 1917.
American Ship Builders and Ship Owners Mutual Insurance Company, Philadelphia, Pa.,	June 7, 1917.
Allied Fire Insurance Company, Pittsburgh, Pa.,	September 3, 1918.
Grange Mutual Casualty Ins. Co., Harrisburg, Pa., ...	March 7, 1917.
Sterling Mutual Health and Accident Ins. Co., Philadelphia, Pa.,	January 8, 1918.

SCHEDULE C.

LIST OF TAX APPEALS FILED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1917 AND 1918.

Name.	Nature of Claim.	Remarks.
Locust Mountain Coal Co.,	Anthracite Coal Tax, 1915.	Judgment in favor of defendant.
Cherry River Paper Co.,	Loans, 1912,	Verdict for defendant.
Cherry River Paper Co.,	Loans, 1914,	Verdict for defendant.
Cherry River Paper Co.,	Loans, 1915,	Verdict for defendant.
The National Cash Register Co.,	C. S. 1915,	Pending.
The National Cash Register Co.,	Bonus on increase, 1915.	Pending.
Penna. Water & Power Co.,	G. R. 1915 (6 mo. to Dec. 31.)	Pending.
Penna. Water & Power Co.,	G. R. 1916 (6 mo. to June 30.)	Pending.
York Haven Water & Power Co.,	G. R. 1914 (6 mo. to Dec. 31.)	Pending.
York Haven Water & Power Co.,	G. R. 1915 (6 mo. to June 30.)	Pending.
York Haven Water & Power Co.,	G. R. 1915 (6 mo. to Dec. 31.)	Pending.
York Haven Water & Power Co.,	G. R. 1916 (6 mo. to June 30.)	Pending.
The Atlantic Refining Co.,	Mercantile license tax.	Pending.
Norfolk & Western Railway Co.,	C. S. 1908,	Pending.
Norfolk & Western Railway Co.,	C. S. 1910,	Pending.
Norfolk & Western Railway Co.,	C. S. 1911,	Pending.
Norfolk & Western Railway Co.,	C. S. 1912,	Pending.
Norfolk & Western Railway Co.,	C. S. 1913,	Pending.
Norfolk & Western Railway Co.,	C. S. 1914,	Pending.
Norfolk & Western Railway Co.,	C. S. 1915,	Pending.
Great Southern Lumber Co.,	C. S. 1914,	Paid.
Great Southern Lumber Co.,	C. S. 1915,	Paid.
John B. Stetson Co.,	C. S. 1913,	Verdict for defendant.
John B. Stetson Co.,	C. S. 1914,	Verdict for defendant.
John B. Stetson Co.,	C. S. 1915,	Verdict for defendant.
The Central Railroad Co. of New Jersey.	C. S. 1912,	Judgment in favor of defendant.
The Central Railroad Co. of New Jersey.	C. S. 1913,	Judgment in favor of defendant.
The Central Railroad Co. of New Jersey.	C. S. 1914,	Judgment in favor of defendant.
The Central Railroad Co. of New Jersey.	C. S. 1915,	Judgment in favor of defendant.
Western Union Telegraph Co.,	C. S. 1914,	Pending.
Western Union Telegraph Co.,	C. S. 1915,	Pending.
Williamsport Rail Co.,	Bonus,	Paid.
Williamsport Rail Co.,	Bonus,	Paid.
Northern Coal & Iron Co.,	C. S. 1914,	Paid.
Northern Coal & Iron Co.,	C. S. 1915,	Paid.
Shanferoke Coal Co.,	C. S. 1913,	Paid.
Shanferoke Coal Co.,	C. S. 1914,	Paid.
Shanferoke Coal Co.,	C. S. 1915,	Paid.
Penna. Heat, Light & Power Co.,	C. S. 1913,	Paid.
Penna. Heat, Light & Power Co.,	C. S. 1914,	Paid.
Penna. Heat, Light & Power Co.,	C. S. 1915,	Paid.
Phila. Electric Co.,	C. S. 1913,	Paid.
Schuylkill Coal & Iron Co.,	C. S. 1911,	Paid.
Schuylkill Coal & Iron Co.,	C. S. 1914,	Paid.
Schuylkill Coal & Iron Co.,	C. S. 1915,	Paid.
Standard Underground Cable Co.,	C. S. 1913,	Verdict for defendant.

SCHEDULE C—Continued.

Name.	Nature of Claim.	Remarks.
Standard Underground Cable Co., . .	C. S. 1914,	Verdict for defendant.
Standard Underground Cable Co., . .	C. S. 1915,	Verdict for defendant.
Edison Electric Light Co. of Philadelphia,	C. S. 1913,	Paid.
Edison Electric Light Co. of Philadelphia,	C. S. 1914,	Paid.
Edison Electric Light Co. of Philadelphia,	C. S. 1915,	Paid.
The United Gas Improvement Co., .	C. S. 1913,	Paid.
The United Gas Improvement Co., .	C. S. 1914,	Paid.
The United Gas Improvement Co., .	C. S. 1915,	Paid.
Hudson Coal Co.,	C. S. 1913,	Paid.
Hudson Coal Co.,	C. S. 1914,	Paid.
Hudson Coal Co.,	C. S. 1915,	Paid.
Lower Merion Township, Montgomery County,	Loans, 1905,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1906,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1907,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1908,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1909,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1910,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1911,	Verdict for defendant.
Lower Merion Township, Montgomery County,	Loans, 1912,	Verdict for defendant.
Overland Motor Company,	C. S. 1915,	Pending.
Overland Motor Company,	C. S. 1916,	Pending.
McCreery & Company,	Bonus on increase,	Paid.
Lord & Gage,	Bonus, 1911,	Pending.
Louis Walther Mfg. Co.,	Bonus 1912,	Paid.
Provident Life & Trust Co. of Philadelphia,	C. S. 1913,	Verdict for defendant.
Provident Life & Trust Co. of Philadelphia,	C. S. 1914,	Paid.
Provident Life & Trust Co. of Philadelphia,	C. S. 1915,	Paid.
Johnson & Johnson Co.,	C. S. 1915,	Submitted to the Court.
John McGlinn Distilling Co.,	C. S. 1914,	Pending.
John McGlinn Distilling Co.,	C. S. 1915,	Submitted to the Court.
John McGlinn Distilling Co.,	C. S. 1916,	Pending.
Lancaster Electric Light, Heat & Power Co.,	Loans, 1914,	Submitted to the Court.
Lancaster Electric Light, Heat & Power Co.,	Loans, 1915,	Pending.
Lancaster Electric Light, Heat & Power Co.,	Loans, 1916,	Submitted to the Court.
McClintic-Marshall Co.,	C. S. 1915,	Pending.
McClintic-Marshall Co.,	C. S. 1916,	Submitted to the Court.
The Atlantic Refining Co.,	C. S. 1916,	Paid.
The Delaware & Hudson Co.,	C. S. 1913,	Verdict in favor of Commonwealth.
The Delaware & Hudson Co.,	C. S. 1914,	Verdict in favor of Commonwealth.
The Delaware & Hudson Co.,	C. S. 1915,	Verdict in favor of Commonwealth.

SCHEDULE C—Continued.

Name.	Nature of Claim.	Remarks.
Metropolitan Life Insurance Co. of New York,	Gross Premiums, 1917.	Pending.
Bethlehem Steel Co.,	C. S. 1916,	Paid.
Nagle Engine & Boiler Works,	C. S. 1914,	Pending.
Northwestern Penna. Railway Co., .	Bonus on increase,	Submitted to the Court.
Hale Coal Company,	Loans, 1917,	Pending.
Roxford Knitting Co.,	Loans, 1917,	Submitted to the Court.
Hebard Cypress Co.,	Loans, 1917,	Pending.
J. Frank Boyer Plumbing & Heating Co.,	C. S. 1911,	Submitted to the Court.
J. Frank Boyer Plumbing & Heating Co.,	C. S. 1912,	Pending.
J. Frank Boyer Plumbing & Heating Co.,	C. S. 1913,	Submitted to the Court.
J. Frank Boyer Plumbing & Heating Co.,	C. S. 1915,	Pending.
J. Frank Boyer Plumbing & Heating Co.,	C. S. 1916,	Pending.
Panther Run Coal Co.,	C. S. 1917,	Pending.
ing Co.,		

SCHEDULE D.

LIST OF THE CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1917 AND 1918.

- Commonwealth of Pennsylvania vs. Crew-Levick Company, Appellant. Reported in 256 Pa. 508,Affirmed.
- President and Managers of the Danboro and Plumsteadville Turnpike Road Company and Commonwealth of Pennsylvania, Intervening Appellee, vs. County of Bucks, Appellant. Reported in 258 Pa. 391,Affirmed.
- President and Managers of the Doylestown and Danboro Turnpike Road Company and Commonwealth of Pennsylvania, Intervening Appellee, vs. County of Bucks, Appellant. Reported in 258 Pa. 399,Affirmed.
- Frank B. Stratford vs. Franklin Paper Mills Company. Appeal of Commonwealth of Pennsylvania. Reported in 257 Pa. 163,Reversed.
- In re Estate of Mary Van Beil, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 257 Pa. 155,Dismissed.
- In re Estate of Eliza Otto, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 257 Pa. 155,Dismissed.
- Commonwealth of Pennsylvania vs. Mary C. Koontz and Levi L. Horst, Appellants. Reported in 258 Pa. 64, .Affirmed.
- Commonwealth of Pennsylvania, ex rel. J. Denny O'Neil, Insurance Commissioner, vs. Union Casualty Insurance Company of Philadelphia, Appellant,Non prossed.
- Commonwealth of Pennsylvania vs. Schwarzschild & Sulzberger Company of America, Appellant. Reported in 259 Pa. 130,Affirmed.
- Commonwealth of Pennsylvania vs. United Cigar Stores Company, Appellant. Determined by last preceding case.
- Commonwealth of Pennsylvania vs. Williamsport Rail Company, Appellant. Determined by last preceding case.
- Germantown Trust Company, Appellant, vs. A. W. Powell, Auditor General of Pennsylvania. Reported in 260 Pa. 181,Reversed.
- Columbia National Bank, a corporation, etc., Appellant, vs. A. W. Powell, Auditor General of Pennsylvania. Reported in 260 Pa. 181,Reversed.
- Union Trust Company, a corporation, etc., Appellant, vs. A. W. Powell, Auditor General of Pennsylvania. Reported in 260 Pa. 181,Reversed.
- Commonwealth of Pennsylvania, Appellant, vs. Harrisburg Light and Power Company. Reported in 262 Pa. 238,Affirmed.
- In re Frank Hoffman, a weak-minded person. Appeal of Commonwealth of Pennsylvania. Reported in 258 Pa. 343,Reversed.
- F. M. Noecker, Appellant, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania. Reported in 259 Pa. 160,Reversed.

- Commonwealth of Pennsylvania vs. Joseph Wormser, Appellant. Reported in 260 Pa. 44, Affirmed.
- Commonwealth of Pennsylvania, ex rel. D. Edward Long, Superintendent of Public Printing and Binding vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania, Appellants. Reported in 261 Pa. 57, Affirmed.
- Commonwealth of Pennsylvania, ex rel. Nathan R. Bul-ler, Commissioner of Fisheries vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania, Appellants. Reported in 261 Pa. 57, Affirmed.
- Commonwealth of Pennsylvania, ex rel. Daniel F. La-fean, Commissioner of Banking vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth, Appellants. Reported in 261 Pa. 57, Affirmed.
- Commonwealth of Pennsylvania, ex rel. Charles E. Pat-ton, Secretary of Agriculture vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania, Appellants. Reported in 261 Pa. 57, Affirmed.
- C. B. Dougherty, et al., constituting the Town Coun-cil of the Borough of Gettysburg, Appellant, vs. Frank B. Black, State Highway Commissioner of the Com-monwealth of Pennsylvania. Reported in 262 Pa. 230, Dismissed.
- George P. Cooper and Edward N. Cooper vs. Common-wealth of Pennsylvania, Appellant, Settled.
- Estate of Margaretta Smith, deceased, vs. Commonwealth of Pennsylvania, Appellant. Reported in 261 Pa. 55, Dismissed.
- In re Estate of Margaretta Smith, deceased. Appeal of Benjamin H. Smith, in his own right and as Admin-istrator of said decedent. Reported in 261 Pa. 51, ... Affirmed.
- Commonwealth of Pennsylvania ex rel. H. M. Counsil, District Attorney of Clinton County, Pennsylvania, Appellant, and Commonwealth of Pennsylvania, Inter-vening Appellant, vs. Adam Dickey, James L. Kem-merer and Robert Myers, Commissioners of Clinton Co. Reported in 262 Pa. 121, Reversed.
- Commonwealth of Pennsylvania vs. Ella (or Helen) M. Lee, Appellant, Non prossed.
- In re Estate of T. Morris Knight, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 261 Pa. 537, Affirmed.
- Commonwealth of Pennsylvania vs. Semet-Solvay Com-pany, Appellant. Reported in 262 Pa. 234, Affirmed.
- Peoples Trust Company of Pittsburgh, a corporation, Appellant, vs. Cyrus E. Woods, Secretary of the Com-monwealth, and The Safe Deposit and Trust Company of Pittsburgh, Defendants. Reported in 263 Pa. 357, .. Dismissed.
- Estate of Isaac W. Hildebrand, deceased. Appeal of the Commonwealth of Pennsylvania. Reported in 262 Pa. 112, Dismissed.
- Ida Collins vs. Commonwealth of Pennsylvania, ap-pellant. Reported in 262 Pa. 572, Reversed.
- Harry C. Swift vs. Commonwealth of Pennsylvania, Ap-pellant. Reported in 262 Pa. 580, Reversed.
- Commonwealth of Pennsylvania vs. J. R. Fulton, Ap-pellant. Reported in 263 Pa. 332, Affirmed.

Commonwealth of Pennsylvania, Appellant, vs. John E. Joos, a resident of the City of Pittsburgh, Allegheny County, Pennsylvania. Reported in 257 Pa. 221,Affirmed.

John E. Joos, a resident of the City of Pittsburgh, Allegheny County, Pennsylvania, Appellant, vs. Commonwealth of Pennsylvania. Reported in 257 Pa. 221,Affirmed.

Commonwealth of Pennsylvania, ex rel. Trustees of Mothers Assistance Fund of Philadelphia County, Appellants, vs. Archibald W. Powell, Auditor General. Reported in 256 Pa. 470,Reversed.

Commonwealth of Pennsylvania vs. H. Homer Matter, Appellant. Reported in 257 Pa. 322,Affirmed.

Edward S. Nolan, Appellant, vs. Edward P. Jones, Jennie Hamison, James Foust and Union Storage Company, a Pennsylvania corporation. Reported in 263 Pa. 124,Affirmed.

W. Murray Carr vs. The Aetna Accident and Liability Company, a corporation. Reported in 263 Pa. 87, ..Reversed.

CASES ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA DURING THE YEARS 1917 AND 1918.

H. W. Allison vs. E. M. Bigelow, State Highway Commissioner of Pennsylvania, Appellant. Reported in 68 Super. Ct. Rep. 219,Affirmed.

Edward S. Nolan vs. Edward P. Jones, Jennie Hamison, James Foust and Union Storage Company, a Pennsylvania corporation, Appellants. Reported in 67 Super. Ct. Rep. 430,Reversed.

In re Estate of James Frazier, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 67 Super. Ct. Rep. 362,Reversed.

Commonwealth of Pennsylvania vs. George E. Winger, Appellant,Non prossed.

Commonwealth of Pennsylvania vs. J. R. Fulton. Reported in 70 Super. Ct. Rep. 95,Reversed.

Estate of Abraham L. Keister, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 70 Superior Ct. Rep. 484,Affirmed.

Commonwealth of Pennsylvania vs. Welsh Mountain Mining and Kaolin Manufacturing Company, Appellant. Appeal ordered certified to Supreme Court as having exclusive jurisdiction.

In re Petition for appointment of Viewers to ascertain and assess damages in the matter of the construction, reconstruction and improvement of State highway route No. 72, upon property of Ellen K. Watson, H. C. Shaw and George E. Shaw. Appeal of Commonwealth of Pennsylvania. Case reported in 71 Superior Ct. Rep. 85,Reversed.

Commonwealth of Pennsylvania vs. S. M. Palmer, Appellant. Reported in 71 Superior Ct. Rep. 188,Affirmed.

Estate of Henry W. Kratz, deceased. Appeal of Commonwealth of Pennsylvania. Reported in 72 Superior Ct. Rep. 232.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth of Pennsylvania vs. Hannis Distilling Company, Appellant.
Commonwealth of Pennsylvania vs. Welsh Mountain Mining and Kaolin Manufacturing Company, Appellant.

Columbia National Bank, a corporation, etc., Appellant, vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania.

Union Trust Company, a corporation, etc., Appellant, vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania.

Germantown Trust Company, Appellant, vs. A. W. Powell, Auditor General of the Commonwealth of Pennsylvania.

CASES NOW PENDING IN THE SUPERIOR COURT OF PENNSYLVANIA.

The Trustees of The State Hospital of the Middle Coal Field of Pennsylvania, vs. Lehigh Valley Coal Company, Appellant.

CASES ARGUED IN THE UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT, DURING THE YEARS 1917 AND 1918.

J. Denny O'Neil, Insurance Commissioner of Pennsylvania, and Francis Shunk Brown, Attorney General of Pennsylvania, Appellants, vs. Homer G. Welch, and The Consolidated Investment Company, and Samuel W. Cooper, Receiver of The Union Casualty Insurance Company.

CASES ARGUED IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF PENNSYLVANIA.

American Druggists' Fire Insurance Company, Plaintiff, vs. Charles A. Ambler, Insurance Commissioner of the Commonwealth of Pennsylvania, Defendant.

CASES ARGUED IN THE SUPREME COURT OF THE UNITED STATES DURING THE YEARS 1917 AND 1918.

Crew-Levick Company vs. Commonwealth of Pennsylvania, Defendant in Error. Reported in 245 U. S. 292,Reversed.

CASES PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Hiram C. Himes, et al., Trustees for bondholders of The New Philadelphia Graphite Company, et al., Plaintiffs in Error, vs. the Commonwealth of Pennsylvania.

SCHEDULE E.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1917 AND 1918.

Name of Defendant.	Nature of Claim.	Remarks.
E. F. Yohn, Frank Carlin, H. E. Prouty, Supervisors of Pike Township, Potter County,	Recovery of State-aid Highway Construction Funds.	Paid.
Borough of South Williamsport, Lycoming County,	Recovery of State-aid Highway Construction Funds.	Judgment in favor of the Commonwealth. Mandamus Execution in Common pleas of Lycoming County.
Borough of Duryea, Luzerne County,	Recovery of State-aid Highway Construction Funds.	Paid.
Penna. Hard Vein Slate Co.,	C. S. 1911-1915, Inc. Loans 1914 and 1915.	Paid.
Cresson Springs Brewing Co.,	C. S. and Loans 1913-1914-1915.	Defendant in hands of Receiver.
Troy Coal Company,	C. S. and Loans 1909 to 1914, Inc.	Judgment in favor of Commonwealth. Paid.
Trymero Washing Powder Co.,	Penalties under Act of 1905, P. L. 166.	Judgment in favor of Commonwealth.
Tunkhannock Distilling Co.,	C. S. 1911 to 1914, Inc. Penalties under Act of 1905, P. L. 166.	Sheriff returns nihil habet.
Tribune Publishing Co., Scranton, ..	C. S. 1913 Loans 1912 and 1913.	Property sold at judicial sale.
Mountain Ridge Water Co.,	C. S. 1912-1913-1914. Penalties under Act of 1905, P. L. 166.	Claims subsequently withdrawn by Auditor General.
Stephens Tin Mining, Milling and Mfg. Co.,	Loans 1909 to 1913, Inc.	Tax resettled and stricken off after suit.
Suburban Gas & Fuel Co. of York County,	C. S. 1914 Loans 1912 to 1914, Inc.	Company in hands of Receiver.
Thurlow Medical Co.,	C. S. 1911-1912-1914.	Company defunct and insolvent.
Taylor Worsted Company,	C. S. 1911-1913-1914. Penalties under Act of 1905, P. L. 166.	Judgment in favor of the Commonwealth. Execution.
Taintor Chemical Company,	C. S. 1908 to 1914, Inc. Penalties under Act of 1905, P. L. 166.	Execution. Paid.

SCHEDULE E.—Continued.

Name of Defendant.	Nature of Claim.	Remarks.
Taylor Silk Mfg. Co.,	C. S. 1911-1912-1913.	Judgment in favor of the Commonwealth. Paid.
Union Peach Bottom Slate Co.,	C. S. 1909 to 1913, Inc. Penalties under Act of 1905, P. L. 166.	Sheriff returns nihil habet.
Superba Coal Co.,	C. S. 1912-1913-1914.	Judgment in favor of the Commonwealth. Execution.
Van Mfg. Company,	C. S. and Loans 1912 to 1914, inc.	Sheriff returns non est inventus.
Sykes Woolen Mill Co.,	C. S. 1912-1913-1914 Loans 1913-1914. Penalties under Act of 1905, P. L. 166.	Defunct and insolvent.
South Huntingdon Water Co.,	C. S. 1913 and 1914.	Judgment in favor of the Commonwealth. Company defunct. Tax uncollectible.
M. O. Coggins Company,	C. S. 1914,	Judgment in favor of the Commonwealth. Execution. Sheriff returns nulla bona.
Union Building Co. (Lancaster),	C. S. 1911-1913-1914. Loans 1911 to 1914, inc. Penalties under Act of 1905, P. L. 166.	Pending.
Valley Securities Company,	C. S. 1914,	Tax resettled and paid.
Vulcan Works Company,	Penalties under Act of 1905, P. L. 166.	Accounts resettled and stricken off.
Sterling Knitting Company,	Penalties under Act of 1905, P. L. 166.	Sheriff returns nihil habet.
Snow Shoe Water Company,	C. S. and Loans 1912 to 1914, inc.	Paid.
Star Box Co. of Sinnemahoning, ...	Penalties under Act of 1905, P. L. 166.	Judgment in favor of the Commonwealth. Execution. Sheriff returns nulla bona.
Verbeck Amusement Company,	C. S. 1914. Loans 1913 and 1914.	Judgment in favor of the Commonwealth. Execution.
Somerset Dairy Co-operation,	C. S. 2-1-12 years from Sept. 20, 1911.	Tax resettled and paid.
Sutter Oil & Gas Company,	Penalties under Act of 1905, P. L. 166.	Defunct and insolvent.
Bennett Garbage Disposal Co.,	Loans 1909-1910-1914.	Judgment in favor of Commonwealth. Execution. Paid.
Waverly, Sayre & Athens Traction Company,	G. R. 1916, 2-1-5 Mo.	Paid.
Waynesburg Pressed Steel Co.,	C. S. 1903 and 1904.	Tax resettled and stricken off after suit.

SCHEDULE E.—Continued.

Name of Defendant.	Nature of Claim.	Remarks.
Wagner Hardware Co.,	C. S. and Loans 1913 and 1914.	Judgment in favor of Commonwealth. Exe- cution. Paid.
Washington Laundry Company,	C. S. 1912-1913.	Affidavit of defense filed. Awaiting trial.
Wahlville Coal Company,	C. S. 1910-1911.	Judgment in favor of Commonwealth. De- funct. Tax uncol- lectible.
Wheatland Land Company,	C. S. 1912 and 1913.	Judgment in favor of Commonwealth. Exe- cution. Paid.
Wolf Store Company,	C. S. 1912-1913- 1914.	Judgment in favor of Commonwealth. Com- pany insolvent. Tax uncollectible.
Worden Mfg. Company,	Penalties under Act of 1905, P. L. 166.	Affidavit of defense filed. Awaiting trial.
Woodworth Chandelier Company, ...	Penalties under Act of 1905, P. L. 166.	Company in hands of re- ceiver.
Wampum Electric Light Co.,	Penalties under Act of 1905, P. L. 166.	Judgment in favor of Commonwealth. Com- pany defunct.
Wyoming Valley Motor Car Co.,	Loans 1911 to 1914, inc.	Judgment in favor of Commonwealth. Exe- cution.
Wyoming Valley Land & Improve- ment Co.,	C. S. and Loans 1913 and 1914.	Judgment in favor of the Commonwealth. Execution.
Wyoming Amusement Company,	C. S. 1905-1906- 1907. Penalties under Act of 1905, P. L. 166.	Judgment in favor of Commonwealth. Exe- cution.
Wyoming Silk Mfg. Co.,	C. S. 1913,	Tax resettled and stricken off after suit. Sheriff returns nihil habet.
West End Realty Company,	C. S. 1911 to 1915, inc. Penalty under Act of 1905, P. L. 166.	Judgment in favor of the Commonwealth. Execution.
Holmes Fibre Graphite Mfg. Co.,	C. S. 1898. Loans 1895 and 1898. Penalty under Act of 1905, P. L. 166.	Judgment in favor of the Commonwealth. Execution.
West Chester & Phoenixville Rail- road Co.,	C. S. 43 years 8 mo. from Mar. 9, 1870.	Sheriff returns nihil habet.
West Grove Plumbing & Heating Company,	C. S. 1910 to 1914, inc.	Judgment in favor of Commonwealth. Com- pany defunct.
West Mountain Coal Co.,	Loans 1910 to 1913, inc.	Company in hands of trustee in bankruptcy. Paid.
Wilcox Glass Company,	C. S. 1910-1911 and 1913. Loans 1914. Penalty under Act of 1905, P. L. 166.	
Modern Food Machine Co.,	C. S. and Loans 1913 and 1914. Bonus on in- crease.	Paid.

SCHEDULE E.—Continued.

Name of Defendant.	Nature of Claim.	Remarks.
Wilkes-Barre Knitting Mills Co., ..	C. S. 1912-1913-1914. Loans 1910 to 1914, inc. Penalty under Act of 1905, P. L. 166.	Suit discontinued.
Queen City Silk Co.,	Loans 1914,	Paid.
Standing Stone Telephone Co.,	Penalties under Act of 1905, P. L. 166.	Suit discontinued.
Somerset County Leader Co.,	Penalties under Act of 1905, P. L. 166.	Accounts resettled and stricken off after suit.
Peter Ace, late Treasurer of Wyoming County, and John B. Fassett, et al., Sureties,	Suit on official bond.	Paid.
L. A. Clark Company,	C. S. 1912 to 1915, inc.	Judgment in favor of Commonwealth. Execution. Paid.
Norristown Insurance & Water Company,	Tax on $\frac{1}{2}$ dividends in excess of 12%. Act of 1834, P. L. 109.	Paid.
Hannah Irwin,	Penalty under Sec. 5, Act of 1911, P. L. 658.	Judgment in favor of Commonwealth. Execution.
Economy Building & Loan Asso. of Scranton, Pa.,	Penalty under Sec. 5, Act of 1895, P. L. 4.	Judgment in favor of Commonwealth. Execution. Paid.
The Artisans Building & Loan Asso. of Scranton, Pa.,	Penalty under Sec. 5, Act of 1895, P. L. 4.	Judgment in favor of Commonwealth. Execution. Paid.
F. G. Kreugerman,	Penalty under Act of 1911, P. L. 658.	Judgment in favor of Commonwealth. Execution.
Tioga Building & Loan Asso., Philadelphia,	Expenses of examination by State Banking Department, per Acts of 1895, P. L. 4, and 1901, P. L. 345.	Judgment in favor of defendant.
Titusville Traction Company,	G. R. 1914 (6 mo.) G. R. 1915 (12 mo.)	Affidavit of defense filed. Pending.
Elizabeth Fisher,	Claim for repairs of a bridge over mill race on State highway route.	Pending.
The Township of Newtown, Delaware County, James H. Wharton, et al., Supervisors,	Claim for State-aid highway maintenance.	Plaintiff's statement and affidavit of defense filed. Pending.
Naomi Coal Company,	Claim of the Commonwealth for the expense of repairing a bridge owned by defendant which crosses a State highway.	Plaintiff's statement and affidavit of defense filed. Pending.

SCHEDULE E.—Continued.

Name of Defendant.	Nature of Claim.	Remarks.
Borough of Avoca, Luzerne County, . .	Claim for State-aid Highway Construction Funds.	Paid.
Edward L. Daron, Surviving Executor of the Estate of Edward Daron, deceased,	Claim for maintenance of insane person alleged to be indigent.	Plaintiff's statement and affidavits of defense filed. Pending.
Mary J. McMorris, Harriet B. Light, Jessie Erb, Edith McMorris, John McMorris,	Claim for maintenance of insane person alleged to be indigent.	Plaintiff's statement and affidavits of defense filed. Pending.
Samuel Fishman,	Claim for balance due the Commonwealth on account of purchase money of certain buildings located in the Capitol Park Extension Zone, Harrisburg.	Plaintiff's statement and affidavits of defense filed. Suit discontinued.
Township of Germany, Adams Co., . .	Claim for State-aid Highway Maintenance.	Pending.
Township of Bristol, Bucks Co., . . .	Claim for State-aid Highway Maintenance.	Pending.
Township of Stony Creek, Cambria Co.,	Claim for State-aid Highway Maintenance.	Pending.
Township of Snow Shoe, Centre Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of St. Petersburg, Clarion Co.,	Claim for State-aid Highway Maintenance.	Pending.
Township of Tredyffrin, Chester Co.,	Claim for State-aid Highway Maintenance.	Paid.
Township of Tinicum, Delaware Co.,	Claim for State-aid Highway Maintenance.	Pending.
Township of Upper Darby, Delaware Co.,	Claim for State-aid Highway Maintenance.	Pending.
Township of Wayne, Erie County, . .	Claim for State-aid Highway Maintenance.	Pending.
Township of Luzerne, Fayette Co., . .	Claim for State-aid Highway Maintenance.	Paid.
Borough of Vanderbilt, Fayette Co., . .	Claim for State-aid Highway Maintenance.	Pending.
Borough of Huntingdon, Huntingdon Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of Quarryville, Lancaster Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of Glenburn, Lackawanna Co.,	Claim for State-aid Highway Maintenance.	Pending.

SCHEDULE E.—Continued.

Name of Defendant.	Nature of Claim.	Remarks.
Borough of Dalton, Lackawanna Co.,	Claim for State-aid Highway Maintenance.	Pending.
Township of Neshannock, Lawrence Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of Great Bend, Susquehanna Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of Blossburg, Tioga Co., ..	Claim for State-aid Highway Maintenance.	Pending.
Borough of Factoryville, Wyoming Co.,	Claim for State-aid Highway Maintenance.	Pending.
Borough of Wellsville, York Co.,	Claim for State-aid Highway Maintenance.	Paid.
Norristown Transit Company,	Penalty under Acts of 1897, P. L. 25, and 1917, P. L. 764.	Pending.
Fowlerville Telephone Co.,	Penalty under Acts of 1897, P. L. 25, and 1917, P. L. 764.	Discontinued.
Portersville Telephone Co.,	Penalty under Acts of 1897, P. L. 25, and 1917, P. L. 764.	Discontinued.
Farmers Interurban Telephone Co., .	Penalty under Acts of 1897, P. L. 25, and 1917, P. L. 764.	Discontinued.
Borough of Paint, Somerset Co.,	Claim for State-aid Highway Maintenance.	Paid.

ACTIONS IN ASSUMPSIT AND TRESPASS BROUGHT AGAINST THE COMMONWEALTH OF PENNSYLVANIA, DEFENDANT.

- Robert K. Young, Treasurer of the State of Pennsylvania, claim by The Western Saving Fund Society of Philadelphia, for unclaimed deposit which escheated to the Commonwealth under Act of 1872, P. L. 62, .. Verdict in favor of Plaintiff.
Paid.
- Robert K. Young, Treasurer of the State of Pennsylvania, claim by The Western Saving Fund Society of Philadelphia, for unclaimed deposit which escheated to the Commonwealth under Act of 1872, P. L. 62, Verdict in favor of Plaintiff.
Paid.
- R. B. Taylor, claim in an action of assumpsit on a contract for the improvement of the National Road, in Washington County, Praecipe filed but no statement.
Pending.

- George C. Souder, claim in an action of assumpsit on a contract for the improvement of section of State Highway, in Lancaster County, Plaintiff's statement and affidavit of defense filed. Pending.
- Somerset Contracting Company, a Corporation, claim in an action of assumpsit on a contract for the construction of a State Highway, in Beaver County, Plaintiff's statement and affidavit of defense filed. Pending.
- George F. Pawling & Company, claim in an action of assumpsit on a contract for the erection of a sun parlor for Pennsylvania State Lunatic Hospital at Harrisburg, Plaintiff's statement and affidavit of defense filed. Pending.
- County of Philadelphia vs. Commonwealth of Pennsylvania, claim for moneys advanced by said County for payment of expenses incident to primary elections for years 1911 to 1914, inc., Amicable action in assumpsit. C. P. No. 5 Phila. County. Pending.
- Charles S. Grubb, claim in an action of trespass on account of personal injuries received while employed by the State Highway Department, through alleged negligence on part of Commonwealth, Verdict in favor of Plaintiff.
- David Yeagley and Hattie Yeagley, his wife, claim in an action of trespass brought in Erie County, on account of injuries received while traveling on a State highway, Pending.
- O. M. Warner, claim in an action of trespass brought in Erie County, on account of injuries received while traveling on a State highway, Pending.
- David Yeagley, claim in an action of trespass brought in Erie County, on account of injuries received while traveling on a State highway, Pending.
- Jesse Kuhl and Nora Kuhl, his wife, claim in an action of trespass brought in Erie County, on account of injuries received while traveling on a State highway, .. Pending.
- Almeda G. Pickering, claim in an action of trespass brought in Bradford County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff. Paid.
- Lee Greenleaf, claim in an action of trespass on account of injuries received while traveling on a State highway, Pending.
- Harry C. Swift, claim in an action of trespass brought in Bedford County on account of personal injuries received while traveling on a State highway, Verdict in favor of Plaintiff. Reversed by Supreme Court on appeal.
- Ida Collins, claim in an action of trespass brought in Somerset County on account of the death of her husband from injuries received while traveling on a State highway, Judgment in favor of Plaintiff. Reversed by Supreme Court on appeal.
- Wilbur Jones Kay, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff.
- Wilbur Jones Kay and Fanny Kay, his wife, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff.
- Ellingwood Kay, a minor, by Wilbur Jones Kay, his next friend, and Wilbur Jones Kay, father of Ellingwood Kay, in his own right, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff.

- Dorothy Kay, a minor, by Wilbur Jones Kay, her next friend, and Wilbur Jones Kay, father of Dorothy Kay, in his own right, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff.
- Hubert Kay, a minor, by Wilbur Jones Kay, his next friend, and Wilbur Jones Kay, father of Hubert Kay, in his own right, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Verdict in favor of Plaintiff.
- Charles H. Sleichter and Mary E. Sleichter, claim in an action of trespass on account of injury to property of defendants by erection of a dam by Commission of Soldiers' Orphan Schools, Pending.
- Theodore Davis and Nellie May Davis, his wife, claim in an action of trespass brought in Erie County on account of injuries received while traveling on a State highway, Plaintiff's statement and affidavit of defense filed. Pending.
- Edward A. Woods, claim in an action of trespass brought in Allegheny County on account of injury or damage to his property arising from the construction of a certain road by State Highway Department, Verdict in favor of Plaintiff.
- James L. Baker, claim in an action of trespass on account of injuries received while traveling on a State highway, Plaintiff's statement and affidavit of defense filed. Pending.
- Mary A. Baker, in her own right and James L. Baker, her husband, claim in an action of trespass on account of injuries received while traveling on a State highway, Plaintiff's statement and affidavit of defense filed. Pending.
- William H. Heard, claim in an action of trespass on account of personal injuries sustained by plaintiff upon property under the control of the Valley Forge Park Commission, Plaintiff's statement and affidavit of defense filed. Pending.
- Mabel Mason, claim in an action of trespass brought in Washington County on account of injuries received while traveling on a State highway, Judgment in favor of Plaintiff. Paid.
- Robert J. McAllister and Ruth McAllister, his wife, claim in an action of trespass brought in Clinton County on account of injuries received while traveling on a State highway, Plaintiff's statement and affidavit of defense filed. Pending.
- Robert J. McAllister, claim in an action of trespass brought in Clinton County on account of injuries received while traveling on a State highway, Plaintiff's statement and affidavit of defense filed. Pending.
- William R. Shellenberger and Emma L. Shellenberger, his wife, claim in an action of trespass on account of injuries received while traveling on a state highway, .. Pending.

SCHEDULE F.

MANDAMUS PROCEEDINGS DURING THE YEARS 1917 AND 1918.

Name of Party.	Action Taken.
C. B. Daugherty, et al., Constituting The Town Council of the Borough of Gettysburg,	Peremptory mandamus refused and proceedings dismissed. Appeal dismissed by Supreme Court.
vs. Frank B. Black, State Highway Commissioner of the Commonwealth of Pennsylvania.	
Commonwealth of Pennsylvania, ex rel. Francis Shunk Brown, Attorney General,	Peremptory mandamus awarded by Common Pleas of Greene County.
vs. Daniel Six, George Moore, and J. Sheridan Johnson, Commissioners of Greene County.	
Commonwealth of Pennsylvania, ex rel. D. Edward Long, Superintendent of Public Printing and Binding,	Alternative mandamus awarded. Judgment in favor of the Plaintiff. Affirmed on appeal to the Supreme Court.
vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania.	
Commonwealth of Pennsylvania, ex rel. Nathan R. Buller, Commissioner of Fisheries,	Alternative mandamus awarded. Judgment in favor of the Plaintiff. Affirmed on appeal to the Supreme Court.
vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania.	
Commonwealth of Pennsylvania, ex rel. Daniel F. Lafean, Commissioner of Banking,	Alternative mandamus awarded. Judgment in favor of the Plaintiff. Affirmed on appeal to the Supreme Court.
vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania.	
Commonwealth of Pennsylvania, ex rel. Charles E. Patton, Secretary of Agriculture,	Alternative mandamus awarded. Judgment in favor of the Plaintiff. Affirmed on appeal to the Supreme Court.
vs. Charles A. Snyder, Auditor General, and Harmon M. Kephart, Treasurer of the Commonwealth of Pennsylvania.	
Willis J. Hulings,	
vs. The Honorable Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	
George Sterner,	Alternative mandamus refused. Proceedings dismissed.
vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	
	Alternative mandamus awarded. Proceedings discontinued.

SCHEDULE F.—Continued.

Name of Party.	Action Taken.
Thomas P. Twibill, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Peremptory mandamus refused. Proceedings dismissed.
Frank T. Matthews, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Peremptory mandamus refused. Proceedings discontinued.
In the matter of Manor Turnpike Road Company,	Alternative mandamus awarded. Petition dismissed.
Commonwealth of Pennsylvania, vs. John O. Watson, A. P. Barnum, and Thomas Hill, Commissioners of Washington County.	Alternative mandamus awarded. Peremptory mandamus directed to issue whenever formally applied for.
George Woodward, vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Peremptory mandamus refused and petition dismissed.

SCHEDULE G.

LIST OF EQUITY CASES DURING THE YEARS 1917 AND 1918.

Name of Party.	Action Taken.
Peoples Trust Co. of Pittsburgh, a corporation, Plaintiff, vs. Cyrus E. Woods, Secretary of the Commonwealth, and The Safe Deposit & Trust Co. of Pittsburgh, Defendants.	Demurrer sustained. Bill dismissed. Appeal dismissed by Supreme Court.
F. M. Noecker, vs. Cyrus E. Woods, Secretary of the Commonwealth.	Bill and demurrer filed. Judgment for Defendant. Reversed by Supreme Court on appeal.
Harry O. Bechtel and Charles E. Berger, Plaintiffs,	Temporary injunction awarded. Dissolved.
vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania, Defendant.	
Joseph F. Lamorellé & Edward A. Anderson, Plaintiffs,	Temporary injunction awarded. Dissolved.
vs. Cyrus E. Woods, Secretary of the Commonwealth of Pennsylvania, Robert F. Bonner and George Ulrich, Defendants.	

SCHEDULE G.—Continued.

Name of Party.	Action Taken.
William H. Staake and John Monaghan, Plaintiffs,	Temporary injunction awarded. Dis- solved.
vs. Cyrus E. Woods, Secretary of the Com- monwealth of Pennsylvania, Eugene C. Bonniwell and Frederick S. Drake, De- fendants.	
The Commonwealth of Pennsylvania, ex rel. The Attorney General, for The Public Service Commission of the Com- monwealth of Pennsylvania,	Bill and demurrer filed. Pending.
vs. Frank Grippi.	
The Commonwealth of Pennsylvania, ex rel. The Attorney General, for The Public Service Commission of the Com- monwealth of Pennsylvania,	Bill filed and served on Defendant.
vs. Joseph Bigsignani,	
The Commonwealth of Pennsylvania, ex rel. The Attorney General, for The Public Service Commission of the Com- monwealth of Pennsylvania,	Bill filed and served on Defendant.
vs. Thomas Bigsignani.	
Walter H. Gaither, a citizen and tax- payer of the Commonwealth of Penn- sylvania, as well as for himself and such other citizens and taxpayers of said Commonwealth of Pennsylvania as may become parties hereto,	Bill filed. Pending.
vs. Martin G. Brumbaugh, Frank B. Mc- Clain, Harmon M. Kephart, Charles A. Snyder, and Frank D. Beary, some times acting or assuming to act as the Commission of Public Safety and Defense of the Commonwealth of Penn- sylvania, Frank B. McClain, the Secre- tary and treasurer of the said Commis- sion, Charles A. Snyder, Auditor Gen- eral of the Commonwealth of Pennsyl- vania, and Harmon M. Kephart, State Treasurer of the Commonwealth of Pennsylvania.	

SCHEDULE H.

QUO WARRANTO HEARINGS DURING THE YEARS 1917 AND 1918.

Name of Party.	Action Taken.
Bradford Power Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Northern Pennsylvania Power Co.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Farm Lands Development Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Chemung Land Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Twenty-second Street Bank of Philadelphia.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
York and Maryland Line Turnpike Co.	Allowed. Suggestion filed in Dauphin County. Proceedings discontinued.
Ruthenian Bank.	Allowed. Suggestion filed in Dauphin County. Pending.
Magnesia Covering Co.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Dale Light, Heat & Power Co., and Bishop S. Harrold, Legal Successor to all of the rights, franchises, powers and privileges of the Dale Light, Heat & Power Co.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Lancaster County Insurance, Trust & Safe Deposit Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Lawrence Power Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Steelton Planing Mill Company.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Penn Treaty Beneficial Association.	Allowed. Suggestion filed in Dauphin County. Decree of ouster.
Central Broadheads Power Company.	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 1917 AND 1918.

Name.	Result.
Pension Life Society (Pittsburgh).	Dissolved.
Guaranty Mutual Fire Insurance Co. (Allentown).	Dissolved.
Industrial Mutual Fire Insurance Co. (Reading).	Dissolved.
The Sons of Italy State Bank of Phila- delphia.	Proceedings discontinued.
Dwelling Building & Loan Association (Philadelphia).	Dissolved.
The Phoenixville Systematic Savings & Loan Co. of Phoenixville.	Dissolved. Receiver.
Girard Beneficial Association (Philadel- phia).	Proceedings discontinued.
The Mutual Live Stock Insurance Co. of Elizabethtown, Pa.	Dissolved.

SCHEDULE J.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
Jan. 1	Amounts recovered from estates of persons in State Hospitals for the insane, as indigents, viz:	
	Maria Gilson, Warren Hospital, -----	\$13 43
	Sarah M. Bennett, Warren Hospital, ---	42 36
	Yetta Zeigler, Warren Hospital, -----	32 50
	Hannah Blasbum, Spring City, -----	23 67
	Thomas Powers, Norristown, -----	32 18
	John Hensinger, Wernersville, -----	568 74
	Amount received from Pine Creek Twp., Clinton Co.: Balance due on account State-aid Highway construction contract No. 16, -----	\$712 88 117 22
2	Amount received from Borough of Ridgway, Elk Co.: 101 Com. Dkt., 1916, on account State-aid highway construction funds, -----	1,000 00
3	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	James M. Duncan, Harrisburg Hospital, -----	32 50
	Ralph A. Rohrer, Harrisburg Hospital, ---	32 50
	Mary S. Meak, Harrisburg Hospital, -----	32 50
	Rufus Smith, Norristown, Hospital, -----	108 43
	George D. Reeder, Norristown Hospital, ---	32 18
	Helen Tyler, Warren, -----	65 36
	Henry Koppenburg, Wernersville, -----	3,163 96
4	Amount received from Greenville Land Co.:	
	Capital stock, 1911, -----	34 00
	Interest, -----	4 84
	Capital stock, 1912, -----	34 00
	Interest, -----	4 84
	Capital stock, 1913, -----	40 00
	Interest, -----	5 50
	Capital stock, 1914, -----	30 00
	Interest, -----	2 83
	Capital stock, 1915, -----	35 00
	Interest, -----	86
	Loan, 1912, -----	2 85
	Interest, -----	41
	Loan, 1913, -----	5 70
	Interest, -----	86
	Loan, 1914, -----	5 70
	Interest, -----	61
	Loan, 1915, -----	5 70
	Interest, -----	20
		213 90
6	Amount recovered from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Louisa Burk, Norristown Hospital, -----	\$524 05
	Mary O. Ketcham, Norristown Hospital, ---	700 00
	Elizabeth Davison, Danville Hospital, ---	21 15
	Margaret M. Haas, Harrisburg Hospital, ---	32 50
	Alice I. Upton, Warren Hospital, -----	17 47
	Victor J. Snyder, Homeopathic Hospital, ---	115 96
		1,411 13

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
8	Amount received from the Reynolds Co.: 127 Com. Dkt., 1916, capital stock, ----- \$21 25 Balance due on bonus, ----- 5 50 Fees of office, ----- 1 34	\$28 09
	Boro of Avoca: Account of State aid Highway Construction, ----- 1,000 00	1,000 00
10	Amount received from the Reynolds Co.: Interest on capital stock, 1915 and bonus 127 Com. Dkt., 1916, ----- 88	88
	Amount received from Columbus and Erie R. R. Co., 121 Com. Dkt., 1916: Interest on capital stock, 1913, ----- 20 39 Fees of office, ----- 7 50	27 89
	Buffalo, Bradford & Pittsburgh R. R. Co., 122 Com. Dkt., 1916.: Interest on capital stock, 1913, ----- 13 59 Fees of office, ----- 5 00	18 59
	Erie & Wyoming Valley R. R. Co., 123 Com. Dkt., 1916: Interest on capital stock, 1913, ----- 34 11 Fees of office, ----- 12 50	46 61
	Jefferson R. R. Co., 124 Com. Dkt., 1916: Interest on capital stock, 1913, ----- 68 01 Fees of office, ----- 25 00	93 01
11	Amount received from estates of persons confined in State Hospitals for the Insane as indigents, viz: Sherman Fennimore Ames, Danville, ----- 200 00 Sherman Fennimore Ames, Danville, ----- 182 83 Emma Groilliam, Norristown, ----- 100 00 Wm. H. Gross, Harrisburg, ----- 32 50 Wm. J. S. Brewster, Norristown, ----- 32 18 Fred W. Meuser, Warren, ----- 386 07 Abram Schwartz, Spring City, ----- 20 00 George Breen, Warren, ----- 35 71	989 29
12	Amount received from Germania Brewing Company: Capital stock, 1914 (14 mos.), ----- 664 66 Loan tax, ----- 233 40 Interest, ----- 22 45	920 51
16	Amount received from estates of persons confined in State Hospitals for the insane as indigents, viz: Walter Clarence Arnold, Norristown, ----- 32 18 E. Howell Headley, Norristown, ----- 32 18 James F. Seasholtz, Harrisburg, ----- 32 50 Sarah Kilmer, Harrisburg, ----- 32 50 D. W. Bordner, Harrisburg, ----- 32 50 Clara Weaver, Harrisburg, ----- 32 50 Bertha V. Bellman, Harrisburg, ----- 32 50 George E. Cleaver, Homeopathic, ----- 208 27 Mary C. Ard, Danville, ----- 29 00 Henry Fasser, Blockley, ----- 372 08 Minnie Wossoff, Spring City, ----- 534 77 ----- 25 00	

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Alice Scott, Spring City, -----	\$3 00
	Laura V. Ryan, Spring City, -----	2 00
	Sarah Landay, Spring City, -----	4 00
	Jennie Long, Spring City, -----	5 00
	Florence Fry, Spring City, -----	13 00
	Amount received from Boro. of Blossburg, 102 Com. Dkt., 1916:	
	Account State Aid Highway Construction, -----	5,000 00
		\$1,390 48
22	Amount received from Heine Safety Boiler Co.: Capital stock, 1913 and 1914, -----	34 10
	Interest, -----	3 30
		37 40
	Amount received from Doubleday Hill Electric Co.: Interest on capital stock, -----	28 56
		28 56
25	Amount received from Brown Twp. Light, Heat and Power Co.: Capital stock, 1915 (14 mo.), -----	29 17
	Loan, 1915, -----	23 18
	Interest, -----	1 23
		53 58
29	Amount received from Wm. Almon Co.: Capital stock, 1915 (14 mo.), -----	21 49
		21 49
Feb. 1	Amount received from Imperial Pneumatic Tool Co., 312 Com. Dkt., 1912: Bonus, 1911, -----	123 28
	Interest, -----	31 55
	Fees of office, -----	7 68
		162 51
	188 Com. Dkt., 1911: Bonus, -----	152 36
	Interest, -----	49 21
		201 57
2	Amount received from Imperial Pneumatic Tool Co., 188 Com. Dkt., 1911, bonus: Fees of office, -----	7 62
		7 62
	Amounts recovered from estate of persons con- fined in State Hospitals for the insane as indigents, viz:	
	Sarah Landay, Spring City, -----	4 03
	Lillie Repsher, Norristown, -----	97 75
	Edward M. Smith, Norristown, -----	4 34
	Josephine Rowan, Norristown, -----	338 99
	Raymond W. Brown, Allentown, -----	26 42
	Mamie Yeager, Danville, -----	445 72
	Effie Pierce, Warren, -----	65 00
	Malissa J. Mohr, Harrisburg, -----	1,725 00
	Job Williams, Hollidaysburg, -----	28 86
	Mayberry G. Trout, Hollidaysburg, -----	90 29
		2,826 40
	Amount received from Glenwood Land Co.: Loan, 1915, -----	159 41
	Interest, -----	9 56
		168 97
	Capital stock, 1915 (14 mos.), -----	58 33
	Interest, -----	3 47
		61 80
	Provident Company: Capital stock, 1915 (14 mos.), -----	5 83
	Interest, -----	32
		6 15

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Loan, 1915, -----	\$36 48
	Interest, -----	2 18
		\$38 66
7	Amount received from Great Southern Amusement Co.:	
	Capital stock, 1913 (2 mos.), -----	4 17
	Capital stock, 1914, -----	25 00
	Interest, -----	3 50
		32 67
	Union Charcoal Co., Inc.:	
	Bonus on increase, -----	53 00
	Interest, -----	7 15
		60 15
8	Amount received from E. H. Lentz Co.:	
	Capital stock, 1914, -----	16 25
	Interest, -----	1 30
	Capital stock, 1915, -----	19 25
		36 80
	Almon Co.:	
	Interest on capital stock, 1915 (14 mos.), -----	77
		77
12	Amount received from May Valley Oil, Gas & Mineral Co.:	
	Capital stock, 1915 (14 mos.), -----	29 17
	Interest, -----	3 55
		32 72
	Borough of Duryea, Luzerne Co.:	
	4 Com. Dkt., 1917, State Aid Construction Funds, balance, -----	2,261 44
		2,261 44
13	Amounts recovered from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Wm. Benj. Holzhauer, Norristown, -----	193 78
	Marie Tissier, Norristown, -----	100 00
	Wm. J. Collins, Sr., Norristown, -----	32 18
	Isaac Devatt, Warren, -----	130 72
	Edward Stalz, Warren, -----	130 71
	Maggie Leslie, Blockley, -----	768 96
	Daniel Dellinger, Harrisburg, -----	125 00
	Amanda Bear, Harrisburg, -----	32 86
	John F. Emig, Harrisburg, -----	605 59
	Ida D. Seitz, Harrisburg, -----	285 00
	Isabella Thomas, Harrisburg, -----	634 51
	David L. Smith, Danville, -----	106 78
	Uriah Thomas, Harrisburg, -----	604 91
	Mrs. Malinda Metzger, Mercer, -----	276 57
	Jane Brightbill, Carlisle, -----	300 00
	Chas. K. Rodearmel, Spring City, -----	5 00
	Susanna Morrison, Spring City, -----	6 00
	George Wagner, Spring City, -----	9 00
	Laura V. Ryan, Spring City, -----	1 00
	Martin Grawler, Spring City, -----	5 00
	Florence Frey, Spring City, -----	6 50
		4,360 07
16	To amount received from Doubleday Hill Electric Co.:	
	Capital stock, 1914, -----	593 15
	Interest, -----	51 86
		645 01
19	Amount received from Central Land Co.:	
	Loan, 1915, -----	1,544 00
	Interest, -----	38 60
		1,582 60

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
20	Amount received from West Chester Street Railway Co.: Reimbursement of the Commonwealth for work done on Lancaster Turnpike for which trolley company was liable on a certain contract with township on account (State Highway \$6,000,000 Fund),	\$5,000 00
		\$5,000 00
21	Amount received from C. E. Warner Co.: Capital stock, 1915 (14 mos.), Interest,	211 75 4 24
		215 99
23	Amounts recovered from estates of persons confined in State Hospitals for the insane as indigents, viz: Ella A. Cunningham, Dixmont, Peter Seldo, Dixmont, Alice Loose, Harrisburg, Eda Conklin, Danville, Ames Bobb, Danville, Maria A. Bacon, Warren, Franziska Koch, Norristown, Elsie Jusseau, Norristown,	24 64 49 29 32 50 109 77 403 73 152 20 31 47 34 03
		837 63
27	Amount received from Greensburg Automobile Company: Capital stock, 1915, Loan, 1915, Interest,	87 50 38 00 3 52
		129 02
28	Amount received from Boro of Avoca, Luzerne County on account of State Aid Highway Construction, contract No. 27,	500 00
		500 00
Mar. 2	Amount received from National Hog Company: Capital stock, 1915 (14 mos.), Bonus,	70 59 36 66
		107 25
5	Amount received from Elizabeth Rural Telephone Co.: Capital stock, 1912, Interest, Capital stock, 1913, Interest, Capital stock, 1914, Interest, Gross receipts, 1916 (to June 30),	14 70 2 91 14 70 1 96 17 60 1 67 40 00
		53 94
	Amount received from Bellmont Realty Co.: Capital stock, 1915 (14 mos.), Interest,	35 00 85
		35 85
6	Amounts recovered from estates of persons confined in State Hospitals for the insane, viz: Franklin A. Housberger, Norristown, Josephine Ermilio, Norristown, Frank Finell, Norristown, Charles Boas, Harrisburg, Charles Bott, Harrisburg, George W. Gates, Harrisburg, Charles E. Spencer, Warren, Annie S. Elgin, Warren, Rebecca Vebant, Polk,	794 60 78 77 242 32 345 79 195 92 440 20 200 00 19 50 300 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Franklin H. Garber, Lancaster County Hospital	\$958 11
	Thomas K. Noble, Lancaster County Hospital	176 89
	Elizabeth Babb, Allentown	135 00
	John H. Heck, Allentown	15 00
	Mary D. Harvey, Danville	65 71
	Ellen Lord, Danville	11 43
	John Gottschall, Danville	66 83
	Euphemia Babb, Danville	70 00
	Annie E. Berkley, Dixmont	415 89
		\$4,535 96
12	Amount received from Duquesne Rug Co.: Loan, 1915	27 55
	Interest	1 60
		29 15
	Amount received from Pennsylvania Hard Vein Slate Co., 10 Com. Dkt., 1917:	
	Capital stock, 1911	25 00
	Capital stock, 1912	17 50
	Capital stock, 1913	17 50
	Capital stock, 1914	17 50
	Capital stock, 1915	8 72
	Loan, 1914	18 62
	Loan, 1915	9 88
	Interest	17 97
	Fees of office	5 73
		138 42
13	Amount received from Union Brick Co.: Capital stock, 1913	37 25
	Capital stock, 1914	36 50
	Capital stock, 1915	42 58
	Loan, 1913	121 60
	Loan, 1914	114 00
	Loan, 1915	64 60
		416 53
	Amount received from Diamond Rubber Co. of New York, 55 Com. Dkt., 1910:	
	Bonus, 1909	255 22
	Interest	106 43
	Fees of office	12 76
		374 41
	212 Com. Dkt., 1911:	
	Bonus, 1910	401 60
	Interest	132 14
	Fees of office	26 40
		560 14
14	Amount received from Harrisburg Realty Co.: Capital stock, 1913	125 00
	Interest	15 03
		140 03
	William F. Remppis Co.: Loan, 1915	19 00
	Interest	2 68
16	Amount received from Champion Drill Co.: Capital stock, 1912	5 50
	Capital stock, 1914	11 00
	Interest	3 00
19	Amount received from West Elizabeth Oil & Gas Co.: Loan, 1915	199 88
	Interest	11 99
		211 87

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Amount received from Deal Boiler Compound Co.:	
	Capital stock, 1914, -----	\$25 07
	Interest, -----	2 31
	Bonus, -----	16 67
	Interest, -----	5 67
		\$49 72
	Kushequa Brick Co., 45 Com. Dkt., 1915:	
	Capital stock, 1912, -----	3 37
	Interest, -----	52
	Fees of office, -----	16
		4 05
	Smethport Railroad Co., 43 Com. Dkt., 1916:	
	Capital stock, 1912, -----	95 00
	Interest, -----	18 66
	Capital stock, 1913, -----	50 00
	Interest, -----	6 95
	Capital stock, 1914, -----	50 00
	Interest, -----	3 90
	Fees of office, -----	9 75
	Interest on judgment, -----	1 44
		235 70
20	Amount received from Union Brick Co.:	
	Interest on capital stock and loans for 1913-1914-1915, -----	40 29
		40 29
	R. D. Elder Lumber Co.:	
	Capital stock, 1908, -----	46 75
	Capital stock, 1909, -----	93 50
	Capital stock, 1910, -----	85 00
	Capital stock, 1911, -----	85 00
	Capital stock, 1912, -----	85 00
	Capital stock, 1914, -----	115 50
	Capital stock, 1915, -----	99 17
	Interest, -----	152 35
		764 27
	Amounts received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Jennie Long, E. Pa. State Institution, ..	5 00
	George Wagner, E. Pa. State Institution, ..	3 00
	Susanna Morrison, E. Pa. State Institution, ..	6 00
	Charles K. Rodearmel, E. Pa. State Institution, ..	7 00
	Morris Kuetcher, E. Pa. State Inst., ..	4 00
	Ada Bechtel, E. Pa. State Institution, ..	32 50
	Lottie Weikel, E. Pa. State Institution, ..	5 00
	Rosie Brunner, Allentown, ..	32 14
	Edwin J. S. Minnich, Allentown, ..	32 14
	Joseph Schenk, Allentown, ..	147 50
	Dan. W. Diehl, Harrisburg, ..	75 50
	Latimer A. Diehl, Harrisburg, ..	17 00
	Ellie M. Diehl, Harrisburg, ..	16 60
	Matilda Laucks, Harrisburg, ..	267 64
	Aden Buser, Harrisburg, ..	32 35
	Charles G. Leslie, Warren, ..	189 64
	Fred O. Brandt, Warren, ..	189 29
	Luella C. Small, Dixmont, ..	170 82
	Clark L. Baker, Dixmont, ..	234 29
	Mary Stewart, Danville, ..	66 51
	Chas. C. Otto, Danville, ..	32 14
	Mary C. Ard, Danville, ..	32 14
	Elizabeth A. Matchin, Danville, ..	32 14
	Margaret Hardy, Danville, ..	257 20

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Sampson F. Scott, Schuylkill Co. Hospital, -----	\$25 71
	Benneville I. Brode, Schuylkill Co. Hospital, -----	25 71
	William J. McComb, Norristown, -----	75 38
	Hattie Wilsky, Norristown, -----	895 21
	J. P. Jones, Norristown, -----	20 00
	Henrietta Swartz, Lancaster Co. Hospital, -----	115 70
	Carl Kirchoff, Lancaster Co. Hospital, -----	56 86
		\$3,102 11
21	Amount received from:	
	Standard Home Supply Co.,	
	Capital stock, 1914, -----	72 91
	On account, 1915, -----	27 09
		100 00
	Punxsutawney Foundry & Machine Co.,	
	Capital stock, 1915 (14 mos.), -----	286 50
		286 50
22	Amount received from Snow Shoe Water Co.,	
	37 Com. Dkt.:	
	Capital stock, 1912, -----	59 50
	Capital stock, 1913, -----	71 99
	Capital stock, 1914, -----	50 00
	Loan, 1912, -----	11 02
	Loan, 1913, -----	13 33
	Loan, 1914, -----	3 80
	Interest, -----	27 96
	Fees of office, -----	10 48
		248 08
22	Amount received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Eva Henne, Harrisburg, -----	43 43
	Fannie C. Hoffman, Harrisburg, -----	65 00
	James M. Duncan, Harrisburg, -----	32 30
	Ralph A. Rohrer, Harrisburg, -----	32 30
	James F. Seasholtz, Harrisburg, -----	32 30
	Sarah Kilmer, Harrisburg, -----	32 30
	Daniel W. Bordner, Harrisburg, -----	32 30
	Anna Aylward, Warren, -----	1,832 86
	Ellen Mitton, Norristown, -----	38 57
	Tillie Rawn, Norristown, -----	38 57
	Mary C. Fenton, Norristown, -----	502 96
	Elizabeth M. Colbert, Allentown, -----	32 14
	Thomas E. Stine, Allentown, -----	32 14
		2,747 17
26	Amount received from Hachmeister, Lind Chemical Co.,	
	Interest on capital stock, 1911-12, -----	53 06
	Interest on capital stock, 1913, -----	50 58
	Interest on capital stock, 1914, -----	14 84
		118 49
27	Amounts received from estates of persons confined in State Hospitals for the Insane as indigents, viz:	
	James Kennedy, Warren Hospital, -----	816 00
	Angelette De Yoe, Warren Hospital, -----	57 93
	Anna Landon, Warren Hospital, -----	15 71
	Helen Tyler, Warren Hospital, -----	15 00
	Thomas Powers, Norristown, -----	38 57
	Olara E. Goldy, Norristown, -----	32 14
	John S. McKnight, Norristown, -----	38 57
	Robert M. Cooper, Norristown, -----	50 00
	Emma L. Ginther, Norristown, -----	32 18

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Franklin Koontz, Norristown, -----	\$38 57
	William Stanley, Norristown, -----	38 57
	John J. Loos, Norristown, -----	51 27
	Jacob Marcus, Norristown, -----	5 00
	Annie E. Nicom, Norristown, -----	38 57
	Elizabeth Megargee, Norristown, -----	38 57
	Ellen Tennihan, Norristown, -----	38 57
	Walker Y. Wells, Norristown, -----	38 57
	William Watson, Norristown, -----	38 57
	John R. Gillespie, Allentown, -----	32 14
	James B. Salmon, Danville, -----	32 14
	Lena Boust, Danville, -----	32 14
	Addie Kerr, Danville, -----	72 30
	Abraham Swartz, E. Pa. State Inst., ---	15 00
	Minnie Wosof, E. Pa. State Inst., ---	25 00
	Susan Morrison, E. Pa. State Inst., ---	6 00
	Morris Kuetcher, E. Pa. State Inst., ---	2 00
	Laura V. Ryan, E. Pa. State Inst., ---	1 00
	George Wagner, E. Pa. State Inst., ---	3 00
	Chas. K. Rodearmel, E. Pa. State Inst., ---	5 00
	Margaret Doyle, E. Pa. State Inst., ---	8 00
	John Hay, Dixmont, -----	480 25
	Nancy A. Faith, Dixmont, -----	32 14
	John E. Potts, Dixmont, -----	32 14
	Bertha L. Landis, Lancaster Co. Hos- pital, -----	384 98
	Anna A. Stierheim, Pbg. City House, ---	260 57
		\$2,846 16
27	Amount received from: Homestead Park Amusement Co., Capital stock, 1915, -----	56 43
	Interest, -----	2 35
		58 78
	Jitney Bus & Transportation Co., Capital stock, 1915, -----	3 75
	Bonus, -----	3 33
	Interest, -----	27
		7 35
30	Amount received from the Hoover & Smith Co., 441 Com. Dkt., 1912: Bonus, 1910, -----	214 39
	Interest, -----	55 74
	Fees of office, -----	13 51
		283 64
April 4	Amount received from Mulgrew Baking Co., Loan, 1915, -----	15 20
		15 20
6	Amount received from Wells Mills Electric Co., Capital stock, 1913, -----	87 50
	Capital stock, 1914, -----	82 50
	Loan, 1913, -----	60 80
	Loan, 1914, -----	100 46
		331 26
6	Amounts received from estates of persons con- fined in State Hospitals for the insane as in- digents, viz: Benjamin Irrgang, Norristown, -----	70 75
	Emma Grailliam, Norristown, -----	100 00
	Caroline Kimble, Norristown, -----	25 29
	John A. Turner, Norristown, -----	32 14
	Philip Duerr, Norristown, -----	38 57
	James M. Daly, Norristown, -----	56 22
	Josephine Ermilio, Norristown, -----	38 57
	J. Wesley Klare, Norristown, -----	38 57
	Louisa F. Daubert, Norristown, -----	38 57
	Margaret A. Schreiner, Norristown, -----	38 57
	Chas. J. Loan, Norristown, -----	38 57

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Ludwig, Norristown, -----	\$38 57
	George P. Bogar, Harrisburg, -----	13 29
	Mary L. Meals, Harrisburg, -----	32 30
	Salome Oswald, Harrisburg, -----	32 30
	Paul Kochenderfer, Harrisburg, -----	190 96
	Margaret M. Haas, Harrisburg, -----	32 30
	Clara Weaver, Harrisburg, -----	32 30
	Ella Cunningham, Dixmont, -----	17 14
	Peter Saldo, Dixmont, -----	32 14
	Minie Huntley, Dixmont, -----	32 14
	Melvin Hays, Dixmont, -----	32 14
	Elizabeth Tibbott, Dixmont, -----	32 14
	Maria Gilson, Warren, -----	13 43
	Louisa Williams, Warren, -----	20 10
	Yetta Ziegler, Warren, -----	32 14
	Edward French, Warren, -----	91 95
	Chas. M. Smith, Warren, -----	32 14
	Clinton Schaffer, Homeopathic, -----	30 00
	Raymond M. Butz, Homeopathic, -----	25 71
	Ella McConnell, Danville, -----	32 14
	Mary Gutbule, Allegheny Co., -----	101 14
	Florence Frey, E. Pa. State Institute, --	6 50
10	Amount received from Wildwood Extension Realty Co.: -----	
	Loan, 1911, -----	13 20
	Loan, 1914, -----	9 68
		\$22 88
12	Amount received from Hawkins, Wilson Co., Capital stock, 1912, -----	36 66
		36 66
12	Amount received from Commercial Sales Co., Capital stock, 1915, -----	29 17
	Interest on capital stock, settled June 21, 1915, -----	2 38
		31 55
17	Amount received from Borough of Avoca, Luzerne Co.: -----	
	State-aid highway construction in said borough, on account, -----	500 00
		500 00
	Atlantic Dredging Co., capital stock, 1906, --	100 00
	Loan, 1904 (4 mos.), -----	13 82
	Loan, 1905, -----	18 53
	Interest, -----	73 15
		205 50
23	Amount received from: -----	
	Keystone Cap Company: -----	
	Loan, 1915, -----	17 67
	Bonus, -----	82 87
	Interest, -----	3 52
		104 06
	Pennsylvania Pneumatic Co.: -----	
	Capital stock, 1915 (4 mos.), -----	35 00
		35 00
	Hawkins, Wilson Co.: -----	
	Interest on capital stock, 1912, -----	5 48
		5 48
17	Amounts received from estates of persons confined in State Hospitals for the Insane as indigents, viz: -----	
	Emma Fennimore, Norristown, -----	38 57
	Eliza M. Percy, Norristown, -----	32 14
	Bertha C. Fackler, Norristown, -----	32 14
	Henry W. Carey, Norristown, -----	437 35
	Wm. J. Brewster, Norristown, -----	38 57
	Geo. B. Freyer, Norristown, -----	100 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Geo. D. Reeder, Norristown, -----	\$38 57
	Mary C. Fenton, Norristown, -----	38 57
	Fanny H. Johnson, Norristown, -----	17 40
	Walter Clarence Arnold, Norristown, ---	38 57
	Clara E. Hughes, Norristown, -----	170 58
	Bridget Sweeney, Norristown, -----	32 14
	Edward M. Smith, Norristown, -----	13 02
	Blanché Wolfe, Norristown, -----	15 00
	Charles Haas, Harrisburg, -----	32 30
	Charles A. Shirk, Harrisburg, -----	146 00
	Mary A. Strine, Harrisburg, -----	1,261 62
	Sophia Barnd, Harrisburg, -----	882 06
	Wm. G. Gass, Harrisburg, -----	32 30
	Mary Crosby, Warren, -----	114 00
	Wilkins B. Newell, Warren, -----	883 22
	Eva E. Thompson, Warren, -----	73 20
	Alice I. Upton, Warren, -----	19 73
	Wm. R. Pfell, Wernersville, -----	1,200 00
	Henry O. Wickert, Wernersville, -----	355 00
	John F. Stuart, Cumberland Co. Hos., ---	287 66
	Sarah A. Delp, Cumberland Co. Hos., ---	241 95
	Louis Bellijean, Phila. Hospital, -----	139 00
	Alice Scott, E. Pa. State Inst., -----	3 00
		\$6,713 76
19	Amounts recovered from estates of persons in State Hospitals for the insane as indigents, viz:	
	Albert D. Allen, Homeopathic Hospital, ---	25 68
	Adeline Fiscus, Warren, -----	2,069 45
	Margery J. Baughman, Allegheny Co., ---	1,454 22
	Lincoln G. Barwitz, Harrisburg, -----	333 68
	Lillie Etta Ilyes, Harrisburg, -----	340 48
	George Eck, Wernersville, -----	435 06
	Emma F. Blank, Dixmont, -----	640 55
	Charles Blank, Dixmont, -----	1,167 81
	Robert R. Miller, Danville, -----	32 14
	Julia O'Brien, Danville, -----	17 50
	Henry Koppenberg, Norristown, -----	70 75
		6,587 32
24	Amount received from Shimer & Co., Inc.,	
	Capital stock, 1915, -----	262 50
	Interest, -----	16 25
		278 75
	Providence Mills Mfg. Co.:	
	Loan, 1912, -----	71 81
	Interest, -----	12 93
	Account loan, 1913, -----	12 92
		97 66
	California Clay Mfg. Co.:	
	Loan, 1914, -----	2 86
	Loan, 1915, -----	2 09
	Capital stock, 1914, -----	11 00
	Capital stock, 1915, -----	17 50
		33 45
	Bonus on increase, -----	9 66
		9 66
25	Amount received from Pipe Line Refrigerating Company:	
	Capital stock, 1915 (14 mos.), -----	145 83
	Loan, 1915, -----	133 79
		279 62

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
27	Amount received from Peter Ace, late County Treasurer, Wyoming county, fees of office collected during term and not previously accounted for, 77 Com. Docket, 1917, -----	177 71
	M. C. Gay, present County Treasurer, Wyoming county, fees of office collected but not previously accounted for, -----	262 92
		\$440 63
27	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Clara L. Baker, Wernersville, -----	25 68
	Tissue E. Hager, Dixmont, -----	1,300 00
	E. Howell Headley, Norristown, -----	38 57
	Amelia Meyer, Norristown, -----	40 00
	William J. Collins, Sr., Norristown, ----	38 57
	Emily Vogt, Norristown, -----	100 00
	Alice Loose, Harrisburg, -----	32 30
	Francis Anderson, E. Pa. State Inst., ---	17 71
	Abraham Swartz, E. Pa. State Inst., ----	10 00
	Margaret Doyle, E. Pa. State Inst., ----	6 00
	George Wagner, E. Pa. State Inst., ----	3 00
	John Schumacher, Schuylkill Co., -----	290 29
		1,902 12
30	Amount received from Westmoreland Coal Co., 195 Com. Dkt., 1912:	
	Interest on bonus, -----	2,679 05
	Fees of office, -----	133 95
		2,813 00
May 1	Amount received from Modern Food Machine Co., 68 Com. Dkt., 1917:	
	Capital stock, 1913, -----	22 67
	Interest, -----	3 40
	Capital stock, 1914, -----	20 87
	Interest, -----	3 13
	Loan, 1913, -----	1 14
	Interest, -----	17
	Loan, 1914, -----	1 14
	Interest, -----	10
	Bonus, -----	15 11
	Interest, -----	2 17
	Bonus on Inc., -----	13 22
	Interest, -----	86
	Fees of office, -----	3 71
		87 69
	Amount received from Penna. Pneumatic Co.:	
	Interest on capital stock, 1915, -----	1 23
		1 23
7	Amount received from Queen City Silk Co., 70 Com. Dkt., 1917,	
	Loan, 1914, -----	60 80
	Interest, -----	4 20
	Fees of office, -----	3 04
	Capital stock, 1914, -----	38 67
	Interest, -----	1 80
	Loan, 1915, -----	64 60
	Interest, -----	3 97
		177 08
8	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Amelia Meyer, Norristown, -----	4 13
	Louise B. Jones, Norristown, -----	260 00
	Rose Fryhage, Norristown, -----	35 81
	Franklin A. Houseberg, Norristown, ---	38 57

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Hannah Draper, Norristown, -----	\$290 65
	Josephine A. Woodhouse, Norristown, --	1,679 78
	Christiana R. Kinzie, Norristown, -----	14 57
	Edward M. Smith, Norristown, -----	4 31
	Mayberry G. Trout, Blair Co. Hospital, --	25 71
	Job Williams, Blair Co. Hospital, -----	25 71
	Mary Barth, Pbg. City House, -----	313 66
	Ellen Ward, Pbg. City House, -----	200 00
	Mary Gutlieb, Alleg. Co. Hosp., -----	17 71
	Casandra Kenner, Dixmont, -----	704 60
	Paul Ray Bissey, E. Pa. State Inst., ---	7 50
	Marion Growler, E. Pa. State Inst., ---	5 00
	Morris Kutcher, E. Pa. State Inst., ---	2 00
	Morris Kutcher, E. Pa. State Inst., ---	2 00
	Minnie Wosoff, E. Pa. State Inst., ---	17 36
	Chas. Bott, Harrisburg, -----	32 30
	Henrietta Eaton, Harrisburg, -----	588 68
		\$4,270 08
8	Amount received from Shrewsbury township, York county, on account State-aid highway construction, -----	1,547 11
		1,547 11
8	Amount received from Butler township, Adams Co., on account State-aid highway construc- tion, -----	1,860 04
		1,860 04
11	Amount received from Weisfield Mfg. Chemical Co.: Capital stock, -----	48 94
		48 94
11	Amount received from Wheatland Land Com- pany, 53 Com. Dkt., 1917, Capital stock, 1912, -----	125 00
	Capital stock, 1913, -----	137 50
		262 50
12	Amount received from Allegheny Foundry & Machine Co., Loan, 1915, -----	11 40
	Interest, -----	46
		11 86
14	Amount received from Penna. Printing Co., Loan, 1911, -----	7 92
	Interest, -----	2 00
	Interest on capital stock, -----	60
		10 52
14	Amounts received from estates of persons con- fined in State Hospitals for the insane, as in- dulgents, viz: Lena Lavin, E. Pa. State Inst., -----	25 00
	Susan Morrison, E. Pa. State Inst., -----	6 00
	Paul Roy Bissey, E. Pa. State Inst., -----	7 50
	Raymond W. Brown, Homeopathic Hosp., --	32 14
	Martha M. Stevenson, Warren, -----	64 64
	Annie S. Elgin, Warren, -----	19 50
	Angelett DeYoe, Warren, -----	33 22
	John W. Keach, Chester Co., -----	113 71
	Jere Hakes, Danville, -----	561 56
	Joseph Crawford, Norristown, -----	12 00
	Josephine Woodhouse, Norristown, -----	38 57
	Annie A. Stierheim, Pbg. City House, ---	25 71
		939 55
16	Amount received from Joseph Wolf Land Co., Capital stock, 1915, -----	204 17
	Interest on capital stock (balance 1911),---	3 64
		207 81

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
17	Amount received from Borough of Stroudsburg, account State-aid highway maintenance, -----	\$25 00
		\$25 00
17	Amount received from Dioxide and Magnesia Co.,	
	Loan, 1913, -----	385 29
	Interest, -----	63 19
	Account loan, 1914, -----	63 95
		512 43
18	Amount received from Weisfield Mfg. Chemical Co.,	
	Interest on capital stock, 1915, -----	1 96
		1 96
21	Amount received from Bonnie Coal Co., Ltd.,	
	Capital stock, balance 1914, -----	21 96
	Interest, -----	1 67
		23 63
28	Amount received from Modern Food Machine Co.,	
	Bonus on increase, -----	53 59
		53 59
	Amount received from Clerk of U. S. Supreme Court in re appeal of A. B. Crowl, fees of office, -----	20 00
		20 00
22	Amount received from Joseph Wolf Land Co.,	
	Interest on capital stock, 1915, -----	4 59
	Interest on capital stock, 1911, -----	10
		4 69
23	Amount received from Borough of Coudersport on account State-aid highway maintenance, -----	1,000 00
		1,000 00
29	Amount received from Borough of Emporium, account State-aid highway maintenance, -----	41 92
		41 92
29	Amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	William J. McComb, Norristown, -----	38 57
	Amelia Meyer, Norristown, -----	38 75
	John G. Hilsman, Norristown, -----	154 91
	James H. Young, Norristown, -----	400 00
	John J. Bridge, Norristown, -----	2,000 00
	Helen Kraut, Norristown, -----	213 69
	Stephen McGowan, Norristown, -----	38 57
	Josephin Rowan, Norristown, -----	97 18
	Joseph Crawford, Norristown, -----	12 86
	W. Benj. Holzhauer, Norristown, -----	6 86
	Anne McChesney, Norristown, -----	50 00
	Lizzie Doersam, Norristown, -----	70 75
	Helen Tyler, Warren, -----	32 14
	J. Brady Thompson, Warren, -----	165 35
	Hester A. Aull, Phila. Co. Hosp., -----	652 52
	Malissa J. Mohr, Harrisburg, -----	32 30
	Mary Diehl, Pbg. City Home, -----	150 29
	Harry A. Yeager, Blair Co. House, -----	7 14
	Chas. K. Rodearmel, E. Pa. State Inst., -----	10 00
	Marion Knowler, E. Pa. State Inst., -----	5 00
	George Wagner, E. Pa. State Inst., -----	3 00
	Margaret Doyle, E. Pa. State Inst., -----	3 00
	Florence Fry, E. Pa. State Inst., -----	6 50
	Sherman F. Ames, Danville, -----	64 64

4,254 02

SCHEDULE J--Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
June 1	Amount received from Borough of Cressona, account State-aid highway maintenance, ----	\$305 76
		\$305 76
2	Amount received from Factory Building Co.,	
	Capital stock, 1913, -----	76 00
	Capital stock, 1914, -----	88 19
	Capital stock, 1915, -----	115 29
	Interest, -----	28 06
		307 54
7	Amount received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Cecelia Ellis, Norristown, -----	5 00
	Sarah C. Walker, Norristown, -----	500 00
	Anna V. Hector, Norristown, -----	200 00
	Harvey M. Barger, Norristown, -----	900 00
	Charles W. Livezey, Norristown, -----	276 93
	Josephine A. Goodheart Norristown, ----	1,380 31
	Effie Pierce, Warren, -----	65 72
	Bridget M. Garvey, Warren, -----	50 00
	John B. Turner, Warren, -----	53 22
	Sarah Sharkey, Homeopathic, -----	64 63
	Katharine B. Beatty, Homeopathic, ----	57 84
	Maud S. Harper, Danville, -----	752 05
	Sarah M. Bush, Danville, -----	300 00
	James A. Welsh, Harrisburg, -----	246 97
	Titus Kirst, Fairview, -----	278 95
	Annie E. Short, Pbg. City Home, -----	150 00
		5,281 62
8	Amount received from Rohn Provision Co.,	
	Capital stock, 1914, -----	100 00
		100 00
13	Amount received from Wyalusing Borough, account State-aid highway maintenance, ----	185 20
		185 20
	Amount received from Hemphill Twp., Westmoreland Co., account State-aid highway maintenance for 1915, -----	268 70
	For 1916, -----	998 07
		1,266 77
18	Amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	William Watson, Norristown, -----	31 97
	Ellen Lenihan, Norristown, -----	31 97
	Annie E. Nicom, Norristown, -----	31 97
	Louisa F. Daubert, Norristown, -----	31 97
	Lizzie Doersam, Norristown, -----	31 97
	Caroline Kimble, Norristown, -----	31 97
	Edw. M. Smith, Norristown, -----	31 97
	Stephen McGowan, Norristown, -----	4 34
	Elizabeth Megargee, Norristown, -----	31 97
	John S. McKnight, Norristown, -----	31 97
	Joseph Crawford, Norristown, -----	13 29
	Philip Duerr, Norristown, -----	31 97
	Henry Vogelson, Norristown, -----	31 97
	Walker Y. Wells, Norristown, -----	31 97
	Josephine Ermilio, Norristown, -----	31 97
	Lillie M. Repsher, Norristown, -----	31 97
	Margaret A. Schreiner, Norristown, ----	31 97
	Robert M. Cooper, Jr., Norristown, ----	50 00
	Thomas Powers, Norristown, -----	31 97
	E. Howell Headley, Norristown, -----	31 97
	Henry Koppenburg, Norristown, -----	31 97

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Ludwig Trein, Norristown, -----	\$31 97
	Lillie Rawn, Norristown, -----	31 97
	Ellen Mitton, Norristown, -----	31 97
	Chas. J. Loan, Norristown, -----	31 97
	Mary P. Styer, Norristown, -----	55 54
	Charles Schulz, Norristown, -----	450 00
18	Annie E. Berkheimer, Norristown, -----	41 20
	George Reigraf, Harrisburg, -----	455 56
	Maggie Koontz, Harrisburg, -----	191 43
	Jacob Musselman, Harrisburg, -----	58 57
	Sallie M. Fanow, Polk, -----	798 73
	Leroy R. Perry, Polk, -----	85 01
	Mathias W. Keck, Homeopathic, -----	32 74
	Chas. M. Smith, Warren, -----	32 86
	Yetta Ziegler, Warren, -----	32 86
	Helen Tyler, Warren, -----	32 86
	Margery B. Baughman, Allegheny Co. Hospital, -----	26 29
	John J. Dempsey, Phila. Co. Hosp., -----	185 14
	Mayberry G. Trout, Blair Co. Hosp., -----	26 29
		\$3,276 05
20	Amount received from Mulgrew Baking Co., -----	
	Interest on loan, 1915, -----	64
		64
23	Amount received from Pittsburgh Food Products Company, -----	
	Capital stock, 1914, -----	10 90
	Capital stock, 1915, -----	12 72
		23 62
	Amount received from Tredyffern Twp., Chester Co., account State-aid highway maintenance, -----	2,569 71
		2,569 71
26	Amount received from Bradford Twp., McKean Co., account State-aid highway maintenance, -----	1,473 67
		1,473 67
27	Amount received from Brinn Coal Co., -----	
	Capital stock, 1913, -----	27 50
	Capital stock, 1914, -----	50 00
	Capital stock, 1915, -----	99 17
	Loan, 1913, -----	31 76
	Loan, 1914, -----	41 14
	Loan, 1915, -----	3 13
	Interest, -----	22 14
		274 84
27	Amount received from new Standard Hardware Works, -----	
	Loan, 1913, -----	61 75
		61 75
28	Amount received from Afro-American Phila. Concert Orchestra Co., -----	
	Capital stock, 1914, -----	5 00
	Capital stock, 1915, -----	29 17
		34 17
30	Amount received from Phoenix Iron Works: -----	
	Capital stock, 1912, -----	33 00
	Loan, 1910, -----	83 38
	Loan, 1911, -----	83 38
	Loan, 1912, -----	83 38
July 2	Amount received from Hazleton Hardware and Heating Co., -----	
	Capital stock, 1913, -----	20 50
	Loan, 1913, -----	11 24
		31 74

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Hazleton Hardware Co.,	
	Capital stock, 1914, -----	21 00
	Loan, 1914, -----	13 20
		34 20
2	Amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Caroline Schuler, Homeopathic, -----	10 72
	Elizabeth M. Colbert, Homeopathic, -----	32 98
	Raymond W. Brown, Homeopathic, -----	32 98
	Catherine Beatty, Homeopathic, -----	32 98
	Alavista Shelly, Homeopathic, -----	195 95
	Sarah Sharkey, Homeopathic, -----	32 98
	Cora Mench, Homeopathic, -----	145 66
	Thomas E. Stine, Homeopathic, -----	32 89
	Rosie Brunner, Homeopathic, -----	32 98
	James M. Duncan, Harrisburg, -----	32 86
	Ralph A. Rohrer, Harrisburg, -----	32 86
	Daniel W. Bordner, Harrisburg, -----	32 86
	Catherine Carney, Allegheny Co., -----	529 43
	Catharine E. Hager, Philadelphia Co., -----	46 08
	Wm. C. Hazlett, Northside City Hosp., -----	457 12
	John Miller, Northside City Hosp., -----	1,721 43
	Catherine Brandon, Warren, -----	32 14
	Mary Ellinger, Warren, -----	65 00
	Susan Keisel, Wernersville, -----	67 50
	Albert D. Allen, Wernersville, -----	26 28
	Mary C. Ard, Danville, -----	32 86
	Charles O. Otto, Danville, -----	32 86
	Elizabeth C. Matchin, Danville, -----	32 86
	Ella McConnell, Danville, -----	32 86
	Adda M. Pusey, Chester Co., -----	405 82
	Mary Diehl, Pbg. City House, -----	52 00
	Benneville I. Brode, Schuylkill Co., -----	26 29
	Sarah J. Oomstock, Dixmont, -----	65 00
	Tisue E. Hager, Dixmont, -----	32 86
	Otto Bardo, E. Pa. State Inst., -----	6 84
	Paul Roy Bissey, E. Pa. State Inst., -----	7 50
	Susan Morrison, E. Pa. State Inst., -----	6 00
	Marion Growler, E. Pa. State Inst., -----	5 00
	Morris Kutcher, E. Pa. State Inst., -----	4 00
	Samuel Fellheimer, E. Pa. State Inst., -----	8 71
	Alice Scott, E. Pa. State Inst., -----	7 00
	Minnie Wossoff, E. Pa. State Inst., -----	15 16
	Abram Schwartz, E. Pa. State Inst., -----	10 00
	Marion Growler, E. Pa. State Inst., -----	5 00
	Mary C. Keohane, Norristown, -----	79 41
	M. Rosalie Beale, Norristown, -----	900 00
	Rudolph Gerlach, Norristown, -----	1,028 73
	Franklin A. Honsberger, Norristown, -----	31 97
	Blanche L. Wolf, Norristown, -----	15 00
	Maria Gilson, Norristown, -----	13 43
	Clara E. Goldy, Norristown, -----	32 86
	Eliza M. Percy, Norristown, -----	32 86
	John A. Turner, Norristown, -----	32 86
	Bridget Sweeney, Norristown, -----	32 86
	Bertha C. Fackler, Norristown, -----	32 86
	Josephine Rowan, Norristown, -----	32 86
	Sarah C. Walker, Norristown, -----	32 86
	M. Rosalie Beale, Norristown, -----	65 00
	Samuel Crawford, Norristown, -----	3 00
	Benj. Irrgang, Norristown, -----	31 97
	Emma Fennimore, Norristown, -----	31 97
	John J. Bridge, Norristown, -----	31 97

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
3	Amount received from Robinson Twp., Washington Co., account State-aid highway maintenance, -----	1,622 87
		1,622 87
6	Amount received from Rudy Brothers Co.,	
	Capital stock, 1915, -----	35 00
	Interest, -----	3 75
		38 75
	Amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	George P. Bogar, Harrisburg, -----	13 53
	Sarah Kilmer, Harrisburg, -----	32 86
	Jas. F. Seasholtz, Harrisburg, -----	32 86
	Katie Ida Houck, Harrisburg, -----	130 36
	Matilda C. Schueler, Harrisburg, -----	32 86
	Alice C. Loose, Harrisburg, -----	32 86
	Mary L. Meals, Harrisburg, -----	32 85
	William A. Leightham, Wernersville, -----	77 93
	Louisa Williams, Warren, -----	20 10
	Wm. M. Grammer, Norristown, -----	300 76
	Martha A. Wilhelm, Danville, -----	114 42
		821 40
10	Amount received from Taintor Chemical Company, 25 Com. Dkt., 1917,	
	Capital stock, 1908, -----	11 69
	Capital stock, 1909, -----	16 50
	Capital stock, 1910, -----	16 50
	Capital stock, 1911, -----	16 50
	Capital stock, 1912, -----	16 50
	Capital stock, 1913, -----	16 50
	Capital stock, 1914, -----	16 50
	Capital stock, 1915, -----	19 25
	Fees of office, -----	7 32
	Capital stock, 1916, -----	16 50
		153 76
11	Amount received from Greene Twp., Franklin Co., on account State-aid highway maintenance, -----	460 90
		460 90
11	Amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Lena Lavin, E. Pa. State Inst., -----	20 00
	George Wagner, E. Pa. State Inst., -----	3 00
	Samuel Fellheimer, E. Pa. State Inst., -----	4 00
	Rose L. Allen, Danville, -----	6 95
	Mary E. Kiefer, Danville, -----	696 98
	Robert R. Miller, Danville, -----	32 86
	Julia O'Brien, Danville, -----	17 50
	James B. Salmon, Danville, -----	32 86
	Alice I. Upton, Warren, -----	20 12
	Sarah M. Bennett, Warren, -----	35 30
	Lawrence Rockefeller, Warren, -----	100 00
	Harry Durban, Warren, -----	60 36
	Louis Fraley, Warren, -----	411 79
	John L. Morrison, Dixmont, -----	32 14
	Samuel Crawford, Norristown, -----	7 93
	Emma G. Williams, Norristown, -----	100 00
	Annie L. Griffiths, Norristown, -----	369 10
	Rosanna Watts, Norristown, -----	1,812 25
	M. McFadden, Norristown, -----	198 95
	George D. Recder, Norristown, -----	31 97
	Elizabeth Synnamon, Norristown, -----	1,287 83
	Wm. J. A. Brewster, Norristown, -----	31 97

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Marie Tissier, Norristown, -----	137 10
	Franklin Koontz, Norristown, -----	31 97
	William Stanley, Norristown, -----	31 97
	John R. Gillespie, Homeopathic, -----	32 98
	Edith Burke, Polk, -----	200 00
	Bertha Sikes, Polk, -----	267 01
	Dennis F. Kelley, Wernersville, -----	1,274 48
		7,289 27
17	Amounts received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Thomas Rimby, Norristown, -----	1,257 12
	Amelia Meyer, Norristown, -----	31 97
	J. Wesley Klare, Norristown, -----	31 97
	Annie L. Slemmer, Norristown, -----	400 00
	Edward M. Smith, Norristown, -----	4 34
	Francis Anderson, E. Pa. State Inst., ---	51 99
	Florence Frey, E. P. State Inst., -----	6 50
	Emerson Althouse, Homeopathic, -----	52 18
	Edw. J. S. Minnich, Homeopathic, -----	32 98
	Clinton Shaffer, Homeopathic, -----	30 00
	Harry A. Sones, Danville, -----	425 00
	Clara Weaver, Harrisburg, -----	32 86
	Charles Bott, Harrisburg, -----	32 86
	William H. Glass, Harrisburg, -----	32 86
	Peter Soldo, Dixmont, -----	32 86
	Melvin Hays, Dixmont, -----	32 86
	John E. Potts, Dixmont, -----	32 86
	Rose Carr, Warren, -----	500 00
	Jacob Lanker, Wernersville, -----	14 90
		3,036 11
20	Amount received from Oovington Borough, account State-aid highway maintenance, ---	844 47
		844 47
	Phillipsburg Milling, Lighting and Heating Company, Loan, 1914, on account, -----	10 00
		10 00
26	Amount received from Pierce Mfg. Co., Bonus, 1915, -----	244 38
		244 38
26	Amounts received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Annie M. Harbster, Harrisburg, -----	46 30
	John F. Schwoyer, Harrisburg, -----	39 65
	Tillie Funk, Homeopathic, -----	194 89
	Joseph Crawford, Norristown, -----	12 86
	Emma L. Ginther, Norristown, -----	31 97
	Samuel Crawford, Norristown, -----	3 00
	Louise M. Workotsch, Norristown, -----	15 00
	Elizabeth M. Ross, Norristown, -----	791 24
	Marion Growler, E. Pa. State Inst., ---	5 00
	Margaret Doyle, E. Pa. State Inst., ---	10 00
	Morris Kutcher, E. Pa. State Inst., ---	2 00
	Clark L. Baker, Wernersville, -----	26 28
	Wm. D. F. Loy, Wernersville, -----	77 93
	Mary E. Neely, Warren, -----	63 93
	Arvilla Van Horn, Warren, -----	195 71
	Olive Hayford, Warren, -----	267 39
	Frank Hoffman, Warren, -----	762 88
	Susan L. Hollinger, Lancaster, -----	120 84
	Peter McDonnell, Danville, -----	514 30
	Benj. Oursler, Polk, -----	164 76
	Elizabeth Tibbott, Dixmont, -----	32 86
		3,378 79

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
27	Amount received from Schwarzschild and Sulzberger Co. of America, 387 Com. Docket, 1911,	
	Bonus, -----	969 14
	Interest, -----	338 42
	Fees of office, -----	62 90
		1,370 46
	Amount received from United Cigar Stores Co., 388 Com. Dkt., 1911,	
	Bonus, -----	324 17
	Interest, -----	113 37
	Fees of office, -----	21 54
		459 08
	Amount received from United Cigar Stores Co., 134 Com. Dkt., 1913,	
	Bonus, -----	130 91
	Interest, -----	30 11
		161 02
28	Amount received from Progressive Publishing Co.,	
	Capital stock, 1915, -----	58 33
	Loan, 1915, -----	11 56
	Interest, -----	3 50
		73 39
Aug. 2	Amount received from Williamsport Rail Co., 23 Com. Dkt., 1913,	
	Bonus on Inc., -----	142 13
	Interest, -----	37 22
	Fees of office, -----	8 85
		188 20
	121 Com. Dkt., 1917,	
	Bonus, -----	193 20
	Interest, -----	22 21
		215 41
	122 Com. Dkt., 1917,	
	Bonus, -----	615 73
	Interest, -----	36 94
		652 67
6	Amount received from Norristown Insurance and Water Co., 142 Com. Dkt., 1917,	
	Tax on one-half dividends in excess of 12% under Act of 1834 (P. L. 109), for years 1910 and 1911, -----	54,000 00
		54,000 00
7	Amount received from Penna. Heat, Light and Power Co., 171 Com. Dkt., 1914,	
	Capital stock, 1912, -----	99 65
	Interest, -----	21 72
	Fees of office, -----	4 98
		126 35
	128 Com. Dkt., 1914,	
	Capital stock, 1913, -----	474 65
	Interest, -----	74 35
	Fees of office, -----	23 73
		572 73
	129 Com. Dkt., 1917,	
	Capital stock, 1914, -----	692 63
	Interest, -----	69 03
	Fees of office, -----	34 63
		796 29
	130 Com. Dkt., 1919,	
	Capital stock, 1915, -----	724 74
	Interest, -----	28 03
	Fees of office, -----	36 24
		789 01

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Amount received from Philadelphia Electric Co., 173 Com. Dkt., 1914,	
	Capital stock, 1912, -----	572 00
	Interest, -----	126 13
	Fees of office, -----	28 60
		726 73
	131 Com. Dkt., 1917,	
	Capital stock, 1913, -----	969 50
	Interest, -----	156 74
	Fees of office, -----	48 48
		1,174 72
8	Amounts received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Anglett DeYoe, Warren, -----	33 22
	Lawrence Rockefeller, Warren, -----	40 72
	Annie S. Elgin, Warren, -----	19 50
	Rhetta Chatland, Warren, -----	100 00
	Sarah A. Mansley, Norristown, -----	53 58
	Elma Nace, Norristown, -----	15 00
	Lizzie Boyd, Norristown, -----	8 34
	Charlotte Bates, Norristown, -----	266 14
	Samuel Crawford, Norristown, -----	3 00
	John L. Morrison, Dixmont, -----	32 86
	Minnie Huntley, Dixmont, -----	32 86
	Ann Tokinson, Wernersville, -----	660 00
	Job Williams, Blair Co. Hosp., -----	26 29
	Morris Kutcher, Spring City, -----	2 00
	Susan Morrison, Spring City, -----	6 00
	George Wagner, Spring City, -----	3 00
		1,302 51
8	Amount received from Borough of Ridgway, 101 Com. Dkt., 1916, on account State-aid highway maintenance, -----	2,000 00
		2,000 00
14	Amount received from Great Southern Lumber Co., 110 Com. Dkt., 1917,	
	Capital stock, 1914, -----	8,604 78
	Interest, -----	926 44
	Fees of office, -----	430 24
		9,961 46
	111 Com. Dkt., 1917,	
	Capital stock, 1915, -----	10,884 19
	Interest, -----	505 84
	Fees of office, -----	500 00
		11,884 19
20	Amounts received from Schuylkill Coal and Iron Co., 132 C. D., 1917,	
	Capital stock, 1911, -----	160 00
	Interest, -----	16 77
	Fees of office, -----	8 00
		184 77
	193 C. D., 1914,	
	Capital stock, 1912, -----	160 00
	Interest, -----	35 12
	Fees of office, -----	8 00
		203 12
20	Amount received from Schuylkill Coal & Iron Co., 39 C. D., 1915,	
	Capital stock, 1915, -----	160 00
	Interest, -----	25 92
	Fees of office, -----	8 00
		193 92

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
	133 C. D., 1917,	
	Capital stock, 1914, -----	160 00
	Interest, -----	16 32
	Fees of office, -----	8 00
		184 32
	134 C. D., 1917,	
	Capital stock, 1915, -----	186 67
	Interest, -----	4 94
	Fees of office, -----	9 33
		200 94
	Amount received from Shanferoke Coal Co., 125	
	C. D., 1917,	
	Capital stock, 1913, -----	550 00
	Interest, -----	92 58
	Fees of office, -----	27 50
		680 08
	126 C. D., 1917,	
	Capital stock, 1914, -----	550 00
	Interest, -----	56 46
	Fees of office, -----	27 50
		633 96
	127 C. D., 1915,	
	Capital stock, 1915, -----	616 67
	Interest, -----	16 34
	Fees of office, -----	30 83
		663 84
	Amount received from Northern Coal Co.,	
	127 C. D. 1914,	
	Capital stock, 1912, -----	1,500 00
	Interest, -----	330 50
	Fees of office, -----	75 00
		1,905 50
	17 C. D., 1915,	
	Capital stock, 1913, -----	1,500 00
	Interest, -----	239 50
	Fees of office, -----	75 00
		1,814 50
	123 C. D., 1917,	
	Capital stock, 1914, -----	1,500 00
	Interest, -----	156 25
	Fees of office, -----	75 00
		1,731 25
	124 C. D., 1917,	
	Capital stock, 1915, -----	1,750 00
	Interest, -----	73 50
	Fees of office, -----	87 50
		1,911 00
27	Amount received from Huntingdon and Clearfield Telephone Company on account Gross R., 6 mo. ending Dec. 31, 1915, -----	439 29
29	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	James Jacob F. Sands, Norristown, -----	6 26
	Marietta Brooks, Norristown, -----	30 58
	Wm. J. McComb, Norristown, -----	31 97
	Wm. J. Collins, Norristown, -----	31 97
	Samuel Crawford, Norristown, -----	5 00
	Anna Shelly, Norristown, -----	69 68
	Malissa J. Mohr, Harrisburg, -----	32 86
	Laura M. Hershey, Harrisburg, -----	245 45
	Chas. E. Haas, Harrisburg, -----	42 86
	Margaret Langley, Warren, -----	20 00
	Michael Keating, Warren, -----	938 24
	Edward Fisk, Warren, -----	50 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Peter Dewalt, Woodville, -----	1,454 22
	Peter Dewalt, Woodville, -----	69 43
	Rachael Adams, Woodville, -----	600 00
	Della E. Foust, Danville, -----	13 57
	Thomas Wallace, Spring City, -----	1,244 77
	Hannah Blasband, Spring City, -----	39 00
	Alice Scott, Spring City, -----	4 00
	Minnie Wossoff, Spring City, -----	15 16
	Morris Kutcher, Spring City, -----	2 00
	Chas. K. Rodearmel, Spring City, -----	10 00
	Morris Kutcher, Spring City, -----	2 00
	Samuel Fellheimer, Spring City, -----	1 00
	Margaret Doyle, Spring City, -----	7 00
	George Wagner, Spring City, -----	3 00
	Rebecca Slater, Homeopathic, -----	1 75
		4,971 77
Sept. 22	To amount recovered from Franklin Paper Mills Co., -----	
	Fees of office in re Capital Stock and Loan, 1914, award by Board of Public Accounts, -----	359 40
		359 40
22	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Florence Frey, E. Pa. State Inst., -----	6 50
	Florence Frey, E. Pa. State Inst., -----	6 50
	Florence Frey, E. Pa. State Inst., -----	13 00
	Minnie Wossoff, E. Pa. State Inst., -----	7 58
	Lester W. Freeman, E. Pa. State Inst., -----	4 00
	Susan Morrison, E. Pa. State Inst., -----	6 00
	Morris Kutcher, E. Pa. State Inst., -----	2 00
	George Wagner, E. Pa. State Inst., -----	3 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	3 00
	John W. Elliott, Wernersville, -----	500 00
	Rose Carr, Warren, -----	200 00
	Emma M. Elliott, Warren, -----	299 94
	Rose Carr, Warren, -----	350 00
	Chas. E. Isett, Norristown, -----	167 95
	Wm. A. Frick, Norristown, -----	35 74
	Joseph Crawford, Norristown, -----	26 57
	Martha Hatfield, Norristown, -----	263 25
	Walter C. Shoemaker, Norristown, -----	13 71
	Reinhard Z. Freed, Norristown, -----	35 62
	Kate E. Matlack, Norristown, -----	150 00
	Margaret Cardin, Norristown, -----	228 51
	Edward M. Smith, Norristown, -----	8 68
	Julia L. Hume, Norristown, -----	10 00
	Mary Lindsey, Harrisburg, -----	33 58
	Ida J. Henry, Harrisburg, -----	148 57
	Barthold Weitzel, Harrisburg, -----	46 84
	M. Melissa Johnson, Harrisburg, -----	100 00
	Florence J. Cawley, Danville, -----	288 29
	John Zimmerman, Homeopathic, -----	244 64
		3,144 47
27	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John J. Bridge, Norristown, -----	25 85
	Sarah Ann Althouse, Norristown, -----	25 85
	Tillie Rawn, Norristown, -----	25 85
	Ellen Lenihen, Norristown, -----	25 85
	Mary Rosalie Beale, Norristown, -----	32 86
	Bertha C. Fackler, Norristown, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	John A. Turner, Norristown, -----	32 86
	Bridget Sweeney, Norristown, -----	32 86
	Sarah Craig Walker, Norristown, -----	32 86
	Josephine Rowan, Norristown, -----	32 86
	Rosanna Watts, Norristown, -----	32 86
	Eliza M. Percy, Norristown, -----	32 86
	Clara E. Goldy, Norristown, -----	32 86
	Charlotte Bates, Norristown, -----	25 85
	Elizabeth Megargee, Norristown, -----	25 85
	Stephen McGowan, Norristown, -----	25 85
	Henry Kappenburg, Norristown, -----	25 85
	Ludwig Trein, Norristown, -----	25 85
	Walter Clarence Arnold, Norristown, ---	25 85
	Lizzie Doersam, Norristown, -----	25 85
	Louisa F. Daubert, Norristown, -----	19 66
	Thomas Powers, Norristown, -----	25 86
	John S. McKnight, Norristown, -----	25 86
	Ellen Mitton, Norristown, -----	25 86
	Annie E. Nicom, Norristown, -----	25 86
	Josephine Ermilio, Norristown, -----	25 86
	George Watson, Norristown, -----	25 86
	Caroline Kimble, Norristown, -----	25 86
	Chas. J. Loan, Norristown, -----	25 86
	Jas. Jacob F. Sands, Norristown, -----	25 86
	Chas. F. W. Kreuger, Norristown, -----	25 86
	Emily W. Swiler, Norristown, -----	84
	Mary C. Ard, Danville, -----	32 86
	Charles Otto, Danville, -----	32 86
	Euphemia Bobb, Danville, -----	17 50
	Elizabeth Matchin, Danville, -----	32 86
27	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	975 17
	Rosie Brunner, Homeopathic, -----	32 86
	Katherine K. Beatty, Homeopathic, -----	32 86
	Raymond W. Brown, Homeopathic, -----	32 86
	Elizabeth M. Colbert, Homeopathic, -----	32 86
	Sarah Sharkey, Homeopathic, -----	32 86
	John H. Heck, Homeopathic, -----	32 86
	John P. Bogar, Harrisburg, -----	15 00
	Charles Bott, Harrisburg, -----	13 53
	Daniel W. Bordner, Harrisburg, -----	32 86
	James M. Duncan, Harrisburg, -----	32 86
	Ralph A. Rohrer, Harrisburg, -----	32 86
	Mary L. Meals, Harrisburg, -----	32 86
	Fannie C. Hoffman, Harrisburg, -----	32 86
	Helen Tyler, Warren, -----	32 86
	Charles M. Smith, Warren, -----	32 86
	Louisa Williams, Warren, -----	20 10
	Ida Diem, Lancaster Co. Hospital, -----	33 14
	Hattie Diller, Lancaster Co. Hospital, ---	37 14
	Mayberry G. Trout, Blair Co. Hospital, ---	32 86
	Job Williams, Blair Co. Hospital, -----	32 86
	Benneville I. Brode, Schuylkill Co., -----	32 86
	Margaret Doyle, E. Pa. State Inst., -----	4 97
	Morris Kuteher, E. Pa. State Inst., -----	1 00
	Jacob L. Aucker, Wernersville, -----	7 45
	Albert D. Allen, Wernersville, -----	26 29
	Margery L. Baughman, Allegheny Co. Hospital, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917. Oct. 1	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz: Samuel Crawford, Norristown, ----- Margaret A. Schreiner, Norristown, ----- Lillie M. Repsher, Norristown, ----- Blanche L. Wolfe, Norristown, ----- Philip Duerr, Norristown, ----- Robert M. Cooper, Norristown, ----- Harry Samuel, Norristown, ----- Mary Lindsey, Harrisburg, ----- Wm. H. Gass, Harrisburg, ----- Margaret M. Haas, Harrisburg, ----- Rebecca McBride, Harrisburg, ----- Maria Gilson, Warren, ----- Thomas E. Stine, Homeopathic, ----- John H. Heck, Homeopathic, ----- Margaret E. Schorr, Phila. Co. Hosp., --	5 00 25 85 25 85 15 00 25 85 50 00 87 32 32 86 32 86 32 86 1,097 08 16 43 32 86 15 00 624 26
	To amount received from the estate of James Frazier, dec'd, 62 Sept. T. 1916, Orphans Court of Butler County, fees of office, -----	64 00
2	To amount received from Mill Hall Borough, account State-aid highway maintenance, ---	1,500 00
3	To amount received from L. A. Clark Co., 109 Com. Dkt., 1917, Capital stock, 1914, ----- Capital stock, 1915, -----	75 00 72 92
3	To amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Thomas Rigby, Norristown, ----- Henry Vogelson, Norristown, ----- George D. Reeder, Norristown, ----- Mary B. Shupe, Norristown, ----- Cecelia Ellis, Norristown, ----- James Marshall, Danville, ----- James B. Salmon, Danville, ----- Margaret Boyle, Phila. Co. Hospital, --- Matilda Schueler, Harrisburg, ----- Ida Henry, Harrisburg, ----- Edwin J. S. Minnich, Homeopathic, ---- John R. Gillespie, Homeopathic, ----- Jane Agan, Warren, -----	7 29 25 85 25 85 944 77 15 00 100 00 32 86 157 83 32 86 32 86 32 86 32 86 32 86
4	To amount received from Andrews & Hitchcock Co., 36 Com. Dkt., 1916, Capital stock, 1914, ----- Interest, ----- Fees of office, -----	1,477 52 110 66 73 87
8	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Elma Nace, Norristown, ----- Edward Leatherman, Norristown, ----- Anna Shelly, Norristown, ----- Emma Fenimore, Norristown, ----- Louise Workatsch, Norristown, ----- Hanah E. Crosssthaite, Norristown, --- Edward M. Smith, Norristown, ----- Fannie Kreider, Lancaster Co. Hospital,	20 00 143 14 25 85 25 85 25 85 214 10 4 34 594 00
		2,151 94
		64 00
		1,500 00
		147 92
		1,473 74
		1,662 05

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Yetta Ziegler, Warren, -----	32 86
	Alice I. Upton, Warren, -----	20 21
	Marion Growler, E. Pa. State Hospital, ---	3 00
	Morris Kutcher, E. Pa. State Hospital, } -----	
	Chas. K. Rodearmel, E. Pa. State Hosp. } -----	
	Marion Growler, E. Pa. State Hospital, } -----	13 00
	Morris Kutcher, E. Pa. State Hospital, } -----	
	Sam'l Fellheimer, E. Pa. State Hosp., ---	
	Malissa J. Mohr, Harrisburg, -----	32 86
	Jacob H. Feeser, Harrisburg, -----	86 90
8	To amount received from Mill Hall Borough, account State-aid highway maintenance, ---	500 00
	To amount received from Bradford Twp., Mc- Kean Co., account State-aid highway main- tenance, -----	1,000 00
9	To amount received from Lord & Gage, 173 Com. Dkt., 1917, -----	
	Bonus, 1911, -----	347 44
	Interest, -----	103 65
	Fees of office, -----	17 37
	McCreery & Co., 290 Com. Dkt., 1908, -----	
	Bonus, 1907, -----	1,834 15
	Interest, -----	1,019 48
	Fees of office, -----	91 71
10	McCreery & Co., 170 Com. Dkt., 1917, -----	
	Bonus, 1914, -----	300 11
	Interest, -----	37 06
	Fees of office, -----	15 01
10	To amount received from Louis Walther Mfg. Co., 9 Com. Dkt., 1911, -----	
	Bonus, 1909, -----	348 50
	Interest, -----	139 63
	Fees of office, -----	17 43
	310 Com. Dkt., 1912, -----	
	Bonus, 1911, -----	86 01
	Interest, -----	25 66
	Fees of office, -----	4 30
	174 Com. Dkt., 1917, -----	
	Bonus, 1912, -----	182 89
	Interest, -----	43 01
	Fees of office, -----	9 14
15	To amount received from Edison Electric Light Co. of Philadelphia, 190 Com. Dkt., 1914, -----	
	Bonus, 1912, -----	175 00
	Fees of office, -----	8 75
	Interest, -----	40 77
	148 Com. Dkt., 1917, -----	
	Capital stock, 1913, -----	175 00
	Interest, -----	28 87
	Fees of office, -----	8 75
	149 Com. Dkt., 1917, -----	
	Capital stock, 1914, -----	175 00
	Interest, -----	20 56
	Fees of office, -----	8 75

1,241 96

500 00

1,000 00

468 46

2,945 34

352 18

505 56

115 97

235 04

224 52

212 62

204 31

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	150 Com. Dkt., 1917.	
	Capital stock, 1915, -----	204 16
	Interest, -----	6 53
	Fees of office, -----	10 20
		220 87
26	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Stella A. Forney, Harrisburg, -----	589 65
	Charles B. Rhoads, Harrisburg, -----	2,428 94
	Louisa Sprecker, Harrisburg, -----	385 08
	Alice E. Dougherty, Harrisburg, -----	267 77
	Clara Weaver, Harrisburg, -----	32 86
	Frank R. Dunlap, Harrisburg, -----	100 00
	Daniel J. Wagner, Harrisburg, -----	202 45
	Louisa Mary Seifert, Harrisburg, -----	37 70
	James F. Seasholtz, Harrisburg, -----	32 86
	Sarah Kilmer, Harrisburg, -----	32 86
	Samuel Crawford, Norristown, -----	5 00
	Chas. F. W. Kreuger, Norristown, -----	25 85
	J. Wesley Klare, Norristown, -----	12 86
	Joseph Crawford, Norristown, -----	45 31
	Emma Gwilliam, Norristown, -----	100 00
	Harry Desmond, Norristown, -----	25 85
	John P. Jones, Norristown, -----	25 00
	William J. A. Brewster, Norristown, -----	25 85
	William L. Park, Norristown, -----	12 00
	Elizabeth Heidt, Warren, -----	421 78
	Francis Murphy, Warren, -----	36 43
	Rose Carr, Warren, -----	250 00
	Maggie C. Moody, Warren, -----	47 50
	Wm. Cossett, Warren, -----	71 95
	Reuben M. Rogers, Warren, -----	11 40
	Mary C. Klinger, Warren, -----	32 86
	Elizabeth Breckius, Lancaster Co. Hosp., -----	167 04
	Ada Krewson, Lancaster Co. Hosp., -----	184 86
	Susanna B. Slack, Lancaster Co. Hosp., -----	198 00
	Cyrus K. Eshelman, Lancaster Co. Hosp., -----	245 43
	Sarah McClain, Lancaster Co. Hosp., -----	26 57
	H. H. Landis, Lancaster Co. Hosp., -----	201 97
	Clinton Schaffer, Homeopathic, -----	30 00
	Mathias W. Keck, Homeopathic, -----	32 86
	Florence Frey, E. Pa. State Inst., -----	13 00
	Minnie Wosoff, E. Pa. State Inst., -----	7 58
	Frances Anderson, E. Pa. State Inst., -----	17 50
	Susan Morrison, E. Pa. State Inst., -----	6 00
	Marion Growler, E. Pa. State Inst., -----	5 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Margaret Doyle, E. Pa. State Inst., -----	4 33
	Geo. Wagner, E. Pa. State Inst., -----	3 00
	Julia M. Hume, E. Pa. State Inst., -----	5 00
	Della E. Foust, Danville, -----	32 86
	Wm. D. F. Loy, Wernersville, -----	26 29
	Anna Howell, Phila. Co. Hosp., -----	151 71
	Mary Shilling, Allegheny Co. Hosp., -----	28 00
	William B. Weiss, Fairview, -----	1,348 03
	Louisa Boetzel, Polk, -----	430 93
	To amount received from Provident Life and Trust Co. of Phila., 179 Com. Dkt. 1917,	
	Capital stock, 1914, -----	335 31
	Interest, -----	35 26
	Fees of office, -----	16 76

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	180 Com. Dkt., 1917, Capital stock, 1915, ----- Interest, ----- Fees of office, -----	259 04 11 48 12 95
30	To amount received from estate of Assena Hawk, a person confined in Harrisburg State Hospital for the Insane and alleged to be indigent, -----	32 86
Nov. 1	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Mary Haywood, Norristown, ----- Clark L. Baker, Wernersville, -----	250 00 26 29
5	To amount received from Wilcox Glass Co., 67 Com. Dkt., 1917, Loan, 1914, ----- Interest, ----- Fees of office, -----	99 25 12 41 4 96
	The United Gas Improvement Co., 174 Com. Dkt., 1917, Capital stock, 1912, ----- Interest, ----- Fees of office, -----	50 00 11 07 2 50
	154 Com. Dkt., 1917, Capital stock, 1913, ----- Interest, ----- Fees of office, -----	387 32 66 04 19 37
	155 Com. Dkt., 1917, Capital stock, 1914, ----- Interest, ----- Fees of office, -----	308 90 33 88 15 45
	156 Com. Dkt., 1917, Capital stock, 1915, ----- Interest, ----- Fees of office, -----	236 83 11 72 11 84
7	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Sarah Stutzman, Somerset Co. Hosp., -- Annie S. Elgin, Warren, ----- Angelett DeYoe, Warren, ----- Alice C. Loose, Harrisburg, ----- Rein Z. Fried, Norristown, ----- Elizabeth H. Synnaman, Norristown, ---- Richard B. McMichael, Norristown, ----- E. Howell Headley, Norristown, ----- Susan B. Carpenter, Lancaster Co. Hosp. Mary M. Stark, Lancaster Co. Hosp., --- David McLane, Chester Co., ----- Cecelia Alice Dugan, Polk, ----- R. G. Colquit, Dixmont, -----	4 57 19 50 25 92 32 86 43 75 25 85 25 00 25 85 87 37 278 12 100 00 500 00 214 83
9	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Ella McConnell, Danville, ----- Benj. Irrgang, Norristown, -----	32 86 25 85

283 47

32 86

276 29

116 62

63 57

472 73

358 23

260 39

1,383 62

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Matilda Pierson, Norristown, -----	94 07
	Justin Hoskins, Norristown, -----	56 09
	Margaret G. Hoskins, Norristown, -----	56 43
	Samuel Crawford, Norristown, -----	5 00
	Samuel Fellheimer, E. Pa. State Hosp., -----	1 00
	Morris Kutcher, E. Pa. State Hosp., -----	1 00
	Abr. Schwartz, E. Pa. State Hosp., -----	16 45
	Anna Wagner, Phila. Co. Hosp., -----	1,037 00
		1,325 75
9	To amount received from Wagner Hardware Co., 50 Com. Dkt., 1917,	
	Capital stock, 1913, -----	137 04
	Interest, -----	24 13
	Capital stock, 1914, -----	139 33
	Interest, -----	17 13
	Fees of office, -----	13 82
	Interest on execution, -----	55
		332 00
	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Henry Sweet, Norristown, -----	30 00
	Franklin Koontz, Norristown, -----	25 85
	William Stanley, Norristown, -----	25 85
	Carrie Werkheiser, Homeopathic, -----	98 45
	H. B. Helfant, Pbg. City Home and Hos., -----	20 57
	Morris Kutcher, E. Pa. State Hospital, -----	1 00
	Samuel Fellheimer, E. Pa. State Hosp., -----	1 00
	Rose Carr, Warren, -----	102 99
		305 71
13	To amounts received from Economy Building and Loan Association of Scranton, Pa., 151 Com. Dkt., 1917,	
	Penalty imposed for failure to make a report of its condition for the year 1916, as per Sec. 5, Act of Feb. 11, 1895 (P. L. 4), -----	100 00
	Interest, -----	16
	Fees of office, -----	5 00
		105 16
	The Artisans Building and Loan Association of Scranton, Pa., 152 Com. Dkt., 1917,	
	Penalty imposed for failure to make a report of its condition for the year 1916, as per Sec. 5, Act of Feb. 11, 1895 (P. L. 4), -----	100 00
	Interest, -----	16
	Fees of office, -----	5 00
		105 16
19	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Harry Hege, Harrisburg, -----	258 72
	Mary Schmidt, Harrisburg, -----	75 00
	George Byers, Harrisburg, -----	31 49
	Henry A. Bell, Harrisburg, -----	350 00
	Merz Poe, Dixmont, -----	219 40
	Fannie J. Hartzell, Dixmont, -----	1,910 57
	Nancy A. Faith, Dixmont, -----	32 86
	Samuel Crouthemal, Homeopathic, -----	2 54
	Samuel Byles, Warren, -----	411 07
	Jacob E. Byles, Warren, -----	95 72
	Rcin Z. Freed, Norristown, -----	7 50
	Anna L. Maria Beck, Norristown, -----	266 52
	Richard Miller, Norristown, -----	301 33

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	John Benner, Norristown, -----	36 10
	Hannah Nace, Norristown, -----	24 89
	Rachael Rebecca Lightkep, Norristown, --	132 48
	Chas. K. Rodearmel, E. Pa. State Hosp.,	10 00
	Marion Growler, E. Pa. State Hosp., -----	5 00
	Minnie Wossoff, E. Pa. State Hosp., -----	7 58
	Margaret Doyle, E. Pa. State Hosp., -----	4 33
	John Wagner, E. Pa. State Hosp., -----	3 00
	Hazel Gatter, E. Pa. State Hosp., -----	5 00
		4,191 10
22	To amounts received from Hudson Coal Co.,	
	392 Com. Dkt., 1911,	
	Capital stock, 1910, -----	250 00
	Interest, -----	87 83
	Fees of office, -----	12 50
		350 33
	325 Com. Dkt., 1912,	
	Capital stock, 1911, -----	7,000 00
	Interest, -----	2,037 00
	Fees of office, -----	350 00
		9,387 00
	178 Com. Dkt., 1914,	
	Capital stock, 1912, -----	250 00
	Interest, -----	57 79
	Fees of office, -----	12 50
		320 29
	157 Com. Dkt., 1917,	
	Capital stock, 1913, -----	1,833 34
	Interest, -----	312 82
	Fees of office, -----	91 67
		2,237 83
	158 Com. Dkt., 1917,	
	Capital stock, 1914, -----	3,500 00
	Interest, -----	392 00
	Fees of office, -----	175 00
		4,067 00
	159 Com. Dkt., 1917,	
	Capital stock, 1915, -----	18,500 00
	Interest, -----	1,023 67
	Fees of office, -----	500 00
		20,023 67
26	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Mary Ruth, Wernersville, -----	545 72
	Wm. A. Leightham, Wernersville, -----	26 29
	Franklin A. Houseberger, Norristown, --	25 85
	Amelia Meyer, Norristown, -----	25 85
	Ezra Snyder, Harrisburg, -----	211 05
	Amanda Bear, Harrisburg, -----	131 08
	Florence Frey, E. Pa. State Inst., -----	6 50
	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Morris Kutcher, E. Pa. State Inst., -----	2 00
	Lester W. Freeman, E. Pa. State Inst., --	4 00
	Lucetta Hazen, Dixmont, -----	1,879 61
	John W. Bogart, Danville, -----	171 67
		3,080 62
Dec. 3	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Sherman F. Ames, Danville, -----	65 71
	Eva Keck, Homeopathic, -----	30 00
	John H. Heck, Homeopathic, -----	15 00
	Wm. J. Collins, Sr., Norristown, -----	25 85

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.	Margaret A. Hagen, Phila. Co. Hosp., --	102 60
	Margaret McGinley, Wernersville, -----	1,500 00
	Emma Cuffs, Wernersville, -----	100 00
		1,839 16
7	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Estella Brooks, Norristown, -----	1,051 22
	Herman Fleishauer, Norristown, -----	38 56
	Martha Brooks, Norristown, -----	25 85
	Robert Field, Norristown, -----	158 05
	Chauncey F. Dively, Blair Co. Hosp., ---	100 00
	Benj. Markley, Lancaster Co. Hospital, --	26 00
	Marion Growler, E. Pa. State Hosp., ---	4 00
	Sam. Fellheimer, E. Pa. State Hosp., ---	1 00
	Susan Morrison, E. Pa. State Hosp., ----	6 00
	Morris Kutcher, E. Pa. State Hosp., ----	2 00
	Elizabeth Carpenter, Warren, -----	57 08
	Sam Crouthamel, Homeopathic, -----	2 00
	Andrew Yonker, Homeopathic, -----	40 30
		1,512 06
10	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Elizabeth Guckes, Warren, -----	15 36
	Emma Hettling, Pittsburgh City Home, --	200 00
	Myer Pragheimer, Norristown, -----	2,109 55
	Julia L. Hume, Norristown, -----	5 00
	Emma B. Crawford, Norristown, -----	6 00
	Morris Kutcher, E. Pa. State Hosp., ---	1 00
	Samuel Fellheimer, E. Pa. State Hosp., --	1 00
	Margery J. Baughman, Allegheny Co. Hospital, -----	26 00
		2,363 91
12	To amount received from Morris A. Rosenberg, 7 Co. Dkt., 1917,	
	Fees of office, Annie Glancy, et al., ----	5 00
	91 Com. Dkt., 1917,	
	Fees of office, Henry Shammo, -----	5 00
	89 Com. Dkt., 1917,	
	Fees of office, H. Homer Matter, -----	5 00
	238 Sept. Term, 1916,	
	Fees of office, -----	18 00
		33 00
13	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Catharine Steffen, Harrisburg Hospital, --	32 50
	Frederick L. Gebhardtsbauer, Norristown, -----	1,226 75
	Mary Eliza Lyles, Norristown, -----	250 00
	Joseph Crawford, Norristown, -----	26 14
	Henry Koppenburg, Norristown, -----	32 50
	Elizabeth Magargee, Norristown, -----	32 50
	Charlotte Bates, Norristown, -----	32 50
	John S. McKnight, Norristown, -----	32 50
	Charles J. Loan, Norristown, -----	32 50
	Caroline Kimble, Norristown, -----	32 50
	Lillie Rawn, Norristown, -----	32 50
	Yetta Ziegler, Warren, -----	32 50
	Helen Tyler, Warren, -----	32 50
	Behneville I. Brode, Schuylkill Co. Hosp. --	26 00
	Minnie Wossoff, E. Pa. State Inst., ----	7 58
	George Wagner, E. Pa. State Inst., ----	3 00
	Alice Scott, E. Pa. State Inst., -----	8 00
	Thomas A. Bechtel, Homeopathic, -----	32 53
		1,905 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
17	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John J. Bridge, Norristown, -----	32 50
	Edward M. Smith, Norristown, -----	8 68
	Ellen Mitton, Norristown, -----	32 50
	Lizzie Doersam, Norristown, -----	32 50
	Stephen McGowan, Norristown, -----	32 50
	Jacob Marcus, Norristown, -----	5 00
	Josephine Ermilio, Norristown, -----	32 50
	Chas. M. Smith, Warren, -----	32 50
	Anna Aylward, Warren, -----	130 36
	Sarah Sharkey, Homeopathic, -----	32 50
	Elizabeth M. Colbert, Homeopathic, -----	32 50
	Raymond W. Brown, Homeopathic, -----	32 50
	Sarah J. McComsey, Homeopathic, -----	51 51
	John R. Gillespie, Homeopathic, -----	32 50
	Mary Schilling, Allegheny Co. Hosp., ---	17 43
		537 98
19	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Charles A. Park, Norristown, -----	12 00
	William Watson, Norristown, -----	28 93
	Ellen Tenihan, Norristown, -----	32 50
	Sarah Ann Althouse, Norristown, -----	32 50
	Elizabeth H. Synnamon, Norristown, ---	32 50
	Marie Tissier, Norristown, -----	58 35
	Louise Warkotch, Norristown, -----	32 50
	Philip Duerr, Norristown, -----	32 50
	John P. Jones, Norristown, -----	25 00
	Bridget Sweeney, Norristown, -----	32 50
	Rosanna Watts, Norristown, -----	32 50
	Clara E. Goldy, Norristown, -----	32 50
	Mary Rosalie Beale, Norristown, -----	32 50
	Elizabeth M. Percy, Norristown, -----	32 50
	John A. Turner, Norristown, -----	32 50
	Sarah Craig Walker, Norristown, -----	32 50
	Bertha C. Fackler, Norristown, -----	32 50
	Josephine Rowan, Norristown, -----	32 50
	Thomas Rimley, Norristown, -----	9 75
	James J. F. Sands, Norristown, -----	32 50
	Hannah Blasband, E. Pa. State Inst., --	39 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Margaret Doyle, E. Pa. State Inst., -----	4 33
	Marion Growler, E. Pa. State Inst., -----	3 76
	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Hazel Getter, E. Pa. State Inst., -----	20 00
	Mary Diehl, Pbg. City Home, -----	52 29
	Mathias W. Keck, Homeopathic, -----	20 36
	Catharine Holland, Homeopathic, -----	70 79
	Harriet Berthoff, Homeopathic, -----	60 38
	Thos. E. Stine, Homeopathic, -----	32 50
	Kathryn K. Beatty, Homeopathic, -----	32 50
	Maria Gilson, Warren, -----	16 25
	Lawrence Rockafeller, Warren, -----	65 86
	Julia O'Brien, Danville, -----	35 00
	Robert R. Miller, Danville, -----	32 86
	Catharine Kelly, Danville, -----	99 87
	Henry C. Livingstone, Danville, -----	105 47
	Anna G. Watts, Polk, -----	845 61
	James B. Witmer, Hillside Home, -----	118 86
		2,279 22

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1917.		
27	To amount received from H. F. Holler, Prothonotary, attorney's fees in 107 Com'th. cases adjusted, Fees of office, -----	321 00
		321 00
	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Myer Pragheimer, Norristown, -----	58 35
	Edw. Featherman, Norristown, -----	32 50
	Anna Shelly, Norristown, -----	32 50
	Annie E. Nicom, Norristown, -----	32 50
	Robert M. Cooper, Jr., Norristown, -----	50 00
	Blanche L. Wolfe, Norristown, -----	15 00
	Thomas Powers, Norristown, -----	32 50
	J. Wesley Klare, Norristown, -----	32 50
	Margaret A. Schreiner, Norristown, -----	32 50
	Anna McKinsey Foote, Norristown, -----	107 25
	Frank A. Honsberger, Norristown, -----	32 50
	Mary C. Ard, Danville, -----	32 50
	James B. Salmon, Danville, -----	32 50
	Elizabeth A. Matchin, Danville, -----	32 50
	Della E. Foust, Danville, -----	32 50
	Charles C. Otto, Danville, -----	32 50
	Robt. H. Miller, Danville, -----	32 50
	Catherine Gangwere, Homeopathic, -----	150 82
	Rosie Brunner, Homeopathic, -----	32 50
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
		1,159 43
	Total for year 1917, -----	\$327,708 41
1918.		
Jan. 2	To amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	R. G. Colkett, Dixmont, -----	32 50
	John E. Potts, Dixmont, -----	65 34
	Tissue E. Hager, Dixmont, -----	65 34
	Nancy A. Faith, Dixmont, -----	65 34
	Peter Soldo, Dixmont, -----	65 34
	Minnie Huntley, Dixmont, -----	65 34
	Albert D. Allen, Wernersville, -----	25 78
	Henry Vogelson, Norristown, -----	32 50
	Mary P. Styer, Norristown, -----	43 35
	George D. Reeder, Norristown, -----	32 50
	Emma Fennimore, Norristown, -----	32 50
	William H. Glass, Harrisburg, -----	32 50
	George F. Bogar, Harrisburg, -----	13 38
	James M. Duncan, Harrisburg, -----	32 50
	Flore E. Rupp, Harrisburg, -----	32 50
	Ralph A. Rohrer, Harrisburg, -----	32 50
	Mary L. Meals, Harrisburg, -----	32 50
		701 71
3	To amount received from Logan Coal Co., 416 Com. Dkt., 1910, Capital stock, 1909, ----- Interest, ----- Fees of office, -----	250 00 105 58 12 50
		368 08
	415 Com. Dkt., 1911, Capital stock, 1910, ----- Interest, ----- Fees of office, -----	250 00 91 50 12 50
		354 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	George M. Sipe, Somerset Co. Home, ----	250 00
	Walter B. Dawson, Warren, -----	608 95
	Albert Sober, Somerset Co. Home, -----	83 35
		4,859 50
15	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Kate Woods, Blair Co. Hosp., -----	100 00
	Emma F. Blank, Dixmont -----	195 70
	Charles Blank, Dixmont, -----	195 70
	Effie Pierce, Warren, -----	97 86
	Maggie C. Moody, Warren, -----	21 78
	Walter Y. Wells, Norristown, -----	58 35
	Edmund M. Smith, Norristown, -----	4 34
	H. B. Halfant, Pbg. City Home, -----	17 43
	David McLane, Chester Co. Hosp., -----	26 00
	John Bogart, Danville, -----	21 77
	Mary Lindsey, Harrisburg Hosp., -----	32 50
	Matilda Schueler, Harrisburg, -----	32 50
	James F. Seasholtz, Harrisburg, -----	32 50
	Sarah Kilmer, Harrisburg, -----	32 50
	Wm. D. F. Loy, Wernersville, -----	25 78
	Rudolph Feister, Farview, -----	74 60
		969 31
16	To amount received from South Fork Coal Mining Company, 159 Com. Dkt., 1914,	
	Interest on capital stock, 1912, -----	12 30
	Fees of office, -----	2 50
		14 80
17	To amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Clara Weaver, Harrisburg, -----	32 50
	Clara A. Quolke, Pbg. City Home, -----	243 00
	Franklin Koontz, Norristown, -----	32 50
	Cecelia Ellis, Norristown, -----	15 00
	Julius Hume, Norristown, -----	5 00
	Louisa Williams, Warren, -----	20 10
	Wm. A. Leightman, Wernersville, -----	25 78
	Minnie Wossoff, Spring City, -----	7 58
	Morris Kutcher, Spring City, -----	2 00
	George Wagner, Spring City, -----	3 00
		386 46
21	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Malissa J. Mohr, Harrisburg, -----	32 50
	Hilda Yensen (alias Mary Peterson), Harrisburg, -----	70 00
	Margaret M. Haas, Harrisburg, -----	32 50
	Josephine Weinstein, Norristown, -----	32 50
		167 50
22	To amount received from B. B. & B. Co., 52 Com. Dkt., 1915,	
	Capital stock, 1913 (bal.), -----	31 38
	Interest, -----	5 91
	Fees of office, -----	1 57
		38 86
29	To amount received from Troy Coal Co., 16 Com. Dkt., 1917,	
	Capital stock, 1909, -----	47
	Interest, -----	19
	Capital stock, 1910, -----	11 00
	Interest, -----	2 97
	Capital stock, 1911, -----	16 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Interest, -----	4 45
	Capital stock, 1912, -----	19 25
	Interest, -----	9 91
	Capital stock, 1913, -----	25 00
	Interest, -----	5 12
	Capital stock, 1914, -----	30 25
	Interest, -----	4 08
	Loan, 1909, -----	47 50
	Interest, -----	19 23
	Loan, 1912, -----	25 08
	Interest, -----	5 14
	Loan, 1913, -----	22 80
	Interest, -----	4 67
	Interest on execution, -----	2 24
	Fees of office, -----	9 89
29	To amounts received from estates of persons confined in Hospitals for the insane, as indigents, viz:	265 74
	Geo. C. Wilson, Blair Co. Hosp., -----	94 77
	John Minster, Blair Co. Hosp., -----	30 57
	Elizabeth Murphy, Hillside House, -----	43 43
	Clark L. Baker, Wernersville, -----	25 78
	Myrtle Osborn, Danville, -----	651 85
	Walter Clarence Arnold, Norristown, -----	64 47
	Joseph Crawford, Norristown, -----	13 29
	E. Louisa Frenkenfield, Norristown, -----	262 06
	Rein Z. Freed, Norristown, -----	7 50
	Jane L. Keys, Norristown, -----	1,153 71
	Nettie Hiveley, Harrisburg, -----	32 50
	C. B. Fawcett, Allegheny Co. Hosp., -----	7 33
	Ellen McN. Corboy, Allegheny Co. Hosp., -----	26 29
	Jere E. Faust, Schuylkill Co. Hosp., -----	308 86
30	To amounts received from West Chester Street Railway Company; second payment on account repairs of Lancaster turnpike between Coatesville and Downingtown, -----	5,000 00
Feb. 4	To amount received from Chapman Decorative Company, 109 Com. Dkt., 1916:	5,000 00
	Capital stock, 1914, -----	65 62
	Interest, -----	8 68
	Fees of office, -----	3 28
118	Com. Dkt., 1916:	77 58
	Capital stock, 1915, -----	64 45
	Interest, -----	5 20
	Fees of office, -----	3 22
4	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	72 87
	Robert B. Weaver, Harrisburg, -----	687 22
	Barbara F. Harbold, Harrisburg, -----	453 92
	Laura M. Leathery, Harrisburg, -----	392 21
	Assena Hawk, Harrisburg, -----	32 50
	Uriah Berkstresser, Harrisburg, -----	284 33
	Henrietta K. Delp, Lancaster Co. Hosp., -----	761 16
	Emma Gwilliam, Norristown, -----	100 00
	Albert C. Pohlig, Norristown, -----	1,901 24
	Jacob Marcus, Norristown, -----	5 00
	Mav Herwick (Herwig), Norristown, -----	2,000 00
	Julia Hume, Norristown, -----	3 00
	Amelia Meyer, Norristown, -----	32 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Jane L. Keys, Norristown, -----	10 00
	F. Marion Davis, Norristown, -----	1,000 00
	Peter Morningred, Blair Co. Hosp., ----	43 14
	Marion Growler, E. Pa. State Inst., ----	2 75
	Sam. Fellheimer, E. Pa. State Inst., ----	1 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Chas. K. Rodearmel, E. Pa. State Inst., ----	5 00
	Susan Morrison, E. Pa. State Inst., ----	5 00
	Margaret Doyle, E. Pa. State Inst., ----	4 33
	Sam. Fellheimer, E. Pa. State Inst., ----	1 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Wilson Miller, Allegheny Co. Hosp., ----	25 00
	Adolph Flubacker, Phila. Co. Hosp., ----	400 00
	Robert McFarland, Dixmont, -----	629 21
	Felix Rissinger, Schuylkill Co., -----	424 57
	Edward Stoltz, Warren, -----	130 71
	Isaac Devitt, Warren, -----	130 36
		9,467 15
7	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Laura M. Baukes, Harrisburg Hosp., ---	1,378 91
	Walter M. Barnes, Harrisburg Hosp., ----	71 03
	Eliza Jane Stiffler, Blair Co. Hosp., ----	105 71
	Israel Hoover, Somerset Co. Home, -----	87 43
	Chas. A. Park, Norristown, -----	12 00
	Wm. Stanley, Norristown, -----	32 50
	Wm. Davis, Norristown, -----	169 07
	Katherine Brandon, Warren, -----	82 50
		1,939 15
11	To amount received from Titusville Traction Company, 133 Com. Dkt., 1917:	
	G. R., 1914, (6 mos. ending Dec. 31), -----	54 11
	G. R., 6 months ending June 30, 1915, -----	109 60
	G. R., 6 months ending December 31, 1915, -----	147 78
		311 49
	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Sam. W. Crouthamel, Homeopathic, ----	2 00
	Angelett DeYoe, Warren, -----	41 42
	Annie Elgin, Warren, -----	19 50
	Wm. J. McComb, Norristown, -----	58 35
	Joseph Crawford, Norristown, -----	115 27
	Wm. J. A. Brewster, Norristown, -----	32 50
	Theo. J. Fairman, Polk, -----	599 31
	Mary J. Shelow, Blair Co. Hosp., -----	52 57
	Rebecca McBride, Harrisburg, -----	32 50
		953 42
19	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Harry Hege, Franklin Co. Hosp., -----	261 14
	Chas. D. Bailey, Schuylkill Co. Hosp., ---	2,000 00
	Edward M. Smith, Norristown, -----	4 34
	Chas. Miller, Harrisburg, -----	35 70
	Wm. R. Heffner, Harrisburg, -----	449 91
	Inez Poe, Dixmont, -----	45 62
	Eva E. Thompson, Warren, -----	33 62
	Frances Anderson, E. Pa. State Inst., --	70 28
		2,900 61

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
20	To amounts received from Somerset Dairy Co-operation, 40 Com. Dkt., 1917: Interest on capital stock, 2½ years from Sept. 20, 1911, ----- Fees of office, -----	1 38 1 14
		2 52
23	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz: Edwin J. S. Minnich, Homeopathic, ----- Wm. M. Mertz, Homeopathic, ----- Lewis M. Somer, Somerset Co. Home, --- Mary Mahan, E. Pa. State Inst., ----- Chas. Rodearmel, E. Pa. State Inst., -- Margaret Doyle, E. Pa. State Inst., ---- Minnie Wosoff, E. Pa. State Inst., ----- Samuel Fellheimer, E. Pa. State Inst., -- Morris Kutcher, E. Pa. State Inst., ----- George Wagner, E. Pa. State Inst., ----- David Lewis, Norristown, ----- Samuel C. Crawford, Norristown, ----- Mary Josephine Smith, Norristown, ----- Mary Bott, Phila. Co. Hosp., ----- Meyer Love, Phila. Co. Hosp., ----- John W. Brown, Phila. Co. Hosp., ----- Louisa Buehl, Phila. Co. Hosp., ----- Susanna B. Slack, Lancaster Co. Hosp., -----	32 50 208 27 225 00 10 00 10 00 4 33 7 58 1 00 2 00 3 00 5 00 5 00 129 74 100 00 50 57 12 57 87 14 12 00
		905 70
26	To amount received from Lower Merion Twp., Montgomery Co., 22 Com. Dkt., 1916: Loan, 1914, ----- Fees of office, -----	2,180 13 109 00
		2,289 13
28	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz: Jane L. Keys, Norristown, ----- Catharine J. Shaw, Norristown, ----- L. Sophie Lipman, Norristown, ----- Frances Anderson, E. Pa. State Inst., -- Elizabeth H. Jones, E. Pa. State Inst., 100 00 Marion Growler, E. Pa. State Inst., ----- Morris Kutcher, E. Pa. State Inst., ----- Samuel Fellheimer, E. Pa. State Inst., -- Joseph Wentz, Dixmont, ----- Hannah May Sproot, Allegheny Co. Hosp., ----- John Brose, Allegheny Co. Hosp., ----- Sarah J. McComsey, Homeopathic, ----- John H. Heck, Homeopathic, ----- Sallie Keller, Lancaster Co. Hosp., ----- Daniel Dolbow, Phila. Co. Hosp., ----- Robert B. Weaver, Harrisburg, ----- Eleanor Lucas, Harrisburg, -----	10 00 655 60 156 47 17 71 3 00 1 00 1 00 686 82 84 50 44 57 32 50 15 00 90 00 18 57 32 50 931 20
	Deduct bad check, -----	2,880 44 17 71
Mar. 5	To amount received from Boro of Ridgway, Elk County, 101 Com. Dkt., 1916: Balance due on account of State Aid Highway construction, -----	2,862 73 445 34
		445 34

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Herbert Hollenback, Warren, -----	25 00
	Lillie Repsher, Homeopathic, -----	73 00
	Eva Keck, Homeopathic, -----	30 00
	Beulah T. Sager, Chester Co. Hosp., ----	737 58
	Susan D. Wise, Phila. Co. Hosp., -----	20 57
	George Ress, Phila. Co. Hosp., -----	4 00
	Benjamin Irrgang, Norristown, -----	32 50
	Samuel C. Dick, Harrisburg, -----	766 21
	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
		1,690 86
12	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Mary Schilling, Allegheny Co. Hosp., --	25 71
	Margery J. Baughman, Allegheny Co. Hosp., -----	25 71
	Chas. C. Otto, Danville, -----	32 14
	Mary O. Ard, Danville, -----	32 14
	Mary Diehl, Pittsburgh City Home, -----	25 71
	Frankel Alberts, Pittsburgh City Home, -----	20 29
	Nancy Lois Andrews, Warren, -----	553 57
	John A. Agey, Warren, -----	33 21
	Yetta Ziegler, Warren, -----	32 14
	Carrie Eberly, Harrisburg, -----	1,349 17
	Alice C. Loose, Harrisburg, -----	32 50
	Samuel H. Lewis, Harrisburg, -----	476 13
	Harry O. Boyer, Lancaster Co. Hosp., --	479 71
	Henrietta K. Delp, Lancaster Co. Hosp., --	25 71
	B. I. Brode, Schuylkill Co. Hosp., -----	25 71
	Alavista Shelly, Homeopathic, -----	97 60
	Lester Freeman, E. Pa. State Inst., ----	8 00
	Marion Growler, E. Pa. State Inst., ----	3 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Sam. Fellheimer, E. Pa. State Inst., ----	1 00
	Susan Morrison, E. Pa. State Inst., ----	5 00
	Mary McNamara, Norristown, -----	491 05
	Henry Koppenburg, Norristown, -----	37 16
	Lillie Rawn, Norristown, -----	37 16
	Patrick Brady, Norristown, -----	37 16
	Charles Kerper, Norristown, -----	37 16
	Susan Gallagher, Norristown, -----	37 16
	Mary S. Sprowles, Norristown, -----	145 16
	John J. Bridge, Norristown, -----	37 16
	Mary E. Cassel, Norristown, -----	37 16
		4,181 48
14	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	L. Sophie Lyman, Norristown, -----	37 16
	Caroline Kimble, Norristown, -----	37 16
	C. F. W. Kreuger, Norristown, -----	37 16
	Thos. Powers, Norristown, -----	37 16
	Rosanna Watts, Norristown, -----	32 14
	Clara E. Goldy, Norristown, -----	32 14
	Mary R. Beale, Norristown, -----	32 14
	Bridget Sweeney, Norristown, -----	32 14
	Eliza M. Percy, Norristown, -----	32 14
	Josephine Rowan, Norristown, -----	32 14
	Bertha C. Fackler, Norristown, -----	32 14
	John A. Turner, Norristown, -----	32 14
	Sarah Craig Walker, Norristown, -----	32 14

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Samuel Fellheimer, E. Pa. State Inst.,--	1 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	George Wagner, E. Pa. State Inst., ----	3 00
	Minnie Wossoff, E. Pa. State Inst., ----	7 58
	Chas. K. Rodearmel, E. Pa. State Inst.,	5 00
	Mary Mahan, E. Pa. State Inst., ----	5 00
		2,879 58
25	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Wm. J. McComb, Norristown, ----	37 16
	Henry Vogelsong, Norristown, ----	37 16
	Margaret McGinley, Wernersville, ----	25 71
	James McArdle, Westmoreland Co. Hosp.,	62 86
	Chas. Bader, E. Pa. State Inst., ----	5 00
	Rosie Brunner, E. Pa. State Inst., ----	32 14
		200 03
28	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Edward Murray, Norristown, ----	32 62
	Louise Warrotch, Norristown, ----	32 50
	Emma Fennimore, Norristown, ----	37 16
	Benj. Oursler, Polk, ----	55 41
	Eliza Jane Stiffler, Blair Co. Hosp., ----	25 71
	Thos. E. Stine, Homeopathic, ----	32 14
	Samuel Verruel, Hillside Home, ----	51 71
	Bridget Murphy, Blockley, ----	1,404 14
	Catherine Wenger, Lancaster Co. Hosp.,	360 28
	John E. Potts, Dixmont, ----	44 22
	Susan Keisel, Wernersville, ----	100 00
	Wm. A. Leightham,* Wernersville, ----	8 00
		2,183 52
April 1	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Anna Shelly, Norristown, ----	37 16
	Mary P. Styer, Norristown, ----	29 66
	Louisa Mary Seifert, Harrisburg, ----	32 14
	Daniel W. Bordner, Harrisburg, ----	32 14
	Ralph A. Rohrer, Harrisburg, ----	32 14
	James M. Duncan, Harrisburg, ----	32 14
	Mary L. Meals, Harrisburg, ----	32 14
	Rebecca McBride, Harrisburg, ----	32 14
	Elizabeth Tibbott, Dixmont, ----	17 78
	John L. Morrison, Dixmont, ----	44 22
	Tissue E. Hager, Dixmont, ----	44 22
	Euphemia Bobb, Danville, ----	58 06
	Mary E. Shelow, Blair Co. Hosp., ----	25 71
		449 65
4	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	George P. Bogar, Harrisburg, ----	13 41
	Flora E. Rupp, Harrisburg, ----	32 14
	Wm. H. Glass, Harrisburg, ----	32 14
	Jesse Lee Test, Harrisburg, ----	32 14
	Louisa Williams, Warren, ----	32 14
	Nancy A. Faith, Dixmont, ----	44 22
	Melvin Hays, Dixmont, ----	44 22

*(The whole amount paid by Wm. A. Leightham of this date was \$25.71, \$17.71 of which amount replaces a similar sum paid by R. M. Anderson under date of Feb. 28, 1919, and credited on the books of the State Treasury as of March 4, 1919. The Anderson check was uncertified and returned "no funds" - hence this transaction.)

SCHEDULE J--Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	John Scheerer, Norristown, -----	494 73
	George Blight, Homeopathic, -----	227 96
	Lillie M. Repsher, Homeopathic, -----	32 14
		985 24
8	To amount received from estate of Richard A. Evans confined in Norristown Hospital as an indigent insane person, -----	540 70
	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	540 70
	Elizabeth Zinn, Harrisburg, -----	201 56
	Matilda Schueler, Harrisburg, -----	32 14
	Sarah Ahner, Harrisburg, -----	32 14
	Patrick Kane, Harrisburg, -----	25 00
	Emma F. Blank, Dixmont, -----	44 22
	Charles Blank, Dixmont, -----	44 22
	George A. Powell, Pittsburgh City Home and Hospital, -----	462 86
	George A. Powell, Pittsburgh City Home and Hospital, -----	43 15
	Annie A. Stierheim, Pittsburgh City Home and Hospital, -----	104 29
	Angeline Keim, Allegheny Co. Hosp., -----	492 57
	Edwin A. Crawford, Allegheny Co. Hosp., -----	217 43
	Caroline Koch, Phila. Co. Hosp., -----	60 00
	Michael Buckley, Phila. Co. Hosp., -----	70 00
	Samuel Crawford, Norristown, -----	6 00
	Chas. A. Park, Norristown, -----	12 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	2 00
	Marion Growler, E. Pa. State Inst., -----	3 00
9	To amount received from the estate of Richard A. Evans, confined in Norristown Hospital as indigent insane person, cost of printing paper books in Supreme Court appeal refunded to Commonwealth and to be credited on contingent fund Acct., -----	46 00
		1,853 58
11	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	40 00
	Annie M. Thompson, Harrisburg, -----	1,000 00
	Ross Handler, Harrisburg, -----	175 00
	Mary Lindsey, Harrisburg, -----	32 14
	Chas. Bott, Harrisburg, -----	32 14
	Malissa J. Mohr, Harrisburg, -----	32 14
	Ross M. Fidler, Schuylkill Co. Hosp., -----	300 00
	Mary Green, Dixmont, -----	324 86
	Robert R. Miller, Danville, -----	32 14
	Julia O'Brien, Danville, -----	17 50
	Maurice G. A. Betz, Wernersville, -----	1,000 00
	Thomas F. Morrow, Norristown, -----	68 28
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
15	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	3,016 20
	Henry S. Brubaker, Lancaster Co. Hosp., -----	1,460 71
	Margaret Hoskins, Norristown, -----	37 16
	Justin Hoskins, Norristown, -----	37 16
	David Lewis, Norristown, -----	5 00
	Minnie Huntley, Dixmont, -----	44 22

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Mary S. Shelly, Harrisburg, -----	97 14
	Frances Schall, Harrisburg, -----	125 27
	James F. Seasholts, Harrisburg, -----	32 14
	Wm. D. F. Loy, Wernersville, -----	25 71
	Shelley S. Scholl, Wernersville, -----	122 44
		1,986 95
16	To amount refunded by Clara J. Best on account of purchase of site for home for inebriates, -----	132 18
		132 18
18	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Peter Nutz, Retreat, -----	64 33
	Jacob Marcus, Norristown, -----	5 00
	John P. Jones, Norristown, -----	37 16
	Mary Josephine Smith, Norristown, -----	25 00
	Albert E. Pohligh, Norristown, -----	32 14
	John Bogart, Danville, -----	21 70
	Ella McConnell, Danville, -----	32 14
	Caroline Mary Adam (Marie Agnes Adam), E. Pa. State Inst., -----	121 18
	Minnie Wossoff, E. Pa. State Inst., -----	7 58
	Margaret Doyle, E. Pa. State Inst., -----	12 99
	Chas. K. Rodearmel, E. Pa. State Inst., -----	5 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Hazel Getter, E. Pa. State Inst., -----	18 74
	Geo. Wagner, E. Pa. State Inst., -----	3 00
	Robert B. Weaver, Harrisburg, -----	32 14
	Emma Bertha Roth, Blair Co. Hosp., -----	536 70
	Edwin S. Shisler, Phila. Co. Hosp., -----	90 71
		1,046 51
22	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Sarah Kilmer, Harrisburg, -----	22 86
	Emily Vogt, Norristown, -----	263 43
	Edward M. Smith, Norristown, -----	4 34
	Wm. Bertram Weiss, Farview, -----	127 90
	Frances Anderson, E. Pa. State Inst., -----	51 42
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Marion Growler, E. Pa. State Inst., -----	3 00
		474 95
25	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Sarah Craig, Phila. Co. Hosp., -----	430 33
	Walter G. Craig, Phila. Co. Hosp., -----	227 36
	Sam Crouthamel, Homeopathic, -----	5 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Sam. Fellheimer, E. Pa. State Inst., -----	1 00
	John Davidson, E. Pa. State Inst., -----	260 51
	Amelia C. Stiles, Norristown, -----	755 63
	Wm. L. Hayward, Norristown, -----	30 00
	Richard A. Evans, Farview, -----	127 90
	Elizabeth McComsey, Lancaster Co. Hosp., -----	378 93
	Martha Eidenmiller, Lancaster Co. Hosp., -----	131 14
	Wm. W. Stapleford, Lancaster Co. Hosp., -----	80 00
	Alice C. Loose, Harrisburg, -----	32 14
	Samuel Byler, Warren, -----	32 50
		2,493 54

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
29	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Frances Anderson, E. Pa. State Inst., --	17 71
	Jennie Hiner, Harrisburg, -----	458 50
	Geo. Proposki, Harrisburg, -----	85 71
	Sophia Annsbach, Harrisburg, -----	32 14
	Bertha Sikes, Polk, -----	155 27
	Ella O. George, Westmoreland Co. Hosp., -----	12 29
		761 62
May 2	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Emma K. Hege, Harrisburg, -----	644 97
	Salome Oswald, Harrisburg, -----	130 36
	Nettie Hively, Harrisburg, -----	32 14
	Isaac M. Lichty, Lancaster Co. Hosp., --	841 92
	Mary Mahan, E. Pa. State Hosp., -----	5 00
	Emma Gwilliam, Norristown, -----	100 00
	Angelett DeYoe, Warren, -----	44 61
	Alice Jane Hoover, Westmoreland Co. Hosp., -----	5 00
		1,801 00
7	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Jane L. Keys, Norristown, -----	10 00
	James Jacob F. Sands, Norristown, ----	37 16
	Chas. A. Park, Norristown, -----	12 00
	Annie S. Elgin, Warren, -----	19 50
	Peter Nutz, Retreat, -----	350 00
	Clark L. Baker, Wernersville, -----	25 71
	Peter Soldo, Dixmont, -----	44 22
	Margaret M. Haas, Harrisburg, -----	32 14
	Assina Hawk, Harrisburg, -----	32 14
	Annie M. Thompson, Harrisburg, -----	32 14
		595 01
9	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Marion Growler, E. Pa. State Inst., ----	3 00
	George Wagner, E. Pa. State Inst., ----	3 00
	Susan Morrison, E. Pa. State Inst., ----	6 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Chas. K. Rodaermel, E. Pa. State Inst., --	10 00
	David Davis, Hillside House, -----	376 00
	Harry G. Wyatt, Hillside House, -----	52 57
	Mary Allwein, Harrisburg, -----	350 56
	John Dewalt, Allegheny Co. Hosp., -----	149 15
	Irvin A. Altman, Dixmont, -----	10 00
	Samuel Crawford, Norristown, -----	6 00
		968 28
14	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Setrak Boyajian, Phila. Co. Hosp., -----	46 57
	Harvey E. Miller, Homeopathic, -----	48 09
	J. W. Russell Uthe, Homeopathic, -----	219 03
	Ivan Coloric, Harrisburg, -----	32 14
	Eleanor Lucas, Harrisburg, -----	64 64
	R. G. Colkett, Dixmont, -----	44 22
	Leonora B. Byers, Norristown, -----	1,812 25
	David Lewis, Norristown, -----	5 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Alice I. Upton, Warren, -----	64 64
	Minnie Wossoff, E. Pa. State Hosp., ----	7 58
	Augusta Miekic, Pittsburgh City Home, ----	11 43
		2,355 59
17	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Mary McNamara, Norristown, -----	327 43
	Amelia Meyer, Norristown, -----	37 16
	Anna E. Foreman, Norristown, -----	400 00
	Blanche Wolf, Norristown, -----	15 00
	Jacob Marcus, Norristown, -----	5 00
	Amanda P. Shirk, Harrisburg, -----	282 15
	Adelina Strohecker, Harrisburg, -----	144 53
		1,211 27
20	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Franklin Koontz, Norristown, -----	37 16
	William Stanley, Norristown, -----	37 16
	Ellen Lenihan, Norristown, -----	18 99
	David McLane, Chester Co. Hosp., -----	25 71
	Dr. Homer L. Clark, Dixmont, -----	134 25
	George Miller, Pittsburgh City Home, ----	24 85
	Aug. Yettinger, Pittsburgh City Home, ----	39 74
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Sam. Fellheimer, E. Pa. State Inst., ----	1 00
	Harry Rosenblatt, E. Pa. State Inst., ----	5 00
	Sarah Morgan, E. Pa. State Inst., -----	50 00
		574 86
22	To amount received from Mauch Chunk Boro on account State aid highway maintenance, -----	4 79
		402 09
24	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Robert McFarland, Dixmont, -----	44 22
	Frances Anderson, E. Pa. State Hosp., ----	17 14
	Amos Hunsicker, Harrisburg, -----	103 55
	Catharine Shinabrough, Harrisburg, ----	689 82
	Edward M. Smith, Norristown, -----	4 34
		859 07
29	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Mary Herwick, Norristown, -----	37 16
	Edward Christman, Norristown, -----	418 59
	Silva Lazar, Norristown, -----	139 34
	W. H. Lichtenwalner, Norristown, -----	244 19
	F. A. Honsberger, Norristown, -----	37 16
	Anna E. Clum, Phila. Co. Hosp., -----	157 72
	Edward Christman, Homeopathic, -----	702 90
	Catherine Gangawere, Homeopathic, ----	32 14
	Mary Mahan, E. Pa. State Inst., -----	5 00
	Clara Weaver, Harrisburg, -----	32 14
	Wm. H. Lichtenwalner, Wernersville, ----	1,171 19
	Alice I. Upton, Warren, -----	54 58
		3,257 54
June 4	To amount received from Sandy Township, Clearfield County on account of State-aid highway maintenance, -----	1,352 89
		1,352 89
5	To amount received from Loyalhanna Township, Westmoreland County on account of State-aid highway maintenance, -----	732 94
		732 94

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
5	To amount received from Freeport Boro, Armstrong County, on account State-aid highway maintenance, -----	571 13
		571 13
7	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Samuel Fellheimer, E. Pa. State Inst., ---	1 00
	Morris Kutcher, E. Pa. State Inst., ---	1 00
	Marion Growler, E. Pa. State Inst., ---	3 00
	Morris Kutcher, E. Pa. State Inst., ---	1 00
	Samuel Fellheimer, E. Pa. State Inst., ---	1 00
	Florence Hinkle, E. Pa. State Inst., ---	2 00
	Florence Hinkle, E. Pa. State Inst., ---	2 00
	Annie Gubar, Allegheny Co. Hosp., -----	8 00
	Jennie French, Norristown, -----	125 00
	Hannah E. Crosthwaite, Norristown, ---	95 51
	Samuel Crawford, Norristown, -----	7 00
	Catherine Schreiner, Lancaster Co. Hosp., -----	35 38
	Peter Hahn, Lancaster Co. Hosp., -----	169 71
	Joseph Carroll, Danville, -----	154 35
	Annie Kryzynski, Hillside House, -----	565 90
	Maurice G. A. Betz, Wernersville, -----	142 53
	Eva Keck, Homeopathic, -----	30 00
		1,344 38
10	To amounts recovered from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Frankel Alberts, Pittsburgh City Home, -----	26 29
	Lester Freeman, E. Pa. State Inst., ---	8 00
	John H. Heck, Homeopathic, -----	15 00
	Roy L. Smith, Harrisburg, -----	32 14
	George Ress, Wernersville, -----	26 29
	Agnes Kilkullen, Hillside House, -----	112 00
	David M. Putney, Hillside House, -----	272 42
	Benneville I. Brode, Schuylkill Co. Hosp., -----	26 29
	Margery J. Baughman, Allegheny Co. Hosp., -----	26 29
	Jane L. Keys, Norristown, -----	10 00
	Charlotte Bates, Norristown, -----	34 83
	Patrick Brady, Norristown, -----	34 83
	F. A. Honsberger, Norristown, -----	34 83
	C. F. Kreuger, Norristown, -----	34 83
	Caroline Kimble, Norristown, -----	34 83
		790 87
10	To amounts received from Horsham Twp., Montgomery County, Pa., -----	1,874 68
	Chambersburg Boro, -----	194 63
	Spring Garden Twp., York County, on account of State-aid highway maintenance, --	3,869 19
		5,938 50
13	To amount received from Hampden Twp., Cumberland County, on account State-aid highway maintenance, -----	1,000 00
		1,000 00
	To amounts received from estates of persons confined in State Hospitals for the Insane, as indigents, viz:	
	Walker Y. Wells, Norristown, -----	21 96
	Bertha C. Paekler, Norristown, -----	32 86
	Mary Rosalie Beale, Norristown, -----	32 86
	Clara Goldy, Norristown, -----	32 86
	Lizzie Doersam, Norristown, -----	34 83

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Thos. Powers, Norristown, -----	34 83
	Annie E. Nicom, Norristown, -----	34 83
	Elizabeth Megargee, Norristown, -----	34 83
	John S. McKnight, Norristown, -----	34 83
	Mary P. Gillespie, Norristown, -----	34 83
	Mary Elizabeth Cassel, Norristown, -----	34 83
	Charles J. Loan, Norristown, -----	34 83
	Albert E. Pohl, Norristown, -----	34 83
	John J. Bridge, Norristown, -----	34 83
	Henry Koppenburg, Norristown, -----	34 83
	Hannah Stetler, Norristown, -----	34 83
	Annie E. Foreman, Norristown, -----	14 01
	Robert M. Cooper, Jr., Norristown, -----	50 00
	Wm. J. A. Brewster, Norristown, -----	37 16
	L. Sophie Lyman, Norristown, -----	34 83
	Maggie Koontz, Harrisburg, -----	32 14
	Annie Donnelley, Dixmont, -----	1,340 22
	Irvin A. Altman, Dixmont, -----	8 00
	Edwin S. Shisler, Phila. Co. Hosp., -----	34 29
	Clayton Farrell, Lancaster Co. Hospital, -----	366 00
	Mary Mahan, E. Pa. State Inst., -----	5 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	George Wagner, E. Pa. State Inst., -----	3 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Chas. K. Rodearmel, E. Pa. State Inst., -----	5 00
	Margaret Doyle, E. Pa. State Inst., -----	4 33
		2,474 51
17	To amounts received from estates of persons confined in State Hospitals for the insane as indigents, viz:	
	Edw. Leatherman, Norristown, -----	34 83
	Jacob Marcus, Norristown, -----	5 00
	Louise Warkotsch, Norristown, -----	32 86
	Elizabeth Irwin, Norristown, -----	118 82
	Myer Pragheimer, Norristown, -----	34 83
	Ellen Mitton, Norristown, -----	34 83
	Geo. D. Reeder, Norristown, -----	34 83
	Josephine Ermilio, Norristown, -----	34 83
	Susan Gallagher, Norristown, -----	34 83
	Lillie Rawn, Norristown, -----	34 83
	Elizabeth Synnamon, Norristown, -----	34 83
	Minnie Wossoff, E. Pa. State Inst., -----	7 58
	Jere E. Faust, Schuylkill Co. Hosp., -----	52 00
	Laura D. Griffey, Allegheny Co. Hosp., -----	516 86
	Ellen McNally Carboy, Allegheny Co. Hospital, -----	26 29
	Mary Schilling, Allegheny Co. Hospital, -----	26 29
	George A. Powell, Pbg. City Home, -----	82 50
	Eliza Jane Stiffler, Blair Co. Hospital, -----	26 29
		1,173 13
18	To amount received from Hickory Twp., Lawrence county, on account of State-aid highway maintenance, -----	1,000 00
		1,000 00
20	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John Malloy, Norristown, -----	829 23
	Emanuel Rimby, Norristown, -----	34 83
	Richard B. McMichael, Norristown, -----	50 00
	Philip Duerr, Norristown, -----	9 86
	Margaret A. Schreiner, Norristown, -----	34 83
	Charles A. Park, Norristown, -----	12 00
	Rosanna Watts, Norristown, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Eliza M. Percy, Norristown, ----- 32 86 John A. Turner, Norristown, ----- 32 86 Sarah Craig Walker, Norristown, ----- 32 86 Josephine Rowan, Norristown, ----- 32 86 Bridget Sweeney, Norristown, ----- 34 83 Francis Vey, Norristown, ----- 140 63 George W. Carson, Harrisburg, ----- 94 36 Bridget Ewing, Harrisburg, ----- 307 25 Ida Belle Goodyear, Harrisburg, ----- 630 85 Hill R. McCreary, Harrisburg, ----- 64 29 Mina E. Robbins, Warren, ----- 706 81 Chas. M. Smith, Warren, ----- 32 86 Yetta Ziegler, Warren, ----- 32 86 Wm. H. Lichtenwalner, Wernersville, ----- 25 89 Albert D. Allen, Wernersville, ----- 25 89 William H. Leightham, Wernersville, ----- 25 89 Margaret McGinley, Wernersville, ----- 25 89 Wm. D. F. Loy, Wernersville, ----- 25 89 Ben Williams, Jr., Phila. Co. Hosp., ----- 1,007 16 Gail D. Mitchell, Hillside House, ----- 1,300 14 Anthony Flasser, Luzerne Co. Hosp., ----- 147 20	5,763 74
24	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Edward M. Smith, Norristown, ----- 4 34 Rudolph Gerlach, Norristown, ----- 32 86 Wm. J. Collins, Sr., Norristown, ----- 37 16 Mary P. Styer, Norristown, ----- 27 33 Samuel W. Clark, Norristown, ----- 713 91 Anna Farson Pugh, Norristown, ----- 779 83 Elizabeth Gerhab, Norristown, ----- 356 57 Martha Brooks, Norristown, ----- 34 83 Catherine Shaw, Norristown, ----- 34 83 Mary S. Shelly, Harrisburg, ----- 32 86 Maria Gilson, Warren, ----- 16 43 Helen Tyler, Warren, ----- 32 86 Annette Wright, Warren, ----- 42 50 Mary E. Clinger, Warren, ----- 65 00 Mina E. Robbins, Warren, ----- 100 00 Samuel Byler, Warren, ----- 32 86 Pamelia Jones, Warren, ----- 76 07 Nellie O'Connor, Warren, ----- 57 71 George M. Walters, Dixmont, ----- 16 43 Setrack Boyajian, Phila. Co. Hosp., ----- 26 29 Caroline Koch, Phila. Co. Hosp., ----- 26 29 John T. Moran, Luzerne Co. Hosp., ----- 26 29 Hazel Gatter, E. Pa. State Hosp., ----- 9 52 Marion Growler, E. Pa. State Hosp., ----- 4 00 Susan Morrison, E. Pa. State Hosp., ----- 4 00 Samuel Fellheimer, E. Pa. State Hosp., ----- 1 00 Morris Kutcher, E. Pa. State Hosp., ----- 1 00	2,592 77
24	To amount received from Manheim Twp., Lan- caster Co., on account of State-aid highway maintenance, ----- 2,836 86	2,836 86
	Borough of Mill Hall, Clinton Co., on account of State-aid highway maintenance, ----- 36 65	36 65
27	To amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Jas. F. Seasholtz, Harrisburg, ----- 32 86 Mary L. Meals, Harrisburg, ----- 32 86	

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	James Duncan, Harrisburg, -----	32 86
	Rebecca McBride, Harrisburg, -----	32 86
	Maggie Koontz, Harrisburg, -----	32 86
	Ralph A. Rohrer, Harrisburg, -----	32 86
	Clara Weaver, Harrisburg, -----	32 86
	Christian L. Keagy, Harrisburg, -----	557 13
	Daniel Adams, Jr., Harrisburg and Schuylkill Haven, -----	800 00
	Stephen McGowan, Norristown, -----	12 80
	Blanche L. Wolfe, Norristown, -----	15 00
	Samuel W. Clark, Norristown, -----	86 06
	Emma Fennimore, Norristown, -----	34 83
	David Lewis, Norristown, -----	5 00
	Tissue E. Hager, Dixmont, -----	32 86
	Maggie C. Moody, Warren, -----	32 86
	Maurice G. A. Betz, Wernersville, -----	25 89
	H. B. Helfant, Pbg. City Home, -----	6 86
		1,839 31
July 1	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Henry V. Simpson, Danville, -----	985 62
	Lewis H. Root, Danville, -----	28 21
	Robert R. Miller, Danville, -----	32 86
	Julia O'Brien, Danville, -----	17 50
	Mary C. Ard, Danville, -----	32 86
	John S. Frederick, Danville, -----	32 86
	Elizabeth A. Matchin, Danville, -----	32 86
	Charles C. Otto, Danville, -----	32 86
	Andrew N. Evans, Danville, -----	139 18
	Alice I. Upton, Warren, -----	24 67
	Elizabeth Tibbott, Dixmont, -----	30 36
	Robert McFarland, Dixmont, -----	32 86
	Nancy A. Faith, Dixmont, -----	10 00
	John E. Potts, Dixmont, -----	32 86
	Hannah Blasband, E. Pa. State Inst., ---	39 00
	Alice Jane Hoover, Westmoreland Co. Hospital, -----	10 00
	Flora E. Rupp, Harrisburg, -----	32 86
	Mary Cochran, Harrisburg, -----	266 70
	Louise Mary Seifert, Harrisburg, -----	32 86
	Daniel W. Bordner, Harrisburg, -----	32 86
	Mary Diehl, Pbg. City Home, -----	26 29
	Sarah Sharkey, Homeopathic, -----	32 86
	Margaret Hoskins, Norristown, -----	34 83
	Justin Hoskins, Norristown, -----	34 83
		1,993 48
3	To amount received from Borough of Oata- wissa, on account State-aid highway main- tenance, -----	135 39
		135 39
	Robinson Twp., Washington Co., on account State-aid highway maintenance, -----	565 77
		565 71
	Kushequa Brick Co., 45 Com Dkt., 1915, ----	
	Capital stock, 1913, -----	5 50
	Interest, -----	65
	Fees of office, -----	27
		6 42
8	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Mary Jane Herr, Harrisburg, -----	2,334 99
	Mary Jane Herr, Harrisburg, -----	32 86
	Samuel W. Lehman, Harrisburg, -----	100.00
	Jacob H. Feeser, Harrisburg, -----	8 93

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Kate Ida Houck, Harrisburg, -----	130 36
	Jesse Lee Test, Harrisburg, -----	32 86
	Samuel W. Hess, Lancaster Co. Hosp., --	1,040 00
	Benj. Oursler, Polk, -----	52 65
	Thos. M. Wallace, Wernersville, -----	103 67
	Minnie Huntley, Dixmont, -----	32 86
	Katherine K. Beatty, Homeopathic, -----	32 86
	James Jacob F. Sands, Norristown, -----	34 83
	Henry Vogelson, Norristown, -----	34 83
	Ella McConnell, Danville, -----	32 86
		4,004 56
8	To amount received from Lower Moreland Twp., Montgomery Co., on account of State-aid highway maintenance, -----	432 50
		432 50
8	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Matilda C. Shueler, Harrisburg, -----	32 86
	Mary Lindsey, Harrisburg, -----	32 86
	Annie Leydig, Harrisburg, -----	32 86
	Charles Bott, Harrisburg, -----	32 86
	Eleanor Lucas, Harrisburg, -----	32 86
	Grace Faust, Harrisburg, -----	150 00
	Anna Shelly, Norristown, -----	19 31
	Benj. Irrgang, Norristown, -----	71 99
	Wm. J. McComb, Norristown, -----	34 83
	Ada Elizabeth Ross, Homeopathic, -----	32 86
	Elizabeth M. Colbert, Homeopathic, -----	32 86
	John R. Gillespie, Homeopathic, -----	32 86
	Raymond W. Brown, Homeopathic, -----	32 86
	Edwin J. S. Minnich, Homeopathic, -----	32 86
	Edward Christman, Homeopathic, -----	32 86
	Rosie Brunner, Homeopathic, -----	32 86
	Melvin Hays, Dixmont, -----	32 86
	Peter Soldo, Dixmont, -----	32 86
	Emma F. Blank, Dixmont, -----	32 86
	Wm. Bertram Weiss, Farview, -----	63 37
	Jane Agan, Warren, -----	82 50
	Chas. Blank, Dixmont, -----	32 86
		951 26
11	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Mary E. Shelow, Blair Co. Hosp., -----	26 29
	Harry Rosenblatt, E. Pa. State Inst., --	5 00
	Florence Hinkle, E. Pa. State Inst., --	3 00
	Wm. H. Glass, Harrisburg, -----	32 86
	Mary Cochran, Harrisburg, -----	65 00
	Malissa J. Mohr, Harrisburg, -----	32 86
	Patrick Kane, Harrisburg, -----	25 00
	John W. Witter, Harrisburg, -----	327 40
	Lydia C. Fleming, Norristown, -----	351 53
	Josephine Weinstein, Norristown, -----	32 86
	Jennie French, Norristown, -----	40 00
	Thos. E. Stine, Homeopathic, -----	32 86
	Sarah McComsey, Homeopathic, -----	65 00
	Samuel M. Crouthamel, Homeopathic, --	5 00
	John F. Hess, Lancaster Co. Hosp., -----	166 73
	Thos. G. Strang, Woodville, -----	61 71
	John Labath, Woodville, -----	76 00
	Della E. Faust, Danville, -----	8 57
	James B. Salmon, Danville, -----	32 86
	Pamelia Jones, Warren, -----	33 22
	Mina E. Robbins, Warren, -----	52 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
12	To amount received from Borough of Avoca, Luzerne Co., on account of State-aid highway maintenance, -----	1,200 00
	Bradford Twp., McKean Co., on account of State-aid highway maintenance, -----	566 00
		1,200 00
15	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Lizzie McKean, Schuylkill Co. Hos., -----	4 57
	Irvin A. Altman, Dixmont, -----	8 00
	Stella Plucinski, Woodville, -----	499 71
	Laura D. Webster, Norristown, -----	125 50
	David Lewis, Norristown, -----	5 00
	Emily Vogt, Norristown, -----	34 83
	Jennie McClintock Dickey, Norristown, -----	1,391 20
	Jane L. Keys, Norristown, -----	10 00
	John P. Jones, Norristown, -----	38 41
	Jacob Marcus, Norristown, -----	5 55
	Samuel Crawford, Norristown, -----	7 00
	Emma Ehman, Norristown, -----	614 04
	Ivan Colaric, Harrisburg, -----	32 86
	Arthur Nevin, Harrisburg, -----	191 12
	George P. Bogar, Harrisburg, -----	13 53
	Anna M. Thompson, Harrisburg, -----	32 86
	Clayton Farrel, Lancaster Co. Hosp., -----	339 43
	Robert R. Miller, Danville, -----	8 57
	Mary McKinnon, Blockley, -----	105 43
	Mary Scheinuld, Blockley, -----	37 72
		3,505 39
18	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	J. Wesley Klare, Norristown, -----	34 83
	Robert Field, Norristown, -----	69 66
	Elizabeth M. Baldauf, Pbg. City Home, -----	193 43
	Newton C. Zuver, Dixmont, -----	33 21
	Louisa Williams, Warren, -----	32 86
	Alice C. Loose, Harrisburg, -----	32 86
	Robert B. Weaver, Harrisburg, -----	32 86
	Chas. K. Rodearmel, E. Pa. State Inst., -----	5 00
	Samuel Fellheimer, E. Pa. State Inst., -----	2 00
	Morris Kutcher, E. Pa. State Inst., -----	2 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	George Wagner, E. Pa. State Inst., -----	3 00
	Florence Fry, E. Pa. State Inst., -----	6 50
	Leah Daveler, Lancaster Co. Hosp., -----	174 17
	Antonio Argenzia, Phila. Co. Hosp., -----	1,837 36
		2,461 74
22	Annie Kress, Allegheny Co. Hosp., -----	529 15
	John C. Marshall, Warren, -----	123 93
	Mary E. Olinger, Warren, -----	32 50
	Hazel Gatter, E. Pa. State Hosp., -----	9 01
	Minnie Wossoff, E. Pa. State Hosp., -----	7 58
	Edward F. Carson, Lancaster Co. Hosp., -----	8 60
	Joseph Carroll, Homeopathic, -----	77 86
	Lillie M. Repsher, Homeopathic, -----	32 86
	John L. Morrison, Dixmont, -----	32 86
	Walter Clarence Arnold, Norristown, -----	71 99
	Franklin Kocntz, Norristown, -----	34 83
	Wm. Stanley, Norristown, -----	34 83
		996 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
25	To amount received from Pure Oil Co., 116 Com. Dkt., 1908, _____ Loan, 1907, _____ 1,643 00 Interest, _____ 1,004 15 Fees of office, _____ 82 15	2,729 30
	571 Com. Dkt., 1909, Loan, 1908, _____ 1,487 90 Interest, _____ 799 49 Fees of office, _____ 74 40	2,361 79
	174 Com. Dkt., 1910, Loan, 1909, _____ 2,238 50 Interest, _____ 1,071 86 Fees of office, _____ 111 93	3,422 29
	89 Com. Dkt., 1911, Loan, 1910, _____ 285 00 Interest, _____ 117 13 Fees of office, _____ 14 25	416 38
	309 Com. Dkt., 1912, Loan, 1911, _____ 285 00 Interest, _____ 98 51 Fees of office, _____ 14 25	397 76
	Loan, 1916, _____ 1,049 00 Interest, _____ 13 95	1,062 95
25	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Lewis H. Root, Danville, _____ 32 14 Amos Hunsicker, Harrisburg, _____ 32 86 Stella Plucinski, Woodville, _____ 26 29 Mary T. Fitzpatrick, Hillside House, _____ 1,500 00 Harry Rosenblatt, E. Pa. State Inst., _____ 5 00 Samuel Fellheimer, E. Pa. State Inst., _____ 1 00 Morris Kutcher, E. Pa. State Inst., _____ 1 00 Hedwig Herbst, E. Pa. State Inst., _____ 2 00 Florence Hinkle, E. Pa. State Inst., _____ 2 00 Margaret Doyle, E. Pa. State Inst., _____ 4 33 Mary Mahan, E. Pa. State Inst., _____ 5 00 Dora Shrader, Philadelphia Co. Hosp., _____ 314 53 Richard Miller, Norristown, _____ 310 00 Richard Miller, Norristown, _____ 20 00 Catherine Merriman, Norristown, _____ 178 43 Jennie French, Norristown, _____ 40 00 Lydia Dager, Norristown, _____ 31 80 Edward Smith, Norristown, _____ 4 34 Barbara Kauffman, Lancaster Co. Hosp., _____ 36 76 Clara L. Baker, Wernersville, _____ 25 89	2,573 37
29	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz: Matilda Pierson, Norristown, _____ 69 66 Edward Murray, Norristown, _____ 17 42 Sarah McCrossin, Retreat, _____ 20 00 Sarah Ahner, Danville, _____ 32 86 Sherman Fennimore Ames, Danville, _____ 64 64 Angelett DeYoe, Warren, _____ 41 60 Lester Freeman, E. Pa. State Hosp., _____ 4 00 Marion Growler, E. Pa. State Hosp., _____ 4 00 Florence Hinkle, E. Pa. State Hosp., _____ 2 00	

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Hedwig Herbst, E. Pa. State Hosp., -----	2 00
	Morris Kutcher, E. Pa. State Hosp., -----	1 00
	Samuel Fellheimer, E. Pa. State Hosp., -----	1 00
		260 18
Aug. 1	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John J. Jones, Norristown, -----	13 25
	Mary Chapman Fenton, Norristown, -----	162 31
	Lawrence Rockafellar, Warren, -----	35 00
	James P. Williams, Warren, -----	265 00
	Edith Burke, Polk, -----	80 01
	Lillie I. Heilman, Harrisburg, -----	117 60
	Assina Hawk, Harrisburg, -----	32 86
	R. G. Colkett, Dixmont, -----	32 86
	Catherine Gangawere, Homeopathic, -----	32 86
		771 75
5	To amounts recovered from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Effe E. Pierce, Warren, -----	97 50
	Catherine Brandon, Warren, -----	120 00
	Fred R. Schwartz, Blockley, -----	351 33
	Mary McMenamin, Blockley, -----	274 10
	Mary S. Sprowles, Norristown, -----	65 00
	Pat Quinn, Chester Co. Hosp., -----	37 87
		945 80
6	To amount received from Menallen Twp., Fayette Co., on account of State-aid highway maintenance, -----	750 75
		750 75
6	To amount received from Borough of Edgeworth, Allegheny Co., on account of State-aid highway maintenance, -----	55 79
		55 79
8	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Emma Musser, Lancaster Co. Hosp., -----	949 78
	Annie S. Elgin, Warren, -----	19 50
	Elizabeth A. Martin, Norristown, -----	65 00
	Samuel Stevens, Farview, -----	78 00
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Susan Morrison, E. Pa. State Inst., -----	5 00
		1,123 28
15	To amount received from Semet Solvay Co., 44 Com. Dkt., 1915, -----	3,549 01
	O. S., 1913, -----	649 47
	Interest, -----	209 92
	Fees of office, -----	85 22
	Interest on judgment, -----	
		4,493 62
12	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Jane L. Keys, Norristown, -----	10 00
	May Herwick, Norristown, -----	34 83
	Wm. H. German, Warren, -----	48 21
	John A. Agey, Warren, -----	32 86
	Frederick Hamilton, Allegheny Co. Hosp. -----	414 57
	Alice Jane Hoover, Westmoreland Co. Hosp., -----	10 00
		550 47

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
15	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Helen Connor, Warren, -----	497 50
	Ed. O. Yeahning, Warren, -----	1,087 17
	Helen Krout, Norristown, -----	333 13
	Chas. A. Park, Norristown, -----	12 00
	Margaret Allen, Blockley, -----	404 70
	Mary Fox, No. 1, Blockley, -----	1,139 56
	Patrick Farrel, Homeopathic, -----	700 00
	Arthur J. Strobe, Homeopathic, -----	500 00
	Charles Culberson, Farview, -----	125 00
	Charles Culberson, Danville, -----	81 53
	Euphemia Bobb, Danville, -----	32 86
	Edward Crawford, Allegheny Co. Hosp., -----	8 86
		4,922 31
17	To amount received from Valley Securities, Co., Ltd., 34 Com. Dkt., 1917,	
	Capital stock, 1914, fees of office, -----	4 04
		4 04
19	To amount received from American Natural Gas Co., 263 Com. Dkt., 1910,	
	C. S., '09, -----	1,500 00
	Compromise settlement with Auditor General, 206 C. D., 1911, -----	
	Capital stock, 1910, -----	1,250 00
	Fees of office, -----	62 50
		2,812 50
19	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	E. S. Warner, Norristown, -----	13 79
	E. Howard Headley, Norristown, -----	104 49
	Matilda Pierson, Norristown, -----	34 83
	Thomas F. McElwee, Norristown, -----	295 03
	Irwin A. Altman, Dixmont, -----	8 00
	Wm. H. German, Warren, -----	45 99
	Minnie Wossoff, E. Pa. State Inst., -----	7 58
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Hazel Getter, E. Pa. State Inst., -----	9 52
	Margaret Doyle, E. Pa. State Inst., -----	4 33
	Marion Growler, E. Pa. State Inst., -----	4 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Florence Frey, E. Pa. State Inst., -----	6 50
	George Wagner, E. Pa. State Inst., -----	3 00
	Emma C. Dietrich, Harrisburg, -----	432 22
	Samuel W. Hess, Harrisburg, -----	639 25
	Julia Wrigley, Polk, -----	14 30
	Giles Tunstall, Allegheny Co. Hosp., -----	76 57
	Mary Ella Martin, Pbg. City Home, -----	684 41
22	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	David Lewis, Norristown, -----	5 00
	Emna Gwilliam, Norristown, -----	100 00
	John Ziegler, Lancaster Co. Hosp., -----	82 00
	Catherine E. Billions, Lancaster Co. Hosp., -----	112 20
		2,391 81

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	David E. Stein, Harrisburg, -----	724 53
	John F. Kapp, Warren, -----	965 93
	Lawrence Rockafellar, Warren, -----	30 00
		2,019 66
28	To amount received from Towanda Water Works, 417 Com. Dkt., 1911, Loan, 1910, -----	38 00
		38 00
30	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Mary E. Elliott, Norristown, -----	500 00
	Josephine A. Woodhouse, Norristown, ---	54 10
	Edward M. Smith, Norristown, -----	4 34
	Oscar Hohman, Pbg. City Home, -----	80 00
	Eva Keck, Homeopathic, -----	30 00
	Elizabeth Burkhardt, Harrisburg, -----	1,300 00
	Jennie Harkins, Harrisburg, -----	51 07
	Herman Hassart, Elwyn and Polk, -----	1,280 36
		3,299 87
Sept. 5	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Bessie Johnson, Harrisburg, -----	944 70
	Frank W. McDaniels, Warren, -----	245 21
	Bridget Starin, Norristown, -----	53 09
	Jennie French, Norristown, -----	40 00
	Samuel Crawford, Norristown, -----	10 00
	Florence Fry, E. Pa. State Inst., -----	6 50
		1,299 50
6	To amount received from Borough of Avoca, Luzerne Co., 37 Com. Dkt., 1917, Balance due on account of State-aid highway maintenance, -----	1,826 48
		1,826 48
9	To amount received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Amanda B. Hamilton, Franklin Co. Hosp. -----	150 47
	Mary Shemuld, Blockley, -----	22 63
	Mary Mahan, E. Pa. State Inst., -----	5 00
	Lester Freeman, E. Pa. State Inst., -----	4 00
	Margaret McGinley, Norristown, -----	11 99
	David McLane, Chester Co. Hosp., -----	26 29
	George B. Grattan, Homeopathic, -----	519 08
		739 46
11	To amount received from Brighton Twp., Beaver Co., on account State-aid highway maintenance, -----	1,000 00
		1,000 00
12	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John Rush, Warren, -----	183 21
	Amanda Baer, Harrisburg, -----	358 54
	Irwin Altman, Dixmont, -----	8 00
	David Lewis, Norristown, -----	5 00
	Susan Morrison, E. Pa. State Inst., ---	5 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Harry Rosenblatt, E. Pa. State Inst., --	5 00
	Marion Growler, E. Pa. State Inst., -----	3 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Samuel Fellheimer, E. Pa. State Inst., --	2 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Chas. K. Rodearmel, E. Pa. State Inst., --	5 00
	George Wagner, E. Pa. State Inst., -----	3 00
		581 75

-SCHEDULE J--Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
16	To amount received from Keystone Telephone Co. of Philadelphia, 532 Com. Dkt., 1912,	
	Capital stock, 1911, -----	1,250 00
	Interest, -----	435 38
	Fees of office, -----	62 50
		1,747 88
	152 Com. Dkt., 1914,	
	Capital stock, 1912, -----	1,250 00
	Interest, -----	360 01
	Fees of office, -----	62 50
		1,672 51
16	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Lizzie Cockley, Wernersville, -----	894 14
	Wilson Miller, Woodville, -----	52 00
	Amelia Meyers, Norristown, -----	34 83
	Sallie Walters, Norristown, -----	23 93
	Frances Anderson, E. Pa. State Inst., --	34 85
	Minnie Wossoff, E. Pa. State Inst., ----	7 58
		1,047 33
20	To amount received from Chas. E. Pass, Prothonotary, et al., attorney fees in 38 Commonwealth cases adjusted in favor of the State,	
	Fees of office, -----	114 00
		114 00
20	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Charles A. Park, Norristown, -----	12 00
	Wm. B. Holzhauser, Norristown, -----	62 06
	Hannah C. Deardorff, Harrisburg, -----	272 83
		346 89
23	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Andrew J. Browne, Danville, -----	128 86
	Andrew P. Douglas, Harrisburg, -----	258 03
	Wm. B. Auman, Woodville, -----	175 00
	Hazel Gater, Spring City, -----	9 52
	Wm. J. A. Brewster, Norristown, -----	34 83
	Charlotte Bates, Norristown, -----	32 86
	Elizabeth Megargee, Norristown, -----	32 86
	Chas. F. Kruger, Norristown, -----	32 86
	Henry Koppenburg, Norristown, -----	32 86
	Lillie Rawn, Norristown, -----	32 86
	Louisa Williams, Warren, -----	32 86
	Harry Yeager, Blair Co. Hosp., -----	20 00
	John Baxter, Blockley, -----	50 00
		873 46
26	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Christian Albrecht, Woodville, -----	13 50
	Josephine Ermilio, Norristown, -----	32 86
	J. Wesley Klare, Norristown, -----	32 86
	Rosanna Watts, Norristown, -----	32 86
	Clara E. Goldy, Norristown, -----	32 86
	Mary Rosalie Beale, Norristown, -----	32 86
	Rudolph Gerlach, Norristown, -----	32 86
	Elizabeth Percy, Norristown, -----	32 86
	John A. Turner, Norristown, -----	32 86
	Sarah Craig Walker, Norristown, -----	32 86
	Josephine Rowan, Norristown, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Bridget Sweeney, Norristown, -----	32 86
	Bertha C. Fackler, Norristown, -----	32 86
	Lizzie Doersam, Norristown, -----	32 86
	Thos. Rimby, Norristown, -----	9 86
	Blanche L. Wolf, Norristown, -----	15 00
	Hannah Stetler, Norristown, -----	32 86
	Myer Pragheimer, Norristown, -----	32 86
	Henry Vogelson, Norristown, -----	32 86
	Margaret A. Schreiner, Norristown, -----	32 86
	Mary Chapman Fenton, Norristown, -----	32 86
	Ellen Mitton, Norristown, -----	32 86
	Emma Fennimore, Norristown, -----	32 86
	Thomas Powers, Norristown, -----	32 86
	Edward M. Smith, Norristown, -----	4 34
	Mary P. Styer, Norristown, -----	25 86
	Josephine Weinstein, Norristown, -----	32 86
	Charles J. Loan, Norristown, -----	32 86
	Lydia Dager, Norristown, -----	32 86
	John J. Bridge, Norristown, -----	32 86
	Jennie French, Norristown, -----	40 00
	Ellen McCasker, Norristown, -----	11 49
	Andrew Fleischauer, Somerset Co. Hosp.	339 21
	Jesse Lea Test, Harrisburg, -----	40 59
	Ralph A. Rohrer, Harrisburg, -----	40 59
	Mary L. Meals, Harrisburg, -----	40 59
	Ettie M. Blair, Harrisburg, -----	226 02
	Margaret Doyle, E. Pa. State Hosp., ---	4 33
	Morris Kutcher, E. Pa. State Hosp., ---	1 00
	Florence Hinkle, E. Pa. State Hosp., ---	2 00
		1,635 38
30	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	George R. Reeder, Norristown, -----	32 86
	Walter Clarence Arnold, Norristown, ---	32 86
	Susan Gallagher, Norristown, -----	32 86
	Samuel W. Clark, Norristown, -----	387 14
	Louisa Warkotsch, Norristown, -----	32 86
	Philip Duerr, Norristown, -----	32 86
	Jacob Raudenbusch, Norristown, -----	112 58
	Mary S. Sprowles, Norristown, -----	32 86
	Albert E. Polig, Norristown, -----	32 86
	Elizabeth Martin, Norristown, -----	32 86
	Mary C. Cassel, Norristown, -----	32 86
	Caroline Trimble, Norristown, -----	32 86
	Annie L. Baker, Philadelphia Co. Hosp.,	1,133 36
	Catherine Farley, Pbg. City Home, ---	445 14
	Ellen McNalley Carboy, Allegheny Co. Hospital, -----	26 29
	Mary S. Shelley, Harrisburg, -----	40 59
	James M. Duncan, Harrisburg, -----	40 59
	Flora E. Rupp, Harrisburg, -----	40 59
	Rebecca McBride, Harrisburg, -----	40 59
	Melissa J. Mohr, Harrisburg, -----	40 59
	Albert D. Allen, Wernersville, -----	25 18
	Jacob L. Aucker, Wernersville, -----	19 90
	Thomas M. Wallace, Wernersville, -----	25 18
	W. H. Lichtenwalner, Wernersville, ---	25 18
	Charles Otto, Danville, -----	32 86
	Mary C. Ard, Danville, -----	32 86
	Andrew N. Evans, Danville, -----	32 86
	John S. Frederick, Danville, -----	32 86
	Elizabeth A. Matchin, Danville, -----	32 86
	Benj. Oursler, Polk, -----	47 23

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Tissue E. Hager, Dixmont, -----	39 56
	Sarah J. Comstock, Dixmont, -----	175 26
	Emma F. Blank, Dixmont, -----	39 56
	Charles Blank, Dixmont, -----	39 56
	Yetta Ziegler, Warren, -----	32 86
	Helen Tyler, Warren, -----	32 86
	Richard A. Evans, Farview, -----	117 20
	Raymond W. Brown, Homeopathic, ----	32 86
		3,452 75
Oct. 2	To amount received from Bennett Garbage Disposal Co., 47 Com. Dkt., 1917,	
	Loan, 1909, -----	23 52
	Loan, 1910, -----	32 30
	Interest, -----	16 46
	Loan, 1914, -----	1 14
	Interest, -----	21
	Fees of office, -----	2 84
		76 47
3	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Benneville I. Brode, Schuylkill Co. Hosp.	26 29
	Thos. G. Strang, Allegheny Co. Hosp.,	26 29
	Stella Pluckinski, Allegheny Co. Hosp.,	26 29
	Katherine K. Beatty, Homeopathic, ----	32 86
	Elizabeth M. Colbert, Homeopathic, ----	32 86
	Edw. Christman, Homeopathic, -----	32 86
	Alice I. Upton, Warren, -----	32 86
	Annette Wright, Warren, -----	30 00
	Samuel Byler, Warren, -----	32 86
	Chas. M. Smith, Warren, -----	32 86
	Edw. Leatherman, Norristown, -----	32 86
	Annie E. Foreman, Norristown, -----	32 86
	Elizabeth A. Synnamon, Norristown, ----	32 86
	Mary Josephine Smith, Norristown, ----	32 86
	John E. Potts, Dixmont, -----	39 56
	Elizabeth Jane Stiffer, Blair Co. Hosp.,	26 29
	Wm. R. Matthews, Harrisburg, -----	100 00
	Wm. Bertram Weiss, Farview, -----	53 83
	Ella McConnell, Danville, -----	32 86
		690 72
7	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Maria Gilson, Warren, -----	16 43
	Wm. H. Gass, Harrisburg, -----	40 59
	Clara B. Weaver, Harrisburg, -----	40 59
	Jacob F. Broadman, Harrisburg, -----	11 79
	Rosie Brunner, Homeopathic, -----	32 86
	John Gillespie, Homeopathic, -----	32 86
	Sarah Sharkey, Homeopathic, -----	32 86
	Wm. Stapleford, Lancaster Co. Hosp.,	50 00
	Peter Hahn, Lancaster Co. Hosp., -----	43 71
	James Barry, Norristown, -----	22 75
	L. Sophie Lyman, Norristown, -----	32 86
	Sarah Ann Althouse, Norristown, -----	67 69
	Robert McFarland, Dixmont, -----	39 56
	John L. Morrison, Dixmont, -----	39 56
	James B. Salmon, Danville, -----	32 86
	Caroline Koch, Philadelphia Co. Hosp.,	26 29
	Sallie M. Farrow, Polk, -----	373 37
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Hedwig Herbst, E. Pa. State Inst., ----	2 00
	Marion Growler, E. Pa. State Inst., ----	5 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Harry Yeager, Blair Co. Hosp., -----	14 00
	Mary Schilling, Allegheny Co. Hosp., ---	26 29
		985 92
10	To amount received from L. A. Clark Co., 109 Com. Dkt., 1917,	
	Capital stock, 1912, -----	75 00
	Interest, -----	30
	Capital stock, 1913, -----	75 00
	Interest, -----	30
	Capital stock, 1914, -----	75 00
	Interest, -----	10 43
	Capital stock, 1915, -----	72 92
	Interest, -----	8 43
	Fees of office, -----	14 89
	Interest on Judgment, -----	92
		185 27
10	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Maggie C. Moody, Norristown, -----	32 86
	Anna LaMaria Bacon, Norristown, -----	26 00
	Robert M. Cooper, Norristown, -----	50 00
	Catharine Shaw, Norristown, -----	32 86
	Samuel Crawford, Norristown, -----	10 00
	Margaret G. Hoskins, Norristown, -----	32 86
	Justin Hoskins, Norristown, -----	32 86
	Wm. J. McComb, Norristown, -----	32 86
	John Steel, Pbg. City Home, -----	401 72
	Irwin A. Altman, Dixmont, -----	8 00
	John S. Frederick, Danville, -----	385 00
	Mary Mahan, E. Pa. State Inst., -----	5 00
	Lester Freeman, E. Pa. State Inst., -----	8 00
	James B. Witmer, Hillside Home, -----	52 58
	Gail D. Mitchell, Hillside Home, -----	43 71
	Patrick Kane, Harrisburg, -----	25 00
	Charles Bott, Harrisburg, -----	40 59
	Ivan Coloric, Harrisburg, -----	40 59
	Margaret Haas, Harrisburg, -----	73 45
	Edwin B. Shisler, Philadelphia Co. Hosp.	26 29
	Helen Kyle, Allegheny Co. Hosp., -----	17 71
	Maurice G. A. Betz, Wernersville, -----	25 18
	Ada Elizabeth Ross, Homeopathic, -----	32 86
	Thos. E. Stine, Homeopathic, -----	32 86
		1,468 84
14	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Geo. P. Bogar, Harrisburg, -----	14 68
	Theoph. T. Houck, Harrisburg, -----	200 00
	Louisa Seifert, Harrisburg, -----	40 59
	Daniel W. Bordner, Harrisburg, -----	40 59
	Minnie Wossoff, E. Pa. State Inst., -----	7 58
	Martha Brooks, Norristown, -----	14 29
	Geo. W. Walters, Dixmont, -----	39 56
	Wm. D. F. Loy, Danville, -----	25 18
		382 47
17	To amount received from Delta Borough, York Co., on account of State-aid highway main- tenance, -----	1,765 51
		1,765 51
18	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Melvin Hays, Dixmont, -----	39 56
	Matilda Pierson, Norristown, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Jane L. Keys, Norristown, -----	6 79
	Richard M. Cameron, Norristown, -----	225 13
	Esther Loeb, Norristown, -----	317 81
	Dora Schrader, Norristown, -----	32 86
	Mary Lindsay, Harrisburg, -----	40 59
	George Ress, Wernersville, -----	26 29
	Julia O'Brien, Danville, -----	17 50
	Sarah Ahner, Danville, -----	32 86
	Frankel Alberts, Pbg. City Home, -----	26 29
	Frances Yellig, Allegheny Co. Hospital, -----	155 72
	Frances Yellig, Allegheny Co. Hospital, -----	26 29
	Eva Creese, Allegheny Co. Hospital, -----	186 57
	Mary Mahan, E. Pa. State Inst., -----	5 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Harry Rosenblatt, E. Pa. State Inst., -----	5 00
	George Wagner, E. Pa. State Inst., -----	3 00
	David Lewis, E. Pa. State Inst., -----	3 13
		1,185 25
21	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Matilda Schueler, Harrisburg, -----	40 59
	Alice Jane Hoover, Harrisburg, -----	10 00
	Margt. Bollinger, Harrisburg, -----	34 29
	Robert B. Weaver, Harrisburg, -----	40 59
	Orrin L. Neale, Warren, -----	619 30
	James P. Williams, Warren, -----	32 86
	Edward C. Yeahnig, Warren, -----	65 72
	John C. Marshall, Warren, -----	32 86
	Wm. Collins, Sr., Norristown, -----	34 83
	Marie Tissier, Norristown, -----	37 16
	Hannah C. Croswaithe, Norristown, -----	67 69
	Kate Edith Lochman, Norristown, -----	16 07
	Richard Miller, Norristown, -----	23 93
	Laura M. Platt, Norristown, -----	15 71
	Wm. Stanley, Norristown, -----	32 86
	Anna Kendra, Danville, -----	171 73
	James M. Wintersteen, Farview, -----	53 83
	Emma A. Dill, Allegheny Co. Hosp., -----	23 57
	Mary E. Kress, Pbg. City Home, -----	178 00
	Wm. H. Newman, Pbg. City Home, -----	88 86
	Sarah J. McComsey, Homeopathic, -----	32 86
	Lillie M. Repsher, Homeopathic, -----	32 86
	Jane S. Wilson, Blair Co. Hosp., -----	1,824 42
	Florence Hinkle, E. Pa. State Inst., -----	2 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Sam'l Fellheimer, E. Pa. State Inst., -----	1 00
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Susan Morrison, E. Pa. State Inst., -----	5 00
	Margaret Doyle, E. Pa. State Inst., -----	4 33
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Florence Hinkle, E. Pa. State Inst., -----	2 00
		3,528 92
24	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	James J. F. Sands, Norristown, -----	32 50
	Cecelia Ellis, Norristown, -----	20 00
	Amelia Meyers, Norristown, -----	32 86
	May Herwick, Norristown, -----	32 86
	Catherine Merriman, Norristown, -----	67 69
	Jas. A. Mahoney, Phila. Co. Hosp., -----	52 58
	Hazel Gatter, E. Pa. State Inst., -----	9 21

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Mary Jane Herr, Harrisburg, -----	40 59
	Grace Faust, Harrisburg, -----	40 59
	Clark L. Baker, Wernersville, -----	25 18
	Tillie Funk, Homeopathic, -----	72 15
		426 21
28	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	George Blight, Homeopathic, -----	65 72
	Eliza Keener, Harrisburg, -----	40 59
	Jennings A. Hiner, Harrisburg, -----	32 86
	John J. Baxter, Philadelphia Co. Hosp., -----	50 00
	Mary E. Shelow, Blair Co. Hosp., -----	26 29
	Robert Brownlee, Dixmont, -----	3,076 25
	Hedwig Herbst, E. Pa. State Hosp., -----	2 00
	Samuel Fellheimer, E. Pa. State Hosp., -----	1 00
	Morris Kutcher, E. Pa. State Hosp., -----	1 00
	Florence Hinkle, E. Pa. State Hosp., -----	2 00
	Emma J. Prutsman, Wernersville, -----	1,139 07
	Annie Urban, Luzerne Co. Hosp., -----	700 00
	L. Ida Baker, Elwyn, -----	1,453 50
	Joseph Blettner, Pbg. City Home, -----	320 00
		6,910 28
31	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Minnie E. Kirlin, Wernersville, -----	700 00
	Benj. Williams, Philadelphia Co. Hosp., -----	43 71
	Edw. M. Smith, Norristown, -----	4 34
	Max North, Jefferson Co. Hosp., -----	269 62
	John A. Agey, Warren, -----	32 86
	David McKee, Pbg. City Home, -----	1,531 80
		2,582 33
Nov. 4	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	John Zimmerman, Homeopathic, -----	163 22
	S. Burkhardt, Homeopathic, -----	38 16
	John F. Kopp, Warren, -----	145 36
	Angelett DeYoe, Warren, -----	13 69
	Minnie Kitton, Allegheny Co., Hosp., -----	149 74
	Rachael Hufnagle, Allegheny Co. Hosp., -----	834 29
	Minnie Huntley, Dixmont, -----	39 56
	Mary Ann Seeger, Dixmont, -----	135 28
	Salome Hetrick, Harrisburg, -----	309 14
	Emily Vogt, Norristown, -----	32 86
	Patrick Brady, Norristown, -----	32 86
	Annie E. Nicom, Norristown, -----	32 86
		1,927 02
4	To amount received from Tionesta Borough, on account State-aid highway maintenance, -----	1,093 21
		1,093 21
	Pottsville Water Co., 297 Com. Dkt., 1912, Tax on net income, 1911, -----	367 87
		367 87
	70 Com. Dkt., 1915, Tax on net income, 1914, -----	429 88
		429 88
7	To amount received from North Huntingdon Twp., Westmoreland Co., on account of State-aid highway maintenance, -----	2,500 00
		2,500 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
7	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Sam'l Fellheimer, E. Pa. State Inst., -----	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Jennie French, Norristown, -----	40 00
	Joseph H. Wood, Allegheny Co. Hosp., ---	40 58
	James Witherspoon, Allegheny Co. Hosp. -----	55 43
	Clarence Ommert, Pbg. City Home, -----	204 85
		344 86
12	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Rene Dörriot Lafferty, Norristown, -----	192 08
	Assina Hawk, Harrisburg, -----	40 59
	Annie S. Elgin, Warren, -----	19 50
	Fannie Payner, Elwyn, -----	521 80
	Isabella Hull, Homeopathic, -----	92 86
	Elias S. Heck, Homeopathic, -----	105 72
	Euphemia Bobb, Danville, -----	32 86
	Fred R. Schwartz, Phila. Co. Hosp., -----	10 99
	Jas. F. Seasholtz, Harrisburg, -----	40 59
		1,056 99
13	To amount received from Borough of Coudersport, Potter Co., on account State-aid highway maintenance, -----	2,516 68
		2,516 68
14	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Harry J. Zecher, Lancaster Co. Hosp., -----	80 00
	David McLane, Chester Co. Hosp., -----	26 29
	James F. Seasholtz, Harrisburg, -----	15 72
	Sarah Ann Althouse, Norristown, -----	178 14
	Franklin A. Honsberger, Norristown, ---	32 86
	Catharine Gangawere, Homeopathic, ---	32 86
	Florence Frey, E. Pa. State Inst., -----	6 50
	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Chas. K. Rodearmel, E. Pa. State Inst., --	10 00
	Harry Rosenblatt, E. Pa. State Inst., --	5 00
		389 37
18	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Walker Y. Wells, Norristown, -----	200 00
	Richard B. McMichael, Norristown, -----	55 34
	Mary Louise Keyser, Norristown, -----	504 92
	Charles C. Baker, Jr., Norristown, -----	315 44
	Minnie Wossoff, E. Pa. State Hosp., ---	7 58
	Florence Hinkle, E. Pa. State Hosp., ---	2 00
	Morris Kutcher, E. Pa. State Hosp., -----	1 00
	Samuel Fellheimer, E. Pa. State Hosp., ---	1 00
	Pamelia J. Jones, Warren, -----	32 50
		1,119 78
21	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Peter Dewalt, Allegheny Co. Hosp., -----	1,424 94
	John O. Logan, Allegheny Co. Hosp., --	102 28
	Owen Williams, Homeopathic, -----	32 86
	Edmund McLaughlin, Homeopathic, -----	791 04
	Irwin A. Altman, Dixmont, -----	8 00
	John P. Jones, Norristown, -----	32 86

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Samuel Crawford, Norristown, -----	10 00
	Jane Agan, Warren, -----	32 86
	Heber C. Connor, Warren, -----	32 86
	Mina E. Robbins, Warren, -----	32 86
	Hazel Getter, E. Pa. State Inst., -----	9 52
	John A. Bleichner, E. Pa. State Inst., -----	43 15
		2,553 23
25	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	George B. Grattan, Homeopathic, -----	65 72
	Eleanor Lucas, Harrisburg, -----	40 59
	Mary P. Gillespie, Norristown, -----	138 91
	Benj. Irrgang, Norristown, -----	32 86
	Mary S. Bonsall, Elwyn, -----	1,106 05
	Alice Scott, E. Pa. State Inst., -----	26 00
		1,410 13
27	To amount received from Tredyffne Twp., Chester Co., 55 Com. Dkt., 1918, on account State-aid highway maintenance for 1916, -----	757 72
Dec. 2	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Eva Eck, Homeopathic, -----	30 00
	Annie E. Short, Pbg. City Home, -----	179 33
	Emma Gwilliam, Norristown, -----	100 00
	Martha Malcomson, Norristown, -----	2,283 08
	Susan Kissell, Wernersville, -----	75 00
	Arvilla Van Horn, Warren, -----	123 14
	Michael Killeen, Allegheny Co. Hosp., --	47 43
	Matilda Krepley, Allegheny Co. Hosp., --	293 15
	Helen Kyle, Allegheny Co. Hosp., -----	8 86
	Hedwig Herbst, E. Pa. State Hosp., ----	2 00
	Morris Kutcher, E. Pa. State Hosp., ----	1 00
	Samuel Fellheimer, E. Pa. State Hosp., --	1 00
	George Wagner, E. Pa. State Hosp., ----	1 40
	Mary Mahan, E. Pa. State Hosp., -----	5 00
	Bert W. Farnham, Phila. Co. Hosp., ----	62 00
	Madeline Klauser, Phila. Co. Hosp., ----	70 00
	Michael Kelly, Dixmont, -----	274 87
	John W. McMorris, Harrisburg, -----	300 00
		3,857 26
3	To amount received from Bradford Twp., Mc- Kean Co., on account State-aid highway maintenance, balance, -----	198 48
		198 48
5	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Frances Anderson, E. Pa. State Inst., --	52 00
	Hedwig Herbst, E. Pa. State Inst., ----	2 00
	Florence Hinkle, E. Pa. State Inst., ----	2 00
	Samuel Fellheimer, E. Pa. State Inst., --	1 00
	Morris Kutcher, E. Pa. State Inst., ----	1 00
	Emma L. Ginther, Norristown, -----	268 34
	Edward M. Smith, Norristown, -----	4 34
	Jennie French, Norristown, -----	40 00
	Wm. J. A. Brewster, Norristown, -----	32 86
	Martha J. McCandless, Polk, -----	243 03
	Annie Haag, Warren, -----	760 47
	Emma F. Huntzberger, Harrisburg, ----	658 03
		2,065 07

SCHEDULE J--Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.		
9	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	V. Margaret Reilly, Harrisburg, -----	1,584 17
	Maggie Koontz, Harrisburg, -----	100 00
	Ellen Guffey, Jefferson Co. Hosp., -----	250 00
	Rachael P. Huinagle, Jefferson Co. Hosp. -----	78 57
	Helen Kyle, Jefferson Co. Hosp., -----	8 57
	Mary Schilling, Jefferson Co. Hosp., -----	26 00
	Thos. G. Strang, Jefferson Co. Hosp., -----	26 00
	Benneville I. Brode, Schuylkill Co. Hosp. -----	26 00
	Irvin A. Altman, Dixmont, -----	8 00
	Lydia Newcomer, Lancaster Co. Hosp., -----	607 95
	Lydia Newcomer, Lancaster Co. Hosp., -----	12 00
	Wm. E. Flick, Lancaster Co. Hosp., -----	2 00
	Eliza Jane Stiffler, Blair Co. Hosp., -----	26 00
	Frankel Alberts, Pbg. City Home, -----	26 00
	Mary Maguire, Philadelphia Co. Hosp., -----	193 57
		2,974 83
12	To amount received from Twp. of Luzerne, Fayette Co., 59 Com. Dkt., 1918, on account of State-aid highway maintenance, -----	1,842 81
		1,842 81
12	To amounts received from estates of persons confined in State Hospitals for the insane, as indigents, viz:	
	Gail D. Mitchell, Hillside House, -----	26 00
	Amos F. Pugh, Chester Co., -----	364 80
	James B. Witmer, Hillside House, -----	26 00
	Thos. M. Wallace, Wernersville, -----	26 00
	Albert D. Allen, Wernersville, -----	26 00
	W. H. Lichtenwalner, Wernersville, -----	26 00
	Maurice G. A. Betz, Wernersville, -----	26 00
	Charles M. Smith, Warren, -----	32 50
	Yetta Ziegler, Warren, -----	32 50
	Edw. C. Yeahnig, Warren, -----	32 50
	Isaac Devatt, Warren, -----	130 36
	Helen Tyler, Warren, -----	32 50
	Jane Agan, Warren, -----	32 50
	James P. Williams, Warren, -----	32 50
	Samuel Byler, Warren, -----	32 50
	John F. Kapp, Warren, -----	32 50
	Mary Cochran, Harrisburg, -----	48 09
	Jennings A. Hiner, Harrisburg, -----	40 59
	Mary L. Meals, Harrisburg, -----	32 50
	Grace Faust, Harrisburg, -----	32 50
	James M. Duncan, Harrisburg, -----	32 50
	Ralph A. Rohrer, Harrisburg, -----	32 50
	Sarah Sharkey, Homeopathic, -----	32 50
	Edward Christman, Homeopathic, -----	32 50
	Katherine K. Beatty, Homeopathic, -----	32 50
	Ada Elizabeth Ross, Homeopathic, -----	32 50
	Edmund McLaughlin, Homeopathic, -----	32 50
	Sarah McComsey, Homeopathic, -----	32 50
	John R. Gillespie, Homeopathic, -----	32 50
	Wm. H. Watt, Homeopathic, -----	97 85
	Elias F. Keck, Homeopathic, -----	32 50
	Raymond W. Brown, Homeopathic, -----	32 50
	Wm. B. Ammon, Allegheny Co. Hosp., -----	26 00
	James S. Wilson, Blair Co. Hosp., -----	26 00
	Caroline Koch, Philadelphia Co. Hosp., -----	26 00
	Antonio Argenzia, Phila. Co. Hosp., -----	57 43
	Edwin S. Shisler, Phila. Co. Hosp., -----	26 00
	Fred R. Schwartz, Phila. Co. Hosp., -----	20 41
	Peter Hahn, Lancaster Co. Hosp., -----	26 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Annie Urban, Luzerne Co. Hosp., -----	17 43
	Lester Freeman, E. Pa. State Inst., -----	8 00
	Harry Rosenblatt, E. Pa. State Inst., --	5 00
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Samuel Fellheimer, E. Pa. State Inst.,---	1 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Charles K. Rodearmel, E. Pa. State Inst.	5 00
	Cora E. Bartholomew, Danville, -----	289 21
	John S. Frederick, Danville, -----	32 50
	Chas. O. Otto, Danville, -----	32 50
	Mary C. Ard, Danville, -----	32 50
	Andrew N. Evans, Danville, -----	32 50
	S. Earl Righter, Norristown, -----	344 06
	Rein Z. Freed, Norristown, -----	36 00
	Wm. J. B. Omwake, Norristown, -----	810 64
	Jere E. Faust, Schuylkill Co. Hosp., ---	52 29
		3,429 66
13	To amount received from Conneautville Borough, Crawford Co., on account of State-aid highway maintenance, -----	1,766 18
		1,766 18
16	To amounts recovered from estates of persons confined in various insane hospitals of the State as indigents, viz:	
	Jesse Blakeley, Allegheny Co. Hosp., ---	218 57
	Bertha Troutman, Allegheny Co. Hosp., ---	300 00
	Mary E. Shelow, Blair Co. Hosp., -----	26 00
	Alice Jane Hoover, Westmoreland Co. Hospital, -----	10 00
	Elizabeth M. Colbert, Homeopathic, ---	32 50
	Thos. E. Stine, Homeopathic, -----	32 50
	Rosie Brunner, Homeopathic, -----	32 50
	Catherine Gangewere, Homeopathic, ---	32 50
	Mary Schenneld, Philadelphia Co. Hosp.,	22 63
	Pamelia J. Jones, Warren, -----	32 50
	Effie E. Pierce, Warren, -----	62 50
	Annette Wright, Warren, -----	26 00
	Marie Gilson, Warren, -----	16 25
	Emma G. William, Norristown, -----	100 00
	Bert W. Farnham, Norristown, -----	32 50
	Thos. Powers, Norristown, -----	11 43
	Chas. G. Baker, Jr., Norristown, -----	32 50
	Elizabeth A. Matchin, Danville, -----	32 50
	James B. Salmon, Danville, -----	32 50
	Jesse Lee Test, Harrisburg, -----	9 64
	Rebecca McBride, Harrisburg, -----	32 50
	Mary S. Shelly, Harrisburg, -----	32 50
	Clara Weaver, Harrisburg, -----	32 50
	Mary Dalgleish, Pbg. City Home, -----	988 70
	Mary Mahan, E. Pa. State Inst., -----	5 00
		2,186 72
19	To amounts recovered from estates of persons confined in various insane hospitals of the State as indigents, viz:	
	Jeannette Henry, Luzerne Co. Hosp., ---	300 00
	Minnie Wossoff, E. Pa. State Inst., ---	7 58
	Fannie O. Hoffman, Harrisburg, -----	36 76
	Flora E. Rupp, Harrisburg, -----	32 50
	Ettie Blair, Harrisburg, -----	32 50
	Chas. Bott, Harrisburg, -----	32 50
	Benj. Oursler, Polk, -----	66 30
	Alice I. Upton, Warren, -----	32 50
	Geo. Ress, Wernersville, -----	26 00
	Ella McConnell, Danville, -----	32 50
	Louisa Warkotsch, Norristown, -----	32 50

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Emma Fennimore, Norristown, -----	32 50
	John J. Bridge, Norristown, -----	32 50
	Chas. J. Loan, Norristown, -----	32 50
	Rosanna Watts, Norristown, -----	32 50
	Clara E. Goldy, Norristown, -----	32 50
	Mary Rosalie Beale, Norristown, -----	32 50
	Rudolph Gerlach, Norristown, -----	32 50
	Eliza M. Percy, Norristown, -----	32 50
	John A. Turner, Norristown, -----	32 50
	Sarah Craig Walker, Norristown, -----	32 50
	Josephine Rowan, Norristown, -----	32 50
	Bridget Sweeney, Norristown, -----	32 50
	Bertha C. Fackler, Norristown, -----	32 50
	Catherine Merriman, Norristown, -----	32 50
	Lillie Rawn, Norristown, -----	32 50
	Josephine Ermilio, Norristown, -----	32 50
	Caroline Kimble, Norristown, -----	32 50
	Walter Clarence Arnold, Norristown, -----	32 50
	Mary E. Elliott, Norristown, -----	32 50
	Annie Arthurs, Hillside Home, -----	450 56
		1,699 70
23	To amounts recovered from estates of persons confined in various insane hospitals of the State as indigents, viz:	
	Catherine Snively, Harrisburg, -----	146 47
	Ivan Coloric, Harrisburg, -----	32 50
	Wm. H. Gass, Harrisburg, -----	32 50
	Mary Jane Herr, Harrisburg, -----	32 50
	Matilda Schueler, Harrisburg, -----	32 50
	Charles F. Kreuger, Norristown, -----	32 50
	Sarah Ann Althouse, Norristown, -----	32 50
	May Herwick, Norristown, -----	32 50
	Pat Brady, Norristown, -----	32 50
	Annie E. Nicom, Norristown, -----	32 50
	Josephine Weinstein, Norristown, -----	32 50
	Richard Miller, Norristown, -----	32 50
	Hannah E. Crosthwaite, Norristown, -----	32 50
	Dora Schrader, Norristown, -----	32 50
	Henry Koppenberg, Norristown, -----	32 50
	Edward Leatherman, Norristown, -----	32 50
	Lydia Dager, Norristown, -----	32 50
	Emily Vogt, Norristown, -----	32 50
	Hannah Stetler, Norristown, -----	32 50
	Myer Pragheimer, Norristown, -----	32 50
	Ellen Mitton, Norristown, -----	32 50
	Albert E. Pohlig, Norristown, -----	32 50
	Elizabeth A. Martin, Norristown, -----	32 50
	James Barry, Norristown, -----	16 25
	Philip Duerr, Norristown, -----	32 50
	Thos. Rimby, Norristown, -----	9 75
	Annie E. Foreman, Norristown, -----	32 50
	Maggie C. Moody, Warren, -----	32 50
	Nancy Lois Andrews, Warren, -----	326 07
	Heber C. Connor, Warren, -----	32 50
	Louisa Williams, Warren, -----	32 50
	Mary E. Clinger, Warren, -----	65 36
	Tissue E. Hager, Dixmont, -----	54 47
	Geo. A. Walters, Dixmont, -----	54 47
	Emma F. Blank, Dixmont, -----	54 47
	Charles Blank, Dixmont, -----	54 47
	John T. Moran, Luzerne Co. Hosp., -----	474 36
	Susan Morrison, E. Pa. State Inst., -----	6 00
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Samuel Fellheimer, E. Pa. State Inst., -----	1 00

SCHEDULE J—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1918.	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Lillie M. Repsher, Homeopathic, -----	32 50
	Minnie Kilton, Allegheny Co. Hosp., -----	26 00
		2,202 14
23	To amount received from Hampden Twp., Cumberland Co., on account of State-aid highway maintenance, -----	786 11
	Clarks' Summit Borough, Lackawanna Co., on account of State-aid highway maintenance,--	892 50
		1,678 61
30	To amounts recovered from estates of persons confined in various insane hospitals of the State as indigents, viz:	
	Susan Gallagher, Norristown, -----	32 50
	Lizzie Doersam, Norristown, -----	32 50
	Sophie L. Lyman, Norristown, -----	32 50
	Jennie French, Norristown, -----	40 00
	Phyllis Ann Chappelle, Norristown, -----	531 05
	Henry Vogelson, Norristown, -----	19 29
	Mary Elizabeth Cassel, Norristown, -----	32 50
	John S. McKnight, Norristown, -----	65 36
	Charlotte Batts, Norristown, -----	32 50
	Elizabeth Megargee, Norristown, -----	32 50
	Edward M. Smith, Norristown, -----	4 34
	Catherine J. Shaw, Norristown, -----	32 50
	Delia Dunlevy, Norristown, -----	211 83
	Chas. McKelvey, Norristown, -----	109 50
	Mary J. McKelvey, Norristown, -----	108 50
	Annie M. Anderson, Norristown, -----	33 87
	Mary P. Styer, Norristown, -----	25 00
	Sarah Ahner, Danville, -----	32 50
	Morris A. Sterling, Phila. Co. Hosp., ---	2 57
	Hedwig Herbst, E. Pa. State Inst., -----	2 00
	Morris Kutcher, E. Pa. State Inst., -----	1 00
	Agnes Fennelly, E. Pa. State Inst., -----	407 62
	Hazel Getter, E. Pa. State Inst., -----	9 21
	Mary A. Patterson, Harrisburg, -----	2,388 67
	Robert B. Weaver, Harrisburg, -----	32 50
	Eliza Keener, Harrisburg, -----	32 50
	Louisa Mary Seifert, Harrisburg, -----	32 50
	Daniel W. Bordner, Harrisburg, -----	32 50
	Anna Catherine Fleishman, Adams Co. Hospital, -----	254 63
	William A. Leitham, Wernersville, -----	51 18
	Melvin Hays, Dixmont, -----	54 47
	Minnie Huntley, Dixmont, -----	54 47
	John C. Marshall, Warren, -----	32 50
	Minnie L. Robinson, Warren, -----	532 71
	Clara V. Holman, Chester Co. Hosp., --	448 48
	Clara V. Holman, Chester Co. Hosp., --	300 09
	Caleb J. Hoopes, Chester Co. Hosp., ---	425 14
	Frank Willauer, Chester Co. Hosp., -----	930 27
	Patrick Coleman, Chester Co. Hosp., -----	102 41
	Isabella S. King, Chester Co. Hosp., -----	739 42
	Ezra Martin, Lancaster Co. Hosp., -----	1,250 00
		9,526 08
	Total, -----	\$252,758 76

SCHEDULE K.

LIST OF EJECTMENT PROCEEDINGS BROUGHT BY THE COMMON-WEALTH OF PENNSYLVANIA.

Name of Defendant.	Result of Action.
Philip B. Broude, -----	Judgment in favor of the Commonwealth.
Morris A. Rosenberg, -----	Judgment in favor of the Commonwealth. Writ of possession granted.
Edward N. Cooper, -----	Proceedings discontinued.
George P. Cooper and Edward N. Cooper.	Judgment in favor of the Commonwealth. Writ of possession granted.
Henry G. Walter and Edgar Walter,--	Declaration filed.
George E. Winger, -----	Judgment in favor of the Commonwealth.
Honora O. Ryan, Alice Ryan and Helen B. Ryan.	Declaration filed. Defendant's plea filed.
Henry Shammo, -----	Judgment in favor of the Commonwealth. Writ of possession granted.
Annie Glancey and Mary F. Nelley, --	Judgment in favor of the Commonwealth. Writ of possession granted.
Ella (or Helen) M. Lee, -----	Judgment in favor of the Commonwealth.

OPINIONS TO THE GOVERNOR.

OPINIONS TO THE GOVERNOR.

STATE EMPLOYEES—ACT OF JUNE 14, 1915.

Employees of governmental agencies, such as penitentiaries, asylums and sanatoria, are not state employees, within the meaning of the Act of June 14, 1915, P. L. 973.

Office of the Attorney General.
Harrisburg, Pa., January 9, 1917.

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

Sir: This Department is in receipt of your communication of December 6, 1916, with which you transmit applications from certain overseers of the Western Penitentiary of Pennsylvania, for retirement under the Act of June 14, 1915, P. L. 973. You ask whether the petitioners are eligible for retirement under the provisions of this Act.

The Act referred to is entitled—"An Act to provide for retirement of State employees, etc." Throughout the Act the same expression "State employe" is used. The question presented is whether an employe of a State institution such as the Western Penitentiary is such a State employe as is contemplated by this Act.

In an opinion given by First Deputy Attorney General Keller to the State Treasurer, under date of December 9, 1915, the question involved was whether the sum of \$15,000 appropriated by the Legislature of 1915 for insuring "employees of the Commonwealth under The Workmen's Compensation Act" included employees of State institutions or other governmental agencies. The question was decided in the negative, for the reason that in Section 302 (a) of The Workmen's Compensation Act, the Legislature used the following language:

"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 employe of the State or of such governmental agency.*"

It was properly noted that that Session of the Legislature had recognized the distinction between an employe of the State and an employe of a State or governmental agency.

For such reason it was held that the appropriation applied only "to employes proper on the payroll of the Commonwealth and its Departments, and does not include employes of governmental agencies of the State."

While the Western Penitentiary of Pennsylvania is a State institution and the funds from which the employes thereof are paid is appropriated by the Legislature of Pennsylvania, yet the Penitentiary itself is governed by a Board of Inspectors, with the power of employment and discharge of all employes without the sanction or approval of your Excellency, or any other branch of the State government. It is such an institution as properly comes within the definition of a governmental agency in the same manner as the various other State institutions, such as asylums, sanatoria, etc.

While it is true that the term "State employe" might be held to cover an employe of a State agency, yet it is pertinent to note that the Legislature of 1915, while recognizing the distinction between an employe of the State, on one hand, and of a governmental agency on the other, omitted to use the latter expression in defining the beneficiaries coming within the purview of the Act of June 14, 1915.

A doubt is thus created by the Legislature failing to use an expression of which it had availed itself in other legislation passed at the same Session. It is also persuasive that this doubt should be resolved against any payment to an employe of a State institution from the fact that the appropriation made by the Legislature of 1915 for this purpose was only the sum of \$10,000 for two years, an amount which would be entirely inadequate were the Act to be given the broader construction.

While we have not been entirely free from doubt as to the proper construction of this Act, for the reasons above given, we must advise you that it does not apply to employes of governmental agencies such as State institutions, including penitentiaries, asylums, sanatoria, etc.

This opinion is given at this time so that the Legislature may, if it sees fit, extend the provisions of the Act in question to cover employes of governmental institutions or agencies.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

RE PURCHASE BY PENNSYLVANIA AND NEW JERSEY OF TOLL
BRIDGES OVER THE DELAWARE RIVER.

The Joint Commission of Pennsylvania and New Jersey may purchase by agreement toll bridges over the Delaware River, but does not have the right to condemn same by eminent domain.

Office of the Attorney General,
Harrisburg, Pa., January 26, 1917.

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

Sir: I have given careful consideration to your request for an opinion upon the constitutionality and legal effect of the Act of July 25, 1913, P. L. 1277, entitled:

“An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll-bridges over the Delaware River, and making an appropriation therefor,”

and the legislation of the State of New Jersey along the same lines.

The Act of this Commonwealth approved July 25, 1913, aforesaid, provides, in effect, that the Board of Commissioners of Public Grounds and Buildings shall be constituted a commission to act in conjunction with a similar commission of the State of New Jersey, as a joint commission for the acquisition of the various toll-bridges over the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, except such bridges as are used exclusively for railroad or railway purposes. The word “bridge” is defined in the Act to “include the actual bridge, the approaches thereto, and all real and personal property, including the franchise belonging to the owner, used in the operation and maintenance of the same.” The said bridges may be acquired either by purchase or by condemnation proceedings, as the joint commission may deem expedient and one-half of the cost of acquiring said bridges shall be paid by the Commonwealth of Pennsylvania.

The Act further directs that the joint commission as soon as conveniently may be after the passage of the Act shall ascertain or estimate the value of each of such bridges, and notify, in writing, the respective owners of such valuation and offer to purchase the bridge at such valuation.

If the owners refuse or neglect to accept such offer, it shall be the duty of the joint commission to determine in which State the condemnation proceedings shall be instituted.

The Act further provides that in the event that the joint commission determine to institute any such condemnation proceedings in the Commonwealth of Pennsylvania, application shall be made by

the Attorney General, or by the owner of such bridge, to the Court of Common Pleas of the county in which the head of such bridge is situated, for the appointment of viewers. Whereupon said court, or any law judge thereof, shall appoint three discreet and disinterested freeholders, none of whom shall be a resident of said county, to view such bridge and estimate the value.

The Act provides that the court shall fix a time for the said viewers to meet and gives full and minute directions with reference to the meeting of said viewers, their powers and duties, and the notice to be given the respective parties in interest, the filing of their report and of exceptions thereto and the disposition of such exceptions and the confirmation of the report by the court, reserving to the parties the right of trial by jury and appeal to the Supreme Court. The costs of such condemnation proceedings are directed to be paid by the Commonwealth and one-half of the purchase price or damages is likewise to be paid by the State Treasurer of the Commonwealth on warrant drawn by the Auditor General.

By Section 13 of the Act it is provided that as soon as the joint commission and the owners shall have agreed upon the price of any such bridge, or as soon as the joint commission shall have determined to acquire any such bridge by condemnation proceedings, if funds sufficient for the purchase of the bridge are available, the said joint commission shall at once take possession of such bridge in the joint names of the Commonwealth of Pennsylvania and the State of New Jersey, and that thereupon toll charges shall cease and interest shall be allowed the owners from the time of taking until payment.

By Section 14 it is provided that upon the acquisition of such bridge by this Commonwealth and the State of New Jersey, the same shall remain in the charge and control of said joint commission or their successors and shall thereafter be maintained and kept in constant repair by the Commonwealth of Pennsylvania and the State of New Jersey, jointly.

By Section 15, the sum of \$500,000 (approved by the Governor in the sum of \$100,000) was appropriated to carry out the provisions of the Act, with the proviso that not more than \$100,000 thereof should be used in any one year.

An examination of the charters of the various bridge companies owning and operating toll-bridges across the Delaware River between Pennsylvania and New Jersey shows that all of them were chartered by concurrent acts of assembly in both States,— that is, the company secured from each State a charter authorizing the construction and operation of the bridge. This was rendered necessary by reason of the fact that part of each bridge was located in each State. When completed, however, the bridge must be considered as a whole, and so in a number of instances,— for example: The Acts of April 12,

1851, P. L. 430; February 20, 1857, P. L. 59; May 5, 1864, P. L. 818, the Legislature of this State approved and validated acts done by the New Jersey Courts and their officers with reference to the sale and conveyance by foreclosure proceedings of certain bridges across the Delaware River, as a whole, and not merely those portions located in New Jersey.

From the very nature of the case these bridges must be purchased or condemned as a whole; it would be impracticable and inequitable for each State to purchase or condemn by separate action half a bridge, for the rights of the owners are so related and interwoven that they possess something more than two unrelated halves of one common bridge. Therefore, it is eminently proper that the proceeding for purchase or condemnation should be joint, and if the procedure and measure of damages are alike in both States, the rights of the bridge owners will be protected and preserved irrespective of which State the proceedings are started in.

Every corporation owning a toll-bridge over the Delaware River between the States of Pennsylvania and New Jersey is a creature of both States. It has two separate entities; it has a charter from the State of Pennsylvania; it holds letters patent from the State of New Jersey; it is subject to the jurisdiction of each state as fully as though it were exclusively a creature of its respective laws.

The Act of this Commonwealth, approved July 25, 1913, fully protects the property rights of the several bridge companies, provides just compensation for all property taken and preserves the right of trial by jury to ascertain the damages. I am, therefore, of the opinion that the act does not operate to take private property without authority of law. It is therefore not in derogation of Article 1, Section 10, of Article I, Section 6 of the Constitution of this Commonwealth.

It may be true that the statute operates to give effect in Pennsylvania to the judgment and decree of the State of New Jersey but there is no constitutional objection to that where the New Jersey court had jurisdiction of the parties. Both statutory and case law are full of instances in which the action of one state, legislative or judicial, is made effective in another.

Nor in my judgment is it in contravention of Article I, Section 10, of the Constitution of the United States, which provides that "no State shall, without the consent of Congress * * * enter into any agreement or compact with another State."

Previous to the adoption of the Constitution of the United States, this Commonwealth and the State of New Jersey entered into an agreement that the courts of both States should exercise concurrent

jurisdiction within and upon the waters of the Delaware River (September 20, 1783—2 Sm. 77). This pact or agreement was not affected by Article I, Section 10, of the Constitution subsequently adopted.

Wharton vs. Wise, 153 U. S. 155.

The consent of Congress was not necessary to permit the chartering by both States of numerous bridge companies with authority to build and operate toll-bridges over the river.

St. L. & S. F. R. Co. vs. James, 161 U. S. 545.

No more, in my judgment, is such consent necessary where both States by concurrent action retake from these companies the powers and privileges thus granted and the property rights founded thereon, after securing to them just compensation for the property thus taken.

In *Virginia vs. Tennessee*, 148 U. S. 503, p. 519, it was held that the agreement made between the States of Virginia and Tennessee without the consent of Congress to appoint commissioners to run and mark the boundary line between them, was not within the prohibition of the clause of the Constitution, which provides that no State shall, without the consent of Congress, enter into any agreement or compact with another State. The purpose of this clause in the Constitution was to prohibit the formation of any combination tending to the increase of political power in the States, which might encroach upon or interfere with the just supremacy of the United States.

The Supreme Court of the United States in that case said:

"There are many matters upon which different states may agree that can in no respect concern the United States. If, for instance, Virginia should come into possession and ownership of a small parcel of land in New York which the latter state might desire to acquire as a site for a public building, it would hardly be deemed essential for the latter state to obtain the consent of Congress before it could make a valid agreement with Virginia for the purchase of the land. If Massachusetts, in forwarding its exhibits to the World's Fair at Chicago, should desire to transport them a part of the distance over the Erie Canal, it would hardly be deemed essential for that state to obtain the consent of Congress before it could contract with New York for the transportation of the exhibit through that state in that way. If the bordering line of two states should cross some malarious and disease producing district, there could be no possible reason, on any conceivable public grounds, to obtain the consent of Congress for the bordering states to agree to unite in draining the district, and thus remove the cause of disease. So in case of threatened

invasion of cholera, plague, or other causes of sickness and death, it would be the height of absurdity to hold that the threatened states could not unite in providing means to prevent and repel the invasion of the pestilence without obtaining the consent of Congress, which might not be at the time in session," P. 518.

On the other hand, it has been held that the right of the State of West Virginia to jurisdiction over the counties of Berkley et al. can only be maintained by a valid agreement between the States of Virginia and West Virginia, to which the consent of Congress is essential.

It was held in *New York & Erie Railroad vs. Young*, 33 Pa. 175, that a foreign railroad company, authorized by Act of Assembly, to construct a portion of its road through this state, is entitled to the same rights and privileges as a Pennsylvania corporation.

The State in the chartering of a bridge company still reserves the power to take it under eminent domain proceedings and one Legislature cannot contract with a corporation that its property shall not be taken by the exercise of eminent domain.

Lock Haven Bridge Co. vs. Clinton Co., 157 Pa. 379.

See also Article XVI, Section 3, of the Constitution of Pennsylvania.

The Legislature has the right to determine in what jurisdiction eminent domain proceedings shall be begun or carried on.

Railroad Co. vs. Cummins, 8 Watts, 450.

By comity, although foreign statutes have no extra territorial force, rights under them will be enforced by remedies in this State according to the procedure of this State.

Knight vs. Railroad Co., 108 Pa. 250.

Usher vs. Railroad Co., 126 Pa. 206.

The agreement between this Commonwealth and the State of New Jersey of 1783 was upheld in the courts of this State in *Commonwealth vs. Frazee*, 2 Phila. 191 and *Commonwealth vs. Luckness*, 14 Phila., 363; and in the case of *Commonwealth vs. Shaw*, 8 Dist. 509, it was held that the compact comprehended criminal offenses committed on bridges over the Delaware River.

The Act of this Commonwealth of July 25, 1913, P. L. 1277, and the acts of New Jersey along the same lines, do not seek in any way to alter the boundary line between this Commonwealth and the State of New Jersey, nor do they constitute "any combination tending to the increase of political power in the States, which may encroach upon

or interfere with the just supremacy of the United States." They amount to nothing more than a taking back by the respective states, by joint proceedings, of certain franchises previously granted out by the States by concurrent action and of the property rights founded thereon.

I am of the opinion, moreover, that the appropriation contained in Section 15 of the Act of 1913, has not lapsed, for the reason that as passed by the Legislature a period of at least five years was contemplated by the Act for the completion of the purchase or condemnation of these bridges. While the appropriation was cut by the Governor from \$500,000 to \$100,000, the period of time within which the appropriation could be expended was not affected thereby, and as it clearly appears in the Act as passed that a period of five years was contemplated within which the commissioners might exercise the powers and privileges granted them thereunder, I am of the opinion that the appropriation has not lapsed and that it will be available for a period of five years, or until June 1, 1918, unless sooner exhausted. (See Attorney General's Report, 1913-1914, page 70).

I now come to an examination of the Acts of Assembly passed by the Legislature of the State of New Jersey along the same lines as our Act, being the Act approved April 1, 1912, Chapter 297, and the amendment approved March 17, 1916, Chapter 170, and Joint Resolution No. 8, approved April 1, 1912. Copies of these Acts are hereto attached.

An examination of these Acts of Assembly shows that they are not, strictly speaking, concurrent with the Act of this Commonwealth of July 25, 1913, P. L. 1277, but differ from our Act in a number of important particulars:

(1) The Act of this Commonwealth specifically defines a bridge to include the franchise possessed by the owners. This is in accordance with the decisions of this State, which hold that the measure of damages for the taking of a toll-bridge by eminent domain proceedings includes the franchise or right to take the toll.

Mifflin Bridge Co. vs. Juniata Co., 144 Pa. 365.

An examination of the New Jersey amendatory statute of March 17, 1916, shows that this Act contains a clause which provides—

"that the said cost shall not include any allowance for the value of the franchise or right to operate any such bridge."

(2) Under the New Jersey statute no provision whatever is made for the institution of any proceedings for the payment of any damages under proceedings, instituted in Pennsylvania. The Act contemplates that the proceedings be instituted solely in the State of

New Jersey. Under the Pennsylvania Act the proceedings may be instituted in either State, whichever the joint commission determine and this Commonwealth will be responsible for one-half the damages ascertained in such proceedings, wherever instituted. If the proceedings should be instituted in Pennsylvania, I am in doubt whether the Acts passed by the Legislature of New Jersey would warrant or justify the payment of any part of the damages of such condemnation proceedings. The proceedings are therefore practically limited to the State of New Jersey, which is important in view of the next consideration.

(3) If the proceedings should be instituted in Pennsylvania, the damages would include the franchise of the bridge owners, but as the New Jersey Act does not contemplate proceedings in this State, it might be impossible to secure under the Act New Jersey's half of the cost of condemnation, especially in view of the prohibition that the State should pay for any franchise. On the other hand, if the proceedings should be instituted in New Jersey, the provisions of the Acts in that State would apply and no allowance would be made in the damages for condemnation of the franchise, although such franchise is recognized as property in Pennsylvania—not only by the express provision of the Act of 1913, but also by the general line of decisions on the subject. There would therefore be a taking of property in Pennsylvania without making just compensation therefor, contrary to Article I, Section 10 of our State Constitution.

(4) By the New Jersey Acts it is provided that the bridges shall become the property of New Jersey and Pennsylvania immediately upon the enactment of the Pennsylvania statute (See Section 8) and that proceedings must be brought within sixty days after such concurrent legislation.

By the Pennsylvania statute, the bridges are not to be taken until the joint commission have determined to acquire such bridges by condemnation proceedings, and then only if funds sufficient for the purchase or condemnation are available.

(5) The New Jersey Act limits the amount to be paid by the State of New Jersey to the sum of \$500,000, and it apparently requires that all the bridges between the two States within the purview of the Act be purchased or condemned for double that sum. The Pennsylvania Act does not attempt to limit the amount to be paid for such appropriation, but limits the present appropriation to \$500,000 (reduced by the Governor to \$100,000). I do not know what construction might be put by the officers of the State of New Jersey on this feature of the Act (Section 11), if the damages under condemnation proceedings should amount to more than \$1,000,000—whether the Act would be inoperative, or would justify the payment of the amount appropriated as far as it would go.

Of course, if the joint commission should agree to purchase any of these bridges for a sum satisfactory to the owners, these objections would not apply, but if the joint commission cannot agree with the owners as to the price to be paid for these bridges and condemnation proceedings would have to be resorted to, I am of the opinion that there is such a diversity or variance between the provisions of the Acts of Assembly of this Commonwealth and of the State of New Jersey as would render it impossible legally to acquire any of the bridges by condemnation proceedings. If it is desired to acquire bridges by condemnation proceedings, acts of assembly should be prepared practically identical so that there may be no question of the concurrence of the acts of Assembly in both States.

I am therefore of the opinion and beg to advise you that while the joint commission may, in my judgment, purchase toll-bridges by amicable agreement, provided a satisfactory figure can be agreed upon between such corporation and the owners of said bridges, if an amicable agreement cannot be entered into, the provision of the Acts of Assembly of this Commonwealth and the State of New Jersey, with reference to eminent domain proceedings, are inoperative and cannot be carried into effect because of the wide divergence or difference between the provisions of the Acts of Assembly of the respective States.

Respectively yours,

FRANCIS SHUNK BROWN,
Attorney General.

INQUIRY INTO MENTAL CONDITION OF PERSONS UNDER SENTENCE OF DEATH.

There is no act of Assembly authorizing the Governor to appoint a commission to inquire into the mental condition of a person under sentence of death.

Office of the Attorney General,
Harrisburg, Pa., January 31, 1917. .

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

Sir: This Department is in receipt of your letter of January 22, 1917, in which you inquire as to "whether or not there is an act or acts, now in force, specifically providing that the Governor may, upon his own initiative or in response to an appeal made to him, appoint a commission to inquire into the mental condition of a person under the sentence of death."

We have to advise you that there is no act or acts now in force specifically so providing.

To thoroughly acquaint you with your powers in the premises, and going beyond the scope of your inquiry, we would advise that the question as to the right of executive action in the case of a prisoner alleged to have become insane after sentence of death had been imposed was discussed in the case of *Commonwealth vs. Briggs*, 16 *Phila. Rep.* 438.

In this case the Court was of the opinion that courts would not have jurisdiction to determine such insanity under the provisions of the Act of May 14, 1874, P. L. 160, and used the following language:

"A prisoner convicted of murder and under sentence of death, is remitted by authority of law to the control of the executive, either for execution of the sentence, commutation of it, or pardon, in the manner prescribed by law. The discretion which is vested in him is within his control. He is the sole judge of the circumstances which may influence him to exercise clemency or enforce the execution. This discretion carries with it the right to ascertain for himself the conditions which may influence him in the exercise of these powers."

This opinion was given in 1884, long after the adoption of the Constitution of 1873, which by Article IV, Section 9, provides that no pardon shall be granted, nor sentence commuted, except upon the recommendation, in writing, of the Board of Pardons.

The scope of the executive power, as set forth in the Briggs' case, can, therefore, not be extended beyond the right to disagree with the Board, after the latter has recommended a pardon.

The practice in this Commonwealth has been for the Governor to refer to the Pardon Board, for investigation, any matters which ultimately come before the Governor in the way of pardons, commutations or remissions of fines or forfeitures. Remission of fines or forfeitures is a matter for the discretion of the Governor independent of any action of the Pardon Board, yet, as set forth in an opinion given by this Department to Governor Stuart, on May 1st, 1907, Att'y. Gen. Report No. 41, the uniformity of the practice above mentioned was recognized.

Aside, however, from this practice, the Governor has no power to pardon or commute a sentence of one under sentence of death, without a recommendation to that effect by the Pardon Board, and, while the latter can in the manner provided by the Constitution, acquaint itself with any of the facts pertaining to the application before it, you are under no greater duty, nor have you any greater authority to recommend that it particularly pass upon the alleged insanity of a prisoner, than would a private individual.

It should, however, be called to your Excellency's attention that, after acquainting yourself with any facts in any manner, it is discretionary for you to recall a death warrant and thereafter refuse to issue the same until you have thoroughly satisfied yourself of the propriety of doing so.

Very respectfully,

HORACE W. DAVIS,
Deputy Attorney General.

STATE PRINTING.

There is no lawful authority for the publication by the State of a pamphlet entitled "The Truth About Wilkes-Barre."

Office of the Attorney General,
Harrisburg, Pa., February 14, 1917.

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

Sir: You ask to be advised whether there is any existing law which provides for the publication by the State of a pamphlet entitled "The Truth About Wilkes-Barre."

You transmit with your communication a letter of inquiry from the Chief Clerk of the Department of Public Printing and Binding, a requisition for five hundred of such pamphlets, signed by the Deputy Superintendent of State Police, and fifty-four pages of typewritten matter, consisting of letters and affidavits for the purpose of showing the conduct of the State Police, and repudiations and charges of violations of law by them during the recent strike of the street railway employes in Wilkes-Barre.

Recognizing that the publication of such a pamphlet would be useful and instructive, I have endeavored to find some authority therefor. I am unable to do so. There is nothing in the statutes with reference to the State Police which would permit such publication. The Act of February 7, 1905, P. L. 3, creating the Department of Public Printing and Binding, provides in the 26th Section:

"No public printing and binding shall be performed for, or supplies furnished to, any department or offices of the State government, or for or to any person acting on behalf of the same, by the contractor or contractors, unless previously ordered or authorized in writing by the Superintendent of Public Printing and Binding, except only the laws, journals of the two houses of the Legislature, official documents and the reports of the

several heads of the executive departments. *No part or parts of any reports of the several heads of departments shall be printed in pamphlet form, nor shall any book be published, at the expense of the State, or additional copies of any book be furnished by the contractor or contractors, unless by virtue of express authority of law.*"

Even if the matter which is contained in this contemplated publication were made a part of the report to the Governor by the State Police, the language which I have just referred to would prevent that part of such report from being printed in pamphlet form.

I am, therefore, compelled to advise you that there is no legal authority for the publication of this pamphlet.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

VACANCIES IN OFFICE.

The Governor is authorized to fill vacancies in offices occurring during a recess of the Senate by commissions expiring at the end of the present session of the Senate, sending to the Senate before final adjournment nominations of proper persons for the consideration of the Senate.

He may also fill the vacancy occurring during a recess of the Senate in the office of County Treasurer of Mercer County by granting a commission which shall expire on the first Monday of January 1918.

Office of the Attorney General,
Harrisburg, Pa., February 28, 1917.

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

Sir: I am in receipt of your communication of the 27th instant, relative to your authority to fill certain vacancies.

You state that by reason of the resignation of certain persons occurring during the last recess of the Senate, several vacancies in offices to which you may appoint, have occurred, which vacancies have not, as yet, been filled.

You further state that by reason of the death of the County Treasurer of Mercer County during the last recess of the Senate, to-wit, on December 20, 1916, a vacancy has occurred in that office, which vacancy likewise continues to exist.

The Senate, being now in session, you inquire—

First: Whether you are authorized to fill the vacancies which occurred during the recess in the offices to which you may appoint, by granting commissions to expire at the end of the present session of the Senate.

Second: Whether you are authorized to fill the vacancy which occurred during the recess in the office of County Treasurer, an elective office, by granting a commission to expire on the first Monday of January next succeeding the election at which a County Treasurer can be legally chosen.

As the circumstances surrounding the respective vacancies are different, the question arising therefrom require separate consideration. They will be disposed of in the order propounded.

Your authority, to fill vacancies in offices to which you may appoint, is governed by Article IV, Sec. 8, of the Constitution, which, as amended in 1909, provides as follows:

"He shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint; he shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session. He shall have power to fill any vacancy that may happen, during the recess of the Senate, in the office of the Auditor General, State Treasurer, Secretary of Internal Affairs or Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy; but in any such case of vacancy, in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall happen within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office. In acting on executive nominations the Senate shall sit with open doors, and, in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays and shall be entered in the journal."

The first clause of this section has exclusive application to the filling of appointive offices for a full term. It relates to what is sometimes designated a "permanent appointment" in contradistinction

tion to a "temporary appointment," by which latter term is meant an appointment to fill a vacancy. This clause of the Constitution has no relevancy to the disposition of your inquiries and requires, therefore, no further consideration.

Your authority to fill vacancies happening during a recess and in offices to which you may appoint—with the exception of the Superintendent of Public Instruction in which office no vacancy now exists—is conferred by the second clause of the section. It provides as follows:

"He (the Governor) shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

This clause is silent as to the time when the power it confers is to be exercised. Alone considered, it authorizes you to fill the vacancies any time before the end of a session of the Senate. Is its operation restricted by any other provision of the Constitution so as to limit the time of the exercise of the power to a recess? No such restriction expressly appears. Does it appear by implication? This depends upon the effect of the fourth clause of the same section which provides as follows:

"If the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate before their final adjournment a proper person to fill said vacancy."

I am of the opinion that no such restriction is contemplated by the clause just quoted, and, that the second clause of the section authorizes you to fill at any time until the end of the present session of the Senate, vacancies which happened during the last recess and in offices to which you may appoint, by granting commissions to expire at the end of the present session of the Senate. The fact that this subsequent clause imposes an additional duty, when the vacancies happen during the session of the Senate, to nominate proper persons before the final adjournment is no limitation on the power contained in the preceding clause. Your authority under the section is clear and the clauses may be readily harmonized. Under the second clause, you may fill the vacancies by granting commissions to expire at the end of the present session of the Senate; under the fourth clause, you must nominate to the Senate, before its final adjournment, proper persons to fill the vacancies which will happen by reason of the expiration of such commissions. The restriction contained in the second clause is not a limitation on the time when the power it confers is to be exercised but is upon the character of the office to be filled, that is it must be appointive, and *upon the time for which the*

person commissioned to fill such vacancy can serve. The fourth clause prescribes no limitation whatsoever, but considered in its relation to the second clause, it operates to impose a distinct and additional duty.

This is not only the clear meaning of the clauses but is the construction most consonant with the theory of Government and the spirit of organic law. The right to an office is not a right of an incumbent to the office but the right of the people to the officer (*Lloyd v. Smith*, 176 Pa. 213). The people are not to be deprived of the functions of an office nor are the agencies of administrative law to be silenced, even temporarily, without the clearest legal sanction. A construction of the section, other than the foregoing, would operate to the direct contrary of that for which organic law is established.

Your second inquiry remains for consideration. The County Treasurer of Mercer County, an elective officer under the Constitution, died on December 20th, 1916, during the last recess of the Senate. You ask whether you are authorized to fill the vacancy, the Senate being in session, by granting a commission to expire on the first Monday of January next succeeding the election at which such officers can be elected.

Article XIV, Sec. 2. of the Constitution, relating to county officers, provides that

"All vacancies not otherwise provided for shall be filled in such manner as may be provided by law."

Article IV, Sec. 8, provides:

"He (the Governor) shall have power to fill any vacancy that may happen, during the recess of the Senate in the office of Auditor General, State Treasurer, Secretary of Internal Affairs or Superintendent of Public Instruction, in a judicial office *or in any other elective office which he is or may be authorized to fill*; if the vacancy shall *happen* during the session of the Senate, the Governor shall nominate to the Senate before their final adjournment a proper person to fill said vacancy."

You are "authorized to fill" vacancies in the office of County Treasurer by the Act of April 17, 1905, P. L. 176; Section one providing as follows:

"That any vacancy occurring by death, resignation or otherwise, in the office of county treasurer, in any county of this Commonwealth, shall be filled by the appointment of any eligible person by the Governor; and the person so appointed shall hold said office until the first Monday of January next succeeding the next general election which shall occur three or more months after the happening of such vacancy."

Undoubtedly the vacancy "happened" during the recess of the Senate so as to authorize you to commission—did it also "happen" during the session of the Senate so as to require you to nominate? This depends upon the meaning of the word. The Century, Worcester's, and also Webster's Dictionary define the word "to occur," "to take place," "to come to pass." The meaning of the word "happen" as similarly used in Section two of Article II of the Federal Constitution came before the court in the case of District Attorney, 7 *Am. L. R. (N. S.)* 786. The question arose whether the word meant "happen to occur" or whether it should be construed as meaning "happen to exist." Judge Cadwallader held there was no necessity to do violence to the ordinary meaning of the word and decided it meant "happen to occur." This decision was approved and followed in *Schenck v. Peay, Fed. Cases* 12, 451 (1869). See also to the same effect, *People v. Forquer, 1 Brese (Ill.)* 68; *Ex parte Dodd, 11 Ark* 152; *Sergeant on the Constitution, 361, and Story on the Constitution, Vol. II, Para. 1559*. I am not unmindful of the opinions and decisions of certain departments and courts which construe the word to mean "to happen to exist." I am of the opinion that the decisions and text-books above mentioned furnish the correct construction and that the word is to be understood in its ordinary sense and that it means "to occur," to take place."

Tested by this definition, the vacancy in the office of County Treasurer did not "happen" during the session of the Senate and hence the fourth clause of Article IV, Sec. 8, providing that if the vacancy "happens" during the session of the Senate, a proper person shall be nominated before final adjournment, etc., has no application. The vacancy happened during the recess and as there is nothing in the Constitution providing when your power is to be exercised, you may fill the vacancy notwithstanding the Senate is in session, by granting a commission, in this particular instance, to expire on the first Monday of January, one thousand nine hundred and eighteen.

Specifically answering your questions, you are now advised—

First: That you are authorized to fill vacancies which occurred during the last recess of the Senate, in offices to which you may appoint, by granting commissions to expire at the end of the present session of the Senate. Before final adjournment, however, it is your duty to nominate proper persons for the consideration of the Senate.

Second: That you are authorized to fill the vacancy which occurred during the last recess of the Senate in the office of County Treasurer of Mercer County by granting a commission to expire on the first Monday of January, one thousand nine hundred and eighteen.

Respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

VACANCIES IN OFFICE.

Where vacancies in office occur during the session of the Senate, the Governor may appoint therefor, commissions to run to the end of the present session of the Senate, and nominations to be made to the Senate before final adjournment.

Office of the Attorney General,
Harrisburg, Pa., March 22, 1917.

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

Sir: I am in receipt of your communication of the 20th inst., relative to your authority to fill certain vacancies. You state, that by reason of the resignation of certain persons on January 15, 1917, vacancies have occurred in the offices of Commissioner of Banking and Chairman of the Pennsylvania State Board of Censors which vacancies still continue to exist and you ask whether the Senate being now in session, you have the power to fill such vacancies by granting commissions to expire at the end of the present session of the Senate or whether your authority is confined to nominating proper persons for Senatorial confirmation.

These vacancies having originated during a session of the Senate and in offices to which you may appoint, I am of the opinion that you are authorized to fill such vacancies by granting commissions to expire at the end of the present session of the Senate. Your authority to fill vacancies in office to which you may appoint is governed by Article IV, Section 8 of the Constitution, which, as amended in 1909, provides as follows:

"He shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years, and such other officers of the Commonwealth as he is or may be authorized by the Constitution or by law to appoint; he shall have power to fill all vacancies that may happen, in offices to which he may appoint, during the recess of the Senate, by granting commissions which shall expire at the end of their next session; he shall have power to fill any vacancy that may happen, during the recess of the Senate, in the office of the Auditor General, State Treasurer, Secretary of Internal Affairs or Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said

vacancy; but in any such case of vacancy, in an elective office, a person shall be chosen to said office on the next election day appropriate to such office according to the provisions of this Constitution, unless the vacancy shall happen within two calendar months immediately preceding such election day, in which case the election for said office shall be held on the second succeeding election day appropriate to such office. In acting on executive nominations the Senate shall sit with open doors, and, in confirming or rejecting the nominations of the Governor, the vote shall be taken by yeas and nays and shall be entered on the journal."

While this section does not expressly confer the power to fill vacancies in appointive offices, when such vacancies occur during the session of the Senate, its spirit unmistakably affirms the existence of such authority. Clause 4 of this section is worthy of repetition. It provides:

"If the vacancy shall happen during the session of the Senate, the Governor shall nominate before their *final adjournment* a proper person to fill said vacancy."

It is pertinent to note that the section does not direct you to nominate immediately upon the happening of the vacancy or within a time thereafter reasonably sufficient to consider whom you desire to nominate. If the vacancies occur the day after the Senate convenes, the section expressly authorizes you to withhold your nominations to any time before the final adjournment. Why such broad limits to the time of the exercise of the power? Certainly it is not to be imputed to the people of the Commonwealth when they adopted the Constitution that they intended to encourage vacancies in office; that they favored long intervals of time when official functions should lie dormant to the detriment of Government and to the injury of the people themselves. Nor is it to be imputed to the people that they intended such vacancies to exist and such detriment and injury to ensue by reason of a senatorial refusal or unreasonable delay to act upon the nominations when made. The Constitution is not to be construed as a promoter of such conditions. The presumption is the other way.

This construction is also supported by the fact that as to vacancies which happen during the recess of the Senate, the Governor is directed to fill such vacancies by granting commissions, which shall expire at the end of the next session of the Senate. If it were contemplated by the Constitution that the Senate must immediately pass upon the qualifications of the person commissioned to fill a vacancy in any office, even before a formal nomination to that body, the clause would have read—until the "beginning" rather than the "end" of the next session of the Senate.

Three different procedures are recognized by Section 8 of Article IV—a nomination, an appointment and a commission to fill a vacancy. The first and second require the joint action of the Executive and the Senate,— the third is by the action of the Executive alone. A nomination has little, if any, effect without an appointment, while an appointment, to be valid, must be predicated upon a nomination. The commission to fill a vacancy is complete in itself and depends for its effect upon no other factor. The purpose of these proceedings differs as much as do their characteristics. A nomination and an appointment were designed to meet normal conditions rather than exigencies which call for immediate action. The commission to fill the vacancy, however, was created for a different circumstance. It was fashioned for a condition which required prompt attention, for a situation which demanded quick relief. By the very force of its nature, and, by the purpose for which it was designed, the time of its exercise must of necessity be unconditional.

Why, under the spirit of the Constitutions, a commission to fill a vacancy should issue when the vacancy happened during a recess and be restrained when the vacancy occurred during the session, is difficult to comprehend. Why should a vacancy, occurring the day before the Senate convened, be permitted to be filled and to the end of the session, and one occurring the day after, be prohibited? The necessity of the exercise of the functions of office is equally great; just as much detriment to the government and injury to the governed results from the one as from the other. Indeed a vacancy occurring during the session may, at times; require more prompt action to protect the public interest than one occurring during a recess.

The second section of Article IV provides, *inter alia*, that:

“The Supreme Executive power shall be vested in the Governor, who shall take care that the laws be faithfully executed.”

How can such care be taken if administrative offices are to be compelled to continue vacant for an indefinite time and their functions remain undischarged?

I can infer no intent from the organic law that such conditions should obtain; I am of the opinion that no such conditions were intended to exist.

You are, therefore, now advised that you may fill the vacancies which now exist in the offices of Commissioner of Banking and Chairman of the Pennsylvania State Board of Censors by granting commissions to expire at the end of the present session of the Senate. You are further advised, that before its final adjournment, it is your

duty to nominate to the Senate proper persons to fill the vacancies which will occur by reason of the expiration of the commissions so granted.

The existence of this power, while not expressly conferred, is clearly recognized by the spirit of the State constitution; an instrument which undertakes not to enumerate all the powers and duties of the branches of Government, but, to prescribe general principles only, the construction of which principles, is to be always in favor of the welfare of the governed.

Respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

THAW'S REQUISITION.

A citizen of Pennsylvania accused of crime committed in another state was arrested on a magistrate's warrant in this State, and thereupon a request was made on behalf of the former state to the Governor of this State for his rendition to the demanding state for the purpose of trial. Subsequently an inquisition in lunacy was appointed by a court of this State, as a result of which the accused was found to be a lunatic, a committee of his person was appointed and he was detained in a place designated by the court: *Held*, this State, as *parens patriæ* of its lunatic citizens, should not surrender the accused for trial and possible punishment in the demanding state.

Where a demand is properly made by the governor of one state upon the governor of another for rendition of a person accused of crime in the demanding state, the duty to surrender the accused is not absolute, but depends upon the circumstances of the case.

The effect of the arrest of the accused on the right of the court to adjudge him a lunatic is a judicial question and not subject to review by the executive.

Office of the Attorney General,
Harrisburg, Pa., May 2, 1917.

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

Sir: Concerning the requisition of the Governor of the State of New York for the rendition of Harry K. Thaw, I beg to advise you as follows:

From the papers before me, it appears that Harry K. Thaw, a citizen of this State, was, on January 9th last indicted by the Grand Jury of the County and State of New York, for the crimes of kidnapping and assault in second degree. A few days later, the Chief of Police of New York City learning that Thaw had left New York

and had gone to Pennsylvania, telegraphed to the Chief of Police of the City of Philadelphia and asked that Thaw be arrested pending extradition. Thaw was arrested in Philadelphia on a magistrate's warrant after he had attempted suicide and on February 1st, a request was made to your Excellency for his rendition to the State of New York for the purpose of trial on the indictment above referred to.

On or about the 26th of February, that is subsequent to the requisition of the Governor of New York, proceedings were instituted in the Court of Common Pleas, No. 5 of Philadelphia County to test Thaw's sanity. An inquisition was appointed which found Thaw to be a lunatic—and on March 13th, the said court granted a rule to show cause why it should not commit the custody of the person and estate of Thaw to such person or persons as it might deem most suitable. On the same day the court entered the following order:

“AND NOW March 13, 1917, on motion of James Gay Gordan pro petitioner, the Court appoints MARY C. THAW committee of the person of the within named Harry K. Thaw, and hereby commits the said Harry K. Thaw to Saint Mary's Hospital, Frankford Avenue and Palmer Street, in the city of Philadelphia, where he now is, and where he shall be safely detained by the said committee of the person until the further order of this court; and the said committee is hereby authorized and directed to employ one or more suitable persons to remain at said hospital and keep the said Harry K. Thaw under such observation and surveillance as may be necessary for his safe detention at said hospital until the further order of this court.”

(Sd.) MARTIN
J.

After the institution of the lunacy proceedings and after a hearing before me on March 9th, at which hearing the several parties interested were represented, you determined,—and on March 10th you so advised the District Attorney of the County of New York,—that, in view of the fact that the Court of Common Pleas of Philadelphia County had taken jurisdiction of a proceeding to determine the sanity of Thaw, you, as Executive, in deference to the court, would take no action in the rendition proceedings, while the case was with the court, unless Thaw's condition was reported changed, or unless the court's action, at any point, opened way for a modification of your attitude.

On March 30th, a hearing was held in my office at which appeared the following counsel—William Harmon Black, Esq. and George F. Turner, Esq., Assistant District Attorneys of the County of New York;

Alfred L. Becker, Esq., Deputy Attorney General of the State of New York.

Owen J. Roberts, Esq., Representing the State of New York.

Hon. James Gay Gordon, Representing Mary Copley Thaw, Committee of Harry K. Thaw.

Hon. Joseph P. McCullen, Representing Harry K. Thaw.

Joseph P. Shannon, Esq. (Kansas City, Missouri), and William A. Gray, Esq., Representing Frederick Gump, Jr.

The case was argued, briefs presented and the matter now awaits your determination.

The foregoing are the facts pertinent to the proceedings and they involve several questions of law, all of which questions were argued at the hearing by counsel for the respective parties interested.

It will be remembered that Thaw was arrested in Philadelphia on a magistrate's warrant prior to the institution of the lunacy proceedings and before the order of the court committing Thaw to the custody of a committee and designating a place for his detention. It was contended at the hearing that Thaw, being in the custody of the law, or in legal parlance in custodia legis on the warrant of the magistrate, the Court of Common Pleas had no authority to take him from that custody and place him in a different custody, for the purpose of his detention as a lunatic.

Whatever the merits of this contention may be, I am of the opinion and now so advise you, that it presents a question purely judicial in its nature and therefore not subject to review by you as Executive.

The preliminary arrest, strictly speaking, while closely related to, is not properly a part of the rendition proceedings. It is a proceeding which, as a general rule, occurs in the asylum state before the executive of that state is in receipt of the extradition papers and, therefore, before he is officially informed of the proceedings. It is a practice which has its origin in the courts; a procedure purely judicial in its character.

The nature of the preliminary arrest is discussed by Moore in the second volume of his text on Extradition. It is there stated that the Federal statute of 1793, passed for the purpose of making effective the constitutional provision relating to extradition, is altogether silent as to an arrest of a fugitive in the asylum state for the purpose of his detention while requisition papers are being presented and considered by the executive of that State.

The act of congress contemplates a proceeding which begins in the asylum state when the requisition papers are duly filed with its executive.

It is further stated by Moore that under the common law existing in the several states of the Union and derived from the common law of England, the courts have the power to arrest and detain one thought to be a fugitive from justice from another state:

Subsequent to the passage of the act of 1793, the subject of preliminary arrest became, in many of the states, a legislative matter and statutes were passed sometimes, declaratory only to the common law and sometimes extending or restricting the common law power. The subject came before the legislature of this state in 1878, and an act was approved May 24 (P. L. 137), which, after providing a method whereby the Governor might arrest and deliver to the proper person, one, whom on proper requisition, he had determined to surrender, undertook, by section 5 as amended by the Act of June 4, 1879 (P. L. 95), to limit the power to arrest one believed to have committed a crime in another state. This section, after enacting that nothing in the act should be construed to prevent the sheriff of any county or the chief of police of any city or any other person from arresting any person or persons, upon information of the commission of a crime in another state, and when a warrant had been issued in that state for the arrest of any such person or when an indictment in that state had been found, provides as follows:

“Such person shall not be committed or held to bail for a longer period than ninety days exclusive of the day of arrest, at the expiration of which time, if the sheriff has not received the requisition or warrant from the Governor of this Commonwealth, then the person or persons so arrested and detained shall be discharged from custody.”

The Pennsylvania statute clearly demonstrates the nature of the preliminary arrest. It recognizes the common law power to make such arrests as a proceeding complete in itself and one which may possibly not be followed by any extradition proceedings at all, for peradventure, no indictment may be found against the person arrested, or, if found, the crime may not constitute an extraditable offense under the rules adopted by the International Extradition conference held in New York in 1887 or many other reasons may lead the Governor of the sister state to abstain from making the demand for rendition of the person so arrested and held.

As before stated it has been earnestly contended that the preliminary arrest of Thaw removed him from the power of the court to question his sanity and to provide for his detention as a lunatic and I have discussed the origin, history and nature of the preliminary arrest in order to show that the contention is one proper only when addressed to the court; that the preliminary arrest is not properly a part of the rendition proceedings; that the nature of the custody of one so arrested is a judicial question; and that the court of common pleas of Philadelphia having decided it had the power to take Thaw out of the custody into which he had been placed by the arrest on the magistrate's warrant and to place him in a different custody,

it is no function of the executive to review such action but that it is rather your duty to assume, that the judicial department of the State proceeded in consonance with law and that its action has legal sanction, sufficient to justify its exercise.

The extradition papers having been filed with you before the institution of the lunacy proceedings, the question has been raised as to the effect of order of the court committing Thaw to the custody of a committee and designating a place for his detention, upon the rendition proceedings. Counsel for Thaw contends the action of the court has removed Thaw from your jurisdiction and that you are bound by the judicial decree.

Counsel seeking Thaw's rendition argue that the lunacy proceeding has no effect on your authority or upon the rights of the State of New York because—

(a) "The law under which Thaw was found to be a lunatic by the commission in Philadelphia was never intended to apply to or defeat extradition proceedings."

(b) "That as to these proceedings they are entirely irrelevant, as the State of New York has applied for Thaw's rendition and as he was held under a warrant awaiting the action of the Governor."

(c) "That they are in no way binding upon the State of New York or the police of Philadelphia who acted under warrant and the authority under which the police arrested Thaw, because neither the State of New York nor these authorities were made parties to the proceedings," and

(d) "That due probably to the fact over which his counsel had no control, the proceeding which was started in good faith was not carried out in good faith."

What the legislative intent, as expressed in the act under which Thaw was found to be a lunatic, may have been, I do not know, nor do I now find it necessary to ascertain; that the State of New York is not precluded by the lunacy proceedings from instituting and prosecuting rendition proceedings, I am inclined to concede; the allegation of lack of good faith I pass by with the remark that the lunacy proceeding was one conducted and determined by a court of this Commonwealth, whose action in any case is entitled to respect from every branch of the government and a challenge of whose decrees, based on lack of good faith of any of the parties thereto, cannot be considered here.

The effect of the lunacy proceeding on the State of New York does not completely dispose of the question. From the fact that the order of the court is not binding on the State of New York, it does not necessarily follow that such order does not bind you, as executive of the asylum state. I cannot subscribe to the proposition ad-

vanced by one of the Assistant District Attorneys of New York County, that after the institution of the proceedings, the Governor of the asylum state is merely an "agent of that procedure" which is tantamount to saying he is practically the agent of the demanding State, bound where the demanding State is bound, and free where it is free. I am of the opinion that the Governor of the asylum state acts in an independent and sovereign capacity and that actions in or binding on the demanding state have no binding effect whatsoever upon the authority of the Executive of the asylum state.

As to the effect of the lunacy proceedings on your authority, I have to advise you, that, in my opinion, you are not bound thereby. I believe the filing of rendition papers with you prior to the institution of the proceedings affected the courts with notice of the fact that you might issue an executive warrant for the arrest of Thaw and for his surrender to the agent of New York, as a fugitive from justice. I do not believe the court, by its order of March 13th, endeavored to remove Thaw from the jurisdiction of your warrant. It is true that he was placed in the custody of a committee and a place of detention designated, but no where does the court imply that it has placed him beyond your authority. Every presumption is in favor of a judicial intent to determine Thaw's mental condition—something which it must be assumed by you that the court had power to do—and to detain him as a lunatic in a custody sufficient and proper for the lunatic's own welfare, and until that custody was changed by the action of the court itself, or, *until some authority having a higher right should remove him therefrom.*

Notwithstanding the fact that you are not bound by the lunacy proceedings the question remains whether you ought to surrender as a fugitive from justice, one who is a citizen of this State and who has been duly adjudged a lunatic by a court of this Commonwealth and detained as such in a place designated by that court.

That a citizen of an asylum state has been found by a court of that State to be a lunatic, even though subsequent to the institution of an interstate rendition proceedings seeking his surrender; that a committee has been appointed for the custody of his person; and that a place for the lunatic's detention has been designated by that court, are facts, which, in my opinion, are altogether proper for the consideration of the executive of the asylum state in determining whether he will surrender such person, as a fugitive from justice, for the purpose of his trial on the criminal charge.

Persons of unsound mind have been the objects of concern long before Pennsylvania had its existence as a State or colony. In England persons of unsound mind were wards of the King and his protecting power was continually and rigorously asserted to safeguard

their person and to afford them such comfort as it was in the Royal power to bestow. This power in the states of the Union has been lodged in the courts of Chancery. The power of the courts of this Commonwealth is well stated in *Black's Case*, 18 Pa. 434, wherein Mr. Justice Woodward speaks as follows:

"In Pennsylvania, the constitution clothes the Supreme Court and the Courts of Common Pleas with the powers of a Court of Chancery as to the care of persons and estates of those who are non compos mentis. — The appointment of committees of lunatics being a prerogative of the sovereign, it must reside somewhere in our government and if the people did not vest it in the courts by the Constitution, they left it with the legislature, who have vested it in the courts. * * * According to the rules heretofore practiced and allowed, whether in Pennsylvania or in England, the committee has been regarded as the mere bailiff of the appointing power, holding his office by no other tenure than that of the pleasure of the crown in Great Britain, and of the courts in Pennsylvania, and, of course, removable at pleasure."

The authority of our courts over persons of unsound mind does not rest on statutory grant, but is derived from the sovereign power of the state known to the law as the *parens patriae* power. *Bouvier* in his *Dictionary* thus speaks of the power—

"In the United States, the state, as sovereign, has power of guardianship over persons under disability."

In *Fontain v. Ravenel*, 17 How. 393, it was held that the *parens patriae* power exists in a state of the United States just as it existed in England in the Crown. It has been well said that the *parens patriae* power is protective rather than punitive or police; that it is invoked to help the helpless; and that it is a duty which the sovereign owes the subject in return for his allegiance.

The effect of lunacy, in the contemplation of the law, is thus stated by *Blackstone* in his *Commentaries*.

"If a man in his sound memory commits a capital offence, and before arraignment for it he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if after he had pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non sane memory, execution shall be stayed, for peradventure, says the humanity of the English Law. Had the prisoner been of sound memory he might have alleged something in stay of judgment or execution."

For this state to surrender out of its jurisdiction, for the purpose of trial and possible punishment, one of its citizens, declared by one of its courts to be insane and therefore unable to make his defense against such surrender, is, to me, contrary to sound reason and justice; it is incompatible with the duty that the state owes to its citizens; it is repugnant to the proper exercise of its *parens patriae* power.

The State of New York contends no right exists in the asylum state to consider Thaw's status as a lunatic; that Pennsylvania must confine itself to the questions of whether a crime has been committed and properly charged, and, to whether Thaw is a fugitive from justice, for all of which facts, the Governor of the asylum state must not look beyond the rendition papers themselves. With such a proposition, advanced as a principle of law, I cannot agree. It would compel this state to take from an insane asylum one who had been therein confined for many years and send him to a foreign jurisdiction for trial and possible punishment for crime. It would compel the Governor to issue his warrant for the surrender of one charged with the abandonment of his child, when in fact the alleged fugitive might be residing here with his child and exerting his best efforts towards its welfare and interest. This last situation has very recently existed in this State, and, had the request of the demanding state been allowed, a man would possibly have been tried for the non-support of his child, when, as a matter of fact, the child was living with its father and receiving the benefit of its father's best efforts exerted in its behalf. If this proposition be correct, then, a citizen of this state committing murder in the State of New York and subsequently returning to this state where he commits a second murder, must be taken out of an insane asylum and be surrendered to New York authorities for trial and possible punishment for the first offense, when on a prosecution in this state for the second offense, he has been found by a court of this state to be insane, not criminally insane, necessarily, so as to have been unable to entertain a criminal intent, but insane at the time of the trial so as to be unable to make his defense.

I cannot subscribe to a principle of law which would require action on your part so opposed to reason and right. I am inclined to the rule followed in *Taylor v. Taintor*, 16 Wall, 366; and in the case of *Troutman*, 4 Zab. (N. J.) 634; and also in the *Matter of Briscoe*, 51 How. Pr. 422, that

"where a demand is properly made by the Governor of one state upon the Governor of another, the duty to surrender is not absolute and unqualified. It depends upon the circumstances of the case."

Counsel for the State of New York contend the principle involved in this requisition is governed by the cases of *Drew v. Thaw*, 235 U. S. 432, and in *Charlton vs. Kelly*, 229 U. S. 449. It is a sufficient reply to say that in both of these cases insanity was raised for the purpose of showing mental incapacity to commit the crime; to plead to the indictment; and to properly defend if placed on trial. In each case the fugitive was free. In neither instance was an attempt made to take out of the state, for the purpose of criminal trial, one, a citizen of that state, who had been, by its own courts, declared to be a lunatic and ordered detained as such in a designated place.

I have endeavored to reply to the several contentions raised by counsel at the hearing before me and I have now to advise you that it is your duty to refuse, at the present time, to surrender Harry K. Thaw to the agent of the State of New York for the purpose of his return to that state and his trial on the indictment existing there against him.

In thus advising you, I am assuming that the order of the court of March 13th will be strictly enforced and that Thaw will be kept in strict detention. If, at any future time, Thaw having been discharged from the custody of his committee and released from his place of detention, or, if at any subsequent date, the court having determined that his mental condition has changed and that he has regained his sanity, the State of New York should see fit to again request his rendition for the purpose of trying him on the indictment, such request should, in my opinion, receive favorable consideration.

I herewith return the papers relating to the proceedings.

Respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

BOARD OF OPTOMETRICAL EDUCATION, EXAMINATION AND LICENSURE.

The Governor may appoint as members of the Board reputable oculists who are citizens of this Commonwealth and who have been practicing their professions in this State during the five years previous to their appointment.

Office of the Attorney General,
Harrisburg, Pa., May 22, 1917.

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

Sir: I have received your favor of the 3rd inst. requesting an opinion as to whether you may appoint reputable oculists as members of the Board of Optometrical Education, Examination, and Licensure, created under the provisions of the Act of March 30, 1917, No. 10.

The Act defines Optometry to be—

“the employment of any means, other than the use of drugs, for the measurement of the powers of vision and the adaptation of lenses for the correction and aid of the vision of human beings.”

Section 3 provides for the appointment of a Board of Optometrical Education, Examination, and Licensure, to consist of seven members, who shall be appointed by you on or before July 1, 1917. The Act provides:

“The members of this board shall be optometrists, citizens of this Commonwealth, who possess the requisite qualifications to practice optometry under this act, and who shall have been so practicing in this State during the five years next previous to their appointment.”

The Century Dictionary defines an Optometrist to be “one who measures visual power; specifically, an optician without medical training, who fits eyeglasses.”

Under the examples explaining the definition is the following:

“One of the points to be thoroughly discussed will be the best name to give those who professionally test eyes for refractive errors. In those States which have laws governing this line of work the term used is ‘Optometrist.’”

In Section 12 of the Act, it is provided:

“The provisions of this act shall not apply: (a) To the physicians or surgeons practicing under authority of license issued, under the laws of this Commonwealth, for the practice of medicine or surgery; or (b) To persons selling spectacles and eye-glasses, but who do not assume, directly or indirectly, to adapt them to the eye, nor neither practice or profess to practice optometry.”

Under the Act, therefore, a physician or surgeon practicing under authority of his license, duly issued under the laws of this Commonwealth for the practice of medicine or surgery, may practice optometry and attempt to determine by an examination of the eye the kind of glasses needed by any person, without taking the examination required by the Act, on securing a license from the Board of Optometrical Education, Examination, and Licensure, because the training and education which the physician or surgeon has received and the license issued him by the Board of Medical Education and Licensure, carries with it the right to treat the eye fully and not merely measure the powers of vision and the adaptation of lenses for the correction and aid of vision without the use of drugs.

An oculist is a physician whose specialty is diseases or defects of the eye—one skilled in treatment of the eyes. He is qualified not only to practice Optometry, but to do things that the Optometrist is not permitted to do, namely: to make diagnosis of diseases of the eye and use drugs in their treatment, as well as measure visual power and fit eyeglasses. Every oculist is, therefore, an optometrist, and more. In addition to being an optometrist, he has received special training in the treatment of diseases and defects of the eye and has knowledge of the drugs proper to be used in connection with such treatment. The greater includes the less. While an optometrist is not qualified to practice as an oculist without special study and an examination and licensure by the Board of Medical Education, every licensed oculist is qualified to practice optometry without taking a further examination or securing an additional license.

You are therefore advised that there is no legal reason to prevent your appointing as members of the Board of Optometrical Education, Examination, and Licensure, reputable oculists who are citizens of this Commonwealth and who have been practicing their profession in this State during the five years previous to their appointment.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

AMENDMENT TO CHARTER OF THE ENTERPRISE MANUFACTURING
COMPANY OF PENNSYLVANIA.

The amendment contained a paragraph giving the directors a right to sell or lease real estate without a majority of stock assenting thereto. The Governor is advised as to certain requirements to be fulfilled before approval of the amendment.

Office of the Attorney General,
Harrisburg, Pa., June 7, 1917.

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

Sir: I have before me the application of The Enterprise Manufacturing Company of Pennsylvania for an amendment to its charter, which you referred to me on May 31. I beg to advise you as follows:

This company was incorporated under the Act of April 29, 1874, "for the purpose of manufacturing all kinds of hardware, machinery, metal castings, electrical appliances, and all other articles of commerce from metal, wood, or both." It, therefore, comes within the

eighteenth clause of the second class of corporations—or corporations for profit—provided for in the Act of April 29, 1874, and is governed by the provisions of Section 39 of that Act (P. L. 101).

The proposed amendment is the addition of a new paragraph, reading as follows:

“The Directors of the Company shall have power to sell or lease the real estate of said company, without a majority of the stock in value consenting or agreeing to such sale or lease before making the same.”

This same question came before Attorney General Carson in 1906, when The Pennsylvania Stave Company made application for a similar amendment. In his opinion to the Governor (Opinions of the Attorney General 1905-1906, page 44), Attorney General Carson based his approval of the amendment on the fact that the twelfth clause of Section 39 of said Act of 1874, relating to companies incorporated for the carrying on of any mechanical, mining, quarrying, manufacturing or other business, as provided in clause eighteen of the second class of corporations, impliedly gave power to the incorporators of such a corporation to insert such a clause in the certificate of incorporation, as originally filed, and held that if the provision could have been inserted in the original articles of incorporation, it could be so inserted by amendment.

His opinion, however, limits this power of amendment to corporations which are incorporated under the eighteenth clause of the second class. The Attorney General's opinion was predicated upon the facts as set forth in his opinion that:

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

While I am not disposed to depart from the opinion rendered by Attorney General Carson, I feel that the privilege should not be extended beyond a case which squarely meets the facts on which that opinion was based. The laws of Pennsylvania have been most careful to safeguard the rights of stockholders; for example, without the consent of the stockholders the name of the corporation cannot be changed, its charter renewed, the location of its principal office or the time of its annual meeting changed, its indebtedness may not be increased, preferred stock issued or the corporation consolidated or

merged with some other corporation, and by clause twelve of Section 39 of the Act of April 29, 1874, on which Attorney General Carson's opinion was based, it is provided that unless such a power be expressly given in the certificate originally filed, the directors shall have no power to sell or dispose of the real estate of the corporation "without a consent of a majority of the stock in value consenting and agreeing to such sale or lease before making the same, which consent shall be obtained at a meeting of the stockholders to be held for that purpose, of which meeting thirty days' notice shall be given in one of the newspapers of the proper county, and such consent shall be evidenced only by the written signatures of such stockholders."

I am of the opinion, in view of the decisions of the Supreme Court in *Mercantile Library Hall Company vs. Pittsburgh Library Association*, 173 Pa. 30, and *Temperance Association vs. Friendly Society*, 187 Pa. 38, that even with the amendment inserted in the charter the directors would not have power or authority to make such a sale or disposition of the real estate of the company, necessary in the transaction of its business, as would amount to a virtual giving up of its franchises as a corporation, without the consent of a majority in value of the stock. But in any event, having due regard to the safeguards which by our laws are placed around the rights of stockholders, I am of the opinion that an amendment of this character, which practically places in the power of the minority of the stock the disposition of the property of the corporation, should not be granted on the mere affidavit of the President and Secretary of the company, unaccompanied by proofs which are necessary in connection with the increase of its stock or indebtedness, and which were affirmatively referred to by Attorney General Carson as having been presented to him with the application.

Therefore, before passing upon this and similar applications, I would advise that you require proof of the advertisement of the notice of the stockholders' meeting called for this purpose, published in one of the newspapers of the proper county for at least thirty days unless the by-laws provide otherwise, or a waiver of notice duly signed by all the stockholders and the production of a certified copy of the minutes showing that the report was unanimously adopted or the return of the judges of election showing the number of votes for and against the resolution. It should also be accompanied by proof, by affidavit, that the proper notices of the application were duly published as required by the Act of March 31, 1905, P. L. 93, and you should be satisfied, by inquiry of the Auditor General, that all reports required by the Auditor General have been duly filed and all taxes due the Commonwealth of Pennsylvania have been paid.

The proceedings necessary are fully set forth in the application and papers accompanying it of *The Pennsylvania Stave Company*,

hereinbefore referred to, enrolled in the office of the Secretary of the Commonwealth in Charter Book 86, pages 169-173, and I would advise that the course there taken be followed in this instance.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

RETIREMENT OF JUDGES.

The Acts of Assembly—re retirement of Judges are reviewed.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1917.

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

Sir: This department is in receipt of your communication of the 3rd ult., enclosing letter from Honorable S. McC. Swope, former judge of the Fifty-first Judicial District, and inquiring whether Mr. Swope is eligible for retirement under the Act of June 5, 1917, No. 186.

It appears from the enclosures submitted with his letter that Mr. Swope was elected President Judge of the Fifty-first Judicial District, composed of the counties of Adams and Fulton, for a period of ten years, to be computed from the first Monday in January, 1895. He was re-elected for a further term of ten years, to be computed from the first Monday in January, 1905, and his term was extended one year by reason of the constitutional amendment of 1913. He therefore served as Judge of the Court of Common Pleas and Orphans' Court of Adams and Fulton counties, composing the Fifty-first Judicial District, from the first Monday of January, 1895, until the first Monday of January, 1916, at which time he was honorably retired from such office by expiration of term, and that he was **sixty-five** years of age on October 4, 1915.

The Act of June 5, 1917, No. 186, is an amendment of the Act of June 23, 1911, P. L. 1121, which amended the Act of May 11, 1901, P. L. 165. The Act of May 11, 1901, P. L. 165, provided that:

"Whenever a judge of any of the Supreme, Superior, Common Pleas, or Orphans' Courts of this Commonwealth, by reason of physical or mental disability appears to be incapacitated for performing his judicial functions and duties, and by reason of such disability has not performed such duties for the period of one year,

the Governor of this Commonwealth shall appoint a commission, consisting of three skillful and disinterested physicians, from different counties of the State, to examine the said judge; and if the said commission shall report that the said judge is permanently incapacitated to perform the duties of his office, the Governor shall notify the said judge of such finding, and if the said judge shall resign, within thirty days of such notice, he shall receive for the balance of the term for which he was elected, during which he shall live, one-half of the salary which he would have received if he had not resigned."

This was amended by the Act of June 23, 1911, P. L. 1121, by creating three classes of cases or instances in which judges were eligible for retirement,

1. As to the first, it was provided that whenever the Governor is of opinion, based upon satisfactory medical evidence, that a judge of the Supreme, Superior, Common Pleas or Orphans' Court is by reason of physical or mental disability permanently incapacitated for performing his judicial duties, he shall notify said judge of his opinion, giving reasons therefor, and if the said judge shall resign within thirty days after said notice and shall hold himself in readiness to advise with his successors and colleagues, and to perform duties as special master, referee, auditor, or examiner, in such ways as he may be reasonably able to do, he shall receive for the balance of the term for which he was elected, if he shall so long live, the salary he would have received had he remained in active service.

It will be noted that in this instance there is no requirement as to the length of time which the judge had served, or his age, and his full salary is payable to him during the balance of the term for which he was elected.

2. The Act further provided that if such incapacitated judge of the Common Pleas or of the Orphans' Court, so resigning, shall have served continuously in judicial office for twenty-five years or more immediately prior to the date of his resignation and shall have reached the age of seventy years, or if such incapacitated judge of the Supreme or Superior Court, so resigning, shall have served continuously in judicial office for twenty years or more immediately prior to the date of his resignation, and shall hold himself in readiness to advise with his successors and colleagues, and to perform duties as special master, etc., he shall receive, during the remainder of his life, *after the expiration of his said term*, one-half of the salary which he would have received had he remained in active service.

That is, if such incapacitated judge of the Supreme or Superior Court shall have served continuously in judicial office for twenty years or more immediately prior to the date of his resignation, or if

such incapacitated judge of the Common Pleas or Orphans' Court shall have served continuously in judicial office for twenty-five years or more immediately prior to the date of his resignation, and shall have reached the age of seventy years, and resigns in response to the request of the Governor, he shall receive, as in the first instance, his full salary for the balance of the term for which he was elected and thereafter as long as he lives shall receive one-half of the salary which he would have received had he remained in active service.

3. The third case provided for by the Act of 1911 was not limited to judges who were physically or mentally incapacitated nor did it apply only to judges who had resigned. It provided that any judge of the Supreme or Superior Court who shall have served continuously in judicial office for twenty years or more and any judge of the Common Pleas or Orphans' Court who shall have reached the age of seventy years and who shall have served continuously in judicial office for twenty-five years or more, and who shall hold himself in readiness to advise with his successors and colleagues and to perform duties as special master, etc., after his honorable retirement from office by expiration of term, resignation or otherwise, shall receive, during the remainder of his life one-half of the salary which he would have received had he remained in active service.

Under this provision, any judge of the Supreme or Superior Court who shall have served continuously for twenty years or more, and who shall hold himself in readiness to advise with his successors and colleagues and to perform such duties as special master, etc., as he may be reasonably able to do, and any judge of the Common Pleas or Orphans' Court who shall have reached the age of seventy years and who shall have served continuously in judicial office for twenty-five years or more and who shall likewise hold himself in readiness to advise with his successors and colleagues and to perform such duties as special master, etc., as he may be reasonably able to do, shall, after his honorable retirement from office by expiration of term, resignation or otherwise, receive during the remainder of his life one-half of the salary which he would have received had he remained in active service.

In this case a judge who fulfils the requirements of the Act, although not incapacitated physically or mentally, immediately after his resignation or the expiration of his term, is entitled to one-half the salary he would have received had he remained in active service. It is not necessary that the Governor call upon him to resign or take any steps toward securing his resignation. The Act applies whether he voluntarily resigns, or serves out his full term, provided, if a judge of the common pleas or orphans' court, he shall have reached the age of seventy years and shall have served continuously in judicial office for twenty-five years or more and shall hold himself in readiness to ad-

advise with his successors and colleagues and to perform such duties as special master, referee, auditor and examiner as he may be reasonably able to do, and if a judge of the supreme or superior court, that he shall have served continuously for twenty years or more and shall hold himself in like readiness, etc.

The Act, however, did not contemplate any hiatus or lapse of time occurring between the judge's honorable retirement from office by expiration of term, resignation or otherwise, and the taking effect of the clause relating to the receipt of one-half his salary for the remainder of his life.

In other words, his election to hold himself in readiness to advise with his successors and colleagues and to perform duties as special master, etc., must be prior to or at least contemporaneous with his retirement from office and must be made at a time when he is a judge, not a private citizen. It is a *judge*, not a *former judge*, who secures the benefits of the Act.

The Act of June 5, 1917, No. 186, amended the Act of 1911, only in the following particulars: with reference to the first case above referred to there was no change; with reference to the second, the time of service of a judge of the common pleas or orphans' court resigning for incapacity was reduced from twenty-five years to twenty years, and his age at retirement from seventy to sixty-five years; and the requirement, with reference to the judicial service of a judge of the supreme or superior court resigning for incapacity, that it must be continuous, was removed.

With reference to the third case above mentioned, the requirement of *continuous* judicial service on the part of a judge of the supreme or superior court was eliminated, and the judicial service of a judge of the common pleas or orphans' court was reduced from twenty-five years to twenty years and the required necessary age for retirement from seventy to sixty-five years. Otherwise the Act of 1917 made no changes.

There is no doubt that had the Act of 1917 been in force on the first Monday in January, 1916, when Judge Swope retired from office he would have been eligible for retirement under its provisions. It was not in force, however, in January, 1916, and Judge Swope was not at that time eligible for retirement under the provisions of the Act of 1911. Since the first Monday in January, 1916, he has not been a judge but has been a private citizen, and at the time of his expression of his willingness to hold himself in readiness to advise with his successors and colleagues and to perform such duties as special master, etc., as he may reasonably be able to do, he had been a private citizen for nearly a year and a half. There has been a lapse of a year and

five months between his retirement from office and the passage of the amendatory bill, the benefit of the provision of which he now claims. At the time of making such claim he was not a judge and had not been a judge for a year and a half. The very first requisite of eligibility is therefore lacking. The Act of Assembly does not provide that any one who shall have served continuously in the office of judge of the common pleas or orphans' court for twenty years and then honorably retired shall, when he attains the age of sixty-five years, be entitled to one-half the salary he formerly received, nor does it provide that any *former* judge of the common pleas or orphans' court who previous to the passage of said Act had served continuously for twenty years and honorably retired at the age of sixty-five years, shall receive such compensation, but that any *judge* who holds himself in readiness to do certain things shall be entitled to one-half his salary on his honorable retirement, which presupposes that at the time he expresses his willingness to perform such duties as special master, etc., as he may be reasonably able to do and to confer with his colleagues and successors, he is a judge, and negatives the idea of any hiatus or break occurring between his retirement and the going into effect of the provisions of the Act relating to one-half pay.

You are therefore advised that Mr. Swope is not eligible for retirement under the Act of June 5, 1917, No. 186.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

INCOMPATIBLE OFFICES.

A member of Congress may be appointed a member of the Valley Forge Park Commission.

Office of the Attorney General,
Harrisburg, Pa., September 18, 1917.

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

Sir: This Department is in receipt of your communication of recent date asking whether a member of Congress is eligible for appointment as a member of the Valley Forge Commission.

An examination of the law has failed to disclose any provision rendering these two offices incompatible. The Federal constitution is totally silent on the question. Our state constitution contains several provisions relative to the disqualification of Congressmen to hold certain other offices, but none of these provisions are germane to the above inquiry.

Thus Article II, Section 6 renders a Congressman ineligible to be a member of the Legislature, and Article IV, Section 6 disqualifies a Congressman for the office of Governor. The second section of Article XII provides, that

“No member of Congress from this State * * * shall, at the same time, hold or exercise any office in this State to which a salary, fees, or perquisites shall be attached.”

This constitutional provision does not, however, rule the question propounded by you, as Section 2 of the Act of May 30, 1893, P. L. 183, relating to the appointment of the members of the Valley Forge Commission, expressly states that such commissioners “shall receive no compensation for their services as commissioners.” No law, constitutional or statutory, having been found rendering these two offices incompatible, you are now advised that you have the power to appoint a member of Congress on the Valley Forge Commission.

Faithfully yours,

FRANCIS SHENK BROWN,
Attorney General.

HALF PAY TO DEPENDENTS.

The Governor is advised as to who are dependents under the Act of June 7, 1917, P. L. 600.

Office of the Attorney General,
Harrisburg, Pa., November 13, 1917.

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

Sir: This Department is in receipt of your letter, enclosing sworn statement of Major John C. Groome, Superintendent of State Police, filed under the provisions of the Act of June 7, 1917, P. L. 600, No. 201, and inquiring whether the persons named therein to receive the benefits of said Act fall within the provisions of said Act as to dependency. Section 3 of said Act provides, inter alia, as follows:

"The statement required to be filed by section two of this act shall be prima facie evidence of the dependency of any person named as a dependent in said statement; but the head of any department, bureau, commission, or office may, in case of doubt, satisfy himself as to the fact of such dependency, and if the person so nominated as a dependent was not, in fact, dependent upon the officer or employe enlisting, enrolling, or drafted in the military or naval service or any branch or unit thereof, at the time of his enlistment, enrollment, or draft, shall refuse to make any payment to such person on account of the salary or wages of such officer or employe."

The statement filed by Major Groome nominates his son, John C. Groome, Jr., and his two daughters, Agnes R. Dixon and Martha G. Thompson, as the persons to receive the portion of his salary to be paid to his dependents under the Act. It does not set forth whether the son is a minor or an adult, but the two daughters are apparently married and are declared to be only "partially dependent." The fact that his wife is not named as a dependent but is appointed as his attorney to "receive all and any sum or sums of money due him as salary as Superintendent of the Department of State Police for such time as he may be in the military service of the United States," would seem to indicate that she has means of her own and is not dependent on her husband for support.

These facts tend to rebut the prima facies of dependency conferred on the statement and to require inquiry on your part as to the actual dependency of the persons named in said statement.

In an opinion recently rendered by Deputy Attorney General Emerson Collins on the interpretation of this Act, he said:

"Where a wife, child or parent duly named in the prescribed statement as a dependent of one entering the military or naval service of the United States, has no means of support other than such as may be provided by the one so entering such service, the case would be manifestly within the scope of the Act. The Act, however, would plainly not apply as to this dependent provision where the nominated dependents have independent means of their own ample and adequate to maintain them suitably without the aid or assistance of others. Between these extremes it is probable that some cases not so clear will arise. No general rule could well be laid down which would be definitely and fairly applicable to every conceivable case. Each must necessarily be adjudged upon and in accord with its own facts and surrounding circumstances. The common understanding and usage of what is imparted by the words 'dependent' and 'dependency' will perhaps furnish the safest and surest guide in reaching a rightful conclusion.

The Act undoubtedly uses these words in their popular meaning and an adjudication in accordance therewith as to what constitutes 'dependency' will be within its terms and intent. * * * Inasmuch as the head of any given department, bureau, commission or office is vested with the power and duty of finding the fact of dependency in all doubtful cases, it follows that such official should make careful scrutiny and inquiry therein, and where satisfied that there is a state of dependency on the part of the nominated dependents, and the other statutory requirements are met, the aforesaid payment should be made in the amount and manner prescribed, but where it is found that a condition of dependency does not exist, then such payment should be withheld.

The primary purpose of the Act is not to serve those who enter the service of the United States, but those who are dependent upon them; its favor runs to this latter class. It should be given that liberal construction and administration as will best advance the generous purpose of the Commonwealth to provide for the families of those joining the armed forces of the country. The public bounty should not, however, be abused. Only those who are actually dependent upon those temporarily leaving the civil service of the state, or a county, municipality, township or school district to enter the military or naval service of the United States are within the intendment of the Act as beneficiaries thereof in the manner therein provided."

It will be noted that Section 2 of the Act which directs the payment of a portion of the salary of the enlisting officer to his dependents, provides that it shall be paid during his service in the military or naval service, as follows:

"If he have a wife, to his wife, for her use and that of his children; if he have children and no wife, then to such person as he may designate for the use and benefit of his children."

This extract shows that the provision is intended for the minor or strictly dependent children who live with their parents and are supported by them, and that it has no reference to adult children capable of earning their own living, or of children, minor or adult, earning their own living and not living at home with their parents. No provision is made for the payment of any part of the enlisting officer's salary to his children if his wife is living. The payment in such case is to the wife for her use and that of his children, contemplating that the children reside with their mother, sustain the family relationship and have not been emancipated, and the dependency of the wife in such case governs as to whether payments are to be made to the children sustaining such family relationship. The purpose of the Act is to provide for the *dependents* of those who

enlist in the military or naval service of their country. The generosity of the Commonwealth, however, is not to be abused or the terms of the Act extended beyond those for whom it was intended.

Applying these principles to the case in hand, if, upon inquiry it should develop that the son named in the statement is an adult not under disability preventing him from earning his own living, or if he is a minor, is emancipated and earning his own living, he would not be a dependent within the meaning of the Act. So also, if the daughters are married and living with their husbands, they would not be dependents within the meaning of the Act or if the persons named have individual estates or personal property of their own sufficient for their maintenance, they would not be dependents within the meaning of the Act. Or again, if the official's wife has means and property of her own sufficient for the maintenance and support of herself and children, such children would not be dependents within the meaning of the Act. As before stated, in view of the facts set forth in this statement, it becomes your duty to investigate the fact of the dependency of the persons named, and to this end detailed information should be given by the officer as to the facts on which this dependency is based.

If the result of such inquiry is to satisfy you that the persons named in said statement are not dependents within the meaning of said Act as interpreted herein, it will be your duty to refuse to make or authorize any payment to be made to them on account of the salary of the officer enlisting.

While the Act provides that no appointive officer of the Commonwealth who, in time of war, shall enlist in the military service of the United States, shall be deemed to have resigned from or abandoned his office or employment, or be removable therefrom during his term of service, it does not contemplate that during such term of service in the military forces of the United States, and while he is thereby prevented from performing the duties of his State office, he shall himself or for his own account, receive any part of the salary of such office during the term of his service in the military forces of the United States.

Section 3 expressly provides:

"No payment shall be made under the provisions of this act to any officer or employe enlisting, enrolling, or drafted, as aforesaid, and so much of the salary or wages of such officer or employe as is not paid, under the provisions of this act, to his dependents and his substitute, shall be recovered back into the fund from which said salary or wages is paid."

The only payments authorized under the Act are to his dependents, and the power of attorney provided for in Section 2 of the Act relates

to the payment of so much of his salary as is authorized under the Act to be paid to his dependents and not to his salary or any portion thereof for his own use. No portion of Major Groome's salary is therefore payable to his wife, the attorney named in the power of attorney attached to his statement, for his own use whether a part thereof is payable to his children will depend upon the result of your investigation as to their dependency, as construed in this opinion.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE VOLUNTEER POLICE OFFICERS.

Under the Act of July 18, 1917, P. L. 1062, authorizing the governor to appoint volunteer police officers during the continuance of the war with Germany, the certificates and oaths of such appointees must be filed in office of the recorder of deeds. No fee is required for such filing, nor is there a State tax. The governor may issue a blanket certificate for all the appointees in the same county, rather than a separate certificate for each one.

Office of the Attorney General,
Harrisburg, Pa., November 23, 1917.

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

Sir: Some time ago you transmitted to this Department a communication of Lewis S. Sadler, Esq., Executive Manager of the Committee of Public Safety.

Mr. Sadler supplemented that communication in a letter to me. A letter to this Department upon the same subject from George P. Donehoo, County Director of Public Safety of Potter County, was also received.

These communications ask for a construction of the Act of July 18, 1917, P. L. 1062, which authorizes the Governor to appoint volunteer police.

The questions which are raised, are:

1. Whether the certificate of appointment and the oath required to be taken may be filed in the Prothonotary's office instead of the Recorder's office.
2. Whether the Recorder is entitled to a fee for filing said certificate and oath.
3. Whether a tax of fifty cents is chargeable for filing such paper.

4. Whether one certificate could be issued for all of the appointees in one county.

5. Whether the Governor could commission to the end of the war, instead of for one year, so as to save duplications of certificates in the event that the war lasted longer than a year.

The Act of Assembly above referred to authorizes the Governor, upon application,

“at any time during the continuance of the present war with Germany * * * to appoint and commission, at his discretion, such number of volunteer police officers, to serve without pay, in the several counties, as may be deemed necessary. In all cities, boroughs and townships where there is a duly constituted police department, or police commission, such voluntary police officers shall be under, and subject to, the authority and direction of such department or commission. In all other cases the Governor shall designate and appoint such officials, or official, person or persons, to advise and direct said police officers and services to be by them performed.”

We answer the question above propounded as follows:

1. The Act of Assembly provides in Section 2 as follows:

“All police officers so appointed shall take and subscribe the oath provided by Article 7 of the Constitution. Such oaths shall be administered by an officer duly authorized to administer oaths, and shall be filed, together with the certificate of appointment, in the office of the Recorder of Deeds.”

It is true, generally speaking, papers are not “filed” in the office of the Recorder of Deeds. That office is intended for the recording of papers required by law to be there recorded, but there is nothing to prevent the Legislature from requiring these certificates of appointment and oaths to be filed in the office of the Recorder of Deeds. The Legislature has so determined. Therefore, these certificates and oaths must be filed in the office of the Recorder of Deeds.

2. Mr. Sadler’s communication shows that the Recorders of the various counties are claiming a fee of at least \$1.50, of which fifty cents is for a State tax for the recording of each such certificate and oath.

Whether the Recorder is entitled to a fee for filing these papers depends upon the law fixing the fees for such office. The Legislature had the right to impose a duty on the Recorders of requiring these papers to be filed without exacting a fee therefor. The Legislature

is presumed to have known what fees were attached to the office of the Recorder of Deeds. No fee is fixed in the Act of July 18, 1917, for the filing of these papers. Therefore, the Recorder is not entitled to any fee for such filing, unless that fee has been fixed by some previous Act of Assembly.

An examination of the Acts of Assembly, beginning with the Act of 1868, fixing fees for the Recorder of Deeds, shows that there has never been any fee fixed for the mere filing of a paper in the office of the Recorder of Deeds. In the Act of May 3, 1915, P. L. 235, which relates to the fees of Recorders of Deeds in counties of over 800,000 and less than 1,500,000, it is provided that "the fees for services not herein specially provided for shall be the same as for a similar service," but upon examination of the Act the fees therein provided for are all for recording, verifying and noting assignments, etc., on the record, and the language quoted must therefore be taken to refer to the same character of services, viz., a service attaching to the recording of instruments.

The Act of July 18, 1917, only requires that these papers "shall be filed" in the office of the Recorder of Deeds. The term "file" does not imply that the instrument must be recorded.

"A paper is 'filed' when it is delivered to the proper officer and by him received to be kept on file."

2 Words and Phrases, page 531.

There is nothing in the Act of July 18, 1917, which requires these certificates to be recorded. I am, therefore, of opinion that no fee is allowed by law, and therefore none can be exacted by the Recorders of Deeds of the various counties for the filing of the oaths and certificates prescribed by the Act of 1917 above referred to.

3. The Act of April 6, 1830, P. L. 272, provides in Section 4 "that the several Recorders of Deeds shall demand and receive for every deed, and for any mortgage or other instrument in writing offered to be recorded, fifty cents."

The certificates of appointment of volunteer police officers and the oaths taken by them, when filed in the office of the Recorder of Deeds, are not filed for record, and therefore are not "offered to be recorded."

The Act of 1830 provides only for a tax of fifty cents upon instruments offered for record. It does not authorize the Recorder to impose a tax upon instruments "filed" in his office.

I am, therefore, of opinion that no tax of fifty cents can be imposed for the filing of the oaths and certificates of appointment of volunteer police officers.

4. The Act provides that the Governor may "appoint and commission, at his discretion, such number of volunteer police officers to serve without pay, in the several counties, as may be deemed necessary."

It also provides that "all police officers so appointed shall take and subscribe the oath provided by Article VII of the Constitution." The question of making one commission for all of the police officers appointed in one county, was raised, as I understand, for the purpose of saving the fees and tax, and it may be that the view which we have expressed in this opinion with reference to the fees and tax, makes unnecessary the consideration of this question, but, if for any reason it be desirable to issue one certificate of appointment for all of the volunteer police officers in any county, there is no reason why the Governor should not issue such blanket certificate, rather than a separate certificate to each appointee.

5. The Act of Assembly is entitled "An Act authorizing the Governor to appoint volunteer police officers during the present war with Germany," etc.

Section 1 provides that upon application the Governor is authorized "at any time during the continuance of the present war with Germany, or in any other war in which this Nation may become involved, to appoint and commission, at his discretion" such police officers.

There is nothing in the Act which limits the Governor to commission such officers for one year. The intent of the Act seems rather to be that they should be commissioned during the continuance of the present war with Germany. In any event, the power in the Governor is to "appoint and commission at his discretion."

I am, therefore, of opinion that the Governor has the power to commission, either for one year, or for any other specific time, or "during the continuance of the present war with Germany."

Very truly yours,,

WILLIAM H. HARGEST,,
Deputy Attorney General

ALDERMAN FOR COATESVILLE.

George Meyer was elected alderman without reference to wards. At the election of 1915 the city was divided into five wards. Meyer is to be commissioned alderman for the ward in which he resides and vacancies exist in the other four wards.

Office of the Attorney General,
Harrisburg, Pa., December 15, 1917.

Mr. W. H. Ball, Private Secretary to the Governor, Harrisburg, Pa.

Sir: Your letter, addressed to the Attorney General, with reference to the election of aldermen in the City of Coatesville, is at hand.

You state that at the election held November 6, 1915, the city was divided into five wards, and at the same election George C. Meyer was elected an alderman for the city of Coatesville, without reference to any wards.

You ask to be advised for what ward Mr. Meyer was elected, and also whether the aldermen elected or appointed shall be residents of their respective wards.

Section 11 of Article V of the Constitution of Pennsylvania provides, among other things:

"No person shall be elected to such office (justice of the peace or alderman) unless he shall have resided within the township, borough, ward or district for one year next preceding his election."

Section 32 of the Act of May 23, 1874, P. L. 248, provides, with reference to cities of the third class, of which Coatesville is now one:

"Each of the wards of each of the said cities shall be entitled to elect one alderman."

Section 3 of the Act of March 22, 1877, P. L. 12, provides, in part:

"If any vacancy shall take place after any ward, district, borough or township election, by reason of the erection of any new ward, district, borough or township, * * * such vacancy shall be filled by appointment by the Governor until the first Monday of May succeeding the next ward, district, borough, or township election."

Mr. George C. Meyer, having been elected an alderman in Coatesville, under the Constitution and laws of the Commonwealth which require that "no person shall be elected to such office unless he shall have resided within the" ward, it follows that George C. Meyer must be commissioned as the alderman for the ward in which he resides.

It also follows that vacancies exist in all of the other wards in Coatesville which must be filled by appointment of persons who reside in such other wards. ✓

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE STATE PENSIONS.

Under the Act of June 7, 1917, P. L. 973, a State employe, who has been in the service of the State for a period of 22 years, reached the age of 66 years and when it appears by proper proof, is physically incapacitated to perform the duties of his or her position, is entitled to retire on a pension to be paid by the State of half the salary received at the time of retirement.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

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

Sir: This Department is in receipt of your favor of the 10th inst., enclosing application of Annue E. Leisenring, inspector of Labor and Industry, for retirement, under the provisions of the Act of June 14, 1915, P. L. 973, entitled:

“An Act to provide for retirement of State employes, permanently disqualified by reason of physical or mental disability to perform their official functions and duties, with half pay, under certain conditions, during the remainder of their lives, except State employes whose retirement has been or shall be otherwise provided for, and the filling of vacancies caused by such retirement,”

as amended by the Act of June 7, 1917, P. L. 559, setting forth that she has served continuously as a Deputy Factory Inspector and Inspector of the Department of Labor and Industry since June 1893, and is sixty-six years old, and offering to hold herself in readiness to perform such special duties in such ways as she may be reasonably able to do, as may be assigned to her after her retirement. Her application is accompanied by a certificate from her physician, W. Frederick Herbst, M. D. that her physical condition is such that she cannot attend to her duties as an Inspector of the Department of Labor and Industry, and a certificate from Mr. Lew R. Palmer, Acting Commissioner of Labor and Industry, that her statements relative to her service under the Commonwealth are correct.

You ask to be advised whether these papers are in proper form, in accordance with the Act of June 7, 1917, and whether Mrs. Leisenring is eligible for retirement under the Act.

I beg to advise you that in my opinion, Mrs. Leisenring is such a State employe as is contemplated by the Act of June 14, 1915, as amended, *supra*, and as she has served in office as such State employe for twenty years, or more, and has reached the age of sixty-six years, is eligible for retirement under that Act.

In my judgment, the application is in proper form, and the correct preliminary steps have been taken, in accordance with the Act. It is now your duty to satisfy yourself either from the evidence submitted to you with the application, or such further investigation and medical evidence as you may deem necessary, as to whether Mrs. Leisenring, by reason of physical disability, is permanently incapacitated from performing her regular official duties, and if you are of opinion based upon satisfactory medical evidence that she is so permanently incapacitated, you should notify her of your opinion, in accordance with the Act. If, within thirty days after the receipt of such notice Mrs. Leisenring shall resign, she will be entitled to receive during the remainder of her life, or during the continuance of such disability, one-half the salary which she would have received had she remained in active service. As she is now receiving \$2000 per year, she would be entitled upon such resignation, in accordance with the provisions of the Act, to receive \$1000 per year during the remainder of her life, or during the continuance of her physical disability.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

VOLUNTEER POLICE OFFICERS—POWERS.

A volunteer police officer can, in the manner prescribed by the Act of May 2, 1899, P. L. 173, execute a warrant issued in the county in which he is commissioned, for an offense committed therein, in any county in the state to which the offender may go.

A volunteer police officer cannot make an arrest without warrant outside the limits of the county for which he is commissioned.

Office of the Attorney General,
Harrisburg, Pa., December 19, 1917.

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

Sir:—There was duly received your communication of the 4th inst. to the Attorney General, requesting an interpretation of the Act of

July 18, 1917, P. L. 1062, relating to the Volunteer Police Officers appointed by the Governor during the present war, upon the question as to what powers such Police Officers may possess to perform any official duty or exercise any official function outside of the limit of the county in which they reside and for which they are commissioned.

The powers of the aforesaid officers are defined and fixed by the provisions of Section 3 of said Act, which read as follows:

"The police officers, when so appointed and qualified, shall have and possess all the powers of police officers of the several cities, boroughs and townships of the Commonwealth, and are authorized to arrest upon view, with or without warrant, any person apprehended in the commission of an offense against the laws of the Commonwealth or of the United States."

It follows from the foregoing that a Volunteer Police Officer is vested with precisely the same powers as those possessed by a police officer of a city, borough, or township of the Commonwealth under existing law.

The Act of May 2, 1899, P. L. 173, provides where a person against whom a warrant issues escapes or goes into "any other city or county out of the jurisdiction of the judge, alderman, or justice of the city or county granting such warrant," and in which county the offense was committed, that the person to whom the warrant issues in such case, may serve the same in the county to which the offender has gone, who is to be taken before a magistrate of such latter county for the giving of bail, if the offense be bailable, for his due appearance in the county in which the offense was committed. In *Commonwealth vs. Leech*, 10 Del. 188, it was held that under this Act, a constable of a borough to whom a warrant was issued for the arrest of one charged with an offense against an ordinance of said borough, had the authority to execute the warrant and arrest the offender in another county into which he had gone.

It may therefore be concluded that a Volunteer Police Officer appointed by the Governor under the said Act of 1917, may serve a warrant outside the county in which he is commissioned for the arrest of one committing an offense therein in the manner as provided in said Act of 1899.

A police officer has no power as such, to arrest without a warrant outside of the limits of the particular municipal division in and for which he was elected or appointed. Since as above pointed out, a Volunteer Police Officer has only like powers with those of city, borough or township police officers, he likewise has no power by virtue of his commission as such official to make an arrest without a warrant beyond the limits of the county in and for which he is commissioned.

It may be noted that under the common law, any individual has the power to arrest, without warrant, a person known to have committed a felony or where there is probable cause of suspicion of the commission of such a crime, though in the latter case the arrest is made at the risk of the party making the same that no crime has in fact been committed. So an individual may arrest, without warrant, one committing a breach of the peace, but not after the offense has been committed.

Sadler on Criminal Procedure, Sec. 79.

4 Blackstone, 293.

Brooks vs. Commonwealth, 61 Pa. 352.

As stated above, however, a Volunteer Police Officer appointed under said Act of 1917, is not in consequence of his commission to such office clothed with any power to make an arrest without a warrant beyond the limits of the county in which he is commissioned. In such respect his authority is no greater than that possessed by individuals in general.

In accordance with the foregoing and in answer to your said communication, you are therefore respectfully advised as follows:

1. That a Volunteer Police Officer can lawfully execute a warrant duly issued in the county in which he is commissioned for an offense committed therein in any county of the State to which the offender may go, in manner as prescribed in the said Act of 1899.

2. That the said Act of 1917, in pursuance of which a Volunteer Police Officer is appointed, does not invest such officer with any authority to make an arrest without a warrant outside of the limits of the county in and for which he is commissioned.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

INCOMPATIBLE OFFICES.

The office of Mayor is not incompatible with an appointment as notary public.

Office of the Attorney General,
Harrisburg, Pa., January 9, 1918.

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

Sir: Your favor of the second instant was duly received.

You ask to be advised whether the office of notary public is incompatible with that of mayor.

The Constitution provides that:

“Members of Congress and persons holding or exercising any office or appointment of trust or profit under the United States, shall not at the same time hold or exercise any office in this State to which salary, fees or perquisites shall be attached.”

It, however, authorizes the General Assembly to declare what offices are incompatible.

The Legislature has declared the office of notary public incompatible with any office or appointment of trust or profit under the United States, but has not declared it incompatible with any municipal office.

Attorney General Elkin, in an opinion dated July 19, 1895, advised Governor Hastings that “the office of Chief Burgess of a borough is not incompatible with an appointment as a notary public.”

I therefore advise you that the office of mayor is not incompatible with an appointment as notary public.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE REGISTRATION COMMISSIONERS.

The office of Registration Commissioner is an “office or position in the city,” within the meaning of the Act of March 7, 1901, P. L. 20, for the government of cities of the second class, so that the mayor of such a city is ineligible for the office.

Office of the Attorney General,
Harrisburg, Pa., January 17, 1918.

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

Sir: I have your favor asking whether Honorable Alexander T. Connell, now Mayor of Scranton, may continue to serve for an indefinite period as a member of the Board of Registration Commissioners.

The Act of March 7, 1901, P. L. 20, entitled “An Act for the government of cities of the second class,” provides, in its first section, in part, as follows:

"The City Recorder * * * shall not be eligible to the office of City Recorder for the next succeeding term, or to any other office or position in the city during the period of two years next succeeding the expiration of his term of office."

The Act of April 23, 1903, changed the title of the chief executive of cities of the second class from "city recorder" to "mayor," but did not change the qualification for the office.

Registration Commissioners are created by the Act of July 24 1913, P. L. 977, for cities of the first and second classes. While the Governor appoints the Board of Registration Commissioners in each of the cities of the first and second classes, the Act provides that they shall be qualified electors of the city.

The commissioners are required, after petitions filed and upon examination, to appoint four registrars for each of the election districts of the city and are invested with power to remove said registrars upon proper hearing.

The office of Registration Commissioner, while it is filled by appointment of the Governor, is, nevertheless, an "office or position in the city" within the meaning of the Act of 1901 for the government of cities of the second class.

Section 1 of that Act provides, in terms, that the

"Mayor shall not be eligible to any other office or position in the city during the period of two years next succeeding the expiration of his term of office."

The Acts of Assembly governing cities of the first and third classes, state in terms that a mayor can hold no other official position. This Act of Assembly does not state in terms that the mayor can hold any other office or position in the city during his incumbency of the office of mayor, but it provides that he cannot hold such an office within the period of two years after the term of office has expired.

The policy of the law is apparent. It is not the legislative intention that the chief executive officer of the city should at the same time hold another office in the city, and the charter of the cities of the second class have so zealously guarded that policy in this Act of 1901 as to prevent him from holding any other office within two years after the expiration of his term as mayor.

It would be a preposterous construction to place upon the Act of 1901 to say that the person might hold another city office while he was holding the office of mayor, but would be prevented from holding any other city office when his term as mayor had expired and for two years thereafter.

I am, therefore, of opinion that Honorable Alexander T. Connell, being mayor of Scranton, is ineligible to serve as a member of the Board of Registration Commissioners for that city.

Yours very truly,

WILLIAM M. HARGEST,
Deputy Attorney General.

MAHANTONGO VALLEY BANK.

The law does not vest in the Governor the right to determine whether there is necessity for the incorporation of a bank.

Office of the Attorney General,
Harrisburg, Pa., April 4, 1918.

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

Sir: In the matter of the application for a charter of the Mahantongo Valley Bank.

Some time ago you transmitted to this Department the necessary papers for the incorporation of the Mahantongo Valley Bank, with certain protests against the incorporation. A hearing was held at this Department and counsel representing both the applicant and the protestants appeared, along with a number of witnesses.

The attack against the charter was made on the ground that there was no necessity for this bank at Pillow or Uniontown (names used interchangeably).

Petitions addressed to the Governor, containing three hundred and ninety-eight signatures of residents in that locality, asking that the charter be granted, were filed.

Two questions arise upon this protest:

First, whether the Banking Commissioner and the Governor can examine into the necessity for the incorporation of a bank.

Second, whether such necessity is shown.

Upon the first proposition, I am of opinion that the law does not vest in the Governor the right to determine whether there is necessity for the incorporation of a bank. Section 3 of the Act of May 13, 1876, as amended by the Act of February 11, 1895, P. L. 4, provides:

“That the Commissioner of Banking upon the receipt of the articles of association with the approval thereon of the Attorney General as aforesaid, and the certificate hereinbefore provided, *shall certify* a copy of such cer-

tificate to the Governor, who *shall*, upon receiving the same, cause letters patent, under the great seal of the Commonwealth to be issued to said banking corporation."

The Legislature has provided certain conditions precedent which must be fulfilled before a charter for a banking company may be had. The Governor can not legally impose additional conditions as to corporations of the second class, any more than the courts can impose additional conditions as to corporations of the first class.

In *Thompson on Corporations*, Paragraph 220, quoting from *Morawetz on Private Corporations*, it is said with reference to the duties of the officer required to pass upon applications for charters:

"Such officer may be required first to exercise his judgment whether the corporation proposed to be formed falls within the provisions of the general laws or not; but he has no right to refuse an application made in compliance with the provisions of the statute; but if he should refuse to act when called upon in the proper case a writ of mandamus may be obtained to compel him to perform his duty."

While, of course, no writ of mandamus lies against the Governor, and he can not be compelled to issue letters to a corporation, yet the same principles of law apply to him in the exercise of his discretion, as apply to the other officials charged with the duty of granting charters.

In the case of *Deutch-Amerikanischer Volkfest-Verein*, 200 Pa. 143, the Supreme Court has held that inasmuch as the Legislature has not imposed upon the Court the duty of determining the question of necessity as to corporations of the first class, a charter can not be refused on the ground that there is no necessity therefor.

The Legislature might have imposed upon the Governor the determination of the question of necessity. It has placed such a duty upon the Public Service Commission as to corporations coming within its jurisdiction. But, until it does clothe the Governor with such power, I am of opinion that he is not vested with the legal discretion of refusing a charter for a bank on the ground that there is no necessity therefor.

As to the second question: Inasmuch as we did not determine the legal question in advance of the hearing, we permitted the hearing to proceed, in order to determine the question of necessity. In this case it appears that all of the persons who object to the granting of the charter to the Mahantongo Valley Bank are persons who are either officers, directors or stockholders in the several banks in the neighborhood whose businesses are likely to be affected.

No witness was produced to say that there was no necessity for this bank who was not connected with some other banking institution. On the contrary, the petitions signed by three hundred and ninety-eight citizens were produced, asking for the incorporation of the bank, and the statements of persons present were made which were strongly persuasive, at least, on the question of necessity.

If the Governor were to determine the question of necessity upon the evidence which has been submitted, I think he would probably be compelled to say that sufficient necessity had been shown.

For these reasons we advise you that the charter should be granted. We herewith return the papers.

Yours very truly,

WILLIAM M. HARGEST,
Deputy Attorney General.

CLARION COUNTY CORONERSHIP.

The drafting of the incumbent of a public office for military service does not create a vacancy in the office which the Governor can fill by appointment; neither the Act of April 5, 1842, P. L. 45, nor that of March 24, 1846, P. L. 165, applies in such cases.

Office of the Attorney General,
Harrisburgh, Pa., April, 24. 1918.

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

Sir: This Department is in receipt of your communication of the 25th ult., relative to the office of Coroner in Clarion County. You state substantially that the person last elected to fill the office and until recently, personally performing the duties incident thereto, has been drafted into the Military Service of the United States, and you inquire whether a vacancy, which you are authorized to fill, now exists in such office.

It is a general rule of law well expressed in *Johnson v. Wilson*, 9 Am. Dec. 50 (*New Hampshire*), that when an office is once accepted by a person legally elected or appointed thereto,

“no vacancy can be said to exist in the office, till the term of service expire, or till death, removal or resignation of the person appointed.”

This rule is, of course, subject to constitutional or legislative modification, but no modification, which would operate to create a vacancy on the contingencies raised in your communication, appears in the organic or statutory law of this Commonwealth.

The acts of April 5, 1842, P. L. 45, and March 24, 1846,, P. L. 165, relating to vacancies in the office of Coroner, were designed to meet situations different from that now existing in Clarion County. The former statute created a vacancy where the person elected refuses to qualify; while the latter applies only where the person elected and qualified notoriously absconds from the county.

The question of what constitutes a vacancy in an office was presented to Attorney General McCormick in 1895. It appeared that the person elected to the office of Alderman in the second ward in the City of Hazleton was, sometime subsequent to his election and qualification, confined in the Danville Insane Asylum as a lunatic, and this Department was asked whether, upon such facts, a vacancy existed in the office of Alderman which the Governor could fill. Attorney General McCormick in his reply to such inquiry, after stating the facts, says (16 Pa. C. C. 318):

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

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

You are, therefore, accordingly advised that no vacancy, which you are authorized to fill, now exists in the office of Coroner in Clarion County.

While the people of this County will lose the personal services of their Coroner for possibly some time, no great hardship should necessarily ensue as the Act of June 6, 1893, P. L. 330, as amended by the Act of July 18, 1917, P. L. 1084, relating to the appointment and powers of a Deputy Coroner, and Section 15 of the Act of May 27,

1841, P. L. 400 conferring certain powers on Justices of the Peace in the absence of the Coroner, afford adequate provision for the performance of those duties incident to the Coroner's office.

Very truly yours,

EDMUND K. TRENT,
Deputy Attorney General.

RAILROAD SPECIAL POLICE OFFICERS.

The Act of February 27, 1865, P. L. 225, giving the Governor power to appoint special railroad police, does not create them police officers of the Commonwealth, but police officers for the several corporations asking for their appointment, and confers upon them like powers to those possessed by police officers of the Commonwealth. The statute does not specifically limit such appointment to men, and, therefore, women may be appointed.

Office of the Attorney General,
Harrisburg, Pa., June 12, 1918.

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

Sir: This Department is in receipt of inquiry addressed by Mr. W. H. Ball, Private Secretary, requesting an opinion as to whether the application of the Pennsylvania Railroad Company for the appointment of Mrs. Kate A. Campbell as a special police officer under the Act of February 27, 1865, P. L. 225, can be granted.

A similar question was presented to this Department by Governor Hastings (Atty. Gen. Rep. 1897-98, p. 42), at which time Deputy Attorney General John P. Elkin advised the Governor that it was within the discretion of the Governor to appoint a woman as a police officer under the Act of May 25, 1887, P. L. 265,, providing for the appointment of police officers for associations for the prevention of cruelty to children and aged persons.

The language of the Act of May 25, 1887, providing for the appointment of special police officers for associations for the prevention of cruelty to children and aged persons is almost identical with, and was evidently modeled upon, the Act of February 27, 1865, providing for the appointment of railroad police under which this application is made.

In my judgment, the reasoning of Deputy Attorney General Elkin in the above opinion is sound and is in line with the trend of modern affairs. I am not unmindful of the fact that Deputy Attorney Gen-

eral Cunningham, in an opinion rendered to the Auditor General on December 26, 1912 (Atty. Gen. Rep. 1911-1912, p. 78), held that women are ineligible to public office in the absence of an express constitutional or legislative enactment making them eligible, and that there was no authority for the appointment of women as mercantile appraisers.

The Acts above mentioned, giving authority to the Governor for the appointment of special police, do not create them police officers of the Commonwealth but police officers for the several corporations asking for their appointment, conferring upon them like powers as are possessed by police officers of the Commonwealth. The Act authorizes the grant of commission to such "persons" as the corporation may designate and the Governor may deem proper to represent the corporation, and does not specifically limit such appointment to men.

I can readily understand how a woman could serve in such a capacity in connection with railroad work with advantage to all interested parties. It is the judgment of this Department that her duties should be directed especially to work in and about stations, for the protection of women and children traveling.

You are therefore advised that it is within your discretion to grant the application. That such an appointment has not previously been asked for a woman and that none has previously been granted does not interfere with your right to make the appointment if you deem the applicant a proper person and the purpose of her appointment a desirable one.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE VOLUNTEER POLICE.

Under the Act of July 18, 1917, P. L. 1062, volunteer policemen are under the control of the duly constituted police department or commission in every municipality having such a department or commission. Where there is no such department or commission, such authority is vested in the person designated by the Governor.

While a volunteer policemen can exercise any power which a city, borough or township police officer possesses, it is against the reason and spirit of the Act of July 18, 1917, P. L. 1062, that he should be called upon to render the ordinary

routine service of a regular policeman. He is not to be used for ordinary, but extraordinary, work during the stress of war threatening the peace and property of any community.

Officer of the Attorney General,
Harrisburg, Pa., June 20, 1918.

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

Sir: I am in receipt of your communication of the 11th inst. requesting an opinion relative to the Act of July 18, 1917, providing for the establishment of a Volunteer Police Force in the Commonwealth, upon the following questions, viz:

First: To whose authority are the volunteer policemen in any city, borough or township, appointed in pursuance of said Act, subject?

Second: What duties properly belong to volunteer policemen and for whose performance they can properly be called upon within the intent of said Act?

In answer to the foregoing, you are respectfully advised as follows:

1. Volunteer policemen are appointed under the Act of July 18, 1917, P. L. 1062. The powers they possess, the duties with which they are charged, and the authority to which they are subject are such as arise from, or are prescribed by, its provisions. Section 1, *inter alia*, provides relative to the matter of the authority to which they are subject as follows:

"In all cities, boroughs and townships where there is a duly constituted police department or police commission, such volunteer police officers shall be under, and subject to, the authority and direction of such department or commission. In all other cases the said Governor shall designate and appoint such officials, or official person or persons, to advise and direct the said police officers and services to be by them performed."

The effect of the above provision is clear and unmistakable. By virtue thereof, in every municipality where a duly constituted police department or commission is maintained, the authority to direct the volunteer police officers appointed and commissioned therein, under said Act, is vested in such department or commission. Only in such places and cases where no such department or commission exists does the person or persons named by the Governor, pursuant to the above provision of the Act, exercise authority and direction over volunteer policemen. As against the plain terms of the Act, a dual

authority cannot be implied. It belongs exclusively either to the police department of a municipality where it exists or, in default of the existence of such department, to the person designated by the Governor to exercise such authority.

You are therefore advised that in every city, borough, or township wherein there is a duly constituted police department or commission, it belongs to such department to direct and exercise authority over the volunteer police officers therein. In other cases it belongs to the person named by the Governor for that purpose.

2. There appears to be some misapprehension as to the true scope of the duties of volunteer policemen. It was held in an opinion of this Department to the Governor, under date of December 19, 1917, that the said Act, by Section 3 thereof, clothes them with precisely the same powers as those possessed by city, borough and township policemen. That opinion is not to be taken as ruling, nor is the Act to be construed as intending, that volunteer policemen should be called upon to do the work commonly done by the ordinary police force of a municipality. The Act does not so contemplate. Its preamble discloses its true purpose, setting forth the needs arising from the present war as the reasons for the creation of this Volunteer Police Force "to prevent injury and destruction to the various industries of the Commonwealth by enemies of the Nation, and to suppress riots and tumults, and to preserve the public peace and safety." It is an accepted rule in the interpretation of statutes that a "preamble" may assist in ascertaining the true intent and purpose thereof.

Endlich, on the Interpretation of Statutes, 62-63.

The purposes of the Act, as shown by the preamble, are further evidenced by the fourth section, to the effect that this Volunteer Police Force shall be organized and disciplined especially to suppress riots and tumults and be used to protect our railroads, industries, public works and buildings against the enemies of the Nation in the war with Germany. To meet the exigencies springing from the war and war conditions is manifestly what the Act had primarily in view in providing for this particular force. Its proper function is to be gathered from the purpose of its establishment.

While a volunteer policeman can exercise any power which a city, borough or township police officer possesses, it is against the reason and spirit of the Act that he should be called upon to render the ordinary routine service of a regular policeman. He is not to be used for ordinary but extraordinary work. It was not intended that through the instrumentality of the Volunteer Police Force the State would thereby relieve municipalities from any part of the duty and

burden heretofore resting upon them of policing the same and maintaining the peace. The members of this Force serve without pay. Their services are tendered from purely public and patriotic motives to assist the Commonwealth during the stress of war. For any city to use them to do what commonly and usually has been done and can continue to be done by the regular police force is not only at variance with the real intent of the Act, but would tend to keep men from joining said Volunteer Force. Where a situation exists or impends endangering or threatening the peace and property of any community, and which is beyond the ability of the regular police force to cope with the local police department should not hesitate promptly to summon the assistance of volunteer policemen, which it may confidently be predicted will be readily given, but resort should not be made to them to perform the ordinary and every day duties of the regular force.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

HEALTH OFFICER—PORT OF PHILADELPHIA.

The Governor may remove on his own initiative the Health Officer of the Port of Philadelphia.

Office of the Attorney General,
Harrisburg, Pa., July 3, 1918.

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

Sir: This Department has received your communication of the 15th ult. inquiring whether you have the right, on your own initiative, to remove the Health Officer for the Port of Philadelphia.

The office was created by the Act of January 29, 1818, P. L. 38, entitled,

“An Act for establishing a Health Office and to secure the City and Port of Philadelphia from the introduction of pestilential and contagious diseases, and for other purposes.”

The first section provides, *inter alia*, as follows:

“And the Governor is hereby authorized and required to appoint * * * one Health Officer * * * all of whom shall be under the direction and control of the

Board of Health, and shall be removed from office by the Governor at the request of the majority of the members of the Board of Health."

It is this clause of the above quoted provision which doubtless raised the question as to your authority to remove, on your own initiative, an incumbent from the office.

Whatever may have been the law prior to the Constitution of 1873, I am of the opinion that since its adoption your authority to remove, on your own initiative, a Health Officer appointed under the provisions of the Act of 1818, is clear.

Article IV, Section 2, of the Constitution provides, that

"the supreme executive power shall be vested in the Governor"

and by Article VI, Section 4, it is ordained that

"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."

That this last quoted provision applies to incumbents of offices created by Act of Assembly, as well as by the Constitution itself, is evident from the language of Article IV, Section 8, which provides, that

"He (the Governor), shall nominate and, by and with the advice and consent of two-thirds of all the members of the Senate, appoint a Secretary of the Commonwealth and an Attorney General during pleasure, a Superintendent of Public Instruction for four years and such other officers of the Commonwealth as he is or may be authorized by the Constitution *or by law to appoint.*"

In *Lane v. The Commonwealth*, 103 Pa. 481, it was held that the Governor had the power, on his own initiative, to remove an incumbent from the office of the Recorder of the City of Philadelphia, a statutory office, even though the Act expressly provided that appointment to the office, for a full term, could only be made by the Governor by and with the advice and consent of the Senate.

The right, therefore, of the Governor to remove an incumbent from an office to which the Governor has the authority to appoint is a constitutional right, and is paramount to any provision of statute law which in any way conflicts therewith. While it is true that the office before the Court in the Lane case was created subsequent, while the

one involved in your inquiry was prior, to the adoption of the Constitution of 1873, it is wholly immaterial in so far as the legal conclusion is concerned.

The extent of the power of executive removal as contained in the provision of the Act of 1818 above quoted, or more specifically, whether the intention as expressed in the above provision was that the Governor *could* remove, on his own initiative, but *must* remove at the request of the Board of Health, is not necessary to the disposition of your inquiry. Whatever the legislative intent may have been, there is no doubt that the constitutional provision above quoted empowers you to remove, on your own initiative, one holding the office of Health Officer as constituted by the Act of 1818, and you are now so advised.

Very truly yours,

HARRY K. DAUGHERTY,
Deputy Attorney General.

PENNSYLVANIA MEADE MEMORIAL COMMISSION.

The Governor has unconditional power to fill by appointment a vacancy on the Commission.

Office of the Attorney General,
Harrisburg, Pa., October 5, 1918

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

Sir: This Department is in receipt of your communication of the 24th ultimo advising us of the death of Colonel Frazer, a member of the Pennsylvania Meade Memorial Commission.

You inquire whether you have the right to fill the vacancy so occasioned; and if so, what restrictions, if any, are placed upon you in naming Colonel Frazer's successor.

The Meade Memorial Commission was created by the Act of June 14, 1911, P. L. 935, the first section of which provides as follows:

"That a Commission consisting of the Governor of the Commonwealth, the Attorney General, the Commander of the Grand Army of the Republic, Department of Pennsylvania; one member of the Senate and one member of the House of Representatives, and the General Chairman of the Committee on Meade Statue of the Philadelphia Brigade Association, who shall be appointed by the Governor within thirty days from the pas-

sage of this Act, is hereby authorized and directed to procure a suitable statue of General George Gordon Meade, and cause the same to be erected on a suitable site in the city of Washington, District of Columbia, and dedicated in a fitting manner."

I understand Colonel Frazer was a member of the Commission by virtue of the fact that he was, at the time of the passage of the above Act, the "General Chairman" of the Committee on Meade Statue of the Philadelphia Brigade Association.

By the Act of June 18, 1915, erroneously published in the volume of Appropriation Acts of that session, on page 249, it is provided in Section 2 that

"The Governor is hereby empowered to make appointments to fill vacancies that may occur on the commission created by the acts to which this is a supplement."

The original Act of 1911 was supplemented in 1913 and certain additional members were provided for, but the latter statute contains nothing pertinent to this inquiry.

The provisions of the Act of 1911 clearly show that the Legislature intended that the committee on Meade Statue of the Philadelphia Brigade Association should have permanent representation on the Commission, in the personnel of its General Chairman. Colonel Frazer became a member of this Commission solely because he was general chairman of the committee above referred to.

It is clearly the Legislative intent that the Governor should formally commission the General Chairman of the Committee on Meade Statue of the Philadelphia Brigade Association, regardless of the individual who happens to hold that position.

If, therefore, this committee is still in existence and has a general chairman, I am of opinion that that person should be commissioned by you to serve in the place of the late Colonel Frazer.

If however, the Committee does not now exist, or if there be no such office as General Chairman of the Committee since the death of Colonel Frazer, then, under the Act of 1915 your power to fill the vacancy is unconditional.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

VOLUNTEER POLICE OFFICERS.

The terms of volunteer policemen, appointed under the Act of July 18, 1917, will expire when peace is declared between this Country and the countries with which it has been at war.

Office of the Attorney General,
Harrisburg, Pa., December 24, 1918.

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

Sir: I am in receipt of a communication from your Private Secretary of the 4th inst., enclosing communication to you of the 27th inst. from Samuel W. Jeffries, Superintendent Volunteer Police, Allegheny County, asking to be advised as to when the commissions of volunteer police officers will expire, whether on "the day peace is declared" or when "the army has returned and is demobilized."

The Act of July 18, 1917, P. L. 1062, in pursuance of which volunteer policemen are appointed, provides in Section 1 thereof, inter alia, as follows:

"That upon application to the Governor of the Commonwealth, the said Governor is hereby authorized, immediately after the passage of this act, *and at any time during the continuance of the present war with Germany, or in any war in which this Nation may become involved, to appoint and commission, at his discretion*
* * * volunteer police officers * * *."

The unmistakable intent of this provision, read in the light of the entire Act and the purposes thereby sought to be effected, is that volunteer police officers may be commissioned during and only for the continuance of a war in which our country is engaged. In harmony with this view, the existing commissions that have been issued under the Act are, as I understand, made to run for the term of the present war. Consequently, the termination of the war will, under the law and their terms, work their expiration. The return and demobilization of the armies called into existence to prosecute the war will not necessarily mark the ending of the war, as this may, in part, take place both before and after its conclusion in the legal sense. You are advised that the aforesaid existing commissions issued to volunteer police officers, pursuant to said Act, will expire, and the powers and duties vested in the holders thereof under said Act cease, when Peace has been duly declared between this Nation and the countries with which it is at war.

Respectfully yours,

EMERSON COLLINS,
Deputy Attorney General.

**OPINIONS TO THE SECRETARY OF THE
COMMONWEALTH**

OPINIONS TO THE SECRETARY OF THE COMMON-WEALTH.

IN RE SALE OF STATE REPORTS.

Under the Act of June 24, 1895, P. L. 212, the Pennsylvania State Reports and the Pennsylvania Superior Court Reports must be sold at the contract price during the term of the contract under which they are published and for five years after its expiration.

Office of the Attorney General,
Harrisburg, Pa., April 5, 1917.

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

Sir: I am in receipt of your inquiry as to the construction of the contracts for the printing of the Pennsylvania State and Pennsylvania Superior Court reports. These contracts are drawn in strict compliance with the provisions of Section 6 of the Act of June 24, 1895, P. L. 212, as follows:

"The reporter shall have no pecuniary interest in such reports, but the same shall be published under the supervision of the reporter, by contract to be entered into by the reporter, Secretary of the Commonwealth and Auditor General with the person or persons who, in addition to furnishing the State Librarian, for library and exchange, fifty copies of each volume, shall agree to publish and sell the said reports on terms most advantageous to the public and at the lowest price, which contract shall be for a term of ten years and shall provide that every volume printed under such contract shall be stereotyped and the plates thereof preserved and be delivered to the Secretary of the Commonwealth as the property of the State, within three years after the expiration of the contract, and shall provide that all volumes published under such contract shall be kept by the contractor at some convenient place within this Commonwealth, to be designated by the said Secretary, for the sale at the contract price to all citizens of the Commonwealth desiring the same during the term of his said contract, and for five years thereafter."

Your inquiry is directed to the meaning of the clause of the contract which provides that all volumes published under such contract

shall be kept by the contractor at some convenient place within the Commonwealth, to be designated by you, for sale at the contract price to all citizens of the Commonwealth desiring the same, "*during the term of his said contract and for five years thereafter.*"

The question has been raised as to how long under the contract the contractor must sell to citizens of the Commonwealth the books published thereunder at the contract price.

In my judgment, the language of the contract is clear and of itself answers your inquiry.

The term of the contract is fixed in the written agreement, in conformity with the Act of 1895, *Supra*, at ten years from the date the contract went into effect.

The contract, as required by the Act of 1895, provides that the contractor shall keep all volumes published under said contract at some convenient place within the Commonwealth, to be designated by the Secretary of the Commonwealth, and shall sell the volumes so published to citizens of this Commonwealth at the contract price "for and during the period of this contract and for the term of five years thereafter."

For example, if a contract was entered into to take effect July 1, 1905, the term of the contract was for ten years from that date or from July 1, 1905 to July 1, 1915 and the volumes published thereunder must be sold by the contractor to the citizens of this Commonwealth at the contract price during the whole of that term or period and for five years thereafter or until July 1, 1920.

The words used in the contract submitted, "for and during the period of this contract" must be construed to have the same meaning as the words used in the act, "during the term of his said contract."

It does not mean that every volume published under the contract shall be sold at the contract price for fifteen years from the date of publication but that all volumes so published shall be sold at the contract price during the term of the contract, that is from July 1, 1905, to July 1, 1915, and for five years thereafter.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

VOTE OF SOLDIERS IN MILITARY SERVICE.

Under the Constitution, art. viii, § 6, and the Act of Aug. 25, 1864, P. L. 990, and the Constitutional Amendment of 1909, P. L. 951, soldiers, *i. e.*, members of the National Guard who have been requisitioned into the service of the United States and members of the National Army under the conscription law, in actual military service are entitled to vote at the election in November, 1917.

Soldiers should be given opportunity to vote for township and municipal officers as well as county officers; but it is impracticable to furnish them ballots with the names of such township candidates printed thereon, or a pamphlet of information containing the names of the various township and district candidates.

The qualified electors in actual military service whose votes are to be taken are limited to those who are in service under a requisition from the President or by authority of this Commonwealth; this excludes soldiers of the United States Regular Army.

Office of the Attorney General,
Harrisburg, Pa., September 26, 1917.

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

Sir: I am in receipt of your favor of the 25th inst. relative to the Act of August 25, 1864, P. L. 990, entitled "An Act to regulate elections by soldiers in actual military service." You ask to be advised:

1. Whether the present election of 1917 is such a general election as is contemplated by the Act.

2. If so, whether it will be necessary for your Department to have the votes polled of the Pennsylvania troops not only for county officers, but also for local officers of the townships, such as constables, election officers, road supervisors, etc.

3. Does the law provide for the taking of the vote of certain Pennsylvania citizens in actual military service in Europe who may be enlisted in the Regular Army of the United States, but not enlisted in the Pennsylvania National Guard units or in the National Army created by selective conscription?

I shall take these up in their order.

1. At the time of the passage of the Act of August 25, 1864, the Constitution of 1838 was in force. That Constitution made no distinction between general and municipal elections. The Act was passed to carry into effect the amendment to Article III, which was adopted in 1864 as Section 4, as follows:

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

The Act of 1864, before referred to, provides in Section 1, *inter alia*, as follows:

"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," etc.

A reference to the election laws in force at the passage of the Act of 1864 shows that these laws recognized and made provision for Presidential or Electoral elections, which were held every four years in November, and were exclusively for the election of Presidential electors; general elections which were held in October, at which all State officers, Members of the Legislature, Congressmen, judges and county officers were elected; municipal and township elections which were held in the spring, and special elections to fill vacancies in offices regularly filled at the general election.

The word "general" was apparently used in the Act to distinguish the October or Fall elections from the Township or Spring elections, and the object of the Act of 1864 was apparently to permit the soldiers to vote for all offices to be filled at the Fall and Presidential elections.

As before pointed out, judges and county officers were elected at the general election,—and where therefore voted for by the soldiers in military service—They did not vote for township and municipal officers who were elected at the Spring election, as no provision was made for the taking of the Soldier Vote at such elections.

This was the status of the law when the Constitution of 1873 was framed, which adopted verbatim the Amendment of 1864 above quoted as Article VIII, Section 6.

The Constitution of 1873 made provision for general and municipal elections, the former of which were held in the fall and the latter in the spring. Again all judges and county officers were elected at the fall elections, while municipal and township officers were elected in the spring.

This provision continued until the adoption of the Amendments to the Constitution of 1909, when spring elections were abolished and provision was made that general elections should be held in even numbered years, and municipal elections in the odd numbered years and that all judges for the courts of the several districts, and all county officers, as well as city, ward, borough and township officers should be elected on the Municipal election day.

I do not think that there was any thought or intention in the adoption of this Amendment to take away from the Soldiers in military service the right to vote at the regular fall election for judges and county officers. The Constitutional provision (Article VIII, Section 6) secures to the soldiers in actual military service, under a requisition from the President of the United States or by the authority of the Commonwealth, the right of suffrage in *all* elections, and the changes in the Constitution as to the holding of elections should not be extended so as to deprive soldiers of their votes for offices which they unquestionably possessed previously without the clearest warrant and language which admits of no other conclusion.

I am, therefore, of the opinion that the division by the Constitution of 1873 of elections into general and municipal and the Amendment of 1909 above referred to are not intended to take away this right and that the Act of 1864 does apply to the election of 1917.

2. Considering your second question as to whether the vote of the men in military service should be taken for local officers of townships, such as constables, election officers, road supervisors, etc., as well as for county officers, the legal position is not so clear.

Under the Act of 1864, soldiers in actual service were given no opportunity of voting for these offices, because they were filled at the spring election at which there was no provision made for the taking of the Soldier Vote. Had the law provided for electing such officers at the fall election I have no doubt the right of the soldier to vote would have extended as well to such offices as to State and county offices.

The absence of the right of the soldier to vote for these offices was not in consequence of the denial of the right of such vote but for the want of machinery to take the vote at the spring election.

Having concluded that the Act of 1864 is operative as to the election of 1917, I see no reason why it should be restricted to judicial and county offices and should not extend to all offices to be filled at said election, except as specially provided in the Act.

You are, however, confronted by a practical as well as a legal question in preparing the form of the ballot and furnishing the information to the soldiers, because there are approximately 7,000 election districts in the State, with an average of something like twenty candi-

dates in each of the election districts, and approximately 140,000 candidates for the various offices to be filled at the election this year throughout the State.

In furnishing information to the voters last year under the instructions of this Department, you had a pamphlet printed giving the names of all the candidates to be voted for in the respective counties and districts of the State.

The preparation of such a pamphlet with regard to the county officers is feasible, but in view of the vast number of candidates for the various townships and election districts, it may be difficult to print a pamphlet containing all of the nominees in each township or district.

The ballot, however can be so prepared as to permit each soldier to vote for the candidates in his own county and district. I would suggest, however, that the pamphlet furnished for the information of the soldier voters should not include the names of any candidates except those for county, city and judicial offices.

Permit me to call your attention, however, to the provisions of Section 41 of the Act of 1864, which provides that it shall not apply to the election of members of council, or to ward and division officers, in the City of Philadelphia.

In recapitulation of the foregoing, I am of the opinion that the soldiers should be given an opportunity to vote for township and municipal officers as well as county officers, but that it is impracticable for your Department to furnish ballots with the names of such township candidates printed thereon, or a pamphlet of information containing the names of the various township and district candidates.

3. Both the Constitution and the Act of 1864 refer only to qualified electors in actual military service "under a requisition from the President of the United States, or by the authority of this Commonwealth."

I am of the opinion that the Act of 1864 should not be construed beyond the express language of the Constitution and the Act, and that the qualified electors in actual military service whose votes are to be taken, are limited to those who are in the military service under a requisition from the President of the United States, or by the authority of this Commonwealth. It doesn't apply and has never heretofore been construed to apply to soldiers who voluntarily enlisted in the Regular Army, and under present conditions should be limited to members of the National Guard who have been requisitioned into the service of the United States, or members of the National Army who have been selected under the conscription law.

This is in harmony with the precedent established during the Philippine Insurrection when the vote of the soldiers of the Pennsylvania

organizations stationed in the Philippine Islands was taken, but not that of Pennsylvanians who were serving there as members of the Regular Army.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

BONDS OF NOTARIES.

Bonds of notaries public and of prothonotaries and other county officers do not require revenue stamps.

Office of the Attorney General,
Harrisburg, Pa., December 28, 1917.

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

Sir: You have asked to be advised whether the war revenue stamps are required on the bonds of notaries public, and of prothonotaries and other county officers.

A notary public gives a bond pursuant to the Act of March 5, 1791, (3 Smith's Laws, 7), to the Commonwealth, for the faithful performance of the duties of his office.

The prothonotaries and other county officials are required to give bonds to the Commonwealth for the faithful performance of their official duties.

In the case of prothonotaries, the sureties are to be approved by two of the judges of the Court of Common Pleas, and also by the Governor.

It is settled beyond question that Congress cannot tax the agencies and instrumentalities of the State Government, or those of its municipal sub-divisions, because such municipal sub-divisions are part of the machinery of the State Government.

In the very well considered case of *State vs. Garton*, 32 Ind. 1, 2 Am. Rep. 315, it is held that

"Congress has no power to impose a stamp tax upon the official bonds given to the State by its officers."

In this case the bond was that of a sheriff of one of the counties of Indiana.

The bonds to which you refer are given to the Commonwealth, and required by the Commonwealth, for the purpose of carrying out its governmental authority. Those of notaries public, of prothonotaries, and other county officers, are in this class and I am of opinion that no Federal tax can be legally imposed upon them.

Very truly yours,

WILLIAM M. HARGEST.

Deputy Attorney General.

IN RE SOLDIERS' VOTE.

The State of Pennsylvania, even if it so desired, has no means to force those in command of the army of the United States to permit its soldiers overseas to vote. Even if it had such power it should not exercise it if those in charge of our military force state it as their deliberate judgment that it is not practicable to secure the votes of soldiers until military conditions have considerably changed, so there is nothing to be done except accede cheerfully to the ruling of the War Department as to taking the votes of soldiers now in France.

Office of the Attorney General.
Harrisburg, Pa., October 2, 1918.

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

Sir: I have your inquiry relative to the course of action of your Department with reference to taking the vote of the Pennsylvania soldiers in the American Expeditionary Forces overseas, together with copies of the letter from the Adjutant General of Pennsylvania to the Adjutant General of the United States Army, dated July 24, 1918, and the reply from the Adjutant General of the Army, dated September 3, 1918.

Article VIII, Section 6 of the Constitution provides:

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

The method of taking the vote of qualified electors in actual military service is provided for in the Act of August 25, 1864, P. L. 990, which calls for the appointment by the Governor of Commissioners to take such vote at the quarters, in field or camp, of the soldiers in such military service.

On June 28, 1918, the War Department in its endeavor to perfect arrangements under which it would be possible to take the votes of members of the American Expeditionary Forces at elections, without seriously interfering with military operations, issued General Orders, No. 63, and suggested that the States amend their present election laws so as to validate votes of soldiers that might be cast under limitations which the Department found necessary to prescribe.

Paragraph (f) of this Order is as follows:

"Where the State laws require the sending of election commissioners to take the soldiers' votes, the military authorities will place at the disposal of such commissioners every assistance that is found to be compatible with the exigencies of the military situation. In most instances, however, it will be impracticable to permit commissioners to take the votes."

On June 24, 1918, the Adjutant General of Pennsylvania, by direction of the Governor, wrote to the Adjutant General of the Army, propounding certain inquiries as to the method of taking the vote of the Pennsylvania soldiers overseas in conformity with General Orders, No. 63. To this the Adjutant General of the Army replied on September 3, 1918, as follows:

"I have been directed by the Secretary of War to acknowledge your communication of July (June) 24, 1918, with reference to General Orders No. 63, W. D. 1918.

"The War Department is desirous of assisting the States in every way possible to take the votes of members of the American Expeditionary Forces in both primary and general elections when the taking of same will not seriously interfere with military operations. *However, owing to the conditions and constant movements of our military forces in Europe, it is not considered practicable to permit commissioners to go to France or England for this purpose; nor is it practicable to attempt to secure in any manner the votes of our soldiers abroad until military conditions are such as to permit the taking of the votes as prescribed in paragraph (f) of G. O., 63, W. D. 1918.*

"*For reasons as stated above, the War Department cannot permit, at this time, the sending of election commissioners abroad as requested by the State of Pennsylvania.*"

In this communication the Adjutant General of the Army states that it is not, at this time, practicable to permit Commissioners to go to France or England for the purpose of taking the vote of soldiers there, nor to attempt to secure in any manner the votes of our soldiers abroad until military conditions are such as to permit the taking of the votes as prescribed in paragraph (f) of said General Orders, No. 63. Definite refusal is therein given by the War Department to the sending of election Commissioners abroad as requested by the State of Pennsylvania.

In my judgment there is nothing further for your Department, or the other officials of the State of Pennsylvania concerned, to do than to submit to the ruling of the War Department. Pennsylvania soldiers in the Expeditionary Forces overseas have the constitutional and statutory right to vote at general elections, but that right, as well as many others, must be enjoyed in such manner as not to endanger the existence of the Republic. If military operations in which the soldiers from this State are engaged are of such a nature that in the judgment of the Supreme Command their success would be interfered with or imperiled by an attempt to take the soldier vote, then this right will have to be, for the time, foregone. It, as well as many other constitutional rights, is subordinate to the supreme duty of defending the Nation in time of peril. *Salus reipublicae suprema lex.*

The State of Pennsylvania, even if it so desired, has no means to force those in command of the Army of the United States to permit its soldiers overseas to vote. Even if it had such power it should not exercise it if those in charge of our military forces state it as their deliberate judgment that it is not practicable to secure the votes of soldiers until military conditions have considerably changed.

In my judgment there is nothing to be done except to accede cheerfully to the ruling of the War Department. There will, therefore, be no duties for you to perform relative to taking the vote of Pennsylvania electors in the American Expeditionary Forces at the coming election.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

CHARTER.

A church charter, properly certified in the past, but not enrolled, may be now transmitted by the Governor with his order of enrollment thereon.

Office of the Attorney General,
Harrisburg, Pa., December 11, 1918.

Mr. John F. Whitworth, Corporation Clerk, Office of the Secretary of
Commonwealth, Harrisburg, Pa.

Sir: I am in receipt of your communication of the 18th inst., transmitting a parchment purporting to contain the Articles of Association of The Rector Church Wardens and Vestrymen of Zion Church, Philadelphia County, together with certain correspondence relative thereto.

The Articles of Association were drawn pursuant to the provisions of the Act of April 6, 1791 (3 Sm. L. 20), entitled:

“An act to confer on certain associations of the citizens of this Commonwealth the powers and immunities of corporations, or bodies politic in law.”

and there appears thereon the signature of William M. Meredith, Attorney General, under the date of February 24, 1864, certifying that the objects, articles and conditions contained in the instrument are lawful. There also appears thereon, a like certificate dated March 19, 1864, signed by the Judges of the Supreme Court, authenticated by the Prothonotary and with the seal of the court attached. There does not appear on the parchment an order of the Governor to the Master of Rolls, requiring the said Master to enroll the instrument at the expense of the applicants as required by the statute.

You state that the records of your department fail to disclose the enrollment of any instrument for the formation of a corporation by this name, and you therefor inquire whether the Governor can now legally endorse an order of enrollment on the parchment, and whether it can be legally received and recorded by you upon payment of the proper statutory charges.

I understand the incorporators or their successors have, for many years, established and maintained a church, and have been conducting themselves as though legally incorporated.

The Act of 1791 has never been expressly repealed, although it would seem that an implied repeal has been occasioned by the Constitution of 1873, and the Corporation Act of 1874, in so far as the institution of proceedings for the creation of a new corporation is concerned, and such is the opinion of the court in *Commonwealth v. Order of Vesta*, 2 Dist. 254. I am of the opinion, however, that this

statute of 1791 is still in force so as to permit, at this time, the enrollment of this particular instrument upon its proper transmission, and upon payment of the proper statutory fee.

Under the procedure provided by the Act of 1791, the persons desiring to form a corporation were required to do nothing after they had filed their Articles of Association with the Attorney General other than to pay the proper enrollment fee, after the instrument had been received in due course by the Master of Rolls. The statute required the Attorney General to satisfy himself that the articles, objects, etc., were legal and in proper form, and if he was so satisfied, to transmit the instrument to the Supreme Court with a certificate of his approval endorsed thereon. The parchment before me shows that this was done on the twenty-fourth day of February, 1864. Upon its reception by the Justices of the Supreme Court, they likewise were directed to peruse the instrument, and if they found the articles and objects in proper form, and in conformity with law, to send it direct to the Governor, with their certificate of approval endorsed thereon. The certificate appears on the instrument signed by the Judges of the Supreme Court, whose action is authenticated, under the seal of the court, by the Prothonotary, and bearing the date of March 19, 1864.

The merits of the application having been passed upon, it is not clear why the remaining steps were not completed, and the instrument transmitted for enrollment with the executive order endorsed thereon. Whatever may have been the cause, it does not appear that it was due to any fatal act or omission on the part of the individuals interested.

I am not unmindful of the fact that the incorporators and their successors of this company have perhaps slept on their right in this matter for a considerable period of time. I am not convinced, however, that their conduct constitutes a fatal omission. No right or interest of the Commonwealth will suffer by the enrollment of this instrument and justice indicates that it should be done. This is a case which calls for liberal construction, and you are advised that the instrument may be now transmitted by the Governor with his order of enrollment endorsed thereon, and that it may be received and enrolled by you, upon payment of the proper statutory charge.

The parchment and correspondence I return herewith.

Faithfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

OPINIONS TO THE AUDITOR GENERAL.

OPINIONS TO THE AUDITOR GENERAL.

TAXATION UPON ORIGINAL WRITS.

Writs of *levari facias*, *feri facias*, *testatum fieri facias*, *habere facias possessionem*, and bills in equity are not original writs taxable under the provisions of the Act of June 5, 1915, P. L. 847, but a summons issued in equity under the Act of June 5, 1915, is an original writ so taxable.

Office of the Attorney General,
Harrisburg, Pa., January 25,, 1917.

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

Sir: The Attorney General is in receipt of your favor of January 17, 1917, enclosing letter of Gilbert Rodman Fox, Esq.

You ask to be advised whether, under the Act of April 6, 1830, P. L. 272, writs of *Levari Facias*, *Fieri Facias*, *Testatum Fieri Facias*, *Habere Facias Possessionem*, Bills in Equity and Summons in Equity, under the Act of June 5, 1915, P. L. 847, are taxable.

The Act of April 6, 1830, in so far as it applies to this inquiry, provides, in Section 3:

“The Prothonotary of the Courts of Common Pleas
* * * shall demand and receive on every original
writ issued out of said court * * * the sum of fifty
cents.”

The question is whether these proceedings are “original writs” within the meaning of this Act of Assembly.

In *Welsh vs. Haswell*, 11 *Vermont* 85, 88, it is said 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 *præcipe*.”

In an opinion given to you dated June 27, 1916, I said, with reference to the term “original writ,” as used in this Act of Assembly:

“It is rather used in the sense of being the first writ or process to compel the appearance or bring the party into Court.”

A *Fieri Facias* is a writ of execution directing the Sheriff to cause the sum or debt to be made out of goods and chattels of the judgment

debtor. The foundation of the writ is a judgment for debt or damages. The judgment could only be obtained after an original writ had brought the parties into Court. A Fieri Facias based upon that judgment could, therefore, hardly be said to be an original writ.

A Levari Facias is much less an original writ, because it is a writ of execution directing the Sheriff to sell the goods and chattels which have theretofore been levied upon, usually by a writ of Fieri Facias.

A writ of Habere Facias Possessionem is based upon a judgment in ejectment, and commands the Sheriff to cause the Plaintiff to have possession of the land. The parties must have brought into Court the original writ of ejectment before the writ of Habere Facias Possessionem could issue, and therefore it cannot be said to be an original writ.

I am of opinion that none of these writs are original writs.

Bills in Equity, prior to the Act of June 5, 1915, P. L. 847, were filed, containing a notice to the defendant to appear. These bills, with the notice, were served. There was no praecipe filed in the Court and no writ issued out of the Court, and for that reason I am of opinion that Bills in Equity of themselves do not constitute "original writs" within the meaning of the Act of 1830.

But, where a summons has been issued in equity, under the Act of June 5, 1915, P. L. 847, such a summons would be an original writ, and, therefore, taxable.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

APPROPRIATION FOR RETURN OF COLLATERAL INHERITANCE TAX ERRONEOUSLY PAID.

An Act of Assembly making an appropriation for the refunding of collateral inheritance tax erroneously paid, and not recoverable under the Act of March 25, 1901, P. L. 59, is special legislation and within the prohibition of Article III of Section 7 of the Constitution of Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., February 13, 1917.

Honorable A. W. Powell, Auditor General of Pennsylvania, Harrisburg, Pa.

Sir: In answer to your inquiry of the 13th inst., addressed to the Attorney General, asking to be advised as to the validity of the appropriation made by Act No. 265 of the General Assembly, approved May 28, 1915, P. L. 615, I beg to advise you as follows:

The Act makes an appropriation, refunding to Paul C. Wolff, executor of the estate of Thomas H. Lane, moneys alleged to have been erroneously paid into the State Treasury.

You state that you have now before you for audit and settlement a requisition in the sum of \$291.23, to reimburse the said executor for collateral inheritance tax alleged to have been paid in error and not recoverable under the provisions of the Act of 1901, on account of the delay in making application for the refund.

The Act referred to is the Act of March 25, 1901, P. L. 59, being an amendment of the Act of June 12, 1878, providing for an extension of the limitation of time within which application may be made to the State Treasurer to refund and pay over to the executor, administrator, etc., who may have paid any collateral inheritance tax in error, to the amount of such tax thus erroneously paid. The Act provides that all such applications for repayment of such tax erroneously paid in the State Treasury shall be made within two years from the date of such payment, except in certain cases therein provided. This is a general Act, applicable to all persons alike.

The Act No. 265 before you is a special Act, passed to meet the conditions of the specific case because for some reason there had been delay, as you state, in making an application for the refund under the Act of 1901, so that it was not recoverable under that Act.

It was just this sort of Special Legislation which the framers of the Constitution meant to prohibit by Article III, Section 7, of the Constitution, providing that the General Assembly shall not pass any local or special law, inter alia, "refunding moneys legally paid into the Treasury."

Of course, if an application for refund had been made within the limitation of time provided by the Act of 1901 and had, in due course, been approved under the provisions thereof, an appropriation to provide for the payment of such refund would have been entirely proper, but such were not the facts in this case.

I am obliged to advise you, therefore, that the payment of this appropriation may not be lawfully made.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE AUDIT OF BOOKS OF AUDITOR GENERAL'S OFFICE.

The general deficiency bill of 1917 is sufficiently broad to justify the Auditor General in employing a responsible audit company to audit the books of his department.

Office of the Attorney General,
Harrisburg, Pa., March 15, 1917.

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

Sir: This Department is in receipt of your favor of the 15th inst., asking "whether or not, under the General Deficiency Bill, just passed, it would be a legal expenditure for the Department to contract with a responsible Audit Company of unquestioned repute and standing, to audit and certify the books of this Department," the purpose of the audit being in the nature of a check-up before turning the office over to your successor.

The General Deficiency Bill, referred to, appropriates to the Auditor General's Department the sum of \$29,000 for the purposes therein set forth, among them "the payment of compensation and expenses of persons appointed in pursuance of law to examine the accounts of officers or individuals receiving or disbursing moneys of the Commonwealth * * * the employment of extra clerical assistance * * * and all other necessary expenses in the proper administration of the Department." The item "employment of extra clerical assistance" refers to the section in the General Appropriation Bill of 1915, as follows:

"For the payment of such extra clerks as the Auditor General may find it necessary to employ for the purpose of carrying out the recommendations of the Economy and Efficiency Commission, balancing and transferring accounts, making new indices, or for the purpose of rendering any other general assistance to the regular clerical force, two years, the sum of thirty-five thousand dollars (\$35,000): the necessity for the employment of extra clerical assistance and monthly wages of all extra clerks employed to be determined and fixed by the Auditor General."

This gives the Auditor General a wide discretion as to the necessity of employing extra clerical assistance and the wages to be paid the clerks so employed.

The General Appropriation Bill of 1915 contains also the following clause:

"For the payment of postage, express charges, cost of filing liens, and *contingent expenses*, two years, the sum of sixteen thousand dollars (\$16,000)."

The item in the Deficiency Bill—"and all other necessary expenses in the proper administration of the Department"—is broader than the language in any of the items in the General Appropriation Bill, above referred to.

In addition, the item in the General Deficiency Bill

"For the payment of compensation and expenses of persons appointed in pursuance of law to examine the accounts of officers or individuals receiving or disbursing moneys of the Commonwealth,"

is very much broader in scope than the corresponding item in the General Appropriation Bill, which provides:

"For the payment of compensation and expenses of persons appointed in pursuance of law to examine the accounts of officers, or of individuals required by law to make report to the Auditor General of moneys due the Commonwealth."

It is well known that it is the custom in large business enterprises to employ a responsible audit company to audit and certify the books at certain times. The practice is entirely reasonable, it does not disarrange the regular force and, on the other hand, does not require the employment of extra clerks whose services would not be needed except at the time of the audit. It is entirely proper that there should be an audit and check-up of books and accounts previous to turning your office over to your successor, in order that, when he assumes charge, he may be satisfied that the books and accounts are in proper shape.

I understand from your letter that the regular force of the office is employed about the ordinary duties, and to assign some of them to a special audit of the books would interfere with the current work which it is highly important should be continued without interruption.

I am of the opinion that the language contained in the General Deficiency Bill—

"For the payment of compensation and expenses of persons appointed in pursuance of law to examine the accounts of officers or individuals receiving or disbursing moneys of the Commonwealth * * * the employment of extra clerical assistance * * * and all other necessary expenses in the proper administration of the department,"

is sufficiently broad to justify the employment of a responsible audit company of unquestioned repute and standing to audit the books of

your Department provided, in your judgment, such step is necessary, and it cannot be done by the regular force of your Department without interfering with the current work of the office.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

FRANKLIN FIRE INSURANCE COMPANY.

A fire insurance company incorporated prior to April 19, 1906, with a capital of \$400,000 paid bonus on that sum. For the purpose of making good an impairment of its capital it reduced the par value of its shares from \$100 per share to \$25 per share and issued \$300,000 worth of new stock, the amount necessary to restore its capital to \$400,000. *Held*, that no bonus was due on the \$300,000 thus issued.

Office of the Attorney General,
Harrisburg, Pa., March 22, 1917.

Honorable A. W. Powell, Auditor General of Pennsylvania, Harrisburg, Pa.

Sir: Some time ago you requested to be advised as to whether the bonus was due upon an increase of the capital stock of the Franklin Fire Insurance Company.

The facts I understand to be as follows:

The Franklin Fire Insurance Company was incorporated prior to April 19, 1906, with a capital of \$400,000, and bonus thereon was paid. The company filed a certificate on January 12, 1907, containing a return made on September 10, 1906, which showed that a special meeting of the corporation was held on the latter day and that for the purpose of making good the impairment of capital caused by the earthquake and fire of San Francisco, the corporation had regularly reduced the par value of its shares from \$100 a share to \$25 a share, and issued \$300,000 worth of new stock, the amount necessary to restore the original capital of \$400,000.

The question is whether a bonus should be settled on the \$300,000 of new stock issued pursuant to the resolution of September 10, 1906.

This question resolves itself into a construction of Section 3 of the Act of February 9, 1901, P. L. 3, which provides, in part, as follows:

“Upon the actual increase of the capital stock or indebtedness of such corporation made pursuant thereto, it shall be the duty of the President or Treasurer of such corporation, within thirty days thereafter, to make a

return to the Secretary of the Commonwealth, under oath, of the amount of such increase actually made, and concurrently therewith, such corporation shall pay the State Treasurer, for the use of the Commonwealth, such bonus on the actual increase shown by said return as shall then be described by law."

The precise question here is whether the bonus should be measured by the aggregate amount of the capital or by the number of shares into which it is divided. All of the bonus acts use the words "capital or amount of capital." They do not impose a bonus on the shares.

In the case of *Commonwealth vs. Independent Trust Company*, 233 Pa. 92, that corporation was organized in 1889 with \$1,000,000 capital on which it paid bonus. It decreased its capital stock in 1903 to \$75,000, and, subsequently, in 1909, increased it to \$2,000,000. The company contended that it was required to pay bonus only upon the actual increase of \$1,000,000, while the Commonwealth asserted that bonus was due on \$1,925,000.

Mr. Justice Elkin, speaking for the Court, said:

"As the situation stands, the Commonwealth has received a bonus on \$1,000,000, and if now permitted to collect a bonus on an additional \$1,925,000 it will then have been paid a bonus on \$2,925,000, although, in fact, the corporation never issued more than \$2,000,000 of capital stock. The position of the Commonwealth in this respect is technical and entirely ignores the equities of the case. *The evident intention of the Legislature was to impose a bonus charge upon the amount of capital stock, and not to exact more than the total capitalization warrants.* When an incorporated company pays bonus upon the amount of its original capital and upon any subsequent increases thereof, the requirements of the law have been satisfied."

I think the reasoning of the case cited applies to the question propounded and I advise you that the Franklin Fire Insurance Company of Philadelphia is not required to pay bonus upon the \$300,000 represented by additional shares of stock because it originally paid a bonus on \$400,000, which amount included the \$300,000 subsequently issued.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE WORKMEN'S INSURANCE FUND.

It is proper to allow the employes of this Bureau a supper fee to be paid by the State when night work prevents said employes from taking their evening meal at the usual place.

Office of the Attorney General,
Harrisburg, Pa., March 29, 1917.

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

Sir: Your favor of recent date asking to be advised whether the employees of the State Workmen's Insurance Fund, located in Harrisburg, may be allowed a supper fee of fifty cents when required to work at night, is at hand.

I am advised that the employees to whom you refer are on an annual salary basis, and that a resolution of the State Workmen's Insurance Fund has been adopted, allowing such a supper fee.

If the night work prevents the employees to whom it is allowed from taking their evening meal at the usual place, and requires an additional expenditure therefor by them, it is a proper allowance.

The Act of June 2, 1915, P. L. 762, provides in Section 26:

"The Board may * * * appoint at salaries fixed by the Board with the approval of the Governor, such underwriters, bookkeepers, controllers, auditors, inspectors examiners, medical advisers, agents, assistants and clerks, as may be necessary for the proper administration of the Fund, and the performance of the duties imposed upon the Board by the provisions of this Act."

The appropriation made is "for the expenses of the organization and administration of said Fund."

I assume that the resolution passed by the State Workmen's Insurance Fund is intended to cover the additional expense to which the employees are put by the night work imposed on them, and it is within the power of the State Workmen's Insurance Fund to provide for that additional burden thus imposed.

I therefore advise you that the allowance for the purposes herein indicated is a proper charge, and you are justified in drawing your warrant for the payment thereof.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE COLLECTION OF TAXES ON GROSS PREMIUMS FROM REAL ESTATE TITLE AND TRUST COMPANY OF PHILADELPHIA.

Original settlements form the basis of suits for the collection of taxes due the Commonwealth by corporations. No suit can be brought to enforce such collection on a mere docket entry in the Auditor General's Department.

While the statute of limitations does not run against the Commonwealth, tax settlements more than thirty years old fall within the class that the law denominates stale claims; and, in the absence of any data, the accounting officers would not be justified in making new settlements for the tax.

There was not during the years 1886, 1887 and 1888, and there is not now, any authority in law for the imposition of a tax on gross premiums of a real estate title insurance or trust company.

Where there is no proper evidence of tax settlements and no authority in law to make them, they should be stricken from the records of the Auditor General's Department.

Office of the Attorney General,
Harrisburg, Pa., March 31, 1917.

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

Sir: Some time ago you requested an opinion of this Department as to what action should be taken against the Real Estate Title and Trust Company of Philadelphia to collect taxes on gross premiums, which seem to have been settled against the company in 1886-87-88.

The facts as I understand them are as follows:

The Real Estate Title Insurance Company of Philadelphia was incorporated March 28, 1876, for "insurance of owners of real estate, mortgages, and others interested in real estate, from loss by reason of defective titles, liens and encumbrances."

The name of this company was changed December 6, 1881, by the Common Pleas Court of Philadelphia County, to Real Estate Title Insurance and Trust Company of Philadelphia, its present title. On July 1, 1881, this corporation accepted the provisions of the Act of May 24, 1881, P. L. 22, which was a supplement to the General Corporation Act of 1874, whereby real estate title insurance companies are authorized "to receive deposit and trust funds, to purchase and sell the same, to insure fidelity of trustees, etc., to act as assignee, trustees, etc., to act as agent for issuing of stocks and bonds, and to manage the same, to become surety, to take real estate and convey the same, etc." This company filed with the Secretary of the Commonwealth a certificate of its acceptance of the provisions of the foregoing Act, pursuant to Section 6 thereof.

On May 11, 1889, it accepted the provisions of the Act of May 9, 1889, P. L. 159, whereby additional powers were conferred upon real estate title insurance companies.

By virtue of its incorporation and its acceptance the Acts of 1881 and 1889, *supra*, this company is not only a real estate title insurance company, but also a trust company under the supervision of the State Banking Department.

It has never engaged in the general insurance business or insurance business of any kind except that of real estate title insurance, as provided by its original charter.

The Auditor General and State Treasurer, during the years 1886, 1887 and 1888, undertook to impose a tax upon the gross premiums of said company, and according to the docket in the Auditor General's Department settled an account for said tax for the semi-annual periods above referred to, but the tax was not paid, and no effort seems to have been made to force the collection thereof. The original settlements cannot be found and there is no data on file in the Auditor General's Department showing why these settlements were made. There is no record or evidence of said settlements except the mere docket entry referred to, giving the date of the settlement, and the amount thereof, the period of time covered thereby and the character of the tax.

The original settlements which would naturally be the basis of a suit for the collection of these taxes, are not in existence and no suit could be brought to enforce collection, on a mere docket entry in the Auditor General's Department.

While the Statute of Limitations does not run against the Commonwealth, it will be noted that these settlements are thirty years old, and the claim is one that the law denominates a "stale claim." I do not think that the accounting officers of this Commonwealth, in the absence of any data, would now be justified in making new settlements for said tax. There was not during the years 1886, 1887 and 1888, and there is not now, any authority of law for the imposition of a tax on the *gross premiums* of a real estate title insurance or trust company.

The tax on gross premiums was first imposed on domestic insurance companies by Section 6 of the Act of March 20, 1877, P. L. 6. This Act was followed by the Act of June 7, 1879, P. L. 112, which in Section 8 required the payment of said tax upon the entire amount of premiums received by *insurance companies*. The Act of June 10, 1881, P. L. 101, Section 7, related to the same subject and class of companies.

The settlements under consideration must have been made under the Acts of 1877, 1879, or 1881, *supra*. None of said Acts confers upon the Auditor General and State Treasurer the right to make a settlement for tax on the gross premiums of a real estate title insurance or trust company. The companies made subject to the provisions of said Act are insurance companies. Real estate title in-

insurance companies are a particular class of insurance companies and are not designated in said acts, nor are trust companies included therein. Title insurance or trust companies are taxable upon their capital stock by virtue of the Act of June 13, 1907, P. L. 640.

For the reason that there is no proper evidence of the settlements and for the reason that there seems to have been no authority of law to make the settlements, I advise you that the collection of these settlements cannot be made and they should be stricken from your record.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

COLLATERAL INHERITANCE TAX.

The inheritance which an illegitimate child receives from its mother under the Act of July 10, 1901, P. L. 639, is direct, and not subject to collateral inheritance tax.

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

Sir: We have your letter of recent date enclosing a letter of Edward Rupp, Register of Wills of your county, which is herewith returned.

You ask to be advised whether the interest of a child born out of wedlock which the child inherits from the mother, is subject to collateral inheritance tax.

The Act of July 10, 1901, P. L. 639, provides, among other things:

"The common law doctrine of *nullius filius* shall not apply as between the mother and her illegitimate child or children. But the mother and her heirs, and her illegitimate child and its heirs, shall be mutually liable one to the other, and shall enjoy all the rights and privileges one to the other, in the same manner and to the same extent, as if the said child or children had been born in lawful wedlock."

Section 2 of this Act provides:

"The mother of an illegitimate child, her heirs and legal representatives, and said illegitimate child or children, its or their heirs and legal representatives, shall have capacity to take or inherit from or through

each other personal estate, as next of kin, and real estate as heirs in fee simple, or otherwise, under the intestate laws of this Commonwealth, in the same manner and to the same extent, subject to the distinction of half-bloods, as if said child or children had been born in lawful wedlock."

Section 4 of this Act provides:

"The intent of this Act is to legitimate an illegitimate child and its heirs, as to its mother and her heirs."

This Section was amended in 1903, but not in any way so as to affect this question.

It is apparent from this statute that the inheritance which an illegitimate child receives from its mother is intended to be a direct inheritance, and not collateral, and therefore, in my opinion, it is not subject to collateral inheritance tax.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

FILING INVENTORY FOR COLLATERAL INHERITANCE TAX.

Under section 15 of the Act of March 15, 1832, P. L. 139, and section 15 of the Act of May 6, 1887, P. L. 79, the Commonwealth is authorized to compel the filing of an inventory by an executor or administrator whenever essential to the proper ascertainment of the amount of the collateral inheritance tax.

Office of the Attorney General,
Harrisburg, Pa., June 7, 1917.

Honorable Charles A. Snyder, Auditor General, Harrisburg, Pa.

Sir: Some time ago you asked to be advised whether the Commonwealth can compel an executor or administrator to file an inventory in the office of Register of Wills.

Section 15 of the Act of March 15, 1832, P. L. 139, requires executors and administrators to make an inventory of all the goods, chattels and credits of the deceased and to file the same in the Register's Office, within thirty days from the time the administration is granted.

Section 15 of the Act of May 6, 1887, P. L. 79, empowers the Orphans' Court to cite the executors or administrators to file an account or to issue a citation to them, to appear on a day certain and show cause why the collateral inheritance tax should not be paid.

The Act of 1887 is silent upon the question of citing the administrator or executor, to file an inventory, but the Act of 1832 above referred to makes it the duty of the executor or administrator to file an inventory, and if such duty has not been performed it can be enforced at the instance of any person who is interested in the estate.

If it be essential to the proper ascertainment of the amount of the collateral inheritance tax that an inventory should be filed, I am of opinion that the Commonwealth would have such an interest as would authorize proceedings in its behalf to compel the filing of an inventory.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General,

STATE TAX ON WRITS.

The Act of April 6, 1830, P. L. 272, does not justify the imposition of any tax upon judgments, orders or decrees of the Court of Quarter Sessions, either in criminal prosecutions or in desertion, non-support or juvenile cases.

Office of the Attorney General,
Harrisburg, Pa., February 13, 1918.

Mr. C. W. Myers, Chief, County Bureau, Auditor General's Department, Harrisburg, Pa.

Dear Sir: Some time ago you transmitted to this Department the letter of John A. Watson, for the purpose of assessing the State tax, under the Act of April 6, 1830, P. L. 272, and you asked for an opinion thereon.

Mr. Watson raised the following questions:

1. Whether the sentences and orders of the Court of Quarter Sessions, being judgments of a court of record, are taxable.
2. Whether the judgments and orders in desertion, non-support and juvenile cases, are taxable.

Both questions may be answered together.

Section 1 of the Act of Assembly provides, in part:

"The officers hereinafter mentioned within this Commonwealth, are hereby authorized to demand and receive, in addition to the fees heretofore required by law, the following sums for and on account of the Commonwealth, which shall be paid by the parties applying for the process or services mentioned, and which sums shall be taxed in the bill of costs, to abide the event of the suit, and be paid by the losing party."

The officers mentioned in the act are, "the Prothonotary of the Supreme Court," "the prothonotaries of the several circuit courts," "the prothonotaries of the courts of common pleas and of the district courts," "the several recorders of deeds," "the several registers of wills."

Clerks of the quarter sessions courts are not designated.

Section 3 provides:

"The prothonotaries of the courts of common pleas * * * 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 writ 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."

It will be noted that nothing in the section quoted describes judgments, orders or decrees of any kind of a court of quarter sessions.

Moreover, the first section of the act, as above quoted, shows that the tax shall be paid "by the parties applying for the process or services mentioned" and it shall be taxed as costs and finally paid "by the losing party."

In the proceedings in the quarter sessions to which Mr. Watson refers, the Commonwealth is usually the party "applying for the process."

It is not intended that the Commonwealth should impose a tax on these original writs in proceedings in which it is a party.

The tax referred to in this Act of Assembly is intended to be imposed upon private individuals and upon private litigation.

I, therefore, advise you that the Act of Assembly above referred to, does not justify the imposition of any tax upon any judgments, orders, or decrees of the court of quarter sessions, either in criminal prosecutions or in desertion, non-support, and juvenile cases.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

RETIREMENT OF STATE EMPLOYEES.

The Retirement Act of June 4, 1915, P. L. 173, amended by the Act of June 7, 1917, P. L. 559, provides that a State employe, when retired under its terms, "shall receive during the remainder of his life, or during the continuance of such disability or incompetency, one-half of the salary which he would have received had he remained in active service."

The maintenance of the superintendent of a state hospital and his family is not "salary" under this act, although the Act of April 14, 1845, P. L. 440, creating his office, required, as a condition to his employment, that such superintendent and his family should reside in the asylum: *Held*, therefore, that he was entitled to only one-half of the salary of \$5,000, which was the stipulated sum which he received at the date of his retirement, and not to any part of the estimated value of the maintenance of himself and his family.

Office of the Attorney General,
Harrisburg, Pa., December 3, 1918.

Honorable Charles A. Snyder, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of a communication from Dr. H. L. Orth, concerning the amount due to him, as the retired superintendent and physician of the Pennsylvania State Hospital, under the Act of June 4, 1915, P. L. 173, as amended by the Act of June 7, 1917, P. L. 559.

Dr. Orth states that a difference of opinion has arisen as to the amount to which he is entitled.

It is our rule to give opinions only to the heads of the departments of the State Government, and therefore we address this opinion to you.

The facts as I understand them, are as follows:

The resignation of Dr. Orth was accepted by the Governor November 29, 1917, to become effective November 30, 1917, under the retirement act. On October 27, 1917, the President and Secretary of the Board of Trustees of the Pennsylvania State Lunatic Hospital certified that Dr. Orth "entered upon the duties of his office on the second day of November, 1891; that he has been on continuous duty until the present time and that he is and has been compensated at the rate of \$12,500 per annum; viz., \$5,000 in cash and maintenance for himself and family very conservatively estimated at \$7,500."

The Act of April 14, 1845, P. L. 440, creating the Pennsylvania State Lunatic Hospital, provides, among other things, that the superintendent "shall reside in the asylum; he shall be a married man, and his family shall reside with him."

The salary of the superintendent of this institution has been fixed from time to time, in gradually increasing amounts, and on January

17, 1907, the Board of Trustees fixed it at the sum of \$5,000. No mention of maintenance in connection with the salary, was made at any time by the Board of Trustees, except on February 14, 1851, when it appears:

“On motion of Dr. Burden it was resolved that the salary of the superintendent of the hospital be fixed at \$1,500 per annum, with board of himself and family.”

No official act of the Board of Trustees fixing the equivalent in money, of the maintenance to Dr. Orth and his family has been made, but the President and Secretary have certified that in their opinion it amounted, at the time of the retirement, to \$7,500 per annum.

The retirement Act provides that a State employe, when retired under its terms,

“shall receive during the remainder of his life, or during the continuance of such disability or incompetency, one-half of the salary which he would have received had he remained in active service.”

The question, therefore, turns upon the meaning of the word “salary” and in the concrete the question is, whether Dr. Orth shall receive one-half of \$5,000, which was his fixed salary, or one-half of \$12,500, which represents his fixed salary plus the estimated amount of the maintenance for himself and family.

Salary is defined to be

“The recompense or consideration stipulated to be paid to a person periodically for services, usually a fixed sum to be paid by the year, half-year or quarter.”—*Century Dictionary*.

In the majority of the cases defining the term “salary,” it is held to be “a fixed sum.”

People vs. Myers, 11 N. Y. Supp. 217, 218.

Comth. vs. Bailey, 3 Ky. Law. Rep. 110, 114.

Brandon vs. Askew, 54 South 605. 608; 172 Ala. 160.

Martin vs. Santa Barbara County, 38 Pac. 687, 688; 105 Cal. 208.

It is rarely held to include “recompense, reward or compensation” in addition to the fixed sum. Therefore, unless it is apparent that the Legislature intended emoluments to be included in the term “salary,” it should not be given that interpretation.

I am convinced that there was no such legislative intent. It would have been very easy for the Legislature to have expressed such an intention, and leave no doubt, if that were in the legislative mind. When we speak of “salary” it does not convey the idea of undesignated allowances or emoluments.

There is nothing in the context to indicate that the Legislature meant to use that term in this Act in a broader sense than it usually conveys.

The interpretation given the Act of Congress providing for the retirement of army and navy officers may shed some light on this matter. The Act of March 4, 1915, Chap. 167, Section 6, 4 U. S. Comp. Stat. Section 2449B, provides that any officer of the army and navy may "on his own application be retired by the President at 75 per cent of the pay of the rank upon which he is retired."

Officers, while in the actual service of the army and navy, in addition to the pay, are entitled to certain allowances, but I am advised that when they are retired the allowances are not taken into consideration in arriving at the sum to which they are entitled.

I am also of opinion that the maintenance of Dr. Orth could not be considered salary under the facts as they are presented. The Act of Assembly required, as a condition to the employment of a superintendent of the hospital, that such superintendent should reside in the asylum, and that his family should reside with him. This was not a part of his salary. It was nothing more than a declaration of the policy of the State, that the superintendent should reside, at the expense of the State, in the institution which he managed.

It was an emolument attached to the actual management of the institution, and predicated upon the fact that the superintendent should reside in the institution. The penal law of 1829 required the warden of the penitentiary to reside in the institution. It was amended in 1913, providing that the warden must reside in the institution or in the vicinity thereof. It might happen that the warden of the Eastern and the Western Penitentiary both received the same salary; that the warden of the Western Penitentiary would reside in the institution and the warden of the Eastern Penitentiary reside outside. If both were to be retired under this Act, would the warden of the Western Penitentiary be entitled to greater compensation for the balance of his life, merely because he chose to reside within the institution, at the expense of the State?

I am, therefore, of opinion, and so advise you, that Dr. Orth is entitled to only one-half of the salary of \$5,000, the stipulated sum which he received at the date of his retirement.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

OPINIONS TO THE STATE TREASURER.

OPINIONS TO THE STATE TREASURER.

SOLDIER VOTES.

Section 26 of the Act of August 25, 1864, P. L. 990 is a specific appropriation of money needed for taking the soldier vote, within the meaning of the Act of May 11, 1909, P. L. 519.

Office of the Attorney General,
Harrisburg, Pa., January 23, 1917.

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

Sir: This Department is in receipt of your favor of the 9th inst., inquiring whether Section 26 of the Act of August 25, 1864, P. L. 990, authorizing the taking of the soldier vote, is not repealed by the Act of May 11, 1909, P. L. 519, forbidding the payment of any money out of the State Treasury except in pursuance of an Act of Assembly setting forth the amount to be expended and the purpose of the expenditure.

I beg to advise you that this matter was considered by the Attorney General at the time of the giving of his opinion to the Governor (August 23, 1916) with reference to the taking of the vote of the electors of this Commonwealth while engaged in the military service of the United States at the Mexican Border.

Section 26 of the Act of August 25, 1864, P. L. 990, reads as follows:

"Said commissioners shall receive, in 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."

This constituted a direction to the Auditor General and State Treasurer to audit and pay the accounts of the commissioners on the basis of ten cents per mile in going to and returning from their

respective regiments (estimating the distance of travel by the usually traveled route) as full compensation for their services and was an appropriation of the amount when thus audited and determined.

An appropriation has been defined by this Department 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.

Opinions of Attorney General, 1895-96, p. 362.

The amount here appropriated is ten cents per mile actually traveled. While the entire amount is not fixed it is capable of definite ascertainment.

Id est certum quod certum reddi potest.

This was the state of the law on this subject when the Constitution of 1873 was adopted.

It was therein provided, Article VIII, Section 6, as follows:

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

There has been no change since the adoption of the Constitution in the law relating to the taking of the soldier vote, and Section 26 is therefore in full force and effect unless it is repealed by the Act of May 11, 1909, P. L. 519, making it unlawful for any officer of the Commonwealth to authorize the payment of, 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.

This Act does not expressly repeal the Act of 1864, or any section of it. Does it do so by implication?

Implied repeals of statutes are not favored. If two statutes can stand together, the latter does not abrogate the earlier.

Citizens Electric Illuminating Company vs. Lackawanna and Wyoming Valley Power Company, 255 Pa. 145.

In this case the Supreme Court adopted the language of Judge Endlich, in his work on the Interpretation of Statutes, Section 210, as follows:

"In order to give an act not covering the entire ground of an earlier one, nor clearly intended as a substitute for it, the effect of repealing it, the implication of an intention to repeal must necessarily flow from the language used, disclosing a repugnancy between its provisions and those of the earlier law, so positive as to be irreconcilable by any fair; strict or liberal construction of it, which would, without destroying its evident intent and meaning, find for it a reasonable field of operation, preserving at the same time the force of the earlier law, and construing both together, in harmony with the whole course of legislation upon the subject."

Furthermore, in the present case, the express mandate of the Constitution should not be nullified if, by any fair construction of the two Acts of Assembly, they can stand together.

I am of the opinion that Section 26 of the Act of August 25, 1864, sufficiently sets forth the amount to be expended, and the purpose of the expenditure, as contemplated by the Act of May 11, 1909, and that it is therefore not repealed by that Act.

I beg to advise you, therefore, that, in my judgment, no further specific appropriation is necessary and that you are justified in paying mileage to the said Commissioners, out of the funds in the Treasury not otherwise appropriated, after their accounts have been duly audited according to law.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE WORKMEN'S INSURANCE FUND.

The funds of the State Workmen's Insurance Fund should be deposited in banks approved by the Board of Revenue Commissioners and the Banking Commissioner, and the bonds of such depositories should be approved by the Board of Revenue Commissioners and by the Banking Commissioner.

The limitation, that no banking institution or trust company shall receive a deposit or have at any one time an aggregate of deposits of state funds in excess of \$300,000, applies to deposits of the State Workmen's Insurance Fund.

Office of the Attorney General,
Harrisburg, Pa., March 21, 1917.

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

Sir: I have your favor of recent date, asking to be advised "whether the moneys belonging to" the State Workmen's Insurance Fund "must be deposited in a bank approved by the Board of Revenue

Commissioners and furnishing a bond approved by the Board of Revenue Commissioners, or whether they may be deposited in a bank approved merely by the State Treasurer and furnishing a bond approved merely by him." '

In response to a request from you, this Department rendered an opinion, December 9, 1916, on several phases of this statute. That opinion contained, among other things, the following:

"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.' "

You now specifically ask to be advised whether this fund should be deposited in a bank approved by the Board of Revenue Commissioners.

The Act of February 17, 1906, P. L. 45, provides, in Section 1:

"The selection of banks, banking institutions, or trust companies, in which the State money shall be deposited, shall be made by the Revenue Commissioners and the Banking Commissioners, jointly, or a majority of them."

Section 5 provides, in part:

"That all banks, banking institutions and trust companies selected as aforesaid, shall, upon the receipt of notice of such selection as depositories of State moneys, furnish a bond to secure payment of deposits and interest to the Commonwealth, with a proper warrant of attorney to confess judgment in favor of the Commonwealth secured by a trust company or individual sureties, to be approved by the Revenue Commissioners or the Banking Commissioner, or a majority of them," etc.

This Act of Assembly does not provide for the specific method of making any particular deposit, or the drawing of checks, drafts or warrants for that purpose. Therefore, the language of Section 4 of the Act of 1915, requiring the State Workmen's Insurance Fund to be deposited "as other State funds are lawfully deposited," cannot mean the specific method of drawing checks, drafts or warrants, and necessarily, therefore, refers to the place or the depository in which such funds are to be deposited.

State funds can only "be lawfully deposited" in banks approved by the Revenue Commissioners and the Banking Commissioner, which banks have given bonds approved by them or a majority of them, and, therefore, I am of opinion that the language of Section 4 of the Act of 1915, P. L. 762, requiring the deposit of the State Workmen's Insurance Fund to be made "as other State funds are lawfully deposited," means that such funds should be deposited in banks approved by the Board of Revenue Commissioners and the Banking Commissioner, which necessarily implies, also, that the bonds of such depositories must be approved by said Board of Revenue Commissioners and Banking Commissioner, or a majority of them.

Upon further consideration I am of opinion that the limitation that "no banking institution or trust company shall receive a deposit" or have at any one time an aggregate of deposits in excess of \$300,000, applies to the deposits of the State Workmen's Insurance Fund, and the opinion given you December 9, 1915, to that extent is now revised.

I, however, re-affirm that opinion as to the manner in which the State Workmen's Insurance Fund should be deposited.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

COLLATERAL INHERITANCE TAX—TAX ERRONEOUSLY PAID—DISCOUNT FOR PROMPT PAYMENT.

The term month, as used in the acts regulating collateral inheritance tax, means a calendar month.

The date of the death of a person whose estate was subject to collateral inheritance tax was December 13, 1912. The tax was paid March 15, 1913. *Held*, That the tax was not paid within three months and that the discount was improperly allowed.

When an estate is involved in litigation in order to determine the amount subject to collateral inheritance tax, application for repayment of tax in excess of the amount finally found to be due may be made within one year from the termination of such litigation. Such litigation brings the case within the Act of March 25, 1901, P. L. 59.

Office of the Attorney General,
Harrisburg, Pa., June 12, 1917.

Honorable Harmon M. Kephart, State Treasurer of Pennsylvania,
Harrisburg, Pa.

Sir: You have asked to be advised whether the Collateral Inheritance Tax paid by the Colonial Trust Company of Pittsburgh, Pa., Executor of the Estate of Sarah L. Black, deceased, should be refunded. In this connection you ask the following questions:

First: Whether or not the litigation in which this estate was involved brings it within the proviso of the Act of March 25, 1901, P. L. 59.

Second: Whether payment made March 15, 1913, was within "three months" as provided by Section 4 of the Act of May 6, 1887, P. L. 80, the decedent having died on December 13, 1912.

Sarah L. Black died December 13, 1912. The Collateral Inheritance Tax appraisalment was filed March 14, 1913, showing a net value of \$1,112,750.00, upon which a tax of \$55,637.50 was assessed.

On March 15, 1913 there was paid of this tax the sum of \$52,855.63, the sum of \$2,781.87 having been deducted for prompt payment. After the payment of the tax, litigation was instituted in which the Supreme Court of Pennsylvania, on January 3, 1916, finally fixed the net assets of the estate, upon which Collateral Inheritance Tax was payable, at \$665,145.74.

Thereupon, on December 12, 1916, The Colonial Trust Company of Pittsburgh applied to the State Treasurer for the repayment of the Collateral Inheritance Tax erroneously paid upon the over-valuation of the estate.

The Act of March 25, 1901, P. L. 59, provides that all applications for the repayment of Collateral Inheritance Tax, erroneously paid in the Treasury, shall be made within two years from the date of said payment, except when the estate, upon which such tax shall have

been so erroneously paid, shall have been involved in litigation, by reason whereof there shall have been an over-valuation of that portion of the estate on which the tax has been assessed or paid, which over-valuation could not have been ascertained within said period of two years; then, and in such case, the application for repayment may be made to the State Treasurer within one year from the termination of such litigation. In my opinion, the litigation brings this estate within this statute.

In regard to your second inquiry—the Act of May 6, 1887, P. L. 79, Section 4, provides:

“If the collateral inheritance tax shall be paid within three months after the death of the decedent, a discount of five per centum shall be made and allowed.”

Sarah L. Black died December 13, 1912, and the Collateral Inheritance Tax was paid on March 15, 1913, which was not within three calendar months after the death of the decedent.

It has been ruled by our Courts that the word “month” in an Act of Assembly means a calendar month.

Moore vs. Houston, 3 S. & R. 169,
Thomas vs. Shoemaker, 6 W. & S. 179,
Commonwealth vs. Chambre, 4 Dallas 143,
Commonwealth vs. Martin, 2 Dist. Rep. 330,
Commonwealth vs. Stanley, 12 Pa. C. C. 543,
Parker's Estate, 14 W. N. C. 566,
Simpson's Estate, 36 P. L. J. 492,
Wittmann's Estate, 9 Dist. Rep. 47.

The payment of the tax in this case was not made within three calendar months and the discount was improperly allowed. I am informed that an appropriation is pending in the Legislature for the repayment of the tax erroneously paid in this case. In making such return to the payor you should not allow a discount, but should charge the estate with the tax upon the sum of \$665,145.74, and the difference between that amount and the amount paid by the estate is the amount which should be refunded.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

APPROPRIATIONS.

The Act of May 11, 1899, P. L. 176, appropriates to the proper counties the annual sum of \$10,000 paid into the State Treasury by the Erie Railroad Company under the Act of March 26, 1846.

Office of the Attorney General,
Harrisburg, Pa., February 26, 1918.

Honorable Thomas A. Crichton, Cashier, State Treasury Department,
Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 13th inst. and its enclosure, which present the following facts:

By the Act of March 26, 1846, P. L. 179, entitled:

"A supplement to an act, entitled 'An act to authorize the New York and Erie Railroad Company to construct said road through a portion of Susquehanna County, in the State of Pennsylvania,' passed the sixteenth day of February, one thousand eight hundred and forty-one,"

the New York and Erie Railroad Company, a corporation of the State of New York, was authorized to extend its line of railroad from the State of New York through certain counties of the State of Pennsylvania.

Section 5 of the act provided, inter alia, as follows:

"That after said railroad shall have been completed and in operation to Dunkirk, or shall have connected at the western end with any other improvement extending to Lake Erie, said company shall cause to be paid into the treasury of this State, annually, in the month of January, ten thousand dollars;"

The road was so completed or so connected and for many years the railroad company, or the Erie Railroad Company with which it is now merged, has paid the said annual sum of ten thousand dollars into the Treasury of this Commonwealth.

On May 11, 1899 (Pamphlet Laws 289) an Act was approved, being entitled

"An act providing for the payment to the county or counties of the moneys or bonus which any foreign railway corporation is required to pay into the State Treasury for the right to pass through said county or counties, and by which payment such foreign railway corporation is relieved from local taxation,"

and which after providing

“That wherever by provision of law a railway corporation of any other state is required to pay a bonus into the State Treasury for the right of passing through one or more counties of this Commonwealth, and by virtue of the payment of such bonus is relieved from the payment of local taxes in the districts through which its lines are located, the money so paid into the State Treasury shall be paid to the county or counties through which said lines are located,”

provided in Section 2, as follows:

“On receipt of the bonus or money referred to, by the State Treasurer, it shall be the duty of the Auditor General to draw his warrant upon the State Treasurer for the amount thereof, said warrant to be made to the order of the treasurer of the county through which said foreign railway corporation has located its lines: Provided, That where such foreign railway corporation has located its lines through more than one county, the money or bonus aforesaid shall be divided among the counties, the division being made in proportion to the assessed valuation of the real estate of said counties, and the warrants of the Auditor General shall be drawn **in accordance with such divisions.**”

The New York and Erie Railroad Company, now, as before stated, merged into the Erie Railroad Company, is the only foreign railway corporation which is required by a provision of law to pay money into the treasury of this Commonwealth “for the right of passing through one or more counties of this Commonwealth.”

For many years it has been the custom of our Legislature to specifically appropriate an annual sum of ten thousand dollars for distribution between the counties through which the railroad before named passes, but at the Session of 1917, however, no such specific appropriation was made.

Upon the above facts, you inquire whether the said Act of May 11, 1899 operated, by virtue of its own provisions, to appropriate the money paid by the Erie Railroad Company to the counties of this State through which the said railroad passes, or whether a special statute such as the Legislature has heretofore been accustomed to enact, is necessary.

As has been well said, and quoted with approval by Attorney General Hensel, in an opinion to Honorable D. McM. Gregg, May 18, 1893, Attorney General's Reports 1893-94, page 17:

“An appropriation made by law is such a direction to pay money by legislative authority as will inform the proper officer of the amount he shall pay, or upon what

basis he shall ascertain it, with a direction, when so ascertained, to pay it. It is a legal direction to take a certain sum, or a sum legally ascertainable from the treasury, and it is as much an appropriation whether it is directed to be done but once or periodically, or upon a contingency which may or may not happen, or upon the amount being ascertained by an officer designated. The amount is appropriated when the law directs it to be paid, and the manner of ascertaining it is complied with and the constitutional requirement is then fulfilled."

Examined by this principle, the conclusion is clear that Section 2 of the Act of 1899 constitutes a specific appropriation of the money paid into the State Treasury by the Erie Railroad Company under the requirements of the statute of 1846. The Act of 1899 contains an express legal direction to take a sum certain or a sum legally ascertainable, from the State Treasury periodically, and to pay it to designated parties. As before stated, this is all that the Constitution requires.

The opinion of Mr. Hensel, before referred to, arose on facts somewhat similar in effect to those presented by you. An Act of Assembly required corporations, subject to the supervision of the Banking Department, to pay certain moneys into the Treasury of the State, "to pay the expenses of such examinations" as may be ordered by the Superintendent of Banking, and it was decided that the language quoted constituted an appropriation of the money thus paid and that no other legislation was required.

In 1912 this Department was asked whether the Act of April 27, 1909, P. L. 265, providing that the revenues derived from the registration of motor vehicles and from licensing operators shall be paid into the State Treasury "to be used for the improvement of the roads of this Commonwealth," constituted an appropriation of the whole amount of such moneys without need of further legislation and in an opinion by Attorney General Bell (Attorney General's Report 1911-12, page 66), it was held that the Act did operate to appropriate the money so paid in for the purposes so designated.

In the case of *Commonwealth ex rel Bell vs. Powell*, 249 Pa. 144, it is held that where a fund is created for a special purpose and dedicated by the act creating it "the appropriation of the fund so created continues as long as the act which dedicates it to the particular use remains in force."

You are, therefore, advised that the Act of May 11, 1899, P. L. 289, No. 176, appropriates to the proper counties the moneys paid in under the conditions and circumstances expressed in said act and that it

appropriates the annual sums of ten thousand dollars paid into the State Treasury by the Erie Railroad Company under the requirements of the Act of March 26, 1846, already discussed.

I return herewith the letter which accompanied your communication.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO THE INSURANCE COMMISSIONER.

OPINIONS TO THE INSURANCE COMMISSIONER.

INSURANCE.

Building and Loan Associations may not contract with an insurance company to insure all policy holders in order that the unmatured shares of those who die may at once become full paid.

Insurance companies in this State cannot lawfully issue such policies, because for an illegal purpose.

Office of the Attorney General,
Harrisburg, Pa., February 21, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of February 7, 1917, in which you ask:

First: Whether life insurance companies organized under the laws of this State can legally issue a contract providing for the payment of policy benefits to an association for a specific purpose.

Second: Whether building and loan associations organized under the laws of this State may legally contract with an insurance company to insure all policy-holders in order that the unmatured shares of those who die may at once become full-paid.

Your second inquiry may be more properly taken up and discussed first. The right of building and loan associations to insure policy-holders so that, in event of death of such policy-holder, the unmatured shares will become full-paid, has been denied repeatedly.

Building and loan associations, as created under the laws of this Commonwealth, have been given extraordinary powers which, however, have been specifically named—such as charging a rate of interest which in other corporations would be usurious. The purpose of such legislation has been to foster mutual and co-operative associations, whereby people of moderate means might borrow money from those of similar circumstances who, however, were able to set aside small savings. The powers given to these corporations were never intended to be utilized as a vehicle for high finance, nor for the purpose of permitting the exploitation of those whom they are intended to serve.

For that reason, the Banking Department of this State has uniformly opposed the introduction of the many questionable expedients and innovations which have, from time to time, been attempted to be

injected into these associations for the purpose of extending their scope beyond the communities and localities in which they are intended to operate, with the ultimate result of enhancing the interests and profits of the few, to the disadvantage of the many.

In the same way this Department has uniformly held that the powers of building and loan associations cannot be extended beyond those clearly expressed in the statutes under which they were created.

Your attention is particularly directed to several opinions given on this subject, the first by Attorney General Carson on January 5, 1905, 30 Pa. C. C. 616, as well as the opinion dated February 15, 1916, 64 P. L. J. 214. The former opinion expressly held that building and loan associations, organized under the laws of this State, are not legally empowered to insure policy-holders for the purpose of maturing the shares of those who die.

Your second inquiry, therefore, is answered in the negative.

As to your first question, I beg to advise you that the right of any insurance company to issue a policy providing for the payment of the benefits to an association, for a specific purpose, depends entirely upon the legality of such policy. If the policy would not be legal under the laws of this State, the insurance company would not have the right to issue it. While not expressly stated in your letter, I take it that your first inquiry is directed to the issuance of policies to building and loan associations for the purposes set forth in your second question.

Building and loan associations, under the Act of April 29, 1874, Section 27, P. L. 96, upon lending money, are required "to secure the payment of such moneys * * * by bond or mortgage or other security." No unsecured loan is authorized.

Bouvier defines security as—

"That which renders a matter sure; an instrument which renders certain the performance of a contract."

A policy of insurance on the life of a debtor is not such "security" as will satisfy the statutes of this State directing the manner in which the investments of various moneys and funds, of which it has taken cognizance, shall be made. Such security would only be available upon the death of the insured, so that the interest of the creditor would not be toward the life of the debtor but toward his death. You must note this distinction. A secured creditor may have an insurable interest in the life of his debtor. That, however, is quite a different thing from basing the security of such creditor on the insurance of such life.

In *Warnock vs. Davis*, 104 U. S. 775, the Supreme Court of the United States has defined an insurable interest as—

"Such an interest, arising from the relations of the party obtaining the insurance, either as creditor of or surety for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life."

It is quite apparent that, with a policy of insurance on the life of a borrowing member as the security upon which a building and loan association had made its loan, the value of the security would be dependent entirely on the borrowing member dying, and only to that extent would such policy be "security."

The Act of June 5, 1883, P. L. 80, in Section 2, provides that a policy of insurance "shall be invalid when the beneficiary or assignee thereof is solely and only interested in the death of the insured."

The foregoing discussion pertains only to policies of insurance written on the lives of borrowing members of an association. The want of an insurable interest on the life of a non-borrowing member is announced in the case of *Tate vs. Commercial Building Association*, 97 Va. 74; 33 S. E. 382. See also Opinion of Attorney General Carson, above cited.

The policy which an insurance company would write for a building and loan association, to cover its members, would be illegal in so far as the contract was between the insurance company and the building and loan association.

As limited, we, therefore, have to answer your first inquiry in the negative.

It might be argued that the taking out of class or group insurance, or the insuring of a particular individual, for the purpose of maturing his stock in a building and loan association, will result only to his benefit by the protection of his estate in the maturity of his stock and the discharge of any obligation without compelling the association to resort to its security. That statement is quite correct, but it is not the function of a building and loan association to do the thinking for its members and to determine for them whether or not any individual member desires to carry insurance. Building and loan associations were never intended as a means of securing business for insurance companies. They are designed along independent and unrelated lines.

The experience of the officers of this Commonwealth, charged with the supervision of these corporations, has demonstrated the fact that departures from the old legitimate methods of operating building and loan associations is disadvantageous to the rank and file of their members, and are, in most instances, the result of those in control or charge of them endeavoring to obtain profits or advantages to themselves.

The officers of any building and loan association will well be performing their duty to its members if they endeavor, with fidelity, to guard their interests within the limits of laws pertaining to such associations. If their motives are correct, it would be well for them, without coercion, to defer to the opinion of those charged with the supervision of such associations throughout the state, which opinion is founded on the unsatisfactory and, in some cases, disastrous results of associations which have extended their activities to include insurance and similar features.

Let me add, in conclusion, that the joint solicitation of building and loan membership and insurance, or their ostensible connection, has been repeatedly condemned and prohibited in this State, and where you find that such practice is being followed it is your duty to conduct a careful investigation, to the end that the consequences enumerated in the Act of July 12, 1913, P. L. 745, or such other laws of this State as are violated, may be visited upon such companies.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

CASUALTY COMPANIES.

A casualty company which has increased its capital stock, after the Insurance Commissioner has issued to it a certificate authorizing the transaction of business under its original capital stock, cannot do business under its increased capital stock until another examination has been made by the Insurance Commissioner, and the provisions of Section 8 of the Act of June 1, 1911, complied with; and upon failure of the company to comply with the provisions of the act, the certificate originally issued may be withdrawn.

Office of the Attorney General,
Harrisburg, Pa., February 7, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your favor of February 5, 1917, in which you set forth the following facts:

A casualty company was chartered on July 27, 1916, under the Act of June 1, 1911, P. L. 567, the authorized capital stock of the company being \$500,000, the minimum required to enable them to engage in the several lines of insurance proposed.

In January of this year you were notified by the company that the capital had been fully paid, and after an examination in accordance with Section 8 of the Act you issued a certificate authorizing them to transact the business for which they were incorporated.

Shortly after its incorporation the company filed notice of an increase of capital stock from \$500,000 to \$5,000,000, the notice of such increase having been filed in the office of the Secretary of the Commonwealth on the twenty-third day of November, 1916, and only brought to your attention subsequent to the issuance of such certificate.

On these facts you ask to be advised as to what paid-up capital this company was required to have at the time the license was issued by your Department on January 20th—was it the amount mentioned in the original article of incorporation or the amount authorized by the subsequent increase?

The authorized capital stock was increased under the provisions of the Act of February 9, 1901, P. L. 3. This Act pertains merely to procedure and does not authorize the corporation to do business with the increased capital any more than the original articles of incorporation, when approved by the Governor, authorized it to engage in the insurance business without a certificate issued by yourself.

This State, in the exercise of its police power, has seen fit to protect not only the insuring public, but the investing public, against corporations having a large authorized capital but a comparatively small paid-in capital. While the Act of June 1, 1911, under which this company was incorporated, is silent as to the procedure in case of an increase, yet there can be nothing gathered from it which shows a legislative intent to take away the safe-guards surrounding such action by other classes of insurance companies.

The Act of May 1, 1876, P. L. 56, for the insurance of lives, etc., provides that the company shall not engage in business until it has notified the Insurance Commissioner that the entire capital stock authorized in its charter has been paid in, and after the Insurance Commissioner, by examination, satisfies himself "that it is possessed of money or assets * * * equal to the amount of its capital stock," he shall issue a certificate to it.

The Act of April 15, 1891, P. L. 11, in Section 1, relating to the increase of the capital stock of such companies, provides that such company "shall be entitled to have the increased amount of capital * * *, and the examination of securities composing the capital stock thus increased * * * shall be made in the same manner as is provided in this Act for capital stock originally paid in."

The Act of June 1, 1911, Section 6, sets forth the manner in which letters patent shall issue, and adds, "but it shall not have power to engage in the business of insurance until the provisions of this Act have been otherwise complied with."

The same Act, in Section 8, provides: "As soon as the entire amount of the authorized capital of a company incorporated under

this Act shall have been paid in" the Insurance Commissioner shall be notified, whereupon he shall make an investigation to determine if "it is possessed of funds invested in the manner hereinafter specified equal to the amount of its capital."

Your right and duty to withhold a certificate does not depend upon such corporation having paid-up capital stock to the minimum amount required under this Act. It must have paid-up capital stock to the amount authorized in its charter, whether the same be the minimum or more. The plain language of the Act allows no other conclusion. Such being the case, to permit a company to name the minimum amount in its original charter and obtain a certificate, and thereafter immediately to increase its stock and not require another certificate, would be an evasion and nullification of the provisions of Section 8. No such subterfuge can be accepted as a compliance with our insurance laws.

For the foregoing reasons you are advised that this company should be informed that they cannot do business as a corporation, having an authorized capital to which theirs has been increased, until another examination has been made by you and the requirements of Section 8 of the Act of June 1, 1911, complied with. If such compliance is not had nor the present authorized capital reduced to the original amount, you have the right to withdraw your certificate heretofore issued.

No practical aspect of the case can control against this position. This company, if it desires to sell stock, may, in its present status, ask for subscriptions to stock to be issued when authorized. With an authorized capital of \$5,000,000 it is not legally empowered under its present certificate to transact the business for which it was incorporated within this State.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

THE AMERICAN ASSURANCE COMPANY OF PHILADELPHIA.

This Company re-insured all its business. The Insurance Commissioner is satisfied that there is no outstanding liability of the Company which requires the retention of the \$100,000 of securities deposited by it for the protection of policy holders, may authorize the State Treasurer to return such securities to the Company or its assigns.

Office of the Attorney General,
Harrisburg, Pa., March 20, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: Your favor of recent date in reference to the American Assurance Company of Philadelphia, is at hand.

I understand the facts upon which you desire an opinion are as follows:

The American Assurance Company of Philadelphia has deposited with the Insurance Department securities of a par value of \$200,000 which are now held by the State Treasurer. This company reinsured all of its health and accident business more than a year ago, with the Casualty Company of America, and those risks have all expired. Recently it reinsured all of its life insurance policies with the Philadelphia Life Insurance Company, and has now no outstanding liability. Practically all of its assets consist of the deposit with the State Treasurer, and in order to complete the reinsurance agreement it will be necessary to have a release of \$100,000 from the fund of the securities now held by the State Treasurer.

The Act of June 1, 1911, P. L. 602, Section 2, provides:

"Upon request of any company, organized under the laws of this Commonwealth, making the deposit, the Insurance Commissioner may authorize the State Treasurer to return to such 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 securities so asked to be returned are subject to no liability, and not required to be longer held by any provision of law, or for the purpose of the original deposit" * * *.

If, therefore, you are satisfied that there is no outstanding liability which requires the \$100,000 of securities to be retained, I advise you that you may authorize the State Treasurer to return such securities to the American Assurance Company of Philadelphia, or its assigns.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

PHILADELPHIA FIRE UNDERWRITERS ASSOCIATION.

The Association may not, under the powers conferred in the Act of June 7, 1915, P. L. 898, by a majority vote adopt rules and regulations, regulating the method of business of the companies which are members of the Association or the compensation which such companies shall pay to their agents.

Office of the Attorney General,
Harrisburg, Pa., May 31, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: Your favor of recent date was duly received.

You ask to be advised whether the Philadelphia Fire Underwriters Association can, by a majority vote of the members thereof, impose upon its members any restrictions as to the manner in which the business of a company which becomes a member of said underwriters shall be conducted, and whether such association may limit the number of agents of companies which are members thereof, and the compensation paid to such agents.

The Act of June 7, 1915, P. L. 898, is entitled

"An act to supervise the operations of fire insurance rate making bureaus, and providing for their examination by the Insurance Commissioner; prohibiting discrimination in fixing and collecting fire insurance rates; requiring companies to maintain and co-operate in maintaining and operating rate making bureaus; requiring inspection and surveys by such bureaus of all risks specifically rated; and regulating agreements between companies or other insurers with respect to fixing and collecting fire insurance rates; and repealing existing laws."

This Act provides, in Section 6:

"Every fire insurance company, or other insurer, authorized to effect insurance against the risk of loss or damage by fire or lightning in this Commonwealth, shall, before being permitted to write fire insurance in this State, file with the Insurance Commissioner a schedule of rates, or be a member of a rating bureau. No such insurer shall be a member of more than one rating bureau for the purpose of rating the same risk."

Section 7 provides:

"A rating bureau may consist of one or more insurers and when consisting of two or more insurers shall admit to membership any fire insurance company

authorized to do business within this Commonwealth, applying therefor, who shall agree to abide by the rules and regulations of such association or bureau."

The principal question which you propound is whether the words "who shall agree to be bound by the rules and regulations of such association or bureau" imply that the rating bureau may make any kind of rules or regulations for the admission of companies to membership, and you ask whether such rules and regulations could be made by a majority vote. . . .

This Act of Assembly does something which perhaps has not been done before. It authorizes an organization which is not connected with the State Government to take some part in the regulation of insurance companies, because, an insurance company cannot do business in the State unless it goes to the expense of making its own rates, or joins a rate-making bureau, and it cannot join a rate-making bureau unless it agrees "to abide by the rules and regulations of such association or bureau."

The constitutionality of this Act is now under review in the United States District Court for the Middle District of Pennsylvania, and one of the attacks upon it is that the State is attempting to vest authority in an organization in no way connected with the State government.

It seems to me to be opening the door very wide, and perhaps endangering the constitutionality of the Act, to hold that a rate-making bureau might, by a majority vote, impose restrictions as to the manner in which the business of a company which is a member, shall be conducted, or the compensation which such company shall pay to its agents.

These matters have nothing to do with the making of rates. I understand that there is or was an intention to change the regulations so as to exclude certain persons from becoming agents and also to provide that no company which does not have its home office in Philadelphia "shall have more than three agents or offices with authority to accept risks located in Philadelphia and issue policies thereon."

If the association, by a majority vote, may amend such rules from time to time, it could also adopt a rule if a majority of its members were sufficiently strong to justify it, so as to provide that no company should become a member which did not have at least three agents or places of business in Philadelphia, and thereby exclude the smaller insurance companies for membership in the rating bureau.

It might also fix such a minimum compensation which insurance agents should receive, that smaller companies could not afford to pay. If it may, by a majority vote, adopt regulations in one respect, it could adopt them in another.

I am convinced that there was no such legislative intention. The purpose of this Act is to provide against unfair competition and discrimination in the matter of rates. It recognizes the existence of rating bureaus and enables the Insurance Commissioner, in the regulation of insurance companies, to avail himself of the rates established by those bureaus.

The Act enables insurance companies which cannot afford to make rates for themselves, to join rating bureaus at a minimum expense, and thereby have their rates submitted to the regulation of the Insurance Department. To give this bureau the right to make any kind of rules or regulations relating to the business of insurance or the compensation of agents by a majority vote, would, in my opinion, go far beyond the legislative intention.

I am of opinion that the Philadelphia Fire Underwriters Association could not, by a majority vote, adopt rules and regulations which have no connection with rate making affecting the business of the companies which are members.

I must not be understood as deciding that the Philadelphia Fire Underwriters Association could not, by a majority vote, if their by-laws so provided, change them with reference to matters of the internal regulation of the association, and this would also include the right to change the rates under the rules and regulations of the association.

I, therefore, specifically advise you that the Philadelphia Fire Underwriters Association may not, under the powers conferred in the Act of June 7, 1915, P. L. 898, by a majority vote, adopt rules and regulations regulating the method of business of the companies which are members of such association or the compensation which such companies shall pay to their agents.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

UNDERWRITERS ASSOCIATION.

It is not within the province of the Insurance Department to compel the Underwriters Association to furnish its service to an insurance agent of a company belonging to the Underwriters Association.

Office of the Attorney General,
Harrisburg, Pa., July 18, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: Sometime ago you asked to be advised by this Department whether, under the Act approved June 7, 1915, P. L. 898, you could compel the Underwriters' Association of the Middle Department to furnish its service to Ned F. Benford, of Johnstown, Pa.

As I understand the facts, Harry H. Benford was until recently conducting an insurance agency, and among the companies which he represented were some that were not affiliated with the Underwriters' Association of the Middle Department. On March 26, 1917, Harry H. Benford advised the Secretary of the Underwriters' Association of the Middle Department that he would sever connection with all companies affiliated with the Middle Department and hold the tariffs and rules books subject to the order of that Department. He says that his son, Ned F. Benford, has purchased the insurance business from him and partly paid him for it. Ned F. Benford is now representing companies which are affiliated with the Middle Department and no others. Harry H. Benford is, independently, representing some companies which are unaffiliated. The Middle Department of the Underwriters' Association refused to furnish to Ned F. Benford its service, because his father represented independent companies.

The Act of June 7, 1915, while entitled "An act to supervise the operations of fire insurance rate-making bureaus, and providing for their examination by the Insurance Commissioner" etc., does not attempt to regulate or supervise the dealings between rate-making associations and their members in any other way than to give the Insurance Commissioner the power to make examinations and to prevent unfair discrimination and excessive rates. I have carefully examined this entire Act, and I do not find anything in it which authorizes the Insurance Commissioner to compel the Middle Department to furnish its service to one of its members.

The Underwriters' Association of the Middle Department is a voluntary partnership association, composed of the various insurance companies which are members of it. If the Association does not furnish the service which it should to any of its constituent companies, through the agents located at Johnstown or elsewhere, that

is a matter between the insurance companies and the Underwriters' Association of the Middle Department. It is not covered by any provisions of the Act of Assembly.

I, therefore, advise you that it is not within the province of your Department to compel the Underwriters' Association of the Middle Department to furnish its service to Ned F. Benford, or to any other authorized agent of the insurance companies belonging to said Underwriters' Association.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE RETAILERS INDEMNITY COMPANY OF GRAND RAPIDS,
MICHIGAN.

Bonds purporting to indemnify retail liquor dealers against loss or damage which may be sustained by reason of unlawful sales of liquor by their agents, servants or employes, without their knowledge or consent, are within the Act of June 1, 1911, P. L. 567, and when issued by an individual, or an unincorporated association, are in violation of its provisions.

The contracts of insurance or indemnity bonds issued by the Retailers Indemnity Company of Grand Rapids, Michigan, to retail liquor dealers in this State, are in violation of the provisions of the Act of June 1, 1911, because they are issued without authority expressly conferred by a charter of incorporation.

Office of the Attorney General,
Harrisburg, Pa., July 25, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: Referring to your recent inquiry asking to be advised whether a certain contract of insurance or indemnity bond issued by Retailers Indemnity Company, of Grand Rapids, Michigan, to retail liquor dealers in this State, is issued in violation of the provisions of the Act of June 1, 1911, P. L. 567, I beg to advise you as follows:

It appears that the so-called Retailers Indemnity Company is not really a company but is the trade name assumed by an individual of Grand Rapids, Michigan. The bond is signed in the following form:

"Retailers Indemnity Co. .

Secretary."

and there is attached a gold seal bearing the impression of the name and domicile of the so-called company with the word "SEAL" in the center. The agreement of the "Company" is to indemnify the "Indemnatee," as the purchaser of the bond is described, "against loss or damage, including attorneys' fees, court costs and witness fees, except attorneys' fees awarded adverse party, which may be sustained or incurred by Indemnatee from the unlawful sales of liquor made without his knowledge or consent, and by his agents, servants or employees, for which he may be liable in civil actions only under the statute law" of the state.

The Act of 1911 above referred to was discussed at length in two opinions rendered your Department under dates of November 18, 1915, and March 22, 1916, in which you were advised that it is a violation of the Act for an individual either in his own name or under a trade name "company" to issue formal bonds or contracts guaranteeing the fidelity of employees.

It was stated in the first of the opinions, after pointing out the regulations and other restrictive features of the Act, that:

"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."

That the term "casualty insurance" used in the Act is not used in a strict technical sense, in which it means insurance against loss or damage to property occasioned by accident, is clear from the many other purposes for which so-called casualty insurance companies may be incorporated thereunder, to-wit:

Guaranteeing the fidelity of persons holding places of public or private trust.

Guaranteeing the performance of contracts, other than insurance policies.

Guaranteeing and executing all bonds, undertakings, and contracts of suretyship.

To insure against loss by burglary or theft, or both.

To carry on the business of credit insurance or guaranty, either by agreeing to purchase uncollectible debts or otherwise.

To insure against loss or damage, from the failure of persons indebted to the insured to meet their liabilities.

To make the Act completely comprehensive there is added to the so-called long list of casualties specified the following:

"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."

The word "casualty" is used in the Act in its generic sense, defined in the Century Dictionary and Cyclopaedia:

"Chance, or what happens by chance; accident; contingency,"

in explanation of which there appears the term "casualties of trade," in a quotation from George Elliot's "Middlemarch," I. 170.

In other words, the Act was passed to regulate insurance of any kind happening on any chance or contingency, except as therein stated, to-wit: life, fire, marine, or title insurance, for which provision had already been made.

The indemnity bond issued by the "Retailers Indemnity Company" for the purpose stated therein as above quoted is within the Act.

However, the contention has been made by the "Company," supported by some briefs, that the Act of 1911 is unconstitutional as being an infringement of the Fourteenth Amendment of the Constitution of the United States because it prohibits an individual from issuing contracts of insurance.

It is sufficient for the purpose of this opinion to point out that the Supreme Court of this State took the other view in passing on a similar objection to the Act of February 4, 1870, P. L. 14, which prohibits any person, partnership or association from issuing any policy or making any contract of indemnity against loss by fire without authority expressly conferred by a charter of incorporation.

Commonwealth vs. Vrooman, 164 Pa. 306.

It may be noted, in passing, that this case was cited with approval in *Norcl Bank vs. Haskell, 219 U. S. 104.*

You are, therefore, specifically advised that the individual or individuals doing business as Retailers Indemnity Company, of Grand Rapids, Michigan, and issuing indemnity bonds as aforesaid to retail liquor dealers in this State, are doing so in violation of the Act of 1911 and they should be accordingly advised to discontinue the practice at once as otherwise they and their agents may be liable to prosecution.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

UNDERWRITERS' ASSOCIATIONS.

The Commissioner of Insurance has no authority to approve or disapprove the constitution and by-laws of a fire underwriters' association.

Office of the Attorney General,
Harrisburg, Pa., August 29, 1917.

Honorable J. Denny O'Neil, Insurance Commissioner, Harrisburg, Pa.

Sir: You ask to be advised as to your authority, under the Act of June 7, 1915, P. L. 898, to approve or disapprove a set of proposed Constitution and By-laws, submitted to you by the Philadelphia Fire Underwriters Association for that purpose.

The Constitution provides in the usual form for the "name" of the organization, its "objects," "membership," "meetings," "management," and its By-laws provide for "representation," "meetings," "offices," "executive committee," "revenue," "outside risks," "payment of premiums," "agents," "brokers reports," "violations," "withdrawals," provision for their "alteration and amendment," "order of business" and "parliamentary rules."

Objection has been filed with you on behalf of certain members of the organization specifically to the agency limitation clause provided in Article IX, Section 2, of the proposed By-laws, as follows:

"Section 2. No company having its home office in Philadelphia shall have, in addition to such office, more than two branch offices or agency offices, and no other company shall have more than three agents or offices with authority to accept risks located in Philadelphia and issue policies thereon * * *."

A meeting was held before you during which parties in interest and counsel representing them were heard, directed principally to the discussion of the question raised by the objection, but during the course of the meeting there was raised the broader question of the propriety of submitting to you the entire proposed Constitution and By-laws and your right or authority to pass upon them.

It must be conceded that if you have any such right it can only be by virtue of the Act of 1915, above referred to. The object of the Act, as indicated by its title, is "to supervise the operations of fire insurance rate-making bureaus, etc."

The first nine sections of the Act make no provision regarding the internal affairs of insurance companies or groups of companies constituting rate-making bureaus, but provide simply for limitations on their operations, forbidding discrimination in rate-making, varying schedules of rates without notice, and "cornering" business for particular groups.

No authority whatever is given to the Insurance Commissioner to pass upon the rules and regulations of insurance companies, or of rate-making bureaus affecting their internal arrangements or business policies.

It is urged, however, by those who have submitted the proposed Constitution and By-laws that your authority to pass upon them may be found in Sections 10, 11 and 12 of the Act.

Section 10 provides:

“No fire insurance company or any other insurer, and no rating bureau, or any representative of any fire insurance company or other insurer or rating bureau, shall enter into or act upon any agreement, with regard to the making, fixing or collecting of any rate for fire insurance upon property within this Commonwealth, except in compliance with this Act.”

This section merely forbids insurers and bureaus from making agreements “with regard to the making, fixing or collecting of any rate * * * except in compliance with this Act.”

This is only another way of safeguarding the anti-discriminating provisions of the Act, the prohibition upon valuation in rates without notice, the prohibition of “cornering” agreements of the requirements of the written survey before rating. The fact that rating bureaus are, by the section, prohibited from entering into the agreements in questions shows that such agreements are not those *creating* the bureau and regulating the business of its members, but are those only which the bureau when created may enter into “with regard to the making, fixing, or collecting” of rates.

Section 11 provides:

“Any such agreement may be made and enforced, provided the same be not contrary to prohibitions conforming to law and practice of this Commonwealth, and be in writing; and, prior to its taking effect, a copy thereof be filed with the Insurance Commissioner and with each rating bureau of which any of the parties thereto shall be a member or subscriber.”

It is perfectly clear that this section refers to rate making agreements. The words in the beginning of the section “any such agreement” can have no reference to other than those mentioned in the preceding section—“with regard to the making, fixing or collecting” of rates—and it is such an agreement that must be filed with the Insurance Commissioner before it is to take effect.

Section 12 of the Act, which empowers the Insurance Commissioner "upon complaint or upon his own motion," to disapprove "any such agreement or any part of such agreement," can also have no reference to anything but an agreement "making, fixing or collecting" rates.

It seems apparent that the Act of 1915 was never intended to confer upon the Commissioner of Insurance power or authority to pass, as such, upon the Constitution and By-laws providing for the internal management of rating bureaus. The scheme of organization and detail of management of such bureaus is of no public concern, but an agreement of such an organization "with regard to the making, fixing or collecting" of rates is by this statute made a matter of public concern, and it is with reference to such an agreement, and no other, that certain duties are imposed on the Insurance Commissioner.

The powers and duties of the Insurance Commissioner in the premises are purely statutory, depending entirely upon this Act of 1915 and his authority to pass upon agreements of rating bureaus "with regard to the making, fixing or collecting" of rates cannot be so broadened by implication as to include the authority as claimed to pass upon the Constitution and By-laws of a rating bureau, providing for its internal organization and management.

It is suggested, however, that the Commissioner ought to pass upon the limitation of the agency provision above referred to on the theory that that portion of the Constitution is an agreement "with regard to the making, fixing or collecting" of rates within the meaning of the Act.

It is very difficult to follow the reasoning for this contention. There are many considerations which, of course, affect the making of rates. For instance, an agreement for an excessive commission charge might affect the premium and ultimately the rate. Whether the Insurance Commissioner would have any authority under this Act to pass upon such feature of a rate-making agreement containing it, is questionable, since it may be well argued that his right to disapprove any such agreement would be limited to cases in which the agreement had failed to comply with the various limitations provided by the Act, and there is no provision in the Act for uniform rate-making as between the various bureaus. There may be, under the Act, as many lawful schedules of rates as there are bureaus; but no one of these schedules may be discriminatory and no variation may be made without notice.

Any agreement, however, limiting the number of high commissioned agents which a company may have could not affect the premium charge, even indirectly.

If the commission cost is fixed, the fact that a company does all its policy writing in a given area through but two agents, would undoubtedly be of great advantage to the two agents, but could not possibly enure to the benefit of the insured—the public.

If the commission cost is not fixed, the number of agents through whom a company does business likewise does not influence the cost and a limitation in the number cannot affect the rate.

Whether the commission is fixed or open it cannot make any difference in the rate, that a maximum commission is paid to one, three, five, ten, or to a hundred agents, since the aggregate sum paid would be the same.

You are, therefore, advised that you have no authority under the Act of June 7, 1917, P. L. 898, or under any other law, to approve or disapprove the Constitution and By-laws submitted to you by the Philadelphia Fire Underwriters' Association as a rating bureau. Your authority under the Act, as indicated, is limited to action on agreements "with regard to the making, fixing or collecting" of rates. The provision in the By-laws limiting the number of agencies cannot be considered such an agreement for the reasons already stated.

Whether a majority of the members of a rating bureau may impose any such restriction or limitation, having no direct relation to rate-making, on the others, is a question which the parties in interest must have determined through the usual legal channels.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

DISSOLUTION OF CORPORATIONS.

The Act of June 15, 1911, P. L. 955, does not repeal the Act of June 1, 1889, P. L. 420, and the Auditor General is not bound to mark a corporation dissolved and out of business on the books of his department, until section 32 of the Act of 1889 has been complied with.

Office of the Attorney General,
Harrisburg, Pa., December, 4, 1917.

Thomas B. Donaldson, Esq., Special Deputy Insurance Commissioner,
Pittsburgh Life Building, Pittsburgh, Pa.

Dear Sir: Some time ago you transmitted to this Department the correspondence which passed between yourself and the Auditor General with reference to marking the Pittsburgh Life and Trust Company dissolved on the books of the Auditor General.

I understand that a decree of dissolution was entered against the Pittsburgh Life and Trust Company in the Court of Common Pleas of Allegheny County, either by proceedings taken pursuant to the Act of June 1, 1911, P. L. 599, or Section 4 of the Act of June 1, 1911, P. L. 607, and that you were appointed Special Deputy Insurance Commissioner, to wind up its affairs, and in the course of your duty you suggested to the Auditor General that the corporation was dissolved.

The Auditor General then called your attention to Section 32 of the Act of Assembly of June 1, 1889, P. L. 420, and the Act of June 15, 1911, P. L. 955, and stated that no application had been made to his Department for a certificate as provided by the Act of 1889, and intimated that the dissolution of the corporation was invalid. You thereupon requested an opinion as to whether the dissolution is invalid, because these acts of Assembly were not complied with.

Inasmuch as this matter is in the courts, and the distribution which you make must have the supervision of the Court, I do not think that it is necessary to express an opinion now as to the effect of the decree of dissolution without complying with these Acts of Assembly.

The 32nd Section of the Act of June 1, 1889, P. L. 420, provides:

"That no corporation, company, joint-stock association, association or limited partnership, made taxable by this Act, shall hereafter be dissolved by the decree of any court of common pleas, nor shall any judicial sale be valid or a distribution of the proceeds thereof be made, until all taxes due the Commonwealth have been fully paid into the State Treasury and the certificate of the Auditor General, State Treasurer and Attorney General to this effect, filed in the proper court, with the proceeding for dissolution or sale."

The Act of June 15, 1911, P. L. 955, provides:

"That all State taxes imposed under the authority of any law of this Commonwealth * * * and all public accounts settled against any corporation * * * shall be a first lien upon the franchises and property, real and personal, of such corporation * * * from date when they are settled by the Auditor General and approved by the State Treasurer; and whenever the franchises or property of a corporation * * * shall be sold at a judicial sale, all taxes, interest * * * due the Commonwealth shall first be allowed and paid out of the proceeds of such sale, before any judgment, mortgage, or other claim or lien against such corporation" etc.

I understand your position to be that this Act of Assembly repeals the Act of June 1, 1889. I cannot agree with that contention.

There is no conflict between the Act of June 15, 1911, and the Act of June 1, 1889. The purpose of the Act of 1889 was to prohibit a corporation from going out of existence while it owed the State money. The purpose of the Act of 1911 was to meet some decisions of the Court which had deprived the Commonwealth of a prior lien which, up to that time, it was thought by the accounting officers, the law gave to the Commonwealth.

The intention of the Act of 1911 was to provide a supplemental safeguard. Standing alone, the Act of 1911 would not wholly protect the interests of the State. The property of a corporation might consist wholly of personalty and, such corporation, seeking to evade its taxes, might sell all of its personal property, distribute the proceeds as dividends, and then dissolve the corporation. Such a proceeding would be entirely within the provisions of the Act of 1911, and, when the State undertook to collect the taxes, it would find nothing upon which the tax could operate as a lien.

The Act of 1889, however, would prevent such a situation from arising. The Act of 1889 and the Act of 1911 were both for the protection of the taxes, interest, penalties and bonus due to the State, and they accomplish that purpose by different means. There is no inconsistency between them. The act of 1911 provides for an immediate lien upon all property of the corporation which continues until paid, and the Act of 1889 prohibits the corporation from being dissolved before a certificate is obtained showing that such claims have been paid. Both acts may operate together and, operating together, better safeguard the Commonwealth.

There is nothing in the Act of 1911 which indicates that it was to be the exclusive safeguard thereafter afforded to the Commonwealth.

I am, therefore, of opinion that the Act of 1911 does not repeal Section 32 of the Act of 1889. It is not necessary to decide whether the decree of dissolution in this case is invalid. All that I do now decide is that under the facts and the law, as I view it, the Auditor General is not bound to mark the Pittsburgh Life and Trust Company dissolved and out of business on the books of his Department, until Section 32 of the Act of 1889 has been complied with.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

INDUSTRIAL LIFE INSURANCE.

Where an industrial life insurance company returns a percentage of the premiums paid to its policy-holders who have paid their premiums for the year directly to the company, and not through the collecting agents, such percentage is taxable as a part of the gross premiums.

Acts of June 28, 1895, P. L. 408, June 1, 1911, P. L. 607, and July 12, 1913, P. L. 745, considered.

Office of the Attorney General,
Harrisburg, Pa., May 28, 1918.

Honorable Charles A. Ambler, Insurance Commissioner, Harrisburg,
Pa.

Sir: Your favor of the 15th inst. was duly received.

You ask for an opinion upon the following facts:

The Metropolitan Insurance Company of New York issues what are known as industrial policies upon the weekly payment plan.

These industrial policies provide, in part, as follows:

"On receipt of written notice from the policyholder of his desire to pay premiums on this policy direct to the company and not through an agent, this policy will be transferred from the account of the agent to either the home office account in New York, or to a city or district office account, as may be preferred by the policyholder; and when after such transfer the weekly premiums shall have been paid at such office continuously for a period of one year, and without the premiums falling in arrears beyond the grace period as defined below, the company will, at the expiration of such year, pay to the policyholder a sum equal to 10% of the year's premiums so paid, and thereafter upon further payments in the same way the company will make, at intervals fixed by the company, a similar ratio of allowance to the policyholder."

Section 1 of the Act of July 12, 1913, P. L. 745, provides, in part, as follows:

"Nothing in this Act shall prevent a company transacting industrial life insurance, on a weekly payment plan, from returning to policyholders who have made a premium payment for a period of at least one year, the percentage of premium which the company would otherwise have paid for weekly collection of such premium."

Section 16 of the Act of June 1, 1911, P. L. 607, provides, in part:

"Every insurance company or association of another state or foreign government, authorized to do business in this Commonwealth, shall make report to the Insur-

ance Commissioner * * * showing the entire amount of premiums of every character and description received from business transacted in the Commonwealth during the year, or fraction of year, ending with the 31st day of December preceding, * * * and pay into the State Treasury the requisite tax upon all such premiums."

The first section of the Act of June 28, 1895, P. L. 408, provides, in part:

"That hereafter the annual tax upon the premiums of insurance companies of other states or foreign governments, shall be at the rate of two per centum upon the gross premiums of every character and description received from business done within this Commonwealth, within the entire calendar year preceding."

The Metropolitan Life Insurance Company has deducted \$41,615.30 from the gross premiums received in this State, which amount represents the sum returned to policyholders who have paid their premiums directly to the company under the provision above quoted.

The company claims that it is not taxable upon this amount.

In the case of *Commonwealth vs. the Penn Mutual Life Insurance Company*, 252 Pa. 512, the Supreme Court, adopting the opinion of the Court of Common Pleas of Dauphin County, held that the dividends payable to the insured and actually credited upon the premiums paid by them, were not taxable as part of the gross premiums received by the insurance company.

In the case of *Commonwealth vs. the Metropolitan Life Insurance Company*, 254 Pa. 510, the question was whether periodical allotments to the credit of policyholders were taxable.

In case of industrial policies which did not provide for the payment of dividends, these allotments were called bonuses, and, when a bonus was declared the company credited in the premium book the premium as paid for sufficient number of weeks to cover the bonus, and took a receipt as follows:

"Received from the Metropolitan Life Insurance Company of New York, dollars and cents, being the amount of bonus on the above numbered policy for the year 19.... This amount has been credited on my receipt book."

The Court held, with reference to the dividends and these bonuses (page 512):

"These allotments and allowances were not received by the company at all. Because of excess premiums previously paid by policyholders, the company relieved the policyholders from the payment to the extent of such

excess premiums so paid, with the result that the company did not receive this sum either in money, by note, credit or other substitute for money. These allotments and allowances do not appear to be covered by the language of the taxing statute, which must be strictly construed."

But the facts are different. The statute taxes "the *gross premiums* of every character and description received," and the Act of 1915 permits the return to policyholders of the percentage of the premium which the company would have otherwise paid for the weekly collection of such premium.

The company actually receives the premiums, holds them until the end of the year, and then returns 10 per cent. If the company is permitted to pay the tax on only 90 per cent., it is paying the tax on the "net" and not on the "gross" premium. If the premiums were paid through an agent, the company would be required to pay the agent for the weekly collection, but it would also be required to pay the tax on the gross premiums, and could not deduct the amount paid the agent from the gross premium before paying the tax thereon. If the company pays the tax on the 10 per cent. returned to policyholders, the result to it is the same because, if it had paid the 10 per cent. to agents it would have paid the tax thereon.

I am, therefore, of opinion that the company cannot be relieved of the tax on the 10 per cent. which represents the amount returned to policyholders who pay their premiums for a year directly to the company and not through the collecting agents.

In coming to this conclusion I have not overlooked the recent case of the *State of Kansas ex rel I. M. Brewster, Attorney General, Plaintiff, vs. Carrie J. Wilson, Superintendent of Insurance*, in which the Supreme Court of that State has decided otherwise.

I therefore advise you that you should settle the tax against the Metropolitan Life Insurance Company upon the amount of \$41,615.30, representing the deductions above referred to.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE COMMISSIONER OF
BANKING**

OPINIONS TO THE COMMISSIONER OF BANKING.

BANKING ASSOCIATIONS.

Banking associations, incorporated under the Act of May 13, 1876, P. L. 161, may begin business when fifty per cent. of the capital has been paid in, although some of the subscribers have not paid in fifty per cent. of their subscriptions.

Office of the Attorney General,
Harrisburg, Pa., January 19, 1917.

Honorable John W. Morrison, Deputy Commissioner of Banking,
Harrisburg, Pa.

Sir: Your inquiry under date of the 16th inst., addressed to the Attorney General, relative to banking associations incorporated under the Act of May 13, 1876, P. L. 161, was duly received. You ask to be advised whether, if fifty per centum of the capital has been paid in before commencing business, the law has been complied with, notwithstanding the fact that some of the subscribers have not paid in fifty per centum of their subscriptions.

The question arises under Section 9 of the Act, which provides:

“That before any association incorporated under this act shall commence business, at least fifty per centum of its capital stock shall be paid in, and the remainder of the capital stock of such corporation shall be paid in instalments of at least ten per centum on the whole amount of the capital per month from the time it shall commence business, and the payment of each instalment shall be certified under oath to the auditor general by the president and cashier of the corporation.”

Under the provisions of Section 10 of the Banking Act of 1895 the certification referred to must now be made to the Commissioner of Banking.

It is apparent that the purpose of the requirement—that at least fifty per centum of the capital stock of the association shall be paid in before it may commence business, is to insure such stability in the association as to warrant the exercise of its corporate powers. It

would appear, therefore, to be immaterial in what proportions the subscribers to the capital stock made payments on account of their subscriptions in order to raise the required minimum of fifty per centum of the capital stock to enable the company to commence business. Any conclusion that the Act contemplated that all of the subscribers pay in fifty per centum of their subscriptions would, therefore, not be warranted either by the language of the Act or the apparent reason for the provision.

You are, therefore, advised that if fifty per centum of the capital has been paid in the law has been complied with so as to enable an association incorporated under this Act to commence business, notwithstanding the fact that some of the subscribers have not paid in fifty per centum of their subscriptions.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

DEPUTY COMMISSIONER OF BANKING.

The Deputy Commissioner of Banking cannot lawfully act as a member of the Board of Revenue Commissioners or of the Board to License and Regulate Private Banking.

Office of the Attorney General,
Harrisburg, Pa., February 7, 1917.

John W. Morrison, Esq., Deputy Commissioner of Banking, Harrisburg, Pa.

Sir: Your favor of January 25th addressed to the Attorney General, asking whether you, as Deputy Commissioner of Banking, can act with the Board of Revenue Commissioners and sit as a member of the Board to License and Regulate Private Banking, is at hand.

The Act of February 17, 1906, P. L. 45, provides that the Banking Commissioner shall sit with the Revenue Commissioners in the selection of State depositories and that the Revenue Commissioners and the Banking Commissioner shall act jointly. It gives to the Banking Commissioner authority to exercise his judgment, along with the Revenue Commissioners, in the selection of such depositories, and to vote with the Revenue Commissioners for the approval of the bonds of such State depositories.

The Revenue Commissioners and the Banking Commissioner, or a majority of them, have power to reduce, change or withdraw deposits from such depositories.

The Private Banking Act of June 19, 1911, P. L. 1060, provides for a Board consisting of the State Treasurer, Secretary of the Commonwealth, and Commissioner of Banking.

Under this Act applications for licenses are to be made to such board, bonds are to be approved by the Board, or in lieu of bonds, security to be deposited, which securities are to be approved by the Board, and, after a proper application for a license, the Board may, in its discretion, approve or disapprove the application.

The duties required by the Commissioner of Banking in sitting with the Revenue Commissioners, and also in sitting upon the Board to License Private Banks, are judicial and not merely ministerial.

In Bouvier's Law Dictionary, citing *Allen vs. Smith*, 12 N. J. 159, *Tillotson vs. Cheetham*, 2 Johns (N. Y.) 63, it is said:

"When the office partakes of a judicial and ministerial character, although a deputy may be made for the performance of ministerial acts, it cannot be made for the performance of a judicial act; a sheriff cannot, therefore, make a deputy to hold an inquisition under a writ of inquiry, though he may appoint a deputy to serve a writ."

I am, therefore, of opinion, and so advise you, that you cannot legally sit, either with the Board of Revenue Commissioners, or as a member of the Board to License Private Bankers.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BANKS.

A bank incorporated under the Act of May 13, 1876, P. L. 161, having complied with the provisions of the Act relative to liquidation and closing may be marked liquidated and closed upon the books of the Auditor General without further proceedings.

Office of the Attorney General,
Harrisburg, Pa., April 10, 1917.

Honorable John W. Morrison, Deputy Commissioner of Banking,
Harrisburg, Pa.

Sir: In answer to your inquiry of the 3rd inst. addressed to the Attorney General as to whether a Bank incorporated under the Act of May 13, 1876, P. L. 161, having complied with the provision of Section 25 of the Act relating to the liquidation and closing of the corporation, may be so marked and taken off the books of your Department without further proceedings through the Courts, I beg to advise you as follows:

Section 25 of the Act provides:

"That any corporation under this act may go into liquidation and be closed by the vote of its shareholders, owning at least two-thirds of its stock, and whenever such vote shall be taken it shall be the duty of the board of directors to cause notice of this fact to be certified under the seal of the corporation to the Auditor General, and publication thereof made for at least three months in two newspapers, if so many are published, if two are not published, then one in the county in which such corporation is located, that it is closing up its affairs and notifying the creditors thereof to present their claims for payment; and it shall be the duty of the said directors, in the name of the corporation, to collect all its assets, apply the same first to the payment of debts thereof and distribute the surplus, if any, to and among the shareholders in the proportion they hold the capital stock thereof."

This section was amended by the Banking Act of February 11, 1895, so that the certification of the vote of the shareholders referred to is now made to the Commissioner of Banking, instead of to the Auditor General. Otherwise the provisions are the same.

The general Act providing for the dissolution of Corporations in this State, is the Act of April 9, 1856, P. L. 293, which provides for a petition to the Court of Common Pleas on the action of a majority of the incorporators with authority, in the Court to enter a decree of dissolution if satisfied that the prayer may be granted without

prejudice to the public welfare. The Act does not provide for any advertisement of the intention to dissolve, but advertisement has been required by various rules of Court, the usual period of advertisement being fixed at once a week for three weeks. At the time of the passage of the Act of 1876 for the "Incorporation and regulation of banks of discount and deposit," the general Act of 1856 was, of course, in force, and apparently it was deemed by the Legislature that the requirements and provisions under the Act of 1856 were not sufficient for the dissolution and winding up of such a banking institution, so that special provision was made in the Act itself creating such corporations for their liquidation and closing up as it is stated in Section 25 above quoted.

It is to be noted that while under the general Act of 1856 the action to dissolve may be brought at the instance of a majority of the incorporators, under Section 25, of the Act of 1876, such action must be taken by shareholders "owning at least two-thirds of its stock," and whereas the general Act of 1856 does not provide for advertisement at all (though this requirement has been imposed by Court rulings requiring generally three weeks advertisement), under the Act of 1876 publication of the intended liquidation and closing up of the corporation must be made "for at least three months in two newspapers."

It follows, and you are so advised that the Act of 1876 having itself provided the manner in which corporations incorporated thereunder may go into "liquidation and be closed," that if the provisions therein, in that respect, are complied with the corporation may be so marked on your records, without requiring further proceedings through the Courts, which is unnecessary as to this class of corporations.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

RESERVE FUND OF BANKING CORPORATIONS.

The reserve fund of banking corporations, required by the Act of May 6, 1907, P. L. 189, may consist of notes of Federal Reserve Banks.

Office of the Attorney General,
Harrisburg, Pa., May 4, 1917.

Honorable John W. Morrison, Deputy Commissioner of Banking,
Harrisburg, Pa.

Sir: Your favor of recent date, addressed to the Attorney General, is at hand. You ask to be advised whether Federal Reserve Bank notes kept in the vaults of various financial corporations can legally be considered as a legal part of the cash reserve required by the Act of May 8, 1907, P. L. 189.

Section 2 of this Act provides, in part, as follows:

"Every such corporation, receiving deposits of money subject to check or payable on demand, shall, at all times, have on hand a reserve fund of at least fifteen per centum of the aggregate of all its immediate demand liabilities. The whole of such reserve fund may, and at least one-third thereof must, consist of either *lawful money of the United States*, gold certificates, silver certificates, notes or bills issued by any lawfully organized National Banking Association."

The Federal Reserve Banks created by the Act of Congress of December 23, 1913, as amended by the Act of September 7, 1916, provides in Section 16 (United States Compiled Statutes 1916, Section 9799):

"Federal reserve notes, to be issued at the discretion of the Federal Reserve Board for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank."

These Federal Reserve notes are the legal obligation of the United States and are legal tender for any taxes, customs or public

dues. They are, therefore, "lawful money of the United States," and the reserve fund of banking corporations may consist of such reserve notes under the Act of May 8, 1907, above referred to.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BUILDING AND LOAN ASSOCIATIONS.

There is no authority for a building and loan association, incorporated under the Corporation Act of 1874, and its supplements, to make a permanent investment of funds in an office building.

Office of the Attorney General,
Harrisburg, Pa., September 6, 1917.

Honorable D. F. Lafean, Commissioner of Banking, Harrisburg, Pa.

Sir: In answer to your letter of recent date, asking to be advised whether a building and loan association, incorporated under the General Corporation Act of 1874, and its supplements, may make a permanent investment of the funds of the shareholders in an office building, I beg to advise you as follows:

The limitations on the power of building and loan associations with reference to the holding of real estate, is contained in several clauses of Section 37 of the General Corporation Act of April 29, 1874, P. L. 73, 96.

Clause 1 provides, inter alia, that such association shall have the

"* * * right to purchase or erect houses, and to sell, convey, lease or mortgage the same at pleasure to their stockholders or others *for the benefit of their stockholders*, * * *."

Clause 8 provides:

"Any loan or building association incorporated by or under this act, is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate, upon which such association may have or hold any mortgage, judgment, lien, or other incumbrance, or ground rent, or in which said association may have an interest, and the real estate so purchased, or any other that such association may hold or be entitled to at the passage of this act, to sell, convey, lease, or mortgage at pleasure, to any person or persons whatsoever; and all sales of real

estate heretofore made by such associations to any person or persons not members of the association so selling, are hereby confirmed and made valid."

Clause 9 provides:

"All such corporations shall have full power to purchase lands and to sell and convey the same, or any part thereof, to their stockholders or others in fee simple, with or without the reservation of ground rents, but the quantity of land purchased by any one of said associations hereafter incorporated, shall not, in the whole, exceed fifty acres, and in all cases the lands shall be disposed of *within ten years from the date of the incorporation* of such associations respectively."

Attorney General Carson held in "Building Associations," reported in 14 District Reports 80, that it was his "deliberate conclusion," *inter alia*, that

"It is contrary to the purpose for which these associations were organized for them to make permanent investments in any kind of property, although they may take such property as the result of procedure or foreclosure upon bonds or mortgages, or under the authority of the Act of April 29, 1874, in clause 9 of section 37."

This conclusion is amply justified by a proper consideration of the statutory provisions above quoted and of the well-known objects and purposes of building associations which the Legislature, by the passage of liberal laws relating thereto, exempting them from the operation of laws relating to usury and other limitations and restrictions imposed upon corporations for profit alone, intended to safeguard and encourage.

The tendency to exceed the basic limitations and purposes of building and loan associations, which reached their highest development as such, in this State, must be arrested if the confidence of the masses in this ideal plan of savings and home building is to be maintained. Accordingly, questionable expedients and innovations should be frowned upon, discouraged, and, if need be, prohibited, unless positive or necessarily inferential warrant and authority therefor is found in the statutes.

You are accordingly advised that there is no authority for a building and loan association, incorporated under the General Corporation Act of 1874, and its supplements, to make a permanent investment of funds in an office building.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE B. & L. ASSOCIATION OFFICERS.

It is unlawful for a secretary of a building and loan association to draw mortgage papers and attend to conveyancing for borrowers from the association.

Office of the Attorney General,
Harrisburg, Pa., November 7, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: This Department is in receipt of your letter of the 31st ult., asking to be advised whether it is lawful for a secretary of a building and loan association to draw mortgage papers and attend to conveyancing for borrowers from the association. It appears that the association has no solicitor or conveyancer, but the by-laws provide, in referring to the duties of its secretary, that he shall, *inter alia*, "attend to conveyancing for borrowers."

The Act of April 29, 1909, P. L. 289, made provision that the offices of president, vice-president, secretary, treasurer and solicitor in any building and loan association were incompatible, and that no individual could hold more than one of said offices.

By the Act of July 5, 1917, P. L. 680, this incompatibility was extended as follows:

"* * * nor shall any president, vice-president, secretary or treasurer be at the same time the holder of the office of conveyancer of any such association."

Obviously, the real purpose of the law is to prohibit the exercise by one person of the functions and duties incident to more than one of the offices named, which are declared incompatible, so that the object of the law is not to be evaded by attaching the duties of one of the incompatible offices to another.

In the case instanced by you the secretary is not the "holder" of the office of conveyancer, but, nevertheless, there is imposed upon him the duty of a conveyancer by the provision, in referring to his duties as secretary, as already indicated, that he shall "attend to conveyancing for borrowers," so that while he is ostensibly a secretary only in that he is named "secretary" and nothing else, he is to all intents and purposes a secretary and a conveyancer, since he is charged with the duties of both such offices. This the law prohibits.

You are advised, therefore, that it is not lawful for a secretary of a building and loan association to draw mortgage papers and attend to conveyancing for borrowers from the association.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE BANK EXAMINATION.

The State Commissioner of Banking, on the request of the board of directors of any State bank or trust company, can lawfully furnish the Federal Reserve Bank with a report of the examination of such bank or trust company, but the information furnished should be limited strictly to what is asked for.

Office of the Attorney General,
Harrisburg, Pa., November 28, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: Answering yours of recent date, in which you submit a letter from Mr. R. L. Austin, Chairman of the Federal Reserve Bank of Philadelphia, together with copy of letter from Parker S. Williams, Esq. (copies of both letters herewith), and inquire how far you can go in meeting the views of the Federal Reserve Bank, I beg to advise you:

There is no legal, or other, reason why the report of the examination of a State Bank or Trust Company, made by your Department, should not be furnished to the Federal Reserve Bank, provided the State Bank or Trust Company so first requests, and this request should state in detail just what it desires your Department to so furnish, and should be evidenced by Resolution of its Board of Directors, and this and no more should be so furnished. The Act of 1895 prohibits only the "willful" giving of publicity to such reports and should be construed in favor of secrecy, and can only be avoided by the written request of the institution as aforesaid.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

ADVERTISEMENT.

The abstract summary of reports made by banks and trust companies to the Commissioner of Banking need not be published in a legal newspaper.

Office of the Attorney General,
Harrisburg, Pa., November 28, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 14th instant in which you state that by the Act of February 11, 1895, P. L. 4, banks and trust companies are required to make reports to you when called upon so to do and that an abstract summary of such report,

“Shall forthwith be published by such corporation in a newspaper published in the place where such corporation is located, at least three times, and if there is no newspaper published in such place, then in the newspaper published nearest thereto in the same county.”

You also direct our attention to the Act of May 3, 1909, P. L. 424, which, as amended by the Act of April 5, 1917, P. L. 49, reads as follows:

“That hereafter in all counties of the Commonwealth, having one hundred and fifty thousand inhabitants or more, every notice or advertisement required by law or rules of court to be published in one or more newspapers of general circulation, unless dispensed with by special order of court, shall also be published in the legal newspaper, issued at least weekly, in said county, designated by rules of court for the publication of court or other legal notices, if such newspaper exists. Publication in such legal newspaper shall be made as often as required to be made in such newspapers in general circulation, and shall be subject to the same stipulations and regulations as those imposed for the like services upon all newspapers: Provided, That nothing herein contained shall be construed to require the publication in such legal newspapers of municipal ordinances, mercantile appraisers' notices, advertising for bids for contracts for public work, or lists of delinquent taxpayers.”

You ask whether the abstract summary referred to in the Act of 1895 is within the purview of the Act of May 3, 1909, as amended by the Act of 1917, so as to necessitate its publication in a “legal newspaper.”

The disposition of the question depends upon whether the “abstract summary” constitutes a “notice or advertisement” as contemplated

by the Act of 1909 and its amendment. The abstract summary certainly does not constitute a "notice," which latter term is defined by Bouvier to mean:

"The information given of some act done, or the interpellation by which some act is required to be done."

The summary is merely a short statement of the condition of the bank or trust company published for general public information. Does it constitute an "advertisement"? The same authority defines the word "advertisement" as:

"Information or knowledge communicated to individuals or the public in a manner designed to attract general attention."

While the character of the summary may include it within the broad language of this definition, an examination of the Act of 1909 leads to the conclusion that the term "advertisement" is used therein in a more restricted sense.

The Act of 1909 contains the following preamble:

"Whereas, There exist in several counties of the Commonwealth legal newspapers, in which notices relating to the courts and the practice therein are usually published; and

"Whereas, It is a great convenience to the legal profession and to the public to have all notices, required to be published by law or rules of court, published in such legal newspapers:"

Though it has been held that the preamble is not a part of a statute so as to enlarge or restrict or in any wise change a legislative provision clearly expressed, yet, it is equally well established that where the meaning is open to doubt, the preamble may be consulted in order to ascertain the legislative intent. The decisions in *Erie, &c., R. R. Co. v. Casey*, 26 Pa. 287; *Yeager v. Weaver*, 64 Pa. 425; and *Commonwealth v. Marshall*, 69 Pa. 328, settle the law that whenever there is doubt as to the subject-matter to which an act is to be applied, the preamble may be consulted as an aid to interpretation.

In *Lewis' Sutherland Statutory Construction*, Vol. 2, Sec. 341 (Second Ed.), it is said:

"* * * Where there is such generality in the text of the statute as renders it ambiguous as to scope, the preamble may be referred to to determine whether such general language is to have the most extensive or only a restricted operation; for the purpose of the preamble is to state the reason and object of the law." Citing *U. S. v. Webster Davies*, 38 Fed. Cases, No. 16658.

A reading of the Act of 1909, as amended, does raise a doubt as to its scope and the preamble may therefore be considered.

The first paragraph is of minor importance, being merely a statement of the existence of certain legal newspapers in which it has been the custom to publish "notices" relating to the courts and the practice therein. The second paragraph is of more importance:

"Whereas, It is a great convenience to the legal profession and to the public to have all *notices*, required to be published by law or rules of court, published in such legal newspapers;"

The preamble says nothing about "advertisements." It was "notices" that was present in the legislative mind. Theretofore only those notices which related to the courts and the practice therein were published. Now, for the convenience of the legal profession and the public, *all notices* are to be published in the legal newspaper. In its more restricted sense, Bouvier defines "advertisement" as:

"A notice published in handbills, placards, a newspaper, etc.,"

and it is in this restricted sense that the term was employed in the Act of 1909 and its amendment. The enumeration contained in the proviso all relate to matters of notice. Thus, "municipal ordinances" are republished in order to give persons an opportunity to object to their passage or to familiarize themselves with provisions affecting them; mercantile appraisers' lists are advertised to notify persons of their liability for personal taxes; bids for contracts are advertised to give notice to all persons engaged in business so that they may have an opportunity to participate in the work, and lists of delinquent taxpayers are advertised in order to notify them that their property may be seized and sold if these taxes are not paid. All these are more than matters of mere information and knowledge; they are really notices of a particular kind and such as may affect the special parties or class of persons for whose benefit they are published.

It is also to be noted that there is a limiting provision in the Act that every "notice or advertisement" required to be published in general newspapers shall also be published in a legal newspaper "unless dispensed with by special order of Court." There might be a strong inference from this, that the Act applies only to such notices or advertisements as to the publication of which the courts have some supervisory jurisdiction were it not for the proviso in the Act excepting certain notices and advertisements above referred

to, relating to matters over which the courts have no jurisdiction whatever—indicating that other such notices or advertisements in the nature of notices are included within the scope of the Act.

It is my conclusion that the term “advertisement,” is used in the Act of 1909 in a restricted sense; that it means an advertisement in the nature of a notice; that it does not comprehend the abstract summary referred to in the said Act of 1895; and, that, therefore, such summary need not be published in a legal newspaper.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

PRIVATE BANKS.

Under the Act of June 19, 1911, P. L. 1060, the statements of private bankers must be published three times in one newspaper of general circulation in the county where business is done. Two publications are not necessary, unless there is a legal periodical published in that county; in which event the statement must appear three times in the legal periodical as well as in the newspaper of general circulation.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg, Pa.

Sir: Your recent favor addressed to the Attorney General, requesting an interpretation of the Act of June 19, 1911, P. L. 1060, was duly received.

You ask to be advised how the reports of private bankers made to the Commissioner of Banking are to be published.

Section 2 of the act provides that the licensee shall, when required by the Commissioner of Banking, report in such form as is prescribed, showing the amount of assets and liabilities of the licensee, and further provides:

“A copy of which statement shall be published three times in a newspaper of general circulation, and a legal periodical, if any, in the county where the business is conducted, or in a newspaper published in the nearest adjacent county.”

This language is not clear. It is susceptible of several interpretations. It may require the publication in a newspaper of general circulation in the county where the business is conducted, *or* in a newspaper published in the nearest adjacent county. It may also be interpreted to mean that the publication must be made in the newspaper of the county, and also in a newspaper in the adjacent county, where there is no legal periodical in the county where the business is conducted. In this event two publications would always be required.

Did the Legislature intend the statement of a private bank to be also published in an adjoining county when publication can be made in the county in which business is conducted?

I am of opinion that it was the intention of the Legislature to require publication for three times in a newspaper in the county where the business is conducted, and only to require publication in a newspaper published in an adjoining county, when there is no newspaper of general circulation in the county in which business is done.

If there is a legal periodical published in the county in which the business is conducted, publication must be made in the legal periodical, in addition to the newspaper. If the parenthetical clause is transposed, the meaning is clear.

In my opinion a copy of the statement must be published three times in a newspaper of general circulation in the county where business is conducted, or if there be no newspaper in that county, then in a newspaper published in the nearest adjacent county, and publication must also be made in a legal periodical, if there is any "in the county where business is conducted."

The language "nearest adjacent county" is also obscure. Every county, bordering on another county is equally near and equally adjacent. The only reasonable interpretation to be given to that language is that, in the absence of a newspaper of general circulation published in the county where business is done, the publication should be made in a newspaper of general circulation in the adjacent county which is nearest to the place of business.

I, therefore, specifically advise you that publication of the statements of the licensees under this act are to be made three times in one newspaper of general circulation in the county where business is done, and two publications are not necessary unless there is a legal periodical published in that county, in which event the publication must appear three times in the legal periodicals, as well as in the newspaper of general circulation.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE PRIVATE BANKERS.

The executor or legatee of a private banker, even when directed in the will to conduct his business after death, cannot do so, unless authorized so to do by a new license. Nor can an administrator conduct the business of a deceased private banker without a new license.

Office of the Attorney General,
Harrisburg, Pa., December 19, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: This Department is in receipt of your favor of the 10th instant, enclosing letter from Repetto & Gardolfo, making inquiries relative to conducting the business of a licensed private banker after his death.

From your inquiry I understand that it has reference only to an individual banker, not to a partnership or unincorporated association. I beg to advise you as follows:

1. In case of the death of the licensee the legatee of a banking business would not be permitted to conduct it unless he secured a new license in his own name.

2. The executors of the licensee, even though directed by his will to conduct the business, could not do so unless they secured a new license from the Banking Department.

3. The executor or administrator of a deceased private banker is entitled to administer his estate, collect moneys due the banker and pay his debts. He is not authorized to conduct the business unless he secures a new license from the Banking Department.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

PRIVATE BANKERS.

A private banker who buys foreign exchange for the purpose of transmitting money to a foreign country is not, on failure of delivery and the return of the foreign draft or money order, liable for any loss that may arise by reason of the conversion of such foreign draft or money order into United States currency.

Office of the Attorney General,
Harrisburg, Pa., December 21, 1917.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: I am in receipt of your inquiry of recent date as to the liability of Private Bankers for the return of moneys deposited for transmission to foreign countries. I understand situations have arisen in which, there having been failure to effect delivery abroad, on the return of the foreign draft or money order and sale thereof at the then ruling rate of exchange, less was realized than originally deposited, and the question has arisen whether the Private Banker is liable to return the full amount in United States currency deposited with him in the first instance, or whether he discharges his obligation by remitting the proceeds of the returned foreign draft or money order on the then ruling rate of exchange.

The bond of the Private Banker required to be filed under the Act of June 19, 1911, P. L. 1060, is conditioned, inter alia, "upon the faithful transmission of any money which shall be delivered to such applicant for transmission to another."

To discharge his obligation to faithfully transmit money so deposited for delivery abroad, the Banker who sells the remittance for payment abroad is obliged to send funds to pay the order and these funds must be purchased at the market rate at the time. When the remittance is not paid, the Banker is obliged to sell the foreign funds again at the then ruling rate of exchange, in order to convert the funds into United States currency, for return to the sender.

If, on account of the war conditions abroad, or any other reason, delivery cannot be effected, and on the return of the foreign draft or money order the rate of exchange is lower than when sent, the Private Banker would be discharged of his full obligation in the premises by remitting to his customer the full proceeds of the returned foreign draft or money order at the then ruling rate of exchange. To hold otherwise would, in effect, make the Private Banker an insurer against change of conditions affecting the money market, and neither the Act of Assembly, the bond, the relationship of the parties, the transaction, or common sense, would warrant any such conclusion.

The Private Banker is bound to faithfully transmit, as directed, what he receives. If, for the purpose of complying with the directions given him he must buy foreign exchange and then, on the failure, without default on his part, to effect delivery, and on the return of the foreign exchange the proceeds, on conversion to United States currency, is less than he originally received, it is perfectly clear that he cannot, on any possible theory, be held liable for the difference. The risk in such case is entirely that of the sender.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE NATIONAL BANKS.

Under the Act of Congress approved December 23, 1913, establishing the Federal Reserve Board, any national bank in Pennsylvania with a paid-up capital of not less than \$125,000, by complying with the State laws, can act as trustee, executor, administrator, or registrar of stocks and bonds, under such rules and regulations as said board may prescribe by special permit.

The Federal Reserve Board Act of December 23, 1913, passed by Congress, does not supersede State or local laws governing corporations acting as trustee, executor, administrator or registrar of stocks and bonds, and a national bank acting in such fiduciary capacity must comply with the laws of Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., June 26, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: In answer to your inquiry of the 10th inst., asking to be advised as to the status of National Banks in this State in relation to their right to act as executor, trustee, administrator, etc., I beg to advise you as follows:

Section 11 (k) of the Act of Congress approved December 23, 1913, establishing the Federal Reserve Board (38 Stat. at L. 251262, Chap. 6, Com. Stat. 1916, Secs. 9785, 9794), gives to that Board authority—

“to grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds, under such rules and regulations as the said board may prescribe.”

The constitutionality of this provision was upheld by the Supreme Court of the United States in the case of *First National Bank of Bay City vs. Fellows*, reported in 244 U. S. 216.

Mr. Chief Justice White, who delivered the opinion of the Court, however, emphasized the limitation in the Act that the special permit may be granted only "when not in contravention of state or local law," as expressly stated therein, and in addition on general principle. The significant expression of the learned Chief Justice on this point appears on page 738 of Advance Opinions, Aug. 1, 1917, as follows:

"Of course, as the general subject of regulating the character of business just referred to is peculiarly within State administrative control, State regulations for the conduct of such business, if not discriminatory or so unreasonable as to justify the conclusion that they necessarily would so operate, would be controlling upon banks chartered by Congress when they came, in virtue of authority conferred upon them by Congress, to exert such particular powers."

It seems to me, therefore, that the rationale of the opinion of the Supreme Court of the United States is this: Congress was constitutionally empowered to vest, in the Federal Reserve Board, authority to grant by special permit to National banks, the right to act as trustee, executor, administrator, registrar of stocks and bonds, but such banks desiring to exercise these particular powers, or any of them, are subject to, and must comply with, State regulations for the conduct of any such business, required of domestic corporations exercising the same powers.

The Act of May 9, 1889, P. L. 159 which amends the twenty-ninth section of the General Corporation Act of 1874, and which further regulates and confers additional powers in all corporations then or thereafter incorporated, including, inter alia, power to act as trustee, executor, administrator, registrar of stocks and bonds, enacts in the amended Section 29, Clause I, Paragraph Thirteen, as follows:

"* * * *Provided, however,* 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, an affidavit of which fact, made by the treasurer thereof, shall be filed in the office of the Secretary of the Commonwealth, and each such company, heretofore or hereafter incorporated, shall file in the office of the Secretary of the Commonwealth a certificate of its acceptance hereof, made by formal resolution adopted at a regular or called meeting of the directors, trustees, managers or other proper officers thereof and certified under the corporate

seal of such company, and a copy of such affidavit and of such resolution certified under the seal of the office of the Secretary of the Commonwealth shall be evidence of compliance with the requirements hereof."

It follows that National banks in this State, having a paid-up capital of less than one hundred and twenty-five thousand dollars, can not exercise any of the said additional powers. Those having a paid up capital of at least that sum may so act, after permit obtained from the Federal Reserve Board, by complying with the statute of this State just quoted, requiring the filing of the affidavit with the Secretary of the Commonwealth referred to, etc.

National banks exercising said additional powers are also subject to the following additional provisions of the same Act of 1889:

"Section 29. Clause II. That whenever such companies shall receive and accept the office or appointment of assignees, receiver, guardian, executor, administrator, or to be directed to execute any trust whatever, the capital of the said company shall be taken and considered as the security required by law for the faithful performance of their duties as aforesaid and shall be absolutely liable in case of any default whatever."

"Clause V. The said companies shall keep all trust funds and investments separate and apart from the assets of the companies, and all investments made by the said companies as fiduciaries shall be designated as that the trust to which such investment shall belong shall be clearly known."

By virtue of these provisions and the duties imposed by the Banking Act of 1895, P. L. 4, with reference to, inter alia, trust companies, the Commissioner of Banking must examine the trust business and funds of companies acting as trustee, etc., to see that there is no dereliction or default on their part in the execution of their trusts; that such funds are kept separate and apart from their assets and are not mingled therewith or otherwise diverted. To that limited extent the Commissioner of Banking must also examine National banks, that is, only as to their trust business, including their accounts as assignee, executor and administrator, to ascertain that the laws of this State relative to such acts are complied with.

It is also important to point out in this connection that the Courts of this State have certain powers to direct the Commissioner of Banking to make examinations of companies appointed assignee, receiver, guardian, executor, administrator, or to execute any trust whatever, and any National bank so appointed would necessarily be subject to the same provision.

Act of June 7, 1907, P. L. 454, provides as follows:

"Clause 4. That whenever any court shall appoint any such company assignee, receiver, guardian, executor, administrator, or to execute any trust whatever, the said court may, in its discretion, or upon the application of any person interested, issue under its seal a mandate to the Banking Commissioner of Pennsylvania, directing him to forward to said court a certified copy of the last report of such institution filed in his office, which said certified copy shall be filed at the number and term of said court at which such company shall have been approved by said court to act in such capacity; or the said court may, in its discretion, or upon the application of of any person interested, issue under the seal of said court a mandate to the Banking Commissioner, requiring him or one of the bank examiners of the State of Pennsylvania to investigate the affairs and management of the company so appointed or approved, who shall report to said court the manner in which its investments, are made and the security afforded to those by and for whom its engagements are held, which said report shall be filed of record as hereinbefore provided; and the expense of such investigation, or certified copy of the last report so filed in the office of the Banking Commissioner of the State and hereby required to be furnished to said court, shall be defrayed by the company so examined or reported upon: Provided, however, That the fees or charges against such company for such certified copy from the Banking Commissioner's office shall not exceed the sum of one dollar for the first page and fifty cents for each additional page: And provided, further, That the expense of such special examination, as herein authorized to be required by said court, shall not exceed the compensation now allowed by law to the Banking Department for examination and report upon such institution: And provided, further, That no other persons shall be appointed or permitted to make such examinations."

The evident intendment of the Act of Congress is not to encroach upon the State's right to regulate this character of business "peculiarly within state administrative control," as indicated in the opinion of the Supreme Court of the United States, but merely to confer upon National banks said additional powers, which may be exercised, subject to nondiscriminating and reasonable State regulations and rules regulating the exercise of the functions conferred, adopted under authority of the Act by the Reserve Board, as well said by the learned Chief Justice— "to the end that harmony and concordant exercise of the national and state power might result."

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE CORPORATIONS.

An advertisement is intended to give notice to the public of the adoption of a name of an intended corporation, and should this name be amended a re-advertisement is necessary.

Office of the Attorney General,
Harrisburg, Pa., July 16, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: I beg to acknowledge receipt of yours of the 12th in reference to the proposed name International State Bank in place of City Bank of Philadelphia.

It will be necessary for the applicant to readvertise its application under any other name than that for which it has already applied and advertised.

The advertisement is intended to give notice to the Public of the adoption of a name, and unless the name approved by the Department is substantially the same as that included in the advertisement, there should be an advertisement of the name finally selected.

With good wishes, I am

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS.

Building and loan associations may not invest their funds in Liberty Bonds, and, hence, have no right to hypothecate such bonds for borrowed money.

The Act of July 5, 1917, P. L. 68, permitting corporations to invest their surplus funds in such bonds without obtaining the consent or approval of the stockholders, has no application to building and loan associations, as such associations have no surplus within the meaning of the act. The surplus of a corporation consists of a part of the profits which may be declared as dividends, and as building and loan associations pay no dividends to stockholders, they have no corporate surplus in the legal sense.

Office of the Attorney General,
Harrisburg, Pa., August 1, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: In answer to your inquiry whether a building and loan association may hypothecate as collateral for borrowed money, Liberty Loan Bonds it had purchased, I beg to advise you as follows:

The strong and lofty motives of patriotism which now impel all persons, both in private as well as in official life, to use every possible means to aid the National Government in its great task of successfully prosecuting the war, are sufficient justification for extending to the most liberal limits any legislation passed in aid thereof. There are, however, limits beyond which one may not pass.

In dealing with the rights and powers of corporations, one must look to the statutes under which they are created. They have only such powers as are expressly granted, or which must necessarily be implied to carry out the purposes for which they are organized under those statutes.

A building association is in effect a co-operative organization. It is limited to making loans and advances to its own stockholders. Its funds are created by periodical payments made by its stockholders on account of subscription of stock. The stockholders are not permanent investors in the association, and they are paid off and automatically cease to be stockholders when the periodical series in which they join the association matures, which happens when the total amount of the periodical contributions made, and all the earnings accruing thereto, reach the par value of the share. A building association cannot, therefore, make permanent investments, because its assets must, at all times, be liquid, so that funds may readily be available to meet the demands of borrowing stockholders, and to pay off maturing series. As already stated, it can make loans only to its own stockholders and then not in excess of the amount of the borrower's subscription to stock.

The stockholders in each series issued are entitled to all the profits earned by the stock of that series. The association as such cannot be considered as separate and apart from the stockholders of the several series so far as the right to profits is concerned. Therefore, there can be no "surplus" in a Building and Loan Association. The stockholders in each series withdraw as their shares mature, and they then take out all their instalments and all the profits earned.

The Act of July 5, 1917, P. L. 681, one of the several acts passed by the last Legislature to facilitate the investment of corporate funds in bonds of the United States government issued for war purposes, provides, that all corporations may invest all or any part of their "surplus" funds in such bonds without obtaining the consent or approval of the stockholders.

"Surplus" has been defined to be "that which remains after expenses and dividends." See "Words and Phrases." In a building association, however, there is no "surplus" because there are no dividends paid to the stockholders; that is, a portion of the profits which may be declared as dividends, as the stockholders are entitled to all the profits.

By the Act of April 29, 1874, P. L. 73, Section 37, the power and franchise of Building and Loan Associations is limited to "loaning or advancing money to the stockholders thereof." Even if the general enabling act of 1917 above referred to could be considered as in any way operating as an extension of the powers of corporations, it could not have that effect as to building and loan associations, because such associations do not and cannot have the funds—"surplus funds"—as to the investment of which the extended power is given.

It is with much regret, therefore, that I am constrained to advise you that building and loan associations may not invest their funds in Liberty Bonds. It follows as a matter of course that a building association has no right to hypothecate Liberty Loan Bonds for borrowed money.

It should be added in this connection, that the limitation of the right of building and loan associations in the matter of borrowing money, and securing the repayment thereof, was passed upon by Attorney General Carson, in re Building and Loan Association mortgages, under date of November 29, 1905, reported in 14 District Reports, 879. It was pointed out in that opinion that under the Act of June 25, 1895, P. L. 303, the right to make temporary loans, that is, borrow money, was extended to a case where a series of stock has matured, in addition to the case of applications for loans by stockholders in excess of the accumulations in the treasury, such loans not to exceed 25% of the withdrawal value of the stock issued by the association, and that the rate of interest on such loans must be less than 6% per annum. It was also there pointed out that the material change appearing in the provision for the security of the payment of such loans obtained by a building association, is stated in the words "and secure the payment of same by interest bearing order, note or bond as collateral," omitting the words "judgments and mortgages," which had appeared in the same connection in the Act of June 2, 1891, P. L. 174, so that building and loan associations are not now authorized to use their "judgments and mortgages" as collateral for money borrowed, but are limited to securing the same by "interest bearing order, note or bond," as provided by the Act of 1895.

I regret that I am compelled to this conclusion. I am not unmindful that we are in the midst of a world war, and that all resources of our country should be available for its successful prosecution, but it is also of vital importance that in the struggle for the maintenance of the integrity of international laws and order, we should not ignore those enacted for the security of our people, their persons and property, at home. I have, during this war, from time to time advised the "letting down of a bar" here and there, in the administration of the laws of the Commonwealth, but only in cases

where there was no legal enactment in direct prohibition. In cases where our laws are mandatory and specific, I have neither the right nor the inclination to construe them otherwise.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

FARM LOANS OF BUILDING AND LOAN ASSOCIATIONS.

Building and loan associations may not invest their funds in farm loan bonds of the Federal Land Banks.

Office of the Attorney General,
Harrisburg, Pa., August 1, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg, Pa.

Sir: In answer to your inquiry whether a Building Association may, by unanimous consent of all its directors, invest in farm loans of the Federal Land Bank, I beg to call your attention to my other opinion sent you under this date, advising that such association may not invest their funds in Liberty Bonds, or any other permanent investment, but are limited by statute to "loaning or advancing to the stockholders thereof the moneys accumulated from time to time."

It is not necessary to repeat, in this opinion, the reasons in detail for the conclusion there reached.

It is pertinent to add in connection with this particular inquiry, however, that the last Legislature was apparently aware of the fact that from the very nature and character of Building and Loan Associations, such corporations could not invest its funds in farm loan bonds of Federal Land Banks, or any other permanent investment.

The following acts, all dated April 5, 1917, were passed by the last Legislature enabling corporations and others to invest funds in farm loan bonds issued by farm land banks.

Act No. 27, authorizing executors, administrators, guardians, and other trustees to invest trust funds in farm loan bonds issued by Federal Land Banks, under the provisions of the act of Congress of the United States of July seventeenth, one thousand nine hundred and sixteen, its amendments, or supplements.

Act No. 28, authorizing Companies to invest their capital and surplus in farm loan bonds issued by Federal Land Banks, under the provisions of the act of Congress of the United States of July seventeenth, one thousand nine hundred and sixteen, its amendments, or supplements.

Act No. 29, specifying additional securities in which trustees or directors of savings banks, savings institutions, and provident institutions, chartered under general or special acts of Assembly, may invest moneys deposited therein.

No such legislation was passed as to Building and Loan Associations.

I regret, therefore, that I must advise you that Building and Loan Associations may not make an investment in farm loan bonds of the Federal Land Banks.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

BUILDING AND LOAN ASSOCIATIONS—LIBERTY BONDS.

Building and loan associations may not invest their funds in Liberty Bonds, and, hence, have no right to hypothecate such bonds for borrowed money.

The Act of July 5, 1917, P. L. 681, permitting corporations to invest their surplus funds in such bonds without obtaining the consent or approval of the stockholders, has no application to building and loan associations, as such associations have no surplus within the meaning of the act.

Office of the Attorney General,
Harrisburg, Pa., August 31, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg, Pa.

Sir: Since my opinion of August 1, 1918, in which I advised you that Building and Loan Associations could not legally buy or hypothecate Liberty Bonds, I have, at their request, given hearing to counsel for "The Building Association League of Pennsylvania" and to representatives of several Building and Loan Associations, at which arguments were presented "looking to a modification" of that opinion. Nothing not considered prior to the rendition of the opinion was presented, except one particular—this will be hereinafter more fully adverted to—but in view of the discussion which the opinion has aroused and by reason of the misunderstanding of those who have not read it or are unfamiliar with the interpretation of statutes, I will impose on you an elaboration of the reasons which impelled me to the conclusion that Building and Loan Associations can not legally purchase or hypothecate Liberty Bonds.

The rule that corporations can have and exercise only such powers as are expressly conferred on them and such implied powers as are necessary to enable them to perform their prescribed duties is set-

tled in the law of this Commonwealth and elsewhere. *Cooke vs. Marshall*, 191 Pa. 315. It is obvious then that unless there exists some statute of this Commonwealth expressly conferring or necessarily implying authority to Building and Loan Associations to buy or hypothecate Liberty Bonds, they do not possess that power.

That there was enacted prior to the session of 1917 no law expressly conferring or necessarily implying the power, is conceded by all except one or two, but it is strongly asserted that the Legislature did grant the authority at its last session by the Act of July 5, 1917, P. L. 681, Section 1 of which provides as follows:

“Be it enacted, &c., That all corporations incorporated under the laws of this Commonwealth may invest all or any part of their surplus funds in bonds of the United States Government issued for war purposes, without obtaining the consent or approval of the stockholders.”

This statute does not expressly mention Building and Loan Associations. It does, however, comprehend all corporations which have “surplus funds” and the question is presented—and to my mind the only legal question involved—whether a Building and Loan Association can have “surplus funds” within the intendment or contemplation of that Act.

I advised you that, in my judgment, these associations could not have such “surplus funds” and after considering the many contentions advanced, I find in none of them anything which could justify me in changing my opinion, much as I realize and accord with the patriotic motives of those who advanced them.

A Building and Loan Association can not, in my judgment, have “surplus funds” because all the funds of the association belong to the members. The right of a member of an association to withdraw is an absolute right (*Rhoades vs. Association*, 82 Pa. 180) and, unlike the stockholders of other corporations, he is entitled upon withdrawal to receive the amount paid in plus the best approximation of the profits earned to the time of withdrawal. What can be more clear than that this statutory right of withdrawal is equivalent to a statutory application of the profits to the shares, and if this be so what moneys can the Association possess which could constitute “surplus funds”; the amount paid in belongs to the stockholder; the profits of the association likewise are his—what are those other moneys which are not his for the asking and to which therefore the term “surplus” could be applied?

I complied with the request for a hearing most heartily, for if there existed some false premise or some fallacy in the reasoning by which I was impelled to my conclusion, I desired to know it in order

that it might be corrected. The contentions presented failed to convince me of the existence of any error, and they may be briefly summarized as follows:

1. It was argued by one that the Act of 1917 was not necessary to the existence of the power; that these associations being formed under the General Corporation Act of 1874, its amendments and supplements, had all the power conferred on corporations generally by the provisions of those Acts and specifically those powers contained in Section 1, paragraphs 4, 6 and 7 of the Act of 1874, to-wit:

Fourth: To hold, purchase and transfer such real estate and personal property as the purposes of the corporation require, not exceeding the amount limited by its charter or by law.

Sixth: To make by-laws not inconsistent with law, for the management of its property, the regulation of its affairs and the transfer of its stock.

Seventh: To enter into any obligation necessary to the transaction of its ordinary affairs.

The answer to this contention is that Section 37 of the same statute deals expressly with Building and Loan Associations and restricts their authority to

“Loaning or advancing to the stockholders thereof the moneys accumulated from time to time.”

This restriction still obtains, except that Associations under a subsequent statute may advance money to other Associations under certain conditions, which borrowing Association is likewise limited to advancing or loaning the money so obtained to its own stockholders.

2. It was further contended that the term “surplus funds” had been sufficiently defined to make it applicable to Building and Loan Associations and in support of this contention reference was made to several decisions. *Leather Manufacturers and National Bank v. Treat*, 116 Fed. 774, was cited wherein the word “surplus,” as used in the War Revenue Act of 1898, was construed as

“the amount left over after setting aside sufficient of the assets of the banker to meet his liabilities.”

The Act before the Court was a taxing statute and the case simply decided that it reached all the assets of the corporation. Under the meaning of the word as construed by the Court in that case, it can not apply to a Building and Loan Association because, as before pointed out, there can be nothing left over if “sufficient assets are set aside to meet liabilities.”

3. *Greeff vs. Equitable Life Assurance Society of United States, 54 Northeastern 712*, is relied on. The defendant in the case was an incorporated society doing a life insurance business under a charter which required the distribution of an equitable share of its "surplus" to each stockholder. The plaintiff took out a policy of insurance in the defendant Company, which contained a provision entitling it to participate in the distribution of such "surplus" according to such principles as might be adopted by the Company, and it was held that, until a distribution was made by the officers of the defendant Company, plaintiff had no such title to any part of the "surplus" as would enable him to maintain an action at law for the same. The Court in discussing the word "surplus" construed it to mean "all the funds in the possession of a mutual insurance company over and above its immediate and present liabilities."

It is but necessary to reiterate in reply to any argument from this case that as to Building and Loan Associations there is nothing "over and above its immediate and present liabilities," all the moneys belong to the stockholders and may be withdrawn at any time.

4. It is argued that dividends are never declared by any association until the actual maturity of the stock, when the amount paid in, together with the profits declared at that time, is paid to the shareholders and that therefore there exists no liability for profits until the maturity of the series.

There are no "dividends" in the legal sense of the term in Building and Loan Associations, and regardless when the money earned on each series is definitely ascertained, the law is clear that a member is privileged to withdraw at any time and take with him the amount by him paid in, plus an approximation of the amount that money earned. That he does not get his full portion of profits is true, but the remaining stockholders of the series are entitled to their full portion, including that left by the withdrawing member.

5. In regard to the right to hypothecate these bonds, counsel calls attention to the Act of June 12, 1907, P. L. 525, which makes it unlawful for, inter alia, Building and Loan Associations to issue improper statements. He cited Section 3 of the statute which is as follows:

"Whenever it may become necessary for any corporation included in this act to borrow money, provided that it already has the legal right so to do, the amount of such liability shall be set out in full on the books and in all reports required by law, together with assets assigned or which may have been guaranteed for a loan or sale or rediscounts. It shall not be lawful to conceal any assets, but a record shall be kept of the same,"

and then comes to this conclusion

“It will therefore be understood that the Legislature at least by an implication granted to a Building and Loan Association the recognized right to assign their assets for their loans.”

I am not impressed with this legal deduction. These Associations can not pledge their mortgages and judgments; they are limited to their own “interest bearing order, note, or bond.” Such was my predecessor, Mr. Carson’s interpretation of the Act of June 25, 1895, P. L. 303, reported in 14 District Reports 879, and I am in accord with his conclusion.

Counsel agrees with the conclusion reached by Mr. Carson, but states that my predecessor in office

“Only had in view the assigning of a member’s mortgage, which should not be done for various reasons, as the relation between the borrower and the association is a personal one and the member whose mortgage is assigned may be placed in a less advantageous position than the member whose mortgage is not assigned, but the reasoning in the opinion of Mr. Carson does not apply in the case of Liberty Bonds.”

Counsel, however, overlooks that portion of the opinion which states that the statute of 1895

“expressly defines, as legal and proper collateral security for temporary loans ‘interest bearing order, note or bond.’”

6. Issue is taken with the statement in my opinion of August first, that the “assets of a building and loan association must at all times be liquid,” and it is pointed out that the mortgages of the association are by no means liquid.

Of course, that portion of the Association’s assets which it has already advanced is no longer liquid. I had hardly deemed it necessary to point out that which seemed to me must be obvious to all, that I was referring to the moneys of the association which had not been advanced and which must be at all times available to meet the demands of the shareholders.

In this connection, the point was made that an association may and frequently does have more funds than its stockholders desire to borrow, or is immediately necessary to meet liabilities, but this situation, to my mind, is adequately met by the Act of April 10, 1879, P. L. 16, Section 3 of which provides for involuntary withdrawal

and cancellation at or before maturity of shares of stock not borrowed on. Under this legislation associations have universally adopted by-laws making it obligatory on stockholders in case there are excess funds to either borrow certain pro rata amounts or withdraw and cancel pro-rated shares.

7. The assertion in my opinion that associations

“can make loans only to their stockholders and then not in excess of the amount of the borrower’s subscription to stock,”

is thought to be erroneous, because the Act of 1874 empowers associations to purchase and sell real estate to their own stockholders *or others* for the benefit of their stockholders, in such manner as they may desire.

Certainly this provision does not enlarge the power to *advance* money to others than stockholders. The Association may, of course, advance money to a stockholder on a mortgage on a property which he has purchased or it may purchase the property direct and then take a mortgage from the stockholder to whom the property is conveyed. The transaction is, in effect, the same. The important point is that the transaction must be with or directly for the benefit of its own stockholders.

8. Attention is directed to the Act of May 14, 1913, P. L. 205, paragraph (b) of which expressly empowers associations to make loans without the assignment of stock as security, provided the loan does not exceed fifty per cent of the entire loan granted, but the “loans” contemplated by this statute are expressly stated to be loans to the stockholders from the funds of the association.

Much was made of the patriotism prompting the loaning of the associations’ funds to the United States, at this, a time when the Government needs so much and is morally entitled to our all, and then it is asserted that should any association require funds with which to meet loans or withdrawal demands by its members, purchasers for the bonds could readily be found. But could the bonds be patriotically sold? Liberty Bonds are to be purchased for permanent investment and not to be acquired with a prospect or probability of sale.

“The credit of the United States,” says Secretary of the Treasury McAdoo, in the public press of August 23rd, “is as vital to the people of the United States as health is to the individual and as virtue is to woman. Any man who sells his Liberty Bonds deliberately, thoughtlessly or unpatriotically, is injuring to that extent the credit of the United States, and is by that much adding to the difficulty of the United States in fighting the war successfully.”

"KEEP YOUR LIBERTY BONDS" is the exhortation of the United States Treasury Department in the last issue of the Saturday Evening Post.

"Hold to that Bond. You invested to help send the boys across. They are over now, at grips with the German monster. You expect them to hold on—hold on! till the last vestige of autocracy is crushed out of him. Then, you too, must hold on—must keep your enlisted dollars invested on the firing line * * * hold fast to your Liberty Bonds. Hold fast for the sake of the boys 'Over There.'"

The accumulated funds of an association lying idle in its treasury need not be withheld from the United States. Let the associations pro rate them among its members as voluntary loans or retirements; let it be known that the action was taken with the expectation that members would invest their pro rata amounts in Liberty Bonds, and I believe every dollar would be immediately loaned to the United States. Indeed, since the question has come officially before me, I have had, orally and in writing, many expressions from large shareholders in building and loan associations, declaring the wish that they could be given the opportunity to invest in Liberty Bonds, the amounts, or parts thereof, which they have paid into their respective associations. The accumulated moneys need not be withheld from the Government; the members will invest if the associations will pro rate these funds among them.

In the consideration of this question I have not overlooked the provisions of Section 1, paragraph (a) of the Act of May 14, 1913, P. L. 205, authorizing building and loan associations to set aside from the net profits a sum not to exceed five per centum thereof each year, as a "reserve fund for the payment of contingent losses." I am of the opinion that the fund provided for by this statute, in the majority of institutions necessarily small in amount, must be a liquid fund, ready at all times to meet sudden and unexpected losses, and that it does not constitute "surplus funds" under the Act of 1917, the investment of which is authorized in Liberty Bonds, securities issued by the United States Government for permanent investment and whose purchasers, as above indicated, are exhorted to withhold them from hypothecation or sale.

One contention was advanced at the hearing that was not considered by me prior to the rendition of my opinion of August first, and that was that

"there were some associations in the state which had funds which were not liable to either withdrawal by or for loans to the shareholders."

This, to my mind, can be correct, except in so far that there may not be any present need therefore for such purposes, as under the law all funds of such associations, no matter how designated, are at all times liable to withdrawal or for loans to shareholders, but if any association has funds which are not by any reasonable possibility liable to withdrawal by or for loans to shareholders, or necessary for payment of its series at maturity, or for any other liability of the association, such funds may be considered as "surplus funds," within the meaning of the Act of 1917, but in the determination of such funds the greatest care and caution should be exercised to the end that there may not be included therein any funds possibly subject to withdrawal or loan.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

STATE BANKS' AND TRUST COMPANIES' RESERVE FUND.

A trust company, not a member of the Federal Reserve Bank, receiving deposits of money subject to check or payable on demand, is obliged to maintain a reserve fund of an amount and in the manner prescribed in the Acts of May 8, 1907, P. L. 189, and July 11, 1917, P. L. 781; this reserve, so far as the law permits it to be in moneys on deposit in other banks or trust companies, must be "subject to call."

A deposit by such a trust company with the Federal Reserve Bank which is not subject to call, but is made on account of instalments in payment of Government securities, cannot be considered a part of the reserve required of the depositing company, nor can the Reserve Bank be approved as a reserve agent of such company.

Office of the Attorney General,
Harrisburg, Pa., September 26, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: There was duly received your communication of the 13th inst. asking to be advised whether you may lawfully approve the Federal Reserve Bank of Philadelphia as the reserve agent of a certain trust company, which has applied to you for such approval.

It appears from your communication that in response to your request to be informed whether the deposits made by it with the Federal Reserve Bank are subject to check, the said trust company advised you as follows:

"We frequently have a considerable amount on deposit with the Federal Reserve Bank of Philadelphia on account of installments, etc., in payment of Government bonds, certificates of indebtedness, etc. * * * This deposit, of course, is not subject to our check but is charged to us by the Federal Reserve Bank of Philadelphia as securities are delivered."

While it is not so stated in your communication, I understand that the aforesaid trust company is not a member of the Federal Reserve Bank—and hence the Act of July 7, 1917, P. L. 1021, authorizing banks and trust companies, incorporated under the laws of Pennsylvania, to become members of a Federal Reserve Bank, has no applicability to the question here under consideration.

The Act of May 8, 1907, P. L. 189, provides that all banks and trust companies, incorporated under the laws of this Commonwealth, shall create and maintain a reserve fund of an amount and manner as therein prescribed. Section 2 of this Act, as amended by that of July 11, 1917, P. L. 791, requires that every such corporation "receiving deposits of money, subject to check or payable on demand, shall, at all times, have on hand a reserve fund of at least fifteen per centum of the aggregate of all its immediate demand liabilities," and Section 3 of said Act of 1907, as amended by said Act of 1917, requires of every such corporation "receiving deposits of money payable at some future time" a reserve fund "equal to at least seven and one-half per centum of all its time deposits." In case of the demand liabilities, at least one-third of the reserve fund *must* consist of money or clearing house certificates of the kinds specified, one-third thereof may be in certain bonds and the balance may consist of

"moneys on deposit, *subject to call*, in any bank or trust company in the State of Pennsylvania, or in any other State which shall have been approved by the Commissioner of Banking."

In the case of time deposits the reserve fund *may* consist of money or clearing house certificates of the kinds specified or of certain bonds to the extent of one-third of the required reserve, or it may consist of "moneys on deposit, subject to call," with a reserve agent approved by the Banking Commissioner.

The manifest purpose of the foregoing provisions of the Act is that every bank and trust company shall at all times have on hand sufficient funds to meet the demands of its customers, the bonds allowed being assets of such liquid nature that they can presumably be quickly converted into cash if the need arises. In furtherance of this purpose, promotive of sound banking, that an adequate reserve be maintained and available for immediate use, it will be ob-

served that the Act requires that a deposit with a reserve agent in order to constitute any part of such fund must be one "subject to call." This provision of the Act is unmistakable in intent, mandatory in effect and cannot lawfully be departed from. It will be noted that two-thirds of the legal reserve in the case of demand liabilities may consist of a deposit with a reserve agent, and in the case of time deposits the whole reserve may be so made up. To permit a deposit other than one subject to call to form part of the reserve fund would defeat the purpose of the Act and be contrary to its plain letter.

As was held by Assistant Attorney General Cunningham in an opinion to the Commissioner of Banking, dated July 17, 1907, reported in 33 Pa. C. C. 626, the Commissioner of Banking may "exercise a sound discretion in approving depositories" of reserve funds, but he has no discretion as to the requirement that to form part of a reserve a deposit with a reserve agent must be one "subject to call," and no bank can be lawfully approved as a reserve agent which does not so receive deposits.

In the particular case occasioning the request for this opinion, as above stated, the deposit with the Federal Reserve Bank is one "on account of installments, etc., in payment of" Government securities and admittedly "not subject" to the check of the depositing trust company. The conclusion is clear that such a deposit cannot be deemed as constituting any part of the reserve required of said trust company and that neither the Federal Reserve Bank nor any other bank can be approved as a reserve agent in such a case, or as a depository of reserve funds on such conditions.

I am not unmindful that our banks and trust companies are facing extraordinary conditions and are bearing a tremendous burden in their patriotic efforts to assist in financing the war. Wherever consistent with safe banking, the laws relative to their administration should be given a liberal construction in this time of stress. The requirement, however, that a deposit to form part of reserve fund shall be one subject to call permits no discretionary latitude in its enforcement, but must be strictly complied with.

Very respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

BANKING COMPANY DIRECTORS.

A judge of the Court of Common Pleas may lawfully be a member of the board of directors of a bank incorporated under the Act of May 13, 1876, P. L. 161. The Act of April 16, 1850, P. L. 477, relating to bank directors, does not apply to such banks.

The Act of May 13, 1876, P. L. 161, provides and furnishes its own full and complete system for the organization, administration and conduct of the companies formed in pursuance of its provisions.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1918.

Honorable Daniel F. Lafean, Commissioner of Banking, Harrisburg,
Pa.

Sir: There was duly received your communication stating that a certain bank incorporated under the Act of May 13, 1876, P. L. 161, "has, as a member of its board of directors, a judge of the Court of Common Pleas of the County in which the bank is located. The Department believes that the holding of such office by a judge is not according to the ethics of sound banking." In your communication attention is also called to the hereinafter quoted provision of the Banking Act of 1850 relative to the ineligibility of certain persons as bank directors.

It is presumed from your communication that you desire an opinion as to whether a judge of the Court of Common Pleas is legally disqualified from acting as director of a banking company organized under the said Act of 1876.

The Act of April 16, 1850, P. L. 477, was a general enactment for the regulation of banks incorporated by special Acts of Assembly, which was the common method for their incorporation prior to the adoption of our present Constitution, Section 1 thereof provides:

"That every banking corporation hereafter created by any special act of the General Assembly, and every bank hereafter rechartered, 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."

Section 10 provided that the "rules, restrictions, limitations and provisions" therein set forth should be the "fundamental articles of

the Constitution of every bank which shall be hereafter incorporated," and further provided in Article I of said Section, inter alia, as follows:

"No person shall, at the same time, be a director of any two banks; nor shall the Governor or any executive or judicial officer of this Commonwealth, city or county treasurer, or a member of the State Legislature, be a director."

This provision of said Act unquestionably remains in force and applies to all banks within the purview and scope of that Act. It may be noted that so late as the session of 1911, the Legislature passed an Act repealing the above provision, which failed to become a law in consequence of an Executive Veto. Vetoes of the Governor, Session of 1911, page 146.

The question here under consideration therefore turns from the point whether the aforesaid provision of the Act of 1850, relative to bank directors, applies to banking companies incorporated under the Banking Company Act of 1876. I am of the opinion that it does not. This latter Act does not incorporate any bank, but provides a general method how banking companies may be incorporated. It provides and furnishes its own full and complete system for the organization, administration and conduct of the companies formed in pursuance of its provisions. To it and the supplements and amendments thereto, we must look for the fundamental statutory rules and limitations governing the banks created thereunder, precisely as banks incorporated or rechartered by special Acts of Assembly subsequent to the Act of 1850 looked to that Act for statutory guidance. Section 1 of the Act of 1876 provides, inter alia, that the articles of association of a company organized under it, "*may contain any provision not inconsistent with this act, which the association may desire to adopt, for the regulation and conduct of its business and affairs.*" This imports a clear legislative intent to provide by the Act a complete and exclusive scheme, in itself, for the creation and conduct of banking companies. There is nowhere in it any intent manifest, or anything from which such intent can be implied, that any former Act, or part thereof, should be read into or supply its terms.

The Act of 1876 is not silent as to the qualifications requisite for directors of the companies erected thereunder, thus leaving us to presume from such silence that the provisions of some other statute were to stand in lieu of any such provision of its own. Section 12, as finally amended by the Act of July 19, 1917, P. L. 1101, prescribes, in detail, qualifications required to render a person eligible to be elected or serve as a director. Some of these are the same or similar

to those prescribed by the Act of 1850. If it had been the legislative intent that the said provision of the Act of 1850 should apply to the Act of 1876, it would have been wholly unnecessary for the latter to require United States citizenship and an oath of office to enable a person to serve as a director, since both are requirements of the earlier Act. Various similar provisions are to be found in both Acts, all tending to the conclusion that the latter one did not look to the former to supply the latter in any respect.

That banks operating under charters originally bestowed by special Act of Assembly may, by virtue of the limitation of the above provision of the Act of 1850, labor under a disability as to who are eligible to its directorate to which one chartered under the General Act of 1876 is not subject, presents no unique anomaly. The corporate powers vested in, and the organization of, our banks, are not all the same, being dependent upon their own particular charter. Attorney General Hensel, in an opinion to the Superintendent of Banking, dated April 27, 1892, 12 Pa. C. C. 40, held that a bank incorporated by special Act of Assembly prior to the Act of 1876, is not made subject to that Act by a renewal of its charter.

In *Merchants Bank of Easton vs. Shouse, Administratrix*, 102 Pa. 488, the Supreme Court, speaking through Mr. Justice Gordon, said that the said Act of 1850 "applies only to banks of issue," and that where a charter, in that case one granted by special Act of Assembly, "is, in itself, full and complete," and "refers to no other Act," it is "idle to rummage other statutes for powers that the Legislature never intended should belong to this institution."

Banking companies incorporated under the Act of 1876 are not banks of issue. Furthermore, what was said in this last cited case may with still greater force be said of companies organized pursuant to the General Act of 1876. That Act was intended to supersede the prior method of incorporating banks by special acts, which method had been outlawed by the new Constitution, and was a plain design to provide a full, complete and exclusive system, in and of itself, for the regulation of the companies organized under it, and we need not search elsewhere for the fundamental constitution of such companies.

I have not overlooked the opinion of Attorney General Carson, rendered to the Commissioner of Banking, dated February 5, 1904, and reported in 29 Pa. C. C. 233, wherein he held that the said provision of the Act of 1850 had not been repealed and that it applied to a bank chartered under the Act of 1876. While agreeing with the learned Attorney General that the said provision is still in force, I am unable, for the reasons above stated, to agree with his conclusion that it applies to banking companies organized in pursuance of the said Act of 1876.

In accordance with the foregoing, you are therefore advised that a judge of the Court of Common Pleas is not legally disqualified to serve as a director of a banking company chartered under the Act of May 13, 1876, P. L. 161.

Very respectfully yours,

EMERSON COLLINS,
Deputy Attorney General.

OPINIONS TO THE ADJUTANT GENERAL.

OPINIONS TO THE ADJUTANT GENERAL.

An extra stenographer in the office of the Adjutant General is not within the terms of the Act of June 7, 1917, providing for pay to the dependents of appointive officers and employes of the Commonwealth who entered the military or naval service of the United States.

Office of the Attorney General,
Harrisburg, Pa., October 12, 1917.

Honorable F. D. Beary, Adjutant General, Harrisburg, Pa.

Dear General: I have your favor of the 3rd inst., enclosing the letter of J. E. Wright.

You ask to be advised whether Mr. Wright is entitled to the benefits of Act No. 201, approved June 7, 1917, providing for pay to the dependents of appointive officers and employees of the Commonwealth who have entered the military or naval service of the United States.

The facts I understand to be as follows: J. Earl Wright is now Quartermaster Sergeant, attached to the Motor Supply Train of the Pennsylvania National Guard now at Camp Hancock, Ga. He was employed, prior to his enlistment into the service of the United States, in the office of the Adjutant General as an extra stenographer. He was not upon the regular payroll, but was paid from the appropriation "for the maintenance of the National Guard" by warrant drawn by the Auditor General upon the State Treasurer.

The Act of June 7, 1917, No. 201, provides:

"That whenever any appointive officer or employee, regularly employed by the Commonwealth of Pennsylvania in its *civil service*"

shall enter the military or naval service, he shall not be deemed to have resigned or abandoned his office or employment, and that upon filing a statement as therein directed, there shall be paid to the dependents of such officer or employee "one-half of the salary or wages of his said office or employment, not exceeding \$2,000 per annum."

It will be noted that the Act applies only to appointive officers or employees regularly employed by the Commonwealth in its "civil service."

The question which your letter raises is whether a stenographer in the office of the Adjutant General, paid out of the fund "for the maintenance of the National Guard of Pennsylvania" is an employee "in the civil service" of the State.

"'Civil service,' in its enlarged sense, means all service rendered to and paid for by the State or Nation, or by political sub-divisions thereof, *other than pertaining to naval or military affairs.*"

Callaghan vs. McGown (Texas), 90 S. W. 319.

Hope vs. City of New Orleans, 30 South. 842.

"'Civil service' * * * includes all offices and positions of trust or employment in the service of the State, or of such civil division or city, except such offices and positions in the militia and the *military departments.*"

People vs. Cram, 61 N. Y. Sup. 858.

It must be assumed that the Legislature used the word "in its civil service" in the light in which they have been construed by the courts.

The foregoing authorities show that they have been construed so as not to include employment in the military department of the State.

Moreover, J. Earl Wright was not a regular employee. He was an extra man. He was not carried on the payroll as an employee. The Act of Assembly provides where an employee shall enter the service "he shall not be deemed to have thereby resigned or abandoned his said office or employment."

He probably had no place from which he could resign. He filled no place for which an appropriation was made. He occupied somewhat similar position to the employees on State Highways who are not regularly employed, or of the physicians at State Sanatoria who are extra help and are paid for the time which they give to the State.

For these reasons, therefore, I am constrained to advise you that J. Earl Wright is not within the terms of the Act above referred to.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

APPROPRIATIONS.

Land purchased by the Adjutant General in 1917 must be paid out of the appropriation of 1917 and not from appropriation of 1915.

Office of the Attorney General,
Harrisburg, Pa., October 17, 1917.

Honorable F. D. Beary, Adjutant General, Harrisburg, Pa.

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

I understand you desire to be advised upon the following facts:

On May 19, 1917, Adjutant General Stewart agreed for the Commonwealth of Pennsylvania, to purchase from Booker H. Gingrich, for the sum of \$8,400, a tract of land in Lebanon County, intended as an addition to the land now owned by the Commonwealth for camp purposes at Mt. Gretna. A surplus of about \$14,000 remains in the funds appropriated for the maintenance of the Adjutant General's Department for the two fiscal years ending May 31, 1917.

You ask to be advised whether the payment of the \$8,400 contracted for on May 19, 1917, may be made out of this unexpended balance. The General Appropriation Act of 1915 provides, in its first section, as follows:

"That the following sums or as much thereof as may be necessary, be and the same are hereby specifically appropriated to the several objects hereinafter named, for the two fiscal years commencing on the first day of June, one thousand nine hundred and 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, to be paid out of any moneys in the treasury not otherwise appropriated."

The General Appropriation Bill this year has precisely the same provision for the two fiscal years "and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending May 31, one thousand nine hundred and seventeen."

It is apparent that the legislative intent is that where bills have been contracted and remain unpaid, the payment should be made out of the current appropriation.

I, therefore, advise you that the payment of \$8,400 contracted by General Stewart on May 19, 1917, and remaining unpaid on May 31, 1917, cannot be paid out of the appropriation ending May 31, 1917, but must be paid out of the appropriation for the two current years.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

MACHINE GUN UNITS.

The Governor does not have authority to form headquarters, supply or machine gun units from an enlisted personnel, separate from the twelve lettered companies and squadron of cavalry, but is empowered to form such units from the enlisted personnel thereof.

Office of the Attorney General,
Harrisburg, Pa., January 25, 1918.

General F. D. Beary, Adjutant General, Harrisburg, Pa.

Dear General: We have your favor of the 16th inst.

You ask to be advised whether the Governor has the power to reorganize the regiments created under the Act of June 26, 1917, P. L. 628, so as to add machine gun units and give such units separate allotments, without creating such units by detail from the enlisted personnel of the twelve companies provided by said Act of Assembly.

This act provides for the creation of the "Pennsylvania Reserve Militia" during a period of war.

The Act provides:

"The Pennsylvania Reserve Militia shall consist of not to exceed three regiments of infantry and one squadron of cavalry. Each regiment of infantry shall consist of the necessary field and staff, commissioned and enlisted personnel, a sanitary department, and of twelve lettered companies. Provision shall be made by detail for headquarters, supply and machine gun units. * * * The enlisted personnel of the Pennsylvania Reserve Militia shall at all times be maintained at a strength of not exceeding sixty-two enlisted men for each lettered company and troop; Provided, however, that if it shall become necessary to order the said Pennsylvania Reserve Militia on active duty, that then it shall and may be lawful for the Governor, in his discretion, to increase the enlisted personnel of each company and troop to not exceed one hundred men severally."

Section 3 provides, in part:

"The Governor shall have power, and he is hereby empowered, to increase *as heretofore provided* for, consolidate, disband or organize, or reorganize any regiment," etc.

This Act does not provide for the organization of machine gun units outside of the personnel of the twelve lettered companies and squadron of cavalry. It requires the headquarters, supply and machine gun units, to be made by detail from the enlisted personnel. The

authority given to the Governor to increase the regiments, etc., is to increase "as hereinbefore provided," which refers to the increase of the enlisted personnel of each company of one hundred men "if it shall become necessary to order the said Pennsylvania Reserve Militia on active duty."

The authority to increase the regiments or companies does not give the Governor authority to form headquarters, supply or machine gun units from an enlisted personnel, separate from that of the twelve lettered companies and squadron of cavalry, but only authority to form such units by detail from the enlisted personnel thereof.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

RIFLE RANGES.

The members of a rifle club formed under the Act of July 6, 1917, P. L. 750, may be sworn in, if necessary. They will receive no compensation. The uniforms to be worn are to be designated by the State authorities.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

General F. D. Beary, Adjutant General, Harrisburg, Pa.

Sir: We have your favor of the 30th ult., asking for an interpretation of the Act of July 6, 1917, P. L. 750, which authorized county commissioners to appropriate moneys for the maintenance and rental of rifle ranges, etc.

The Act of Assembly provides, in part:

"That the county commissioners of each county are authorized, at any time that a state of war exists, to appropriate to civilian rifle-clubs * * * moneys for the maintenance and rental of rifle ranges * * * and for the equipment and uniforms for such of the members of such clubs as volunteer for special military duty in their respective counties or answer any call of the Governor of the Commonwealth."

You asked to be advised whether the members of such clubs who volunteer for service under this Act shall take an oath before they enter upon the service or before any uniforms or equipments are is-

sued to them, and if so what oath shall be administered; whether such volunteers are entitled to compensation, and if so, by whom is it to be fixed; and what uniform is to be supplied.

This Act of Assembly is vague and indefinite as to the character of service which the members of such rifle-clubs may volunteer to perform. It is characterized only as "special military duty in their respective counties, or answer any call of the Governor." No oath is prescribed, no compensation fixed.

The apparent intention of the Act was to encourage the voluntary service of persons skilled in the use of fire-arms, in the event of local trouble or insurrection which might require such volunteer service, either in any county of the Commonwealth, or at the call of the Governor.

If the particular service which the members of any such club volunteer to perform requires an oath to be administered before entering upon such service, then the oath, in the form which it is prescribed for such service, should be administered to the members of the rifle-clubs who volunteer therefor. Otherwise, no oath is required, either before entering the service or before securing uniforms, equipment or pay.

This Act of Assembly authorizes no compensation but if compensation is attached to the "special military duty," or to the "call of the Governor," which the members of these rifle-clubs may volunteer to perform, they are entitled to the compensation fixed for such service.

This Act of Assembly prescribes no uniform, because it refers to no particular service. The uniform directed to be supplied is the uniform otherwise fixed for the "special military duty" which the members of the rifle-clubs volunteer to perform. Such uniforms, if not prescribed by Federal regulation, will be designated by the State authorities. This Act does not provide that the rifle-clubs, as such, or the members thereof, may adopt a uniform. It refers only to the uniform of the service which the members volunteer to perform.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

SOLDIER VOTE.

A commissioner to take the vote of every 1,200 or 1,500 men, or fraction thereof may be appointed, instead of a commissioner for every regimental unit.

Office of the Attorney General,
Harrisburg, Pa., October 23, 1918.

General F. D. Beary, Adjutant General, Harrisburg, Pa.

Sir: I am in receipt of your recent favor relative to taking the vote of citizens of this Commonwealth in actual military service in this country, in which you point out that soldiers from this State are scattered in various military camps, located in widely separated places throughout the United States, that men are placed in the various military units in those camps without regard to the State from which they come, and that in many camps there are no regimental units.

You ask to be advised whether, under such circumstances, the Act of August 23, 1864, P. L. 990, may be so construed as to permit the sending of a Commissioner for every twelve hundred or fifteen hundred men or fraction thereof from this State in a camp approximating the number constituting a regiment at the passage of the Act.

In the opinion which I rendered to the Governor on August 23, 1916, as modified on October 24, 1917, I said:

"The primary purpose of the Act is to afford all electors of the Commonwealth in actual military service of the United States the opportunity to vote, and this with the least friction and embarrassment, and with that end in view its provisions must be liberally construed."

Bearing this in mind, I am of the opinion that under the circumstances now existing, as detailed in your letter, the Act of August 25, 1864, may be construed so as to permit the sending of a Commissioner for every twelve hundred or fifteen hundred men, or fraction thereof, from this State in a camp, instead of a Commissioner for every regimental unit.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

POLICEMEN—APPOINTMENT OF.

There is no Act of Assembly which authorizes the Armory Board or any other State agency to appoint a policeman with authority to make arrests.

Office of the Attorney General,
Harrisburg, Pa., December 31, 1918.

Mr. Benjamin W. Demming, Secretary, State Armory Board, Harrisburg, Pa.

Sir: Your favor of the 19th inst., transmitting the letter of Saville Smith, was duly received. You ask whether there is some provision by which he may be sworn and commissioned as a police officer of the State, with authority to make arrests.

He has been special officer of the Second Infantry of the National Guard of Pennsylvania for more than thirty years, and has been appointed by the authorities of the City of Philadelphia. Inasmuch as the Commonwealth of Pennsylvania owns the Armory now, it is suggested that he be sworn as a State policeman, for the protection of the property.

There is no Act of Assembly which authorizes the Armory Board, or any other State agency, to appoint a policeman of this character, and, therefore, I am compelled to advise you that such appointment can not be made.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE STATE HIGHWAY COM-
MISSIONER.**

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

MOTOR VEHICLES.

A justice of the peace or other officer, making a return to the State Highway Department of fines and penalties collected by him for violations of the law relating to motor vehicles, cannot take his own affidavit to the truth of the statements contained in such return.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1917.

Honorable Frank B. Black, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 25th ult., inquiring whether, under Section 22 of the law relating to motor vehicles, approved July 7, 1913, P. L. 672, which provides that sworn statements of all fines and penalties collected under the provisions of the Act for violation of the same shall be made to the State Highway Department by the officer imposing or receiving the same, a Justice of the Peace or other officer making such return can take his own affidavit and swear to the truth of the matters therein contained, or whether such statement should be sworn to by him before some other officer than himself.

While an examination of the decisions in this State fails to discover any ruling of the Courts squarely upon the subject, in my judgment, this is due not to any uncertainty as to the law on the question, but rather to the fact that it has heretofore been universally accepted that no officer could legally take his own affidavit.

In the case of *King vs. Wallace*, 3 Durnford & East, 403, it was held that an affidavit to a petition for an attachment for contempt of court might not be taken before the Attorney or agent of the Prosecutor.

In many states of this country it has been held that an interest, such as being a partner or Attorney for the affiant, or an officer or stockholder of a corporation interested, will disqualify an officer or magistrate from taking an affidavit. This has been decided not only because of positive statutes forbidding the same, but on the broad ground of public policy.

In the case of *Fair vs. Bank*, 67 L. R. A. 851, the Supreme Court of Kansas said:

"That one who is of counsel, or is related to either party or is otherwise interested in the event of an action, should be barred, even in the absence of our statutory provision, is too evident for discussion."

The following extracts from Ruling Case Law give the best thought from the reported decisions:

"The proper administration of an oath or affirmation requires *concurrent action on the part* of the affiant and an authorized officer. Either it must be administered by the officer to the affiant, or asseveration must be made to the truth of the matters contained in the affidavit by the party making it, to the officer with the latter's consent; otherwise there can be no affidavit * * * To make a valid oath or affirmation there must be some overt act which shows that there was an intention to *take an oath or affirmation on the one hand and an intention to administer it on the other*; for even though such intention actually did exist, if it was not manifested by an unambiguous act, perjury could not be based thereon, and the affidavit would be insufficient." (Vol. 1, P. 765.)

The law contemplates one person who administers the oath and another person who takes the oath. An oath cannot properly be administered by one man to himself. This position is supported by the fact that it would be impossible to convict a person taking a false oath before himself of perjury, for ordinarily the person administering the oath is the only witness to prove its administration, and he could not be compelled to testify in a criminal prosecution against himself if he was charged with perjury in having thus sworn falsely.

The same ruling has been held with regard to acknowledgments:

"As a rule, the grantor or obligor in a deed or other instrument is disqualified to take the acknowledgment or proof thereof."

.....
 "The grantee or obligee in an instrument is disqualified on grounds of public policy from acting in an official capacity in taking and certifying the acknowledgment of the grantor or obligor."

1 Corpus Juris, 805.

You are, therefore, advised that the statement provided for by Section 22 of the Act approved July 7, 1913, must be sworn to before some other officer than the person making such return.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE EMPLOYES OF COMMONWEALTH IN THE MILITARY OR NAVAL
SERVICE OF THE UNITED STATES.

Under the Act of June 7, 1917, the full one-half of the salary of employes of the Commonwealth, in the military or naval service of the United States, is payable to dependents designated in the Act, upon compliance by such employe with the provisions of the act.

Office of the Attorney General,
Harrisburg, Pa., July 17, 1917.

Honorable Frank B. Black, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 21st inst. relative to the construction of the Act of June 7, 1917, P. L. No. 201.

You state that one of the employes of your Department has enlisted in the National Guard of Pennsylvania, Quartermaster's Department, and another in the Engineers' Enlisted Reserve Corps of the United States Army. Both of these young men have filed statements, in accordance with said Act, requesting that half of their respective salaries be paid their dependent mothers.

You asked to be advised whether you shall pay these dependent mothers the full half of their salary, or only such portion as they were accustomed to have contributed to the support of their mothers.

In the first place, the National Guard of Pennsylvania, until it is mustered into the United States service, is not a branch or unit of the Military or Naval service of the United States and, therefore, until the young man who has enlisted in the National Guard is called out for service by the United States this Act does not apply to him.

The Act provides as follows:

"Any said officer or employe so enlisting, enrolling or drafted and having a dependent or dependents, as aforesaid, may, at the time of his enlistment, enrollment or draft or immediately thereafter, file with the head or

chief of the department, bureau, commission or office in which he is employed a statement in writing, executed under oath, setting forth the fact and date of his enlistment, enrollment or draft, his intention to retain his said office or employment, and to resume the duties thereof after the expiration of his service in the military or naval service or any branch or unit thereof, and the names and addresses of his wife, children and dependent parent or parents, if any such he have, and requesting and directing that one-half of the salary or wages of his said office or employment, not exceeding two thousand (\$2,000.00) dollars per annum, shall be paid, during his service in the military or naval service or any branch or unit thereof, as follows: If he have a wife, to his wife for her use and that of his children; if he have children and no wife then to such person as he may designate for the use and benefit of his children. If he have a dependent parent or parents, then he shall direct such sum as he has theretofore been accustomed to contribute to their support, to be paid to them and the amount payable to his wife or children, if any he have, shall be proportionately decreased. If he have no wife or children he may direct the entire one-half of his said salary or wages, not exceeding two thousand (\$2,000.00) dollars per annum, to be paid to his dependent parent or parents; if any such he have; all sums so directed to be paid shall be paid to the person designated in the same proportional installments as nearly as may be as the salary or wages of such person were theretofore paid to him. With such statement he shall also file powers of attorney authorizing the proper dependents to receive their proportion of said salary or wages as aforesaid."

The provision as to paying a dependent parent such sum as the enlisting employe had theretofore been accustomed to contribute to her support applies only in cases where the employe has a wife or children.

It appears from your statement that neither of these young men has a wife or children. The following part of the Act, therefore, is applicable:

"If he have no wife or children, he may direct the entire one-half of his said salary or wages, not exceeding two thousand (\$2,000.00) dollars per annum, to be paid to his dependent parent or parents, if any such he have."

Both these young men have directed, in the statements filed by them under the provisions of the Act, that the full one-half of their wages shall be paid to their dependent mothers. If you have satisfied yourself, in accordance with Section 3 of the Act, that the

mothers of these young men are "dependent" within the meaning of the Act, then they are entitled to be paid the full one-half of the monthly salaries of their respective sons from the date of their enlistment or enrollment (following the approval of the Act) in the military service of the United States.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE HIGHWAYS—RECONSTRUCTION.

The county of Cambria has the right to become a bidder for the reconstruction of Route No. 52, in Jackson and East Taylor Townships, in said county, and, if the lowest responsible bidder, and its bid is within the estimate of the State Highway Department, or near enough to it to justify its acceptance, the contract for such reconstruction may be awarded to said county.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1917.

Honorable J. Denny O'Neil, State Highway Commissioner, Harrisburg, Pa.

Sir: I have given careful consideration to the recent inquiry of your Department relative to your right to award to the County of Cambria the contract for the reconstruction of a section of State Highway Route No. 52 in Jackson and East Taylor Townships, Cambria County.

It appears from said communication that this work is to be done under the provisions of the Act of June 5, 1913, P. L. 419, the County of Cambria having made application to your Department that said section of State Highway be reconstructed in the same manner as a State-aid highway, and having agreed to pay a certain part or share of the total cost of such reconstruction or improvement.

It further appears from said letter that the Department advertised for bids for the reconstruction of this road three times, to-wit, on July 19, 1916; May 3, 1917, and June 12, 1917; that the bids received on July 19, 1916 and May 3, 1917, were so much in excess of the estimate of cost made by your Department that all bids were rejected and that no bids whatever were received for the work at the advertised letting on June 2, 1917.

It is stated that the Commissioners of Cambria County feel confident that the County is in a position to do the work within the estimated cost of your Department and inquiry is made whether, under the circumstances, you can award the contract to the County at the estimate of your Department.

The Act of May 31, 1911, P. L. 468, is very explicit as to the manner in which the work of construction, building and rebuilding of State highways is to be done. Section 13 of the Act provides that all such work, except that of repairing and maintenance, shall be done by contract given to the lowest responsible bidder, under the conditions set forth in the Act.

As to the repair and maintenance of State highways, the work may either be done directly by your Department through workmen employed by it, or, by Section 12, you may enter into a contract with any person, firm or corporation, or the authorities of any borough or incorporated town, or the commissioners of any county, or the supervisors or commissioners of any township to repair and maintain any State highway or portion thereof within the respective limits of such borough, township or county; but this section does not apply to the present case as the work to be done is not repairing and maintenance but reconstruction or rebuilding, which is clearly distinguished in the Act.

The Act of March 22, 1917, Pamphlet Laws 1917, No. 5, provides that any county in this Commonwealth may appropriate and expend the moneys for the improvement and maintenance of any State highway or State-aid highway, or any public highway within its proper limits, provided that no such improvement can be made to State highways or State-aid highways until the same has been submitted to and approved by the State Highway Department.

This would authorize the County of Cambria to reconstruct at its own expense this section of State highway, subject to the supervision and approval of your Department, but it does not cover the present case, in which it is contemplated that both the State and the county shall contribute to the expense of reconstruction.

By Section 31, of the Act of May 31, 1911, *supra*, which relates to State-aid highways, it is provided:

"Any county, township, borough or incorporated town may, through its commissioners or supervisors or councils, bid for the construction or improvement of such portion of any State-aid highway, undertaken under the provisions of this act, as may lie within its limits; and any county, township, borough or incorporated town submitting such bid shall have the same consideration and shall be governed by the same rules and regulations of the department, as in the case of other bidders; and,

if awarded the contract, shall fulfill the same, and be subject to the same conditions and regulations as herein provided for other contractors."

If the road to be constructed were a State-aid highway, under the provisions of the section just quoted, the County of Cambria, through its commissioners, could submit a bid for the construction of this section of highway under the same rules and regulations as other bidders, and if awarded the contract, would be required to fulfill the same and be subject to the same conditions and regulations as provided in said Act for other contractors. The evident purpose of this provision was that as the county, township, or borough was contributing a considerable share or portion of the cost of improving State-aid highways it should have the right to construct such highways, provided it could do the work just as well and at less expense than any other responsible contractor.

The Act of June 5, 1913, P. L. 419, under which this work is proposed to be done, provides that the State Highway Commissioner is authorized to make and enter into contracts for the reconstruction or improvement of any section of a State highway where an application has been made by any county, township, borough, etc., asking that such section of State highway be reconstructed or improved *in the same manner as a State-aid highway*, and agreeing to pay its or their respective share of the total cost of such reconstruction as provided for in Section 22 of the Act of May 31, 1911, or upon such other terms and conditions as to the sharing of the total cost of such reconstruction or improvement as may be agreed upon between the State Highway Commissioner and such county, township, borough, etc. It will be noted that the application presented in this case by the County of Cambria asks that this section of road be reconstructed or improved *in the same manner as a State-aid highway*. This clause, in my judgment, does not relate merely to the manner or method of payment, for under the Act of June 5, 1913 the State Highway Commissioner and the county may make a different agreement as to the sharing of the total cost of the reconstruction from that provided for State-aid highways proper. It rather means to provide that, inasmuch as the county is to bear a certain part or share of the cost of the reconstruction or improvement, just as it does in the reconstruction or improvement of a State-aid highway, it shall have the same rights and privileges in such work of reconstruction as are given or secured to it in the case of a State-aid highway.

I have already pointed out that if this were a State-aid highway the county of Cambria could become a bidder for this work and, if it was the lowest bidder, could have the contract awarded to it. As, under

the Act of June 5, 1913, the application in this case is that the State highway be improved in the same manner as a State-aid highway, I am of the opinion that the right which was secured to the county of Cambria under Section 31 of the Act applies in the present instance. While, therefore, you do not have the right to award the contract without any bidding to the County of Cambria at the estimate of cost made by your Department, I beg to advise you that, under the circumstances, the County of Cambria has the right to become a bidder on this work and if it is the lowest responsible bidder and its bid comes within the estimate of your Department or is near enough to such estimate to justify its acceptance by your Department, you can let the contract to such County in accordance with the provisions of Section 31 above referred to.

I would, therefore, advise you to readvertise this work and notify the Commissioners of Cambria County that under the ruling of this Department it has the right to submit a bid and that if it is the lowest responsible bidder and its bid is sufficiently near the estimate of your Department to justify its acceptance the contract may be awarded to it.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE HIGHWAY CONTRACTS.

It is not incumbent on the State Highway Commissioner to submit proposals, bids, or unexecuted contracts for State Highways to the Auditor General for his supervision and certification before advertising for bids or letting contracts, but he should submit the contract after it is executed, so that the Auditor General may audit the payments to be made thereunder. •

Office of the Attorney General,
Harrisburg, Pa., October 9, 1917.

Honorable J. D. O'Neil, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 27th ult. enclosing a letter from the Auditor General, dated September 13, 1917, in which he suggests that you should submit, for his inspection, copies of proposals for road construction work and advise him of your contemplated action in regard thereto before executing the con-

tracts and incurring liability for the cost, rather than **after** the contracts are executed, and asking to be advised whether under the law you must comply with this request.

I beg to advise you that the system of State highways and State-aid highways in force at this time was established by the Act of May 31, 1911, P. L. 468, and its amendments and supplements. This Act clearly and specifically sets forth the manner in which State highways and State-aid highways shall be improved and reconstructed.

Section 13 provides that all work of construction, building or rebuilding of State highways, excepting that of repairing and maintenance, done under the provisions of the Act, shall be by contract and shall be according to plans and specifications to be prepared in every case by the State Highway Department. It further provides:

"In awarding any contract the work shall be given to the lowest responsible bidder; with the option on the part of the State Highway Commissioner to reject any or all bids, if the prices named for the work or materials to be used, are higher than the estimated cost, or for any other reason appearing to said Commissioner. Every person, firm, or corporation before being awarded any contract for the construction or improvement of any State Highway or of any State-aid highway, under the provisions of this act, shall furnish a bond, with sufficient surety or sureties, acceptable to the State Highway Commissioner, in a sum equal to fifty per centum of the contract price of the work; conditioned that the contractor shall well and truly, and in a manner satisfactory to the State Highway Commissioner, complete the work contracted for, and shall save harmless the Commonwealth of Pennsylvania from any expense incurred through the failure of said contractor to complete the work as specified, or for any damages growing out of the carelessness of said contractor or his or its servants, or for any liability for payment of wages due or material furnished said contractor; and shall well and truly pay to all and every person furnishing material or performing labor in and about the construction of said highway, all and every sum and sums of money due him, them and any of them, for all such labor and materials, for which the contractor is liable."

Section 14 provides that:

"Advertisement for proposals for construction, reconstruction, or improvement of all State Highways, under the provisions of this act, shall be made by the State Highway Commissioner, at least three weeks before the contract may be awarded, by public notices inserted once a week in at least *two newspapers of general circulation* in the county or counties in which the highway to be

improved is located; such advertisements to designate where the plans and specifications may be had, and the time and place of the reception of bids and letting of the contract. The State Highway Commissioner may, at his discretion, insert the same advertisement in other newspapers or engineering periodicals."

Section 15 provides as follows:

"Every contract authorized to be made by the State Highway Commissioner, under the provisions of this act, for the reconstruction or improvement of State highways shall first be approved by the Governor, and shall be made in the name of the Commonwealth of Pennsylvania, and shall be signed by the State Highway Commissioner, and shall be approved as to form and legality by the Attorney General or Deputy Attorney General of the Commonwealth."

There is no provision in any part of the act that the proposals, the bids, or the contracts shall be submitted to the Auditor General and be passed upon or certified by him. Whatever requirements along this line may exist in other jurisdictions, the Legislature of this State has not deemed it necessary to impose this responsibility on the Auditor General. Subject to the approval of the contract by the Governor, and its approval by the Attorney General as to form and legality, you are the sole judge as to whether the work of construction is necessary, the manner in which it shall be performed, and the amount of money that may be reasonably expended thereon. The Act, in Section 6, provides that the State highways shall be under the exclusive authority and jurisdiction of the State Highway Department, and in Section 11, that the State Highway Commissioner, in addition to the powers conferred upon him in the Act, shall enjoy and possess, in the construction and maintenance of highways designated as State highways, all the rights and powers conferred by existing laws on supervisors or commissioners of townships in the construction and maintenance of township roads.

The respective duties of the State Highway Commissioner and the Auditor General with reference to these matters are definitely set forth in Section 11:

"The State Highway Commissioner is directed to construct or improve, and thereafter to maintain and repair, at the cost and expense of the Commonwealth, the highways forming the plan or system of the State Highways, in the several counties and townships hereinbefore mentioned, and such improvement and maintenance shall be made according to specifications to be prepared by the State Highway Department, as regards the char-

acter, construction, and material to be used; and the said work of construction and maintenance of said State highways shall be done under the direction and supervision of the State Highway Commissioner. The expense of the construction, improvement, and maintenance of State highways provided for in this act, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer."

This negatives any right or authority on the part of the Auditor General to pass upon the necessity of the proposed improvement or the character, construction and materials to be used. Those duties fall within your province. When the contract is executed it is the duty of the Auditor General to see that the payments made to the contractor are in accordance with the contract which has been entered into by you with the approval of the Governor and the Attorney General, and that they do not exceed the appropriations allowed by law.

Section 22, with reference to State-aid highways, provides that the State Highway Commissioner shall advertise for bids, and let contract or contracts for the improvement of such roads in the manner provided in the case of the improvement of State highways.

You are therefore advised that it is not incumbent upon you to submit proposals, bids or unexecuted contracts for the construction and improvement of State highways and State-aid highways to the Auditor General for his supervision and certification before advertising for bids, letting contracts or executing the contracts, but that it is your duty to submit such contract to the Auditor General after it is executed in order that he may audit the payments to be made thereunder.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

DOVER-ROSSVILLE TRANSIT COMPANY'S APPLICATION.

Under the Act of May 31, 1911, P. L. 468, the authority and jurisdiction over the roads constituting the system of State highways is vested exclusively in the State Highway Department.

The State Highway Commissioner has discretion, wherever necessary in his judgment, to refuse his consent to the erection of poles for the transmission of electricity on a State highway, in all cases where the power has not been specifically granted by general act of the legislature.

Office of the Attorney General,
Harrisburg, Pa., October 23, 1917.

Honorable J. Denny O'Neil, State Highway Commissioner, Harrisburg, Pa.

Sir: I have given careful consideration to the recent inquiry from your Department as to whether it is *compelled* to grant the application of the Dover-Rossville Transit Company for a permit to erect poles and string wires from Dover to Rossville, on State highway route No. 124, ostensibly to be used by it in the operation of a trackless trolley.

The facts, as I gather them from the letter of your predecessor and the exhibits submitted to me in connection therewith, are as follows:

The Dover-Rossville Transit Company is a corporation organized under the laws of the State of Delaware to construct, maintain and operate lines of poles and overhead wires for the transmission of electricity for public use and to operate motor vehicles for public use in the transportation of passengers and commodities.

The application is for a permit to erect and maintain lines of electric power poles on State Highway Route No. 124, from the village of Rossville in Warrington Township, through Warrington and Dover Townships to the Borough of Dover, all in the County of York.

The applicant states that the poles are to be used to support electric power lines, for the transmission of electricity for purposes of public use, including the propulsion of motor vehicles operated for public use in the transportation of passengers and commodities on the highway.

While the proposition is commonly known as a "trackless trolley," consisting of motor vehicles supplied with power from overhead wires, which are arranged similarly to those for street railways, except that there are two suitably supported wires parallel with each other, instead of one, the power being supplied to the vehicle from the wires

by means of trolley carriers, which vehicles run upon the road (and not on tracks) like motor omnibuses or trucks, yet the application is not so limited.

The applicant frankly states that its activities are not intended to be limited to this phase of its business.

It says:

"In its present status the applicant lawfully may confine its activities to the single purpose of the construction and operation of an electric power line for the transmission of electricity between points along the line; or it may confine its operation to the transportation of passengers and commodities by motor vehicles on the road, or either or both. Frankly, however, *it is its intention to proceed to do both* in the regular and logical sequence and order."

The application therefore includes the right of a foreign corporation to erect poles on a State highway for the *transmission* of electricity—what is ordinarily known as an electric transmission line—without any restriction as to the power or voltage to be carried thereon, and the right to operate motor vehicles for the transportation of passengers and *freight*. It is not limited to *trackless* trolley for, again, the applicant is frank enough to say that it proposes to make use of all its corporate powers, and declares that questions relating to the type and character of vehicles to be used are irrelevant but, nevertheless, states broadly that the proposed operation consists of "electric power lines for the transmission (not the sale) of electricity for public use, also the operation of motor vehicles, *some of which* are supplied with power from the overhead wires, for the transportation of passengers and commodities."

As no permit from the State Highway Department is necessary for the operation of ordinary motor vehicles, the intention of the applicant is evidently to operate motor vehicles in connection with the overhead wires, forming part of the electric transmission line, whether with or without tracks is not definitely stated in its charter, though no claim has been, as yet, formally presented of its right to place such *tracks* on the public highway.

The applicant claims that your Department has no discretion in the matter beyond requiring that the poles to be erected under such permit shall conform to the uniform rules and regulations established by your Department governing the construction of such poles along State highways and bases said claim on the following facts: -

1. It is registered as a foreign corporation in the office of the Secretary of the Commonwealth.

2. It has obtained the consent of the Supervisors of Warrington and Dover Townships to such construction.

3. On October 19, 1916, it was granted a certificate of Public Convenience by the Public Service Commission of this Commonwealth approving its right as a foreign corporation to do business within this Commonwealth and on February 27, 1917, Certificates of Public Convenience evidencing the Commission's approval of the beginning of the exercise of the rights, franchises, etc., granted it under the municipal contracts with the said Township authorities consenting to such construction.

In support of this claim the applicant has cited a number of authorities, mostly of the Courts of Common Pleas of this State or of Courts of last resort of other States, which it is claimed rule the question in favor of this applicant.

As authority for the proposition that the applicant has the right to erect its pole line and electric transmission system along the State highway, the applicant cites the case of *Lindsay v. Telephone Co.*, 9 Del. Co. 295. As establishing its right to operate motor vehicles in connection with poles and wires, it cites *Commonwealth v. Herdic*, 14 Phila. 93 and *Commonwealth v. Wagner*, 20 Phila. 307.

(1) *Lindsay v. Telephone Company*, 9 Del. 295, was a suit in equity brought by a land owner abutting on a public highway to restrain a foreign telephone company, registered in Pennsylvania, from erecting its poles and stringing its wires upon the highway in front of the plaintiff's property. So far as the report of the case shows, the Township authorities in charge of the road made no objection to the erection of the poles and wires. The suit was instituted by an abutting property owner and therefore could not define or deal with the power of the road authorities in connection with the proposed pole line.

It is true that Judge Johnson, in dismissing the bill, said:

"The defendant was incorporated for the purpose of constructing telephone lines throughout the United States. The registration in the office of the Secretary of the Commonwealth gave it authority to transact its business in this State. To transact its business it is necessary to plant poles and wires. Section 33 of the Act of Assembly of 1874 gives telegraph companies (held to include Telephone Companies) the right to construct its lines along and upon the public highways. * * * I am therefore of the opinion that the defendant is entitled to construct and maintain its line on the public road."

Whether this is a correct interpretation of the law or not, it must be restricted to the facts of that particular case. That it is authority for the proposition that a *foreign* corporation, though registered in this State, may construct its pole line and string electric wires, which may prove a source of danger to the traveling public, without the consent of the public authorities in charge and control of said highway, I cannot admit.

Neither the State of New Jersey nor the State of Delaware has any power to grant to its corporate creatures any rights, powers or privileges in, over or upon the highways of this Commonwealth; that is a matter solely for this Commonwealth, acting either generally by legislative enactment or specially through the several agencies to whom the Commonwealth has committed the care and control of its highways.

Nor does registration in the office of the Secretary of the Commonwealth give foreign corporations any such power. That is a purely formal act for the purpose of protecting the citizens of this State in their dealings with foreign corporations, by designating their authorized agents within this State upon whom service of process may be made. While without such registration no foreign corporation may legally do business in Pennsylvania, such registration gives the foreign corporation no new or additional powers beyond permitting it to transact such lawful business in this State, as it may be legally empowered to do. It certainly confers on the foreign corporation no rights in, or powers and privileges over, the highways of this Commonwealth, except as may be conferred by the Commonwealth itself by general law, or by its duly constituted agents in charge and control of such highways, by special permission.

There is no general law in this State giving to corporations such as this applicant the right to use and appropriate the public highways of the Commonwealth for the construction of an electric power line for the *transmission* of electricity, and before it can lawfully do so, it will have to secure the consent of the legally constituted authorities in charge and control of the road sought to be so occupied.

(2) The cases of *Commonwealth v. Herdic*, 14 Phila. 93, and *Commonwealth v. Wagner*, 20 Phila. 307, were concerned with horse-drawn carriages (popularly known as herdics) and omnibuses used for conveying passengers for hire on the streets of Philadelphia. They contemplated only the ordinary use of the streets and no permanent system of poles and wires for the operation of such omnibuses. If the applicant intended to operate horse-drawn or self-propelled vehicles without the contemplated system of poles and wires, no further consent of the local authorities would be necessary. No one would

think of seriously contending, however, that, in the absence of legislation permitting it, any corporation could, without the consent of the proper authorities, occupy the streets and highways of the Commonwealth with a line of buses requiring for their operation a system of poles and electric wires, and even in the above case it was held that the Commissioner of Highways was vested with a discretion in the issuing of omnibus licenses, the only limitation upon its exercise being that it must not be arbitrary.

As before stated, the Legislature has enacted no general law giving to corporations, such as the applicant, the powers and privileges on public highways which it seeks to obtain in this application.

Therefore, in order to secure these rights, it will have to obtain the consent of the authorities in charge of the highways which it proposes to occupy.

The question then arises—who are the authorities whose consent the applicant must obtain?

The applicant contends that the only consent required is that of the Township Supervisors and that the State Highway Department has no jurisdiction in the matter beyond the right to require that the construction of its pole line shall be in accordance with the reasonable rules and regulations which the Department has adopted with reference to the construction of electric pole lines on State highways. I cannot accede to this view. The Act of May 31, 1911, P. L. 468, which establishes the present system of State highways, provides in Section 5:

“The highways designated in this act as State Highways shall be taken over by the State Highway Department from the several counties or townships of the State, and when so taken over shall thereafter be constructed, improved, and maintained by the State Highway Department, at the expense of the Commonwealth.”

Section 6:

“From and after the adoption of this act, all those certain existing public roads, highways, turnpikes, and toll-roads, or any parts or portions thereof, subject to the provisions hereinafter made in the case of turnpikes and toll-roads, forming and being main traveled roads or routes between the county-seats of the several counties of the Commonwealth, and main traveled roads or routes leading to the State line, and between principal cities, boroughs, and towns, shall be known, marked, built, rebuilt, constructed, repaired, and maintained by and at the sole expense of the Commonwealth; *and shall be under the exclusive authority and jurisdiction of the State Highway Department*, and shall constitute a system of State Highways * * *.”

Section 11:

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

The State Highway Commissioner, in addition to the powers conferred upon him in this act, shall enjoy and possess, in the construction and maintenance of highways herein designated as State Highways, all the rights and powers conferred by existing laws on supervisors or commissioners in townships in the construction or maintenance of township roads * * *."

Section 17:

"All State Highways under the provisions of this act shall be marked with suitable signs, having the words 'State Highway' and year-date thereon; and signs, or distance boards, giving directions to towns or villages, shall be erected at cross or intersecting roads; the same to be paid for as part of the cost of the highway. The State Highway Commissioner may also cause trees to be planted and maintained along said highways, the same to be paid for as part of the cost of the road. No railroad or street railway shall hereafter be constructed upon any State Highway, nor shall any railroad or street railway crossing nor any gas-pipe, water-pipe, electric conduit, or other piping, be laid upon or in, nor shall any telephone, telegraph, or electric light or power poles be erected upon or in, any portion of a State Highway, except under such conditions, restrictions and regulations as may be prescribed by the State Highway Department. The State Highway Commissioner is empowered to make reasonable rules and regulations governing the use of all State Highways * * *."

These extracts from the Act of May 31, 1911, show that the authority and jurisdiction over the roads constituting the system of State highways is now vested exclusively in the State Highway Department; that the Supervisors of the several townships have no longer any authority or jurisdiction over State highways; that the State Highway Commissioner, in addition to the powers conferred upon him by the Act of 1911, enjoys and possesses all the rights and powers

conferred by existing laws on supervisors with reference to the construction and maintenance of township roads, and that by the said Act it is expressly provided that no electric light or power poles shall be erected upon or in any portion of a State highway, except under such conditions, restrictions and regulations as may be prescribed by the State Highway Department. These words, "conditions, restrictions and regulations" are not synonymous. Considering the exclusive authority and jurisdiction conferred upon the State Highway Department with reference to State highways, these words cannot be understood to mean that the State Highway Department shall have no voice or say as to what electric power poles shall be erected upon or in a State highway, and that the power of the Department is limited merely to general regulations as to how they shall be constructed. Construed as the applicant contends, this would put upon the State Highway Department the burden of keeping in proper maintenance and repair the roads constituting the system of State highways, and withhold from the responsible authority all right of passing upon the pole lines that may be erected upon it, and confer that authority upon a Board of Supervisors which has been deprived by the Act of any authority or jurisdiction over the road. Such a course of construction would be simply to invite litigation against the Commonwealth.

The Pamphlet Laws of 1917 are burdened with acts permitting various individuals, who have been injured on the State highways, to bring suit against the Commonwealth as the responsible authority for the condition of said highways, irrespective of whether the persons injured exercised due care in traveling upon said highways or not. To permit the supervisors of townships, who are no longer responsible for the condition and repair of such roads, to confer the power to erect thereon appliances which may prove dangerous to the traveling public and hold the Commonwealth responsible for injuries that may result therefrom would be simply to lay the Commonwealth open to endless litigation.

I do not so construe the law. The State Highway Department is not a mere figurehead in passing upon applications of this character. Under the powers conferred by the Act of May 31, 1911, it may grant the application and impose reasonable rules and regulations adopted as standards for the construction of all such pole lines, or it may impose conditions deemed necessary for the protection of the traveling public as to the voltage to be carried on said pole lines, and the means and appliances to be used to prevent the power line from coming into contact with other wires along the road or, where the circumstances are such in a particular case as to warrant the State

Highway Commissioner in restricting the erection and construction of poles, he may refuse to permit an electric power line to be located on a State highway. All such action, whether of regulation, condition, restriction or refusal, must be based on a sound discretion. His action in the premises must not be arbitrary, but the grant of discretion to him implies the right to impose conditions and restrictions, and where necessary, in his judgment, by reason of the peculiar circumstances of a road, he may refuse or withhold his consent to the erection of such pole line, in all cases where the power has not been specifically granted by general act of the Legislature.

The Certificates of Public Convenience issued by the Public Service Commission are, by their terms, limited to evidencing the Commission's approval of the applicant's right to do business within this Commonwealth and of the beginning of the exercise of the rights, franchises, etc., granted to the applicant company under the municipal contracts entered into in connection with the consent of the Township authorities to such construction. They do not purport to waive any requirements of the law as to the consent of the State Highway Department before beginning its operations or to interfere with the prerogatives of that Department.

You are therefore advised that, in passing upon this application, you have the right to grant it and direct the manner and method of construction, or you have the right to impose such reasonable conditions with regard to the construction of the electric power line and the wires carrying the power thereon as you may deem necessary and advisable for the protection of the public traveling along said highway, or if conditions and circumstances in connection with any highway are such as to lead you, in the exercise of a sound discretion, to refuse the erection of a pole line, the right to construct which has not been granted by general law of this Commonwealth, you have the right to refuse your consent to the construction of such a pole line, the only condition being that your action is the result of a reasonable discretion and not arbitrary.

It is not my province to pass upon the merits of this particular application, and I have not attempted to do so. That is a matter solely for you. I have endeavored to set forth your powers in the premises, leaving to you full judgment as to the exercise of them.

With respect to the operation of such line in the Borough of Dover, the matter is on a different footing. By Section 10 of the Act of May 31, 1911, full control of its highways is reserved to the Borough

authorities and in so far as the said line is to be located within the Borough limits it is a matter solely for the Borough authorities to decide.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

HALF PAY FOR EMPLOYEES ENTERING THE MILITARY OR NAVAL
SERVICE OF THE UNITED STATES.

The State Highway Commissioner is advised as to the circumstances entitling an employe to half pay during the term of his enlistment.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1917.

Honorable J. Denny O'Neil, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 9th inst. in which you ask to be advised whether a transitman who enrolled in Company 4, Third Provisional Training Regiment, New York, on June 1, 1917, and was transferred to the Third Pennsylvania Infantry, September 6, 1917, and who has filed a claim for one-half of his salary to be paid to his dependent wife, in accordance with the Act approved June 7, 1917, No. 201, is within the provisions of that Act.

The answer to this inquiry will depend upon the circumstances under which the employe left the Department on June 1, 1917. If he filed his resignation and finally severed his employment with the Department on June 1, 1917, he would not come within the provisions of the Act of June 7, 1917. On the other hand, if he was away on leave of absence, or other temporary arrangement so that he might still properly be considered an employe of the Department at the time Act No. 201 was approved, he would come within its provisions and be entitled to claim its benefits on behalf of his dependent wife.

In so far as the employe is concerned, however, he acquires for his dependent wife the benefits of the Act only from the date when he makes formal claim, in accordance with the provisions of the Act.

It is not retroactively cumulative and does not carry with it back pay for the time that elapsed between the passage of the Act and the filing of his claim and affidavit.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE BOROUGH STREETS.

In a borough where a street has been paved with brick and has now become worn out and rough, said street forming a connection between two improved State roads under the Act of May 31, 1911, P. L. 468, if the original paving of brick was done with the aid of the Commonwealth, under the provisions of the Act of April 15, 1903, P. L. 188, or of May 1, 1905, P. L. 318, the duty of maintaining the street, including resurfacing and relaying, rests on the borough alone and the State Highway Department could not resurface or relay the street. If such a road was not reconstructed or paved with bricks as a State-aid road, the State Highway Department can, subject to the consent of council, resurface or relay the street, provided the street was not according to or equal to the State highway standard.

There is no provision in the Act of May 31, 1913, P. L. 419, which permits the State to contribute, to a borough or township, part of the cost of reconstructing or improving a highway. With reference to State-aid highways or State highways improved in the same manner as State-aid highways, a borough may become a bidder and be awarded the contract, if it submits the lowest bid. Bids must be submitted and there must be a contract.

Under Chapter VI, Article VII, Section 9-V, of the Borough Code of 1915, any street in a borough may be improved without a petition of the property owners, and two-thirds of the cost may be collected from the abutting property owners. The cost of a second or subsequent paving cannot be assessed against the abutting property owners.

Office of the Attorney General,
Harrisburg, Pa., October 30, 1917.

Honorable J. Denny O'Neil, State Highway Commissioner, Harrisburg, Pa.

Sir: I have your favor of the 18th inst. asking the opinion of this Department upon the following questions:

1. In a borough where a street has been paved with brick and has now become worn out and rough, said street forming a connection between two improved State roads under the Sproul Act, can the Highway Department resurface or relay the said street?

2. If a borough improves a street the full width, said street being a connecting link between two State highways, can the State pay one-half the cost up to 16 feet, provided the borough does the work?

3. If the State improves a street in a borough that forms a connection between two State highways will the borough officials have the right to assess the abutting property for two-thirds of the cost of construction?

The answer to the first question would depend upon the circumstances under which the borough street was paved and the manner of its construction. Your action in the premises is governed by the provisions of Section 10 of the Act of May 31, 1911, P. L. 468. It is there provided that, by and with the consent of the borough councils, you may improve or reconstruct at the expense of the Commonwealth, a borough street which forms a part or section of a State highway if the same "is not already improved or reconstructed according to the standards of the State Highway Department, or in a manner equal to said standards, by the borough."

If, therefore, at the passage of the Act of May 31, 1911, this borough street had not been improved or reconstructed according to the standards of the State Highway Department, or in a manner equal to said standards, and by said Act it forms a part or section of a State highway, you may, with the consent of the borough councils, reconstruct the same, at the expense of the Commonwealth, subject, however, to the further proviso contained in Section 10 of said Act:

"Provided, That where any road, street or highway, or any part or parts thereof, in any borough or incorporated town, has been heretofore reconstructed, as a State-aid road, with bricks, or material other than a telford, water-bound macadam road * * * the said brick or paved road, street, or highway shall be maintained according to the standards of the State Highway Department, by the borough or incorporated town, wholly at the cost and expense of the borough or incorporated town in which said road, street, or highway may lie."

By the terms of this proviso if the original paving of brick was done with the aid of the Commonwealth, under the provisions of the Acts of April 15, 1903, P. L. 188, or May 1, 1905, P. L. 318, the duty of maintaining the street, including resurfacing and relaying, rests on the borough alone and the Highway Department could not resurface or relay the street. If it was not reconstructed or paved with bricks as a State-aid road the State Highway Department can, subject to the consent of councils, resurface or relay the street, provided the original paving was not according to the standards of the State Highway Department or equal to said standards.

2. I presume your second question relates to the improvement of the borough street under the provisions of the Act of June 5, 1913, P. L. 419, in the same manner as a State-aid highway, for unless the

work of reconstructing a State highway is done under the provisions of that Act the State must pay for the entire cost and not merely a part thereof.

In an opinion rendered to your Department on September 5, 1917, we advised you that under the Act of May 31, 1911, and its supplements and amendments, the work of reconstructing State highways must be done by contract. It was pointed out, however, in that opinion that with respect to State highways reconstructed or improved under the Act of June 5, 1913, in the same manner as a State-aid highway, the provisions of Section 31 of said Act, relating to State-aid highways, would apply, and the borough, through its councils, could bid for the construction or improvement of the highway and if awarded the contract would be required to fulfill the same under the same conditions and regulations as provided for other contractors.

There is no provision in the Act which permits the State to contribute to a borough or township part of the cost of reconstructing or improving a highway. With reference to State-aid highways or State highways improved in the same manner as State-aid highways a borough may become a bidder and be awarded the contract if it submits the lowest bid. In any event, however, there must be a contract whether with the borough or some outside contractor. The State is not permitted to pay one-half or any part of the cost of the improvement up to a width of sixteen feet unless there has been a regular contract let and entered into as provided by the Act.

3. Under Chapter VI, Article VII, Section 9 V of the Borough Code, page 350 of the Acts of 1915, it is provided that if any street in a borough is graded, curbed, paved, or macadamized by the borough without a petition of the property owners, two-thirds of the cost may be collected by assessment by the foot front on the owners of real estate abutting on the improvement.

It is my opinion that this provision would apply to the cost of improving that portion of a borough street which was not embraced within the 16 foot strip improved by the State.

It has been decided, however, that such a provision applies only to the original or first paving or improvement. If a borough street has been improved or paved, whether at the expense of the borough or the property owners, the cost of a second or subsequent paving cannot be assessed against the abutting property owners.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE NATIONAL ROAD.

That portion of the National Road, also known as the Cumberland Road, laid out by the Act of Congress approved March 29, 1806, lying within the State of Pennsylvania, by recent enactments of the Legislature, is such a highway as to be within the State appropriations and is within the Act of July 25, 1917 (page 203, Appropriation Acts), setting aside \$200,000 to the Public Service Commission to be used in part payment of the cost of elimination of grade crossings on State highways.

Office of the Attorney General,
Harrisburg, Pa., February 19, 1918.

Honorable Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your favor of the 7th inst., asking to be advised whether the National or Cumberland Road is a State highway within the meaning of the Act of July 25, 1917 (page 293, Appropriation Acts), appropriating Two Hundred Thousand Dollars (\$200,000.00) to the Public Service Commission to be used in part payment of the cost of elimination of grade crossings on State highways.

The National Road, also known as the Cumberland Road, was laid out by the Act of Congress approved March 29, 1806, to which consent was given by the Legislature of Pennsylvania by Act approved April 9, 1807.

Subsequently, by Act of Assembly approved April 4, 1831, with the consent of Congress (given by Act of Congress approved July 3, 1832), that portion of the road lying within the State of Pennsylvania was taken over by this State for preservation and repair, and commissioners were appointed who were given authority to collect tolls for the purpose of keeping the road in repair; and by the Act of Assembly of April 1, 1835, P. L. 101, the surrender by the United States of so much of the Cumberland Road as lay within the State of Pennsylvania was accepted by the State.

By the Act of April 10, 1905, P. L. 129, it was provided "that so much of the Cumberland Road, lying within the State of Pennsylvania, as is now maintained, by officers appointed for that purpose, under existing laws, out of revenues received from the collection of tolls thereon, shall hereafter be under the care and management of the State Highway Department, and shall be maintained and kept in repair by the State Highway Commissioner, at the cost of the State." By the same Act it was provided that collection of tolls upon the said road should cease and all travel thereafter be free of toll, and that the officers then in charge of said road should hand over

to the State Highway Commissioner the custody and control thereof. Immediately upon its being taken over by the State from the United States this road became a State road or State highway.

State roads have been recognized by the Legislature of this State for many years. See the Act of June 13, 1836, P. L. 551, Sections 20 and 21.

The Act of May 31, 1911, P. L. 468, establishing the State Highway Department, provided for the taking over by the State from the several counties or townships of the State of certain highways which were designated in the Act as State highways and provided that when so taken over these roads should be constructed, improved and maintained by the State Highway Department at the expense of the Commonwealth. The Act provided for a general system of State highways but did not limit the State highways of the Commonwealth only to those named or designated in the Act.

Any public road, the duty of constructing, repairing and maintaining which rests upon the Commonwealth of Pennsylvania to the exclusion of the local authorities, is a State highway.

While special appropriations have been made by the Legislatures of 1905, 1907, 1911 and 1915 for the maintenance and up-keep of the National or Cumberland Road, no such appropriations were made in 1913 or 1917, and the road is now properly being repaired and maintained by the State Highway Department out of the general appropriation for the maintenance and repair of State highways.

The Act of July 25, 1917, above referred to does not limit the appropriation to such State highways as were established by the Act of May 31, 1911, but to State highways generally, and as before stated, any road or highway, the care and maintenance of which rests under existing law on the Commonwealth of Pennsylvania, is a State road or state highway. As the National or Cumberland Road within the State of Pennsylvania is such a State highway, it comes within the Appropriation Act of July 25, 1917, above referred to.

Yours very truly,

WILLIAM H. KELLER, /
First Deputy Attorney General.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

COMMERCIAL FERTILIZERS.

A particular brand of commercial fertilizer, made by "A" one year and by "B" the next year, is still the same brand of fertilizer, and the fees to be paid by the manufacturer or importer are based on the sales of the preceding year.

Office of the Attorney General,
Harrisburg, Pa., January 24, 1917.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: Your favor of the 13th inst. is at hand.

You ask for a construction of the Act of May 1, 1909, P. L. 344, upon the following state of facts:

A fertilizer firm, manufacturing several brands of commercial fertilizers, with distinct brand and trade names, and with guaranteed analyses, registered with the Department, discontinued its business. It is succeeded by a firm of a different name, which continues to manufacture and sell the same fertilizers with the same trade or brand names, and the same analyses.

The question which you propound is whether these fertilizers, manufactured and sold by the new firm, are to be considered as new brands and accepted upon the payment of a minimum fee, or whether the fees therefor are to be graded upon the sales.

The Act provides, in Section 1:

"That every package of commercial fertilizer sold, offered, or exposed for sale, * * * shall have plainly stamped thereon the name and address of the manufacturer or importer and his place of business, the net weight of the contents of the package, the brand or trade-name of the fertilizer the package contains, and an analysis stating the percentage such fertilizer contains of nitrogen," etc.

Section 3 provides for the filing of an affidavit with the Secretary of the Commonwealth on or before the first day of January of each

year, "showing the amount of each brand of fertilizer having a distinct trade name, sold within the Commonwealth during the last preceding year."

This Section then provides for a fee, graded upon the amount sold during the preceding year.

It continues:

"If such manufacturer, 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."

The requirement for registration and for affixing to each package the brand or trade name of the fertilizer, as well as an analysis of the particular brand, indicates that the statute is more concerned with the fertilizer and its name and quality than it is with the person who makes or sells it. The fees are graded on the sale of each brand, not on the output of the manufacturer.

A particular brand of fertilizer made by "A" one year, and by "B" the next year, is still the same brand of fertilizer, regardless of who manufactures or sells it.

I do not think the language "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 *such brand*," can be construed to mean that, in order to be regarded as a brand which has been sold in the State theretofore, it must have been made by the same manufacturer.

The pertinent inquiry is whether it is the same brand.

I am, therefore, of opinion and so advise you, that a manufacturer or importer of a brand of commercial fertilizer which has been sold in the Commonwealth during the preceding year, must pay the fee based upon the amount of said sales, pursuant to Section 3 of said Act, even though the manufacturer or importer of said brand is not the same who manufactured or imported it during the year preceding.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE BUREAU OF MARKETS.

The purpose of the Act of July 17, 1917, creating a Bureau of Markets, was not to have the Commonwealth engage in the commission business, or to effect sales of agricultural products for commissions, so that the bureau has no authority to charge any commission for effecting a sale of agricultural products or putting buyers in touch with sellers.

Office of the Attorney General,
Harrisburg, Pa., October 30, 1917.

J. Wallace Hallowell, Jr., Esq., Assistant Director Bureau of Markets,
Department of Agriculture, Harrisburg, Pa.

Dear Sir: Your favor of the 22nd inst., addressed to the Attorney General, is at hand.

You ask to be advised whether, under Act No. 327, approved July 17, 1917, the Bureau of Markets is authorized to collect money as commissions, for services rendered in making sales of agricultural products or in putting buyers in touch with sellers.

This Act of Assembly creates a Bureau of Markets, and, as its first section indicates,

“for the purpose of promoting proper, efficient and economical handling, packing, transporting, storage, distribution, inspection, and sale of agricultural products of all kinds within this Commonwealth, and for the further purpose of assisting producers and consumers thereof in selling and purchasing the same, under fair conditions at a fair and reasonable price.”

Among other things, the Director of said Bureau is required

“to ascertain sources of supply of all such products and prepare and publish from time to time lists of the names and addresses of producers and consignors thereof and *furnish the same without charge* to persons applying therefor.”

Section 4 of said Act provides that the Bureau of Markets shall formulate and announce fair standards, grades and classes of agricultural products and render services to any producer, distributor, vendor or other person interested in the production and sale of agricultural products in inspecting and determining the standard, grade and class of said Agricultural products, and have authority to mark distinctly all products so inspected and standardized, with proper labels,

“And for such services and labels the Bureau of Markets shall charge, collect and receive such sums as may be fixed in the schedule of fees hereinafter pro-

vided for. The Director shall, from time to time, prescribe and make public a schedule of fees to be charged by the Bureau for its services and labels as aforesaid, which shall be uniform throughout the Commonwealth for like kinds of products. All fees so collected shall be paid by the Bureau of Markets to the State Treasurer."

The fees referred to in this Section are fees for the services in inspecting and determining standards, grades, and classes of products and marking the same with proper labels. It was not the purpose of this Act of Assembly to have the Commonwealth engage in the commission business, or to effect sales of agricultural products for commissions. The purpose is to "promote the proper, efficient and economical handling, packing, transporting, storage, distribution, inspection and sale of agricultural products," not to make the sales and charge therefor.

I, therefore, advise you that the Bureau has no authority under this Act to charge any commission for effecting any sale of agricultural products or putting buyers in touch with sellers.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

DOG STATUTES.

The fact that the legislature of 1872 amended a local Act of 1866 taxing dogs so as to exempt only certain townships is not preventive of another legislature passing a general act, the effect of which is to tax dogs in said townships; therefore, the dog law of 1917 applies to such townships.

Office of the Attorney General,
Harrisburg, Pa., November 23, 1917.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: Sometime ago you submitted to this Department a letter of the County Commissioners of Lycoming County, and upon it you based an inquiry as to whether Limestone and Nippenose Townships, in Lycoming County, are subject to the provisions of the Act of July 11, 1917, P. L. 818, known as "the Dog Law of 1917."

The reason suggested why these two townships should not be subject to this Act of Assembly is because of a special Act of March 9, 1872, P. L. 304.

The Act of April 14, 1866, P. L. 903, is entitled

“An Act for the protection of sheep and taxing of dogs,
in the county of Lycoming.”

That Act, as its title indicates, requires the assessors to assess dogs in the several townships, boroughs, wards and cities of said county and imposes a tax thereon.

The Act of March 9, 1872, P. L. 304, simply repeals the Act of 1866 “so far as the townships of Limestone and Nippenose, in the said county of Lycoming” are concerned.

The situation, therefore, after the passage of the Act of 1872 is this—there was by the Act of 1866 an Act taxing dogs in these two townships; by the Act of 1872 there was no Act taxing dogs in these two townships. That left the matter open for the Legislature and by “the Dog Law of 1917,” which is a general Act and applies to the State at large, the Legislature has dealt with this subject. There is nothing in it indicating that it was not intended to apply to these townships. The fact that the Legislature repealed one Act taxing dogs in these two townships did not prevent another Legislature from passing an Act, the effect of which would be to tax them.

I, therefore, advise you that “the Dog Law of 1917” applies to the townships of Limestone and Nippenose, in Lycoming County.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

EXPRESS COMPANIES.

One agency of the state government should not appear as a complainant before another agency of the government, unless the reason for so doing is imperative.

While the Bureau of Markets has authority to investigate a rule of express companies that no payment will be made for eggs broken in shipment, unless the number broken equals five per cent. of the number shipped, and to make complaint before the Public Service Commission concerning the enforcement of the rule as to intra-state shipments, such complaint should not be made except in a matter of importance.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Mr. J. Wallace Hallowell, Jr., Assistant Director Bureau of Markets,
Harrisburg, Pa.

Dear Sir: Your favor of the 4th inst., addressed to the Attorney General, is at hand.

You call our attention to the rule of express companies declining to pay for broken eggs in case the number broken does not equal 5 per cent of the eggs shipped.

You also direct our attention to the ruling of the Interstate Commerce Commission, and to the fact that the Public Service Commission of New York has held that the express companies must file new schedules, in which the rule that they will not pay for damage to the amount of 5 per cent. of the eggs shipped, is required to be eliminated.

Under paragraph G of Section 3 of the Act of July 17, 1917, P. L. 1011, creating your Department, the Director of the Bureau of Markets has authority to investigate the "practice, charges and rates in the transportation and handling of all such agricultural products; and, when the same may be warranted, in his opinion, may cause such proceedings to be instituted before the proper courts or other tribunals as may be necessary to improve or adjust the same."

Under this authority, your Bureau has the right to investigate a rule such as you refer to, in so far as it is applied to the shipment of eggs within the State of Pennsylvania. You have no right to investigate the conditions, practices, charges and rates of interstate shipments.

In the matter to which you refer, you have also the right, if you deem it of sufficient importance, to file a complaint with the Public Service Commission, and have that tribunal pass thereon.

However, your Bureau is one of the agents of the State Government. The Public Service Commission is another agency. One agency of the State Government should not appear as complainant before another agency of the Government, unless the reason for so doing is imperative.

We, therefore, advise you that, while you have the authority to investigate a rule such as you have referred to, and to make a complaint before the Public Service Commission, concerning the enforcement of the rule as to intra-state shipments, such a complaint should not be made except in a matter of importance.

The better practice is to have the parties directly interested, such as large shippers of eggs, make the complaint, and you can then offer the Public Service Commission any information which your investigation has disclosed.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

LICENSED KENNELS.

A kennel license issued under the Act of July 11, 1917, P. L. 818, authorizes the kennel owner to take dogs outside the kennel temporarily for breeding purposes, but not to keep his dogs outside the kennel and bring them into it temporarily for such purposes.

Where the owner of a dog kennel puts a certain number of his "matrons out on nearby farms, where they are used as stock dogs," and keeps a record of each dog so put out, and "when due to breed" brings them back, and then again puts them out on the farms, where they remain until the next breeding period, the dogs so put out are not covered by a kennel license taken out by the owner of the kennel. Each dog must be separately licensed under section 8 of the act.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Honorable Charles R. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: This Department is in receipt of your communication the 30th ult., relative to the "Dog Law of one thousand nine hundred and seventeen." From the letter which you enclose, it appears that the owner of a dog kennel in the State puts a certain number of his "matrons out on nearby farms where they are used as stock dogs." The owner of the kennel keeps a record of each dog so put out and "when due to breed, they are brought back * * * for breeding." Afterwards, they are again put out on the farms where they remain until the next breeding period.

You ask whether the dogs so put out are covered by a kennel license taken out by the owner of the kennel, or, whether each such dog must be separately licensed under the provisions of the eighth section of the statute.

The term "kennel" is defined in Section 3 to mean:

"Any establishment, wherein or whereon dogs are kept for the purpose of breeding, sale, or sporting purposes,"

and it is obvious from the foregoing definition, that only those dogs are covered by the kennel license issued under the authority of Section 11 of the Act which are "kept for the purpose of breeding, etc." *within* the kennel. Such licensed kennel must be the place where the dog is permanently confined. Section 11 which, inter alia, provides that

"with each kennel license, the County Treasurer shall issue a number of metal tags equal to the number of dogs authorized to be kept in the kennel."

and also by Section 12, which provides, that

"such tags may be transferred from one dog to another *within* the kennel whenever any dog is removed from the kennel. No dog bearing a kennel tag shall be permitted to stray or to be taken anywhere *outside the limits of the kennel.*"

It is true this same section authorizes the taking of kennel dogs outside the limits of the kennel in leash or for certain purposes, but this is a temporary removal of the dogs only. If the kennel ceases to become the regular and permanent place where the dog is confined, then, clearly within the language of the sections referred to, such dogs cease to become kennel dogs within the meaning of the Act, and, therefore, are not protected by a kennel license.

Applying these provisions of the statute to the facts contained in the letter enclosed by you, it is clear that such dogs are not covered by a kennel license. The dogs are not regularly or permanently kept within the kennel; they are put out and kept on "nearby farms" and are taken into the kennel only at breeding periods. At the expiration of these periods, they are immediately taken out of the kennel and again placed upon the farms. A kennel license issued under the Act does authorize the kennel owner to take dogs outside the kennel temporarily for breeding purposes, but it does not authorize him to keep his dogs outside the kennel and bring them into it temporarily for such a purpose.

I have, therefore, to advise you, that dogs, put out on farms by the owner of a kennel in the manner and under the arrangement above set forth, are not covered by a kennel license, and that, in order to protect such dogs, they must be licensed under the eighth section of the statute.

I return the correspondence enclosed by you.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

DOG LAW—KENNEL LICENSE.

Under the Act of July 11, 1917, P. L. 818, dogs registered under a kennel license cannot be used for hunting purposes. When used for such purposes they should be classed as individual dogs and so registered.

Office of the Attorney General,
Harrisburg, Pa., December 20, 1917.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

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

You ask for an interpretation of Section 3, Section 11, and Section 12 of the Act of July 11, 1917, P. L. 818, and whether dogs registered under a kennel license can be taken from said kennels and used for hunting purposes during the hunting season without a violation of said law. This act establishes a complete and thorough going system for the licensing of dogs; and their identity in the kennel; and as the property of the individual owner. It provides that upon application of the owner, or the person who harbors the dog, or permits such dog to remain about any premises occupied by him, a certain license shall be issued and it prescribes the fee, etc.

And, in addition, it provides for the operation of kennels, and fixes the fees for a kennel license and describes the kennel as follows:

"The term 'kennel' shall mean any establishment wherein or whereon dogs are kept for the purpose of breeding, sale, or sporting purposes;"

and bases the fees on the number of dogs kept. The license is limited in extent and carries no description of the dog. It is, therefore, restricted in individual use.

While the exception in Section 12 says—that it is not intended to

“* * * prohibit the taking of dogs having a kennel license outside the limits of the kennel temporarily and in leash, nor does it prohibit the taking of such dogs out of the kennel temporarily for the purpose of hunting, breeding, trial, or show,”

it is clearly not the intention of the said Act of Assembly to permit dogs, registered under a kennel license, to be used for hunting purposes.

In order to arrive at a proper conclusion, it is perhaps necessary to examine the requirements for licensing dogs both in the case of the individual owner, and the keeper of a kennel,—(1) The owner of a dog is required to make formal application for a license for which he is compelled to pay a fee ranging in amount from one to four dollars; and (2) the keeper of a kennel is likewise required to make application for a license, and the fee fixed is five dollars for ten dogs, or less; and ten dollars for more than ten dogs permitted to be kept under the kennel license. The law distinctly provides the system of licensing dogs, and places upon the individual owner no restrictions whatever in the use of his dog, but on the owner of the kennel the use of the dogs are restricted as set forth above.

In the enactment of this legislation, the Legislature never intended to do an injustice to any person coming within its provisions; and hence it never intended to permit kennel owners, with an unlimited number of dogs, for a license fee of ten dollars, to farm out any or all of the kennel dogs for hunting purposes during the hunting season. In the exception to Section 12, the language is perfectly clear that dogs can be taken out temporarily for hunting purposes, but the term is so vague, indefinite and indecisive, that it could not be construed to mean that dogs, kept under a kennel license, could be used for hunting purposes during the hunting season, and, therefore, such licensed dogs, when used for hunting purposes, should be classed as individual dogs and be registered according to Section 8 of the above stated Act of Assembly. I am

Very truly yours,

HARRY K. DAUGHERTY,
Deputy Attorney General.

DOG LAW.

County Commissioners who fail to carry out the provisions of the Dog Law of 1917, may be proceeded against by indictment, under section 35 of the Act, or by mandamus, under section 4 of the Act of June 8, 1893, P. L. 345.

Office of the Attorney General,
Harrisburg, Pa., January 3, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg,
Pa.

Sir: Your communication of December 19th received, asking to be advised as to the method of compelling County Commissioners to carry out the provisions of the Dog Law of 1917, P. L. 818.

In the case of nonperformance of the duties of public officers authorized to enforce the provisions of this law, it is the duty of the Secretary of Agriculture to employ the proper means for the enforcement of the Act.

Section 34 of said Act provides, in part, as follows:

"To this end the Secretary of Agriculture may employ all proper means for the enforcement of this act. Any other State Department, bureau, or commission may, on request of the Commissioner of Agriculture, assist in the enforcement of the provisions of this act."

County Commissioners, therefore, who refuse to perform their duties are guilty of a misdemeanor and should be proceeded against in accordance with Section 35 of this Act, which provides as follows:

"Any person violating, or failing or refusing to comply with, any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding one hundred dollars, or to undergo an imprisonment not exceeding three months, at the discretion of the court."

Upon notice of the violation, it would be the duty of the Secretary of Agriculture to direct the District Attorney of the proper county to prepare an indictment against the accused officials and prosecute them in the criminal court of the county in which they live.

And, in addition, if the above remedy is not effective, the County Commissioners can be proceeded against by a writ of mandamus on the initiative of the Secretary of Agriculture, as provided in Section

4 of the Act of June 8, 1893, P. L. 345, which provides as follows:

"When the writ is sought to procure the enforcement of a public duty, the proceeding shall be prosecuted in the name of the Commonwealth on the relation of the Attorney General: Provided, however, That said proceeding in proper cases shall be on the relation of the district attorney of the proper county: Provided further, That when said proceeding is sought to enforce a duty affecting a particular public interest of the State, it shall be on the relation of the officer entrusted with the management of such interest. In all other cases the party procuring the alternative writ shall be plaintiff, the party to whom said writ is directed shall be defendant, and the action shall be docketed as in ordinary cases, namely:, plaintiff versus defendant."

Yours very truly,

HARRY K. DAUGHERTY,
Deputy Attorney General.

DOG LAW.

The County Treasurers must perform the duties provided in the Dog Law of 1917 without compensation therefor; but is authorized to hire extra clerks for this service to be paid from the County Treasury. The County Treasurers may not pay postage on license certificates and license tags sent by mail.

Office of the Attorney General,
Harrisburg, Pa., January 31, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: You recently requested this department to advise you upon the following propositions, based upon the Dog Law of 1917:

1. Whether the county treasurers are entitled to compensation for the work imposed upon them by that statute.

2. Whether county treasurers are authorized to employ extra clerical services to be paid out of the county treasury to perform the duties imposed thereby.

3. Whether the county treasurers have a right to pay postage on license certificates and license tags sent to an applicant upon a written application received by mail.

Answering the first proposition, I have to say that the Act of July 11, 1917, P. L. 818, known as the "Dog Law of 1917," requires certain duties to be performed by the Treasurer of each county, but

makes no provision whatever for the payment of any fees to the county treasurer for the services imposed upon him. It requires the County Commissioner to fix the amount of fees for licenses within certain limitations, and section 15 provides:

"An accurate record of all license fees collected by the county treasurer or paid over to him by any justice of the peace, shall be kept, as a matter of information, *but all such funds shall be turned into the county funds.*"

In *Hayes vs. Oil City, Sadlers Pa. Sup. Ct. Cas., Vol. 8, page 185*, the Supreme Court adopted an opinion of the Court below, quoting from Judge Dillon on Municipal Corporations, Vol. 1, Section 172, page 290:

"It is a well settled rule that a person accepting a public office, with a fixed salary, is bound to perform the duties of the office for salary. He cannot legally claim additional compensation for the discharge of these duties, even though the salary may be very inadequate remuneration for the services. Nor does it alter the case that by subsequent statutes or ordinances his duties within the scope of the charter powers pertaining to the office are increased and not his salary. When he considers the compensation inadequate, he is at liberty to resign. The rule is of importance to the public. To allow changes and additions in the duties properly belonging, or which may properly be attached, to an office, to lay the foundation for extra compensation, would introduce intolerable mischief. The rule, too, should be rigidly enforced."

To the same effect is the case of *Fry vs. Berks County, 38 Pa. Sup. Ct. 449*.

There seems to be no distinction in principle between the public officers who are paid salaries and those who are paid fees.

In the case of *Lehigh County vs. Semmel, 124 Pa. 358*, it is said:

"Public officers who are paid solely by fees take and hold their offices *cum onere*. They can claim no compensation for any service not specified or provided for in the fee bill. It is well settled that they cannot be paid out of the public treasury without the statutory warrant therefor * * * in some cases the rule may operate harshly; but the remedy, if any is needed, rests with the legislature alone. The courts have no power either to make or amend fee bills."

I, therefore, advise you that the Dog Law of 1917, having imposed additional duties upon county treasurers, and provided no compensation therefor, such duties must be performed without compensation.

2. The statute is silent upon the subject of the employment of extra clerks, but I am of opinion that it does, by implication, authorize the County Treasurer to employ such clerks and authorizes the payment of their compensation out of the county treasury.

The rule governing the proposition is thus expressed in *Throop on Public Officers*, Section 542:

"The rule respecting such powers (i. e. implied or incidental powers) is, that in addition to the powers expressly given by statute to an officer or a board of officers, he or it has, by implication, such additional powers, as are necessary for the due and efficient exercise of the powers expressly granted, or as may be fairly implied from the statute granting the express powers."

The case of *New York vs. Sands*, 105 N. Y. 219, cited with approval in *Endlich on the Interpretation of Statutes*, Section 418, decides that where an act authorizing the Comptroller of a county to create a public fund or stock for certain specified purposes, it impliedly authorized the officer to employ an agent to negotiate the county bonds provided for by the act, to make an agreement with him for compensation, and to pay him out of the proceeds of the bonds.

In *Kershner vs. Stoltz*, 1 Pa. C. C. 72, it was held that in duties of a ministerial nature a person on whom the duties were imposed by statute had implied power to employ such clerks as he deemed necessary to enable him to comply with the mandate of the law.

The act of 1917 imposed on the county treasurer extensive duties of a ministerial nature and it is not to be presumed that the Legislature intended that the county treasurer must perform these duties with the clerical force which he had at the time of the passage of the act. The presumption is that if extra clerk hire is necessary, the county treasurer, that is, the officer on whom the duties are imposed, may employ such extra help as he deems necessary.

Section 15 of the act provides, inter alia:

"All bills incurred under this act shall be paid out of the county funds."

Section 19 provides, inter alia, that:

"All expenses incurred under this act * * * and not otherwise provided for shall be paid by the proper county."

I am, therefore, of opinion that the county treasurer has authority to engage and bind the county to pay the compensation of such clerks as he deems necessary to employ.

3. I am of opinion that there is no authority to authorize the county treasurer to pay postage on license certificates and license tags sent by mail upon a written application.

The act primarily contemplates that an applicant wishing to secure a license shall present himself personally, and that the license certificate and license tag shall be given to him in person.

Section 4 of the act provides that the owner of a dog shall apply to the county treasurer "*either orally or in writing* for a license for each such dog owned or kept by him."

Section 7 of the act authorizes a justice of the peace to issue such licenses upon the payment of an extra charge of fifteen cents.

The true intent of the act seems to be that the owner of a dog shall go to a county treasurer, or, for the sake of convenience, he may go to the nearest justice of the peace, make his application and secure his license. This is the primary procedure provided by the act for securing a license, but, recognizing that in some cases this might present inconvenience to the owner of the dog, it provides that an application may be made in writing.

If, however, the applicant desires to avail himself of this written application, *he must do so without any more expense to the county than would be occasioned by one applying orally for a license*, and, if he desires that the license tag and license certificate be mailed to him, he must advance to the county treasurer such additional sum as will cover postage fees.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

NITRATES.

The Act of May 29, 1917, P. L. 329, providing for the branding of fertilizers does not apply to nitrates sold by the Federal Government.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg,
Pa.

Sir: We have your favor of January 29th, asking to be advised as to whether the Act approved May 29, 1917, P. L. 329, applies to the distribution of nitrate of soda purchased by the United States Food Administration.

The facts, as I understand them to be, are as follows:

The United States Food Administration buys from Chili large quantities of nitrate of soda which it imports into the United States. The soda so purchased is paid for by the Federal Food Administration from Federal Funds. It is sold to farmers in this country through the medium of the farm extension system.

In this State an application is made to a local Extension Agent, forwarded by him to the State College, the Trustees of which are in charge of the Extension Force in this Commonwealth. The application is then forwarded to the Federal Food Administrator. At the time the application is made, the prospective purchaser deposits with some bank a sum sufficient to pay for the nitrate applied for. The bank, on receiving the deposit, notifies the Federal Food Administrator of the fact. The nitrate is then shipped to the purchaser.

While the expenses of the extension work are partly paid by the appropriation of the State, partly by the appropriation of the counties, and partly by Federal Government, the money for the nitrate purchased, together with the shipping charges, is paid by the purchaser directly to the Federal Food Administrator.

The Act of May 29, 1917, P. L. 329, amending a former Act, provides that before selling commercial fertilizer in this Commonwealth, it shall be branded in the manner prescribed by that Act, and also that the manufacturer or importer shall file an affidavit of the amount previously sold in the preceding year, in the Commonwealth.

It is obvious that this Act applies to persons in the business of selling commercial fertilizers. It does not apply to the Federal Government, and could not be enforced against it.

I, therefore, advise you that no nitrate of soda imported into Pennsylvania in the manner hereinbefore indicated, is required to be branded as provided by this Act of Assembly.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

DOG LAW.

By section 18 of the Act of July 11, 1917, P. L. 818, it is the duty of every police officer to seize and detain any dog running at large which bears a proper license tag, and is unaccompanied by its owner or keeper and also to kill any dog which does not bear a proper license tag which is found running at large; and, under section 19, for such services he shall be paid the sum of one dollar.

Office of the Attorney General,
Harrisburg, Pa., February 19, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg,
Pa.

Sir: Your favor of the 29th ult., addressed to the Attorney General, is at hand. You ask to be advised—

“With respect to Section 18 of the Act approved the 11th day of July, 1917, I shall be very glad to have you advise whether or not sworn officers of the Commonwealth who are deputized for police service to perform certain services for other agencies of the Commonwealth and without salary, can collect from the County Commissioners the fees provided for in the several sections of this Act pertaining to the detention of dogs as well as the destruction of the same.”

Attention is called to Section 3 of this Act, which provides as follows:

“The term ‘police officer’ shall mean any person employed or elected by this Commonwealth, or by any municipality, county, or township, and whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes game, fish and forest wardens.”

Under the term “police officer” is included the chief of police or his agents, of any city; the high constable of any borough, or the constable of any borough not having a high constable, the constable of any incorporated town or township, game, fish and forest wardens.

In Section 18 it is provided—“It shall be the duty of every police officer to seize and detain any dog or dogs which bear a proper license tag, and which are found running at large and unaccompanied by its owner or keeper. It shall be the duty of every police officer to kill any dog which does not bear a proper license tag, which is found running at large”; and the specific duty of “the chief of police or his agents, of any city, the high constable of any borough, or the constable of any borough not having a high constable, and the constable of any incorporated town or township, shall cause any dog bearing a proper license tag and so seized and detained to be properly kept

and fed, and shall cause immediate notice, either personal or by registered mail, to be given to the person in whose name the license was procured, or his agent, to claim such dog within ten days."

Under Section 19 such officer shall be paid the sum of one dollar for detaining the said licensed dog, and one dollar for the killing of a dog.

You are, therefore, advised that only the officers specifically named for the duty of detaining dogs, their care, and the final disposition of the same, are entitled to the fee as provided in Section 19. Clearly, it is the duty of any police officer to seize and detain any dog or dogs which bear a proper license tag, and which are found running at large and unaccompanied by its owner or keeper; and also the duty of any police officer to kill any dog which does not bear a proper license tag, which is found running at large, and for such services they shall be paid the sum of one dollar. For the specific duty of detention, care and destruction of a dog, however, the duty must be confined to the officers above named—the Legislature evidently having in mind the fact that the chief of police or his agents, the high constable of any borough, the constable of any borough not having a high constable, or the constable of any incorporated town or township, are permanent officers, located at a fixed and definite place, while the various wardens are subject to call to different sections of the State.

Further, that the police officers of the State, which include the chief of police, or his agents, the high constable of any borough, the constable of any borough not having a high constable, the constable of any incorporated town or township, the game, fish and forest wardens, are authorized to enforce the other provisions of this law and receive the fees as provided therein.

Further, you ask to be advised, "also with respect to Section 35, I shall be very glad to have you define specifically the individual duty provided for in the same covered by the words 'any person.'"

Section 35 of this Act has reference to its violations, fines and penalties, and is as follows:

"Any person violating, or failing or refusing to comply with, any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine not exceeding one hundred dollars, or to undergo an imprisonment not exceeding three months, at the discretion of the court.

"All fines collected under the provisions of this act shall be forthwith paid to the treasurer of the proper county."

Briefly, any person who refuses or neglects to perform his official duties violates this law, or any person who fails or refuses to comply

with its provisions likewise is guilty of its violation. "Any person" may mean a county commissioner or county treasurer who refuses to perform or neglects to perform his duties as set forth in the different sections of the act; or any person who is the owner of a dog over six months old who refuses or neglects, on or before the fifteenth day of January, to make application for a license for such dog; or any person becoming the owner, after the fifteenth day of January of any year, of any dog six months old or over and refuses or neglects to make application for a license; or any person who keeps a kennel and refuses or neglects to take out a license for the same; or any assessor who fails to carry out the provisions of Section 16 of this Act; or any person who, on and after the fifteenth day of January, one thousand nine hundred and eighteen, shall keep any dog six months old or over, unless such dog is licensed by the treasurer of the county in which the dog is kept; or any person who kills, injures or poisons any dog which bears a license tag for the current year; or any person who places any dog-button, or any poison of any description, in any place on his own premises or elsewhere where it may be easily found and eaten by dogs; or any person, except the owner, who removes any license tag from a dog collar or removes any collar with a license tag attached thereto from any dog; or any person who harbors, or permits to remain about his premises, any dog not having a license; or any person knowingly who makes any false statement or conceals any fact required to be disclosed under the provisions of this Act.

The Secretary of Agriculture, through his officers, and agents, shall have the general supervision over the licensing and regulation of dogs and protection of livestock and poultry from damage by dogs in all counties of the Commonwealth. The commissioners of each county shall enforce, within their respective jurisdiction, the provisions of this Act. To this end the Secretary of Agriculture may employ all proper means for the enforcement of this Act. Any other State department, bureau, or commission may, on request of the Commissioner of Agriculture, assist in the enforcement of the provisions of this Act.

Very truly yours,

HARRY K. DAUGHERTY,
Deputy Attorney General.

DOG LAW.

Section 18 of the Dog Law of July 11, 1917, P. L. 818, provides: "It shall be the duty of every police officer to kill any dog which does not bear a proper license tag which is found running at large." In section 20 of the same law a penalty upon failure of the officer to perform his duty as above is imposed. Such officer, then, by statutory enactment, has certain defined duties which he must perform, and, upon failure, he is subjected to a penalty. Therefore, he can and may perform his duty as required without violating any municipal ordinance or enactment, though such enactment might otherwise provide.

The words "running at large," as used in the Act of July 11, 1917, P. L. 818, mean that animals when found trespassing on the public roads and streets, or on the premises of another and away from the owner or keeper, are "running at large"; but when the animals are on the premises of the owner or keeper they cannot be properly classed as "running at large," as are animals which roam, ramble and feed at will without restraint or care.

Although the Act of July 11, 1917, P. L. 818, specifically requires the owner of a dog to apply for a license on or before January 15th, it is the intention of the act that all dogs over six months' old shall be licensed, and a penalty is imposed for failure to apply for a license.

There is contained in the act no express or implied prohibition from the granting of licenses upon proper application, and county treasurers must continue the issuance of licenses upon application without regard to the failure of the applicant to make the said application on or before January 15th; and the owner, therefore, who failed to make application before that date can do so afterwards and obtain the necessary license.

Office of the Attorney General,
Harrisburg, Pa., March 11, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg,
Pa.

Sir: Your several communications directed to the Attorney General, dated March 6th, in which you ask to be advised upon certain features of the Dog Law of 1917, have been duly received.

First: In reference to an apparent conflict between borough ordinances and the law of the State, the question being raised in this way:

"There is a peculiar condition existing in this borough relative to the Dog Law. Our Burgess declares that under our borough ordinance no shooting of fire arms is permitted within borough limits and no dogs can be shot. We cannot believe that our borough laws are greater than State laws."

Concerning this inquiry you are advised that under the police powers of the State the borough has the right to enact regulations for the peace, health, protection and morals of the community, which do not encroach upon the general powers of the State; but could not by municipal enactment prevent a sworn officer of the law from enforcing a statutory provision of the State.

"Boroughs under their corporate powers shall have power to make such laws, ordinances, by-laws and regulations as are not inconsistent with the laws of this Commonwealth." (Purdon's Digest, 13 Ed. Vol. 1, page 492.)

On the point in question Section 18 of the Dog Law provides:

"It shall be the duty of every police officer to kill any dog which does not bear a proper license tag which is found running at large."

In Section 20 of the same law a penalty upon failure of the officer to perform his duty as above is imposed. Such officer, then, by statutory enactment has certain defined duties which he must perform and upon failure he is subjected to a penalty. Therefore he can and may perform his duty as required with out violating any municipal ordinance or enactment, though such enactment might otherwise provide.

While a borough may prohibit the shooting of fire arms within the borough limits, no such ordinance was ever intended to prohibit the regularly constituted peace officers from discharging fire arms in case of riot, insurrection, disturbance of the peace, enforcement of the law, or in making arrests, but in its application has particular reference to reckless or promiscuous shooting of fire arms.

Second: This inquiry relates to the question of dogs running at large and is as follows:

"A party here holds the contention that he has a perfect right to let his dog run on any of his property at any time of day, regardless whether or not he accompanies said dog at time while running. This party has reference to property about one-half mile from the place on which he lives; and does not connect with the place on which he lives in any way, shape or form. Said property is a stump and pasture lot; and one of the best 'rabbit pastures' around here. Whether a 'rabbit pasture' or other kind of property away from his residence he cannot keep any dog from straying from that property and I say he cannot let the dog run at will."

Under Section 18 it is provided:

"It shall be the duty of every police officer to kill any dog which does not bear a proper license tag which is found running at large."

Upon the precise meaning of the words "running at large" this question will be determined. Under the provisions of the present law, dogs are personal property and the application of the phrase "running at large" should be the same as its application to other

animals. "Running at large" means strolling without restraint or confinement, as rambling, roving or wandering at will, unrestrained, i. e., without any one to hinder or direct them. "Going at large" is used in the statute prohibiting animals running at large without a keeper and means the unrestrained use of the highway by animals in the absence of the keeper or other person to look after them. Animals trespassing upon the premises of another than their owners when not under the immediate control of their owners are "running at large." The statutes of different states, as well as Pennsylvania, agree on the meaning of the words "running at large," and the general interpretation seems to be that animals when found trespassing on the public roads and streets, or on the premises of another and away from the owner or keeper are "running at large," but when the animals are on the premises of the owner or keeper they cannot be properly classed as "running at large," as applicable to animals which roam, ramble and feed at will without restraint or care.

Therefore, you are advised that the dog or dogs on the farm or farms of the owners or keepers are not "running at large" within the meaning of the terms as defined in this law.

Third: The communication relative to the issuance of dog licenses after January 15th and raised by the letter of David Cameron, Esq., in which he says:

"As counsel for the Commissioners of Tioga County, I advised them that the County Treasurer could not issue a license unless the owner of the dog sought to be licensed made application on or before the 15th day of January. Our court sustained me in that position."

It is clear and positive that one of the principal objects of this act is to require the licensing of all dogs.

"On and after the 15th day of January, 1918, it shall be unlawful for any person to own or keep any dog six months old or over unless such dog is licensed by the Treasurer of the County in which the dog is kept. (Section 17.)

This is obvious and as the County Treasurer issues the license upon application, there is no other method to be followed. The Legislature intended that all dogs over a certain age should be registered and licensed and penalty is fixed for a non-performance of duty.

There is contained in the Act no express or implied prohibition from the granting of licenses upon proper application and it is the opinion of this Department that County Treasurers must continue the issuance of licenses upon application without regard to the failure of the

applicant to make the said application on or before January 15th; and the owner, therefore, who failed to make application before that date can do so afterwards and obtain the necessary license.

Very truly yours,

HARRY K. DAUGHERTY,
Deputy Attorney General.

ANIMAL FEED.

Peanut meal or peanut oil meal containing peanut hulls cannot be legally sold in Pennsylvania.

History of legislation shows that the prohibition against rice hulls, peanut hulls and weed seeds was deliberately made by the legislature.

Office of the Attorney General,
Harrisburg, Pa., March 30, 1918.

Mr. James W. Kellogg, Chief Chemist, Department of Agriculture,
Harrisburg, Pa.

Sir: Your favor of the 20th inst. is at hand. You ask to be advised whether peanut meal or peanut oil meal, which contains varying proportions of peanut hulls, can be sold as a commercial food for domestic animals in this Commonwealth.

I understand that your inquiry is made because certain manufacturers and importers are placing upon the market peanut meal or peanut oil meal, which contains peanut hulls in proportions varying from eleven per cent. in the higher grades to thirty-four per cent. in the inferior grades, and desire to sell these products in this State.

Section 2 of the Act of May 3, 1909, P. L. 395, regulating the sale of concentrated commercial feeding-stuffs and of condimental stock and poultry food, provides, in part, as follows:

"The term 'concentrated commercial feeding-stuff,' as used in this act, shall include cottonseed meals, cottonseed feeds, linseed meals, gluten meals, gluten feeds, pea meals, bean meals, *peanut meals*, cocoanut meals," etc.

Section 3 provides, in part:

"No foreign mineral substance, or substances injurious to the health of domestic animals, nor oat hulls, ground corn cobs, flax plant refuse, elevator chaff, cottonseed hulls, ground corn stalks, rice hulls, *peanut hulls*, weed seeds, or other similar adulterations, shall be mixed with any feeding-stuff sold, offered, or exposed for sale in this State."

Then follows the proviso:

"That any feeding-stuff the crude fiber content of which does not exceed nine per centum, that may be found, upon analysis, to contain either oat hulls, flax plant refuse, elevator chaff, cottonseed hulls, ground corn stalks; or all of these ingredients, shall not be considered adulterated with oat hulls, flax plant refuse, elevator chaff, cottonseed hulls, or ground corn stalks, within the meaning of this act."

Another proviso permits the grinding of corn feeds with corn stalks so that the fiber contents shall not exceed nine per cent.

It will be noted that the proviso above quoted does not alter the prohibition against any amount of rice hulls, peanut hulls and weed seeds. The other fibers are permitted in proportions not exceeding nine per cent.

I am advised that the history of this legislation shows that this prohibition against rice hulls, peanut hulls and weed seeds was deliberately made by the Legislature. This Act of Assembly, as originally introduced, did not permit any of the prohibited substances mentioned in Section 3 in any proportion. After full hearing, the proviso permitting nine per cent. of oat hulls, flax plant refuse, elevator chaff, cottonseed hulls, and ground corn stalks was inserted, and "rice hulls, peanut hulls and weed seeds" was designedly omitted from the proviso permitting nine per cent. of such fibers.

I am, therefore, of opinion that peanut meal or peanut oil meal containing peanut hulls cannot be legally sold in Pennsylvania.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

DIRECTOR OF MARKETS.

The Director of Markets, under facts outlined, should be paid his salary from the date of his appointment to the date of his resignation.

Office of the Attorney General,
Harrisburg, Pa., May 27, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 14th inst. enclosing communication from the Auditor General relative to the

appointment of E. B. Dorsett as Director of Markets, requesting to be advised as to whether he is entitled to be paid compensation by the Commonwealth as such Director.

The Bureau of Markets in the Department of Agriculture was created by the Act of July 17, 1917, P. L. 1011. Section 2 thereof provides:

"The Secretary of Agriculture, with the approval of the Governor and commission, shall appoint, upon the recommendation of the Secretary of Agriculture, a Director of Markets (hereinafter called the director), who shall be qualified for the performance of his duties under this act by practical training and experience. He shall be appointed for the term of four years, and shall devote his entire time to the duties of his office, and shall receive the sum of four thousand dollars (\$4,000.00) per annum for his services, and also be allowed his necessary traveling and other expenses actually incurred in the performance of his duties."

The Minutes of the State Commission of Agriculture show that at a meeting held on August 14, 1917, the Secretary of Agriculture reported that arrangements had been made for establishing the Bureau of Markets which would require three people for the present, the following names being used in connection with these positions:

E. B. Dorsett, Chief, at \$4,000 per year.

J. Wallace Hallowell, Assistant, at \$1,800 per year.

Helen M. Nesbit, at \$1,200 per year.

No action was taken on the confirmation of these appointments.

On October 10, at the regular meeting of the State Commission of Agriculture, the following names were presented in connection with the new Bureau of Markets:

E. B. Dorsett, Director.

J. Wallace Hallowell, Assistant.

Helen M. Nesbit.

Favorable action was taken on the transfer of Miss Nesbit. The other names were passed by at that meeting of the Commission.

At a meeting of the Commission held on November 21, 1917, during the absence of the Secretary of Agriculture, the Commission took action on the appointment of Mr. Dorsett as follows:

"The State Agricultural Commission does not approve of the appointment of E. B. Dorsett as a director of the Bureau of Markets."

At a meeting of the Commission held on February 6, 1918, the Minutes show the following action:

"Mr. Dorsett who had asked permission to appear before the Commission was given opportunity to do so. After several matters had been gone over with him and when he had withdrawn, the Commission did not approve of confirming him in a certain appointment as chief of the Bureau of Markets, but appreciating that he had given the best service that he had to render for a few months past, Mr. Bushong presented a resolution that the action of the Commission of November 21st in rejecting Mr. Dorsett's appointment be reconsidered. This was duly put and carried. Mr. Gilfillan then made a motion that the appointment of Mr. E. B. Dorsett as Chief of the Bureau of Markets be confirmed, seconded by Mr. Bushong, the same being duly put and carried. Mr. Patton, Secretary of Agriculture, presented a resignation from Mr. E. B. Dorsett as Chief of the Bureau of Markets to take place between this date and the 1st of March. The resignation was accepted by the Secretary of Agriculture."

It further appears that immediately following his appointment by the Secretary of Agriculture on August 1, 1917, Mr. Dorsett assumed his duties as Director of the Bureau of Markets and continuously rendered such service up until his resignation on February 6, 1918. There may be some question as to whether Mr. Dorsett should have been appointed as Director and entered upon his duties prior to his confirmation by the Commission, but he was appointed Director by the Secretary of Agriculture, entered upon his duties and performed services for the Commonwealth, and the action of the Commission of Agriculture on February 6, 1918, contemplated the approval of such appointment by the Secretary of Agriculture and recognition of, and payment for, the services of Mr. Dorsett under such appointment.

I am of the opinion and so advise you that in view of all the circumstances Mr. Dorsett is entitled to be paid his salary as Director of the Bureau of Markets from the date of his appointment, August 1, 1917, to the date of his resignation, February 6, 1918.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

FARM PRODUCTS.

The Bureau of Markets has no power or authority to sell a car load of perishable food, refused by the consignee, except by agreement of all parties.

Office of the Attorney General,
Harrisburg, Pa., June 12, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg, Pa.

Sir: We have your favor of the 5th inst.

You ask an opinion upon the following statement:

"A car load of perishable farm products is refused by the consignee at destination because of its slightly deteriorated condition. The common carrier attempts to collect freight charges from consignor. The lading in dispute at the time of delivery still possesses considerable food value, if promptly distributed, and would be readily purchased at reduced prices by consumers if opportunity were given."

You say prompt sale of such products would benefit both the producer and consumer if the Bureau of Markets has authority to require the common carrier to deliver shipments to it for disposition.

Section 3 of the Act of July 17, 1917, P. L. 1013, creating a Bureau of Markets, provides, in part, as follows:

"The director shall be the chief executive officer of the Bureau of Markets and it shall be his duty to organize said bureau and to plan and formulate the work to be done, and carry out the provisions of this act; and he shall. * * *

(h) Whenever it shall appear that any agricultural products are liable to spoil or waste or depreciate in value for lack of ready market, take such steps as may be advisable to benefit the producers, distributors, and consumers thereof, and to prevent waste."

This is the only statutory language which, by any possible construction, could bear upon the subject of your inquiry, but we are of opinion that this was not intended to reach a situation such as you present.

The Legislature could not constitutionally give to the Bureau of Markets any power to take a shipment of farm products from a common carrier or give to the common carrier any power to deliver such shipment to the Bureau of Markets without the consent of the owner of such shipment.

In order for the Bureau of Markets to have the disposition of any such shipments, the delivery would have to be made to it by the agreement of all parties concerned.

But we are of opinion that the language of the statute quoted does not refer to specific or single shipments. This language must be read in connection with the rest of the section, and when so read it does not refer to a single consignment of farm products. Under this language the executive officer of the Bureau of Markets is directed to take such steps as may be advisable to benefit producers, distributors, and consumers when "for lack of a ready market" agricultural products "are liable to spoil or waste, or depreciate in value."

To illustrate: There might be an over-production of a particular crop in an out of the way section of the State. The fact of such over-production might not be known to the dealers, distributors, and consumers of that particular product. This section authorizes the Bureau of Markets "to take such steps as may be deemed advisable" to bring the fact of such over-production to the attention of the distributors and consumers, and thereby, as far as possible, create a ready market so that the particular product may not spoil or waste, or depreciate for lack thereof. This section is not intended to apply to specific shipments, and the Bureau of Markets has no power or authority to act in a case such as you have outlined, except by agreement of all parties.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ALIENS AND DOGS.

Under the Act of June 1, 1915, P. L. 644, an unnaturalized foreigner cannot escape the penalty for having in his possession or on the premises a dog by the plea that it belongs to his child or children who were born in the United States. Actual control by the parent is equally complete whether the legal title be in the parent or in the child who lives with him, and certainly it is complete as actual ownership where the alien obtains the "use" of the animal from another. In either event the unnaturalized foreign-born resident is in unlawful "possession" of a dog.

Office of the Attorney General,
Harrisburg, Pa., October 5, 1918.

Honorable Charles E. Patton, Secretary of Agriculture, Harrisburg,
Pa.

Dear Sir: This Department is in receipt of your communication of the 29th ult. and enclosure, relative to the interpretation of the Act of June 1, 1915, P. L. 644, entitled

"An Act to give additional protection to wild birds and animals and game within the Commonwealth of Pennsylvania; prohibiting the hunting for, or capture or killing, of such wild birds or animals or game by unnaturalized foreign-born residents; forbidding the ownership or possession of dogs by any unnaturalized foreign-born resident within the Commonwealth and prescribing penalties for violation of its provisions."

The statute makes it unlawful for unnaturalized foreign-born residents to hunt for, capture or kill, wild birds or animals in the Commonwealth, and provides further:

"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."

You state that in some cases dogs have been found on the premises of unnaturalized foreign-born persons who assert, however, that the animals belong to their child or children, and, in other cases, citizens of the United States owning dogs, permit them to be used by and in the possession of unnaturalized foreign-born residents.

You inquire whether such acts are within the prohibition of the statute of 1917 hereinbefore referred to.

The provisions of the statute, in my opinion, cover the situations above stated. The Act not only prohibits the ownership of dogs but likewise renders unlawful the "possession" of these animals. Section 1 of the Act provides, *inter alia*, that

"In addition to the before-named fine, all dogs of the before-mentioned kinds found in *possession or under control* of an unnaturalized foreign-born resident shall * * * be declared forfeited," etc.

The third section of the Act provides that the "possession" of a dog outside of buildings, within the Commonwealth, by such a person, is conclusive proof of the violation of the act, and that the presence of a dog in a room, house, etc., occupied or controlled by the foreign-born person

"shall be *prima facie* evidence that such dog is *owned or controlled* by the person occupying or controlling the property in which such dog is found."

While this is a penal statute and therefore to be strictly construed, yet the words of the Act are to be interpreted in the sense in which they are employed by the Legislature. A cursory reading of the statute is alone sufficient to indicate an intent on the part of the Legislature to use the term "possession" as implying more than

merely "actual or physical possession." The term is employed as tantamount to "control," and I am of opinion that a dog is under the "control" of an unnaturalized foreign-born resident when the animal is permitted to stay on his premises and without regard as to where the legal title of the animal is vested. Actual control by the parent is equally complete whether the legal title be in the parent or in the child who lives with him, and certainly it is complete as actual ownership where the alien obtains the "use" of the animal from another. In either event, the unnaturalized foreign-born resident is unlawfully in "possession" of a dog.

When the Legislature provides that an unnaturalized foreign-born resident could not "either own or be possessed of a dog," it drew the distinction between ownership and possession and meant to provide against possession as well as against ownership.

I am, therefore, of opinion, that either of the situations suggested by you constitute violations of the statute. To decide otherwise would render the provisions of the Act useless, for any person could avail himself of such subterfuges.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO THE DAIRY AND FOOD
COMMISSIONER.

OPINIONS TO THE DAIRY AND FOOD COMMISSIONER.

ATTORNEYS AT LAW.

As a general proposition it is not proper for an attorney holding an appointment and receiving a regular salary under the State government to defend prosecutions instituted by another department or bureau of the State administration.

Office of the Attorney General,
Harrisburg, Pa., February 20, 1917.

Honorable James Foust, Dairy and Food Commissioner, Harrisburg,
Pa.

Sir: This Department is in receipt of your favor of the 13th inst., inquiring whether "it is right, proper or legal for an attorney holding an appointment and receiving a regular salary under the State government to defend prosecutions instituted by another department or bureau of the State administration."

It is the custom of this Department, as it is the practice of the courts, to render opinions only upon actual questions in controversy, where all the facts of a particular case are presented, thus providing for distinctions which may not be apparent when a broad general question not based upon a concrete case is presented. The wording of your inquiry is rather broad, and it may be, therefore, that in particular instances facts may exist which may distinguish them from the present case and to that extent render this opinion inapplicable.

I have no hesitation in saying, however, that as a general proposition it is not proper for an attorney holding an appointment and receiving a regular salary under the State government to defend prosecutions instituted by another department or bureau of the State administration. This does not prevent an attorney who holds an appointment and receives a salary under the State government from acting for a defendant in a criminal case where there is a private prosecutor and where the interest of the Commonwealth is no different from nor greater than that which is involved in all criminal prosecutions; but wherever the Commonwealth is especially interested in a prosecution, even though there be a private prosecutor, or where any department or bureau of the Commonwealth has instituted a prosecution, thus showing that the Commonwealth is interested in

the result to a greater degree than in ordinary prosecutions, I would deem it improper for any attorney holding an appointment and receiving a regular salary under the State government to defend one accused in such a prosecution. Under these circumstances there is such a conflict between the attorney's public and private employment as should lead him either to give up his employment by the Commonwealth or else forego employment against the interests of the Commonwealth.

I do not hold that his accepting such private employment contrary to the interests of the Commonwealth would render his acts illegal, but rather that it is violative of the best professional ethics. While I cannot directly advise you without a full knowledge of all the facts, I have no doubt that if such a case arises or has arisen, and you call the attention of the official to the special interest of the Commonwealth in the matter, he will recognize the conflict of interest and retire from a situation that may be misconstrued and prove embarrassing.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

OLEOMARGARINE LICENSES.

Under the Oleomargarine Law of June 5, 1913, § 2, P. L. 412, an agent of the manufacturer who holds a wholesale license must take out a license before he shall be permitted to offer oleomargarine for sale by retail dealers.

Office of the Attorney General,
Harrisburg, Pa., March 27, 1917.

Honorable James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Your letter of March 6, 1917, requesting an opinion upon the construction of the oleomargarine law of June 5, 1913, P. L. 412, is at hand.

The facts I understand to be as follows:

Manufacturers of oleomargarine in Chicago who have a license to sell oleomargarine at wholesale in Pennsylvania, but who do not have a license to sell at retail therein, propose to send their agents throughout the State to secure orders for oleomargarine at retail from housewives, and other consumers, and when such orders are obtained, to forward them to the nearest licensed retail dealer handling or selling

their brands of oleomargarine. The licensed retail dealer will then receive, accept the order, pack the oleomargarine and send or deliver the package to the purchaser.

The retail dealer does not pay the salary or any part thereof, of the soliciting agent.

I understand your inquiry to be whether such plan can be lawfully carried out without such agents obtaining licenses.

Section 2 of this Act provides, in part, as follows:

"Every person, firm or corporation, and every 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 * * * such licenses shall not authorize the manufacture or 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."

In an opinion dated February 3, 1916, upon a similar subject, I endeavored to draw the distinction between the regular clerks of a grocery store who would take orders for groceries, and incidentally for oleomargarine, and the agents employed to travel around the country, taking orders for nothing but oleomargarine.

In that opinion it was said:

"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 into 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."

Under this proposed plan the agents are not even the employees of the retail dealer who holds the license, but are employees of the manufacturer of the oleomargarine. They are employees of a licensee to sell at wholesale, and are taking orders to sell at retail.

The Act of Assembly specifically requires not only the person, firm or corporation to be licensed, but "every agent of such person, firm or corporation desiring to manufacture, sell or offer or expose for sale * * * oleomargarine," to make application for a license.

It is within the letter of this statute to require every agent of a retail dealer to obtain a license before *offering* oleomargarine for sale. This construction, however, may not be within its spirit, but it is certainly within both the letter and the spirit to require an agent of the manufacturer who holds a wholesale license, to take out a license before he shall be permitted to offer oleomargarine for sale at retail.

Nothing said in this opinion is intended to apply to the agents of licensed wholesale dealers who take orders for oleomargarine to be sent directly to and filled by said licensed dealers.

I am, therefore, of opinion, and so advise you, that the plan proposed cannot be put into force in the State of Pennsylvania, unless the agents are licensed as required by the statute.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE FOOD CONTROL.

An Act of Congress, passed as a war measure, supersedes an act of the State legislature, so that the State cold storage act and other statutes relating to the administration and handling of foods, must give way to rules and regulations in conflict therewith established by the President in accordance with congressional action. Such period of suspension of State regulations would continue during the period of war only.

Office of the Attorney General,
Harrisburg, Pa., December 14, 1917.

Honorable James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: Your favor of the 10th inst., addressed to the Attorney General, enclosing a copy of the opinion given to Howard Heinz, Esq., Federal Food Administrator for Pennsylvania, by Robert C. Taft, Acting Chief Counsel, United States Food Administration, was duly received.

You ask to be advised whether you are justified in treating the cold storage law as superseded by the Act of Congress which confers upon the President the control of foods and is known as the Food Control Act.

This Act of Congress recites that it is passed "by reason of the existence of a state of war," and "for the successful prosecution of the war, and the support and maintenance of the army and navy."

It provides, among other things:

"The President is authorized to make such rules and issue such orders as are essential effectively to carry out the provisions of this act."

I have carefully considered Mr. Taft's opinion, I concur in his conclusions. There is, in my opinion, no doubt that under the Act of Congress, such rules and regulations which may be promulgated by the President, or by the Federal Food Administrator, acting under the authority of the President as a war measure, supersede any statute of Pennsylvania with which such rules and regulations conflict, and you should not attempt to enforce the laws of Pennsylvania in conflict with any such rules and regulations.

What I have heretofore said, answers, in part, your letter recently forwarded to this Department, containing a communication from W. L. Danahey.

That correspondence suggests that much of the dried cod and other dried fish which come into Pennsylvania contain boric acid, applied as a preservative. The laws of Pennsylvania prohibit the addition of any boric acid or borates to food.

Mr. Danahey called attention to the war conditions, and the efforts of the food administration of the Federal Government to encourage the consumption of fish, in order to conserve the meat supply. He also called attention to the fact that, under the Federal Food and Drugs Act of June 30, 1906, boric acid was not forbidden, if it were applied in such a manner as to be removed mechanically, or by maceration in water, and the direction for such removal printed on the covering or package.

I am advised that dried cod and other dried fish are always soaked or boiled before eating, to eliminate the salt, and that this also removes the boric acid.

It seems to me that, under the facts as they have been presented by this correspondence, this is a proper subject for a regulation by the Federal Food Administrator for Pennsylvania, under the provisions of the Food Control Act.

If such regulation is made, then it would supersede the Act of Pennsylvania, which prohibits the sale of boric acid, or borates, in food, as to such dried cod and other dried fish. You have no right to set aside the Pennsylvania statute as a war measure, but if the President, or those acting under his authority, by virtue of the Food Control Act, make any such regulation, then, as heretofore stated

in this opinion, the Pennsylvania statute which conflicts with such regulation must be suspended, but only so far as it directly, or by necessary implication, conflicts therewith.

I do not deem it wise to advise any general rule as to the suspension of any of our laws. I think it better that each case should be dealt with as it arises.

It is, of course, understood that the Food Control Act, being a war measure, will be in force only during the period of the war and the regulations made under it will suspend the laws of Pennsylvania and your enforcement thereof only for such period.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO THE STATE VETERINARIAN.

OPINIONS TO THE STATE VETERINARIAN.

EMPLOYES OF STATE IN MILITARY SERVICE OF UNITED STATES.

The Act of June 7, 1917, relative to employes of the State in the military service of the United States, applies to all employes of the State, without regard to rank and without regard to the rank in which they enter such service.

Office of the Attorney General,
Harrisburg, Pa., July 31, 1917.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: Your favor of the 30th inst., addressed to the Attorney General, is at hand.

You ask to be advised whether, in entering the Veterinarian Reserve Corps of the United States Army, you will come under the provisions of Act No. 201, approved June 7, 1917, and whether you will receive one-half of your salary during the time you are in the United States Army service.

You also ask to be advised whether the Act applies to other agents of the State Livestock Sanitary Board who may enter the army service with, or without a commission.

The Act to which you refer provides that whenever any officer or employe of the Commonwealth in any department shall be enlisted, enrolled or drafted, either in the military or naval service of the United States, or any branch or unit thereof, he may hold his position with the Commonwealth of Pennsylvania. It also provides that such officer or employe may file with the head or chief of the department or bureau a statement in writing, executed under oath, setting forth the fact and date of his enlistment, enrollment or draft, his intention to retain his office or employment, the names and addresses of wife, children or dependent parents, and requesting that one-half of his salary, not exceeding \$2,000, be paid during his service to his wife, for her use, and that of the children, or, if he has no wife or children, to dependent parent or parents, if any, and with such statement file a power of attorney, authorizing the dependents to receive said proportion of his salary.

This Act of Assmblly seems clear. Answering your questions categorically, I have to advise you,

1. This Act applies to you and all other officers in your department.

2. You will not have to receive a leave of absence from anyone in your department, but you probably will have to obtain such leave of absence from the Governor.

3. The statement provided for must be filed with your department.

4. You will not receive the salary, but your wife or parent, as the case may be, will receive it.

5. It makes no difference whether the person is a commissioned officer or not, the Act applies to all employees of the State, without regard to rank, and without regard to the rank in which they enter the army or navy service.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

REIMBURSEMENT FOR DISEASED CATTLE.

The Act of July 25, 1917 does not authorize the payment of the difference between half the appraised value of diseased cattle which were destroyed and the maximum amount permitted to be paid under the Act of July 22, 1913.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1917.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 20th ult. with reference to the Act of July 25, 1917, No. 230-A, entitled "An Act making an appropriation to the State Livestock Sanitary Board for the purpose of reimbursing certain owners of animals destroyed during the recent epidemic of hoof and mouth disease."

From the facts detailed in your letter I gather that it was the intention of those who framed this Bill to make an appropriation to reimburse certain owners of animals destroyed during the recent epidemic of the hoof and mouth disease for the difference between half the appraised value of the cattle killed and the maximum amount permitted to be paid by the State under the Act of July 22, 1913, P. L. 928.

Unfortunately, the Act was not so drawn. The framers of the Act have failed entirely to express the real purpose they had in mind. The Act as passed and approved provides that the appropriation

"shall be used for the payment by the Board to the owners of such animals as shall produce satisfactory evidence to the Board that the appraisement in each case was less than the actual value of the animal destroyed."

I do not understand from your letter that in any of the cases referred to there is any claim that the appraisement was less than the actual value of the animals destroyed, but only that by reason of the maximum limit fixed in the Act of July 22, 1913, your Department was not able to pay the State's full half share of the appraised value.

I regret very much that this error on the part of those who drafted this Bill should result in defeating the real purpose in view, but I can not change or alter the language of the Act as it was passed and approved.

You are, therefore, advised that under the Act approved July 25, 1917, you cannot pay the Addison B. Grubb and similar claims for the difference between half the appraised value of the destroyed cattle and the maximum amount permitted to be paid under the Act of July 22, 1913, *supra*.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

OPINIONS TO THE GAME COMMISSIONER.

OPINIONS TO THE GAME COMMISSIONER.

APPROPRIATIONS TO BOARD OF GAME COMMISSIONERS.

Unappropriated money collected under Section 12 of the Act of April 17, 1913, P. L. 85, does not lapse into the funds of the State after the expiration of two years.

Office of the Attorney General,
Harrisburg, Pa., February 6, 1917.

Dr. Joseph Kalbfus, Secretary, Board of Game Commissioners, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of January 17, 1917. Your inquiry, as we understand it, is directed to Section 12 of the Act of April 17, 1913, P. L. 85, and Section 5 of the Act of April 15, 1915, P. L. 126. The matter upon which you ask particularly to be advised is whether any unappropriated money collected under Section 12 of the Act of 1913, or any moneys appropriated from the fund created by such section and remaining unexpended, lapse or revert into the general funds of this State after two years.

This question must be answered in the negative. As this decision is of moment to the activities of your Commission, it is proper to fully explain the considerations which have led up to it.

The fiscal relationship of the government of this State to the various departments, boards and commissions created under it may be grouped under three heads.

First are those for which all necessary funds are appropriated biennially by the Legislature from the general funds of the Commonwealth. The income of such boards or commissions is payable forthwith upon receipt over to the State Treasurer for the use of the Commonwealth.

The second class are those whose income is derived entirely from the various activities of such board or commission and is not paid into the State Treasury but retained by such board or commission, to be by it expended for the purposes of its creation and within those bounds at its own discretion.

The third class is intermediate of the first two, viz: those which are dependent for their necessary funds upon the income derived solely from the designated activities of such board or commission, which

income, however, is paid over to the State Treasurer to be kept in a separate fund and thereafter, upon appropriation by the Legislature from such fund, to be expended for the purposes of such board or commission.

The Board of Game Commissioners comes under the third class; i. e., no funds are appropriated to the work and activities of your Commission except the income from hunters' licenses, fines and penalties and other revenue raised through the activities of your Board. The Act of April 17, 1913, P. L. 85, in Section 12, provides that all license fees, fines and penalties collected under the provisions of the Act shall be paid to the State Treasurer, "who shall keep the moneys thus collected as a fund separate and apart solely for the purpose of wild bird and game protection, and for the purchase and propagation of game under the supervision of the Board of Game Commissioners of the Commonwealth of Pennsylvania and the payment of bounties under the provisions of the law."

By this Act the Legislature has adopted a definite policy, founded on good reasons, whereby the income produced from a certain class shall be devoted and restricted in its expenditure to the purposes and reasons for which the burden was imposed upon that class.

The Act of 1913 above referred to further provides in this section that the Legislature shall biennially apply not to exceed fifty per centum of such fund to the payment of bounties. The creation of this fund and its separation from moneys used for other State purposes, does not in itself constitute an appropriation, as was previously held by this Department in the opinion of yourself under date of March 25, 1914, p. 298, 42 Pa. C. C. 438. Pursuant to such opinion the Legislature, by the Act of May 3, 1915, Appropriations 23, appropriated a definite amount, which was set aside from this fund to be used for reimbursement to the several counties for bounties theretofore paid. Likewise in the Legislature of 1913 and 1915, specific appropriations were made for salaries and other expenses of your Commission.

The Legislature has distinctly stated by the Act of 1913 that the State Treasurer, so far as the funds arising from that Act are concerned, must keep them apart for a specific use. The plain meaning of such words can only be modified by specific legislation to that effect, and in the absence of any such direction any moneys unappropriated from such fund must be considered as continuing in that fund from year to year.

Now, as to the moneys which have been specifically appropriated from that fund to certain purposes as specified in the Act of 1913, the same result occurs where such appropriations are not exhausted. This Department has uniformly held that appropriations are deemed to have lapsed or reverted if not used within two years or, rather,

by the end of the next fiscal year from that in which the appropriation was made. While this holding has been the rule, it has, of course, not been followed where the Legislature had fairly expressed itself to the contrary or such construction would defeat the purpose of the appropriation. See opinion to the Auditor General's Department under date of January 27, 1914, Opinions of the Attorney General, p. 65. In this opinion, as well as practically all the other ones pertaining to the same subject, the question was whether or not the unexpended appropriation "would be deemed to revert to the State Treasury."

The meaning of the word revert is "to come back to a former place or position; return." Hence, why should any unexpended portion of an appropriation from a specific fund be said to revert to some place from which the appropriation was not made? The appropriation having been made from a fund which the Legislature directed should be set apart for a specific purpose, any unexpended portion thereof would, at the end of the succeeding fiscal year, revert to the same fund, and as such, limited to the same uses and restrictions until the Legislature by direct enactment diverted it therefrom to some other purpose.

You are further advised that in view of Section 5 of the Act of April 15, 1915, no further appropriation is necessary to make one-half of the fund created by the Act of 1913 at all times available for the payment of bounties in accordance with the Act of 1915. See *Commonwealth ex rel. vs. Powell*, 249 Pa. 144.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

IN RE BOUNTIES.

Counties in which claims for bounties for noxious animals and birds have been paid under the Act of July 25, 1913, may be reimbursed under the validating Act of June 19, 1917, where such claims have been paid in good faith and where the claims upon investigation have been found not to be fraudulent.

Office of the Attorney General,
Harrisburg, Pa., July 31, 1917.

Honorable Joseph Kalbfus, Secretary, Game Commission, Harrisburg, Pa.

Sir: Your favor of the 2nd inst., addressed to the Attorney General, was duly received.

You ask to be advised whether the various counties which have paid certain bounty claims made under the Act of July 25, 1913, should be reimbursed, under Act No. 211 passed June 19, 1917.

You submit a list of thirty-five different classes of claims.

I understand you to desire to be advised whether the counties should be refused reimbursement for any one, or all, of these different classes.

The Act No. 211, approved June 19, 1917, is, in its nature, a validating Act. It recites that the Auditor General has declined to draw his warrant to reimburse the counties which have made payments to persons as bounties or rewards, for the destruction of noxious animals and birds, under the Act of July 25, 1913, because of omissions, defects, errors, or irregularities in the proofs of such claim, or in the certificates of the officers before whom such proofs were made. The Act also recites that there is an obligation on the part of the Commonwealth, and it is deemed just that such counties should be reimbursed to the extent of the amounts which were paid in good faith by their officers, notwithstanding such omissions, defects, errors or irregularities, and it validates all such claims.

There is, however, this provision:

"This Act shall not authorize the payment of any claims which, under investigation, have been found to be fraudulent."

It must be remembered that this Act is a validating Act. It is intended to reimburse the counties for moneys which were paid in good faith by their officers.

I have carefully examined the thirty-five different reasons which you suggest might justify the rejection of certain claims, and all of the reasons which you have given, except those indicated later on in this opinion, do not constitute reasons for the refusal to re-

imburse the counties, because they consist of "omissions, defects, errors, or irregularities, in the proof of such claim, or in the certificates of the officers before whom such proofs were made," and are the very thing intended to be cured by this Act of Assembly.

The exceptions which appear in your list are as follows:

"15. Claims made out of whole cloth, by justices who received and kept the money."

By this I understand you to mean that there is no basis for the claim, and that it was fraudulently prepared by the justice who received the money and kept it, and of course this comes within the exception contained in the Act, that the payment of such a claim upon investigation will be found to be fraudulent and cannot be paid.

"21. Goshawk not in the State at the time of supposed killing."

By this I understand you to mean that there were no goshawks in the State at the time of the supposed killing, and that some other bird was substituted for a goshawk and payment fraudulently received therefor. In such case payment should not be made.

"25. Certificate as filed by Commissioners not in accord with the certificates of justice."

If this goes to the amount it can be corrected on a proper audit of the claim. If only a discrepancy then it does not justify rejection of the claim.

"26. Claims under provision of the Act of 1907."

These claims cannot be allowed because the Act No. 211, passed June 19, 1917, only authorized the repayment to the counties of bounties paid under the Act of July 25, 1913, and does not authorize the repayment of bounties paid under the Act of June 1, 1907.

"29. Affidavits for animals not named in the bounty Act."

Such claims, of course, cannot be allowed, and the counties cannot be reimbursed therefor. The county can only be allowed for the payment of bounties for the destruction of noxious animals or birds, as authorized by the Act of July 25, 1913, and not for the destruction of animals or birds which are not included in that Act.

"32. Dates altered in both the affidavit and certificate."

If by this you mean that both the affidavit of the claimant and the certificate of the justice have the dates altered in them, so as to make a fraudulent claim, which otherwise would not have been paid by the county officials, then such alteration brings these claims within the provision of the Act which provides that it "shall not authorize the payment of any claims which, on investigation, have been found to be fraudulent."

"33. Skins brought into the State from other states."

"34. Skins of animals actually killed probated rapidly."

By which I understand you mean that the same animal has been used as a basis for more than one claim.

"35. Probates made in several counties by men who acknowledged they were fraudulent."

As to these last three, if the facts be found as stated, there can be no question but what the payments upon investigation "have been found to be fraudulent," and therefore no reimbursement for such claims should be made.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE ARRESTS BY GAME COMMISSIONERS.

A game commissioner can lawfully serve a warrant under the Act of June 7, 1917, for a violation of its provisions, but he does not have any power under the Act of May 21, 1901, P. L. 266, to arrest without warrant a person found in the act of violating the Game Laws of the Commonwealth.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1917.

Dr. Joseph Kalbfus, Secretary, Board of Game Commissioners, Harrisburg, Pa.

Sir: There was duly received your communication of the 2nd ult. to the Attorney General, asking to be advised as to the powers of the members of the Board of Game Commissioners to make arrests.

The Act of June 25, 1895, P. L. 273, creating the Board of Game Commissioners, by Section 2 thereof provided, *inter alia*, that:

"It shall be the duty of said board to protect and preserve the game, song and insectivorous birds and mammals of the State and to enforce, by proper actions and proceedings, the laws of this Commonwealth relating to the same."

Under Section 34 of Act No. 199, approved June 7, 1917, it is provided that on complaint duly made before a proper magistrate of the violation of any of the provisions of said Act such magistrate shall

"issue his warrant, under his hand and seal, directed to any constable, police officer, game protector, or any officer of the Commonwealth whose duty it is to protect the game and wild birds of the Commonwealth, and cause such person to be brought before him, such magistrate, justice of the peace, or alderman, who shall hear the evidence and determine the guilt or innocence of the person accused."

I am of the opinion that in pursuance of the foregoing a magistrate can properly issue a warrant directed to a game commissioner to make an arrest for a violation of any of the provisions of said Act of 1917.

Section 1 of the Act of May 21, 1901, P. L. 266, provides that:

“Game protectors * * * shall have * * * the authority to arrest without warrant any person or persons found by them in the act of violating any of the laws of this Commonwealth now in force, or that may hereafter be enacted for the protection of game, of song and of insectivorous birds, and take such person or persons forthwith before a justice of the peace or other magistrate having jurisdiction, who shall proceed without delay to hear, try and determine the matter.”

The power given under said Act of 1901 to arrest without warrant is limited to the officer specifically designated by the Act, namely, “game protectors,” and cannot by implication extend to game commissioners.

While as a general rule a game commissioner does not have the power to arrest without warrant a person found in the act of violating the game laws, yet the power to make such arrest for a violation of some particular statute may vest in such officer in consequence of some specific provision of such statute. An instance of this may be cited in the case of the Act providing for the establishment of Game Preserves, approved April 16, 1915, P. L. 135, wherein under Section 16 it is provided that:

“Any person whose duty it is to protect the game of the Commonwealth * * * may arrest, without warrant, any person caught in the act violating any provisions of this act, or in pursuit immediately following such violation.”

I am of the opinion that this provision gives a game commissioner the power to arrest without warrant a person caught in the act of violating the said Act of 1915. The same would likewise be true of any other Act containing a like provision.

In accordance with the foregoing you are advised that a Game Commissioner is an officer who can lawfully serve a warrant under the said Act of 1917 for a violation of its provisions, but that he does not have any power under the said Act of 1901 to arrest without a warrant a person found in the act of violating the game laws of the Commonwealth, although as above pointed out he may and does possess such power in the case of certain statutes by virtue of some specific provision therein to such effect. The said game law of 1917, however, contains no provision clothing a game commissioner with

authority to arrest without warrant a person found violating any of its provisions. There is no general power vested in game commissioners to make arrests, either with or without warrants; wherever it exists as to any statute it does so wholly in pursuance of some specific provision contained in such statute to such effect. There should be strict care that this officer should undertake to exercise this power only in cases where he is clearly given it.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE EXPLOSIVES. *

In protection and defense of the national interest in time of war, as well as for the preservation and assurance of the peace and safety of our people, police officers should at once seize and hold gunpowder, dynamite and other explosives, unless lawful authority to possess the same can be shown. Game wardens, by becoming members of the voluntary police force, will have the power to make such seizures.

Office of the Attorney General,
Harrisburg, Pa., July 18, 1918.

Dr. Joseph Kalbfus, Secretary, Board of Game Commissioners, Harrisburg Pa.

Sir: In reply to your inquiry as to the authority of your wardens to seize gunpowder, cartridges and other explosives found in the possession of persons in the course of investigation as to possession of fire-arms, etc., I beg to advise you that, while the authority of your deputies is limited to the enforcement of the Game Laws, they might be clothed with the additional and general powers of police officers by appointment and commission as members of the Voluntary Police Force, under the Act of July 18, 1917, P. L. 1062.

While there is no legislation in the State providing for the seizure of explosives outside of the counties of Philadelphia and Allegheny, it is my opinion that during the state of war which now exists a very grave responsibility rests upon the State and all its officials to preserve the public peace and safety by every possible means. It was for this purpose that the said Act of Assembly was passed.

There can, of course, be no greater menace to the public peace and safety than the existence of quantities of gunpowder and explosives in

or near communities where any considerable number of people live. Such explosives may also be in the possession of persons for the purpose of aiding the enemy.

It is my opinion, therefore, that in protection and defense of the national interest, as well as for the preservation and assurance of the peace and safety of our people, police officers so appointed should at once seize and hold gunpowder, dynamite and other explosives, unless lawful authority to possess the same can be shown.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE FIREARMS.

No Federal tax can be imposed upon guns, revolvers and other firearms seized and taken from foreigners by game wardens and sold.

Office of the Attorney General,
Harrisburg, Pa., October 2, 1918.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg,
Pa.

Dear Sir: Your favor of the 27th ult., asking whether firearms seized by the Game Wardens and State Police, for violations of law, and sold by you pursuant to the authority given you by statute, are subject to the imposition of a Federal war tax.

I understand the firearms to which you refer have been taken from foreigners who have no right to own them in the State of Pennsylvania, and have come into your possession in enforcing the laws of the State. In selling them you are acting as the agent of the State and the money is turned into the State Treasury.

There is no authority in the Federal Government to tax states or state agencies, and no Federal tax can, in my opinion, be imposed upon the guns, revolvers and other firearms so sold.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE DEPARTMENT OF
LABOR AND INDUSTRY.**

OPINIONS TO THE DEPARTMENT OF LABOR AND INDUSTRY.

MATTRESSES.

It is not lawful for the statement upon mattresses required by law to set forth or contain the name of the customer for whom a mattress is made instead of the name of the maker thereof.

Office of the Attorney General,
Harrisburg, Pa., January 2, 1917.

Doctor Francis D. Patterson, Chief, Division of Industrial Hygiene,
and Engineering, Department of Labor and Industry, Harrisburg,
Pa.

Sir: There was duly received your communication of the 28th ult., requesting an opinion as to whether it would be permissible for the "statement" required on mattresses in pursuance of the Mattress Law to contain the name of the customer for whom a mattress is made, instead or in place of the name of the maker of the mattress—that is, that it would show the name of the dealer for whom the article is made instead of that of the manufacturer by whom it was made.

It appears from the correspondence accompanying your communication that a certain mattress manufacturing company, for special reasons, desires to so label its product.

Section 3 of the Act of May 1, 1913, P. L. 134, as amended by the Act of May 14, 1915, P. L. 510, provides, inter alia, as follows:

"No person or corporation, by himself or by its agents, servants, or employes, shall, directly or indirectly, at wholesale or retail, or otherwise, sell, lease, offer to sell or lease, or consign in sale or lease, or have in their possession with intent to sell or lease, or consign in sale or lease, any mattress that shall not have plainly and indelibly written or printed thereon, or upon a plain muslin or linen tag securely sewed to the covering thereof, a statement in the English language setting forth:

(a) The materials used in filling said mattress, and whether the same are, in whole or in part, new or old;

(b) The name and address of the maker, vendor, or successive vendors * * *."

Section 6 of said Act, as amended, prescribes the form of said required "statement," as follows:

"The statement required under section three of this act shall be not less than three by four and a half inches in size, and in form shall be as follows:

Official Statement.

Materials used in filling
.....
.....
Made by
Address
Vendor
Address

This article is made in compliance with the Act of Assembly of Pennsylvania approved the first day of May, one thousand nine hundred thirteen, as amended * * *

The foregoing provisions are plain and unequivocal in intent and effect. It is thereby made mandatory that the said "statement" or label, as it is commonly called, required under said Act to be placed upon mattresses, shall, in all cases set forth, inter alia, "the name and address of the maker" of the mattress. No such label would fulfill the requirements of the Act if it failed to show that fact. The evident object of this label is to furnish ready and definite information as to the identity and residence of the parties who manufacture and vend mattresses; hence, to omit the name of the manufacturer therefrom or to substitute something else therefor would be to that extent to defeat the object in view in requiring the article to be labeled.

No rule of interpretation would justify a departure from the literal terms of the Act's provisions in question. Their import is plain and their effect in full accord with the purpose of the Act. We cannot properly, by mere construction, modify or overthrow any of the safeguards thereby intended to be thrown around the manufacture and sale of mattresses. The prescribed requirements as to the form of the said "statement" required to be placed upon mattresses and as to what it shall or shall not set forth, must be strictly complied with and rigidly followed. To hold otherwise, in order to meet the need of some special case, however meritorious, would be not only to set up a dangerous precedent of laxity in the construction or enforcement of the statute, but would be manifestly contrary to its express language.

The conclusion here reached is in harmony with former opinions from this Department.

In an opinion to the Commissioner of Labor and Industry under date of February 9, 1914, construing said Act of 1913, First Deputy Attorney General Cunningham held that:

“It is the evident legislative intent, as expressed in this act, that the statement required to be placed upon every mattress shall contain the name and address of the manufacturer of the mattress (who is the only person who has actual knowledge of and can certify to the materials out of which it has been manufactured) and the name and address of each successive vendor, so that in case of a violation of the act responsibility may properly be fixed.”

(Report and Official Opinions of the Attorney General, 1913-1914, page 251.)

In an opinion to the Commissioner of Labor and Industry under date of October 27, 1915, First Deputy Attorney General Keller concurred in the above quoted opinion and held that, under the Act as amended, as aforesaid, “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.”

In accordance with the foregoing, I am, therefore, of the opinion and so advise you that it would not be lawful or permissible for the “statement” required upon mattresses in pursuance of said Act, to set forth or contain the name of the customer for whom a mattress is made instead or in lieu of the name of the maker thereof.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

CHILD LABOR.

The provision of section 5 of the Act of May 13, 1915, P. L. 286, that no minor shall be employed or permitted to work in, or in connection with, any saloon or bar-room where alcoholic liquors are sold, applies to the minor son or minor brother of the proprietor of a saloon or bar-room. It applies also when the home of the proprietor is in the same house as the saloon or bar-room and whether employment is regular or only occasional.

Office of the Attorney General,
Harrisburg, Pa., January 30, 1917.

Mr. Lew R. Palmer, Chief Inspector, Department of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 12th inst., to the Attorney General, in which you request an opinion as to whether it is unlawful, under the Child Labor Law of 1915, for a "minor who may be a member of the family of the proprietor" of a saloon or barroom in which alcoholic liquors are sold, to be employed or permitted to work therein. It appears that the particular instances that occasioned this request for an opinion were as follows:

(1) Where the minor son of a proprietor of a barroom was found waiting on customers in his father's barroom.

(2) Where a minor brother of the proprietor of a barroom with whom the minor resided was likewise found waiting on customers in said barroom.

In one of these cases, at least, the barroom and the proprietor's home were in the same house and in both cases the employment of the minor was not regular but only occasional.

The said Act of May 13th, 1915, P. L. 286, by the third paragraph of Section 5 thereof, provides 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."

This enactment is an exercise of the well recognized police power of the Commonwealth to regulate or prohibit occupations which may endanger the morals, safety or health of its people. It is a power inherent in the State and plenary in extent. The above quoted provision is intended to safeguard minors against the temptations or harmful influences attendant upon working in places where alcoholic liquors are sold. It is to be noted that it does not merely exclude them from being *employed* therein, but forbids that they be "*permitted to work in, or in connection with*" these places.

Although the child's home be that of the parent, yet work in the parent's barroom, although kept in the same house as the home,

cannot be construed as "domestic service in private homes" within the meaning of that term as used in Section 1 of the Act, wherein such service is excepted from the application of the Act. To permit a parent to have his minor child work in a barroom of which the parent is the proprietor, or to allow any other proprietor of such place, who stands *in loco parentis* to a minor, to have said minor work in his barroom, would be to withhold from children of that class the protection which the Act by its aforesaid provision affords to children generally. Parental control over minor children, or right to their labor, is not absolute, but always subject to the regulation of the law where the welfare of the child needs the interference of the law. The good of the child is the constant and controlling consideration.

I, therefore, advise you that, in my opinion, the foregoing provision contained in Section 5 of said Act that

"No minor shall be employed or permitted to work in,
or in connection with, any saloon or bar-room where al-
coholic liquors are sold"

applies in such cases as above stated.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

STATE PRINTING.

There is no legal authority for printing at the expense of the State speeches made by officers of the Department of Labor and Industry.

Office of the Attorney General,
Harrisburg, Pa., February 14, 1917.

Honorable John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: Your favor of the 30th ult., addressed to the Attorney General, is at hand.

You ask to be definitely advised as to where you should draw the line with reference to printing of speeches made by members of your Department.

If any speeches of any kind are to be printed or distributed at the expense of the State, some authority of law for that purpose must be found.

The Act of February 7, 1905, P. L. 3, provides, in the 26th Section, as follows:

"No public printing and binding shall be performed for, or supplies furnished to, any department or offices of the State government, or for or to any person acting on behalf of the same, by the contractor or contractors, unless previously ordered or authorized in writing by the Superintendent of Public Printing and Binding, except only the laws, journals of the two houses of the Legislature, official documents and reports of the several heads of the executive departments. *No part or parts of any reports of the several heads of departments shall be printed in pamphlet form, nor shall any book be published at the expense of the State, or additional copies of any book be furnished by the contractor or contractors, unless by virtue of express authority of law.*"

This Section also provides that the heads of departments may have a reasonable discretion in ordering "the printing and binding and miscellaneous work."

Section 29 provides:

"The official documents shall contain the Governor's message, the reports of the heads of the executive departments and all other reports made to the Governor, and all reports ordered to be done by the Legislature. The official documents shall be printed annually, etc."

The provision of the Act relating to the Department of Public Printing and Binding above quoted has never been construed to authorize the printing of speeches, nor even bulletins, and where bulletins are printed by departments, some other Legislative authority is found therefor.

An examination of the Act creating the Department of Labor and Industry does not disclose any language which could be interpreted into an authority to print any speeches made by those connected with that department.

Section 15 of that Act provides, among other things:

"Any rule or regulation adopted by the Board (Industrial Board) shall be promptly published in bulletins of the Department of Labor and Industry," etc.

and Section 22 authorizes "the printing and binding necessary for the proper performance of the duties of this Department," to be done upon the requisition of the Commissioner of Labor and Industry, but this language means the ordinary blanks and reports required by the Department.

Neither does an examination of the several Acts relating to the Workmen's Compensation and the Insurance Fund, disclose any authority for the printing and dissemination at the expense of the State, of any speeches by persons connected with the Workmen's Compensation Board, or the State Workmen's Insurance Board.

I am, therefore, of opinion that until some further legislation is obtained, there is now no legal authority for printing, at the expense of the State, any speeches made by any persons connected with the Department of Labor and Industry.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BOILERS USED IN CONNECTION WITH OIL WELL OPERATIONS.

Boilers used in connection with oil well operations are subject to the inspection and requirements prescribed in Section 19, of the Act of May 2, 1905, P. L. 352.

Office of the Attorney General,
Harrisburg, Pa., March 22, 1917.

Honorable John Price Jackson, Commissioner of Labor & Industry,
Harrisburg, Pa.

Sir: There was duly received your communication of recent date, to the Attorney General, requesting an opinion as to whether or not "boilers used in connection with oil well operations" are subject to the inspection prescribed and required by the Act of May 2, 1905, P. L. 352.

Section 19 of said Act of May 2, 1905, provides as follows:

"All boilers used for generating steam or heat in any establishment shall be kept in good order, and the owner, agent or lessee of such establishment shall have said boilers inspected, by a casualty company in which said boilers are insured, or by any other competent person approved by the Chief Factory Inspector, once in twelve months, and shall file a certificate showing the result thereof, in the office of such establishment, and shall send a duplicate thereof to the Department of Factory Inspection. Each boiler or nest of boilers used for generating steam or heat in any establishment shall be provided with a proper safety-valve and with steam and water-gauges, to show, respectively, the pressure of steam and the height of water in the boilers. Every

boiler-house, in which a boiler or nest of boilers is placed, shall be provided with a steam gauge properly connected with the boilers, and another steam-gauge shall be attached to the steam-pipe, in the engine-house, and so placed that the engineer or fireman can readily ascertain the pressure carried. Nothing in this section shall apply to boilers which are regularly inspected by competent inspectors, acting under local laws and ordinances."

The determination of the question here submitted therefore turns upon whether or not an oil well operation is an "establishment" within the meaning of that term as it is employed in said Act of 1905. If so, the boilers used in connection therewith would be subject to the inspection and requirements of the aforesaid section of said Act.

This Act fixes its own definition of the term "establishment." as used therein, by Section 1 thereof, which reads as follows:

"That the term 'establishment', where used for the purpose of this act, shall mean any place within this Commonwealth other than where domestic, coal-mining or farm labor is employed; where men, women or children are engaged, and paid a salary or wages, by any person, firm or corporation, and where such men, women or children are employes, in the general acceptance of the term."

It is well settled that a legislative definition of any term, embodied in a statute, governs in the construction of the statute.

"It is conceded that the legislature has the right to prescribe the legal definitions of its own language. A construction put upon an act of the legislature itself, by means of a provision embodied in the same, that it shall or shall not be construed in a certain designated manner, is binding upon the courts although the latter, without such a direction, would have understood the language to mean something different."

Commonwealth vs. Curry, 4 Pa. Superior Court, 356.
Endlich on the Interpretation of Statutes, 365.

Since the Act of 1905 in its title uses the term "industrial establishments," the question has been raised whether it is not thereby limited to such establishments as are industrial ones within the strict or ordinary meaning of the word "industrial." The term "establishment," within the meaning of this Act, has, however, been judicially construed so as to give it the full import and effect of its statutory definition.

In the case of *McNabb vs. Clear Springs Water Company*, 239 Pa. 502, it was held that a pumping station of a water company is an "establishment" within the intent of said Act. The Court, speaking through Mr. Justice Elkin, after quoting Section 1 of the Act, said, in part, as follows:

"The legislature has thus defined what the word 'establishment' means, and having the power to deal with the subject, we are not at liberty to disregard what is so plainly written. It is argued that the word 'industrial' should be read into the definition because it is used in the title of the act, and that when so read and understood, appellee does not belong to the class of employees intended to be protected by the statute. The argument is not without force, but we are not convinced that it should prevail. No reason has been suggested why such a distinction should be made, or why an engineer employed in a recognized industrial establishment should be given the protection of the act, while an engineer employed in and around equally dangerous machinery in an establishment not commonly called industrial, but which is engaged in business for profit, should be denied its protection."

An incorporated musical and social association operating a bowling alley was also held to be an "establishment" under said Act. In the course of the opinion in that case the Court said:

"When the legislature gave a specific definition to the word establishment, and provided that in that act it 'shall mean any place within this Commonwealth, other than where domestic, coal mining or farm labor is employed,' is segregated in direct terms by exclusion of these three divisions, as, other than all other classifications, where men, women or children are employed and paid a salary or wages by any person, firm or corporation, and where such men, women and children are employed in the general acceptance of the term. Unless the business or operation of the defendant is within the excluded subjects, 'where domestic, coal mining or farm labor is employed,' it is within the specific, plain and clear terms of the act, and its meaning is apparent and obvious.

"It may well be, that in legal or colloquial use the word establishment may be accepted in a more narrow or restricted sense than is given to it in this act of Assembly, but under the authorities the legislature is not limited to such a meaning and may give one of its own which the courts are bound to follow."

McElhone vs. Philadelphia Quartette Club, 53 Pa. Super. Ct. 262.

It will be seen that in the above cited cases a construction of said Act was rejected which would limit its scope to such establishments as may be industrial ones within a narrow or restricted meaning of the word "industrial." It was therein given an application as broad and liberal as the literal definition of the term "establishment" as it is defined in Section 1. Applying the reasoning and rule of interpretation followed in these cases to the one here under consideration leads plainly to the conclusion that an oil well operation is likewise an establishment within the meaning and intent of the Act and consequently that boilers used in connection with such operations are subject to the inspection and requirements prescribed and provided in Section 19 thereof. Such a construction is not merely in accord with the terms of the Act, but is in furtherance of its purpose to guard against the danger of defective boilers by their due inspection. There is no apparent reason why the protection and safeguard of the boiler inspection provided by said Act should not extend and be afforded as well to the employees in and about an oil well operation as to those engaged in industrial establishments in general.

The Act of June 2, 1913, P. L. 396, creating the Department of Labor and Industry, by the twenty-third section thereof, vested in said Department all the powers and duties that had been theretofore vested in or imposed upon the Department of Factory Inspection. It follows that all the powers and duties of the Department of Factory Inspection relating to the inspection of boilers, pursuant to said Act of 1905, now devolve upon the Department of Labor and Industry.

In accordance with the foregoing, I therefore advise you that, in my opinion, boilers used in connection with oil well operations are subject to the inspection and requirements provided and prescribed in Section 19 of said Act of 1905; and that the powers and duties for the enforcement of said provisions imposed upon or vested in the Department of Factory Inspection by said Act are now vested in the Department of Labor and Industry.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

STATE PRINTING.

The Commissioner of Labor and Industry is advised as to what matter may be published in pamphlet form, in the annual report of the Bureau, or both.

Office of the Attorney General,
Harrisburg, Pa., April 25, 1917.

Honorable John Price Jackson, Commissioner of Labor & Industry,
Harrisburg, Pa.

Sir: There was duly received your communication of the 14th inst., to the Attorney General, requesting an opinion as to whether it is lawful to publish matter both in bulletin or pamphlet form and also in the annual report of the Department.

It appears that certain information is deemed of such value that the Department of Labor and Industry desires to publish the same in bulletins or pamphlets and also to include it in the annual report of the Department and to continue thereafter to print it in pamphlet form. The question is whether this would offend against the provision contained in Section 26 of the Act of February 7, 1905, P. L. 3, which reads as follows:

“No part or parts of any reports of the several heads of departments shall be printed in pamphlet form, nor shall any book be published, at the expense of the State, or additional copies of any book be furnished by the contractor or contractors, unless by virtue of express authority of law.”

The particular cases occasioning this present inquiry, with the several conclusions reached in each, are as follows:

1. Certain “Codes” embodying rules and regulations adopted by the Industrial Board and relating to various industries have been published by the Department of Labor and Industry in pamphlet form. The question is,—may these “Codes” so published in pamphlet form be now included in the annual report of the Department and lawfully thereafter printed in pamphlet form.

The Act of June 2, 1913, P. L. 396, creating the Department of Labor and Industry and establishing the Industrial Board, by the fourteenth section thereof, vested said Board with the duty and power to make rules and regulations to promote safety in the construction, equipment and operation of places where labor is employed and by Section 15 provided, *inter alia*, that:

“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."

The publication of the above mentioned "Codes," embracing the rules and regulations adopted by said Board, was therefore in pursuance of a mandatory duty imposed on said Department. No limitation is imposed by the Act as to the extent or duration of such publication. The manifest purpose of publishing such rules and regulations is to give them the widest and fullest publicity possible in order that all affected thereby or concerned therein may have ample opportunity to gain knowledge of their contents. Their violation may be a misdemeanor. They govern in considerable measure the conduct of the industrial establishments to which they relate. It is for the Department to determine whether it is advisable to insert them in the annual report. Publication therein, however, could not properly arrest their further publication so long as they continue in force, to whatever extent such continued publication may be deemed necessary to secure their publicity, as it is needless to point out that the limited number of copies of the annual report renders it insufficient as a sole medium for the dissemination of information relative to such rules. Against the specific direction of the said Act of 1913 that the rules and regulations of the Industrial Board be published, the obvious necessity therefor and plain purpose thereby sought by the Act, the aforesaid provision of the Act of 1905 must yield. The later provision of said Act of 1913 requiring that these rules be published may fairly be held to be the express authority of law excepting their publication from the said inhibition of said Act of 1905.

I am, therefore, of the opinion that the rules and regulations of the Industrial Board published in pamphlet or bulletin form may be included in the Annual Report of said Department and continue thereafter lawfully to be printed in pamphlet form.

2. The Department of Labor and Industry has published under the title "Timely Hints" or "Accident Prevention Poster," a series of bulletins or leaflets dealing with the means and methods for the prevention of accidents in various industries and with the subject of safety and health in various vocations. These have been included in the Annual Report of the Department and the question here submitted is whether this operates to make unlawful the printing of them hereafter in pamphlet form.

Section 10 of said Act of 1913 provides, inter alia, that the division of industrial hygiene of said Department "shall prepare material for *leaflets and bulletins*, calling attention to dangers in particular industries and the precautions to be observed to avoid them," and in Section 11 of said Act it is provided that it shall be the duty of the Bureau of Statistics and Information:

"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 providing compensation therefor."

Presumably the matter contained in the above mentioned bulletins or leaflets was collected and published in accordance with the foregoing provisions of said Act of 1913, and therefore in pursuance of a duty in respect thereto charged upon the Department of Labor and Industry. The principle applied in reaching the conclusion in the former case is applicable also here, viz., that inasmuch as the publication of such information, as is contained in the said bulletins or leaflets, is specifically directed as aforesaid by said Act of 1913, it is consequently not subject to the limitation of the aforesaid provision of the Act of 1905. This construction is in harmony with the spirit of the Act of 1913 and in furtherance of its purpose. It intends by means of the publication of information of the educational nature contained in the above bulletins to safeguard labor against industrial accidents and occupational diseases. To restrict or fetter this would tend to defeat this end. Since the Act in requiring that such matter be published fixes no limit as to the extent or duration of such publication, it may be presumed none was intended, but that it may be of that measure and extent deemed necessary by the Department to fulfill the intent and carry out the purpose of the Act. The direction to *publish* is express and hence the printing of bulletins, leaflets, or pamphlets containing the matter directed to be published in pursuance of this specific statutory mandate is not restricted by the said provision of the Act of 1905, but excepted therefrom as something printed by express authority of law.

I, therefore, advise you that in my opinion the contents of such bulletins as are published in pursuance of the provisions of Sections 10 and 11 of the said Act of 1913 may be inserted also in the annual report of the Department of Labor and Industry and continue thereafter lawfully to be printed in pamphlet form.

3. May the rules adopted by the Workmen's Compensation Board relating to procedure under the Workmen's Compensation Law, and already published as bulletins, be included in the annual report of the Department and continue to be published in pamphlet form?

Section 13 of the Act of June 2nd, 1915, P. L. 758, creating the Bureau of Workmen's Compensation, makes it the duty of the Workmen's Compensation Board "to make all proper and necessary rules

and regulations for the conduct of the Bureau." There is, however, nothing in the Act which directs that such rules and regulations be published. This differentiates this case from the preceding ones herein considered where the publishing was in pursuance of a specific statutory direction which was held to prevail against the said inhibition of the Act of 1905. The absence of any express statutory direction that the said rules and regulations adopted by the said Workmen's Compensation Board be published leaves their publication subject to the prohibition of said Act of 1905. These rules may, however, continue to be published in bulletins and omitted from the annual report, if that be deemed advisable by the Department. Such practice would accord with the ruling in an opinion of Deputy Attorney General Cunningham to the Secretary of Agriculture, wherein he held that although the contents of the bulletins of the Dairy and Food Commissioner, if included in the Annual Report of the Department, could not be properly printed in pamphlet form, yet there was "no valid objection to printing the report of the Dairy and Food Commissioner and State Veterinarian as bulletins of your Department and omitting the contents of said bulletins from your annual report" a department being invested with a wide discretion as to the contents of its report.

Attorney General's Report, 1907-1908, page 163.

I, therefore, advise you that the said rules and regulations of the Workmen's Compensation Board cannot be included in the annual report of the Department and continue to be published in pamphlet form.

4. May a report giving the result of an investigation or study of fire prevention in industries employing women, carried on at the expense of a certain College Association, under the direction and in co-operation with the Department of Labor and Industry and which was included in the annual report of the Department for the year 1916, be now published or printed in pamphlet form?

So far as I understand, the publication of this matter could not be construed as one made in pursuance of any direction or provision of any statute that it be published. In accordance with the ruling made in the preceding case, I am, therefore, led to the conclusion, and so advise you, that since this report was inserted in your annual report it cannot now, under the terms of the said Act of 1905, be published or printed as a pamphlet.

The guiding and controlling rule followed in reaching the several conclusions in the foregoing cases may, in general, be re-stated as follows:

Where any matter is printed and published as a bulletin or pamphlet, in pursuance of an express statutory direction, then the matter contained in such bulletin is not subject to the limitation imposed by the said provision of the Act of 1905, and such matter may be published both in the annual report of the Department and in pamphlet form, but in the absence of a statutory direction that any given matter be published, then the printing or publishing of such matter falls within the said Act of 1905 and the same cannot be published both in the annual report and pamphlet form.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

SALARIES OF WORKMEN'S COMPENSATION REFEREES AND CLERKS.

Referees under the Workmen's Compensation Act are public officers, within the meaning of Section 13, Article III of the Constitution of Pennsylvania; and the Act of April 20, 1917, increasing the salaries of such referees cannot apply to any incumbent of said office at the time of its approval.

Clerks of referees under the Workmen's Compensation Act are not public officers and are entitled to the increased rate of salary provided by the Act of April 20, 1917.

Office of the Attorney General,
Harrisburg, Pa., May 17, 1917.

Honorable John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: There was duly received your communication the 10th inst., relative to the salaries of the Workmen's Compensation Referees and their clerks as the same may be affected by the Act of April 20, 1917.

The Act of June 2, 1915, P. L. 758, creating the Workmen's Compensation Bureau, by Section 21 thereof fixed the annual salary of a Workmen's Compensation Referee at \$2,500.00, and by Section 15 thereof fixed the annual salary of the clerk of such Referee at \$1,000.00. The Act of April 20, 1917, amends said sections of said Act of 1915 by increasing the salary of the Referee to \$5,000.00 per annum and his clerk to \$1,500.00.

You ask to be advised whether such Referee and Clerk may lawfully be paid at the increased rate of salary to the end of the present fiscal year out of the current appropriation, as made by the Act

of 1915, "for the payment of the salaries of the members of the board, attorneys, referees, clerks and other employes" of said Workmen's Compensation Bureau.

The first question to be determined in answering your inquiry is whether a Workmen's Compensation Referee is a "public officer" within the meaning of that term as the same is used in Section 13, Article III, of the Constitution, which provides as follows:

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

This provision of the Constitution has been construed in numerous cases relating to various offices. It has been held to extend not only to offices created by the Constitution but also those created by statute.

In holding that a poor director elected under a special Act of Assembly was a "public officer," within the meaning of the above constitutional provision, the Supreme Court, speaking through Mr. Justice Mestrezat, said in *Commonwealth vs. Moffit*, 238 Pa. 255:

"It is settled by many decisions of this court that the prohibition against the extension of the term of a public officer or the increase or diminution of his salary after his election or appointment, contained in Section 13, Article III, is not limited to constitutional officers. Whether an officer is a 'public officer' within the intentment of the constitutional prohibition depends upon the manner of his selection, the duties imposed and the powers conferred upon him."

A real estate assessor of the City of Philadelphia was held to be a "public officer" within the prohibition of Section 13, Article III, of the Constitution, and whose salary, therefore, could not be increased for the incumbent. In the course of the opinion in that case the Superior Court say:

"It cannot be disputed that there is a distinction between the situation of one who occupies a constitutional office and that of an officer whose position is created by statute. The former has an exemption from the control of the legislature which does not exist in favor of the latter, and if we were warranted in concluding that a 'public officer' in contemplation of the constitution was only one whose existence that instrument provided for, the appellant's position would be clearly correct. But this view is too narrow when we take into consideration the object of this limitation of legislative power and the comprehensive language in which it is expressed. Many important offices exist which are not provided for by the constitution, and the number is increasing from year to year. The duties of these officials are various and some

of them highly important. The compensation of many of them is large, their existence is in harmony with the constitution and we must assume that the framers of that instrument did not overlook the fact that the necessities or convenience of the Commonwealth would call for an increase of public officers with various new duties. It is hardly to be supposed that the general expression of the constitution would have been used in view of the number of offices then in existence and likely to be created by the will of the legislature if the prohibition was only to apply to the comparatively small number whose existence was required by that instrument. It is more in consonance with the spirit of the section under consideration as well as with its terms to hold that all those exercising important public functions by authority of law are embraced within the description of 'public officer;' and this, we think, is the effect of the adjudications on the subject.

* * * *

"It is no doubt true that there are many persons engaged in the public service in subordinate positions exercising functions of such an inferior character that they could not be properly considered public officers within the meaning of the constitution. * * * Where, however, the officer exercises important public duties and has delegated to him some of the functions of government and his office is for a fixed term and the powers, duties and emoluments become vested in a successor when the office becomes vacant such an official may properly be called a public officer. The powers and duties attached to the position manifest its character."

Ritchie vs. Philadelphia, 37 Super. Ct. 190.

The above case was affirmed by the Supreme Court in *Ritchie vs. Philadelphia*, 225 Pa. 511. The contention was there rejected which would limit Section 13, Article III, of the Constitution to the "comparatively few offices created by the Constitution," the Court further saying upon the point as to whether a real estate assessor is a "public officer"—

"In every case in which the question arises whether the holder of an office is to be regarded as a public officer within the meaning of the constitution, that question must be determined by a consideration of the nature of the service to be performed by the incumbent and of the duties imposed upon him, and whenever it appears that those duties are of a grave and important character, involving in the proper performance of them some of the functions of government, the officer charged with them is clearly to be regarded as a public one."

An assistant clerk of a separate orphans' court is a "public officer" within the aforesaid constitutional provision, the fact that there is no fixed term attaching to said position being immaterial.

"The fact that no fixed term is attached to the office does not militate against the conclusion that it is a public office within the meaning of sec. 13, art. III, of the constitution, for it will be observed that the prohibition of that section, so far as relates to the increase or diminution of salary, is not 'during the term' of the officer, but 'after his election or appointment.' The framers of the constitution evidently had in mind public officers removable 'at the pleasure of the power by which they shall have been appointed,' as well as those elected or appointed for fixed terms."

Evans vs. Luzerne County, 54 Super. Ct. 44.

Attorney General Carson in an opinion reported in *31 Pa. C. C. 263*, advised that the harbor master of the port of Philadelphia, appointed by the Governor, was a "public officer" and that the said section of the Constitution operated to prevent an increase of the salary of the incumbent, saying, in part, in the course of his opinion:

"I am of opinion that the provisions of the Constitution of Pennsylvania, as contained in section 13 of Article III, apply to this case, and that a salary cannot be increased during the incumbency of the occupant of an office of an executive character where, as in this case, the office is one to be filled by appointment, and the appointee is in service under that appointment at the time the increase in salary is made.

* * * *

"It would be too strict a construction to hold that because there is no term fixed for the office of harbor master the provision does not apply. That would be to make the word 'term' the controlling one in the section, whereas it is clear that the provisions of the section are twofold, that there shall be no extension of a term when fixed by an act of Assembly, and that there shall be no increase of salary during a term to which an officer is elected, or after his appointment where he is appointed. The word 'appointment' being unlimited by the context, must relate to cases where the appointment is at will, as well as to cases where there is an appointment to an office with a fixed term."

A county solicitor elected in pursuance of an Act of Assembly providing for such office is a "public officer within the meaning of said provision of the Constitution.

Lancaster County vs. Fulton, 128 Pa. 48.

The collector of delinquent taxes of Philadelphia, a city assessor, a prison inspector, and a constable were held to be "public officers" in the following respective cases:

City of Philadelphia vs. Wright, 100 Pa. 222.

Fox vs. Lebanon, 4 C. C. 393.

Dundore vs. County Controller, 22 Dist. Rep. 5.

Commonwealth vs. Kromer, 4 Pa. C. C. 241.

In the last mentioned case the Court quotes the following definitions of a public officer:

"Every office is considered public, the duties of which concern the public. * * * Where an individual has been appointed or elected, in a manner prescribed by law, has a designation or title given him by law, and exercises functions concerning the public, assigned to him by law, he must be regarded as a public officer."

The general rule of construction followed in the above cited cases warrants the conclusion that a Workmen's Compensation Referee is a "public officer." He cannot properly be regarded as a mere employe of the Workmen's Compensation Bureau, but clearly as an officer thereof, appointed in a prescribed manner, with a title given and designated by the Act. His duties are defined and assigned to him by law, and his powers thereby specifically prescribed. He exercises functions of public concern and for the public benefit and interest. The duties with which he is charged, and the powers with which he is clothed surpass in gravity and exceed in importance those vested in some officers expressly held to come within the meaning of a "public officer" as used in the Constitution. A referee is an important functionary in the administration of a measure of far-reaching consequence, vitally dealing with and affecting the employers and employes of the Commonwealth. The fact that a referee is not appointed for a fixed term is immaterial to the question here under consideration under the ruling in *Evans vs. Luzerne County, Supra*. The importance of the office, and the character of the services rendered through its medium were recognized in the recent Act of Assembly increasing the annual salary attached thereto to the sum of \$5,000.

Under the definition of what constitutes a "public officer" as enunciated and stated in the foregoing citations and in view of the nature and character of the duties and powers vested in and imposed upon a Workmen's Compensation Referee, I am of the opinion that he is a "public officer" within the purview and meaning of Section 13, Article III, of the Constitution. I accordingly advise you that the said Act of April 20, 1917, increasing the salary of such referee, cannot law-

fully apply to any incumbent of said office at the time of the approval of said Act while holding the same in pursuance of an appointment made prior thereto.

Any referee appointed subsequently to the approval of said Act would be entitled to receive a salary at the rate of \$5,000 per annum, as provided in the Act of 1917, and this salary at the increased rate would be properly payable to the end of the fiscal year out of the current appropriation made for the payment of the salaries of such referees.

As to the clerks of referees, whose salaries are also increased by said Act of 1917, the above constitutional inhibition against the increase of the salary of a public officer after his appointment is not applicable. They are clearly only to be regarded as employes and do not exercise any functions or possess any powers which would bring them within the definition of a public officer. They belong to that class of subordinate public servants referred to by the Superior Court in the case of *Ritchie vs. Philadelphia*, *supra*, as being outside said provision.

I am, therefore, of opinion that the said clerks are lawfully to be paid at the increased rate of salary provided for in said Act of 1917, from the time of its approval to the end of the present fiscal year, out of the current appropriation made for the payment of the salaries of such clerks.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

**SALARY OF WILLIAM J. RONEY, MANAGER OF THE STATE WORK-
MEN'S INSURANCE FUND.**

The State Workmen's Insurance Fund may increase the salary of the Manager thereof to \$7,500 per annum, the act providing such salary shall not exceed that sum.

Office of the Attorney General,
Harrisburg, Pa., May 18, 1917.

Honorable H. M. Kephart, Chairman, State Workmen's Insurance Board, Harrisburg, Pa.

Sir: Your letter of the 16th instant, addressed to the Attorney General, relative to the payment of salary to William J. Roney, as Manager of the State Workmen's Insurance Fund, has been referred to me for reply.

You state, in effect, that Mr. Roney was appointed Manager of the Fund and qualified January 1, 1917; that the salary was fixed at six thousand dollars per annum. I understand from members of the Board that it was understood at the time if the service of Mr. Roney should prove satisfactory the salary was to be increased later to seven thousand five hundred dollars per annum, which is the maximum fixed by Section 26 of the Act of June 2, 1915, P. L. 762. You also advise that on May 2, 1917, the Board, concurring that it was "satisfied with the qualifications, industry and intelligence of Mr. Roney in the position to which he was elected," it was

"Resolved: That the salary of the manager be and is hereby fixed at seven thousand five hundred dollars (\$7,500) per annum, to begin with the date of his qualification as manager, and that any arrears of salary remaining unpaid be paid forthwith; subject to the approval of the Governor."

You ask to be advised whether under said resolution the Board has authority to direct the payment of the increase and arrearages as set forth therein.

The only reference to a Manager in the Act referred to is in Section 26, already indicated, as follows:

"The board may, with the approval of the Governor, appoint a manager at a salary not to exceed seven thousand five hundred dollars * * * *"

None of his duties are defined in the Act or elsewhere by law, and it is very doubtful, therefore, whether notwithstanding the important duties the Manager performs he may be properly referred to as a "public officer" within the legal contemplation of the term and under the authorities. In any event, however, Section 13 of Article III 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," would not be applicable. The increase of the Manager's salary in this case from six thousand dollars per annum to seven thousand five hundred dollars is not accomplished by the passage of any "law," but by mere resolution of the State Workmen's Insurance Fund, which has not exceeded its authority for the reason that the increased salary fixed by its action is the amount limited and provided by the Act itself, as already indicated.

Likewise, the Resolution of the Board to pay arrearages so called, that is—the difference between the tentative salary of Six Thousand Dollars fixed as of January 1, 1917, and the salary of Seven Thousand Five Hundred Dollars fixed by the last Resolution of the Board above referred to, is unobjectionable for the reason that the Board

in taking such action was acting entirely within the scope of its lawful authority since, under Section 26 of the Act above quoted, the right to fix such salary was delegated to the Board "with the approval of the Governor," with the only limitation that it is "not to exceed Seven Thousand Five Hundred Dollars."

It is a nice question whether Article III, Section 11, of the Constitution providing that "no bills shall be passed giving any extra compensation to any public officer, servant, employe, agent or contractor, after service shall have been rendered, etc.," would be applicable, as a matter of policy and as being within its spirit, to a case such as this, in which the salary is fixed by a Board and not by direct action of the Legislature. The provision is, of course, that no "bill" shall be passed and is a limitation on legislative action. However that may be, it is not necessary to pass opinion on the matter in this particular instance for the reason that the last Resolution does not really provide for "extra" compensation, but merely carries out part of the arrangement which was made at the time that Mr. Roney was appointed Manager of the Fund.

You are, therefore, respectfully advised that your Board has authority to direct the payment of salary as set forth in said Resolution.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

IN RE INDUSTRIAL DISPUTES.

Under the provisions of the Act of June 4, 1914, P. L. 833, the State Employment Bureau is vested with the power and duty to ascertain upon due investigation the fact as to the existence of an industrial dispute, strike or lockout, where a statement has been filed relative thereto, and further, upon like investigation, to find the fact as to the determination of such dispute, strike or lockout, and when found to exist, to exhibit the "statement" and "reply" relating thereto in the public employment office, and to continue the posting or exhibition thereof therein until such time as it is found by the bureau that said dispute, strike or lockout has terminated.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1917.

Honorable John Price Jackson, Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: There was duly received your communication of the 8th inst., to the Attorney General, requesting an opinion as to "when from the standpoint of the employment office does an industrial dispute, strike or lockout exist, and when and how is it terminated?"

This question arises under the Act of June 4, 1917, P. L. 833, establishing, under the Department of Labor and Industry, the Bureau of Employment. The sixteenth section of said Act provides, *inter alia*, as follows:

"Any citizen or employe may file at any public employment office a signed statement with regard to the existence of an industrial dispute, strike or lockout affecting any business or trade. Each statement filed shall be exhibited in the public employment office, but not until it has been communicated to the employes affected if filed by employers, or to the employers affected if filed by citizen or employes. In case a reply to such statement is received, it shall be exhibited, together with the original statement, in the public employment office; but no statement or reply thereto shall be so exhibited until it has been ascertained, upon investigation, that an industrial dispute, strike or lockout does exist at or in connection with the business or place of business in question. No official of the bureau shall assist, in any manner whatsoever, any person, firm, association or corporation who is a party to an industrial dispute, strike or lockout."

It is further, in pursuance of Section 17 of the Act, made the duty of the officer in charge of any public employment office to call the attention of any applicant for a position

"To the existence of any industrial dispute, strike, or lockout affecting the business or trade in which the position is offered."

The terms "strike" and "lockout" as used in the Act are to be understood as used therein in their ordinary usage and meaning. The Century Dictionary defines them respectively as follows:

A strike as

"A concerted or general quitting of work by a body of men or women for the purpose of coercing their employer in some way, as when higher wages or shorter hours are demanded, or a reduction of wages is resisted; a general refusal to work as a coercive measure."

and a lockout as

"A refusal on the part of an employer to furnish work to his employes in a body, intended as a means of coercion."

In Words and Phrases, Vol. 4, page 720, a strike is defined as a "cessation of work by employes in an effort to obtain more desirable

terms" and in Vol. 3, page 178, a lockout as a "cessation of furnishing work to employes in an effort to get for the employer more desirable terms."

Precisely what is intended by the Act to be embraced within the meaning of the term "industrial dispute" is not susceptible of as precise definition as a strike or lockout, but it may fairly be inferred that it is intended to mean a condition similar to or of the general nature of a strike or lockout.

It will be noted that in pursuance of the above quoted provision of Section 16, the said "statement" as to the existence of any industrial dispute, strike or lockout and the "reply" thereto are not to be exhibited in a public employment office

"Until it has been ascertained, upon investigation, that an industrial dispute, strike or lockout does exist at or in connection with the business or place of business in question."

For the purposes of the Act, therefore, the Employment Bureau must determine whether or not such dispute, strike or lockout does exist in any given case, the said Bureau being consequently vested with the power and duty of ascertaining such fact upon due investigation. It will be further noted that the Act is silent as to when such "statement" or "reply," where once exhibited in an employment office, as prescribed by the Act, shall be withdrawn. It is necessarily implied, however, that the said "statement" and "reply," whenever exhibited or posted as to the existence of any industrial dispute, strike or lockout, shall continue to be so exhibited or posted in the public employment office during the continuance of the dispute, strike or lockout and be withdrawn on the termination thereof. The further implication follows that the said Bureau is charged with the power and duty of ascertaining the fact of the termination of an industrial dispute, strike or lockout upon a due investigation of the case in like manner as it had originally been determined that the same existed.

A strike or a lockout is a condition the fact of whose existence at the outset can ordinarily be readily ascertained. On the other hand, it is probable that in some instances the termination thereof cannot so easily be fixed or determined. No general rule, however, could be formulated by, or in accordance with which the fact as to the ending of a strike or lockout could in all cases be determined. Each case must of necessity be decided upon its own facts. Each may and probably does differ from every other in some respect and in reaching a conclusion the Bureau should take into consideration all the circumstances and conditions surrounding the case. It is respectfully

urged in all doubtful or controverted cases as to whether any given strike or lockout has or has not terminated that all parties interested or affected should be given full opportunity to be heard.

There is a plain and abundant reason why the function of ascertaining and finding the facts as to the existence, continuance and termination of an industrial dispute, strike or lockout is, for the purposes of the said Act, lodged with the Bureau of Employment in view of the Act's provision that "No official of the bureau shall assist, in any manner whatsoever, any person, firm, association or corporation who is a party to an industrial dispute, strike or lockout," and the requirement contained in Section 17 that the officer in charge of a public employment office shall call the attention of any applicant for a position "to the existence of any industrial dispute, strike or lockout affecting the business or trade in which the position is offered." The Bureau can thus steadily act intelligently as to these provisions since the facts of the case are to be ascertained by and are accordingly within the knowledge of the Bureau.

In accordance with the foregoing you are advised that the Employment Bureau is vested with the power and duty, for the purposes of the aforesaid Act, to ascertain, upon due investigation, the fact as to the existence of an industrial dispute, strike or lockout where a statement has been filed relative thereto in the manner prescribed by said Act, and further, upon like investigation, to find the fact as to the termination of such dispute, strike or lockout where the same had previously been found to exist, and where it is found to exist to exhibit the "statement" and "reply relating thereto in the public employment office and to continue the posting or exhibition thereof therein until such time as it is found by the Bureau that said dispute, strike or lockout has terminated.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE HOURS OF FEMALE CAR CLEANERS.

Under the provisions of the Female Labor Act of July 25, 1913, P. L. 1024, it is not unlawful to employ females over 21 years of age between the hours of 10 P. M. and 6 A. M. provided there is a full compliance with said act as to the hours per day and per week and its other provisions.

Office of the Attorney General,
Harrisburg, Pa., October 2, 1917,

Mr. Lew R. Palmer, Chief Inspector, Department of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 22nd ult., asking to be advised as to whether females over twenty-one years of age may lawfully be employed between the hours of 10 P. M. and 6 A. M., as car cleaners.

As I understand, the proposed work is to be done at the car barns of a certain railway company, which desires to employ women both day and night at such work.

This question arises under the Female Labor Law of July 25, 1913, P. L. 1024. The only provision in said Act forbidding the employment of women over twenty-one years of age after 10 P. M. and before 6 A. M. is that contained in Section 4, which relates solely to their employment in a "manufacturing establishment." It is needless to point out that the work here proposed does not come within that class and hence does not fall under the inhibition of said provision.

You are therefore advised that the employment of females, who are over twenty-one years of age, as car cleaners, between the hours of 10 P. M. and 6 A. M. is not unlawful. Care should be taken, however, to see that in case of such employment there is full compliance with said Act as to the hours per day and per week, and number of days per week permissible for female employes, and also that there be strict observance of the various provisions of the Act as to the intervals of rest, sanitary safeguards, etc., as thereby required.

Yours very truly, .

CHILD LABOR LAW.

This State has full jurisdiction over offenses against the Child Labor Law, occurring on the Delaware River, or on Ferry boats running thereon.

Office of the Attorney General,
Harrisburg, Pa., October 3, 1917.

Mr. Lew R. Palmer, Chief Inspector, Bureau of Inspection, Department of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 22nd ult., requesting an opinion as to what jurisdiction this State has to enforce the Child Labor Law on ferry boats running between Philadelphia and Camden, New Jersey. Your inquiry is specifically directed to whether this Commonwealth can enforce on such boats the provision of the Act of May 13, 1915, P. L. 286, contained in the fifth section, wherein it is provided, *inter alia*, that—

“Nor shall any minor under sixteen years of age be employed or permitted to work * * * upon any boat engaged in the transportation of passengers or merchandise.”

This inquiry raises two questions—

First: As to the jurisdiction of Pennsylvania over offenses committed on the Delaware River, and

Second: As to whether the State can regulate the employment of minors on a boat thereon, such as above mentioned, which is engaged in interstate commerce.

By the compact entered into between the States of Pennsylvania and New Jersey September 20, 1783 (2 Smith's Laws, 77), it was agreed:

“That each state shall enjoy and exercise a concurrent jurisdiction within and upon the water, and not upon the dry land, between the shores of said river, but in such sort, nevertheless, that every ship and other vessel, while riding at anchor before any city or town in either state, where she hath last laded or unladed, or where it is intended she shall first thereafter either lade or unlade, shall be considered exclusively within the jurisdiction of such state; and every vessel fastened to or aground on the shore of either state, shall in like manner be considered, exclusively, within the jurisdiction of such state, but that all capital and other offenses, trespasses or damages, committed on said river, the judicial investigation and determination thereof shall be exclusively vested in the state wherein the offender or person charged with such offense shall be first apprehended, arrested or prosecuted.”

The Act of September 25, 1786 (2' Smith's Laws, 388), provided for the exercise of such jurisdiction by extending the limits of the counties bordering on the Delaware River to the Shore of New Jersey.

In the case of *Commonwealth vs. Shaw*, 22 Pa. C. C. 414, it was held that the above gave ample authority for a Pennsylvania court to try a criminal offense committed on the Delaware River, in that particular case occurring on a bridge spanning said river and on the Jersey side of the bridge, the court saying in the course of the opinion:

"Between the two shores of the river offenses were liable to be committed under circumstances where it would be difficult or impossible to determine the jurisdiction by the boundary lines in the middle of the stream. Therefore a simple and wise arrangement was made for concurrent jurisdiction, between the two shores, to attach to the state making the first arrest. All offenses committed between the shores within the scope of the concurrent jurisdiction—that is, on or over the river, were to be tried and determined in the manner provided."

It was also held in *Commonwealth vs. Frazee*, 2 Phila. 191, that in pursuance of said Agreement of 1783 and said Act of 1786, jurisdiction over offenses committed on said river vests in the State which first arrests or prosecutes.

From the foregoing it would appear plain that this State has, in general, full jurisdiction over offenses against the Child Labor Law occurring on the Delaware River.

Does such jurisdiction, however, extend to a violation of said law committed on a boat running between this State and New Jersey and therefore engaged in interstate commerce, such as a ferry boat above mentioned?

A state is not inhibited from exercising its police powers to safeguard the life, health or welfare of persons within its own limits who may be engaged in the work of inter state commerce where the regulation operates uniformly on like classes and is not one regulatory of commerce.

A familiar instance of the valid exercise of the police power of a state operative within the state upon those engaged in interstate commerce is to be seen in the various "Full Crew" laws. In *Chicago, R. I. & Pacific Ry. Co. vs. Arkansas*, 219 U. S. 453, a number of cases are cited relating to the police power of a state as applied to interstate carriers wherein the exercise thereof is sustained.

In *Sherlock vs. Alling*, 93 U. S. 99, involving the question as to whether an Indiana statute could apply to a case arising out of a collision between boats navigating the Ohio River, the Supreme Court of the United States said, in part, as follows:

"In conferring upon Congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the Constitution.

* * * and it may be said, generally, that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

The principle there stated covers the one involved in the case here under consideration. The Child Labor Law contains a provision prohibiting the employment of a minor under said age upon a railroad. Under the above ruling it would scarcely be questioned that the State would have the power to reach a violation of said provision in a case of the employment of a minor under the given age upon a railroad doing an interstate commerce business. It is difficult to see any distinction in principle between such a case and one on a ferry boat running between Pennsylvania and New Jersey on waters expressly within the jurisdiction of Pennsylvania. It is an offense against the laws of Pennsylvania to employ or permit a minor under said age to work "upon any boat engaged in the transportation of passengers or merchandise." This law prevails throughout the extent of her territorial jurisdiction which, in pursuance of the said Agreement of 1783, extends across the Delaware River for the punishment of offenses against her laws committed on said river. Until the Federal Government assumes exclusive control in the matter of the employment of children engaged in working for interstate carriers, a state is not without authority to exercise its police power to regulate such employment upon a boat engaged in interstate commerce while plying on waters within the jurisdictional limits of the state, where such control is not one regulatory of commerce.

I, therefore, advise you that in my opinion this Commonwealth has the power to enforce the above mentioned provision of the Child Labor Law on ferry boats running between Philadelphia and Camden, or on any boat carrying passengers or merchandise and running between Pennsylvania and New Jersey on said river.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

WORKMEN'S COMPENSATION.

A physician in charge of a dispensary of the Department of Health is like any other physician in charge of an institution. He is subject to subpoena by a proper tribunal and must obey such subpoena. When he responds he must testify to any relevant matter within his knowledge. The fact that his knowledge was obtained through his employment as physician in charge of a State Institution does not exempt him from testifying.

A referee of the Workmen's Compensation Board cannot compel the production of the records of the Department of Health, if the department regards it improper to produce such records.

Office of the Attorney General,
Harrisburg, Pa., November 23, 1917.

H. A. Mackey, Esq., Chairman Workmen's Compensation Board,
North American Building, Philadelphia, Pa.

Sir: Your favor of recent date addressed to the Attorney General, enclosing copy of the letter of Referee Klauder, in reference to the case of John Raskelly against the American Pulley Company, is at hand.

I understand you desire an opinion as to whether the record of the State dispensaries under the control of the Department of Health should, when demanded, be produced before the Referee, and whether the doctors in charge of such dispensaries can be required to testify to matters within their knowledge, acquired within the line of their duties.

The facts which give rise to your inquiry I understand to be as follows:

On October 25th the Manager of the Compensation Department wrote to Dr. Karl Schaffle, Medical Inspector of Dispensaries of the Department of Health, stating that the case of John Raskelly against the American Pulley Company would come before the Referee for hearing on October 30th at ten o'clock A. M., and that it would be necessary for Dr. Jamison of the State Tuberculosis Dispensary at Jenkintown, who examined the man, and found pulmonary tuberculosis present, to testify regarding his examination and findings, and asking Dr. Schaffle to give Dr. Jamison the necessary authority to attend the hearing, and bring with him his complete record in this particular case.

Dr. Schaffle thereupon wired that the "law prohibits dispensary records from being used in hearings, any information given by physician in charge."

It also appears that Dr. Jamison was subpoenaed and that he wrote to Benjamin O. Frick, Esq., counsel for the employer, that "the case in question is one in which all the information is to be obtained

through the Commissioner of Health of Pennsylvania, and I am not permitted to give any information received in my capacity as physician in charge of Dispensary No. 7 B."

The physician in charge of a dispensary of the Department of Health is like any other physician in charge of any other institution. He is subject to subpoena, by a proper tribunal and must obey such subpoena. When he responds he must testify as any other witness to any relevant, competent matter within his knowledge. The fact that his information was obtained through his employment as a physician in charge of a State institution does not render him exempt from testifying, or seal his lips as to the knowledge which he has obtained. I know of no statute which excuses the physician in charge of a State dispensary from testifying as to such facts.

The production of records of the Department of Health is quite a different matter. Those records are made by reports and it may not be for the best interest of the State, or the Health Department, to have records of this character submitted in any litigated case in which they are called for, and heretofore the courts have decided that such records cannot be demanded where the Department of Health protests against their exhibition. But the record is not the best evidence of the condition of a man alleged to be sick or injured. The record is simply the report of an examination. The party who made the examination may be subpoenaed and required to testify as to the results of such examination, and such testimony is better evidence than the record would be in the absence of the party who made it.

I am, therefore, of the opinion that a Workmen's Compensation Referee may not require the production of the records from the Department of Health, if the Department of Health regard it as improper to produce such records, but that the doctor who made the examination, whether he be the Medical Inspector of a dispensary or not, must testify to relevant facts within his knowledge, even though such facts were obtained in his capacity as a physician in the employ of the Department of Health.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

HALF PAY TO DEPENDENTS.

The Act of June 7, 1917, P. L. 600 is construed.

Office of the Attorney General,
Harrisburg, Pa., December 11, 1917.

Mr. George C. Klauder, Workmen's Compensation Referee, Philadelphia, Pa.

Sir: There was duly received your communication of the 30th ult., addressed to the Attorney General, asking an opinion relative to the applicability in your case of Act No. 201, approved June 7, 1917, P. L. 600. In substance, you ask to be advised upon the following:

First: What constitutes "dependency" under the said Act?

Second: Whether the fact as to the income of your proposed nominated dependents, as stated in your said communication, are to be construed as constituting a condition of dependency such as to entitle said nominated dependents to the benefits of said Act.

Third: Whether attendance at an 'Officers' Training Camp, training for a commission in the United States military service, is such an enlistment or enrollment in the said service as to bring such attendant within the scope of said Act.

In reply to the foregoing, you are respectfully advised as follows:

First: The question of what constitutes "dependency" was covered in an opinion of this Department to Honorable William D. B. Ainey, dated October 29, 1917, a copy of which is herewith sent you.

Second: As was pointed out in the foregoing opinion, the Act provides that the statement as filed by one entering the military service and claiming the benefit of said Act is not conclusive as to the dependency of any person therein named as a dependent, but is only prima facie evidence thereof. In case of doubt as to the dependency of such nominated dependent, it is made the duty of the head of any department, bureau, commission or office from which the said party enters the service to satisfy himself upon that point.

It will be readily seen that the Attorney General is not vested with the power to pass upon that question of fact. Consequently whether the facts in your case would constitute a state of dependency, within the meaning of the Act, is a matter which this Department was not given jurisdiction to decide. That duty, as stated above, in all cases is charged upon, and rests with, the proper head of the department, bureau, commission or office in which the party entering the military service had been employed.

Third: In pursuance of the provisions of Section 1, the said Act is made to apply to those who "shall in time of war or contemplated

war, enlist, enroll or be drafted in the military or naval service of the United States, or any branch or unit thereof." In my opinion, attendance upon an Officers' Training Camp would fulfill this requirement and would bring one entering such a Camp as an attendant thereof within the purview, and entitle him to the benefits, of said Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

WORKMEN'S COMPENSATION ACT.

The Act of June 3, 1915, P. L. 777, which provides that nothing contained in the Workmen's Compensation Act of 1915 shall apply to persons engaged in domestic service or agriculture is constitutional.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Honorable H. A. Mackey, Chairman, Workmen's Compensation Board,
Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 30th ult., relative to the constitutionality of the Act of June 3, 1915, P. L. 777 (No. 343), which provides that nothing contained in the Workmen's Compensation Act of 1915 shall apply to, or in any way affect, any person who, at the time of injury, is engaged in domestic service or agriculture.

I am of the opinion that this Act is constitutional; that the classification contained therein is genuine and founded on a real distinction in the classes of service.

In a well considered opinion rendered March 1, 1917, in the case of *Shaffer vs. Shires*, 3 Dept. Rep. p. 660, you yourself cite a number of decision from other States in which the constitutionality of similar exemptions has been upheld.

The Supreme Court of this State, in the case of *Seabolt vs. Commissioners*, 187 Pa. 318, said:

"Legislation for a class distinguished from a general subject is not special but general, and classification is a legislative question, subject to judicial revision only so far as to see that it is founded on real distinctions in

the subjects classified, and not on artificial or irrelevant ones used for the purpose of evading the constitutional prohibition. If the distinctions are genuine the courts cannot declare the classification void, though they may not consider it to be on a sound basis."

In the case of *West Virginia Pulp & Paper Co. vs. Public Service Commission*, 61 Superior Ct. 555, the Superior Court said, page 567:

"A law is general and uniform if it affect in like manner all persons in the same circumstances. It is not to be understood that to be uniform and general it must operate upon every person in the State. All that is required is that every person brought within the relations provided for it in the statute is within its provisions."

In the case of *Commonwealth vs. Beatty*, 15 Superior Ct. 5, it was held that in the exercise of its police power the State may enact laws to protect the lives, health and safety of persons *following specified callings* and may thus indirectly interfere with the freedom of contract.

That decision related to the construction of the Act of April 29, 1897, P. L. 30, regulating the employment and providing for the health and safety of men, women and children in manufacturing establishments, mercantile industries, laundries, renovating works and printing offices.

In the recent case of *Commonwealth vs. Wormser*, 67 Superior Ct. 444, it was held that the Act of May 13, 1915, P. L. 286, regulating the employment of minors is constitutional, although it is specifically provided therein that the Act should not apply to children employed on the farm or in domestic service in private homes.

Numerous other decisions of the Supreme and Superior Courts of this State might be cited, but I deem it unnecessary to do so. In my judgment the classification is genuine and founded on a real distinction in the subjects classified, and is, therefore, constitutional.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

WORKMEN'S COMPENSATION BOARD.

The award made by Referee Christley in the case of Hollis vs. Poland Coal & Coke Company is approved and the law as to compensation explained.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Honorable H. A. Mackey, Chairman, Workmen's Compensation Board,
Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 30th ult., relative to Article III, Section 306, of the Workmen's Compensation Act of 1915, P. L. 736.

I am of the opinion that the award made by Referee Christley in the case of Hollis vs. Poland Coal and Coke Company is the correct interpretation of this section of the Act, and that where an employe has sustained other injuries which disable him from work, in addition to the loss of specific members provided for in Clause (c) of said section, he can draw compensation as long as these additional injuries continue, and when his compensation thus derived ceases because he has been cured, then the compensation for the loss of the specific member begins to run and continues for the time prescribed in the Act.

I am of the opinion, however, that all disabilities taken together cannot extend beyond the period of five hundred weeks or four thousand dollars mentioned in Clause (a) as the compensation for total disability. In other words, that the sum allowed for disabilities of different character, including the loss of specific members provided in Clause (c) cannot in any event exceed the extreme limit allowed for total disability. This conclusion is borne out by the concluding language of Clause (c) of said section. After stating that the compensation for all disability resulting from permanent injuries by the loss of a hand, an arm, a foot, a leg or an eye, shall be exclusively as therein set forth, the Act provides: "*For the loss of any two or more of such members, not constituting total disability, fifty per centum of wages during the aggregate of the periods specified for each,*" thereby showing that if the injuries caused by the loss of two or more such members constitute total disability, the schedule under Clause (c) is not applicable, but that the injured employe is entitled to compensation for five hundred weeks, not exceeding four thousand dollars, as provided in Clause (a).

The same clause also provides:

“Unless the board shall otherwise determine, the loss of both hands or both arms, or both feet, or both legs, or both eyes, shall constitute total disability, to be compensated according to the provisions of clause (a).”

Prima facie the loss of both eyes constitutes total disability, to be compensated for under Clause (a), unless the occupation of the injured employe was such that he would not be totally disabled from working by reason of the loss of both eyes.

In the case which you have under consideration it is my opinion that unless you can find that the occupation of the injured employe was such that he would not be totally disabled by the loss of both eyes, such loss constitutes total disability, and is to be compensated in accordance with Clause (a) of Section 306, and he should be awarded fifty per centum of his wages for five hundred weeks, not exceeding four thousand dollars. As this is the maximum for total disability, no additional award can be made him on account of the other injuries which he suffered besides the loss of both eyes.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

INJURED EMPLOYEES OF COMMONWEALTH.

Under the Workmen's Compensation Act of June 2, 1915, P. L. 736, the Commonwealth is an "employer," and the proper person upon whom to make service of any notices or papers required under the act is the head of the department, bureau or commission under whom the injured employe was working; at the same time awards should be made against the Commonwealth and not against the particular department of the government by whom the injured person was employed.

Such an award is not payable out of the department's contingent fund, but has to await an appropriation by the Legislature.

Office of the Attorney General,
Harrisburg, Pa., December 20, 1917.

Mr. J. Lloyd Hartman, Chief of Bureau of Workmen's Compensation,
Department of Labor and Industry, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 5th inst., inquiring as to the procedure to be had under the Workmen's Compensation Act of June 2, 1915, P. L. 736, with reference to injured

employees of the Commonwealth, in view of the fact that the last Legislature made no appropriation for the payment of such compensation for the two years beginning June 1, 1917.

The Workmen's Compensation Act of 1915 expressly included the Commonwealth within the term "employer" as defined in the Act (Sec. 103), and the passage of the Act was therefore equivalent to conferring authority upon an injured employe to secure an award against the Commonwealth, in accordance with the provisions of the Act. The proper person upon whom to make service on behalf of the Commonwealth of the notice of injury and claim petition, and any other notices or papers that are required under the Act, is the head of the Department, Bureau or Commission under whom the injured employe was working. The same proceedings should be had as would be required with respect to an individual employer, and if the injured employe is found to be entitled to compensation, the referee should, in accordance with the law, make an award against the Commonwealth, not against the particular department of the Government by whom the injured person was employed.

The award cannot, however, be paid out of the Department's contingent fund, as suggested by you, but will have to await payment by an appropriation of the next Legislature.

The situation is almost identical with those in which suits are authorized against the Commonwealth by special act of the Legislature. The general authority contained in the Workmen's Compensation Act of 1915, is equivalent to the special authority contained in such acts of assembly. The judgment recovered in such suits must await payment by appropriation of the Legislature, and the awards in these cases must do the same.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

WORKMEN'S COMPENSATION BOARD.

The procedure on appeal from a referee's award is outlined.

January 16, 1918.

Honorable Harry A. Mackey, Chairman Workmen's Compensation Board, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 24th ult., relative to the construction of Section 425 of the Workmen's Compensation Act, which makes it the duty of the Bureau, within ten days after an appeal has been taken to the Court of Common Pleas of any county, to prepare and mail or deliver to the prothonotary of the proper county a transcript of the agreement or findings of fact and award or disallowance of compensation, or modification thereof, involved in the appeal. Section 425 must be read in connection with Sections 420 and 421, which are as follows:

"Section 420. Whenever an appeal shall be based upon an alleged *error of law*, it shall be the duty of the Board to grant a hearing thereon. The Board shall fix a time and place for such hearing, and shall serve notice thereof on all parties in interest.

As soon as may be after any such hearing, the Board shall either sustain or reverse the referee's award or disallowance of compensation, or make such modification thereof as it shall deem proper.

Section 421. Whenever an appeal shall be taken on the ground that the referee's award or disallowance of compensation was *unwarranted by the evidence*, or because of fraud, coercion, or other improper conduct by any party in interest, the Board may, in its discretion, grant a hearing de novo or sustain the referee's award or disallowance of compensation. If the Board shall grant a hearing de novo, it shall fix a time and place for the same and shall notify all parties in interest.

The Board shall at all times have the power to make any investigation which it shall deem necessary to ascertain the facts. It may employ physicians, surgeons, or other experts to aid in its investigation; and shall in all cases fix the compensation of such physicians, surgeons, or experts, and tax the same as a part of the costs of the proceedings, to be paid by either party, or both, as the Board may direct.

As soon as may be after any hearing de novo by the Board, it shall in writing state its findings of fact, and award or disallow compensation in accordance with the provisions of this act."

It will be noted that where the appeal is taken from the referee's award or disallowance of compensation on the ground that it was unwarranted by the evidence, the Board does not have power or authority to reverse the action of the referee without a hearing *de novo*. The Board may sustain the referee's award or disallowance of compensation without more, but if, in the judgment of the Board the referee's findings were unwarranted by the evidence, it is the duty of the Board to grant a hearing *de novo* and make its own findings of fact on which to base its award or disallowance of compensation.

If an appeal is taken from the action of the Board after such a hearing *de novo*, naturally the evidence taken before the referee and his findings of fact based thereon are superseded by the hearing *de novo* before the Board and its findings of fact, and on such appeal the Court of Common Pleas has no authority to go behind the findings of fact of the Board beyond determining whether they are based on any evidence taken before the Board. In such case neither the referee's findings of fact nor the testimony taken from him need be sent to the Prothonotary.

Where an appeal has been taken from the action of the referee to the Board on an alleged error of law, the hearing provided for in Section 420 is not *de novo*, but is based upon the testimony taken before the referee and his findings of fact and the legal conclusions drawn from those findings. The Board in its consideration of such an appeal, upon an alleged error of law, has no power to go behind the findings of fact of the referee beyond determining whether they were based upon any evidence in the case, and if an appeal is taken from the action of the Board to the Court of Common Pleas, its action is limited to the same consideration so far as the facts are involved and in such case the referee's findings of fact and the testimony taken before him should be transmitted to the Prothonotary.

In other words, where an appeal from a referee to the Board is based upon an alleged error of law, the findings of fact of the referee are final provided they are based upon any evidence, and if an appeal is taken from the action of the Board to a Court of Common Pleas from such an appeal, the findings of fact of the referee must be considered as final and conclusive in the Court of Common Pleas, subject only to the provision that the Court of Common Pleas has a right to consider whether there was any evidence in the case upon which the findings of fact could be based.

On the other hand, as to an appeal taken from a referee to the Board under Section 421 on the ground that the action of the referee was unwarranted by the evidence, if the Board determines that the findings of the referee were unwarranted by the evidence in the case, it is its duty to grant a hearing *de novo* and the findings of fact

of the *Board* thereupon become final, subject only to the consideration as to whether there was any evidence upon which they could be based. If the Board agrees with the action of the referee on an appeal under Section 421, and sustains his award or disallowance of compensation, the findings of fact of the referee concurred in by the Board become final and conclusive and are not reviewable by the Court of Common Pleas except to determine whether there was any evidence in the case which justified the findings.

To sum up: If an appeal on an alleged error of law is taken from a referee to the Board under Section 420, and an appeal from the action of the Board is taken to the Court of Common Pleas, the findings of fact of the referee and the transcript of testimony taken before the referee should be forwarded to the Court of Common Pleas, under the provisions of Section 425.

If an appeal is taken from the referee to the Board under Section 421, on the ground that the referee's award or disallowance of compensation was unwarranted by the evidence and the action of the referee should be sustained by the Board, then on an appeal from the Board to the Court of Common Pleas the referee's findings of fact and the transcript of testimony taken before the referee, should be forwarded to the Prothonotary. If, in such case the Board should not sustain the action of the referee, then a hearing *de novo* should be had before the Board and in case of an appeal from the action of the Board to the Court of Common Pleas, the findings of fact of the Board and a transcript of the testimony taken before the Board should be transmitted to the Prothonotary, but the findings of fact of the referee and the testimony taken before the referee, should not be transmitted.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

WORKMEN'S INSURANCE FUND.

The State Workmen's Insurance Fund is not liable for the income tax provided by Act of Congress of September 8, 1916, as amended by the Act of October 3, 1917, nor the war income tax, the war excess profits tax, nor the war tax on insurance, imposed by Act of Congress of October 3, 1917. No duty is imposed upon the Workmen's Insurance Board to make return of its income or to pay any tax on policies of insurance issued by it, at least until July 1, 1919.

Office of the Attorney General,
Harrisburg, Pa., January 22, 1918.

Honorable H. M. Kephart, Chairman State Workmen's Insurance Board, Harrisburg, Pa.

Sir: This Department is in receipt of your letters of December 19th and January 3rd, requesting to be advised whether the State Workmen's Insurance Fund is liable for income tax under the Acts of Congress of September 8, 1916, and October 3, 1917, and whether the policies of insurance issued by the State Workmen's Insurance Fund are subject to the tax imposed on policies of insurance by Act of Congress of October 3, 1917.

Section 10 of the Act of Congress of September 8, 1916, which is entitled "An Act to increase the revenue, and for other purposes," as amended by the Act of October 3, 1917, provides:

"(a) That there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding calendar year from all sources by every corporation, joint-stock company or association, or insurance company, organized in the United States, no matter how created or organized but not including partnerships, a tax of two per centum upon such income.

"(b) In addition to the income tax imposed by subdivision (a) of this section there shall be levied, assessed, collected, and paid annually an additional tax of ten per centum upon the amount, remaining undistributed six months after the end of each calendar or fiscal year, of the total net income of every corporation, joint-stock company or association, or insurance company, received during the year, as determined for the purpose of the tax imposed by such subdivision (a), but not including the amount of any income taxes paid by it within the year imposed by the authority of the United States.

"The tax imposed by this subdivision shall not apply to that portion of such undistributed net income which is actually invested and employed in the business or is retained for employment in the reasonable requirements of the business or is invested in obligations of the United States issued after September first, nineteen hundred and seventeen: Provided, That if the Secretary of the

Treasury ascertains and finds that any portion of such amount so retained at any time for employment in the business is not so employed or is not reasonably required in the business a tax of fifteen per centum shall be levied, assessed, collected, and paid thereon."

Section 4 of the Act of Congress of October 3, 1917, entitled "An act to provide revenue to defray war expenses and for other purposes," provides:

"That in addition to the tax imposed by subdivision (a) of section ten of such act of September eighth, nineteen hundred and sixteen, as amended by this act, there shall be levied, assessed, collected, and paid a like tax of four per centum upon the income received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, by every corporation, joint-stock company or association, or insurance company, subject to the tax imposed by that subdivision of that section,
* * *

"The tax imposed by this section shall be computed, levied, assessed, collected, and paid upon the same incomes and in the same manner as the tax imposed by subdivision (a) of section ten of such act of September eighth, nineteen hundred and sixteen, as amended by this act, except that for the purpose of the tax imposed by this section the income embraced in a return of a corporation, joint-stock company or association, or insurance company, shall be credited with the amount received as dividends upon the stock or from the net earnings of any other corporation, joint-stock company or association, or insurance company, which is taxable upon its net income as provided in this title."

Title II—War Excess Profits Tax—of the Act of October 3, 1917, imposes an additional tax upon corporations, including joint-stock companies or associations and insurance companies. This tax varies according to the net income received by the corporation.

Title V—War tax on Facilities Furnished by Public Utilities, and Insurance—of the same Act, Section 504, provides as follows:

"(c) Casualty Insurance: A tax equivalent to 1 cent on each dollar or fractional part thereof of the premium charged under each policy of insurance or obligation of the nature of indemnity for loss, damage or liability (except bonds taxable under subdivision two of schedule A of Title VIII), issued or executed or renewed by any person, corporation, partnership, or association, transacting the business of employer's liability, workmen's compensation, accident, health, tornado, plate glass, steam boiler, elevator, burglary, automatic sprinkler, automobile, or other branch of insurance (except life

insurance, and insurance described and taxed in the preceding subdivision): Provided, That policies of reinsurance shall be exempt from the tax imposed by this subdivision;

“(d) Policies issued by any person, corporation, partnership, or association, whose income is exempt from taxation under Title I of the act entitled ‘An act to increase the revenue and for other purposes,’ approved September eighth, nineteen hundred and sixteen, shall be exempt from the taxes imposed by this section.”

The exemptions referred to above are set forth in Section 11 (a) of Title I of the Act of September 8, 1916, and comprise fourteen classes of organizations or associations, which it is not necessary to enumerate here, State Workmen's Insurance Funds not being included by name.

The State Workmen's Insurance Fund of this Commonwealth was established by the Act of Assembly approved June 2, 1915, P. L. 762. Its purpose was to assure the success of the new system of Workmen's Compensation which had been created by the Act approved the same date, P. L. 736, and to furnish to the employers of the Commonwealth, or give them an opportunity of securing, Workmen's Compensation Insurance required under the provisions of the new system at a rate that would be fair and equitable and not expose them to exorbitant charges of insurance companies, which, without such brake or check, could charge any amount agreed upon among themselves for the insurance required by the Act.

The Workmen's Compensation Act of 1915, P. L. 736, was a new departure in the law of this Commonwealth, enacted in response to a growing demand for social legislation protecting the workmen of the Commonwealth or their dependents in case of injury or death. It is a far reaching measure, following the best thought along the subject and is designed wholly for the benefit of the people at large.

To show the importance which the Commonwealth attached to the successful operation of the Workmen's Compensation Law and the insurance provided for therein, it was provided that the expenses of the organization and administration of the State Workmen's Insurance Fund should, until the first day of July, 1919, be paid by the State out of the funds thereafter appropriated therefor, and in the same Act an appropriation of \$300,000 was made for the expenses of the organization and administration of the said fund.

By the Act of July 25, 1917—Appropriation Acts Session of 1917, page 193—the sum of \$200,000 was appropriated to the State Workmen's Insurance Board for the purpose of the administration of the State Workmen's Insurance Fund, and the payment of incidental expenses, and for the payment of the salaries, compensation and ex-

penses of the manager, assistant manager, actuary attorneys, underwriters, bookkeepers, comptrollers, auditors, inspectors, examiners, medical advisers, agents, assistants, and clerks, as provided for in the Act approved the second day of June, one thousand nine hundred and fifteen, entitled "An Act providing for the creation and administration of a State fund for the insurance of compensation for injuries to employes of subscribers thereto, declaring false oaths by the subscribers to be misdemeanors, and providing penalties for the violation thereof."

The State Workmen's Insurance Board, which directs the affairs of the State Workmen's Insurance Fund, is, by the Act, composed of three high officers of the Commonwealth, namely, the Commissioner of Labor and Industry, Insurance Commissioner and the State Treasurer. By the Act all premiums received by the Fund are payable to the State Treasurer. The manager, assistant manager, actuary and other officers and employes of the Fund are appointed by the Board, with the approval of the Governor. The Attorney General is appointed ex officio General Counsel for the Board and the Act provides for the appointment by the Attorney General of Counsel for the Board at an annual salary or salaries to be fixed by him, not to exceed \$10,000.

This brief review of the Act creating the Insurance Fund shows that, although not a department of the State, it is an operation of the State government; it is an agency created by the State for the purpose of putting into successful operation legislation enacted by the State for the general public benefit. It is certainly just as much an agency of the Commonwealth of Pennsylvania as the United States Bank, which was incorporated by the Act of Congress of April 10, 1816, was an agency of the United States Government—in fact, more so; for, with regard to the State Insurance Fund, all of its expenses of administration until July 1, 1919, are paid out of the funds of the State government appropriated for that purpose, while the United States did not assume or pay the expenses of the United States Bank.

The right of the United States to tax the agencies or operations of the State government was recently discussed in an opinion of this Department to the Chief of Division, Department of Public Printing and Binding, in which reference was made to the decisions of the Supreme Court of the United States in the cases of

McCulloch vs. the State of Maryland, 4 Wheaton 306.

Osborn vs. Bank of United States, 9 Wheaton 736.

Weston vs. Charleston, 2 Peters 449.

Buffington, Collector, vs. Day, 11 Wallace 113.

South Carolina vs. United States, 199 U. S. 437.

United States vs. Railroad Company, 17 Wallace 332.

Ambrosini vs. United States, 187 U. S. 1.

Pollock vs. The Farmer's Loan and Trust Co., 157 U. S. 429.

These cases hold, on the one hand, that the several States cannot tax the operations of the United States government and, on the other, that the United States cannot tax the operations of a State government.

If, therefore, the United States Bank created by Act of Congress, though not strictly a part of the government of the United States, was an operation of the Federal government, the State Insurance Fund, created by the State of Pennsylvania for the purpose of assuring the successful operation of the Workmen's Compensation Act, all of the expenses of which are paid out of the State Treasury, is certainly a governmental operation of the Commonwealth of Pennsylvania.

Under the legislation creating this Fund, any tax required to be paid by the State Insurance Fund, either by way of income tax, war excess profits tax or war tax on insurance, would be paid out of the Treasury of the State of Pennsylvania, not out of the income received from the several subscribers, at least, up to July 1, 1919.

It is true that in the list of exemptions from the operation of the Act of Congress, set forth in Section 11 (a) of Title I of the Act of September 8, 1916, the State Workmen's Insurance Fund is not specifically included. The exemptions from the Act of Congress enumerated apply to corporations, organizations and associations which, without such exempting clause, would have been liable for the payment of the tax. It was not necessary to exempt from the effect of the Act operations of the several State governments which, under the decisions of the United States Court construing the Constitution of the United States, could not be taxed by Congress.

For a further discussion of the matter you are respectfully referred to the opinion above mentioned, rendered to Mr. Robert H. Hendrickson, Chief of Division, Department of Public Printing and Binding, on December 26, 1917.

I am of the opinion and so advise you that the State Workmen's Insurance Fund is not liable for the income tax provided by the Act of Congress of September 8, 1916, as amended by the Act of October 3, 1917, nor the war income tax, the war excess profits tax or the war tax on insurance, imposed by the Act of Congress of October 3, 1917, and no duty is imposed upon the Workmen's Insurance Board to make return of its income or to pay any tax upon the policies of insurance issued by it, at least, until July 1, 1919.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE FEES FOR BOILER INSPECTION.

Under the power vested in the Commissioner of Labor and Industry by the Rules and Regulations of the Industrial Board, he would be justified in revoking the commission of an inspector guilty of making charges, which are clearly unfair and unreasonable, for the inspection of boilers.

A boiler inspector examined and commissioned in accordance with the Rules and Regulations of the Department of Labor and Industry is not a State officer or employee. The commission issued to him is a certificate evidencing his fitness to do the work in question.

There is no fee fixed by law which a boiler inspector may charge for his services in making boiler inspection, but his compensation therefor is wholly a matter of agreement between him and the owner of the establishment in which he makes the inspection.

Office of the Attorney General,
Harrisburg, Pa., January 23, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 11th inst., to the Attorney General requesting an opinion as to the fee chargeable by a boiler inspector for making boiler inspection.

Section 19 of the Act of May 2, 1905, P. L. 352, provides, inter alia, as follows:

"All boilers used for generating steam or heat in any establishment shall be kept in good order, and the owner, agent or lessee of such establishment shall have said boilers inspected, by a casualty company in which said boilers are insured, or by any other competent person approved by the Chief Factory Inspector, once in twelve months, and shall file a certificate showing the result thereof, in the office of such establishment, and shall send a duplicate thereof to the Department of Factory Inspection. * * * Nothing in this section shall apply to boilers which are regularly inspected by competent inspectors, acting under local laws and ordinances."

In an opinion by this Department to the Commissioner of Labor and Industry, under date of March 22, 1917, ruling that boilers in oil well operations are subject to inspection, it was pointed out that under the definition as made in Section 1 of said Act, any place is an "establishment," within the meaning of the Act, "where men, women or children are engaged and paid a salary or wages, by any person, firm or corporation, and where such men, women or children are employees, in the general acceptance of the term" other than "where domestic, coal-mining or farm labor is employed."

By Section 23 of the Act of June 2, 1913, P. L. 396, creating the Department of Labor and Industry, establishing the Industrial Board, and "prescribing a standard of reasonable and adequate protection to be observed in the rooms, buildings, and places where labor is employed," etc., the Department of Factory Inspection was abolished and all its powers and duties vested in the Department of Labor and Industry. Pursuant to the power given the Industrial Board, under Section 14 of said Act of 1913, to make rules and regulations for the carrying into effect all laws, the enforcement of which is entrusted to, or imposed upon the Department of Labor and Industry, which rules and regulations, by virtue of the provisions contained in Section 15 of said Act, "may embrace all matters and subjects to which the power and authority of the Department of Labor and Industry extends," said Industrial Board adopted a Boiler Code and further adopted Rules and Regulations for the administration of said Boiler Code, to become and be operative on and after July 1, 1916. Sections 1 and 2 of said administrative Rules and Regulations are as follows:

"Section 1. No person shall be authorized to act for the Commonwealth, as a boiler inspector, unless he has passed an examination, described in section 4, and unless he holds a commission from the Department of Labor and Industry.

"Section 2. (a) A commission shall be revoked by the Commissioner of Labor and Industry for incompetence or untrustworthiness, for wilfull falsification of any matter or statement contained in his application, or in a report of any inspection, or for other sufficient reasons."

It will be noted that under Section 19 of said Act of 1905, the boiler inspection therein required is to be made "by a casualty company in which said boilers are insured, or by any *other competent person approved by the Chief Factory Inspector*," the powers and duties of the Chief Factory Inspector having been, pursuant to said Act of 1913, transferred to the Department of Labor and Industry as above mentioned. The Rules and Regulations adopted by the Industrial Board are consequently an appropriate method to test the qualifications of a person to determine his fitness as a boiler inspector and adapted to keep the inspection up to the required standard. A boiler inspector examined and commissioned in accordance with the aforesaid Rules and Regulations is not, however, to be deemed a State officer or employe. The commission issued to him is a certificate evidencing his fitness to do the work in question. He is one upon whose competency to make boiler inspection the State has thus in due form set its seal of approval, and whose inspection will be accepted by the State.

The owner of an establishment is required by law to have an inspection made of the boilers used therein, and the duty rests upon the Department of Labor and Industry to see that such inspection has been made and to enforce the law and the Rules of the Industrial Board relative thereto. The said Department exercises an inspection in and over establishments to see that this boiler inspection is made in conformity to law and the said Rules, but for such supervisory inspection by the Inspectors of the Department of Labor and Industry, no fee is, of course, charged or chargeable.

As above stated, a boiler inspector examined and commissioned as such under the aforesaid Rules and Regulations of the Industrial Board, is not an employe of the State. He is employed by the owner of an establishment to make an inspection which the law requires the owner shall have made. The law fixes no fee to be paid him for such services. This is wholly a matter of contract between the boiler inspector and the owner of the establishment, who is at full liberty to employ any inspector he chooses among those whose competency is duly evidenced by the said commission. It would be advisable that this compensation should always be agreed upon by the owner and inspector before the work is done.

While the law fixes no fee for the services of a boiler inspector, I understand that the Commissioner of Labor and Industry sometime ago named or suggested the fees which would properly be chargeable. Although this may be helpful to assist the owner and inspector in reaching a just agreement as to the compensation, it is not binding on the parties who, as above stated, are free to bargain as they please as to that. Under the power vested in the Commissioner of Labor and Industry by Section 2 of the above Rules and Regulations of the Industrial Board, he would, in my opinion, be justified in revoking the commission of an inspector guilty of making charges which are clearly unfair or unreasonable. Where one was found untrustworthy in this respect, it would be a fair presumption that a like character might attach to his work of inspection.

In accordance with the foregoing, you are therefore advised that the law fixed no fee which a boiler inspector may charge for his services in making a boiler inspection, but that his compensation therefor is wholly a matter of agreement between him and the owner of the establishment in which he makes the inspection.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

FIRE ESCAPES.

All fire escapes under the Act of 1917 shall be constructed in accordance with specifications to be issued or approved by the Department of Labor and Industry.

That portion or provision of section 3 of the Act of 1909, P. L. 1074, as amended by the Act of 1917, by omitting the same, was thereby repealed, and hence is no longer in force.

It is well settled that where a statute or a section thereof is amended "so as to read" in a prescribed way, all that was contained in the original statute or section and not re-enacted, is repealed.

The Legislature plainly intended that the Department of Labor and Industry should not be fettered by any statutory specifications, but should have plenary power to specify how the fire escapes required by the Act of 1917 shall be constructed; so as to effectuate the ends of safety.

Office of the Attorney General,
Harrisburg, Pa., January 31, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication to the Attorney General of the 22nd inst., requesting an opinion relative to Section 3 of the Act of May 3, 1909, P. L. 417, as amended by the Act of July 18, 1917, P. L. 1074.

In Section 3 of said Act, as amended by said Act of 1917, there is eliminated, inter alia, the following provision contained in the original section, viz.:

"And such fire-escapes * * * shall be connected with each floor above the first, firmly fastened and secured, and of sufficient strength to sustain a weight of not less than four hundred pounds per step, on a safety factor of four; each of which fire-escapes shall have landings or balconies at each story, capable of sustaining a weight of not less than eighty pounds per square foot, guarded by railings not less than three feet in height, and embracing one or more windows or doors at each story, and connecting with the interior by easily accessible and unobstructed openings."

Your question is whether the foregoing provision, contained in the original section of the Act, but not contained in said section as amended by said Act of 1917, is still in force. It will be noted that the said Act of 1917 provides, inter alia, that Section 3 of said Act of 1909 "*is hereby amended to read as follows*," and, as above stated, drops from the re-enactment the above-mentioned portion of the original section.

It is well settled that where a statute or section thereof is amended "so as to read" in a prescribed way, all that was contained in the original statute or section and not re-enactment is repealed.

"Where the words 'so as to read as follows' precedes the amendment or enactment, we must conclude that all that was intended to be retained in the old section was re-enacted, and that anything in the old section not found in the new was not intended to be incorporated within it."

J. R. Fowler vs. Columbia County, 18 C. C. 653.
Endlich on the Interpretation of Statutes, Section 196.

It follows from the above rule of statutory interpretation, and you are so advised, that the aforesaid portion or provision of the original Section 3 of said Act, which was not retained in said section as amended by said Act of 1917, was thereby repealed and is no longer in force. The section, as amended, was intended to supply the original section *in toto*.

It was the evident purpose of the amendment to said section of said Act, as made by the Act of 1917, to vest the Department of Labor and Industry with plenary power to specify how the fire-escapes required by its provisions shall be constructed. It was plainly intended, that in prescribing the specifications as to their construction it is not to be fettered by any statutory specifications relative thereto, as was the case to some extent under the said section as it read prior to its amendment. The said section, as amended, does not specify how fire-escapes shall be erected, but provides that those provided for thereunder "shall be constructed according to specifications to be issued or approved by the Department of Labor and Industry." Consequently, it follows that the said requirements of the above quoted provision contained in the original Section 3 of said Act, directing how fire-escapes in certain respects are to be constructed, are no longer mandatory, since the said provision, as above pointed out, has been repealed by said section as amended. Inasmuch, however, as all fire-escapes provided for under said section as amended must be constructed in accordance with specifications prescribed or approved by the Department of Labor and Industry, the said Department can, by virtue of this power so vested in it, require that their construction shall be such in all respects as had been expressly specified by said section as it originally stood. It should be so required in each and every case where it is needed to furnish or afford adequate means of safety. That is the supreme consideration. Upon the said Department rest the power and duty to prescribe or approve the speci-

fications as to the construction of the fire-escapes provided for by the above section of said Act, and this authority should be exercised to the full to effectuate the ends of safety.

You are therefore advised that the aforesaid part of, or provision contained in, the original Section 3 of said Act of 1909 and which was omitted from and not retained in said section, as amended by said Act of 1917, was thereby repealed and hence is no longer in force, and that in pursuance of the provisions of said section, as amended, all fire-escapes provided for thereunder shall be constructed in accordance with specifications to be issued or approved by the Department of Labor and Industry.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

IN RE FIRE ESCAPES.

The Department of Labor and Industry is vested with no power or duty, under the law, to enforce the erection of fire escapes in cities of the second class, cities of the first and second class being specifically excepted by the Act of July 18, 1917, P. L. 1074.

In pursuance of the Act of June 2, 1913, P. L. 396, creating it, the Department of Labor and Industry was vested with all the powers and duties theretofore vested by law in the Department of Factory Inspection.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication, to the Attorney General, requesting an opinion as to what authority the Department of Labor and Industry has "in the matter of ordering the erection of fire-escapes" in cities of the second class.

Whatever power the said Department possesses to enforce the erection of fire-escapes anywhere is that possessel by virtue of some statutory provision conferring it expressly or by clear and necessary implication. In pursuance of the Act of June 2, 1913, P. L. 396, creating it, the Department of Labor and Industry was vested with all the powers and duties theretofore vested by law in the Department of Factory Inspection.

The general Act giving authority to the Department of Labor and Industry in the matter of fire-escapes and preventive means against fire and fire panics is that of May 3, 1909, P. L. 417. This Act was amended in its several sections, in some respects most drastically, by that of July 18, 1917, P. L. 1074. It is a comprehensive enactment covering the subject of fire preventive expedients and safeguards, prescribing what they shall be, regulating the erection of buildings to insure safety against fire, fixing penalties for its violation, and imposing on said Department the power and duty of its enforcement.

This Act, both as it originally stood and as amended by said Act of 1917, expressly excepts from the scope of its provisions "*buildings situated in cities of the first and second classes.*" The constitutionality of the said Act of 1909 was sustained in the case of *Roumfort vs. Delaney*, 230 Pa. 374, wherein it was held that while the exclusion of cities of the first and second classes from the operation of said Act rendered it local, it was not one regulatory of the affairs of municipalities and not unconstitutional.

Going back a step in the legislation relating to this matter, we find that the twenty-second section of the Act of May 2, 1905, P. L. 352, made it the duty of the Chief Factory Inspector to inspect all buildings required by law to be equipped with fire-escapes or appliances for the extinguishment of fire, or exits in case of fire, and required that they should be provided and located subject to his order or approval, and to enforce compliance with said law. Said section, however, further provides as follows, namely:

*"That the provisions of this section shall not apply
to cities of the first and second classes."*

In harmony with the foregoing legislation, excluding the authority of the Department of Labor and Industry in the matter of fire-escapes from cities of the first and second classes, is the Act of June 7, 1911, P. L. 677, requiring fire drills in factories and industrial establishments where women or girls are employed. This Act directs that drills be conducted under rules and regulations promulgated "in cities of the first and second classes by the Fire Marshal, and elsewhere in the Commonwealth by the Chief Factory Inspector," it being made the duty of the Fire Marshal and his assistants "in cities of the first and second classes, and the Chief Factory Inspector and several deputy factory inspectors elsewhere in the Commonwealth" to see that the provisions of this Act are carried out.

The statute immediately preceding the said Act of 1905, which gave to the Factory Inspector authority to enforce compliance with the laws relative to fire-escapes and appliances for the extinguishment of

fire, was that of May 29, 1901, P. L. 322, which in pursuance of Section 13 thereof vested him with such power and duty. This section of said Act was clearly intended to supply any previous legislation vesting said Inspector with power and authority concerning this subject, including Section 2 of the Act of May 5, 1897, P. L. 42, and Section 12 of the Act of May 20, 1889, P. L. 243. There was no limitation under Section 13 of the Act of 1901 upon the territorial extent of his jurisdiction, excepting such as might arise in pursuance of the proviso contained in Section 14 thereof.

While I am of the opinion that Section 13 of the said Act of 1901 was impliedly repealed by virtue of the twenty-second section of said Act of 1905, which substantially covered the same subject with the added proviso excepting cities of the first and second classes from its provisions, yet it is unnecessary to pass upon that question here for the reason that the said thirteenth section of the Act of 1901 was expressly repealed by the Act of May 13, 1915, P. L. 297, supplementing and adding to the powers of second class cities to provide against fire and danger therefrom and to inspect buildings to such end, etc.

Although, as above stated, I am of the opinion that Section 13 of the said Act of 1901 had been previously repealed by implication, yet the said express repeal thereof by said Act of 1915 was significant as confirming the legislative purpose and policy, as shown in the Acts of 1905 and 1909, to withhold from the Department of Labor and Industry (formerly Department of Factory Inspection) any jurisdiction in the matter of the erection of fire-escapes in cities of the second class. It evidenced an unmistakable intent to vest in their own municipal authorities the whole power and duty in reference to that subject. The state has selected such municipality and not the said Department as the proper instrumentality through which it operates to enforce the erection and maintenance of fire-escapes therein. This purpose was again made manifest in the said Act of 1917, amending the Act of 1909, by retaining the provision excepting from its scope buildings situated in cities of the first and second classes. There is no express authority bestowed upon the said Department to enforce the erection of fire-escapes in cities of the second class, and the conclusion is clear that such power cannot be implied.

It is outside the province of the Attorney General to undertake an interpretation of the laws governing second class cities as the same may be applicable to the subject of the erection or maintenance of fire-escapes or fire preventive safeguards, or to point out the powers and duties of their officials in regard thereto. This opinion

deals solely with the question as to whether the Department of Labor and Industry has any power or duty to enforce the erection of fire-escapes in such cities.

In accordance with the foregoing, I am of the opinion and you are hereby advised that the Department of Labor and Industry is vested with no power or duty, under the law, to enforce the erection of fire-escapes in cities of the second class. As I understand it, this ruling is in harmony with the construction heretofore placed by said Department upon the law relative to this subject matter.

I would respectfully urge, however, that the Department of Labor and Industry, wherever possible or practicable, should assist the municipal authorities in the said cities to provide, insure and enforce therein all fire preventive means and measures and safeguards from loss by fire. In the course of their inspection of factories and industrial establishments to see that the labor laws are there observed, the Inspectors of this Department should note any shortcomings in the matter of fire-escapes and fire preventive expedients and promptly report the same to the proper local authorities. Furthermore, this should also be reported to the Commissioner of Labor and Industry who may, in turn, take the matter up with the local authorities to the end that the mischief may be remedied. While, as above held, the Department of Labor and Industry has no power to compel obedience to the law requiring the erection and maintenance of fire-escapes in cities of the second class, and cannot properly institute legal proceedings therefor, it can, nevertheless, do much in the way above indicated to aid the local officials to enforce their erection and maintenance, and to insure safety against fire and minimize the danger therefrom.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

AUTOMATIC LOCKING DEVICES ON PASSENGER ELEVATORS.

The Industrial Board, Department of Labor and Industry is advised that a proposed rule, re-locking devices on elevators, would be invalid and unenforceable.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1918.

Mr. William Lauder, Secretary, Industrial Board, Department of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication to the Attorney General of the 5th inst. in regard to a certain Rule or Regulation, proposed to be adopted by the Industrial Board, relative to automatic locking devices on passenger elevators required by the Act of May 30th, 1895, P. L. 129. The Board asks to be advised as to its power to adopt said Rule or Regulation.

Section I of said Act of 1895 provides as follows:

"That all elevators that are now in use or that may hereafter be constructed in this State for the carriage of passengers are required to have placed thereon or attached thereto such automatic locking device, electrical or mechanical, as will hold immovable and secure the carriage used in such elevator while any gate, door or doors at the landing that is used for entrance thereto or exit therefrom is or are open and unsecured; the said automatic device, electrical or mechanical, to place the power of controlling the elevator beyond the control of the attendant while any gate, door or doors on the landing leading to the carriage is open and unsecured."

The Regulation in question proposed to be adopted by the Industrial Board reads as follows:

"The locking device shall be so constructed that it will hold the car immovable, under normal service conditions, when the door or doors of the landing at which the car stands is or are open and unsecured. If the locking device is so constructed that the car will be held immovable by the accidental opening of any other door than the door or doors of the landing at which the car stands, then there shall be *an emergency release in the car, which, when actuated by the operator, will permit the operation of the car independently of the locking device without effecting the locking of the doors.*"

Under Section 14 of the Act of June 2, 1913, P. L. 396, for the carrying into effect the provision of said Section of said Act that all rooms, buildings and places where labor is employed shall be so constructed,

equipped and operated as to safeguard the life, health and morals of those employed therein and the provisions of all the laws, whose enforcement is entrusted to or imposed upon the Commissioner or Department of Labor and Industry, the Industrial Board is given the power "to make, alter, amend, and repeal general rules and regulations necessary for applying such provisions to specific conditions, and to prescribe means, methods, and practices to carry into effect and enforce such provisions."

The law clothing the Industrial Board with the aforesaid authority should be given as liberal a construction as is possible consistent with the settled rules of statutory interpretation in order to effectuate the salutary ends sought in the creation of said Board and the vesting it with said power. I take it, however, that there will be no dissent from the statement that this Board has or can have no power to amend, alter or change any statute or provision thereof in any respect. That is a legislative power which the Legislature itself could not constitutionally delegate.

"The words 'legislative power' mean the power or authority, under the constitution or frame of government, to make, alter and repeal laws; 13 A. & E. Ency. L. 272. Under the constitution of this state this power is vested in, and must be exercised by, the legislative branch of the government; *Parker vs. The Commonwealth*, 6 Pa. 507. It is a power that cannot be delegated."

O'Neil vs. Insurance Co., 166 Pa. 72.

The said Act of 1895 makes it mandatory that all passenger elevators shall be equipped with an automatic locking device, electrical or mechanical, so as—

"to place the power of controlling the elevator beyond the control of the attendant while any gate, door or doors on the landing leading to the carriage is open and unsecured."

The Act makes no exceptions from its terms, but applies to "all elevators" used for the carriage of passengers. There can be no mistake or doubt as to the intent, force and effect of its provisions. As was said in *Westervelt vs. Dives*, 231 Pa. 548, they—

"require that all passenger elevators shall be equipped with an automatic device, that will hold immovable and secure the elevator carriage while the door at a landing is open. And it is further required that this device must work independently of the action of the attendant, so long as the door at the landing is open."

It will be noted that the above proposed Regulation of the Industrial Board would require in certain cases that—

“there shall be an emergency release in the car which, when actuated by the operator, will permit the operation of the car independently of the locking device without effecting the locking of the doors.”

As I understand this Rule, it would require the installation of a device which would put it within the power of the attendant of the car to do precisely what the said Act of 1895 says must be beyond his control. The requirement of the Rule would, therefore, conflict with the express requirement of the Act. In effect, such a rule would be altering, changing or amending a statute and thus be an exercise of a legislative function and consequently clearly transcend the rule-making power of the Industrial Board.

For the reasons above stated, I am of the opinion, and so advise you, that the Industrial Board has no power to make the aforesaid Rule or Regulation and that if adopted it would be invalid and unenforceable and relieve no one of the duty of complying with the said Act of 1895 as the same now stands.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

INCORPORATED NURSES ASSOCIATIONS.

The Department of Labor and Industry has no jurisdiction over such associations under the terms of the Act of June 7, 1915, P. L. 888.

Office of the Attorney General,
Harrisburg, Pa., February 27, 1918.

Mr. Lew R. Palmer, Acting Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: There was duly received your communication of the 22nd inst., to the Attorney General, requesting an opinion as to whether or not “Incorporated Nurses Associations are entirely exempted” from the jurisdiction of the Department of Labor and Industry “as regards employment regulation covered in Act No. 397, June 7, 1915” In reply thereto you are respectfully advised as follows:

The said Act of June 7, 1915, P. L. 888, regulating the business of employment agents, etc., by its second section, provides, inter alia, as follows:

*"Provided that no provision of any section of this Act shall be construed as applying to * * * registries of any incorporated association of nurses."*

The intent and effect of this proviso are, in my opinion, not open to doubt. It follows therefrom, and you are so advised, that Incorporated Nurses Associations are not subject to the said Act, and that the Department of Labor and Industry has no jurisdiction over such Associations by virtue of its provisions.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE INFORMATION ABOUT MUNICIPALITIES.

It is the duty of city and borough officials to furnish any information requested of them by the Bureau of Municipalities under the Department of Labor and Industry in accordance with the provisions of section three of the Act of June 1, 1915, P. L. 689, for which services they are entitled to no compensation, but that such duty is not imposed by said act upon any official other than those expressly designated in said section of said act.

Office of the Attorney General,
Harrisburg, Pa., April 1, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: There was duly received your communication to the Attorney General of the 15th ult., requesting an opinion as to the duty of certain officials to furnish information to the Bureau of Municipalities free of charge.

The Act of June 1, 1915, P. L. 689, authorized the Commissioner of Labor and Industry to establish a Division of Municipal Statistics and Information in the Bureau of Statistics and Information, in said Department of Labor and Industry. Sections 1 and 2 of said Act of 1915 were amended by that of July 19, 1917, P. L. 1111, whereby the said Commissioner was authorized to establish, in said Department, a Bureau of Municipalities and to employ a Chief of such

Bureau and such clerical and expert services as may be required to carry out the purposes of said Act, as the same are set forth and defined therein.

Pursuant to and consequent upon the amendments to said Act of 1915 by that of 1917, the said Division of Municipal Statistics and Information in the Bureau of Statistics and Information ceased to exist and there was created in its place, in said Department, an additional Bureau known as the Bureau of Municipalities.

The third Section of said Act of 1915 was not, however, amended and the same remains in its original form, reading as follows:

“It is hereby made the duty of every city or borough official to furnish such information as may be requested by the chief of the Bureau of Statistics and Information, or his duly authorized deputy.”

There were thus, by virtue of Section 3 of said Act of 1915, new duties imposed upon city and borough officials without any provision being made therein for any compensation for the services rendered. It is a familiar principle that new duties may be added to those which had previously attached to a public office, which the incumbent thereof must discharge without additional compensation so long as he holds the place. In *Mays vs. City of Oil City*, 35 P. L. J. 117, the following citation from *Dillon on Municipal Corporations*, Vol. 1, page 290, Section 172, was quoted with approval:

“It is a well settled rule that a person accepting a public office with a fixed salary is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of those duties, even though the salary may be a very inadequate compensation for the services. Nor does it alter the case that by subsequent statutes or ordinances his duties within the scope of the charter, pertaining to the office, are increased and not his salary.”

The above principle was followed by Deputy Attorney General Hargest in an opinion, under date of November 23, 1917, to the Governor, in passing upon the question whether a Recorder is entitled to a fee for filing the oath required to be taken by a volunteer policeman appointed under the Act of July 18, 1917, P. L. 1062, in which it was said:

“The legislature had the right to impose a duty on the Recorders of requiring these papers to be filed without exacting a fee therefor.”

From the foregoing, the conclusion is clear that the duty rests on city and borough officials throughout the Commonwealth to furnish

any information that may be duly required of them under and in accordance with the provisions of Section 3 of said Act of 1915, and that since the said Act makes no provision for any compensation to such officials for such additional service they are entitled to none therefor. The said provision of said Act is not, however, to be construed so as to extend, by implication, the aforesaid duty to officials other than those expressly designated therein, viz., "city or borough officials." It does not therefore apply to county or township officers, who consequently could not be compelled to render the said service without being paid therefor. It will no doubt be found that in the public interest these latter officials will commonly furnish the said Bureau of Municipalities with any desired information without charge, but, in my opinion, it cannot be exacted of them under said Act.

As above pointed out, while the said Bureau of Municipalities was erected in pursuance of the amendments made to the Act of 1915 by that of 1917, the third Section of the Act of 1915 was left intact. It is under this Section of said Act that the aforesaid duty is imposed upon city and borough officials. It will therefore be seen that the information which the said officials are required to furnish must be requested of them in the manner prescribed in said third Section of the Act. It designates the *Chief of the Bureau of Statistics* as the one to make such request. It is obvious enough that it was an oversight to fail to amend this Section of said Act by substituting therein the Chief of the Bureau of Municipalities for the Chief of the Bureau of Statistics and Information, so as to harmonize it with the preceding sections of the Act as amended. In order to comply strictly with the letter of the Act as it now stands, the request for information to borough and city officials must consequently still be made by the Chief of the Bureau of Statistics and Information. This would be a mere administrative detail of said Department as the information so gathered could readily be transmitted from one Bureau to the other.

You are therefore advised that it is the duty of city and borough officials to furnish any information requested of them in accordance with the provisions of Section 3 of said Act of 1915, for which services they are entitled to no compensation but that such duty is not imposed by said Act upon any official other than those expressly designated in said Section of said Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT OF MINORS.

A minor under fourteen years of age cannot be employed in a foundry in any capacity, and a minor under sixteen and eighteen cannot be so employed, if in proximity to dangerous machinery enumerated in the Acts of Assembly.

Office of the Attorney General,
Harrisburg, Pa., April, 11, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication to the Attorney General of the 2nd inst., requesting an opinion as to certain questions relative to the employment of minors in foundries. The only question submitted in your communication upon which the Attorney General can properly render an opinion is the one as to the legal age at which minors are permitted to work in such establishments. In reply thereto you are respectfully advised as follows:

Under Section 2 of the Act of June 13, 1915, P. L. 286, no minor under fourteen years of age can lawfully be employed in such an establishment in any way. Section 5 of said Act forbids the employment of minors under sixteen years of age in various industries and occupations therein specifically named, and in the operation of many kinds of machines therein enumerated and, for the purposes of the Act, classed as dangerous. It contains no specific inhibition against the employment of minors under said age in a foundry as such. It does, however, provide that no minor under that age shall "*be employed or permitted to work, in any capacity, in adjusting or assisting in adjusting any belt to any machinery, or in proximity to any hazardous or unguarded belts, machinery, or gearing, while the same is in motion.*" This provision applies to all establishments as that term is defined in Section 1 of the Act, and is consequently applicable to a foundry. It follows from the aforesaid that it would not only be unlawful for a minor under sixteen years of age to be employed or permitted to work in a foundry in operating or assisting in operating any machine whose operation is specifically forbidden by the Act to minors of that age, but that it would also be unlawful for such minor to be employed or permitted to work therein, in any way or in any capacity, if in the performance of his work or the discharge of his duty he would be brought or permitted to come into proximity with any hazardous or unguarded belt, machine or gearing while in motion.

Section 5 of said Act by the second paragraph thereof also forbids, inter alia, the employment of a minor under eighteen years of age "in the operation or management of hoisting machines, in oiling or

cleaning machinery, in motion; in the operation or use of any polishing or buffing wheel," which work a minor under said age could not therefore lawfully do in a foundry.

It is readily seen from the foregoing that whether any given case in the employment of a minor in a foundry constitutes a violation of any of the provisions of said Act depends upon its own facts and each must necessarily be adjudged in accordance therewith. The obvious purpose of said provisions is to safeguard minors against the perils of dangerous machinery or harmful occupations and, in order that it be not defeated, vigilant care should be exercised by the Inspectors of the Department of Labor and Industry to see, where any minor is employed in any establishment, that the character of the employment is not such as to offend against the spirit and intent of the Act.

Attention may also be called to the concluding paragraph of Section 5 of said Act, whereby the Industrial Board is vested with the authority to determine and declare other occupations to be unlawful for minors under eighteen years of age in addition to those mentioned in the Act. By virtue of that power, the said Board can, by appropriate action, determine and declare it to be unlawful for any minor under that age to be employed in a foundry.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE BOILER REGULATIONS.

It is within the scope of the power of the Industrial Board of the Department of Labor and Industry to prescribe enforceable rules and regulations concerning boilers used within the State of Pennsylvania.

A regulation of the Industrial Board is unenforceable which makes unlawful the mere act of bringing into this State of boilers that fail to conform to the boiler code adopted by said Board for the purpose of rebuilding them here and then re-shipping them to other States, in that it would conflict with inter-state commerce.

Office of the Attorney General,
Harrisburg, Pa., April 15, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication to the Attorney General of the 8th inst., requesting an opinion in interpretation of

the hereinafter quoted Regulation of the Industrial Board relative to the bringing into this State of boilers not built in accordance with the standard prescribed by the Boiler Code of said Board.

The Regulation of said Board in question reads as follows:

"That no boiler shall be admitted into Pennsylvania after January 1, 1918, which does not conform with the boiler standard of Pennsylvania."

It appears that a certain establishment proposes to purchase boilers in other states, ship them into Pennsylvania, rebuild them here, and then ship them to other states. The question submitted by you is whether this is permissible under the above mentioned Regulation.

Section 19 of the Factory Act of May 2, 1905, P. L. 352, provides, inter alia, that:

"All boilers used for generating steam or heat in any establishment shall be kept in good order, and the owner, agent, or lessee of such establishment shall have said boilers inspected by a casualty company in which said boilers are insured, or by any other competent person approved by the Chief Factory Inspector, once in twelve months, and shall file a certificate showing the result thereof, in the office of such establishment, and shall send a duplicate thereof to the Department of Factory Inspection,"

the said provision not applying to boilers "regularly inspected by competent inspectors, acting under local laws and ordinances."

By the Act of June 2, 1913, P. L. 396, the Department of Factory Inspection was abolished and the duties theretofore vested in it were vested in the Department of Labor and Industry, which was created by said Act. Said Act of 1913 established, in said Department of Labor and Industry, the Industrial Board. Section 14 thereof requires that all places where labor is employed shall be so equipped and operated as to afford reasonable and adequate protection for all persons employed therein, and for the purpose of carrying into effect this provision and those of all the laws with whose enforcement the Department of Labor and Industry is charged, the said Board is thereby clothed with the power to make rules and regulations "for applying such provisions to specific conditions, and to prescribe means, methods, and practices to carry into effect and enforce such provision."

The authority of the Industrial Board to make rules and regulations relative to boiler inspection arises from the foregoing and pursuant thereto it adopted a Boiler Code prescribing a standard of safety for boilers. It follows that in order to make more effective

the aforesaid provision of the said Act of 1905, and to promote conditions of safety in places where labor is employed in furtherance of the requirement of the said Act of 1913, it is well within the scope of the power of this Board to prescribe enforceable rules and regulations concerning boilers used in such place or establishment. The manifest purpose of boiler inspection is to guard against dangers incident to the use of defective boilers. The above mentioned Regulation, however, is so comprehensive and sweeping in its terms that it literally forbids the importation into this State of any boiler that falls short of the standard fixed by the said Code, regardless of the purpose for which it is brought here or the use to which it is to be put.

A boiler brought here from another state or country and used as such is, of course, subject to a Regulation of said Board in common with all others; it is then within the jurisdiction of the state's inspection laws, and its operation can be interdicted or prevented if it fails to measure up to the requirements of the Pennsylvania code. But it is clear that a Regulation of said Board is unenforceable which makes unlawful the mere act of bringing a boiler into this State which does not conform to the said standard. Aside from the question whether such a Regulation would not be an exercise of a legislative function and hence beyond the authority of said Board, it is manifestly invalid as an interference with the right of interstate commerce and in effect regulatory thereof. It falls within the rule that:

“* * * Whenever the law of the state amounts essentially to a regulation of the commerce with foreign nations or among states, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity or its disposition before it has ceased to become an article of trade between one state and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the general government and is therefore void.”
Leisy vs. Hardin, 135 U. S. 100.

In answer to the specific inquiry submitted in your communication and for the reasons above stated, you are therefore advised that the above Regulation of the Industrial Board cannot be enforced to prevent the bringing into this state of boilers that fail to conform to the boiler code adopted by said Board, for the purpose of rebuilding them here and then reshipping them to other states.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT AGENCIES.

The Commissioner of Labor and Industry has power to make a rule limiting employment agencies in carrying on their business for profit to the locations for which they have been licensed; a rule forbidding "labor scouting," a practice consisting of inducing employes to leave one employer for another would be valid.

An employment agent found guilty of such a practice should have his license revoked.

Office of the Attorney General,
Harrisburg, Pa., May 23, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 6th inst., to the Attorney General, requesting an opinion as to whether the Department of Labor and Industry has the power to make a rule limiting "employment agents in carrying on their business for profit to the location for which they have been licensed."

As appears from your communication and that of the Director of the Bureau of Employment to you, a copy of which accompanies yours, it is alleged that there are employment agents who "have in their employ what they term labor runners," who, as I understand, in order to secure employes for one employer induce those of another to leave the latter's employment for that of the former. It is further represented that there are many complaints against this practice. The aforesaid proposed rule is sought by your Department to break up this practice known as "labor scouting."

The Act of June 7, 1915, P. L. 888, regulating the business of employment agents, makes it unlawful for any person to engage in the business of an employment agent for profit unless first licensed to conduct same in accordance therewith, excepting those classes exempted from the provisions of the Act by virtue of the proviso contained in Section 2. The Act vests the Commissioner of Labor and Industry with extensive powers and duties relative to the licensing and supervision of employment agents. He is given authority to refuse a license if he finds the applicant therefor unfit or that the business is to be conducted at unsuitable premises, to revoke a license if he finds the holder thereof guilty of a violation of the Act or the rules made thereunder, to approve the form of the contract used by agents and the schedule of fees charged by them, and to enter any office or place of business of any agent.

While the Act does not expressly provide that the license shall be issued for a specific place, the intent is fairly to be implied that the licensee shall have a certain definite, and fixed place where his business is to be carried on. Under Section 6, as above noted, a license

is not to be allowed if the "*business is to be conducted on or immediately adjoining unsuitable premises.*" It follows from this provision that the place where an employment agent intends to carry on his business is an essential matter to be taken into consideration when the license is granted, and consequently to be kept steadily within the view of the Commissioner of Labor and Industry throughout the life of the license. It is of the essence of the right to have and enjoy a license. Under Section 14 it is required that every agent shall keep posted his license and other specified information "in his office or place of business." From the foregoing, it is manifest that an employment agent's license should designate the place where the business is to be conducted, and I understand that the form of application therefor, as used, sets forth such fact as does the accompanying bond, and that the license is issued in accordance therewith. This is unquestionably the proper procedure to follow.

The Act contemplates that employment agents shall be subject to the supervision of the Commissioner of Labor and Industry. Supervision is one of its purposes. To effectuate this it is provided in Section 8 as follows:

"The commissioner shall prescribe such rules and regulations as may be necessary for the supervision of employment agents."

Pursuant to this provision, the Commissioner is clothed with plenary power to make any rule or regulation necessary to secure due and proper supervision of every agent licensed under the Act. This authority is commensurate with whatever is needful to effect the end in view. It is obvious that there can be no effective supervision of an agent where his sub-agents or representatives are scattered at large through out the Commonwealth soliciting or otherwise conducting business for him at various points. The business methods of an agency so operated could not be kept within the scrutiny and inspection of the Commissioner. As above pointed out, the place where the business is carried on is of the essence of the right to a license, and this applies to the conduct and operation of the business as a whole and not merely to where some central office may be located. In whatever respect it may be necessary to limit the activities of employment agents to the place for which they are licensed, in order to have due and effective supervision of them, then to that extent the Commissioner may make valid rules or regulations relative thereto. The rule must, of course, be reasonable and one necessary for supervisory purposes. I am clearly of the opinion, however, that a regulation which would forbid agents from sending sub-agents or representatives out to solicit or carry on business for the agency at points

beyond the place for which the license is issued, would be a reasonable and lawful exercise of the power vested in the Commissioner under Section 8 of the Act.

The purpose of the above statute was to eliminate wrongful practices by employment agents and to keep the business in fit hands and at fit places. It requires no comment to show the mischievous nature of a practice whereby an employment agent, or his representative, would solicit or influence the employes of one establishment to leave it for that of another. This would be exploitation of labor for the profit of the agent. The proper function of an agent is to bring together an employe needing an employer, and an employer needing an employe, but not to entice those already employed to find employment elsewhere through the medium of the agency. Where this is done through the voluntary action of the employed it is a matter outside the jurisdiction of the Employment Bureau, but the State cannot stand by and permit its licensed agents to engage in such work, much less to permit them to have sub-agents or "runners" roaming the State on such an errand. Especially at this time, when conditions are so profoundly affected by the war and when the uninterrupted operation of certain industries is so vital to the public welfare, the State and its officials should be vigilant to see that nothing be permitted which tends to cripple our industries or harm labor and render it inefficient.

In accordance with the foregoing, I am of the opinion that the Commissioner of Labor and Industry has the power to make rules and regulations restricting licensed employment agents to doing business as such agent to the place for which they are licensed, to whatever extent such regulation may be necessary in order to have due and adequate supervision over the agents and their method of doing business, and that a rule forbidding the sending out of sub-agents or representatives beyond that place to solicit or otherwise carry on business for the agency would be a valid one. You are further advised that if any agent is found guilty of enticing, either by himself or those acting for him, employes to leave one employer for another, his license should be revoked.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

CHILD LABOR LAWS.

The Child Labor Law of May 13, 1915, P. L. 286, repeals the Act of April 29, 1909, P. L. 283, and its amendments of June 9, 1911, P. L. 282, and July 19, 1913, P. L. 862; hence, minors under eighteen years of age may be employed in quarries, an employment which is not specifically forbidden to minors of that age under the later act.

Office of the Attorney General,
Harrisburg, Pa., May 23, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 11th inst., to the Attorney General, asking to be advised whether the Child Labor Act of May 13, 1915, P. L. 286, repeals the Child Labor Law of April 29, 1909, P. L. 283, as amended in Section 2 thereof by the Act of June 9, 1911, P. L. 832, and by the Act of July 19, 1913, P. L. 862.

It appears that the question arises from the provision in said former Act, as amended, which forbids the employment of a minor under eighteen years of age "in quarries," and which employment is not specifically forbidden to a minor of said age under the said latter Act.

The Child Labor Law of 1915 constitutes a complete and comprehensive system regulating the employment of minors in this Commonwealth. It specifies, in detail, employments forbidden to minors of various ages and the hours of permissible employment, requires employment certificates in certain cases and provides when the same are allowable and the method of their issuance. It was a remodeling of all our Child Labor Laws. The Act repeals all acts or parts of acts inconsistent therewith, but does not contain any express repeal of any former statute.

While repeals by implication are not favored, yet it is likewise a familiar principle that a subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, although it contains no express words to that effect, operates to repeal the former.

Endlich on Interpretation of Statutes, Sections 200-208.
Bartlett vs. King, 12 Mass. 541.
Johnston's Estate, 33 Pa. 511.

In *Emsworth Borough, 5 Super. Ct. 29*, the Court, speaking through President Judge Rice, stated the rule as follows:

"The question of the repeal of statutes by implication is one of legislative intention, and all rules of construc-

tion have in view with ascertainment of that intention. One of the rules upon the subject is that a subsequent statute revising the whole subject matter of a former statute and evidently intended as a substitute for it, although it contains no express words to that effect, operates to repeal the former."

Of like import was the decision reached in the case of *Commonwealth vs. Mann*, 168 Pa. 290, wherein it was said:

"But if a statute embrace the essential provisions of an antecedent one on the same subject, and formulate a new system, the intention that the new shall be a substitute for the old is manifest, although there be no expressed intention to that effect."

Applying the principle laid down in the foregoing cases, the conclusion follows that the Act of 1915 repealed that of 1909. The latter act supplies the former one, covers its entire subject matter and provides a new rule relative to the employment of minors. For example, in regard to the particular question out of which this inquiry arose, namely, the employment of minors under eighteen years of age, it will be noted that various employments were forbidden to such minors by the Act of 1909, pursuant to Section 2 thereof. It will further be noted that the Act of 1915, by the second paragraph of Section 5, makes unlawful certain employments for minors under that age. A comparison of these respective provisions of the two Acts shows that the later one is in large measure precisely the same as that of the earlier, couched in the same language and enumerates, with but few changes, the same occupations.

There could have been no purpose for the Act of 1915, forbidding certain employments to minors of a given age which were already unlawful for them under the existing law, unless it had been intended that the later enactment was to constitute a new rule on the subject, and hence to supply and supplant the earlier statute. We must presume that the Legislature did not intend that there should be in force at the same time two distinct acts covering the same subject matter, for that would not merely be idle and useless, but misleading. The Act of 1915 manifestly was intended to be a general and complete revision of, and stand as a substitute for, the old law upon the subject of child labor.

In accordance with the foregoing, you are therefore advised that the said Act of 1909 was repealed by the said Act of 1915, the provisions of which now govern in the matter of the employment of minors.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

STATE WORKMEN'S INSURANCE FUND.

The appropriation to this Bureau does not lapse, but is available until consumed.

Office of the Attorney General,
Harrisburg, Pa., June 7, 1917.

Honorable H. M. Kephart, Chairman State Workmen's Insurance Fund, Harrisburg, Pa.

Sir: Your favor of June 26th, addressed to the Attorney General, is at hand. You ask to be advised whether the appropriation of \$300,000 made by the last Legislature to the State Workmen's Insurance Fund, merged on June 1st of this year.

Generally speaking, appropriations made under the language of the General Appropriation Acts, which, in terms, specify that the various amounts appropriated are for two fiscal years, lapse at the expiration of the two fiscal years, but the appropriation to which you refer was made by the Act of June 2, 1915, P. L. 762, which is entitled

"An Act providing for the creation and administration of a State Fund for the insurance of compensation for injuries to employes of subscribers thereto," etc.

Section 28 provides that

"The sum of three hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated for the expenses of the organization and administration of the said Fund."

There is nothing in this Act of Assembly that indicates that this appropriation should lapse at any time. It is an appropriation for the administration of the Workmen's Insurance Fund.

I am, therefore, of opinion that the appropriation does not lapse, but is available until it is consumed.

Very truly yours,

WILLIAM M. HARGEST.
Deputy Attorney General.

STATE WORKMEN'S INSURANCE FUND.

After January 1, 1918, if the appropriation made by Section 21 of the Act 1915 is exhausted, the expenses of the administration of the fund may be paid out of premiums paid in by subscribers until July 1, 1919. After July 1, 1919, all expenses must be paid from premiums.

Office of the Attorney General,
Harrisburg, Pa., August 5, 1918.

Honorable William J. Roney, Manager State Workmen's Insurance Fund, Harrisburg, Pa.

Dear Sir: We have your favor asking to be advised whether the moneys received from premiums since January 1, 1918, may be in part used for the expenses of the administration of the State Workmen's Insurance Fund.

I see no difficulty in the phraseology of the Act of July 20, 1917, P. L. 1139, amending the Act of June 2, 1915, creating the State Workmen's Insurance Fund.

Section 1 of the Act of 1917, amends Section 8 of the Act of 1915, so as to read as follows:

"The expenses of the organization and administration of the Fund shall, until the first day of July, one thousand nine hundred and nineteen, be paid out of the money appropriated by Section 28 of this Act, and out of such money, part in premiums by subscribers, as is made available for the expenses of the administration of the Fund by Section 11 of this Act.

Expenses of the administration of the Fund shall, after the first day of July, one thousand nine hundred and nineteen, be paid out of such money, part in premiums by subscribers, as is made available for the expenses of the administration of the Fund by Section 11 of this Act."

Section 2 of the Act of 1917 amends Section 11 of the Act of 1915, and provides, in part:

"The money paid in premiums by subscribers is hereby made available for the expenses of administering the Fund. The Board shall keep an accurate account of the money paid in premiums by the subscribers, and the disbursement on account of injury to the employes, and on account of administering the Fund."

The Section then provides for the distribution of the balance.

Section 4 of the Act of 1917 which is a new section, provides as follows:

"The provisions of sections 1 and 2 of this Act shall become effective on the first day of January, one thousand nine hundred and eighteen."

Section 28 of the original Act of 1915 appropriated the sum of \$300,000 "for the expenses of the organization and administration of the said Fund.

It is, therefore, apparent that after the first day of January, 1918, if the appropriation made by Section 21 of the Act of 1915 is exhausted, the expenses of the administration of the Fund may be paid out of premiums paid in by subscribers until the first day of July, 1919. When that time arrives, even though the appropriation made by Section 28 of the original Act has not been exhausted, all of the expenses of the administration of the Fund must nevertheless be paid out of the premiums paid in by subscribers. In other words, the appropriation made by the Act of 1915 must first be used, and, if necessary, the money paid in, in premiums, may also be used for the expenses of the administration of the Fund, until the first day of July, 1919, when the Fund must be entirely administered out of the money paid in, in premiums.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE Y. M. C. A. WAR SERVICE.

The Young Men's Christian Association is not a branch of either the military or naval service of the United States Government so that a State employe who enters the service of the association is not within the provisions of the Act of June 7, 1917, P. L. 600, and his dependents are not entitled to half pay during such service.

Office of the Attorney General,
Harrisburg, Pa., August 5, 1918.

Honorable William J. Roney, Manager State Workmen's Insurance Fund, Harrisburg, Pa.

Dear Sir: Your favor of the 23rd ult., addressed to the Attorney General, is at hand. You ask to be advised whether one of the employes of the State Workmen's Insurance Fund who has gone to

France to act as an agent of the Young Men's Christian Association is within the purview of the Act of June 7, 1917, P. L. 600.

This Act provides:

"That whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau, commission, or office thereof, * * * shall in time of war or contemplated war enlist, enroll, or be drafted in the *military or naval service of the United States, or any branch or unit thereof*, he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment."

and under certain conditions his salary or a part thereof may be paid to his dependents.

This Act of Assembly plainly comprehends only those who enter the military or naval service of the United States. The Young Men's Christian Association is not a branch of either the military or naval service. It is a voluntary association doing creditable and commendable work in connection with the military service, but can not be classed as a part of such service and therefore is not within the terms of this statute.

For these reasons I advise you that an employe of the State Workmen's Insurance Fund who has gone to France as an agent for the Young Men's Christian Association is not entitled to the benefits of this statute.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

BOILER INSPECTION ON COAL DREDGES.

A coal dredge operated on navigable rivers and propelled by steam, is a steam vessel and is subject to Federal and not State inspection.

Office of the Attorney General,
Harrisburg, Pa., August 5, 1918.

Mr. Lew R. Palmer, Acting Commissioner, Department of Labor and Industry, Harrisburg, Pa.

Sir: In a communication, to the Attorney General, you request an opinion as to whether the boilers on coal dredges in the streams of Pennsylvania are subject to State Boiler Inspection as "being establishments," or to Federal Inspection.

Section 19 of the Act of May 2, 1905, P. L. 352, vested the Department of Factory Inspection with the power and duty to enforce boiler inspection in all "establishments," as that term is defined in Section 1 of said Act, the term "establishment" as used therein being made to include all places in this Commonwealth where labor is employed other than "domestic, coal mining or farm labor."

The Act of April 15, 1903, P. L. 201, provides for the inspection of vessels on the "inland lakes" of the States, "excepting vessels which are subject to inspection under the laws of the United States," and charged the enforcement of its provisions upon the Department of Factory Inspection.

By the Act of June 2, 1913, P. L. 396, the powers and duties theretofore vested in the Department of Factory Inspection were vested in the Department of Labor and Industry. This latter Act also created the Industrial Board, which, pursuant to the powers given it, has promulgated a boiler code. The powers and duties of the Department of Labor and Industry in the matter of boiler inspection arise from the foregoing.

If the coal dredges, referred to in your communication, are subject to Federal Inspection, then it is needless to inquire further as to whether they are "establishments" within the intent of the Act of 1905 and subject to the boiler inspection therein prescribed. The question as to whether they are subject to Federal Inspection is to be therefore first considered.

While it is not stated in your communication exactly upon what streams the coal dredges referred to are operated, I understand and presume that it is upon the Susquehanna and other navigable rivers of the Commonwealth.

There are many cases to the effect that these fresh water rivers of the Commonwealth, within the meaning of the law, are navigable streams and public highways of commerce, among which may be cited

The Barclay R. R. and Coal Co. vs. Ingham, 36 Pa. 194,
Flannigan vs. City of Philadelphia, 42 Pa. 219,
McKean vs. Delaware Canal Co., 49 Pa. 429,
Wainwright vs. McCullough, 63 Pa. 66.

Being navigable rivers the navigation thereon is subject to Federal control and regulation.

"The power to regulate commerce comprehends the control, for that purpose and to the extent necessary, of all the navigable waters of the United States which are accessible from a state other than those in which they lie. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress."

Gilman vs. Philadelphia, 3 Wallace 724.

In *Flannigan vs. City*, above cited, the Supreme Court of Pennsylvania, in holding the Schuylkill River to be a navigable stream, said:

"The power to regulate commerce with foreign nations, and among the several states,, was held by the Supreme Court of the United States, in *Gibbons vs. Ogden*, 9 Wharton 1, to include the power to regulate navigation, a power which does not stop at the external boundary of the State, but may be introduced into the interior."

Pursuant to its power to regulate navigation, the Federal Government has provided a system of inspection, including boiler inspection, of steam vessels navigating the waters of the United States.

Section 4399 of the Revised Statutes of the United States provides that every vessel is to be deemed a "steam vessel" within the meaning of that title, which is "propelled in whole or in part by steam."

Section 4400 of said Statutes extends such inspection to

"All steam vessels navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this title."

It is readily seen that this provision is sufficiently broad to embrace all steam vessels navigating the navigable rivers of Pennsylvania. That a coal dredge propelled by steam is a "steam vessel," within the intent of the Federal Law, is scarcely open to doubt.

In the case of *The Alligator*, 161 *Federal Reporter*, 37, the United States Circuit Court of Appeals, speaking through Judge Gray, said:

"It may be conceded at once that the dredges are to be considered in admiralty as 'vessels,' and as such, subject to the general maritime jurisdiction."

In the case of *Charles Barnes Co. vs. One Dredge Boat*, 169 *Federal Reporter* 895, the United States District Court discusses very fully the question as to whether a dredge is a vessel, saying, in the course of the opinion:

"It has therefore been held in a number of cases that a steam dredge is a vessel,"

and cites numerous cases in support of that conclusion.

In the case of the *Oyster Police Steamers of Maryland*, 31 *Federal Reporter* 763, the District Court of the United States, in holding that

a police boat of the State of Maryland was subject to the inspection provided by the aforesaid Revised Statutes of the United States, said, in part, as follows:

"It is apparent that the existing legislation of Congress, with regard to steam vessels, proceeds upon the the assumption that it possesses full power to regulate all vessels navigating public waters of the United States, whether they are engaged in commerce or not. * * * And it also is apparent that Congress proceeds upon the theory that proper regulation requires that all vessels in those waters shall be subject to one uniform system. * * * It is quite obvious that this supreme and exclusive control of the navigable waters might be defeated, or rendered less effective for its objects, if there were to be recognized a class of vessels privileged to use them, without being subject to those provisions which Congress determines are required for the safety of all. * * * It is not their use, but the fact that they navigate the highways of commerce, which brings them within the constitutional grant of power, and within the language of Section 4400 of the Act of Congress."

From the foregoing, I am of the opinion that the conclusion clearly follows that a coal dredge operated on the navigable rivers of the State and propelled in whole or in part by steam is to be deemed a "steam vessel," within the purview of the Federal Statutes relative to steam vessels, and hence subject to the inspection thereby provided and consequently that the inspection of these boilers is outside the scope of the authority of the State Department of Labor and Industry. The status of these steam coal dredges is that of other steam vessels navigating these waters.

I understand that the conclusion here reached is in harmony with the practice heretofore followed by the Department of Labor and Industry, which has never exercised any inspection of boilers on these coal dredges. It may also be noted that the above mentioned Act of 1903, requiring inspection of vessels on the inland lakes of the State, may fairly be construed as a Legislative recognition that the State has no jurisdiction in the matter of inspection as to vessels generally within the Commonwealth or those navigating her rivers which are public highways of commerce. The opinion applies only to steam dredges operating on navigable streams.

Inasmuch, however, as the purpose of boiler inspection is to promote safety, it is respectfully urged that the Department of Labor and Industry should lend any reasonable assistance possible to the Federal authorities to secure due inspection of these coal dredges

and to bring to the attention of these authorities any such dredges of which it may have knowledge which are now escaping such inspection.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT CERTIFICATES.

A medical inspector cannot be required to accept the certificate of an osteopathic physician that a child's vision has been corrected by glasses without the use of drops or drugs, under the 14th section of the Act of May 13, 1915, P. L. 286, for the purpose of issuing a certificate as to the physical fitness of such child for employment.

Office of the Attorney General,
Harrisburg, Pa., August 28, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 15th inst., enclosing file of correspondence with Dr. John A. Presper and inquiring whether school medical inspectors can be required to accept the certificate issued by an osteopathic physician that a child's eyes have been corrected as to defective vision without the use of drops.

I presume the certificate to which you refer is in connection with the certificate of physical fitness required by the Act of May 13, P. L. 1915, P. L. 286, before an employment certificate can be issued to a minor under sixteen years of age.

Section 14 of that Act provides:

"The certificate of physical fitness required by this act shall be signed by a physician, approved by the board of school directors of the school district in which said minor resides, and shall state that the said minor has been thoroughly examined by the said physician at the time of the application for an employment certificate, and is physically qualified for the employment specified in the statement of the prospective employer."

I gather from the correspondence submitted with your letter that the physician or medical inspector, whose certificate as to physical fitness was asked, required that he be furnished with a certificate

from a duly qualified physician, after an examination with drops, stating that the best correction possible of the defective vision had been obtained.

You are advised that he was entirely within his rights in requiring such a certificate before issuing a certificate of physical fitness. The law will not coerce a physician or medical inspector by compelling him to accept the result of an examination without drops if, in his judgment, such drops are necessary to get an accurate estimate of the refraction of a child's eye.

One phase of this question was considered by Deputy Attorney General Collins in an opinion of this Department, rendered on October 31, 1917, to the Secretary of the Board of Optometrical Education, Examination and Licensure, construing the Act of March 30, 1917, P. L. 21, relating to the right to practice optometry and providing a Board of Optometrical Education, Examination and Licensure. In that Act the practice of optometry was defined to be "the employment of any means, other than the use of drugs, for the measurement of the powers of vision and the adaptation of lenses for the correction and aid of the vision of human beings." In his opinion Mr. Collins pointed out that the excepting clause contained in Section 12—"The provisions of this act shall not apply to the physicians or surgeons practicing under authority of license issued, under the laws of this Commonwealth, for the practice of medicine or surgery"—did not include osteopathic physicians and that osteopathic physicians desiring to measure the power of vision and the adaptation of lenses for the correction and aid of the vision of human beings by means other than drugs would have to secure licenses from the Board of Optometrical Education, Examination and Licensure.

As construed by Mr. Collins, and I am in entire accord with his views, the law as at present existing contemplates two methods of treating the eye for defects of vision and the adaptation of lenses for the correction and aid of such vision; the one with the use of drops or drugs—this can only be administered or done by a physician or surgeon duly licensed by the Bureau of Medical Education and Licensure; the other without the use of drops or drugs—this method can be employed by such physician or surgeon and also by an optometrist, duly licensed by the State Board of Optometrical Education, examination and Licensure. The physician or surgeon duly licensed by the Bureau of Medical Education and Licensure may use both methods, the optometrist only the method without drugs.

An osteopath who has not been licensed by the Bureau of Medical Education and Licensure is within the terms of the Optometrical Act

and must be licensed by the Board of Optometrical Education, Examination and Licensure, and may not use drops or drugs in connection with such work.

You are advised accordingly that a medical inspector cannot be *required* to accept the certificate of an osteopathic physician that a child's vision has been corrected by glasses without the use of drops or drugs, for the purpose of issuing a certificate as to the physical fitness for employment of such child.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE WORKMEN'S INSURANCE FUND.

The expense of the fund, paid from premiums, need not be accounted for to the Auditor General. The premiums are not "State funds."

Office of the Attorney General,
Harrisburg, Pa., September 24, 1918.

Mr. William J. Roney, Manager State Workmen's Insurance Fund,
Harrisburg, Pa.

Sir: There was duly received your communication of the 3rd inst., requesting to be advised as to whether an account of the expenses of the administration of the State Workmen's Insurance Fund, paid from the premiums received from the subscribers to said Fund, will be required to be rendered to the Auditor General, an account being now furnished to the Auditor General as to the disbursements for such expenses paid out of the appropriation which the Legislature made therefor.

The Act of June 2, 1915, P. L. 762, being one of the series of statutes establishing the Pennsylvania system of Workmen's Compensation, provides for the creation and administration of a State Workmen's Insurance Fund for the insurance of compensation to the employees of the subscribers to said Fund. Sections 8, 11 and 26 thereof were amended by the Act of July 20, 1917, P. L. 1139, which amendments are now, by virtue of Section 4 of said Act of 1917, all in force. Pursuant to Section 8 of the Act of 1915 as it originally stood, the expenses of the organization and administration of said Fund until

July 1, 1919, were to be borne and paid out of an appropriation of three hundred thousand dollars (\$300,000.00) made for that purpose by Section 28 of the Act. The State thereby provided the means to organize and administer the Fund until it would attain a condition of self-support. Experience evidently demonstrated that such time would be a briefer period than had been anticipated, and accordingly Section 8 of the Act was amended by said Act of 1917 so as to read as follows:

"The expenses of the organization and administration of the Fund shall, until the first day of July, one thousand nine hundred and nineteen, be paid out of the money appropriated by section twenty-eight of this act, and out of such money, paid in premiums by subscribers, as is made available for the expenses of the administration of the Fund by section eleven of this act."

It follows from this provision that the money received as premiums from the subscribers to said Fund is now at any time usable to defray the expenses of the administration of the Fund whenever there is any money from that source so available in accordance with the provisions of Section 11 of the Act as amended, as aforesaid, which reads in part as follows:

"The money paid in premiums by subscribers is hereby made available for the expenses of administering the Fund. The Board shall keep an accurate account of the money paid in premiums by the subscribers, and the disbursements on account of injuries to the employes thereof, and on account of administering the Fund."

Section 4 of the Act makes the State Treasurer "the custodian of the Fund," and provides, inter alia, that

"all disbursements therefrom shall be paid by him, upon vouchers authorized by the Board and signed by any two members thereof, except as hereinafter provided in sections twenty-two and twenty-three."

There is nothing in sections twenty-two and twenty-three relating to disbursements for administration purposes. Section 24, however, provides in part as follows:

"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 aforesaid,"

the subsequent portion of Section 24 relating to payments for compensation under the Workmen's Compensation Act.

The question submitted in your communication is in effect ruled and governed by an opinion of this Department as rendered by Deputy Attorney General Hargest to the State Treasurer, under date of December 9, 1915, and contained in the Report and Official Opinions of the Attorney General, 1915-1916, page 189. It was there held that the moneys paid into the State Workmen's Insurance Fund by the subscribers thereto are not State funds and that warrants issued thereon need not be countersigned by the Auditor General. In the course of the opinion it was said:

"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. * * * *

"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."

The ruling in the above quoted opinion applies to disbursements from the Fund for expenses incident to its administration as well as to those made for other purposes. In respect of the matter here under consideration, there is nothing in principle to distinguish or in the terms of said Statute to differentiate the method required in a payment from the Fund for the expenses of its administration from that required in other disbursements therefrom. There is a clear distinction between the money which the Legislature appropriated for the organization and initial administration of the Fund, and that coming to it from its subscribers. The former was the money of the State, given by the State, for the successful establishment on a self supporting basis of an instrumentality created by it to carry out its policy and system of Workmen's Compensation. Disbursements from that appropriation were and are plainly and

properly within the scope of the jurisdiction of the Auditor General, but such is not the case as to the money arising from the premiums paid by the subscribers to the Fund.

As held in the above cited opinion of Deputy Attorney General Hargest, the moneys coming into the fund from the subscribers thereto are not State funds, and the Act of 1915 provides "an exclusive scheme or system in itself for the payment of the moneys out of the Fund." It prescribes a full method for the disposal of the whole Fund, and there is no requirement in any disbursement therefrom, in any case or for any purpose, beyond or other than the requirements specified in said Act which should be strictly followed.

Very respectfully yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT OF MINORS.

Under the Child Labor Law of May 13, 1915, P. L. 286, boys under fourteen years of age may not be employed to distribute merchandise on the streets or other public places.

Section 7 of the act is not a proviso to section 2, nor can it be construed as being intended as such in its nature so as to effect an exception from the general inhibition of section 2 against the employment of minors under fourteen years of age.

Office of the Attorney General,
Harrisburg, Pa., September 24, 1918.

Honorable Lew R. Palmer, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 3rd inst., requesting an opinion as to whether a male minor over 12 years of age may lawfully "be employed to distribute merchandise" pursuant to the provisions of Section 7 of the Act of May 13, 1915, P. L. 286, known as the Child Labor Law.

In reply thereto you are respectfully advised as follows:

Section 2 of said Act reads as follows:

"No minor under fourteen years of age shall be employed or permitted to work in, about, or in connection with, any establishment or in any occupation."

Subsequent sections of the Act further regulate and limit the right to employ minors, prescribing the hours and other conditions of their lawful employment. Section 5 enumerates various occupations forbidden to minors under 16 and 18 years of age respectively, and to minors of any age. Section 6 forbids the employment of any minor at certain work during certain prescribed hours. Section 7 provides as follows:

“No male minor under twelve years of age, and no female minor, shall distribute, sell, expose, or offer for sale any newspaper, magazine, periodical, or other publication, or any article of merchandise of any sort, in any street or public place. No male minor under fourteen years of age, and no female minor, shall be suffered, employed, or permitted to work at any time as a scavenger, bootblack, or, in any other trade or occupation performed in any street or public place. No male minor under sixteen years of age, and no female minor, shall engage in any occupation mentioned in this section before six o'clock in the morning, or after eight o'clock in the evening, of any day.”

The inquiry submitted by you turns upon the question whether it was intended by Section 7 that any occupation therein named is, by virtue of its provisions, to be deemed as an exception from the provision of Section 2 which interdicts the employment of minors under fourteen years of age in “any establishment or in any occupation.” A careful reading of the whole Act leads to the conclusion that such is not its true construction. Section 2 inhibits the *employment* of minors under fourteen years of age. The purpose of Section 7 is to prevent male minors under the ages therein mentioned, and all female minors, from working *in any way* on the streets or in other like public places at the occupations therein named. It is a matter of common knowledge and every day observation, that boys ply certain street trades on their own account, working for themselves and in the employ of no one. The object of Section 7 is to regulate that type and class of labor, and to safeguard male minors of tender years and all female minors against the perils that may attend it, by prescribing the minimum permissible age of male minors engaging therein and prohibiting female minors therefrom entirely. As pointed out in an opinion of this Department to the Director of Industrial Education, under date of January 3, 1916, the duty of enforcing this provision of the Act addresses itself strongly to the several municipal authorities of the State.

It would place a peculiar and unreasonable interpretation on the Act to hold that it would be unlawful for a storekeeper to employ a male minor under fourteen years to sell or otherwise handle merchandise in his store, which it would unquestionably be, but that it

would be, by virtue of Section 7, lawful for him to send such boy *out on the street* to sell or distribute it. It may also be noted that the Act requires employment certificates only in the case of the employment of minors between fourteen and sixteen years of age, as appears from the provisions of Section 11, and hence to hold that a minor under fourteen may lawfully be employed to distribute merchandise on the street would present the further anomaly that during his employment thereat between the ages of twelve and fourteen years no such certificate is requirable, but that on his attaining the age of fourteen one would become necessary.

Section 7 of the said Act is not in form a proviso to Section 2, nor can it be construed as being intended as such in its nature, so as to effect an exception from the general inhibition of Section 2 against the employment of minors under fourteen years of age. You are therefore advised that it would not be lawful under said Act to employ a male minor under fourteen years of age to distribute merchandise on the streets or other public places.

Very respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE STATE INSURANCE.

The State Workmen's Insurance Fund should carry with insurance companies its own insurance on its office furniture and other equipment against loss by fire, the cost thereof to be paid out of and charged to the expenses of the fund's administration. Under the Act of July 20, 1917, P. L. 1139, it is clearly intended that the compensation bureau shall be administered without liability on the part of the State, and in case of loss there could be no recovery from the State Fire Insurance Fund.

Office of the Attorney General,
Harrisburg, Pa., October 23, 1918.

Mr. W. J. Roney, Manager State Workmen's Insurance Fund, Harrisburg, Pa.

Sir: There was duly received your communication of the 15th inst., to the Attorney General, asking to be advised whether the State Workmen's Insurance Fund should carry its own insurance, with Insurance Companies, against loss by fire on its "office paraphernalia, such as desks, files, etc." in its main office at Harrisburg and in various branch offices throughout the State.

It appears that heretofore no such insurance has been carried, insurance against such loss having been deemed to be covered by the State Fire Insurance Fund.

The Act of May 14, 1918, P. L. 524, created a State Fire Insurance 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," and provides, where any loss occurs to such property by fire or other casualty, that the cost of the restoration or replacement thereof shall be paid out of said fund in the manner therein prescribed. In brief, it establishes a comprehensive system whereby the State insures its own property against fire and other casualty and excludes other such insurance thereon.

The Act of June 2, 1915, P. L. 762, creating the State Workmen's Insurance Fund, and therein called the Fund, by Section 8 provided that the expenses of its organization and administration until July 1, 1919, should be paid out of an appropriation of \$300,000 made by the Act for those purposes. This was amended by the Act of July 20, 1917, P. L. 1139, to the effect that such expenses may be paid out of the receipts from the subscribers to the Fund, after January 1, 1918, whenever thereafter there are sufficient funds from such source available therefor. It will thus be seen that the Act originally contemplated that the Fund must be self supporting after July 1, 1919, while, as amended, it provides that it might become so prior thereto after January 1, 1918. It may be noted that an additional appropriation of \$200,000 was made to the said State Workmen's Insurance Fund for the administration thereof by the Act of July 25, 1917 (Appropriation Acts of 1917, P. 193). I am not advised, and it does not seem material to the question here under consideration, whether any part of said appropriations now remains unused, and the Fund becomes wholly dependent upon its own resources. As noted above, it is clearly intended that it shall ultimately support itself. In Section 3, it is provided, *inter alia*, that it "shall be administered by the Board *without liability on the part of the State*, except as hereinafter provided, beyond the amount thereof, and shall be applied to the payment of such compensation."

It was ruled by this Department in an opinion of Deputy Attorney General Hargest to the State Treasurer, dated December 9, 1915, that—"No part of the Fund belongs to the State." Report of the Attorney General, 1915-1916, page 189. This ruling was followed in principle by the opinion of this Department rendered by the writer hereof, to you, under date of September 24, 1918, relative to disbursements from the Fund for administrative expenses. Since the Fund is not State money, the conclusion follows that any office furniture or other equipment purchased therefrom, and used in the administration thereof, would not be the property of the State, but that of the Fund. I take it that this is likewise true of any such equipment purchased from the aforesaid appropriations. That was

a gift of the State to the Fund, without provision for its return, for the purpose of promoting the State's plan of Workmen's Compensation. It rests with the Fund to supply, replace and maintain whatever furniture or other office equipment it may require in its administration, being a part of the expenses thereof. It can not look to the State therefor beyond that provided out of said appropriations. It follows that the restoration or replacement of such equipment in case of loss; or damage thereto by fire is not a burden imposed upon the Commonwealth, nor could the cost thereof in such case be lawfully paid from the State Fire Insurance Fund whose coverage is strictly limited to State owned property. Furthermore, to hold otherwise would be to subject the State to a liability on account of said State Workmen's Insurance Fund beyond that expressly prescribed in the Act creating it, and would be tantamount to the State's giving it financial assistance in the matter of its administration expenses, in addition to said specific appropriations. Insurance against loss from fire occurring to its own property is a proper part of the expenses of administering the Fund, an overhead charge to be paid out of the receipts from the subscribers thereto.

In accordance with the foregoing, you are therefore advised that the State Workmen's Insurance Fund should carry with Insurance Companies its own insurance on its office furniture and other equipment, against loss by fire, the cost thereof to be paid out of, and charged to the expenses of, the Fund's administration.

Very respectfully yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE FEMALE MINE EMPLOYES.

No woman or girl of any age, can be legally employed, or be permitted or suffered to work in or about any coal mine in Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., October 28, 1918.

Mr. Lew R. Palmer, Acting Commissioner of Labor and Industry,
Harrisburg, Pa.

Sir: There was duly received your communication of the 22nd inst. to the Attorney General, requesting to be advised how to

answer the communication of the Attorney for the United States Fuel Administration, addressed to you under date of October 14, 1918, relative to the employment of women in mines.

The employment of all females in bituminous mines in Pennsylvania is forbidden pursuant to Section 1, Article XVIII of the Bituminous Coal Mining Act of Jun 9, 1911, P. L. 756, which provides, inter alia, that "no woman or girl of any age, shall be employed, permitted or suffered to work in or about any mine."

Section 1 Article IX of the Anthracite Mining Act of June 2, 1891, P. L. 176, also prohibited the employment of females in and about anthracite mines. This Section was amended by Section 1 of the Act of May 13, 1903, P. L. 359, but the specific provision prohibiting the employment of women in mines was the same in the Act as amended as in the original Act, and reading:

"no woman or girl of any age, shall be employed or permitted to be in any mine for the purpose of employment therein. Nor shall * * * a woman or girl of any age, be employed or permitted to be in or about the outside structures or workings of a colliery for the purpose of employment, but it is provided, however, that this prohibition shall not affect the employment of a boy or female of suitable age in an office or in the performance of clerical work at a colliery."

Section 2 of the said Act of 1903, was held unconstitutional by the Superior Court in the case of *Commonwealth vs. Schults*, 26 Super. Ct. P. 95. It is not quite clear whether this decision did not also affect the constitutionality of Section 1 of the Act of 1903, but for the question here under consideration, that is immaterial since, as above noted, the amendment as made to the said Act of 1891, did not, in any way, change the law as to the employment of women, but related solely to the permissible age at which male minors might be employed. In either event, the aforesaid provision forbidding the employment of women in anthracite mines is in full force and such employment made unlawful.

The Act of July 5, 1917, P. L. 686, referred to in the communication of the United States Attorney, would have no bearing on the above mentioned provisions of the mining laws. This Act of 1917 vests the Industrial Board with power to modify the Female Labor Act of 1913, but it is manifest that it does not vest said Board with power to suspend or modify the operation of the above mentioned provisions of the mining laws of Pennsylvania, forbidding the employment of women in mines.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

EMPLOYMENT OF WOMEN-INTERSTATE COMMERCE.

A State statute, regulating the employment of women, may apply as well to those within the State who are engaged in Interstate Commerce as to others, until such time as Congress assumes exclusive control of the precise subject matter.

Office of the Attorney General,
Harrisburg, Pa., December 11, 1918.

Honorable Walter McNichols, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: I have your communication of the 25th ult. requesting an opinion as to whether the Pennsylvania Female Labor Act of July 25, 1913, P. L. 1024, applies in the case of women within the State employed by railroads engaged in doing interstate commerce business. It appears that the particular class of railroad employment occasioning this inquiry is that of "leverman."

The said statute is an exercise of the police power of the State in the public interest. Such an exercise of this power has been repeatedly upheld as a reasonable regulation and one within the inherent right of the State to safeguard the health and morals of its citizens and promote the general welfare. It has been said that this power is not a fixed quantity, but must be allowed to expand to reach the needs of developing social and economic conditions.

Railroad Commission of Indiana vs. Grand Trunk Western Railroad Company, 100 N. E. 852.

Laws limiting the hours of employment of women have been upheld as a valid and reasonable exercise of the police power.

Riley vs. Massachusetts, 232 U. S. 671.
Muller vs. Oregon, 208 U. S. 412.

There is a wealth of cases dealing with the question of State laws, enacted under the police power, as they may conflict with, or trench upon, the power delegated to the Federal government to regulate interstate commerce. It may be stated, as a general rule, that a State statute, passed in pursuance of the police power, which does not undertake to regulate interstate commerce but merely affects it incidentally, is valid where Congress has not assumed an exclusive control over the precise subject matter in question. If it is a reasonable regulation, having for its object the welfare of the citizens of the State, and is not directly or actually inconsistent with some Federal statute covering the same subject, it is not to be set aside although it may indirectly affect interstate commerce.

In the case of *Southern Railway Co. vs. Railroad Commission*, 100 N. E. 337, there is an extensive review of the cases dealing with the subject of the applicability to the instrumentalities of interstate commerce of State regulations in a field where Congress has not assumed exclusive control. Among the conclusions there reached was one to the effect that:

“Until, and unless Congress does act, and its action covers the subject-matter the states may act.”

In *Austin vs. Tennessee*, 179 U. S. 343, the Court said, in part, as follows:

“We have had repeated occasion to hold, where state legislation has been attacked as violative either of the power of Congress over interstate commerce, or of the 14th Amendment to the Constitution, that, if the action of the state legislature were a bona fide exercise of its police power, and dictated by a genuine regard for the preservation of the public health or safety, such legislation would be respected, though it might interfere indirectly with interstate commerce,”

and quoted *Holden vs. Hardy*, 169 U. S. 366, that the police power—

“May be lawfully resorted to for the purpose of preserving the public health, safety, or morals, or the abatement of public nuisances, and a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what measures are necessary for the protection of such interests.”

It was likewise held in *Sligh vs. Kirkwood*, 237, U. S. 52, that it is competent for a State—

“To provide local measures in the interest of the safety and welfare of the people * * * although such regulations incidentally and indirectly involve interstate commerce.”

In the *Minnesota Rate Cases*, 230 U. S. 352, Mr. Justice Hughes, speaking for the Court, says in the course of the opinion:

“There necessarily remains to the states until Congress acts, a wide range for the permissible exercise of power appropriate to their territorial jurisdiction, although interstate commerce may be affected. * * * It is competent for a state * * * to adopt protective measures of a reasonable character in the interest of the health, safety, morals, and welfare of its people, although interstate commerce may incidentally or indirectly be involved. * * * Where the subject is peculiarly one of local concern, and from its nature be-

long to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power."

A well known instance of the constitutional exercise of the police power of a State operative therein upon those engaged in interstate commerce is that of the so called Full Crew Laws. It was held that a State statute prescribing a minimum number of brakemen for trains was applicable to the trains of interstate carriers operating within the State.

Chicago, Rock Island and Pacific Railway Company vs. Arkansas, 219 U. S. 453.

In this case the Court said:

"The statute in question is not directed against interstate commerce. Nor is it, within the meaning of the Constitution, a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce."

Citation is made therein also to the case of *Sherlock vs. Alling*, 93 U. S. 99, wherein Mr. Justice Matthews said:

"Legislation, in a great variety of ways may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the Constitution. * * * And it may be said generally, that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce, foreign or interstate, or in any other pursuit."

The foregoing citations furnish abundant authority for the conclusion that a State statute regulating the employment of women may apply as well to those within the State who are engaged in the work of interstate commerce as to others, until such time as Congress may assume exclusive control of this precise subject matter.

The question here submitted consequently further turns upon the question whether Congress has so assumed exclusive control of this precise subject matter as to exclude the applicability of our State statute. Does the Federal "hours of service" Law of March 4, 1907, prescribing the hours of employment upon railroads in various capacities, constitute such an occupying of the field as to render our

State law regulating the employment of women inoperative as to those employed by railroads doing an interstate commerce business? A careful consideration of the matter leads me to the conclusion that such is not the case. The case of *Erie Railroad Company vs. People of the State of New York*, 233 U. S. 670, has not been overlooked. Reversing the opinion of the Court of Appeals of the State of New York, the Supreme Court of the United States there held invalid a New York statute that fixed other and shorter hours for certain railroad employments than those fixed by the Federal law. In the course of the opinion Mr. Justice McKenna said:

“Regulation is not intended to be a mere wanton exercise of power. It is a restriction upon the management of the railroads. It is induced by the public interest or safety, and the ‘hours of service’ law of March 4, 1907, is the judgment of Congress of the extent of the restriction necessary. It admits of no supplement; it is the prescribed measure of what is necessary and sufficient for the public safety, and of the cost and burden which the railroad must endure to secure it.”

It will be noted that the purpose sought by the said Federal law and that sought by the said New York statute is not the same as that in view in the said Female Labor Law of this State. The former had in view the safety and efficiency of railroad operation and management. Our Act has in view the welfare of women. The New York statute was, in fact, one regulatory of railroads, while our statute is simply one prescribing the conditions upon which women may be employed in any establishment. This Pennsylvania Act is general in its scope and is in no sense regulatory of commerce, and only affects the same incidentally where women are employed. It is entirely within the reach of the powers of Congress to legislate specifically as to the conditions upon which women may be employed by interstate carriers, but until such time as it does so legislate, I am of the opinion that our own State Act applies.

Laws limiting the hours and regulating the method of employment of women are well within the domain of the police power of a state and have commended themselves to modern thought as essential to the public welfare. The welfare of the Commonwealth is vitally affected by the welfare of its womanhood, and we shall only surrender full control over the subject when Congress acts specifically upon this precise question, or the Courts construe the existing law to that effect.

Your attention, however, is called to the Act of July 5, 1917, P. L. 686, which permits the Industrial Board, by due proceedings, to modify in certain respects the Female Labor Law of 1913. Railroad employment is within the purview of that Act. It is suggested that

where railroads desire to employ women in any capacity upon hours other than those expressly stipulated in the Female Labor Law, you take the matter up with them with the view that they invoke the provisions of said Act of 1917, in order that women may be employed by them at hours satisfactory for their service and yet in harmony with the Pennsylvania law.

It is further to be noted that pending the Federal control of railroads any State act is necessarily subject to any Federal regulation made by the Federal railroad administration, as to which you can readily keep yourself advised.

Very respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

BOILER INSPECTION OF THRESHING MACHINES.

The boiler of a portable steam threshing machine is not subject to boiler inspection under the Act of May 2, 1905, P. L. 382, when used to thresh wheat for a farmer on the premises of the farmer, whether the thresherman or the farmer furnishes the help.

The determining question is whether the labor employed in the operation is "farm labor" within the meaning of the exception contained in section 1 of the act.

Office of the Attorney General,
Harrisburg, Pa., December 31, 1918.

Honorable Walter McNichols, Acting Commissioner of Labor and Industry, Harrisburg, Pa.

Sir: There was duly received your communication of the 16th inst., requesting an opinion as to whether "steam boilers on portable threshing machines" are subject to the boiler inspection required by the Act of May 2, 1903, P. L. 352, in the following cases:

"1. A thresherman agrees to thresh the wheat for a farmer for a stipulated price per bushel on the premises of the farmer, the thresherman furnishing all the help necessary for the operation.

"2. A thresherman agrees to thresh the wheat for a farmer for a stipulated price per bushel on the premises of the farmer, the farmer furnishing all the help necessary for the operation."

The aforesaid Act of 1905 by Section 1 thereof defines an "establishment" within its meaning as any place where persons are employed "*other than where domestic, coal mining or farm labor is em-*

ployed." Consequently the question submitted turns upon the point whether the labor employed in operating a steam threshing machine in cases such as above stated is to be deemed "farm labor," for, if so, then the case is not within the terms of the Act. It is not the kind of machinery used, but the nature of the labor employed which determines the point. It has, however, been held that a steam engine used in connection with a threshing machine is a "farm utensil." *Words & Phrases, 2nd Series, Vol. 2, page 471.*

It is needless to point out that the work incident to threshing a crop of grain is farm labor of a very definite nature. As is well known it has become quite customary for farmers to have their threshing done by some one with a steam thresher going about from farm to farm. Whether the workmen in connection with such threshing operation be employed by the owner of the crop or by the owner of the machine, their labor would in both cases be directly and equally in furtherance of farm work. Where a farmer has such machine of his own, it is plain that the labor he would employ to run it, in threshing his own crop, would be "farm labor." It is precisely the same kind where he hires some one else with a machine and the help needed to run it to come in on his premises and do this piece of work for him. For farming or any part thereof to be done by contract does not thereby impress upon the labor employed pursuant thereto a changed character. The use of the steam threshing machine in the above way was general at the time the above Act was passed and hence not something outside the contemplation of the Legislature in exempting places where "farm labor is employed" from the intendment of the enactment.

I understand that the conclusion here reached is in harmony with the construction heretofore placed upon said Act by the Department of Labor and Industry and its practice in the administration thereof. A construction of a statute long adopted and followed is not to be lightly set aside. It may well be that, in the interest of safety, inspection should be required of boilers in cases such as the aforesaid, but to effect that legislation will be needed, as, in my opinion, it is not provided for in said Act.

In accordance with the foregoing, you are advised that the boiler of a steam threshing machine is not subject to boiler inspection under the provisions of the said Act of 1905 where its use is limited to the operation of a threshing machine, as in the above stated cases.

Very respectfully yours,

EMERSON COLLINS,

Deputy Attorney General

OPINIONS TO THE DEPARTMENT OF MINES.

OPINIONS TO THE DEPARTMENT OF MINES.

HOURS OF LABOR IN ANTHRACITE COAL MINES.

An engineer, employed at an anthracite coal mine, to hoist men and boys, but not coal, cannot be required to work more than eight hours in each day of twenty-four hours.

Office of the Attorney General,
Harrisburg, Pa., February 15, 1917.

Honorable James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Your favor of the 2nd inst. is at hand. You ask to be advised specifically whether an engineer, whose duty it is to hoist men and boys, but who does not hoist coal, may be required to work more than eight hours in each day of twenty-four hours.

The Act of April 20, 1911, P. L. 102, is entitled:

"An Act to provide for the safety of persons employed in and about the anthracite coal mines in this Commonwealth, and to limit the hours of labor of hoisting engineers at or about the same," etc.

Section 1 provides:

"That on and after the passage of this Act, no person engaged as hoisting engineer at or about the anthracite coal mines of this Commonwealth, part of whose duties it is to lower men and boys into, and hoist them and coal from, the said mines, shall be engaged for a longer period than eight hours each day of twenty-four hours."

On November 14, 1916, this Department advised 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.

The precise question now is, as I understand it, whether an engineer whose duty it is to hoist men and boys, but who does not hoist coal, may be required to work more than eight hours.

This Act of Assembly was, as its title indicates, intended to provide for the safety of the persons employed in the mines, and to that end it provided that a hoisting engineer should not be so overworked, or continued in his employment so long, that he would cease to be alert, cautious and careful. For that reason the Act provides that an engineer "part of whose duties is to lower men and boys into and hoisting them and coal from the mines," must not be required to work longer than eight hours in any day of twenty-four hours.

The spirit of this Act would be violated if an engineer hoisting only men and boys, and not coal, could be required to work twelve hours, or if an engineer engaged in hoisting coal only on one day should be required to work thirteen or fourteen hours that day and the next day should be required to hoist men and boys and coal, and work eight hours.

If it be a *part* of the duties of the engineer to hoist men and boys, I am of the opinion that in order to carry out the intention of the Legislature, such an engineer cannot be required to work more than eight hours out of each day of twenty-four hours, even though he may be hoisting coal only on a particular day or hoisting men and boys on another day.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

MINES AND MINING.

Requiring hoisting engineers at mines to attend to electric generators violates rule 20 of the Anthracite Mine Code of June 2, 1891, P. L. 176.

Office of the Attorney General,
Harrisburg, Pa., April 12, 1917.

Honorable James E. Roderick, Chief of the Department of Mines,
Harrisburg, Pa.

Sir: Some time ago you asked for an interpretation of Rule 20 of the Anthracite Mine Code, approved June 2, 1891, P. L. 176.

The facts which give rise to your inquiry, I understand to be as follows:

The engineers of the Buck Run Colliery operated by the Buck Run Coal Company, complained that the company had installed two electric generators in the engine room in which they are employed as hoisting engineers, and that they are required to attend these two electric generators.

One of these generators is known as a high speed generator and is used for generating electricity. The other a motor generator, used for generating and transforming high voltage to lower voltage, or vice versa, and from an alternating to a direct electric current, or vice versa.

The motor generator is started at 12:30 A. M. and is stopped at 5:30 A. M. The high speed generator is started about the time the motor generator is stopped and is stopped when the motor generator is about started. In other words, when one is started and running at full speed, the other is stopped.

The switch or circuit breaker is about twenty-six feet from where the engineer would be while in charge of the hoisting engine. The engineer is required to walk around the generator, observe the flow of oil, oil the generators, and to note the heat in certain parts.

There is a wide difference of opinion between the President of that District of the Mine Workers, the inspectors of the District, and the President of the company, as to the responsibility and the time which these additional duties impose upon the hoisting engineer, and also a difference of opinion between them as to whether the hoisting engineers, if required to look after the generators can do so without in any way endangering the safety of those in the mines.

Rule 20 of the Act above referred to provides:

"An engineer who has charge of the hoisting engine by which persons are lowered and 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 ordinary and usual meaning of the word is "incessant" or "ceaseless." If an engineer is required to give part of his time to other duties while miners are below ground, then he cannot be in "constant attendance."

The use of the word "whole" in this Rule, emphasizes that the attendance should be unceasing during the whole time any persons are below ground.

There is a difference of opinion between those who are presumably experts upon the subject, and this Rule being enacted for the protection of the miners, should not be relaxed or so construed as to take away that protection. It should be rigidly adhered to.

I am, therefore, of opinion, upon the facts before me; that the installation of the two electric generators and the attention which the engineers are required to give them, prevents the engineers from being in constant attendance upon the hoisting machinery within the meaning of Rule 20 of the Act of 1891 above quoted.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

MINES AND MINING.

The Chief of the Department of Mines has no authority to supervise the findings of the Board of Examiners. Certificates of qualification should be issued by him to those who have successfully passed the examination prescribed by the board.

Office of the Attorney General,
Harrisburg, Pa., July 20, 1917.

Honorable James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Some time ago you transmitted to this Department ten reports made by the Board of Examiners in the 14th Anthracite Inspection District, each certifying that the applicant

"has passed a satisfactory examination by the Board, and has given satisfactory evidence of at least five years practical experience as a miner, and of good conduct, capability and sobriety, and we therefore recommend that a certificate of qualification as a Mine Foreman be granted him."

You ask, "Is this Department warranted in issuing certificates to these applicants?"

This question is inspired because the report of the qualification, in addition to giving the name, age and place of birth of the applicant, gives "the length and nature of his previous service in and about mines."

It appears in each case that the applicant has spent various periods of time as door boy, driver, runner, brattice man, laborer, and in other occupations in and about the mines. It also appears that in no application is the service as "miner" given for as long a period as five years.

Your inquiry raises these questions:

(1) Whether the various occupations given in the several reports of qualifications are to be taken together in ascertaining whether the applicant had "at least five years practical experience as a miner."

(2) Whether the Chief of the Department of Mines can decline to issue a certificate of qualification after having received the report of the Board of Examiners, if, in his opinion, the nature of the previous service has not amounted to "five years practical experience as a miner."

The Act of Assembly of June 2, 1891, P. L. 176, provides, in Section 2 of Article VIII:

"Certificates of qualification to mine foremen and assistant mine foremen shall be granted by the Secretary of Internal Affairs to every applicant who may be reported by the examiners, as hereinafter provided, as having passed a satisfactory examination, and as having given satisfactory evidence of at least five years practical experience as a miner, and of good conduct, capability and sobriety."

Section 3 of Article VIII of the same Act provides for the creation of the Board of Examiners.

The Act of April 14, 1903, P. L. 182, provides in Section 7 that

"Certificates of qualification to mine foremen and assistant mine foremen in the anthracite mines * * * shall be granted by the Chief of the Department of Mines to each applicant who has passed a successful examination."

The first question involves the meaning of the phrase, "practical experience as a miner."

In view of our answer to the second question, it is perhaps not necessary to answer the first, and we have no information before us which would enable us to determine whether many of the occupations given upon these certificates should be termed as "experience as a miner." However, I call your attention to the opinion of Deputy Attorney General Elkin, dated October 24, 1895, given to William Stine, Inspector of the 6th Anthracite District.

After referring to the definition of "mine," as given in Article XVIII of the Act of 1891, as follows:

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

Attorney General Elkin says:

"If, then, the term 'mine' as expressed in this Act of Assembly, embraces all underground workings, excavations, shafts, tunnels, other ways and openings, etc., it must necessarily follow that a person who works in any of these places, included in this definition, is a miner within the meaning of the law. I do not think it was the intention of the Legislature to limit the right of examination to a particular class of persons who work in the mines, but rather to include all classes of miners who have had five years practical experience in working in a 'mine,' as defined in the Act of Assembly. In view, however, of the conclusion to which we have come, this opinion is rather for the guidance of the Board of Inspectors than for the Chief of the Department of Mines."

Second: The Act of Assembly above quoted provides that

"Certificates of qualifications * * * shall be granted * * * to every applicant who may be reported by the examiners * * * as having passed a satisfactory examination, and as having given satisfactory evidence of at least five years practical experience as a miner," etc.

Section 7 of the Act of April 14, 1903, above quoted provides:

"Certificates of qualification * * * SHALL be granted by the Chief of the Department of Mines to each applicant who has passed a successful examination."

Under Section 2 of the Act of 1891, above referred to, the Board of Examiners must be satisfied that the applicant has passed a satisfactory examination. Satisfactory evidence must be given to that Board that the applicant has "had at least five years practical experience as a miner."

When that tribunal is satisfied, the law provides that the Chief of the Department of Mines shall grant a certificate of qualification. There is nothing in these Acts of Assembly or any other Act of

Assembly, to which my attention has been called, that permits the Chief of the Department of Mines to supervise the finding of the Board of Examiners.

The Board of Examiners is composed of experienced practical miners. It is a tribunal which, under the law, is to determine whether the applicant has given satisfactory evidence of at least five years' practical experience as a miner, as well as the fact as to whether the applicant is of good conduct, capability and sobriety.

When the Board of Examiners finds these facts and properly certifies them to the Chief of the Department of Mines, the Chief of the Department of Mines has no further duty to perform than to issue the certificate of qualification to the mine foreman, as recommended by the Board of Examiners.

I herewith return to you the ten reports which you transmitted with your letter.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

LAMP HOUSE WOMEN.

Under the Bituminous Mine Code of 1911 no female of any age can be employed in or about any mine except in the office.

*Girls between fourteen and sixteen years of age may be employed in the office of a mine, provided a proper certificate is furnished; girls of sixteen years of age may be employed in such office without a certificate.

When lamp houses are placed so far from the entrance of the mine as to remove them from all danger in the operation of the mine, females above the age of sixteen years may be employed therein.

Office of the Attorney General,
Harrisburg, Pa., March 26, 1918.

Honorable Seward E. Button, Chief of Department of Mines, Harrisburg, Pa.

Sir: We received your favor of recent date, asking for an opinion as to whether a mining company may employ women as attendants in lamp houses or in shops at mines or at any other work except in a mine office, and you enclosed certain correspondence between the Governor, your Department, and the H. C. Frick Coke Company.

The lamp houses to which you refer I understand to be the houses in which are kept the small lamps that miners use upon their caps when working in the mine. When the miner comes out of the mine,

these lamps are deposited, numbered, kept and cleaned in the lamp house, which is usually near the entrance to the mine.

The shops to which you refer I understand to be the repair shops which are generally at or near the entrance of the mine and upon the mine property.

The H. C. Frick Coke Company being engaged in the mining of bituminous coal, we resort to the Bituminous Mine Code of June 9, 1911, P. L. 756, for the answer to this question.

Section 1 of Article XVIII provides, in part, as follows:

"No boy under the age of fourteen years, and *no woman or girl of any age*, shall be employed, permitted or suffered to work in or about any mine * * * *

"Nothing in this section shall be held to forbid the employment of a girl between the ages of fourteen and sixteen years in the office of a mine; provided that, during the entire period of said employment, there is in like manner on file for said girl in said office, an employment certificate of the character hereinbefore provided for as a prerequisite to the employment of boys under the age of sixteen years inside any mine."

I think this language is plain. By it the Legislature intended that no female of any age should be employed in or about a mine except in the office, and that girls between fourteen and sixteen years of age may be employed in the office of a mine, provided that a proper certificate is furnished, and that girls of sixteen years of age may be employed in the office of a mine without a certificate.

Where, therefore, the lamp houses and shops are "about the mine," the employment of a female in a lamp house or a shop would be employment about the mine. If, however, the lamp houses were placed so far from the entrance to the mine as to remove them from all danger in the operation of the mine, females over the age of sixteen years might be employed therein, because said lamp houses would then not be "about the mine."

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

DRAINAGE OF COAL MINES.

Under the Bituminous Mine Code of May 15, 1893, P. L. 52, the mine inspector should approve the tapping or draining of an abandoned mine in which water has been allowed to accumulate in large and dangerous quantities, endangering the adjoining mine of another operator. His approval should not be withheld on the ground that the tapping is to be made by a surface opening, nor because the owner of the surface objects.

Office of the Attorney General,
Harrisburg, Pa., March 27, 1918.

Honorable Seward E. Button, Chief, Department of Mines, Harrisburg, Pa.

Sir: Your favor of the 20th instant, enclosing letter of C. B. Ross, Inspector of the Second Bituminous District, was duly received. Inspector Ross states that there is a worked out and abandoned mine in his district now filling up with water, and when these workings have filled to a certain point of drainage there will be a head of water of about fifty feet against a barrier pillar of coal left between said abandoned workings and the adjoining mine now in operation; and that if the water is allowed to accumulate it endangers the safety of the miners in the mine in operation; that it is the desire of the operator of the latter mine to reopen the surface opening and make a drain in order to reduce the head of water about twenty feet by allowing it to flow by its own gravity from this opening to a sulphur creek. The surface at this point is said to belong to the parties owning the abandoned mine. The operator of the mine in operation has asked for the Inspector's approval for tapping the abandoned mine and the Inspector has some doubt as to whether the provision of the law above referred to relates to abandoned mines, and to surface openings, and whether he should give your approval in the event that the owner of the surface over which the water is to be drained objects.

The Section of the Bituminous Mine Code above referred to provides:

"In any mine or mines, or portions thereof, wherein water may have been allowed to accumulate in large and dangerous quantities, putting in danger the adjoining or adjacent mines and the lives of the miners working therein, and when such can be tapped and set free and flow by its own gravity to any point of drainage, it shall be lawful for any operator or person having mines so endangered, with the approval of the inspector of the district, to proceed to remove the said danger by driving a drift, or drifts, protected by bore holes, as provided for by this act, and in removing said danger it shall be lawful to drive across property lines if needful."

There is nothing in this section which would limit it to draining the water only from mines which are in operation—so limited it would fall far short of the protection to the lives of the miners which the Legislature intended to give. The accumulation of water in an abandoned mine is quite as dangerous to the lives of miners in an adjoining mine as if both mines were in operation.

I am, therefore, of opinion that Section 3 above quoted, applies to the accumulation of water in abandoned workings.

The Section provides that when the accumulation of water becomes dangerous

“when such can be tapped and set free, and flow by its own gravity to any point of drainage, it shall be lawful for any operator or person having mines so endangered, with the approval of the inspector of the district, to proceed to remove the said danger by driving a drift, or drifts, protected by bore holes, as provided for by this Act * * * .”

I do not think this language excludes draining by surface openings. It provides that the mine shall be tapped and the water set free to flow by its own gravity. There is nothing in the section which limits this to draining beneath the surface. It would fail of the full protection to the lives of the miners if it were so limited, and therefore, I am of the opinion that it is within the section for an operator to remove the danger by surface drainage.

The fact that the owner of the property across which the drain may be located, or driven, may object, is no reason for the inspector to decline to approve the tapping or draining. If there be any doubt as to the application of this Section, the owner of the property across which the drain is opened, may either in suit for damages or by injunction, secure a judicial interpretation of it.

I am, therefore, of opinion, and so advise you, that if the situation otherwise is such as to merit the approval by the Inspector of the tapping or draining of a mine in which water has been allowed to accumulate in large and dangerous quantities, he should not withhold such approval because the mine in which the water has accumulated has been abandoned, or because the tapping of the water is to be made by surface opening, or because the owner of the surface objects. If there be an objection on the part of the owner of the surface, that is a matter for settlement between him and the operator who desires his mine to be protected.

I herewith return the letter of Inspector Ross.

Yours very truly,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO THE DEPARTMENT OF HEALTH.

OPINIONS TO THE DEPARTMENT OF HEALTH.

-STATE EMPLOYEES IN MILITARY SERVICE.

The Act of June 7, 1917, P. L. 600, relating to officers and employes of the State who enter the military or naval service of the United States, does not apply to a substitute, employed in accordance with the provisions of that act, to perform the work or exercise the duties of one who was regularly employed at the time he entered such service.

A substitute employed under the act to perform the duties of an officer or employe who has entered the military or naval service, and duly filed his statement declaring his intention to retain his office or employment and resume its duties upon the expiration of his said service, is not entitled, if he himself enters the military service, to claim the benefit of the act either in respect to the right to retain the office or employment to which he had been called as a substitute, or to have any part of his salary as such substitute paid to his dependents.

Office of the Attorney General,
Harrisburg, Pa., January 10, 1918.

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

Sir: There was duly received your communication of the 3rd inst., to the Attorney General asking to be advised as to the applicability in the case hereinafter mentioned of the Act of June 7, 1917, P. L. 600, relating to officers and employes of the Commonwealth entering the military or naval service of the United States.

The question submitted by you is as follows:

In case a substitute, employed in pursuance of the provisions of said Act to perform the work or exercise the duties of one who had been regularly employed and who has enlisted, enrolled or been drafted into the military or naval service of the United States and has claimed the benefit of said Act, should himself likewise enter said service, would such substitute employe in turn also thereupon be entitled to the benefit of said Act in respect to having his employment retained for him and a portion of his salary paid to his dependent.

It is provided in Section 1 of the Act, inter alia, as follows:

"That whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service * * * shall in time of war or contemplated war enlist, enroll, or be drafted in the military or naval service of the United States, or any branch or unit thereof, he shall not be deemed or held

to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service, but the duties of his said office or employment shall, if there is no other person authorized by law to perform the powers and duties of such officer or employe during said period, be performed by a substitute."

It is further provided in Section 2 that such officer or employe may at the time of his enlistment in the United States service file his statement in the manner therein prescribed setting forth "his intention to retain his said office or employment and to resume the duties thereof after the expiration" of his military service, and the names of his dependents to whom he requests and directs that one-half of his salary be paid while he is in such service.

It will be noted that only those "*regularly employed*" are entitled to claim said benefits of the Act. That is one uniform test of its applicability in all cases. A substitute called to perform the duties of any particular place cannot be regarded as one "*regularly employed*" within the intent of the Act. His tenure therein is wholly limited by the right of the regular incumbent to return to it and resume its duties at any time. The absence of the regular officer or employe is merely temporary. The Act enjoins that during such absence in the military service he shall not in consequence thereof lose his position. The person who is substituted to perform its duties is consequently not regularly employed thereat, but is only an occupant of the position *ad interim*, and gives way immediately by operation of law upon the return of the regular officer or employe.

Furthermore, it is obvious that a given position could not be held open and secured to both the regular and the substituted employe; two persons could not have the right to return to and resume the duties of the same place. Under the Act it belongs to the one who had been "*regularly employed*" therein by the Commonwealth at the time of his entering the military service and who, in due form, has signified his intention to retain it and resume its duties upon the expiration of his military service. His is the prior right thereto pending his said service. This privilege can attach alone at the same time to one person for each office or employment.

Since a substitute cannot claim the benefit of the provision of the Act entitling one to retain an office or employment during his military service, it must necessarily be also concluded that he does not come within the provision relating to the payment of a portion of salary to a dependent. Only an officer or employe vested with the right to retain his office of employment, and who has, in the pre-

scribed statement, declared his intention to retain and resume it, is within the scope of this bounty. The status of a substitute is plainly not such as to meet this essential requirement.

You are therefore advised that a substitute employed under said Act to perform the duties of an officer or employe who has entered the military or naval service and duly filed his statement declaring his intention to retain his office or employment and resume its duties upon the expiration of his said service, is not entitled, if he himself enters the military service, to claim the benefit of said Act either in respect to the right to retain the office or employment to which he had been called as a substitute or to have any part of his salary as such substitute paid to his dependents.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

MEDICAL RESERVE CORPS.

A proposed plan to form a Medical Reserve Corps is declared impracticable. The State Health Officers do not have such power, and may not delegate or transfer the health functions of the State to any other authority or jurisdiction.

Office of the Attorney General,
Harrisburg, Pa., August 1, 1918.

Dr. B. Franklin Royer, Acting Commissioner of Health, Harrisburg, Pa.

Sir: There was duly received your communication relative to a proposed program for the medical personnel of the State Health Department and other State health agencies entering the Medical Reserve Corps of the United States.

As I understand it, the said plan, in brief, is as follows:

The Health Officers of the respective States shall require, so far as possible, that all members of the medical staff of the Health Department, together with those on the various State health agencies, shall enlist in a Medical Reserve Corps of the United States. Thereupon, they will at once become subject to the order of the Surgeon General of the United States, who will detail for service with the United States such members of such Reserve Corps as he may require. The other members of said Corps are to remain in their respective State

positions on what may be termed the inactive list of such Reserve Corps. It is contemplated that as those on the active service list with the United States become incapacitated therefor they will be available once more for State work and that the Surgeon General will so adjust his call upon such Reserve Corps for active service with the United States as will least disturb the health activities or duties of the State. Provision is made for calling to his attention the relative importance of the State's work of the members so enlisted in this Reserve Corps. Those in service with the United States are to be paid by that government, and those remaining with the State by it.

You ask to be advised:

(1) Does this program transfer to the Surgeon General of the Army the civil health functions and activities of a State proceeding under the plan?

(2) Could State health officers, even if they so desire, transfer the civil health functions and activities of a state to the jurisdiction of the Surgeon General of the United States?

The answer to the second question answers both. Neither the State Health officers nor those charged with the administration of the State agencies or activities have any power whatever to transfer the health functions and activities of the State to any other authority or jurisdiction, or in any way to delegate to any other authority the power by law vested in them. It may be further noted that neither the Health Department nor any State agency has any power to enter any plan or program such as the above mentioned which would operate to bind such Department or agency or in any way to bind the State. Consequently, as it would seem to me, the proposed program cannot be carried out in any practical way. The various medical employes of the State Health Department and State agencies can as individuals enter the Federal service or the Federal Government can draft them into its service, but the State cannot send them into such service.

Furthermore, when the persons would enter such Reserve Corps, as provided under your proposed program, they would at once pass to the jurisdiction of the United States. The Department of the Attorney General of Pennsylvania could not undertake to interpret their status under such jurisdiction. It would then be a Federal matter. Nor could this Department undertake to rule as to the effect of the above mentioned plan in any other State.

You are also, of course, aware that under the Act of June 7, 1917, P. L. 600, relating to State officers and employes entering the Army

and Navy, any medical officer or employe of the State, could by virtue of that Act, in case he entered the Federal military or naval service, elect to return to the same position or employment in the State government after the determination of his military or naval service.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

IN RE BIRTH RECORDS.

It is within the discretion of the Commissioner of the Department of Health to determine whether the interests of the public are best served by allowing or refusing access to copies of the birth records in the possession of the Department of Health, or in the hands of the local registrar of that department.

Office of the Attorney General,
Harrisburg, Pa., August 5, 1918.

Dr. B. Franklin Royer, Acting Commissioner Department of Health,
Harrisburg, Pa.

Dear Sir: Your recent letter to the Attorney General requesting an opinion upon the subject of disclosing your records of births, was duly received.

We understand you have requests from newspapers, advertisers, merchants and others from time to time to furnish them with the birth records or to permit them to have access thereto, and that if access were allowed, such records would be used for publication, in some instances, for the purpose of sending to parents advertisements of patent medicines for children and baby equipment and paraphernalia.

It is true, as a general principle, that the records of a public office are public property, but that does not mean that they are to be indiscriminately submitted to public inspection. The officer in charge of such records has large discretion as to when and by whom they may be examined or to whom copies thereof may be given, and such officer may refuse access to, or copies of, such records when, in his judgment, it is for the best interests of the public so to do.

It would be inconceivable that the corporation records of the Insurance Department, of the Auditor General's Department, or of the Public Service Commission, could be examined at will by any rival corporations, merely because they are public property, and it may be that the public interests would best be served by refusing, in

certain instances, to permit examinations into the records of the Health Department. As Acting Commissioner of the Department of Health it is for you to determine, in the exercise of a sound discretion, whether the records of your Department shall be open to public inspection.

You are therefore advised that it is within your discretion to determine whether the interests of the public are best served by allowing or refusing access to or copies of the birth records in the possession of the Department of Health or in the hands of the local registrar of that Department.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO THE SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

OPINIONS TO THE SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

STATE PRINTING.

There is no lawful authority for the printing at the expense of the State of the report of the State Supervisor of Mother's Assistance Fund.

Office of the Attorney General,
Harrisburg, Pa., April 17, 1917.

Honorable D. Edward Long, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 5th inst., stating that the State Supervisor of the Mothers' Assistance Fund has made a report addressed to "H's Excellency, the Honorable Martin G. Brumbaugh, Governor of Pennsylvania and to the Legislature of the State of Pennsylvania—1917," and that the report contains matter valuable for public information. You ask to be advised whether you have any authority to print and bind the report for such purpose.

The office of the State Supervisor of the Mothers' Assistance Fund was created by the Act of June 18, 1915, P. L. 1038, being an amendment to the Act approved April 29, 1913. I find no provision in this amendment providing that the State Supervisor shall make a report to the Governor and to the Legislature; on the contrary, Section 2 of the Act requires the State Supervisor to report annually to the State Board of Education.

The State Supervisor cannot be considered as the head of an executive department within the meaning of Section 26 of the Act of February 7, 1905, P. L. 3, relating to public printing and binding as the first section of the Act of 1915 provides:

"Said Supervisor shall furthermore act as a general field organizer and shall be on the staff of the State Board of Education."

You suggest that perhaps the report might be printed as part of the annual report of the Superintendent of Public Instruction. I am of the opinion, however, that this cannot be done, as Section 1005 of

the Act of May 18, 1911, P. L. 309, provides expressly what the report of the Superintendent of Public Instruction shall contain. The Section reads as follows:

"He shall prepare and submit to the Legislature an annual report, containing a full account of the condition of the public schools of the State, the expenditures of the system during the year, the whole number of pupils, the average cost of instruction per pupil, the number of districts, plans for the improvement and maintenance of the system, and all other matters relating to the public schools and to the duties of his office which he may deem it expedient to communicate."

The language of this Section is not broad enough to comprehend the work done by the State Supervisor in rendering financial assistance to certain indigent mothers.

I have found no statute covering the subject and I regret that I must advise you that you have no authority to print and bind the report of the State Supervisor of Mothers' Assistance Fund.

If it be deemed that the matter is of such public importance that this report ought to be printed and bound for general distribution, there is sufficient time to amend the law by appropriate action by the Legislature now in session.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

REVENUE TAX ON PARCELS POST PACKAGES.

No tax can be lawfully imposed on parcels post packages sent by the State of Pennsylvania in its governmental operations. There should be plainly stamped on each package a statement that it is sent by the State of Pennsylvania in connection with its government operations and that exemption from the stamp tax imposed by Act of Congress of October 3, 1917, is claimed.

Office of the Attorney General,
Harrisburg, Pa., December 26, 1917.

Mr. Robert H. Hendrickson, Chief of Division Department of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 11th inst., inquiring whether the Commonwealth of Pennsylvania is subject to the revenue tax imposed on parcels post packages under the Act of Congress approved October 3, 1917.

This tax is laid in pursuance of the fourteenth clause of Section 807, Schedule A, of the above mentioned Act of Congress, entitled "Stamp Taxes," which reads as follows:

"14. Parcel-post packages: Upon every parcel or package transported from one point in the United States to another by parcel post on which the postage amounts to 25 cents or more, a tax of 1 cent for each 25 cents or fractional part thereof charged for such transportation, *to be paid by the consignor.*

No such parcel or package shall be transported until a stamp or stamps representing the tax due shall have been affixed thereto."

It will be noted that this is not an increase in parcel post rates such as is provided for postal rates under Title XI of the said Act. The increase in postal rates is a charge made by the United States Government for services rendered by it in connection with its postal service, and the State of Pennsylvania is not exempt from the increase. The tax imposed on parcels post packages, however, is distinctly a revenue tax. It does not purport to be a compensating charge paid to the United States Government or its postal department for services rendered by the United States Government in the transmission of parcels post, but a revenue tax to be paid by the consignor, similar to a tax on bonds, conveyances, powers of attorney, etc. The stamp required to be affixed is not a postage but a revenue stamp.

In the case of *McCullough vs. the State of Maryland*, 4 Wheaton 306, Chief Justice Marshall held that the several States cannot lawfully, whether by taxation or otherwise, retard, impede or hinder, or in any manner control the operations of the constitutional laws passed by Congress, to carry into effect the powers vested in the national government; that the power to tax was the power to destroy. This was followed by *Osborn vs. Bank of United States* 9 Wheaton 736 and *Weston vs. Charleston*, 2 Peters 449, which held that the States could not lawfully impose a tax on the operations of the Federal Government.

In the case of *Buffington, Collector, vs. Day*, 11 Wallace 113, the converse of this ruling was made and it was decided that Congress could not under the Constitution of the United States, impose a tax upon the salary of a judicial officer of the State. The Court (Mr. Justice Nelson delivering the Opinion) said:

"And if the means and instrumentalities employed by that government (that is the federal government) to carry into operation the powers granted to it are necessarily, and, for the sake of self-preservation, exempt from taxation by the states, why are not those of the states

depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

In the case of *South Carolina vs. United States*, 199 U. S. 437, the Supreme Court said, Mr. Justice Brewer delivering the opinion:

"The exemption of the state's property and its functions from Federal taxation is implied from the dual character of our Federal system and the necessity of preserving the state in all its efficiency."

In the case of *United States vs. Railroad Company*, 17 Wallace 332, the Court said (p. 327):

"The right of the states to administer their own affairs through their legislative, executive, and judicial departments, in their own manner through their own agencies, is conceded by the uniform decisions of this court and by the practice of the Federal government from its organization. This carries with it an exemption of those agencies and instruments, from the taxing power of the Federal government."

In *Ambrosini vs. United States*, 127 U. S. 1, it was held:

"The general principle is that, as the means and instrumentalities employed by the general government to carry into operation the powers granted to it are exempt from taxation by the states, so are those of the state exempt from taxation by the general government. It rests on the law of self-preservation, for any government whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government exists only at the mercy of the latter."

In the case of *Pollock vs. The Farmers' Loan and Trust Company*, 157 U. S. 429, the Supreme Court said (p. 534):

"As the states cannot tax the powers, the operations, or the property of the United States, nor the means which they employ to carry their powers into execution,

so it has been held that the United States have no power under the Constitution to tax either the instrumentalities or the property of a state."

In an opinion rendered by this Department to the Superintendent of the Board of Public Grounds and Buildings on December 7, 1914—Opinions of Attorney General, 1913-1914, page 194,—it was ruled that no Federal tax was required upon bills of lading for the shipment of State property, nor are telegraph or telephone companies required to pay a tax upon messages, if such messages are sent to or from the various departments of the State Government in performing the governmental functions of the State.

So also, on June 17, 1915, this Department rendered an opinion to the Commissioner of Health that the State was not required to attach revenue stamps for shipment of containers at the State Sanatoria exclusively controlled and operated by the State through the Department of Health.

A reference to Section 500 of the Act of Congress of October 3, 1917, which imposes a tax on facilities furnished by public utilities and insurance, recognize this exemption of the State from such taxation, for Section 502 provides:

"That no tax shall be imposed under section five hundred upon any payment received for services rendered to the United States, or any State, Territory, or the District of Columbia."

This exemption was not granted as an act of grace on the part of Congress, for in construing previous Acts which had imposed similar taxes, it had been held that the states were not liable to the imposition of such taxes. Section 502 was rather a recognition of the claim that the Federal Government could not impose taxes of this character on the states and their governmental operations.

The fact, therefore, that no exemption similar to that contained in Section 502, is found in the Section with reference to parcels post packages, is of no consequence.

If the exemption allowed in Section 502 had not been contained in the Act, the United States nevertheless could not have imposed any tax on the facilities furnished by public utilities companies to the State of Pennsylvania. The exemption from the payment of such taxes is not by virtue of Section 502 recognizing such exemption, but rather by reason of the constitutional inhibition against the levying of such taxes on the states and their governmental operations, as recognized in the decisions of the United States Supreme Court, hereinbefore cited.

I am of the opinion, therefore, that as to parcels post packages sent by the State of Pennsylvania in its governmental operations, no tax can lawfully be imposed under Section 807, Schedule A, Stamp Taxes. There should be plainly stamped on such package a statement that the package is sent by the State of Pennsylvania in connection with its governmental operations, and that exemption from the stamp tax imposed by the Act of Congress of October 3, 1917, is claimed.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE PRINTING.

The Acts of Assembly do not define the term "miscellaneous printing" and because of the doubt thereon, the custom prevailing should govern.

Office of the Attorney General,
Harrisburg, Pa., February 28, 1918.

Honorable D. Edward Long, Superintendent Public Printing and Binding, Harrisburg, Pa.

Sir: Some time ago you requested an opinion of this Department as to how certain printing was to be charged for; that is to say, whether as miscellaneous work, or as book composition; and submitted a number of samples indicating the difference in the amount the State was required to pay, if charged under one or the other of these methods.

The facts I understand to be as follows:

The State Printer is required to print, upon the order of the Legislature and the various departments all styles, classes and sizes of printing. Included in the work required of him are loose sheets of pamphlet laws and many bulletins, orders, etc., which are generally six by nine inches in size, some of which are covered and some not covered.

Since the Act of February 7, 1905, P. L. 1, has been in force, it has been the practice to charge for every kind of printing, except Legislative bills, calendars, reports, blank-books, Dairy and Food Bulletins, without covers, and books, pamphlets and bulletins with covers, journals, official documents, Small's Hand Book and lithographic work. This method has been adopted and carried out by your pre-

decessor in the office of Superintendent of Public Printing and Binding, and by yourself, until shortly before the request for this opinion. The present State Printer, John L. L. Kuhn, who entered into his present contract on July 1, 1917, was the State Printer for four years, up to July 1, 1913, and the rule which has prevailed, was applied during his previous contract. It also was applied to the contract held by W. S. Ray, who succeeded Mr. Kuhn as State Printer for four years and whose contract expired June 30, 1917.

The question which you propound is not easy of solution from the language of the Act of February 7, 1905, P. L. 1, as amended on May 11, 1911, P. L. 210. This Act nowhere defines "miscellaneous printing," either in specific terms or by terms of exclusion. The Act refers to "orders for all blanks, blank-books, and miscellaneous printing and binding" (Section 10); to "copy for all documents, blanks, blank-books and miscellaneous work" (Section 11); to "copy of each and every bound report, pamphlet or piece of miscellaneous printing," and to a statement of the cost of "every report, book, pamphlet and order for miscellaneous printing and binding" (Section 12). Other sections of the act refer specifically to the laws, journals, reports, messages, documents, official documents and Smull's Hand Book.

So that there is nowhere in the Act any satisfactory method of determining what is "miscellaneous printing."

Section 30 of the Act of 1905 provides:

"The standard rates of compensation, or price, for the public printing and binding, for all objects of charge against the Commonwealth by the contractor or contractors, shall be according to the schedule appended to this act, which said schedule is made part of this act."

Section 38, as amended by the Act of 1911, provides, in part:

"That all *book composition* shall be computed by the measurement of the number of ems. The said contractor or contractors shall print the blanks, circulars and miscellaneous printing for all officers of the Commonwealth at the rates fixed in the schedule annexed to this act."

The schedule provides, among other things, as follows:

"Printing.—For all machine composition, in whatever type, except bills, blanks and miscellaneous printing, the rates per one thousand ems shall be as follows:"

There are various schedules for the work of all kinds upon Legislative bills and journals, blank book work, and lithograph work.

The schedule continues:

"Letter press printing, blanks, cards, and all miscellaneous job work including composition as follows:"

and then follows the various character of composition and the rates therefor.

The question is whether the bulletins bound or unbound, loose laws, public service decisions, Adjutant General's orders, and matters of that kind which are in the ordinary book form size of six by nine inches, should be charged under this last item, or by measurement of the number of ems, as book composition.

Many of these bulletins, programs and pamphlets appear to be the same composition as book composition.

This Act of Assembly deals with technical printing terms, but its application to what is included in book composition, or in the term "miscellaneous printing" is so doubtful, that those who are skilled in the use of such terms, like yourself and the State printer, seem unable to construe it.

Since the construction of the Act is doubtful, the course of conduct and the interpretation which has heretofore been put upon it, should be controlling.

The State Printer submitted his bid in view of the interpretation which he put upon it, under his former contract, and under the contract in force at the time his bid was presented.

Since the Act has been in force, and up to this time, the Superintendent of Public Printing and Binding has interpreted it to mean that all printing which is not bound and covered as a book, except Legislative bills, calendars, reports, blank-books, Dairy and Food Bulletins without covers, and books, pamphlets and bulletins with covers, journals, official documents, Smull's Hand Book, and lithograph work, should be included in the term "miscellaneous printing." To put a different interpretation upon the Act now, from that which was put upon it at the time the bids were opened, might work a great hardship upon the State Printer.

I am therefore, of opinion, in view of the ambiguity in the law itself, that the course of conduct should be controlling and the contract should be construed as the contracts with the State Printer have been heretofore construed.

Permit me to suggest that your request forcefully demonstrates that the law relating to the contract of the State Printer should be revised by the next Legislature.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OPINIONS TO COMMISSIONER OF FISHERIES.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

COMMODORE PERRY.

The Commissioner of Fisheries is advised as to registration and operation of the "Commodore Perry" a vessel owned by the Commonwealth of Pennsylvania.

Office of the Attorney General,
Harrisburg, Pa., March 5, 1917.

Honorable N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of January 29, 1917, in reference to the steamer Commodore Perry, owned by the Commonwealth of Pennsylvania and employed in connection with the business of the Department of Fisheries on Lake Erie.

It appears that this vessel is now documented as a passenger vessel with one of the members of the State Commission of Fisheries named as the resident owner.

The Commodore Perry is a boat of less than fifty tons burden and has but one collision bulk head. Under Section 4490 R. S., as amended by Act of July 9, 1886, this vessel, as documented, is not permitted to navigate beyond fifteen miles from the mouth of any bay or harbor of the United States.

It appears that the principal work of the Commodore Perry consists of acting as a patrol boat to oversee the fisheries within Pennsylvania waters, to prevent illegal fishing and to confiscate illegal apparatus. In addition to that the vessel must cross over to the Canadian side several times a year for the purpose of carrying employes of the Fisheries Department other than those used to navigate the boat, which employes are taken to the spawning fields for the purpose of collecting fish spawn. Also, special business and emergencies have called the boat to Dunkirk, Buffalo and other ports on Lake Erie. In that Port Dover, in Canada, is twenty eight miles from Erie, and Dunkirk some fifty miles distant, the present documentation of the vessel is such as makes trips to these points illegal under the section of the revised statute referred to.

I have to advise you that for the purpose of determining the proper status of this boat and adjusting the several matters of contention existing between this Commonwealth and the United States Department of Commerce, a conference was held in Washington on Wednesday, February 6, at which were present the Honorable Edwin F. Sweet Assistant Secretary of Commerce, Supervising Inspector General George Uhler, Deputy Commissioner of Navigation Tyrer, and myself. At this conference the status of the vessel was agreed upon, together with the law, and rulings thereunder, applicable to the same, and as the result of such agreement I have to advise you first that the vessel Commodore Perry should be registered under the ownership of the Commonwealth of Pennsylvania.

In the cases of *Oyster Police Steamers of Maryland*, 31 Fed. 763, and the *Governor Robert McLane vs. United States*, 35 Fed. 926, the District Court in the first case, and the Circuit Court in the latter, determined that steam vessels belonging to the State of Maryland and used by its officers in the enforcement of the State fishery laws are required, under Sections 4417 and 4418 R. S., to have their boilers and hulls inspected by the United States Steam Boat Inspectors. These sections pertain only to the inspection of hulls and boilers, and the right of the United States to so act in reference to the vessels belonging to any State of the Union as to this particular is predicated upon the power and duty of the Federal Government to protect navigation in general upon the highways of commerce.

In an opinion given by the Attorney General of the United States to the Secretary of Commerce and Labor, under date of August 6, 1912, the distinction is shown between the regulations following the particular documentation of a vessel and the right of the Federal Government to inspect it regardless of documentation. A copy of this opinion is attached hereto, but it may be proper to embody certain portions of it in the present opinion. Those portions are as follows:

“* * * vessels of the State employed only in protecting State fisheries are not within the purview of Section 4311, R. S.”

Again,

“That case (31 Fed. Rep. 763) involved the application of the inspection laws of the United States to vessels owned by the State, and it was held that they were applicable not only because of the failure of Congress to except vessels owned by the State, and because ‘it is not their use, but the fact that they navigate the highways of commerce, which brings them within the constitutional grant of powers, and within the language of Section 4400 of the act of Congress.’ The opinion in

that case also held that the sections of the Revised Statutes relating to the carrying of passengers and merchandise were inapplicable to the vessels there involved because such vessels were not so used."

The opinion, after stating that State Vessels used in protecting fisheries should not be licensed, concludes:

"It would seem that the confusion on this subject has grown out of a failure to distinguish between the regulations as to inspection, which are based upon the fact that the vessels navigate the highways of commerce, and other provisions which are based upon the use or occupation of the vessel."

From the foregoing it is evident that it is not necessary to obtain a license for the Commodore Perry, provided in its use passengers are not carried. In the employment of this vessel for the purposes for which it is intended no passengers will be carried.

The Commissioner of Navigation, in General Letter No. 117, under date of May 20, 1916, a copy of which is likewise attached to this opinion, defined the term "passenger," as used in the steamboat inspection laws, as follows:

"The Department has ruled that 'any person carried who is not connected with the vessel, her navigation, ownership, or business, is a passenger within the meaning of the steamboat inspection laws.'"

Under the foregoing definition, any person who is connected with the navigation, ownership or business of the vessel is not a passenger. This would permit employees of the Department of Fisheries engaged in preventing illegal fishing, in confiscating illegal apparatus, and in crossing to the Canadian side for the purpose of collecting fish spawn, to be carried on the vessel. Aside from the employees of the Department of Fisheries, as above set forth, only those officers of the Commonwealth who occupy a position analogous to that of officers and directors of a private corporation may be carried upon the vessel, and such officers of the Commonwealth would be only those who, because of their official positions, have the right to control the equipment and operation of the boat.

You have, however, no right to permit other persons to be carried upon the boat, or to transport game or merchandise for private parties.

In conclusion, therefore, we would advise you to have the "Commodore Perry" documented in the name of the Commonwealth of Penn-

sylvania, to surrender its present certificate as a passenger vessel, and the officers of the vessel instructed to enforce compliance with the ruling as set forth in this opinion. After such has been done, this vessel need only be inspected by the officials of the Federal government for the purpose of determining the safety of its hull and boilers.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

DEPARTMENT OF JUSTICE.

Washington, D. C.

August 6, 1912.

The Secretary of Commerce and Labor.

Sir: I have had under consideration your letter of June 17, 1912, in further reference to the application of the Federal navigation laws to vessels owned and operated by the State of Maryland. The specific questions presented, as I understand it, is whether sec. 4311 of the Revised Statutes, referring to licensing of certain vessels, applies to vessels of the State of Maryland engaged exclusively in protecting its fisheries.

You say that it is the opinion of your Department that the law requiring such vessels to be documented is mandatory and cannot be waived by executive regulations, and therefore suggest that a test case be arranged in order that the question may receive judicial determination if the case of the Oyster Patrol Steamers of Maryland, 31 Fed. Rep. 763, is not thought conclusive. Upon further consideration of this matter, I concur in the view expressed by the Governor of Maryland that vessels of the State employed only in protecting State fisheries are not within the purview of Section 4311, and think it would be idle to bring a suit to test this question. The suggestion in the Department's former correspondence on this subject that the case reported in 31 Fed. Rep. 763, was applicable to the present case I think upon further consideration to be erroneous. That case involved the application of the inspection laws of the United States to vessels owned by the State, and it was held that they were applicable not only because of the failure of Congress to accept vessels owned by the State, but because it is not their use, but the fact that they navigate the highways of commerce, which brings them within

the constitutional grant of power, and within the language of section 4400 of the Act of Congress." The opinion in that case also held that the sections of the Revised Statutes relating to the carrying of passengers and merchandise were inapplicable to the vessels there involved because such vessels were not so used.

Section 4311 and subsequent provisions relating to the licensing of vessels are directed only at vessels engaged in the coasting trade or fisheries, and, therefore, I feel that the case in 31 Fed. Rep. is an authority against rather than for the contention that the vessels of the State of Maryland engaged in protecting its fisheries should be licensed.

It appears from the letter to the Commissioner of Navigation from the Collector of Customs of the Port of Baltimore, Maryland, of January 22, 1912, which is a part of the file of your Department transmitted by you, that in Treasury Decision No. 3994, dated May 1, 1879, the Secretary of the Treasury held that "if vessels do not engage in the coasting trade or the fisheries, they are not obliged by law to be enrolled or licensed," and that the Collector has always acted in accordance with that decision. It would seem that the confusion on this subject has grown out of a failure to distinguish between the regulations as to inspection, which are based upon the fact that the vessels navigate the highways of commerce, and other provisions which are based upon the use or occupation of the vessel.

If there are any further considerations in this connection which you think should be called to my attention, I should be glad to entertain them.

The file of your Department referred to is herewith returned.

Respectfully

For the Attorney General,

WILLIAM R. HARR,
Assistant Attorney General.

In reply refer to File No. 86166-N.

DEPARTMENT OF COMMERCE,
Bureau of Navigation, Washington.

May 20, 1916.

General Letter No. 117.

To Collectors of Customs and Others Concerned.

Your attention is invited to the following letter, dated the 12th inst., in regard to the meaning of the word "passenger," as used in the Steamboat-Inspection laws:

"Dear Sir: Yours of the 5th instant, submitting certain questions as to the carrying of persons therein designated on steamers not certificated as passenger-carrying vessels was duly received and referred to the Solicitor of the Department. I am advised by him to the following effect:

"The Department has ruled that 'any person carried who is not connected with the vessel, her navigation, ownership, or business, is a passenger within the meaning of the Steamboat-Inspection Laws,' and in construing this ruling the Department has held that the wives and children of the officers of the vessel and of the officers of the company are not passengers and may be carried. Referring to the specific questions submitted by you, first, the family of the owner of the vessel are not considered to be passengers within the meaning of the above ruling and may be carried on the vessel; second, if a corporate owner, any member of the board of directors or his family is not to be considered as a passenger within the above ruling and may be carried on the vessel. They fall clearly within the above ruling as being connected with the ownership and business of the vessel. Third, neither a stockholder nor any member of his family is included in the above ruling and can not be carried on the vessel. They are not considered as connected with the vessel, her navigation, ownership, or business. The word 'family' in this connection is to be construed as being limited to, or as including, only those persons who are actually a part of the household.

"Yours very truly,

"(Signed) WILLIAM C. REDFIELD,
"Secretary.

"Mr. Morton H. Eddy,
"Attorney at Law,
"109 North Dearborn Street,
"Chicago, Illinois."

Please be governed accordingly,

Respectfully,

E. T. CHAMBERLAIN,
Commissioner.

IN RE FISH WARDEN.

A salaried fish warden is a civil officer of the Commonwealth within the meaning of Section 6, Article II, of the Constitution, so that a member of the Legislature is not eligible to appointment to that position, under the Act of May 1, 1909, P. L. 353.

Office of the Attorney General,
Harrisburg, Pa., July 25, 1917.

Honorable Nathan R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of the 12th inst., asking, substantially, whether a member of the Legislature is eligible for appointment as a Fish Warden, by which I infer is meant a salaried fish warden.

The answer to this question depends upon whether a Fish Warden in a "civil office under this Commonwealth" within the meaning of Section 6, Article II, of the Constitution, which provides:

"No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth,"

or within the meaning of Section 15 of the Act of May 15, 1874, P. L. 186, which provides that:

"No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth; and no member of Congress or other person holding any office, except of attorney-at-law or in the militia under the United States or this Commonwealth, shall be a member of either house during his continuance in office. They shall receive no other compensation, fees or perquisites of office for their services from any source, nor hold any other office of profit under the United States, this state or any other state."

The meaning of the term "civil office" has been much discussed and the law is now settled that the words import the idea of tenure, duration, fees, emoluments and exercise of some sovereign power of the State.

As was said by Attorney General Carson in an opinion holding that a member of the Legislature might act as an attorney for the Factory Inspector, reported in 28 Pa. C. C. 369:

"It involves the idea of tenure, duration, fees, the emoluments and powers, as well as that of duty, and it implies an authority to exercise some portion of the sovereign power of the state either in making, administering or executing the laws."

Practically the same definition was given by Attorney General Bell in an opinion reported in 39 Pa. C. C. 441, holding that a water shed inspector was not a civil officer.

Opinion p. 441:

“Concurring in the views expressed in these opinions, elaboration is unnecessary, suffice it to say that there is a legal difference between an ‘officer’ or one who holds such a ‘civil office’ as is referred to in the section quoted, and an employe. Incident to, and involved in the holding of such an office, is the idea of tenure, duration, fees, emoluments and the exercise of certain rights, powers and duties—a portion of the sovereign power of the state—in the making, interpreting or administering the laws of the state.”

Tested by the foregoing rule, it is quite clear that Fish Wardens are civil officers under the Commonwealth.

Section 29 of the Act of May 1st, 1909, P. L. 353, providing for fish wardens, authorizes their appointment by the Commissioner of Fisheries, with the advice and consent of the Board of Fishery Commission. The wardens are to hold their office during the pleasure of the Commissioner of Fisheries. Their salary is fixed by the Act at \$75.00 a month and their powers and duties are expressly enumerated at length by the statute. They may investigate all offenses against the fish laws, they may search, without warrant, receptacles suspected of containing fish, and may take all action necessary for the proper execution and enforcement of the laws relating to fish.

It thus appears that a Fish Warden has a tenure of office, indefinite, it is true, but, nevertheless, a tenure. The fact that no fixed term is attached to the office is immaterial. (Evans vs. Luzerne County, 54 Pa. Super. Ct. 44.) He is paid by the State a Compensation expressly fixed by law and many of his powers are expressly prescribed by statute, and are all designed for the administration and execution of the laws.

Specifically answering the question raised by your inquiry, you are advised that a member of the Legislature cannot be appointed as a salaried fish warden.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

FEDERAL TAXES.

The Commonwealth of Pennsylvania is not liable for Federal tax on the price of an automobile truck purchased for one of its departments.

Office of the Attorney General,
Harrisburg, Pa., November 27, 1917.

Honorable Nathan R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your communications of the 25th and 31st ultimo in which you substantially state that on September 11, 1917, your Department placed an order with the Atterbury Motor Car Company of Buffalo, New York, for a motor truck, manufactured by the said Company and at a quoted price of \$1875. You further state that this truck was shipped on October 15 and that on the day of its receipt, to-wit, October 22, the Company directed a letter to you stating it would be necessary for it, the Company, to collect three per cent. War Revenue Tax, and further stating as follows: "We are, therefore, enclosing you our invoice for this amount, which will be \$56.25 and would like to have you add the same to the amount of your bill."

On the foregoing facts, you ask whether the Commonwealth is liable for this tax. There is no doubt as to the purchaser of the truck. The order was placed by the "Commonwealth of Pennsylvania, Department of Fisheries," and the purchaser is so described in the invoice of the Company.

The provision under which the tax is sought to be collected is Section 600 of the Public Act, No. 50, approved October 3, 1917, entitled "An act to provide revenue to defray war expenses and for other purposes and with Section 601 reads, inter alia, as follows:

"That there shall be levied, assessed, collected and paid—

(a) Upon all automobiles, automobile trucks, automobile wagons and motor-cycles, *sold* by the manufacturer, producer, or importer, a tax equivalent to three per centum of the price for which so sold."

Section 601 of the Act provides as follows:

"That each manufacturer, producer, or importer of any of the articles enumerated in Section six hundred shall make monthly returns under oath in duplicate and pay the taxes imposed on such articles by this title to the collector of internal revenue for the district in which is located the principal place of business. Such returns shall contain information and be made at such

times and in such manner as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may by regulations prescribe."

While it appears by Section 601 that the tax is to be paid by the "manufacturer, etc.," it is doubtless contended that the manufacturer is merely the collecting agent and that the purchaser is the person ultimately liable under the act. Whether this contention be correct or not, and whether the tax be considered as operating on the contract for sale or upon the thing itself which is sold, I am of the opinion that the Commonwealth is not liable for the tax.

No rule of law is better settled than that the Federal Government is without authority to tax the means, agencies and instrumentalities of a state. This proposition was presented in *Buffington v. Day*, 11 Wal. 113 (20 L. Ed. 122), the precise question being whether an Act of Congress could so operate as to tax the salary of a State judge. It was held the statute could not so operate. The court on page 126 et seq. saying:

"Two of the great departments of the government, the executive and legislative, depend upon the exercise of the powers, or upon the people of the states. The Constitution guarantees to the states a republican form of government, and protects each against invasion or domestic violence. Such being the separate and independent condition of the states in our complex system, as recognized by the Constitution, and the existence of which is so indispensable, that, without them, the general government itself would disappear from the family of nations, it would seem to follow, as a reasonable, if not a necessary consequence, that the means and instrumentalities employed for carrying on the operations of their governments for preserving their existence, and fulfilling the high and responsible duties assigned to them in the Constitution, should be left free and unimpaired; should not be liable to be crippled, much less defeated by the taxing power of another government, which power acknowledges no limits but the will of the legislative body imposing the tax.

* * * * *

And if the means and instrumentalities employed by that government to carry into operation the powers granted to it are necessarily, and, for the sake of self-preservation, exempt from taxation by the states, why are not those of the states depending upon their reserved powers, for like reasons, equally exempt from Federal taxation? Their unimpaired existence in the one case is as essential as in the other. It is admitted that there is no express provision in the Constitution that prohibits the general government from taxing the means and instrumentalities of the states, nor is there any

prohibiting the states from taxing the means and instrumentalities of that government. In both cases the exemption rests upon necessary implication, and is upheld by the great law of self-preservation; as any government, whose means employed in conducting its operations, if subject to the control of another and distinct government, can exist only at the mercy of that government. Of what avail are these means if another power may tax them at discretion?"

The same rule is stated by *Cooly on Constitutional Limitations*, p. 681 *et seq.* On page 682 it is said:

"It follows as a logical result from this doctrine, that if the Congress of the Union may constitutionally create a Bank of the United States, as an agency of the national government in the accomplishments of its constitutional purposes, any power of the States to tax such bank, or *its property, or the means of performing* its functions, unless with the consent of the United States, is precluded by necessary implication.

* * * * *

If the States cannot tax the means by which the national government performs its functions, neither, on the other hand and for the same reasons, can the latter tax the agencies of the State governments."

And to the same effect is *Pollock vs. The Farmers' Loan & Trust Co.*, 157 U. S. 429, 39 L. Ed. 759.

I can see no distinction in principle between the salary of a state officer and a contract of purchase or the thing purchased, one may be just as much a means by which the Government performs its functions as the other; and if the Federal power of taxation be conceded in one instance where shall the line be drawn. On principle they must stand or fall together and I am of the opinion and you are now so advised that the Commonwealth is not liable for the tax sought to be imposed on the truck before mentioned.

While the Commonwealth might agree to assume the payment of such a tax, I find no evidence of such an agreement, every inference from your correspondence and the company's invoice is to the contrary.

Very truly yours,

HARRY K. DAUGHERTY,
Deputy Attorney General.

OPINIONS TO THE DEPARTMENT OF PUBLIC
INSTRUCTION.

OPINIONS TO THE DEPARTMENT OF PUBLIC INSTRUCTION.

EMPLOYMENT CERTIFICATE.

An employment certificate issued to a minor in a school district is not rendered invalid by the minor's removal to another school district.

Office of the Attorney General,
Harrisburg, Pa., January 30, 1917.

Mr. Millard B. King, Director of Industrial Education, Department of Public Instruction, Harrisburg, Pa.

Sir: Your communication of the 16th inst. was duly received, requesting an opinion as to whether an employment certificate issued for a minor while residing in a certain school district continues to be valid if he removes, with his parents, into another district. Although not so stated in the case mentioned in the correspondence accompanying your communication and out of which arises your present inquiry, I presume that the said minor in question, although changing his place of residence, remains employed in the same establishment or occupation.

The Child Labor Act of May 13th, 1915, P. L. 286, in pursuance of which employment certificates are required in the employment of minors between fourteen and sixteen years of age, prescribes how and by whom they may be issued, the requisites entitling a minor thereto, the classes and forms thereof. Under Section 9 of the Act it is provided, *inter alia*, that they shall be issued by certain school officials "for children residing within their respective public school districts." The Act is silent, however, as to whether such a certificate, when so issued, ceases to be valid if the minor removes into another school district. There is no doubt that, under Section 17 of the Act, the termination of the employment for which an employment certificate was issued operates to terminate such certificate, which is thereupon to be returned to the official issuing it. The need and reason therefor are plain. The very fact, however, that the Act clearly exacts the issuance of a new certificate when the employment of the minor changes, but does not expressly require it upon a change in the minor's place of residence, is persuasive of the conclusion that it is not required in the latter case.

There is no apparent reason of weight why a new certificate should be issued as a mere consequence of the change in the minor's residence from one district to another. The statutory requisites entitling a minor to an employment certificate are precisely the same in all districts. If he were lawfully entitled to its benefit in the district in which it was issued, he would continue to be entitled thereto in a district to which he may remove. It may be urged that the educational standards of districts differ, but that, if true, is immaterial to the question as a legal proposition. Not the educational standard of any particular district, but the Act itself, in Section 13 thereof, fixes the educational qualifications of the minor for whom a certificate may lawfully be issued, viz: That the "said minor has completed a course of study equivalent to six yearly grades of the public school, in the English language, spelling, reading, arithmetic, geography, and history of the United States." If the minor's school work measures up to that test, then as to that statutory requisite a certificate could properly be granted for him.

The only express provision in the Act which might seem to indicate that an Employment Certificate only remains good so long as the minor resides in the district in which it was issued, is that contained in Section 18 of the Act which in prescribing the form of the certificate provides, *inter alia*, that it "shall state the name, sex, date, and place of birth, place of residence, color of hair and eyes, and any distinguishing physical characteristics of the minor for whom it shall be issued." Where the minor would change his residence after the issuance of the certificate, the statement contained in the certificate as to his residence and the actual fact would cease to agree. The purpose of this last mentioned requirement, as to what the certificate shall set forth, is to afford ready means to identify and locate the party for whom it is issued. It would not, however, tend to defeat in any substantial degree this purpose to hold that a certificate continues valid despite a change in the minor's residence after its issue, as such changed residence would be a matter of easy ascertainment for those charged with the enforcement of the Act.

The Act is so comprehensive in its scope as to these employment certificates, it specifies in such detail and with such care how and in what cases they may be issued, that it seems only fair to conclude if it had been the intent of the statute to make a change in the place of residence of a minor for whom one had been issued invalidate it, such intent would have been expressed in specific terms to that effect. The procuring of a new certificate would impose some hardship and entail the expense of an additional medical examination

on the minor. Not alone is there an absence of express provision necessitating it, but so far as I can discern there is nothing in the Act warranting the implication of such a requirement.

I am therefore of the opinion and so advise you that where an employment certificate was duly issued for a minor in the school district of the minor's residence, this certificate is not rendered invalid as a consequence of the minor's removal to another school district.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

ACADEMIC DEGREES.

A synod, conference or a sisterhood cannot be vested with power to confer academic degrees.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1917.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 16th ult. inquiring whether under the Act of 1895, a synod, a conference or a sisterhood can be vested with the power to confer academic degrees. The provision of the Act of June 26, 1895, P. L. 327, and its amendment of April 27, 1909, P. L. 206, under which the College and University Council is created, and the conferring of degrees is regulated, relate solely to "institutions of learning incorporated as colleges, universities or theological seminaries." No corporation, unless it is an institution of learning incorporated as a college, a university, or a theological seminary, is given power to confer degrees in art, pure and applied science, philosophy, literature, law, medicine and theology, or any of them, nor unless it is incorporated in the manner set forth in said Act.

You are therefore, advised that a synod, a conference or a sisterhood cannot be vested with power to confer academic degrees. The limitation is to colleges, universities and theological seminaries.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE POWER TO CONFER ACADEMIC DEGREES.

In Pennsylvania, no corporation, unless it is an institution of learning incorporated as a college, a university or a theological seminary, is given power to confer degrees in art, pure and applied science, philosophy, literature, law, medicine and theology, or any of them, nor unless it is incorporated in the manner set forth in the Act of June 26, 1895, P. L. 327, and its amendment of April 27, 1909, P. L. 206.

Office of the Attorney General.
Harrisburg, Pa., September 5, 1917.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 16th ult., inquiring whether an incorporated college with power to confer academic degrees could continue to possess such power and confer degrees when the property, including assets and facilities for instruction have been transferred to and are owned by a private individual or some other corporation.

The Act of June 26, 1895, P. L. 327, which establishes the College and University Council and provides the conditions under which colleges, universities and theological seminaries may confer degrees, requires as a condition precedent for the incorporation of such an institution of learning with power to confer degrees the possession by it of assets amounting to \$500,000, invested in buildings, apparatus and endowments for the exclusive purpose of promoting instruction.

The Act of March 7, 1901, P. L. 18, which amends the 12th Section of the Act of 1895, provides that the Act shall not impair the authority of colleges theretofore incorporated by Courts of Common Pleas with power to confer degrees in cases where such institutions have property or capital at the time of the passage of the amendment of at least \$100,000, or universities possessing property amounting to the sum of \$500,000, which shall comply with the provisions of said Act.

It appears from these Acts that the Legislature considered the possession of a certain amount of property, evidencing the stability of the institution, as a prerequisite to the right to confer degrees. It would appear that the institution, which, by misfortune or otherwise, has lost all its assets, and the plant and facilities for instruction of which are owned by an individual or by some other corporation, does not possess the requisite qualifications which the Legislature had in mind. While the Act does not expressly require that such colleges or universities shall always and continuously possess assets and property to the value of \$100,000 or \$500,000, as the case

may be, it does contemplate the possession of a plant and assets sufficient to insure the stability of the institution and the worth of a degree issued by it.

I am of the opinion that an institution which has lost all its assets and property and which subsists merely by grace of, or arrangement with, some individual or other corporation, is not authorized to continue the conferring of degrees, but loses such power until its affairs are rehabilitated and placed on a firm and stable foundation. The purpose of establishing the College and University Council was to give weight and authority to the degrees conferred by institutions of learning within this Commonwealth and to put an end to the granting of such degrees by irresponsible institutions, and the Act of 1895 in my judgement should be construed to that end.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE SCHOOL EMPLOYES' PENSIONS.

Under the provisions of the Act of July 18, 1917, P. L. 1043; establishing a public school employees' retirement system, the date, July 18, 1917, when the Act became a law, is the date which separates or distinguishes a "present employee" from a "new entrant," and not July 1, 1919, when the retirement system is to be established.

Office of the Attorney General,
Harrisburg, Pa., March 28, 1918.

Mr. H. H. Baish, Secretary State School Retirement Board, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 15th inst., asking to be advised whether the terms "present employee" and "new entrant," as defined in the first section of the Act of July 18, 1917, P. L. 1043, establishing a public school employees' retirement system, are to be distinguished as of the date of approval of the Act, July 18, 1917, or the date of the establishment of the retirement system, July 1, 1919.

The pertinent provisions of the Act are as follows:

Section 1—

“(8) ‘Present Employee’ shall mean any employee, as defined in paragraph seven of this section, employed in any capacity in connection with the public schools at the time this bill becomes a law, and any employee who was employed prior to such time and who shall become a contributor within three years from the date of expiration of such employment.”

“(9) ‘New Entrant’ shall mean any employee, as defined in paragraph seven of this section, appointed or elected, or contracting or otherwise legally engaging, to serve in any capacity in connection with the public schools after this bill becomes a law.”

“Section 2. The retirement system shall be established on the first day of July, nineteen hundred nineteen.”

“Section 20. This act shall take effect immediately.”

The Act by its express terms provided that it should take effect immediately, and thereby became a law on the eighteenth day of July, 1917.

In paragraphs eight and nine of Section 1 the date distinguishing a “present employee” from “new entrant” was fixed as of the time “this bill becomes a law” which, as shown above, was July 18, 1917. The fact that the system created by the Act was to be established on the first of July, 1919, does not change the date when the Act becomes a law. It is by virtue of the fact that the Act became a law on July 18, 1917, that your State Retirement Board was appointed. If it had been intended to fix the date of distinguishing between a “present employee” and “new entrant” as of July 1, 1919, the Act would have read “when the retirement system goes into force” rather than when “this bill becomes a law.”

You are therefore advised that under the provisions of the Act the date of the approval of the Act, July 18, 1917, which is the date when it became a law, is the date which separates or distinguishes a “present employee” from a “new entrant.”

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

SALARIES OF SUPERINTENDENTS OF PUBLIC SCHOOLS.

The Acts of Assembly, approved July 6, 1917, increasing the salaries of county superintendents of public schools and of assistant county superintendents of public schools does not operate to increase the salaries of such officers, who were in office prior to the approval of the acts.

Office of the Attorney General,
Harrisburg, Pa., September 6, 1917.

Honorable Nathan C. Schaeffer, Superintendent of Public Instruction,
Harrisburg, Pa.

Sir: There was duly received your communication of July 30th, to the Attorney General, requesting an opinion as to whether the recent Acts of Assembly increasing the salaries of County Superintendents and Assistant County Superintendents of public schools can apply to those holding the said offices at the time of the approval of said Acts.

There are two Acts relating to the subject raised by your inquiry, both approved on July 6, 1917, the one amending Section 1121 of the School Code of 1911, by increasing the salary of the county superintendent, and the other amending Section 1130 of the said School Code by increasing the salary of the Assistant County Superintendent.

The determination of the question submitted by you depends upon whether or not a county superintendent and assistant county superintendent are "public officers" within the meaning of that term as used in Section 13, Article III, of the Constitution, reading as follows:

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

In general a public officer has been defined to be one who has been elected or appointed to an office in a manner prescribed by law, has a designation or title given him by law and who is invested with and exercises some of the functions of government for the public benefit.

Words and Phrases, Vol. 3, 696-701.

In deciding that a real estate assessor of the City of Philadelphia was a public officer within the meaning of the above Constitutional provision, the Superior Court say, in the course of the opinion:

"It is no doubt true that there are many persons engaged in the public service in subordinate positions exercising functions of such an inferior character that they could not be properly considered public officers within the meaning of the constitution; this much is in-

dictated in *Com. v. Black*, 201 Pa. 433, and *Houseman v. Com.*, 100 Pa. 222, in the latter of which the court expressed the opinion that policemen, firemen, watchmen and superintendents of public property under the orders of the municipal department were subordinate ministerial agents or employes, at the most, petty officers not intended to be embraced in the constitutional provision, and therefore subject to appointment and removal according to legislative regulation. Where, however, the officer exercises important public duties and has delegated to him some of the functions of government and his office is for a fixed term and the powers, duties and emoluments become vested in a successor when the office becomes vacant such an official may properly be called a public officer. The powers and duties attached to the position manifest its character."

Ritchie vs. Philadelphia, 37 Pa. Super. Ct. 190.

This case was affirmed by the *Supreme Court*, *Ritchie vs. Philadelphia*, 225 Pa. 511.

A poor director was held to be a public officer, whose salary, under the above Constitutional provision, could not be increased after his election. In the opinion in this case Mr. Justice Mestrezat said:

"It is settled by many decisions of this court that the prohibition against the extension of the term of a public officer or the increase or diminution of his salary after his election or appointment, contained in Section 13, Article III, is not limited to constitutional officers. Whether an officer is a 'public officer' within the intendment of the constitutional prohibition depends upon the manner of his selection, the duties imposed and the powers conferred upon him. If he is chosen by the electorate for a definite and certain tenure in the manner provided by law to an office whose duties affect and are to be exercised for the benefit of the public for a stipulated compensation paid out of the public treasury, it is quite safe to say that the incumbent is a public officer within the meaning of the constitutional provision in question."

Tested by the foregoing, it is plainly to be seen and concluded that a county superintendent and an assistant county superintendent of public schools are public officers within the intendment of Section 13, Article III, of the Constitution, and whose salaries, therefore, cannot be increased after their election or appointment. They fulfill every criterion of what has been held or defined to constitute a public officer. They are elected or appointed to office in a manner prescribed by law for a definite term and are clothed with and exercise functions

of government delegated to them by law for the public benefit. The powers and duties attached to these offices are of a grave and important character.

In view of the ability required to properly discharge the work of these offices and of the onerous nature of this work, the increase in salary provided by the above mentioned Acts is in both instances richly merited. The Constitution, however, stands in the way of permitting the benefit of these measures to run in favor of those in office at the time of the approval of said Acts during their then existing term therein.

You are accordingly advised that the said Acts cannot operate to increase the salary of any incumbent of the office of County Superintendent or Assistant County Superintendent during his incumbency of said office in pursuance of an election or appointment thereto prior to the approval of said Acts.

Yours very truly,

EMERSON COLLINS,
Deputy Attorney General.

IN RE SCHOOL TEACHERS' RETIREMENT FUND.

Under the Teachers' Retirement Act of July 18, 1917, P. L. 1043, local school districts and other employers are required to make their first payments to the Commonwealth to reimburse the Commonwealth to the extent of one-half the amount paid by it to the Contingent Reserve Fund in July, 1920. Payments by the local school districts and other employers to the Commonwealth to reimburse the Commonwealth for payments made on account of State Annuity Reserve Fund No. 2 are due and payable during the month of July, 1919. Provision will have to be made in both instances by the school boards and other employers in advance of such payments.

Office of the Attorney General,
Harrisburg, Pa., June 4, 1918.

Mr. H. H. Baish, Secretary Teachers' State Retirement Board, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 20th of May, inquiring when the first contributions to the Contingent Reserve Fund and the State Annuity Reserve Fund No. 2, are due and payable to the Commonwealth by the several local school districts, under the Act of July 18, 1917, P. L. 1043.

Section 8, Paragraph 3, of that Act provides that in the month of July, 1920, for a period covering the twelve months next preceding, and semi-annually thereafter covering the six months next preceding, the Commonwealth of Pennsylvania shall make payments into the Fund known as the Contingent Reserve Fund. Paragraph 5, of the same section provides that beginning with the month of July, 1919, and continuing until the accumulated reserve equals the present value, the Commonwealth of Pennsylvania shall semi-annually make payments into the Fund known as the State Annuity Reserve Fund No. 2, on account of present employes to be retired, as provided in the Act.

Section 9 of the Act provides that the Commonwealth of Pennsylvania shall be reimbursed to the extent of one-half of the amount paid by the Commonwealth into the Contingent Reserve Fund and the State Annuity Reserve Fund No. 2, on account of employes of each other employer (including the local school districts) by payments into its treasury made directly by such employer, or indirectly from moneys otherwise belonging to such employer.

Section 2 of the Act provides that the retirement system shall be established on the first day of July, 1919.

It will be noted that while the Commonwealth begins making its payments to the Contingent Reserve Fund in the month of July 1920, such payments cover the twelve months next preceding, that is, from July 1, 1919. Reimbursement is not required to be made until payment has been made, but the several school districts must make provision so that the money is forthcoming immediately on payment by the Commonwealth.

Payments by the Commonwealth to the State Annuity Reserve Fund No. 2 begin during the month of July, 1919, and reimbursement is due by the local school districts as soon as made.

Local school districts and other employers, therefore, are required to make their first payments to the Commonwealth to reimburse the Commonwealth to the extent of one-half the amount paid by it to the Contingent Reserve Fund in July, 1920. Payments by the local school districts and other employers to the Commonwealth to reimburse the Commonwealth for payments made on account of State Annuity Reserve Fund No. 2, are due and payable during the month of July, 1919. Provision will, of course, have to be made in both instances in advance for such payments.

I would suggest that inquiries as to the construction of the Teachers' Retirement Act be limited as much as possible to such matters as are absolutely essential at this time, and that questions which may arise in the future be not anticipated. It is a wise rule in judicial construction to decide questions only as they arise, when

all the facts in connection with the matter can be presented and considered. In attempting to decide questions which may arise in the future, certain important matters of fact are sometimes overlooked, causing an ill-advised decision. I mention the subject at this time not by way of criticism, but only for the purpose of calling it to your attention, and limiting inquiries in the future to those questions which actually arise in the conduct of your Board, leaving all other matters to be decided as they present themselves in connection with the concrete facts involved.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

GRANTING OF DEGREES.

The Superintendent of Public Instruction is advised as to the granting of degrees by Irving College.

Office of the Attorney General,
Harrisburg, Pa., July 2, 1918.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: Receipt is acknowledged of your letter of April 25th, 1918, in which, as Secretary of the College and University Council, you ask whether Irving College "has the power to continue to grant academic degrees in view of the fact that it seems not to comply with the provisions of the Act creating The College and University Council.

Irving College was incorporated by Act of 28 of March, 1857, P. L. 132. Section 4 of such Act reads as follows:

"That the faculty shall have power to confer such literary degrees and academic honors as are usually granted by colleges, upon such pupils as shall have completed in a satisfactory manner the prescribed course of study."

By that Act Irving College was given full power to grant academic degrees and whilst the Act of 26 June, 1895, creating the College and University Council was intended to create a comprehensive system which would in proper cases affect all charters theretofore and thereafter granted, it was not intended that institutions theretofore

chartered should be required to have all the requirements therein specified to enable them to grant degrees, etc., if they had prior thereto the power to confer degrees and were fulfilling the purposes and accomplishing the objects of their incorporation, and continued so to do.

The Act of 1895 was intended to protect the people in the granting of college degrees, and whenever it shall be made to appear to The College and University Council, by proper proof, that any institution is granting degrees, or offering so to do, and such institution is not fulfilling the purposes or accomplishing the objects intended by its charter, it is the right and the duty of the Council to take the necessary action to protect the public.

If The College and University Council is considering whether it should give such approval to Irving College as would permit its graduates to receive the "provisional college certificates" or "permanent college certificates," contemplated by Sections 1316 and 1317 of the Act of 18 of May, 1911, being the Act known as the School Code, I advise as follows:

These provisions of the School Code are:

"The Superintendent of Public Instruction may grant a provisional college certificate to every person who presents to him satisfactory evidence of good moral character, and of being a graduate of a college or university approved by the College and University Council of this Commonwealth, who has during his college or university course successfully completed not less than two hundred hours' work in pedagogical studies, such as psychology, ethics, logic, history of education, school management, and methods of teaching, which certificate shall entitle him to teach for three annual school terms.

"The Superintendent of Public Instruction shall issue a permanent college certificate to every graduate of a college or university approved by the College and University Council of Pennsylvania, and of such departments therein as are approved by him, when such graduate furnishes satisfactory evidence of good moral character, and successful experience of three years' teaching in the public schools of this Commonwealth, which certificate shall entitle its holder to teach without further examination."

By the Act of June 26, 1895, The College and University Council, together with the Courts of Common Pleas, were given certain powers with respect to the granting of institutions of learning the power to confer degrees, together with the same powers as to such institutions already incorporated as should desire to amend their charters.

Among the restrictions which the Legislature thought proper to make as a condition for granting such charters, was a property quali-

fication. One of the grounds upon which The College and University Council, together with the Courts of Common Pleas, shall act in granting charters to such institutions is a property qualification, which is made by the Act of 1895 one of the requisites for the approval contemplated by that Act.

The Section of the Act of 1911, however, seem to me to contemplate an approval of The College and University Council, based upon different standards and supported by different facts than the approval with respect to a charter of the Act of 1895. The Sections of the Act of 1911 are drawn with a view of securing qualified persons to teach in the schools of Pennsylvania. One of the qualifications is graduation from a college or university approved by the College and University Council. Irving College has been so approved.

The approval in this case would seem to have in view the character of the instruction in the college or university in question, and it is upon the fact in this case that the approval of your Council with respect to the college certificates should be predicated. It appears to me that the Legislative requisites for approval, in respect to corporations, as set forth in the Act of 1895, do not necessarily govern the approval with respect to college certificates required by the Act of 1911.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

SCHOOL CODE OF 1911.

The State Board of Education has the right to prescribe the equipment provided by the school code.

The plans for a new school building must be approved by the Board.

The Superintendent of Public Instruction may condemn a school building, erected contrary to the code requirements and declare forfeited all or any portion of the appropriation to the school district.

Office of the Attorney General,
Harrisburg, Pa., October 16, 1918.

Dr. J. George Becht, Executive Secretary State Board of Education, Harrisburg, Pa.

Sir: This Department is in receipt of your recent favor relative to the interpretation of Sections 615, 618, 619, 620, 621, 908 and 1017 of the School Code of 1911, and making the following inquiries upon

which you request to be advised in connection with the construction or reconstruction of school buildings and the installation of heating plants:

"1. Does not the State Board of Education have the right to prescribe the equipment provided for in the act under such reasonable rules and regulations which may appear to it to be necessary to provide sanitary and hygienic conditions?

"2. Has a school board the right to enter into a contract for the construction or reconstruction of a school building if the plans and specifications required by the State Board of Education under authority vested in it by Section 615 and 908 have not been submitted for inspection and suggestion?

"3. In case a board does not carry out the recommendations made to it and as a consequence the building is unsanitary, the construction unsafe, or the heating and ventilating system not in accordance with Code requirements, may the State Superintendent of Public Instruction, under Section 1017 of the School Code, penalize the school board by withholding its appropriation?"

The sections of the Act above referred to, so far as material, are as follows:

"Section 615. 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; * * * ."

"Section 618. All school buildings hereafter built or rebuilt shall comply with the following conditions:

"In every school room the total light area must equal at least twenty per centum of the floor space, and the light shall not be permitted thereto from the front of seated pupils.

"Every school room shall have not less than fifteen square feet of floor space, and not less than two hundred cubic feet of air space per pupil."

"Section 619. No board of school directors in this Commonwealth shall use a common heating stove for the purpose of heating any school room, unless such stove is in part enclosed within a shield or jacket made of galvanized iron, or other suitable material, and of sufficient height, and so placed, as to protect all pupils while seated at their desks from direct rays of heat."

"Section 620. No school room or recitation room shall be used in any public school which is not provided with

ample means of ventilation, and whose windows, when they are the only means of ventilation, shall not admit of ready adjustment both at the top and bottom, and which does not have some device to protect pupils from currents of cold air. Every school room or recitation room shall be furnished with a thermometer."

"Section 621. Every school building hereafter erected or reconstructed, whose cost shall exceed four thousand dollars (\$4,000.00), or which is more than one story high, shall be so heated and ventilated that each school room and recitation room shall be supplied with fresh air at the rate of not less than thirty cubic feet per minute for each pupil, and which air may be heated to an average temperature of seventy degrees Fahrenheit during zero weather."

"Section 908. (The State Board of Education shall have the following powers and duties, subject to the provisions of this Act:) To prescribe rules and regulations for the sanitary equipment and inspection of school buildings, and to take such other action as it may deem necessary and expedient to promote the physical and moral welfare of the children in the public schools of this Commonwealth."

"Section 1017. He shall have power to condemn as unfit for use, on account of unsanitary or other improper condition, any school building, school site, or outbuilding in this Commonwealth, and upon failure on the part of the board of school directors to remedy such conditions, he shall have power to withhold and declare forfeited all or any part of the annual appropriation apportioned to any such school district."

I note from your letter that in conformity with the provisions of Section 908 the State Board of Education has prescribed rules and regulations in regard to various phases of school house construction and necessary equipment to provide sanitary conditions, and that these rules and regulations have been sent to the officers of the several School Boards in the State. I am of the opinion that the language of these sections is clear and unmistakable, and you are accordingly advised:

1. The State Board of Education does have the right to prescribe the equipment provided for in the Act, under such reasonable rules and regulations as may appear to it to be necessary to provide sanitary and hygienic conditions.

2. Since the passage and approval of the School Code a School Board does not have the right to enter into a contract for the construction or reconstruction of a school building, if the plans and specifications in connection therewith have not been submitted to the State Board of Education for inspection and suggestion, unless the

buildings are being built according to plans and specifications furnished by the State Board of Education, in accordance with Section 616 of the School Code.

3. If a School Board does not carry out the recommendations made to it and in consequence the building is unsanitary, the construction unsafe, or the heating and ventilating system not in accordance with the Code requirements, the Superintendent of Public Instruction may condemn the same and upon failure of the Board of School directors to remedy such condition he shall have the right to withhold and declare forfeited all or any part of the annual appropriation apportioned to such school district.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

EMPLOYMENT OF MINORS.

A minor under 16 years of age cannot lawfully be employed at theatrical work without an employment certificate.

Office of the Attorney General,
Harrisburg, Pa., December 9, 1918.

Mr. Millard B. King, Director of Industrial Education, Harrisburg, Pa.

Sir: There was duly received your communication of the 15th ult., asking to be advised as to the "legality of employing children under sixteen years of age without an employment certificate in theatrical work or any form of paid entertainment."

The Child Labor Act of May 13, 1915, P. L. 286, by virtue of Section 1 thereof, applies to all places in this Commonwealth where work is done for compensation, excepting farm labor and domestic service in private homes.

Section 8 provides as follows:

"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."

The conclusion clearly follows from the foregoing that a minor under sixteen years of age cannot lawfully be employed at theatrical work without an employment certificate duly issued in the manner prescribed by said Act for the issuance of such certificates.

It may further be noted that this Act of 1915 does not modify or affect various prior acts specifically relating to the employment of minors in places of amusement so as to render lawful in any way any employment of that kind which had been made unlawful by such prior acts.

Very respectfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

**OPINIONS TO BOARD OF COMMISSIONERS OF
PUBLIC GROUNDS AND BUILDINGS**

OPINIONS TO BOARD OF COMMISSIONERS OF PUBLIC
GROUNDS AND BUILDINGS

IN RE TOLLHOUSES ON STATE HIGHWAYS.

Under the provisions of the Act of May 31, 1911, P. L. 468, as amended by the Acts of April 11, 1913, P. L. 59, and June 1, 1915, P. L. 691, when turnpikes are purchased by the State, these turnpikes as well as the tollhouse buildings pass to the exclusive jurisdiction of the State Highway Department.

Office of the Attorney General,
Harrisburg, Pa., May 15, 1917.

Mr. James C. Patterson, Deputy Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: I have your favor of the 10th inst. supplementing your letter of April 25, requesting a "legal opinion" as to whether the State Highway Department has any jurisdiction over tollhouse buildings purchased by the State Highway Commissioner on behalf of the Commonwealth in connection with turnpikes forming parts of State Highway Routes under the provisions of the Act of May 31, 1911, P. L. 468, as amended by the Acts of April 11, 1913, P. L. 59, and June 1, 1915, P. L. 691.

Ordinarily buildings owned by the Commonwealth are under the jurisdiction and control of the Board of Public Grounds and Buildings. The tollhouses referred to in your inquiry, however, are appurtenant to turnpikes or toll roads purchased by the State Highway Commissioner, with the approval of the Governor, for the Commonwealth as a part of its system of State highways, which by the express terms of the Act of May 31, 1911, *supra* are declared to be under the exclusive authority and jurisdiction of the State Highway Department. By Section 3 of that Act the State Highway Commissioner is authorized and empowered to purchase machinery, implements, tools and materials incident to or necessary in the construction and maintenance of State highways and to purchase and maintain horses, mules, wagons, harness, etc., and provide for their keeping and maintenance.

The authority to purchase and maintain machinery, equipment, supplies, horses, mules and vehicles carries with it the authority to house, keep or store such equipment, supplies, etc. It is in con-

nection with these purposes that the tollhouses appurtenant to the turnpikes were purchased by the State Highway Commissioner along with the several turnpikes and I am informed will be so used.

They formed part of a turnpike property purchased by the State Highway Commissioner for the Commonwealth and pass under the jurisdiction and control of the Highway Department along with the turnpikes to be used in connection with the work of constructing and maintaining State highways.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

STATE INSURANCE FUND.

Insurance may be placed in the State Insurance Fund and carried by it upon machinery in the Eastern State Penitentiary leased by the Prison Labor Commission.

Office of the Attorney General,
Harrisburg, Pa., June 6, 1917.

Honorable George A. Shreiner, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of the 29th ult. inquiring whether insurance in the sum of eighteen hundred (\$1,800) dollars may be placed on machinery in the Eastern State Penitentiary leased by the Prison Labor Commission and whether the same may be carried in the State Insurance Fund created by the Act of May 14, 1915, P. L. 534.

It appears from the correspondence between the Prison Labor Commission and yourself, which is attached to your communication, that the machinery in question is owned by the United Machine Company of Boston, Massachusetts, and that it is leased to the Commission which pays a royalty, monthly, for the use thereof. It also appears that by the terms of the contract of lease the machinery "shall be held at the sole risk of the lessee from injury, loss or destruction."

The Act of Assembly referred to provides in Section 1 that the Insurance Fund thereby created is for the purpose of "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," etc.

While the act refers, in several places, to property "owned" by the Commonwealth, the word is not to be given its technical meaning, but regard is rather to be had for the purpose of the act which is to create its own insurance fund, so as to avoid the payment of premiums for insurance of property of the Commonwealth, in which it has an insurable interest. There would be no point in holding that the Act of Assembly restricts the use of the fund to such property only in which the Commonwealth has absolute title or ownership. In a case such as this, the basis of your inquiry, the loss to the Commonwealth would be the same as if it owned the machinery in question absolutely, inasmuch, as under its contract with the lessor, it is liable and responsible for the replacement of the machinery in case of its destruction. There is no reason, therefore, why the insurance on this leased machinery should not be carried by the State Insurance Fund as is insurance on all other property held by the Commission.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

RENTAL OF OFFICES.

The rental of offices of the Workmen's Compensation Bureau must be paid out of the appropriation to the Board of Commissioners of Public Grounds and Buildings for rental of offices outside of the Capitol Building.

Office of the Attorney General,
Harrisburg, Pa., July 27, 1917.

Hon. George A. Shreiner, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: Your favor of the 20th inst., addressed to the Attorney General, it at hand.

You ask to be advised whether the Workmen's Compensation Board should pay the rental of offices in rooms outside of the Capitol which are occupied by that Board, and the Referees, out of the funds appropriated to it, or whether said rentals should be paid out of the appropriation made to the Board of Commissioners of Public Grounds and Buildings for the purpose of paying office rentals.

The appropriation to the Board of Workmen's Compensation for the two years ending May 31, 1917, provided in terms, among other

things, "for the expenses of procuring places for hearings and establishing permanent offices." No appropriation whatever has been made to the Bureau of Workmen's Compensation for the two fiscal years beginning June 1, 1917, for anything except salaries, and neither does the appropriation made to the Department of Labor and Industry provide for the payment of any office rent.

Therefore, I am compelled to advise you that the rent for the offices of the Workmen's Compensation Bureau must be paid out of the appropriation made to the Board of Commissioners of Public Grounds and Buildings for rental of offices and rooms of departments, boards and commissions outside of the Capitol Building.

Very truly yours,

WILLIAM M. HARGEST,

Deputy Attorney General.

STATE INSURANCE.

Since the passage of the Act of May 14, 1915, P. L. 524, increased insurance cannot be taken out on new buildings, and any loss of such buildings will have to be paid for out of the insurance fund set aside by the Legislature.

Office of the Attorney General,
Harrisburg, Pa., August 31, 1917.

Honorable George A. Shreiner, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 29th, enclosing copy of letter from Mr. Oscar E. Thomson, Superintendent of the State Institution for Feeble-Minded of Eastern Pennsylvania, and inquiring whether additional insurance should be taken for new buildings erected in connection with said Institution.

The Act of May 14, 1915, P. L. 524 (No. 227) establishing the State Insurance Fund, contemplates the creation of an insurance fund, which, by December 31, 1920, will be sufficient to cover the probable loss by fire on any of the State's property. It expressly provides that it shall be unlawful, after the passage of the Act, to secure a policy of insurance for any amount in excess of the amount of insurance outstanding at the date of the approval of the Act, after deducting from such amount twenty per cent. thereof for each calendar year which shall have elapsed from and after December 31, 1915, to the date of securing such policy of insurance. No exception is made in the Act with reference to new buildings erected after the passage

of the Act. The Legislature must have contemplated that the State would, from time to time, enlarge and add to its buildings, but it nevertheless concluded that the sum of one million dollars and its natural income and increment would be sufficient to protect the Commonwealth, and that until this amount was accumulated the funds dedicated to this purpose would be sufficient to permit the expiring insurance to be reduced twenty per cent. per year.

In a ruling of this Department, to your predecessor, Honorable Samuel B. Rambo, dated June 14, 1916, Deputy Attorney General Hargest said:

“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.”

You are, therefore, advised to notify Mr. Thomson that the increased insurance requested cannot be taken out, but that any loss on such new buildings will have to be paid for out of the insurance fund set apart by the Legislature.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE ADVERTISING BRIDGE PROPOSALS.

The purpose of the Act of April 21, 1903, P. L. 233, relating to advertising proposals for building bridges, was not to limit the discretion of the Board of Public Grounds and Buildings, beyond requiring certain minimum advertisements. It does not take away from the Board power to publish additional advertisements, if it deems wise and proper so to do. The Board is required, however, to exercise this discretion as a Board.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1917.

Honorable George A. Shreiner, Superintendent of Public Grounds
and Buildings, Harrisburg, Pa.

Sir: This Department is in receipt of yours of the 13th inst. enclosing communication from Honorable David Cameron, Solicitor for the Commissioners of Tioga County, relative to the advertisement of the proposals for the bridge over the Cowanesque River near the village of Knoxville, Tioga County.

Judge Cameron calls attention to the fact that these proposals were not only advertised in two weekly newspapers in Tioga County, but also in the Harrisburg Telegraph, the Philadelphia Press, and the Pittsburgh Dispatch, and questions the legality of this action as to the two last named papers.

The Act of April 21, 1903, P. L. 233, Section 3, to which he refers, does not limit the Board of Public Grounds and Buildings in advertising for bids to three newspapers. It provides that the Board shall advertise

"In *not less* than three daily newspapers, two of which shall be published in the county or counties in which such bridge is located, and the other in one newspaper published in the State Capital, for a period of three weeks—and in counties in which two daily newspapers are not published, such notice, in the weekly newspapers of the county or counties, or otherwise, shall be given as the court may order and direct."

This requires as a minimum that there must be one advertisement in a newspaper published in the State Capital, and advertisements in two daily or weekly newspapers in the county in which the bridge is to be located, but it does not limit the Board to these three advertisements. If, in the judgment and discretion of the Board it is necessary or advisable for the purpose of securing bidders that additional advertisements shall be printed elsewhere than in the county in which the bridge is to be located, it has the power to so order. If, in the exercise of this discretion, the Board saw fit to advertise the proposals in Philadelphia and Pittsburgh, as well as in the news-

papers in Tioga County and Harrisburg, it had that power. The purpose of the Act was not to limit the discretion of the Board of Public Grounds and Buildings, beyond requiring certain minimum advertisements. It does not take away from the Board the power to publish additional advertisements, if it deems wise and proper so to do. The Board is required, however, to exercise this discretion as a Board.

You are therefore advised that in the opinion of this Department, the advertisements published in the Philadelphia Press and Pittsburgh Dispatch by order of the Board of Public Grounds and Buildings, were both legal and proper, and the bills therefor constitute proper charges, which the County Commissioners may safely pay as required by law.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

ATHENS BRIDGE.

The State should reimburse the County of Bradford for the use by the State of a temporary bridge at Athens, Pa., where the temporary bridge, built by the county saved the State the sum of \$7,500 in erecting a new bridge.

Office of the Attorney General,
Harrisburg, Pa., March 6, 1918.

Honorable George A. Sireiner, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: Some time ago you sent to this Department the papers in reference to the rebuilding of the bridge across the Susquehanna river at Athens, Pennsylvania, and the petition of the county commissioners for the payment by the Commonwealth to the county of Bradford of the sum of \$7,500, for the erection of a temporary bridge across the Susquehanna river.

I understand the facts to be as follows:

The Board of Public Grounds and Buildings asked for proposals for the erection of the bridge at Athens, Pa., in two ways; one a straight proposition in a lump sum, and the other a proposition making an "allowance for the use of temporary traffic and erection trestle."

Messrs. Whitaker & Diehl proposed to erect the bridge for a lump sum of \$87,548 without the use of the temporary bridge, and \$82,048 with the use of the temporary bridge, making an allowance "for the use of the temporary traffic and erection trestle of \$7,500.

It appears that after the destruction of the former bridge, the Commissioners of Bradford County built a temporary structure to enable what was left of the bridge to be used. The temporary structure was in use for a very short time. Messrs. Whitaker & Diehl who secured the contract, took possession of it on August 11, 1916, and shut off all traffic thereon, with the exception of one week, when the trestle was used for travel to the county fair. By the use of the trestle, considerable time was gained in the active construction work on the bridge.

The Commissioners of Bradford County say that there was an agreement between them and the Board of Public Grounds and Buildings that the Board should have the use of the temporary trestle and the county be reimbursed therefor. In this way they are corroborated by David Keefe, the Engineer in charge of the construction of the bridge. They are practically corroborated by Messrs. Whitaker & Diehl, contractors.

Samuel B. Rambo, former Superintendent of Public Grounds and Buildings, insists that there was no contract whatever by which the State was to reimburse the county.

The undisputed facts show that the State asked for bids in a way to determine the value of the temporary structure, and let the contract so as to gain the benefit of the temporary structure. The temporary structure belonged to the county. The State paid for the bridge \$7,500 less than it would have paid if the temporary structure had not been there.

Bradford County saved practically nothing as salvage from this trestle, after the permanent bridge was erected.

There is no reason why the county of Bradford should have donated to the State this temporary structure. Even if the Board of Public Grounds and Buildings did not formally agree to reimburse the county of Bradford for the temporary trestle, nevertheless, they used the temporary trestle in obtaining a bridge for \$7,500 less than the bid would have been if the trestle had not been there.

The State advertised for bids in a manner to make use of the trestle.

I am therefore of opinion that the State should reimburse the county of Bradford to the extent of \$7,500 the amount which it saved in the bid of the contractors by taking possession of the temporary trestle.

I return herewith all the papers.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE INSURANCE FUND.

The fund covers the damage to buildings caused by boiler explosions.

Office of the Attorney General,
Harrisburg, Pa., August 5, 1918.

Honorable George A. Shreiner, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: We have your favor of the 18th ult., in which you ask for a construction of the Act of May 14, 1915, P. L. 524, providing for the State Insurance Fund.

You ask whether this Fund will cover the destruction of property of the Pennsylvania Lunatic Hospital by boiler explosions which is not destroyed by fire, and whether that hospital should renew the boiler insurance which it now carries.

The Act to which you refer provides for 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.*”

There can be no question that the fund created by this Act covers the damage to buildings caused by boiler explosions, even though unaccompanied by fire.

It is also plain, under the provisions of this Act of Assembly, that any policy of insurance which is taken out to cover boiler explosions shall be calculated by taking the amount of the insurance at the date of the approval of the Act, and—

"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."

said insurance.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

COST OF TELEGRAMS AND TELEPHONE MESSAGES MADE NECESSARY BY INFLUENZA EPIDEMIC.

The cost of telegrams and telephone messages made necessary by the influenza epidemic should be paid out of the general fund appropriated to the Department of Health.

Office of the Attorney General,
Harrisburg, Pa., December 31, 1918.

Honorable George A. Shreiner, Superintendent, Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Sir: This Department is in receipt of your recent favor requesting to be advised as to what appropriation the cost of telegrams and telephone messages made necessary by the recent influenza epidemic should be charged.

The appropriation to the Department of Public Grounds and Buildings is, in part, as follows: (Appro. Acts 1917, p. 58)

"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 two years, the sum of eighty thousand dollars (\$80,000)."

The appropriation to the Department of Health is, in part, as follows: (Appro. Acts 1917, p. 77)

"For the payment of the cost of diphtheria antitoxin * * * for educational work, and for the payment of all other necessary expenses of the Department of Health in the performance of duties imposed upon it by acts of Assembly in supervising epidemics of diseases, and in protecting the public health, two years, the sum of one million and seventy-five thousand dollars (\$1,075,000)."

The cost of telegrams and telephone messages made necessary by the influenza epidemic comes directly within the language of the appropriation to the Department of Health, above quoted, because they were necessary expenses "in supervising epidemics of diseases."

The appropriation to the Department of Public Grounds and Buildings was, in my opinion, intended to cover the usual and ordinary telephone services and telegrams necessary in conducting the business of the various Department of the State government.

I am therefore of opinion, and so advise you, that the cost of the telegrams and telephone messages made necessary by the epidemic should be paid out of the general fund appropriated to the Department of Health.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE DEPARTMENT OF STATE
POLICE**

OPINIONS TO THE DEPARTMENT OF STATE POLICE

EXEMPTION FROM CONSCRIPTION.

Members of the State Police Force are executive officers of the Commonwealth and are exempt from conscription by the Act of Congress of May 18, 1917.

Office of the Attorney General,
Harrisburg, Pa., August 30, 1917.

Major John C. Groome, Superintendent of State Police, 1216 Walnut Street, Philadelphia, Pa.

Sir: This Department is in receipt of your favor of the 29th instant, inquiring whether the members of the State Police Force are executive officers within the meaning of the Act of Congress of May 18, 1917, exempting such officers from conscription into the military service of the United States.

In an opinion rendered by this Department to the Commissioner of Labor and Industry on May 17, 1917, Deputy Attorney General Collins pointed out the distinction between an officer of the Commonwealth and an employe. He said, speaking of an officer:

"His duties are defined and assigned to him by law, and his powers thereby specifically prescribed. He exercises functions of public concern and for the public benefit and interest."

He cited decisions of the courts of last resort of this State for the purpose of showing that it is not necessary in order that a person be an officer that there be a fixed term attaching to his position or that his office be created by the Constitution of Pennsylvania. If the office is created by statute with a fixed salary, and its duties are defined and assigned by law and its powers specifically prescribed, the incumbent is an officer and not an employe.

The Act of May 2, 1905, P. L. 361, which created the Department of State Police, provided for a force consisting of the superintendent, deputy superintendent, captains, lieutenants, sergeants, corporals and privates. It expressly authorized and empowered (Section 5) the various members of said police force to make arrests without warrant for all violations of the law which they may witness and to

serve and execute warrants issued by the proper local authorities; to act as forest, fire, game and fish wardens; and in general to have the powers and prerogatives conferred by law upon the members of the police force of cities of the first class or upon constables of the Commonwealth.

Giving due consideration to the provisions of this Act, I am of the opinion and so advise you that the members of the State Police Force are executive officers of the Commonwealth and are therefore within the exemption contained in the Act of Congress of May 18, 1917.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General

SALARY.

The Deputy Superintendent of State Police acting as Superintendent is entitled to the salary of the Superintendent while the Superintendent is temporarily absent in the military service of the United States.

Office of the Attorney General,
Harrisburg, Pa., Nov. 13, 1917.

Captain George F. Lumb, Deputy Superintendent of State Police,
Harrisburg, Pa:

Sir: This Department is in receipt of your favor of the 31st ult. asking to be advised as to the amount of salary which you are entitled to receive from the State during the absence, on military service, of the Superintendent of State Police, Major John C. Groome, and whether it is necessary for you to be specially designated or appointed as his substitute to perform his duties in his absence.

From the facts set forth in your communication and the papers on file in this Department, it appears that Major John C. Groome, Superintendent of State Police, on October 27, 1917, filed with the Governor of Pennsylvania a statement, under the Act of June 7, 1917, P. L. 600, No. 201, setting forth that on the twentieth day of October, 1917, he was commissioned in the military service of the United States, and that at the expiration of his military service he intends to resume his former position as Superintendent of State Police of Pennsylvania, and claiming the benefits of said Act.

On October 30, 1917, the Governor designated you as Acting Superintendent of the State Police Force during the absence of Major Groome in the military service of the United States.

The Act of June 7, 1917, above mentioned, provides, *inter alia*:

"That whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau, commission, or office thereof, or by any county, municipality, township, or school district within the Commonwealth, shall in time of war or contemplated war enlist, enroll, or be drafted in the military or naval service of the United States, or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service, but the duties of his said office or employment shall, *if there is no other person authorized by law to perform the powers and duties of such officer or employe during said period*, be performed by a substitute, who shall be appointed by the same authority who appointed such officer or employe, if such authority shall deem the employment of such substitute necessary."

The Act of March 22, 1917, P. L. 11, No. 6, provides:

"That whenever, by reason of the absence, incapacity, or inability of the head or chief of any of the departments of the State Government to perform the duties of his office, or whenever a vacancy in the office of the head or chief of any of the departments of the State Government occurs, the duties of the head or chief of such department shall be performed by the deputy, chief clerk, or other person next in authority, until such disability is removed or the vacancy filled."

You were, at the time of enlistment of Major Groome in the military service of the United States, Deputy Superintendent of State Police, and, in his absence, the duties of said office are, by this Act, directed to be performed by you as Deputy. In view of the fact that in the Department of State Police there is a person authorized by law to perform the powers and duties of the Superintendent during his absence in the military service of the United States, there is no necessity for the appointment by the Governor of a substitute, as you have, by virtue of the Act of March 22, 1917, full authority to perform all of the duties of the Superintendent during his absence in the military service.

The Act of July 25, 1917, P. L. 1201, No. 415, provides as follows:

"Section 1. Be it enacted, &c., That when a vacancy occurs, by death or otherwise, in the head or chief of any of the departments of the State government, the duties thereof devolve upon and are discharged by the deputy, chief clerk, or person next in authority, for a

period of one month or more, such deputy, chief clerk, or other person next in authority, shall be paid an amount, over and above his regular salary, that shall equalize it with the salary provided by law to be paid to the head or chief of such department for and during the time he has performed the duties of head or chief of such department.

"Section 2. That the provisions of the first section of this act shall apply to, and in behalf of all deputies, chief clerks, or other persons next in authority, who are performing or who have performed the duties of the heads or chiefs of any department of the State government, within the year one thousand nine hundred and seventeen, for a period of one month or more, the heads or chief places in such department being vacant from any cause whatsoever.

"Section 3. The payments herein provided for shall be made by the State Treasurer upon warrants drawn by the Auditor General; and there is hereby appropriated the sum of three thousand one hundred dollars (\$3,100), or so much thereof as may be necessary, for payment of the amount accrued to June first, one thousand nine hundred and seventeen; thereafter said payments to be made out of any unused moneys hereafter appropriated for the salary of the head or chief of any department whose office may become vacant."

The Act of June 7, 1917, before mentioned, specifically provides that Major Groome, by his enlistment in the United States service, shall not be deemed or held to have thereby resigned from or abandoned his office. He is, however, absent in the military service of the United States and during such service cannot perform the duties of the office of Superintendent of State Police, and is not entitled to receive the salary or emoluments of said office as long as he is in said service and not able to perform the duties of his office. The Act (Section 3) specifically provides:

"No payment shall be made under the provisions of this act to any officer or employe enlisting, enrolling, or drafted, as aforesaid, and so much of the salary or wages of such officer or employe as is not paid, under the provisions of this act, to his dependents and his substitute, shall be recovered back into the fund from which said salary or wages is paid."

The question to be determined is, therefore, whether a vacancy has occurred in the office of Superintendent of State Police within the meaning of the Act of July 25, 1917.

Under the provisions of the Act of June 7, 1917, *supra*, the Superintendent has not resigned, and cannot be held to have resigned or abandoned his office, but, on the other hand, as long as he is in the

Federal service and not performing the duties of his office he is not entitled to the salary thereof and cannot be held to be the actual incumbent of the office, lawfully entitled to its salary or emoluments.

In the case of *Commonwealth vs. McAfee*, 232 Pa. 36, the Supreme Court held that—

“The word ‘vacancy’ as applied to an office has no technical meaning. An existing office without an incumbent is vacant. There is no basis for the distinction that it applies only to an office vacated by death, resignation or otherwise.”

• “An existing office without an incumbent is vacant.”

State vs. Blakemore, 15 S. W. 960, (Mo.).

“A vacancy in office means that the office is empty; that is, without an incumbent who has a right to exercise its functions and take its fees or emoluments.”

State vs. Ware, 10 Pac. 885, p. 888, (Ore.).

In re Lewensohn, 98 Fed. 576.

The purpose of the Act of July 25, 1917 was evidently to provide that the deputy, chief clerk or other person in authority, who performed the duties of the head of the department whenever there was no incumbent acting as head of the department, should be paid the salary which the head of the department would have received had he been the incumbent of the office.

A quasi vacancy certainly exists in the office of Superintendent of State Police, for as long as Major Groome is absent from duty in the service of the United States, although he may not be held to have resigned or abandoned his position, he is not entitled to the salary or emoluments of the office and cannot be held to be holding or exercising said office. The purpose of the Act of June 7, 1917, was evidently two fold. It was, first, to provide for the dependents of officers and employes enlisting in the military or naval service of the United States, and, second, to secure to such officers and employes a return of their office or employment upon the determination of their Federal service. Their incumbency of their respective offices is certainly so far in abeyance that no violence to the language of the Act will be done by holding that a vacancy exists in the office so long as they are in the Federal service of the United States.

You are therefore advised that as long as you are Acting Superintendent of State Police and performing the duties of said office,

during the absence in the military service of the Superintendent, Major Groome, you are entitled to the salary allowed the Superintendent of State Police by law.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE STATE POLICE.

The Act of June 7, 1917, P. L. 600, does not purport to extend the term of service of any officer of the State Police Force, and could not constitutionally do so. Members of the State Police Force, whose terms of enlistment expire while they are in the military service of the United States, if they desire to retain their places in the State Police and continue to retain the benefits of the act with respect to their dependents, should re-enlist, otherwise their names would be automatically dropped from the rolls, and their dependents would be deprived of any support they might receive from the State.

Office of the Attorney General,
Harrisburg, Pa., December 18, 1917.

Major George F. Lumb, Acting Superintendent of State Police, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 5th instant, relative to the Act of June 7, 1917, P. L. 600, No. 201.

You call attention to the fact that in the Act creating the State Police (May 2, 1915, P. L. 361), it is provided that the members of the State Police Force shall be enlisted for a period of two years, and state that the term of enlistment of a number of the officers and men who have enlisted or been drafted into the military service of the United States will expire in a very short time. You ask to be advised whether these men should be re-enlisted or whether the first section of the Act of June 7, 1917, *supra*, which provides that an appointive officer or employe enlisting in the military service of the United States shall not be deemed or held to have thereby resigned from or abandoned his office or employment, will protect them in their positions.

I am of the opinion that they should be re-enlisted. If they had not entered the military service of the United States they could continue on the State Police Force only by re-enlistment. Any one who did not re-enlist would automatically be dropped from the rolls. The

Act of June 7, 1917, does not purport to extend the term of service of any officer, and could not constitutionally do so. Any members of the State Police Force, therefore, whose terms of enlistment expire while they are in the military service of the United States, if they desire to retain their places in the State Police and continue to retain the benefits of the Act with respect to their dependents, should re-enlist and I would advise that re-enlistment papers be forwarded to them at once with instructions to complete and return them as soon as possible if they wish the benefits of the Act to be continued in behalf of their dependents.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE EMPLOYEES IN MILITARY SERVICE.

The Act of June 7, 1917, P. L. 600, providing that when an officer or employe of the State enters the military or naval service of the United States he shall not be deemed to have resigned from, or abandoned, his office or employment, applies to those who, in good faith, enter the service of the Commonwealth and subsequently enlist, enroll or are drafted into the military or naval service of the United States.

The criterion is whether there was a regular employment in the service of the Commonwealth prior to the enlistment, enrollment or draft.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

Capt. George F. Lumb, Acting Superintendent State Police, Harrisburg, Pa.

Dear Sir: Your favor of January 25th, addressed to the Attorney General, was duly received.

You ask to be advised whether one who has entered the employ of the Commonwealth after the passage of the Act of June 7, 1917, P. L. 600, is entitled to the benefits of that Act.

This Act makes provision for the dependents of persons in the service of the Commonwealth who enter the military or naval service of the United States.

Section 1 provides, in part, as follows:

"That whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau,

commission or office thereof * * * shall in time of war, or contemplated war, enlist, enroll, or be drafted in the military or naval service of the United States, or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment," etc.

There is no language in the Act which indicates that it was intended to apply only to those in the service of the State at the time of its passage. It would have been easy for the Legislature to so limit it.

The language is

"That whenever any appointive officer or employe, regularly employed * * * shall enlist, enroll or be drafted."

The criterion is whether there was a regular employment in the service of the Commonwealth, prior to the enlistment, enrollment or draft.

It certainly was not the legislative intent that one who was regularly employed in the service of the Commonwealth, and subsequently drafted, should not receive the benefit of this Act, if his employment began after the passage of the Act. Such a person could not be said to have entered the service of the State of Pennsylvania for the purpose of getting the benefits of this Act of Assembly, but the Act puts those who enlist, enroll or are drafted upon the same basis.

I am not unmindful that it is possible for one to enter the service of the State for a short time, knowing, in advance, that he intends to enlist in the military or naval service, and thus obtain the benefits of this Act of Assembly for his dependents, but such a course of conduct is not to be presumed. If proven, it would be a fraud upon the State and the person perpetrating it would not be entitled to secure the benefits of the Act of Assembly.

Care should be taken by those employing persons qualified for military service to see, as far as possible, that they are not entering the service of the State for the mere purpose of securing the advantages of this Act.

On the other hand, to hold that this Act of Assembly applies only to persons who enter the service of the State after its passage, would require us to read something into the law which is not there.

I am, therefore, of opinion that the Act does apply to those who, in good faith, enter the service of the Commonwealth and subsequently enlist, enroll or are drafted into the military or naval service of the United States.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE POLICE.

The Act of June 7, 1917, P. L. 600, recognizes both partial and total dependency, and the claim of a corporal in the State Police entering the military service of the United States for partial support of his dependents should be allowed.

Office of the Attorney General,
Harrisburg, Pa., August 2, 1918.

Capt. George F. Lumb, Acting Superintendent of State Police, Harrisburg, Pa.

Dear Sir: We have your favor of the 30th ult., addressed to the Attorney General, asking to be advised whether you should approve the claim of Corporal Howard Confer, of Troop C, for dependency.

I understand Corporal Confer has made an application for the benefits of the Act of June 7, 1917, P. L. 600, which provides that persons employed in the service of the Commonwealth entering the military or naval service of the United States, shall not be deemed to have abandoned their employment, and may authorize one-half of the wages or salary to be paid to their dependents.

I understand Corporal Confer of Troop C has requested that one-half of his salary be paid to his mother; that his father and mother are both living; that the father is employed at a monthly salary of \$84.60, owns a small farm of which about 11 acres are tillable, with some stock, and that the family seems to be living comfortably, but not in luxury. I also understand that Corporal Confer has in fact contributed \$90 or \$100 during the last year to his mother, and has sent clothing, from time to time, to brothers and sisters, of which there are five, ranging from five, to twenty-three years of age.

The Act of Assembly to which I have referred, provides, in terms, in Section 2—with reference to the employe entering the Federal military or naval service:

"If he have a dependent parent or parents, then he shall direct such sum as he has theretofore been accustomed to contribute to their support to be paid to

them, and the amount payable to his wife or children, if any he have, shall be proportionately decreased. If he have no wife or children, he may direct the entire one-half of his said salary or wages, not exceeding \$2,000 per annum, to be paid to his dependent parent or parents, if any such he have."

I think this Act of Assembly was intended to recognize both partial and total dependency. It is apparent that in this case the father and mother of Corporal Confer are not totally dependent upon him for support, but in view of the salary of the father and the size of the family, and the fact that Corporal Confer has from time to time made contributions to their support, it is evident that there has been a partial dependency.

Under all the circumstances, I think that you should find to what extent this dependency exists, and will probably continue, and approve the claim therefor. If the dependency should hereafter cease, or be materially changed, the payments should be made accordingly.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE POLICE.

A reward for the arrest of a murderer cannot be paid from the appropriation to the State Police, nor the surgical or hospital expenses of a wounded officer, nor medical and funeral expenses.

Office of the Attorney General,
Harrisburg, Pa., October 25, 1918.

Capt. George F. Lumb, Acting Superintendent of State Police, Harrisburg, Pa.

Dear Sir: We have your letter of the 10th inst., in which you ask for an opinion as to whether certain items can be legally paid out of the appropriation to your Department.

That appropriation is, in part, as follows:

"For the payment and keep of horses, renewal of uniforms, horse equipment, replacing horses, rent of barracks and maintenance of sub-stations, purchase and maintenance of motor vehicles and other necessary expenses, for two years, the sum of three hundred seventy-five thousand dollars (375,000)."

The questions you propound, are:

1. Whether a reward for \$200 offered for the arrest of a murderer of a member of the State Police, where the arrest was effected in Alabama as the direct result of the offering of that reward, may be paid out of this appropriation.

We are of opinion that it cannot. The only language which by any possible interpretation could apply is found in the words "other necessary expenses," but these general words refer to the same character of expenses as the specific items which have preceded them, viz., to the keep and replacement of horses and the maintenance of equipment and barracks. The Legislature could not have intended by the use of the language "other necessary expenses" used in this item, the payment of a reward for the apprehension of the murderer of a member of the State Police. It might be a very proper subject for legislative consideration, inasmuch as the members of the State Police are exposed in the discharge of the duties which they so faithfully perform, to dangers of this character, but it cannot be said that such a payment is within the legislative intention of the appropriation above referred to.

2. Can this appropriation be used to defray the funeral expenses and shipment to his home, of a member of the State Police killed in the performance of his duty, or to defray the necessary surgical and hospital expenses of such an officer wounded in the performance of his duty?

As above pointed out, this item is for rent, maintenance and equipment. The payment of surgical or hospital expenses in the event that an officer is wounded, or funeral expenses and transportation of the body to his home, in the event that he is killed, does not come within the purview of this appropriation. In view of the character of the services which a member of the State Police performs and the risks which he undertakes in the performance of his duty, the Legislature might well make an appropriation for these purposes, but notwithstanding the fact that an expenditure for this purpose would be meritorious, we are forced to the conclusion that it is not within the purposes of the present appropriation to your Department.

3. May medical and funeral expenses be paid in whole or in part, as the necessary expenses of the Department, for members of the State Police who have died from pneumonia while on duty away from their homes?

The answers to the previous questions necessarily answer this inquiry. All of the departments have appropriations which include the language "other necessary expenses." Most of the departments of the State government have, from time to time, persons who are sent away from the Capitol on State business. If the language "other necessary expenses" were to include the medical or funeral

expenses of a member of the State Police, it would also include the medical and funeral expenses of any other employe of the State who happens to die away from the Capitol in the discharge of his duties, to be paid out of the appropriation to the department to which he was attached.

We do not think the Legislature had any such intention in using this language.

We are, therefore, constrained to advise you that none of the matters concerning which you inquire, may be paid out of this appropriation, but suggest to you that some of them, at least, are proper for legislative consideration.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

**OPINIONS TO THE PUBLIC SERVICE
COMMISSION.**

OPINIONS TO THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION.

The Public Service Commission does not have authority to make a contribution of money from its appropriation to the valuation committee of the National Association of Public Service Commissioners.

Office of the Attorney General,
Harrisburg, Pa., January 16, 1917.

Honorable William D. B. Ainey, Chairman, Public Service Commission, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 4th inst. asking whether the Public Service Commission has the authority, out of its appropriation, to make a contribution of either \$500.00 or \$1,000.00 to the valuation committee of the National Association of Public Service Commissioners.

The appropriation, to which you refer, is as follows:

"For the payment of the making of valuations and appraisals of public service companies' plants, facilities, and properties; the traveling expenses of the commissioners, their employes and experts the fees and expenses of witnesses, the payment of wages or salaries of experts, accountants, inspectors, or engineers employed by the commission; the salaries of clerks, stenographers, messengers, janitors and other office employes; the purchase of books, stationery, printing, office supplies, and other materials for which no requisition may be made by the commission, two years, the sum of three hundred sixty-six thousand three hundred and twenty dollars \$366,320." (Approved in sum of three hundred twenty-six thousand three hundred and twenty dollars (\$326,320).

We understand from your letter that about sixteen of the State commissions have made such contribution, and that the purpose of the contribution is to keep in touch with and be advised, from time to time, about the progress of the railroad valuations now being carried on by the Interstate Commerce Commission under the Act of Congress.

While the information thus obtained may be of substantial benefit in the general work of your Commission, it cannot strictly be said to be the making of valuations and appraisals of public service companies' plants, facilities and properties. Your commission is authorized, out of the appropriation, to make valuations and appraisals of plants, facilities and properties of public service companies. This does not include, in my judgment, a contribution to the expenses of a committee who are following the progress of such a valuation by the Interstate Commerce Commission.

I beg to advise you that the contribution does not come within the terms of the appropriation and that, in the absence of a special appropriation for that purpose, or of a change in the next General Appropriation bill at this session of the Legislature sufficiently broad to cover such an item, the contribution cannot be made out of the appropriation to your Commission.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

HALF PAY TO DEPENDENTS.

The Public Service Commission is advised as to circumstances entitling an employe to half pay. The fact that the employe will receive larger pay from the United States than his salary from the State does not affect the case.

Office of the Attorney General,
Harrisburg, Pa., October 24, 1917.

Honorable William D. B. Ainey, Chairman, Public Service Commission, Harrisburg, Pa.

Sir: There was duly received a communication of the 6th inst., from the Secretary of The Public Service Commission wherein a request is made on your behalf as Chairman of said Commission for an opinion relative to the Act No. 201, approved June 7, 1917, and providing for the payment of a portion of the salary or wages of an officer or employe of the State, county, municipality, township or school district entering the military or naval service of the United States, to the dependents of such officer or employe.

The several questions submitted for an opinion may be stated as follows:

1. What constitutes "dependency" under the provisions of the Act?

2. Is it incumbent upon the head of a department, bureau, commission or office in which the officer or employe entering the military or naval service was employed, "to make inquiry as to the ability of the nominated dependents to support themselves from their own income and in case he finds that the nominated dependents have ability to support themselves should he refuse to make any payment under the said Act?"

3. Should payment to a dependent be made where the party naming such dependent receives a larger salary or pay in the United States military or naval service than he had previously received as an officer or employe of the State?

In reply to the foregoing you are respectfully advised as follows:

1. Section 2 of the said Act requires that any officer or employe of the state or municipality entering the military or naval service of the United States and desiring to claim the benefit of the Act shall—

"file with the head or chief of the department, bureau, commission, or office in which he is employed a statement in writing, executed under oath, setting forth the fact and date of his enlistment, enrollment, or draft, his intention to retain his said office or employment, and to resume the duties thereof after the expiration of his service in the military or naval service, or any branch or unit thereof; and the names and addresses of his wife, children, and dependent parent or parents, if any such he have; and requesting and directing that one-half of the salary or wages of his said office or employment, not exceeding two thousand (\$2,000.00) dollars per annum, shall be paid during his service in the military or naval service or any branch or unit thereof as follows: * * *"

Section 3 of the Act provides, inter alia, that the statement as above required—

"shall be prima facie evidence of the dependency of any person named as a dependent in said statement; but the head of any department, bureau, commission, or office may, in case of doubt, satisfy himself as to the fact of such dependency, and if the person so nominated as a dependent was not, in fact, dependent upon the officer or employe enlisting, enrolling or drafted in the military or naval service or any branch or unit thereof, at the time of his enlistment, enrollment, or draft, shall refuse to make any payment to such person on account of the salary or wages of such officer or employe."

The Century Dictionary defines a "dependent" as "one who depends on or looks to another for support or favor."

In *Words & Phrases*, Vol 1, pages 1298, 1299, *Murphy vs. Nowak*, 79 N. E. 112, is cited to the effect that the term "dependent" used in reference to a benevolent association means one who is "sustained by another or relies for support upon the aid of another," and *Money vs. Monk*, 40 South. 411, is cited as holding that the word "dependent," as used in the bylaws of a beneficial association, means one dependent on a member of such association in a material degree for support, or maintenance or assistance.

Where a wife, child or parent duly named in the prescribed statement as a dependent of one entering the military or naval service of the United States, has no means of support other than such as may be provided by the one so entering such service, the case would be manifestly within the scope of the Act. The Act, however, would plainly not apply as to this dependent provision where the nominated dependents have independent means of their own ample and adequate to maintain them suitably without the aid or assistance of others. Between these extremes it is probable that some cases not so clear will arise. No general rule could well be laid down which would be definitely and fairly applicable to every conceivable case. Each must necessarily be adjudged upon and in accord with its own facts and surrounding circumstances. The common understanding and usage of what is imported by the words "dependent" and "dependency" will perhaps furnish the safest and surest guide in reaching a rightful conclusion. The Act undoubtedly uses these words in their popular meaning and an adjudication in accordance therewith as to what constitutes "dependency" will be within its terms and intent.

2. In pursuance of the above quoted portion of Section 3, the head of any department, bureau, commission or office in which had been employed one entering the military or naval service of the United States and claiming the benefit of the Act, is charged with the duty, in case of doubt as to the dependency of the person nominated as the dependents of the one so entering said service, of satisfying himself upon that point. The statement filed by the party entering the military or naval service is merely prima facie evidence of the "dependency" of the persons designated by him as his dependents, and does not in cases of doubt relieve the proper departmental head of the responsibility of proceeding to ascertain and determine the fact. Where a state of "dependency" is found not to exist, then it becomes the further duty of the head of the department, bureau, commission or office to refuse to make payment to the nominated dependents of any portion of the salary or wages of one entering the said service of the United States. The Act leaves no discretion as to this, as payment in such instance is expressly inhibited. Inasmuch as the head of any given department, bureau, commission or office is vested with

the power and duty of finding the fact of dependency in all doubtful cases, it follows that such official should make careful scrutiny and inquiry therein; and where satisfied that there is a state of dependency on the part of the nominated dependents, and the other statutory requirements are met, the aforesaid payment should be made in the amount and manner prescribed, but where it is found that a condition of dependency does not exist, then such payment should be withheld.

The primary purpose of the Act is not to serve those who enter the service of the United States, but those who are dependent upon them; its favor runs to this latter class. It should be given that liberal construction and administration as will best advance the generous purpose of the Commonwealth to provide for the families of those joining the armed forces of the country. The public bounty should not, however, be abused. Only those who are actually dependent upon those temporarily leaving the civil service of the state, or a county, municipality, township or school district to enter the military or naval service of the United States are within the intentment of the Act as beneficiaries thereof in the manner therein provided.

3. That the salary or pay of one entering the military or naval service may be larger than what he had previously received from the State would not, of itself, defeat payment to his dependents. The Act contains no express provision to that effect and such a limitation on its operation can not be implied. Dependents are entitled to the payment provided by the Act regardless of the amount of emolument paid by the United States Government to the one upon whom they are dependent. It is possible that in a close case as to whether there is a state of dependency, the fact that the one upon whom the alleged dependents depend for support is now being paid a greater compensation than he had been paid by the State or the municipality whose service he had left, might be taken into consideration, but it should not govern the case. Payment to a dependent could not lawfully be denied on that ground.

Very truly yours,

EMERSON COLLINS.
Deputy Attorney General.

PUBLIC SERVICE COMMISSION.

The Public Service Commission has power to authorize a street railway company to increase a rate of fare notwithstanding the fact that that rate was specified by the local authorities as a condition upon which they gave their consent to the company to construct its lines within the municipal limits.

Office of the Attorney General,
Harrisburg, Pa., May 22, 1918.

Honorable W. D. B. Ainey, Chairman of the Public Service Commission of the Commonwealth of Pennsylvania, Harrisburg, Pa.

Sir: I am in receipt of your communication of the 9th ult., relative to the proposed increase of the rates of certain street passenger railway companies. You state the following as a typical case:

"The Borough of Wilksburg by ordinances authorized a predecessor of the Pittsburgh Railways Company to construct its railway within that municipality, which ordinances were upon the following terms:

'The fare to be charged passengers riding in the cars of said company, its lessees, successors and assigns, within the Borough limits, shall not exceed three (3) cents, providing tickets are used, which tickets said Street Railway Company agrees to sell and furnish at the rate of 17 tickets for 50 cents.'

(Section VIII of Wilksburg Ordinance, approved January 24, 1899.)

'The fare from the Borough of Verona to the dividing line between the Borough of Wilksburg and the City of Pittsburgh shall not exceed 5c, and the fare between the downtown portion of the City of Pittsburgh and the dividing line between the Borough of Wilksburg and Penn Township shall not exceed 5c.'

'The fare from the Borough of Verona to the dividing burg and Edgewood shall not exceed 5c and the fare from the dividing line between Penn Township and Wilksburg and points east of Wilksburg.'

(Sections X and XI of Wilksburg Ordinance, approved August 12, 1901.)

The railway company formally accepted these ordinances, and constructed its railway under the authorization thereof.

The rates of fare therein prescribed have been charged and maintained by the railway company until the 22nd day of December, 1917, when the Pittsburgh Railways Company, now operating the railway, filed its tariff schedule with The Public Service Commission proposing to increase the rates to six cents and making other increased charges.

Against this proposed increase the Borough of Wilkinsburg have filed a formal complaint setting forth, among other things, in substance that under the Constitution of the Commonwealth neither the railway company nor The Public Service Commission have power or authority to change the rates established by the ordinance, and that The Public Service Commission, in the light of the same constitutional objection, may not inquire into the reasonableness or unreasonableness of the proposed increase, or to authorize the collection of the increased rate should the Commission upon examination find and determine it to be reasonable.

The particular ordinances to which your attention is directed are perpetual in that no time or term limits are imposed."

The company above named having applied for permission to increase its tariffs, you now inquire if your commission possesses the power generally to authorize an increase in the rate of fare of a street railway company when that rate was specified by the authorities of a municipality as a condition upon which consent was given to the company to construct its lines within the municipal limits.

The answer to your inquiry requires the disposition of two questions:

First—Does Article XVII, Section 9, of the State Constitution, providing—

"that no street passenger railway shall be constructed within the limits of any city, borough or township without the consent of its local authorities"

operate to confer upon a municipality such a power that its local authorities can specify, as a condition to their consent, the rate of fare the company shall charge and not even the legislature can change it, and

Second—If the legislature does possess the authority to change rates so fixed, has it delegated that power to your commission?

In reply to this second question, I am clearly of the opinion that there has been delegated to your commission authority to supervise and regulate rates of street railway companies to the full extent of the legislature's power.

In Article V, Section 1, of the Public Service Company Law, it is provided—

"The commission shall have general administrative power and authority, as provided in this act, to supervise and regulate all public service companies—"

and by Section 3 of the same Article, it is further enacted—

“Whenever the commission shall determine, after hearing, had upon its own motion, or upon complaint, that the rates, fares, tolls, or charges established, demanded, exacted, charged, or collected by any public service company or companies, for any service rendered or furnished, are unjust or unreasonable or inadequate, or are unjustly discriminatory or unduly or unreasonably preferential; or that the facilities or service furnished or rendered by any public service company or companies are unjustly discriminatory, or unduly or unreasonably preferential; in favor of or against any particular person, corporation, locality or any particular kind or description of traffic or service,—then the commission shall determine, and prescribe by a specific order, the maximum, just, due, equal, and reasonable rates, fares, tolls, and charges to be thereafter established, demanded, exacted, charged, or collected for the service to be performed.”

A consideration of the title and purview of the statute leaves no doubt but that your commission has authority to regulate rates of street railway companies to the same extent as could the legislature itself.

The first question then becomes important. Has the legislature power to change rates of fare so fixed by local authorities? I am of the opinion that the legislature does possess that authority. The regulation of rates of public service companies, including street railway companies, is a function of the state, exercisable under that attribute of the state's sovereignty called its police power, and it is not to be taken away from the legislature and vested in local subdivisions of government except by the plainest constitutional direction.

In *Munn v. Illinois*, 94 U. S. 113, the court, inter alia, said (p. 134):

“It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest and that what is reasonable is a judicial and not a *legislative question*.

As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial for the *legislature to declare* what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable.”

And in *Milwaukee Company v. Railroad Commission of Wisconsin*, 238 U. S. 174, Mr. Justice Day said (p. 180):

"The fixing of rates which may be charged by public service corporations, of the character here involved, is a legislative function of the state, and while the right to make contracts which shall prevent the state during a given period from exercising this important power has been recognized and approved by judicial decisions, it has been uniformly held in this court that the renunciation of a sovereign right of this character must be evidenced by terms so clear and unequivocal as to permit of no doubt as to their proper construction."

Section 1 of Article II of our Constitution provides that the legislative power of this Commonwealth shall be vested in a general assembly which shall consist of a Senate and a House of Representatives; and Section 3 of Article XVI of the same fundamental law ordains that—

"The exercise of the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State."

Certainly, then, Article XVII, Section 9, is not to be construed as withdrawing, by an implication, from the legislature a portion of the sovereign power of the State which it has exercised from time immemorial and vesting it in the authorities of local subdivisions of government, who owe their very existence to the legislature and who may cease to officially be, at the legislative whim.

That there is a grant by the section of some power to the local authorities, is clear. They can arbitrarily refuse their consent to the construction of a street railway within their limits. They can make their consent conditional and can attach as conditions anything the legislature could enact. I am of the opinion, however, that, as to the State, those conditions are always subject to legislative action and that they are made by the local authorities with constructive knowledge that they may, at any time, be affected by that paramount authority. So long as the General Assembly abstains from legislation on the subject of the conditions, they must be observed by company on which they are imposed. When the legislature deems it for the well being of the citizens of the State to pass laws on the same subject, then the conditions, if they conflict, must give way. Any other construction of the constitutional provision would operate to remove a street railway company from State control, for if it can attach one condition which is beyond legislative interference, where shall the line be drawn.

Such a power to local governments was never contemplated by the adopters of the Constitution and it was so recognized in *McKeesport City v. Passenger Railway Co.*, 2 Pa. Super. Ct. 242, wherein the court held, in effect, that the section did not vest in a municipality such a power that it could grant in its consenting ordinance an immunity for a definite period from the imposition of license fees.

Opinion p. 246.

"Should we grant the contention of the appellant and construe the ordinances and attached agreement as a contract, made at the time between the councils and the company, that no ordinance should be passed imposing a license fee upon the poles erected for fifteen years, on principle and authority we would have to pronounce it null and void. The state cannot bargain away its right to exercise at all times its police power, nor can a municipality, to which is delegated the right to exercise the state's police power over streets and highways, enter into any contract by which the free exercise of the power granted can be abridged, limited or destroyed. It is not granted by the state to the municipality for that purpose. * * * Suppose the ordinance had provided that in a certain portion of McKeesport, densely populated, the speed of the cars should be five miles, and in another portion, not so densely populated, ten miles per hour for fifteen years, and at the end of five years the latter portion should become as densely populated as the former, would the alleged contract for one moment stand in the way of an ordinance making the uniform speed five miles an hour?"

The conditions which dictated the adoption of the constitutional provisions are well known. As early as 1840, *Philadelphia and Trenton R. R. Co.*, 6 *Wharton* 25, had settled the law, that the legislature could authorize the construction of a railroad upon a city's streets, regardless of the local desire and, with the advent of the street railway, the situation of these new companies entering a municipality and occupying not one, but many and perhaps all of its streets against its will, loomed up as an intolerable menace. The mischief to be remedied, however, was not a need of municipal power to impose regulatory conditions that the legislature could not change, but it was the need of municipal authority to keep street railways off its streets if it so desired. The trouble calling for correction was not the need of exclusively local power to regulate, by imposed conditions, street railways *within* the municipality, it was the necessity of local power to keep them *without* the municipal limits, if such was the local desire.

When this provision was first considered in the constitutional convention on April 25, 1873 (Const. Debates, Vol. 3, p. 612), it was drafted as an express command to the legislature. It reads as follows:

"No law shall be passed *by the legislature granting* the right to construct or operate a street railroad within any city, borough or township without providing (i.e. in the act) for the consent of the local authorities having control of the street or highway proposed to be occupied by such railroad."

The source of the power under the provision thus drafted was the legislature. The provision in effect said: In every statute providing for the construction of a street railway, you must provide that the railway cannot be constructed until the local authorities give their consent—and thus impliedly confer power on the local authorities to give or withhold that consent—otherwise your act will be unconstitutional and of no effect.

Certainly it is not a reasonable deduction that, along with this power of consent, the legislature also added the authority to impose regulatory conditions upon the companies which it, the legislature, the source of the municipal power, could in no wise affect.

After the provision had been before the convention, Mr. Hemphill made the following statement:

"I desire to offer an amendment to the section *which does not change the meaning of the section at all* but is merely for the purpose of abbreviating it. I move to substitute the following."

He then introduced the section as it reads at present with a slight difference which he afterwards agreed should be changed.

Neither the phraseology, nor the purpose, nor the history of this constitutional provision justifies the implication of a power to the local authorities to exclusively control street railway companies, through the medium of regulatory conditions annexed to their consent, and the public policy of the State is certainly opposed to the existence of such a power.

I do not read the decision in *Allegheny City v. Railroad*, 159 Pa. 411, as opposed to the foregoing construction. In that case it appeared that the City of Allegheny had passed an ordinance authorizing the construction, and operation of a street railway within its limits. Section three of the ordinance specified certain maximum rates of fare, and by another section it was enacted that the ordinance should not go into effect until the company should accept its provisions, such acceptance to be made within thirty days after the ordinance was approved.

The company did not accept the provisions of the ordinance but, nevertheless proceeded to lay its tracks upon the city streets, whereupon the municipality filed its bill in equity for an injunction, which the court granted.

This case involved a question solely between the city and the company; the Commonwealth was not a party to the proceeding; its rights were not in question. The case decided that if the city made its consent conditional, the company must accept the condition along with the consent. It did not decide that conditions, involving the exercise of the State's police power, could be attached to the municipal consent and thereafter be beyond legislative interference.

It may be as the court intimates, that a stipulation as to the maximum fares to be charged, is not a *regulation*, but a *condition* of the consent; but if the Commonwealth cannot affect the condition, where lies the power to "regulate" the rates of company? The municipality has not done it; the Commonwealth cannot do it; and where then resides the power? Certainly none will seriously contend for its non-existence. Regardless of the name, the effect of such a stipulation does operate to regulate and control the operations of a street railway company, and, in my opinion, no authority is to be implied that that control and regulation shall be exclusively municipal.

So far as the power of the legislature is concerned, to change rates fixed by local authorities as conditions upon which consent was given to enter the municipal limits, there exists no difference whatsoever between a street railway company and a water company; and as to this latter class of corporations, the decision of the Supreme Court in *Bellevue Boro. v. Ohio Valley Water Company*, 245 Pa. 114, expressly recognized the right of the legislature to change or authorize the change of rates, so fixed.

Specifically answering your inquiry, I have now to advise you that the Public Service Commission of the Commonwealth of Pennsylvania does have the power to legally authorize a street railway company to increase a rate of fare, notwithstanding the fact that that rate was specified by local authorities as a condition upon which they gave their consent to the company to construct its lines within the municipal limits.

Faithfully yours,

FRANCIS SHUNK BROWN.
Attorney General.

**OPINIONS TO THE BOARD OF OPTOMETRICAL
EDUCATION, EXAMINATION AND LICENSURE.**

OPINIONS TO THE BOARD OF OPTOMETRICAL EDUCATION, EXAMINATION AND LICENSURE.

OPTOMETRY.

A statute goes into effect upon its approval unless otherwise provided in the act itself.

The Act of March 30, 1917, P. L. 21, went into effect, as therein provided, upon the appointment of the Board of Optometrical Education, Examination and Licensure.

In order to be entitled to take a "limited examination" for license to practice optometry, a person must have been engaged in the practice of optometry for two full years prior to March 30, 1917, the date of approval of the act.

A person entitled to the benefit of the "limited examination" can be required to take an examination only on the subjects specified in the act.

Office of the Attorney General,
Harrisburg, Pa., October 3, 1917.

Dr. Chester H. Johnson, Secretary, Board of Optometrical Education,
Examination and Licensure, York, Pa.

Sir: There was duly received your communication of the 14th ult., to the Attorney General, requesting an opinion as to certain provisions of the Act (No. 10) approved March 30, 1917, "Defining optometry; and relating to the right to practice optometry in the Commonwealth of Pennsylvania," etc. As I understand from your said communication you asked to be advised upon the following questions, viz:

1. When did the above Act go into effect?
2. Whether the two years practice required to entitle a person to take the "limited examination," provided for under Section 5, means such period two years prior to the date of the passage of the Act or to the date when it went into effect.
3. Whether the examination prescribed in said section on the subject—"the limitation of the sphere of optometry," is to be strictly confined to that subject or may it include an examination on "practical questions relating to the practice of optometry * * * not contained in the other four subjects."
4. As to the length of the respective terms of the several appointees to the said Bureau of Optometrical Education, Examination and Licensure.

Taking up these questions in the above stated order, you are respectfully advised as follows:

1. It is the rule in the construction of statutes that every law goes into effect upon its approval unless otherwise provided in the act itself. Such provision is made in the above Act which by Section 13 thereof provides that:

"This act shall take effect and be in full force from the date of the appointment of the said board by the Governor as herein provided."

It follows from this that the said Act went into effect and full force on the date of the appointment by the Governor of the said Board, which date may be definitely ascertained upon inquiry to the Secretary of the Commonwealth.

2. The Act contemplates two classes of examinations for those desiring to be licensed to practice optometry, viz: a "limited examination" and a "standard examination." Section 5 entitles any person to take the "limited examination" "who has been engaged in the practice of optometry in this Commonwealth for *two full years prior to the passage of this act*, or, for one year in this, and for the year preceding it in another State, and is of good character." The Act was passed, that is to say, approved, on March 30, 1917. Although, as above pointed out, it did not "take effect and be in full force" until said Board had been duly appointed, yet such latter time is not made the date which the required two years of practice must precede to give a person the right to take the "limited examination." Such period of practice must be "two full years prior to the passage of this act." Had the legislature intended that this period of practice need only precede the time when the Act went into full effect and force, it may be presumed such intent would have been couched in express terms. It can not be implied as against the plain language fixing "the passage of this act" as the date from which to reckon back in computing the required duration of practice.

You are accordingly advised that the two years of practice of optometry required under Section 5 of said Act to entitle a person to take the "limited examination" must be two years prior to the date of the approval of the Act.

3. The "limited examination," provided for under and in pursuance of Section 5 of the Act, is to cover "the following only:

- (a) The limitation of the sphere of optometry;
- (b) The necessary scientific instruments used;
- (c) The form and power of lenses used;
- (d) A correct method of measuring presbyopia, hypermetropia, myopia and astigmatism;
- (e) The writing of formulae or prescriptions for the adaptation of lenses in aid of vision."

This examination must be limited to the specific subjects enumerated in the Act and can not be extended to cover others. This is both in accord with the terms of the Act itself in providing as it does that the examination shall cover these subjects "only," and in harmony with the familiar rule of statutory construction that enumeration weakens as to things not enumerated. A person entitled to the benefit of the "limited examination" can be required to take an examination only on the subjects specified in the Act. It follows that the examination prescribed to be taken on the subject of "The limitation of the sphere of optometry" must be one strictly confined to such subject and an examination on other subjects can not be included thereunder. There is no need to attempt to define the meaning of the term "The limitation of the sphere of optometry," as used in the Act. Presumably it was intended to mean precisely what the words import. The plain purpose of an examination on this subject is to ascertain whether the applicant has knowledge of the true limits and extent of the field of optometry—where its practice properly begins and ends.

You are therefore advised that the examination required by said Act to be taken on the said subject of "The limitation of the sphere of optometry" must be one restricted to that subject and that other subjects of examination can not be included thereunder.

4. Section 3 of the Act provides for the appointment of a Board of Optometrical Education, Examination and Licensure to consist of seven members, of whom, under the first appointment, two are to serve for one year, two for two years and three for three years, the successor of each thereafter to be appointed for a term of three years, except that vacancies shall be filled only for the unexpired term. I understand that of the appointments as now made the term of two of the appointees was designated for one year each while the others were appointed for a term to run to the end of the next session of the Senate. The commission or certificate of appointment, however, issued to each member shows the length of his term under this present appointment. The respective terms of the several appointees to said Board will in due course all be designated when nominations for their appointments are sent to the next session of the Senate.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

OPTOMETRY EXAMINATIONS.

Attendance at a school giving a course in actual practice of optometry does not entitle a person receiving such a course to take the "standard" examination provided by section 5 of the Act of March 30, 1917.

Office of the Attorney General,
Harrisburg, Pa., October 16, 1917.

Dr. Chester H. Johnson, Secretary, Board of Optometrical Education,
Examination and Licensure, York, Pa.

Sir: There was duly received your communication of the 5th inst., relative to certain requirements entitling a person to take a "standard examination" under the Act of March 30, 1917, "Defined Optometry," etc.

As I understand, from your communication, an opinion is requested upon the following point, viz: whether attendance at a school giving a course in actual practice of optometry would entitle a person taking such course in such school to take the "standard examination" in pursuance of the proviso to Section 5 of said Act, which reads as follows:

"Provided, That any person, not less than twenty-one years of age, who is actually engaged in the practice of optometry at the time of the passage of this act, shall be entitled to take the standard examination, merely upon proof to the board that he is of good moral character and is not addicted to the intemperate use of alcohol or narcotic drugs."

The question here submitted turns upon the construction of the provision contained in the above quoted portion of the Act reading: "*actually engaged in the practice of optometry.*"

In my opinion, the practice of optometry as part of a course in a school would not of itself be sufficient to meet the requirement entitling the person to take the standard examination under the above quoted portion of said Act. In the general sense in which it is here used the Century Dictionary defines "Practice" as—

"The regular pursuit of some employment or business; the exercise of a profession; hence, the business of a practitioner; as, to dispose of one's practice; a physician in lucrative practice."

The term "engaged in the practice," as used in the Act, is presumably so employed in its popular and ordinary import. For a person in some institution of learning, as part of his course of preparation, to practice at the thing which fits him for a given profession is not what is commonly meant when a person is said to be "engaged

in the practice" of such profession. Students at professional schools usually do practical work to help equip them for the profession they are preparing to pursue. This, however, is not considered being engaged in the practice of such profession. For example, a student at a medical college, although doing surgical work, that is practicing at surgery as a part of his course of study, would not in consequence thereof be deemed engaged in the practice of surgery.

The above quoted provision in question applies only to those who were *actually* engaged in the practice of optometry at the time of the approval of the Act, not simply as part of some course of instruction in a school teaching that subject, but so engaged in such practice as a vocation or occupation. That is the unmistakable intent of the requirement and also in harmony with the spirit of the general provisions of said section of the Act. The use of the word "actually" is significant and strengthens the conclusion here reached.

You are therefore advised that said provision in Section 5 of said Act, which entitles a person to take the standard examination who at the time of the passage of the Act was "actually engaged in the practice of optometry," does not apply to one whose practice was limited to such as he may have had in connection with the course of instruction in some school giving a course in the actual practice of optometry, but is to be construed as applying only to those who were actually engaged in the practice of optometry as an occupation or vocation.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE PRACTICE OF OPTOMETRY.

The Act of March 30, 1917, defining optometry and relating to the practice thereof, applies to "Chiropractic" equally with persons in general and that lawfully to engage in the work or practice of examining eyes and fitting glasses they must comply with the requirements of the act.

"Osteopaths" not being licensed to practice "medicine and surgery" are not exempt from the provisions of the Act of March 20, 1917, relating to the examination of those who practice on the eyes and the fitting of glasses for the same.

Office of the Attorney General,
Harrisburg, Pa., October 31, 1917.

Dr. Chester H. Johnson, Secretary, Board of Optometrical Education
and Licensure, York, Pa.

Sir: There was duly received your communication to the Attorney General of the 20th inst., asking for an opinion relative to the Act (No. 10) approved March 30, 1917, "Defining optometry; and relating to the right to practice optometry in the Commonwealth of Pennsylvania," etc.

The questions submitted for an opinion are as follows:

1. Whether said Act affects the right of a "Chiropractic" to "examine eyes and fit glasses."
2. Whether "Osteopaths" are exempt from the provisions of said law.

In answer to the foregoing you are advised as follows:

1. What constitutes the practice of optometry is defined in Section 1 of said Act.

Section 2 thereof provides, *inter alia*:

"That, on and after January first, one thousand nine hundred and eighteen, it shall not be lawful for any person in this Commonwealth to engage in the practice of optometry or to hold himself out as a practitioner of optometry, or to attempt to determine by an examination of the eye the kind of glasses needed by any person, or to hold himself out as a licensed optometrist when so licensed, or to hold himself out as able to examine the eyes of any person for the purpose of fitting the same with glasses, excepting those hereinafter exempted, unless he has first fulfilled the requirements of this act, and has received a certificate of licensure from the Board of Optometrical Education, Examination and Licensure created by this act."

Section 12, in pursuance of which there are certain exemptions from the application of the Act, reads as follows:

"The provisions of this act shall not apply: (a) To the physicians or surgeons practicing under authority of license issued, under the laws of this Commonwealth, for the practice of medicine or surgery; or (b) To persons selling spectacles and eyeglasses, but who do not assume, directly or indirectly, to adapt them to the eye, nor neither practice or profess to practice optometry."

It follows from the foregoing that it will be unlawful after said date for any person to engage in the practice or work mentioned in Section 2, or as defined in Section 1, or to hold himself out as such practitioner or able to do such work unless he has first fulfilled the requirements of said Act, except such persons as are excepted from the Act's application by virtue of the provisions of Section 12. It is obvious that there is nothing whatever in this latter section which operates to exempt a "chiropractic" as such from the Act or its requirements. It is also plain that "to examine eyes and fit glasses" is work of a kind and character within the meaning of that mentioned or defined in Sections 1 and 2 of the Act and to do or engage in the practice of which is subject to the Act's requirements.

You are accordingly advised that the said Act applies to "chiropractics" equally with persons in general and that lawfully to engage in the work or practice of examining eyes and fitting glasses they must comply with the requirements thereof.

2. Had the provisions contained in Section 12 to the effect that the Act shall not apply "to physicians and surgeons practicing under authority of license issued, under the laws of this Commonwealth, for the practice of medicine or surgery" stopped short of the final clause thereof reading: "*for the practice of medicine or surgery*," then an osteopath would clearly be within the letter of said provision and consequently exempt from the Act. Osteopaths are not, however, licensed under our laws to practice "medicine or surgery"; they are licensed in pursuance of the Act of March 19, 1909, P. L. 46, to practice "osteopathy." Persons are licensed to practice "medicine and surgery" in this Commonwealth in pursuance of the Act of June 3, 1911, P. L. 639, as amended by that of July 25, 1913, P. L. 1220, and which does not apply to osteopaths. Only physicians and surgeons licensed for this latter practice are specifically within the contemplation and scope of the above provision contained in Section 12 of the Act. Its terms precisely fit this class and no other and it may fairly be concluded that no other class was intended to be included therein. The limits of said provision can not be widened by mere implication. There is no reason for a departure from its letter. We must assume that if it had been the legislative intent to exempt osteopaths from the requirements of the Act, such intendment would have been expressed in specific terms to that effect.

Section 12 excepting as it does certain classes from the application of the Act should be given, in my opinion, a strict interpretation. It is a settled rule of statutory construction that a proviso restricting the scope of the general enactment or taking certain classes therefrom is to be strictly construed and limited to the objects fairly within it.

The Pennsylvania Reform School, 8 District 644.

Folmer's Appeal, 87 Pa. 133.

Endlich on the Interpretation of Statutes, 186.

I have therefore to advise you that osteopaths are not exempt from the provisions and requirements of the above Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

PRACTICE OF OPTOMETRY.

Under the Act of March 30, 1917, the two years of practice in optometry, necessary to entitle an applicant for license to take the limited examination provided for in the act, are not restricted to the two years immediately preceding the passage of the act.

Office of the Attorney General,
Harrisburg, Pa., November 23, 1917.

Dr. Chester H. Johnson, Secretary, Board of Optometrical Education,
Examination and Licensure, York, Pa.

Sir: There was duly received your communication of the 10th inst., to the Attorney General, requesting an opinion as to whether a party who practiced Optometry "from 1899 to November, 1915," but was not engaged in the practice thereof between this latter date and March 30, 1917, the date of the approval of the Act regulating the practice of Optometry, is entitled to take the limited examination provided in said Act.

Section 5 of said Act, No. 10, approved March 30, 1917, P. L. 21, provides, inter alia, as follows:

"Any person who has been engaged in the practice of optometry in this Commonwealth for two full years prior to the passage of this act, or, for one year in this, and for the year preceding it in another, State, and is of good character, shall be entitled to take a limited examination."

The question here, therefore, turns upon the point whether the two years of practice required to entitle one to take the limited examination must be the two years immediately preceding the passage of the Act, or may be any two years prior thereto. The word "prior," as used in the Act, is synonymous with the word "previous." In the framing of the above provision it was evidently the legislative thought that the prescribed limited examination would constitute a sufficient test of qualification to entitle one to a license to practice optometry, where the applicant therefor had had the benefit of two years of experience in such practice.

It would seem, therefore, that it would not be generally material whether such practice had been engaged in for the two years immediately prior to the passage of the Act or so engaged in for any other like period. The experience gained in such latter instance might fulfil the purpose or spirit of the Act quite as well as in the former. In my opinion, it would be too strict an interpretation to hold that the said period of practice must be embraced within the two years immediately preceding the passage of the Act.

It may be noted that in the case of the one year of practice in another State allowable to make up the required two years it is provided that it must be "*for the year preceding*" the year in this State. This fixes the year in another state definitely with reference to the one in this Commonwealth. Presumably, if it had been the intent to restrict the said two years to those immediately preceding the passage of the Act such intent would have been likewise couched in express terms.

It is conceivable that there may be cases where the two years of practice were so remote or long past as not fairly to be construed as coming within the scope or spirit of the above provision. The practice as required to warrant one to take the limited examination must be such as is defined in Section 1 of the Act. In other words, it must be the "practice of optometry" as the same is therein defined and not as it may have been understood or practiced at some previous period thereto. The burden is on the one claiming the right to take a limited examination to show that he has actually had two full years of practice, and the duty rests with the Board of Optometrical Education, Examination and Licensure to determine and find said fact. Where the claim for a limited examination rests upon a practice long anterior to the passage of this Act, there should be a very rigid scrutiny by the Board to ascertain whether there had been two full years of the practice of optometry actually engaged in as a business or vocation and not merely some desultory or intermittent work of that general nature.

You are therefore advised that the two years of practice required to entitle one to take a limited examination are not necessarily restricted to the two years immediately preceding the passage of the Act, but that it would meet the requirements thereof if such practice had been engaged in for any two full years prior to the passage of the Act where the practice fulfilled the definition as laid down in Section 1.

While the question is not specifically raised in your request for an opinion, I may state further that I am of the opinion that the two years of practice required to entitle one to take the limited examination must be continuous years. Such is expressly the case where one year of the practice occurs in this State and the other year in another State, and we may conclude that the same rule holds good where both years of the practice occur in this state.

In the specific case occasioning this inquiry, I am of the opinion that said party would be entitled to take the limited examination provided the Board finds that he was actually engaged for two full years continuously in the practice of optometry as defined in the Act.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

OPTOMETRY.

A rule of the Board of Optometrical Education, providing that no person shall be eligible for a "limited examination" who has not been practicing in Pennsylvania since March 30, 1912, is not warranted.

"Peddling" and "temporary offices," as used in the Act of Assembly of March 30, 1917, P. L. 21, are defined.

Office of the Attorney General,
Harrisburg, Pa., January 23, 1918.

Dr. Chester H. Johnson, Secretary, Board of Optometrical Education,
Examination and Licensure, York, Pa.

Sir: There was duly received your communication of the 8th inst., to the Attorney General, asking to be advised upon certain matters relative to the Act of March 30, 1917, P. L. 21, defining Optometry, etc.

The matters submitted by you for an opinion, as I understand them, may be stated as follows:

First—Whether the Board of Optometrical Education, Examination and Licensure has the power to make a rule “that if a person has not been practicing in Pennsylvania since March 30, 1912 (5 years) they will not be eligible for the limited examination.”

Second—What constitutes “peddling,” as that term is used in Section 6 of said Act.

Third—What constitutes “temporary offices,” as that term is used in said Section of said Act.

In an opinion rendered to you by this Department under date of November 23, 1917, it was held that the two years of practice prior to the passage of the Act requisite for a limited examination, did not necessarily need be the two years immediately preceding the passage of the Act, but that it might be any other two years of practice prior thereto, provided the same had been continuous years and the practice such as defined in said Act. It will readily be seen that the above rule proposed to be adopted by the Board would not be consistent with the foregoing ruling of this Department and that the same would not be warranted by the Act as interpreted in said opinion.

It was pointed out in the course of the aforesaid opinion that the burden is on the applicant for the limited examination to show that he is eligible therefor, that he actually practiced optometry for two full, continuous years prior to the passage of the Act as such practice is defined in Section 1 thereof, and that the duty rests with the said Board to find that such is the fact before permitting any one to take said examination. It was further, and is now again, urged in a case where the application is based upon a practice long anterior to the passage of this law, that there should be a rigid scrutiny and investigation by the Board to ascertain if the applicant had in fact pursued the practice of optometry as defined in the Act for two continuous years, both of which must have been in this State, or one in this State and the one immediately preceding it in another state. Unless this is clearly shown, the privilege to take the limited examination should be withheld, as it belongs of right only to those whose qualifications fully measure up to the requirements of the Act. This ruling is in harmony with the Act's spirit and purpose, and if strictly applied it is unlikely that any undeserving applicant will be able to show that he is eligible for said examination or that any deserving one will be excluded therefrom.

(2) It is provided in Section 6 of the Act, *inter alia*, as follows:

“Peddling from door to door, or the establishment of temporary offices, is specifically forbidden, under penalty of revocation of certificate by said board. Whenever any person shall practice optometry outside, or

away from his office or place of business, he shall deliver to each person fitted with glasses by him a certificate, signed by him, wherein he shall set forth the amount charged, his post-office address, and the number of his certificate. Each person to whom a certificate has been issued by said board shall, before practicing under the same, register said certificate in the office of the prothonotary in each county wherein he proposes to practice optometry, and shall pay therefor such fee as may be lawfully chargeable for such registry."

The term "peddling" as used in the Act is to be given the usual meaning in which it is ordinarily understood. A "peddler" generally may be defined as one who goes about from place to place, from home to home, from customer to customer, carrying for sale and exposing to sale the goods, wares and merchandise he carries.

Words & Phrases, Vol. 3, p. 938.

In *Commonwealth vs. Edson*, 2 C. C. Rep. 377, in an opinion by Judge Elwell, there is a very full discussion of what is meant by a "peddler" or "peddling," in the course of which it is said:

"In judging whether a person is a peddler or not, all the circumstances are to be taken into consideration; first, settle what are the facts, and then inquire whether those facts constitute the person a peddler."

The question as to whether or not there has been a violation of the provision of said Act forbidding peddling, can best be determined as some particular case arises. Each must be decided upon its own facts and attendant circumstances.

(3) Presumably the term "temporary offices" was intended to mean precisely what the words thereof import.

The test as to whether an office is a temporary one within the intent of the Act depends upon the permanency with which it is maintained by a person as a place in which to practice optometry, and not upon the extent with which it is so used. If an office is permanently maintained by one as a place in which to practice optometry and is so held out, the fact that he only occasionally or at intervals uses it for that purpose, would be immaterial and would not of itself render the office a temporary one within the meaning of the Act. The prohibition is against the establishment of a temporary office, not against the temporary or transient use of an office permanently maintained as a place in which to carry on the practice of optometry. To attempt, however, to lay down any general rule of interpretation of the said term as a guide in the enforcement of said provision would

be much more apt to mislead than to help. As was said above relative to "peddling," so may it be said of this, that each case must be decided upon its own facts.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

OPTOMETRY.

Under the Act of March 30, 1917, P. L. 21, regulating the practice of optometry, and providing "that the establishment of temporary offices is specifically forbidden, under penalty of revocation of certificate," by the Board of Optometrical Education, Examination and Licensure, the establishment of a temporary office is prohibited; but such prohibition does not extend to the temporary or transient use of an office permanently maintained as a place in which to carry on the practice of optometry.

An optometrist regularly visited several towns for the purpose of practising optometry, at intervals of from one to three months, advertising his coming, staying at each town for one day, and using his rooms at the hotel as his office or place in which to carry on his practice. He leased the rooms at the hotel or hotels where he stayed for the term of one year, and during his absence the rooms were otherwise used by the hotels: *Held*, such practice was lawful, for the act expressly recognizes the right to practice in different places, and there is no limit thereto; and the use of hotel rooms as offices in this manner, in good faith, does not constitute the establishment of temporary offices within the intent of the act.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1918.

Mr. Chester H. Johnson, Secretary, Board of Optometrical Education,
Examination and Licensure, York, Pa.

Sir: There was duly received your communication of the 1st inst., to the Attorney General, relative to the provision of the Act of March 30, 1917, P. L. 21, regulating the practice of optometry, reading as follows:

"* * * the establishment of temporary offices, is specifically forbidden, under penalty of revocation of certificate by said board."

You ask to be advised whether the hereinafter stated case constitutes a violation thereof.

The facts in said case, as I gather the same from your communication, are substantially as follows:

A certain optometrist for a number of years prior to the passage of the above Act had regularly been visiting several towns, for the purpose of practicing optometry, at intervals of from one to three months; advertising his coming, stopping at each town for one day, and using his rooms at the hotel as his office or place in which to carry on his practice. Since the passage of said Act he has continued to do this as heretofore with this difference, viz: that he has now leased rooms at the hotel or hotels where he stops for the term of one year. It is further alleged that during his absence therefrom, the rooms are otherwise used by the hotels.

At the outset it may be stated that what the said party may have done prior to the passage of the Act has no bearing whatever on the question. Anything forbidden by the Act is unlawful, regardless of how long it may previously have continued. The sanction of usage or custom cannot be invoked to defeat any of its terms. The purpose of the above provision was to break up the custom of having temporary offices and wholly to interdict the establishment of such thereafter.

In a former opinion of this Department to you, under date of January 23, 1918, it was said:

"The test as to whether an office is a temporary one within the intent of the Act depends upon the permanency with which it is maintained by a person as a place in which to practice optometry, and not upon the extent with which it is so used. If an office is permanently maintained by one as a place in which to practice optometry and is so held out, the fact that he only occasionally or at intervals uses it for that purpose, would be immaterial and would not of itself render the office a temporary one within the meaning of the Act. The prohibition is against the establishment of a temporary office, not against the temporary or transient use of an office permanently maintained as a place in which to carry on the practice of optometry."

It does not seem necessary to add to what was said in the above opinion in construing the aforesaid provision. The plain purpose thereof was to prohibit the mere itinerant practice of optometry without certain or definite place or office in which the practice is to be carried on. The Act, however, does not forbid, but expressly recognizes, the right to practice in different places, and there is no limit thereto. Necessarily, if an optometrist practices in different places, there must be intervals between his visits to each. In harmony with what was said in the above opinion of this Department, I take it that it is immaterial how brief his visit to any town, or how long the intervals between the visits thereto may be, provided the office

or place in which he practices while in any given town is not a mere temporary establishment, but one regularly and permanently maintained and used by him for that purpose.

Applying the aforesaid rule to the particular case under consideration, it would follow that if the said party chooses to use hotel rooms as his offices, holds the same out as such by due advertisement as the place in which he practices, *and in good faith actually rents the same for a fixed term for that purpose and so uses them in accordance therewith*, it could not fairly be deemed the establishment of temporary offices within the intent of the Act. While their use would be, from time to time, temporary, their maintenance would be permanent in nature. The fact that the rooms during his absence would be used for other purposes would not change this conclusion. His office or place of business in any town would be fixed and certain. The public and those who deal with him would know precisely where to find him. The Board would be quite as aware of the exact place in which he carried on his practice in any town as though he maintained offices outside the hotel and which during his absence were kept closed. The purpose of said provision of the Act not being defeated by such a case as above stated, it does not, in my opinion, fall within its prohibition.

While expressing the foregoing view as to the above mentioned case, it is respectfully urged that, in this case as in every other, where any question arises or exists as to the establishment of a temporary office, the said Board should carefully investigate and scrutinize all the facts and circumstances surrounding the same, in order that it may ascertain and determine whether in fact there is an establishment of temporary offices. That duty rests upon the Board, which is clothed with the power to revoke a certificate of licensure where a violation of said provision is found. If there be kept in view the purpose and intent of this provision; a conclusion should be reached which will neither nullify its effect or work injustice to any individual.

Very respectfully yours,

EMERSON COLLINS,
Deputy Attorney General.

OPINIONS TO PENITENTIARIES AND RE-
FORMATORIES.

OPINIONS TO PENITENTIARIES AND REFORMATORIES.

CONVICT LABOR—ACT OF JUNE 1, 1915.

There can be no profit, as such, on goods manufactured by convict labor, but the cost to the counties for such goods includes not only materials and equipment but also the amount chargeable as labor, provided such labor comes within the definition given under section 1 of the Act of June 1, 1915, P. L. 656.

Office of the Attorney General,
Harrisburg, Pa., January 9, 1917.

Mr. Thomas B. Foley, Secretary, Western Penitentiary of Pennsylvania, Pittsburgh, Pa.

Sir: This Department is in receipt of your communication of January 2, 1917, in which you say:

"At the beginning of the year 1916 the Western Penitentiary found itself with a large number of idle prisoners, and also in need of various articles necessary to its maintenance, to wit: cloth for making inmates' suits, shoes, etc., whereupon the prison itself advanced the money required to purchase raw material, the Prison Labor Commission having furnished neither cash nor supervision, nor installed any machinery, the tools, looms, etc., used in the manufacture of cloth and shoes being the property of the Western Penitentiary; and paid for by the counties comprising the Western Pennsylvania Prison District, the prisoners employed being supported by the Institution, and manufacturing only supplies for their own consumption.

"The question, therefore, presents itself to the Board of Inspectors of the Western Penitentiary, whether, under the conditions above cited, there should be any "profit" on the goods manufactured, and if so, should it be paid over to the Prison Labor Commission?"

Under the facts as you set them forth, there cannot be any "profit" as such, on the goods manufactured, but the cost to the counties for such goods comprises not only the cost of the materials and equipment furnished, but also the amount chargeable as labor, provided that such labor comes within the definition given under Section 1 of the Act of June 1, 1915, P. L. 656.

It is provided in the section referred to that

“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,” etc.

Section 7 of the Act provides that an account shall be kept

“of the labor performed by all prisoners under sentence in such institution. In such account the prisoner shall be credited with wages for the time he is actually engaged in work * * * In no case shall the amount be less than ten cents, nor over fifty cents, for each day of labor actually performed.”

The plain meaning of this Act as gathered from the portions quoted would make an additional charge upon the counties in respect to the amount payable by them in the maintenance of the prisoners sent from such counties. Three-fourths of the fund created from such labor charge is held for the benefit of the prisoners or their dependents, and with the latter element a predominating purpose of the Act, the burden of increased costs to the counties or institution is of necessary consequence.

The wages with which the prisoners are to be credited for the labor specified is not contingent upon the machinery or raw materials being supplied by the Prison Labor Commission, and I have, therefore, to advise you that the amount of wage as fixed by the Prison Labor Commission for such work as set forth in your inquiry, must be added to the cost of the goods and paid over to the Prison Labor Commission for the purposes specified in Section 8 of the Act.

Very truly yours,

HORACE W. DAVIS,
Deputy Attorney General.

PURCHASE OF SUPPLIES.

Where a years supply of coal had been contracted for at a given price with the Pennsylvania Industrial Reformatory, that price cannot subsequently be increased during the term of the contract.

Office of the Attorney General,
Harrisburg, Pa., January 23, 1917.

Mr. T. B. Patton, General Superintendent, Pennsylvania Industrial Reformatory, Huntingdon, Pa.

Sir: This Department is in receipt of your favor of the 13th inst.

You state that the contract for the necessary supplies of bituminous coal required for the Reformatory for a period of one year from July 15, 1916, was awarded to Mr. John Langdon, of Huntingdon, Pa., who was the lowest bidder for the furnishing of 5,500 gross tons of coal, or such quantity over that as might be required, delivered in the yard of the Reformatory freight paid, at \$2.30 per gross ton.

You have received a communication from Mr. Langdon, in which he advised the Board of Managers that—

“Owing to the increased cost of living and in order to keep our employes at work in the mines, we have given each one a bonus, for the months of October and November of ten per cent., and for the month of December, fifteen per cent., in addition to their earnings, and will have to continue doing so until conditions return to normal. In view of this increase and the increased cost of supplies for the mines, will you kindly consider increasing our contract price twenty-five cents per gross ton? Making the price \$2.55 per gross ton. (instead of \$2.30) f. o. b. cars Reformatory, effective January 1st, 1917.”

You further stated that the Board feels inclined to comply with this request if they have the legal authority to do so, and request an opinion as to whether they possess such authority.

As stated in your letter, the Reformatory now has a contract with Mr. Langdon, secured by a good and sufficient bond, for the supply of whatever bituminous coal may be required for a period of one year from July 15, 1916, not less than 5,500 gross tons, at \$2.30 per gross ton.

Mr. Langdon is a responsible dealer, and his contract is protected by a responsible bond. There is no question of the financial ability of Mr. Langdon or his bond, to comply with the contract entered into with your Board.

Under this state of facts, any additional sum paid over and above the contract price, would amount to a gratuity out of State moneys, and would be without legal warrant or authority. I appreciate the merit of the situation, and if your institution was a private corporation, dealing with its own money, I have no doubt that in most instances a situation like this would be acted upon favorably. The same latitude, however, is not permitted to trustees dealing with the State's money, that is allowed to directors of private corporations, and even though the circumstances of the case are meritorious, and I sympathize fully with your inclinations in the matter, I beg to advise you that, under the conditions detailed in your letter, you do not have authority to grant the concession asked for.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE COMPENSATION FOR CONVICTS.

Convicts performing labor in and about prisons, even though they receive compensation from the State, are not employes within the spirit and meaning of the Workmen's Compensation Act of 1915, and it is not necessary for the prison board of inspectors to take out workmen's compensation insurance for them.

Office of the Attorney General,
Harrisburg, Pa., August 15, 1917.

Mr. Thomas B. Foley, Secretary, The Board of Inspectors of the
Western Penitentiary of Pennsylvania, Pittsburgh, Pa.

Dear Sir: This Department is in receipt of your favor of the 11th instant in which you request an opinion as to whether you should take out workmen's compensation for the convicts "who are employed in and about both the old and new prisons."

I beg to advise you that, in my judgment, convicts who are performing labor in and about the prisons, even though they receive compensation from the State, are not employees within the spirit and meaning of the Workmen's Compensation Act of 1915, and it is therefore not necessary for your Board to take out workmen's compensation insurance for them.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE PAROLED PRISONERS.

A prison board has no concern with the conduct of a paroled prisoner after the expiration of his maximum sentence. If his conduct during the whole of his parole period was exemplary, he can not be returned to serve out his maximum sentence, no matter how bad his conduct was immediately thereafter.

Where the conduct of a paroled prisoner during his parole period was such as to justify his being declared delinquent, he should not escape the consequences thereof because the board did not become acquainted with it for a month after it occurred. The terms of the parole were violated by the bad conduct of the convict, not by its discovery by the board.

Where a paroled prisoner commits a crime during such parole period, the parole is violated whether a conviction is secured during the parole period or later. If he should be acquitted of the charge upon which he was arrested during the parole, it is for the prison board to decide whether his conduct constituted a breach of his parole.

Office of the Attorney General,
Harrisburg, Pa., September 6, 1917.

Mr. John M. Egan, Parole Officer, Western Penitentiary, Pittsburg,
Pa.

Sir: I have your favor of the 25th instant relative to the parole of Delbert Williams. The facts as contained in your letter are, that Delbert Williams was convicted in the Court of Quarter Sessions of Elk County, of larceny and impersonating an officer, and on July 6, 1914, was sentenced to undergo an imprisonment in the Western Penitentiary of not less than two years nor more than three years. On July 6, 1916, at the expiration of his minimum sentence, he was paroled under the provisions of the Act of July 19, 1911, P. L. 1055. In June, 1917, he was arrested in Johnsonburg, Elk county, on a charge of larceny and committed to the Elk County jail, where he is now awaiting trial.

You state that his deportment was otherwise so bad during the month of July, as to warrant his being returned to the Penitentiary.

The Board of Inspectors did not have the facts in connection with his misconduct, nor an opportunity to declare him delinquent until July 14, 1917, which was eight days after the expiration of his maximum sentence. On that day at a regular meeting, the Board declared him delinquent, and ordered a warrant for his arrest.

You ask to be advised whether, in the event that he is found guilty of the present charge against him, he should be compelled to serve the unexpired portion of his original maximum sentence in addition to the sentence that might be imposed for the crime committed during his parole period, and if he should be acquitted of the charge of larceny and the Board of Inspectors decide that his conduct apart from the larceny charge was a breach of parole, whether the Board

has a legal right to retake him for the violation of his parole, notwithstanding the fact that he was not declared a delinquent until after his maximum sentence expired. .

In the first place, in the consideration of these questions, you are not concerned with Williams' conduct *after* the expiration of his maximum sentence, viz: July 6, 1917. If his conduct during the whole of his parole period was exemplary, he could not be returned to serve out his maximum sentence, no matter how bad his conduct was immediately thereafter.

On the other hand, if his conduct during his parole period was such as to justify his being declared delinquent, he should not escape the consequences thereof, because the Board did not become acquainted with it for a month after it occurred.

Section 10 of the Act of July 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, such convict shall, in addition to the penalty imposed for such crime committed during the said period, and after expiration of 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."

Section 14 provides:

"Whenever it shall appear to the Governor that a person who has been sentenced under this act, and released on parole by commutation containing a condition that the convict shall be subject to this act, has violated the terms of his or her parole, he may issue his mandate, reciting the date of commutation, for the arrest and recommitment of such convict for breach of parole, to the penitentiary or original commitment; and upon being so returned for said breach of parole, said convict shall be imprisoned in said penitentiary for a period equal to the unexpired maximum term of such prisoner as originally sentenced, unless sooner released on parole or pardoned."

The terms of the parole are violated by the bad conduct of the convict, not by its discovery by the Board. If a paroled prisoner commits a crime during such parole period, the parole is violated whether a conviction is secured during the parole period or later. He forfeits the clemency of the parole law by his bad conduct, not by its discovery by the Board.

You are therefore advised, that if the said Delbert Williams is found guilty of the charge of larceny, for which he is now awaiting trial, he may be compelled to serve the unexpired portion of his original maximum sentence in addition to the sentence that may be imposed for the larceny conviction, and if he should be acquitted on the present charge of larceny, and the Board of Inspectors decide that his conduct during his parole period, that is up to July 6, 1917, was such as to constitute a breach of his parole, the Board has a legal right to retake him for violation of his parole, notwithstanding the fact that he was not declared delinquent until after the expiration of his maximum sentence.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

DISCHARGE OF PRISONERS.

Prisoners who were discharged by reason of their conviction or sentence having been determined illegal, were not convicts and are not entitled to receive the gratuity and clothing provided for convicts.

Office of the Attorney General,
Harrisburg, Pa., November 1, 1917.

Honorable John Francies, Warden, Western Penitentiary, Pittsburgh, Pa.

Sir: This Department is in receipt of your favors of the 19th and 24th inst. inquiring whether W. H. Hubbard and Steve Wakely are entitled to the cash and clothing gratuity provided for discharged and paroled convicts under the appropriation of July 25, 1917, No. 402-A, which reads as follows:

“For each discharged or paroled convict from the penitentiary, a sum not to exceed ten (\$10.00) dollars; and for clothing for each discharged or paroled convict a sum not to exceed ten (\$10.00) dollars.”

It appears that these parties were indicted in Tioga county and convicted of conspiracy to cheat and defraud, and were sentenced to pay the costs of prosecution, a fine of \$100.00 and undergo an imprisonment in the Western Penitentiary, at Allegheny, Pa., for a period of not less than one year.

Habeas corpus proceedings were instituted before the Superior Court, which found the sentence to be improper and directed the relators to be brought before the Court of Quarter Sessions of Tioga county and re-sentenced according to law, directing that in such sentence due allowance should be made by the court for the punishment already suffered. It appears from the papers submitted with your inquiry that the sentence imposed by the Court of Quarter Sessions was improper and the order of commitment irregular.

In the case of *Commonwealth vs. Vitale*, 250 Pa. 548, it was held by the Supreme Court that a defendant is not *convicted* of crime until judgment has been entered on the verdict, i. e., until sentence has been passed by the court. Until he has been sentenced on the verdict of the jury he is not properly a convict within the meaning of the criminal law of this State, and if the sentence is improper or illegal and it is so determined by the court on habeas corpus proceedings, he is not a convict until he has been sentenced according to law.

The appropriation is not made to each discharged or paroled prisoner, but to each discharged or paroled *convict*, and it can apply only, therefore, to persons who have been legally found guilty and sentenced to the Penitentiary and who are paroled or discharged by the expiration of sentence or its sooner determination. It does not apply to prisoners who are discharged by reason of their conviction or sentence having been determined to be illegal.

You are therefore advised that W. H. Hubbard and Steve Wakely having been discharged from the Western Penitentiary by the Superior Court in habeas corpus proceedings, on the ground that their sentences were illegal, they are not convicts within the meaning of the Act of July 25, 1917, before mentioned, and are not entitled to the gratuity of money and clothing provided in said Act.

I return herewith the documents submitted with your inquiry.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE EMPLOYES IN MILITARY SERVICE.

The Act of June 7, 1917, P. L. 600, relating to State officers and employes who may enter the military or naval service of the United States in time of war, does not apply to employes of the penitentiaries, reformatories or other institutions similarly operated by the Commonwealth.

Office of the Attorney General,
Harrisburg, Pa., November 28, 1917.

Mr. Thomas B. Foley, Secretary, Western Penitentiary, Pittsburgh, Pa.

Sir: There was duly received your communication of the 20 inst., to the Attorney General, asking for an opinion as to the applicability to employes of the Western Penitentiary of the Act of June 7, 1917, P. L. 600, relating to the officers and employes, etc., of the State entering the military service of the United States.

The said Act by its first section is made to apply to "any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau, commission, or office thereof, or by any county, municipality, township, or school district within the Commonwealth," entering the military or naval service of the United States in time of war.

The question submitted by you depends for its determination upon whether or not an employe of the Western Penitentiary is an employe of the Commonwealth of Pennsylvania or any department, bureau, commission or office thereof, within the meaning and intent of said Act.

Institutions such as State hospitals, penitentiaries and reformatories are given their own separate appropriations and are administered by their own respective boards of managers, trustees, or inspectors. The management of each of them is a distinct entity of its own and is not an integral part of the government of the Commonwealth proper. Their employes are not employes of the State in the strict sense and are not commonly so deemed in popular understanding.

We are not without precedent in reaching a decision upon the question here presented. In an opinion by First Deputy Attorney General Keller to the Chairman of State Workmen's Insurance Board, dated December 9, 1915, in interpretation of Section 103 of the Workmen's Compensation Act of June 2, 1915, P. L. 736, there was pointed out that there had been a statutory recognition of the distinction between "the Commonwealth and governmental agencies created by the Commonwealth."

In an opinion by Deputy Attorney General Davis, dated January 9, 1917, to the Governor of the Commonwealth, it was held that the

term "state employe," as used in the Act of June 14, 1915, P. L. 973, providing for the retirement of State employes, did not include the employes of the Western Penitentiary and other like State agencies. The Legislature took evident note of that ruling by amending said Act of 1915 by that of June 7, 1917, P. L. 559, specifically providing that the said term "state employe," as used therein, should apply to the "employes in penitentiaries, reformatories and other institutions operated by the Commonwealth, as well as those more directly in the service thereof."

It is to be presumed there was full legislative knowledge of the foregoing construction of the term "state employe" holding that it does not, in ordinary usage, comprehend within its meaning the employes of penitentiaries, reformatories or other like administered State institutions. Consequently we may fairly conclude that if it had been intended that the said Act, relative to State officers and employes entering the military service, should extend to the employes of these said institutions it would have defined the term "employe" as therein used, or contained other express provision, showing such intendment. The fact that a contemporary Act did, as above pointed out, expressly define the term "state employe" for its own purposes so as to make it apply to those institutional employes, tends to confirm the conclusion that the Act here under consideration was not intended so to apply since it contains no specific provision of like import. While this statute is of a character to be liberally construed in favor of the beneficiaries within its contemplation, yet bestowing, as it does, exceptional privileges and benefits upon certain classes it should, in my opinion, be given a strict interpretation upon the question as to who come within its scope. Its application in such respect is to be limited to that clearly imported by its terms.

Although no formal opinion has heretofore been rendered by this Department covering the subject hereof, yet in response to inquiries from various State institutions, it has uniformly ruled in harmony with the above view. You are accordingly advised that the said Act of June 7, 1917, P. L. 600, relating to State officers and employes who may enter the military or naval service of the United States in time of war, does not apply to the employes of the penitentiaries, reformatories or other institutions similarly operated by the Commonwealth.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

COMMUTATION OF SENTENCE.

A prisoner was paroled, sentenced again for a second term for another offense, and then pardoned for the first offense: *Held*, he was not entitled to credit on the second term for the time he served after his return to the prison until his pardon.

Office of the Attorney General,
Harrisburg, Pa., February 13, 1918.

Mr. John W. McKenty, Parole Officer, Eastern Penitentiary, Pittsburgh, Pa.

Dear Sir: Your favor of the 6th inst. in reference to the sentence of Archie Clay, was duly received.

The facts I understand to be as follows:

Clay was sentenced to the Eastern State Penitentiary from Adams county August 28, 1909, for the term of one year, minimum, to ten years, maximum, and was released on parole October 3, 1910. He was sentenced again by the Court of Adams county for breaking and entering, to a minimum of five years and a maximum of fifteen, and was received at the institution April 26, 1912. He was pardoned January 23, 1918, from the sentence imposed on August 28, 1909.

You ask to be advised whether credit should be given him on the second term from the time on which he was returned to the institution up to the time at which he was pardoned.

In an opinion given to you December 26, 1916, this Department held that a prisoner must serve the remainder of his first term before he begins to serve the second sentence.

It therefore follows that, when Clay was returned to the Penitentiary on April 26, 1912, he started to serve the remainder of the term imposed upon him August 28, 1909, and was serving that sentence until he was pardoned. He never served any part of the sentence upon which he was returned on April 26, 1912. He is, therefore, not entitled to credit on the second sentence from the time he was returned to the Penitentiary until the day he was pardoned, because he had served no part of that sentence.

If any injustice is done by the application of this rule, it may be corrected by another petition to the Board of Pardons.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

EXPIRATION OF SENTENCE.

A prisoner in the Eastern Penitentiary transferred to the State Hospital for the Insane at Farview and there serving out the term of his sentence is entitled to credit for the time served in the State Hospital.

Office of the Attorney General,
Harrisburg, Pa., April 30, 1918.

Mr. J. J. Horstman, Secretary, Board of Inspectors Eastern Penitentiary, Philadelphia, Pa.

Dear Sir: Your letter in reference to the expiration of the sentence of E. A. Steinbach, was duly received.

The facts I understand to be as follows:

Steinbach was sentenced to the Eastern Penitentiary on September 21, 1914. On July 27, 1915, by order of the court he was transferred to the State Hospital for the Criminal Insane at Farview, Pa., and on March 1, 1918, he was returned to the institution as cured. His sentence expired when he was in the insane hospital. You ask to be advised whether he is to have credit for the time in which he was in the State Insane Hospital.

The Act of May 14, 1874, P. L. 160, answers your inquiry. That Act provides for the transfer of persons convicted of crime from the penitentiary or prison in which they are confined to the insane hospital, when the occasion requires; that upon a proper certificate being presented to the judge or the court that a prisoner sent to the insane hospital has been restored to sanity,

"it shall be lawful for the said judge or court, if the term of imprisonment for which such prisoner was sentenced has not expired to remand such prisoner to the place of imprisonment from which he or she was brought to such hospital, to serve out the unexpired term of sentence, * * * but if the term for which such prisoner was sentenced shall have expired, * * * it shall be lawful for said judge or court to order the discharge of such patient from said hospital."

This law has been changed in so far as the method of discharge is concerned, which is now to be done by the Board of Prison Inspectors, but I think the Act otherwise is in force.

Therefore, I advise you that Steinbach is entitled to credit for the time served in the State Hospital for the Criminal Insane.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

PENNSYLVANIA INDUSTRIAL REFORMATORY—HUNTINGDON.

The Board of Managers of the Reformatory are not authorized to receive young men convicted of the violation of the laws of the Federal Government.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1918.

Honorable T. B. Patton, General Superintendent of the Pennsylvania Industrial Reformatory, Huntingdon, Pa.

Sir: This Department has received your communication of the 21st ult. inquiring whether the Pennsylvania Reformatory may legally receive "young men over seventeen years of age convicted of violation of the laws of the United States."

The law is settled that the control of State Penal Institutions and the persons who shall be confined therein is a matter exclusively within the State control, and that, if it be so desired, the State may constitutionally prohibit the use of its penal institutions by the Federal government. This rule was stated by the Federal Court in *Ex-parte Shores*, 195 Fed. 627, wherein the court said as follows:

Opinion p. 629:

"The several states may, no doubt, refuse to allow the use of their jails and prisons for such purpose; and, should they do so, the United States could not lawfully commit persons to such jails, and the jailers would not be required to receive them."

The question raised by your communication, therefore, necessarily depends upon whether the statutes of this Commonwealth, either general or those relating specifically to the Pennsylvania Industrial Reformatory, authorize, expressly or by implication, the Federal Government to place persons convicted of the violation of the Federal laws in your reformatory.

By the Act of December 5, 1789, 2 Sm. L. 513, Sec. 2, it is enacted as follows:

"That all Sheriffs, Gaolers, Prison-keepers, and their and each and every of their deputies, within the commonwealth, to whom any person or persons shall be sent or committed, by virtue of legal process issued by or under the authority of the United States, shall be, and they are hereby, enjoined and required to receive such prisoners into custody, and to keep the same safely, until they shall be discharged by due course of law; and that all such Sheriffs, Gaolers, Prison-keepers, and their deputies, offending in the premises, shall be liable to the same pains and penalties, and the parties aggrieved shall

be entitled to the same remedies against them, or any of them, as if such prisoners had been committed to their custody by virtue of legal process issued under the authority of this state."

and by Section 1 of the Act of March 3, 1814, 6 Sm. L. 118, all sheriffs, gaolers, prison-keepers and their deputies are required to receive, by any order from the government of the United States, every person or persons sent or committed to their institutions as hostages or prisoners of war. Other sections of these statutes provides a system whereby the State shall be reimbursed by the National government for the cost of the maintenance of persons so received and detained. These acts were undoubtedly passed in response to the Congressional Resolution of September 23, 1789, which requested the legislatures of the several states to pass laws making it the duties of the keepers of their jails to receive and safely keep therein, under the same penalties as in the case of State prisoners, all prisoners committed under the authority of the United States until they shall be discharged by due course of the laws thereof, the United States, however, to pay for the keeping and support of such prisoners as they shall commit to such jails. (1 Stat. 96.) On March 3, 1791, (1 Stat. 225) Congress passed another resolution which, after referring to the Resolution of September 23, 1789, provides that in case any State shall not comply with the request, the marshal, in such case, may be authorized to hire a convenient place to serve as a temporary jail, and to make all necessary provisions for the safe keeping of prisoners committed under the authority of the United States, until permanent provision shall be made by law for that purpose.

An examination of all the early Pennsylvania acts and particularly of the sections relating to the cost of maintenance shows that they referred to county jails rather than State institutions. The provisions of these general statutes do not authorize the incarceration of Federal prisoners in the Pennsylvania Industrial Reformatory and the only question remaining is whether the several statutes, expressly providing for the regulation of your institution, indicate a legislative intent to permit your institution to receive prisoners convicted by United States courts.

An examination of the statutes relating to your institution discloses no such legislative intent. Indeed the provisions of Section 4 of the Act of April 28, 1887, P. L. 63, disclose a contrary intent, the section providing as follows:

"Any court in this Commonwealth, exercising criminal jurisdiction, may sentence to the said reformatory any male criminal, between the ages of fifteen and twenty-five years and not known to have been previously sentenced to a state prison in this or any other State or

country, upon the conviction in such court of such male person of a crime punishable under existing laws in a State prison. And the said board of managers shall receive and take into said reformatory all male prisoners of the class aforesaid, who shall be legally sentenced on conviction as aforesaid; and all existing laws requiring the courts of *this Commonwealth* to sentence to the State prison male prisoners convicted of any criminal offense between the ages of fifteen and twenty-five years, and not known to have been previously sentenced to a State prison in this Commonwealth, or any other State or country, shall be applicable to the said reformatory, so far as to enable courts to sentence the class of prisoners so last defined to said reformatory and not to a State prison."

Section 6 of the same act provides, that—

"Every sentence to the reformatory, of a person hereafter convicted of a felony or other crime, shall be a general sentence to imprisonment in the Pennsylvania Industrial Reformatory at Huntingdon, and the *courts of this Commonwealth* imposing such sentence shall not fix or limit the duration thereof."

The intention of the legislature was the establishment of an institution for reformation of juvenile delinquents rather than for punitive and correctional measures. It was intended for the reformation of juveniles of this State and neither by the express terms of the acts relating to the institution, nor from any implication fairly deducible therefrom, can any authority be inferred that would authorize your Board of Managers to receive Federal convicts.

Specifically answering your inquiry, you are advised that the Board of Managers of the Pennsylvania Industrial Reformatory at Huntingdon are not authorized to receive young men convicted of the violation of the laws of the Federal government.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

COMMITMENT OF WIFE DESERTERS.

The Act of May 24, 1917, P. L. 268, empowers Courts of Quarter Sessions to commit wife deserters to the penitentiary for the term of one year, and the Act of March 13, 1903, P. L. 25, so far as it restricts the place of confinement to a county jail, is repealed.

The provision of the Prison Labor Commission Act (Act of June 1, 1915, P. L. 656), as to paying prisoners 50 cents per day, is repealed by said Act of May 24, 1917, P. L. 268, so far as concerns prisoners committed for the support of wives, children, aged parents or illegitimate children.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1918.

John Francies, Esq., Warden, Western Penitentiary of Pennsylvania,
Pittsburgh, Pa.

Sir: You have inquired of me concerning your duty under the Act of May 24, 1917, P. L. 268, with reference to the commitment to the Western Penitentiary of one Levi Graham by the court of Quarter Sessions of Clearfield county, and have forwarded to me a transcript of the record of his case. From the record, it appears that the said Levi Graham was committed to the Western Penitentiary for one year after having pleaded guilty to an indictment charging him with wife desertion, and that the said court ordered that there should be paid to the Desertion Probation Officer of Clearfield county the sum of sixty-five cents per day, Sundays and holidays excepted, during the term of said imprisonment, the order of court concluding as follows:

"and if said payment cannot be made by the said institution, such sum shall be charged to and paid by the county of Clearfield."

An examination of the Act of 1917 referred to discloses two subjects of inquiry which are pertinent in resolving the question asked by you.

1. Whether the act permits the court of Quarter Sessions to sentence to the penitentiary for the crime of wife desertion.
2. What the facts are which decide whether the Western Penitentiary or the County of Clearfield shall ultimately pay the sums ordered paid the Desertion Probation Officer on account of Levi Graham.

As to the first question, the words of the act are as follows:

"The court may order the defendant to be imprisoned at hard labor under existing law or laws that may hereafter be passed in such penal or reformatory institution of this Commonwealth as the court shall direct."

The words used are undoubtedly broad enough to comprehend the Western Penitentiary, unless there be some other provision in the law which would have to be considered as plainly contrary thereto.

An examination of the history of the law with relation to the imprisonment of wife deserters, leads to the conclusion that the language used in the Act of 1917 gives to the court power to imprison wife deserters in the Western Penitentiary.

Prior to 1903, wife desertion in Pennsylvania did not constitute a crime *Commonwealth v. Rudy*, 29, Pa. C. C. 450).

By the Act of March 13, 1903, P. L. 26, desertion was expressly made a misdemeanor punishable by "imprisonment not exceeding one year," and the payment of a "fine not exceeding one hundred (\$100) dollars or either or both at the discretion of the court."

In *Commonwealth v. Fetterman*, 26 Super. Ct. 569, it was expressly held that the term "imprisonment" meant "simple imprisonment," and that the place of incarceration is the county jail and that it was error to make the sentence in such a case imprisonment in the penitentiary.

Immediately prior to the Act of May 24, 1917, P. L. 268, therefore, a person convicted of the crime of wife desertion could not be sentenced to a penitentiary, but could only be confined in the county jail.

Imprisonment "at hard labor" means confinement in a penitentiary.

In *Commonwealth v. Barge*, 11 Super. Ct. 164, the court, on page 169, said:

"The rule is clear that the court, in imposing sentence, is limited to the punishment prescribed by the terms of the violated statute. It cannot go beyond the statute's express terms. *Kraemer v. Com.* 3 Binn. 577; *Scott v. Com.*, 6 S. & R. 224. So rigidly is the rule applied that even where the court has power to sentence a prisoner, either to a penitentiary or to a county jail, *the former, by the laws creating and regulating it, imposing hard labor upon all prisoners confined in it, and the latter not, it cannot confine him in the latter at hard labor.* If this is to be a part of the sentence he must be sent to the penitentiary: *Daniels v. Com.*, 7 Pa., 371."

It would, therefore, seem clear that the Act of 1917 had, in effect, amended the Act of 1903 were it not for the phrase in the subsequent statute "under existing law or laws that may hereafter be passed." It is elementary that in the interpretation of statutes some meaning must be ascribed to all the words used in the purview of the act, as the legislature is not to be presumed to have indulged in meaningless language. The use, however, of this phrase is confusing. "Under existing laws" relating to desertion, an offender could not be sent to the penitentiary, and if the court would have to rely upon existing

laws for authority to sentence, no justification could be found in sending a man to the penitentiary. However, if such construction be given to the phrase, then the words of the Act of 1917, to wit, to be imprisoned *at hard labor* cannot be effectuated. The conflicting words of the statute can be reconciled by construing the phrase "under existing law" as relating to the duration of the sentence. In other words, as to wife deserters convicted under the Act of 1903, the maximum term of service is one year in a county jail. By virtue of the power contained in the Act of 1917, the court may change the place of confinement from a county jail to imprisonment in the penitentiary, but the term of the sentence cannot be other than that prescribed "under existing law," in this case by the Act of 1903 not more than one year. The phrase construed as relating to the term of sentence has some meaning which does not render either of the statutes inharmonious. By the Act of 1903, the court may imprison the offender to a county jail for any time not exceeding one year; or, under the Act of 1917, the court may imprison the offender in a penitentiary for a period of one year. The law seems to be settled that sentence for less than one year cannot be to a penitentiary. I am of the opinion that this construction is in consonance with the general purpose of the statute of 1917. It is well known that prisoners in a county jail perform little work. It is equally well known that work is one of the ordinary consequences of imprisonment in a penitentiary. The very purpose of the statute would be defeated by a construction which would withhold from the court jurisdiction to sentence an offender to a penitentiary. The purpose of the Act of 1917, was apparently to empower the court to put the wife deserter in an institution where he could be compelled to work, and in an institution where labor was part of the sentence, so that, during the time when he was in confinement, he would still be some asset in the support of those whom he had refused to support. A county jail is not a place where labor is performed by prisoners. Penitentiaries and reformatory institutions are the converse. Labor is an incident to the incarceration and therefore the very spirit of the act was to give the power to the court to abstain from sending a deserter to a place where he would be useless to his family, and to sentence him to an institution where he could be made to support those whom he had deserted. I conclude, therefore, that the Act of 1917 empowers the court to send a wife deserter to a penitentiary for the term of one year, and that the Act of 1903, so far as it restricts the place of confinement to a county jail, is repealed.

At the conclusion of Section 1 of the Act of 1917 occurs the following provision:

"Such sum shall be paid as wages, and shall be paid at such times and in such manner as other wages are paid by cities and counties, and shall be charged as one of the general running expenses of such institution; and, if the labor done in such institution is not sufficient to pay the running expenses of such institution, such sum shall be charged to and paid by the county from which such defendant was committed."

I have been informed by the officials of the Western Penitentiary that the returns from labor of the prisoners is almost negligible when considered in relation to the running expenses of the institution. What the fact is in this regard is a question for you to decide, and one on which the advice of this Department is unnecessary. If the fact is, however, as stated here, it would seem that the sum of sixty-five cents per day, to be paid the Desertion Probation Officer at Clearfield county, should properly be charged to and paid by that county when the accounts between your institution and the said county are settled.

There is another inquiry which is not directly pertinent in advising you in the case under consideration, but while writing you in this connection, it may not be out of place to point out the apparent inconsistency between the Act of 1917 and the Prison Labor Commission Act of 1915. The latter act provides a complete and uniform system of labor for prisoners in correctional and reformatory institutions, and provides that a prisoner shall receive fifty cents a day for labor which he performs. The Act of 1917, however, as to wife deserters and other prisoners in similar cases, provides for the payment of sixty-five cents per day. It must necessarily follow that the Act of 1917 repeals the provisions as to fifty cents per day of the Prison Labor Commission Act, in so far as is concerned the class of prisoners enumerated in the Act of 1917, to wit, those liable for the support of wives, children, aged parents, or illegitimate children.

Respectfully yours,

EDMUND K. TRENT,
Deputy Attorney General.

EASTERN STATE PENITENTIARY.

The Board of Inspectors have no power to contract with the United States authorities for the employment of convicts to do war work.

Office of the Attorney General,
Harrisburg, Pa., October 25, 1918.

Charles Carver, Esq., President Board of Inspectors, Eastern State Penitentiary, Philadelphia, Pa.

Dear Sir: I beg to acknowledge your communication of October 21st, as follows:

"October 21, 1918.

Hon. Francis Shunk Brown,
Attorney General,
1003 Morris Building, Philadelphia.

My dear Sir: I herewith enclose you the following copies of communications recently received at the Eastern State Penitentiary:

1. Copy of letter of Hugh Frayne, Chairman Labor Divisions War Industries Board, dated October 9th, 1918, and addressed to Robert J. McKenty, Warden of the Penitentiary.
2. War Prison Labor Presidential Order of September 14, 1918.
3. Executive order of President Wilson, dated September 14th, 1918.
4. Executive order issued by President Roosevelt in 1905.

Will you kindly advise the Board of Inspectors whether they are empowered to contract in the matter therein referred to directly with the Government and give employment to such of the inmates of the Institution as may be required to carry out the work.

The favor of your early reply will be appreciated.

Yours truly,

(Signed) CHARLES CARVER.
President."

The copy of letter of Hugh Frayne above referred to is as follows:

“War Industrial Board,
Washington, D. C.

War Prison Labor
and
National Waste-Reclamation Section.

October 9th, 1918.

Mr. Robert J. McKenty,
Warden, Eastern Penitentiary,
Philadelphia, Pennsylvania.

Dear Warden McKenty: Enclosed please find copy of the Executive Order promulgated by President Wilson on September 14th.

I trust you will read this with care and determine whether your institution will be interested in developing its industrial system in accord with the provisions of this order.

This Section of the War Industrial Board will be glad to hear from you in this connection.

Very truly yours,

(Signed) HUGH FRAYNE,
Chairman, Labor Division,
War Industries Board.

P. S.—If you have not already returned the questionnaires sent you by this Section, will you kindly do so at your earliest convenience.

F./H.”

The Executive Order of President Wilson of September 14th is as follows:

“Executive Order.

Whereas, The present emergency has created a demand for supplies which cannot wholly be procured or supplied by privately owned or conducted factories not employing prison labor, it is ordered that the agents of the Departments or Bureaus charged with the buying of war or Government supplies are, for the period of the war, empowered in addition to any method of purchase or procurement now authorized, to place an order for such supplies with the superintendent or other head of any penal institution where persons are confined by any State, County or Municipal authority willing to undertake the manufacture, production and delivery of such supplies; provided that the compensation to be paid for such sup-

plies shall, so far as possible be the prevailing price for like commodities in the vicinity of the institution furnishing them. Compensation and hours of labor for inmates of any institution above specified, working upon such supplies, shall be based upon the standard hours and wages prevailing in the vicinity in which the institution is located. The pro rata cost of maintaining the inmates so employed shall be deducted from their compensation.

The Executive Order dated May 18th, 1905, in so far as it is inconsistent with the provisions of this Order, is superseded for the period of the war.

WOODROW WILSON.

The White House,
14th September, 1918."

It has been the policy of this State, as in most all the other States of the Union, in the protection and interest of free labor, to restrict convict labor.

Accordingly by the Act of June 13, 1883, such labor was restricted to the employment of convicts for and on behalf of the State, and the hiring out of such labor by contract was prohibited.

The Act of June 18, 1897, P. L. 170, prohibited the use by convicts of any machinery operated by steam, electricity, hydraulic force, compressed air or any other power, limiting the machinery to such as were operated by hand or foot power.

The Act of April 28, 1899, P. L. 122, further restricted the employment of inmates in the manufacturing of brooms, brushes and hollow ware to 5% of the whole number of inmates, and in the manufacture of other goods manufactured in the State, to 10% of the number of inmates, except mats and matting on which the restriction was placed at 20% of the whole number of inmates.

In line with other progressive humanitarian legislation, the Legislature, by the Act of June 1, 1915, P. L. 656, repealed these, and other restrictive Acts, and provided for a new system of employment and compensation for the inmates of the Eastern Penitentiary, the Western Penitentiary, the Pennsylvania Industrial Reformatory at Huntingdon and such other correctional institutions thereafter established by the Commonwealth, as the title of the Act indicates.

In an opinion given to Thomas B. Foley, Esq., Secretary and Treasurer, Western Penitentiary, under date of January 11, 1916, Deputy Attorney General Kun held that it was the intentment of the Prison Labor Act of 1915 to delegate the entire matter of the supervision and compensation of the inmates in the said State institutions, to the Prison Labor Commission and that the officials of these institutions have no further authority or jurisdiction in the premises. The reasons for the conclusion are given in the opinion.

It must be concluded therefore that the Board of Inspectors of the Eastern State Penitentiary have no power to contract with the United States Government for the employment of its inmates to do war work. If there is any authority to employ the inmates of that or any other State correctional institution in such work, it would have to be exercised by and through the Prison Labor Commission.

The more serious question is as to the existence of such authority. If it exists, it must be found in the Prison Labor Act of 1915, which is the latest and most comprehensive legislation on the subject, existing restrictive legislation having been repealed thereby.

As before indicated, the restrictions as to the employment of convict labor in this State as in other States were induced in protection of and in the interest of free labor to avoid unfair competition. Accordingly the market for such labor, the number of inmates to be employed therein and the use of modern machinery were restricted.

While the Prison Labor Act of 1915 removed the restrictions as to the use of machinery and as to the number of inmates that might be employed, it being intended that as many inmates as possible be given an opportunity for employment under the Act, and while further, the market for such labor was considerably enlarged, it was, nevertheless, restricted as provided for 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."

The attention of the Prison Labor Commission was called to this restriction and it was further explained in an opinion rendered by Deputy Attorney General Kun to John E. Hanifen, Esq., Chairman of the Prison Labor Commission, under date of March 15, 1916.

In line with the general policy of the States, President Roosevelt, on May 18, 1905, by executive order, following the spirit of the Act of Congress approved February 23, 1887, forbidding the hiring out of labor of any criminals confined for violation of any federal law, forbade any officer or agent of the United States entering into any contract involving employment of labor in any of the States, without a

stipulation forbidding the employment of persons imprisoned for violation of any State laws. By executive order of President Wilson dated September 14, 1918, on account of the present emergency created by the great demand for supplies which cannot be entirely supplied by privately owned or controlled factories not employing prison labor, the order of President Roosevelt, 1905, was superseded for the period of the war.

The effect of this latter executive order is to permit the temporary employment of federal prisoners and the authority also to employ inmates of State institutions, but whether the latter class of inmates may be employed under such authority must depend on the laws of the State relating to such employment.

The executive order of President Wilson, superseding the prior restrictive order of President Roosevelt, is simply permissive, authorizing the Federal Government authorities to place orders for supplies with the authorities of such State penal institutions, as the executive order states, "willing to undertake the manufacture, production and delivery of such supplies." Manifestly, the willingness of the State authorities in such a case must be predicated on and limited by the statutory authority under which they act and perform their duties. The purpose for which convict labor in the State correctional institutions in this State may be engaged is defined by Section 1 of the Act of 1915 above quoted, limiting the same to 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."

Doubtless it would be of great advantage to enlarge at this time the scope of the purposes of the employment of inmates of our correctional institutions. It must be borne in mind, however, that this is a matter that is beyond the authority of the executive officers of the Commonwealth, who are bound by the legislative mandate on the subject. It may be assumed, however, that the Legislature of the Commonwealth, which will convene for its biennial session within a few months, will take cognizance of the exigencies produced by the participation of our country in the world war and will provide such temporary changes in our laws in this matter and all others which will place at the disposal of the Federal Government the full and unrestricted resources of the State, including the inmates of our prisons who, I am informed, desire to aid their fellows on the outside to win the present war.

In the meantime, it must be regretfully concluded that on account of the statutory restrictions above referred to, the inmates of our

State correctional institutions cannot have their desire satisfied and legally be employed in the manufacture and production of supplies for the Federal Government.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

INSANE PRISONER.

The procedure in removal of an insane prisoner from the Western State Penitentiary, whose residence is outside this State, is explained.

Office of the Attorney General,
Harrisburg, November 12, 1918.

Mr. John M. Egan, Parole Officer, Western Penitentiary, Pittsburgh, Pennsylvania.

Sir: I have your communication of the 24th ultimo, asking substantially the procedure to be pursued in order to remove from your institution a prisoner who has become insane and whose legal residence is or may be outside this State.

The procedure is fully prescribed by statute and, without quoting extensively from the Acts of Assembly, may be indicated as follows:

By Section 1 of the Act of May 14, 1874, P. L. 169, it is, *inter alia*, provided as follows:

“Whenever any person is imprisoned within the Commonwealth, convicted of any crime whatsoever * * * application in writing may be made by the warden, superintendent, physician or any inspector of the penitentiary * * * in which such person is imprisoned, or by the general agent of the Board of Public Charities, to the court hereafter named or any law judge thereof, which application shall certify under oath or affirmation that such prisoner is believed to be insane and shall request that such prisoner shall be removed to a hospital for the insane; whereupon it shall be lawful for any judge learned in the law of any court within this Commonwealth having immediate cognizance of the crime with which such prisoner is charged, or of the court by which such prisoner has been convicted to appoint a commission of three citizens of this Commonwealth * * * whose duty it shall be to inquire into and report the mental condition of such prisoner.”

The section then provides that if the commission finds the prisoner to be of unsound mind and unfit for penal discipline, the judge may order the removal of the prisoner to a hospital for the insane nearest to the place of confinement or to any hospital aided by the State which is established especially for the care of criminal insane. Before the order of commitment is made, however, it is the duty of the court under the Act of June 22, 1897, P. L. 177,

“to determine the legal residence of such indigent insane person, whether such settlement be within the Commonwealth or in any other State or country.”

The Act further provides that if the court find that such person has not a legal residence within the State of Pennsylvania, or if the question of his or her legal residence be in doubt, the clerk of the court must, without delay, notify the State Board of Charities that if such court commits such person to any of the State asylums for the insane, notwithstanding that he has not gained a legal residence, it shall be the duty of the court to give the reasons for such recommendation.

Upon the receipt of the notice the Board of Public Charities must investigate the question of the legal residence of the person, and if it find that such person is not a legal resident of the State of Pennsylvania but has a legal residence in some other State or country, it is empowered to cause the insane prisoner to be returned

“to that State or country where he has a legal residence or that State or country whence he came to the State of Pennsylvania.”

If the State or country which the Board find to be the legal residence of the insane prisoner refuses to accept such person or if the legal residence of the prisoner can not be definitely ascertained, he should not be permitted to remain in the penitentiary, having been found to be not a fit subject for penal discipline, but should be committed to the proper institution.

In the event of such a commitment Section 5 of the said Act of 1874 expressly imposes liability for the cost of removal, care and maintenance. It reads as follows:

“The expenses incurred for the removal of any insane person from a place of imprisonment to any hospital * * * and of his or her detention, maintenance and care in said hospital, shall be chargeable to and paid by the commissioners of the county *in which the alleged crime with which he or she was charged was committed*; and the said commissioners shall have remedy over against the poor district liable under existing law, or against the estate and effects of every such prisoner, or the reimbursement of such expenses to the said county.”

While the Act of 1874 is not by its terms mandatory on the court, its spirit plainly contemplates that where the commission reports the prisoner unfit for penal discipline by reason of insanity and there is no objection raised as to the finding of the commission, the court ought to proceed to the disposition of the case so that the prisoner could be removed from the State through the Board of Public Charities or so that the person could be placed in a State hospital in the event that the Board find he can not be sent out of the State.

Upon the commitment to an institution the county in which the crime was committed is primarily liable to the institution for the expense occasioned by the removal, maintenance and care of the insane convict. The county, the Act expressly states, can be reimbursed from the estate of such person or from the proper poor district.

Without entering into a detailed discussion or reference to the provisions of the statutes or the decisions of the court, it is sufficient to state that the law is settled in this State as to the liability of poor districts for the support of indigent persons not having a legal residence within this Commonwealth. It may be, and often is, difficult to ascertain the district, owing to the absence of facts necessary to fix such liability. That, however, is a matter of concern for the county.

The policy of the State with reference to insane criminals is, to my mind, clear. A person becoming insane in a penitentiary should not be permitted to remain in that institution; notwithstanding he has been found guilty of a crime, he becomes a ward of the State and must be removed to an institution having facilities for his proper care and attention. There may be instances where a financial hardship is imposed upon the county for the maintenance of such persons but the Legislature has devised that system as the best known for the meeting of the exigency and until it is changed it must be followed without exception.

In the case instanced by you the court should at once notify the Board of Public Charities to investigate the question of his legal residence and the Board should, if it find his legal residence to be without the State, cause him to be removed to the place of his legal residence.

If the Board can not bring about such removal, the court should be informed and the judge should thereupon commit the insane convict to the proper hospital.

I am of the opinion that it is not necessary for the court to make an order imposing the cost of such removal, care and maintenance upon the county. That liability is imposed by statute and engrafts itself to the order of commitment. The county in which the prisoner committed the crime for which he was serving his sentence is liable

to the institution. It possibly may be able to reimburse itself from a poor district or the estate of the prisoner, but that is not a matter for the consideration of the court if it find the person insane and that he can not be sent out of the State.

I have abstained from discussing the availability of the provisions of Section 1 of the Act of March 24, 1858, P. L. 151, for the removal of prisoners becoming insane from the Western Penitentiary to the Insane Department of the Western Pennsylvania Hospital without the interposition of a court and which would now, if the provision is operative, have to be made possibly to the Dixmont Hospital for the Insane; a proceeding for the removal of the prisoner has already been instituted in the court and this procedure should now be exclusively pursued.

Faithfully yours,

FRANCIS SHUNK BROWN,
Attorney General.

RETIREMENT OF STATE EMPLOYES.

A State employe, retired under provisions of law, is entitled to half pay of the salary he would have received had he remained in active service.

Office of the Attorney General,
Harrisburg, Pa., November 18, 1918.

John M. Egan, Esq., Clerk Board of Inspectors of Western Penitentiary, Pittsburgh, Pa.

Dear Sir: We have your favor of the 25th inst., in reference to the application of John T. Koerner for retirement under the Act of June 7, 1917, P. L. 559.

The facts I understand are as follows:

Mr. Koerner notified Warden Francies, in writing, May 10, 1918, that he desired to apply for retirement. On June 5, 1918, the Board of Inspectors passed a resolution recommending "the retirement of John T. Koerner, overseer, whose salary is at the rate of \$107 per month."

At the same meeting of the Board, on June 5, 1918, the Board of Inspectors increased the salaries of all the overseers ten per cent., to date from June 1, 1918. Mr. Koerner was examined by the resident physician on June 5th, and on June 6th made a final application to

the Governor, requesting that he be retired with half pay. He is still in the employ of the penitentiary, fulfilling his duties as overseer, and since June 1, 1918, has received \$117.70 per month.

You ask to be advised whether the Governor should be advised that the applicant's salary is \$107 per month, or \$117.70 per month.

The Act of Assembly relating to the retirement provides that the applicant "shall receive during the remainder of his life, or during the continuance of such disability or incapacity, one-half of the salary which he would have received had he remained in active service."

At the time of Koerner's application he was entitled to receive, and has since received, a monthly salary of \$117.70. Had he continued to remain in active service he would receive that amount per month. It is, therefore, clear, and you are so advised, that the sum which he is entitled to receive is one-half of \$117.70 per month.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

WESTERN PENITENTIARY.

An escaped prisoner may be proceeded against for the crime of breaking and escaping from prison. The procedure is defined.

Office of the Attorney General,
Harrisburg, December 2, 1918.

Mr. John Francies, Warden of the Western Penitentiary, Pittsburgh, Pa.

Dear Sir: This Department is in receipt of your communication of the 5th instant, relative to the case of William Hall, a prisoner in your institution.

The prisoner, as I understand the facts, was originally confined in the new Penitentiary in Centre county, and having escaped therefrom, fled into Blair county where he committed another crime and was sentenced therefor and committed to the Western Penitentiary at Pittsburgh. The question you now propound is whether this prisoner can be at the present time charged with the crime of breaking and escaping from the Penitentiary in Centre county, and if so, the proper procedure to be followed.

In an opinion rendered by Attorney General Bell on March 15, 1911, and reported in Attorney General's Reports, 1911-12, page 309, it was held that where a prisoner is sentenced for a crime committed

while on parole, he is received by the prison authorities under the second sentence and after the expiration thereof he is at once subject to be held for the unexpired maximum term of his first sentence. This same rule would apply to the commission of a crime by one who had escaped, so that it may be taken as the settled law that the prisoner here in question must serve the sentence which was imposed upon him by the Judge in Blair county before serving the expiration of the term which he was serving at the time his escape from Centre county occurred. There does not seem to be any doubt in your mind on this question, your inquiry being directed to the manner of proceeding against this prisoner for escaping from the Penitentiary in Centre county.

I am of the opinion that the criminal proceedings against the prisoner for the crime of breaking and escaping from prison should be at once instituted in Centre county, and that the prisoner should be brought to the preliminary hearing by a writ of habeas corpus ad respondendum secured from the Court of Quarter Sessions of Centre county. In *Wharton's Criminal Pleading and Practice, Ninth Edition, paragraph 931*, it is said:

"The proper process for obtaining jurisdiction of the person of a prisoner under sentence in order to try him for another crime is by 'habeas corpus directed to the keeper of the prison.'"

In *Peri v. People, 65 Ill. 17*, it was held that a defendant imprisoned for life may be brought into court and convicted on an indictment for murder and sentenced to be hung.

While the issuance of a writ of habeas corpus is discretionary with the Court, I have no doubt but that the writ would issue to the proper authorities of the Western Penitentiary directing them to produce the prisoner before the proper Court for preliminary hearing on the crime charged.

After the preliminary hearing he should be returned to Pittsburgh, and if an indictment is found, the prisoner should be brought to trial and his presence in court secured through a similar writ of habeas corpus. If found guilty, the court should impose sentence, which should commence to run after the expiration of the sentence which he was then serving. (See *Russell v. Com., 7 S. & R. 489.*)

After the expiration of this sentence imposed for escape, the prisoner should be returned or held to serve that portion of the sentence which he was serving at the time the escape occurred, and which remained unexpired at that time.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

OPINIONS TO HOSPITALS.

OPINIONS TO HOSPITALS.

MAINTENANCE OF INDIGENT INSANE.

By Act No. 39 of April 12, 1917, the expense of maintaining indigent insane in State hospitals for the insane chargeable to the proper county or poor district was increased from \$1.75 to \$2.50 per week.

Office of the Attorney General,
Harrisburg, Pa., June 12, 1917.

Dr. Henry I. Klopp, Superintendent, Homeopathic State Hospital,
Allentown, Pa.

Sir: There was duly received your communication of the 9th inst. to the Attorney General, in reference to the Act of April 12, 1917, and the Act of May 3, 1917, severally relating to the cost of the care and treatment of inmates in State insane asylums. In reply thereto I beg to advise you as follows:

By the Act approved April 12, 1917, No. 39, the expense chargeable to the proper county or poor district for the maintenance and care of the indigent insane in State hospitals for the insane, was increased from \$1.75 per week to \$2.50 per week.

The said Act of May 3, 1917, No. 69, changes the cost chargeable to the proper county or poor district for the care and detention of the Chronic Insane in the State Asylum for the Chronic Insane, from \$1.50 per week to \$2.00 per week.

This latter Act of May 3, 1917, relates solely to the State Asylum for the Chronic Insane, being the Asylum located at Wernersville, and does not relate to your hospital. The amount chargeable to the proper county or poor district for the care and maintenance of the indigent insane in your and similar State Hospitals for the insane, is, therefore, now fixed by the said Act of April 12, 1917, at \$2.50 per week.

In accordance with the foregoing, you are therefore advised that a bill rendered by your institution to a county for the care and maintenance of an indigent insane inmate in your institute is properly rendered in pursuance of and in accordance with the provisions of the said Act of April 12, 1917.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

The Board of Managers of the Pennsylvania Village for Feeble Minded Women should appoint a superintendent before they proceed to erect the buildings provided for in the appropriation of 1917.

Office of the Attorney General,
Harrisburg, Pa., September 12, 1917.

Harry M. Showalter, Esq., Lewisburg, Pa.

Sir: This Department is in receipt of your favor of the 5th inst. inquiring whether the Board of Managers of the Pennsylvania Village for Feeble-Minded Women should appoint a Superintendent before they proceed to erect the buildings provided for in the appropriation of 1917.

Section 7 of the Act of July 25, 1913, P. L. 1319, provides as follows:

"The board of managers shall elect annually, from its members, a president, secretary, and treasurer; and shall appoint a superintendent, who shall be under its direction and control, and who shall hold office during the pleasure of the board. The superintendent shall be a skilled woman physician, who shall be a graduate of a legally chartered medical college, with an experience of at least five years in the actual practice of her profession, with such powers as said board may confer upon her; and such board shall also appoint such instructors, assistants, matrons, stewards, attendants, and employes as may be necessary for the proper maintenance, discipline, and government of said institution, and remove the same from time to time at pleasure, and shall fix the compensation of all said officers and employes. The said board shall also have authority to employ legal counsel, from time to time, as occasion may require, and as they may deem necessary. The superintendent shall have authority to make temporary appointments and to suspend any employe, subject to ratification by the board at its next meeting. Employes for the special work of the institution shall be selected only after strict examination as to their moral character and their fitness to care for and instruct those who may be assigned to the custody of the village. The compensation of all officers and employes shall be fixed by the board."

On first impression it might seem that the Superintendent who is to be appointed under the terms of this section, as well as the instructors, assistants, matrons, stewards, attendants and other employes therein provided for, has to do only with the maintenance, discipline and government of the institution, and that therefore her

appointment should be delayed until a building has been erected and is ready for the reception and care of feeble-minded women; but this view is negatived by the provisions of the third section of the Act, which is as follows:

"It shall be the duty of the board of managers, *together with the superintendent appointed by them*, subject to the approval of the Governor, to select a suitable tract of land for said village on a portion of the State forest reserves; and to provide suitable plans for said buildings, subject to the approval of the Board of Charities and of the Governor; and to make all necessary contracts for the construction and furnishing of the same."

This section of the Act would seem to indicate that it was the intention of the Legislature that the Superintendent should be appointed before the selection of a tract of land for the village or the erection of the buildings thereon; that her knowledge and experience in her profession would probably be of benefit to the Board in the selection of a suitable tract of land and in the construction and furnishing of the buildings thereon, and that, therefore, it was desirable that she be appointed at the outset for the purpose of assisting the Board in these preliminary matters, and that her duties were not to be limited solely to the maintenance, discipline and government of the institution after the buildings were erected.

I understand from your letter that the Superintendent who was appointed when the Board was first established is not now in the employ of the Board, owing to the fact that the fund for the construction of the buildings under previous appropriations was exhausted and that the village has received no inmates.

You are advised that under the provisions of the Act the Board should appoint a Superintendent before proceeding with the construction of the buildings contemplated by the appropriation of 1917, in order that her assistance and advice may be given the Board with reference to this important part of the work committed to them.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

COMMITMENT OF INEBRIATES.

The order of court from Dauphin County, committing an inebriate to the State Hospital at Warren, was not authorized by Act of Assembly and was improvidently made.

Office of the Attorney General,
Harrisburg, Pa., October 9, 1917.

Dr. H. W. Mitchell, Superintendent State Hospital, Warren, Pa.

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

You transmit some correspondence relating to the commitment from Dauphin county of Dr. Arthur Wiley Kaines, on the 30th of August, 1917, and ask to be advised whether you are required to accept commitments of inebriates from any section of the State.

The facts I understand to be as follows:

On August 28, 1917, an attorney of Harrisburg, Pa., wrote you, saying that a certain individual was likely to be committed under the Act of 1915, by reason of being addicted to the use of narcotic drugs and asking whether you had accommodations at the State Hospital at Warren for him, to which you replied, on August 29th, 1917, that the only commitments of inebriates which you recognize are those made under the Act of 1907. Notwithstanding your letter, on August 30, 1917, the court found that "Dr. Arthur Wiley Kaines is an inebriate, by reason of being habitually addicted to the use of narcotic drugs, and a proper subject for restraint, care and treatment," and committed him "to the State Institution for Inebriates, viz., the State Hospital for the Insane, Warren, Pa., for restraint, care and treatment for a period not less than thirty days, and not over six months," at the expense of the county of Dauphin.

Warren State Hospital was established by the Act of August 14, 1873, P. L. 1874, 332, of the district composed of the counties of Warren, Crawford, Erie, Mercer, Venango, Clarion, Forest, McKean, Elk and Cameron.

By Section 7 of the Act of June 8, 1881, P. L. 83, it is provided:

"The courts of this Commonwealth shall have power to commit to said hospital any person who, having been charged with any offense punishable by imprisonment or death, shall have been found to have been insane in the manner now provided by law, at the time the offense was committed, and who still continues in same; and the expenses of said person, if in indigent circumstances, shall be paid by the county to which he or she may be long by residence."

Section 8 provides:

"The authorities of the several poor districts within that portion of the State comprising the district for the said hospital, shall have authority, in their discretion, to send to the said hospital the indigent insane under that character; the amount to be charged for the support of insane persons committed by the court, or of any insane indigent persons sent to said hospital by the poor authorities of a poor district, shall not exceed three dollars per week."

I find no other provisions especially charging upon the Warren State Hospital, the care and treatment of insane or inebriates.

The Hospital is required under Section 7 of the Act of 1881 above quoted, to take criminal insane persons committed by any of the courts of the Commonwealth, but is only required to take the indigent insane from "within that portion of the State comprising the district for said hospital."

The Act of May 28, 1907, provides for the commitment to a proper hospital or asylum, upon the petition of two interested persons, of any person "habitually addicted to the use of alcoholic drink, absinthe, opium, morphine, chloral, or other intoxicating liquor or drug," but that *"no person shall be committed under the provisions of this Act, or be admitted into any hospital or asylum, until payment has been made or security has been given to the managers of the hospital or asylum, satisfactory to them, to pay the proper charges for board, care and treatment of the alleged drunkard, and also to indemnify the said managers from all costs and expenses."*

The Act of July 25, 1913, P. L. 1306, created a commission for the selection of a site and the erection of a State institution for Inebriates, and appropriated \$20,000 to carry out the provisions of the Act, but no further appropriation was made in 1915. However, in the early part of that session, and perhaps in anticipation of an appropriation to complete the hospital for which provision was made in 1913, the Legislature, by the Act of April 14, 1915, P. L. 120, provided for the commitment to the "State Institution for Inebriates" of persons addicted to the use "of alcohol or narcotic drugs."

The State Hospital at Warren is not "a State Institution for Inebriates." There is no such institution as a State Institution for Inebriates yet in operation. Moreover, the Act of 1915 provides:

"No inebriate shall be committed to the institution until the court shall, by order, determine who shall bear such cost and expense; nor until payment therefor be made to the said Board of Trustees or security satisfactory to the Board, be given."

The court did not in its order require security to be given satisfactory to the Board of Trustees or payment to be made before such commitment was effective.

Said Act of Assembly does not authorize such commitment at the expense of the county.

I am, therefore, of the opinion that the order committing Dr. Arthur Wiley Kaines to your Institution, was improvidently made.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

APPROPRIATIONS.

The appropriation for Ward "J" at Farview Hospital was not large enough to construct a completed building. The trustees may not expend the appropriation upon the building--so far as it will go.

Office of the Attorney General,
Harrisburg, Pa., October 26, 1917.

G. Von Phul Jones, Esq., Real Estate Trust Bldg., Philadelphia, Pa.

Dear Sir: Some time ago, as counsel for the Board of Trustees of the State Hospital for the Insane at Farview, you requested an opinion of this Department as to whether the Board may use the entire appropriation of \$80,000 made by Act No. 368-A for "erecting and constructing ward "J," for all the exterior work, including the roof, and omit the inside work necessary to complete such building. I understand this request is made because the lowest and only bid for the building complete, according to the architect's specifications, is \$98,840.

The question, therefore, is whether the Trustees are authorized to expend the appropriation upon the building, as far as it will go.

We have given careful consideration to your inquiry. The Act specifically provides \$80,000 for "erecting and constructing of Ward "J"—which means "Ward J" completed, according to plans prepared by the architect, and which necessarily includes the items it is now proposed to exclude. In our opinion this cannot be done.

We are not unmindful of the case of *Commonwealth vs. Mylin*, 185 Pa. 19, in which the subject of the erection by construction commissions is fully discussed, and upheld, but in that case it did not appear that the construction proposed by the commission would not fully comply with the appropriation.

In the case of Farview Hospital it does so appear. The Legislature intended the erection of a building which would be substantially practical and useful, for the purpose for which the appropriation was made.

Under the reasoning in the case of *Commonwealth vs. Mylin*, supra, the commission, in the exercise of its discretion, would be justified in changing the plans so as to provide for a building contemplated by the Appropriation Act.

To hold that where there is an appropriation made for the purpose of erecting a building of any kind, such appropriation could be used in building the shell and roof, would be a dangerous precedent and would defeat the evident intention of the Legislature.

I am therefore constrained to advise you that you cannot expend the whole appropriation of \$80,000 in building the walls and roof of "Ward J," and wait for subsequent appropriations to complete it ready for use.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

COMMISSION FOR STATE INSTITUTION FOR INEBRIATES.

The Commission is advised it may dispense with the services of an architect, compensating him for services performed and may retain another architect.

Office of the Attorney General,
Harrisburg, Pa., December 3, 1917.

Lewis S. Sadler, Esq., Chairman of Commission for State Institution
for Inebriates, Carlisle, Pa.

Dear Sir: Your favor of the 17th inst. was duly received.

I understand that you desire to be advised whether the Commission may change the architect to supervise the building of the State Institution for Inebriates, without any liability to the architect who was previously selected.

The facts in that connection I understand to be as follows:

The Commission was created by an Act of Assembly approved July 25, 1915, P. L. 1305, to "select a site and build an institution for the detention, care and treatment of inebriates, or persons habitually addicted to the use of alcoholic drink or intoxicating drugs."

The Legislature of that year appropriated \$20,000 which was practically consumed in the purchase of land. At a meeting of the Commission held December 18, 1914, J. B. McCollum was selected as the architect, and a committee was appointed to "employ him for such purposes, and on such terms, as they might deem wise, and at the same time be agreeable to Mr. McCollum."

The Committee advised Mr. McCollum of his employment, stating the terms as follows:

"It is understood that you are to personally view the premises selected as a site for the institution, in Lower Allen Township, Cumberland County, Pennsylvania, and to make such careful observations as may be necessary to enable you to prepare and submit to the Commission for its approval, or revision until approved, a comprehensive plan showing the location and character of the various buildings and improvements which may be presently and ultimately necessary for its purposes, and and that when accepted this plan shall be the property of the Commission, and available for its use, and that for this work you will not ask or expect compensation.

Further, after said comprehensive plan is accepted by the Commission, that as appropriations may be available, and as you may be requested by the Commission, you will prepare, for any proposed building or improvement, all preliminary studies, plans, working drawings and specifications required to complete the same, and as provided by the rules of the American Institute of Architects, and modify them as often as may be necessary to meet the approval of the Commission, and for this complete service, together with superintendence of construction, as is provided by said rules, you shall be allowed a commission of five (5%) per cent. of the final cost of said building or improvement, which shall be your full compensation, except that your necessary traveling expenses shall be allowed, as may be approved by the Commission."

Mr. McCollum thereupon made some additional suggestions as to the understanding, including the following:

"And all payments shall be made in accordance with the rules of professional practice of the American Institute of Architects."

Whereupon, by a subsequent passage of letters, a full understanding was arrived at between the Committee and Mr. McCollum.

On December 19, 1914, Mr. McCollum, in anticipation of his employment, requested a topographical survey of the ground, and information as to the maximum number of inmates to be considered in planning the buildings. Such topographical survey was subsequently

furnished him. On January 17, 1915, Mr. McCollum wrote the chairman of the Board that he had completed a schedule of buildings required and would like to have a meeting of the commission for consideration of the schedule, and also requested the Commission to give their suggestions as to location and grouping of the buildings. He again advised the chairman of the Committee on January 29, 1915, that such a schedule had been prepared.

In February the chairman of the Commission communicated with Senator Hunter, one of the members, with reference to the kind of buildings to be considered, and Senator Hunter in turn communicated with Mr. McCollum, who advised the chairman that he would proceed along the lines suggested, and in April, 1915, Mr. McCollum advised the chairman of the Commission that he would have completed, on or about May 5th "a study plan of the block plan for the entire group of buildings, and a study plan for each of the various buildings for the entire group consisting" of a dozen or more different buildings, and desired an opportunity to submit the plan to the Commission about May 5th.

On May 21, 1915, the chairman of the Commission advised Mr. McCollum that the Legislature had failed to make an appropriation to carry on the work of the Commission, whereupon Mr. McCollum suggested that if there was any money left from the original appropriation he would like to have a small payment on account of the work done, but if the Commission had no money, he would wait until the Legislature provided means for the work to go on.

On December 2, 1916, Mr. McCollum wrote the chairman of the Commission, suggesting that it was time the various institutions were getting ready to present claims to the Legislature for appropriations, and inquiring what was being done in behalf of the Institution for Inebriates, and tendering his personal assistance to help the work along.

Other letters passed between the chairman of the Commission and Mr. McCollum, but on August 5, 1917, Mr. McCollum wrote the chairman, inquiring the intention of the Commission in regard to starting the work, saying: "I am very anxious to get started, and am ready to do so, as soon as the Commission indicates. All the study plans were completed over two years ago, as I think I advised you at the time, so I am ready at any time to take the work up."

During the session of the Senate of 1917, the Governor, with the consent of the Senate, appointed four new members to the Commission, and the Commission, as now organized, desire to select another architect.

You desire to be advised as to whether there is any obligation to pay Mr. McCollum for the work and service he may have performed.

The correspondence submitted to me plainly shows that while Mr. McCollum agreed "to prepare and submit to the Commission for its approval or revision until approval, a comprehensive plan showing the location and character of the various buildings and improvements which may be presently and ultimately necessary for its purpose and that when accepted this plan shall be the property of the Commission and available for its use," and agreed that for this work he would not ask or accept compensation, it was also agreed that

"after said comprehensive plan is accepted by the Commission, that as appropriations may be available, and as you may be requested by the Commission you will prepare, for any proposed building or improvement, all preliminary studies, plans, working drawings and specifications required to complete the same * * * and for this complete service, together with the superintendence of construction, as is provided by said rules, you shall be allowed a commission of 5% of the final cost of said building or improvement, which shall be your full compensation."

The contract thus entered into contemplated that the Commission, while not being bound to pay for the preliminary sketches, would give Mr. McCollum the opportunity to prepare the detailed studies, plans and working drawings when the work was to proceed. It can not be inferred from the papers submitted to me that Mr. McCollum would have prepared the preliminary plans and sketches without compensation, if there has not been an understanding, at least on his part, that his compensation for such preparation was to be included in the 5% commission allowed for the completed work. No reservation of the right to select another architect was made. It was apparently not contemplated when the assessment was made.

It is within the power of the Commission to employ another architect and to decline to continue the services of Mr. McCollum, but the Commission cannot do that without paying Mr. McCollum reasonable compensation for the services which he has actually performed. His compensation, of course, would not be 5% of the estimated cost of the work, but would be a reasonable compensation for the amount and character of the work already done.

Having considered the whole matter, we conclude, and thereby specifically advise you, that your Commission may dispense with the services of Mr. McCollum and retain another architect, but that you are bound to make such settlement with Mr. McCollum as will fairly compensate him for the work and services which he has already performed.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE HOSPITAL AT NANTICOKE.

The hospital may enter into a contract with the United States Employees Compensation Commission to receive and cure for civil employes of the United States in the locality of the hospital, who may be sick or injured.

Office of the Attorney General,
Harrisburg, Pa., December 19, 1917.

Dr. E. C. Heyer, Superintendent State Hospital, Nanticoke, Pa.

Dear Sir: Your favor of the 11th inst., addressed to the Attorney General, is at hand.

You ask to be advised whether the State Hospital at Nanticoke may enter into a contract presented to you by the United States Employees' Compensation Commission.

As I understand the terms of this proposed contract, you simply agree to receive at the hospital civil employes of the United States who may be sick or injured in your locality, and furnish them such hospital service, including medicine, nursing and ordinary medical and surgical attendance, at rates to be agreed upon.

I understand from your letter that you are able to perform this service.

The special purpose of the Nanticoke Hospital is to care for the persons injured in and about the mines of Nanticoke, and the surrounding territory.

It became a State Institution by virtue of the act of June 14, 1911, P. L. 933. There is nothing in this act of Assembly which prohibits the Board of Trustees from making any contract such as the one proposed. You would take into your hospital a person injured in your locality, who happened to be a civil employe of the United States, if he were unable to pay for the service, and render whatever service and treatment were necessary.

There certainly can be no objection to entering into an agreement with the United States Employees' Compensation Commission to perform this service and receive reasonable pay therefor, provided such service can be performed without interfering with your ability to serve the community; as the hospital was intended to do.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

EASTERN STATE HOSPITAL FOR INSANE.

The Legislature did not intend to authorize the employment of a paid secretary before an appropriation was passed for construction of buildings. After the appropriation is passed, a secretary may be employed.

Office of the Attorney General,
Harrisburg, Pa., January 8, 1918.

Mr. Charles T. Aikens, Chairman Building Commission of Eastern State Hospital for Insane, Selinsgrove, Pa.

Dear Sir: In your recent letter to the Attorney General you ask to be advised whether the Building Commission of the Eastern State Hospital for the Insane would have the right to employ a secretary to answer correspondence, and make a record of the actions of the Commission, from time to time, and pay the salary of such secretary out of the State's funds.

Your Commission is created by the Act of July 25, 1915, P. L. 1206. This act provides:

"The said commission shall organize within thirty days after its appointment by the election from its members of a chairman and treasurer."

The members shall receive no compensation but shall be allowed expenses actually and necessarily incurred. The only duties which the Commission now has to perform is the selection of a site and the preparation of plans and specifications for said hospital, to be built when the General Assembly shall make an appropriation therefor.

The Legislature has provided that the cost of the site shall not exceed \$50,000. The act appropriates \$52,000

"to provide for the purchase and improvement of the site for the Eastern 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."

I am of opinion that the Legislature did not contemplate the employment of a paid secretary.

Section 1 provides that the Commission shall elect "from its members a chairman and treasurer." They receive no compensation.

Section 3 provides that when the General Assembly shall make an appropriation for the construction of buildings, the Commissioner shall appoint a Superintendent of Construction

"and may employ such other persons as it may deem necessary to secure the speedy and economical construction of the buildings of said hospital and the improvement of said site, and such compensation shall be fixed by the Commission."

Section 10 of this same Act of Assembly, prescribing the duties of the Board of Trustees, which Board is to succeed the Commission, provides:

"The said Board shall appoint such and so many assistants, attendants and other employes as they may deem necessary, and may remove the same from time to time. They shall fix the salaries and compensation of all officers and employes of the hospital."

The fact that the Legislature failed to provide secretary for the commission; that the only duties which the Commission has to perform are the selection of the site and the providing for the plans and specifications, with the approval of the Board of Public Charities; and that the appropriation for plans, specifications and other incidental expenses of the Commission is fixed at only \$2,000 above what the land may cost, indicates that it was not the legislative intention that the Commission should employ a paid secretary.

Moreover, the Legislature of 1917, in creating commissions, used apt language when it intended a secretary to be employed.

By a joint resolution, approved July 25, 1917, P. L. 1188, providing for a Commission to revise the penal code, provision was specifically made for the employment of a secretary and for his salary.

The act approved July 25, 1917, P. L. 1190, providing for a Commission to investigate prison systems, specifically authorized the Commission to appoint "a stenographer or law assistant, or both."

The act of July 25, 1917, P. L. 1199, establishing a Commission to Investigate Sickness and Accident not compensated under the Workmen's Compensation Act, in Section 3 specifically authorized the Commission to "employ a secretary, expert in the matter to be investigated, and all necessary clerical assistance."

The act of July 25, 1917, P. L. 1202, providing for the appointment of a Commission to codify and revise the banking laws, provided, in terms, that the "Commission may appoint a stenographer or law assistant, or both, at such reasonable compensation as it may determine."

It is therefore apparent by the language of the Act used in this case, that the Legislature did not intend the appointment of a paid secretary, at least before the General Assembly made an appropriation for the construction of the buildings. After that, if the Commission shall determine that a secretary is "necessary to secure the speedy and economical construction of the buildings of said hospital," it will have power, under Section 3 of the act, to employ such secretary.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

STATE INSTITUTION FOR INEBRIATES.

The organization and operation of the State Institution for Inebriates may not be had at any other place than upon the site selected therefor by the Commission.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

Lewis S. Sadler, Esq., Chairman, Commission State Institution for Inebriates, Carlisle, Pa.

Sir: I have your favor of the 2nd inst.

You ask whether the Commission may take advantage of a large building centrally located, and open therein the State Institution for Inebriates for the reception of patients, inasmuch as it is likely that no buildings can be constructed during the period of the war.

The Act of July 25, 1913, P. L. 1306, creating the Commission to select a site and build an institution for the inebriates, provides that the commissioners shall "select a tract of land suitable for the purpose of said institution"; provides that plans shall be prepared by the commissioners and approved by the Governor; for the selection of an architect, and that the commissioners, upon completion of the building shall surrender their trust to the Board of Trustees. Twenty thousand dollars was appropriated for carrying out the provisions of that Act.

The supplement of July 25, 1917, P. L. 1213, appropriated \$10,000 for the purchase of additional land, and \$100,000

"for the construction and erection of the necessary buildings for the housing of the inmates, as contemplated by the act to which this is a supplement, and for the necessary administration buildings."

Section 2 of this latter act provides:

"As soon as buildings sufficient to care for fifty persons shall be available, such building is turned over to the trustees provided for in the act to which this is a supplement, and thereafter commitments to said institution may be made as contemplated by said act."

It is apparent from these Acts of Assembly that the legislative intention was that the Commission should erect buildings on the site to be selected, but that the institution for inebriates should not be organized until there were buildings on the site selected, which should accommodate at least fifty inmates.

I am of opinion that there is nothing in these Acts of Assembly that would justify the organization and operation of an institution for inebriates at any other place than upon the site selected therefor by the Commission.

I therefore am of opinion, and so advise you, that no part of the appropriation can be used for maintaining an establishment elsewhere than on the site selected.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

APPROPRIATION—STATE HOSPITAL FOR THE INSANE.

The appropriation of \$10,000 for a 12,000 gallon per hour water softener, may be used to install a water softener of smaller capacity.

Office of the Attorney General,
Harrisburg, Pa., February 8, 1918.

Mr. Thomas W. Marshall, Trustee State Hospital for the Insane,
Norristown, Pa.

Dear Sir: Your favor of the 2d inst., addressed to the Attorney General, was duly received.

You call attention to the appropriation made by the act of July 25, 1917, Appropriation Acts 265, which provides an item "for the purpose of installing a water softening plant (12,000 gallons per hour) for the laundry the sum of \$10,000, or so much thereof as may be necessary."

You state that the report of the engineer shows that the appropriation of \$10,000 will not build a plant with a capacity of 12,000 gallons per hour, and that he further stated that it is not necessary to have it so large; that a softener of the capacity of twenty-five hundred gallons per hour would be better for the needs of the laundry.

You ask whether the trustees are authorized to erect a plant of that capacity.

The appropriation of \$10,000 was for the purpose of installing a water softening plant. If, by reason of the increase in the cost of labor and materials the plant of 12,000 gallons per hour cannot be installed, then the trustees are authorized to expend the sum of \$10,000 for the purpose of installing such a plant as is necessary for the needs of the institution, and you are not required to wait for another appropriation or other legislative action before using the appropriation for the installation of such a plant.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

INSANE SOLDIERS AND MARINES.

An insane soldier or marine delivered by United States War Department to the Pennsylvania State Lunatic Hospital at Harrisburg for care, without commitment by the courts, cannot be maintained at the expense of the county of his residence, without a commitment. The proper procedure to obtain such commitment is described.

Office of the Attorney General,
Harrisburg, Pa., May 1, 1918.

Dr. E. M. Green, Superintendent Pennsylvania State Lunatic Hospital at Harrisburg, Harrisburg, Pa.

Sir: This Department is in receipt of your recent communication with inclosures. You state that under an arrangement with the United States War Department the Pennsylvania State Lunatic Hospital at Harrisburg has been designated by the State Committee on Lunacy as the institution to which all insane soldiers and marines from Pennsylvania shall be sent, that such patients are now being sent to your institution from the various camps and that they are received and detained under the Act of May 8, 1883, P. L. 21. No order of commitment is received from the courts, but, as I understand from your communication, the soldier or marine is delivered to you by the military authorities and by you received into the institution, after an examination has been made by two physicians qualified as provided in Sections 18 and 19 of the said Act of 1883.

Upon the foregoing facts, you ask whether the county, of which the insane soldier or marine so received and detained is a resident, is liable for the cost of his commitment, clothing and later maintenance. If not so liable under the procedure now followed, you ask what is the most practicable procedure to charge the county with the cost of commitment and maintenance.

Under the procedure now followed by you for the reception and detention of such insane soldiers and marines there is no liability on the county for the cost of their commitment, clothing and later maintenance, for the reason that there is no statute imposing such a liability. There are several statutes making counties primarily liable for the cost of commitment and maintenance of insane, but in all cases, as a condition precedent to such liability, there must be an order of court committing the insane person to an institution. Without a formal order by the court committing the patient, there seems to be no liability whatsoever upon the county either for the cost of commitment or of maintenance.

In order to charge the respective counties, I think the most practical method to pursue would be under the Act of April 13, 1845, P. L. 440, creating your institution, and the supplementary Act of April 8, 1861, P. L. 243. Section 14 of the Act of 1845 provides as follows:

"That if any person shall apply to any court of record within this Commonwealth, having jurisdiction of offences which are punishable by imprisonment for the term of ninety days or longer, for the commitment to said asylum any insane person within the county in which such court has jurisdiction, it shall be the duty of said court to inquire into the fact of insanity in the manner provided by law; and if such court shall be satisfied that such person is, by reason of insanity, unsafe to be at large, or is suffering any unnecessary duress or hardship, such court shall, on the application aforesaid, commit such insane person to said asylum."

And by the supplementary Act of 1861, P. L. 249, the court is empowered—

"to either inquire into the fact of insanity, in a summary way, after giving the notice required by law to the alleged lunatic, and his or her parents or kindred, or by avoiding (awarding) an inquest at the option of the court."

The eleventh section of the Act of 1845 requires the courts to certify to the hospital to which the person shall be committed the legal settlement of such person. Section 4 of the said Act of 1861 provides that the city or county from which the indigent insane person shall be sent shall be liable to the trustees of the hospital for his or her maintenance, and by Section 5 of the Act a procedure is provided for the recovery by the Commonwealth of such cost of maintenance.

In the case of *Davidson Township's Appeal, Commonwealth vs. Gower*, 68 Pa. 312, it was held that the Court of Quarter Sessions may inquire in a summary way into the fact of insanity of a pauper and use their discretion in sending him, if unsafe to be at large, to the State Lunatic Asylum, or to be confined elsewhere, as they believe his case to be curable or not.

In *Lower Augusta Township vs. Northumberland County*, 37 Pa. 143, it was held that under the Act of 1845, when a lunatic is committed to the State Lunatic Hospital, the county is primarily liable to the hospital for the expenses of maintenance. To the same effect is *Boyle's Lunacy*, 20 Super. Ct. 1.

The foregoing acts provide, in my opinion, the most expeditious procedure to be pursued in order to procure a commitment sufficient to impose upon the several counties a primary liability to your institution for the cost of the commitment and maintenance of the insane patient. Their provisions authorize any person to present a petition to the Court of Quarter Sessions of the proper county asking for the commitment of the person as a lunatic and upon such petition the court is empowered to find the fact of lunacy *in a summary way* and

thereupon to order the commitment of the person. While the Acts of 1845 and 1861 contain no express statement as to who shall pay the cost of the commitment of the insane patient, I am of the opinion that the court before whom the proceeding is instituted has the right to impose the costs upon the county, if it so desired, and the court would impose the costs upon such county rather than upon the institution to which it ordered the patient to be committed.

While there are other proceedings under which a formal commitment by order of court could be secured, for example, the doctor, lawyer and layman proceeding, under the Act of 1869, the court has no summary powers and the procedure to be followed is much more tedious and would involve much more time and expense. This is a matter, however, for you to determine and my reference at length to the procedure provided by the Acts of 1845 and 1861 is intended as a suggestion only.

It is pertinent to note that the court need not establish the fact of lunacy in a summary manner, if it does not so desire, but I am of the opinion that the court will co-operate with you to the full extent of its authority.

There is no objection to your receiving the patients as you have been doing and instituting the proper procedure to charge the county afterwards, although it may be that the county would only be liable from the date of the order of the court.

I return herewith the papers enclosed by you.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

WESTERN STATE HOSPITAL FOR THE INSANE.

A superintendent of construction for the Western State Hospital for the Insane may be employed at a salary to be fixed by the Commission. The Commission may employ clerks.

No contract for equipment for more or less than \$500 and no contract for construction involving more than \$500 can be let without competitive bidding and these provisions apply to the improvements and alterations of the present buildings.

The Building Commission has no authority to operate the hospital.

Office of the Attorney General,
Harrisburg, Pa., May 27, 1918.

Honorable Francis J. Torrence, Chairman Building Commission,
Western State Hospital for the Insane, Pittsburgh, Pa.

Dear Sir: Mr. Bromley Wharton, General Agent and Secretary of the Board of Public Charities, has requested that you be advised concerning the erection of a new Western State Hospital for the Insane at Blairsville Intersection, Westmoreland county.

He states that the Commission for the erection of this hospital has, as a matter of economy, purchased the old Walker-Gordon dairy farms and contemplates converting two of the barns thereon into dormitories and dining rooms, which furnish comfortable and commodious but not elegant, facilities for caring for a number of insane patients.

The following questions are propounded:

"1. Has the Commission power to select a superintendent of construction who is a physician experienced in insane hospital management at a salary of not more than \$300 per month during the construction period, who can supervise the construction work as well as care for the patients who may be employed in working about the new hospital?"

"2. Has the Commission power to engage clerical help? By this the Commission does not mean to have an organization, but, to have two employes of the Board of Public Charities in the Pittsburgh office look after the accounts, bids, contracts, and supervise the work generally, at a small compensation, using the office of the Board of Public Charities in Pittsburgh for this work. These employes of the Board of Public Charities to work for the Commission in their own time without interference with the work of the Board of Public Charities."

"3. Has the Commission power to make improvements and let contracts without advertising and competitive bids for work not in excess of \$500? Does this authority extend to new construction, as well as to improvements and alterations?"

The Act of June 18, 1915, P. L. 1055, created the Commission for the selection of a site and the erection of buildings for this hospital; provided for the management and made an appropriation for the purchase of the site and the preparation of plans for the construction of the building. This Act was amended by the Act of July 6, 1917, P. L. 749, and an appropriation for the erection of buildings was made by the Act of July 25, 1917, Appropriation Laws 271.

Section 3 of the Act of 1915, P. L. 1055, provides as follows:

"When the General Assembly shall make an appropriation for the construction of the buildings for said Western State Hospital for the Insane, the said Commission shall appoint a superintendent of construction, for the construction of the buildings for said hospital; and may employ such other persons as it may deem necessary to secure the speedy and economical construction of the buildings of said hospital, and the improvement of the said site, at such compensation as shall be fixed by the commission."

The Appropriation Act of 1917 contains this provision:

"That the said Building Commission of the Western State Hospital for the Insane may use such part of this appropriation as it may deem proper for the improvement of such buildings as are now located on the site of said hospital, which buildings will, in the opinion of the Board, be useful for the purpose of the institution."

The section quoted authorizes the Commission to appoint a "Superintendent of Construction, for the construction of the buildings for said hospital," and the Appropriation Act authorizes the Commission to expend a part of the appropriation on the buildings now located on the site.

I am of opinion that the two laws must be read together and that a superintendent of construction may be appointed for the alteration of the present buildings.

The Legislature contemplated that when a Superintendent of Construction is selected, he will be qualified to discharge the duties usually incident to that position. If, in the opinion of the Commission, a physician experienced in insane hospital management is also competent to discharge the duties of superintendent of construction, the fact that he is a physician would not disqualify him from appointment as Superintendent of Construction.

There is no limitation in the Act upon the power of the Commission to fix the compensation of the Superintendent of Construction. Section 3 above quoted is manifestly improperly punctuated. The

semicolon after the word "hospital" should not be there. In my opinion the words "at such compensation as shall be fixed by the Commission" applies both to the superintendent of construction and to "such other persons as it may deem necessary."

I therefore advise you that the superintendent of construction may be employed at a salary of not more than \$300 per month in the discretion of the Commission.

2. The section above quoted answers in terms, your second question. It provides that the Commission "may employ such other persons as it may deem necessary to secure the speedy and economical construction of the building of said hospital, and the improvement of said site."

This gives the Commission authority to employ two persons in the office of the Board of Public Charities if, in the opinion of the Commission, it is expedient and economical so to do.

3. Section 2 of the Act of Assembly provides:

"In the construction of said buildings or the improvement of the said site, no contract involving an expenditure of more than five hundred (\$500.00) dollars shall be made, unless the same be duly advertised and competitive bids thereon received. All contracts shall be made by the said commission."

Section 5 provides, in part:

"All contracts for equipment of the buildings for said hospital shall be entered into only after competitive bidding."

Construing these two sections together, I advise you that no contract for *equipment*, whether for more or less than \$500, can be entered into except after competitive bidding, and that no contract involving more than \$500 for *construction*, can be entered into except after competitive bidding.

As I have said before, the provision in the Appropriation Act permitting the improvement of the buildings now located on the land, must be construed together with the Act of 1915, and I therefore advise you that the provisions with reference to competitive bidding applies to the improvement and alteration of the present buildings, as well as to new construction.

What I have heretofore said categorically answers the questions which were asked, but in Mr. Wharton's letter he said:

"The proposition being to relieve, as soon as possible, the over crowded conditions in other State hospitals, and it is Mr. Torrence's idea that he will be able to house from 150 to 220 indigent insane patients by remodeling the present buildings."

The present Building Commission of the Western State Hospital has no authority to operate that hospital.

By Section 8 of the Act of 1915, it is provided that when buildings have been "sufficiently constructed and furnished to accommodate five hundred patients, the said Commission shall surrender its control over said hospital and buildings to a board of nine trustees who shall be appointed by the Governor."

Moreover, there is no appropriation for operating said hospital. The appropriation made in 1917 is to carry out the provisions of the Act of 1915. The proviso in that Act permits the use of such part of that appropriation as the Building Commission may deem proper "for the improvement of such buildings as are now located on the site of said hospital. There is no appropriation whatever for the operation of a hospital, and the Act does not contemplate the operation of the hospital until the buildings are constructed and furnished to accommodate five hundred patients.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE HOSPITAL FOR THE INSANE—DANVILLE, PA.

An assistant supervisor is a State employe within the terms of the Act of June 7, 1917, P. L. 529.

Office of the Attorney General,
Harrisburg, Pa., May 28, 1918.

Dr. H. B. Meredith, State Hospital for the Insane, Danville, Pa.

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

You ask to be advised whether the term "State employe" as used in the Act of June 7, 1917, P. L. 529, includes "Assistant Supervisor" of your hospital.

The Act of Assembly provides:

"The term 'State employe,' as used in this Act, shall apply to all employes in penitentiaries, reformatories, and other institutions operated by the Commonwealth, as well as those more directly in the service thereof."

The State Hospital for the Insane at Danville is, as I understand, maintained by the appropriations made to it by the State, and its trustees are appointed by the Governor.

I am, therefore, of opinion that it is an institution "operated by the Commonwealth" within the terms of this Act of Assembly, and that your Assistant Supervisor is entitled to the benefit of the said Act of Assembly if he otherwise brings himself within its terms, as to age and length of service.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE INSTITUTION FOR FEEBLE MINDED OF EASTERN PENN-
SYLVANIA.

An architect employed to prepare plans, who has performed his labor, is not entitled to receive 2% of the amount of the contract, estimated, where the contract was not awarded, but should be paid fair compensation for the services he performed.

Office of the Attorney General,
Harrisburg, Pa., October 29, 1918.

Oscar E. Thomson, Esq., Superintendent State Institution for Feeble-Minded of Eastern Pennsylvania, Pennhurst, Pa.

Dear Sir: Your favor of the 3d inst., addressed to the Attorney General, was duly received.

You enclose a bill of Philip H. Johnson to the Board of Trustees of your institution, and also a contract made with Mr. Johnson, and request an opinion as to whether he is entitled for his services to three per centum of the amount on the lowest bid received for buildings for the institution.

I understand the facts to be as follows:

A contract was made May 11, 1917, between the State Institution for Feeble-Minded of Eastern Pennsylvania, and Philip H. Johnson, by which he was employed

"as consulting engineer and architect for such construction and other work as said party of the first part shall contract for, by virtue of the appropriation made to said trustees by act of the Legislature of Pennsylvania, Session of 1917 * * * the said Johnson agrees to perform, under the direction of said trustees, all the usual and customary duties of an architect and engineer required in the performance and construction of any work or buildings to be performed or constructed, including the furnishing of all preliminary sketches, also all neces-

sary drawings, specifications and papers required for proper and satisfactory work upon the same; also all necessary duplicate and copies of said drawings, specifications and papers required by the contractors and employes upon the same in the execution of their work; and he further agrees to supervise such work and the performance and construction thereof. * * *

In consideration of the foregoing, the said party of the first part agrees to pay to the said Johnson the sum of five per centum, of the total cost of such work or buildings when completed, including in the case of buildings all the fixtures necessary to render them fit for occupation; said five per centum to be paid in installments as follows: One per cent. on the estimated cost of the work involved by preliminary drawings, when such drawings have been approved by said party of the first part; *two per cent. on the amount of each contract when awarded*; and the balance, two per cent., to be paid upon the estimated value of the work shown in certificates made to the contractor during the progress of the work when and as the same are made to the said contractor."

The plans and specifications were prepared by Mr. Johnson, approved by the Board, and bids were advertised for and received; but the contract was not awarded because the amount submitted by the lowest bidder was in excess of the available appropriation. The architect has done the necessary work preliminary to the awarding of the contract and it is through no fault of his that the contract was not awarded. He, therefore, claims three per cent on the amount of the lowest bid, which was, including fixtures, \$198,417.00. He has been paid 1%, and the question is, whether he is entitled to the other 2%.

Mr. Johnson, having been paid 1%, now claims specifically the 2% additional under the contract. He is entitled only to the "2% on the amount of his contract when awarded." The awarding of the contract was in the control of the Board of Trustees. He had no power over it. The Board of Trustees no doubt for very proper reasons, has seen fit not to award the contract. Mr. Johnson, therefore, is not entitled to the specific sum of 2%, which is only payable on the contract when awarded.

But, he has performed much more work than was intended to be covered by the 1% already paid to him. For this additional work he should be compensated upon a *quantum meruit*. Having performed his part of the contract as far as he was permitted to go, and having been prevented from completing it by the act of the Board of Trustees, he is entitled to be paid a reasonable compensation for the work done.

It may be that the 2% mentioned in the Act is a reasonable sum for the work already performed. The 2% cannot be paid under the strict terms of the contract, because the contract for the construction of the buildings has not been awarded, but the Board of Trustees should determine what sum, in their opinion, is fair compensation for the work already performed, and having so determined, should pay such sum to Mr. Johnson.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

IN RE HOSPITAL BILLS.

A hospital must look for its pay to the dependents of an employe under the Workmen's Compensation Act where the employe dies as the result of an operation within 14 days of the injury and the employer has paid \$100 to the dependents for medical and funeral expenses. Had the injured employe died after the expiration of 14 days from the injury the employer should deduct the hospital bill from the \$100 and pay the difference to the dependents.

Office of the Attorney General,
Harrisburg, Pa., November 1, 1918.

W. A. DeWitt, Executive and Medical Director, Blossburg State Hospital, Blossburg, Pa.

Dear Sir: Your favor of recent date was duly received.
You request the opinion of this Department upon the following facts:

J. Edward Smith was brought to your hospital by his employer, having received a severe abdominal injury. He was operated upon and died three days later. A bill for \$75.00 was rendered his employer. The insurance company who insured the employer under the Workmen's Compensation law (P. L. 1915, 736) paid \$100 to the family. You ask whether the employer is liable to the hospital.

Section 307, Clause 9, paragraph 1, provides as follows:

"In case of death, compensation shall be computed on the following basis, and distributed to the following persons: * * *

9. Whether or not there be dependents, as aforesaid, the reasonable expenses of the last sickness and burial, not exceeding one hundred dollars (without deduction of any amounts theretofore paid for compensation or

for medical expenses), *payable to the dependents, or, if there be no dependents, then to the personal representative of the deceased.*"

The Workmen's Compensation Board has construed this section in two opinions, reported on pages 157 and 241 of their decisions for the year 1916. The effect of the construction placed thereon by the Board is that where an employer takes his injured employe to a hospital in which medical treatment is rendered to such employe, the employer is liable for his expenses in the hospital, under Section 306, Clause E, up to \$75.00 in case of a major operation, providing the injury does not result in death. If, however, the injury does result in death, and the death occurs before compensation is payable to the employe; that is to say, within fourteen days after the injury, the employer must pay to the dependents the sum of \$100 for medical and funeral expenses and there is no liability on the part of the employer to the hospital, notwithstanding the fact that the employe was taken to the hospital and received by it at the request of the employer. If the injured employe survives more than fourteen days and then dies, and the employer has in good faith paid to the hospital the reasonable cost of the employe's expenses, he is entitled to deduct such sum so paid from the \$100 and pay the difference to the dependents.

I am, therefore, of opinion that under the construction placed by the Workmen's Compensation Board on that portion of Section 307 above referred to, the hospital in this case must look to the dependents of the injured man and that there is no liability to your institution on the part of the employer.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

MINERS' HOSPITAL—ASHLAND, PA.

The hospital may, with proper warning to contractors, advertise for bids for supplies for the full year of 1919, although the appropriation expires June 1st, 1919. Supplies must be secured by contract after securing bids therefor.

Office of the Attorney General,
Harrisburg, Pa., December 3, 1918.

Honorable R. D. Heaton, Secretary Miners' Hospital, Ashland, Pa.

Dear Sir. Your favor of the 25th instant is at hand.

You ask whether a hospital may ask for bids for supplies for the full year 1919, inasmuch as the appropriation expires June first.

It appears that the appropriation to your hospital (Appropriation Acts 1917, page 268), provides that the hospital should advertise for bids, "to furnish all needed supplies for the year beginning January 1 next ensuing."

In awarding the contract for the year 1919, however, the contractor must take it with the distinct understanding that it depends upon an appropriation to carry it out after June 1, 1919.

You also ask whether the hospital is required to make contracts for maintenance, or whether it may buy in the open market.

I have examined the Acts of Assembly creating this hospital, and I find nothing which prohibits the hospital from buying in the open market, but the Appropriation Act to which I have referred, indicates that so far as that appropriation is concerned, bids for supplies should be obtained, and a contract awarded to the lowest responsible bidder.

I therefore advise you that under the present appropriation you must secure your supplies by contract, after securing bids therefor, and whether you will be required to do so after the fiscal year has expired, depends altogether upon the appropriation which the Legislature of 1919 may make.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

STATE INSURANCE.

A State hospital cannot insure its automobile against fire, but can against theft. An insurance policy may be taken out insuring against death or injury to person other than employees resulting from the use of the ambulance.

Office of the Attorney General,
Harrisburg, Pa., December 12, 1918.

Mr. P. Silas Walter, Secretary State Hospital of Northern Anthracite
Coal Region, Scranton, Pa.

Dear Sir: We have your favor of recent date to the Attorney General.

You ask to be advised whether the Act of May 14, 1915, P. L. 524, prohibits you from placing the usual fire and theft insurance on the automobile ambulance purchased by the hospital.

The Act of 1915 provides for a State Insurance Fund, out of which loss or damage to the property of the State "by fire or other casualty" may be paid.

Therefore, you cannot insure your ambulance against fire.

But the Act of 1915, does not cover theft. It is not within the meaning of the words "other casualty," and it therefore follows that you may take out a separate policy insuring the ambulance against theft.

There is nothing in the Act of 1915 which precludes your taking out a separate policy covering insurance against injuries or death to persons resulting from the use of the ambulance, provided that the policy relates to injuries to other persons than employees.

Injuries to employees in the service of the State would be covered by the Workmen's Compensation Law.

You ask, also, whether the trustees would be liable individually, or collectively, for damages in the event that any person was killed or injured, and if any bills were incurred by the hospital in case no appropriation was made by the State to pay the same.

Ordinarily trustees are not individually liable for their acts as trustees, or for the acts of the corporation or association for which they are trustees. Negligence or misconduct might subject trustees to liability under certain conditions.

Whether the trustees would be liable for bills incurred, in case no appropriation is made, is a speculative question upon which we cannot base an opinion. If you are confronted by the fact that the Legislature does not make an appropriation and the question arises whether the hospital should be continued under those circumstances, we will;

upon the consideration of all the facts, give you an opinion, but until the actual case arises, under the rules of this Department we must decline to render an opinion upon a hypothetical proposition.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

MISCELLANEOUS OPINIONS.

MISCELLANEOUS OPINIONS.

PAY OF CLERK AND STENOGRAPHER TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

The clerk and stenographer to the Speaker of the House of Representatives are entitled to ten days pay and mileage in January, 1917, although the then Speaker appointed a new clerk and stenographer who took office on January 2, 1917.

Office of the Attorney General,
Harrisburg, Pa., February 14, 1917.

Thomas H. Garvin, Esq., Chief Clerk, House of Representatives,
Harrisburg, Pa.

Sir: Your favor of the 5th inst. addressed to the Attorney General, is at hand.

You ask to be advised whether the clerk to the Speaker and the stenographer to the Speaker, appointed at the Session of 1915, are entitled to compensation and mileage as returning employes, in view of the fact that the present Speaker appointed his clerk and stenographer on the day of his election, viz, January 2nd.

Section 1 of the Act of June 17, 1915, provides, in part, as follows:

"In the House of Representatives there shall be, in addition to the Speaker, as provided for by the Constitution, one Chief Clerk, * * * one Speaker's Clerk, one stenographer to the Speaker," etc.

Section 4 provides, in part:

"All the officers and employes provided for in this Act *shall return*, as such to the next regular biennial session of the Legislature following that for which they were elected or appointed; and those who shall not be re-elected or reappointed, or elected or appointed to some other office in the Legislature, shall not be allowed their regular per diem compensation,—except the Assistant Clerk * * * and the Clerk and stenographer to the President, who shall receive seven dollars per diem, for ten days, or until their successors are duly elected or appointed and have qualified."

Inasmuch as the position of Speaker's clerk and stenographer to the Speaker are created by the statute itself, these officials do not

lose their positions because of the change in the personnel of the Speaker. The statute requires them, as all other officers and employes designated in it, to return in their respective capacities to the next regular biennial session, and, therefore, these two employees properly returned to the session of 1917.

Section 1 of this Act of Assembly provides, among other positions, for a clerk and stenographer to the President of the Senate, and provides also for a clerk and stenographer to the Speaker of the House of Representatives.

Section 2 provides:

"All officers and employes of the General Assembly shall be elected or appointed in the odd numbered years, at the opening of each regular biennial session, and shall serve until ten days after the opening of the next General Assembly, or until their successors are selected and have qualified; Provided, That all of the officers and employes of the General Assembly shall be continued in such positions until their successors are elected or appointed at the next regular session of the Legislature."

The difficulty is to ascertain under the language of this statute, whether the returning employees are to be paid for ten days, even though their successors may be appointed and qualified before that time, or whether they are to be paid only for the time which they serve.

Looking at Section 4 alone, it may be susceptible of both interpretations—the first part of that section provides that all officers and employes shall return, and those that are not re-elected or reappointed, shall be allowed their regular per diem compensation. It then makes a number of exceptions, and it is susceptible of the construction that those within the exceptions are to be allowed for ten days at the rate therein fixed and those not named are to be paid only for the days employed.

The question now is whether those not within the exception are also to be allowed for ten days, even though their successors are duly elected or appointed, and have qualified prior to that time.

Of those enumerated in the exception, all but the message clerks and the clerk and stenographer to the President receive an annual salary, and not a per diem compensation for regular sessions, and the exception may be construed as fixing their per diem for returning. Thus interpreted it would allow all returning employes compensation for ten days. The clerk and stenographer to the Speaker are not within the exception. Whatever compensation they receive must be at the regular rate fixed for them.

The language of Section 2, read in connection with Section 4, seems to indicate that it was the intention of the Legislature to pay all returning employes for ten days, and the reason for it may have been that the Legislature regarded it as unfair for an employe to be required to return to his duties—perhaps give up the employment in which he is then engaged, run the chance of reappointment, and be sent home with one or two days' pay.

The use of the words "ten days" in both the second and fourth sections, leads to the conclusion that all officers and employees who were not re-elected were to be paid for ten days service, or longer time if their successors were not appointed and qualified within the ten days.

Compensation fixed for the Clerk to the Speaker is seven dollars per day, for the stenographer to the Speaker six dollars per day.

I am of opinion, and therefore advise you that they are entitled to this compensation for ten days and to their mileage to Harrisburg and return to their homes.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

OIL AND GAS PUMPS.

The Chief of Bureau of Standards is advised as to means to be taken to insure the proper measuring of gasoline and oil pumps, used to sell these materials.

Office of the Attorney General,
Harrisburg, Pa., February 21, 1917.

Mr. James Sweeney, Chief of Bureau of Standards, Department of Internal Affairs, Harrisburg, Pa.

Sir: We are in receipt of your favor of the 20th instant, inquiring as to the status of measuring pumps used extensively in this State for selling oil, gasoline and similar liquids.

The construction of these pumps is such that they are adapted to expel a definite quantity of the particular liquid at each stroke. The salient features of the pump comprise a cylinder having a plunger rod therein, at the lower end of which is a plunger. This plunger may be adjusted upon its rod so as to vary the volume of liquid expelled.

You ask whether or not such a pump comes within Section 3 of the Act of July 24, 1913, P. L. 965, providing:

"It shall be unlawful to use a measure without a bottom in selling any commodity."

The evident intention of the Legislature in using this phraseology was to prohibit the employment of measures which could not readily be inspected by the consumer. The laws of this State pertaining to weights and measures were enacted particularly for safeguarding the interests of consumers in that their purchase of measurable commodities is merely incidental to their main business, and would be only subject to their scrutiny where any defects or irregularities are obvious. It would seem that in using the words "measure without a bottom," the Legislature intended that the bottom should be fixed in relation to the measure so as not to permit, by adjustment or otherwise, of any tampering with it so that the consumer would receive less than the proper quantity from a seemingly correct measure.

We are not, however, disposed to adopt this construction in reference to this style of measure for the reason that its utility and universal adoption for measuring liquids is so obvious as to deter the State from taking a position which would prohibit their use.

As above stated, the plunger is adjustable and, as such, in the possession of a careless or unscrupulous dealer, affords a means of defrauding the public which could only be detected by a test. For that reason, you should particularly see that the condition of these forms of measures is maintained correctly, and would therefore advise the following procedure:

You should cause a State-wide test to be made of all of these measures now in operation, and upon their inspection and approval have the adjusting nut at the top of the plunger rod so sealed as to be conspicuous.

This would give notice to any consumer so that the absence of such seal should put him on his guard as to the correctness of the pump.

You should instruct the various Sealers of Weights and Measures that upon testing any of these pumps and finding the measure short, he should unbolt the same from its base, plug or cap the pipe and confiscate the pump, under Section 2 of the Act of July 24, 1913, P. L. 960, and thereupon institute prosecution against the dealer operating such pump. This appears to be drastic action, but in our opinion is warranted under the circumstances.

You should require all jobbers and manufacturers in this class of measures to notify you immediately upon the sale of any of these pumps, giving to you the name of the purchaser, and location. It would thereupon be your duty to see that the Sealer of Weights and Measures in that territory inspected the pump prior to its being placed in operation.

It occurs to us that the manufacturers of these pumps should and will co-operate with you in maintaining the correctness of the measuring devices. If, however, it should develop that such co-operation is not given or that the continued use of such apparatus is inconsistent with the proper enforcement of the laws of this State dealing with this subject, we would suggest that you then refer the matter to this Département for such further action as may be necessary.

Yours very truly,

HORACE W. DAVIS,
Deputy Attorney General.

RETAIL DRUG LICENSES.

To justify granting a certificate of competency to carry on a retail drug business, the State Pharmaceutical Examining Board should be satisfied beyond a reasonable doubt that the applicant therefor has the required practical experience.

Office of the Attorney General,
Harrisburg, Pa., February 21, 1917.

Mr. Lucius L. Walton, Secretary, State Pharmaceutical Examining Board, Williamsport, Pa.

Sir: There was duly received your communication, to the Attorney General, of the 12th inst., requesting to be advised as to whether the State Pharmaceutical Examining Board would be justified in refusing to grant a certificate of competency to carry on the retail drug and apothecary business in a case where certain evidence produced by the applicant for such certificate as to his required practical experience in said business is such that the Board "has been unwilling to accept it as the 'satisfactory evidence' provided by the law."

In pursuance of Section 5 of the Act of May 24th, 1887, P. L. 189, as amended by the Act of May 28th, 1915, P. L. 591, regulating the practice of pharmacy, the said State Pharmaceutical Examining Board is charged with the duty and vested with the power to examine persons desiring to carry on the retail drug and apothecary business or to act as an assistant therein, and to grant certificates of competency or qualification to such as may be found duly qualified in accordance with the provisions of said Act. The second paragraph of said Section further provides, *inter alia*, as follows:

"All persons applying for examination for certificates, to entitle them to conduct and carry on the retail drug and apothecary business, must produce *satisfactory evidence* of having had not less than four years' practical experience in the business of retailing, compounding, or dispensing of drugs, chemicals, and poisons, and of compounding of physicians' prescriptions, * * * And those applying for examination for certificates as qualified assistants therein must produce evidence of having not less than two years' experience in said business."

The term "satisfactory evidence" has a well defined meaning and import. In "*Words and Phrases*," Volume 7, page 6335, many cases are cited in support of the following definition:

"Satisfactory evidence, which is sometimes called sufficient evidence, means that amount of proof which ordinarily satisfies an unprejudiced mind beyond a reasonable doubt."

The Century Dictionary defines it as:

"Such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it is adduced."

This definition is quoted, with approval, by the Court in *Walker vs. Collins*, 59 *Federal Reporter*, 70, as is also that of Bouvier's Law Dictionary, wherein "satisfactory evidence" is defined as:

"That evidence which is sufficient to produce a belief that the thing is true; in other words it is credible evidence."

The authority of said Board, in pursuance of said Act, to grant a certificate of competency to any one to carry on the retail drug and apothecary business is conditioned, among other things upon a due finding by the Board, from "*satisfactory evidence*," that the applicant for the certificate has had the requisite practical experience in such business. The Act itself fixes the standard of the evidence needed to prove that fact, and if it falls short of what is commonly understood and defined as "satisfactory evidence" it fails to fulfill the Act's requirement. Words or terms which have judicially acquired a definite and well settled meaning are presumed to be used in a statute with that import. *Endlich on the Interpretation of Statutes*, 367.

To justify the granting of a certificate of competency to carry on said business, the said Board should be satisfied and convinced beyond a reasonable doubt that the applicant therefor has had the required practical experience. The Board itself must be satisfied upon that point. The evidence adduced in proof thereof should be of that

amount and credibility sufficient to produce the belief and lead the Board to adopt the conclusion that the applicant has in fact had the necessary experience to entitle him to a certificate. Such a fact is a matter susceptible of definite and ordinarily of easy proof. It rests with the Board in all cases to pass upon the question and adjudge whether, in credibility and other adequacy, the evidence offered to prove this essential fact measures up to the provision and requirement of the Act that it be "*satisfactory evidence*."

You are accordingly advised that, under said Act, the power and duty belong to the said Board to find and determine from the evidence produced by an applicant for a certificate of competency to carry on the retail drug and apothecary business whether or not the applicant has had the practical experience in said business required to entitle him to such certificate, and that a certificate is properly refused where such evidence is not "*satisfactory evidence*" to the Board in proof that the applicant has had the requisite experience.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

REGISTRATION OF NURSES.

A graduate of an approved training school for nurses or of an approved hospital, who has not received necessary theoretical and practical training in surgical and medical nursing, may supplement her training by a post graduate course and then be eligible for examination for registration as a trained nurse.

Office of the Attorney General,
Harrisburg, Pa., April 4, 1917.

Dr. Albert E. Blackburn, Secretary, Pennsylvania State Board of
Examiners for Registration of Nurses, Philadelphia, Pa.

Sir: I have your favor of the 27th ult. asking for an opinion as to the construction of Section 7 of the Act of May 1, 1909, P. L. 321, with reference to the requirement that an applicant for examination must have "graduated from a training school for nurses which gives at least a two years' course of instruction or has received instruction in different training schools or hospitals for periods of time amounting to at least a two years' course as aforesaid and then graduated, and that such applicant during said period of at least two years has received practical and theoretical training in surgical and medical nursing."

The facts, on which your inquiry is based, as detailed to me by the President of your Board, are substantially as follows:

An applicant was graduated from a training school or hospital after a two years' course of instruction, but did not during her course receive the amount of practical and theoretical training in surgical and medical nursing usually given in connection with such course. She now desires to take a post-graduate course covering this amount of practical and theoretical training in surgical and medical nursing, and your inquiry is directed as to whether, if she does this, she may be admitted to examination, or whether she must again take an entire two years' course of training in a hospital or training school in order to receive such practical surgical and medical nursing and be graduated a second time.

The intent of the Legislature evidently was that every applicant for examination as a registered nurse must have been graduated from a training school or hospital which gave at least a two years' course, and during her training must have received such practical and theoretical training in surgical and medical nursing as was deemed requisite and necessary by your Board.

The law does not require that during the entire two years' course of instruction pupils in these training schools or hospitals must *continuously* receive practical and theoretical training in surgical and medical nursing, but that a certain portion of their course deemed sufficient for the purpose shall be devoted to such training. If, therefore, a nurse who has been graduated from a training school giving a full two years' course, but who did not receive a full course in practical and theoretical training in surgical and medical nursing, supplies that deficiency by devoting the requisite time to those subjects in a post-graduate course the requirements of the statute will have been complied with. In fact, the applicant will have devoted more time to her training than she would have done if she had received a full course of practical and theoretical training in surgical and medical nursing and in her undergraduate course of two years.

You are, therefore, advised that if an applicant has been graduated from a training school or hospital approved by your Board, which had a course of at least two years, though during that course she did not receive the requisite or necessary practical and theoretical training in surgical and medical nursing, she may supplement her work by a postgraduate course, taking the required or necessary amount of practical and theoretical training in surgical and medical nursing, and upon completing this postgraduate course would be eligible to examination by your Board.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE MOVING PICTURES.

The State Board of Censors under the Act of May 15, 1915, P. L. 534, has the power to recall any film, reel or view of a moving picture which may have been approved previously.

Office of the Attorney General,
Harrisburg, Pa., July 25, 1917.

Honorable Frank P. Shattuck, Chairman, Pennsylvania State Board
of Censors, Philadelphia, Pa.

Sir: This Department is in receipt of your communication of the 14th inst. asking whether the State Board of Censors, after giving approval to a film, is empowered to recall such approval.

The Act of May 15, 1915, P. L. 534, is the only statute conferring powers on your Board and your authority, therefore, depends upon the express words of that statute, or upon the implications necessarily arising therefrom.

Section 6 of the Act, relating to your authority provides as follows:

"The board shall examine or supervise the examinations of all films, reels, or views to be exhibited or used in Pennsylvania; and shall approve such films, reels, or views which are moral and proper; and shall disapprove such as are sacrilegious, obscene, indecent, or immoral, or such as tend, in the judgment of the board to debase or corrupt morals. This section shall not apply to announcement of advertising slides."

While the language thus employed does not expressly authorize the recall of an approval, the intent is clear to constitute the Board a bulwark of the people against sacrilegious, indecent and immoral motion pictures. The statute is an exercise of the police power of the State. It was passed for the protection of its citizens. It was designed to safeguard the morals of the public. These purposes of the Act are totally defeated if the approval of an immoral, sacrilegious or obscene film, given through inadvertance or otherwise, is beyond the recall of the Board. Under Section 26 of the Act a film disapproved by the Board must be re-examined, if request be made, and certainly the Board at its own instance could do that which it might be compelled to perform; but if the Board may reconsider its disapproval, why not its approval? It may err in the one instance as well as in the other and the harm which may ensue an approval may be infinitely greater than that which would result from an erroneous disapproval. In the first case the individual may be harmed but in the latter instance it is the public that would suffer.

Statutes are to be construed so as to advance the result sought to be attained and no intent is to be imputed to the Legislature hostile to the purpose for which the Act was designed. Unless rights have accrued or intervened following such approval, which a recall would disturb, your authority is clear.

The rule of law stated in Throop on Public Officers, Section 564, is in point. It is there said:

"It has been held, in several cases, that where a quasi judicial power has been exercised, upon which a private individual has acquired rights, the rule is the same, as where a judgment has been rendered by a court of inferior and limited jurisdiction; that is, that the officer or body can exercise the power only once, and cannot afterwards alter his or its decision."

It follows that a decision may be altered when no such rights have been acquired.

Specifically answering your inquiry, you are advised that your Board has the power to recall an approval of a film unless rights have been acquired or have intervened, which a recall would disturb.

Very truly yours,

JOSEPH L. KUN,

Deputy Attorney General.

SUPERINTENDENTS OF MANUFACTURE IN PENAL INSTITUTIONS.

The chairman of the Prison Labor Commission may draw direct requisitions against the manufacturing fund created by the Act of 1915, P. L. 656, and increased by Act No. 430, 1917, for the payment of salaries of superintendents of manufacture and their traveling expenses and for the office employes of the chairman of the commission.

Office of the Attorney General,
Harrisburg, Pa., July 27, 1917.

Honorable John E. Hanifen, Chairman Prison Labor Commission,
Real Estate Trust Building, Philadelphia, Pa.

Sir: I am in receipt of your communication of July 11th, asking to be advised whether you may properly draw direct requisitions for the payment of salaries and expenses of the Superintendents of Manufacture at the Huntingdon Reformatory and the Eastern State Penitentiary, and for the traveling expenses of the Commissioners, and the

salaries of the clerk, stenographer and incidental office expenses, the same to be charged to the Manufacturing Fund, created by the Act of 1915, P. L. 656, and increased by Act No. 430, 1917.

The Prison Labor Commission Act of 1915, P. L. 656, creating your Commission, provides for a Manufacturing Fund:

Section 5. 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 \$75,000, shall be made to the Prison Labor Commission, to be known as the Manufacturing Fund.

It is provided in Section 6 of the Act, that the receipts from the sales of manufactured articles shall not be turned into the State Treasury, but shall be credited to the Manufacturing Fund created by Section 5 of the Act, and used for the purchase of further material, equipment, machinery and supplies.

By the Act of 1915, in addition to the special appropriation of \$75,000 for a Manufacturing Fund, there was appropriated, by Section 6 of the Act, the sum of \$8,000 for the purpose of paying salaries of clerk, traveling expenses, and contingent expenses.

The legislature of 1917 appropriated an additional sum of \$100,000 by Act No. 430, for the Manufacturing Fund, but neglected to make a separate appropriation for contingent expenses, which situation gives rise to your inquiry.

By making an additional appropriation of \$100,000 to the Manufacturing Fund, the Legislature of 1917 clearly recognized the existence of your Commission and provided for the continuation of its operations and the exercise of the duties imposed upon it by the Act of 1915, under which it was created.

It seems hardly necessary to state that the employment of persons in and about manufacturing is as necessary thereto as the material, equipment and machinery used therein, so that it may fairly and reasonably be concluded that as a necessary incident to the employment of the inmates of the correctional institutions of the State in manufacturing, which is the duty imposed upon your Commission, the salaries and expenses of persons employed in connection therewith may properly be paid out of the Manufacturing Fund. This, I understand, has been the practice of your Commission and has been acquiesced in since August, 1916.

It cannot be assumed that the Legislature did a vain and idle thing. When it appropriated an additional sum of \$100,000 to the Manufacturing Fund, it clearly intended that your Commission should continue to perform the duties imposed upon you by the Act of 1915 creating the Commission.

Any other view fails of support in sound reason, logic or business experience.

Manufacturing cannot be conducted without a supervision, without bookkeeping, without correspondence, without necessary traveling expenses. If your Commission is to continue to exercise its functions under the law, as it was clearly intended that it should, it must have its clerk, stenographer, or other help necessary to maintain its office and the Commissioners living, as they do, in widely separated parts of the Commonwealth, must necessarily on occasion travel in order to meet for the purpose of consultation, supervision and exercise of its duties. All this is also as necessary an incident to manufacturing as the employment of persons to directly supervise the manufacturing and the purchase of material, equipment and machinery to be used therein.

This view finds support in the opinion of Attorney General Hensel to Auditor General McCamant, under date of July 14, 1891, reported Attorney General's Report, 1891-1892, page 20, in which it was held that the necessary traveling expenses of the Commissioners, while engaged in the selection of a site and construction of buildings, were properly payable out of an appropriation under the Act of January 21, 1891, for the selection of a site and the construction of buildings thereon.

You are, therefore, advised that it is proper for you to draw direct requisitions against the Manufacturing Fund created by Act of 1915, P. L. 656, and increased by Act No. 430, 1917, for the payment of salaries of superintendents of manufacture and their traveling expenses, for the salaries of your office employes, incidental office expenses, and for the traveling expenses of the Commissioners incurred in the performance of their duties.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

CONDEMNATION OF LAND BY VALLEY FORGE PARK COMMISSION.

The authority of the Commission in the acquisition of land is confined to fixing the location and boundary of the land to be acquired, and the giving of notice of its action to the owner of the legal title. When this is done, the statute, by its own force, appropriates the property, which appropriation includes all the interests in the land condemned. The owner of a leasehold interest should be made a party to the proceeding and be duly compensated. Whether an option to purchase contained in the lease is a covenant running with the land or merely a personal contract with the owner of the fee, is a question of law for the disposition of the Court. The time when the taking of the land occurs is when the Commission has fixed the location and boundaries thereof and when notice of such action of the Commission has been given to the owner of the legal title. All interests in the land created prior to such fixing of location, and the giving of such notice are valid and the owners thereof must be compensated through an appropriation under the act.

Office of the Attorney General,
Harrisburg, Pa., November 14, 1917.

Honorable Richmond L. Jones, Chairman, Land Committee, Valley Forge Park Commission, Reading, Pa.

Sir: I am in receipt of your communication of the 24th ult., requesting the opinion of this Department on the following propositions relative to the condemnation of land embraced within the Valley Forge Encampment, which was conveyed to the present owners in 1906 and leased by them for a term of twenty years, under a lease giving the lessees the option of purchasing the property at any time during the term on payment of a sum therein stipulated:

First—Can the Commissioners, following the language of the Act of Assembly, condemn “the title to and ownership in the ground covering said site,” without making the lessee a party to the proceeding and without condemning the leasehold estate which has about twelve years to run, and without evicting the lessee or disturbing his quiet possession in the meantime?

Second—If not made a party to the proceeding, can the lessee be heard in the case? Or, can he institute a proceeding of his own for trespass or damages or otherwise if his possession is not disturbed until the expiration of his term?

Third—Is his option, unexercised, a covenant running with the land, or merely a personal contract with the owner of the fee which will be terminated and ended if the Commonwealth takes the land under its right of eminent domain?

Fourth—Inasmuch as both the lessor and lessee had actual notice of the coming of the Commonwealth to assist its paramount title for the public use, could they, after such notice, interpose any estate by lease or otherwise, except upon the implied condition that the term

of such estate would expire and cease upon the condemnation of the condemnation of the title of the owner of the land by the Commonwealth?

The Valley Forge Park Commission was created by the Act of May 30, 1893, P. L. 183, the first section of which has been amended at various times in order to increase the amount of land which may be acquired for the purpose of preserving perpetually the site of the historic camp. The last amendment was approved June 23, 1917, P. L. 640. It reads as follows:

“That for the purpose of perpetuating and preserving the site on which the Continental Army under General George Washington, was encamped in winter of one thousand seven hundred and seventy-seven and one thousand seven hundred and seventy-eight, the title to and ownership in the ground covering said site, including Forts Washington and Huntingdon, and the entrenchments adjacent thereto, and adjoining grounds, in all not exceeding fifteen hundred acres, the location and boundaries thereof to be fixed by the Commissioners of Valley Forge Park, shall be vested in the State of Pennsylvania, to be laid out, preserved, and maintained forever as a public place or park, by the name of Valley Forge, so that the same and the fortifications thereon may be maintained, as nearly as possible, in their original condition as a military camp, and may be preserved for the enjoyment of the people of the said State.”

An examination of the original statute, its amendments and supplements leads to the conclusion that there is no authority to condemn any “ground covering said site without making the lessee a party to the proceedings and without condemning the leasehold estate.”

It is pertinent to note that the Legislature did not, by the Act of 1893 and its amendments, delegate its sovereign power of eminent domain to the Commission. As to the appropriation of land, the authority and duty conferred and imposed on the Commission is confined to the determination of the land deemed expedient to be acquired and to the fixing of the location and boundaries thereof. When this has been done, then, says the statute:

“the title to and ownership in the ground * * *
shall be vested in the State of Pennsylvania.”

It is well settled that the Legislature may directly acquire private property by eminent domain. The rule is thus stated in *Lewis on Eminent Domain*, Vol. 1, Section 375:

"It is competent for the Legislature to appropriate property directly by an act duly passed instead of conferring authority to do so and this has occasionally been done."

And in consideration of the Road Law of June 13, 1836, P. L. 551, the court, in *Smedley v. Erwin*, 51 Pa. 445, said:

Op. p. 451:

"Again it is urged that the chief commissioner of highways was without power or authority to open the street, because he did not proceed and open it, or cause it to be opened, within thirty days from the passage of the act that directed him to proceed and open it. It is said his authority expired with the thirty days. The argument overlooks the character and purpose of the enactment. It is not a grant of eminent domain of the Commonwealth to private persons, nor is it the gift of a naked power. It is a statute for a public purpose. Its main design is to secure the street without delay. It therefore in effect appropriates the land for the street by its own force, and the direction respecting the time and agency for opening it are but incidental to the main purpose."

The Commission therefore has no power under the Act to determine at all what interests shall be acquired in the land which it, the Commission, deems proper to have taken over. When it has fixed the location and boundaries, the Act, by its own force, condemns the interests therein, and in absence of an express legislative intent to the contrary, it must be presumed that all the interests in the land should be vested in the "State of Pennsylvania" at the same time. Any doubt as to the legislative intent on this proposition is removed by Section 3 of the statute, which, *inter alia*, reads as follows:

"That the owners of the said ground by the first section of this act appropriated for public purposes, shall be paid for the same by the State of Pennsylvania according to the value which shall be ascertained by a jury of disinterested freeholders to be appointed by the court of quarter sessions of the county in which said grounds lie, upon the petition of the said commissioners."

The term "owners," as used in this Section, embraces all who have any interest in the land appropriated and includes tenants for years holding under the owners. *Brown v. Powell*, 25 Pa. 229.

This disposition of the first proposition renders a consideration of the second unnecessary, as it necessarily follows that the lessee must be made a party to the proceeding and duly compensated.

As to your third inquiry, that is, whether the option contained in the lease is a covenant running with the land or merely a personal contract with the owner of the fee, I beg to advise that this is a question for the disposition of the court and any opinion of this Department would have no binding effect. The lessee is entitled to be compensated for all his interests in the land as evidenced by his contract and the general rule of law seems to be that all the different elements of damage to both the particular estate and the estate in remainder taken together should not exceed the value of the land, and this on the theory that the sum of parts can never exceed the whole. (See *Lewis on Eminent Domain*, Vol 2, Section 719, and notes.)

As to your fourth inquiry, I am of the opinion that the time when the taking of the land occurs under the Act of 1893, as amended, is when the Commission has fixed the "location and boundaries" of the land which it deems necessary and expedient for the State to appropriate and when notice of such action of the Commission has been given in some manner actually or constructively to the person or persons in whom is vested the legal title. Until the boundaries of the land have been so marked and until such notice has been given, the owner may create such estates and interests therein as he deems fit and upon an appropriation under the statute the owners of all estates and interests so created must be compensated. Whether the lessee therefore in this particular instance is to be compensated depends entirely upon whether the "location and boundaries were fixed" and whether notice of such action was given to the owner of the legal title, before the execution of the lease. If the boundaries were so marked and notice was so given prior to such execution then the lessee is not entitled to compensation. In fixing the location and boundaries of the Park, the Commission was limited to the amount of land appropriated by the Legislature by Act of Assembly in force at the respective times the Commission undertook to mark such boundaries. For example, immediately following the original Act of May 30, 1893, the boundaries of the Park could not be fixed so as to include an area in excess of two hundred and fifty acres, subject to enlargement by the Commission, however, as the Legislature from time to time increased the area appropriated.

Specifically answering your inquiries, you are now advised as follows:

First—The authority of the Valley Forge Park Commission in the acquisition of land for the purpose of a public park is confined to fixing the location and boundaries of the land which it deems expedient for the State to acquire and the giving of notice of its action to the owner of the legal title. When this is done, the statute, by its own force, appropriates the property, which appropriation includes all the interests in the land condemned.

Second—The owner of a leasehold interest in the property condemned should be made a party to the proceeding and duly compensated.

Third—Whether an option to purchase contained in the lease constitutes a covenant running with the land or merely a personal contract with the owner of the fee, raises a question of law solely for the disposition of the court, and any opinion of this Department would have no binding effect.

Fourth—The time when the taking of the land occurs is when the Commission has fixed the location and boundaries thereof and when notice of such action of the Commission has been given to the owner of the legal title. All interests in the land created prior to such fixing of location, and the giving of such notice are valid and the owners thereof must be compensated through an appropriation under the Act.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

CAMP CURTIN COMMISSION.

No part of the appropriation for placing the park in suitable condition for park purposes can be used for the purchase of additional land.

Office of the Attorney General,
Harrisburg, Pa., November 14, 1917.

Mr. Thomas M. Jones, Secretary, Camp Curtin Commission, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 31st ult., asking to be advised whether the Commission can use five thousand dollars appropriated for the purpose of placing the grounds of the park in suitable condition for park purposes for the purchase of property adjoining the site contemplated, in order to enlarge the site for the proper completion of the work.

The Act of July 25, 1917, No. 373-A, as approved by the Governor, appropriates \$13,000 for the establishment of a park in the City of Harrisburg, to be known as Camp Curtin Park, and directs that the sum thus appropriated shall be used for and applied to the following purposes: For the purchase of the grounds for said park, the sum of eight thousand dollars, or so much thereof as may be necessary. For

the purpose of placing said grounds in suitable condition for park purposes, for the erection of the necessary fences, for building roads, for incidental expenses of the Commission, and for the dedication of said park (and monument) the sum of five thousand dollars, or so much thereof as may be necessary.

The Commission is limited in its expenditures to the purposes for which these items are appropriated, that is, the limit for the purchase of grounds for the park is eight thousand dollars. Five thousand dollars are appropriated for the purpose of placing the grounds thus purchased in suitable condition for park purposes, for the erection of necessary fences, for building roads, and for the incidental expenses of the Commission and dedication of the park. No part of the appropriation of five thousand dollars can be used for the purchase of additional grounds. If the appropriation of eight thousand dollars is exhausted and the purchase of additional ground is necessary or advisable, it will have to be done under the authority of a subsequent appropriation.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

MOTHERS' ASSISTANCE FUND.

Grants of assistance may not be made in cases where the children have separate estates.

Office of the Attorney General,
Harrisburg, Pa., December 19, 1917.

Mrs. Helen Glenn Tyson, State Supervisor, Mothers' Assistance Fund,
Philadelphia, Pa.

Madam: I am in receipt of your letter of the 6th instant, with copy of your notice (November, 1917), to the Boards of Trustees, Mothers' Assistance Fund, advising, in effect, that grants are not to be made in cases where the children have separate estates and suggesting that in those cases allowances for maintenance and support of children should be procured from the Orphans' Courts.

You state that these rulings were compiled after a study of other Mothers' Pensions Laws of the United States, the practical application of these laws and also from a careful study of petitions that have been granted in this State by the County Boards previous to the appointment of a State Supervisor.

You ask to be advised as to the legality and propriety of your rulings.

It is to be remembered that the Mothers' Pensions Acts were passed primarily and solely for the support and maintenance of *indigent* mothers and their children, under the limitations contained in the Acts.

The Act of April 29, 1913, P. L. 118, was passed to provide for monthly payments "to indigent, widowed and abandoned mothers for *partial support of their children in their own home.*" (Section 1.)

For the reason that the class, though in all respects worthy, was entirely too large and comprehensive, and sufficient funds could not be provided to extend to such a large class, the amending Act of June 18, 1915, P. L. 1038, was passed, by which payments were limited to women "whose husbands are dead or permanently confined in institutions for the insane * * * *as aid in supporting their children in their own homes.*" (Section 1.)

It is to be noted that both in the original Act and in the amendment it is provided that the payments are to be made to aid in the support of children.

Your attention is called to Section 3 of the amending Act of 1915, which provides:

"The trustees shall in no case recommend payment until they are satisfied that the recipient has proven her character and ability and that for *decent maintenance of her children in her own home monthly payments are necessary.*" * * *

It becomes, therefore, apparent, after a consideration of these references, that it would be highly improper to divert the public funds for the maintenance of children who have estates of their own from which allowances for their support may be procured. The legislative intent, as indicated by the amending Act restricting the class to which these payments may be made, is clear, that they should be authorized and made only in the most worthy cases and where there is actual dependency.

While it is perhaps very laudable and natural as well, for a mother to endeavor to conserve any estate that her children may have, for their future use and benefit, and no doubt many mothers make extreme sacrifices in order to do so, this entirely proper desire on their part should not be considered so as to influence the administration of this great public charity, which should be limited in its application to cases of really indigent mothers having actually dependent children

You are advised, therefore, that both under the express language of the Mothers' Pensions Acts of 1913 and 1915 and their manifest intent and spirit, you are fully justified in making the rulings referred to. Indeed, it may be added that it was your duty as State Supervisor to make the rulings.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

BUREAU OF MEDICAL EDUCATION AND LICENSURE.

Five members are a quorum for the ordinary transaction of business. To revoke or suspend a license, and to determine the fitness of any college to render its graduates eligible for licensure requires the presence and unanimous action of seven members of the Bureau.

Office of the Attorney General,
Harrisburg, Pa., January 10, 1918.

Dr. J. M. Baldy, President, Bureau of Medical Education and Licensure, Philadelphia, Pa.

Sir: I have your favor of December 29 requesting to be advised as to the effect to be given Section 3 of the Act of June 3, 1911, P. L. 639, providing, *inter alia*, as follows:

"Five members shall constitute a quorum; except for the consideration of the revocation or suspension of a license, or the determination of the fitness of any college to render eligible its graduates for licensure, or the refusal to grant license, when the unanimous consent of all seven members shall be necessary."

Under this clause, for the ordinary transaction of the business of the Bureau, five members constitute a quorum, but when the consideration of the revocation or suspension of a license or the determination of the fitness of any college to render its graduates eligible for licensure or the refusal to grant license comes before the Bureau, then all seven members of the Bureau must be present and their action must be unanimous. There is no provision for any of the members voting by proxy. With regard to those matters, which by the Act are excepted from the action of a quorum of the Bureau, the personal and individual thought and action of all the members is required and this does not permit or allow such action by proxy.

For the determination of these particular matters the Act specifically requires not the consent of *all* the members of the Bureau, but the consent of *all seven* members. If, therefore, a member of the Bureau should die, it would be necessary for you to await the appointment of his successor before you could revoke a license, and if any of the members are ill and unable to attend the meeting they cannot vote by proxy, but the matter will have to await their recovery and attendance at the meeting of the Bureau.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE BOARD OF EXAMINERS FOR REGISTRATION OF NURSES.

The Board is advised as to procedure in re examination of nurses and payment of fee.

Office of the Attorney General,
Harrisburg, Pa., January 10, 1918.

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 December 31, relative to the application of Mrs. Edith J. Hess Greeno for examination for registration as a nurse, under the Act of May 1, 1909, P. L. 321, as amended by the Act of June 4, 1915, P. L. 809.

It will be noted that Mrs. Greeno is not applying for registration as a nurse, but only to be permitted to take the examination for registration. I am of the opinion that the mere fact that the institution of which Mrs. Greeno is a graduate, the University of Louisville Training School for Nurses, is no longer in existence, having been absorbed by the Louisville Hospital, is not a sufficient reason to debar her from taking the State Board examination. If Mrs. Greeno produces evidence that the course of instruction given by the University of Louisville Training School for Nurses was a two years' course, giving practical and theoretical training in surgical and medical nursing along accepted standards, she should be admitted to the examination. This evidence may be by way of affidavits or statements from well known physicians satisfactory to the Board as to the character and the course of training given by the University of Louisville Training School for Nurses before its amalgamation with the Louisville Hospital.

It must be remembered that the application is wholly preliminary and that the applicant's fitness will be determined on the examination. Bearing this in mind, these provisions of the Act should be construed liberally and no one should be debarred from taking the examination because the school from which she was graduated is out of existence, if the Board is able to satisfy itself in any manner as to the character and course of instruction given by the Training School while it was in existence.

With reference to the fee of ten dollars, provided for by Section 7 of the Act as amended, I am of the opinion that this fee is intended to cover the examination or registration of the applicant. While the Act provides that no application for registration shall be considered unless accompanied by a fee of ten dollars, the other provisions of the Act show that this is not intended as a fee for a preliminary consideration. Unless the fee of ten dollars accompanies the application, no consideration is to be given to it, but the fee covers all the expenses in connection with examination and registration. Its payment in advance is required as an evidence of good faith and to insure that the fee fixed in the Act will be paid without fail. Where the Board refuses, however, to entertain the application, it is my opinion that the fee should be returned. This is not the case of one who takes the examination and fails; in such case the fee is not to be returned. But where the Board refuses to admit the applicant to an examination, in my judgment, it is not authorized to retain the fee provided for in the Act.

Very truly yours, .

WILLIAM H. KELLER,
First Deputy Attorney General.

SENATORIAL ELECTIONS.

It is not necessary to call a special election for vacancies in the State Senate occurring in 1918, where the regular terms expire on December 1, 1918, unless a special session is called during that year.

It is necessary to call special elections for vacancies, where the regular term expires December 1, 1919.

Office of the Attorney General,
Harrisburg, Pa., January 21, 1918.

Honorable Frank B. McClain, Lieutenant Governor, Harrisburg, Pa.

Sir: I have your favor of the 8th inst. requesting to be advised—

(1) As to whether it is mandatory upon you to issue writs preceding the Primary Election of May, 1918, for special elections to fill vacancies existing in the 8th and 42d Senatorial Districts, the regular terms of which will expire on December 1, 1918.

(2) Whether it is mandatory upon you to issue writs prior to the May Primary of 1918, for special elections to fill vacancies existing in the 3d, 29th and 43d Senatorial Districts, the regular terms of which will not expire until December 1, 1919.

The Constitution provides (Article II, Section 2):

“Whenever a vacancy shall occur in either House the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term.”

The statute law on the subject is contained in the following Acts:

Act of January 16, 1855, P. L. 1—

“Section 1. That whenever a vacancy shall have occurred, or may hereafter occur, in either House of the Legislature of this Commonwealth, during the recess of the Legislature, and the members thereof may have been or may be required, either by their own adjournment, by the Governor or otherwise, to meet at some time previous to the next general election, the Speaker shall issue the writ and appoint a time for holding said election to fill said vacancy, as provided for by the thirty-sixth section of the Act (of 1839, P. L. 526), to which this is a supplement.”

Act of July 2, 1839, P. L. 526—

“Section 35. Every writ which shall be issued by the Speaker of either House of the Legislature, in pursuance of the Constitution of this Commonwealth, to supply a vacancy in such House, shall be directed to the sheriff or sheriffs of the proper county or counties, as the case may be, and shall particularly express the day on which the election shall be held to supply such va-

cancy. If such writ shall be issued by the Speaker (President) of the Senate, during the recess of the Legislature, he shall, except as is hereinafter provided, direct the election to be held at the time appointed for holding the general elections."

"Section 36. If such vacancy shall happen during the session of the Legislature, or if the members shall be required by their own adjournment, or by the Governor, to meet at some time previous to the next general election, the Speaker issuing the writ, shall appoint a time as early as may be convenient, not exceeding thirty days thereafter, for holding such election. But if the return of such election cannot be made before the time appointed for the adjournment of the Legislature, such writ shall not be issued, or if issued, shall, in the case of a vacancy in the House of Representatives, be countermanded, and in case of a vacancy in the Senate, shall, by another writ issued as aforesaid, be extended until the next general election."

"Section 37. If, after a writ shall have been issued, directing the election to fill such vacancy to take place on the day of the general election, or countermanding a previous writ, as aforesaid, the Governor shall issue his proclamation for convening the Legislature, the sheriff to whom such writ shall be directed, shall give notice, as is hereinafter provided, of an election to be held within thirty days after the date of such proclamation."

"Section 38. Every writ for holding a special election as aforesaid, shall be delivered to the sheriff, to whom the same shall be directed, at least fifteen days before the day appointed for such election, who shall forthwith give due and public notice thereof throughout the county, at least ten days before such election, and shall send a copy thereof to at least one of the inspectors of each election district therein."

It will be noted that, unless a special session of the Legislature is called, the President of the Senate is required to direct the special elections to fill vacancies to be held at the time appointed for holding the general elections.

With reference to the 8th and 42d Senatorial Districts elections for the full term for these offices will be held in November, 1918. Unless a special session of the Legislature should be called by the Governor it would be a useless proceeding to issue writs for special elections to fill vacancies, to be held at the same time that the general election for the full term is held. Unless, therefore, a special session of the Legislature should be called by the Governor, you are advised that as to vacancies in office which will expire on December 1, 1918, it is not necessary for you to issue writs to fill the vacancies at all.

If a special session of the Legislature should be called by the Governor it will then be your duty to issue writs for special elections to

be held at a time fixed by you but, at least, fifteen days thereafter and deliver the same to the Sheriff of the proper counties in order that they may be executed in accordance with the statute above quoted.

(2) With regard to the 3d, 29th and 43d Senatorial Districts the situation is different. The terms of these offices will not expire until December 1, 1919, and it is, therefore, your duty to issue writs calling for special elections to fill these vacancies for the unexpired term. Unless a special session of the Legislature is called by the Governor you should fix the date of holding these special elections as the time for holding the general election in November, 1918.

While the primary election this year will be held on May 21, all nominations for offices must be filed at least forty days before that date, that is, by April 11. While it is not mandatory upon you to do so, it would be advisable to issue your writs calling for special elections in these districts long enough before the eleventh day of April to permit nominations to be regularly made in the manner prescribed by the Primary Laws of the Commonwealth. As before stated, however, it is not mandatory upon you, and if the writs are not issued by you prior to April then nominations will have to be made according to the Party rules.

If, after you issue your writs for special elections to be held at the time for holding the general election in November, a special session of the Legislature should be called by the Governor, it would then be your duty to countermand the previous writs and issue new writs for holding special elections to the several Sheriffs, at least fifteen days before the time appointed by you for such elections.

With regard to the 22d Senatorial District, I beg to advise you that there is no vacancy existing. The Attorney General has advised the Senator from that district that there is nothing in the Constitution to prevent him from accepting the position of Superintendent of the State Hospital for the Insane at Farview; that said superintendency is not a civil office under the Commonwealth within the meaning of the Constitution; that it is simply a place of employment under a corporation created by the Commonwealth as one of its agencies for the relief of the insane of the State, and no more debars him from exercising his office of Senator than a person holding the office of trustee of the same institution is debarred from being a Senator of this State.

I enclose herewith a form of writ for such special elections, which you may use in this connection.

I trust I have made myself clear. If not, I shall be glad to have the matter again directed to my attention.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

Commonwealth of Pennsylvania, ss:

To....., Sheriff of the County of.....;

Greeting:

Whereas, A vacancy exists in the office of Senator of the Commonwealth of Pennsylvania for theSenatorial District, composed of....., caused by reason of the..... of....., the Senator from said District, on theday of....., one thousand nine hundred and seventeen;

Now, therefore, I, Frank B. McClain, Lieutenant Governor and ex officio President of the Senate of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the State of Pennsylvania and by the Act of Assembly in such case made and provided, do hereby command you: That you cause an election to be held in the said.....Senatorial District on the fifth day of November, A. D. one thousand nine hundred and eighteen, being the time appointed for holding the general election, to choose a person to represent saidSenatorial District in the Senate of Pennsylvania for the remainder of the term expiring December first, one thousand nine hundred and nineteen, and that you give due and public notice of said election throughout saidSenatorial District and to at least one of the inspectors of each election district therein, in the form and manner directed by law.

Given under my hand and seal at Harrisburg, Pennsylvania, thisday of....., A. D. one thousand nine hundred and eighteen.

.....(Seal)

Lieutenant Governor and President of the Senate.

INSTRUCTIONS.

Under 35 of the Act of July 2, 1839, P. L. 519, the writ issued by the President of the Senate calling for a special election to fill a vacancy in the office of Senator in any district, must be directed to the Sheriff of the county in which such vacancy exists, and must set forth the day on which the election to fill such vacancy is to be held, which, as to vacancies occurring during the recess of the Legislature,

or at such time that the return of the writ cannot be made before the adjournment of the Legislature, is directed to be the time appointed for holding the general elections.

The writ must be delivered to the Sheriff at least fifteen days before the day fixed for the election, and the sheriff must give due public notice by proclamation of such election at least ten days before the election and must send a copy of such proclamation to at least one of the inspectors of each election district in the Senatorial district wherein the vacancy occurs.

The return of the election is to be made by the prothonotary to the Secretary of the Commonwealth, who, upon the receipt of the return, shall deliver the same to the Senate as soon as it convenes.

IN RE FIRE MARSHAL'S COURT FEES.

Fire Marshals and Deputy Fire Marshals are entitled to collect witness fees in cases tried in court where the defendants are found guilty and the costs imposed upon them.

Office of the Attorney General,
Harrisburg, Pa., January 31, 1918.

Hon. G. Chal Port, State Fire Marshal, Harrisburg, Pa.

Dear Sir: I have your favor of the 11th inst., asking whether the Deputy State Fire Marshal appearing as a witness, can collect his witness fees in cases where the defendants are found guilty and the costs imposed upon them.

I find nothing in the act creating your department which throws any light upon this subject, and in the absence of any statute specially dealing with fire marshals in this request, I think they are in the same position as State police.

In an opinion given the Superintendent of State Police by Attorney General Todd, January 28, 1907, Attorney General's Opinions, 1907-8, page 302, he said:

"I advise you that costs may be collected by the State police in amounts equal to the costs allowed by law for constables in similar services, and that the costs so collected should be transmitted to you and by you turned into the State Treasury."

We adopt this language as applicable to the Deputy Fire Marshals.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

STATE FOREST LANDS.

A building erected on State forest land by a lessee of land leased under the Act of March 27, 1913, P. L. 12, and which, under the terms of the lease, the lessee may remove upon the termination of the lease, may be assessed to him as real estate, and is liable to taxation as such for county and township purposes.

Office of the Attorney General,
Harrisburg, Pa., March 6, 1918.

Honorable Robert S. Conklin, Commissioner of Forestry, Harrisburg, Pa.

Sir: There was duly received your communication of the 18th ult., to the Attorney General, relative to the liability to taxation of a building erected by the lessee on State forest lands, leased under the Act of March 27, 1913, P. L. 12. An opinion is requested as to whether such a building is liable to be taxed for county purposes, either as personalty or realty, and whether the building in such case is held in trust by the Commonwealth for the use of the lessee of the land who erects the building.

The Act of February 25, 1901, P. L. 11, regulating the acquisition of forest lands by the State, provides in Section 8 thereof, inter alia, that "all such forestry reservation lands shall be exempt from taxation from the time of their acquisition" by the Commonwealth for said purpose.

By the Act of May 13, 1909, P. L. 744, and that of April 5, 1905, P. L. 111, lands acquired by the Commonwealth for forest reserves are subject to an annual charge of two cents an acre for the benefit of the schools in the district, and two cents an acre for the benefit of the roads in the township in which the lands are located, payable to the respective districts by the State Treasurer in manner as prescribed in said Acts.

The Act of March 27th, 1913, P. L. 12, by Section 1 thereof, provides as follows:

"That the Department of Forestry is hereby authorized to lease, for a period not exceeding ten years, on such terms and conditions as it may consider reasonable, to any citizen, church, organization, or school board of Pennsylvania, such portion of the State forest as the department may deem suitable, as a site for a temporary building to be used by such citizen or family for health and recreation, or as a site for church or school purposes."

Pursuant to and in accordance with the authority given it by said Act of 1913, the Department of Forestry has, as appears by your said communication, leased various lots of State forest land on which,

in some instances, the lessees have erected buildings. These leases are made subject to certain restrictions and conditions, as is shown in the form of the agreement used accompanying your communication. As I understand and interpret the agreement one of its conditions is that the lessee is given the right to remove the building or other structure, which he may erect on the leased premises, therefrom prior to the expiration of the lease or upon its rescission by the Department for a breach of its terms. In case the building is not so removed it becomes the property of the Commonwealth. It appears from your communication that in certain counties the commissioners thereof are proceeding to levy and collect a tax on these buildings.

The relation between the Commonwealth and the lessee of a tract of State forest land, leased in pursuance of said Act of 1913, is that of lessor and lessee. The Act itself fixes it as such and the agreement between the parties is to that effect. The Commonwealth can not be deemed a trustee holding in trust, for the use of the lessee, the building which the latter may erect on the leased premises.

As above mentioned, the lease stipulates that the lessee may remove his building prior to the expiration of the lease or, in case of a violation of its terms, within a reasonable time to be named by the Department. It is needless to point out that, in the absence of such permission, the building on the expiration of the lease would belong to the Commonwealth as being part of the real estate. Under said stipulation permitting its removal, as between the Commonwealth and the lessee, the building which the latter erects may be regarded as personalty, the ownership of which is vested wholly in him subject, of course, to the several restrictions set forth in the agreement. Inasmuch as such a building does not belong to any class of personalty taxable under the laws of this State, it follows that if taxable at all it is only so by virtue of being treated as realty for the purpose of taxation.

In my opinion, the question here submitted is governed by the case of *Bemis vs. Shipe*, 26 Penna. Superior Court, 42. In that case a stationary sawmill erected on leased land with the right on the part of the lessee of the land, who was the owner of the mill, to remove the same prior to a fixed date, was assessed to the lessee as real estate. The court sustained this, holding that it was liable to taxation as realty for county and township purposes. In the course of the opinion, which was delivered by Judge Beaver, it was said:

"It may be admitted that, as between the owners of the land and the owners of the mill, the latter may be regarded and treated by them as personal property, and yet it by no means follows that in contemplation of law for other purposes it is not real estate. Without the express permission of the owners of the land to remove

buildings prior to a certain date, if nothing whatever had been said in regard to them in the original lease, they would doubtless belong to the owners of the land at the expiration of the lease, as being part of the real estate, but such permission does not change the physical character of the property, nor does it in any way change its legal status, except as between the parties themselves and those claiming under them and as to the legal machinery through which the title of the lessees may be transferred to creditors or others who desire to secure their rights.

* * * *

"It can scarcely be conceived that the legislature, even without such a constitutional provision, should intend to exempt from taxation a building upon one tract of land, because it happened to be erected upon a leasehold, under a concession of the right to remove it at the termination of the lease, and impose a tax upon a precisely similar building on an adjoining tract, because it was erected by the owner, and yet, if the contention of the appellants is correct, that would be the inevitable result.

* * * *

"We have no doubt that, within the purview of the law for the purposes of assessments and taxation, the property, assessed to the plaintiffs and upon which the taxes, from the payment of which they seek to escape, have been levied, is real estate within the meaning of the first paragraph of the fourth section of the act of April 15, 1834, *supra*, and this would be so if the words 'mills and manufactories of all descriptions' had not been included therein."

This case was distinguished in *Dravo Contracting Company vs. Grambling*, 45 Superior Court 72, but the principle as stated in *Bemis vs. Shippe* was reaffirmed, of which case it was said:

"In that case, the property assessed for taxation was a mill situated on leased land. * * * *The plaintiff in that case also had an estate in land, which was distinct and subject to taxation.*"

The case of *The Mint Realty Company vs. Philadelphia*, 13 Dist. Rep. 513, has not been overlooked. There land belonging to the United States was sold under articles of agreement, and upon which land the purchaser under the agreement made certain improvements. Pending a further conveyance a tax was assessed on the land itself, which was held invalid upon the principle that land from the United States does not pass so long as the deed or patent therefor is withheld.

I see no such distinction in principle between the case of a building located on forest lands leased from the Commonwealth and that of *Bemis vs. Shipe*, supra, as would operate to avoid the application to the former of the rule laid down by the court in the latter. It would seem inequitable to exempt from taxation purely privately owned improvements erected on a leasehold from the State while subjecting thereto similar improvements on a like leasehold from other parties. The said Act of 1901, exempting forest lands from taxation, was for the benefit of the State and was merely a statutory recognition of the ancient doctrine that the State pays no taxes. It would be contrary to its true intent and spirit to construe it so as to relieve private property from taxation because located on these lands. A lessee of forest land has a distinct interest or estate therein. The tax would not be assessed against the land or interest of the Commonwealth, but solely upon this interest of the lessee together with his improvements in connection therewith whatever they might be.

Primarily this question concerns only the owner of a building erected on such leased lands and the municipalities seeking to collect from him a tax thereon. The interests or rights of the Commonwealth would or could in no way be affected or prejudiced in consequence of this tax. Under a sale of the lessee's property for non-payment of the tax, the purchaser thereat would simply take what the lessee had, subject to all the conditions and restrictions contained in the agreement between him and the Commonwealth. Many local districts have felt the loss of revenue arising from the withdrawal from the scope of taxation of the lands acquired by the State for forest reserves. The said Acts of 1905 and 1909 were passed to relieve this in some measure. The Commonwealth should not be too astute in finding a way for private property located on the leased forest lands to escape a taxation such as like property elsewhere bears. If any owner of a building on these lands feels aggrieved at the imposition of a tax thereon the courts are open to him to test out his rights relative thereto. No duty, however, rests on the Commonwealth or Department of Forestry to intervene in his behalf.

In accordance with the foregoing, I am of the opinion and so advise you that a building erected on State forest lands by a lessee of the land leased under the said Act of 1913, and which, under the terms of the lease, the lessee is given the right to remove from the land upon the termination of the lease, may be assessed to him as real estate and is liable to taxation as such for county and township purposes, payable by such owner of the building.

Very truly yours,

EMERSON COLLINS,
Deputy Attorney General.

IN RE HOSPITALS AND NURSES.

The Pennsylvania State Board of Examiners for Registration of Nurses is not given general supervisory power or authority over the various hospitals and training schools for nurses in the Commonwealth. Its specific duties is to examine applicants for registration as nurses to see if they are qualified to be registered nurses in this State. Suggestions to hospitals by the Board should not be arbitrary and should be limited strictly to matters referred to in the Act of June 4, 1915, P. L. 809.

If the suggestions of the Board for the examination of nurses are not complied with, the Board, in the exercise of its discretion, may refuse to approve the hospital as a training school possessing the necessary requirements for giving a pupil-nurse a full and adequate course of instructions.

Office of the Attorney General,
Harrisburg, Pa., April 12, 1918.

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 5th instant, enclosing copy of certain complaints made relative to the West Philadelphia Hospital for Women, of Philadelphia, the reply of the Hospital thereto, and the recommendations and suggestions which the Board proposes to make to the Hospital. You ask the Attorney General for his approval or suggestion in the matter.

I beg to advise you that the Pennsylvania State Board of Examiners for Registration of Nurses is not given general supervisory power or authority over the various hospitals and training schools for nurses in the Commonwealth. Its specific duty is to examine applicants for registration as nurses to see if they are qualified to be registered nurses in this State. In connection with that duty the Board is required to prepare and make a report for public distribution, at intervals regulated by the by-laws of the Board, of all training schools that are approved by the Board as possessing the necessary requirements for giving a pupil-nurse a full and adequate course of instruction.

In addition it is made the duty of the State educational director of training schools for nurses, under the direction of the Board, to assist in maintaining the necessary standards in the living, working and educational conditions of training schools for nurses. In other words, the Board, through its appointed State educational director of training schools for nurses, has a right to investigate the living, working and educational conditions of training schools and see that they conform to the necessary standards adopted by the Board, and approved as forming part of the necessary requirements for giving a pupil-nurse a full and adequate course of instruction. Any sugges-

tions along these lines, as limited in Section 7, of the Act of June 4, 1915, P. L. 809, may be given by the Board. They should not be arbitrary and should be limited strictly to the matters referred to in the Act, viz., the necessary requirements for giving a pupil-nurse a full and adequate course of instruction, and in connection therewith the necessary standards in the living, working and educational conditions of training schools for nurses.

A hospital is not bound to adopt your suggestions. On the other hand, if they are not adopted or complied with, the Board, in the exercise of its discretion, may refuse to approve it as a training school possessing the necessary requirements for giving a pupil-nurse a full and adequate course of instruction.

Your recommendations should be carefully gone over and limited strictly to the matters referred to in the Act. General matters of policy, in so far as they do not lower the standards in the living, working and educational conditions of training schools do not come within the province of your Board. On the other hand, if the conditions in a training school are such as to interfere with or prevent the school giving a pupil-nurse a full and adequate course of instruction—and this includes the maintenance of the necessary standards in its living, working and educational conditions—then it is the duty of your Board not to approve the training school. You are justified in pointing out defects in those matters, the remedying of which will permit the granting of your approval.

This Department can not specifically advise you whether the recommendations which you have submitted are proper or not. It can only point out the limits of your duties and authority so that such recommendations or suggestions as you may make will be strictly within those limits.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

IN RE TEACHERS RETIREMENT.

The Act of July 18, 1917, P. L. 1043, does not authorize the payment of a retirement allowance to any school employe who for any reason discontinues school service prior to July 1, 1919, when the Act goes into effect. The allowance for disability retirement under the Act is limited strictly to contributors.

Office of the Attorney General,
Harrisburg, Pa., April 12, 1918.

Mr. H. H. Baish, Secretary, State Retirement Board, Harrisburg, Pa.

Sir: This Department is in receipt of your favor of the 5th instant, asking to be advised whether the Act of July 18, 1917, P. L. 1043, authorizes the payment of retirement allowance to any school employe who for any reason discontinues school service prior to July, 1919.

It seems to me that the provisions of the Act which you have quoted in your inquiry settle the question. The Act makes the following definitions:

“‘Contributor’ shall mean any person who has an account in the annuity savings fund.”

“‘Employee’s Annuity’ shall mean payments for life, derived from contributions made by a contributor as provided in this act.”

“‘Retirement Allowance’ shall mean the State annuity plus the employe’s annuity.”

Its provisions relative to retirement for superannuation (see Section 14) are limited strictly to contributors. Its allowance for disability retirement (Section 13) is also limited to contributors. In fact, the whole Act shows that it has no application to any who are not contributors, and as the retirement system does not go into force until the first day of July, 1919, they must be contributors from that date.

There is therefore no provision in the Act for retirement allowance to any school employe who for any reason discontinues school service prior to July 1, 1919.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

PARDONS.

A person convicted while on parole of another offence for which he was subsequently pardoned, must be considered as still on parole for the first offense, and, unless other circumstances appear, is entitled to his freedom on parole.

Acts of May 10, 1909, P. L. 495, June 19, 1911, P. L. 1055, and June 3, 1915, P. L. 780, considered.

Office of the Attorney General,
Harrisburg, Pa., June 6, 1918.

Honorable George D. Thorn, Secretary, Board of Pardons, Harrisburg, Pa.

Sir: I am in receipt of your communication of the 23d ult., relative to the effect of a pardon on the parole of a person convicted of a prior offense. I understand the facts to be as follows:

A person convicted and having served the minimum period of his indeterminate sentence was paroled in the manner provided by law, and while on parole committed, and was convicted of, another criminal offense. Upon application, the Pardon Board recommended a pardon for the second offense, which pardon the Governor in due course granted. Upon the foregoing, you inquire as to the effect of the pardon upon the parole.

The authority of the court to impose an indeterminate sentence, and of the Governor to parole after the minimum period thereof, was first comprehensively provided for by the statute of May 10, 1909, P. L. 495. At the legislative session next following, the Act of June 19, 1911, P. L. 1055, was passed and, with its amendment of June 3, 1915, P. L. 788, provided a more simple and complete system.

Whether paroled under the Act of 1909, or the statute of 1911, the law is clear if nothing else appeared that the convict violated his parole upon his conviction of the second offense, Section 10 of both statutes expressly providing that—

“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 such period”

be compelled to serve the remainder of the term which he would have been compelled to serve but for his parole; the acts being somewhat different as to the priority of the serving of the sentences. A pardon, however, was granted for the second offense, and I am of the opinion that the effect of this pardon was, not only to relieve the convict from the punishment for this crime, but to eradicate the conviction itself, so that in contemplation of law a conviction for the second offense never occurred.

The effect of a pardon has been settled in this Commonwealth in the case of *Diehl et al. v. Rodgers et al.*, 169 Pa. 316, where the court, quoting from *ex parte Garland*, 71 U. S. 333, approved the following rule:

"A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out the existence of the guilt, so that in the eyes of the law the offender is as innocent as if he had never committed the offense. * * * It removes the penalties and disabilities, and restores him to all his civil rights."

The law is clear, therefore, that no violation of the convict's parole has taken place by the conviction of a crime while on parole as contemplated by Section 10 of the act above quoted.

The only other question arising is whether the parole Board may find the parole convict delinquent, and that his parole has been broken by reason of conduct, which, while not constituting a crime—a pardon having been granted—was nevertheless of such a character that the freedom of the convict should cease, or, briefly stated, whether the Parole Board can look behind the fiction of law as to the effect of the pardon, and base their action upon the facts under the authority of Section 14 of the Act of 1911, which, as amended by the Act of 1915, provides as follows:

"Whenever it shall appear to the Board of Inspectors of a penitentiary that a person who has been sentenced thereto under this act, and released on parole by commutation containing a condition that the convict shall be subject to this act, has violated the terms of his or her parole, the secretary of said Board of Inspectors may issue a warrant for the arrest of said person, in the same manner as in the case of an escaped convict. Upon said convict being returned to the penitentiary, he or she shall be given an opportunity to appear before its Board of Inspectors, and, if said board shall find that said parole has not been broken, the prisoner shall be released, and continue subject to the terms of said parole; but, if it be found that said parole has been broken, said board shall declare such convict delinquent; after which a full report of the said case shall be forwarded immediately to the Governor, who thereupon may issue his mandate, reciting the date of commutation, for the recommitment of such convict for breach of parole, to the penitentiary of original commitment, to be imprisoned in said penitentiary for the remainder of a period equal to the unexpired maximum term of such prisoner as originally sentenced (computing the same from the date of arrest for breach of parole, unless sooner released on parole or pardoned; but, if the Governor shall disapprove the finding of the Board of Inspectors, the said prisoner shall be released upon the conditions of his original parole."

This section is somewhat different from the provisions of the Act of 1909 in that, under the earlier law, the Governor declared, in the first instance, whether the convict had violated his parole, while in the later act the fact of violation is first determined by the Board of Inspectors of the penitentiary whose findings are subject, however, to the approval or disapproval of the Executive.

Under either of the laws, the final authority in the determination of the violation of a parole is the Governor, and I am of the opinion that there is no rule of law or reason which would justify any action in disregarding the full legal effect of a pardon, and basing their action upon the facts which constituted the crime for which the pardon was granted. The Board of Inspectors are bound by the pardon because it emanated from a superior authority and in the consideration of the question of the violation of a parole, they are to consider a pardon as blotting out the acts of the person as well as the crime which these acts, had not a pardon been granted, would have constituted. I am of the opinion that the Governor is also bound to give a pardon its full legal effect, and that he cannot look behind the fiction of law and consider, as existing facts, those acts which, there being no pardon, would have constituted a crime; and, certainly it is difficult to seriously conceive of any Executive granting a pardon and then declaring a convict as having violated his parole by reason of the very acts which constituted the crime for which the Governor believed he should be pardoned.

You are, therefore, accordingly advised that a person convicted while on parole of another offense, and for which he was subsequently pardoned, must be considered as still on parole for the first offense, and, unless other circumstances appear, is entitled to his freedom on parole.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

PENNSYLVANIA TRAINING SCHOOL—MORGANZA, PA.

The school may replace a building destroyed by fire by purchasing an existing building and the Board of Public Grounds and Buildings may pay out of the insurance fund the cost of such purchase.

Office of the Attorney General,
Harrisburg, Pa., June 26, 1918.

Mr. W. F. Penn, Pennsylvania Training School, Morganza, Pa.

Sir : I beg to acknowledge receipt of yours of June 20th, 1918, as follows:

"Desiring to further call your attention to the matter of the purchase of the Boland property adjoining the School grounds, the committee of our Board which met you at your office in Philadelphia last Friday, held a meeting shortly thereafter and directed me to write and say to you that the property will be a very valuable addition to the school's assets, and that the opportunity for its purchase should not be missed. Some months ago, a house which has for a number of years been used by the Chief Engineer of the Institution, burned, and the insurance money collected therefrom was turned into the State Treasury, through the Department of Public Grounds and Buildings. The Public Grounds and Buildings Commission expressed a desire to replace the house, and plans were drawn for that purpose. For a very small house the lowest bid taken was more than \$7,000 and the matter was postponed. At the time of our meeting with the Commission, the possible purchase of the Boland property was mentioned, and met with approval. However, at that time the institution had no option, and only recently an option was secured for the purchase of the property in the sum of \$5,000. We need the house very much at this time, and if it is purchased, possession will be given immediately. The house is built directly facing the entrance of the school grounds, and if occupied by an employe of the school, with direct telephone communication to the Administration Building, it will afford a considerable protection to us on many occasions. In the purchase of this property at this time the State will probably save more than the \$2,000 and in addition thereto will give us a house at once when it is so badly needed, whereas if bids were taken now, it is quite likely that before the plans can be approved and contracts let, it would be well into next year before the building would be finished.

Taking everything into consideration, our Board is of the opinion that the purchase of this property would be the practical and economical thing for the State to do at this time, and respectfully requests that your Department recommend to the Public Grounds and Buildings Commission that such action be taken."

I beg to advise you:

The Act of May 14, 1915, 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,"

provides, among other things—

"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 especially 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 other 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: Provided, That the provisions of this act shall not apply to armory buildings owned by the Commonwealth of Pennsylvania, and under the supervision of the Armory Board of the State of Pennsylvania."

The proposition of your Board is that instead of restoring, rebuilding or replacing the destroyed structure upon the place of its former location or within the present property, owned by the Commonwealth of Pennsylvania, you desire to purchase a property with-

out the Commonwealth's present ownership to replace the building so destroyed, the property so intended to be purchased to be in substantial accord with the original character, use and purpose of the property destroyed.

I am of the opinion that such replacement is within the letter and spirit of the Act and that the Board of Public Grounds and Buildings would be fully justified to pay out of the Insurance Fund of the Commonwealth the necessary moneys for the purchase of this property.

Yours very truly,

FRANCIS SHUNK BROWN,
Attorney General.

BOARD OF CENSORS.

Where salaries are fixed by Act of Assembly, it is unlawful to increase them without a specific appropriation for such purpose.

Office of the Attorney General,
Harrisburg, Pa., July 31, 1918.

Frank R. Shattuck, Esq., Chairman, Board of Censors, Philadelphia,
Pa.

Sir: Your inquiry of the 29th instant, relative to the petition of the employes of your Board, dated the 24th instant, for increase of salaries, which petition is herewith returned to you, was duly received. While we all must appreciate the thorough merit and good faith of the appeal of the petitioners, certain constitutional and statutory restrictions make it impossible to grant the request. The number of employes and the salaries to be paid them is fixed by the Censorship Act of 1915, P. L. 534, Section 13, and somewhat extended by the provisions for the State Board of Censors in the General Appropriation Act of 1917.

Section 16, of Article III, of the Constitution provides that—

“No money shall be paid out of the treasury except upon appropriation made by law, and on warrant drawn by the proper officers in pursuance thereof.”

While not bearing directly on your inquiry since the employes of your Board are not “public officers” within the technical meaning of

the term, it is well to call attention, as showing evidence of the policy of the State on the proposition generally, to Section 13 of the same Article of the Constitution, which provides:

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

Following the disclosures in the so-called Capitol Graft cases in which it appeared that appropriations had, in devious ways, unlawfully and fraudulently been extended, and to preclude any further possible repetition of such acts, there was passed the Act of May 11, 1909; P. L. 519—

"Making it a misdemeanor for any officer of this Commonwealth to authorize to be paid, or for the State Treasurer to pay, any money out of the State Treasury except in accordance with the provisions of an act of assembly specifying the amount and purpose of the expenditure; or for any officer of this Commonwealth to authorize to be paid, or for the State Treasurer to pay, any money out of the State Treasury in excess of the amount of such specific appropriation; and providing penalties for the violation thereof."

I must regretfully advise you, therefore, that, as to the employees specifically mentioned and where salaries are fixed in the Acts referred to, your Board would have no authority to increase any of the salaries therein provided.

Under the provision at the end of Section 13 of the Act of 1915, you, as Chairman, may, with the approval of the Governor, appoint such additional employees as the work of the Board may necessarily require, the salaries of such additional employees not to exceed in the aggregate the sum of five thousand dollars annually. I think that you might increase the salaries of employees so appointed within the limitation provided. It would seem to me, however, that, under the circumstances, it would be unfair to the other employees to do so.

Yours very truly,

JOSEPH L. KUN,
Deputy Attorney General.

STATE BOARD OF EXAMINERS OF PUBLIC ACCOUNTANTS.

The fees charged to applicants for examination cannot exceed \$25.

Office of the Attorney General,
Harrisburg, Pa., August 12, 1918.

M1. Frank Wilbur Main, Secretary State Board of Examiners of Public Accountants, 723 Farmers Bank Building, Pittsburgh, Pa.

Dear Sir: We have your favor requesting an opinion of the Attorney General upon Rule No. 3 adopted by your Board. The rule is as follows:

"Applicants must be citizens of the United States and have resided or have had an office for the regular transaction of public accounting in the State of Pennsylvania for at least two years and must be over the age of twenty-one years and must satisfy the Board of Examiners that they are of good moral character. All applicants must furnish satisfactory evidence that they have completed an academic four year high school course of study or such an education which in the opinion of the Board is at least equivalent to the same. In the event that satisfactory evidence is not so produced, such applicants will be required to take a preliminary educational examination at such time and such places as may be designated by this Board. For such preliminary educational examinations, an additional fee of \$15.00 for each examination will be made."

You ask whether the Board can exact a fee of \$15.00 for a preliminary examination and then a fee of \$25.00 for regular examination, from the same applicant.

The Act of March 29, 1899, as last amended by the Act of June 4, 1915, which creates your Board, provides in Section 2, in part, as follows:

"The examination for certificates shall be based upon an examination in commercial law and general accounting. * * * In no event, however, shall a special examination be given or a degree granted to any person, except by passing a regular examination as herein provided for. * * * The fees provided by this act shall be \$25.00 for each applicant."

The Act of Assembly limits the fees to be charged to each applicant to \$25.00. If the Board sees fit to require, under certain conditions, a preliminary examination, it may impose a fee of \$15.00 for such examination. However, in the event that the applicant passes such

examination, and takes the final examination, the Board could then impose only \$10.00 for a final examination because the language of the statute is plain that "the fees provided by this Act shall be \$25.00 for each applicant."

Therefore, no more can be charged to any one applicant. We suggest that you amend your rule accordingly.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

IN RE REVOKING PHYSICIAN'S LICENSE.

The Bureau of Medical Education and Licensure has the power to revoke the right to practice medicine where there was a conviction of such practitioner for procuring a criminal abortion, even though the offense and conviction were obtained prior to the Act of May 2, 1917, P. L. 271, amending the Act of June 3, 1911, P. L. 639.

Office of the Attorney General,
Harrisburg, Pa., August 21, 1918.

Dr. J. M. Baldy, President Bureau of Medical Education and Licensure, Philadelphia, Pa.

Dear Sir: Your favor of recent date is at hand. You ask whether the Bureau of Medical Education and Licensure has authority to revoke the license of the physician practicing medicine who has been convicted of procuring an abortion.

Your inquiry is based upon Section 2, paragraphs 1 and 2 of the Act of May 2, 1917, P. L. 271, amending the Act of June 3, 1911, P. L. 639, as amended by the Act of July 25, 1913, P. L. 1220, and you ask whether the Bureau of Medical Education and Licensure has power to revoke the license where the offense was committed in 1915, and the conviction obtained in 1916, prior to the passage of the Act. You also ask whether the Bureau has the power to revoke a license for such offense committed prior to the passage of the Act where the conviction was obtained after its passage.

If you were compelled to resort only to the amending Act of 1917, it might be a serious question whether this would not be an additional penalty and therefore as applied to offenses committed prior to its passage an *ex post facto* law.

But you are not restricted to the Act of 1917. The original Act of June 3, 1911, P. L. 639, provides in Section 12, *inter alia*:

"The Bureau of Medical Education and Licensure may refuse, *revoke*, or suspend the right to practice medicine or surgery in this State for any and all the following reasons, to-wit: the conviction of a crime involving moral turpitude."

There can be no doubt that procuring an abortion by a physician is a crime involving moral turpitude. It has been held that the attempt to procure an abortion by one who is not a physician is such a crime. *Filber v. Dautermann*, 26 Wis., 518.

I am therefore of opinion, and so advise you, that your Bureau had the power, under the original Act of 1911, to revoke the right to practice medicine where there was a conviction of such practitioner for procuring a criminal abortion, and that the Bureau, after proper proceedings and hearing, may revoke the license of any practitioner so convicted, even though the offense and the conviction were obtained prior to the amendment of 1917.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

CONDENMATION OF LANDS BY VALLEY FORGE PARK COMMISSION.

The Act of June 23, 1917, P. L. 640 contemplates the acquisition of land not exceeding 1500 acres, at any time deemed expedient by the Commission without regard to the available amount of money appropriated for this purpose.

Office of the Attorney General,
Harrisburg, Pa., September 4, 1913.

Mr. J. P. Hale Jenkins, Norristown, Pa.

Sir: I have your communication of the 13th ult., asking for an interpretation of the Act of June 23, 1917, P. L. 640. This statute amends the first section of the Act of May 30, 1893, P. L. 183, entitled "An act providing for the acquisition by the State of certain ground at Valley Forge for a public Park, and making an appropriation therefor," as amended, and provides that for the purpose of perpetuating and preserving the site on which the Continental Army under George Washington was encamped, etc.,

"the title to and ownership in the ground covering said site, including Forts Washington and Huntingdon, and the entrenchments adjacent thereto, and adjoining grounds, in all not exceeding fifteen hundred acres, the location and boundaries thereof to be fixed by the Commissioners of Valley Forge Park, shall be vested in the State of Pennsylvania, to be laid out, preserved and maintained forever, as a public place or park."

The act as originally passed provided for the acquisition of land not exceeding two hundred and fifty acres. This quantity was from time to time increased until, by the amendment of 1917, the maximum amount was fixed at fifteen hundred acres.

The unexpended balance of specific legislative appropriations for the purchase or condemnation of this land being insufficient to pay for the full quantity of land whose acquisition is desired by your Board, you now inquire whether the amount of land that can be acquired at any time is limited by the amount of specific appropriations, or, whether the act contemplates an acquisition of the full fifteen hundred acres, or any part thereof, in anticipation of appropriations to compensate owners of the land taken.

I am of the opinion that the act contemplates an acquisition of any amount of land not exceeding fifteen hundred acres at any time deemed expedient by the Commissioners and without regard to the available amount of moneys specifically appropriated for this purpose.

This statute does not confer upon the Commissioners of Valley Forge Park the right to condemn land, but the State itself appropriates the property directly and by virtue of the express terms of the statute. The power of the Commissioners is limited to designating and marking the boundaries of the land deemed expedient by them to be acquired and as soon as this is done, the title is immediately vested in the State.

This construction was given the act in an opinion to Honorable Richard L. Jones, Chairman of the Land Committee of your Commission, on November 14, 1917, by First Deputy Attorney General Keller, and I deem it unnecessary to review his reasons which are fully set forth in the opinion referred to.

That the Legislature did not intend that the amount of land acquired from time to time should be limited by specific appropriations is further indicated by the Act of July 3, 1895, P. L. 508, Section 1, of which appropriates a certain sum "to complete the purchase or condemnation money for lands already taken by the State for a public park known as Valley Forge."

The legislative intent is sufficiently clear but the question arises as to whether the operation of the statute is limited to specific appropriations by Article I, Section 10, of our State Constitution which provides, *inter alia*, as follows:

"No person shall, for the same offense, be twice put in jeopardy of life or limb; nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured."

The original Act of 1893 provides a procedure where in the event of an appropriation by the State, the damages for any property taken may be assessed; the award of the assessing jury may be reviewed, and enforced "in the same manner as now provided by law in the taking of land for the opening of roads in said county," and I am of the opinion that this constitutes a sufficient security within the meaning of the above constitutional provision.

The law is well settled in Pennsylvania that the foregoing constitutional provision is complied with, if adequate remedy is provided, by which the owner can obtain compensation without reasonable delay. While a corporation or individual having a right to eminent domain must pay or secure the price of a property before it is taken, the State itself need only provide the means of payment. The public purse is an adequate fund and is considered an adequate security.

In *Yost's Report*, 17 Pa. 524, commissioners were appointed by an Act of Assembly to lay out streets at Norristown, Montgomery county. The means for compensation for the persons injured or damaged by the laying out of the streets was designated in another statute which read—

"The person or persons who shall sustain any damage shall be entitled to recover the same, in the same manner as if such street had been laid out or widened pursuant to law by order of the Court of Quarter Sessions of said county."

The constitutionality of the first mentioned act was attacked on the ground that it authorized the taking of private property for public use without the preliminary payment of damages, and without providing adequate security therefor. In upholding the constitutionality of the act, the Supreme Court said, on page 531:

"Where corporations or individuals seeking their own advantage, are invested with the high privilege of seizing the property of the citizen, it is manifestly just, that they should be compelled to pay or provide adequate security for compensation before the citizen is disposed. They are supposed to have an interest in the exercise of the privilege sufficient to induce them to pay the compensation or give the required security. But this reason for the constitutional provision has no application to cases in which duties are imposed upon individuals instead of privileges conferred. In the one case they may exercise the privileges, or not, at discretion; they exercise them for their own advantage (the public advantage being only an incident), and they have an interest which is justly chargeable with the burden of making compensation. But in the other case the individuals em-

ployed are invested with no privileges, but are obliged to obey the mandate of the state without deriving any special advantage from it, and have no interest in the matter whatever, which would render it just to impose upon them the burden of paying or securing compensation to the owner, or which would present any inducement thus to involve themselves for the benefit of the public. They are the mere agents of the Commonwealth; their action is her action, and the duty of awarding compensation rests upon her. The difference between the two classes of cases has been held to be that 'a corporation' or an individual 'must pay or secure the price of the property before it is taken; but the state must provide the means of payment at the passing of the Act: 6 W. & Ser. 114. And it has been decided in a sister state; 'that compensation must be either ascertained and paid before the property is thus appropriated, or an appropriate remedy must be provided upon an adequate fund, whereby compensation may be obtained through the medium of courts of justice, if those whose duty it is to make it refuse to do so.' 'And the public purse, or the property of the town or county upon which the assessment is to be made,' has been held to be 'an adequate fund' *Bloodgood v. M. & H. R. R. Co.*, 18 Wend. 18. The requirements of the constitution and the purposes of justice are fully complied with in this case, if an appropriate remedy to enforce compensation existed at the time the commissioners were authorized to lay out or widen the street. The form of the remedy is unobjectionable; and the property of the county of Montgomery liable to assessment is, we think, an adequate security. That security appears to have been provided by the legislature."

The Act of 1893 specifically provides that where the amount of compensation is ascertained by a jury, "their award shall be reviewed and enforced *in the same manner as provided by law in the taking of land for the opening of roads in said county*"; substantially the same character of security as was upheld in Yost's Report. Certainly the State of Pennsylvania, with its paramount taxing powers, must be deemed more adequate than a county, an entity of the State's own creation.

The whole question has been thoroughly discussed in the case of *In re Valley Forge Park*, 14 Mont. Law Reports, 129, on a petition to revoke the appointment of the viewers to assess damages for certain land marked by the Commissioners on the ground that the land could not be condemned because no means of compensation or payment of the damages have been provided by the Legislature. After indicating that this was an appropriation by the State and not by a private corporation, the court said:

"It is not necessary that the compensation should be actually ascertained and paid before the property is appropriated; it is enough that an adequate remedy is provided by which the owner can obtain compensation without unreasonable delay.

* * * *

The act under which these proceedings are had provides that the state shall pay for the land taken; that unless the parties agree a jury shall assess the value of the land taken; and that the finding can be enforced as in road cases. Here we have the whole machinery for ascertaining the damages and for their collection, which fully complies with the constitutional requirement."

See also *Shoemaker v. United States*, 147 U. S. 362; *United States vs. Gettysburg Electric Railway*, 160 U. S. 668; *Long vs. Fuller*, 68 Pa. 170; *Bridge Co. vs. Union, &c., Counties*, 232 Pa. 255; *State Highway Commissioner vs. State Turnpike Co.*, 242 Pa. 171.

In *re United States*, 24 Pitts. Leg. J. (O. S.) 105, objection was made to condemnation proceedings instituted by the Federal government on the ground that there was not sufficient money remaining of the amount appropriated by Congress to pay for the damage sustained by the complainant whose property had been seized. This contention failed to impress the court and it said:

"It assumes what at present we have no means of knowing and it is not to be presumed that the government will not provide, if not already done, all that will be required to pay such compensation as acceptant may appear to be entitled to."

The intention of the Legislature being clear and not restrained in its operation by the Constitution, you are therefore now advised that the Act of 1893, as amended, operates to appropriate land whose boundaries are marked out and designated by the Commission notwithstanding the fact that there are no moneys available from specific appropriations, to compensate the owners of the land, so acquired.

Very truly yours,

FRANCIS SHUNK BROWN,
Attorney General.

STATE WATER SUPPLY COMMISSION.

The Commission may employ labor, secure material and itself do the work of building a dike at Lawrenceville, Pa., authorized by law.

Office of the Attorney General,
Harrisburg, Pa., September 5, 1918.

Mr. R. A. Zentmyer, State Water Supply Commission, Harrisburg,
Pa.

Dear Sir: This Department is in receipt of your favor of the 27th ult. relative to the Act of July 25, 1917, authorizing the Water Supply Commission to build a dike or dikes for the protection of property in the Borough of Lawrenceville, Tioga county, and making an appropriation therefor. (See Appropriation Acts of 1917, p. 187.)

In view of fact that the Commission has twice made efforts by newspaper advertisement to interest prospective bidders and secure proposals for doing the work, in accordance with the plans, specifications and estimates furnished by the Commission, but has received no bid as the result of such advertisement, I am of opinion that under the language of the first section of the Act the Commission can have the work done under the supervision of one of its assistant engineers, securing labor, teams and material directly for the work, provided you are satisfied that the work can be completed within the appropriation of five thousand dollars made in said Act. Unless you are reasonably certain on this point, the work should not be undertaken.

Yours very truly,

WILLIAM H. KELLER,
First Deputy Attorney General.

REVOCATION OF MEDICAL LICENSE.

The Board of Medical Education and Licensure has no power to revoke the license of a physician whose right to practice was obtained prior to the Act of June 3, 1911, P. L. 639, if the offense was committed prior to the Act of May 24, 1917, P. L. 271.

Office of the Attorney General,
Harrisburg, Pa., October 2, 1918.

Dr. J. M. Baldy, President Bureau Medical Education and Licensure, Philadelphia, Pa.

Dear Sir: We have your letter asking whether the Bureau of Medical Education and Licensure has authority to revoke the license of a

physician practicing medicine who has been convicted of procuring an abortion, and also your subsequent letter stating that your inquiry relates to a physician licensed to practice prior to the Act of 1911.

The Act of June 3, 1911, P. L. 639, in Section 12, provides, *inter alia*:

"The Bureau of Medical Education and Licensure may refuse, revoke or suspend the right to practice medicine or surgery in this State for any and all the following reasons, to wit, the conviction of a crime involving moral turpitude."

There can be no doubt that the procuring of an abortion by a physician is a crime involving moral turpitude. It has been held that an attempt to procure an abortion by one who is not a physician is such a crime. *Filber vs. Dautermann*, 26 Wis. 518.

[The question is whether the original Act of 1911 authorizes the Bureau of Medical Education and Licensure to revoke the right to practice where that right was obtained prior to the passage of the Act. It must be held that it did not.

Deputy Attorney General Cunningham so held, in an opinion dated September 11, 1913, *Attorney General's Opinions, 1913-1914*, page 307.

The title of the Act of 1911 provided, among other things, "for revocation and suspension of licenses *given* by said Bureau."

The first paragraph of Section 12 authorizes the Bureau of Medical Education and Licensure to refuse to grant a license upon the presentation "of a court record showing a conviction in due course of law, of said person for producing or aiding or abetting in procuring a criminal abortion or miscarriage, by any means whatsoever," and the Bureau is authorized upon such evidence and proof "to cause the name of such convicted person, if a *licentiate*, to be removed from the record in the office of Superintendent of Public Instruction."

The second paragraph of Section 12 which is above quoted, would, standing alone, be broad enough to confer the power to revoke the right to practice, whether obtained before or after the passage of the Act of 1911, but the third paragraph of that section provides:

"Any person who is a *licentiate*, under this act, or who is an applicant for examination for licensure to practice medicine or surgery in this State, and against who are preferred *any of the foregoing charges* for causing the revocation or suspension of licenses * * * shall be furnished by the Bureau of Medical Education and Licensure with a copy of the complaint," etc.

If the second paragraph of Section 12 was intended to include those practicing before the passage of the Act, why did the last paragraph of the Section include them in the provisions for notice and trial? They are not included. The Legislature surely did not intend to provide for notice of a proceeding to revoke the licenses granted

under the Act, and give the Bureau of Medical Education and Licensure power to revoke the licenses obtained prior to the passage of the Act, without any notice or trial. The only inference is that it was the legislative intention that the revocation referred to licenses granted by the Bureau.

The title to the Act of 1911 limits the power of revocation to "licenses given by said Bureau." This title does not include the power of revocation of the right to practice obtained before the creation of the Bureau. The Legislature of 1913 apparently so construed it. The Legislature of that year, by the Act approved July 25, 1913, P. L. 1220, struck out the word "given" in the title, but did not change the context of the Act of 1911.

Deputy Attorney General Cunningham held that the amendment of the title only was not sufficient to confer on the Bureau the right to revoke or suspend the right to practice, obtained prior to the creation of the Bureau.

The Legislature of 1917 (P. L. 271) amended Section 12 of the Act by giving in terms the right to the Bureau of Medical Education and Licensure to revoke the licenses, or the right to practice, of physicians obtained prior to the Act of 1911.

The question then arises as to whether the Bureau has the right to revoke a license of a physician convicted of procuring an abortion where the offense was committed prior to the Act of May 24, 1917, P. L. 271.

This Act unquestionably increases the punishment for the crime to the extent of authorizing the revocation of the practitioner's right to practice. It is, therefore, as to the offense committed prior to May 24, 1917, an *ex post facto* law. The date when the offense was committed, and not the date of trial, determines the punishment which must be meted out for that offense.

I am, therefore, of opinion, and so advise you, that the Board of Medical Education and Licensure has no power to revoke the license of a physician whose right to practice was obtained prior to the Act of June 3, 1911, if the offense was committed prior to the Act of May 24, 1917.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

BOARD OF COMMISSIONERS OF NAVIGATION OF THE STATE OF
PENNSYLVANIA.

The Board has no power to levy a charge for the removal of sand and gravel from the Delaware river.

Office of the Attorney General,
Harrisburg, Pa., December 2, 1918.

George F. Sproule, Esq., Secretary Board of Commissioners of Navigation, 349-351 Bourse, Philadelphia, Pa.

Dear Sir: This Department duly received your communication of recent date addressed to the Attorney General, asking for an opinion covering the question of the right of your Board acting in conjunction with the Board of Commerce and Navigation of the State of New Jersey, to make a charge for the removal of sand and gravel from the bed of the Delaware river.

The navigable portion of the Delaware river constitutes navigable waters, within the meaning of the Acts of Congress. The United States has supreme control in the regulation of navigation over that river. *United States vs. The Montello*, 20 Wall. 430; 22 L. ed. 391; *Gibson vs. United States*, 166 U. S. 264; 41 L. ed. 994.

The United States has, by Act of Congress, fixed the harbor lines along the Delaware River and the Board of Commissioners of Navigation of the State of Pennsylvania is limited in its jurisdiction to those harbor lines. The harbor lines of the Delaware river have been fixed pursuant to Acts of Congress.

The powers of the Board of Commissioners of Navigation of the State of Pennsylvania must be gathered from the Act of June 8, 1907, P. L. 496. There appears to be nothing in that Act of Assembly which authorizes the Board of Commissioners of Navigation to levy a charge for the removal of sand or gravel from the bed of the Delaware river beyond the harbor lines. While the Delaware river is subject to the jurisdiction of the United States for the purpose of navigation, the bed of the river belongs to the states of Pennsylvania and New Jersey. *Gibson vs. United States*, *supra*.

The State of Pennsylvania holds the soil under its portion of the Delaware river as a trustee for the public use. The Congress of the United States has provided that the bed of navigable rivers may be dredged or removed with the consent of the United States. If gravel or sand were removed pursuant to such consent, the State of Pennsylvania would have the right to impose a charge for the removal thereof, but there is in existence now no Act of Assembly which authorizes the levy of such charge. *State vs. Akers*, 140 Pac. 637; *State vs. Southern Sand and Material Company*, 167 S. W. 854.

The subject is a proper one for the joint legislative action of the states of Pennsylvania and New Jersey, but as the law now stands, I have to advise you that the Board of Commissioners of Navigation of the State of Pennsylvania have no authority to levy a charge for the removal of sand or gravel from its portion of the river beyond the harbor lines.

Very truly yours,

WM. M. HARGEST,
Deputy Attorney General.

PENNSYLVANIA BOARD OF PHARMACY.

The Board may not refuse to make a reciprocal agreement with the New Jersey Board of Pharmacy merely because that Board has not become an active member of the National Association of Boards of Pharmacy.

Office of the Attorney General,
Harrisburg, Pa., December 3, 1918.

Mr. Lucius L. Walton, Secretary Pennsylvania Board of Pharmacy,
Williamsport, Pa.

Dear Sir: This Department is in receipt of your recent favor asking whether the rules of your board with reference to reciprocal agreements with the boards of pharmacy of other states, are proper.

Your request for an opinion has been prompted by an application of a registered pharmacist of this State to be registered as a pharmacist without examination in New Jersey.

The facts I understand to be as follows:

The Pennsylvania Board of Pharmacy was created by the Act of May 17, 1917, P. L. 208. That Act provides that it is

"to consist of five persons * * * from among the most skillful pharmacists in Pennsylvania, who are not teachers or instructors in any educational institution teaching pharmacy; each appointee must have been registered as a pharmacist in Pennsylvania for at least ten years previous to his appointment, and he must be actually engaged in conducting a pharmacy at the time of his appointment."

The Board is required by Section 3 of the Act to

"examine all persons in the science of pharmacy and its allied branches who shall make application for registration as pharmacists or assistant pharmacists; and that

the said Pennsylvania Board of Pharmacy, or a majority of them, shall grant to such persons as may be qualified registration and certificates of competency and qualification, which shall entitle the holders thereof to all the privileges of a pharmacist or assistant pharmacist, under the provisions of this Act, as may be specified therein."

Section 4 provides the qualifications for each applicant for examination and registration as a pharmacist.

Section 5 provides that each applicant shall pay to the Pennsylvania Board of Pharmacy an examination fee of five dollars, and if the applicant passes a satisfactory examination, the Board shall grant the applicant registration and a certificate of competency and qualification as a pharmacist, upon the payment of a fee of twelve dollars:

Section 16 provides:

"That the Pennsylvania Boards of Pharmacy may register as a pharmacist, without examination, any person who was duly registered as a pharmacist by examination in some other state: Provided, That the said person shall produce satisfactory evidence of having had the required secondary and professional education demanded of applicants for registration as pharmacists under the provisions of this Act; And provided also, That the State in which such person was registered shall grant registration as a pharmacist, without examination, to pharmacists duly registered by examination within the meaning of this Act. A fee of twenty-five dollars shall be paid for such registration."

Section 10 of the Act provides that:

"The Pennsylvania Board of Pharmacy shall make uniform rules and regulations for the enforcement of this Act, including the forms of application for registration in accordance therewith."

It appears that there is a National Association of Boards of Pharmacy organized for the purpose of bringing about reciprocal registration of pharmacists, without examination, and establishing uniformity in examination and standards of requirements in the various states. This National Association is composed of officers and members of boards of pharmacy of many states, and it endeavors to see that the standards adopted and agreed upon by the various state boards of pharmacy are properly maintained in each state.

The Pennsylvania State Board of Pharmacy, being of opinion that this National Association was the best course through which the

guaranty of uniform examinations and requirements could be obtained, became an active member of the National Association. The boards of pharmacy of forty or more other states are members of this Association.

Upon becoming a member of the National Association the Pennsylvania Board adopted the following rule:

"An applicant for registration and certificate as pharmacist, without examination, as provided in Section 16 of the Act of May 17, 1917, shall apply for the same through the National Association of Boards of Pharmacy, and upon the official application form issued by the association."

The application which the National Association prescribes, and which the Pennsylvania Board of Pharmacy demands from every applicant, requires, among other things, the fee prescribed by the Board of Pharmacy of the State to accompany the application, and also an additional fee of fifteen dollars to be paid to the National Association.

This application shows that no registration will be asked for or granted unless the State Boards reciprocally comply with the rules and regulations of the National Association.

The New Jersey Board of Pharmacy has requested the Pennsylvania Board to make a reciprocal agreement with it.

The New Jersey Board is not an active member of the national Association, and for that reason the Pennsylvania Board has declined to make such reciprocal agreement for registration, as provided by Section 16 of the Act of Assembly above quoted.

The Pennsylvania Board is of opinion that if it made a reciprocal agreement with New Jersey, it would place in jeopardy the reciprocal arrangements it has made with other states, because those reciprocal arrangements were predicated upon membership in the National Association.

The question, therefore, is whether the Pennsylvania State Board of Pharmacy may prescribe, as a condition precedent to the registration of a pharmacist of another State, that the Board of Pharmacy of that State shall be an active member of the National Association of Boards of Pharmacy.

It must be remembered that the National Association is not a creature of statute. It is an association organized by the members of the various State Boards of Pharmacy. It is not recognized by any law of Pennsylvania. The Board of Pharmacy secures all of its powers from the Act of May 17, 1917, P. L. 208. It has no authority outside of the provisions of that Act, and it cannot prescribe any conditions for examination or registration inconsistent with the terms of that statute.

Section 4 of that Act of Assembly specifically enumerates the qualifications for applicants for examination and registration as pharmacists, and Section 16 authorizes the Pennsylvania Board of Pharmacy to register as a pharmacist, without examination, any person who was duly registered, by examination, in some other State, if he produces satisfactory evidence that he has the educational requirements demanded by this State.

It provides that a fee of twenty-five dollars shall be paid for such registration. The Pennsylvania State Board of Pharmacy has attempted to add additional requirements and exact for the National Association an additional fee. The Board requires that before it will register an applicant from any other State, the Board of Pharmacy of that State must join the National Association. The Act of Assembly does not authorize the Pennsylvania Board of Pharmacy to make any such requirement. Moreover, instead of prescribing its own forms for application, it delegates to the National Association the right to prescribe such forms. Instead of charging the fee of twenty-five dollars which the law authorizes the Board to charge, it requires the applicant to pay forty dollars. In other words, the Pennsylvania Board of Pharmacy has, by the rules which it has adopted, extended the requirements which it exacts from applicants beyond those which the Legislature has prescribed. This it cannot do. The effect of this rule is to exclude an applicant otherwise qualified under the Act, because of the failure or refusal of the State Board of Pharmacy of his State to join the National Association, thus denying to the applicant, who is properly qualified, registration, through no fault whatever of his own, and even though the educational requirements are sufficient under the Pennsylvania statute.

The Act of Assembly provides that any pharmacist who has been registered after examination in another State whose standards are the same as those of this State, may be registered upon making a proper application and paying a fee of twenty-five dollars. The Pennsylvania Board of Pharmacy by its rule, excludes the applicant, even though properly qualified under the law, merely because the Board of Pharmacy of his State has not seen fit to join a voluntary association which is not a governmental agency of this or the State of the applicant, and not recognized by the laws of either.

The fact that Section 10 of the Act of Assembly gives the Pennsylvania Board of Pharmacy the right to make uniform rules and regulations for the enforcement of the Act, does not give it the right to prescribe a rule exacting requirements which are neither authorized nor countenanced by the Act. The Act of Assembly is the chart by which the Pennsylvania Board of Pharmacy must steer its course. Its duty is to comply with all of its provisions. It may make any

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proper rules and regulations for the enforcement of the Act, but it cannot make any rules or regulations imposing terms which are not authorized by the Act.

I am not unmindful that it is suggested that an agreement with New Jersey Board of Pharmacy would place in jeopardy the rights provided under the rule of the Pennsylvania Board, for registration without examination, with the other states who have become members of the National Association. Such jeopardy could only arise because of some action by the National Association, but, be that as it may, the rights of the Pennsylvania Board of Pharmacy must be determined by the laws of Pennsylvania and not by any rules and regulations of a voluntary association outside of, and entirely disconnected with, the governmental agencies of this State.

I am, therefore, constrained to advise you that you have no right to refuse to make a reciprocal agreement with the New Jersey Board of Pharmacy, merely because that Board has not become an active member of the National Association of Boards of Pharmacy.

Very truly yours,

WILLIAM M. HARGEST,
Deputy Attorney General.

STATE SUPERVISOR, MOTHERS' ASSISTANCE FUND.

The Mother's Pension Act of April 29, 1913, § 5, P. L. 118, and its amendment of June 18, 1915, P. L. 1038, intended to restrict the payment of benefits under the act to those persons who were citizens of, or *bona fide* resident, or domiciled in, this State, and in the particular county in which application was made, for a continuous period of three years, and remained so during the receipt of their pensions.

A claimant who had been residing in Philadelphia County at the time of making her application, and was only temporarily sojourning with her husband's mother in New Jersey, awaiting the granting of her application, and who continued to regard Philadelphia as her home and intended to return and live there as soon as her pending application was allowed, continued to have Philadelphia County as her legal domicile, and it might also be considered her residence for the purpose of this act. Upon her return to Philadelphia to live, she is eligible to receive the benefits of the act.

Office of the Attorney General,
Harrisburg, Pa., December 10, 1918.

Miss Mary F. Bogue, State Supervisor, Mothers Assistance Fund,
Harrisburg, Pa.

Dear Madam: I am in receipt of your favor of November 25, requesting an opinion as to the eligibility of Mrs. Carrie Dougherty for

relief under the provisions of the Act of April 29, 1913, P. L. 118, as amended by the Act of June 18, 1915, P. L. 1038.

It appears from the papers submitted with your inquiry that Mrs. Dougherty had, at the time of filing her application for relief in 1915, been a continuous resident of Philadelphia county for twenty-four years. Owing to lack of funds, the Trustees of the Mothers Assistance Fund of Philadelphia county were unable to grant her relief at the time of her application and "she was forced to give up her home in Philadelphia and go to her husband's people in Newark, New Jersey." It is stated, "that she left the city with the full intention of returning as soon as her pension was granted." In your letter of inquiry you say, "shortly after her application was filed, as she was unable to earn enough to provide for her children, her mother-in-law in Newark, New Jersey, offered her a home *temporarily* until her application could be acted upon by our Mothers Assistance Fund," and "she left the city with the full intention of returning."

Section 5 of the Act of April 29, 1913, provided:

"No family shall be a beneficiary under this act unless the mother has been a continuous resident of the county, in which she is applying for the benefits under this act, for a period of three years."

This was amended by the Act of June 18, 1915, so as to read:

"In order to prevent the alienation of citizenship of those who receive the benefits of this act, no family shall be a beneficiary under this act unless the mother has been a continuous resident of the county, in which she is applying for such benefits, for a period of three years."

In an opinion which I gave on April 4, 1918, to Miss Helen Glenn, then State Supervisor, I said respecting this section of the Act:

"A resident, as contemplated by the Act, is one who has a fixed, permanent abode, or domicile. This does not mean that she may not temporarily leave the county on a visit, or to work, provided she maintains her residence within the county of her domicile. It is our opinion, however, that it does mean that the mother must be a continuous resident of the county for three successive years immediately preceding the date of making application for assistance."

In Bouvier's Dictionary (Rawle's Revision, Vol. I, page 916), it is said:

"Legal residence, inhabitancy and domicil are generally used as synonymous."

There is, of course, a technical distinction between the terms "residence" and "domicile," which in proper cases will be applied.

Taney's Appeal, 97 Pa. 74.

From the language of Section 5 of the Act of 1913, and its amendment of 1915, it was evidently the intent of this section to restrict the payment of benefits to those persons who were citizens of or bona fide resident or domiciled in this State, and in the particular county in which application was made, for a continuous period of three years and remained so during the receipt of their pensions.

If Mrs. Dougherty was only temporarily sojourning with her husband's mother in Newark, New Jersey, awaiting the granting of her application, and continued to regard Philadelphia as her home and intended to return and live there as soon as her pending application was allowed, I am of opinion that Philadelphia county was her legal domicile and might also be considered her residence for the purpose of this Act.

As stated in my letter of April 4, 1916, the determination of the applicant's eligibility will depend very largely on the facts in each particular case.

The Act should be construed liberally in favor of the applicant, having in view the humane purposes of its enactment.

It should not be interpreted, however, so as to give its benefits to those who are non-residents of the State.

In view of the fact that Mrs. Dougherty, since the allowance of her pension has returned to Philadelphia and is now living there, thus giving effect to her expressed intention of preserving her domicile in that city, I am of opinion that she is eligible to receive the benefits of the Act.

Mrs. Beckman's case, in my judgment, is similar in its facts and may be treated in the same way.

I may add, however, that these cases are, in my opinion, the extreme limit of liberality in the construction of this Act, and should not be construed so as to embrace cases where applicants have actually acquired a residence or legal domicile elsewhere.

Very truly yours,

WILLIAM H. KELLER,
First Deputy Attorney General.

STATE BOARD OF CENSORS.

The Act of June 7, 1917, § 1, P. L. 600, referring to State employes who enter the military service of the United States, provides that "such employe shall not be deemed or held to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service." and directs that the duties of such officer or employe during said period be performed by a "substitute." It follows that the cessation of the relationship between the State and any such officer or employe must be deemed to be only a temporary suspension.

It is, therefore, mandatory to reinstate in his original employment any employe who either enlisted, enrolled or was drafted in the military or naval service of the United States, or any branch or unit thereof. Of course, if such returning employe is willing to take another position equally satisfactory to him, the full intentment and purpose of the law is accomplished, and such an arrangement may properly be made.

This act is intended to assure officers and employes of the State entering into the military or naval service of the United States that their positions will be held for them.

Office of the Attorney General,
Harrisburg, Pa., December 11, 1918.

Frank R. Shattuck, Esq., Chairman, State Board of Censors, Philadelphia, Pa.

Sir: I have your inquiry of the 6th inst relative to the reinstatement of an employe of your department, who left his position to enter the military service of the United States. You ask to be advised specifically whether it is mandatory upon your Board to give him employment, and incidentally whether you are required to restore him to his old position, or whether you may give him another one equally satisfactory to him.

This subject is covered by the Act of June 7, 1917, P. L. 600. Section 1 of this act provides:

"That whenever any appointive officer or employe, regularly employed by the Commonwealth of Pennsylvania in its civil service, or by any department, bureau, commission, or office thereof, or by any county, municipality, township, or school district within the Commonwealth, shall in time of war or contemplated war, enlist, enroll, or be drafted in the military or naval service of the United States, or any branch or unit thereof, he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service, but the duties of his said office or employment shall, if there is no other person authorized by law to perform the powers and duties of such officer or employe during said period, be performed by a substitute,

who shall be appointed by the same authority who appointed such officer or employe, if such authority shall deem the employment of such substitute necessary. Such substitute shall receive so much of the salary or wages attached to said office or employment as shall not be paid to the dependent or dependents of said officer or employe, as hereinafter provided, and such substitute may receive such further compensation, from appropriations made for that purpose or otherwise, as may be required, when added to the amount received under the provisions of this act, to constitute a reasonable compensation for his services, in the opinion of the authority appointing him."

It must be quite clear from the provision referred to such employe that "he shall not be deemed or held to have thereby resigned from or abandoned his said office or employment, nor shall he be removable therefrom during the period of his service," and from the further reference that the duties of such officer or employe during said period, be performed by a "substitute," that the cessation of the relationship between the State and any such officer or employe must be deemed to be only a temporary suspension, it being the clear intendment of this legislation to give this statutory assurance to officers and employes of the state entering into the military or naval service of the United States, that their positions will be held for them, and that they are not to suffer loss of the same because of their sacrifices in the interests of the Republic and humanity.

You are accordingly advised, that it is mandatory upon your Board to reinstate, in his original employment, any employe who either enlisted, enrolled or was drafted in the military or naval service of the United States, or any branch or unit thereof. Of course it goes without saying, that if such returning employe is willing to take another position equally satisfactory to him, the full intendment and purpose of the law is accomplished, and such an arrangement may properly be made.

Very truly yours,

JOSEPH L. KUN,
Deputy Attorney General.

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