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Irene M. Stanton

Date September 6, 1989

STATE OF MARYLAND

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Vol.

1

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1916

ALBERT C. RITCHIE
ATTORNEY GENERAL

ATTORNEYS GENERAL OF MARYLAND.

Luther Martin	1778
William Pinkney	1806
John Thomas Mason	1806
John Johnson	1806
John Montgomery	1811
Luther Martin	1818
Nathaniel Williams, Assistant Attorney General	1820
Thomas B. Dorsey	1822
Thomas Kell	1824
Roger B. Taney	1827
Josiah Bayley	1831
George R. Richardson	1845
Robert J. Brent	1851
*Alexander Randall	1864
Isaac D. Jones	1867
Andrew K. Syester	1871
Charles J. M. Gwynn	1875
Charles B. Roberts	1883
William Pinkney Whyte	1887
John P. Poe	1891
Harry M. Clabaugh	1896
George R. Gaither, Jr.	1899
Isidor Rayner	1900
William S. Bryan, Jr.	1904
Isaac Lobe Straus	1908
Edgar Allan Poe	1912
Albert C. Ritchie	1916

*The office of Attorney General was abolished by the Constitution of 1851, but was re-established by the Constitution of 1864.

STATE LAW DEPARTMENT.

Albert C. Ritchie	Attorney General.
Ogle Marbury	Assistant Attorney General.
John M. Resquardt	Assistant Attorney General.
William Pinkney Whyte, Jr	Assistant Attorney General.
Philip B. Perlman	Assistant.
Miss Virginia Ellinger	Stenographer.
Miss Emily Dashiell	Stenographer.

OFFICE:—633-645 Title Building, Baltimore, Md.

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Annual Report for 1916.

BALTIMORE, MD., *January 1, 1917.*

HON. EMERSON C. HARRINGTON,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOVERNOR HARRINGTON:

I have the honor to present to you, as required by Section 8 of the Act of 1916, Chapter 560, a report of the business and proceedings of the Department of Law during the preceding calendar year, together with a statement of receipts and disbursements during the preceding fiscal year, and such recommendations as seem appropriate. As further required by said section, the official opinions rendered by my Department during the preceding calendar year follow this report.

The State Law Department.

I qualified as Attorney General of Maryland on December 20, 1915. From that time and until October 1, 1916, when the Act creating the State Law Department became effective, I had no assistants, and most of the important boards and Commissions of the State had their own special counsel.

Beginning with October 1, 1916, all of these special counsel, except the counsel to the Public Service Commission, were abolished, and the State Law Department was created, with the Attorney General as its head, and three Assistant Attorneys General to aid him.

Since October 1, 1916, therefore, the work of the State Law Department has comprised, and will continue to comprise, the following:

a. Advice and opinions to the Governor, the Comptroller, the Treasurer, the Secretary of State, the Board of Public Works and the General Assembly.

b. Advice to the several State's Attorneys throughout the State, and also to the several Registrars of Wills and other local officers upon questions affecting revenue due the State or questions in which the State is otherwise interested.

c. Trial of all criminal appeals and other cases in the Court of Appeals or in the Supreme Court of the United States, in which the State is interested, and all cases in the lower courts in which the state, or any of its officers, boards or commissions, are interested, except criminal prosecutions which, in the lower courts, are in charge of the State's Attorneys.

d. Attendance at the sessions of the General Assembly, drafting all administration bills, advising with legislators on matters of legislation, and examination of all bills passed, before their presentation to the Governor for approval.

e. Advice to and representation of all the State boards and commissions, except the Public Service Commission, and all state institutions. There are sixty-five of these boards and institutions, the more important ones being:

The Insurance Department.
The Bank Commissioner.
The State Industrial Accident Commission.
The State Tax Commission.
The Conservation Commission.
The Commissioner of Motor Vehicles.
The Election Supervisors of Baltimore City.
The Police Board of Baltimore City.
The State Board of Health.
The Liquor Board of Baltimore City.
The State Roads Commission.
The State Board of Education.
The Agricultural Board.
The Maryland Agricultural College.
The State Board of Prison Control.
The Board of Labor and Statistics.
The Board of Motion Picture Censors.
And forty-eight other state boards, commissions and institutions which from time to time need legal advice.

f. Member-ship upon the State Board of Health, the Lunacy Commission and the Board of Trustees of the Fifth Regiment Armory.

Legislature of 1916.

The Democratic Platform of 1915 provided for an Economy and Efficiency Commission, of which Dr. F. J. Goodnow was Chairman, to recommend legislation for a Budget System and for the abolition or consolidation of offices. Immediately upon my qualification, I offered my services to the Commission for the drafting of such legislation as they desired to recommend. The Commission itself drafted the Budget Amendment, Act 1916, Chap. 159, adopted November 7, 1916, but at their request I drafted about ten other bills. I also drafted still other bills at your request from time to time.

I attended at Annapolis almost uninterruptedly during the entire legislative session, being there engaged in drafting bills, in advising with the State officials and members of the Legislature, in attending committee hearings, in following certain of the administration measures through the Legislature, and in doing what I could to secure their passage.

The more important bills drafted by me were:

Bills creating State Board of Labor and Statistics, and transferring to it the duties of the Bureau of Statistics and Information, the Ten Hour Law Bureau for Females, the Steam Boiler Inspectors of Baltimore City and the Mine Inspectors of Allegany and Garrett Counties, and abolishing the Bureau of Immigration. Acts 1916, Chapters 406, 410, 207.

Bill reducing the membership of the State Roads Commission. Acts 1916, Chap. 575.

State Law Department bill, which was drafted after compiling and studying the legislation of every other State upon the subject. Acts 1916, Chap. 560. This Department represents a saving to the State of at least one-third of the cost of the State's legal services under the old system.

Abolishing continuing appropriations. Acts 1916, Chap. 126.

Abolishing envelope system of voting in counties at primary elections. Acts 1916, Chap. 160.

Providing Registration Day in Counties before Primary Elections. Acts 1916, Chap. 569.

Providing for Uniform Systems of Accounting and Uniform Fiscal Year, and enlarging the powers and duties of the State Auditor. Acts 1916, Chap. 587.

State Board of Prison Control, drafted along the lines of the Goldsborough Commission's bill of 1914. Acts 1916, Chap. 556.

Lunacy Law amendments, making full provision for reimbursement to the State for the support of lunatics who or whose families are able to pay. Acts 1916, Chap. 566.

Safeguarding Securities deposited with the State. Acts 1916, Chap. 601.

Bond Issues, the $2,000,000 Treasury Relief Loan and the $3,000,000 Loan of 1916 for roads, etc. Acts 1916, Chaps. 142 and 681.

In addition to the above legislation, I drafted, at your request, certain provisions for the reduction of campaign expenses, which were offered as amendments to House Bill No. 537 on the same subject, but this bill did not pass.

I also drafted a bill enlarging the powers of the Parole Board, which was introduced, Senate Bill No. 432, but did not pass.

I drafted for the State Comptroller certain constitutional amendments and bills abolishing the fee system in the cases of Clerks, Registers of Wills and Sheriffs, and providing a sliding scale for office expenses proportioned to the amount of office receipts, but these bills were not introduced.

I advised on the bill creating the Conservation Commission and on other conservation measures, all of which were actually drafted by Mr. W. Thomas Kemp, now Chairman of the Conservation Commission. Acts 1916, Chaps. 682 and 702.

Two other bills require special mention.

A bill providing general powers for cities or counties which vote to adopt the provisions of the Home Rule Amendment, embodied in Acts 1914, Chap. 416, and adopted at the November, 1915, election, was drafted by me, and introduced as Senate Bill No. 433. This bill did not pass. A bill to accomplish this purpose should be presented to the Legislature of 1918.

Article 15 of the Declaration of Rights, as amended by the Acts of 1914, Chap. 390, adopted by the people at the November, 1915, election, requires the General Assembly to provide, by uniform rules, for the separate assessment of land and the classification and subclassification of improvements on land and personal property. The preparation of these uniform rules was undertaken by a committee of lawyers, of which Hon. Alfred S. Niles was Chairman. The bill was introduced as Senate Bill No. 618, and a companion measure, Senate Bill No. 630, was also introduced. This latter bill passed, and is now Act 1916, Chap. 656, but Senate Bill No. 618 did not pass. The failure to pass it resulted in the case of Leser, et al., vs. Lowenstein, et al., in which the Circuit Court for Frederick County held that in view of such failure, the general reassessment of property throughout the State could not proceed. Fortunately, this decision was reversed by the Court of Appeals, on September 16, 1916, after the court had held a special session for its argument.

A bill to accomplish the above purposes should be presented to the Legislature of 1918.

The total number of bills passed by the General Assembly of 1916 was 714, and every one of these was personally examined by me or under my supervision, in order that questions relating to their constitutionality and effect might be brought to your attention before the bills were presented to you, and before you personally examined each of them yourself, which you afterwards did.

Criminal Cases Tried in the Court of Appeals.

January, April and October Terms, 1916.

William H. Frick vs. State, January Term, 1916. Appeal from Criminal Court of Baltimore City. Conviction for manslaughter. Judgment affirmed. 128 Md. 122. The appeal involved the admissibility of threats made by the traverser before the shooting.

John Allen vs. State, January Term, 1916. Appeal from the Circuit Court for Prince George's County. Indictment for

bastardy. The traverser moved to quash the indictment on the ground that it stated that the offense was committed on a day which had not then arrived. The lower court overruled the motion, and the ruling was affirmed. 128 Md. 265.

William G. Damm vs. State, January Term, 1916. Appeal from Circuit Court for Allegany County. Conviction for manslaughter by abortion. Judgment affirmed. 128 Md. 665. The appeal involved the admissibility of expert testimony.

Grant S. Stansbury vs. State, April Term, 1916. Appeal from Circuit Court for Howard County. The accused was found guilty of intent to commit burglary. When the case was reached for argument, and after the filing of the State's Brief, the appeal was dismissed.

Harry N. Rickards vs. State, April Term, 1916. Appeal from Criminal Court of Baltimore City. Conviction for manslaughter by abortion. Judgment reversed in 129 Md. 184, because of error in excluding certain expert testimony.

Gottlieb Freud and Harry Miller vs. State, October Term, 1916. Appeal from Criminal Court of Baltimore City. Conviction of conspiracy to defraud fire insurance company by maliciously burning a store. Judgment affirmed, January 11, 1917.

State vs. Earl Darling, October Term, 1916. Appeal from the Circuit Court for Caroline County. The accused pleaded guilty before the Justice to assault and battery, and the question was whether this plea barred his right to appeal on the merits to the Circuit Court. The lower Court held that it did not. The Court of Appeals, on January 19, 1917, dismissed the appeal, on the ground that the record did not sufficiently show the circumstances under which the plea of guilty had been made, and whether it had been made with a full understanding on the part of the accused of its effect.

Moritz Benesch vs. State, October Term, 1916. Appeal from Circuit Court for Baltimore County. This case involved the validity of that portion of the 1916 Liquor License Law for Baltimore County which prohibited any person from taking part in any picnic or other entertainment on Sunday, at which

liquor was drunk. The lower court sustained the law, and the judgment was affirmed on December 13, 1916, in an opinion which upholds the exercise of the police power for the suppression of crime and disorder. Daily Record, December 20, 1916. In the argument of this and the Vanura case, the State had the benefit of the services of Mr. Isaac Lobe Straus, who had been retained by the State's Attorney in the trial below.

Anton Vanura and Lizzie Vanura vs. State, October Term, 1916. Appeal from the Circuit Court for Baltimore County. This case involved the validity of that portion of the 1916 Liquor License Law for Baltimore County, which prohibited any person from renting any park or shore for a picnic or other entertainment on Sunday, at which any liquor was drunk. It was argued with the Benesch case. The lower court sustained the law, and this decision was affirmed on December 13 1916. Daily Record, December 20, 1916.

William Raehl vs. State, October Term, 1916. Appeal from the Circuit Court for Allegany County. This case involved the validity of the Act of 1916, Chap. 594, imposing additional license fees upon saloons, wholesale liquor dealers, bottlers and hotels. These additional fees in Baltimore City alone aggregate $129,250.00. The Act as introduced in the Legislature provided that these additional fees were to be paid to the State Treasurer, for general State purposes, and this was appropriately stated in the title. During the rush incident to the closing two days of the session, the Act was amended so as to apportion the fees between the State and the city or counties, but the title was not amended at all, and, therefore, still indicated that the increased fees were to be for general State purposes. The validity of the Act was attacked on the ground that its subject was not properly described in the title. The Court of Appeals, on February 2, 1917, held that the Act was valid.

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1916.

Henry F. Wingert et al. vs. State, April Term, 1916. Appeal from Orphans' Court for Washington County. The method of

the lower court in appraising certain property for collateral inheritance tax purposes was held to have been correct. 129 Md. 28.

D. E. Foote & Co. et al. vs. Emerson C. Harrington, Governor, et al., April Term, 1916. Appeal from Baltimore City Court. The lower court held that mandamus would not issue to compel the Governor, Comptroller and Treasurer to recommend to the Legislature the refunding of certain taxes paid under a statute afterwards held unconstitutional. The order was affirmed. 129 Md. 123. The case is now pending on writ of error in the Supreme Court of the United States.

State Tax Commission vs. David Lowenstein et al., October Term, 1916. Appeal from the Circuit Court for Frederick County. This case involved the question whether the failure of the Legislature of 1916 to enact uniform rules for the assessment and classification of property, as directed by the 1915 amendment to Article 15 of the Declaration of Rights, deprived the State Tax Commission of all power to proceed with the general reassessment of property throughout the State. The lower court held that it did, but this ruling was reversed on September 16, 1916, after argument at a special session of the Court of Appeals held on September 7, 1916. This case was of great importance, because the reassessment of property for taxation throughout the State, and the equalization of assessments, which had been at last inaugurated, depended upon it, and the State's victory in the Court of Appeals was most fortunate. 129 Md. 244.

Joshua Levering et al. vs. Board of Supervisors of Elections of Baltimore City, October Term, 1916. Appeal from the Superior Court of Baltimore City. This case involved the question whether an Ordinance permitting Base Ball and other games on Sunday, subject to the approval of the voters, could lawfully be submitted to the voters at the general election of November 7, 1916. The lower court held that it could, but this decision was reversed on appeal, the Court of Appeals holding that the City of Baltimore had no authority under the law to submit such an ordinance to the people at a general election. 129 Md. 385.

John J. Hanson vs. Board of Election Supervisors of Baltimore City et al., October Term, 1916. Appeal from the Baltimore City Court. This case involved the question whether the court had jurisdiction to strike from the registry the name of a person who was not a qualified voter, but whose name did not appear upon the "suspect" list, because of the fact that he had registered after the time for the filing of such list. The lower court held that it had no jurisdiction. Ruling affirmed on November 3, 1916. 129 Md. 287.

CIVIL CASES TRIED IN THE LOWER COURTS.

October 1, 1916, to December 31, 1916.

Daniel J. Loden vs. Board of Supervisors of Elections of Baltimore City. Superior Court of Baltimore City. This was an action of mandamus brought to compel the Election Supervisors to relocate the registration and polling places selected by them in twenty-two precincts in Baltimore City, on the ground that these selections did not comply with Section 12 of Article 33 of Bagby's Code, which provided that they "shall be as near the centre of the voting population of the precinct, and as convenient to the greatest number of voters, as is practicable." The case was tried on October 10, 1916, and the court (Carter, J.), declined to issue the writ, for the reason that the location of the registration and polling places was a matter for the Election Supervisors to determine, and their determination was not reviewable by the courts.

William Mason Sloban, State Insurance Commissioner, vs. Family Rescue Fraternal and Beneficial Society. Same vs. Colonial Sick Benefit Society. Same vs. Imperial Mutual Aid Society. Same vs. Alto Friendly Society. Circuit Court No. 2 of Baltimore City. These are proceedings taken under Bagby's Code, Art. 23, Sec. 178, subsection 7, to forfeit the charters of the several beneficial societies named, on the ground that they are conducting a straight insurance business, and refuse to make the deposit required therefor by the Maryland law for the protection of policy holders. On December 14, 1916, the court (Bond, J.), passed an order, under the statute, appointing the Insurance Commissioner, and Messrs. Alfred G.

Goodrich and Warren K. Magruder a Commission to examine the companies in question, and report the result of their examination to the court. This commission is now at work.

Edith A. McClenahan vs. Board of Police Commissioners of Baltimore City. Superior Court of Baltimore City. On August 26, 1916, Mr. Vernon Cook, then counsel to the Police Board advised the Board that the numerous acts giving pensions to former members of the police force were all void, on the ground that the law provided a general system for the granting of pensions by the Police Board, upon specified conditions, to retired members of the force, and that the acts in question were, therefore, special acts upon a subject for which provision had been made by an existing general law. Acting under Mr. Cook's opinion, the Police Board discontinued all pensions previously paid under special acts. On October 23, 1916, the above suit was brought for the purpose of testing the validity of these special pension acts. The suit was an action for mandamus to compel the Board to continue paying to Mrs. McClenahan, who was a former police matron, the pension which a special Act of 1914 provided should be paid to her. The case was tried on December 29, 1916, and a few days later the court (Ambler, J.), held that the general retirement law did not cover the case of a matron situated as Mrs. McClenahan was, and that, therefore, her special pension act was valid. The court considered Mrs. McClenahan's case *sui generis*, and did not pass upon the validity of any of the other special pension acts. It is understood that these will be the subject of another suit, which will be taken to the Court of Appeals along with Mrs. McClenahan's case.

Park Bank of Maryland vs. John M. Dennis, State Treasurer. Superior Court of Baltimore City. German Savings Bank of Cumberland vs. Same. Circuit Court for Anne Arundel County. Frederick Trust Company vs. Same. Circuit Court for Frederick County. These proceedings were all brought for the purpose of obtaining an Order directing the State Treasurer to return to the institutions the deposit or part of the deposit made by them under the law. The institutions were in each case entitled to the return asked for, but the same could

not be made without an Order of Court. The Attorney General represented the State Treasurer in each of the cases, and saw that the proper proceedings were taken to justify the order.

Francis E. Brady vs. William Carlos. Baltimore City Court. Action for damages against policeman for alleged assault. Judgment of *non pros.* on October 5, 1916.

Cases Pending on Appeal.

D. E. Foote & Company et al. vs. Emerson C. Harrington, Governor, et al. Supreme Court of the United States. Writ of Error. Question: Whether mandamus lies to compel the Governor, Comptroller and Treasurer to recommend to the Legislature the refunding of taxes paid under a statute afterwards held unconstitutional? The Court of Appeals held that it did not. 129 Md. 123.

Thomas S. Jackson vs. State. Court of Appeals. January Term, 1917. Appeal from Criminal Court of Baltimore City. Involves validity of segregation ordinance of Baltimore City. Argued by former Attorney General Poe and City Solicitor Field at October Term, 1915. Reargument ordered, March 9, 1916. Case continued to await decision of United States Supreme Court upon a similar ordinance.

Agricultural Society of Montgomery County vs. State. Court of Appeals. January Term, 1917. Appeal from Circuit Court for Montgomery County. Involves validity of statute authorizing court to grant licenses for betting on horse races.

Benjamin F. Crouse vs. State. Court of Appeals. January Term, 1917. Appeal from Circuit Court for Carroll County. Involves validity of Carroll County anti-saloon law.

Civil Cases Pending in Lower Courts.

The cases pending against state boards and commissions, represented by the Attorney General since October 1, 1916, and which have not yet been reached for trial, are:

Quality Amusement Co. vs. Board of Police Commissioners et al. Circuit Court of Baltimore City. Involving the right of a negro stock company to play in the Colonial Theatre before

negro audiences. Since the institution of these proceedings, the company failed, and the case will probably not be tried.

Robert H. Slaine vs. Annie Slaine. Circuit Court of Baltimore City. Involving the Police Beneficial Association.

State Roads Commission vs. American Telephone Co. Same vs. Chesapeake & Potomac Telephone Co. Same vs. Postal Telegraph-Cable Co. Superior Court of Baltimore City. Rental for use and occupation of State roads and bridges.

Stanley C. Preston vs. State Roads Commission. Circuit Court for Baltimore County. Action for damages to horse due to non-repair of road.

William E. Little vs. State Roads Commission. Circuit Court for Washington County. Suit for injunction against maintenance of culverts alleged to cause overflow on plaintiff's land.

Pugh & Hubbard Co. vs. State Roads Commission. Baltimore City Court. Action for balance of $4,884.28 alleged to be due on road contract.

Phillips and Neal vs. State Roads Commission. Circuit Court for Worcester County. Action for balance alleged to be due on road contract.

Clara E. Rees vs. State Roads Commission, et al. Circuit Court for Harford County. Action to enjoin the Commission from constructing road upon plaintiff's property.

McQuire Construction Co. vs. State Roads Commission. United States District Court. Action for $34,158.10 on account of alleged extra work on road contracts.

State Tax Commission. Circuit Court for Prince George's County. Appeal of Mayor and City Council of Hyattsville from assessment against Chesapeake & Potomac Telephone Co.

State Tax Commission. Baltimore City Court. Assessment appeal of Mrs. Alice McCreary Paine.

State Roads Commission, et al., vs. Baltimore, Chesapeake & Atlantic Railway Co., et al. Inter-state Commerce Commission. Proceedings to have increased railroad rates on crushed stone declared unreasonable. The State has engaged Mr. John B. Daish, of Washington, D. C., who specializes in legal work

before the Interstate Commerce Commission, to assist in the presentation of this case.

James vs. Goddard, et al. Supreme Court of the District of Columbia. Proceedings involving the validity of certain conveyances and devises to the Maryland Agricultural College.

State Tobacco Inspector, et al., vs. Baltimore City, et al. Baltimore City Court. Appeal from assessment re St. Paul Street opening, and motion to quash.

George Norbury Mackenzie, Administrator, vs. John M. Dennis, State Treasurer, et al. Circuit Court for Baltimore City. Involves the disposition of a small estate to which there are no heirs.

Leland M. Talbott vs. Severn Community, Inc., and State Industrial Accident Commission. Circuit Court for Anne Arundel County. Appeal from Commission's order disallowing claim against State Accident Fund.

Assistant Attorney General Marbury has charge of the preparation of most of these cases for trial.

Oyster Condemnation and Protest Cases.

Condemnation of Oyster Leases.

The Shepherd Law, Act 1914, Chap. 205, provided that when bottoms which had been leased by the Shell Fish Commission as barren bottoms, were upon resurvey determined to be natural bars, then the interests of the lessees should be condemned by the State, under proceedings to be instituted by the State's Attorney of the County in which such bottoms were located. There were thirty-eight leases of this kind in Somerset County, and after the resurveys the State's Attorney of Somerset County instituted the appropriate condemnation proceedings. The cases were tried by the State's Attorney in October, 1915, and resulted in Jury awards aggregating $257,975.

Early in November, 1915, Attorney General Poe filed appeals to the Court of Appeals from the judgments in each of the cases, but upon subsequently learning that no exceptions had been reserved by the State's Attorney to any ruling of the Court at the trials, and that there were, therefore, no grounds

upon which to appeal. Mr. Poe dismissed the appeals, and filed instead motions to set aside the judgments. These motions were argued by the State's Attorney on December 20, 1915, which was the day upon which the present Attorney General qualified, and on the following day the court overruled the motions.

The law only allowed ten days for appeals, and as it took some days to have the testimony and court proceedings written up, which had not been done, I was compelled to enter appeals at once to the Court of Appeals from the orders overruling the motions to set aside the judgments, and to investigate afterwards what merit there might be in the points made by the State for the setting aside of the judgments.

I made a thorough investigation of the cases as soon as possible, and under date of January 21, 1916, formally advised the Governor that in my opinion the appeals could not be prosecuted successfully, and would not justify the expense of approximately $1,500 which their prosecution would entail; and that the State should decide whether to abandon the condemnation proceedings altogether, and permit the lot owners to keep their lots, or whether to make an appropriation for the payment or settlement of the awards. This opinion, which fully discusses the questions involved, will be found among the Opinions of the Attorney General. (See *post*, page 53.)

After several conferences between the representatives of the judgment holders and the Board of Public Works, and with the consent of most of the judgment holders, it was finally decided to ask the Legislature to appropriate $75,000 for the settlement of the awards which, as aforesaid, aggregated $257,975. This was done by the Acts of 1916, Chap. 582, which appropriated $75,000 for the compromise of the judgments, and authorized the Board of Public Works to abandon any of the cases which could not be compromised on a reasonable basis. The judgments are in process of compromise now.

In Calvert County, thirteen similar condemnation proceedings had been instituted, and these came up for trial at the January, 1916, Term of the Circuit Court. Although the law

required the State's Attorney to conduct these cases, yet it was felt that, in view of their importance, he should have some assistance. It was impossible for me at that time to leave Annapolis, where the Legislature was in session, and as I then had no Assistants, it was decided to employ Mr. W. Thomas Kemp, of Baltimore, to represent the State with the State's Attorney. The cases resulted in awards aggregating $6,195, which was a reasonable and satisfactory amount, and this sum was appropriated to pay the awards by the Acts of 1916, Chap. 658.

In St. Mary's County, there were eight similar condemnations. Early in December, 1916, Assistant Attorney General Marbury tried these cases with the State's Attorney and Mr. William M. Loker, special assistant. The trials resulted in awards aggregating $9,700.00, which the Conservation Commission and my Department consider reasonable and satisfactory, and for the payment of which provision should be made by the Legislature of 1918.

A number of other condemnation cases are pending, principally in Talbot County, and these will be disposed of as promptly as possible.

Protested Oyster Leases. The law provides for a court hearing when leases or applications for leases are protested, on the ground that the areas covered are alleged to be natural bars. The court determines whether the areas are barren bottoms, in which event they are subject to lease, or natural bars, in which event they are not. The State Law Department appears for the Conservation Commission in these protest cases. Assistant Attorney General Marbury has charge of these cases, and in a number of them the State has had the benefit of the services of Mr. C. John Beeuwkes, of the Baltimore Bar, who formerly represented the Shell Fish Commission in protest cases.

The cases tried since October 1, 1916, are as follows:

Queen Anne's County. Thirteen cases involving protested applications for leases. Tried on November 10, 1916. In all of these cases the Conservation Commission had reexamined the areas, and was satisfied that the areas were in fact natural

bars. The testimony showed that they were, and the court so held.

St. Mary's County. Three cases involving protested applications for leases. In all of these cases the areas were, on December 4, 1916, held to be natural bars, in conformity with the Commission's re-examination.

Dorchester County. Ten cases involving protested applications for leases. The Conservation Commission's re-examination convinced it that in nine of these cases the areas were natural bars, and, accordingly, on November 23, 1916, the court entered orders declaring them to be so. The protest in the tenth case was dismissed. On December 20, 1916, seven additional protest cases in Dorchester County were disposed of. In four the protests were dismissed. One was held to be natural bar, upon the Commission's testimony that a re-examination showed that to be the case. The other two cases were held sub-curia.

There are a number of other protest cases pending in the tidewater counties which will be disposed of as promptly as possible.

Board of Election Supervisors of Baltimore City.

The legal work for this Board is quite exacting for some time preceding primary and general election days, when it is necessary to have one of my Assistants constantly at the disposal of the Board. I assigned Assistant Attorney General Resquardt to this work, and in addition to attending daily at the Board's offices, and advising with the Board upon the numerous questions which arose, he tried, in October, 1916, 73 non-contested and 16 contested registration cases, in the Baltimore City Court, and the case of Hanson vs. Election Supervisors, et al., in the Court of Appeals.

I prepared or supervised the preparation of Instructions to Election Officers and Voters, passed upon the form of ballots submitted by Election Officials throughout the State, and rendered a large number of opinions upon election and registration questions.

State Insurance Department.

It has been my aim to cooperate in every way with this Department in a rigorous enforcement of the insurance laws for the protection of policy holders and others. To this end, on October 1, 1916, I assigned Assistant Attorney General Resquardt to the Insurance Department. He is at the service of the Department at all times, and, in addition to advising with respect to general matters and all disputed questions which do not require reference to the Attorney General, Mr. Resquardt has, since October 1, 1916, participated in the investigation of six suspicious fires and eight hearings upon protests against insurance agents and solicitors.

Bank Commissioner.

There are about 167 financial institutions under the supervision of the Bank Commissioner, and this necessitates constant legal advice. I have assigned Assistant Attorney General Resquardt to this work, and he keeps in constant touch with the Bank Commissioner at all times, for the rendering of legal advice upon all questions which do not require reference to the Attorney General. Under the supervision of my Department, the state banking laws have been compiled and published.

State Board of Health.

Assistant Attorney General Whyte has been assigned to this Department, the work of which is very important and exacting, and occupies the greater portion of his time. Since October 1, 1916, Mr. Whyte has handled nearly two hundred complaints of the pollution of drinking water, has prepared regulations under the Cold Storage Law, has advised with the officials of the Towns of Centreville, Friendsville, Queenstown, Delmar, Ridgely and Myersville as to the legality and effect of various local health ordinances, and as to nuisances and the installation of sewerage systems, and has handled various claims made against the Board of Health for accounts alleged to be due or supplies furnished the Board. Mr. Whyte personally attends all meetings of the Board of Health, and is at the service of the

Health Department daily to assist in handling questions which continually arise, and in supervising or conducting prosecutions under the health laws and aiding in the enforcement of the health laws generally throughout the State.

Opinions.

No official opinion is rendered by this Department which has not been the subject of personal investigation and consideration by the Attorney General, and during the past calendar year every such opinion has been prepared and signed by him. Such of these opinions as involve questions of general legal interest have been classified, and they follow this Report. They do not include a very large number of opinions given to persons other than State officers and boards, both within and without the State, upon questions which do not affect the State's business, but upon which the Attorney General, although not required to do so, has nevertheless thought it proper to give opinions or information. And, of course, they take no account of the numerous occasions upon which oral advice is given State officers, boards and commissions.

I

RECOMMENDATIONS AND CONCLUSIONS.

A year's service as Attorney General has suggested a good deal of legislation which seems to me desirable, but inasmuch as the Legislature does not meet again until 1918, I will postpone recommendations of this kind until my next annual Report, with the exception of two subjects.

There must be presented to the next Legislature a Bill providing general powers for cities or counties which may vote to adopt the provisions of the Home Rule Amendment, embodied in the Acts of 1914, Chap. 416, and adopted at the November, 1915, election. Such a Bill was introduced in the last Legislature (Senate Bill No. 433), but it did not pass. The preparation of this Bill is a work of great importance and difficulty, and I think it highly desirable that either you should appoint or authorize me to appoint a commission of lawyers residing in different sections of the State, who will thoroughly study the

subject, in the light of local and other conditions, and submit the draft of a bill embodying the result of their labors.

There must also be presented to the next Legislature a Bill providing uniform rules for the separate assessment of land and the classification and subclassification of improvements on land and personal property, as directed by the amendment to Article 15 of the Declaration of Rights, embodied in the Acts of 1914, Chap. 390, and adopted at the November, 1915, election. This also is a work of great importance and considerable difficulty, and I think it very desirable either for you to appoint or authorize me to appoint a commission of lawyers who will study this subject, and submit the draft of a Bill embodying the result of their labors.

In conclusion, permit me to express my deep appreciation of your unfailing courtesy and consideration upon all occasions, and of that of the other State officers connected with your administration.

I have the honor to be,

Respectfully yours,

ALBERT C. RITCHIE, *Attorney General.*

RECEIPTS AND DISBURSEMENTS OF ATTORNEY GENERAL FOR FISCAL YEAR BEGINNING OCTOBER 1, 1915, AND ENDING SEPTEMBER 30, 1916.

1. Salary from October 1, 1915, to December 20, 1915, Mr. Poe		$ 661.29
Salary from December 20, 1915, to September 30, 1916, Mr. Ritchie		2,338.71
		$3,000.00
2. Contingent fund for "printing and travelling expenses, clerical services, stationery, postage and other necessary expenses." Acts 1914, Chapter 389, page 627		$2,500.00
Paid by Comptroller to Mr. Poe, for period from October 1, 1915, to December 20, 1915		555.33
		$1,944.67
Disbursements by Mr. Ritchie for period from December 20, 1915, to September 30, 1916, for purposes named in the appropriation Act, every disbursement being accompanied by receipted voucher		1,870.32
Reverted into general treasury October 1, 1916		$ 74.35
3. Briefs and Records. Appropriation, Bagby's Code, Art. 17, Sec. 11		$ 500.00
Balance from preceding year's appropriation		60.00
Amounts refunded State under court orders awarding costs to the State		110.15
Balance October 1, 1915		$ 670.15
Printing bills for Briefs, approved by Mr. Poe	$376.50	
Printing bills for Briefs, approved by Mr. Ritchie	292.00	
		668.50
Reverted into general treasury October 1, 1916		$1.95

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

(Collateral Inheritance Tax Opinions included under Taxation.)

ADMINISTRATION—DESCENT OF REAL ESTATE.

July 7, 1916.

Howard W. Jackson, Esq.,
Register of Wills,
Court-House, Baltimore, Md.

DEAR SIR: I have your favor of July 6th.

The Act of 1916, Ch. 325, relating to the manner of descent of an intestate's real property, only applies to intestates whose deaths occurred *after* June 1, 1916. The real property of intestates who died *before* June 1, 1916, will descend according to the law as it stood at the time of death, even though their estates are administered after June 1, 1916.

Rock Hill College vs. Jones 47 Md. 1, 22;
Remington vs. Metropolitan Bank, 76 Md. 546, 548;
Harris vs. Whitely, 98 Md. 430, 444;
Jeavons vs. Pittman, 126 Md. 650, 653;
14 Cyc. 20.

This does not affect the ruling I gave you under date of May 25, 1916, namely, that the state tax imposed upon all commissions allowed after June 1, 1916, should be in accordance with the Act of 1916, Ch. 559, whether the testator or intestate died previous to June 1, 1916, or not. This latter question is determined by the law as it stands when the commissions are allowed, but the descent and distribution of an intestate's estate is governed by the law as it stands at the time of death.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

January 7, 1916.

William J. Peach, Esq.,
Register of Wills,
Towson, Maryland.

DEAR SIR: I received your favor of January 4th, with reference to the Estate of John Silk.

Whether money collected by a widow (who is her husband's administratrix) for the death of her husband has to be accounted for to the Orphans' Court or not depends upon whether it is paid to her as direct beneficiary (as, for example, under Lord Campbell's Act), or as administratrix.

If you are correct in saying that in the present instance Mrs. Silk received the money as administratrix, then the money must be distributed through the Orphans' Court, and this being so Mrs. Silk as administratrix is entitled to commissions upon it, and must pay the State tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

January 7, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 6th, enclosing letter from Mr. Thomas E. Hilliard, Register of Wills for Washington County, making an inquiry with reference to the application of the Act of 1916, Chap. 559, relating to the tax on commissions of executors and administrators.

The tax provided by this Act should be imposed upon all commissions allowed after June 1st, whether the testator or the intestate died previous to that date or not, or whether Letters were granted previous to that date or not.

Gaines vs. Reutch, 64 Md. 517;
Montague vs. State, 54 Md. 481.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAX ON EXECUTOR'S COMMISSIONS.

June 9, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 7th, asking for an interpretation of the Act of 1916, Chap. 559, upon the basis of a $3,000 estate.

Under this Act, the State tax on Commissions of executors and administrators is not calculated upon the amount of the commissions, but upon the amount of the estate, and it is one per cent upon the first $20,000 of the estate and 1/5 of one per cent on the balance.

Therefore, in the case of a $3,000 estate, the tax would be $30, and this amount would be due by the executor or administrator without regard to the amount of commissions allowed him. The law does not permit him to waive his commissions except as to the excess thereof over this $30.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—TAXES DUE STATE AND CITY, PAYMENT OF.

December 6, 1916.

Howard W. Jackson, Esq.,
Register of Wills,
Court-House, Baltimore, Md.

DEAR SIR: I beg to reply to your request for my opinion upon certain questions which have arisen under the Act of 1916, Chap. 52, adding Section 171A to the Baltimore City Charter.

This Act was the result of the case of Bamberger vs. Baltimore, 125 Md. 431. It provides that "*executors and administrators shall pay* all taxes *due* from their decedents, also all taxes *levied* upon estates in their hands, *prior to the final account and distribution*, as preferred debts," etc.: and in the event of any distribution on or after October 1st, either before or after the taxes have been levied for the ensuing year, "said

executor or administrator *shall retain sufficient funds* to pay State and City taxes for the ensuing year upon all property so distributed, *and shall pay said taxes when due,*" etc. The Act is also made to apply to Guardians, Receivers and Trustees, except that "Receivers and Trustees shall be liable only for taxes due at the time of the distribution upon property or funds distributed to creditors." Finally, "any Auditor who shall *pass the account* of any such executor, administrator or guardian, without requiring the provisions of this section to be complied with, shall himself be liable, together with the securities on his bond, for such taxes."

I beg to advise you as follows:

In passing the accounts of Executors, Administrators and Guardians, I think that the Register of Wills of Baltimore City will be regarded as the "Auditor" referred to in the last sentence of the above Act. Therefore, you will be required to discharge the duties which the Act places upon the "Auditor."

What the Act requires you to do, in order to protect yourself and your bond from liability for taxes, is not to pass the account of any executor, administrator or guardian "without requiring the provisions of this section to be complied with."

The effect of this, in my opinion, is that in cases where State and City taxes are due at the time of filing the account, you should, before passing the account, satisfy yourself that the taxes have been paid, but in cases where taxes are not due your liability under the Act will be discharged by seeing that sufficient funds to pay such taxes are retained, and if the account retains sufficient funds for this purpose, I think you can safely pass it.

In Baltimore City, assessments become final on October 1st, and the levy is always made between that time and January 1st, when taxes for the ensuing year are payable. I would, therefore, suggest that you meet the situation as follows:

1. Taxes due when an account is filed will present no difficulty, because they can be paid. Such taxes must be paid, so do not pass any account at any time without requiring the receipted bills for all taxes then due to be exhibited to you.

Generally speaking, this will apply to all accounts filed between January 1st and October 1st. Generally, also, there will, between these dates, be no taxes levied but not due, because the levy is made between October 1st and January 1st, and the taxes are payable on January 1st.

2. Accounts passed between October 1st and January 1st must retain sufficient funds to pay State and City taxes for the ensuing year.

3. In the cases of accounts filed between October 1st and January 1st, *if the levy for the ensuing year has been made*, then the amount of the taxes for the ensuing year can be ascertained by multiplying the assessment (which became final on October 1st) by the levy rate. In such cases you should satisfy yourself, either by a certificate from the City Collector or in some other way which you consider reliable, as to what the assessment is and what the rate is and what the taxes for the ensuing year will be. You may then pass an account which retains sufficient funds to pay these taxes.

4. In the case of accounts filed between October 1st and January 1st, *at a date prior to the levy for the ensuing year*, and when, therefore, you cannot tell what the taxes for the ensuing year will be, all you can do is to estimate these taxes as well as you can, from the assessment, which became final on October 1st, and from the probable tax rate for the ensuing year. Since this tax rate cannot then be known definitely, you must estimate it high enough to allow a sufficient margin to protect you. You may then pass an account which retains sufficient funds to pay these estimated taxes for the ensuing year.

5. The taxes for the ensuing year are treated by the Act as preferred debts *of the estate*, and as payable from the estate to the exclusion of all others except funeral expenses. Therefore, the funds retained for the payment of such taxes should be treated, like other debts, and like taxes then due and paid, as credits against the estate, and should not be charged against the distributive shares of the collaterals.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS.

BANKS—BRANCH BANKS.

December 14, 1916.

J. Dukes Downes, Esq.,
Bank Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your inquiry as to the power of state banks in Maryland to establish branch banks under the general law.

In many cases state banks maintain agencies in different localities, which may be called branches, but which do not themselves exercise general banking powers, but merely act for the bank as its agent in receiving deposits and forwarding them to the bank's offices, and in otherwise acting for the bank for the convenience of the bank's customers. I see no reason why banks may not establish and maintain agencies of this kind.

The power of a state bank under the general law to establish branches which are not mere agencies, but which themselves exercise banking powers, is not clear.

The banking law neither gives nor denies this power to banks, but is silent on the subject. The power to establish such branch banks, without express statutory authority, is said not to exist in:

Bruner vs. Citizens' Bank of Shelbyville, 134 Ky. 283;
Morehead Banking Co. vs. Tate, 122 N. C. 313;
Magee on Banks and Banking (2nd Ed.), pages 42-50, 252-256, 918-921;
Michie on Banks and Banking, Vol. I, pages 67-68, 177, 591, 829; Vol. II, page 1351.

The Maryland law requires charters to state the particular village or town or city and county where the bank is to be located, and the law also fixes the minimum amount of capital

stock in proportion to the population of the community (Bagby's Code, Art. 11, Secs. 20 and 21). These provisions furnish a basis for the view that the general law does not contemplate branch banks.

On the other hand, the general law permits the consolidation of banks, and does not expressly prohibit the consolidated bank from conducting its business at the places where the constituent banks were located; and also makes certain fee provisions for cases in which the Bank Commissioner has to extend his examination beyond the *principal* office, and in *other* towns or cities (Bagby's Code, Art. 11, Sections 59; 16). These provisions furnish a basis for the view that the general law impliedly recognizes the bank's power to have branches.

This view is at least somewhat strengthened by the fact that a considerable number of banks in this State do maintain branches, with no express authority in their charters or under the general law to do so, and their power to do this has never been questioned by the Bank Commissioner, nor, so far as I know, by any stockholder. Moreover, ordinary corporations have the implied power to maintain branches, and it can be argued with much force that there is no legal reason for denying the same power to banks.

Both views have much to be said in their favor, and in the absence of any decision in this State upon the question, I am unable to advise you with certainty which view our courts would take.

As a practical matter, however, I do not think that your Department is necessarily called upon to take a position upon this disputed legal question which will be adverse to the power of the banks to establish branches, as many of them have done for years, without any express authority in their charters, but with the full knowledge and acquiescence of the state authorities.

The principal object of your Department is for the protection of the depositors and the public who deal with the banks, and if you see that the banking laws, which aim to accomplish this, are faithfully complied with, then I see no reason for your

Department to take the position that the banks shall not maintain branches, when it is by no means clear that they cannot legally do so, and when there is at least as much to be said in favor of the view that they can, as in favor of the view that they cannot.

The banking law (Bagby's Code, Art. 11, Sec. 20) requires the capital stock of banks to be fixed in proportion to the population of the community where the bank is to operate. The object of graduating the capital stock in this way, is, of course, to require each bank to have such amount of capital stock as, in the opinion of the Legislature, will be adequate to protect the customers who may naturally be expected to deal with the bank.

If a bank is allowed to maintain branches in different localities, upon the capital required in the locality of its home office alone, then, of course, the protection sought to be accomplished by the above provision would often be impaired.

This, however, would not be the case if a bank is only allowed to establish branches on condition that its capital stock is not less than the amount that would be required for a locality having the combined population of the communities in which the branches and the home office are to be maintained.

If a bank which desires to establish branches under the general law, whether in the same or in different counties, either has or acquires this amount of capital, then I think that its customers are given the protection as to capital stock which the law intended they should have; and in such case I think that you may properly take the position that, so far as your Department is concerned, you will not raise the disputed legal question of the bank's power to maintain branches under the general law.

But if such a bank has not and will not acquire this amount of capital stock, then I suggest that you take the matter up with me, to the end that we may test such bank's power to establish branches, when it has not the amount of capital stock required by you as above.

In every case, however, I think that you should require the operations of the branch bank to be conducted under the supervision and direction of the home office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—REDUCTION OF CAPITAL STOCK.

December 28, 1916.

J. Dukes Downes, Esq.,
Bank Commissioner,
402 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I have considered the application of the Equitable Mortgage and Trust Company for your approval of a decrease in the company's capital stock to $10,000.

This decrease would, of course, reduce the capital stock much below the $500,000 which the banking law prescribes as the minimum for trust companies in cities the size of Baltimore. Bagby's Code, Art. 11, Sec. 42.

Sec. 54 of the same Article authorizes any bank or trust company to amend its charter "in any manner not inconsistent with the provisions of law," and also provides that "no reduction of capital shall be made to a less amount than is required under the provisions of this Article for capital, nor be valid nor warrant the cancellation of stock certificates, or diminish the personal liability of stockholders, until such reduction has been approved by the Bank Commissioner."

In my opinion, this does not authorize the Bank Commissioner to approve a decrease in capital stock below the minimum fixed by law. The section means that no decrease in capital stock shall be valid, or warrant the cancellation of stock certificates or diminish the personal liability of stockholders, unless the decrease is approved by the Bank Commissioner, but that in no case can the capital stock be decreased below the minimum amount required by section 42. If this could be done, not only might the protection designed to be afforded by section 42 be evaded, but such a decrease would be "inconsistent with the

provisions" of section 42, and, therefore, not allowed by section 54.

Inasmuch as the proposed reduction is unlawful, you should not, of course, approve it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—TRUST COMPANY POWERS ELIMINATED BY CHARTER AMENDMENT.

November 10, 1916.

J. Dukes Downes, Esq.,
Bank Commissioner,
Garrett Building,
Baltimore, Maryland.

DEAR MR. DOWNES: As requested by you, I have examined the Certificate of Amendment to the Charter of the Eastern Shore Trust Company, both with respect to the legality of the amendments proposed and to its form.

The company was incorporated by the Act of 1900, Chap. 351, with both banking powers and trust company powers. The object of the amendment is to eliminate the trust company powers, and thus make the company a bank, with banking powers only.

Bagby's Code, Art. 11, Sec. 54, authorizes any bank or trust company to amend its charter "in any manner not inconsistent with the provisions of law," and by Sec. 51 this power is made applicable to legislative charters, as well as to charters granted under the general law.

An amendment which, like the one here proposed, diminishes the charter powers, is not inconsistent with any provisions of the law. On the contrary, such an amendment is expressly authorized by the Act of 1916, Chap. 596, Sec. 24, amending Bagby's Code, Art. 23, Sec. 24.

There is no doubt that the company could dissolve altogether, under the Act of 1916, Chap. 596, Sec. 76, amending Bagby's Code, Art. 23, Sec. 76, and Bagby's Code, Art. 11, Sections 60 and 61. It cannot, therefore, be against the policy of the law

to permit the company to dissolve or eliminate the trust feature of its business.

The principles applied in a number of Maryland cases, by analogy at least, recognize that this can be done.

State vs. German Savings Bank, 103 Md. 196;
Webster vs. Pole Line Co., 112 Md. 416, 435;
Public Service Comm. vs. P., B. & W. Ry., 122 Md. 438.

I am, therefore, of opinion that the Eastern Shore Trust Company has the power, by amendment to its Charter, to eliminate its trust company powers and business.

I understand that no practical difficulties will arise after the amendment has been adopted with reference to the company's existing trust company business, because that business is confined principally to a few trusteeships and guardianships, and that the company will take the proper steps to be relieved of these, and of any other trust business which it may now have and which it will not have the power to continue after the amendment is adopted. I think that you should advise the company that this will be required.

I also find that the certificate of amendment submitted to you recites that the required preliminaries have been complied with. The certificate is in proper form, and the amendments themselves contain no provisions which it would not be lawful to insert in an original certificate of incorporation.

I, therefore, think that you may approve the certificate, when the same has been duly executed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION.

CONSERVATION—CRAB LICENSES—POWER TO ARREST.

August 29, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of August 26th, asking whether Deputy Game Wardens have authority to make arrests for violations of the crab license laws.

The Act of 1916, Ch. 682, Sec. 3, charges the Conservation Commission with the duty of enforcing all laws relating to fish and crabs, and section 8 specifically refers to crab license laws. The same act puts the Game Warden and Deputy Game Wardens, with their existing powers, under the jurisdiction of the Commission (sections 4-3 & 5).

The existing laws undoubtedly confer upon the Deputy Game Wardens the power to arrest for all violations of the fish laws (Bagby's Code, Art. 99, Sections 45-56), and I think that it may fairly be said that this includes the crab license laws. It is, of course, the duty of the State Fishery Force to enforce the crab license laws also, and that Force likewise has the power to arrest. (Act 1916, Ch. 544, amending Code, Art. 39, Sec. 93; Code, Art. 72, Sections 39, 45, 119; Art. 39, Sec. 116; Art. 99, Sections 6 & 57.)

I, therefore, think that the Deputy Game Wardens may make arrests for violations of the crab license laws.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRAB LICENSES—CLERK'S SHARE OF FEES.

June 3, 1916.

Oliver C. Collins, Esq.,
Clerk, Circuit Court,
Snow Hill, Maryland.

DEAR MR. COLLINS: I have your favor of June 1st. The fifty cent charge "for granting any license of any kind," provided by Bagby's Code, Art. 56, Sec. 12, is a general charge, and does not apply to any case for which the Legislature, by a special act, specifically provides a different charge. The Act of 1916, Chap. 544, clearly does this.

This Act imposes crab license fees ranging from $1.00 up to $10.00, and then, in Section 94, provides that "one-tenth of all crab license fees provided by this sub-title shall be retained by the respective Clerks of the Courts issuing the same, and the remaining nine-tenths, together with all fines," shall be paid into the Conservation Fund, and shall be disbursed by the Conservation Commission for the protection or propagation of the crab supply.

This is a clear, specific provision as to the charges for crab licenses, which supersedes the charges authorized for licenses generally, and under this provision the Clerks can only retain one-tenth of the $1.00 license fees, or 10 cents. In the case of the $5.00 license fees, they can retain 50 cents, and in the case of the $10.00 license fees, they can retain $1.00.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRAB LICENSES—CRABBING FOR PLEASURE.

July 28, 1916.

George A. Kratsch, Esq.,
1003 W. North Avenue,
Baltimore, Maryland.

DEAR SIR: I have your favor of July 26th. It is not necessary to have a license to crab for pleasure in the waters of Anne Arundel County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRAB LICENSES—SELLING LESS THAN CRATE.

June 20, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. KILLIAN: I have your favor of June 16th. I understand from Mr. Kemp that the point of your inquiry relates to whether commission merchants and wholesale dealers in the City of Baltimore are subject to the $5.00 license fee provided by the Act of 1916, Chap. 544, Sec. 93-B (2), if they sell live, hard or soft crabs by the dozen or half dozen, as well as sell them by the barrel or crate.

In my opinion they are. The fact that a person who sells by the barrel or crate also sells in less than such quantities, does not relieve him from the obligation of securing the license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—FISH LICENSES—RIGHT TO REQUIRE OF NON-RESIDENTS OF COUNTY.

August 17, 1916.

William L. Seabrook, Esq.,
State's Attorney,
Westminster, Md.

DEAR MR. SEABROOK: I received your favor of August 8th, in which you ask my opinion upon the constitutionality of Sec. 6 of the Act of 1916, Ch. 404, making it unlawful for any person not a bona fide resident of Frederick County to fish in any of the waters thereof without a license.

There may be, as you say, some question as to the constitutionality of this section. The right to discriminate against non-

residents of the State, by requiring them to take out a fishing license, when none is required of residents, seems clear.

26 L. R. A. (N. S.) 794, case note;
40 L. R. A. (N. S.) 285 case note;
41 L. R. A. (N. S.) 469, case note;
19 Cyc. 1008.

The right, however, to discriminate against residents of the same state has, in some cases at least, been denied.

Harper vs. Galloway, 26 L. R. A. (N. S.) 794;
51 So. Rep. 226;
11 R. C. L., sec. 34;

But this right seems to be upheld in a Maine case.

State vs. Leavitt, 26 L. R. A. (N. S.) 799; 105 Me. 76; 72 Atl. Rep. 875.

The question may be affected by other elements, such as the character of the waters, whether public or private; and the riparian rights of landowners.

See also—

Hughes vs. State, 87 Md. 298;
State vs. Applegarth, 81 Md. 293;
Hess vs. Muir, 65 Md. 586.

I understand that it has been the custom in Maryland to pass statutes of this kind, and in view of this, and of the reasoning in the Maine case, above, and in other cases cited in the above notes, I am disposed to think that the law in question is constitutional. At all events, I do not think that I should declare any act unconstitutional unless it is clearly so, but it is rather my duty to uphold Maryland legislation, if possible; and accordingly my advice in this case would be that the law in question should be enforced by the authorities, leaving those affected thereby to their resource to the courts, should they desire to test the question.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—UNDERSIZE.

February 5, 1916.

James B. Curley, Esq.,
State Game Warden,
510 Garrett Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of February 3rd, in which you ask whether Section 85 of Article 39 of Bagby's Code, relating to undersize fish is still in force.

Section 85 of Article 39 of Bagby's Code is still in force. The situation is this:

The Act of 1906, Ch. 161, contained sections 78 to 86, inclusive. The Act of 1910, Ch. 255, merely repealed and re-enacted with amendments Sections 79, 83 and 85 of the Act of 1906, leaving the other sections of the Act of 1906 unamended, and continuing the same as before.

In Bagby's Code of 1912 all of these sections were codified in Article 39, by their original numbers, 78 to 86, inclusive. Sections 78, 80, 81, 82, 84 and 86 were, of course, codified in the form in which they had been passed in 1906, and sections 79, 83 and 85 were codified as they had been amended in 1910.

In 1914 the Legislature (Acts 1914, Ch. 366) repealed and re-enacted sections 81 and 86 (the amendment to section 86 removing Harford County from the several counties named to which sections 78 to 86 did not apply), but all sections other than these two sections 81 and 86 were unchanged and continued and still continue as before.

The result is that the law today is exactly as it appears in Article 39 of Bagby's Code of 1912 (Vol. I), sections 78 to 86, inclusive, except that section 81 and section 86 were amended in 1914 in the form in which they now appear in Volume III of Bagby's Code.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION — GAME — CLOSED SEASON FOR SQUIRRELS — DOVES — WILD FOWL FOR STOCKING AND DECOY PURPOSES — BELLBIRD QUAIL — WAIVING HEARING BEFORE JUSTICE.

September 15, 1916.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of September 5th.

1. The Act of 1916, Chap. 143, provides two closed seasons for shooting squirrels in all of the counties of the State except seven, Anne Arundel, Talbot, Dorchester, Charles, Prince George's, St. Mary's and Calvert. These closed seasons are between December 24th and August 25th, and between October 1st and November 10th, said dates being exclusive. Therefore, squirrels cannot be shot in any of the counties of the State, other than the seven excepted counties, and also other than Frederick and Allegany Counties as hereinafter explained, within either of these two closed seasons.

The Act of 1916, Chap. 143 provides that it shall not apply to the seven counties above named, and I think the effect of this is that Bagby's Code, Art. 99, Sec. 20 (Acts 1914, Chap. 472), still applies to these seven counties, and that therefore, the closed season for squirrels, in these seven counties is between December 24th and November 10th.

Frederick County is not one of the seven counties excepted from the Act of 1916, Chap. 143, but the Act of 1916, Chap. 404, applying specifically to Frederick County, was approved on a later day than Chapter 143, and, therefore, supersedes it as to Frederick County. Under Section 9 of Chapter 404, the closed season for squirrels in Frederick County is between December 24th and August 25th.

Also, Allegany County is not one of the seven counties, excepted from the Act of 1916, Chap. 143, but the Act of 1916, Chap. 282, applying specifically to Allegany County, was approved on a later day than Chapter 143, and, therefore, supersedes it as to Allegany County. Under Section 12A of Chap.

282, the closed season for squirrels in Allegany County is from December 24th to September 15th.

The Act of 1916, Chap. 97, provides a closed season for squirrels in Cecil County between October 25th and August 25th, but this Act, while approved on the same day as Chapter 143, was approved before Chapter 143, and is, therefore, superseded by Chapter 143, so far as squirrels are concerned.

The result is:

a. Anne Arundel, Talbot, Dorchester, Charles, Prince George's, St. Mary's and Calvert Counties. Closed season for squirrels, December 24th to November 10th. (Acts 1914, Chap. 472, Code, Vol. III, Art. 99, Sec. 20.)

b. Frederick County. Closed season for squirrels, December 24th to August 25th. (Acts 1916, Chap. 404, Sec. 9.)

c. Allegany County. Closed season for squirrels, December 24th to September 15th. (Act 1916, Chap. 282, Sec. 12A.)

d. All other Counties. Closed seasons for squirrels, December 24th to August 25th and October 1st to November 10th. (Act 1916, Chap. 143.)

2. I think that the Legislature can make doves game birds in Talbot County and not in the other counties, as it has done in Section 28B of the Act of 1916, Chap. 385

3. While the Act of 1916, Chap. 568 (Bagby's Code, Art. 99, Sec. 14), makes it unlawful to have the wild fowl there mentioned in possession during the closed season therefor, yet Bagby's Code, Art. 99, Sec. 27, permits persons to have live birds in possession during closed seasons for stocking purposes. It is, therefore, lawful to have live wild fowl in possession during closed seasons for stocking purposes, and I see no reason why wild fowl which are thus used for stocking purposes may not also be used for decoy purposes.

4. It is not unlawful for a person to breed or rear quail, without any official permission, provided in so doing he does not collect nests or eggs from the trees or woods. He can only do that, under the Act of 1916, Ch. 385, after obtaining the State Game Warden's certificate, and then only for strictly

scientific purposes. But there is nothing to prevent the breeding and rearing of quail if that is done without molesting quail nests or the eggs therein. (Compare Bagby's Code, Art. 99, Sec. 27 and 34; and Act 1916, Chap. 595.)

5. Parties arrested for violations of the Act of 1916, Chap. 568 (Bagby's Code, Art. 99, Sec. 14), may waive a hearing before the Justice, and elect to have a court trial.

Very truly yours.

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—CLOSED SEASONS IN ALLEGANY COUNTY FOR RACCOONS AND POSSUMS.

September 11, 1916.

J. C. Turner, Esq.,
Federal and State Game Warden,
Cumberland, Md.

DEAR SIR: I have your favor of September 9. Under the Act of 1916, Chap. 282, Sec. 150, the closed season for raccoons and possums in Allegany County is from April 1 to September 1. This Act supersedes as to Allegany County the general law codified in Bagby's Code, Art. 99, sects. 58 and 59.

Very truly yours.

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—CLOSED SEASONS IN GARRETT COUNTY FOR VARIOUS GAME—SHOOTING LICENSES FOR NON-RESIDENTS.

August 29, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of August 18th, enclosing letter from Mr. E. Z. Tower, Clerk of the Circuit Court of Garrett County.

It is rather difficult to reconcile the different statutory provisions which bear on Mr. Tower's question, but my views are as follows:

The Act of 1914, Chap. 552, approved April 10, 1914, provides, in Sections 1 and 2, the open season in Garrett County for pheasants, partridges or quail, woodcock, wild turkey and rabbits. Section 4 requires a license of non-residents of Garrett County who wish to kill "any of the game above mentioned in Garrett County during the open season for the hunting and killing of the same as hereinbefore provided," such license to be granted by Justices of the Peace, and the fee to be $10, of which the Justice may retain fifty cents.

It is not necessary to consider the effect of the words in section 1, "it shall not be *un*lawful," because this section, prescribing the open season for the above kinds of game, was, I think, superseded by the Act of 1914, Ch. 472 (Bagby's Code, Vol. III, Art. 99, Sec. 20), approved on a later date, April 16, 1914, and this Act was in turn repealed and re-enacted by the Act of 1916, Ch. 143, approved April 4, 1916. This latter Act now prescribes the season for shooting partridges or quail, pheasants, rabbits, wild turkey, woodcock and squirrels throughout the State. For all of the above game except squirrels, the season is from November 10th to December 24th; and the season for squirrels (except in certain named counties, of which Garrett County is not one), is from August 25th to October 1st, and from November 10th to December 24th; all said dates being exclusive.

The Act of 1916, Ch. 143, also authorizes the killing of deer during said season from November 10th to December 24th, but the Act of 1916, Ch. 329, approved on April 18th, after Chapter 143, requires a closed season for deer throughout the State for six years from June 1st, 1916. See also Act 1916, Ch. 10.

It seems to me that the Act of 1916, Ch. 143, repealing, as explained above, those provisions of the Act of 1914, Ch. 552, which relate to the open seasons for the above game, does not repeal the provisions of Section 4 of said Chapter 552, which requires a license for non-residents of Garrett County to shoot

in that county. I also think that this Section 4 of the Act of 1914, Ch. 552, operated to repeal the earlier Act of 1900, Ch. 189, which also provided for non-residents' licenses.

My conclusions, therefore, are:

1. The open season for partridges or quail, pheasants, wild turkeys, woodchucks and rabbits in Garrett County is from November 10th to December 24th, both dates inclusive, and the open season for squirrels is from August 25th to October 1st and from November 10th to December 24th, said dates being exclusive.

2. Non-residents of Garrett County who desire to shoot in Garrett Cunty, during the open seasons, must take out the license and pay the fees provided by section 4 of the Act of 1914, Chapter 552.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—GAME—EXPORTATION BETWEEN COUNTIES.

September 26, 1916.

Ernest Ray Jones, Esq.,
State's Attorney,
Oakland, Maryland.

DEAR MR. JONES: I have your favor of September 23rd.

The Act of 1914, Ch. 552, prohibits the exportation of game *out of Garrett County*, except as therein provided. This, of course, means that the game cannot be exported from Garrett County to any other county of the State, nor can it be exported from Garrett County beyond the State.

The Act of 1916, Ch. 215, prohibits the exportation of wild game, water fowls excepted, *beyond the limits of the State*, except as therein provided.

I think that both of these acts can stand together, and that the Act of 1916, Ch. 215, does not repeal the Act of 1914, Ch. 552. The Act of 1916 only prohibits the exportation of game *beyond the State*, and does not attempt to regulate exportation between counties in the State. It is not, in my opinion, incon-

sistent with any local laws which permit or prohibit the exportation of game *from one county to another county.*

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—GAME—EXPORTATION BEYOND THE STATE.

November 21, 1916.

William S. Thomas, Esq.,
211 North Calvert Street,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your recent favor, in which, on behalf of the Adams Express Company, you ask my opinion as to what is included in the term "wild game," as that term is used in the Act of 1916, Chap. 215, making it unlawful "to export or ship out from the limits of the State of Maryland any wild game, water fowls excepted."

The Act of 1916, Chap. 215, adds section 72 to Article 99 of Bagby's Code, and section 44 of the same Article provides that "the word 'game' shall be taken to embrace deer, wild turkey, pinnated grouse, ruffed grouse, known as 'pheasants,' Mongolian or English pheasants, woodcock, partridges or quail, rabbits, squirrels, ducks, geese and all other species of wild fowl."

The words "water fowls," to which Act of 1916, Chap. 215, does not apply, embraces duck, geese, swan and brant.

The Act of 1916 does not, in my opinion, apply to otter, raccoon, muskrat, fox or other fur bearing animals.

My opinion as to the application of the Act of 1916, Chap. 215, therefore, is:

(1) It prohibits the exportation from this State of the game specified in section 44 of Article 99 of the Code, except that:

(2) It permits the exportation from this State of duck, geese, swan and brant.

(3) It does not apply at all to otter, raccoon, mu-krat, fox or other fur bearing animals.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—MOTOR BOATS IN DUCK SHOOTING.

November 20, 1916.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of November 4th, in which you ask whether it is lawful for persons shooting wild fowl on the Susquehanna Flats to put out decoys, then lay off some distance in a motor boat, and when the wild fowl decoy to the dummies, run up in the motor boat and shoot.

This method of shooting ducks is, as I understand it, known as "bushwhacking." Whatever doubt there may formerly have been as to its legality on the Susquehanna Flats, has, I think, been removed by the Act of 1916, Chapter 542, which amends Section 13 of Article 99 of Bagby's Code, and adds to that section the following:

"Provided, that nothing herein contained shall apply to sink boxes nor to motor boats running with the wind while shooting over decoys, nor to retrieving or shooting wounded wild water fowl which have been wounded over decoys, if said sink boxes and motor boats running with the wind while gunning over decoys or retrieving ducks, wounded or killed over decoys, occurs northward of a line drawn east and west from Turkey Point, in Cecil County, and Locust Point, in Harford County."

The practice you describe on the Susquehanna Flats consists of shooting ducks, over decoys, from motor boats running with the wind, and this, I think, is lawful under the Act of 1916, Chapter 542.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—STATE GAME WARDEN—SALARY AND EXPENSES.

September 25, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Mansey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of September 21st, asking my further opinion with respect to the subject of my letter of September 19th to Mr. LeCompte.

As I wrote Mr. LeCompte, I think that the State Game Warden's salary and expenses "are proper charges against the State Game Protection Fund, and not against the Conservation Fund, so long at least as the State Game Protection Fund is sufficient to meet them."

If this fund is not sufficient for the purpose, then I do not see how the salary and expenses in question can be charged against the general funds of the State.

The appropriation acts of 1916, Chapters 685 and 684, made no appropriation to the State Game Warden. The Act of 1916, Ch. 682, sec. 4, continues the State Game Warden under the supervision of your Commission "at such annual salary as may now or hereafter be fixed by law." This salary is fixed at $1200 by Bagby's Code, Art. 99, sec. 44, but while it is possible that this statutory provision for salary might formerly have been considered as a sufficient appropriation, without also embodying it in the annual appropriation acts (under Thomas vs. Owens, 4 Md. 189, 225-228), yet this could hardly be so now, in the face of the Act of 1916, Ch. 126, abolishing continuing appropriations.

But in any event the Act of 1916, Ch. 682, which placed the State Game Warden under your Commission, and which continued his $1200 salary now fixed by law, as aforesaid, expressly provided how that salary was to be paid.

The State Game Warden is one of your Commission's "staff officers." Act 1916, Ch. 682, sec. 4. Section 9 of the same act provides that the Conservation Fund shall be drawn upon, among other things, for the "salaries and expenses of the Com-

mission, its *staff officers* and employees." If nothing more had been said, the State Game Warden's salary and expenses would clearly, I think, be charges against the Conservation Fund alone.

Section 9, however, then proceeds to transfer the State Game Protection Fund to your Commission, and provides that "the moneys in said fund shall be used solely for the salaries and expenses of the State Game Warden," etc.

The effect of this is, it seems to me, that the State Game Protection Fund must be applied to these purposes, as far as it will go, but if it is not sufficient therefor, then I cannot find any warrant for making up the deficiency from the general treasury, because there is now no act which can be construed as appropriating anything from the general treasury for these purposes. Code, Art. 99, sec. 44, not being now susceptible of such a construction, because of the act abolishing continuing appropriations. And, of course, no money can be drawn from the general treasury "except in accordance with an appropriation by law." Constitution, Art. 3, sec. 32.

Therefore, I see no escape from holding that the only source from which such deficiency can be made up is the Conservation Fund, which is chargeable with the salaries and expenses of the staff officers (the State Game Warden being a staff officer) of the Commission, as augmented by the $25,000 appropriation, made by the Acts of 1916, Ch. 685, page 1570, and Ch. 684, page 1556, "to make up any deficiency between the Conservation Fund, and the cost of conducting said Commission."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—MARYLAND AND VIRGINIA BOUNDARY LINE.

July 29, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Mansey Building,
Baltimore, Maryland.

DEAR SIR: As requested by you orally yesterday, I have examined the question of what is the true boundary line between the States of Maryland and Virginia.

By the Act of 1874, Ch. 247, "the settlement and determination of the true line of boundary" between Maryland and Virginia, was referred to arbitrators; and the Act provided that Maryland "hereby pledges its faith to accept and abide by the award of said arbitrators as final and conclusive." The State of Virginia passed concurrent legislation. (Act of March 28, 1874.)

The Maryland Act of 1874 was amended by the Act of 1876, Ch. 198, by substituting a new arbitrator in place of one of the original arbitrators who had died; and in this act the above provisions were reenacted. Virginia passed concurrent legislation. (Act of February 10, 1876.)

The arbitrators filed their award, determining the boundary line between the two states, in January, 1877 (Maryland Land Office, Liber R. H. No. A, folio 1); and the State of Virginia, by the Act of 1878, Ch. 246, accepted and confirmed the boundary line so established, and provided, that the same should be "forever faithfully and inviolably observed and kept by" Virginia and her citizens.

Maryland had already pledged her assent by the Acts of 1874 and 1876, and by the Act of 1878, Ch. 374, she provided for commissioners to survey and mark the line; and by the Act of 1878, Ch. 451, for copies of the map made by the arbitrators.

Congress, by 20 U. S. Statutes at Large, Ch. 196, page 481, gave its consent to the award.

The boundary line established by the aforesaid arbitrators is the true boundary line between Maryland and Virginia. The faith of Maryland was expressly pledged to accept and abide by it, it was confirmed by both States and by Congress, and, moreover, the Supreme Court of the United States has recently recognized it.

Maryland vs. W. Va., 217 U. S. 45; 578-580.

You have a copy of the award, defining the boundary line, and also a copy of the map filed with the award by the arbitrators and verified by them. This map is marked "Coast Chart No. 23, Chesapeake Bay, Sheet No. 3," and on it there appears a red line marked "true line of boundary as ascertained and

determined by arbitrators, 1877." If that line conforms, as I assume that it does, to the line as determined in the award, then it is the true boundary line between Maryland and Virginia.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTERS—CULLING WHOLE CARGO.

October 23, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of October 7th, in which you ask whether the Captain or Master may be required to cull the whole cargo of oysters, in cases where the inspector finds that a portion of the cargo contains more than five per cent. of unmerchantable oysters.

Section 11 of Article 72 of Bagby's Code, provides that in such event "the said cargo shall be deemed to be unculled, and the Captain, Master or person in charge of such oysters shall be required to cull the whole cargo." Therefore, the law requires the Captain or Master to do the culling in the case mentioned.

If the Captain or Master refuses to cull the whole cargo, and thus violates the requirements of Sec. 11, he is, under Sec. 17, guilty of a misdemeanor, and may be prosecuted under Sec. 17.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION — OYSTER INSPECTION TAX — COMMISSIONS NOT ALLOWED ON COLLECTIONS.

September 14, 1916.

William H. Killian, Esq.,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of September 11. In my opinion, commission merchants buying oysters are required to pay the whole of the one cent bushel tax imposed by the Act of 1916, Ch. 702 (Bagby's Code, Art. 72, sec. 70); and they are not authorized to deduct ten per cent or any other amount for collecting the half of the tax due by the sellers, but they must account for the whole tax to the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION — OYSTER INSPECTION TAX ON SALES TO BUY-BOATS FOR SHIPMENT BEYOND THE STATE.

October 23, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of October 16th, asking whether oysters caught within the limits of this State, and sold and delivered in this State to "buy-boats," are subject to the one cent per bushel inspection tax, if the oysters are to be shipped in the "buy-boats" to points outside the State of Maryland.

The only contention which could be urged against the tax in such cases, is that Sec. 70 of Art. 72 of Bagby's Code (Act

1916, Ch. 702), provides that the tax is to be levied "upon all oysters caught within the limits of the State of Maryland, unloaded from vessels at the place in Maryland where said oysters are to be no further shipped in bulk in vessels." I think, however, that this provision, taken in connection with the other provisions of Sec. 70, means that the tax is to be levied upon all oysters caught within the limits of this State; and that it is to be levied at the place in Maryland where the oysters are to be no further shipped in Maryland.

This is evidently the construction of the Court of Appeals, because in the case of Foote vs. Stanley, 117 Md. 335, 346, the court said that "the State Fishery Force is required to see to the inspection of oysters sold to 'buy boats' as well as those sold at packing houses."

See also:

Tyler vs. State, 93 Md. 309;
Windsor vs. State, 103 Md. 611.

Therefore, oysters of the character in question are subject to the tax; and since the place where the oysters are loaded upon the "buy-boats" is the place in Maryland where they are to be no further shipped in this State (because they are then to be shipped beyond this State), it follows that the tax is to be levied at that point.

The whole one cent, being payable by the buyer, is to be paid by the owner or master of the "buy boats."

These buyers have, under Section 70, one week in which to pay the tax, and if they wish that period of time before making payment, they are entitled to it.

If, however, the buyers, at the time of the inspection of oysters bought by the "buy-boats" for shipment beyond the State, declare their intention not to pay the tax at all, then in my opinion they waive the benefit of this period of one week, and their property may be levied upon at once.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Conservation—Oyster Inspection Tax on Virginia Raised Oysters.

October 31, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

Dear Sir: I beg to reply to your oral inquiry, as to whether or not the oyster inspection tax provided by Bagby's Code, Art. 72, Sec. 71, can be imposed upon oysters raised on Virginia bottoms which are owned by certain Maryland packers, when the oysters are brought into Maryland and unloaded at the places of business of their owners in this State, from which they are thereafter sold.

By Section 71 of Article 72 of Bagby's Code all oysters caught beyond the limits of the State of Maryland and brought within this State, are clearly required to be inspected, so that the only question is whether the 1/3 of a cent charge which this Act imposes to cover the cost of inspecting such oysters must be paid in the present case.

This charge is levied:

1. "Upon all such oysters unloaded from vessels at the place in Maryland where said oysters are to be no further shipped in bulk in vessels, to be charged equally to the buyer and seller, but to be paid by the buyer.

2. "On oysters caught beyond the limits of the State of Maryland and brought within said State, and sold by commission merchants and others selling by less than the cargo."

In my opinion the oysters in question are subject to the inspection charge under these provisions of the law.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

CONSERVATION—OYSTER LEASES—CONDEMNATION OF PROPERTY—ABANDONMENT.

January 21, 1916.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR: I beg to submit to you a report and recommendations as to the advisability of prosecuting the appeals recently taken in the cases known as the Oyster Condemnation Cases tried at the September, 1915, Term of the Circuit Court for Somerset County.

These cases were 38 in number, and they involved 38 lots which had been leased by the Shell Fish Commission as barren bottoms, open for oyster culture, but which, under the resurveys provided for by the Shepherd law (Acts 1914, Ch. 266), were determined to be natural bars, and, therefore, not subject to lease. Section 940 of the Shepherd law (Bagby's Code, Vol. III, Art. 72, Sec. 940) provided that the interests of lessees under outstanding leases of bottoms which, under such resurveys, were determined to be natural bars, and the oysters thereon, should be condemned by the State, and the duty of instituting such condemnation proceedings was placed upon the State's Attorney of the county in which said areas were located.

The lots in question were all located in Somerset County, and accordingly the State's Attorney for Somerset County, Mr. Gordon Tull, instituted the proper proceedings for their condemnation, and the cases were tried in October, 1915. The awards of the Juries aggregated $23,7[illegible], and the lots, with their locations, and the amounts awarded by the jury for each lot, are as follows:

(*Note. These details are omitted.*)

Early in November, 1915, Attorney General Poe filed appeals to the Court of Appeals from the judgments in each of the cases, but upon subsequently learning that no exceptions had been reserved by the State to any ruling of the Court at the trials, and that there were therefore no grounds upon which to appeal, Mr. Poe, on December 3, 1915, dismissed the appeals, and filed instead motions to set aside the various judgments.

The grounds upon which these motions were based will be stated later.

These motions were argued by Mr. Tull on December 29, 1915, which was the day of my qualification as Attorney General, and on the following day the court overruled the motions.

I at once secured the papers in the cases from Mr. Pose, and ordered a copy of the testimony from the Court stenographer, and inasmuch as that required some little time to write up, and as the law only allowed ten days for appeals, there was nothing to do but enter appeals without further delay from the orders overruling the motions to set aside the judgments, and investigate afterwards what merit there was in the appeals. I, accordingly, entered these appeals on December 29, 1915.

Subsequently I received the testimony, and made a careful examination of it and of the points assigned by Mr. Pose, which were the only points he could assign, as the basis of his motions to strike out the judgments. These points are as follows:

1. That the Jury in the condemnation cases did not view the lots condemned (which, of course, were under water), such view having been expressly waived by the State's Attorney and counsel for the lot owners. This point involves the question of whether the State's Attorney had the legal power to waive the State's right to have the jury view the lots, and I have concluded that he had such power.

2. That the clerk did not administer to the jury the oath prescribed by the act under which the condemnation proceedings were conducted. I found on investigation that the clerk had in fact administered the proper oath to the jury, so there is, of course, nothing in this point.

3. That the Shepherd law of 1914 provided in Section 940 (Bagby's Code, Vol. III, Art. 72, Sec. 963), that the condemnation proceedings should be "that set forth in Chapter 117 of the Acts of 1912," whereas the proceedings were actually taken under the Act of 1914, Chapter 463, which repealed the Act of 1912, and reenacted it with amendments (Bagby's Code, Vol. III, Art. 33A). I found, however, that under the Act of 1914, Chap. 463, Sec. 15 (Bagby's Code, Sec. 14), whenever the State thereafter resorted to condemnation, it was

directed to acquire the property under the said Act of 1914, Chap. 463, "anything in any other Public General or Public Local Law or private or special statute to the contrary notwithstanding"; and I think it quite clear that the proceedings were properly taken under the Act of 1914, which amended the Act of 1912, and not under the Act of 1912 which had been repealed by the Act of 1914.

4. That the cases were separated into groups, in accordance with the locations of the lots (these groups being shown above), and testimony was taken in the case of only one lot in each group, the State's Attorney and the counsel for the defendants agreeing, as each of the other cases in the same group was reached, that it should be submitted to the Jury upon the same evidence as that taken in the case tried. In all of the groups but one, there was testimony in the case tried to the effect that the other lots in the same group were immediately adjacent to and of the same value as the lot tried, and in the one group in which this was not done, the omission seems to have been due to an oversight, and there seems to be no doubt that the witnesses would have so testified had they been asked, and that this was perfectly well understood. This method of procedure may or may not have resulted in some injustice to the State, but I cannot say that it was a procedure beyond the power of the State's Attorney to agree to.

From this brief review of the [illegible] involved in the appeals, you will see that in my judgment the appeals cannot be prosecuted successfully, and I do not [illegible] that the time and expense (the latter approximating $1,[illegible]) which the prosecution of the appeals would involve, are justifiable. I, therefore, think it my duty to report my conclusions [illegible] the matter to you, and to ask you, if you agree with them, to authorize me not to prosecute the appeals, but to enter the [illegible] be dismissed.

If the appeals are dismissed, [illegible] will, of course, leave the judgments, aggregating $25[illegible], outstanding against the State, and as requested by you [illegible] have considered whether the State has the power to abate [illegible] condemnation [illegible] and permit the lot owners to [illegible] their lots, and if so, what is the proper procedure for this w[illegible]

Without troubling you with a review of the authorities upon the question, I will simply say that I have examined them all, and that in my judgment there is no doubt about the State's power to abandon the condemnation proceedings at any time before payment of the damages assessed. Indeed, the Shepherd law itself, in Section 940 (Bagby's Code, Vol. III, Art. 72, Sec. 940), provides that the rights and property of the lot owners shall not be divested until the compensation awarded has been paid them by the State.

Of course, such compensation could not be paid in any event unless an appropriation therefor is made by the Legislature, so that if no appropriation is made for this purpose the result would be that the lot owners could not be paid, and the property would remain their. Nevertheless, I think that fairness to the lot owners requires that if the condemnations are to be abandoned, some formal determination to that effect should be made by the State, because otherwise the lot owners could not know with certainty whether their lots were to be taken or not, and they would probably not feel justified in cultivating their lots while the possibility existed that the State might decide to pay the awards and take over the property.

The Shepherd law provides that lots leased as barren bottoms, but found, under the resurveys, to be natural bars, "shall be condemned by the State of Maryland for the use of the public," (Bagby's Code, Vol. III, Art. 72, Sec. 940). Since the Legislature is the body which directed that these condemnations should be taken, I think that the Legislature is the body which should now determine that the condemnations are to be abandoned, if that course is decided upon.

Therefore, if the condemnations are to be abandoned, then I think that the Legislature should pass an act so declaring, and that upon the passage and approval of that act, an order should be filed in each one of the cases dismissing, abandoning and nonprossing the petitions, and releasing the judgments of condemnation. In the event that you decide to recommend such a course to the Legislature, I have drafted and enclose you a bill which will accomplish the purpose.

It may not be inappropriate to add that an abandonment of these condemnations can in no sense be said to involve any failure on the part of the State to meet its legal or moral obligations. The situation will simply be that the State decides to permit the lot owners to keep their lots rather than pay the large amount which the juries have determined they are worth. If the lots are in fact worth as much as the juries found they are, then the lot owners will have no complaint whatever, because while they will not receive the awards, they will nevertheless retain the lots which the juries determined are worth the amount of the awards, and which the lot owners themselves claimed in the condemnation cases are worth much more than the amount of the awards.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—REFUND OF APPLICATION FEES.

December 27, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your recent letter in which you ask my opinion as to whether the $5.00 fee which applicants for oyster leases paid your predecessors, the Board of Shell Fish Commissioners, upon filing their applications, may be refunded by your Board, when the areas applied for, after advertisement and protest before lease, have been determined to be natural bars.

I think that such cases fall within Section 105 of Art. 72 of Bagby's Code, providing that the application fee "shall be returned to the applicant if his application shall be for any reason declined."

The revenues of which these fees formed part constituted a fund which was to be first applied to the payment of salaries, expenses, surveys, outlays and disbursements authorized by the

oyster culture laws. (Bagby's Code, Art. 72, Sec. 120.) The fund is still applied in substantially the same way (Act 1916, Chap. 682, Sec. 9), and inasmuch as the return of these fees is one of the outlays or disbursements which the oyster culture laws required and still require to be made when the applications are for any reason declined, I think that your Board is fully authorized to repay these fees out of the Conservation Fund.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—SCALE OF RENTS.

June 30, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. KEMP: I beg to acknowledge your favor of June 28th and Mr. Killian's favor of June 26th.

The Board's power to modify existing leases, by reducing the scale of rentals reserved, or to cancel existing leases and issue new leases of the same bottoms to the same parties without advertisement and notice, are both, in my opinion, too doubtful to justify resorting to either plan.

Under Section 98, however, the Board may exercise its discretion as to whether it will or will not cancel existing leases for non-payment of rent. I think that the Board, in the exercise of this discretion, may decide not to cancel the leases which you now have under consideration for non-payment of the rent reserved therein, but to accept under these leases payment of rent according to the present scale of rents (instead of the rents reserved), such payments to be regarded as payments on account of the rent reserved in the leases in question, pending the Board's application to the next Legislature for legislation which will confer upon the Board the power to modify existing leases as to the rent reserved therein, or otherwise.

I also think that no part of the rent already paid under existing leases can be credited as a payment of the account payments accepted under the above plan.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—STAKES FOR MARKING.

May 1, 1916.

B. A. Duke, Esq.,
Broome's Island,
Calvert Co., Md.

DEAR SIR: I received your favor of April 24th.

Section 107 of Article 72 of the Code authorizes residents in the State to crab or fish upon leased areas, provided that they do not remove or destroy the oysters thereon. Other sections provide for marking leased areas with buoys, and provide penalties for the removal of buoys. I understand that in shallow water stakes are frequently used instead of buoys. When stakes are used they ought to be placed so as to interfere as little as possible with the rights of the crabmen and fishermen. Indeed, it is only necessary for the stakes to be placed at the four corners of the leased lot.

Without knowing more about the stakes you have in mind, it is impossible for me to say whether they are properly placed or not; or whether they unnecessarily interfere with the rights of crabmen or fishermen, and ought to be relocated or removed altogether.

There ought to be no difficulty in staking off the lots so as to properly show the boundaries thereof, and at the same time locating the stakes so as not to interfere with the crabmen and the fishermen. If the stakes are so located as unreasonably to interfere with the crabmen and the fishermen, they can be removed by the authorities. Whether this is so in any given case or not must depend, of course, upon the actual location of the stakes.

I would suggest that you take the matter up with the Shell Fish Commission or the State Fishery Force, and ask them to have the stakes relocated or removed, if they think that the

stakes interfere unreasonably with the rights of crabmen and fishermen.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTER LICENSES—CULLING AND TONGING.

October 5, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of September 26th.

It is true that the law does not specifically provide for a license for culling oysters. Art. 72, Sec. 8 of Bagby's Code, however, requires oysters to be culled where they are caught, and before being deposited in the hold of the boat. This means that they must be culled on board the boat from which they are caught by the tongers, and Art. 72, Sec. 1, provides that any resident of the State desiring to catch oysters with rakes or tongs, must have "a separate license for every person to be employed on such boat." Since those who cull oysters are employed on the tongers' boat, I think that Section 1 requires a separate license for those who cull, as well as a separate license for those who catch,—in other words, as the statute says, for every person employed on the boat.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTER LICENSES—DREDGING—LEASED AREAS AND NATURAL BARS—SEASON.

August 29, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of August 5th, asking my opinion upon certain inquiries from Mr. J. Pembroke Thom and associates.

1. Bagby's Code, Art. 72, Sec. 114, authorizes a lessee of oyster bottoms, who obtains a dredger's license under that section, to operate thereunder on his leased area between September 15th and June 15th: provided, that if he wishes to operate on his leased area during the portion of said period which represents the closed season for dredging oysters from natural bars (Art. 72, Sec. 21), that is, if he wishes to dredge on his leased area (not on the Potomac River) between September 15th and November 1st, and between March 15th and June 15th, he must give written notice of his intention to do so to the nearest police boat, as provided in Section 114.

2. Your second inquiry is whether a license to dredge taken out under Section 21, also authorizes the holder to dredge on leased area.

Section 21 was originally Section 19 of the Act of 1894, Ch. 380, and applied then, as now, to the "waters of the Chesapeake Bay, Potomac River, and in Eastern Bay," subject to certain boundaries and to certain exempted bars. The Act of 1906, Ch. 711, Sec. 112, provided that it should not be necessary for the holder of oyster land to take out a license to dredge thereon, but that he could take oysters therefrom in any manner and at such times as allowed by existing laws. The Act of 1912, Ch. 539, Sec. 112 (now Section 114 of Art. 72), made it unlawful for any person to dredge on any leased land "without first having a license therefor in the same manner as is now required by law for dredging oysters on the natural bars in the waters of the Chesapeake Bay," that is by Section 21.

The dredging season for leased areas under Sec. 114 is longer than the dredging season for natural bars under section 21. Section 114 subjects persons violating its provisions, that is, dredging on leased areas without license, to all the penalties provided in section 25 for dredging without license under sec. 21, that is, on natural bars.

While the question is not entirely free from doubt, I think that the effect of sections 21 and 114 is to require separate licenses for leased areas and for natural bars, and that the license taken out under Section 21 for natural bars does not

authorize its holder to dredge on leased areas, but that an additional license is necessary for that purpose; and similarly, that the license taken out under Sec. 114 for leased areas, does not authorize its holder to dredge on natural bars, but that an additional license is necessary for that purpose.

3. Dredges owned and operated by others than the lessee cannot dredge on the lessee's leased area, upon the lessee's request, unless the owners of such dredges hold a license under Section 114 for each dredge.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—PACKERS.

November 24, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of November 22nd, in which you ask my opinion as to whether William H. Valliant & Bro. are required to take out separate licenses for two oyster packing establishments conducted by them in the same county, or whether one license will cover both.

I understand from your letter that oysters are brought to each house by tongers; a large number of shuckers are employed in each house; the oysters are prepared for the market in each house; and they are actually shipped from each house. Under these circumstances I think that each house is being operated upon an independent basis, notwithstanding the fact that the owners may record the operations in one set of books.

The Act of 1916, Chap. 702, Sec. 79, makes it unlawful to engage in the business of packing or canning oysters without first taking out a license "to engage in such business" in the county in which "the place of business of such applicant may be situated."

I think that the intent of this law is to require packing houses which conduct separate and independent places of busi-

ness to take out separate licenses for each such place of business, and that William H. Valliant & Bro. should, therefore, secure a license for each of their establishments.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—PACKING AND CANNING—TONGING—ONE CENT INSPECTION TAX—MOTORS ON YAWLS.

September 11, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to the inquiries contained in your Commission's letter of August 31st, and to other more recent oral inquiries, as follows:

1. Persons, firms and corporations having a fixed place of business, where they buy oysters and employ labor to prepare them for the market, are, in my opinion, engaged in the business of packing or canning oysters, and must take out the license required by Bagby's Code, Art. 72, Sec. 79.

2. A strictly retail oyster dealer is not engaged in the business of packing or canning oysters, within the meaning of the above section, and need not take out a license thereunder.

3. Under Bagby's Code, Art. 72, Sec. 1, it is provided that the tongers' license shall not, except in certain waters, permit the taking of oysters beyond the limits of the county in which the license is issued, which limits are bounded by the middle of the dividing channel. Special provision, however, is made for the Patuxent River, by the Act of 1904, Ch. 522 (Bagby's Code, Art. 72, Sec. 57), and under that act I think that licenses granted to residents of St. Mary's, Charles and Calvert Counties will authorize them to use the Patapsco River in common. This has always been the custom.

4. Under the Act of 1916, Ch. 702, Section 70 (Bagby's Code, Art. 72, Sec. 70), the whole of the one cent oyster inspection tax is payable by the buyer. The buyer is entitled

to collect one half of this tax from the seller, but the law makes the buyer responsible to the State for the payment of the whole one cent tax. The Court of Appeals of Maryland has so decided in the Foote cases, 117 Md. 335; 116 Md. 228.

5. Section 20 of Art. 72 of Bagby's Code, prohibiting the use of engines and motors upon oyster dredges, was intended, I think, to prohibit engines and motors attached to or on such dredges, and not the carrying by such dredges of a yawl which carries a motor. I do not think that it is unlawful for any dredge to carry a yawl with a motor on the yawl, nor do I think that it is unlawful for such yawl to be used to push the dredge, provided the dredge is not catching oysters while the yawl is being so used. But no engine or motor can be attached to or on the dredge itself.

This ruling will not operate unfairly towards any dredge owners who desire to use motors for pushing purposes. The law does not, it is true, permit them to carry such motors on the dredges themselves, because while there is no reason why a motor should not be used for pushing purposes, yet if the motor could be carried on or attached to the dredge itself, there would be the opportunity to use it, without detection, during dredging operations, which is unlawful. But such owners all carry yawls, and all they need do is equip their yawls with motor, and then use the yawls for pushing purposes. If such yawl were used during dredging operations, which would be unlawful, such use could readily be detected and stopped.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LICENSES—TONGING—PATENT TONGS.

November 22, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to several inquiries you recently submitted to me.

1. The lessee of oyster lands has the right, individually, to tong on his leased area, without a tonger's license. The Act of 1906, Chap. 711, Sec. 112, provided that it should not be necessary for any holder of oyster land "to take out any license for dredging, scraping or tonging on any land so held by him." The Act of 1912, Chap. 539, which repealed and re-enacted this section (Bagby's Code, Art. 72, Sec. 114), requires lessees to take out a license to dredge on their leased areas, but not to tong.

2. If, however, the lessee of oyster land employs others to tong for him upon his leased area, then such persons must have a tongers' license, under Bagby's Code, Art. 72, Sec. 1.

3. A tongers' license does not authorize the taking of oysters outside the limits of the county in which it is granted, and the middle of dividing channels, except that citizens of certain counties may use the dividing streams in common. Bagby's Code, Art. 72, Sec. 1 and Sec. 57.

4. A lessee cannot use patent tongs to catch oysters in the Patuxent River north of a line drawn from the north side of Kourkles Creek, St. Mary's County, to the southeast side of the mouth of Hungerford Creek in Calvert County. It is true that the prohibition against the use of such tongs in these waters, Bagby's Code, Art. 72, Sec. 7, applies to those "who have obtained a license," and, as already stated, the lessee himself, does not require a license to tong on his leased area. But tongers employed by the lessee must be licensed, and it could hardly have been the intention to permit patent tongs when used by the lessee and to prohibit them when used by tongers employed by the lessee, all working on the same ground. I think, therefore, that Section 7 should be construed to prohibit patent tongs altogether in the specified waters.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER SEASON IN PATUXENT RIVER AND TRIBUTARIES.

August 28, 1916.

James E. Gatton, Esq.,
Broome's Island,
Maryland.

DEAR SIR: Replying to your favor of August 19th, I beg to say that the oyster season in the Patuxent River, and its tributaries of Calvert, Charles and St. Mary's Counties, begins on September 15th. This is under the Act of 1912, Ch. 603, which repealed section 55 of Art. 72 of Bagby's Code as to the above waters.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—STATE FISHERY FORCE—POWER TO ARREST.

July 28, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: Replying to your oral inquiries of this morning, I beg to advise you that, in my opinion, arrests can legally be made by the following employees of the Conservation Commission:

1. Crab Inspectors, appointed under Section 2 of the Act of 1916, Ch. 682. The Act of 1916, Ch. 544, Section 93, charges the Deputy Commanders with the enforcement of the crab laws, and gives them power to arrest violators thereof. I think that this power to arrest extends to those employees who are necessary in order to assist the Deputy Commanders in discharging their said duties; and the crab inspectors are such employees.

2. Oyster Inspectors, appointed under Act 1916, Ch. 702, Section 69. Such inspectors are expressly given the power to arrest by Section 73.

3. Mates who are in command of the State Fishery steamers, during the absence of the Commanders. See Bagby's Code, Art. 72, Sections 39, 40, 44, 45.

4. No warrant is required in any of the above cases.
Kane vs. State, 70 Md. 546.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—STATE FISHERY FORCE—SALARIES AND EXPENSES PAID OUT OF CONSERVATION FUND.

July 31, 1916.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: As requested by you orally the other day, I have considered Deputy Commander Turner's claim with respect to his salary and rations.

The general appropriation acts for the fiscal years ending September 30, 1913, and September 30, 1914, as approved by the Governor, fixed the Deputy Commander's salary at $1,250 per annum (Acts 1912, Ch. 556, pages 790 and 797; Acts 1912, Ch. 637, pages 926 and 934).

The general appropriation acts for the fiscal years ending September 30, 1915, and September 30, 1916, increased this salary for those years to $1,500 per annum (Acts 1914, Ch. 386, page 613; Acts 1914, Ch. 389, page 625).

It seems, however, that Captain Turner, for some reason, did not actually receive this $250 increase in his salary, and he now makes claim for the same. Captain Turner was clearly entitled to the increase, and I think it should be paid.

In your letter of July 25, 1916, to Mr. Hopkins, you suggest that not only this increase, but the entire salary of the Deputy Commander, as well as that of the Commander, should be paid out of the general treasury of the State, and not out of the Oyster Fund.

It seems to me, however, that these salaries are payable out of the Oyster Fund, under section 31 of Art. 72 of Bagby's Code, which provides that said fund "shall be kept separate and distinct from other funds in the treasury, and shall only

be drawn upon * * * in the payment of the officers and men * * * of the state fishery force." I think that this statute embodies a state policy that the oyster fund should be chargeable with the salaries, as well as other expenses, of the State Fishery Force; and I do not think that the fact that general appropriation acts, passed subsequent to section 31, make appropriations for these salaries, should be regarded as reversing this state policy. The same policy is continued for the future by the Act of 1916, Ch. 682, section 9, whereby the Oyster Fund became, on June 1, 1916, merged into the Conservation Fund.

I, therefore, think that the salaries already paid to the Commander and the Deputy Commander were properly chargeable by the Comptroller to the Oyster Fund, and that the increase in the Deputy Commander's salary which has not been paid him, is also chargeable to that fund, or to its successor, the Conservation Fund.

I understand that Captain Turner's claim also includes an item for rations. The rations allowable are specified in section 43 of Art. 72 of Bagby's Code, and that section specifically provides that the amount therefore is payable out of the oyster fund.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—STATE FISHERY FORCE—SALE AND PURCHASE OF VESSELS.

November 28, 1916.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of November 20th. I understand that the Commission desires one of the two state steamers, McLane and Howard, both of which were built about 1884, to be sold, and in its place to purchase a number of smaller motor

boats, which would be much better adapted to the needs of the State Fishery Force. In the event that such sale can be effected, you wish to know whether the proceeds thereof would be available for the purchase of the smaller boats.

Bagby's Code, Art. 72, Sec. 38, authorizes the Board of Public Works, "in its discretion, to sell one of the steamers and to turn the funds arising from such sale over to the Comptroller to be placed to the credit of the Oyster Fund." This power has existed for a long time—ever since 1896—but it has not yet been exercised, and I see no reason why it may not now be exercised.

I, therefore, think that the Board of Public Works has the power, in its discretion, to sell one of the state steamers.

Bagby's Code, Art. 72, Sec. 114A, authorizes the Board of Public Works to "purchase and maintain motor or other boats that may be required by the State Fishery Force" to prevent the taking of oysters from the natural bars and neutral zones in violation of law, "and to pay for the same out of the revenues received under this sub-title."

The revenues received under the sub-title referred to, together with other revenues and funds, have been consolidated by the Act of 1916, Chap. 682, Sec. 9, into one fund, known as the Conservation Fund. The proceeds of sale of the state steamer—which by Sec. 38 of Art. 72 were to be placed to the credit of the Oyster Fund—will now be placed to the credit of the Conservation Fund.

Section 9 of the Act of 1916, Chap. 682, puts the Conservation Fund under your Commission's control, and makes it liable, among other things, "for the equipment and maintenance of the State Fishery Force"; and Sec. 10 authorizes your Commission to make, from time to time, "such repairs and *additions* to the vessels of the force as may in its discretion be necessary for the efficiency of the force, provided that all moneys expended by the Commission for such purposes shall be paid out of the Conservation Fund under its control, unless other funds are specially appropriated therefor by the General Assembly."

The General Assembly has made no appropriation for the purchase of additional vessels, and I think there is no doubt that under the above provisions the motor boats which your Commission desires may be purchased, and paid for out of the Conservation Fund.

Since the proceeds of the sale of the state steamer would, as already stated, be paid into the Conservation Fund, it follows, of course, that in paying for the motor boats out of that fund, you would, as a practical matter, be purchasing the motor boats with the proceeds of the sale of the steamer.

There may be some doubt as to whether the motor boats should be purchased by the Board of Public Works, under Section 114A of Article 72, or by the Conservation Commission, under the Act of 1916, Chap. 682, Sec. 10; but as the Board and your Commission are co-operating in the matter, and will, I understand, co-operate in the purchase of the motor boats, there is no need to decide this question.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION.

EDUCATION—ATTENDANCE LAW—STATE SUPERINTENDENT'S INTERPRETATION OF.

October 26, 1916.

Charles J. Fox, Esq.,
State Board of Labor and Statistics,
500 Equitable Building,
Baltimore, Maryland.

DEAR MR. FOX: I understand that you have a copy of the ruling of the State Superintendent of Education, in which he holds,—(1) That under Sec. 162 of the Acts of 1916, Chap. 506, school attendance is not compulsory upon children who have completed the Elementary School work, even though they may not be fifteen or sixteen years of age; and (2) That the said section is not retroactive and does not apply to children who were granted Employment Certificates prior to June 1, 1916, provided such children are now regularly and lawfully employed.

The State Superintendent has given this interpretation of the law under Sec. 19 of the Act of 1916, Chap. 506, which authorizes him to "explain the true intent and meaning of the school laws," and "decide, without expense to the parties concerned, all controversies and disputes involving the proper administration of the public school system, and his decision shall be final."

I beg to advise you that your Department should accept and follow the State Superintendent's interpretation of the law as above set forth.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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EDUCATION—COUNSEL FOR COUNTY SCHOOL BOARDS.

October 12, 1916.

Charles H. MacNabb, Esq.,
Cardiff,
Maryland.

DEAR MR. MACNABB: I received your favor of October 9th. The Act of 1916, Ch. 560, which discontinues special counsel

and creates the State Law Department, provides in Section 10 that it shall not apply to the Boards of School Commissioners of the several counties, but that the powers of such Boards to employ their own counsel shall continue as now or hereafter prescribed by law. Consequently, your Board has now the same power as it has always had to employ counsel.

I do not know that there is any specific provision in the law authorizing the School Boards to employ counsel, but it has been almost the unbroken custom throughout the State for the School Boards to do so, and I am of opinion that your Board has the right to retain regular counsel by the year for the purposes stated by you.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION—COUNTY SUPERINTENDENT—TERM OF OFFICE.

May 15, 1916.

Hon. Oliver H. Bruce, Esq.,
Cumberland, Maryland.

DEAR MR. BRUCE: I have your favor of May 8. The present law relating to the appointment of county school superintendents is contained in section 22 of Article 77 of Bagby's Code, Vol. III. It provides that the Board of County School Commissioners shall organize on the first Tuesday in May succeeding their appointment, or as soon thereafter as may be, and elect the county superintendent, who shall enter upon his duties on the first day of August next ensuing after his election. I understand that under this law your Board will elect its superintendent during the present month of May.

On June 1, 1916, the General Educational Act (Acts 1916, ch. 506), will become effective. That Act repeals sec. 6 of Article 77 of Bagby's Code, but the Board appointed by the Governor under section 6 will nevertheless continue in office under the new law, because section 6 of the new law provides that "the terms of office of persons who are members of the County Boards at the time when this act shall take effect shall not be affected by its provisions."

The term of office of the county superintendent, however, will not begin until August 1, 1916, and section 22 of Article 77, under which he is appointed in May, is repealed by the Act of 1916.

The Legislature has the undoubted power to abolish the office of county superintendent altogether, if it sees fit to do so.

Purnell vs. Shriver, 125 Md. 266, 270;
Duer vs. Dashiell, 91 Md. 660, 667.

This would be true even if the superintendent had already entered upon the duties of his office, and it is, of course, all the more clear that the Legislature can do this as to a superintendent who has been appointed, but who has not yet entered upon his duties.

Therefore, the Act of 1916, repealing as of June 1, 1916, section 22 of Article 77, under which your Board's superintendent is appointed, would terminate the new superintendent's right to the office altogether in the absence of a saving clause; and he could have no right to the office unless he falls within the provisions of such saving clause.

The only saving clause which the Act of 1916 contains with reference to county superintendents, is contained in section 72 of the Act of 1916, and it provides that "all county superintendents of schools, *holding office* at the time when this act shall take effect, shall continue to serve to the end of the term for which they were originally appointed."

The Act of 1916 will take effect on June 1, 1916, and according to the clear language of section 72, county superintendents who serve to the end of their terms are those and only those *holding office* on June 1, 1916. The superintendent holding office on June 1, 1916, is not the superintendent elected in May, 1916. He will not hold office until August 1, 1916. He will have been *appointed* to the office on June 1, 1916, but he could not *hold* it until August 1, 1916. Therefore, his term is not preserved by the Act of 1916, and he will not, in my opinion, be entitled to serve at all by virtue of his appointment in May.

The superintendent who will be holding office on June 1, 1916, will be the superintendent whose term of office began on

August 1, 1914. Since he will be holding office on June 1, 1916, he will, under section 72, continue to serve to the end of his term, that is, until August 1, 1916.

After the new law takes effect on June 1, 1916, the Board should appoint a county superintendent to hold office from August 1, 1916, and who must measure up to the standard of eligibility required by the Act of 1916.

See: Hummel-hime vs. Hirsch, 114 Md. 39, 52-55, and notes to 41 L. R. A. (N. S.), 1119, 23 L. R. A. (N. S.), 1228, and 50 L. R. A. (N. S.), 374, 375.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION—COUNTY SUPERINTENDENT—TEACHERS—OATH OF OFFICE.

September 26, 1916.

Charles O. Clemson, Esq.,
Westminster, Maryland.

DEAR MR. CLEMSON: I have your favor of September 25th. Section 72 of the General Educational Bill (Act 1916, Ch. 506), provides that "all county superintendents of schools *holding office* at the time this act shall take effect, shall continue to serve to the end of the term for which they were originally appointed." Mr. Unger, the Superintendent elected in May, 1916, was not *holding office* on June 1, 1916, when the Educational Bill took effect, but was merely an *appointee* then, whose term was not to begin until August 1, 1916. Consequently, he was not within the saving clause of section 72. Nor do I think that he could legally assume office at all without a re-appointment after June 1st, because the statute under which he was appointed in May (Bagby's Code, Art. 77, Sec. 224), was repealed as of June 1st by the Act of 1916. I, therefore, think that the Board should now confirm the legality of Mr. Unger's appointment, by re-electing him at its next meeting.

The General Educational Bill does not appear to require the County Superintendent to take an oath of office. Therefore, he need not take any unless some other law requires it. Bagby's

Code, Art. 70, Sec. 7, after referring to certain officials, proceeds to require "all other officers elected or appointed to any office of trust or profit under the constitution and laws of this State," to take the oath provided by Art. 1, Sec. 6, of the Constitution. It is probably true that this section does not apply to such an officer as the County Superintendent, under the case of Clark vs. Harford, etc., Asso., 118 Md. 608, 617-619, and the cases there cited, and if so, I do not see that any oath is required. Nevertheless, the line as to when an official is and is not holding an office of trust and profit under the Constitution is often a very close one, and inasmuch as the consequences of not taking an oath when an oath is required may be quite serious, it seems to me that the safe course would be to require the County Superintendent to take the oath prescribed by the Constitution, Art. 1, Sec. 6, before the Clerk of Court (Code, Art. 70, Sec. 7).

Teachers, however, are certainly not officers of trust and profit, within the meaning of the Constitution, and the law does not require them to take any oath of office. At the same time, the State Board of Education, under its power to adopt rules and regulations, can certainly require an oath, if the Board sees fit, and this is what the Board appears to have done by its resolution as to "Teacher's Oath of Office," which you sent me. It seems to me that this is a very proper requirement for the Board by rule to make, and I think that as long as the rule continues it should be enforced, and all teachers be required to take the oath prescribed by the Board.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS.

ELECTIONS—BALLOTS—DETACHABLE STUBS FOR PRIMARIES.

April 25, 1916.

John F. Willis, Esq.,
President, Board of Election Supervisors,
Cambridge, Maryland.

DEAR SIR: I beg to reply to your favor of the 20th. The ballots to be used in the primary election should have on them the detachable stub or coupon required by Section 59 of the Election Law, exactly as is the case with ballots for general elections.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—BALLOTS—FORM OF, FOR PRIMARIES—ENVELOPE SYSTEM ABOLISHED—CAUTION FOR CANDIDATES.

April 25, 1916.

Henry M. McCullough, Esq.,
105 E. Main Street,
Elkton, Maryland.

DEAR MR. MCCULLOUGH: I beg to reply to your favor of April 21st. The portion of Chapter 160 of the Act of 1916 relating to preparation of ballots is substantially the same as it has always been. The only substantial amendment which the Act makes to Section 181 of the Election Law is the omission of the portions thereof relating to the envelope system. The intent was that the form of the primary ballot should be the same as the form required for the ballot in general elections, except that on the back and outside of all such official ballots shall be printed only the words "official ballot for," etc.

I think that you will be perfectly safe if the outside of the ballot is printed precisely as it has been printed in former primary elections (because the Act of 1916 was not intended to make any change as to this), or if the outside of the ballot is printed similar to the outside of ballots cast in general elections.

With respect to the inside of the ballot, in view of the fact that there are three Senatorial candidates, I think that it would be better to insert over the block in which their names appear—"Vote for one for first choice and vote for one for second choice," instead of the usual "Vote for one."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—BALLOTS—FORM OF, FOR PRIMARIES—ENVELOPE SYSTEM ABOLISHED.

April 12, 1916.

Alexander Armstrong, Esq.,
President, Board of Election Supervisors,
Hagerstown, Maryland.

DEAR SIR:—I have your favor of April 11th, and beg to answer your inquiries in their order.

1. Under section 184 as amended by the Act of 1916, Ch. 160, ballots for the primary should be in the same form as in the general election, except as provided in said section 184, and *except as otherwise provided by the sections of the Primary Law which the Act of 1916 does not amend.* In other words, the Act of 1916 only amends sections 184, 185, 195 and 198. All other sections of the Primary Law are unaffected by the new act, and directions contained in these other sections as to the form of ballots should still be followed. For instance, section 182 provides for different color primary ballots. This section is not affected by the new law.

2. Sections 184 and 185 of the Act of 1916 omit the provisions of the same sections as they formerly stood with respect to envelopes and with respect to the voter's right to take with him into the booth a ballot prepared outside and of voting the same. Therefore, the voter can now vote only the official ballot handed to him by the judges when he enters the booth, exactly as is the case in general elections.

3. Section 185 of the Act of 1916 omits the provision of the same section of the law as it formerly stood whereby candidates could secure from the Elections Supervisors as many

official ballots as they desired. Therefore, the candidates can no longer do this.

4. The entire Act of 1916, in the form in which I understand that the Secretary of State has already mailed copies to the various Boards of Election Supervisors, is made effective from the date of its approval, to wit: April 4, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—BALLOTS—PRESIDENT—CROSS MARK FOR.

October 12, 1916.

John S. Strahorn, Esq.,
Annapolis, Maryland.

DEAR MR. STRAHORN: I have your favor of October 10th. I think there is no doubt that a cross mark placed opposite the names of the Presidential and Vice-Presidential candidates of any party will be a vote for all of the electors representing that party.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—BALLOTS—PRESIDENTIAL CANDIDATES AND ELECTORS, ARRANGEMENT OF.

October 18, 1916.

Dr. John L. Riley,
President, Board of Supervisors,
Snow Hill, Maryland.

DEAR DR. RILEY: I beg to reply to your favor of October 5th, in which you ask whether your Board can arrange the names of the Presidential candidates upon the ballot in such order as you deem proper, or whether your Board is required to arrange them in the alphabetical order of their surnames.

The subject of the arrangement of the names of candidates upon the ballots has been provided for, successively, by the Act of 1901, Chap. 2, Sec. 50; Act of 1902, Chap. 133, Sec. 50; Act of 1904, Chap. 339, Sec. 50; Act of 1908, Chap. 737, page 103, Sections 54 and 55; Act of 1912, Chap. 124, Sections 54

and 55; and the Act of 1914, Chap. 307, Sec. 54; and is now contained, so far as applicable to Worcester County, in Bagby's Code, Art. 33, Sec. 55.

By the Acts of 1901 and 1902 the names of all *candidates* were required to be arranged alphabetically, under the designation of the office, *except Presidential Electors.* These provisions have ever since continued as part of the Election Laws, except that by the Act of 1904, Ch. 339, the alphabetical requirement was omitted; by the Act of 1908, Chap. 737, it was restored again as to Baltimore City and certain counties (Section 54), and not required as to certain other counties (Section 55); by the Act of 1912, Chap. 124, Sections 54 and 55, the alphabetical requirement was again made applicable to Baltimore City and all the counties; and by the Act of 1914, Chap. 307, Section 54, it was continued in the same way.

In none of the above acts, however, do these provisions as to *candidates,* apply to candidates for President and Vice-President, because they are not voted for as such, but the Presidential Electors are; and all of the above laws excepted Electors from the above provisions, and made special provision for them.

The Acts of 1901, 1902, 1904 and 1908 provided that the Presidential Electors should be arranged in groups, and that the several groups "shall be arranged *in such order of the surnames of the candidates for President as the several Boards of Supervisors shall prescribe in the City of Baltimore, and in the several counties, respectively.*"

The Act of 1912, Chap. 124, Sec. 54, continued this provision as to Baltimore City and as to all counties of the State except Worcester, Somerset, Talbot, Kent, Prince George's, Charles, St. Mary's, Calvert and Anne Arundel. As to these latter counties, Section 55 of the Act of 1912 required the several groups of Electors to be arranged "in the alphabetical order of the surnames of the candidates for President in the City of Baltimore and in the several counties, respectively."

The Act of 1914, Chap. 307, however, repealed Section 55 of the Act of 1912, requiring the names of the candidates for President to be arranged alphabetically in certain counties, and made the provisions of Section 54, under which the names of

the candidates for President can be arranged in such order of their surnames as the several Boards of Supervisors shall prescribe, applicable to the entire State, except Prince George's, Charles, St. Mary's, Calvert and Anne Arundel Counties (Act 1914, Chap. 307, Sec. 3, page 463), as to which latter five counties the Act of 1912, Chap. 124, Sec. 55, still applies.

The result is that in Worcester County the names of the candidates for President can, under Sec. 54 of the Act of 1914, Chap. 307 (now Section 55 of Art. 33 of Bagby's Code), be arranged in such order as the Supervisors shall prescribe.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—BALLOTS—PRESIDENTIAL CANDIDATES AND ELECTORS, ARRANGEMENT OF—NUMBER OF COLUMNS—PARTY DESIGNATIONS.

October 19, 1916.

Walter H. Gray, Esq.,
Attorney; Board of Election Supervisors,
Port Tobacco, Maryland.

DEAR MR. GRAY: I beg to reply to your favor of October 18th, asking my opinion as to the arrangement on the ballot in Charles County of the candidates for President and Vice President, and whether the party designation should be printed opposite the names of candidates.

1. Under the Act of 1912, Ch. 124, Sec. 54, the candidates for President and Vice-President may be arranged in such order of their surnames as the several Boards of Election Supervisors, in Baltimore City and in the counties specified in said section, may prescribe; but by section 55 of the same act it is provided that in the counties of Worcester, Somerset, Talbot, Kent, Prince George's, Charles, St. Mary's, Calvert and Anne Arundel, the groups of Presidential Electors shall be arranged "*in the alphabetical order of the surnames of the candidates for President.*" Under that act, therefore, the candidates for President and Vice-President were, in Charles County, required to be placed upon the ballot in the alphabetical order of their surnames.

The Act of 1914, Ch. 307, made certain amendments to section 54 of the Act of 1912, Ch. 124, and in re-enacting that section did not limit its application to any particular Counties; and also repealed section 55 of the Act of 1912, Ch. 124; But section 3, page 463, of the Act of 1914, provided "that this act which is hereby repealed and re-enacted with amendments does not in anywise affect the law heretofore in force in Prince George's, Charles, Anne Arundel, Calvert and St. Mary's Counties." I think that by this the Legislature meant that the Act of 1914 should not affect the law previously in force in the counties named; and, of course, the law previously in force in these counties was the Act of 1912, Ch. 124, Sec. 55.

Charles County is one of the counties in which the law previously in force was not affected by the Act of 1914; and, therefore, the candidates for President and Vice-President must be arranged on the ballots in Charles County as prescribed by the Act of 1912, Ch. 124, Sec. 55, that is, in the alphabetical order of their surnames.

Sec. 55 of the Act of 1912, Ch. 124, is now Section 56 of the Election Laws of the State.

2. If the candidates exceed thirty-six, then under Sec. 55 of the Act of 1912, Ch. 124, the names should, in Charles County, be printed in two columns; and the only limitation as to the arrangement of the names in these two columns is that "the same number of names shall, as far as possible, be printed in each column, and the initial letter of the given or Christian names of the several candidates in each column shall be printed directly beneath each other in a vertical line." If two columns are required this year, then there is no objection to printing the first four groups of Presidential Electors in the first column, and the Wilson and Marshall group of Electors at the head of the second column, followed by the names of the other candidates and the Constitutional Amendment, provided this results in printing the same number of names, "as far as possible," in each column.

3. The Act of 1912, Ch. 124, Sec. 55, provides that "the names of candidates for every office, shall, *except in case of*

candidates for Presidential Electors, be arranged alphabetically, according to their surnames, *and without any party name or designations*, under the designation of the office above the group of names of the candidates for each office." This still applies to Charles County (Act 1914, Ch. 307, Sec. 3, p. 463).

Very truly yours

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—BALLOTS—PRESIDENTIAL CANDIDATES AND ELECTORS, ARRANGEMENT OF—RESIDENCE OF ELECTORS—SEPARATE COLUMNS FOR POPULAR QUESTIONS—BLANK SPACES.

October 23, 1916.

James A. Young, Esq.,
Clerk, Board of Election Supervisors,
Cumberland, Maryland.

DEAR SIR: I have your favor of October 22nd, enclosing proof of ballot and asking whether or not it is in proper form.

The only suggestions that occur to me are the following:

1. Under Sec. 55 of the Election Law, Constitutional Amendments and questions submitted to popular vote "shall be printed in a separate column to follow immediately after the names of candidates." I, therefore, think that the prohibition question and the Constitutional Amendment ought to be printed in a column by themselves.

2. Under Sec. 55 the places of residence of the candidates for Presidential Electors, "including the numbers of the Congressional Districts in which they reside," should be printed on the ballot. Where, however, the Congressional Districts are not certified to you, so that you do not know what they are, I do not see how you can print them. In Baltimore City the Congressional Districts are printed when they are certified, but are not printed when they are not, and the City ticket this year will contain the Congressional Districts of the Democratic and Republican candidates, because these were certified, but will simply contain the residences, and not the Congressional Districts, of the candidates for Presidential Electors of the other

parties, because they have not been certified. I do not see that you can do any more than this.

3. Under Sec. 55, the Boards of Election Supervisors may arrange the candidates for President and Vice President in such order of the surnames of the candidates for President as they may prescribe. Consequently, your Board has the power to place the Republican Presidential ticket in the place where the Labor presidential ticket now is, if, in your Board's judgment, this should be done.

4. Under Sec. 54, there should be a blank space at the end of the Senatorial candidate similar to the spaces at the end of the Congressional candidates, and at the end of the candidates for Presidential electors.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—BALLOTS—SAMPLES FOR CANDIDATES.

April 25, 1916.

C. Lee Gillis, Esq., Clerk,
Board of Election Supervisors,
Salisbury, Maryland.

DEAR SIR: I beg to reply to your favor of April 20th.

The provisions of Section 184 of the Election Law, with respect to printing sample ballots, apply only to Baltimore City, and there does not seem to be any provision in the Election Law whereby the election boards in the counties are to print and furnish sample ballots to candidates. Of course sample ballots should be posted in accordance with Section 59.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—CORRUPT PRACTICES—ELECTIONEERING—SANDWICHES AND COFFEE.

November 1, 1916.

Rev. Thomas M. Dickey,
Chairman of the Dry Cause,
Hancock, Maryland.

DEAR MR. DICKEY: I am in receipt of your favor of October 30th asking whether the ladies interested in the Dry Cause could give away sandwiches and coffee at the polls on election day, and maintain temperance mottoes over the booth. I think that this would violate the election laws of the State.

Section 111 of Article 33 of the Code prohibits electioneering within one hundred feet of the polls.

Section 168 specifies the purposes for which expenses may be incurred in connection with elections, and the giving away of sandwiches and coffee is not included.

Section 173 makes any one guilty of corrupt practices who before, during or after an election either directly or indirectly "gives or provides, or pays, wholly or in part, the expense of giving or providing any meat, drink, entertainment or provisions to or for any person for the purpose of influencing that person, or any other person to give or refrain from giving his vote at the election, or primary election, or to influence his vote in any other way therein."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—JUDGES AND CLERKS—JUSTICE OF THE PEACE AND NOTARY PUBLIC INELIGIBLE.

September 29, 1916.

Bowie F. Waters, Esq.,
Rockville, Maryland.

DEAR MR. WATERS: I have your favor of September 28th. I think that the office of Justice of the Peace or Notary Public is a "public office or employment," within the meaning of Section 7 of Article 33 of Bagby's Code, and, therefore, I agree

with you that those holding such offices are ineligible to serve as judges and clerks of election.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRECINCTS, CONSOLIDATION OF.

July 21, 1916.

John L. Riley, Esq.,
President, Supervisors of Election,
Snow Hill, Maryland.

DEAR SIR: I have your favor of July 18th.

The only law I find upon the subject is Section 127 of Article 33 of Bagby's Code, as amended by Act 1912, Ch. 511. That section apparently contemplates the subdivision of election districts into new precincts, and not the consolidation of precincts, and the court would have to give a very liberal construction to section 127 in order to authorize the combining of the two precincts, as you wish to do. At the same time, Section 126 authorizes the Supervisors in Baltimore City to do this, and in Brome vs. Dorsey, 99 Md. 602, the Court of Appeals, on page 610, intimates that the Legislature intended by Section 127 to give to the counties the same power of readjusting precincts that the city has.

I am afraid that the best I can do is to advise you that your right to combine the two precincts of the Eighth District is doubtful, the probability being that the court, if appealed to, would hold that the power does not exist.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRESIDENTIAL CANDIDATES, CERTIFICATION OF.

August 5, 1916.

Hon. J. Fred. C. Talbot,
Law Building,
Baltimore, Maryland.

DEAR MR. TALBOT: As requested by you this morning, I have examined the Maryland Statutes in order to see whether

the officers of the Democratic National Convention should certify to the Secretary of State of Maryland the names of the nominees of the Convention for President and Vice-President of the United States.

The Maryland statutes which are applicable are codified in Bagby's Code, Vol. I and Vol. III, Article 33, sections 44, 47, 48, 54, 55, 56, 146-151, inc.

Section 55, relating to the form of ballot, is clear in providing that "the surnames of the candidates of each political party for the office of President and Vice-President, with the party name at the right of the surname, shall be placed above the group of candidates for electors of each party."

Other sections require the Secretary of State to certify the various nominees to the several Boards of Election Supervisors, and also require to be filed with the Secretary of State certificates of nomination "for offices to be filled by the voters of the entire State."

I find no provision specifically requiring the nomination of candidates for President and Vice-President to be certified to the Secretary of State, and in my opinion the provision just quoted was intended to apply to state offices only. Of course, the candidates for President and Vice-President are not really voted for at all, but the Electors are.

There is consequently no procedure provided, whereby the Secretary of State is to be officially informed who are the nominees for President and Vice-President; and, in my opinion, this means that it is the Secretary of State's duty to take official notice of the nominees for these offices, and to certify them to the Election Supervisors, without any certification from the party conventions at all.

Nevertheless, I do not think that it is wise to take any chances in a matter of this importance. Accordingly, while it is my opinion that a certification from the Democratic National Convention is not necessary, yet, in order to prevent the possibility of any question being raised my advice is that the Presiding Officer and Secretary of that Convention do formally certify to Thomas W. Simmons, Secretary of State of

Maryland, Annapolis, Maryland, the nominees of the Convention for President and Vice-President, and that this certification be filed with the Secretary of State not less than twenty-five days before the election.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRESIDENTIAL ELECTORS, ELIGIBILITY OF FEMALE—CERTIFICATION OF SECRETARY OF STATE.

October 16, 1916.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I beg to reply to your favor of October 7th, 1916, asking whether Mrs. Nathanie E. Ells, of Baltimore, Maryland, is eligible as a Presidential Elector.

I understand that Mrs. Ells was duly nominated by the convention of the Socialist Party, held in Baltimore, on July 5th, 1916; that her nomination has been duly certified to you in accordance with Section 42 of the Election Law; and that the object of your inquiry is to determine whether or not you should certify Mrs. Ells' name to the various Boards of Election Supervisors, as directed by Section 48, which reads as follows:

> "Not less than eighteen days before an election to fill any public office, *the Secretary of State shall certify* to the Supervisors of Elections of each county, within which any of the voters may, by law, vote for candidates for such office, *the name and description of each person nominated for such office, as specified in the certificates of nomination filed with the Secretary of State*, and shall certify the same to the Supervisors of Election of Baltimore City, if any of the voters of said city may, by law, vote for candidates for such office."

In my opinion, the Secretary of State has no authority under this Section, to exercise the judicial function of passing upon

the qualifications of candidates who are regularly and duly certified to him, but in such case his function is the ministerial one of transmitting, as the statute directs, to the Boards of Election Supervisors the name and description of each nominee, as specified in the certificates of nomination.

The following decisions of the Maryland Court of Appeals are, I think, conclusive upon this question:

Wells vs. Munroe, 86 Md. 443, 446-448;
Sterling vs. Jones, 87 Md. 141;
Thom vs. Cook, 113 Md. 85, 90-91.

To these should be added the decision of Judge Stockbridge on October 22, 1909, in the Baltimore City Court, in the case of Ada Smith Lang vs. Board of Election Supervisors, in which Judge Stockbridge decided that Mrs. Lang was entitled to have her name printed on the ballot as a candidate for the House of Delegates, she having been nominated therefor by the Socialist Party, and her nomination having been duly certified to the Supervisors. Judge Stockbridge held that the Supervisors had no authority to pass upon Mrs. Lang's qualifications.

In view of the aforegoing, I think that the Secretary of State should certify Mrs. Ells' name to the various Boards of Election Supervisors, under Section 48.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—CANDIDATE'S DEPOSIT, RETURN OF.

May 5, 1916.

Henry A. Whitaker, Esq.,
Belair, Maryland.

DEAR MR. WHITAKER: I received your favor of April 24th. The only provision of the primary election law that I know of which relates to the return of deposits is Section 184A, enacted by the Act of 1914, ch. 261. This, of course, does not cover Mr. Allen's case.

In addition to this, Section 50 of the law relating to general elections (Act of 1896, ch. 202) provides for making the nomination void of any nominee who shall at least ten days before

election decline the nomination in the manner specified in Section 50.

Section 181 of the primary election law (Act of 1910, ch. 741), provides that the primary elections shall be conducted in the same manner as general elections, and the Board of Supervisors of Baltimore City have ruled that this section 181 makes the provisions of Section 50 applicable to the primary elections, as well as to general elections, so that in Baltimore if any candidate for nomination withdraws his name in the manner specified in Section 50 (that is, in writing and acknowledged) ten days before the primary election, then the name of such person is not printed on the ballot, and in such case his deposit is returned to him.

I do not know whether Mr. Allen's declination was made more than ten days before the primary itself or not. If it was, and if it was in proper form, then according to the ruling of our supervisors his deposit will be returned to him.

It may be stretching the law a little bit to make Section 50 apply to such a case; but in any event I judge from your letter that Mr. Allen's written declination was not acknowledged as required by Section 50, so that strictly he would not come under the ruling which our supervisors have made.

The only way I know in which Mr. Allen could get back his deposit would be by construing Section 50 as applying to his case, and he would not really come under Section 50 then, unless his declination was not only in writing, but acknowledged also.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—NATIONAL COMMITTEEMAN—DOES NOT EXIST, BUT IS APPOINTED BY STATE CONVENTION.

March 4th, 1916.

Hon. J. Fred. C. Talbot,
House of Representatives,
Washington, D. C.

MY DEAR MR. TALBOT: I beg to reply to your letter of March 1st.

I agree with you that our Primary Law does not require you to enter the primaries as a candidate for National Committeeman from Maryland. The law seems to provide that the National Committeeman is to be elected by the State convention.

Article 33, section 178 of Bagby's Code, Volume III (codifying the Acts of 1914, Ch. 163, Sec. 160A, and Ch. 475, Sec. 160A), provides that "*such State conventions* elected by the direct vote in the same manner as the State conventions for the nomination of candidates for State offices, *shall also elect* as hereinafter set forth, delegates to National Conventions and Presidential electors and *the governing bodies of such political parties for the State*, but shall have no power to select or appoint committee or governing bodies of any character for Baltimore City nor for any division thereof, nor for the counties of the State." It seems to me that the words underscored, "the governing bodies of such political parties for the State," refer to the National Committee, and that the state convention is the body clothed with authority to appoint you.

Sincerely yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—PARTIES WHICH MAY PARTICIPATE.

March 14, 1916.

Prohibition National Committee,
100 North La Salle Street,
Chicago, Ill.

GENTLEMEN: Please pardon my not having before answered your favor of March 2nd.

Bagby's Code, Vol. III (1914), Art. 33, Sec. 178 (codifying the Acts of 1914, Chap. 475, 160A), provides that "political parties which at the general election held on November 2nd, 1909, in the State of Maryland, or which at any future *general election next preceding any primary election to be held hereunder*, as shall have polled 10 *per cent of the entire vote cast in the State at such or any such general election*, shall hereafter nominate all their candidates for public office in and for

Baltimore City," etc. (naming the local and state officers), by means of primary elections.

The same section further on provides that "any person who may be a candidate for the nomination of *any party subject to the provisions of this sub-title* for the office of President of the United States, and who may desire to obtain the vote of the delegates from Maryland of any such party in its national convention, may become a candidate for such nomination in primary elections to be held in accordance with the provisions of this sub-title" in the counties and in the City of Baltimore.

The political parties which are "subject to the provisions of this sub-title" (and which are, therefore, authorized to participate in Presidential primaries), are those which at the "general election next preceding" the primary election to be held May 1st, 1916, polled "10 per cent of the entire vote cast in the State at such" general election.

The last general election in Maryland was held November 2nd, 1915 (for Governor and other state officers), and the entire vote cast in the State at that election was 228,983 votes. The Prohibition party polled, for its highest candidate, 2,943 votes. This was less than 10 per cent of the entire vote cast, and consequently the Prohibition party cannot participate in the Presidential primary, which will be held in Maryland May 1, 1916.

The Prohibition party can, however, nominate by convention, under sections 41 and 42 of Article 33 of the Code, or by petition, under sections 43 to 48 and 200 of Article 33.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PROHIBITION QUESTION—SUBMISSION IN ELLICOTT CITY.

June 30, 1916.

D. C. Higinbotham, Esq.,
Clerk, Board of Election Supervisors,
Ellicott City, Maryland.

DEAR SIR: I have carefully considered the three inquiries contained in your letter of June 22nd, and I beg to submit my opinion upon them.

The first question which arises is, how will the election officials know at the November, 1916, election, what voters in the first and second precincts of the Second Election District, are also registered voters of Ellicott City, and, therefore, entitled to vote on prohibition?

Bagby's Code, Vol. III, Art. 33, Sec. 14, provides that the Boards of Election Supervisors of the several counties shall have charge of all elections to be held in any city or county, except *municipal or charter elections*, for which provision is made by *local law*. The election of November, 1916, will not be a municipal or charter election in Ellicott City, for which provision is made by local law; and, therefore, the Election Supervisors of Howard County will have charge of it.

This being so, the Clerk of Court should deliver the Ellicott City registration book now in his custody to the election officials who, in one of the precincts, will conduct the November, 1916, election. As each voter presents himself, the judges will then examine the registration books for that precinct, in order to know whether he is entitled to vote in the precinct. If he is, then they will examine the Ellicott City registration book in order to see if the voter is also a registered voter of Ellicott City. If he is, then he will be entitled to vote on prohibition in Ellicott City. If he is not, then he will not be entitled to vote on that question.

As to the other precinct, it will be necessary to furnish the election officials there with a copy of the Ellicott City registration book. The provisions of the election laws with reference to transcribing names into new books of registry and for making copies of registrations (Bagby's Code, Art. 33, Sections 24, 26, 40), seem to apply only to the registration books which are in the custody of the Board of Election Supervisors, and the Ellicott City registration book is, of course, in the custody of the Clerk of Court. But Bagby's Code, Art. 33, Section 5, authorizes the Boards to provide all registry books necessary for the conduct of elections (see also Sections 26 and 120), and Bagby's Code, Art. 17, Sec. 1, requires the Clerk of the Circuit Court to "give a copy of any paper or record in his office to any person

applying for the same, upon being paid the usual fees for transcribing such paper or record, and shall annex thereto his certificate, under the seal of the court, if required."

Under these provisions, the Board of Election Supervisors for Howard County should provide a new registry book similar to the Ellicott City registration book, and deliver the same to the Clerk of the Circuit Court, and direct the Clerk to cause to be transcribed into it all the entries contained in the Ellicott City registration book in his custody. It will be the Clerk's duty to do this, upon payment of the usual fees, and to certify the copy under the seal of the court.

The Board will then deliver this certified copy of the Ellicott City registration book to the election officials in that one of the two precincts which will not have the original book, and, under its power to make all necessary rules and regulations with reference to the conduct of elections (Bagby's Code, Art. 33, Sec. 14), the Board will direct the election officials to use the copy (in manner above described with reference to the other precinct), in determining who are the voters in this precinct who are also registered voters of Ellicott City, and therefore, entitled to vote on the question of prohibition.

The only objection which I can see to the use of a copy of the Ellicott City registration book, is that some question might be made in the precinct where the copy is used as to the identity of some person who desires to vote and the judges might want to see his signature as a means of ascertaining whether such person was really the person he purported to be. Of course, the actual signature would only appear on the original book. The possibility of this is, however, probably quite remote, and if the occasion arose arrangements could doubtless be made to examine the signature in the original book at the other precinct. In any event, the election can only be held through the use of the copy, secured from the Clerk as above explained.

The second question that arises is this: Some of the voters in each of the two precincts of the Second Election District will also be registered voters of Ellicott City, and others will not be. The former will be entitled to vote on the question of prohibi-

tion in Ellicott City, but the latter will not be entitled to vote on that question. How should the ballots be arranged to accomplish this?

I think that your suggestion is the proper one, and that two sets of ballots should be prepared, both sets being exactly the same, except that one will contain the question of prohibition, as set out in Section 2 of the Act of 1916, Ch. 30, and the other will not contain that question. One of the former ballots will be given to each voter of each precinct of the Second Election District who is also a registered voter of Ellicott City. One of the latter ballots will be given to each voter of each precinct of the Second Election District who is not a registered voter of Ellicott City.

The third question relates to whether or not the Ellicott City registration book can be opened for new names and for revision.

As already stated, the voters who will be entitled to vote on prohibition in Ellicott City, are, under Section 1 of the Act of 1916, Ch. 30, "the registered and qualified voters" of Ellicott City. As I understand it, no one can become a registered and qualified voter of Ellicott City except under the registration provisions of the Act of 1914, Ch. 836.

Section 53 of that Act provides that "*for all registrations after* 1914, the officer of registration then holding office shall open the said book of registration on the *second Tuesday of March prior to any municipal election* and on the succeeding Tuesday of that month for the revision of said lists of registration and for the registration of new voters," etc. Provision is then made for giving notice of such new registration and revision, and Section 54 provides for depositing the registration book with the Clerk of Court within two weeks thereafter, and also provides that the book shall remain in the clerk's custody (except for use at elections, Sections 57, 59), until the next sitting of the officer of registration (that is, until the second Tuesday of March prior to the next municipal election, section 53).

I think that these provisions limit the times when registrations and revisions in Ellicott City can be had to the month of March prior to municipal elections. The month of March has

now passed, and in any event the November, 1916, election is not a municipal election, as that term is used in Section 53.

Consequently, there is no method by which the registration book of Ellicott City can be opened for new registrations and revisions for or prior to the election of November, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note.—In the case of Max Siegel et al. vs. Board of Election Supervisors, the Circuit Court for Howard County, on August 28, 1916, held that all residents of Ellicott City who, according to the general registration books, were qualified to vote on November 7, 1916, could vote on the question of prohibition in Ellicott City, and that whether or not they were in fact residents, was a question to be determined by the election officials at the time. Also, that separate ballots could be used.

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ELECTION:—PROHIBITION QUESTION—SUBMISSION IN ANNAPOLIS.

August 30, 1916.

William A. Strohm, Esq., Clerk,
Board of Election Supervisors for Anne Arundel Co.,
Annapolis, Maryland.

DEAR SIR: I beg to advise you upon the questions referred to me by your Board's counsel, in connection with the submission, under the Act of 1916, Ch. 30, of the prohibition question in Annapolis at the general election to be held November 7th, 1916.

I understand that the boundaries of the City of Annapolis are identical with the boundaries of the Sixth Election District of Anne Arundel County; and that in addition to the registration books for the Sixth District, there are also separate registration books for the City of Annapolis, which latter are used as the basis for municipal elections and special elections held in the City of Annapolis.

Code P. L. L. 1888, Art. 2, Secs. 28-30;
Bagby's Code, Vol. III, Art. 33, Sec. 14;

Acts 1896, Ch. 202, Sec. 34;
Acts 1908, Ch. 525, page 347;
Acts 1910, Ch. 270, page 541;
Acts 1894, Ch. 533;
Acts 1894, Ch. 536;
Jones vs. Monroe, 86 Md. 333.

I also understand that there are registered voters of the Sixth District who are not registered voters on the Annapolis City registration books, and vice versa.

The fact that the boundaries of the Sixth District and of the City of Annapolis are identical, differentiates the situation in Annapolis from the situation in Ellicott City, as to which I recently advised the Board of Election Supervisors for Howard County.

Under the above circumstances, I beg to advise you as follows:

1. The election of November 7th, 1916, is a general election, and will be in charge of and conducted by the Board of Election Supervisors of Anne Arundel County, and their judges of election.

Act 1916, Ch. 30, Sec. 2, last paragraph;
Bagby's Code, Vol. III, Art. 33, Sec. 14.

2. The registration books of the Sixth District should be used as the basis of the election, and only those voters will be entitled to vote who are duly registered and qualified according to those books.

The only possible question about the correctness of this, arises from the fact that the Act of 1916, Ch. 30, Sec. 1, provides that the question of prohibition in the several political units therein named "shall be submitted to the registered and qualified voters of said political units," and as Annapolis City is one of the units named, it follows that if the above provision should be construed as including only those voters who are registered and qualified according to the registration books of Annapolis City, then those voters who are registered on the Sixth District books but not on the Annapolis City books would not be entitled to vote on prohibition.

But I think that the Act of 1916, Ch. 30, should be construed, in accordance with what I believe was the intent of the Legislature, so as to give the right to vote upon prohibition to all voters in the several political units therein named, wherever such a construction is possible; and inasmuch as the election of November 7, 1916, will be a general election, and inasmuch as all voters registered in the Sixth District are necessarily also voters of Annapolis City, even though not registered on the Annapolis City books for municipal or special elections in Annapolis City, it is my opinion that the Sixth District, which in fact comprises Annapolis City, and nothing else, should be treated as the political unit whose registered voters are entitled to vote upon the prohibition question.

I, therefore, think, as already stated, that the voters who will be entitled to vote on prohibition are those and those only who are registered on the registration books of the Sixth District.

3. The result of this is that persons registered on the Annapolis City books, but not also registered on the Sixth District books will not be allowed to vote. This does not deprive such persons of their right of suffrage, however, because ample opportunity exists for them to register on the Sixth District books before the election. But in order to prevent any possible misapprehension on the part of such persons, I would respectfully suggest that your Board give special and due notice by advertisement that no resident of Annapolis City will be entitled to vote on prohibition unless he is also a registered voter of the Sixth District, and apprising all whom this ruling will affect of the registration days at which they will have the opportunity to register upon the Sixth District books, and thus obtain their right to vote.

4. The result of this ruling also is that there will be but one ballot in the Sixth District, which will contain the prohibition question in the form directed at the end of the first paragraph of Section 1 of the Act of 1916, Ch. 30; the Annapolis City registration books will not be used at the election at all; and the only election officials will be those appointed by your Board.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PUBLICATION OF LOCAL LAWS REFERRED TO THE PEOPLE.

Hon. Thomas W. Simmons, *July 12, 1916.*
Secretary of State,
Annapolis, Md.

DEAR MR. SIMMONS: I have your favor of July 11th with reference to the referendum to the voters of Wicomico County of the Act of 1916, Ch. 712.

Whenever a public local law is referred to the people of the county affected, I am of opinion that Section 5(a) of Art. XVI of the Constitution (Act 1914, Ch. 673), requiring the publication to be "in the manner prescribed by Art. XIV of the Constitution for the publication of proposed Constitutional Amendment," means that such publication must be for the length of time and in the number of newspapers prescribed by Art. XIV, but that there need be no publication in any newspapers published outside of such county. I, therefore, advise you that the Act of 1916, Ch. 712, should only be published in the newspapers of Wicomico County.

I am also of opinion that the said Act need only be published by the order of the Secretary of State. Art. XVI, in both Section 2 and Section 3(a), clearly requires the law to be "referred by the Secretary of State" to the people, and I think that Section 5(a), requiring the publication to be "in the manner prescribed by Art. XIV," refers to the length of publication and the number of newspapers only, and not to that portion of Art. XIV, which requires publications thereunder to be "by order of the Governor."

It is so easy, however, to avoid any possible question on this point by having the proclamation signed by the Governor and the Secretary of State, that I think it best to adopt your own suggestion in this connection and have the publication signed in this way. But this need, I think, be done out of abundant caution, because it is, in my opinion, quite clear that the Secretary of State's signature alone is sufficient.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—RECOUNT OF VOTE ON CONSTITUTIONAL AMENDMENT.

August 17, 1916.

Mrs. Mary Sumner Boyd,
National American Woman Suffrage Assn.,
171 Madison Avenue, New York City.

DEAR MADAM: Please pardon my delay in answering your favor of August 5. I was out of the city when it arrived, and have only just received it.

The election laws of Maryland do not seem to contain any provisions providing for a recount of the vote cast on constitutional amendments, and as far as I know the question has never been presented. The nearest case on the subject seems to be Norman vs. Hagan, 78 Md. 152, which involved the right of candidates for County Commissioners to have their names placed upon the official ballots, which question depended upon the validity of a constitutional amendment relating to County Commissioners. It was contended that the Governor had proclaimed the adoption of the amendment wrongfully, and on this point the Court of Appeals of Maryland said:

"On his (the Governor's) proclamation that a proposed amendment has received a majority of the votes cast, it becomes *eo instanti* a part of the Constitution. There is no reference of the question to any other officer, or to any other department. It is committed to the Governor without qualification or reserve, and without appeal to any other authority."

I beg to remain,

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION DAYS IN COUNTIES.

September 13, 1916.

James A. Young, Esq.,
Clerk, Board of Election Supervisors,
Cumberland, Maryland.

DEAR SIR: I received your night letter of September 11th.

The statutes providing the dates for county registration are perhaps not as clear as they might be.

Referring to Article 33 of Bagby's Code, it seems to me, however, that Section 17 (Act 1896, Ch. 202, Sec. 16; Act 1901, Ch. 2; Act 1910, Ch. 236, p. 105; Act 1916, Ch. 158), Section 20 (Act 1896, Ch. 202, Sec. 19; Act 1914, Ch. 726), and Section 23 (Act 1896, Ch. 202, Sec. 21; Act 1902, Ch. 133), all apply either to the new general registration of 1896 or to subsequent new general registrations.

By the Act of 1896, Ch. 202, Sec. 24, such subsequent new general registrations were to be held every eight years after 1896, but this policy has been changed by later acts, and new general registrations seem now to be ordered in the counties for specific years, when the Legislature deems proper. The Legislature has done this every four years. Thus, the Act of 1904, Ch. 254, the Act of 1906, Ch. 703, and the Act of 1910, Ch. 236, p. 108 (Bagby's Code, Art. 33, Sec. 26), all repeal and re-enact Sec. 24 of the Act of 1896, Ch. 202, as the same was codified, and these acts provided for new general registrations in the counties in 1906; 1910 and 1914, respectively. These Acts all required such new general registrations to be held under the same provisions as those made for the general registration of 1896. In other words, the registration days provided for the 1896 registration by sections 16, 19 and 21 of the Act of 1896 (now Sections 17, 20 and 23 of Bagby's Code, Art. 33), were made the registration days for the new general registrations of 1906, 1910 and 1914.

Intermediate registrations were provided for, by the Act of 1896, Ch. 202, Sec. 26, on the Tuesdays, respectively, five and four weeks preceding each regular fall election, in each year between the *general* registrations which under the Act of 1896, Ch. 202, Sec. 24 were to be held every eight years; and Section 29 of the Act of 1896 provided for a meeting for revision only, in each of such intermediate years, on the Tuesday three weeks before the regular fall election.

These two sections of the Act of 1896 are now codified in Bagby's Code, Art. 33, Sections 31 and 34. The words in Section 31 "between the general registrations *hereinbefore provided for*," refer, of course, to the years between the general

registrations which Section 24 of the Act of 1896 provided for every eight years; and since this eight year general registration law no longer exists (having been repealed by the Act of 1904, Ch. 254, the Act of 1906, Ch. 703, and the Act of 1910, Ch. 236, p. 108, as above explained), the words quoted do not seem to be really applicable to the present situation, because there are no longer any general registrations, "hereinbefore provided for." But in my opinion these words "hereinbefore provided for" should be disregarded, and Sections 31 and 34 should be construed as providing for intermediate registrations in the counties each year between the years when the Legislature see-fit to require new general registrations.

There is no general registration in the counties this fall, and, therefore, I think that the dates for registration in the counties will be on Tuesdays, five and four weeks, respectively, preceeding the November 7th, 1916, election (Section 31), and that the meeting for revision will be on Tuesday, three weeks before said election.

These dates are: General registration, Tuesday, Oct. 3, 1916. General registration, Tuesday, Oct. 10, 1916. Revision, Tuesday, Oct. 17, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT.

January 29, 1916.

Harrison E. Crook, Esq.,

Pomfret, Charles County, Md.

DEAR SIR: I have your favor of January 24th, and beg to advise you that whether or not you are entitled to be registered in order to vote at the primary in May, 1916, seems to depend upon where you lived before moving to Charles County.

If you came from another State, then you are not entitled to register until *one year* after your intent to become a legal voter of Charles County was evidenced by your declaration of intention recorded with the Clerk of the Circuit Court on October 11, 1915 (Bagby's Code, Vol. II, Art. 33, Sec. 29). Of course, this year will not have expired when the May primary is held.

If, however, you came to Charles County from the City of Baltimore or from another county of Maryland, then you are entitled to register if you have been a resident of this State for one year, and of the Legislative District of Charles County in which you now live for six months preceding the election. (Constitution, Article 1, Section 1.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT.

September 1, 1916.

Charles T. Clayton, Esq.,
Clerk, Committee on Labor,
House of Representatives,
Washington, D. C.

DEAR MR. CLAYTON: I have your favor of August 29th.

Bagby's Code, Vol. II, Art. 33, Section 29 (being the Act of 1902, Ch. 133, Sec. 25B), which controls the case you submit, does not mean that the declarant can only become a resident and voter of the particular county in which he registers his intention on coming into this State. The required declaration is of the declarant's intention to become a citizen and resident "*of this State,*" and not of any particular county; and the declarant must then wait a year before he can register as a legal voter "*of this State.*"

I understand from your letter that some of the parties you mention moved into Montgomery County and others moved into Prince George's County, but that all declared their intention in Montgomery County.

As to those who moved into Montgomery County, and declared their intention there, and afterwards became residents of Prince George's County, their right is, I think, quite clear (upon the expiration of the year after their declaration in Montgomery County), to register in Prince George's County, assuming, of course, that they have been residents of Prince George's County for the necessary six months. They should obtain a certified copy of their declaration from the Clerk of the Circuit Court

of Montgomery County, and the registration officials of Prince George's County should, under section 29, register them upon that.

The case is not quite so clear as to those who moved into Prince George's County, declared their intention in Montgomery County, and subsequently became residents of Prince George's County. The object of Section 29, however, is, it seems to me, to establish the rule of evidence, consisting of the declaration plus one year's residence, by which the intent to become a resident *of this State* shall be established (Pope vs. Williams, 98 Md. 59); and, accordingly, I think that these men, too, may, upon the expiration of the year, and upon a certified copy of their declaration, register in Prince George's County, again assuming, of course, that they have been residents of Prince George's County for the necessary six months.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT—COMPUTATION OF SIX MONTHS' PERIOD.

October 9, 1916.

Dr. John L. Riley,
President, Board of Election Supervisors,
Snow Hill, Maryland.

DEAR DR. RILEY: I have your favor of October 5th.

Your inquiry is whether or not persons who remove from this State after May 7, 1916, and, therefore, less than six months preceding the next November election, which will be on November 7, 1916, but who declare their intention to return (under Bagby's Code, Art. 33, Sec. 281, can nevertheless be stricken from the registration books, because they cannot return or intend to return on or before six months before such election of November 7, 1916.

The same question was raised in the case of Sterling vs. Lankford, 74 Md. 573, under the Act of 1890, Ch. 573, Sec. 14, the provisions of which were similar to section 28 of the present Election Law. In that case a citizen of Somerset County, with-

out making any declaration, removed to Washington in August, 1890, less than "six months preceding the next succeeding election in November," that is, less than six months before the election in November, 1890. He returned to Somerset County in February, 1891. In September, 1891, the registration officers refused to register him. His contention was that he was not required to make the affidavit, because the act did not apply to him, for the reason that when he left in August, 1890, it was impossible for him to make affidavit that he intended to return within six months preceding the next succeeding election in November, 1890.

The court, however, held that in such cases the "next succeeding election in November" meant the election in November which would be *after* six months after making the affidavit, that is, the election in November, 1891; and that a person making the affidavit, and leaving within less than six months before the November, 1890, election, should be stricken from the books if he did not return at least six months before the November, 1891, election; but that he would be entitled to vote at the November, 1890, election.

The case you submit is that of persons who remove from the State after May 7, 1916, and, therefore, less than six months before the election of November 7, 1916, and who make the required affidavit that they intend to return "on or before six months preceding the next succeeding election in November." Under the above decision, this means the November election occurring after six months after the affidavit is made, that is, the election in November, 1917. If such persons do not return on or before six months preceding this November, 1917, election, they should be stricken from the books. But in the meantime, they cannot be stricken off now, because under the above decision they are entitled to vote on November 7, 1916, they being still legal residents of this State, and having made the required affidavit that they do not intend to give up their residence here, but do intend to return.

The above is based on the assumption that the persons so removing after May 7, 1916, have made the necessary affidavit

of their intent to return. If they have, they are, as I have said, entitled to vote on November 7, 1916. But if they have removed from the State without making the affidavit, then they cannot vote on November 7, 1916, and in this event, they may be stricken from the books. Bowling vs. Turner, 78 Md. 595.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT—MINORS.

September 19, 1916.

Hon. Frederick N. Zihlman,
Cumberland, Maryland.

MY DEAR SENATOR: Please pardon my delay in answering your letter of September 11th.

I cannot find that the question you ask has ever been raised before, and, frankly, I feel a good deal of doubt as to how it should be decided.

The Act of 1902, Ch. 133, Sec. 25B (Bagby's Code, Art. 33, Sec. 29), requires *all* persons who remove into this State from other States to make the prescribed declaration, and the language is broad enough to cover persons who move into this State when they are minors, as well as those who come here after they are of age.

On the other hand, if that be the proper construction, then no matter how young a minor might be, who was brought into this State, for example, by his parents, he could not thereafter register until he had made the declaration. Moreover, the object of requiring the declaration is that it shall constitute evidence of the person's *intent* to become a citizen and resident of Maryland (Pope vs. Williams, 98 Md. 39), and ordinarily minors cannot acquire a domicile of their own, but their domicile follows that of their parents.

14 Cyc. 843;
9 R. C. L. 547.

I think, on the whole, that if I were asked for an opinion by one of the Boards of Election Supervisors, it would be that the Act of 1902 only applies to those persons who remove into

this State after they become of age, and, therefore, at a time when they can legally acquire a domicile here, and can, therefore, make the required declaration that they *intend* to become citizens and residents of this State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—MILITIA SHOULD NOT BE STRICKEN OFF.

October 12, 1916.

R. Ernest Smith, Esq.,
Upper Marlboro, Maryland.

DEAR SIR: I have your favor of October 11th. I do not think that any of the militia who are properly on the registration books should be stricken therefrom because of their absence on the Border at the present time.

The only provision of the Election Law that I know of which could possibly be said to justify this is Section 28, which provides for the filing of a declaration of intent by any one who removes from his domicile in this State and takes up a domicile outside of the State. I do not think, however, that a member of the militia, who is temporarily doing Border duty, comes within this section.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—MILITIA ON BORDER CANNOT REGISTER.

October 31, 1916.

Hon. David J. Lewis,
House of Representatives,
Washington, D. C.

DEAR MR. LEWIS: I beg to acknowledge Mr. Clayton's letter to me of October 27th, asking whether there is any way to enable members of the First Regiment, who were absent from the State on the recent registration days, to register now and vote.

I regret that there is no way under the law of Maryland in which this can be done. No one who is not registered can vote on November 7th, and our law does not permit any registration except on the regular registration days and at the places where the regular registrations are held.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—TRANSFER CERTIFICATES.

October 3, 1916.

A. Merrill Addison, Esq.,
Lothian, Maryland.

DEAR MR. ADDISON: I received your favor of September 28th. There is a general registration in Baltimore City this fall, and, therefore, persons who formerly lived in Baltimore City, but who now live in one of the counties, are entitled to be registered in such county, provided they have lived there long enough, without obtaining any transfer certificate from Baltimore City.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISORS, APPOINTMENT OF.

May 16, 1916.

J. Dawson Williams, Esq.,
Real Estate Trust Building,
Washington, D. C.

DEAR MR. WILLIAMS: I received your favor of May 13th. I have given it very careful consideration, and take pleasure in giving you the conclusions I have reached.

As I understand the situation, it is this:

The Board of Election Supervisors of Montgomery County consisted of Mr. Julian Griffith, Democrat, Mr. Vinson, Republican, and Mr. Browning, Democrat. These gentlemen were all appointed by Governor Goldsborough in 1914 under the provisions of Bagby's Code, Vol. II, Art. 33, Sec. 1. Under Sec. 3 of Art. 33, they "hold office for two years *and until their successors are appointed and qualified.*"

Governor Harrington nominated to the Senate of 1916 Mr. Riggs, Democrat, to take the place of Mr. Julian Griffith, Democrat. This appointment was confirmed by the Senate, and its validity is not questioned.

Governor Harrington also nominated to the Senate Mr. Offutt, Democrat, to take the place of Mr. Browning, Republican. The Senate rejected this nomination on March 29, 1916. The Legislature finally adjourned on April 3, 1916, and thereafter, on May 4, 1916, Governor Harrington appointed Mr. William H. Griffith, Democrat, to the office.

Governor Harrington also nominated to the Senate Mr. Browning, Republican, to take the place of Mr. Vinson, Republican. The Senate rejected this nomination on March 29, 1916. Governor Harrington has made no other appointment to this position.

The first question is whether Mr. William H. Griffith is entitled to hold the office to which he was appointed.

Nearly all of the cases which have arisen on the subject involve officers whose original appointment must be made by the Governor and the Senate *jointly*, under sections 10 and 13 of Article II of the Constitution; and it is settled that with respect to such officers the Governor has no power to appoint without the consent of the Senate, except in the two cases provided for by sections 11 and 14 of Article II, namely (1) where a *vacancy* occurs during the recess of the Senate or (2) where a *vacancy* occurs during the session of the Senate, but within ten days before the final adjournment thereof.

Smoot vs. Somerville, 59 Md. 84;
Ash vs. McVey, 85 Md. 119;
Cull vs. Wheltle, 114 Md. 58, 91.

With respect to such officers, that is, officers whose original appointment must be made by the Governor and the Senate *jointly*, and whom the Governor alone can only appoint where a *vacancy* exists, it is also settled that *the failure of the Senate to act at all* upon a nomination made to it by the Governor, or *the rejection of such nomination* by the Senate, *does not create a vacancy* which the Governor is authorized to fill; and that in

such case the incumbent simply holds over until a vacancy does occur or until the Governor and the Senate jointly appoint.

Smoot vs. Somerville, 59 Md. 84, 91, 94;
Cull vs. Wheltle, 114 Md. 58, 90, etc.;
Purnell vs. Shriver, 125 Md. 266, 269.

Since the rejection of Mr. Offutt by the Senate did not create a vacancy in the office he held, it follows that if this were the usual case in which the Senate's consent, under Art. II, Secs. 11 and 13 of the Constitution, was essential, Mr. William H. Griffith would not be entitled to the office, because he was appointed by the Governor *without* the consent of the Senate, at a time when a *vacancy*, which alone could authorize such an appointment, did *not* exist. In such event Mr. Browning would hold over.

It is settled, however, that the Legislature can confer upon the Governor the power to appoint to statutory offices without the consent of the Senate.

Ash vs. McVey, 85 Md. 119, 128;
Purnell vs. Shriver, 125 Md. 266.

In the case last mentioned, the Court of Appeals held that under a statute which authorized the Governor to appoint the State Board of Education "by and with the advice and consent of the Senate, if in session, and without said advice and consent when not in session," the Governor may, if he sees fit, wait until after the adjournment of the Senate before making his appointments. In this case the Governor nominated Mr. Shriver to the Senate, but the Senate adjourned without acting on the nomination, and thereafter the Governor appointed Mr. Shriver again, without the Senate's consent, and he was held entitled to the office.

Purnell vs. Shriver, 125 Md. 266.

In the present case, Bagby's Code, Art. 33, Sec. 1, provides that "the Governor biennially, by and with the advice and consent of the Senate if in session, *and if not in session, then the Governor alone*, shall appoint" the Boards of Election Supervisors.

I think that under this provision, if the Governor makes his appointments while the Senate is in session, then the Senate's

consent is necessary, but that he may, if he sees fit, wait until the Senate has adjourned, and then make his appointments *without* the Senate's consent.

This is precisely what the Governor did in the present case. He first appointed Mr. Offutt, but the Senate, which was then in session, rejected this appointment. Since the Senate was in session, its consent was necessary, and not being given, Mr. Offutt's appointment fell. The Governor made no other appointment at that time, but waited until the Senate had adjourned, and then, on May 4, 1916, appointed Mr. William H. Griffith. The Governor had the right to do this under Sec. 1 of Art. 33 of the Code, which provides that "if (the Senate is) not in session, then the Governor *alone* shall appoint."

It is, therefore, my opinion that Mr. William H. Griffith is entitled to the office.

In the other case, however, it is, I think, clear that Mr. Vinson holds over. Under Art. 33, Sec. 6, he is entitled to hold office until his successor has been appointed and qualified. Mr. Browning was rejected by the Senate, and the Governor has made no other appointment since the Senate adjourned. Until he does, Mr. Vinson will continue to hold.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISORS, COMPENSATION FOR PRIMARY ELECTIONS.

June 12, 1916.

Walter H. Gray, Esq.,
Town Hall, La Plata, Md.

DEAR MR. GRAY: I have your favor of June 9, and have examined sections 2 and 187 of Article 33 of the Code, which seems to be the only provisions of law relating to your inquiry.

In my opinion you are right in considering that the 25 per cent additional compensation allowed County Supervisors of Elections under the Primary Election Law is an annual addition to their salaries, and not an additional compensation for each primary election. In other words, the salary of your Supervisors is $100 plus the additional 25 per cent, or $125 per annum. The old Board was, therefore, only entitled to $125 each for the year ending May 1, 1916, and the new Board is entitled to $125 each for each year they are in office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS.

FISCAL—ACCOUNTING AND BOOKKEEPING, UNIFORM SYSTEMS OF.

January 18, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: As requested by you orally on January 14th, I have looked into the question of the Comptroller's power to prescribe a system of accounting and bookkeeping for state-aided institutions, Clerks of Court, Registers of Wills, Sheriffs, State's Attorneys and Collectors of State Taxes, and I find no provision of law giving this power to the Comptroller.

State-aided institutions are required to file with the Comptroller itemized statements of how their appropriations have been expended, and the Comptroller is authorized to "cause an examination of their financial affairs and management to be made" in order to inform himself as to this. (Bagby's Code, Vol. III, Art. 19, Sec. 41.)

The Clerks of Court are required to file with the Comptroller annually "a full and complete account of" receipts and expenses, and "such accounts shall be rendered under oath, and in such forms and supported by such proofs as shall be prescribed by the Comptroller." (Bagby's Code, Vol. I, Art. 17, Sec. 13.) There is a similar provision with respect to the Registers of Wills. (Bagby's Code, Vol. II, Art. 93, Sec. 277.)

The State Treasurer is authorized to "make weekly examination of the books" of the Collector of State Taxes for Baltimore City. (Bagby's Code, Vol. II, Art. 81, Sec. 37.) The other Collectors, are required to account to the State Treasurer. (Bagby's Code, Vol. II, Art. 81, Sec. 47.) The Comptroller audits the accounts of all Collectors to the extent of determining the State's interest in the collections.

I do not find any specific provisions with respect to the Sheriffs or the State's Attorneys, but under Article XV of the Constitution every state officer, whose pay is derived from fees, is required to "keep a book in which shall be entered every sum or sums of money received by him, or on his account," in the performance of his duties, and send a copy thereof annually to the Comptroller, and to account to the State for the excess of his receipts over $3,000 per annum.

I have cited the above provisions merely for your convenience, in case you should wish to refer to them. None of them measure up to your present purpose.

The State Auditor, however, is required to examine annually, before December 1st, the books and accounts of all of the above state officers, as well as of state-aided institutions, and to report annually, before December 1st, to the Board of Public Works, making "suggestions as to changes in the conduct of such offices and institutions and in the method of keeping the books and accounts in the offices and institutions examined by him; and also as to changes in the form of the reports made by said officers to the Comptroller." If such suggestions are adopted by the Board of Public Works, then the Board "shall forthwith pass an order directing all officers accounting to the Comptroller to adopt and follow such method of conducting their offices or of keeping their books and accounts in their offices or institutions, or making such form of report, as the case may be."

Therefore, while the Comptroller as such has not the power to prescribe a system of accounting and bookkeeping for state-aided institutions and for the state officers above mentioned, yet the Board of Public Works, of which the Comptroller is a member, acting on the suggestion of the State Auditor, has this power.

The trouble with the statute conferring this power upon the Board of Public Works is, that while it authorizes the Board to prescribe the systems of accounting and bookkeeping in question, it does not confer any means for compelling the state aided institutions or the state officers to comply with the Board's orders. The Report recently filed by State Auditor Ray recom-

mends that his department be given authority to prescribe and enforce the adoption of new systems of accounting.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note.—The Act of 1916, Ch. 587, provides for uniform systems of accounting and bookkeeping, a uniform fiscal year, etc.

FISCAL—BALTIMORE CITY STOCK—STATE TAXES ON—SERVICES OF APPEAL TAX COURT AND CITY REGISTER.

July 28, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I received your favor of July 10th, asking whether the bills rendered by the Judges of the Appeal Tax Court of Baltimore City, aggregating $150, and by the City Register for $300, under Bagby's Code, Art. 81, section 111, should be paid. I have not answered your inquiry sooner, because I wanted to communicate with the City Solicitor and with the officials themselves, and this took some little time.

In my opinion the above bills are legally required to be paid. All of the services required of the officials in question, by Bagby's Code, Art. 81, Sections 107-109, were, I have ascertained, actually performed, and Section 111, providing for payment by the State for these services, has never been repealed or affected in any way. The fact that all issues of city stock except the Western Maryland loan have been exempted from state taxation, cannot affect the state's legal obligation to pay, under section 111, for the services referred to therein, even though they are less now than formerly.

Nor is the State's obligation in this respect affected by the fact that the appropriation acts for the fiscal years ending September 30, 1915, and September 30, 1916, contained no appropriations for this purpose. Section 111 of Art. 81 makes a continuing appropriation, and the Act of 1916, Ch. 126, does not abolish continuing appropriations until October 1, 1916.

A mandamus to compel the Comptroller to issue his warrant in this case would be successful, and I, therefore, think that you should issue your warrant for the bills.

I may add that I understand similar bills were paid by the State for 1914 and 1915, although the Western Maryland loan was, during both those years, the only city stock subject to state taxation.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—BIDS MUST BE INVITED.

December 16, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. McMULLEN: I beg to confirm the opinion I expressed orally to you, and also to the Governor, a short time ago, namely, that I do not think that the State should take over the $600,000 bonds of the Three Million Dollar Loan of 1916, which have not been advertised. The law contemplates that these bonds should only be issued after they have first been offered to the public after the usual advertisement, and this is the course which I think should be followed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—BIDS MAY BE INVITED AT DIFFERENT TIMES FOR BLOCKS OF THE SAME ISSUE.

November 13, 1916.

Hon. John M. Dennis,
State Treasurer,
Baltimore, Md.

DEAR MR. DENNIS: I have your favor of November 11th, relative to inviting bids for the $1,500,000 of the Three Million Dollar Loan of 1916, which is to be issued as of February 1, 1917.

I understand that instead of advertising for bids for this entire issue of $1,500,000, such bids to be opened at one time, the Governor, the Comptroller and the Treasurer may desire to advertise for bids for the issue in three blocks of $500,000, the bids for each such block to be opened on separate dates prior to the date of the issue, your opinion being that you can secure better bids for the State in this way; and you ask whether this would be lawful.

The Act of 1916, Chap. 681, authorizing the Three Million Dollar Loan, provides in Section 4 for advertising for bids for bonds to be issued under the Act, "*under such regulations as may be made in the discretion of the Governor, Comptroller of the Treasury and Treasurer*, or a majority of them." This section further provides that upon the day named in the advertisement for opening bids "for the proposals *thereby called for*," proposals shall be received for "*as many of such bonds* or certificates of indebtedness *as may be mentioned or designated in said advertisement*; and on the opening of such sealed proposals, *as many of said bonds* or certificates of indebtedness *as have been so bid for* shall be awarded," etc.

In my opinion, these provisions of the Act of 1916 give the Governor, the Comptroller and the Treasurer the power, in their discretion, to advertise for bids for separate blocks of the $1,500,000 issue, the same to be opened at different times prior to the date of the issue.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—BIDS SHOULD BE INVITED SEPARATELY FOR EACH BOND ISSUE AUTHORIZED.

May 25, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to acknowledge your favor of May 22nd, enclosing me draft of advertisement for the $2,000,000 bonds to be issued under the Act of 1916, Ch. 142, providing for "The Treasury Relief Loan of 1916," and for the

$1,500,000 bonds to be issued under the Act of 1916, Ch. 681, providing for "The Three Million Dollar Loan of 1916;" and also enclosing draft of resolution to be passed by the Board of Public Works with respect to said issues: all of which I have carefully examined in connection with the Acts themselves.

The only substantial suggestion that I would make relates to the manner in which bids can be submitted under the draft of advertisement you enclosed.

By that advertisement, bids are invited for $3,500,000 of bonds, composed of $2,000,000 Treasury Relief Bonds and $1,500,000 Three Million Dollar Loan bonds. This would authorize separate bids for each of the two issues, and it would also authorize single bids for the aggregate of the two issues. In other words, a bidder on one issue would be in competition not only with bidders on the *same issue*, but he would also be in competition with bidders on the *other issue*, as well as with bidders on *both issues together*.

The two loans are provided for by *separate acts*, in no way related to each other, and *each act* calls for competitive bids for the bonds to be issued under *it*, and requires that the bonds to be issued under *each act* shall be awarded to the highest responsible bidder for *those* bonds. Neither act in terms authorizes competitive bids for the bonds to be issued under *one act*, and for the bonds to be issued under *the other act*, and for the aggregate of the bonds to be issued *under both acts*.

Under this method of bidding (and taking the figures only for illustration), it is quite possible that A might bid 101 for the $2,000,000 issue alone, B might bid 98 for the $1,500,000 issue alone, and C might bid 100 for the total issue of $3,500,000. If these were the bids, then:

A's bid at 101 would be.....	$2,020,000
B's bid at 98 would be.....	1,470,000
Or a total for both issues of.....	$3,490,000
C's bid at 100 for the entire issue would be.....	$3,500,000

Under these circumstances, C would be awarded both issues, at his bid of 100, although A, at 101, would be the highest responsible bidder on the $2,000,000 issue alone.

A could then contend very forcibly that the $2,000,000 of bonds should have been awarded to him, as the highest responsible bidder therefor, on the ground that the loan act authorizing those bonds had nothing to do with the other act, and that the express language of that act required competition between bidders on *those* $2,000,000 of bonds alone, and required that those bonds be awarded to the highest responsible bidder *for them*, and not for those bonds mingled with other bonds of a different issue.

I do not know how much importance you attach to the inviting of bids on both issues together, as well as on both issues separately. I feel myself that there is little likelihood of getting a higher bid on both issues together, than the aggregate of the bids on both issues separately, but even if there is, I feel that the chance would hardly justify the State in taking the risk of a situation such as I have suggested above, and which is quite possible to occur.

I think that the only safe method will be to advertise for bids for the two issues separately, as the two Acts contemplated should be done. See:

Packard vs. Hayes, 94 Md. 233;
Baltimore vs. Flack, 104 Md. 107, 126;
Baltimore vs. Gahan, 104 Md. 145;
Abbott, Public Securities, S. 241;
28 Cyc. 1596-7.

While this could be done in the one advertisement, yet this might lead to some confusion, and I have accordingly drafted and enclose you two forms of advertisement, one inviting bids for the $2,000,000 Treasury Relief Loan, and the other for the $1,500,000 of the Three Million Dollar Loan. These advertisements follow substantially the same form as the draft of advertisement you enclosed, although a careful examination of the two Acts of 1916 suggested a few changes, which I have made. The

third paragraph from the last is mostly new, but I think it expresses what you wish to have the power to do.

While I think, for the reasons already given, that *separate advertisements* should be inserted, inviting separate bids on each issue, yet I see no reason why *one resolution* of the Board of Public Works will not be sufficient. I have accordingly only changed the resolution in a few particulars which an examination of the two Acts suggested, and I enclose you the resolution as thus redrafted.

I have not checked up the amounts of the two issues which will be redeemable each year under the Serial Annuity Plan, but have simply inserted in my draft of advertisements the amounts as given in yours. With reference to the time the advertisement must run, and the naming of the day for opening the bids not less than fifteen days after the expiration of the four weeks' notice, please see that section 4 of both acts is strictly followed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—VALIDITY OF 1916 ISSUES.

August 1, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: With reference to the State of Maryland bonds, thus described—

$2,000,000—"The Treasury Relief Loan of 1916," Series "A" to "M," dated Aug. 1, 1916, 4% Bonds, $1,000 denomination, Coupon form, registrable as to principal.

$1,500,000—part of "The Three Million Dollar Loan of 1916," Series "A" to "M," dated August 1, 1916, 4% Bonds, $1,000 denomination, Coupon form, registrable as to principal—

which were awarded to the successful bidders at public sale on July 20, 1916, I beg to advise you as follows:

1. The said bonds are authorized by the Act of the General Assembly of Maryland of 1916, Chap. 142, and by the Act of

the General Assembly of Maryland of 1916, Chap. 681, respectively.

2. Both of said Acts of Assembly are valid and constitutional.

3. All of the formalities prescribed by law for the issue of said bonds have been legally and duly complied with.

4. The said bonds have been duly delivered to the purchasers referred to, and the purchase price fully paid.

5. The said bonds, as issued, are in form in accordance with said Acts of Assembly, are duly signed by the proper officers, and are the legal, valid and binding obligation of the State of Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BUREAU OF IMMIGRATION—PAYMENT OF BILLS AFTER BUREAU ABOLISHED.

November 24, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of November 23rd, in which you ask my opinion as to whether you should pay three bills, aggregating $177.00, for advertisements which were published under contracts made by the Bureau of Immigration.

The Bureau of Immigration was abolished on June 1, 1916, by the Act of 1916, Chap. 397, but I do not think that the Legislature intended thereby to repudiate outstanding obligations which the Bureau, while in existence, incurred.

I understand that at the close of the fiscal year ending September 30, 1916, you brought down to the Bureau's credit the sum of $10,714.52, this being the unexpended balance of the Bureau's 1916 appropriation (Act 1914, Chap. 389, page 630); that you did this in order to meet obligations which the Bureau incurred before its abolition, and which were still outstanding; and that you have in hand funds more than sufficient for the

payment of these bills, together with the other obligations of the Bureau.

Under these circumstances, I think that the bills should be paid, if the amounts thereof are correct.

I have investigated the correctness of the bills, and find the following to be the facts:

Metropolitan Printing and Publishing Company—$36.00. Contract dated Feb. 3, 1916, expiring one year thereafter, or with the week ending Feb. 3, 1917. $1.50 per week. This bill covers the period from May 24, 1916, to Nov. 7, 1916.

Metropolitan Company—$120. Contract dated Feb. 3, 1916, expiring one year thereafter, or with the week ending Feb. 3, 1917. $3.00 per week. This bill covers the period from Feb. 7, 1916, to Nov. 13, 1916.

Baltimore Traders Unionist—$21.00. Contract dated Sep. 17, 1915, for one year. $1.00 per week. This contract has expired. The bill covers the period from April 8, 1916, to August 26, 1916, at which time I understand the advertisement was discontinued.

I have been assured by counsel for the above companies that the bills have never been paid, and I have no reason to doubt the correctness of his information on this point.

Under these circumstances, I think that all three of the bills should be paid out of the funds standing to the credit of the Bureau of Immigration.

As already stated, the Baltimore Trade Unionist contract has expired, and I have notified counsel for the other two companies to have the advertisements discontinued at the close of the current year.

The advertisements will, according to the contracts, still appear in the Metropolitan Printing and Publishing Company from November 8, 1916, to February 3, 1917, at $1.50 per week, and in the Metropolitan Company from November 14, 1916, to February 3, 1917, at $3.00 per week; and when the vouchers for these periods are presented to you, they should be paid out of the said fund.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—CLERKS OF COURT, BONDS OF.

December 28, 1916.

Lloyd L. Shaffer, Esq.,
Clerk of the Circuit Court,
Cumberland, Maryland.

DEAR SIR: Mr. Allan C. Girdwood has referred to me your letter to him of December 17th.

As you probably know, the form of bond described for Clerks of the Circuit Courts is given in Bagby's Code, Vol. 2, Art. 17, Sec. 48. Section 49 requires this bond to be renewed every second year, and I think that the renewal bond ought simply to follow the form which is prescribed for the original bond.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

FISCAL—CLERKS OF COURT—OFFICE EXPENSES.

November 18, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of November 10th, enclosing copy of letter from Mr. Stephen C. Little, Clerk of the Superior Court of Baltimore City.

The Superintendent of Public Buildings has notified Mr. Little to vacate two rooms connected with the Record Office, which are used by the Examiners and Proof Readers, and has assigned one large room in their place. It is essential that the Examiners should do their work in quiet surroundings, and Mr. Little finds that to accomplish this partitions must be erected in the new room. The Superintendent of Public Buildings has declined to erect these partitions, and Mr. Little desires to know whether he can have them erected out of the receipts of his office.

Art. III, Sec. 45, of the Constitution provides that the annual compensation of the Clerks of Court in Baltimore City shall not exceed $3,500, over and above office expenses, and com-

pensation to assistants," all of which shall be paid out of the fees and receipts of the office.

Art. XV, Sec. 1, of the Constitution requires each Clerk to account yearly to the State for the excess over his compensation and "the expenses of his office."

Bagby's Code, Art. 17, Sec. 13, requires each Clerk to account annually to the Comptroller for "the expenses incident to his office," and "the sums paid for stationery, official and contingent expenses, fuel and other items."

Under these provisions of law, the only deductions, in addition to salaries, which the Clerks of Court are authorized to make from the receipts of their office, are those required for *office expenses.*

In my opinion the cost of erecting partitions, such as Mr. Little needs, is not an office expense, within the meaning of the above provisions of law, and should not, therefore, be paid for out of the receipts of the office.

Such partitions of this kind as may be necessary should, I think, be erected and paid for by the City of Baltimore, which, through its Superintendent of Public Buildings, has charge of the Court House and the Clerks' offices. (Charter, Sec. 207.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—DEPOSITARY BANKS—COLLATERAL MUST BE REGISTERED.

October 5, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Md.

DEAR MR. DENNIS: I received your favor of October 2nd, enclosing letter from Mr. J. D. Baker, President of the Citizens National Bank of Frederick, in which he asks that I modify my opinion to you of August 29th, 1916, to the effect that bonds and stock deposited with you as collateral by depositary banks, must be registered.

The Act of 1916, Ch. 115, authorizes depositary banks to deposit as collateral with you "registered public stock of the United States or of the State of Maryland or of Baltimore City or the bonds of any county or municipal corporation of this State which shall be approved by the State Treasurer." As Mr. Baker says, the word "registered" is not repeated before the words "bonds of any county or municipal corporation." But in the next sentence the act proceeds: "Which stock must be registered in the name of said Treasurer, officially, as held in trust under and pursuant to this section." I think that the word "stock" in this sentence clearly refers to the collateral deposited, whether it be stock or bonds, and, accordingly, I wrote you on August 29th that the collateral, whether stock or bonds, must be registered.

I was not unmindful of the fact that counties and municipalities, outside of Baltimore, frequently do not provide for registering their securities, but I felt that I could not advise you to accept any which were not registered, not only because the Act of 1916 in terms requires registration, but also for these other reasons which, for brevity, I did not refer to in my letter:

1. If your office were to accept securities which were unregistered, and payable to bearer, the consequences of a possible loss or misuse of the securities, which while remote might still occur, might be rather serious if they came into the hands of a *bona fide* holder for value, whereas the consequences would not be the same if the securities were registered. In the former case, you might not be able to reclaim the securities, and in this event your bond would be liable for any loss to the State, not only because the securities had been lost or misused while under your control, but also because the fact that you accepted them unregistered when the law required them to be registered would be the cause of the loss; while in the latter case, there would, as a practical matter, be no liability on you, because the securities would not be negotiable. I, therefore, felt that for your own protection against all possible contingencies it would be better for you not to receive negotiable securities. I would not wish to accept them if I were Treasurer.

2. If anything did happen to the negotiable securities, in case you accepted them in that form, then if the State could not reclaim them, as it might not be able to do if they were negotiable, the bank's deposit for the protection of the State would be gone, and if the bank were to fail, the State would have nothing to look to, except, of course, your own bond. If, on the other hand, the securities were registered, the State could reclaim them.

I felt that the protection of the State's funds against any possible loss, and your own protection against any possible liability on your bond, were the first considerations; and it was for these reasons, as well as because the law itself requires it, that I advised you to accept only registered securities.

I do not think that Mr. Baker's suggestion for a deposit of the securities with a trust company, and the issue by it of a receipt or certificate to you, would be practical. The law makes you the custodian of the securities, and specifically requires you to hold them in trust. If you permit any one else to hold them, you necessarily do so at your own risk. If a trust company were to hold them, and if the securities should happen to be misapplied while in its possession, the State might lose the collateral, and if the trust company were not able to make it good, your bond might be liable.

Doubtless the contingencies I mention may be remote, but still they might occur, and I think that the course to follow is the course which will certainly protect both the State and you from loss. That course is to do what the statute requires, and accept only registered securities. The result will, of course, be that counties and municipalities must provide for registering such securities as may be offered to you for deposit. I should think that that could be arranged without much difficulty, but in any event the Act of 1916 requires it.

I enclose you a copy of this letter which I will be obliged if you will send to Mr. Baker, because I want him to feel that I have given the best consideration I can to his suggestions, which I am always only too glad to receive, and that I am sorry not to see my way clear to conform to them in this case.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—DEPOSITS—FORM OF REGISTRATION.

February 24, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Maryland.

DEAR SIR: I have your favor of February 19th, asking whether or not the registration of certain security deposits "to the Treasurer of Maryland in trust for ———————" is satisfactory from a legal standpoint.

I presume that the deposits you refer to are those made pursuant to Sections 106, 110, 118, 157 of Article 23 of the Code. Those Sections require that the deposits "must be registered in the name of the State Treasurer officially as held in trust under and pursuant to this section."

I think that the wording of the Certificate and the form of registration quoted above is a compliance with this requirement.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

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FISCAL—DEPOSITS OF STATE TAXES—FORM—DAILY CERTIFICATES AND BEGINNING OF TREASURER'S RESPONSIBILITY.

March 8th, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Maryland.

DEAR MR. DENNIS: I have your favor of February 28th, enclosing letter from Mr. William C. Page, Collector, to yourself.

I think that the form of deposit which you suggest to be used for the deposit of State taxes in Baltimore City is correct, namely: "In account with the Treasurer of the State of Maryland for daily deposits to be made by the Collector of State taxes in the City of Baltimore."

I also think that it would be advisable for the bank in Baltimore in which such deposits are made, to send you a daily certificate, in substantially the form suggested by Mr. Page at the bottom of page 3 of his letter.

And I think that the responsibility of the Collector for State collections made in Baltimore City, ends, and your responsibility, as Treasurer, begins, when the monies have been deposited by the Collector to your account in the Bank in Baltimore designated by you to receive the same.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—DEPOSITARIES OF STATE FUNDS—TRUST COMPANIES MAY BE.

February 21, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Maryland.

DEAR SIR: I have your favor of February 17th, with respect to the deposit of the State's funds in Trust Companies.

The Act of 1914, Chap. 202 (Bagby's Code, Vol. III, Art. 95, Sec. 32), provides:

> "The Treasurer may deposit the moneys of the State in such bank or banks as he may so select, or in such Trust Company or Trust Companies, incorporated under the laws of this State and doing business therein, as he may, from time to time, with the approval of the Governor, select; such depositaries giving security satisfactory to the Governor, for the safe-keeping and forthcoming, when required, of said deposits."

The Constitution, Article VI, Sec. 3, provides that the Treasurer "shall receive the moneys of the State, and, *until otherwise prescribed by law*, deposit them, as soon as received, to the credit of the State in *such bank or banks* as he may, from time to time, with the approval of the Governor, select."

While the question is not free from doubt, yet my own opinion is that the Act of 1914 is valid, and authorizes the deposit

of the State's funds in Trust Companies in accordance with its provisions.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—INTEREST ON BANK DEPOSITS CREDITED TO GENERAL TREASURY.

November 21, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of November 17th, in which you ask whether the sum of $10.25 received by you from the State Tax Commission as interest upon that Commission's bank deposits, and the sum of $12.85 received by you from the Public Service Commission as interest upon that Commission's bank deposits, should be credited to the general treasury as interest on deposits, or should be credited to the funds of the respective Commissions.

I have ascertained from the State Tax Commission that in its case the interest was paid by its bank upon bonus taxes received by it from corporations. Under the law (Bagby's Code, Art. 23, Sec. 88A, amended by Act of 1916, Chap. 596, page 1231), the State Tax Commission is required to account quarterly for bonus taxes collected by it, and interest allowed the Commission on such taxes while on deposit in bank pending this quarterly accounting, should, like the taxes themselves, be paid "to the State Treasurer for the use of the State."

I think that the $12.85 interest received from the Public Service Commission also belongs to the state funds. I have ascertained that the Commission's bank account on which this interest was allowed consisted partly of fees received for certified copies of papers, and partly of advances made on account of the Commission's annual appropriation, which advances it deposited in bank until needed.

So far as this interest was allowed on fees received by the Commission, it clearly should be credited to the general treas-

ury, because Section 420 of Article 23 of the Code, as amended by the Act of 1916, Chap. 638, provides that such fees shall be paid into the treasury monthly, and "become part of the general funds of the State." The interest on these fees should become part of the general funds, just as the fees themselves do.

And so far as this interest was allowed on advances to the Commission out of its annual appropriation, it should form part of the general funds of the State also. This interest was allowed as of May 1, 1916, and by Sec. 417 of Art. 23 of Bagby's Code the Commission's appropriation for 1916 was $75,000, or so much thereof as was necessary, the same not to exceed said amount, although the Act of 1916, Chap. 389, page 631, gave certain additional compensation to the People's Counsel. The Commission's funds for 1916 were restricted to the amount thus appropriated, or as much thereof as was necessary, and any interest allowed on the deposit of part of this appropriation belongs to the State.

I am, therefore, of opinion that in both of the cases submitted, the interest should be credited to the general treasury.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—REGISTER OF WILLS—ELLIOTT-FISHER BOOK TYPEWRITER IS A PROPER OFFICE EXPENSE.

January 10, 1916.

Hon. Emerson C. Harrington,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I beg to acknowledge your favor of December 31, 1915, in which you ask whether or not the Register of Wills for Allegany County is authorized to charge against the receipts of his office the sum of $270 for the purchase of an Elliott-Fisher book typewriter.

The Constitution, Art. III, Section 45, provides that the Registers of Wills in the counties shall receive, out of the fees or receipts of their offices, a compensation not exceeding $3,000 a year, "over and above office expenses, and compensation to assistants."

Bagby's Code, Art. 93, Sec. 276, provides that the Registers of Wills for the several counties, the emoluments of whose offices shall exceed the sum of $3,000 in any one year, "after deducting therefrom the necessary expenses incident to their office for the same period," shall pay the excess to the treasurer.

Sec. 277 of the same Article requires every Register to return annually to the Comptroller an account of his fees, emoluments and receipts, "and of all the expenses incident to his office," and with such accounts of expense each Register is required to give a list of his clerks, their compensation and duties, and also "an account of the sums paid for stationery, official or contingent expenses, fuel and other things, and stating the purposes for which said expenses are applied."

From the aforegoing provisions it appears that the Registers of Wills are entitled to charge against the fees or receipts of their offices, *necessary office expenses, stationery, official or contingent expenses, fuel and other things incident* to their offices. I think that under these provisions an Elliott-Fisher book typewriter, if needed, is a proper charge against the receipts of the office of the Register of Wills of Allegany County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL — SCHOOLS — COMMON SCHOOL FUND — 1812 WAR LOANS — MARYLAND AGRICULTURAL COLLEGE — FEDERAL AID.

March 10th, 1916.

Hon. Harvey L. Cooper,
Chairman Senate Finance Committee,
Annapolis, Maryland.

DEAR SENATOR COOPER: As requested by your favor of March 8th, I have looked into the power of the State to sell the securities you mention and make disposition of the proceeds.

1. Securities and cash aggregating $233,560.50, consisting of Baltimore and Ohio common stock, Baltimore City 3½s,

United Railways and Electric Company first 4s, State loan of 1914, and $3,572.50 cash, carried by the Comptroller to the credit of the Common Free School Fund (Report for 1915, Statement F-A).

These securities represent moneys received from the United States Government, amounting originally to $160,929.26, and representing interest upon loans contracted by the State for the prosecution of the war of 1812. See Resolution of General Assembly of Maryland No. 38, 1825.

The present investments of this money were made under the Act of 1858, Ch. 295, March 9, 1858, and by that act the interest and dividends are required to be distributed "among the several counties of the State and the City of Baltimore, in the ratio of the whole representation of the said counties and city, respectively, in the General Assembly, in the same mode that the free school fund is now, or may be hereafter distributed according to law, to the person or persons duly and legally authorized to receive the same."

I see no reason why the Legislature cannot require the sale of these securities, and make such other disposition of the proceeds as it deems proper.

2. Securities aggregating $138,943.05, consisting of Public Building Loans and State Loans of 1902, 1912 and 1914, carried by the Comptroller to the credit of the Maryland Agricultural College. (Report of 1915, Statement F-A.)

These securities represent the investment of moneys received by the State from the United States Government, under Act of Congress of July 2, 1862, Ch. 130, 12 Stat. 503, amended by Act of Congress of March 3, 1883, Ch. 102, 22 Stat. 484. (See United States Compiled Statutes, 1901, Vol. 3, pages 3212, etc.)

Under these Acts of Congress the principal of this fund is required to "forever remain unimpaired" and "undiminished," and the income is "inviolably appropriated" to the endowment, support and maintenance of a state college where the leading object is the teaching of agriculture and mechanic arts, the college selected by the State being the Maryland Agricultural College.

The Legislature cannot apply either the principal or the interest of this fund to any purpose other than the purpose to which the same are now applied.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS—FELT SCHOOL FUND AND INDIGENT BLIND—SURPLUS REVENUE OF THE UNITED STATES.

June 28, 1916.

Harry J. Hopkins, Esq.,
Comptroller's Office,
Annapolis, Maryland.

DEAR MR. HOPKINS: I have examined all the legislation relating to the $34,069.36 appropriations for the public schools, and the deductions therefrom for the indigent blind. I apologize for the length of this report, but in view of the possible mandamus proceedings which you mentioned, and of the desirability of having a record of the situation for future use, I thought it best to set out the result of my examination at length. You will find the conclusions I have reached briefly stated at the end of this report.

The Act of 1836, Ch. 220, seems to be the first Act providing for the disposition of Maryland's share in the surplus revenue of the United States. This act provided that $274,451 out of the total fund of $955,838.25 should be used in paying the public debt, and that the interest on the remaining $681,387.25 should be distributed among the counties and the City of Baltimore for the public schools.

The Act of 1837, Ch. 173, provided that a sum not exceeding $1,000 should be appropriated annually, for the indigent blind, out of the interest upon the surplus fund. The Act of 1837, Ch. 285, provided the method by which the interest on the surplus fund should be distributed among the counties and the City of Baltimore. The Act of 1837, Ch. 308, provided for the deposit of the surplus fund at 5 per cent interest, and that this interest, after deducting the said $1,000 annually for the

indigent blind, should be distributed in the manner specified in Chapter 285 of the Acts of the same year.

The result of this legislaiton was that from the interest on the surplus fund there was first deducted each year $1,000 for the indigent blind, and the balance of the interest was distributed annually for the public schools.

The Act of 1839, Ch. 33, provided that *in place of the interest on the fund*, the sum of $34,069.36 yearly (which was 5 per cent on the $681,387.25 constituting the fund) of the State's revenue *from the Baltimore and Washington Railroad*, should, beginning with July 1, 1841, and after first deducting therefrom the $1,000 aforesaid for the indigent blind, be distributed annually for the public schools, according to the method of distribution set forth in the Act of 1837, Ch. 308.

This Act made the $34,069.36 appropriation a charge against the State's revenue from the Baltimore and Washington Railroad, instead of, as formerly, against the interest on the surplus revenue fund. (The form of the recent annual appropriations seems to make this immaterial. See Acts 1914, Ch. 386, page 614, and Acts 1914, Ch. 389, page 626.) The $1,000 was still to be deducted for the blind, and the balance was still to be distributed for the public schools.

The Act of 1849, Ch. 209, repealed the Act of 1837, Ch. 173, and also all prior legislation for the indigent blind; and provided that a sum not exceeding $2,000 (instead of $1,000 as formerly) should be annually appropriated *out of the interest upon the surplus fund for the indigent blind*. The Act of 1854, Ch. 224, increased this appropriation to $4,000. The balance was still to be distributed for the public schools.

The Act of 1849, Ch. 209, as amended by the Act of 1854, Ch. 224, was codified in the Maryland Revised Code of 1859 as Sections 7, 8, 9 and 10 of Article 33, and by Section 7 it was provided that "a sum not exceeding $4,000 *shall be annually appropriated*, to be applied under the direction of the Governor in placing, for instruction in the Maryland Institute for the Instruction of the Blind, or in some other convenient institution established for that purpose, such indigent blind persons," etc.

In other words, the appropriation for the blind, which had become $4,000, *was no longer to be deducted from the interest on the surplus revenue fund*, as the previous legislation required, but was made *a straight, annual appropriation.*

The above Sections 7, 8, 9 and 10 of Art. 33 of the Revised Code of 1859, became Sections 3, 4, 5 and 6 of Art. 33 of the Code of 1860, and Section 3 as there codified is the same as Section 7 of Art. 33 of the Revised Code of 1859, except that "a sum not exceeding $6,000" was appropriated, instead of a sum not exceeding $4,000. This again was *a straight, annual appropriation*, and was not to be deducted from the interest on the surplus revenue fund.

This appropriation for the indigent blind was thereafter continued as a straight annual appropriation.

The Act of 1868, Ch. 205, increased the appropriation to $15,000.

The Act of 1886, Ch. 278, continued it at $15,000, and it was codified at this amount in the Code of 1888, Art. 30, Sec. 3.

The Act of 1892, Ch. 272, increased the appropriation to $21,000, and it was codified at this amount in the Code of 1904, Art. 30, Sec. 3, and in Bagby's Code of 1912, Vol. I, Art. 30, Sec. 3.

The Act of 1912, Ch. 200, increased the appropriation to $33,000, and it is codified at this amount in Bagby's Code, Vol. III, Art. 30, Sec. 3.

It thus appears that prior to the Codes of 1859 and 1860 the appropriation for the indigent blind was deducted from the $34,069.36 representing the interest on the surplus revenue fund, and that the amount which, between 1849 and 1854, should have been so deducted, was $2,000 annually; and between 1854 and 1859 it was $4,000 annually, leaving, for these years, a balance of $30,069.36 as the amount which should have been distributed for the public schools.

It also appears, however, that under the Codes of 1859 and 1860 this appropriation for the indigent blind ceased to be a charge against the $34,069.36 interest, and was converted into an ordinary, straight, annual appropriation of $6,000, which

has since been gradually increased, until in 1912 it was made $33,000.

Therefore, it is no longer proper to deduct any part of this appropriation for the blind from the $34,069.36 representing interest. The original $1,000 appropriation, which in 1839 became $2,000, has been merged in and become part of the present $33,000 appropriation for the indigent blind.

I understand that this $33,000 appropriation for the blind has been and will be duly paid (see Act 1916, Ch. 685, page 1568 for 1917 and Act 1916, Ch. 684, page 1553 for 1918), as have the several annual amounts which preceded it, and this being so, my opinion is that the $2,000 per annum which has been retained for the blind, but not paid, during each of the past four years, should not be paid for that purpose, and that, of course, nothing should be deducted for the blind from the $34,069.36 appropriated for the schools, in accordance with the Act of 1839, Ch. 33, by the Act of 1914, Ch. 389, and due July 1, 1916.

Since no part of this $34,069.36 is to be deducted for the blind, the remaining question is, whether the whole of this sum shall be distributed, on July 1, 1916, to the schools, in accordance with the method prescribed by the Act of 1837, Ch. 285.

In my opinion it should be. The Act of 1914, Ch. 389, appropriates this $34,069.36 for the Free School Fund, in accordance with the Act of 1839, Ch. 33 (which refers to the legislation of 1837), said sum to be "substituted for the interest on the surplus fund as provided in said Act, *and shall be apportioned and paid in the manner now provided by law.*"

The laws providing for deductions for the blind from this interest, were, as already shown, the Act of 1837, Ch. 173, the Act of 1837, Ch. 308, the Act of 1839, Ch. 33, the Act of 1849, Ch. 209 (which repealed all prior legislation for the blind), and the Act of 1854, Ch. 224. Those laws, to the extent at least that they provided for these deductions, were, as has been shown, repealed by the Codes of 1859 and 1860, and have never been revived since. Consequently, there is now no law providing for any deductions for the blind from the $34,069.36.

This being so, I think that the present effect of the Act of 1839, Ch. 33, taken in connection with the Act of 1837, Ch. 285 (which provides the method of distribution, without any deduction for the blind at all), and also in connection with the Act of 1849, Ch. 209 (which repealed all prior legislation providing for the indigent blind), is that the whole of the said sum of $34,069.36, due on July 1, 1916, should be distributed for the schools, because that is the manner of distribution "now provided by law."

Finally, the Act of 1916, Ch. 557, repeals the Act of 1839, Ch. 33, as of August 1, 1916. This repeal, together with the Act of 1916, Ch. 126, abolishing continuing appropriations, and the appropriation Acts of 1916, Chapters 684 and 685, which do not continue the $34,069.36 appropriations in question for either 1917 or 1918, mean that this appropriation of $34,069.36 ceases with the payment of July 1, 1916, and will not be payable thereafter.

My conclusions are:

1. That nothing is to be deducted for the indigent blind from the $34,069.36 appropriation made by the Act of 1914, Ch. 389, for the Free School Fund, and due July 1, 1916.

2. That the whole of said appropriation of $34,069.36 should be distributed on July 1, 1916, to the Free School Fund, in the manner specified in the Act of 1837, Ch. 285.

3. That this appropriation of $34,069.36 ceases with the payment of July 1, 1916.

4. That no part of the $8,000 retained from the similar appropriations of $34,069.36 made annually during the past four years should be paid for the indigent blind.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS—GUARANTEE OF FRATERNITY BONDS BY MARYLAND COLLEGE OF AGRICULTURE.

July 19, 1916.

H. J. Patterson, Esq.,
President, Maryland Agricultural College,
College Park, Maryland.

DEAR MR. PATTERSON: I have your favor of July 18th, asking whether the Maryland State College of Agriculture can guarantee the payment of bonds issued by college fraternities to build fraternity houses.

I do not think that the College should do this. I have not been able to find any power in the College's original charter or in any of the amendatory acts, or in the legislation of 1916, which would, in my judgment, confer a power of this kind.

In any event, however, the College is practically a State Institution, and should incur no obligation not contemplated by the State. The obligations which the State contemplated the College would be under during the next two fiscal years are shown in the appropriation acts for those years (Acts 1916, Ch. 654, page 1559, and Ch. 656, page 1573), and, of course, do not include liability on fraternity bonds. The guarantee would be worth nothing unless the State were behind it, and if, as might very well happen, the bonds defaulted, there would be no funds at all available to meet the default.

Morover, the amount of liability under the guarantee would necessarily be uncertain, and a default in the bonds would place the State in the position of either repudiating the obligation, on the ground that it had never authorized it, or else of assuming what might be a quite considerable payment for buildings which the Trustees would not have constructed out of their own funds.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SCHOOLS—SPECIAL APPROPRIATIONS TO CALVERT AND GARRETT COUNTIES FOR HIGH SCHOOLS.

September 26, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have carefully considered your inquiry of September 22nd, relative to the special appropriations made for school purposes to Calvert County, by the Act of 1916, Ch. 295, and to Garrett County, by the Act of 1916, Ch. 565.

The provisions of these two acts are, as you say, in direct conflict with sections 133 and 138 of the Act of 1916, Ch. 506, the General Educational Bill.

Under these circumstances, it is clear, under Musgrove vs. B. & O. R. R. Co., 111 Md. 629, 637, that the validity of the appropriations made by the two acts in question depends upon whether the acts were approved by the Governor before or after the General Educational Bill was approved.

All three of the acts were approved on the same day, April 18, 1916, but they were approved in the following order:

1. Chapter 506, General Educational Bill.
2. Chapter 295, Calvert County appropriation.
3. Chapter 565, Garrett County appropriation.

Since the two last named acts were approved after the General Educational Bill, they take precedence over it to the extent of any inconsistency; and, therefore, the two special appropriations should be paid, as the acts direct, out of the public school tax (that is, out of the General State School Fund, of which the receipts from the public school tax form part), before the same is apportioned.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF THE SENATE, APPROPRIATION TO—MAY ALSO HOLD OFFICE OF SHERIFF.

January 10, 1916.

Hon. Emerson C. Harrington,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I beg to acknowledge your favor of December 31, 1915, asking whether you are authorized to pay Mr. John R. Sullivan his salary of $300 as Secretary of the Senate from October 1, 1915, to January 5, 1916, in accordance with the appropriation made therefor by the Act of 1914, Ch. 221 (Bagby's Code, Vol. III, Art. 84A, Sections 1 and 2), in view of the fact that Mr. Sullivan was elected Sheriff of Anne Arundel County, and duly qualified as such in the month of November, 1915.

The only provision of law under which Mr. Sullivan might be deprived of his right to his said salary as Secretary of the Senate, is Article 35 of the Bill of Rights, which provides "that no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State," but in my judgment the position of Secretary of the Senate is not an "office" within the purview of Article 35, as the same has been construed by the Court of Appeals. See

Truitt vs. Collins, 122 Md. 526;
State Tax Commission vs. Harrington, 126 Md. 157.

I, therefore, advise you that Mr. Sullivan is entitled to his salary of $300 as Secretary of the Senate from October 1, 1915, to January 5, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF THE SENATE—APPROPRIATION FOR INDEXING SENATE JOURNAL.

May 4, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I received your favor of April 25th, asking my advise as to whether the Journal Clerk of the Senate or the Secretary of the Senate should be paid for indexing the Senate Journal.

The Act of 1892, Chapter 225, quoted by you, makes it the duty of the Secretary of the Senate to do this work, and provides for an appropriation, not exceeding $300.00, by each Legislature to cover this work at the succeeding Legislature, the same to be paid to the Secretary of the Senate upon the certificate of the President of the Senate that a proper and complete index has been made. The Appropriation Act for the fiscal year ending September 30th, 1916, made the proper appropriation for this purpose. (Act 1914, Chap. 389, page 632.)

The Senate Order passed January 5, 1916, directing the Journal Clerk to do the indexing, cannot override the provisions of the Act of 1892, and the $300 should, therefore, be paid to the Secretary of the Senate, upon receipt of the proper certificate from the President of the Senate.

The only hesitation I had about the matter arose from the fact that I understood the Journal Clerk had done all the work, and that the Secretary of the Senate would be paid for something he did not do. I find upon investigation, however, that the Secretary made an arrangement with the Journal Clerk whereby the work was to be done by the latter in conjunction with the Secretary, the appropriation to be divided between them on a basis agreed upon. This is in accordance with what I understand has always been the custom. The agreement will be carried out by the Secretary of the Senate, so that no injustice will be done the Journal Clerk by the above ruling, which is undoubtedly correct legally.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SECRETARY OF STATE—COMPENSATION OF—FEES OF HIS OFFICE BELONG TO STATE.

December 22, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: As requested by your favor of December 8th, I have most carefully considered the question whether the fees of the Secretary of State should be reported to your office and paid into the state treasury.

My conclusion is that the Secretary of State is not entitled to any compensation for the duties of his office in addition to the $2,000 salary which the Constitution allows, and that no part of the fees of his office can be legally retained by him as his own; but that the law does not prevent him from also holding the position of Secretary to the Board of Public Works, and that if he does, he is entitled to the $500.00 salary which that Board pays its Secretary, in addition to his $2,000 salary as Secretary of State.

I am giving you at length the reasons for this conclusion, because it involves a departure from what has for years been the practise of those who have filled the office of Secretary of State, and because it not only materially affects the compensation of the gentleman who now occupies that office, but also involves the obligation of former Secretaries of State to reimburse the State for the fees they respectively retained in excess of their salary.

It is doubtless true that a gentleman of the high standing and ability of the present Secretary of State would not have accepted the office had he known that the constitutional salary would be the limit of his compensation. This case is an illustration of the objection to having the Constitution fix salaries, for when that is done, very often the salary cannot be changed without a constitutional amendment. The result in the present case is that the compensation of the Secretary of State is limited by a constitutional provision adopted almost fifty years ago, although conditions are vastly different now from what they

were then, and the importance and work of the office have greatly increased. But in this case the only remedy is through a constitutional amendment. My duty is to declare the law as I find it.

1. *The whole compensation of the Secretary of State is the $2,000 salary which the Constitution provides.* Article II, Sec. 22 of the Maryland Constitution requires the Secretary of State to perform such duties as the Legislature may prescribe, and provides that he shall "receive an annual salary of $2,000." The salary, therefore, is fixed by the Constitution itself, and unless there is some provision in the Constitution authorizing the Legislature to increase or add to it, then clearly the Legislature has no such power.

The only provision in the Constitution from which it can be argued that the Legislature has this power is the clause in Article 3, Section 35, which reads: "Nor shall the salary or compensation of any public officer be increased or diminished during his term of office." The argument would be that this clause impliedly recognizes the power of the Legislature to change the salaries which the Constitution prescribes for public officers, such changes, however, not to become effective until the expiration of the incumbent's term.

In my opinion this clause applies only to those public officers whose compensation the Legislature is authorized to fix in the first instance or whose compensation the Constitution authorizes the Legislature to change.

The increases which the Legislature has made from time to time (Act 1892, Chap. 355, Act 1905, Chap. 150, and Act 1914, Chap. 847) in the salaries of the Judges, which are named in the Constitution with certain provisions against diminishing them during the term of office, have been suggested as a basis for the contention that section 35 of Article 3, above referred to, recognizes the right of the Legislature to increase the salary of the Secretary of State.

The Constitutions of this State, however, have always made special provision for the case of the Judges, and from this as well as from the debates in the Constitutional Conventions it is quite clear that the question of the Judges' salaries is and

always has been treated on a basis separate and distinct from the salaries of other public officers.

Constitution 1851. Art. 4. Sec. 4. 9. 12. 13;

Constitution 1864. Art. 4. Sec. 21. 28. 32;

Constitution 1867. Art. 4. Sec. 21. 31;

Debates of Constitutional Convention of 1851. Vol. I. pages 239. 516. 544. 549; Vol. II. pages 552-559. 579-582. 658-659. 661. 699-700;

Debates of Constitutional Convention of 1864. Vol. II. pages 1177. 1310-1314; Vol. III. pages 1435-1436. 1560-1562. 1617-1622.

The situation as to the Secretary of State is this:

The office of Secretary of State was created in 1837, when the people adopted the constitutional amendment embodied in the Act of 1836, Chap. 197, Sec. 17. That amendment provided that the compensation should be fixed by the Legislature; and following this, the Act of 1837, Chap. 131, fixed the salary at $2,000.00 "*in full for all services* that the law does now or may hereafter require said officer to perform." Later this salary was reduced to $1,000.00.

In the Constitutional Convention of 1851 the proposition that the Legislature should continue to have the power to fix the compensation *was voted down*, and the salary was fixed in the Constitution itself at $1,000.00. The Convention did this in face of the protest that if the Constitution fixed the salary, *it could not be changed and a competent man might not be secured for the salary named.*

The salary was continued at $1,000.00 in the Constitution of 1864, and the present Constitution of 1867 raised the salary to $2,000.00, this increase being intended, in large part at least, as compensation for performing "all clerical duty belonging to the Executive Department," which work was transferred to the Secretary of State from the Private Secretary, whose office was then abolished.

It is clear from the debates and proceedings of the Constitutional Conventions that the framers of the several Constitutions of this State intended, with respect to the salary of the Secre-

tary of State, what they in fact provided in every Constitution, namely, that the salary provided for the Secretary of State should be in *full compensation* for all his duties.

Debates of Constitutional Convention of 1851, Vol. I, pages 451-452, 493-494;
Debates of Constitutional Convention of 1864, Vol. II, pages 1328-1329;
Proceedings of Constitutional Convention of 1867, pages 201-204;
Constitution of 1851, Art. II, Sec. 22;
Constitution of 1864, Art. II, Sec. 23;
Constitution of 1867, Art. II, Sec. 22.

I cannot believe that the general provision of Section 35 of Article 3 of the Constitution of 1867 (which occurs in identically the same language in the Constitution of 1851, Article 3, Section 23, and in the Constitution of 1864, Article 3, Section 34), "nor shall the salary or compensation of any public officer be increased or diminished during his term of office," confers any authority upon the Legislature to increase or add to the salary which the Constitution itself, in Article 2, Section 22, fixes for the Secretary of State.

To hold that it does would not only be to disregard all that was said in the Debates of 1851 and 1864, which clearly show that the object of fixing the Secretary of State's salary in the Constitution was [illegible] his compensation to the amount therein named; but it would be to disregard also the view as to the application of [illegible] which was advanced when this section was adopted, as [illegible] of Article 3 of the Constitution of 1864. This view, in my opinion is the correct one, was thus expressed [illegible] Sterling:

"Now [illegible] be the salaries fixed by the Constitution [illegible] put into the Constitution, the Legislature [illegible] change them [illegible]. This section [illegible] applies [illegible] salaries which the Legislature has [illegible]. Other salaries, those fixed by

the Constitution, cannot be affected by the Legislature."

Debates of Constitutional Convention of 1864, Vol. I, pages 802-806; see also page 475;

Debates of Constitutional Convention of 1851, Vol. I, pages 124, 379-380.

The salaries "which the Legislature has the power to regulate," and to which, like Mr. Stirling, I think this section applies, are salaries which the Legislature has the power to fix in the first instance, and salaries which the Constitution fixes, but authorizes the Legislature to change. Such salaries the Legislature may change, although it cannot increase or diminish them during the term of office. But salaries which the Constitution itself fixes, without any authority to the Legislature to change them, cannot be affected by the Legislature at all.

In the present case, the Constitution fixes the salary of the Secretary of State, and does not authorize the Legislature to change it or increase it or add to it. It follows, in my opinion, that the salary thus fixed by the Constitution constitutes the whole compensation which the Secretary of State is authorized to retain for the performance of his duties.

2. *Any Statute providing additional compensation would be void.* From the aforegoing it follows that if there were now any statute purporting to give the Secretary of State any compensation in addition to the salary which the Constitution contemplates shall be his whole compensation, such statute would, to that extent, be unconstitutional and void.

On this point see

Green vs. State, 122 Md. 288;

Cecil vs. Anne Arundel Co., 121 Md. 696.

I have discussed the constitutional question at length, because it is more or less popularly supposed that the existing statutes treat the fees of the Secretary of State as belonging to him. I do not think, however, that the constitutional question is really involved at all, because in my opinion the statutes under which the Secretary of State collects fees or compensation in addition

to his salary, do not purport to authorize him to retain any part of these fees as his own.

3. *Statutes under which additional compensation has been retained.* I am advised that these statutes are the following:

a. Fees paid upon the incorporation of Maryland companies. Fees of this character have been paid the Secretary of State since April 16, 1914, when the Act of 1914, Chap. 789, amending section 4 of Article 23 of Bagby's Code, went into effect. Under that Act charters were required to be delivered to the Secretary of State for record, instead of to the State Tax Commissioner as theretofore, and it was further provided that the Secretary "shall collect double the fees allowed by law to Clerks of Court for recording documents of similar length." The law also required the State Tax Commissioner to record an abstract of the charter in his office, and provided that one-fourth of the fees should be paid by the Secretary of State to the State Tax Commissioner, but did not provide how the remaining three-fourths was to be disposed of.

The law continued in this way until June 1, 1916, when the Act of 1916, Chap. 326, became effective. That act requires Maryland charters to be delivered to the State Tax Commission, together with $10 for recording fees. The Commission is first to record each charter, and then send it to the Secretary of State, to be recorded again. The act then provides that "$3.50 of the recording fees so collected shall be paid by it (the Commission) to the Secretary of State." An additional $1.50 was required to be paid to the Clerk of the Court where the charter was again to be recorded, and the remaining $5.00 was to be paid to the Treasurer for the use of the State. Section 29, page 1222 provides that on consolidations, $6.00 shall be paid to the Secretary of State.

Therefore, the Act of 1914 provided that the Secretary of State "shall collect double the fees" allowed Clerks of Court, and specifically disposed of only one-fourth of these fees, and the Act of 1916 requires $3.50 of the present recording fees, or $6.00 in case of consolidations, "to be paid by the State Tax Commission to the Secretary of State," who then records the

charter,—and does not say what the Secretary of State is to do with these fees.

In neither case, however, does either act provide that the fees thus paid to the Secretary of State are intended for him personally. The only basis for that contention is the fact that the Act of 1916 expressly requires the State Tax Commission to pay $5.00 of the recording fees to the State Treasurer for the use of the State, whereas nothing is said as to what disposition the Secretary of State shall make of the $3.50 paid him. But, in my opinion, no statute should be construed as authorizing a public officer to retain fees as his own, unless the statute clearly provides that such fees shall be his own.

In the absence of such a provision in the statutes in question, I think that their intent is that the fees are received by the Secretary of State in his official capacity, as an officer of the State, and that they belong to and are the property of the State.

These fees do, however, constitute recording charges, and I think that such reasonable clerical expenses as the work of recording necessitates may properly be paid out of them. The balance of the fees then remaining belongs to the State.

b. Fees paid by foreign corporations. Bagby's Code, Art. 23, Sec. 93, requires foreign corporations desiring to do business in this State, among other things, to pay "to the Secretary of State for the use of the State, a fee of $25.00," and thereafter to file a renewal certificate annually, "accompanied by the annual fee of $1.00 for recording such renewal." This section, after imposing the $25.00 fee, then provides that "for all such fees the Secretary of State shall account quarterly to the Comptroller and pay the same forthwith to the State Treasurer for the use of the State, less the costs and expenses of recording the same."

Of course, these fees clearly belong to the State, because the statute expressly so provides. The "costs and the expenses of recording" may be deducted, but the balance must be paid to the State.

c. Fees paid for certifying documents. The authentication of records and papers in the office of the Secretary of State is provided for in Bagby's Code, Art. 35, Sec. 59, and Art. 85,

Sec. 1. These sections contain no provisions with respect to fees, but to the extent that such fees may be lawfully charged and collected, they belong to the State.

d. Appropriation for Maryland Manual. I understand that the excess of this appropriation over the cost of preparing and publishing the Manual, has been customarily retained by the Secretary of State.

The Manual is provided for by the Act of 1900, Chap. 240, codified in Bagby's Code, Art. 83, Sections 62. That Act made an annual appropriation for "compiling, printing and distributing said manual," of $1,500, "or so much thereof as may be necessary," the same to be paid to the Secretary of State "upon the presentation of proper vouchers from him that the work above mentioned has been fully done."

This annual appropriation has been repealed, as of October 1st, 1916, by the Act of 1916, Chap. 126, abolishing continuing appropriations. The appropriation for the Manual for the current and the next fiscal year is $1,200, "or so much thereof as may be necessary." Acts 1916, Chap. 685, page 1571, and Chap. 684, page 1557.

Any excess of this appropriation over and above the cost of "compiling, printing and distributing," for which "proper vouchers" should be presented, belongs to the State.

4. *Article XV of the Constitution does not Apply.* It is clear from the aforegoing that the Secretary of State is a salaried officer, and that his whole compensation for his official duties, is his salary of $2,000 provided by the Constitution.

It follows that Article XV of the Constitution, requiring certain officials to return an account of their fees annually to the Comptroller, and to pay to the Treasurer the excess over what the law allows them to retain, and providing also that no person holding office shall receive more than $3,000 per annum, except where the Constitution provides otherwise, does not apply to the Secretary of State.

This section, as the Court of Appeals has recently held in Thrift vs. Laird, 125 Md. 55, 63, "was intended to apply to that class of officers *whose pay or compensation was derived*

from fees which they were entitled to receive by law for the performance of their official duties," and does not apply to salaried officers. The Secretary of State is not and never has been an officer whose pay or compensation is derived from fees. He is an officer for whom a salary is provided, and for this reason Article XV does not apply to him.

But, as already stated, the fees collected by the Secretary of State belong to the State, and, therefore, he should account for them to the Comptroller, and pay them to the Treasurer, exactly as any other salaried official accounts for and pays over any receipts which come into his hands officially.

5. *Salary as Secretary to the Board of Public Works.* The Secretary of State also acts as Secretary to the Board of Public Works, and receives therefor a salary of $500.00.

The Board of Public Works is created by Article XII of the Constitution. In former times the Board's principal function was to manage and dispose of the State's interest in public service corporations, but the Constitution also provides that they "shall perform such other duties as may be hereafter prescribed by law."

Acting under this authority, the Legislature has from time to time imposed upon the Board various duties of importance, such as the construction and renting of state buildings, the leasing of state offices, the awarding of state contracts, the insuring of state property, the floating of state bond issues, the supervision over the State Fishery Force and its vessels, and the like.

The Board has a contingent fund, which is $4,500 for the current fiscal year and a like amount for the next fiscal year. (Acts 1916, Chap. 656, page 1567, and Chap. 681, page 1652.)

The Board is an important factor in the state government, and although no statute expressly authorizes it to appoint a Secretary, yet if the Board finds that such an officer is necessary for the discharge of its duties, then I think that it has the power to appoint one, and pay him reasonable compensation out of its contingent fund.

The Board cannot, however, require the Secretary of State to act as its Secretary. It is no part of the duty of the Secretary of State to act as Secretary to the Board of Public Works. But if the Board desires to appoint the Secretary of State as its Secretary, then there is no legal reason why the Secretary of State may not accept the position and receive the salary thereof, unless he is prevented from so doing by Art. 35 of the Declaration of Rights, which provides that "no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State." (See also Constitution, Art. I, Sec. 6, and Bagby's Code, Art. 79, Sec. 2.)

The Court of Appeals, however, has made a clear distinction between an *officer* and an *employee* under this and other sections of the Constitution, and under these decisions the position of Secretary to the Board of Public Works is not an *office* of profit within the meaning of Article 35.

Truitt vs. Collins, 122 Md. 526;
State Tax Com. vs. Harrington, 126 Md. 157;
Baltimore vs. Lyman, 92 Md. 591.

Therefore, the Secretary of State can hold the position of Secretary to the Board of Public Works without violating Article 35 of the Declaration of Rights; and, accordingly, there is no legal reason why he may not hold this position, and receive the salary thereof, in addition to his salary as Secretary of State.

6. *Accounting for Fees obtained in the Past.* On this subject I will simply state the conclusions I have reached after a careful examination of the law. In my opinion, the State is legally entitled to recover from those who formerly held the office of Secretary of State any compensation which they may have received for the duties of their office in excess of the $2,000 salary allowed by the Constitution.

The institution of such suits by the Comptroller is authorized by the Constitution, Art. 6, Sec. 2, and Bagby's Code, Art. 19, Sec. 37 (as amended by Act 1916, Chap. 601, and subsequent sections. Section 37 also authorizes the compromise or abate-

ment of claims of this kind by the Comptroller, with the approval of the Governor and the Treasurer.

When the Governor, the Comptroller and the Treasurer come to determine whether such suits should be brought or not, it is only fair to the former Secretaries of State that due consideration should be given, as of course it will be, to the fact that the fees which the former Secretaries of State retained in excess of their salaries were retained by them with the knowledge and acquiescence of the state officials, and doubtless under the belief that they were entitled to them.

Also, the $1,000 which was retained by the Secretary of State out of automobile and chauffeur licenses from 1906 to 1910, was expressly authorized by the Act of 1906, Chap. 449, Sections 131 and 139A to be retained by the Secretary of State "for his services." The other statutes above referred to contain no such provision as this, and while I think that this provision was unconstitutional, yet in determining whether or not the State should now sue to recover back these automobile fees, the fact should not be overlooked that at the time they were retained a state statute existed which expressly provided that the Secretary of State should be entitled to retain them.

It is also doubtless true that the gentlemen who formerly held the office of Secretary of State, as well as the present incumbent, would not have accepted the office had they known that the constitutional salary would be the limit of their compensation.

I await instructions as to whether or not I am to institute proceedings against the former Secretaries of State to recover such fees or compensation as may have been retained by them in excess of their annual salary.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—STATE FIRE MARSHAL—PHYSICIANS' BILLS NOT OFFICE EXPENSE.

June 5, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 1st, in which you ask whether the State Fire Marshal is entitled to include among his disbursements for the past six months an item of $566.59 paid for medical treatment received at the University of Maryland on account of the accident he received while making arrests in an arson case.

The amount in question was paid by the State Fire Marshal out of the annual appropriation of $10,000, made to the State Fire Marshal, "for the entire expenses of his office," by the Act of 1910, Ch. 392, p. 79, Bagby's Code, Art. 23, Sec. 225. This Act provides that the State Fire Marshal shall be allowed out of this appropriation for the salaries of himself and his deputy, for office rent, for clerical and other assistants, for means of conveyance, for travelling, hotel and other necessary expenses, and for office fixtures and appliances, and that any balance remaining unexpended should be paid into the State Treasury.

I cannot find in this Act any authority for an expenditure out of the above appropriation for medical attention necessitated by injuries received in the discharge of duty. On the contrary, I think it quite clear that the appropriation can only be expended, as the Act provides, for the expenses of the office. These expenses are specifically enumerated in the Act, and medical attention for personal injuries is not one of them, nor, in my opinion, can such medical attention properly be regarded as an office expense.

I regret being compelled to this conclusion, but the law seems to me clear.

The apparent hardship, however, is somewhat mitigated by the fact that the Act of 1916, Ch. 671, appropriated $2,000 to Mr. Myers as compensation for the injuries received by him on the occasion in question.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—STATE LIVE STOCK SANITARY BOARD AND CHIEF VETERINARY INSPECTOR—TRAVELLING AND HOTEL EXPENSES AND TEAM HIRE.

February 3, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I have your favor of January 27th, asking my opinion upon two questions raised by vouchers presented to you by members of the State Live Stock Sanitary Board, and by the Chief Veterinary Inspector. I beg to reply thereto as follows:

The law creating the State Live Stock Sanitary Board requires the Board to maintain an office in Baltimore City, and provides that each member shall be paid "the sum of five dollars per day and necessary expenses for time actually spent in the discharge of his duties." (Bagby's Code, Vol. II, Art. 58, section 4.)

In my opinion the traveling expenses incurred by county members of the Board in going from their homes to their office in Baltimore, the hotel or boarding expenses of such members while in Baltimore, and their traveling expenses in returning to their homes, are none of them "necessary expenses for time actually spent in the discharge of his (their) duties," and that the law does not provide for the payment of such expenses.

With respect to the Chief Veterinary Inspector, the law provides that he shall be paid "a salary not exceeding $1,000 and traveling expenses, in the discretion of the Governor" (Bagby's Code, Vol. II, Art. 58, sec. 5). In my opinion the Chief Veterinary Inspector is not authorized to charge the State an arbitrary lump sum of $50 per month for "Team Hire," which I understand covers the use on official business of his own automobile.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—TREASURER OF BALTIMORE COUNTY—LEVY FEES.

June 24, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Md.

DEAR MR. DENNIS: As requested by your favor of June 9th, I have considered the question contained in Mr. Merryman's letter to you of June 6th.

It appears that under Section 148 of the present Baltimore County Code (Sec. 90 of the former County Code, Act 1908, Ch. 495), the County Treasurer is "entitled to the following fees for levying upon property to enforce payment of taxes: For summoning and swearing two appraisers and making out a schedule, $2.50," this sum being collected from the delinquent tax payer. Out of these collections, Mr. Merryman has hitherto paid 75 cents per levy to a deputy, whose employment, he says, was necessary to assist in the work.

By the Act of 1914, Ch. 742, the compensation of the County Treasurer was increased, and it was provided that all fees thereafter collected by him from delinquent taxpayers should be paid to the State Treasurer.

Mr. Merryman desires to know whether he can still pay 75 cents, out of each $2.50 collected from said levies, to the deputy whom he needs to employ, and account to the State Treasurer for only $1.75.

Before the Act of 1914 was passed, the compensation of the County Treasurer was $3,000 per annum, for his services as collector of both State and County taxes. (Act 1908, Ch. 495, Sec. 80.) By the Act of 1914, the Treasurer's compensation for collecting county taxes was fixed at $2,500 per annum, to be paid by the County, and in addition thereto the County was required to levy a commission for the collection of State taxes, not exceeding two per cent on the State taxes estimated to be collected during the year, but in no event to exceed $3,000 in any one year. These two sums aggregate $5,500 per annum.

The Act of 1914 then provided that "all the fees and commissions hereafter collected by the Treasurer of Baltimore County from delinquent taxpayers, as provided by Sections 87 and 90 of this subtitle, shall be paid to the Treasurer of the State." Section 90 is, as already stated, section 148 of the present Baltimore County Code, and is the very section which provides for the $2.50 levy fees now under consideration.

Under these circumstances, it is impossible for me to reach the conclusion that the Treasurer can charge a deputy's salary of 75 cents against each of the said $2.50 levy fees, and account to the State for only $1.75. The Act of 1914, which increased the Treasurer's compensation, and which requires the levy of a commission not exceeding $3,000 per annum to insure a speedy collection of State taxes, specifically directs that all of the fees collected from the levies provided for by Section 90 of the old Code (now sec. 148 of the present Code), that is, all of this very $2.50 charge now under consideration, shall be paid to the Treasurer of the State. This leaves you no discretion at all. Since the law in express terms requires that *all* of each such $2.50 collected shall be paid to you, it follows that you have no power to accept less.

I, therefore, advise you that under the express terms of the Act of 1914, Ch. 712, it is the duty of the Treasurer of Baltimore County to account to the State Treasurer for the whole of each $2.50 collected as levy fees under section 148 of the present Code of Baltimore County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL TREASURER OF WICOMICO COUNTY—APPROVAL AND CUSTODY OF BONDS.

August 17, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of August 15, relating to the bond of the County Treasurer of Wicomico County.

The Act of 1904, Ch. 14, makes the County Treasurer the collector of both State and County taxes in Wicomico County, and requires him to execute a bond to the State of Maryland in the penalty of $50,000, which shall be secured by a fidelity or security company qualified to act as surety or guarantor under the laws of the State of Maryland, and shall be approved by the Judges of the Circuit Court of Wicomico County, and thereafter be recorded in the office of the Clerk of Court for said county.

Though it is not entirely clear, yet I rather think that this Act would be held to render unnecessary the Governor's approval of the bond, which approval is required in ordinary cases by Bagby's Code, Art. 81, sec. 33. I think, however, that a question of this kind, which might possibly be contended to affect the validity of the bond, should not be left open; and I, therefore, advise that the original bond of the County Treasurer of Wicomico County should be approved by the Governor as well as the Judges of the Circuit Court.

With reference to the custody of the bond after it has been thus approved, section 35 of Article 81, providing for the filing of bonds with the Comptroller, applies, I think, to the separate bonds for state taxes required by sections 33 and 35, and not to a bond like that of the County Treasurer of Wicomico County, which, under the Act of 1904, Ch. 14, covers both state and county taxes.

I, therefore, think that in this case the County Treasurer's original bond may properly be deposited either in your office or with the local authorities of Wicomico County; and if the latter, then a certified copy of the original bond, containing the Governor's approval upon it, should be filed in your office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Fiscal—Unexpended Balance of State Roads Commission's Appropriation Does Not Revert if There are Outstanding Obligations Against It.

January 19, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

Dear Sir: On January 7th I wrote Mr. Hopkins for certain information with respect to a balance of $200,797.39 to the credit of the State Roads Commission at the close of the last fiscal year, on September 30, 1915, which balance was then treated as having reverted to the general treasury, because not withdrawn on or before that date. The State Roads Commission had previously asked my opinion as to whether this balance should not have been carried to the Commission's credit for the fiscal year beginning October 1, 1915. Mr. Hopkins gave me the information for which I asked under date of January 10, and I now beg to submit to you my conclusions about the matter. I will do so somewhat fully, as the question is one of considerable importance.

The appropriations which are involved were all made to cover the State's proportion of the cost of roads constructed under what is known as the Shoemaker Road Law. For this purpose, the Act of 1904, Chapter 225, sec. 16, provided that "the sum of $200,000 annually, or so much thereof as may be necessary, be and the same is hereby appropriated, out of any money in the treasury not otherwise appropriated"; the Act of 1910, Chapter 217, Sec. 18, made a similar annual appropriation (Bagby's Code, Vol. II, Art. 91, Section 81); and the Act of 1912, Chapter 121, made an annual appropriation for the same purpose of $200,000 (Bagby's Code, Vol. III, Art. 91, Section 81).

On the books of the Comptroller's office, the amounts of these appropriations which remained unexpended at the close of the fiscal years 1906, 1907 and 1908, were treated as reverting into the general treasury.

From 1909 to 1914, inclusive, a different procedure was followed, and the amounts of the annual appropriations unexpended at the close of each of the respective fiscal years from 1909 to 1914, inclusive, were carried down to the credit of the State Roads Commission for the succeeding fiscal year, and as a result of this there was carried to the Commission's credit, for the fiscal year beginning October 1, 1914, the sum of $302,412.24. This balance, added to the appropriation of $300,000 for that fiscal year, made a total credit to the Commission for the said fiscal year beginning October 1, 1914, of $602,412.24. During that fiscal year $401,614.85 of this credit was withdrawn, which left a balance to the Commission's credit on September 30, 1915, of $200,797.39. This balance was then treated as having reverted to the general treasury, because of the fact that it had not been withdrawn during that fiscal year.

The Comptroller accordingly transferred this balance of $200,797.39 to the general treasury account, and he did this in accordance with an opinion from Attorney General Poe, dated February 3, 1915, to the effect that so much of the said annual appropriation of $300,000 "as is not withdrawn or contracted for by the end of each year ceases to be any longer available for the purpose for which it was appropriated, and becomes a part of the general revenues of the State."

From a statement handed me by the State Roads Commission I find that on September 30, 1915, there were a large number of out-standing contracts in the various counties of the State for road work under the Shoemaker Road Law. Some of these contracts were completed and others were nearly completed, and the total balance then due by the State, under these contracts, being one-half of the aggregate of the contract prices, was $220,924.28, or more than the balance of $200,797.39, which, as already shown, was treated as having reverted to the general treasury at the close of September 30, 1915, because not withdrawn on or before that date.

Since that time further contracts have been awarded for State aid work under the Shoemaker Road Law, of which the State's one-half will amount to $92,500; and the State's one-half of work planned but not yet contracted for is estimated at over

$500,000. It is not, however, necessary to consider anything except the situation as it existed on September 30, 1915.

On that date, as already shown, the State's outstanding obligations for State-aid road work, amounted to $220,924.28, and there was an unexpended balance to the Commission's credit, for the State's share of such work, of $200,797.39. The question is, whether this balance of $200,797.39 should have been carried down to the Commission's credit for the fiscal year beginning October 1, 1915, in order to meet the then outstanding obligations of $220,924.28 against it, or whether it reverted to the general treasury on the ground that although contracted for, it had nevertheless not been withdrawn prior to October 1, 1915.

In the first place, Attorney General Poe's opinion states, in express terms, that only such balances revert as are "not withdrawn *or contracted for*" at the close of the fiscal year, so that the balance in question could not, under his opinion, be treated as having reverted, because contract obligations were then outstanding against it, which exceeded the amount of the balance.

I have, however, very carefully considered the question independently of Mr. Poe's opinion, and I have no doubt whatever that balances to the credit of the State Roads Commission to meet the State's half of the cost of State-aid road work, and which are unexpended at the close of the fiscal year, do not revert to the general treasury, at least to the extent that there are outstanding contract obligations against them. I have considerable doubt as to whether they would revert in any event, but if there are outstanding contract obligations against them then I do not consider that there is any doubt about the question at all.

There is in Maryland no general law which declares that money not drawn in the fiscal year for which it has been appropriated cannot be drawn thereafter; and if the intent of the Legislature is clear that any appropriation may be drawn after the close of the fiscal year, then beyond all question this legislative intent must be given effect, and the unexpended balances may be thereafter withdrawn. *Md. Agricultural Col. vs. Atkinson*, 102 Md. 557.

To determine the legislative intent in the present case requires an examination of the legislation applicable, all of which I have carefully examined. It is found in the Shoemaker Road Law itself, Acts 1904, Chapter 225, more particularly sections 3, 12 and 16 (now codified with amendments, in Bagby's Code, Vol. II, Art. 91, sections 68, 77 and 81); the Act of 1910, Chapter 217, more particularly sections 33, 42, 44 and 48 (now Bagby's Code, Vol. II, Art. 91, sections 66, 75, 77 and 81); and the Act of 1912, Ch. 121 (now Bagby's Code, Vol. III, Art. 91, section 81).

I will not trouble you with a review of the provisions of this legislation, but will only state my conclusion with respect to it. This is that the legislative intent is quite clear that any balance of the appropriations in question unexpended at the close of any fiscal year is not to revert into the general treasury, if there are at that time outstanding contract obligations against it in excess of such balance. It is not necessary to decide what would happen if no such outstanding contract obligations existed, because they do exist in the present case.

While the present appropriation Act of 1912 does appropriate $300,000 annually, "or so much thereof as may be necessary," this does not mean that the amount *necessary* for any one year must all be *withdrawn* during that year and that any balance not actually withdrawn reverts. Whether the whole $300,000 is *necessary* in any one year or not, depends upon whether the Commission has, during that year, *obligated itself for the whole* $300,000. In other words, the intent of the law is that the State is to make an *annual contribution* of $300,000 for the work, and this annual contribution is not to be cut down for any one year merely because the Commission, while it has *contracted* for all of it during that year, yet has not actually *drawn* it all, on account of the fact that all of the work so contracted for has not been finally completed.

It is, therefore, my opinion that the balance of $200,797.39 unexpended at the close of the fiscal year ending September 30, 1915, did not revert to the general treasury, but should have been carried down to the credit of the State Roads Com-

mission for the fiscal year beginning October 1, 1915, and be subject to withdrawal on proper vouchers to meet the contract obligations of $220,924.28, which were outstanding against it on that date.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note.—The State Roads Commission instituted mandamus proceedings against the Comptroller to have the $200,797.39 above referred to transferred back to their credit. Baltimore City Court. On January 29, 1917, the Court passed an order directing the transfer to be made. Affirmed by Court of Appeals, February 16, 1917.

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FISCAL—UNEXPENDED BALANCE OF STATE INDUSTRIAL ACCIDENT COMMISSION'S APPROPRIATION REVERTED.

August 21, 1916.

J. Milton Reifsnider, Esq.,
Chairman State Industrial Accident Commission,
Equitable Building, Baltimore, Maryland.

DEAR MR. REIFSNIDER: I received your favor of August 14, asking whether the sum of $7,975.69, being the unexpended balance of a former appropriation of $40,000 to the Commission, was still available, or whether it had reverted to the general treasury.

The appropriation in question was made under sec. 63 of the Act of 1914, Ch. 800 (Bagby's Code, Vol. III, Art. 101, sec. 64), which appropriated "$40,000 annually for the year 1914, 1915 and 1916, or so much thereof as may be necessary annually" for the maintenance of the Commission, the payment of its salaries and expenses, and the maintenance of the State Accident Fund.

I think that the intent of this section of the law is that the Commission should only be entitled, during each of the said years 1914, 1915 and 1916, to so much of the annual appropriation of $40,000 as might be necessary, during each of said years, for the purposes mentioned; and that any portion of said annual appropriation which, during any one year, exceeded

the disbursements made and the obligations incurred by the Commission for such year, was not necessary for such year, and reverted to the general treasury.

The Comptroller's Office advises me that (as they advised your Auditor under date of March 16, 1916), the $7,975.84 in question represents the balance of the 1915 appropriation which remained after all disbursements made during 1915 and all obligations incurred during 1915 had been taken care of.

Under these circumstances it is my opinion that the said $7,975.84 reverted to the general treasury, and is no longer available to the Commission.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE.

INSURANCE—CHARTER PERPETUAL.

December 6, 1910.

Hazelton A. Jager, Jr., Esq.,
State Insurance Department,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your inquiry as to the status of the Mutual Insurance Company of Washington County.

This company was incorporated by the Act of 1846, Ch. 37, for a period of twenty years, the Legislature reserving the right to amend the charter at pleasure. The Act of 1866, Ch. 95, continued the company's charter until the end of the session of the Legislature of 1886. The Legislature of 1886 did not expressly renew the charter, nor has any subsequent Legislature done so.

The Legislature of 1886 did, however, pass the Act of 1886, Ch. 89. This Act was an amendment to the company's charter, and it authorized the company to create a Special Reserve Fund and to do business under the provisions of the Act. The Act provided in detail for the creation, investment and application of the fund, and for the issuing of future policies and renewals subject to the provisions of the Act.

This Act was duly accepted by the members of the company on July 13, 1886, and the certificate of acceptance was duly filed with the Clerk of the Circuit Court as required by the Act, and the company has since done business under the provisions of the Act.

The Act of 1900, Ch. 678, authorized the company to reinsure its risks which "now or may hereafter be carried."

In my opinion, both the Act of 1886, Ch. 89, and the Act of 1890, Ch. 678, constituted a waiver by the State of the company's obligation to renew its charter in 1886, and a recognition by the State of the company as a legally existing corpora-

tion, authorized to continue to do business in accordance with these two Acts, and with its original charter and amendment thereto.

This was the situation in 1908. The Act of 1908, Ch. 240, section 1 (page 24), section 7 (page 27) and section 75 (page 34) made perpetual the charters of "all corporations then existing," and repealed all provisions in the charter of "any existing corporation" which limited its duration.

Since the Mutual Insurance Company of Washington County was an existing corporation in 1908, the above provisions of the Act of 1908 applied to it, with the result that the company's charter, in my opinion, is now perpetual.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—DEPOSIT OF SECURITIES AND REGISTRATION THEREOF UNDER RETALIATORY LAW.

May 10th, 1916.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Maryland.

DEAR MR. DENNIS: I received some time ago your letter of April 20th, relating to the deposit to be made by the Atlantic Life Insurance Company, a Virginia corporation doing business in Maryland, under the retaliatory law of Maryland, codified in Bagby's Code, Art. 23, Sec. 205.

The questions raised are two: (1) whether the Atlantic Life Insurance Company can make the deposit required by Sec. 205 of Art. 23, in securities of the State of Virginia, and (2) if so, whether these securities must be registered in the name of the State Treasurer of Maryland, or whether it will be sufficient if they are accompanied by proper power of attorney authorizing their sale and transfer.

The Maryland statutes specifying the kind of securities which must be deposited in this State by insurance companies, and specifying how such securities must be registered, do not apply to the present case.

I am informed by the Insurance Department that the Atlantic Life Insurance Company has complied with all the specific provisions of our laws passed for the protection of the citizens of this State, by filing the proper certificate showing that it has made in Virginia the $100,000 deposit specifically required by our law. (Bagby's Code, Art. 23, Sec. 183.)

The reason why a further deposit is now required is because the laws of Virginia make greater exactions upon foreign corporations doing business in Virginia, than do the Maryland laws upon foreign corporations doing business here. This being the case, Bagby's Code, Art. 23, Sec. 205, applies. That law provides that whenever the laws of any *other* State require that a Maryland insurance company, doing business in such other State, shall make a deposit greater than the laws of Maryland require of insurance companies of such other State doing business *here*, then the non-resident company doing business in Maryland shall be required to make the *same deposit in Maryland* which the laws of such other State require of a Maryland company doing business there.

This law does not specify what character of securities shall, in such case, be deposited in Maryland, nor does any other Maryland law so provide; but section 205 does provide that the *same deposit* shall be made by the non-resident company doing business in Maryland as the laws of the other State require of a Maryland company doing business there.

This being so, the effect of section 205 is to import the Virginia law into Maryland, and to fully justify you, as Treasurer, in receiving a deposit of such securities as the Virginia law authorizes, provided you are satisfied with their character.

In the present case, the company wishes to deposit $10,000 Town of Ginter, Virginia, bonds, and $5,000 City of Richmond bonds. These bonds are authorized to be deposited by the laws of Virginia, and the Insurance Department informs me that they are in all respects safe and sound securities. If this is so, then I think that you should accept them as the deposit required by section 205 of Article 23 of Bagby's Code.

With respect to the form of registration, the provisions of our law which require securities to be registered in the name

of the Treasurer, in trust for the depositing company, do not apply to deposits made under the retaliatory provisions of section 205 of Article 23. Nothing is specified as to how securities deposited under this section shall be registered.

Under these circumstances, I think that the question of registration is one which you, as Treasurer, can decide as you, in your judgment, think proper.

Personally, I see no objection to your accepting the bonds as they may now be registered, if accompanied by the proper powers of attorney authorizing their sale and transfer.

If that is your judgment also, then it seems to me that you should require a separate power of attorney for each bond, because in the event that it should ever become necessary to sell in order to meet the company's liabilities here, you might wish to sell one or more of the bonds, and not all of the bonds.

The conclusions I have just expressed are concurred in by the Insurance Department, and by Col. Arthur D. Foster, its counsel.

I return you the letter from Mr. Condon, Deputy Insurance Commissioner, to yourself, dated April 16, 1916, and also the copy of the letter from Mr. Taylor, Vice-President of the Atlantic Life Insurance Company, to Mr. Condon, dated April 14, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—DEPOSITS, FIRST MORTGAGES AS—LICENSES AND LICENSE FEES—REFERENDUM LAWS—DIVIDING COMMISSIONS.

June 30, 1916.

William L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR MR. CONDON: I beg to give you my opinion upon the inquiry contained in your favor of June 27th, and also upon the questions you orally submitted to me yesterday.

1. The Insurance Department should not accept first mortgages as part of the deposits required to be made under Sec-

tions 110, 118, 157, 193 and 379 of Article 23 of Bagby's Code. Of course, *bonds* secured by first mortgages on real estate in Maryland owned by the depositing company may be received, under the terms of Section 118, if approved by the Board of Public Works.

2. A broker's solicitor who takes out his license as such under the Act of 1916, Ch. 257, Sec. 219-A, and who later in the year takes out a broker's license under Art. 23, Sec. 219 of the Code, is not entitled to have the $25 fee paid by him for the broker's solicitor's license credited against the fee due for the broker's license. Even if such credit were permissible, it would in most cases amount to only a very small saving, because of the fact that fees for broker's licenses are pro rated.

3. If a foreign insurance company, authorized to write policies in Maryland, holds a broker's license in its home state, and desires to take out a broker's license in Maryland, the fee for the Maryland broker's license should be the same as the fee which such company's home state charges citizens of Maryland for taking out a broker's license in such home state. Act 1916, Ch. 257, Sec. 219-E.

If, in this case, the foreign insurance company holds no broker's license in its home state, then the fee for the Maryland broker's license will be $100 under Sec. 219, because the reciprocal provisions of Sec. 219-E only apply to duly authorized brokers in other States.

4. A foreign insurance company holds no broker's license in its home state, but one of its employees holds a broker's license there, issued to him as an individual. In such case the *company* cannot obtain a broker's license in Maryland for the same fee for which New York would issue a broker's license to a citizen of this State in New York, because the company itself holds no broker's license in New York, and Sec. 219-E only applies to duly authorized brokers of other States.

5. Where a foreign state makes no distinction between agents and brokers, but an agent does the work which a broker does in Maryland, such agent will be authorized to take out a broker's license in Maryland under the reciprocal provisions of Sec. 219-E. The words of that section "any duly authorized

broker of any other State" mean any person who in fact does the work in such other State which brokers do in Maryland, whether such person is called a broker in his home State or not, and whether he does other work in his home State or not.

6. I do not think that the fact that a foreign State will not grant a broker's license to a resident of Maryland at all, prevents your Department from granting a broker's license to a resident of such foreign State upon Maryland terms. I do not think that Section 219-B was intended to be retaliatory in such a case, and in any event there would probably be constitutional objections to refusing such a license altogether. But you should only grant it on Maryland terms.

7. Wisconsin permits resident agents or brokers to divide commissions with non-resident agents or brokers, provided the property insured is located in Wisconsin and is also owned by non-residents of Wisconsin. In Maryland it is unlawful and a punishable offense for a Maryland agent or broker to divide commissions with any non-resident agent or broker, who is not licensed in Maryland. (Art. 23, Secs. 185, 186, 163 of the Code.)

In my opinion, Sec. 219-B does not authorize a Maryland broker to divide commissions with a Wisconsin agent or broker who is not licensed in Maryland, even though the property insured is located in Maryland and owned by residents of Wisconsin.

Sec. 185 embodies a clear, fixed policy of Maryland law, the violation of which is a punishable offense, and it should not be regarded as supplanted in any case by reciprocal legislation unless the intent so to supplant it is clear. I do not think that Section 219-B shows this intent.

Very truly yours,

ARTHUR C. RICHARDS, Deputy Attorney General.

INSURANCE—LICENSES FOR AGENTS AND SOLICITORS CAN ONLY BE ISSUED TO INDIVIDUALS.

October 7, 1916.

Wilson L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR MR. CONDON: I have considered the inquiry contained in your letter of October 2nd.

In my opinion, the effect of the Act of 1916, Ch. 255, adding sections 184 A to E to Art. 23 of the Code, is that licenses for agents and solicitors provided for by those sections and by section 184, can no longer be issued to a copartnership, so as to cover all the members of the copartnership, but that such licenses can only be issued to individuals; and that each license will only authorize the individual named therein to act as agent or solicitor.

I do not think that each member of a copartnership need necessarily always have an agent's or solicitor's license, but each member who acts as an agent or as a solicitor will have to have one. Any member who has no such license cannot act in either of these capacities.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES—BROKERS' LICENSES FOR FIRMS AND CORPORATIONS.

July 22, 1916.

Messrs. Baldwin & Frick,
Keyser Building, Baltimore, Maryland.

GENTLEMEN: I have your favor of July 20th.

Section 219 of the Insurance Law seems to me clearly to confine the use of the firm broker's license to not more than three members of the firm, and the corporation broker's license to not more than three representatives of the corporation.

The result is that in the case of a firm composed of two members, like your own, only these two members can act under the firm license, and if such a firm wishes a third person, not a

partner, even though he be a paid employee, to act as broker, an additional license must be taken out for such third person, either as a broker ($100), or as a broker's solicitor ($25, section 219-A). If, however, such a firm were to incorporate, then three representatives could act under the corporation's broker's license.

I can readily see how you regard this law as involving a hardship upon a firm such as yours, as compared with a corporation, but the language of section 219 is so clear that I do not see any escape from it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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INSURANCE—LICENSES FOR BROKERS' SOLICITORS CAN ONLY BE ISSUED TO INDIVIDUALS.

June 10, 1916.

Wilson L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR MR. CONDON: I beg to reply to your favor of June 5th.

In my opinion Section 219-A of the Act of 1916, Chapter 257, requires insurance brokers' solicitors' licenses to be issued to each individual acting as such. They cannot be issued to firms.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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INSURANCE—LICENSES FOR BROKERS' SOLICITORS CANNOT BE PRORATED.

June 21, 1916.

Wilson L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR SIR: I beg to reply to the second inquiry contained in your favor of June 5, namely, whether the fees charged for brokers' solicitors' licenses can be prorated if such licenses are applied for after the beginning of the license year.

While a number of the laws with respect to insurance licenses (for example, Code, Art. 23, sections 184, 189, 219), provide for pro-rating the fees, yet the Act of 1916, ch. 257, contains no such authority in the case of brokers' solicitors' licenses, but simply provides that the $25 license fee shall be paid "for each such broker's solicitor."

Under these circumstances, I think that the license fees in question cannot be pro-rated, but that the entire $25 fee must be paid, without regard to the length of time which will intervene between the granting of the licenses and the succeeding May 1, when they expire.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR FIRE INSURANCE COMPANIES—COUNTY'S RIGHT TO IMPOSE.

June 22, 1916.

Wilson L. Coulson, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR MR. COULSON: I beg to reply to your recent inquiry as to whether the towns of Westminster and Taneytown, both in Carroll County, can exact licenses from fire insurance companies transacting business therein, in view of the fact that such companies are subject to the State Insurance Department.

The charter of Westminster authorizes the Mayor and Common Council "to impose a license upon all fire insurance companies and agencies located in or doing business in said city." Act 1892, Ch. 116; Act 1910, Ch. 341, Section 225. Under this authority the town passed Ordinance No. 91, imposing an annual license fee of $10. This ordinance is clearly authorized by the express terms of the charter of Westminster, and I find nothing in the insurance laws of the State, subjecting fire insurance companies to the State Insurance Department, which prohibits a municipality from requiring a local license. I, therefore, think that such companies are required to pay the license fee in question before doing business in Westminster.

The charter of Taneytown authorizes the Commissioners "to enact and pass all laws and ordinances not inconsistent with the laws of this state, of said county, or this act, as they may deem wise and expedient for the comfort, health, order, prosperity, peace and convenience of said town and the inhabitants thereof." Act 1884, Ch. 509, Sec. 13. This is the only section in the town's charter that I have been able to find which could be construed as authorizing the license fee in question in Taneytown. The Ordinance is No. 62, passed June 3, 1901, and it imposes an annual license fee of $10 upon all fire insurance companies and agencies located or doing business in Taneytown.

Whether the above provision of the charter of Taneytown authorizes the passage of Ordinance No. 62 admits of some doubt. But if the Ordinance imposing the town license is not valid, its invalidity is not due to the fact that fire insurance companies are subject to the State Insurance Department, but to the fact that the town has not the necessary charter authority to impose any license at all. This is a question which does not concern the State, and, therefore, I express no opinion upon it. If the companies think that the local license in Taneytown is invalid, on the ground that the town's charter does not authorize it, then this is a purely local question between the companies and the town of Taneytown, which the companies should take up with the local authorities of Taneytown.

Very truly yours,

ARTHUR C. RICHARDS, *Attorney General.*

INSURANCE—MUTUAL COMPANIES REORGANIZING AS STOCK COMPANIES—CONDITIONS TO BE MET.

Letter of Advice.

Wilson L. Gordon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR MR. GORDON: As requested by you, I have considered the question of whether your Department should now accept the deposit from the Independent Mutual Life Insurance Company,

which the company's counsel informs me was tendered on July 5, 1916.

This company was formerly the Independent Mutual Aid Society, and it undertook to reorganize as a stock corporation under section 193 of Article 23 of Bagley's Code, which was amended by the Act of 1916, Ch. 1333.

Under the above law, before mutual companies can be converted into stock corporations, two things must be done "prior to July 1, 1916, and not thereafter," namely:

1. The mutual company must reorganize as a stock corporation under the provisions of section 155.

2. The mutual company must comply with all the requirements and provisions of section 155.

I have communicated with the company's counsel, and I find that all of the steps required by law for the reorganization of the Independent Mutual Aid Society as a stock corporation, and all the requirements and provisions of section 155, were complied with before July 1, 1916, unless the following two steps, which were not complied with before that date, be regarded as essential:

1. The corporation did not tender your Department the deposit required by law prior to July 1, 1916.

2. Your Department has not issued its certificate, as required by section 155, that "the admitted assets of the said company, including its capital stock, are sufficient to provide reserve upon all outstanding policies as required by the laws of this State in relation to insurance companies, over and above all other bona fide debts and claims against it."

These last two requirements are not part of the reorganization of a mutual company into a joint stock corporation, but the provision of section 155 is that such corporation "shall not be entitled to do any business as a stock corporation" until these requirements have been complied with. In other words, these requirements are for the benefit and protection of policy holders. Inasmuch as they are not part of the reorganization of the mutual company into a joint stock corporation, but are simply the conditions which must be observed before the joint stock corporation, when organized, can begin business, I see no reason

why these requirements may not be complied with after July 1st, and indeed it seems to me that the protection of policy holders will be best subserved by accepting compliance with them, even after July 1st, rather than by refusing it, and thus forcing the company out of business.

I, therefore, think that the deposit of the Independent Mutual Insurance Company should be accepted now.

After the deposit has been accepted, the corporation will still not be legally authorized to transact business until your Department issues the certificate called for by the provisions of section 155 quoted above. Under date of June 30, 1915, the corporation wrote your Department a letter which was intended as a request for this certificate, and I think that your Department should now, under section 155, value the assets and outstanding policies, and if you find that the admitted assets, including capital stock, are sufficient to provide the required reserve upon all outstanding policies, over and above all other bona fide debts and claims against it, then you should so certify, whereupon the corporation will be legally entitled to do business.

I do not think that this opinion need give you much concern as to its application to other mutual companies desiring to reorganize under section 193. Any such companies which have not completed their reorganization as joint stock corporations prior to July 1, 1916, cannot, of course, complete it after that date. And while I think that such companies as have so reorganized prior to July 1, 1916, may make their deposit and receive your certificate after July 1, 1916, yet until they do so, they are transacting business unlawfully, and are subject to all the penalties provided by law for so doing, and to proceedings by your Department for winding up their affairs. And I think that such companies should be notified that these penalties will be exacted and these proceedings taken unless their deposits are made at once.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—MUTUAL FIRE INSURANCE COMPANIES—NOTICE OF ANNUAL MEETINGS.

November 21, 1916.

Hazelton A. Joyce, Jr., Esq.,
State Insurance Department,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of November 16th.

1. You first ask what Act constitutes the charter of the Mutual Insurance Company of Frederick County.

This company was incorporated by the Act of 1843, Chap. 199. Its charter was amended by the Act of 1852, Chap. 145, Act of 1856, Chap. 29, Act of 1860, Chap. 227, and Act of 1906, Chap. 186. Each of these amendatory Acts provided that they should only take effect upon the approval of the members.

Finally, the Act of 1912, Chap. 841, provided an entirely new charter for the company. This act expressly repealed all of the original charter, except Section 1 thereof (which incorporated the Company), and also repealed all of the Acts which had amended the charter. This act also provided that it was to become effective if approved by the members, otherwise it was to be null and void. I understand that this Act was duly approved by the members. Consequently, the company's present charter consists of Section 1 of the Act of 1843, Chap. 199, and the Act of 1912, Chap. 841.

2. You also ask what notice your Department should require the company to give of its annual meetings.

The Act of 1912, Chap. 841, Section 5, requires the President and Secretary "to give at least two weeks' notice by advertisement in one or more newspapers published in Frederick County, and such other counties in the State in which the company shall have properly insured, of the annual meeting of the Company."

The Act of 1916, Chap. 256, contains a number of provisions relating to mutual fire insurance companies. Section 154-O of this Act provides, among other things, that "every person insured by a mutual fire insurance company * * * shall be

notified of the time and place of holding its meetings by a written notice or by an imprint in type not smaller than long primer upon the filing back of each policy, receipt or certificate of renewal." in the form prescribed by the Section.

While the charter of the Mutual Insurance Company was originally not subject to amendment, because granted prior to 1851, yet, as already stated, the acceptance of the Act of 1912, Chap. 841, constituted that Act the company's charter, and I think that this Act is now subject to amendment.

I also think that the company is subject to the provisions of Section 1540 of the Act of 1916, Chap. 256, relating to notices, and that it should be required by your Department to notify its members of its annual meetings "by a written notice or by an imprint" upon the filing back of each policy, receipt or certificate of renewal, as provided in Section 1540.

Whether these provisions of Section 1540 repeal the provisions relating to notice of the annual meetings contained in Section 5 of the Act of 1912, Chap. 841, so that the notice provided by Section 1540 now constitutes the only notice of annual meetings which the company is required to give, or whether the company must give the notice provided by section 5 of the Act of 1912 and also the notice required by section 1540 of the Act of 1916, is a question which admits of some doubt.

Section 1540 provides that the notice by imprint "shall be a sufficient notice," but does not contain a similar provision as to the written notice, if that is adopted.

This, however, is a question which I think the company must take the responsibility of deciding for itself.

The position which your Department should take is that the Act of 1916, Chap. 256, Sec. 1540, relating to notices, applies to this company, and that either a written notice or a notice by imprint, in accordance with that section, must be given, leaving it to the company to decide whether or not its charter requires it to give in addition the notice provided by section 5 of its charter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—NON-RESIDENT BONDING AND SURETY COMPANIES NEED NOT COMPLY WITH CODE ART. 23, SEC. 93, RELATING TO FOREIGN CORPORATIONS.

October 10, 1916.

Wilson L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR SIR: As requested by your favor of September 30th, I have considered the question of whether or not a non-resident bonding or surety company, which has been licensed by the Insurance Department to transact the bonding or surety business in this State, must also comply with section 93 of Article 23 of Bagby's Code, relating to foreign corporations generally.

Section 93 exempts from its provisions "insurance companies hereinafter provided for," and, therefore, the question is whether a non-resident bonding or surety company is an "insurance company," as that term is used in section 93.

After a careful examination of the Insurance Laws of this State, I have reached the conclusion that it is.

There is, of course, no doubt that the bonding and surety business is one character of insurance.

Moreover, Sections 153, 156, 163, 178, subsections 14, 13, 14 and 15 of 178, Sections 181, 187, 191, 192 and 201 of Article 23 of Bagby's Code, all recognize bonding and surety companies as insurance companies, or clearly include them in their provisions. Many of these sections, or sections substantially similar, were in force in 1908, when the present section 93 of Article 23 was enacted.

In this connection see Md. Cas. Co. vs. Gehrmann, 96 Md. 634, 646.

Moreover, the object of section 93 is to require non-resident corporations to file with the Secretary of State copies of their charters, the names of their officers and directors, the location of their offices in this State, certain information as to their capital stock, and the names of their resident agents on whom process can be served, whose authority shall continue as long as there are any outstanding liabilities in this State. See

tion 182 of Art. 23, applying to non-resident companies transacting "*any* business of insurance, whether life, fire, marine or inland, or *other insurance risks*," and Section 201, applying to non-resident companies conducting "*any* branch of insurance business," and other sections of the law, require such non-resident companies to file exactly similar data with the Insurance Department. These provisions all include, I think, bonding and surety companies, and, therefore, if the phrase "insurance companies" in section 93 does not include bonding and surety companies, the result would be to require such companies, without any apparent reason, to duplicate this data to the Secretary of State. This could hardly have been intended.

In this connection see Oland vs. Agr. Ins. Co., 69 Md. 248, 251.

For the above reasons, I am of opinion that the exemption of "insurance companies" from section 93, includes insurance companies which conduct the bonding and surety business, as well as other kinds of insurance, and that, therefore, non-resident bonding and surety companies, which comply with the insurance laws of the State, need not also comply with section 93.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

INSURANCE—PROMOTION OF INSURANCE COMPANIES—STATUTE NOT RETROACTIVE.

November 25, 1919.

Wilson L. Gaudon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR SIR: I beg to reply to your letter of November 17th asking whether the promoters of the Independent Life Insurance Company are subject to the Act of 1916, Chap. 274.

This Act prohibits the solicitation of subscriptions to or the sale of stock of insurance companies, until the Insurance Commissioner has been furnished with full particulars as to the methods and cost of promotion; requires the salesmen to be

licensed; provides that the cost of promotion, including commissions and all expenses of organization, shall not exceed five per cent of the subscription or selling price of each share of stock, this requirement to be plainly set forth in the subscription agreement or contract for the sale of the stock; and requires the fiscal agent or promoter to give bond for the faithful performance of the undertaking in accordance with the Act.

I understand from the letter of November 17th from Messrs. Haman, Cook, Chesnut and Markell to your Department, and from investigations which I have since made myself, that the Independent Life Insurance Company was incorporated and organized some years ago, and began soliciting subscriptions to its capital stock in 1914, under a contract entered into with a fiscal agent on May 14, 1914, whereby the fiscal agent was to receive more than 5 per cent for procuring stock subscriptions; that during May and June, 1914, 150 shares were subscribed for and issued, when the European War broke out, and efforts to secure further subscriptions were suspended; that in January, 1916, the owners of the outstanding shares of stock reduced the same to 50 shares and then proceeded with the solicitation of further subscriptions, in order to launch the company.

The contract with the fiscal agent was valid when made. The parties interested have expended, since January 1, 1914, $2,175.00 on the faith of the contract, in organization and preliminary expenses. The promoters proceeded to solicit subscriptions, without furnishing your Department with the particulars of the promotion, without obtaining any license and without giving any bond, because the Act of 1916, Chap. 274, requiring these things, had not then been passed. They had secured a number of subscriptions when the Act became a law, and, of course, the subscription agreements did not contain the five per cent limitation on expenses, because this was not required when they were obtained.

Under these circumstances, I beg to advise you that the Act of 1916, Chap. 274, should not be given a retroactive effect, so as to require the promoters of the Independent Life Insur-

ance Company to comply with its provisions in this case; but the promoters are entitled to proceed under the contract entered into and acted upon by them prior to the passage of the Act.

Very truly yours,

ARTHUR C. RICHARDS, *Attorney General.*

INSURANCE—TAX ON PREMIUMS.

December 16, 1916.

Wilson L. Condon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building, Baltimore, Maryland.

DEAR SIR: I have carefully considered the question you have raised under Section 184 of Article 23 of the Annotated Code, as amended by Chapter 255 of the Acts of 1916, as to the tax on premiums of a policy of insurance issued by a foreign insurance company, and covering both fire and accident.

The words of the statute which govern this question are: "Which tax shall be at the rate of two per centum on premiums on policies of such companies, whose Charters authorize them to write fire, marine or inland insurance, and at the rate of one and one-half per centum on premiums on policies of all other such companies."

Applying these words strictly to a policy of insurance issued on an automobile, which covers both fire and accident, and for which the premium is $200.00, divided, $150.00 for accident and $50.00 for fire, your Department would collect two per cent on the entire $200.00 premium.

I do not think, however, that this is what the Legislature meant when it passed the Act; the use of the words "whose charters authorize them to write fire, marine or inland insurance," must be read in connection with the words "policies of all other such companies," and hence the technical construction of the former would be wanting. The tax collected before 1912 was one and one-half per centum from all foreign companies, and the distinction between fire and accident was first made in 1912. In making this distinction the intent of the Legislature

evidently was to separate the policies of insurance and not the character of the companies writing them. It was not the intention to arbitrarily say that any insurance written by a company whose charter might incidentally authorize it to write a fire policy, must be taxed the full rate of two per cent. Suppose a company having power to write both fire and accident insurance actually only wrote the latter in this State, surely your Department would not be justified in collecting a two per centum on premiums on such policies.

The companies, in writing the form of the policy under discussion, state the premiums on fire and on accident, so that it is easy to separate the two.

My conclusion, therefore, is that in computing this tax, you are to be guided by the policy as actually written, and to collect the same as follows:

Two per centum for fire, marine and inland insurance, and one and one-half per centum on all others; which leads us to the question as to what is inland insurance. My judgment as to inland insurance is that it means protection against any accident to the thing insured while in transportation, and it makes no difference whether the article insured is transported by a carrier or under its own power, or whether it is in motion, or is at a stand-still; it embraces several of the subdivisions of automobile risk, and as the practical question will only arise in automobile insurance. I would suggest that you adopt the rule, so far as this question of taxation is concerned, that any damage done to the insured automobile, outside of fire, comes under the head of inland insurance, and any damage done by the automobile to person or property is casualty or accident insurance. You can readily adjust the different forms of automobile insurance to meet the requirements of this rule.

Very truly yours,

JOHN M. RIQUARET,

Assistant Attorney General.

Approved:

ALBERT C. RITCHIE, *Attorney General.*

LICENSES.

(Excluding opinions on Conservation, Motor Vehicle and Insurance Licenses, which will be found under these respective headings.)

LICENSES—CASH REGISTERS AND ADDING MACHINES.

July 15, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Md.

DEAR MR. MCMULLEN: I have your favor of July 14. The opinion I gave you on May 29, under sec. 167 of the Act of 1916, ch. 704, imposing a license fee upon cash register and adding machine companies, was not intended to cover the case of a company having more than one place of business, but simply of a company having a number of agents, and in such case the license secured by the company will be sufficient to cover the operations of the Agents throughout the State.

If, as in the case of Adder Machine Company, the company has more than one place of business in this State, then section 167 is not clear as to whether only one license is required or whether a separate license is required for each place of business. I think, however, that the fair construction of the law is that the license is required for the *company*, and not for the place or places of business of the company, and that consequently one license will suffice. I know that this was the intent of the state authorities in drafting the act, and I think that the state should construe it in this way.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—CLEANING, DYEING AND PRESSING ESTABLISHMENTS—WHEN IN THIS STATE.

July 7th, 1916.

Old Staten Island Dyeing Establishment,
332 N. Howard Street,
Baltimore, Md.

GENTLEMEN: I have your favor of July 6th, with reference to section 180 of the Act of 1916, ch. 704, requiring licenses for "each person, firm or corporation, resident or non-resident, conducting the business of cleaning, dyeing and pressing in this State, when done by steam, electric or other power than by hand."

"Establishments employing less than five persons.	$ 5.00
"Establishments employing not less than five persons, and not more than ten persons.	15.00
"Establishments employing not less than ten persons, and not more than twenty persons.	50.00
"Establishments employing more than twenty persons.	100.00."

As I understand your letter, the question in your case is, whether you are "conducting the business of cleaning, dyeing and pressing in this State," in view of the fact that you only take orders and make deliveries here, and do the actual work on Staten Island.

The question is not entirely clear, but my opinion is that the above section does apply to you, and that you should take out a license upon the basis of the number of persons employed in your establishment here.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—CLEANING, DYEING AND PRESSING ESTABLISHMENTS—HAND WORK.

July 11, 1916.

Chr. Hemmeter, Esq.,
419 W. Saratoga Street,
Baltimore, Maryland.

DEAR SIR: I have your favor of July 10th.

Section 180 of the Act of 1916, Ch. 704, does not apply to dyeing and cleaning establishments where the work is done solely by hand.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—COLLECTION AGENCIES.

June 21, 1916.

Sun Mercantile Agency,
15 East Main Street,
Frostburg, Md.

GENTLEMEN: I have your favor of June 19.

I think that a concern conducting a collection agency only, that is, an agency such as you describe, which undertakes collections on a commission basis, is not a "commercial, mercantile or mutual protective agency" as these terms are used in section 169 of the Act of 1916, Ch. 704, and, therefore, no license is required under that section for such collection agency.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—FARM MACHINERY.

June 20, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I have your favor of June 15th.

Section 174 of the Act of 1916, Chapter 704, is by no means clear upon the question, but I think that the intention is that in such a case as you submit the wholesale dealer in farm

machinery is required to take out only one license in Maryland, to wit: In Cumberland, where he maintains his general agency and where he stores all his machinery for distribution: and that he is not required to take out licenses in the different cities or towns in which he sells to dealers.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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LICENSES—GARAGES.

June 9, 1916.

Hart B. Noll, Esq.,
Clerk, Circuit Court,
Ellicott City, Md.

DEAR SIR: I have your favor of June 7th.

In my opinion, the license fee imposed by the Act of 1916, Chap. 704, Sec. 166, is a charge exacted for the privilege of keeping a garage where automobiles are stored for hire or kept for hire or sale, and it is in addition to the traders' license required for stock. I, therefore, think that in the case you put both licenses are required.

I also think that a person buying junk in the county and selling the same to dealers in Baltimore, is dealing in junk within the meaning of Section 172, and must take out the license required by that section wherever he has his place of business.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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LICENSES—GARAGES.

July 5, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court-House, Baltimore, Maryland.

DEAR SIR: Mr. Osborne I. Yellott, counsel for the Automobile Dealers' Association, and Mr. German H. H. Emory, also representing certain interested parties, have asked me to consider several questions which have arisen in connection with

the application of Section 166 of the Act of 1916, Chap. 704, requiring licenses for garages.

I have considered these questions, and I beg to send you herewith my opinion upon each of them.

1. Garages where cars are kept solely for sale, and not for hire or storage, and which may or may not be also used as repair shops. These garages are required to procure a license.

The only question in this connection arises because of the fact that while the first paragraph of Section 166 requires a license for garages "for the hire, storage *or sale* of automobiles," the succeeding paragraph defines a garage as meaning "a place of storage for hire or a place where there is kept for hire any automobile," etc., thus *omitting* from the definition garages where automobiles are kept *for sale*.

I think, however, that the first paragraph of Section 166 controls as to the application of the section, and that the definition of the word "Garage" is not exclusive, and does not relieve garages where cars are kept solely for sale from the necessity of taking out a license.

2. Garages where cars are kept for sale, and also for storage and also for hire. These garages are required to procure a license.

3. Garages where cars are kept solely for hire, but not for sale and not for storage. These garages are required to procure a license.

4. Garages or buildings where cars are kept solely for storage for hire, in which garages or buildings automobiles alone may be stored, or in which other classes of property may be stored also. These garages or buildings are required to procure a license.

5. Repair shops, where cars are not kept for sale or for hire or for storage for hire. In this case, no license is required.

6. Garages in which one or more automobiles are kept for hire, but are sometimes used for private purposes also. These garages are required to procure a license. Any garage where a car is kept which will be hired out on call, must procure a license, even though the car may at other times be used for purposes other than for hire.

7. The license fees are computed in accordance with the floor space which each garage contains. In this connection, the question arises whether any floor space can be included in the computation other than the floor space actually occupied by the cars.

I think that the computation should be based on the floor space actually occupied by the cars, plus such additional floor space as may be occupied for offices or other rooms used in connection with the business of selling, hiring or storing the cars. In the case of a building which is used for no other purpose than for the sale, storage or hire of automobiles, no question would arise, because the whole of such building would be used either for keeping the cars themselves, or for the transaction of the business, and in such cases the whole floor space of the building is the basis for computing the fee.

Cases will, however, arise where the entire building is not used for the sale, storage or hire of automobiles, but where only part of the building is so used, and where other parts are used for purposes not connected at all with the sale, storage or hire of automobiles. For instance, a warehouse may be used for the storage of automobiles, and also for the storage of other classes of property.

In all such cases the license fee should be computed upon the amount of floor space occupied by the cars themselves, plus such additional amount of floor space as may, in each case, reasonably and fairly be necessary for attending to that portion of the business which relates to the automobiles, and their storage, sale or hire.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—HUNTERS' LICENSES IN ALLEGANY COUNTY.

August 21, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of August 18, enclosing copy of letter from Mr. Lloyd L. Schaffer, Clerk of the Circuit Court for Allegany County.

The Act of 1916, Ch. 282, relating to hunters' licenses in Allegany County, provides in section 13A the cost of the licenses required by the Act, to wit: bona fide residents of Allegany, Garrett and Washington Counties, $1; non-residents of these counties but residents of Maryland, $3; non-residents of Maryland, $5. Under this law, applicants cannot be charged more than these specified amounts, and accordingly they cannot be charged an additional 50c for issuing the license.

The same section, and also section 15A, provide that all of such license monies shall be paid over monthly by the Clerk of Court to the Treasurer of the Board of Game Wardens of Allegany County, which Board is created by section 14B; and section 14B provides that such license moneys shall be used (1) for protecting and propagating game in Allegany County, (2) for the incidental expenses of the Board, (3) for the hunters' licenses and applications, and (4) for the Clerk's record license book.

Under this section, the Board will allow the Clerk, out of said license moneys, the cost incurred by him in preparing the licenses and application blanks, and in procuring his record book. The Clerk will not be allowed the 50c fee for issuing licenses provided by Bagby's Code, Art. 56, sec. 12, and the Clerk will, therefore, not be held accountable by your office for that 50c fee. This fee cannot be charged at all for licenses issued under the Act of 1916, ch. 282, because its exaction would be inconsistent with the terms of this Act, and section 18A of the Act expressly provides that all sections of the Code

inconsistent with the Act are repealed so far as Allegany County is concerned.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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LICENSES—JUNK DEALERS—SEPARATE COUNTIES—EMPLOYES.

June 2, 1916.

William L. Seabrook, Esq.,
State's Attorney,
Westminster, Md.

DEAR MR. SEABROOK: I beg to acknowledge your favor of May 31.

Whether or not a junk dealer is required by sec. 172 of the Act of 1916, ch. 704, to take out a license in each county in which he operates, depends upon whether he has a "place of business" in each such county. The law requires the license for conducting *the junk dealing business in this State,* and requires a separate license to be taken out *for each place of business,* and whether a junk dealer operating, for example, in Carroll County, has to take out a license there, would depend upon whether his operations are such as to constitute a place of business in Carroll County.

Of course, if the dealer has an office or headquarters in Carroll County, the case would be clear. Also, even if he has no office or headquarters in Carroll County, but maintains these in some other county, still if he deals in junk in Carroll County from a wagon or car, then I think that he would have a place of business in Carroll County, under Saffner vs. State, 84 Md. 299, 303, and would have to take out a license in Carroll County. Other cases would likewise be controlled by the question of whether the method of operation could fairly be said to constitute a place of business.

With respect to your second inquiry, I agree with you that the law does not require a junk dealer, who has taken out his license in any given county, to take out additional licenses for his bona fide, salaried employees who buy junk for him in such

county. I think that the dealer's license covers such employees. I also agree with you that if such a junk dealer buys junk from others on a commission basis, that then such commission men must each take out a license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—JUNK DEALERS—WHEN TRADERS' LICENSE ALSO NECESSARY.

June 2, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR SIR: I beg to acknowledge your favor of May 26th, asking whether junk dealers taking out the license required by Section 172 of the Act of 1916, Ch. 704, are also required to take out a traders' license under Art. 56, Sections 38 and 39 of the Code.

I understand that hitherto there has been no provision of the license laws dealing specifically with junk dealers, but that junk dealers have been required to take out the ordinary license prescribed by Section 38 of Article 56 for selling "goods, wares or merchandise." Now, however, Section 172 of the Act of 1916, Chapter 704, provides specifically for junk dealers' licenses.

Under these circumstances it is my opinion that the license required of junk dealers by the Act of 1916 is the only license they are required to take out. I may add that I have conferred with Mr. McMullen, who drafted the law, and he tells me that this was his intention.

I am, of course, assuming that the dealers in question deal only in junk, because if they also deal in other forms of goods, wares or merchandise the ordinary traders' license would also be necessary.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—JUNK DEALERS—WHEN TRADERS' LICENSE ALSO NECESSARY.

September 8, 1916.

Ernest Ray Jones, Esq.,
Oakland,
Maryland.

DEAR MR. JONES: I have your favor of September 6th. The difficulty about permitting the ordinary traders' license to cover dealing in junk, when the trader deals in junk as part of his general business, seems to be that in this event the trader would often be enabled to take out his trader's license, covering both his junk and his other dealings, for a fee which would be less than the fee prescribed for those who deal in junk alone. This will appear by comparing the fees for traders' licenses specified in Bagby's Code, Art. 56, Sections 41, etc., with the fees for junk dealers specified in the Act of 1916, Ch. 704, Sec. 172. The Legislature could hardly have intended this.

From this fact, as well as from the language of Section 172, it seems to me that the general traders' license will not cover dealing in junk, but that those traders who wish to deal in junk as well as in other goods, must take out both licenses.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—DISPOSITION OF INCREASE IN ELLICOTT CITY.

June 10, 1916.

D. C. Higenbotham, Esq.,
Registrar, Ellicott City, Maryland.

DEAR SIR: I beg to acknowledge your favor of June 3rd.

The Act of 1916, Chap. 594, provides that the additional license fee of $100 "shall be disposed of as other license fees now provided by law for the issue of licenses."

The Act of 1902, Chap. 249, Sec. 98-E, provides that out of the $500 license fee imposed in Ellicott City, Howard County, the clerk shall "pay over quarterly to the Treasurer of the State the same sum as is now charged by the State for such license.

to wit, the sum of $50 for each license, and the balance shall be paid to the Mayor and City Council of Ellicott City."

The only way I see to work out the proper division of the additional $100 fee between Ellicott City and the State, is to treat the Act of 1902 as disposing of the $500 license fee in the proportion of one-tenth to the State and nine-tenths, less Clerk's authorized deduction, to Ellicott City. The $100 additional fee should then be disposed of in the same way, that is, $10 to the State, and $90, less Clerk's authorized deduction, to Ellicott City.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—HOTELS.

June 24, 1916.

Hon. Hugh A. McMullen,
State Comptroller, Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 23rd, enclosing inquiry from Edward Oswald, Esq., Clerk of the Circuit Court for Washington County.

I understand that the saloon keepers in Washington County take out two different kinds of licences: (1) The Traders' Liquor License, under Bagby's Code, Art. 56, Sec. 60, which authorizes the sale of liquor in quantities greater than one pint, and (2) the Oyster House License, under Bagby's Code, Art. 56, Sec. 90, which authorizes the sale of liquor in quantities less than one pint.

In my opinion, the saloon keepers of Washington County are only required to pay the additional $100 fee, provided by the Act of 1916, Chap. 594, with respect to their Traders' Liquor Licenses issued under Section 60 of Art. 56 of the Code, and they are not required to pay any other additional fees under the Act of 1916.

I also understand that the hotel keepers in Washington County take out two different kinds of licenses: (1) The Traders' Liquor License, under Bagby's Code, Art. 56, Sec. 60, which authorizes the sale of liquor in quantities greater than one pint,

and (2) the Ordinary Keeper's License, under Bagby's Code, Art. 56, Sec. 72, which authorizes the sale of liquor in quantities less than one pint.

The Act of 1916, Chap. 594, provides increased license fees for the sale of liquors by saloons or restaurants and also by hotels. If a saloon or restaurant is operated in connection with and as part of a hotel, then I think that the additional $100 fee required of saloons should not be imposed, but that the additional fees of $250 or $500, as the case may be, required of the hotels, should be imposed.

Therefore, the hotels in Washington County, which sell liquor are required to pay the additional fees provided for hotels selling liquor by the Act of 1916, Chap. 594, that is, an additional fee of $250 or $500, as the case may be, and are not required to pay any [redacted] ional fees under the said Act of 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—HOTELS.

July 3, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to reply to your recent letter relative to increased liquor license fees on hotels.

If a saloon is operated in connection with and as part of a hotel, then the additional $100 fee required by the Act of 1916, Chap. 594, should not be imposed at all, but the additional fee of $250 or $500, as the case may be, required by that Act for hotels selling liquor, should alone be imposed. This of course, is in addition to the Ordinary Keeper's license fee already required by Bagby's Code, Art. 56, Sec. 72.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—RESTAURANTS OR EATING HOUSES.

June 12, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to answer the inquiries contained in your letter of June 9th.

1. You do not say what additional $100 fee you refer to, but I presume you mean the $100 additional license fee provided by the Act of 1916, Chap. 594, for saloons, etc. If you do, then that law expressly provides that the $100 fee is to be in addition to the already existing fees, and that it shall be payable on June 15, 1916, for the period between that date and the expiration of the current license year. Consequently, this $100 must be paid by those who took out their licenses during May.

2. Section 182 applies to public restaurant and eating places. If a man conducts a saloon under a liquor license, and also conducts in connection therewith a public restaurant, or eating place, then it seems to me that the law requires him to take out the license provided by section 182.

3. I do not think that a person with a saloon license who simply serves short lunches (sandwiches, coffee, etc.), such as you describe, can be said to be conducting a public resturant or eating house, and, therefore, I do not think that he need take out a license under section 182.

4. Nor do I think that a person having a traders' and soda fountain license, and serving similar light lunches, can be said to be conducting a public restaurant or eating house, and, therefore, I do not think that he need take out a license under section 182.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATRES—ADMISSION CHARGES.

September 1, 1916.

Curtis W. Long, Esq.,
State's Attorney,
Salisbury, Maryland.

DEAR MR. LONG: I have your favor of August 31st. It seems to me that if the moving picture theatre you mention has a license, under the Act of 1916, Ch. 704, Sec. 165, based on five cents admission, that it has no right to charge ten cents for any performance. Such license authorizes five cent shows, but does not authorize any ten cent show.

If the theatre wishes to charge five cents most nights, but ten cents some nights, and wants to have the five cent license, then I think that the ten cent shows must be the subject of an additional license, based on the ten cents admission. If the ten cents admission is only charged one night each month, then, as the ten cent exhibition is not given more than three nights in any one week, the fee, under section 165, will be one-half of the ordinary fee for ten cent shows.

In other words, the theatre will have this choice: Either take out a license for ten cent shows, and charge ten cents or five cents, which ever and whenever it wishes, in which event the fee, on the basis of 600 seating capacity, would be $80; or take out a license for the five cent shows, which would be $45 and an additional license for the ten cent shows, which would be $40 (one-half of $80). Under these circumstances the theatre would, of course, take out the ten cent license for $80.00.

The five cent license certainly does not authorize a ten cent show, and I think it is perfectly clear that if the ten cent show is given on the five cent license, the law is violated, and the penalties provided by Section 188 can be imposed. Therefore, I see nothing for the owners to do except take out a ten cent license, which will authorize the ten cent shows as well as the five cent shows, or else take out the two licenses, one for the five cent shows and the other for the ten cent shows.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURES—WHEN LICENSE REQUIRED.

July 10, 1916.

L. A. Rudisill, Esq.,
Mountain Lake Park Association,
Mountain Lake Park, Maryland.

DEAR SIR: I have your favor of July 6. With respect to the licenses for moving pictures, prescribed by the Act of 1916, ch. 704, sec. 165, I beg to advise you as follows:

1. If no admission fee is charged, then no license is required, even though collections may be taken up, and the audience contribute anything or nothing as they see fit.

2. If an admission fee is charged, then the license must be taken out, unless your Association is for benevolent, charitable or educational purposes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURES—VAUDEVILLE.

August 22, 1916.

O. L. Mitchell, Esq.,
Manager "The Lyric,"
Crisfield, Maryland.

DEAR SIR: Absence from the city has prevented my answering your favor of August 9th more promptly.

I must say that the law is not entirely clear, but it seems to me that the intent is that the license fee required by section 165 of the Act of 1916, Chap. 704, is for the exhibition of moving pictures only, and that if a vaudeville performance is also to be given, the license required by section 108 of the Act of 1916, Chap. 704, should also be taken out. Under this latter section (which amends Sec. 108 of Art. 56 of the Code), the license for stage players, etc., is now $50 per annum for each county in which performances are given, or $2.00 for each exhibition.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATRES—LAW NOT RETROACTIVE.

July 1, 1916.

Hon. Hugh. A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of June 30th.

With reference to the moving picture house you speak of, I understand that the exhibition license it took out May 1, 1916, to exhibit in Allegany County for one year, was taken out under Bagby's Code, Art. 56, Sec. 108, and that the house has now been asked to take out a license under Sec. 165 of the Acts of 1916, Ch. 704.

I understand that while the old law did not specifically cover motion picture houses, yet it was in actual practice treated as covering them, and that such houses did customarily take out licenses under the old law. This being so, then I think that the provisions of Sec. 165 of the new law will not apply, until May 1, 1917, to such motion picture houses as, in good faith, procured and paid for licenses, during May, 1916, under the old law. In other words, the May, 1916, licenses of such houses will be good until May 1, 1917.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—PEDDLERS USING AUTOMOBILES.

July 10, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Md.

DEAR MR. MCMULLEN: I have your favor of July 7, enclosing copy of letter of July 5 from Mr. A. Parks Rasin, Clerk of the Circuit Court for Kent County.

Whether or not Bagby's Code, Art. 56, sections 24, 25, etc., apply to peddlers in Kent County who use an automobile is not free from doubt. Those sections were, however, evidently

intended to cover all peddlers, and I think that the language can fairly be construed as applying to the case in question, and that Kent County peddlers who use automobiles should be required to take out the license. I also think that they should be required to pay the $200 fee. If this construction is incorrect, this should be for the courts to decide and not for your department or mine.

Such licenses are not assignable by the holders. (Bagby's Code, Art. 56, sections 2, 26.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RAILROAD CHECK ROOMS—NO EXEMPTION BECAUSE OF GROSS RECEIPTS TAX.

July 25, 1916.

Leon E. Greenbaum, Esq.,
111 N. Charles Street,
Baltimore, Maryland.

DEAR SIR: I received your favor of July 17th, asking my opinion as to whether Section 179 of the Act of 1916, Chapter 704, applies to the Western Maryland Railroad Company, and stating the reasons why you think that it does not. I have considered this question, and beg to give you my views upon it.

Section 179 provides that "each person, firm or corporation conducting a check-room in this State for the deposit of packages and baggage, shall pay a privilege tax for stall purposes, and before doing so, shall first take out a license therefor, paying an annual license fee" of $40 where the charge is at the rate of 10 cents or more per twenty-four hours, and $20 where the charge is less than 10 cents.

I think that check-rooms such as I understand the railroad represented by you conducts at various stations throughout the State are included within the language of section 179. I have ascertained that it was the intention of the draughtsman of the Act to include them, and I think that the language does so.

I also think that the fact that your company pays a tax on its gross receipts does not exempt it from the obligation to take out the license and pay the license fee required by section 179.

The tax which you speak of as a gross receipt tax is imposed by section 167 of Article 81 of Bagby's Code, and is a franchise tax. The Act of 1896, Ch. 120, Sec. 146, specifically declared that this was its nature. Cumb. vs. Pa. R. R. Co. vs. State, 92 Md. 676.

I do not understand that section 179 imposes a franchise tax. It may be true that your company's check rooms are conducted under your charter power to provide reasonable facilities for the public, and that power, of course, grows out of the railroad franchise which the state gave you, and which section 167 of Article 81 of the Code taxes. But the fact that you hold a railroad franchise, and pay a tax upon it measured by your gross receipts, does not prevent the State from taxing you for the actual carrying on of some part of your business. This is what section 179 seems to me to do.

For instance, your charter doubtless authorizes you to conduct hotels for the accommodation of passengers, and this power grows out of your franchise, for which you pay the franchise tax. But if you exercise that power by actually establishing hotels, surely a state law requiring all hotels to be licensed and requiring them to pay a license fee, would have to be complied with by your road.

Your charter also, I assume, authorizes you to conduct a restaurant as one of the facilities to be furnished the public. That authority grows out of your franchise powers, but if you actually exercise it, surely a state law requiring all restaurants to be licensed would have to be complied with by your road.

The same would be true with reference to the sale of liquor. This is one of the things which your charter doubtless gives you authority to do, and that authority grows out of your franchise powers. But if you actually sell liquor, you would have to comply with the license laws of the State for so doing.

Section 179 requires every person or corporation conducting a check room to pay a license fee. That is an occupation or business charge. If your corporation did not have the franchise

power to conduct this character of business, you could not, of course, conduct it at all; so that, in the case of corporations, section 179 presupposes that the franchise power to conduct a check room business exists. For the existence of that, as well as of the other powers covered by your franchise, you pay the tax imposed by section 167 of Article 81. For the actual exercise of the portion of your franchise power authorizing check rooms, that is, for carrying on the check room business, you pay the fee imposed by section 179.

The franchise tax and the check-room license fee seem to me, therefore, to cover two distinct things. The former covers the franchise which is granted to you, and which you hold. The latter covers the actual exercise of one of the powers which your charter grants, namely, the business of operating a check-room. The difference is between the right or privilege, called a franchise, to carry on a particular business, and the actual operation of the business itself.

I see no reason why the state cannot tax both. The former is taxed by section 167 of Art. 81, and the intent to tax the latter is, I think, clear from section 179.

In my opinion, therefore, your road must comply with section 179 of the Act of 1916, Ch. 704, at every station in this State where you receive for deposit and check packages and baggage.

I note from your letter that the Western Maryland will regard it necessary to give up the check-rooms now conducted by it throughout the State, if section 179 is construed as applying to such check-rooms, because the license fee is, your state, in most cases more than the receipts from the service.

I will thank you to let me know whether this will in fact be the attitude of your company, in view of this opinion, because if your company does contemplate abandoning its check-room service, I feel that I should communicate this fact to the Public Service Commission, to the end that they may decide whether they will consent to the abandonment of what the Commission may consider a necessary service for the convenience of the public using your road.

I enclose you copy of a letter I am today writing Mr. Marsden Smith attorney for the Baltimore & Ohio Railroad, as to the application of section 179 to that road; and I am sending a copy of both letters to Messrs. Bernard Carter & Sons, attorneys for the Pennsylvania lines in Maryland, with the statement that in my opinion section 179 applies to those lines; and as Mr. Marchant, Deputy State's Attorney, has asked me to let him know my conclusions, I am sending him a copy of all three letters.

I thank you for the assistance you gave me in examining the question, and I regret that I have not been able to agree with you about it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RAILROAD CHECK-ROOMS—BALTIMORE AND OHIO RAILROAD NOT EXEMPT.

July 25, 1916.

E. Marsden Smith, Esq.,
B. & O. R. R. Law Department,
Charles and Baltimore Streets,
Baltimore, Maryland.

DEAR SIR: I received your favor of July 18th, asking my opinion as to whether section 179 of the Act of 1916, Chapter 704, applies to the Baltimore and Ohio Railroad Company, and stating the reasons why you think that it does not. I have considered this question, and now beg to advise you of my views upon it.

In the first place, I think that the method in which your company receives packages and hand baggage at your stations in this State, as described in your letter, constitutes "conducting a check-room in this State for the deposit of packages and baggage," within the meaning of section 179.

This leaves open two questions, first, whether the state can subject your company to the provisions of section 179, in view of the fact that you pay a franchise tax, measured by your gross receipts; and, secondly, whether this can be done in view of your company's irrepealable exemption from taxation.

The first of these questions is covered by an opinion which I am today sending Mr. Greenbaum, attorney for the Western Maryland Railway Company, a copy of which I enclose you, in which I hold that the payment of the franchise tax will not relieve a railroad from the license fee imposed by section 179.

With respect to the second question, I do not think that your company's exemption from taxation relieves it from the obligation of complying with section 179.

The exemption, as contained in section 18 of your charter (Act 1826, Ch. 123), is, as I understand the decisions of our Court of Appeals, an exemption of your property and franchises from taxation; and the Act of 1878, Ch. 155, by which you agreed to a limited tax on your gross receipts, provided that no further tax for State purposes should be levied upon any of your franchises, property or receipts.

I understand this to be the limit of your exemption, and I do not think that it includes a business or occupation fee such as, in my letter to Mr. Greenbaum, I interpret the license fee required by section 179 to be.

For these reasons it is my opinion that your road must comply with section 179 of the Act of 1916, Ch. 704, at every station in this State where you receive for deposit and check packages and baggage.

I note from your letter that if section 179 is construed as I construe it, your company will cease giving the parcel room service at the twenty-five stations where the receipts from that service do not, you state, equal the license fee imposed. I will thank you to let me know whether this will in fact be the attitude of your company, in view of this opinion; because if it will be, then I feel that I should communicate this fact to the Public Service Commission, to the end that they may decide whether they will consent to the abandonment of what the Commission may consider a necessary service for the convenience of the public using your road.

I am sending a copy of this letter and of my letter to Mr. Greenbaum, to Messrs. Bernard Carter & Sons, attorneys for the Pennsylvania lines in Maryland, with the statement that

in my opinion section 179 applies to those lines; and as Mr. Marchant, Deputy State's Attorney, has asked me to let him know my conclusions, I am sending him a copy of all three letters.

I thank you for the assistance you gave me in examining the question, and I regret that I have not been able to agree with you about it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—RESTAURANTS OR EATING PLACES.

August 3, 1916.

Edwin H. Brown, Jr., Esq.,
Centreville, Maryland.

DEAR MR. BROWN: I have your favor of August 2nd. It is difficult to give a definition to the words "restaurant or eating place" in section 182 of the Act of 1916, Chap. 704, which may not be incorrect in some cases. Some special circumstance might make considerable difference.

However, as a general proposition, I think that the words mean any place where the public can regularly go for the purpose simply of obtaining a meal.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STAGE PLAYERS—DETECTIVE AGENCIES—CARNIVALS—TRAVELLING SALESMEN—TYPEWRITER AGENCIES—RESTAURANTS OR EATING PLACES—WHOLESALE LIQUOR DEALERS.

June 9, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR SIR: I beg to answer the inquiries you make in your letter of June 3rd, relative to the Act of 1916, Chap. 704.

1. Section 108 is precisely the same as Sec. 108, Art. 56 of Bagby's Code, except that the amount of the license fee has

been increased. The new section 108 should be construed as applying in exactly the same way as the old section 108. In my opinion, when a company of stage players, etc., perform in a duly licensed theatre, the license of the theatre is all that is necessary, and the company will not be required to take out an additional license under section 108.

2. Under Section 164, a private detective agency must take out a license in each county in which it is *located*. What constitutes being *located* in a county depends upon the facts of each case, but in my opinion an agency which maintains its headquarters in Baltimore City or in one of the counties, and also maintains branch offices in other counties, must take out a license in every county in which such branch offices are located. An agency may, however, *operate* (that is, conduct its investigations, etc., in specific cases) anywhere in the State, without being obligated to take out a license in any county, except in the county or counties in which it is located.

3. Under section 165, "traveling, tented carnivals," working under the auspices of charitable or benevolent organizations, but sharing in the profits, must pay the $100 weekly license fee imposed by the last paragraph of section 165.

4. The license required by section 167 does not, I think, apply to traveling salesmen who stop for a few days at hotels and there display their samples.

5. The license required by section 168 applies only to concerns dealing *exclusively* in typewriters and typewriter supplies, and is not required of general office supply houses, which deal in office supplies of all kinds, including typewriters and typewriter supplies.

6. It is somewhat difficult to give a general definition of Commercial, Mercantile and Mutual Protective Agencies, which will cover all the cases intended to be covered by Section 169. I would prefer, therefore, not to give an opinion upon the general application of this Section, but will be glad to give an opinion as to its application to any specific cases, about which there may be some question.

7. The only way I know to compel the concerns mentioned in sections 174 and 185 to take out the licenses required by

those sections, is to notify those that you know of to secure their licenses, and prosecute those that do not do so. Of course, everyone is charged with knowledge of the law, and subject to prosecution for not complying with it.

8. Section 182 does not apply to the case of a private dwelling, owned by a person who serves meals to two or three persons. It applies rather to public restaurants or eating places.

Hotels need not take out the restaurant license provided by this section, if they have the usual hotel license.

This section does not apply to persons who accommodate roomers in their own homes, and serve no meals.

9. Section 186 does not apply to saloons or retail liquor dealers. It applies only to non-residents, who *sell by the wholesale* in this State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STORAGE WAREHOUSES.

June 5, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of June 1st, enclosing letter from Mr. William P. Cole, Clerk of the Circuit Court for Baltimore County, in which Mr. Cole asks whether Section 178 of the Act of 1916, Ch. 704, providing licenses for storage warehouses, applies to warehouses located in counties, but not in cities in such counties. In my opinion it does.

Section 178 specifically requires the license to be obtained in Baltimore City, if the warehouse is located in Baltimore City, and if it is located in one of the counties, then the license is required to be obtained in such county; and the only difficulty arises from the fact that the amount of the tax is graduated in accordance with the number of inhabitants *in cities.*

I think, however, that the word *cities* should receive a liberal interpretation, and that it means communities or localities in which people reside, and that the license fees in question should

be charged upon the basis of the number of people in the community or locality in which each storage warehouse is located.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS, CIGARETTES AND BILLIARDS—TRANSFER, DEVOLUTION AND ASSIGNMENT OF LICENSES.

July 7th, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of July 6th. Bagby's Code, Article 56, section 3, provides that "wherever a particular place for transacting the business for which a license is obtained is specified in the license, if the party removes, he may carry on said business at the place to which he may remove; provided the clerk shall endorse such removal on the license, which he is hereby directed to do on application."

This applies to Female Traders licenses (Code, Art. 56, sec. 38, 54, Act 1916, ch. 632), Billiard licenses (Code, Art. 56, sec. 8), and Cigarette licenses (Code, Art. 56, sec. 58). Accordingly, such licenses are transferable from place to place, if the place of removal is endorsed on the license by the clerk.

Under Bagby's Code, Art. 56, sec. 2, no person other than the holder can operate under a license, unless he "is entitled as a representative, or assignee under the provisions hereinafter contained in this article."

Sec. 4 of Art. 56 (Act 1914, ch. 159), authorizes the devolution of licenses upon the holder's death, but I understand that Mr. Cole has in mind an assignment by the holder during his life. The only provisions of law which deal with assignments, are sections 56 and 57 of Art. 56, which authorize the sale of trader's licenses (and also liquor licenses) to purchasers of the holder's stock of goods who also purchase or rent his place of business, and provide that in such cases the clerk should enter the transfer.

These sections 56 and 57 apply to trader's licenses, and also to cigarette licenses issued under sec. 58, but not to billiard licenses. Therefore, a billiard license cannot be assigned at all by the holder. A trader's license or a cigarette license can be assigned by the holder to anyone who purchases his stock of goods and who purchases or rents his place of business, but cannot be assigned to anyone else.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS AND CIGARETTES, INCREASED FEES NOT RETROACTIVE—ADDITIONAL LIQUOR LICENSE FEES—DRUGGISTS.

May 29th, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: I am sorry to have been so long in answering your inquiries of May 13th, but I have only just received the copies of the laws in question. I now answer your inquiries in their order.

1. *Cigarette licenses.* The license for retail cigarettes is provided for by Sec. 58 of Art. 56 of the Code, and at present Sec. 59 requires a $10 fee for the same. The Act of 1916, Ch. 701, amends Sec. 59 by raising the fee to $15, and this Act takes effect on June 1st, 1916.

Under the present law, Art. 56, Sec. 1, cigarette licenses expire on May 1, and consequently the 1915-1916 licenses expired on May 1, 1916. Sec. 1 of Art. 56 has been amended by the Act of 1916, Ch. 632, which takes effect June 1, 1916, and under this amendment the Clerks of Court "are hereby expressly forbidden to date any such license other than the first day of May in each and every year, except when the trader engages in business in any other month subsequent thereto, when such license shall be issued from such month, and a ratable sum shall be charged therefor. All licenses granted or issued by said Clerks shall expire the first day of May next thereafter, except licenses for fisheries and horse racing."

Therefore, the situation is that both under the present law and under the Act of 1916, Ch. 632, which amends the present law as of June 1, 1916, all cigarette licenses expire every year on May 1st and must be renewed then for another year; and the law raising the fee to $15 does not take effect until June 1, 1916.

In my opinion, cigarette licenses issued at the $10 rate *before* June 1, 1916, will be good until May 1, 1917, on which date the $15 fee will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the $15 rate.

2. *Traders' Licenses.* The increases in traders' licenses generally are made by the Act of 1916, Chap. 632. This law leaves the license fees now provided by sections 41 to 51, inc., of Art. 56 of the Code unchanged, but by sections 52 and 52-A to 52-I, inc., the new law provides increased license fees on stocks in trade ranging from $10,000 upwards. The Act of 1916, Chap. 632, does not take effect until June 1, 1916.

In my opinion, traders' licenses taken out *before* June 1, 1916, at the existing fees, will be good until May 1, 1917, on which date the rates fixed by the Act of 1916, Ch. 632, will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the rates prescribed by the Act of 1916, Chap. 632.

3. *Female Traders' Licenses.* These licenses are now provided for by Sec. 54 of Art. 56 of the Code, and are $6.00 on stock in trade not exceeding $300.00. The Act of 1916, Ch. 632, amends this section by making the fee $6.00 on stock in trade not exceeding $300.00. This Act of 1916 takes effect June 1, 1916.

In my opinion female traders' licenses taken out *before* June 1, 1916, at the existing rate, will be good until May 1, 1917, on which date the rate fixed by the Act of 1916, Chap. 632, will become operative; but all such licenses taken out *after* June 1, 1916, must pay at the rate prescribed by the Act of 1916, Ch. 632.

4. *Additional Liquor Licenses.* The $100 additional license fee required by the Act of 1916, Ch. 594, for saloons or restaurants, for wholesale liquor dealers or jobbers and for bottlers,

applies to *each license issued*, so that if one man has more than one of such licenses, he must pay the additional $100 on each license that he has. This additional license is due June 15, 1916, for the current year.

5. *Druggists* as such are not under the Act of 1916, Chap. 594. But if a druggist desires to take out any of the licenses covered by the law, then he must, of course, pay, in addition to the amounts now required for such licenses, the additional amounts required for each such license by the Act of 1916, Chap. 594.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS' AND PEDDLERS' LICENSES IN BALTIMORE COUNTY.

November 9, 1916.

Hon. Harry J. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR MR. HOPKINS: I beg to reply to your favor of November 3rd, enclosing copy of letter to the Comptroller from the Clerk of the Circuit Court of Baltimore County, in which the latter asks advice as to the proper construction of the Act of 1900, Chap. 218, relating to licenses in Baltimore County.

This Act is certainly not clear, and different constructions of it are possible. It seems to me, however, that the Act should be regarded as containing two separate provisions on the subject of licenses.

The first one is that "no person or resident conducting business in Baltimore County, shall sell any goods or merchandise whatever in Baltimore County unless he shall first take out the license now provided by law."

Under this provision every person, *conducting business in Baltimore County*, who sells goods or merchandise in Baltimore County, must take out the license *now provided by law*,—that is, if he is a hawker and peddler, he must be licensed under Section 24 of Article 56 of Bagby's Code, and if he is a trader, then he must be licensed under Section 38.

This portion of the Act of 1900 apparently applies only to those who *conduct business in Baltimore County.*

The remaining portion of the Act applies, it seems to me, to those who do *not* conduct business in Baltimore County, *and* who reside in any of the counties except Baltimore, Carroll, Howard, Anne Arundel and Harford counties, *and* who wish to sell in Baltimore County *from wagons.* If such persons (a) do not hold in Baltimore County the license "now prescribed by law,"—that is, either a hawkers' and peddlers' license or a traders' license; and (b) wish to sell from wagons in Baltimore County "any merchandise, except fish, fruit and vegetables, except to dealers," then they must take out the local $50 license provided by the Act of 1900.

There are certain conditions under which such persons could sell from wagons in Baltimore County, under the traders' license which they hold from their home counties (Saffner vs. State, 84 Md. 299, 303); but under the Act of 1900 they cannot, in the cases named in the Act, sell from wagons in Baltimore County, on their home county licenses alone, but will be required in addition to take out the $50 local license provided by the Act of 1900.

In other words:

1. Persons conducting business in Baltimore County, no matter where they reside, must always take out either a hawkers' and peddlers' license or a traders' license in Baltimore County, under the general law.

2. Persons who do not conduct business in Baltimore County, but who reside in any of the counties except the five excepted ones, and who hold neither a hawkers' and peddlers' license nor a traders' license in Baltimore County, can in no case sell "any merchandise, except fish, fruits and vegetables, except to dealers," *from wagons* in Baltimore County on their home license alone, but, in cases where this would be permissible under the general law, they must take out the $50 license provided by the Act of 1900.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADING STAMPS—COUPONS REDEEMABLE IN TUITION.

August 16, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of August 11.

In my opinion, the issue of coupons by the Tri-State Business College, redeemable in tuition, in the manner set forth in the College's letter to you of August 10, and in the enclosure with that letter, is not within section 173 of the Act of 1916, ch. 704, relating to trading stamps redeemable for merchandise; and, therefore, I think that the College is not required to take out a license under that section for the issue of such coupons.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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LICENSES—TRADING STAMPS—MANUFACTURERS.

May 17, 1916.

Hon Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of May 13th, enclosing copy of letter from Mr. D. Meredith Reese, in which he asks whether a manufacturer who sells his goods mostly to consumers, to whom he gives trading stamps, must pay a license fee of $1,500 or of $50 under the Act of 1916, Chap. 704.

I understand Sec. 172 to provide that:

1. Every person, firm or corporation, who or which is *not* a manufacturer or packer, and who or which sells or delivers trading stamps *to any other person, firm or corporation* in connection with sales *by such other person, firm or corporation*, shall pay a license fee of $1,500.00.

2. *Every manufacturer or packer*, who sells or delivers trading stamps in connection with the sale of his own manufactured

products *to any other person, firm or corporation*, shall pay a license fee of $50.

I understand that Mr. Reese submits the case of a manufacturer who sells his own goods to others, and issues trading stamps with such sales. If that is the case, then I think that the manufacturer in question must pay a license fee of $50.00.

I do not see that it makes any difference whether he sells *mostly* to consumers or not. If he is a manufacturer, and if he sells *his own* manufactured product to *any* person, firm or corporation at all, whether consumers or not, and if he *issues trading stamps* with such sales, then it seems to me that he falls within the class upon which the Act of 1916 imposes the $50 license fee.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADING STAMPS—RETAIL STORES.

June 9, 1916.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR SIR: I beg to reply to your favor of May 26th, in which you ask my opinion upon the inquiry made by Messrs. Mengel and Smith in their letter to you of May 25, namely, whether a retail tea store which issues trading stamps must take out a trading stamp license under section 173 of the Act of 1916, Ch. 704.

Section 173 only applies (1) to trading stamp companies and (2) to manufacturers or packers who issue trading stamps in connection with the sale of their own manufactured or processed products to others. Whether or not a retail tea store which issues trading stamps must take out a license, depends upon whether the articles which such a store sells, and with which it furnishes the stamps, are its own manufactured or processed

products or not. If they are, then the store must obtain the license, but if the retail store simply procures such articles from others, and neither manufactures them nor processes them itself, then it is not subject to the license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—WHOLESALE LIQUOR DEALERS—SALES IN MARYLAND.

August 2, 1916.

Lloyd L. Shaffer, Esq.,
Clerk of Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: I beg to reply to recent letter asking whether a Pittsburg brewing agency, operating a wholesale house in Cumberland, must take out a non-resident wholesale liquor dealers' license under the Act of 1916, Ch. 704, Sec. 186. As I wrote you, I have been considering the application of section 186 for some time, and this question involves some difficulty.

I think that the section only applies to such non-resident houses as can legally be said to *sell in Maryland*, and very often a non-resident house does not sell in Maryland, when it solicits orders here which are accepted elsewhere, and filled from stock kept elsewhere. I do not know enough about the exact method by which the agency you refer to conducts its business and makes its sales, to enable me to say whether its sales are legally made in Maryland or not. If, however, as I infer from your letter, the agency operates a wholesale warehouse in Cumberland, and sells in Maryland the stock contained in that warehouse, then I should say that it sells in Maryland, within the meaning of section 186, and is required to take out the license.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES — WHOLESALE LIQUOR AND TOBACCO DEALERS — SALES IN MARYLAND.

September 21, 1916.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Maryland.

DEAR MR. SHAFFER: The Act of 1916, Ch. 704, Sec. 186, only applies to wholesale liquor dealers who *sell* in Maryland, and if the dealer to whom you refer does not sell beer for the non-resident house, but buys it himself, and then in turn sells it himself to his own customers, he is not required to be licensed under Section 186.

Section 185 applies to non-residents who sell at wholesale tobacco for delivery in this State. I under-tand that the dealer to whom you refer is a non-resident, who travels and solicits wholesale orders in Maryland, and when he gets them, turns them over to local jobbers, who then buy and receive the tobacco from the non-resident dealer, and deliver it to the Maryland customers. Under these circum-tances I think that the non-resident dealer is selling his tobacco at whole-ale for delivery in this State, and that he must be licen-ed under section 185.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LIQUORS.

LIQUORS—GALLON A MONTH LAW, REPEAL OF AS TO TALBOT AND QUEEN ANNE'S COUNTIES.

May 15, 1916.

Ralph Robinson, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of May 12, referring to the Act of 1916, ch. 148. I have considered the different suggestions you make relative to this law, its constitutionality and effect, and I beg to give you my views upon each of them.

1. Your first point is that the Act does not apply to Queen Anne's County.

The title indicates that the Act is to repeal the gallon a month law in so far as it relates to shipments to residents or tax-payers of *Talbot and Queen Anne's County*. The Act itself repeals the gallon a month law to the extent that it prohibits shipments into *Talbot County* for individuals, etc., who are residents or tax-payers of *Talbot County and Queen Anne's County*, but preserves the gallon a month law with respect to shipments into *Talbot County and Queen Anne's County* for individuals, etc., who are not residents or tax-payers of *Talbot County and Queen Anne's County*.

Of course, the omission of Queen Anne's County in the first portion of the enacting clause was a mistake, because the law was really intended to apply to both counties; but the question in this connection is whether the language of the Act, as a whole, applies so clearly to Talbot County only, that there is no room for construction, or whether the whole language used shows the legislative intent that the Act should apply to Queen Anne's County as well as to Talbot County.

While the question is certainly not free from doubt, I think that a consideration of the body of the Act, in which both Talbot and Queen Anne's Counties are mentioned together three times, and of the title (which should also be considered,

Waters vs. Laurel, 93 Md. 221, 224), in which both counties are also mentioned together, shows that the legislative intent was to repeal the gallon a month law as to both Talbot and Queen Anne's Counties. In my opinion this is the proper construction and effect of the law.

As bearing upon the question, the following authorities are in point:

Overton vs. Harrington, 126 Md. 32, 35;
Criswell vs. State, 126 Md. 103, 107;
State Tax Com. vs. Harrington, 126 Md. 157, 166;
Purnell vs. Shriver, 125 Md. 265, 270;
Shehan vs. Tanenbaum, 121 Md. 283, 285;
Mitchell vs. State, 115 Md. 360, 364;
Storck vs. Baltimore, 101 Md. 476, 482;
State vs. Tag, 100 Md. 388, 392;
Waters vs. Laurel, 93 Md. 221;
Maxwell vs. State, 40 Md. 273.

2. You next suggest that the Act of 1916 is not merely a repeal of the gallon a month law as to the two counties in question, but is an amendment to the gallon a month law; and that this being so, the Act of 1916 does not comply with Article III, sec. 29, of the Constitution, which provides that "it shall be the duty of the General Assembly, in amending any article or section of the Code of Laws of this State, to enact the same as the said article or section would read when amended."

In the first place, the gallon a month law, Act 1914, ch. 831, is no part of and is not contained in the "Code of Laws of this State," and, therefore, even if the Act of 1916 is an amendment of the Act of 1914, nevertheless it is not an amendment of "any article or section of the Code of Laws of this State."

In the second place, I think that this provision of Art. III, sec. 29, of the Constitution is not mandatory, but is directory only.

Hardesty vs. Taft, 23 Md. 512, 525;
Anderson vs. Baker, 23 Md. 531, 571, 585;
Co. Commrs. vs. Meekins, 50 Md. 28, 45.

Finally, the point that the Act of 1916 is really an amendment of the gallon a month law is based on the fact that the Act of 1916 in terms only applies to "spirituous, vinous, fermented, malt or intoxicating liquors," whereas the gallon a month law in terms applies not only to these but also to "any mixture thereof containing alcohol for beverage purposes." And the result you suggest is that under the Act of 1916 it would be *lawful* to ship into the two counties in question, for residents or tax-payers thereof, "spirituous, vinous, fermented, malt or intoxicating liquors," in any quantities at all, but *unlawful* to ship, to such residents or tax-payers, "any mixture thereof (i. e., of such liquors) containing alcohol for beverage purposes," except under the Act of 1914; and furthermore, that it would be *lawful* to ship "any mixture thereof containing alcohol for beverage purposes" into the two counties in question for persons who are *not* residents or tax-payers of such counties.

The gallon a month law prohibits the shipment of "any spirituous, vinous, fermented, malt or intoxicating liquors, *or any mixture thereof* containing alcohol for beverage purposes, in any quantity whatever." The law then proceeds in sections 1 and 2, to authorize the shipment for personal use of one gallon a month of "spirituous, vinous or fermented liquors," and of six dozen pint bottles a month "of any malt liquor," but does not in this connection authorize the shipment of *mixtures* thereof in any quantities at all. Finally, towards the end of section 2, the carriers are prohibited from delivering packages containing "spirituous, vinous, fermented, malt or intoxicating liquors, *or any mixtures thereof* containing alcohol for beverage purposes," without labeling the same; and the same language is repeated in section 3.

These clauses last mentioned doubtless authorize the shipment of *mixtures* of the liquors in question in quantities not exceeding respectively one gallon a month or six dozen pint bottles a month, although the portions of the law expressly authorizing such quantities to be shipped do not mention *mixtures* at all. If this is the proper construction, and I think it is, it can only be reached by construing the authority to ship

one gallon a month of "spirituous, vinous or fermented liquors" and six dozen pint bottles a month of "any malt liquor" (sections 1 and 2), as including also *mixtures* of such liquors, although such mixtures are not specifically authorized to be shipped at all.

I think that in the same way the words "spirituous, vinous, fermented, malt or intoxicating liquors" in the Act of 1916 should be construed as including "any mixture thereof containing alcohol." In other words, that the same construction ought to be placed upon these words in the Act of 1916 as is placed upon them in the Act of 1914; with the result that the Act of 1916 would permit the shipment into Talbot and Queen Anne's Counties of the liquors in question, *and also of any mixtures thereof* containing alcohol, without restriction as to quantities, provided only they are for residents or tax-payers of such counties.

If this construction is right, then the Act of 1916 is not an amendment of the Act of 1914, in the particular you suggest, but is simply a repeal of the Act of 1914 as to residents and tax-payers of the two counties affected; and in this event no question of non-compliance with Art. III, sec. 29 of the Constitution, with respect to the form of amendatory laws, would arise.

If this construction is not right, then, for the reasons already given, the Act of 1916 would not on this account be void (because the constitutional provision does not apply, and in any event is only directory); and the result would be that the liquors enumerated could be shipped into the counties in question without restriction as to quantities, but that the mixtures thereof could not be so shipped, except in the quantities authorized by the Act of 1914. Even if this distinction exists, it could not, in my opinion, invalidate the Act of 1916. But, as already stated, I do not think that the Act of 1916, properly construed, admits of any such distinction.

3. You next suggest that the subject of the Act of 1916 is not described in its title, because the title indicates a law to *repeal* the Act of 1914 as to residents or tax-payers of Talbot and Queen Anne's Counties, whereas the law itself is an

amendment, in the particulars already discussed, of the Act of 1914. I have already stated the reasons why I do not think that the Act of 1916 is an amendment of the Act of 1914, but that it is simply a repeal of the Act of 1914 so far as shipments to residents or tax-payers of Talbot and Queen Anne's Counties are concerned. The same reasons lead me to the opinion that the Act of 1916 is properly described in its title.

4. The final suggestion you make relates to whether or not the State can authorize shipments of the liquors in question, without restriction as to quantity, to bona fide residents or tax-payers of the two counties affected, and at the same time prohibit the shipment thereof, except in accordance with the gallon a month law, to those who are *not* bona fide residents or tax-payers.

In my opinion this is a lawful classification.

I fully appreciate, of course, the importance to the carriers of the considerations you mention, and it is for this reason that I have troubled you so fully with my views upon them.

In case my opinion shall be requested by the State's Attorney of either of the counties affected, it will be to the effect:

1. That the Act of 1916 is valid legislation.

2. That it applies to both Talbot and Queen Anne's Counties.

3. That it repeals all of the provisions of the gallon a month law so far as concerns shipments to bona fide residents or tax-payers of these two counties, and authorizes the shipment to such bona fide residents or tax-payers of "spirituous, vinous, fermented, malt or intoxicating liquors, or any mixture thereof containing alcohol for beverage purposes," without restriction as to quantity.

4. That the shipment of such liquor, and mixtures thereof as aforesaid, into either of such counties to "corporations, firms, clubs, associations or individuals who or which are not bona fide residents or tax-payers" thereof, except as may be authorized by the Act of 1914, ch. 831, is unlawful; and that the

Act of 1914, ch. 831, still applies to such shipments precisely as if the Act of 1916 had never been passed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LIQUORS—GALLON A MONTH LAW DOES NOT APPLY TO "SEABOARD."

July 22, 1916.

Ralph Robinson, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of June 23rd, asking what will be the attitude of the prosecuting officers of the State and counties towards the steamship companies you represent, with respect to the handling by them of the product of the Monumental Brewing Company, known as "Seaboard," in view of the Act of 1914, Ch. 831 (the gallon-a-month law), as amended by the Act of 1916, Ch. 148.

In considering this question I have had the benefit of the views of Mr. Eli Frank, attorney for the Monumental Brewing Company, and the citation of numerous authorities by him, and have also made a careful examination of the authorities myself.

"Seaboard" is a fermented liquor, is for beverage purposes, and contains some alcohol. According to the analysis of Dr. Arthur Lee Browne, it contains .36% of alcohol by volume and .28% of alcohol by weight, or less than ½ of 1% in both cases. It may, I understand, be regarded as entirely non-intoxicating according to the recognized definitions of intoxicating liquors. Grape juice and ginger ale, according to Dr. Browne, frequently contain as much and often more alcohol than "Seaboard."

The Act of 1914, Ch. 831, as amended by the Act of 1916, Ch. 148, prohibits the shipment into certain designated counties of Maryland of "any spirituous, vinuous, fermented, malt or intoxicating liquors or any mixture thereof containing alcohol for beverage purposes," in quantities exceeding one gallon a

month or six dozen pint bottles a month, as the case may be, to any one person.

The authorities are in some conflict as to whether the Maryland Statute should be construed to prohibit the shipment of fermented liquor, which contains any percentage of alcohol at all, however small, or whether the statute applies to intoxicating liquors only.

6 L. R. A. (N. S.), 186, Case Note;
20 L. R. A. (N. S.), 1146, Case Note;
26 L. R. A. (N. S.), 872, 890, 895, Case Note;
34 L. R. A. (N. S.), 890, Case Note;
46 L. R. A. (N. S.), 759, Case Note;
48 L. R. A. (N. S.), 302, 308, Case Note;
Joyce, Intoxicating Liquors, sections 9, 10, 38-42;
Woollen & Thornton, Intoxicating Liquors, Secs. 1-48, 961 n. 73, 962, 963;
23 Cyc. 60, 228, 230;
20 L. R. A. 645, 647;
Sarlls vs. United States, 152 U. S. 570;
Perkins vs. Barr, 126 Md. 91.

In view of this conflict of authority it is, of course, not easy to predict which view our courts would take; and I do not understand that it would be my duty to control any prosecution which the local authorities might deem proper to institute in the premises.

Having regard, however, to what I under-tand to be the purpose and spirit of the Act of 1914, Chap. 831, and to what seems to me to be the correct interpretation of that act, I will, if asked for an opinion by any of the local State's Attorneys, advise that in my judgment the said Act was not intended to apply to "Seaboard" (as the analysis submitted to me shows "Seaboard" to be constituted), and that in my judgment the common carriers should not be prosecuted for shipping "Seaboard" into counties covered by the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LIQUORS—RIGHT TO CARRY THROUGH DRY COUNTY.

July 6, 1916.

Ernest Ray Jones, Esq.,
Oakland, Maryland.

DEAR MR. JONES: I have your favor of June 3rd.

As I under-stand it, what you want to stop is the carriage through Garrett County of liquors in wagons and cars operating between points in Pennsylvania and points in Allegany County, the liquor not being sold or used in any way in Garrett County, but being simply carried over the highways of Garrett County.

It is possible that this carriage might, under the Wilson law (upheld in 205 U. S. 93), be stopped by statute, although the decisions seem to be in conflict as to whether the Wilson law applies except when the liquor has reached its destination.

7 Cyc. 440.

But assuming that such a statute, applying only to the *carriage* of liquor through Garrett County, would be valid, it still seems to me that the Act of 1916, Ch. 156, (which I understand is the only statute involved), does not undertake to do this. I would construe that act as applying to liquor carried or brought into Garrett County as the place of destination, and not simply in transit.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURE CENSORS.

MOTION PICTURE CENSORS—LIABILITY FOR DAMAGES.

July 14, 1916.

Mrs. Marguerite E. Harrison,
Secretary, Board of Motion Picture Censors,
204 East Lexington Street, Baltimore, Maryland.

DEAR MRS. HARRISON: As requested by you, I have considered the question whether or not the Board of Motion Picture Censors can be held liable for damages to films while under examination by the Board.

I am quite clearly of the opinion that the Board cannot be held liable in such cases. The Board is an agency of the State, exercising public powers, and under the law all of the funds coming into the Board's hands are appropriated to the performance of the Board's public duties, and cannot be diverted to the payment of claims for damages to films.

If, however, any films are damaged through the carelessness of any employee of the Board, then such employee could be sued personally for the damage.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURE CENSORS—POSTERS.

July 10, 1916.

Charles E. Harper, Esq.,
Chairman, Board of Motion Picture Censors,
204 East Lexington St., Baltimore, Md.

DEAR SIR: I understand from you that on July 8, 1916, Mrs. Harrison, the Secretary of your Board, saw what she considered to be an exceedingly immoral poster at the Dixie Theatre, 312 W. Baltimore Street. She requested the lady manager, who was there, to submit the poster to the Board, in order that the whole Board might pass upon it, but the manager refused to do so.

I beg to advise you that section 15 of the Motion Picture Law provides that "no banner, poster or like advertising matter shall contain anything that is immoral or improper," and that a copy of such poster "shall be submitted to the Board;" and section 20 imposes a fine of not less than $25 nor more than $50 for the first offense of any person who violates any of the provisions of the law. For each subsequent offense the fine is not less than $50 nor more than $100.

Your Secretary was absolutely within her rights in requesting the manager of the Dixie to submit the poster in question to the Board, and in declining to do so the manager violated the law, and subjected herself to the fines above mentioned.

I further advise you that the law gives your Board full power to require any banner, poster or like advertising matter, used in connection with moving pictures, to be submitted to your Board, and that you also have power to adopt a rule to the effect that when such a requirement is made of any exhibitor, then, pending the Board's approval, the poster in question must not be shown.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURE CENSORS—PREMIUMS ON BONDS.

August 17, 1916.

Hon. William F. Stone,
Board of Motion Picture Censors,
204 E. Lexington St.,
Baltimore, Maryland.

DEAR MR. STONE: I have your note of August 11, asking whether the premiums on the bonds given by the members of the Board of Motion Picture Censors are proper charges against the funds of the Board. In my opinion they are. This is in accordance with the established practice of the Comptroller's office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Motion Picture Censors—Traveling and Hotel Expenses.

June 30, 1916.

Hon. William F. Stone,
Treasurer, Md. State Board of Censors,
Western National Bank,
Baltimore, Maryland.

Dear Sir: Answering your request for my opinion as to whether a member of the Board of Censors can charge the funds of the Board with traveling expenses incurred in going from his home elsewhere to your offices in Baltimore and back, and with hotel expenses incurred while in Baltimore, I beg to reply that such expenses are not proper charges against the funds of the Board.

Expenses of this kind must be borne by the member personally. They are not incurred in connection with the business of the Board, and it is only expenses incurred in connection with the business of the Board which can be charged against the funds of the Board. This is not only clear under the censorship law, but it is in accordance with previous rulings by me in similar cases, and with rulings of the State Comptroller in similar cases.

Very truly yours,
Albert C. Ritchie, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—DEPUTIES' POWER TO ARREST.

August 21, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR MR. BAUGHMAN: I have your favor of August 17th. I presume that your motor cycle men are the deputies provided for by section 137 of the Act of 1916, Ch. 687. Such deputies have the power to arrest drivers of horse drawn vehicles for any violation of the motor vehicle or traffic laws of the State, including the case you mention, where the vehicle is being driven on the wrong side of the road.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—FINES and COSTS, AMOUNT AND DISPOSITION OF—SUNDAY HEARINGS—NON-RESIDENT OPERATORS.

June 26, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: I have considered the several questions about which you conferred with me some days ago, and now beg to advise you as to each of them, this opinion to be taken as of July 1, 1916, when the new Motor Vehicle Laws take effect.

1. *Amount of Fines which Justices of the Peace may impose.* The fines which may be imposed for violations of the Motor Vehicle Laws are set forth in connection with the various provisions of those laws. Where a minimum fine is provided for any offense, the Justice has no power to impose any smaller fine than the minimum, and likewise where a maximum fine is provided for, the Justice cannot impose any fine

in excess of the maximum. If section 521 of Article 27 of Bagby's Code, authorizing courts to impose less than the minimum penalty, applies to Justices in the trial of ordinary cases, because of Article 52, sec 12 of the Code, still I do not think it applies to offenses under the Motor Vehicle Law tried before Justices, because sec. 159 of Act 1916, Ch. 687, requires Justices to impose the fines therein provided.

2. *Amount of Costs which may be imposed in trials before Justices of the Peace.* The Act of 1916, Ch. 687, provides, in Section 162, the costs which Justices of the Peace are authorized to charge under the Motor Vehicle Laws. The costs authorized by Section 162 take the place of any and all costs which Justices, under other provisions of law, are entitled to charge in cases not involving violations of the Motor Vehicle Laws. In other words, in cases involving violations of the Motor Vehicle Laws, Justices are authorized to charge the costs set forth in that section, and they are not authorized to charge any other or additional costs.

The same section specifies the fees, and the only fees, which Constables are entitled to charge in cases involving violations of the Motor Vehicle Laws.

The costs thus authorized to be charged are as follows:

	Contested Cases.	*Uncontested Cases.*
Warrant	.25 cents	.25 cents
Trial	.25 cents	
Oath to *all* Witnesses	.10 cents	
Entering Judgment	.10 cents	
Entering plea of Guilty and Judgment		.10 cents
	.70 cents	.35 cents

In addition to these costs, the Constable's fee, where the arrest is made on warrant, is 75 cents, and where the arrest is made without warrant, 25 cents. There is no difference, in

respect to Constable's fees, between contested and uncontested cases. Consequently:

Costs in contested cases, arrest on warrant	$1.45
Costs in contested cases, arrest without warrant	.95
Costs in uncontested cases, arrest on warrrant	1.10
Costs in uncontested cases, arrest without warrant	.60

In no event can the costs exceed these amounts, except that the Justices are entitled to charge the following additional amounts, and no more, for the following specific services, if rendered:

For each continuance	10 cents.
For each release of accused on bail	25 cents.
For each copy of warrant	10 cents.
For each copy of docket entries	10 cents.

The amount of costs as aforesaid is not affected by the fact that the Justice may be paid a fixed salary in lieu of fees, as is the case in Baltimore City (Charter Sec. 636), and in some of the counties; or that the Justice may receive his compensation by fees, as is the case in other counties. The costs are the same, regardless of how the Justice is paid his compensation.

3. *Disposition of Fines.* This is covered by Sec. 139 of Ch. 687 of the Acts of 1916. All fines, penalties and forfeitures must be paid over by the Justice, within five days after the receipt thereof, to the Commissioner of Motor Vehicles, together with a statement setting forth the action or proceeding in which such monies were collected, the name and residence of the defendant, the nature of the offense, and the fine, penalty, forfeiture or sentence, if any, imposed.

All monies so received by the Commissioner of Motor Vehicles, except such as shall be necessary for his salary and the expenses of his office, shall be accounted for and remitted by the Commissioner to the State Treasurer, and they then constitute a special fund for road work.

If fines, penalties and forfeitures are not paid over to the Commissioner within five days after the receipt thereof, then the Commissioner is authorized to take, in the name of the State, all steps necessary to enforce their collection. These

steps may be: (a) an action at law to recover the amount of fines withheld; (b) an action on the delinquent official's bond: (c) a proceeding against the delinquent official for malfeasance in office.

In making their returns to the Commissioner, the Justices should, in each case, state separately the amount of fine or penalty imposed and the amount of costs.

4. *Disposition of Costs.* The Motor Vehicle Laws do not provide how costs are to be disposed of. Consequently, this is regulated by local laws, as follows:

(*a*) *In Baltimore City.* All costs paid to the Station House Justices in Baltimore City must be accounted for to the Board of Police Commissioners of Baltimore City (Charter, Sec. 646), and they form part of the Police Pension Fund (Charter, Sec. 750).

(*b*) *In the Counties.* In the counties, this is usually regulated by the local laws applicable to the different counties. In those counties where the Justices are paid fixed salaries, it is usually provided that the costs shall be paid to the County Commissioners. In counties where the Justices do not receive fixed salaries, they may be authorized to retain their costs.

In no event, however, does the Commissioner of Motor Vehicles receive any part of the costs, and he is under no duty with respect to their disposition.

5. *Sunday Hearings.* In Baltimore City, the Station House Justices are expressly authorized to sit on Sundays (Charter, Sec. 630). I know of no similar law applicable to the counties. I think, however, that Section 159 of the Act of 1916, Ch. 687, requiring that persons taken into custody in the counties, "shall *forthwith* be taken" before the nearest Justice, and "be entitled to an *immediate* hearing" authorizes trials to be held on Sundays before Justices in the counties.

7. *Non-resident Operators.* A non-resident operator is only entitled to the benefit in Maryland of his non-resident operator's license when he is driving his non-resident car, displaying the identification markers of the State of its registration; and then

only in case such State permits licensed Maryland Operators to drive Maryland registered cars in such State, without further license. A non-resident operator cannot drive in Maryland a Maryland registered car upon his non-resident operator's license. He can only use his non-resident operator's license in Maryland when driving his non-resident registered car. If he wishes to drive in this State a Maryland registered car, he must secure a Maryland operator's license. (Act 1916, Ch. 687, Sec. 146.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—FINES, DISPOSITION OF.

August 2, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: Confirming my oral conversation with you this morning, I beg to advise you that, in my opinion, all fines imposed for violations of the provisions of section 148 of the Act of 1916, ch. 687, relating to brakes, horns, lights and mufflers, must be paid by the local magistrates to you, as Commissioner of Motor Vehicles.

In my letter to you of July 7 I did not mention section 148, not because fines for its violation are not payable to you, but because I was then only advising you as to the disposition of fines imposed for violation of the provisions of the law relating to speed, licensing, registration and fees.

All fines imposed under any of the provisions of the state law, in cases where no conflict exists between the state law and some local law, ordinance or resolution, must, under the state law, always be paid to the Commissioner of Motor Vehicles.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General*

MOTOR VEHICLES—FOREIGN DIPLOMATS, THEIR CHAUFFEURS EXEMPT FROM ARREST.

August 16, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: You asked me sometime ago whether the chauffeurs of foreign public ministers were exempt from arrest for violations of the state motor vehicle law. My delay in answering has been due to the fact that I have been in communication with the State Department at Washington, in order to ascertain its rulings upon certain Federal Statutes which are applicable, namely, U. S. Comp. Statutes, sections 7611, 7613, 1210.

The cases I submitted to the State Department were the following:

1. When the foreign minister is in the car.

2. When the foreign minister is not in the car, and the chauffeur is operating it alone, (*a*) on business for the foreign minister, (*b*) for his own pleasure.

I have received the following reply from the State Department:

> "After consideration of the matter, the Department does not find that it has made rulings upon all of the situations which you mention, but is pleased to advise you that according to its view and in line with what it understands to be international usage in such matters, the Department is of the opinion that in all the above situations the chauffeur of a foreign minister should be regarded as immune from arrest irrespective of the statutory provisions which have been enacted in the United States and which seem to bear upon the matter. However, after the termination of such employment, the chauffeur of a foreign minister would be subject to arrest for a violation of the law committed during the time of his employment.
>
> "The authorities upon international law have attached great importance to the immunity from local

jurisdiction of the vehicular equipage of foreign diplomatic representatives as essential for their freedom of movement, which constitutes such a large part of their independence in the State where they represent their governments. Therefore, the Department considers, that irrespective of statutory enactments, the latitude in this respect granted by the generally accepted international usage should govern the action of the authorities in the United States in dealing with the servants of foreign diplomatic representatives whose duty it is to convey their employers from place to place. It is recognized that some inconvenience may in given cases result from an exercise of this indulgence, but presumably any dereliction committed by a chauffeur of a foreign minister, if called to the latter's attention through the Department, would result in a satisfactory adjustment of the matter."

I think that these rulings of the State Department should be followed in this State, and that accordingly the chauffeurs of foreign ministers should be regarded as exempt from arrest in all of the above cases.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR OPERATORS IN POLICE AND FIRE DEPARTMENTS.

July 15, 1926.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the application of Section 135 to the motor vehicles and operators of the Police and Fire Departments of Baltimore City.

The motor vehicles of these Departments are not exempted from any provisions of the State law except the provisions of section 141 requiring the payment of registration fees. (See Section 135.) Identification markers, approved by the Com-

missioner of Motor Vehicles, must be secured and displayed, but no fee can be charged therefor.

The operators of the cars of the Police and Fire Departments must be licensed under Section 143, and the fees prescribed by Section 144 must be paid. The law clearly makes no exemption in this case. The operators of these cars must and ought to be licensed just as in the case of all other operators.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR OPERATORS CARRYING UNITED STATES MAILS.

August 1, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you orally the other day, I have considered the question of whether or not chauffeurs driving motor vehicles engaged in carrying United States mails, either by contract or directly for the Post Office Department, are required to take out operators' licenses under the Act of 1916, Ch. 687, sections 143 and 144.

The license provided for by these sections is required of all persons who operate motor vehicles upon any highway in this State, without any exception whatever, and the license is required under the State's police power, for the protection and safety of its citizens and of the public.

The exemption of Federal agencies from State regulation only applies where such State regulation can properly be said to interfere with or impair the efficiency of the Federal agencies in performing their public functions. I do not consider that the efficiency of carriers by motor vehicle of the United States mails would be interfered with or impaired at all by subjecting them to the requirement of being licensed under the Maryland

law; and inasmuch as the law by its terms clearly applies to them, it is my opinion that they should be required to take out operators' licenses.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR OPERATORS, SUSPENSION OR REVOCATION THEREOF.

August 31, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered your power to suspend or revoke operator's licenses without hearing, upon convictions not appealed from.

Section 145 of the Act of 1916, Ch. 687, provides, in the second paragraph, that "whenever any person licensed to operate a motor vehicle upon the highways of this State shall have been convicted of any violation of any of the provisions of this subtitle, said Commissioner may, in his discretion, suspend or revoke the operator's license of such person."

In my opinion this authorizes you, in your discretion, to suspend or revoke the operator's license of such person upon the fact of his conviction alone, without any hearing before you at all. In other words, you may, if you deem proper, treat the fact of conviction as of itself sufficient cause to suspend or revoke the license.

While you have, I think, this discretionary power, yet I hardly think that it would be advisable to adopt a rule that a conviction should always result in the suspension or revocation of the license. I think that you should rather use your judgment in each case as it arises, as to whether you will suspend or revoke without a hearing or whether you will give a hearing first. If, in any case, the circumstances are such that you conclude that there ought to be either a suspension or a revocation by reason of the conviction alone, without any hearing before you, then you have the necessary power.

In all cases, however, which do not involve a conviction, you can only suspend or revoke after a hearing, as provided in the first paragraph of section 145.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LOCAL LAWS AS TO SPEED, REGISTRATION, LICENSES AND FEES REPEALED—DISPOSITION OF FINES.

July 7, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the effect of the Act of 1916, ch. 687, known as the General Motor Vehicle Law of Maryland, upon certain local laws, ordinances, or resolutions relating to motor vehicles in the counties, cities and towns of this State, and beg to advise you as follows:

The said law supersedes and repeals (see section 133 and also section 2 entitled "Repeal") each and every local law, ordinance or resolution relating to the following three subjects:

1. The speed at which motor vehicles may be operated. This subject is now controlled throughout the State by sections 149 and 150 of the State law.

2. The registration or licensing of motor vehicles and the operators thereof. This subject is now controlled throughout the State by sections 140, 142, 143, 145, 146 and 147 of the State law.

3. The taxation, registration fees, license fees, assessments and charges of every kind for the use of a motor vehicle upon any public highway or highways in this State. This subject is now controlled throughout the State by sections 141, 142 and 144 of the State law.

All existing local laws, ordinances or resolutions upon any of the subjects covered by any of the above sections of the State law (that is, sections 140, 141, 142, 143, 144, 145, 146, 147, 149 and 150), are superseded and repealed by the State

law, and can no longer be enforced; and any local law, ordinance or resolution which any county, city or town may hereafter pass upon any of the said subjects, will be void and unenforceable.

All prosecutions throughout the State, relating to any of the matters covered by any of the sections above enumerated, must necessarily be taken under the said sections of the State law, and not under any local laws, ordinances or resolutions; and all fines and penalties imposed and collected under such prosecutions by Justices of the Peace, Magistrates or Police Justices must in every case be paid over, within five days after the receipt thereof, to the Commissioner of Motor Vehicles, in accordance with section 139 of the State law.

It is proper to add that section 133 of the State law authorizes incorporated cities and towns within the State to prescribe and enforce "reasonable traffic regulations," applicable to all vehicular traffic, motor vehicles included, provided (1) they do not, so far as motor vehicles are concerned, relate to any of the subjects above mentioned, and provided also (2) they do not involve any charge of any kind for the use of the highways.

Under this power to prescribe reasonable traffic regulations, subject to the two limitations just mentioned, local ordinances or resolutions may doubtless be passed upon subjects not covered at all by the State law, and possibly also, in some cases, upon subjects (other than the three subjects mentioned in the beginning of this letter) which are referred to in the State law.

Rosberg vs. State, 111 Md. 394;
23 Cyc. 72-74.

It is difficult to define in advance the precise extent to which such local traffic regulations will be valid, and the safe course is to lay down no general rule upon the subject, but to determine in each case as it arises whether any given local regulation that may exist or may be hereafter passed is valid or not. As such cases actually arise in the future I will be glad to give you an opinion upon them.

Of course, all fines imposed under any of the provisions of the State law, in cases where no conflict exists between the State

law and some local law, ordinance or resolution, must always be paid to the Commissioner of Motor Vehicles.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—LOCAL LICENSE FEES REPEALED.

November 22, 1916.

Alexander R. Hagner, Esq.,
Attorney for Mayor and City Council of Hagerstown,
Hagerstown, Maryland.

DEAR MR. HAGNER: I beg to reply to your favor of November 20th, in which you ask my opinion as to the effect of Chapters 610 and 714 of the Acts of 1916 upon an ordinance of Hagerstown requiring a license fee to be paid the town by passenger and freight motor busses, for the use by them of the streets.

The Act of 1916, Chap. 610, relating to motor vehicles used in the public transportation of passengers for hire over the streets and roads of incorporated towns and cities, provides in Section 1 that the license fees there prescribed shall be paid to the Commissioner of Motor Vehicles, "and no other additional fees, license or tax shall be charged by the State or any municipal subdivision thereof except the regular property tax in respect to such vehicles or their operation."

The Act of 1916, Chap. 714, contains a similar provision in Section 1 with respect to motor vehicles used in the public transportation of merchandise or freight over the streets and roads of incorporated towns and cities.

By Section 3 of both Acts the fees are to be accounted for by the Commissioner to the State Treasurer, and the State Treasurer is to pay annually "to the Mayors of the respective towns and cities in the State of Maryland all moneys collected for the use of the roads and streets of said towns and cities, and all such moneys so collected shall be used for the maintenance of said roads and streets over which said motor vehicles shall operate."

In my opinion these Acts repeal any ordinances of the town of Hagerstown imposing fees for the use of the streets upon passenger and frieght motor busses operated for hire, and no fees can now be legally collected under ordinances of this kind.

You will observe, of course, that the town of Hagerstown will ultimately receive the fees imposed by the two Acts in question for the use of your roads and streets.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION CERTIFICATE. NO PENALTY FOR NOT CARRYING.

July 14, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the question whether or not any penalty is provided for the violation of those provisions of Section 140 of the Motor Vehicle Law, Act 1916, Ch. 687, requiring that certificates of registration "shall at all times be carried upon such motor vehicle, and shall be subject to examination upon demand by any proper officer as hereinafter provided."

This requirement as to *registration certificates*, with the omission of the words "as hereinafter provided," seems to have first appeared in section 133 of the Act of 1910, Ch. 207, p. 171 (Bagby's Code, Vol. II, Art. 56, Sec. 133), along with the provision of Section 137 of the same Act requiring *operator's license certificates* to be similarly carried and exhibited (Bagby's Code, Vol. II, Art. 56, Sec. 137). Section 140 of the Act of 1910, Ch. 207, prescribed a penalty for the violation of both of these requirements, as well as other requirements of the law, the fine being not more than $50 for the first offense of failing to carry and exhibit the registration certificate, and not more than $200 for the first offense of failing to carry and exhibit the operator's license certificate. At that time there was, therefore, no difficulty about prosecuting for any violation of the

provisions of either of these sections, and Hendrick vs. State, 115 Md. 552, is an instance of a prosecution under both.

The law as it thus stood was not affected by the Act of 1912, Ch. 133, nor by the Acts of 1914, Ch. 564 and 842.

The Act of 1916, Ch. 687, however, repealed and re-enacted all three of these Sections 133, 137 and 140o of the Act of 1910, Ch. 207, as the same were contained in Bagby's Code, Vol. II, Art. 56, that is, sections 135, 139 and 156 of said Article 56. Section 135, relating to registration certificates, became Section 140 of the present law, section 139 relating to operator's license certificates become Section 143 of the present law, and some of the provisions of Section 156 became Section 161 of the present law. But the provisions of Section 156 imposing fines for violations of the old law were omitted entirely from Section 161 of the new law, the scheme of the new law being to have each section provide the fines for its own violation.

The scheme was carried out with respect to most of the requirements of the present law. For instance, the failure to carry and exhibit operator's license card certificate, as required by Section 143, is penalized at the end of that section.

Section 140, however, requiring the registration certificate to be carried and exhibited, contains no penalty for failure to do so, and there is now no other provision in the law imposing a penalty for such offense.

The offense of failing to carry and exhibit the registration certificate is purely statutory, and it is elementary that no fine can be imposed for the violation of a statutory offense, unless the statute provides for one. Inasmuch as there is no statute providing any fine or penalty for failure to carry the registration certificate required by Section 140, I am of opinion that no fine or penalty can be imposed for failure to observe this requirement of section 140.

The omission should be corrected at the next session of the Legislature.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION OF HOSPITAL AMBULANCES.

December 21, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: I beg to confirm the oral opinion I gave you the other day with reference to the classification of hospital automobile ambulances.

The Act of 1916, Chap. 687, Sec. 141, Class A, requires a registration fee of fifty cents per horse power "in the case of all motor vehicles having pneumatic tires," and Class F provides that the fee shall be $1.00 per horse power "in the case of motor vehicles operating for the purpose of transporting persons for hire upon any of the public highways of this State, other than more vehicles operating on fixed schedules."

Whenever a motor vehicle operates at all for the purpose of transporting persons for hire, and has not a fixed schedule, then it comes under Class F, even though it may also carry persons free. Only those motor vehicles which do not operate for hire at all come under Class A. Motor vehicles which operate both free and for hire, and have no schedule, necessarily come under Class F. The test is, whether they operate for hire. If they do, they come under Class F, and they cannot be taken out of Class F because they may also carry persons free.

The extent to which they carry free is immaterial. If they carry at all for the purpose of hire, then Class F applies. Otherwise a motor vehicle carrying for hire, could have itself classified under Class A by simply also carrying persons free.

I understand that the hospital automobile ambulances, which, of course, have no fixed schedules, do a large percentage of their carrying free, but that they also operate for the purpose of transporting persons for hire. The fact that they do this necessarily puts them in Class F.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—REGISTRATION OF JITNEYS—FIXED ROUTES AND SCHEDULES.

October 26, 1916.

William Curran, Esq.,
463 Calvert Building,
Baltimore, Maryland.

DEAR MR. CURRAN: I beg to reply to your favor of October 18th.

I understand from your letter that the motor vehicles to which you refer carry passengers for hire, and are commonly known as jitneys; that they have a fixed route; that they have not, however, a fixed schedule, in the sense of fixed hours for arriving at and departing from the termini and intermediate points on their route, but that these hours depend upon the extent and exigencies of traffic.

Under these circumstances, you ask my opinion as to whether these jitneys should be registered under the Act of 1916, Ch. 687, Sec. 141, Class F, or under the Act of 1916, Ch. 610.

Class F of Chapter 687 provides for registering, according to horse power, motor vehicles which transport persons for hire "other than motor vehicles operating on fixed schedules, the registration fees of which are fixed by other specific provisions of law."

The other specific provisions of law referred to are Chapters 610 and 714 of the Acts of 1916.

Chapter 610 requires the granting of permits by the Public Service Commission to motor vehicles used in the transportation of persons for hire, and for the registration of such motor vehicles by the Commissioner of Motor Vehicles; and the application for such registration must, among other things, state "the route on which said motor vehicle is to be used," and "the schedule under which it shall be operated during the ensuing year" (Section 1). Such motor vehicles may operate "only on the route and schedule set forth in said application during the year," and may not change "said schedule or route" without permission.

Chapter 714 contains similar provisions as to motor vehicles used in the public transportation of freight.

You contend that the jitneys to which you refer do not operate on "fixed schedules," and, that, therefore, they are not included among the motor vehicles exempted from Class F of Chapter 687, but should be registered under Class F.

I am unable to agree with this contention. In my opinion jitneys such as you describe must be registered under Chapter 610, and not under Class F of Chapter 687.

The object of Chapter 610, and of its companion measure, Chapter 714, was to protect the highways over which motor vehicles with fixed routes operate. This object is shown by Section 3 of both chapters, whereby the fees are distributed among the counties, cities and towns, to be "used for the maintenance of said roads and streets over which said motor vehicles shall operate." This object should be gratified by bringing under Chapter 610 such motor vehicles for passenger hire as, like yours, have fixed routes, as far as this is legally possible.

I think that the proper construction of Section 1 of Chapter 610, requiring motor vehicles used in transporting passengers for hire, to state, in their applications for registration, their route and their schedule, is that whenever such motor vehicles have a route, they must also have a schedule. In other words, the route and the schedule must go together, and no permit can be granted and no registration had of motor vehicles which have a route, unless they also have a schedule.

If this is not the proper construction, then it would be impossible to compute the tax, which Chapter 610 evidently intends to be imposed upon such motor vehicles having fixed routes; because the tax, under Section 1, is computed by multiplying the rate per passenger seat with the total number of miles the motor vehicle will travel. The total number of miles the motor vehicle will travel cannot be ascertained unless the mortor vehicle has a schedule, and hence the motor vehicle having a route must also have a schedule, in order that the tax may be computed and imposed, as the law contemplates, upon motor vehicles carrying passengers for hire over fixed routes.

I am advised that the above is the construction of the Public Service Commission, which, under Sections 1 and 4 of Chapter 610, will issue no permits to jitneys having a route unless they also have a schedule.

This is also the construction of the Commissioner of Motor Vehicles, who, under Section 141 of Chapter 687, has "authority, in disputed cases, to determine the classification in which any motor vehicle belongs;" and he has determined that motor vehicles of the kind you refer to, do not come under Class F of Chapter 687, but do come under Chapter 610.

Being of opinion, therefore, that all motor vehicles carrying passengers for hire which have a fixed route, must under the law also have a fixed schedule, it follows that such motor vehicles as you refer to are not under Class F of Chapter 687; because such motor vehicles as have fixed schedules do not come under Class F, and your motor vehicles must have fixed schedules as the necessary result of their having fixed routes. If they do not have fixed schedules, they cannot either receive a permit or be registered, and hence cannot operate. Therefore, such motor vehicles come under Chapter 610.

I understand that the Public Service Commission, acting under its General Counsel's opinion of July 2, 1916, has ruled that Chapter 610 does not apply to motor vehicles which secured their licenses before July 1, 1916, until the expiration of such licenses on December 31, 1916.

On and after January 1, 1917, therefore, the situation will be that motor vehicles carrying passengers for hire cannot receive a permit from the Public Service Commission, and cannot be registered by the Commissioner of Motor Vehicles, unless they have both a fixed route and a fixed schedule.

The question of what shall constitute a fixed schedule, is, I think, in the first instance for the Public Service Commission, in its discretion, to decide, under Section 4 of Chapter 610. I may say, however, that I do not think that the words "fixed schedules" in Class F of Chapter 687, necessarily mean fixed hours for arrival at and departure from the termini and intermediate points on the route. I think that the words "fixed

schedules" should not be construed too strictly, but that motor vehicles will have fixed schedules if they aim to make a certain number of trips per day, over their route, even though the hours for arrival and departure are not attempted to be scheduled at all.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note.—On January 5, 1916, in the case of State vs. William M. Smith, Criminal Court of Baltimore, Judge Soper held that jitneys come under Chapter 610 of the Acts of 1916. Opinion published in full in Daily Record, January 10, 1917.

MOTOR VEHICLES—REGISTRATION NUMBER OF HOME STATE AND DISTRICT OF COLUMBIA.

July 7th, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the matter referred to in Mr. J. Charles Linthicum's letter of June 30, 1916, to Mr. Zouck, namely, the effect of a District of Columbia registration number upon a non-resident car in addition to the registration number of the owner's home State.

District of Columbia registrations are not recognized in Maryland, both because there is no reciprocity between Maryland and the District of Columbia, as provided by section 146 of the Maryland law, and because in any event section 134 provides that the word "state" in section 146, relating to non-resident owners whose cars are registered in their home states, shall not include the District of Columbia.

The registration in the owner's home State (the District of Columbia excepted) will be recognized in Maryland, under sec. 146, if reciprocity exists between such home state and Maryland, provided the car displays its home registration number and "none other." I do not see any escape from this last requirement under the terms of section 146.

Consequently, if a non-resident car displays in Maryland the registration number of the owner's home state and also the registration number of the District of Columbia, the operator is subject to arrest in Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—RIGHT OF WAY AT INTERSECTING STREETS AND ROADS.

July 12, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR: As requested by you, I have considered the effect of the conflict between Section 14 of Ordinance No. 188 of the Mayor and City Council of Baltimore, approved July 10, 1908, which provides: "On all public streets and highways of the city all vehicles going in a northerly or southerly direction shall have the right of way over any vehicle going in an easterly or westerly direction," and Section 163 of the State Motor Vehicle Law, Act 1916, Chapter 687, which provides: "All vehicles shall have the right of way over other vehicles approaching at intersecting roads from the left, and shall give right of way to those approaching from the right."

The word "vehicle" as used in this latter clause of the state law clearly means "motor vehicles," and motor vehicles, under Section 134, are defined as embracing "all vehicles, including motor bicycles or motorcycles, propelled by any power other than muscular power, except such vehicles as run only upon rails or tracks." The word "roads" as used in said clause is defined, in Section 134, as including "any highway or thoroughfare of any kind used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise."

Consequently, there is a clear conflict between the city ordinance and the state law with respect to the right of way of motor vehicles at intersecting streets in the City of Baltimore.

They cannot stand together, but one or the other must give way.

Section 133 of the state law provides that the provisions of the state law "are intended to be state wide in their effect," and that this provision shall not be deemed as repealed by any act hereafter passed unless "expressly referred to and repealed in terms, or some other clear evidence given of an intent on the part of the General Assembly to change the policy of the State herein declared." Incorporated cities and towns are, however, permitted to prescribe and enforce "reasonable traffic regulations * * * applicable to all vehicular traffic, motor vehicles included," etc.

While incorporated cities and towns may thus prescribe "reasonable traffic regulations," this authority does not extend to any subject which is regulated by the state law, and as to which the state law shows the Legislature's intent that the state regulation shall be exclusive and supreme over contrary local regulation.

The provisions of Section 163 of the state law, as to right of way at intersecting streets, are embraced in a separate part, entitled "Rules of the Road," and clearly apply and were intended to apply to all motor vehicles operating upon any highway or street in this State; and Section 2 of the state law, title "Repeal," provides that "all acts and parts of acts, laws and parts of laws, ordinances and parts of ordinances, inconsistent herewith or contrary hereto, be and the same are hereby repealed to the extent of such inconsistency."

In my opinion, these circumstances, taken in connection with the provisions of Section 133, already referred to, make it clear that the state law supersedes the city ordinance as to right of way of motor vehicles at intersecting streets and highways, and that this subject, so far as motor vehicles in Baltimore City are concerned, is now governed by Section 163 of the state law and not by section 14 of the city ordinance.

The same is true with respect to any local law, ordinances or resolutions which may exist elsewhere in the State on the same subject. All are superseded by section 163 of the state

law, which now contains the requirements, and the only requirements in force anywhere in this State with respect to the right of way of motor vehicles at intersecting roads, highways and streets.

It has been suggested that if four motor vehicles, one coming from each direction, reach a street intersection at the same time, then under the state law none of them will have the right of way, because each much give the right of way to the motor vehicle approaching from the right, so that all must stop, and none can proceed without mutual agreement.

This may be true. It is one of those instances which sometimes occur in applying statutes, the language of which does not cover every conceivable case which may arise. When four motor vehicles, each coming from a different direction, do meet at the same moment at intersecting streets in Baltimore City, it will probably in most cases be at a crossing regulated by a traffic officer, and there will then be no difficulty, because as a practical matter the traffic officer will control the right of way. Where there is no traffic officer, the situation will simply have to be dealt with by the common sense of the driver, and practically there ought to be no real trouble.

Of course, the Legislature makes the laws, and neither your Department nor mine has anything to do with the question of whether the Legislature acted wisely in superseding all local laws on the subject of right of way of motor vehicles at intersecting highways by the state law; but in this connection it may be noted:

1. The city ordinance, giving the absolute right of way to north and south traffic, is hardly calculated to make cars going north and south slow down at crossings, and, therefore, if cars going east and west fail to slow down, as they should do, the danger of accident is increased. But under the state law every car must give the right of way to cars approaching from the right, and this should make all cars, from no matter what direction they may be coming, slow down at every crossing, in order to see whether another car is approaching from the right—thus decreasing the danger of accident.

2. Where a street running northeasterly intersects a street running northwesterly, then a car going northeasterly on one and northwesterly on the other are both "going in a northerly direction," and neither would have the right of way under the city ordinance, but under the state law there would be no difficulty. It may be observed that this is a case which, under the city ordinance, would have to be regulated by the traffic officer or by the practical sense of the operators, exactly like the case, under the state law, of the four cars meeting at the same corner at the same time.

3. The east and west streets in Baltimore are now well paved, whereas formerly the north and south streets only were usually the well-paved streets. There is really no reason why north and south traffic should have precedence over east and west traffic. For example, under the city ordinance, traffic on Baltimore Street has to give the right of way to traffic on all streets which cross it.

4. If the subject is one for local regulation, then such regulations might and doubtless would differ in different localities of the state. But a state-wide law, which simply requires that at every crossing every motor vehicle must be on the look-out for motor vehicles on the right, is uniform throughout the state, is easily known and understood, and can be easily observed. There will, moreover, be no difficulty in ascertaining directions, as must be the case, more or less, where the north and south traffic has the right of way.

These considerations simply tend to show why the Legislature may have thought it better to have one uniform state law upon this subject; but in any event it is, I think, clear that the state law does supersede all inconsistent local laws, ordinances and resolutions.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—SPEED.

August 14, 1916.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St., Baltimore, Md.

DEAR SIR:—I beg to reply to your favor of August 12th. Under the Act of 1916, Ch. 687, section 149, a rate of speed greater than thirty-five miles an hour is always unlawful.

Rates of speed below thirty-five miles an hour may or may not be unlawful, according to the circumstances. If the speed is reckless, or if it is greater than is reasonable and proper, having regard to the width, traffic and use of the highway, or to danger to property, life or limb, or to damage to the highway, then it is unlawful. Otherwise, the rate of speed is lawful. Whether a less rate than thirty-five miles an hour is lawful or unlawful in any particular case, depends, therefore, upon the facts.

Whenever it is shown that the rate exceeds twelve miles an hour in the thickly settled or business parts of cities, or eighteen miles an hour in the out-lying or not thickly settled parts of cities, or twenty-five miles per hour in the open country, then the rate is presumed to be unlawful; and in such case the burden of proof is shifted to the operator to show that the rate, although exceeding twelve or eighteen miles or twenty-five miles an hour, was nevertheless not reckless or not greater than was reasonable and proper under the circumstances.

The law is, I think, quite clear on these points, and in fact Judge McLane has so held in the case of State vs. Offut, decided March 10, 1915, Circuit Court for Baltimore County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY.

POLICE BOARD—RETIREMENT OF OFFICER ALREADY RESIGNED.

November 17, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR SIR: I beg to reply to your recent request for my opinion as to whether the Police Board is authorized to place Mr. Louis V. Paff on the retired list now because of disability resulting from injuries incurred in the discharge of duty in 1890.

I understand that after receiving the injuries in question Mr. Paff, who was a patrolman, resigned in May, 1898, and that the Board accepted his resignation. He made no application for retirement on pension.

The Legislature, however, by the Act of 1902, Chap. 280, authorized the Board to pay Mr. Paff a pension, and the Board did this, under that Act, until August, 1916, when it was advised by Mr. Vernon Cook, then counsel to the Board, that all acts providing for special pensions were void; whereupon the Board notified Mr. Paff, and all others who were the beneficiaries of special pension acts, that such pensions would be discontinued.

The validity of these special pensions acts is now involved in litigation, and pending the result of that litigation your Board is paying no pensions under special acts; but I understand that your Board wishes my opinion as to whether Mr. Paff can now be placed on the retired list for the injuries received by him in 1890, and receive a pension in that way.

The law authorizing retirement on pension is Section 777 of the Baltimore City Charter, as enacted by the Act of 1912, Chap. 567. This section provides for retiring on one-half pay "any officer of police, policeman, detective, clerk or turnkey" appointed by the Board, provided he shall have served faithfully for sixteen years, or shall have been permanently disabled in the discharge of his duty.

Mr. Paff is, of course, not an officer of police or a policeman, because he resigned as such in 1898, over sixteen years ago. Since he has thus resigned, he cannot now be retired. The Board can only retire persons who are officers at the time of retirement. They cannot retire as an officer anyone who, by resignation, has long since ceased to be an officer.

In my opinion, therefore, Mr. Paff cannot now be retired because of the injuries received by him in 1890.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—RETURN OF MONEY STOLEN.

November 24, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR MR. KINSEY: I have investigated the right of Benjamin Franklin to the sum of $90.00 taken from Samuel Cohen and James Hanman at the time of their arrest for larceny in April, 1916.

I understand that Cohen and Hanman were arrested for picking the pocket of Mr. Charles Gemmecker of $90.00. This sum was found on them at the time of their arrest, and taken from them and is now in your property room. Cohen was released on bail, and shortly thereafter Mr. Gemmecker received a registered letter containing $90.00. I assume that this sum was returned to Mr. Gemmecker by Cohen and Hanman, or at their instance. Afterwards, Cohen and Hanman were convicted, and both are now serving prison terms. While in prison, each man, under date of July 18, 1916, addressed the following communication to the Police Board:

> "I, the undersigned, do hereby sell, transfer and assign unto Benjamin Franklin all the money and personal effects taken from me at the time of my arrest, and I hereby authorize and empower you to accept his receipt therefor."

Mr. Harry B. Wolf, attorney for Franklin, has requested the payment of the $90.00 to his client, in accordance with these assignments.

Before paying the money to Franklin, I think that you should secure a letter to your Board from Mr. Gemmecker to the following effect:

> "I hereby certify to your Board that I have been repaid the sum of $90.00 stolen from me in April, 1916, for the larceny of which Samuel Cohen and James Hannan were convicted by the Criminal Court of Baltimore, and are now serving sentence. I have no interest of any kind in any money or effects taken from said Cohen and Hannan at the time of their arrest, and consent to the payment or delivery thereof to them, or to their assignee."

Upon the receipt of a letter of this kind from Mr. Gemmecker, I think that your Board will be fully authorized to pay the $90.00 in question to Franklin, provided, of course, you are satisfied that the assignments to Franklin were executed by Cohen and Hannan.

Mr. Wolf can doubtless satisfy you upon this point, as I believe he saw the assignments signed. He has the assignments, and will present them to you.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD STATION HOUSE JUSTICES DOCKETS.

October 10, 1916.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR SIR: I received your favor of October 4th, asking whether Police Justices in Baltimore City are entitled to retain their Dockets, as their own property, upon the expiration of their terms of office; and if not, whether the Dockets should remain at the Station Houses or must be deposited with the Clerk of the Baltimore City Court.

There is no doubt at all that the Police Justices are not entitled to retain their dockets as their own property. In State vs. Wyman, 2 G. & J. 254, 282, the Court of Appeals held that "the records of our courts of justice are to be considered as public property," and Justices of the Peace, in exercising their criminal jurisdiction, are unquestionably acting as courts of justice.

McBee vs. Fulton, 47 Md. 403, 425-6;
Crichton vs. State, 115 Md. 423, 434;
State vs. Chaney, 93 Md. 71, 74.

And in State vs. Chaney, 93 Md. 71, 74, the court said: "It is the settled policy of the law that the original papers relating to the proceedings before each tribunal, even that of a Justice of the Peace, should be kept together, and with its dockets and records, where there are records, should constitute its archives."

The dockets, being thus public records, cannot be treated by the Justices as their private property, and the only question is, where they must be deposited.

Section 648 of the Baltimore City Charter, and sections 18 and 19 of Article 52 of Bagby's Code, require Justices of the Peace in Baltimore City to deliver their dockets, upon the expiration of their terms, or when they die, resign or are removed, to the Clerk of the Baltimore City Court. These are the only provisions of law I find upon the subject. I have examined the history of these sections as contained in the following acts:

See Act 1864, Ch. 179; Act 1870, Ch. 39; Rev. Code 1878, Art. 68, Sec. 59 and 60; Code P. G. L. 1888, Art. 52, Sec. 15 and 16; Code P. L. L. 1888, Art. 4, Sec. 631; Act 1888, Ch. 74; Baltimore City Charter 1893, Sec. 631; Baltimore City Charter 1906, Sec. 648; Act 1912, Ch. 823; Act 1914, Ch. 242; Baltimore City Charter 1915, Sec. 648; Bagby's Code, Art. 52, Sections 18 and 19; Art. 17, Sec. 42.

After a good deal of consideration, I have reached the conclusion that these provisions apply to Police Justices as well as civil Justices. The language of the statutes is clearly broad

enough to include both, and the Police Justices are simply those Justices whom the Governor has selected, from the whole list of his magistrate appointments, to sit at the Station Houses (Charter, Section 630), and the Governor may select other Justices from time to time for that purpose (Charter, Section 635).

I, therefore, think that under the above provisions of law the Police Justices in Baltimore City are required to deposit their dockets with the Clerk of the Baltimore City Court.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION.

(Collateral Inheritance Tax Opinions Included.)

TAXATION — COLLATERAL INHERITANCE TAX — APPRAISAL IS FINAL AS TO VALUE OF PROPERTY.

October 18, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of October 14th, enclosing letter of the same date from Mr. Hervey W. Shuck, Register of Wills for Allegany County.

I understand that the real estate of Mr. Francis M. Gramlich was duly appraised on March 9, 1915, at $23,675.00, and the collateral inheritance tax paid on that amount and duly returned to the Comptroller; that on October 4, 1916, the same real estate was sold by Trustees for $22,126.25; and that in paying the collateral inheritance tax now due upon $3,000 of personal property about to be distributed, the Executors claim a credit of $1,548.75, being the difference between the appraisal of the real estate of $23,675, and the selling price thereof of $22,126.25.

The Executors are not entitled to this credit. After providing for the manner of appraising real estate for collateral inheritance tax purposes, Bagby's Code, Art. 81, Sec. 130, provides:

> "The appraisement thus made shall be deemed and taken to be the true value of the real estate upon which the said tax shall be paid."

A price obtained for the real estate at a Trustees' sale, one year and a half after the appraisal, and after the tax on the appraisal has been paid and returned, cannot be substituted for the amount of the appraisal, which, under Section 130, is final as to the value of the real estate for collateral inheritance tax purposes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—DEDUCTION OF ADVANCES TO PAY DEBTS.

October 18, 1916.

J. Enos Ray, Jr., Esq.,
State Auditor,
Garrett Building, Baltimore, Md.

DEAR MR. RAY: I beg to reply to your favor of October 13th, transmitting to me an inquiry from the Register of Wills of Frederick County.

I understand that in the Estate of Christian Smith there is approximately $5,000 of personal property, $10,426 of debts and real estate appraised at $13,000, and that it will, therefore, be necessary for approximately $5,426 of the real estate to be sold, and the proceeds applied, with the $5,000 of personal property, to the payment of the debts, or else for the collateral heirs to advance this $5,426. Under these circumstances, you ask whether the Register should collect the collateral inheritance tax on the entire appraised value of the real estate, $13,000, or whether the amount which the collateral heirs, who will receive this real estate, may advance for the debts, should be first deducted from the appraised value, and the tax paid upon the balance.

Bagby's Code, Art. 81, Sec. 120, provides that estates passing to collaterals "shall be subject to a tax of five per centum in every hundred dollars *of the clear value of such estate.*" This means that the collaterals pay the tax upon the value of the estate which they receive.

Therefore, if the collaterals advance nothing, and part of the real estate is sold to pay the debts, the tax will only be paid on the value of what is left, because that is what they receive. If instead of having part of the real estate sold, the collaterals themselves advance the amount necessary for the debts, then I think that the amount so advanced should be deducted from the appraisal of the real estate, and the tax paid upon the balance. In such case, the clear value of the real estate which the collaterals receive, and which is the thing to be taxed, will

not be the total appraisal of $13,000, but it will be that amount less the advances made by the collaterals for the debts.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—ESTATES VALUED AT $500 ARE SUBJECT TO.

October 5, 1916.

Randolph Barton, Jr., Esq.,
207 North Calvert Street,
Baltimore, Maryland.

DEAR MR. BARTON: I beg to reply to your request for my opinion as to whether a distributive interest of less than $500 may be subject to the collateral inheritance tax.

It seems to me that the word "estate," occurring in the first, fourth and eleventh lines of Section 120 of Article 81 of the Code, should be given a different meaning from the word "estate" occurring in the fifteenth line, after the word "provided."

The first three references are to the estate *which passes to the collateral*, that is, the collateral's distributive share, which is taxed to the extent of 5% of its clear value.

The last reference is to the estate *left by the testator*, that is, all the property he left.

If the testator's whole estate is valued at less than $500.00, then no distributee pays any tax at all. But if his whole estate is valued at more than $500.00, then the tax is imposed upon what passes to the collaterals, and it makes no difference in such case whether the estates passing to the collaterals, that is, their respective distributive shares, are more or less than $500.00.

I have already advised the Registers of Wills of Baltimore City and of Harford County to this effect.

It is, of course, true, as you say, that the thing which is taxed is the clear value of the estate which passes to the collaterals, but the question here is not on what interest the tax, when payable, must be computed, but what must be the value of the

testator's estate, before any tax can be charged at all: and this value, it seems to me, must be $500.00.

In the illustration you give of a testator leaving a $1,000 estate, with $900 of debts, and $100 for distribution to collaterals, the result would, of course, be that this $100 would be subject to the tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—ESTATES TAKING EFFECT AFTER GRANTOR'S DEATH.

March 25, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I received your favor of March 9th, enclosing letter from Thomas E. Hilliard, Register of Wills for Washington County, with reference to collateral inheritance tax on the estate of Sarah J. F. Cushwa.

I understand from Mr. Hilliard's letter that Mrs. Cushwa, on February 12, 1915, deeded certain property to Richard E. Cushwa and Mary Susan Cushwa, reserving a life estate in herself, and reserving also power to revoke the grant during her life by deed, but not by will. She died in August, 1915, without having revoked the grant.

A future estate of this kind was void at common law, but is now valid under the Statute of Uses; and according to the better view the future estate, that is, the estate in Richard E. Cushwa and Mary Susan Cushwa, did not arise, or at least did not take effect in possession, until the death of Mrs. Cushwa.

Tiffany, Real Property, Part II, Chap. 2, Sec. 134;
Rogers vs. Eagle Fire Ins. Co., 9 Wend. 611.

Bagby's Code, Art. 81, Sec. 120, provides that all estates "transferred by *deed*, will, grant, bargain, gift or sale, *made or intended to take effect in possession after the death of the grantor*" are subject to the collateral inheritance tax.

While the question is not entirely free from doubt, yet since the deed from Mrs. Cushwa to Richard E. Cushwa and Mary

Susan Cushwa created an estate in them which did not, in my opinion, take effect in possession until after the grantor's death. I think that the estate is now subject to the tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—EXECUTOR'S LIABILITY.

March 22, 1916.

Howard W. Jackson, Esq.,
Register of Wills,
Court House, Baltimore.

DEAR MR. JACKSON: I have your favor of March 20th, with respect to collateral inheritance tax on the estate of L. Clementina Grace, together with copy of Mr. Brundige's letter to you and of your reply to him.

There is no doubt at all that the estate of L. Clementina Grace, passing to her sisters Mary F. Grace and Mrs. Elizabeth Powell, was liable for the collateral inheritance tax, and while it is true that the tax is a lien on real estate for only four years (Bagby's Code, Art. 81, Sections 131, 132, 135), which have now expired, yet the amount of the tax is still a debt due the State of Maryland.

The administratrix of L. Clementina Grace distributed the estate, without deducting the tax, to herself (Mary), and her sister, Mrs. Powell. Mrs. Powell and Mary's estate are both liable, *as distributees*, and as such may both be sued for money "had and received."

Fisher, Trustee, vs. State, 106 Md. 104, 120.

In addition to this, *Mary's bond* as administratrix of Clementina's estate is liable for the amount of the tax (section 137).

Mary's estate is also liable for the tax, because she, as administratrix, was required to pay it (sections 120, 121, 123), and not having done so, the amount of the tax is a proper claim against her estate.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—REGISTER'S COMMISSIONS.

March 18, 1916.

John M. Dennis, Esq.,
State Treasurer,
Annapolis, Md.

DEAR MR. DENNIS: I have your favor of March 17th, asking me the amount of Collateral Inheritance Taxes which the Registers of Wills in Baltimore City and in the counties are entitled to retain from their collections.

Article 81, Section 143 of the Code, allows the several Registers of Wills 12½% commissions on the amount of Collateral Inheritance Taxes received by them respectively during the year. The Registers, however, are not allowed to retain this 12½% as compensation (Banks vs. State, 60 Md. 305). The commission simply goes into the general receipts of the office out of which the office expenses, etc., are paid, and the excess is accounted for quarterly to the Treasurer.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—SETTLEMENT OF LITIGATION NOT SUBJECT TO.

June 5, 1916.

D. Princeton Buckey, Esq.,
Frederick, Maryland.

DEAR MR. BUCKEY: I received your favor of May 24th.

As I understand the situation, a mortgage and bank deposit belonging to James Graham, deceased, were both held by said deceased and his wife, Barbara Graham, as tenants by the entireties, but were distributed by the executors to other parties; that Mrs. Graham filed a bill in equity to secure a decree that the mortgage and bank account belonged to her, and that a transfer of the same previously made by her to one of the defendants was void; and that the case was settled by the payment by Mrs. Graham to the defendants in this suit of $1,500, in return for which the mortgage and bank account were retransferred to her.

Under these circumstances it does not seem to me that the $1,500 constitutes any part of the estate of James Graham, and accordingly I do not think that it is subject to the collateral inheritance tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—SUCCESSIVE ADMINISTRATIONS.

February 18, 1916.

Walter J. Mitchell, Esq.,
La Plata, Maryland.

DEAR MR. MITCHELL: I am in receipt of your favor of February 10th. You say that Mr. John H. Freeman died intestate, leaving his sister as sole heir and distributee, and then, before distribution to her, the sister died, leaving all she possessed or was entitled to, to collaterals. You ask whether Mr. Freeman's estate and his sister's estate are both subject to collateral inheritance taxes.

The Code, Art. 81, Sec. 120, as you know, provides that all estates "passing from any person," etc., "to any person or persons," etc., shall be subject to the collateral inheritance tax. The only contention which occurs to me could be made against the collection of the tax on both Mr. Freeman's and his sister's estate, is that the title to Mr. Freeman's *personal property* passes, of course, through his administrators, and that, therefore, his personal property never passed to his sister, because she was dead at the time of administration. This contention could not be made with respect to Mr. Freeman's *real property*, because that passed to his sister, as sole heir, immediately upon his death.

My own opinion, however, is that the point would not be good even with respect to the personal property. The two administrations are necessary, and I think that when Mr. Freeman's personal estate is distributed to the Executors of his sister it

is subject to the tax, and that when it is distributed to his sister's beneficiaries it is again subject to the tax; and I think that the same is true with respect to his real estate.

The situation does appear to involve a hardship, but the above is my best judgment about it. With kindest regards, I am

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—FOREIGN CORPORATION TAX.

July 21, 1916.

Albert L. Steuart, Esq.,
Continental Building,
Baltimore, Maryland.

DEAR MR. STEUART: I have considered the copy of your letter to Mr. McMullen, dated June 8, 1916, with reference to the liability of the Baltimore Tube Company of Virginia, to the foreign corporation tax imposed by Bagby's Code, Art. 23, Sec. 95.

I understand that the Baltimore Tube Company of Maryland paid the domestic franchise tax imposed by Bagby's Code, Art. 23, Sec. 88B as of January 1, 1916, and that the Virginia Company, on January 25, 1916, took over all of the Maryland company's assets, except $25,000, which it borrowed, whereupon the Maryland company's capital stock was reduced to $25,000; and that the Maryland company is being kept alive for the enforcement, if this be necessary, of certain unexpired contracts which it executed.

Under these circumstances, I do not see how I can avoid holding, if the question is presented to me, that the Virginia company is liable for the full amount of the foreign corporation tax for the current year.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—FRANCHISE TAX ON ORDINARY BUSINESS CORPORATIONS—DISCOUNTS.

May 1, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of April 27, asking me whether the Act of 1916, ch. 630, relating to the collection of state taxes, applies to the franchise tax imposed upon ordinary business corporations by the Act of 1914, ch. 324 (Bagby's Code, Vol. III, Art. 23, sec. 88D).

Section 49 of ch. 630 of the Acts of 1916, by its terms applies to the state taxes which the City of Baltimore and the several counties levy, and also to "all taxes due from incorporated institutions of this State." Of course, ordinary business corporations, which are required to pay the franchise tax, are incorporated institutions of the state. Nevertheless, I do not think that the Act of 1916 was intended to apply to these franchise taxes, for the following reasons:

1. Section 48 of the Act of 1916, makes the taxes to which it applies payable on July 1 "in the year in which they are levied." This, I think, contemplates taxes which are provided for by annual levies. There are no annual levies for the franchise tax. The tax was imposed by the Act of 1914 once for all.

2. Section 48 also makes it the duty of the local collectors, treasurers or other officers to collect the taxes to which said section applies, and to account for the same monthly to the Comptroller. The franchise tax is payable to the State Treasurer direct, and is not collected by the local officers at all.

3. Section 48 also provides that the local collectors shall receive such compensation for the collection of the taxes to which said section applies, as may be levied by the City of Baltimore and the several counties. Nothing is levied for local collectors in connection with the franchise tax, because that tax is paid to the State Treasurer.

4. Section 48 makes it the duty of the local collectors who collect the taxes to which said section 48 applies, to collect the same as delinquent taxes after January 1st succeeding their

levy. When the franchise tax is in arrears on November 1, a penalty of 10 per cent is added, in addition to interest from May 1, and the whole is placed in the hands of the Attorney General to collect by suit, and the failure of the corporation to pay constitutes a cause for forfeiture and dissolution proceedings. This constitutes a procedure for the collection of the franchise tax distinct from the ordinary procedure for the collection of delinquent taxes.

5. Section 48 of Article 81 of Bagby's Code, which was amended by the Act of 1916, applied, before its amendment, to state taxes due by "all persons and incorporated institutions," yet it did not apply to the franchise tax due by ordinary business corporations, because the Act of 1914 made special provision for that. I think that section 48 as amended by the Act of 1916 applies only to the same character of taxes due by incorporated institutions as it did before its amendment.

6. One of the principal objects in enacting the Act of 1916, ch. 630, was to do away with discounts on state taxes. Franchise taxes are not among the kinds of taxes for the prompt payment of which discounts have been allowed.

For these reasons I do not think that it was the legislative intent that the Act of 1916, ch. 630, should apply to the collection of the franchise tax imposed upon ordinary business corporations by the Act of 1914, ch. 324; and since the legislative intent, as gathered from the terms of the Act, always prevails over the letter, it is my opinion that the Act of 1916, ch. 630, does not apply to the collection of the franchise tax, but that the franchise tax should continue to be collected in accordance with the terms of the Act of 1914, ch. 324.

I understand that you also wish my opinion as to when the discounts now allowed on state taxes will cease under the Act of 1916, Ch. 630. This act takes effect on June 1st. Consequently, taxpayers who pay their taxes during the month of May are entitled to discounts exactly as if the new law had not been passed. On and after June 1st no discounts will be allowable.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—INTEREST—PENALTIES.

May 9, 1916.

A. T. Benzinger, Esq.,
Deputy Collector,
City Hall, City.

DEAR SIR: I beg to answer the two inquiries contained in your letter to me of May 6th, as follows:

1. Under section 51 of the Charter, which provides for the one per cent penalty to which you refer, the advertisement there called for is required to be inserted two weeks before the taxes become in arrear, and the penalty is to be added in case the taxes are not paid before they so become in arrear, accounting from the time the said taxes became in arrear to the time of the payment thereof. I think, therefore, that the penalty in question should be added to the 1916 bills for state taxes from January 1st, 1917, which is the date they become in arrear under the Act of 1916, Chap. 630.

2. I think that the Act of 1916, Chap. 630, should be construed as applying only to state taxes for the year 1916 and succeeding years, and that in the case of state taxes now overdue, and now carrying interest or penalties or both, such interest and penalties should be collected exactly as if the Act of 1916 had not been passed at all.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

TAXATION—INTEREST—PENALTIES.

August 17, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of August 15th, asking when penalties and interest are chargeable upon taxes due by incorporated institutions.

The only possible doubt upon this subject relates to the question of penalties. The Act of 1916, Ch. 630, provides the time

when state taxes due by incorporated institutions are payable, when they bear interest, and when they are collectible by legal process, this latter date being January 1st, succeeding their levy. Section 95 of Article 81 of Bagby's Code, which relates to the five per cent penalty, imposes that penalty on November 1st, and requires the collection by legal process immediately thereafter. In other words, section 95 provides for the collection by legal process after November 1st, and the Act of 1916, Ch. 630, after January 1st. I think, however, that the proper construction of these two provisions is, that the penalty will still be imposed, under section 95, on November 1st, but that portion of section 95 which requires the collection by legal process after November 1st, has been superseded by Chapter 630, so that the collection by legal process will not now be undertaken until January 1st.

Under the present law, therefore, the state taxes due by incorporated institutions, referred to in the Act of 1916, Ch. 630, are payable and carry interest and penalties as follows:

1. Said taxes are payable July 1st in the year in which they are levied.

2. They bear interest from September 1st.

3. They carry penalties from November 1st.

4. They are subject to collection by legal process after January 1st.

I should add that what has been said does not apply to franchise taxes due by corporations. These are still collectible in accordance with the Act of 1914, Ch. 324, as explained in my letter to you of May 1, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS.

Agriculture. Barbers. Corporate Charters. Criminal Law. Forestry. Health. Hours of Labor. Land Office. Lunacy Commission. Municipal Charter. Senate Rules. Statutes, when effective. Veterinary Medicine. Workmen's Compensation Law.

AGRICULTURE—COUNTY DEMONSTRATORS, SALARIES OF.

December 6, 1916.

Samuel M. Shoemaker, Esq.,
President, State Board of Agriculture,
816 Fidelity Building, Baltimore, Md.

DEAR SIR: I beg to confirm the opinion I gave you orally yesterday, namely, that under the terms of the $23,000 appropriations made by the Act of 1916, Chap. 685, page 1574, and the Act of 1916, Chap. 684, page 1558, for salaries for County Demonstrators, your Board is not required to pay a salary of $1,000 to each County Demonstrator, but you may fix the salary of each County Demonstrator at such amount as you deem proper, not to exceed, however, $1,000 in any one county.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BARBERS—CERTIFICATES—DEAD BODIES—CHILDREN.

September 2, 1916.

C. Henry Bischoff, Esq.,
President, State Board of Barber Examiners,
Hotel Kernan, Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of August 30th.

1. Section 9 of the Act of 1904, Ch. 226 (Bagby's Code, Art. 43, Sec. 217), makes it the duty of the holders of certificates of registration "to post the same in a conspicuous place in the shop where he is working, where it may be readily seen by all persons whom he may serve." Section 14 (Section 222 of the Code) imposes a penalty upon "any person violating any

of the provisions of this subtitle." Consequently any barber who does not comply with the above provisions of Section 9 can be arrested and prosecuted.

2. I do not think that Section 13 of the law (Section 221 of the Code) makes it unlawful for undertakers to shave or cut the hair of deceased persons. The business of an undertaker, as the Maryland statutes recognize, consists, among other things, in the *preparation* of bodies for burial, and undertakers have the right to shave and cut the hair of deceased persons whom they are preparing for burial. It was not intended by the Barbers' Law to interfere with this. (See, as to undertakers, Bagby's Code, Art. 43, Sec. 230-247; Keller vs. State, 122 Md. 677; State vs. Rice, 111 Md. 317.)

3. Nor do I think it was intended by the Barbers' Law to prevent lady hairdressers from cutting children's hair.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATE CHARTERS—CUSTODY OF ORIGINAL CERTIFICATE.

December 14, 1916.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Md.

DEAR MR. SIMMONS: I beg to reply to your inquiry of December 11th. The Act of 1916, Ch. 396, Sec. 4, provides that after the State Tax Commission records a certificate of incorporation, it shall transmit the original to the Secretary of State, "by whom the same shall be again recorded." The law does not provide for your doing anything at all with the certificate after you have recorded it, and all that the law provides for you to do with it is to record it.

Under these circumstances, I think that after you have recorded the certificate, you may properly permit its return to the incorporators.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—ARRESTS WITHOUT WARRANT.

August 31, 1916.

J. Frank Parran, Esq.,
Prince Frederick, Maryland.

DEAR MR. PARRAN: Please pardon my delay in answering your favor of August 22nd. I have been so much occupied, that last night was the first opportunity I had to consider it.

I hesitate to give a specific opinion upon the question you ask, without knowing more definitely what the offense is for which you contemplate an arrest without warrant, and whether there may be some local law relating to the subject.

The law, however, seems to be that:

1. Peace officers may arrest without warrant for felonies, or where there are reasonable grounds to suspect felonies.

Brish vs. Carter, 98 Md. 445, 449;
Edgar vs. Burke, 96 Md. 715, 722;
Kirk vs. Garrett, 84 Md. 383, 405.

2. They may also, of course, arrest without warrant for breaches of the peace committed in their presence.

3. And in the following Maryland cases arrests without warrant have been upheld, where the offense was committed in the officer's view, although it may not have amounted to a breach of the peace.

Mitchell vs. Lemon, 34 Md. 176, 181;
Roddy vs. Finnegan, 43 Md. 490, 504;
Turner vs. Holtzman, 54 Md. 148, 159-160;
B. & O. R. R. vs. Cain, 81 Md. 87, 100.

I think that the above decisions, particularly those last cited, will enable you to decide whether a warrant will be necessary for the offense you have in mind.

The subject is also discussed in the following treatises, some of which are doubtless available to you.

3 Cyc. 877-884;
2 R. C. L., pp. 446-449, 452-453;
5 Corpus Juris., pp. 398-410;
8 L. R. A. 529;

51 L. R. A. 203;
34 L. R. A. (N. S.) 1182;
42 L. R. A. (N. S.) 69;
L. R. A. 1915 B 305;
L. R. A. 1915 E 883.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—OFFENSES ON GOVERNMENT RESERVATION AT INDIAN HEAD.

February 7, 1916.

Ferdinand C. Cooksey, Esq.,
State's Attorney,
La Plata, Maryland.

DEAR MR. COOKSEY: I beg to reply to your favor of February 4th.

As I understand it, the United States Government purchased the Reservation at Indian Head, on August 5th, 1901, from Gaffield and wife, for military purposes.

At this time the Act of 1900, Ch. 67, adding sections 19, 20 and 21 to Article 96 of the Code, was in force. Section 19 gave the consent of the State to the purchase by the United States of any land for certain military purposes, and provided further that the consent thus given was in accordance with the United States Constitution, Art. 1, Sec. 8, Clause 17. This constitutional provision confers upon Congress power "to exercise *exclusive* legislation in all cases whatsoever . . . over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards and other needful buildings.

Section 21 provided that the provisions of section 17 of Article 96 (relating to land *condemned*) should apply to all land *purchased* by the United States under the provisions of section 19, and section 17, which was thus made part of the State's consent in such cases, provided, among other things, that "this State shall retain concurrent jurisdiction with the United States in and over all lands condemned under the provisions of this article" (which concurrent jurisdiction was by

Section 21 of the Act of 1900, Chapter 67, extended to lands *purchased*) "so far as that *all* processes, civil and criminal, issuing under the authority of this State, or any of the courts or judicial officers thereof, *may be executed on the premises* so condemned" (or so *purchased*, by virtue of section 21 above). "and in any building erected or to be erected thereon, in the same way and manner as if this article had not been passed."

Consequently, the consent given by the State by the Act of 1900, which Act covered the purchase of Indian Head, was conditional to the extent that the State retained concurrent jurisdiction with the United States with respect to the execution of process upon the Reservation. Except for this condition, the jurisdiction of the United States over Indian Head is unquestionably exclusive. The condition reserved, however, only applies to the *execution of process* upon the Reservation. It authorizes process to be executed there for offenses committed *outside* the Reservation, but I do not think it covers the punishment of offenses committed *on* the Reservation.

See Western Union Telegraph Company vs. Chiles, 214 U. S. 274, which appears to cover the present case exactly.

That the State did not reserve jurisdiction over offenses committed *on* the Reservation, is emphasized by the Act of 1902, Ch. 263, Bagby's Code, Art. 96, Sec. 28 (which does not apply to the present case because passed *after* the purchase of Indian Head), which Act retains the State's jurisdiction over land acquired by the United States, for the purpose of executing process within such lands for crimes committed *within or without their limits*, and Indian Head is *expressly excepted* from this Act.

For these reasons it seems to me that Dodd cannot be prosecuted by the State for an offense committed on the Reservation.

In addition to the three Fort Leavenworth cases, 114 U. S. 525, 114 U. S. 542, and 146 U. S. 325, and to the Chiles case, 214 U. S. 274, I would refer you also to Battle vs. United States, 209 U. S. 36, 37, and also to cases reported in 160 U. S. 510, 220 U. S. 345, 357; 224 U. S. 369, and 234 U. S. 547.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FORESTRY—ADVERTISING MATTER ON GUIDE POSTS AND DANGER SIGNS.

November 8, 1916.

F. W. Besley, Esq.,
State Forester, Johns Hopkins University,
Baltimore, Maryland.

DEAR MR. BESLEY: I beg to reply to your recent favor, in which you ask whether guide posts erected upon the public highways of the State by the B. F. Goodrich Company, and which contain the name "Goodrich" in addition to the distances between points, violate the Act of 1914, Ch. 824, Sec. 151 (Bagby's Code, Art. 39A, Sec. 151), which reads as follows:

> "Any person who in any manner paints, puts or affixes any advertisement, sign, notice or other written or printed matter, other than notices posted in pursuance of law, on or to any stone, tree, fence, stump, pole, building or other structure which is in or upon a public highway, or which is on the property of another, without first obtaining the written consent of such owner, shall be guilty of a misdemeanor," etc.

Under this section, it is lawful to paint, put or affix advertisements or notices upon poles in the public highways, provided they are "notices posted in pursuance of law."

Bagby's Code, Art. 91, Sec. 37, provides that the State Roads Commission "shall erect suitable guideposts at convenient points along State highways," and section 37A requires the Commission's consent before any structure can be placed on such highways. Sections 82A and 82B provide for the erection by the Commissioner of Motion Vehicles of guide posts and danger signs.

These latter sections (37, 37A, 82A and 82B), do not expressly authorize advertising matter to be placed on guide posts, nor do they expressly prohibit it, and whether the simple name "Goodrich" on the sign posts to which you refer (which were erected as hereafter explained under the supervision of the

State Roads Commission), constitutes a violation of the Act of 1914, Ch. 824, Sec. 151, is by no means clear.

I find the facts to be that the State Roads Commission and the Commissioner of Motor Vehicles have been co-operating with regard to guide posts and danger signs, with the view of having erected as many as are needed at the least possible cost to the State. These guide posts and danger signs are certainly essential to the convenience and safety of the vast number of automobilists, both from this and other States, who travel our highways, and the State Roads Commission informs me that their erection involves a cost of about $5.00 each, so that the expense item is a serious one to the State.

Accordingly, the Commission some time ago, acting under the authority of Sections 37 and 37A of Article 91 of the Code, expressly authorized the Goodrich Company to erect *guide posts* on the public highways in this State. The form of the sign was submitted to and approved by the Commission, and the points at which they were to be erected were designated by the Commission; and on the faith of this permission the Goodrich Company has, at large expense, and under the supervision of the Commission, erected thousands of these guide posts. The Commission advises me that all of them are necessary for the proper convenience of travellers, that it has authorized no company other than the Goodrich Company to erect any guide posts, or to place any advertising matter thereon, and that it intends to limit the permission to that company. These particular guide posts certainly do not seem to offend the artistic sense. Moreover, if they are removed, not only would the Goodrich Company have at least a moral claim against the State on account of the money which it expended on the faith of the State Roads Commission's permission to erect them, but the State would be compelled to expend thousands of dollars in order to substitute new guide posts in the place of those removed.

The Commission further advises me that it has never authorized any private concern to erect *danger signs* on any of the public highways, and has never authorized advertising matter of any kind to be placed on danger signs.

Under these circumstances, I think that the *guide posts* of the Goodrich Company, erected by that Company, at large expense, upon the permission of the Commission, acting under its authority to "erect suitable guide posts at convenient points along State highways" (Art. 91, Sec. 37 and 37A), should be allowed to remain.

No private concern, however, has authority to erect either guide posts or danger signs upon the public highways without the Commission's consent, and, as already stated, the Commission has not given permission for guide posts to any company other than the Goodrich Company, and has not given permission to any company at all to erect danger signs.

While, therefore, I think that in view of the above circumstances the guide posts of the Goodrich Company should be allowed to remain, I also think that any guide posts, containing advertising matter, and erected on public highways by any other company, and all danger signs containing advertising matter, and erected by any private concern, are being unlawfully maintained, (if for no other reason than that they have not been authorized by the State Roads Commission), and that they may, therefore, be removed, and that those who have erected them may be prosecuted.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FORESTRY—TRIMMING ROAD SIDE TREES.

July 15, 1916.

F. W. Besley, Esq.,
State Forester,
Johns Hopkins University,
Baltimore, Maryland.

DEAR MR. BESLEY: As requested by you, I have considered the question whether or not the State Board of Forestry has the power to authorize the trimming of roadside trees, growing within the right of way of public roads, without the consent of the owner of the trees.

This subject is governed by the Act of 1914, Ch. 824 (Bagby's Code, Vol. III, Art. 39A, Sections 15A to 15J, inc.), as construed by the decision in Chesapeake and Potomac Telephone Company vs. Board of Forestry, 125 Md. 666. I think it is quite clear from this Act and decision that the permit of the Board of Forestry will not alone be sufficient, but that the consent of the owner is also necessary. The Court of Appeals itself emphasizes the fact that the Act does not interfere in any way with private property rights, and it was only because it does not do this, that the Act was upheld.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HEALTH—STATE BOARD OF HEALTH HAS NO POWER OF EMINENT DOMAIN.

June 21, 1916.

William Pinkney Whyte, Jr., Esq.
620 Munsey Building,
Baltimore, Md.

DEAR SIR: I have examined your opinion to Mr. Robert B. Morse, Chief Engineer State Department of Health, dated May 29, 1916, in which you hold that the incorporated Town of Myersville, the County Commissioners of Frederick County, and the State Board of Health, have no power of condemnation in order to comply with the Act of 1914, Ch. 810.

I agree with you that the power of condemnation does not exist unless it is expressly conferred by the Legislature.

In addition to the authorities you cite upon this point, it is said in the Union Railway Company case, 35 Md. 224, 231, that the power to condemn "ought to be conferred in language clear and unequivocal," and in Baltimore vs. Kane, 125 Md. 135, 137, that the proceeding is "wholly dependent upon statutory regulation and provision."

I find no statute that confers the power of condemnation upon the State Board of Health, and I assume (without having examined this question myself) that you are correct in saying that there is no statute that confers the power of condemnation

in such a case as the present one on either the Town of Myersville or the County Commissioners of Frederick County.

I have accordingly approved your opinion to Mr. Morse, and I return it to you herewith.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HEALTH—STATE BOARD OF HEALTH—INFORMERS' FEES.

July 26, 1916.

J. Davis Donovan, Esq.,
Investigating Officer,
Department of Health,
16 W. Saratoga St., Baltimore, Md.

DEAR SIR: I have your favor of July 25th.

In my opinion neither the State Health Department nor any of its members or employees, are entitled to informers' fees in the cases you mention, because it is their official duty to secure and disclose information as to violations of the health laws, and public officers and employees are not entitled to informers' fees for doing what it is their duty to do.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HOURS OF LABOR—FEMALES IN DEPARTMENT STORES.

June 19, 1916.

Hon. Frederick N. Zihlman,
Cumberland, Maryland.

MY DEAR SENATOR: I have your favor of June 16th. The Ten Hour Law for Females, as amended by the Act of 1916, Ch. 147, provides that "in any *retail mercantile establishments located outside of the City of Baltimore*, a female may be permitted to work on *Saturdays* and on Christmas Eve and the five working days next preceding Christmas Eve not more than *twelve hours*, if during each of such Saturdays and Christmas Eve and five days aforesaid the female so employed shall have at least two rest intervals of not less than one hour each, and this provision shall only apply to such mercantile establish-

ments as have during the *remainder* of the calendar year a working day of not more than *nine hours.*"

I think that a department store is a retail mercantile establishment, within the meaning of this section, and, therefore, department stores located outside of Baltimore City can work their female help twelve hours on Saturdays, provided they fulfil the other requirements of the Act.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

HOURS OF LABOR—CHAUTAUQUA CHOIR BOYS.

May 30, 1916.

Chautauqua Association of Pennsylvania,
Swarthmore, Penna.

GENTLEMEN: I have your favor of May 26th. The Act of 1916, Ch. 222, Sec. 8, provides:

> "Nor shall any child under the age of sixteen years be employed, permitted or suffered to appear upon the stage of any theatre or concert hall in connection with any professional theatrical performance, exhibition or show."

In my opinion this provision of the law was not intended to apply to the Choir Boys in a Chautauqua program.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

LAND OFFICE—REVOLUTIONARY WAR DOCUMENTS.

June 23, 1916.

Hon. James S. Shepherd,
Commissioner of the Land Office,
Annapolis, Maryland.

DEAR SENATOR SHEPHERD: I have your favor of June 21st, enclosing request from the Maryland Historical Society that you deliver to it any commissions or enlistment papers of soldiers in the Revolutionary War which may be in your office.

The Act of 1882, Chap. 138, to which you refer, authorizes and directs the Commissioner of the Land Office to deliver to

the Maryland Historical Society "all the records, archives and ancient documents of the province and State of Maryland of any date prior to the acknowledgment of the independence of the United States by Great Britain."

I think that the documents in question are within the terms of this Act, and that you are authorized to deliver such of them as may be in your possession to the Maryland Historical Society.

Inasmuch as the Act imposes certain obligations upon the Society with respect to the safe keeping, etc., of the documents, it would be advisable for the receipt which the Society gives you for such documents as you deliver to it, to state that the same "are received and are to be owned, kept, arranged, catalogued and accessible in accordance with the provisions of the Act of 1882, Ch. 138."

I do not know whether the appropriation provided for by the Act was paid or not; but if not, I think that at this late date it may properly be said to have lapsed, and that the same is not now payable.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LUNACY COMMISSION—RIGHT TO CHARGE FOR SERVICES—SUPPORT OF LUNATICS.

October 4, 1920.

Dr. Arthur P. Herring,
Secretary, Lunacy Commission,
530 North Charles Street,
Baltimore, Maryland.

DEAR DR. HERRING: I beg to reply to the inquiries contained in your letter of September 28th.

1. In my opinion, the members of the Lunacy Commission cannot charge for their services in making examinations, at the court's order, under the Act of 1916, Ch. 699, of persons under indictment, because this Act makes such examination part of the duty of the Lunacy Commission, and by Art. 59, Sec. 16, of Bagby's Code it is provided that the Commission shall receive

no compensation for their services. I may add that after a conference this morning between you, Judge Soper and myself, Judge Soper could see no escape from this conclusion.

2. The Act of 1916, Ch. 566, Sec. 3A, in providing that a father or mother, or both, shall be liable for the support of a son or a daughter, and vice versa, makes no distinction between adults and minors. Therefore, an adult son or daughter is responsible, under this section, for the support of a father or mother, and a father or mother is responsible for the support of an adult son or daughter.

3. As to the power of the County Commissioners to require patients committed by the courts, or their relatives, to pay the expenses of support, I find that lunatics may be committed by the Court to State Hospitals under the following provisions of Bagby's Code:

a. Art. 59, Sec. 1, when a jury is impanelled to try the question of sanity. This section provides that the committal shall be "at the expense of the county or city," but section 3 (amended by the Act of 1916, Ch. 566), provides that no person shall be entitled to the benefit of section 1, if he or his relatives are able to pay for his support, and in such case the County Commissioners or the City Supervisors may require such person to be a reimbursing patient; and in this event section 3A (Act 1916, Ch. 566) will apply. Therefore, the County Commissioners can require patients committed under Art. 59, Sec. 1, or their relatives, to pay for their support, in accordance with the provisions of section 3A.

b. Art. 59, sections 4 to 8, inc. (sections 4 and 6 having been amended by the Act of 1916, Ch. 566), provide:

For commitment of traversers found, on trial by the jury, to be insane (sections 4 and 5).

For commitment of indicted persons before trial, when the Lunacy Commission, on reference from the court, finds them to be insane (section 4).

For commitment of arrested persons before indictment or trial, when the Lunacy Commission, on reference from the court, finds them to be insane (section 6).

For commitment of arrested persons during the recess of the courts (section 7).

In each of the above cases, if the person committed is himself possessed of property adequate for his support, that property may be subjected to the payment of his support, through the appointment of a trustee, under section 9. But if such person has no property himself, then I do not think that his family or relatives can be compelled to pay for his support, because the only provisions of law requiring the family or relatives to pay for the support of insane persons, are the provisions contained in the Act of 1916, Ch. 556, and these do not apply to commitments under Art. 59, sections 4 to 8.

c. Art. 59, Sec. 44, and Act 1916, Ch. 556, Sec. 648, provide for the commitment of convicts found by the Lunacy Commission to be insane. These sections specifically provide that the expenses of support shall be borne by the State. Also, Art. 27, Sec. 282, provides for the commitment of prisoners confined in the Jail, who become insane, and this section expressly provides that the support of such persons shall be at the expense of the county or city.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LUNACY COMMISSION—SUPPORT OF LUNATICS.

August 31, 1916.

Dr. Arthur P. Herring,
Secretary, State Lunacy Commission,
330 N. Charles St., Baltimore, Md.

DEAR SIR: I beg to advise you upon the question you submitted to me the other day.

1. Under section 3A of the Act of 1916, Ch. 556, and the amendment to section 3 made by that Act, the County Commissioners and the Supervisors of City Charities have, in my opinion, the power and authority to commit insane persons, even though they or their relatives are able to pay for their maintenance and support, either in whole or in part.

2. The form of agreement to be made by relatives or other-chargeable, when they are able to pay, in whole or in part, for the patient's support and maintenance, should be substantially as enclosed herewith.

3. Section 3A of the Act of 1916, Ch. 566, provides, among other things, for making claims against the estates of deceased patients for their maintenance and support in the institution to which they may be committed, and section 3B authorizes the authorities to exercise, in the case of patients *heretofore* committed and still confined, all the powers conferred by section 3A with respect to patients *hereafter* to be committed, "to the end that payment for the *future* maintenance and support of such persons while in such institutions may be required," etc., as in the case of persons hereafter to be committed under section 3A.

No claim can be made under these provisions against the estates of deceased patients for maintenance and support incurred before the Act took effect. Moreover, in order to furnish the basis for a claim under these sections for maintenance and support since the Act took effect, the procedure as to investigation and the passage of an order requiring payment, provided by section 3A, should be followed.

In the case of claims, if any, against the estates of deceased patients committed before the Act of 1916 took effect, which claims arise under provisions of law other than those contained in the Act of 1916, the same can, I think, be made. For instance, claims against the estates of deceased patients who were committed as reimbursing patients under section 3 as it stood before the amendment of 1916, and which are, I think, preserved by the Acts of 1912, Ch. 120 and Ch. 365 (Bagley's Code, Vol. III, Art. 1, Sec. 2A; Art. 89A). Also, claims under the last sentence of section 45.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MUNICIPAL CHARTER—ACT NAMING ONLY FOUR OF SIX COUNCILMEN. EFFECT OF—DE FACTO OFFICES.

August 28, 1916.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: As requested by your favor of August 23rd, I have examined the charter of the town of Accident, Act 1916, Ch. 514, in order to see if it is invalid for the reason suggested by Mr. John Gies in his letter to you of August 21st.

After incorporating the citizens of the town, and defining the corporate limits, the charter then proceeds, in Section 3, to provide that "said corporation shall be governed by a Mayor and six councilmen." A Mayor is then named to serve until March, 1918, two councilmen, Messrs. Richter and Ravenscroft, are named to serve until March, 1918, and two other councilmen, Messrs. Diehl and Speicher, are named to serve until March, 1917. The Act then provides that "thereafter an election shall be held on the first Tuesday in March in each and every year for the election of two councilmen to serve for two years from the date of their election."

Therefore, the Act does not name the remaining two of the six councilmen, nor does it make any provision for their election, because at the councilmanic election to be held each year in March, only two councilmen are to be elected, and these, of course, will always take the place of two of the four councilmen named in the act, or their successors, as their terms expire. Consequently, while the act calls for six councilmen, provision is only made for four.

Whether or not a condition of this kind would make the charter invalid, is a question which, as far as I have been able to ascertain, has not arisen before in Maryland, nor have I been able to find that the direct question has been presented elsewhere. If the question should hereafter present itself in a manner in which the State as such is interested, I would like to make a more extended examination of it than I have thus far

been able to make; but in the meanwhile the conclusions which I have reached are as follows:

1. The Act of 1916 very clearly *incorporates* the town of Accident, and I think that the fact that six councilmen are specified and only four provided for, does not affect the validity of the *incorporation*, but at most only affects the *machinery for governing* the town which the Act incorporates. In other words, the act does two things: first, it *incorporates* the town, and, secondly, it provides for its *government*; and I think that an ambiguity or inconsistency in the provisions for *governing* the town would not invalidate the *incorporation* of the town, as to which there is no ambiguity. The town is still a corporation, even though there is an inconsistency in the provisions which relate to the membership of its council. Accordingly, the charter is, I think, valid.

2. It remains to determine the membership of the council. I find that as originally introduced, this bill (House Bill No. 683) provided in section 3 for *six* councilmen, as the act now does, but named *three*—Messrs. Richter, Ravenscroft and Speicher—whose terms would expire in March, 1918, and *three*—Messrs. Gies, Diehl and Shartzer—whose terms would expire in March, 1917, and also provided that at each annual election *three* councilmen should be elected.

In this form the Bill passed the House (House Journal, pages 841, 966 and 1121), and passed its first and second readings in the Senate (Senate Journal, pages 826 and 1047). On its third reading in the Senate, however (Senate Journal, page 1233), the bill was amended by striking Mr. Speicher's name from the three councilmen whose terms were to expire in March, 1918, leaving the other two—Messrs. Richter and Ravenscroft—and by striking out the names of all three of the councilmen whose terms were to expire in March, 1917, and inserting instead the names of only two—Messrs. Diehl and Speicher; and also by providing that at each annual election only *two* (instead of three) councilmen should be elected. The Senate, however, did not amend the first part of section 3, which called for *six* councilmen, but left that part unchanged. It seems

reasonably clear to me that this was an oversight, and that what the Senate really intended to do was to provide for four councilmen only; and this must, I think, also be taken as the intention of the House, when it concurred in the Senate's amendment.

The requirement that there shall be six councilmen cannot, of course, be reconciled with the fact that provision is only made for four; and accordingly one or the other of these two clauses must control. I think that the latter clause, providing for only four councilmen, supersedes the former clause, saying that there shall be six, first, because the provision for the four councilmen is *specific*, in that it names each of them, whereas the requirement for six is general; and secondly, because the *intent* of the Legislature, as gathered from the amendments it made, seems to have been that there should only be four councilmen. The result, in my opinion, is, that the town will be legally governed by a Mayor and four councilmen.

3. This last conclusion, that the requirement of six councilmen is superseded by the subsequent provision for four only, may not be entirely free from doubt, although I think it correct; but even so, the whole question of the validity of the charter is one that, in my opinion, can only be raised by the *State*, and no one but the State would, I think, have a standing in the courts to question the charter on the above grounds. This means that if the four councilmen act, they will at the very least be *de facto* officers; and as long as the State, which incorporated the town, does not bring proceedings to question the right of the four councilmen to act for the town, then I think that no one else can do so.

4. For the above reason, I think (a) that the town is a valid corporation, and that the four councilmen can legally act for it under the charter, and (b) even if the four councilmen cannot *legally* act for the town, nevertheless, in actually acting, they will be regarded as *de facto* officers, and their authority and the validity of their acts can be questioned by the State alone. When the Legislature of 1918 meets, any desired amendments can, of course, be made to the charter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

SENATE RULES—JOURNALIZATION OF BILLS.

February 8, 1916.

Joseph M. George, Esq.,
Journal Clerk, Senate of Maryland,
Annapolis, Md.

DEAR MR. GEORGE: I beg to confirm what I told you orally the other day, namely, that I see no legal objection to Senator Williams' order of February 1, 1916, adopted by the Senate on February 3, 1916 (Journal, page 175), as an amendment to Rule 29, directing that "after a bill has been journalized the first time it shall in future Journal references be simply referred to by number and a short descriptive title," etc.

I also think that this Rule contemplates that all bills which come to the Senate from the House should be journalized in the Senate, and that the journalzation of such bills in the House will not suffice for the Senate, but that they should be journalized the first time in the Senate also.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

STATUTES—WHEN THEY TAKE EFFECT.

January 25th, 1916.

Hon. William J. Ogden,
Chairman, Judiciary Committee,
Senate of Maryland,
Annapolis, Maryland.

DEAR SIR: As requested by you orally on January 25th, I have considered the effect of the Amendment adopted by the people at the November Election, 1915, adding Article XVI to the Constitution, known as the Referendum (Acts 1914, Ch. 673), upon the time when laws passed by the Legislature become effective.

All laws now take effect in accordance with the provisions of this Constitutional Amendment, and not as formerly, in accordance with Article III, Sec. 31, of the Constitution.

The effect of this Constitutional Amendment is that "no law enacted by the General Assembly shall take effect until the first day of June next after the session at which it may be passed," unless:

1. "It contain a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly."

2. Or unless it be a "law making any appropriation for maintaining the State Government."

3. Or unless it be an appropriation law "for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose."

4. Or unless it be a law "licensing, regulating, prohibiting, or referring to local option the manufacture or sale of malt or spirituous liquors."

Any law which falls within any one of the first three of these four classes can be made effective at once by the insertion of the usual clause: "This Act shall take effect from the date of its passage." I do not, however, wish to be understood at this time as expressing any opinion upon the question whether the declaration of three-fifths of the membership of the Legislature that a law is "an emergency law and necessary for the immediate preservation of the public health or safety" will be final and conclusive upon that question or not, first, because this might depend very largely upon the nature of the particular law in question, and, secondly, because I assume that the Legislature would not make such a declaration unless in its judgment it conformed to the facts. Any law of this character which is made effective at once would nevertheless still be subject to reference to the people in accordance with the terms of the Constitutional Amendment.

Any law embraced within the second or third of the above classes can, in my judgment, be made effective at once by the insertion of the usual clause to this effect, and cannot be referred to the people under the Amendment; except that any law mak-

ing an appropriation to a public institution in *excess* of the next previous appropriation for the same purpose, can be so referred to the extent of the excess, and to that extent cannot become effective until the first day of June, but to the extent that such appropriation does not exceed the next previous appropriation for the same purpose it can be made effective at once.

No law embraced within the fourth class, "licensing, regulating, prohibiting, or referring to local option the manufacture or sale of malt or spirituous liquors" can be referred to the people under the Constitutional Amendment. Whether or not such a law can, in any event, and independently of the Amendment, be passed without a referendum, is a question which may hereafter arise directly, and, therefore, I do not think that I should express any opinion upon that question at this time.

Any law which does not fall within one of the above four classes, can in no event take effect before the first day of June. In such case a clause in the law providing that it shall take effect from the date of its passage, or at any time before the first day of June, would, in my judgment, be simply nugatory, and the law would take effect on the first day of June notwithstanding such clause.

If such law contains no clause at all as to when it is to take effect, then, in my judgment, it will take effect, under the Constitutional Amendment, on the first day of June, unless previously referred to the people. In order, however, that there should be no possible question about this, I think it better to add a section to all laws which are not embraced within one of the above four classes, to the effect that "This Act shall take effect from the first day of June, 1916."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

VETERINARY MEDICINE—RIGHT TO REGISTER.

June 29, 1916.

Dr. G. H. Grapp, President,
State Veterinary Medical Board,
Port Deposit, Maryland.

DEAR SIR: I have your favor of June 24, and enclose you copy of the Act of 1916, Ch. 108, regulating the practice of veterinary medicine in Maryland.

You ask whether a person can register under this law if he conducts a general merchandise store, and practices veterinary medicine "illegally as a side issue." I assume that the person you have in mind holds no diploma. If such a person has practised veterinary medicine in Harford County "as a means of livelihood" for ten years previous to June 1, 1916 (when the enclosed act took effect), then he is entitled to be registered within twelve months, and to continue practising in Harford County. The fact that he conducted a store would not necessarily debar him, but he must have practised veterinary medicine "as a means of livelihood." This depends upon the facts, and as I do not know them, I cannot be more definite.

You next ask whether a person can be registered if he has been prosecuted for illegal practise. I do not know what kind of illegal practise he was prosecuted for. If it was that he practised without having been examined or without having had a diploma, this would not debar him, provided he has practised in Harford County as a means of livelihood for ten years.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

WORKMEN'S COMPENSATION LAW—REINSURANCE AGAINST CATASTROPHY HAZARD.

October 12, 1916.

J. Milton Reifsnider, Esq.,
Chairman, State Industrial Accident Commission,
Equitable Building, Baltimore, Md.

DEAR MR. REIFSNIDER: I beg to reply to your favor of October 5th.

I understand that what you desire to do, for the protection of the State Accident Fund, is to reinsure your risks against catastrophy hazard only.

In my opinion, the proper protection of the State Accident Fund, both for the benefit of the employers who insure in it and of the employees and dependents who are intended to share in it, as well as the duty of your Commission to take all appropriate steps to see that such employees and dependents may not be deprived by unforeseen circumstances of the benefits of the fund which the State has provided for them, fully justify your Commission in safeguarding the fund by reinsuring your risks against catastrophy hazard.

I think that your Commission has the implied power to do this in connection with your duty of administering the fund, and that the reinsurance premiums will be part of the expenses of such administration, payable in accordance with Section 77 of the law, as amended by the Act of 1916, Ch. 597.

Very truly yours,

ALBERT C RITCHIE, *Attorney General.*

WORKMEN'S COMPENSATION LAW—STATE MILITIA.

May 5, 1916.

Henry M. Warfield, Esq.,
Adjutant General,
Annapolis, Md.

DEAR SIR: I have your favor of May 3rd.

In my opinion the Workmen's Compensation Law of Maryland does not apply to the military branch of the State, and the State assumes no liability under that law with respect to the troops of the Maryland National Guard, whether the troops are on duty with or without compensation.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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Oscar Leser 8/20/18

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

AL

COMPLIMENTS OF

ALBERT C. RITCHIE

ATTORNEY GENERAL

1917

ALBERT C. RITCHIE

ATTORNEY GENERAL

ATTORNEYS GENERAL OF MARYLAND.

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Luther Martin	1778
William Pinkney	1805
John Thomas Mason	1806
John Johnson	1806
John Montgomery	1811
Luther Martin	1818
Nathaniel Williams, Assistant Attorney General	1820
Thomas B. Dorsey	1822
Thomas Kell	1824
Roger B. Taney	1827
Josiah Bayley	1831
George R. Richardson	1845
Robert J. Brent	1851
*Alexander Randall	1864
Isaac D. Jones	1867
Andrew K. Syester	1871
Charles J. M. Gwynn	1875
Charles R. Roberts	1883
William Pinkney Whyte	1887
John P. Poe	1891
Harry M. Clabaugh	1896
George R. Gaither, Jr.	1899
Isidor Rayner	1909
William S. Bryan, Jr.	1904
Isaac Lobe Straus	1908
Edgar Allan Poe	1912
Albert C. Ritchie	1916

*The office of Attorney-General was abolished by the Constitution of 1851, but was re-established by the Constitution of 1864.

STATE LAW DEPARTMENT.

Albert C. Ritchie..... Attorney-General.

Ogle Marbury..... Assistant Attorney General.

John M. Requardt..... Assistant Attorney General.

William Pinkney Whyte, Jr..... Assistant Attorney General.

Philip B. Perlman..... Assistant Attorney General.

Miss Virginia Ellinger..... Stenographer.

Miss Emily Dashiell..... Stenographer.

OFFICE:—623-645 Title Building, Baltimore, Md.

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Annual Report for 1917

BALTIMORE, MD., *January 1, 1918.*

HON. EMERSON C. HARRINGTON,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOVERNOR HARRINGTON:

I have the honor to present to you, as required by Section 8 of the Act of 1916, Chapter 560, a report of the business and proceedings of the Department of Law during the past calendar year, together with a statement of receipts and disbursements during the past fiscal year, and such recommendations as seem appropriate.

These recommendations, which conclude the Report, all relate to subjects for proposed legislation.

As further required by said Section 8, the official opinions rendered by me during the past calendar year, which may be of public interest, follow this Report.

THE DEPARTMENT OF LAW HAS SAVED THE STATE PRACTICALLY ONE-THIRD THE FORMER COST OF ITS LEGAL WORK.

The total cost of the State's legal work, under the Department of Law, for the fiscal year ended September 30, 1917, exclusive of the cost of equipping the offices of the State Law Department, which is, of course, a capital charge, and less appearance fees collected by me, all of which were paid to the State, was $21,573.77. (See *post*, for items.)

The total cost of the State's legal work during each of the two preceding fiscal years, before special counsel to State boards and commissions were abolished, as far as that cost is ascertainable, was at least $33,000.

As the counsel to the Public Service Commission have not been abolished, the compensation paid them is excluded from both the above figures.

volved the validity of that law. The law was upheld and judgment affirmed. 130 Md. 364. See also Poisel vs. Cash, 130 Md. 373. The Attorney General and State's Attorney Seabrook appeared for the State in the Court of Appeals.

William M. Smith vs. State. Adolph Jaffa vs. State. January Term, 1917. Appeal from Criminal Court of Baltimore City. Conviction of operating a jitney without a permit from the Public Service Commission, and without having filed route and schedule. This appeal raised the question whether these requirements of the Motor Vehicle Law apply to jitneys. The Court of Appeals held that they do. Judgment affirmed. 130 Md. 482. The Attorney General appeared for the State in the Court of Appeals.

State vs. Jacob S. Shapiro. April Term, 1917. Appeal from Criminal Court of Baltimore City. Indictment of junk dealer for conducting business without the license required by the Act of 1916, Chap. 704, Sec. 172. The amount of the license fee imposed by this law is graduated from $10 to $30, in accordance with the population of the county or city in which the junk dealer conducts his business, and a flat rate of $250 is imposed in Baltimore City. The lower court held the law void, on the ground that this method of charge was arbitrary and discriminatory. The Court of Appeals, however, on June 27, 1917, sustained the validity of the law. Judgment reversed. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals.

State vs. Edgar T. Mercer. October Term, 1917. Appeal from Circuit Court for Carroll County. Appellee indicted for acting as auctioneer in Carroll County without the license required by the local law. (Act 1914, Chapter 633.) This law imposes no license fee upon auctioneers who are residents of Carroll County, but imposes a fee upon auctioneers conducting business in Carroll County, who are residents of other counties, and a higher fee upon those who are non-residents of the State. The lower court held the law discriminatory and void, and dis-

charged the appellee. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals. *Sub curia.*

State vs. Paul Case. October Term, 1917. Appeal from Circuit Court for Carroll County. Appellee indicted for carrying on construction business without the license required by Act 1916, Chap. 704, Sec. 184. This law imposes a license fee upon construction companies having their chief office in the State, and a higher fee upon such companies having their chief office outside the State. It was contended that the law was discriminatory, and also that it did not, in any event, apply to *individuals* engaged in the construction business, because the title referred only to construction firms and companies. The lower court held the law void, and discharged the appellee. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals. *Sub curia.*

Royston W. Jones vs. State. October Term, 1917. Appeal from Circuit Court for Harford County. Conviction under bastardy law. This appeal involves the admissibility of evidence. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals. *Sub curia.*

State vs. Dudley R. Hardesty. October Term, 1917. Appeal from Circuit Court for Prince George's County. This appeal involves the jurisdiction over bastardy proceedings of the Circuit Court of the county in which the mother and the child reside, when the offense has been committed and the father resides in another county. The lower court sustained a demurrer to the indictment on the ground that it had no jurisdiction in such a case. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals. *Sub curia.*

Paul R. Burkentine vs. State. October Term, 1917. Appeal from Circuit Court for Harford County. Conviction under bastardy law. This appeal involved the admissibility of evidence. Judgment affirmed on December 13, 1917. The Attorney General and Mr. Perlman appeared for the State in the Court of Appeals.

W. Wesley Beall, Sheriff, vs. State ex rel Lewis C. Jenkins. October Term, 1917. Appeal from the Circuit Court for St. Mary's County. This case involved the Act of 1917, Chapter 13, the prohibition act for Prince George's County, which provided that it should be effective from the date of its passage, June 28, 1917. The case arose on habeas corpus, the traverser contending that, under the provisions of the Referendum, the Act did not take effect until June 1, 1918. The State contended that liquor laws were not within the Referendum; and that such laws could take effect from the date of their passage. On December 22, 1917, the Court of Appeals upheld the State's contention, and reversed the judgment. The Attorney General, Mr. Marbury and State's Attorney Peach appeared for the State in the Court of Appeals.

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1917.

Nine civil appeals were tried during the year. Four of these have been decided, the State winning three and losing one. The remaining five are still *sub curia.* The cases follow:

Hugh A. McMullen, Comptroller, vs. State Roads Commission. January Term, 1917. Appeal from Baltimore City Court. The Attorney General rendered an opinion, on January 19, 1916, that the sum of $200,797.39, being the unexpended balance of the appropriation for State-aided roads which stood to the credit of the State Roads Commission on September 30, 1915, and which had been reverted to the general treasury on October 1, 1915, should not have been reverted, but should have been carried down to the Commission's credit, in order to meet contract obligations which had already been entered into upon the faith of it, but which were unpaid on October 1, 1915. (Atty. Gen. Opinions, Vol. 1, page 158.) The Comptroller, however, declined to restore the credit, unless directed to do so by the courts. Mandamus proceedings were then instituted by the State Roads Commission, through the Attorney General, to

require the Comptroller to transfer the said sum from the general treasury to the credit of the Commission. The Baltimore City Court ordered the transfer to be made, and this order was affirmed by the Court of Appeals. 130 Md. 541. The Court held that whether or not an unexpended balance should be reverted at the close of the fiscal year depends upon the legislative intent, and that in this case the balance in question remained applicable to obligations which had been incurred, although not paid, during the fiscal year. The Attorney General appeared for the State Roads Commission both in the Baltimore City Court and in the Court of Appeals.

Board of Police Commissioners of Baltimore City vs. Edith E. McClenahan et al. April Term, 1917. Appeal from Superior Court of Baltimore City. On August 29, 1916, Mr. Vernon Cook, then counsel to the Police Board, advised the Board that the several acts granting pensions to former members of the police force were void, on the ground that the law provided a general system for the granting of pensions by the Police Board, upon specified conditions, to retired members of the force, and that the acts in question were, therefore, special acts upon a subject for which provision had been made by an existing general law. Acting under Mr. Cook's opinion, the Police Board discontinued all pensions previously paid under special acts. Thereafter, ten mandamus suits were brought for the purpose of testing the validity of these special acts. The lower court decided that the special acts were valid. This judgment was affirmed by the Court of Appeals, on June 28, 1917, the Court holding that none of the cases in which pensions had been granted by the special acts were covered by the provisions of the general law. The Attorney General and Mr. Marbury appeared for the Police Board both in the Superior Court and in the Court of Appeals.

Mayor and Common Council of Hyattsville vs. State Tax Commission and Chesapeake and Potomac Telephone Company. October Term, 1917. Appeal from Circuit Court for Prince George's County. This appeal involved the questions, (*a*)

whether the State Tax Commission has the power to review and abate assessments made by towns (other than Baltimore City), as well as by counties, and (*b*) whether the exemption from taxation of the personal property of corporations whose shares of stock are taxed, which exemption is granted by the general law, operates to prevent towns from assessing such personal property under municipal charters authorizing them to assess all property within their limits. The lower court decided both these questions in the affirmative, and the judgment was affirmed on December 13, 1917. This decision was extremely important, because if the contention that the State Tax Commission could not review town assessments had been upheld, the work of equalizing assessments throughout the State would have been seriously impaired. The Attorney General appeared for the State Tax Commission in the Court of Appeals.

Board of Education of Prince George's County vs. County Commissioners of Prince George's County. October Term, 1917. Appeal from Circuit Court for Prince George's County. This appeal involved the validity and effect of that portion of the general educational law of 1916 (Act 1916, Ch. 506, Sec. 26), which provides that if the County Board of Education requests a school levy in excess of 40 cents, and if the County Commissioners disapprove such excess, then the Commissioners must indicate in writing what items they have denied in whole or in part, and the reasons therefor; they cannot, as formerly, make simply a lump reduction. The appeal involved also the question whether the budget submitted by the County Board of Education to the County Commissioners was "an itemized and detailed school budget," as required by the law.

The County Commissioners made a lump reduction in the school levy requested, without indicating the items denied, and the County Board of Education brought mandamus to compel the Commissioners to indicate the items denied. The lower court dismissed the petition, on the ground that the budget submitted was not "itemized and detailed," as required by the law, and, therefore, did not give the Commissioners the information

necessary to enable them to indicate the items denied, and on the further ground that the powers of the Commissioners in the levying of taxes were discretionary, and could not be controlled by mandamus.

The requirement that the County Commissioners, in disapproving a school levy requested by the County Board of Education, must indicate the items denied, and can no longer make simply a lump reduction, is one of the most important and salutary reforms introduced by the educational law of 1916, and its validity and effect were involved in this case. The Attorney General, therefore, obtained leave from the Court of Appeals to file a brief upon this question and to participate in the argument, on behalf of the State Board of Education and the State Superintendent. The Court of Appeals, on December 13, 1917, held that the County Commissioners were required to indicate the items denied, and that mandamus should issue to compel them to do so. Judgment reversed. The Attorney General appeared for the State Board of Education and the State Superintendent in the Court of Appeals.

Henry F. Wingert et al. vs. State. October Term, 1917. Appeal from the Orphans' Court for Washington County. The heirs at law of P. Hager Wingert, deceased, contend that his estate had no interest in certain property, and that, therefore, the same is not subject to collateral inheritance taxes. The Circuit Court for Washington County sustained this contention, and entered a decree injoining the collection of the taxes. Thereafter, the Orphans' Court ordered the administrators to sell the real estate of the decedent to pay the taxes upon this property which the Circuit Court had decided did not belong to the estate. The administrators appealed. The Attorney General was not advised of any of these proceedings until after the record had reached the Court of Appeals. Being of opinion that the proper way to raise the question whether or not the estate had any interest in the property is by appeal from the decree of the Circuit Court, he directed such appeal to be taken, and requested the Court of Appeals to continue the appeal from

the Orphans' Court until the appeal from the Circuit Court is heard at the January Term, 1918. The Attorney General appeared for the State in the Court of Appeals. *Sub curia.*

State vs. Safe Deposit and Trust Company, Trustee, et al. October Term, 1917. Appeal from Circuit Court of Baltimore City. This appeal involves the question whether the collateral inheritance tax upon estates in remainder, when the testator died before 1908, the rate then being 2½%, and when the remainderman comes into possession after 1908, the rate then being increased to 5%, should be imposed at the 2½% or the 5% rate. The lower court held that the rate was the rate existing at the time the remainder legally vested, or 2½%. Mr. Marbury argued the case in the Circuit Court, and the Attorney General and Mr. Marbury appeared for the State in the Court of Appeals. *Sub curia.*

William G. Albrecht vs. State. October Term, 1917. Appeal from Superior Court of Baltimore City. This appeal involved an execution upon a forfeited recognizance, the recognizance having been given in open court, and being evidenced only by the docket entries. The appellant contended that a recognizance to be valid and enforceable, must be evidenced by a written, executed instrument. The lower court held that a recognizance is valid if given in open court, and evidenced by the docket entries. This case arose before the organization of the State Law Department, and Mr. Frank Gosnell, Jr., had been engaged by the Sheriff to represent the State. Mr. Frank Gosnell argued the case for the Sate in the Court of Appeals, the Attorney General appearing with him. *Sub curia.*

Elmer Swann et al. vs. Board of Police Commissioners of Baltimore City and Mayor and City Council of Baltimore. October Term, 1917. Appeal from Circuit Court of Baltimore City. This appeal involved the validity of the Act of 1910, Ch. 109, Sec. 286, authorizing the Police Board to designate public and private cab stands, to stipulate the number of cabs which may occupy each of such stands, and to regulate the occupation and use thereof. The appellants are cab owners and cab driv-

ers, and they filed a bill for an injunction, asking that the act, as well as a prior ordinance covering the same subject, be declared void, on the ground that both act and ordinance were discriminatory, in that they authorized the Police Board to confine cab stands to localities designated by them, and then to select the cabs which they would permit to use such stands, denying to others the right to use them. The lower court refused the injunction and dismissed the bill. The Attorney General and Mr. Whyte appeared for the Police Board in the Court of Appeals. *Sub curia.*

Chesapeake and Potomac Telephone Company vs. State Roads Commission. October Term, 1917. Appeal from Circuit Court No. 2 of Baltimore City. This appeal involves the right of the State Roads Commission to charge the telephone company rental for the use of state roads for conduits and manholes, the telephone company contending that its franchise from the State entitles it to lay its lines in the public highways free of any charge by the State for the use of such highways. The Company appealed from the refusal of the lower court to injoin the State Roads Commission from interfering with the construction by the Company of a manhole and conduits in one of the state roads, free of any charge by the State. The Attorney General and Mr. Marbury appeared for the State Roads Commission in the Court of Appeals. *Sub curia.*

Civil Cases Finally Disposed of in Lower Courts.

There were eighteen of these cases, of which sixteen were decided or disposed of in the State's favor.

McGuire Construction Company vs. State Roads Commission. United States District Court. Action by contractor for $34,468.10 claimed to be due for extras and changes in specifications under state road contracts. Tried before Judge Rose and a jury on April 16th and 17th, 1917. Verdict of jury and judgment for State Roads Commission. The Attorney General and Mr. Marbury appeared for the State Roads Commission.

William R. Scott vs. E. Austin Baughman, Commissioner of Motor Vehicles, et al. Circuit Court for Allegany County. Scott was a resident of West Virginia, who had been convicted in Maryland of violating the automobile laws, and had taken an appeal. He had also been arrested for another violation of the motor vehicle law, and had prayed a jury trial. While both cases were pending, the Commissioner of Motor Vehicles demanded that Scott take out an operator's license and register under the Maryland law, before again operating his car in this State, on the ground that a non-resident who violates the Maryland law thereby forfeits the right given him to operate in this state for three months without a license or registration. Scott then applied for an injunction to restrain the Commissioner from requiring him to be licensed and registered. The court refused to grant the injunction. Mr. Perlman appeared for the Motor Vehicle Commissioner. After the decision Scott took out the required licenses.

Baltimore Life Insurance Company vs. State Tax Commission. Baltimore City Court. This case involved the taxability of the reserve of non-stock insurance companies. The court held the reserves taxable. Mr. Marbury appeared for the State Tax Commission.

Baltimore Transit Company vs. State Tax Commission. Baltimore City Court. Appeal from assessment for gross receipts tax. Appeal dismissed. Mr. Perlman appeared for the State Tax Commission.

City Motor Company vs. State Tax Commission. Baltimore City Court. Appeal from assessment for gross receipts tax. Appeal dismissed. Mr. Perlman appeared for the State Tax Commission.

M. E. Jenkins vs. Plant and Land Food Company. Circuit Court No. 2 of Baltimore City. State's claim for franchise tax allowed. Mr. Perlman appeared for the State.

William Mason Shehan, State Insurance Commissioner, vs. Family Rescue Fraternal and Beneficial Society. Same vs. Colonial Sick Benefit Society. Same vs. Imperial Mutual Aid

Society. Same vs. Alto Friendly Society. Same vs. Ebenezer Fraternal Society. Same vs. Columbia Home Sick Benefit Society. Circuit Court No. 2 of Baltimore City. These were separate proceedings brought to forfeit the charters of the several beneficial societies named, for violations of the insurance laws of the State. In the first five cases the court, after hearings, entered decrees injoining the societies from further prosecuting business. The commission appointed to examine the Columbia Home Sick Benefit Society has not yet completed its final report to the court. Mr. Requardt appeared for the Insurance Commissioner in each of these cases.

August Steman vs. Police Board of Baltimore City. J. H. Norwig vs. Police Board of Baltimore City. Baltimore City Court. Attachment for unliquidated damages. Attachment dismissed. Mr. Whyte appeared for the Police Board.

Ray Bernstein vs. Police Board of Baltimore City. Baltimore City Court. Mandamus for delivery of jewelry. Mandamus dismissed. Mr. Whyte appeared for the Police Board.

Quality Amusement Co. vs. Police Board of Baltimore City et al. Circuit Court of Baltimore City. Involved right of negro stock company to play in Colonial Theatre before negro audiences. Dismissed. Mr. Marbury appeared for the Police Board.

Robert H. Slaine vs. Annie Slaine. Circuit Court of Baltimore City. Involved Police Beneficial Association. Dismissed. Mr. Marbury appeared for the Association.

Leland M. Talbot vs. State Industrial Accident Commission et al. Circuit Court for Anne Arundel County. Appeal from Commission's order disallowing claim. Reversed. Mr. Perlman appeared for the Commission.

Mary P. O'Riordan vs. State Industrial Accident Commission et al. Superior Court of Baltimore City. Involved right to compromise award without Commission's consent. Settled and dismissed. Mr. Marbury appeared for the Commission.

Samuel S. Costin vs. Hugh A. McMullen, Comptroller, et al. Circuit Court for Somerset County. Injunction against collec-

tion of inspection tax on oysters brought from Virginia beds into Maryland. Injunction granted. Mr. Marbury appeared for the Comptroller.

Sheriff's Cases. In addition to the above, the Sheriff of Baltimore City was made party to a number of suits brought to injoin the execution of judgments. Mr. Requardt appeared for the Sheriff in all of these cases.

Cases Pending on Appeal.

D. E. Foote & Company et al. vs. Emerson C. Harrington, Governor, et al. Supreme Court of the United States. Writ of Error. Involves the question whether mandamus lies to compel the Governor, the Comptroller and the Treasurer to recommend to the Legislature the refunding of taxes paid under a statute afterwards declared unconstitutional. The Court of Appeals held that it did not. 129 Md. 123.

Thomas S. Jackson vs. State. Court of Appeals. January Term, 1918. Appeal from Criminal Court of Baltimore City. Involves validity of segregation ordinance of Baltimore City. Argued by former Attorney General Poe and City Solicitor Field at October Term, 1915. Reargument ordered, March 9, 1916. Case continued from term to term awaiting decision of Supreme Court in case of Buchanan vs. Warley, involving the Louisville ordinance. On November 5, 1917, the Supreme Court held the Louisville ordinance unconstitutional, and on December 4, 1917, Judge Rose, in habeas corpus proceedings in the United States District Court, held the Baltimore ordinance unconstitutional, under the Supreme Court's decision.

State vs. American Colonization Society. Court of Appeals. January Term, 1918. Appeal from Circuit Court of Baltimore City. In American Colonization Society vs. Soulsby, the Court of Appeals, on January 10, 1917, held that a trust covering several valuable warehouses in Baltimore City, created by the will of the late Caroline Donovan, was void, and that the heirs at law were barred from claiming the property. Thereupon, the Attorney General filed a petition in the proceedings

asking that the property be decreed to belong to the State, on account of the failure of heirs entitled to take. The lower court dismissed the petition, and the State has appealed to the Court of Appeals. Mr. Marbury and Mr. Perlman appeared for the State.

State vs. Henry F. Wingert et al., Administrators. Court of Appeals, January Term, 1918. Appeal from Circuit Court for Allegany County. Involves the liability of certain property to collateral inheritance tax. See *ante*, Henry F. Wingert et al. vs. State, October Term, 1917, under "Civil Cases tried in Court of Appeals."

Note.—The January, 1918, Docket of the Court of Appeals has not yet been made up, and there will doubtless be appeals at that term not included above.

Cases Pending in Lower Courts.

State vs. Robert P. Graham (for $11,841.85). State vs. N. Winslow Williams (for $13,356.50). Superior Court of Baltimore City. State vs. Thomas W. Simmons (for $4,655.15). Circuit Court for Anne Arundel County. These three cases were brought, under instructions from the Board of Public Works, to recover fees retained by the defendants during their respective terms of office as Secretary of State, in addition to the constitutional salaries received by them; the Attorney General having given an opinion, to the Board of Public Works, on December 22, 1916 (Atty. Gen. Report, Vol. 1, page 142), that the Secretaries of State are required to account for such fees.

James S. Shepherd vs. Hugh A. McMullen, Comptroller. Circuit Court for Anne Arundel County. Mandamus to compel the Comptroller to pay the Commissioner of the Land Office one-fourth of the fees of his office, in addition to his constitutional salary. The Attorney General gave an opinion to the Board of Public Works, on May 4, 1917, that the Commissioner was not entitled to any part of the fees of his office, in addition to his salary. (See *post*, Opinions.)

Phillips & Neal vs. State Roads Commission. Circuit Court for Worcester County. Action for balance alleged to be due on road contract.

Pugh & Hubbard Co. vs. State Roads Commission. Baltimore City Court. Action for balance of $4,884.28, alleged to be due on road contract.

State Roads Commission vs. American Telephone and Telegraph Company. Same vs. Chesapeake & Potomac Telephone Company. Same vs. Postal Telegraph Cable Company. Superior Court of Baltimore City. Actions to recover rental for use of state roads.

George Kofskey et al. vs. State Roads Commission et al. Circuit Court for Baltimore County. Bill to injoin digging of trench on state-aided road.

United Railways and Electric Company vs. State Roads Commission. Superior Court of Baltimore City. Action to recover $7,500 paid by Railway for paving on state roads.

United Railways and Electric Company vs. State Tax Commission. Circuit Court No. 2 of Baltimore City. Special case stated, involving liability of Railway for bonus tax on increased capital stock.

Industrial Corporation vs. State Tax Commission. Baltimore City Court. Appeal from capital stock assessment.

Sun Life Insurance Company vs. State Tax Commission. Baltimore City Court. Appeal from capital stock assessment.

Julia Jacobs vs. State Industrial Accident Commission. Circuit Court for Caroline County. Involves the question of casual employment.

Sarah J. Bradshaw vs. Hugh A. McMullen, Comptroller. Circuit Court for Anne Arundel County. Action for mandamus to compel Comptroller to pay the appropriations for the counties made by the Mothers' Pension Law, Act 1916, Chap. 670. This case is awaiting the outcome of litigation brought by the City of Baltimore to have the Mothers' Pension Law declared invalid.

Robert W. Wells vs. Maryland State College of Agriculture. Circuit Court for Prince George's County. Action for salary claimed to be due plaintiff as Secretary and Treasurer of the College.

David T. Benson vs. State Veterinary Medical Board. Baltimore City Court. Mandamus to compel the issuance of veterinarian's license.

State Tobacco Inspector et al. vs. Baltimore City et al. Baltimore City Court. Appeal from assessment *re* St. Paul Street opening, and motion to quash.

Jennie Schriver vs. Diederich Classen et al. Superior Court of Baltimore City. Action for damages against police officers for alleged unlawful arrest.

James vs. Goddard et al. Supreme Court of District of Columbia. Proceedings involving validity of certain conveyances and devises to Maryland Agricultural College.

State Roads Commission et al. vs. Baltimore, Chesapeake & Atlantic Railway Company et al. Interstate Commerce Commission. This is a proceeding to have the Commission set aside as unreasonable certain increased railroad rates on crushed stone, which, if not set aside, will considerably increase the cost of state road work. In October, 1916, under the authority of the Acts of 1916, Chap. 560, Sec. 9, the State engaged John B. Daish, Esq., of Washington, D. C., who specializes in legal work before the Interstate Commerce Commission, to represent it in the prosecution of this case. (Atty. Gen. Report, Vol. 1, page 12). During the year, a great amount of testimony was taken, and finally the Attorney-Examiner reported to the Commission that a very substantial and satisfactory reduction in the rates should be made. The case was set for hearing before the Commission, together with other rate cases, early in November, 1917, but has now been postponed by the Commission on account of war conditions. In July, 1917, the State Roads Commission paid Mr. Daish a fee of $500 on account of his services.

New York-New Jersey Port Differential Case. Interstate Commerce Commission. This case involves the claim of New Jersey that western freight rates to and from Jersey City should be three cents less per hundred pounds than they are to New York City, on account of the lighterage charges across the Hudson River. If this claim is successful, the result would be to place Jersey cities upon a parity with Baltimore, thus wiping out Baltimore's differential. In order to aid in protecting Baltimore's interests, the Attorney General filed an intervening petition in the case on behalf of the State. The hearing was conducted by counsel representing the Board of Trade. The Attorney-Examiner filed a report, holding that the existing rates were not unreasonable. This substantially sustains Baltimore's contention. The case has not yet been decided by the Interstate Commerce Commission.

Shortage in Accounts of Clerks of Circuit Court and Circuit Court No. 2 of Baltimore City.

On August 30, 1916, the State Auditor reported to the Board of Public Works that William M. Carson, Clerk of the Circuit Court of Baltimore City, had failed to account to the State for fees of various kinds received in his office during the six years from December, 1909, to December, 1915, the same aggregating $19,974.02. Mr. Carson was bonded with the United States Fidelity and Guaranty Company, and after prolonged negotiations conducted by the Attorney General, the surety settled the State's claim by the payment to the State, on February 3, 1917, of $18,150, the difference of $1,824.02 between this sum and the amount of the shortage as originally reported by the State Auditor consisting of certain items for which a thorough examination disclosed that Mr. Carson was not accountable to the State.

On November 25, 1916, the State Auditor also reported to the Board of Public Works that John Pleasants, Clerk of the Circuit Court No. 2 of Baltimore City, had failed to account

to the State for fees of various kinds received in his office during the six years from December, 1909, to December, 1915, the same aggregating $11,612.68. After negotiations between the Attorney General and Mr. Pleasants' counsel, and after Mr. Pleasants had had the shortage verified by the American Audit Company, Mr. Pleasants settled the State's claim by the payment to the State, on April 13, 1917, of $11,050.43, the difference of $562.25 between this sum and the amount of the shortage originally reported by the State Auditor consisting of certain items for which a thorough examination showed that Mr. Pleasants was not accountable to the State. Mr. Pleasants then requested the State Auditor to examine the books of his office from December, 1915, to November 30, 1916, and this examination disclosed a further shortage for that year of $908.45, which Mr. Pleasants, after verification by the American Audit Company, paid to the State on June 6, 1917.

If the State had been compelled to sue for these shortages, it would have been not only a tedious but an extremely difficult matter to prove, with the requisite legal certainty, the innumerable items comprising the State's claim, and legal questions of difficulty and doubt would also have been presented. All this was avoided by the result of the negotiations conducted by the Attorney General, the State finally recovering, without the institution of any suit, the large sum of $30,108.88, representing every dollar to which the State was legally entitled.

It should be added that Mr. Pleasants had not the slightest knowledge of the shortage in his office until the same was brought to his attention by the State Auditor, and the same is true in Mr. Carson's case.

The criminal prosecutions of the deputy clerks which resulted from the disclosure of these shortages, were, of course, in the hands of the State's Attorney of Baltimore City.

Maryland Preparedness and Survey Commission.

In February, 1917, the Governor organized the Maryland Preparedness and Survey Commission, and appointed the At-

torney General a member of it. A great part of the Attorney General's time was devoted to the work of this Commission, until the Commission was succeeded by the Maryland Council of Defense, after the adjournment of the extraordinary session of the General Assembly, on June 27, 1917.

Among the more important work done by the Attorney General for this Commission may be noted:

1—Examination of the laws and ordinances of other states and cities regulating the storage, sale and use of explosives, and preparation of the Proclamation Regarding Explosives issued by the Governor on March 14, 1917.

2—Preparation of the Rules and Instructions, Enrollment Cards and Notices under which the Military Enrollment Boards appointed by the Governor in the counties and the Police Board in Baltimore City took the Military Census of the able-bodied male citizens of the State, the handling of all legal questions which arose in connection with this Census, and advising with the State's Attorneys, Clerks of Court and other officers as to their respective duties.

3—The preparation of all bills for submission by the Governor to the Extraordinary Session of the General Assembly held in June, 1917. There were twenty-one of these bills prepared by the Attorney General, the same covering ninety-eight pages of printed matter, and there were also five additional bills relating to Conservation, which were prepared by the Conservation Commission.

After these bills were finally approved by the Commission and by the Governor, the Attorney General had them all printed in pamphlet form, and sent to all the members of the Legislature in advance of the convening of the Extraordinary Session, so that each member had ample opportunity, before the session met, to study all the bills proposed by the administration for their consideration.

Extraordinary Session of 1917.

The Attorney General and Mr. Perlman attended at Annapolis uninterruptedly during the Extraordinary Session of the General Assembly which met on June 12, 1917, and adjourned on June 27, 1917. The laws prepared by the Attorney General and passed by the Extraordinary Session were as follows:

1. One Million Dollar War Loan of 1917, Act 1917, Chap. 3.
2. Prison Labor on the Public Roads. Act 1917. Chap. 4.
3. State Farm for Prison Labor. Act 1917, Chap. 15.
4. Contamination of water supplies and food. Act 1917, Chap. 8.
5. Destruction of property by dynamiting, etc. Act 1917, Chap. 9.
6. Suspension of statutes of limitations in favor of soldiers and sailors. Act 1917, Chap. 19.
7. Suspension of legal proceedings brought by or against soldiers and sailors. Act 1917, Chap. 22.
8. Suspension of judgments, etc., against soldiers and sailors. Act. 1917, Chap. 23.
9. Authorizing successive legal holidays. Act. 1917, Chap. 21.
10. Maryland Council of Defense. Act 1917, Chap. 24.
11. Authorizing volunteer fire companies to be county guards. Act 1917, Chap. 25.
12. Maryland State Guard. Act 1917, Chap. 26.
13. Sundry amendments to Militia Law. Act 1917, Chap. 27.
14. Compulsory Work Law. Act 1917, Chap. 33.
15. Abatement of Nuisances to Health. Act 1917, Chap. 36.
16. Soldiers and sailors not to be stricken from registration books. Act. 1917, Chap. 40.

The bills prepared by the Attorney General, but not passed by the Legislature, were:

1. Authorizing Governor to organize State's resources during war.

2. Constitutional Amendment relating to Absent Voting.
3. Soldiers' and Sailors' Vote Law.
4. Farms for State Institutions.
5. Pay and position of public employees during absence in military or naval service.

Maryland Council of Defense.

The Attorney General is not a member of the Executive Committee of this Council, but he attends its weekly meetings, and advises the Committee upon all legal questions connected with its duties. Among other things, he prepared the necessary proceedings incident to the issue of $500,000 bonds of the War Loan of 1917.

Compulsory Work Law.

This law (Act 1917, Chap. 33) provides for the assignment of able-bodied males, between 18 and 50 years of age, not regularly employed, to work at such public or private occupations as are proclaimed by the Governor to be necessary for the protection and welfare of the State or the Nation during the present war. The Governor has proclaimed the occupations to which persons may be thus assigned. They include agricultural and horticultural work, cannery work, state, county and Baltimore City road work, work in hospitals, box factories and shipyards, and any work done in Maryland by the United States or the State in connection with the war.

The law is the only one of its kind in this country, and has attracted much attention and received much publicity in the different States. It is now being considered as the basis of a proposed Federal law.

The scope and application of the law were worked out by the Attorney General and his Department with careful regard for constitutional considerations, and the Attorney General prepared the Rules and Regulations for the enforcement of the law, and the necessary forms.

The Compulsory Work Bureau has been established, with Mr. George A. Mahone as its Director, and Mr. Mahone and his assistants have actual charge of enforcing the law throughout the State. Mr. Perlman has been specially assigned to aid the Bureau in legal questions which arise.

The effect of the law has been most salutary, not only through its actual, successful administration, but also because of its moral influence in forcing the idle, whether with or without means, to work. It has reduced idleness in the State and helped labor conditions to a marked degree.

Bank Commissioner.

The supervision of over 150 banking institutions, with combined assets of nearly $200,000,000, requires frequent legal advice, and Mr. Requardt has been specially assigned to this Department, with which he keeps in constant touch. During the year he passed upon numerous charters and amendments, drafted forms for the incorporation of trust companies, and rendered assistance upon the many legal questions which arose in the conduct of the Department's business.

State Insurance Department.

The Attorney General has been particularly anxious to cooperate promptly and in every way with this Department in its enforcement of the insurance laws. In order to facilitate this, Mr. Requardt has been specially assigned to the Insurance Department, and he is at all times at its service. He attends the hearing of complaints against agents and brokers, and is constantly called on for advice upon questions which arise in the conduct of the Department's business. During the year, proceedings against five insurance companies, which were operating in violation of the law, have been prosecuted and successfully concluded. A sixth proceeding is still pending.

Board of Election Supervisors of Baltimore City.

The legal work of this Board is quite considerable each year from before the primary until after the election. Instructions are prepared for judges and clerks of election and for the voters, and the forms of ballots approved. Advice is constantly required upon questions arising under the registration laws and upon election days. There are also numerous registration cases to be tried each year. Mr. Requardt is specially assigned to the legal work of this Board.

State Board of Health.

The work of this Board is important and exacting, and occupies the greater portion of Mr. Whyte's time. Mr. Whyte is always at the Board's service. During the year he had charge of the proceedings necessary to abate 152 nuisances and pollutions of various kinds throughout the State. In 27 of these cases, proceedings in the Circuit Court were necessary. In practically every case the nuisance has been abated and the conditions remedied. Mr. Whyte is in daily personal contact or correspondence with the State Board of Health and its several Bureaus, and with the deputy health wardens throughout the State, upon questions of every conceivable kind which arise under the health laws, and he also advises with the local State's Attorneys upon criminal prosecutions.

Commissioner of Motor Vehicles.

The Commissioner requires constant legal advice upon the multitude of questions and the numerous cases which arise in connection with his work. Mr. Perlman is specially assigned to this Department, and is in daily contact with it.

Other Commissions and Officers.

In addition to those specially referred to above, the Attorney General represents all the other State boards, commissions and officers, with the single exception of the Public Service Com-

mission. These other boards and officers do not require any special mention, other than to say that in most cases their calls for legal advice are frequent, some of them, like the Conservation Commission, for example, being in constant consultation with the Department of Law.

Condemnations and Title Work.

The condemnation cases instituted during the fiscal year ended September 30, 1917, were all brought on behalf of the State Roads Commission, for the acquisition of rights of way for state roads.

During the said fiscal year, titles were examined for the State Roads Commission in cases where rights of way were acquired by agreement, and titles were also examined for sites acquired for state armories in Hyattsville, Cambridge and Westminster, for an additional strip of land for the Bel Air Armory, and for land acquired by the Springfield State Hospital and by the State Board of Prison Control for the Maryland House of Correction.

In county condemnation cases, the interests of the State can only be properly cared for by the employment of local counsel; and, of course, local counsel are necessary in county title examinations. Accordingly, local counsel were engaged in work of this character, under the authority of Section 9 of Chapter 560 of the Acts of 1916.

The fees of local counsel in state road condemnation cases were paid from the funds of the State Roads Commission, after the amounts thereof had been approved by the Attorney General as reasonable. The title fees for the Hyattsville, Cambridge and Westminster Armory sites were paid from the proceeds of the Three Million Dollar Loan of 1916, of which $100,000 was applicable to said armories (Act 1916, Ch. 681); the title fee for the additional strip of land acquired for the Bel Air Armory was paid from the State Law Department's appropriation; and the Springfield State Hospital and the State Board of Prison

Control paid the title fees for the land acquired for them from their respective funds.

A list of these condemnation cases and title examinations, together with the names of the local counsel employed and the fees paid each, during the fiscal year ending September 30, 1917, follows:

Anne Arundel County. Acquisition of land for Maryland House of Correction by State Board of Prison Control. Examination of title. Counsel, Joseph L. McAllister. Fee: $50.

Carroll County. Acquisition of Baltimore and Reisterstown Turnpike from western limits of Westminster to the Pennsylvania line. Examination of title. Counsel, Messrs. Bond and Parke. No fee paid by the State.

Acquisition of site for Westminster Armory. Examination of title. Counsel, Messrs. Bond and Parke. Fee: $25.

Acquisition of property for Springfield State Hospital. Examination of title. Counsel, Messrs. Bond and Parke. Fee: $25.

Cecil County. Condemnation of Stubbs and Evans properties for state road. Counsel, William Pepper Constable. Fee: $100.

Dorchester County. Acquisition of site for Cambridge Armory. Examination of title. Counsel, Calvin Harrington. Fee: $25.

Frederick County. Buckeystown Turnpike, Washington Turnpike and Monocacy and Urbana Turnpike. Acquired by the State under Act 1916, Ch. 358. Examination of titles. Counsel, D. Princeton Buckey. Fee: $75.

Condemnation of Henkle property for state road. Counsel Edward J. Smith. Fee: $100.

State road from Knoxville to Harper's Ferry. Examination of sundry titles. Counsel, Edward J. Smith. Fee: $250.

Harford County. Condemnation of Scarff property for state road. Counsel, Thomas H. Robinson. Fee: $100.

Acquisition of additional land for Bel Air Armory. Examination of title. Counsel, Joseph S. Goldsmith. Fee: $25.

Kent County. Condemnation of Noland property for state road. Counsel, Harrison W. Vickers. Fee: $150.

Prince George's County. Acquisition of site for Hyattsville Armory. Title examined by Maryland Real Estate Title Company. Fee: $50.

Somerset County. Condemnation of Stuck, Dryden and Weidema properties for State road. Counsel, Henry J. Waters. Fee: $175.

Washington County. Condemnation of Stonebraker property for state road. Counsel, J. Cleveland Grice. Fee: $150. Paid by Baltimore and Ohio Railroad Company.

Worcester County. Condemnation of Taber property for bridge over Sinepuxent Bay. Counsel, George M. Upshur. Fee: $250.

The total fees thus paid by the State to the above special counsel, during the fiscal year ending September 30, 1917, amounted to $1,400.

Tax Collections.

The law imposes upon the Attorney General the collection of overdue franchise taxes due by domestic and foreign corporations, and the collection of overdue capital stock taxes. The number of these claims is extremely large, the great majority of them are of small amounts, and as a practical matter it is simply impossible for my Department to handle and push them properly, without seriously hampering the legal work of the State, which is constantly increasing.

This situation was recognized by the Legislature, because the appropriation acts for the past and the present fiscal years, which were passed at the same session at which the Department of Law was created, each appropriated $3,000 "for the commissions to attorneys on claims of the State placed in their hands for collection," which appropriations the Governor disapproved as to $1,000 and approved as to $2,000. (Acts 1916, Chap. 685, pages 1566 and 1576, and Chap. 684, pages 1551 and 1564.)

Therefore, pursuant to the authority of Section 9 of Chapter 560 of the Acts of 1916, special counsel have been engaged to make these collections, upon a commission, payable out of the above appropriations, of 10 per cent. upon collections not exceeding $50.00, and 5 per cent. upon collections over that amount.

These counsel, for the year 1916-1917, have been Mr. William L. Galvin and Mr. Charles B. Hoffman, both of Baltimore City. The total amount of their collections during the said year have been $16,173.87 and the total commissions paid them has been $1,481.36.

Recently, Mr. Galvin found it impossible to continue with the work, and Mr. James Clarke Murphy, of Baltimore City, has been appointed in his place.

LEGISLATION FOR GENERAL ASSEMBLY OF 1918.

In conformity with the provisions of Section 8 of the Act of 1916, Chapter 560, requiring the Attorney General to make "such recommendations, if any, as he may consider appropriate to make," I respectfully submit for consideration certain subjects of proposed legislation.

The measures are of two classes:

The first class relates to subjects which the actual experience of the State Law Department has shown to be in need of remedial legislation. With the exception of three of these subjects, which involve important questions of governmental policy (one relating to legislative procedure, another to soldiers' votes and the third to home rule), every one of these measures has already been drafted by my Department in bill form, and all are ready to be introduced on the very first day that the General Assembly is ready to receive bills, in the event that their introduction is deemed desirable by those whose province it is to decide that question.

The second class embraces what may be called Departmental measures. The work of the extra session was so very much

aided by the fact that the measures which that session was called to consider had all been prepared by the State Law Department before the session met, that I felt it would be of great advantage to the Legislature of 1918 if the measures desired by the different departments of the State were in like manner prepared before the session met.

Accordingly, about the middle of November, 1917, I communicated with all the important boards and commissions of the State, asking them what legislation they desired to submit to the Legislature of 1918 (exclusive, of course, of subjects properly belonging in the Governor's budget), and offering the services of my Department to draft it.

The result has been that, with the few exceptions which will be noted, every measure desired of the Legislature of 1918, by any department of the State government, has been drafted in bill form, and has either been sent by me to the respective Departments which requested these measures drawn, or else is in my hands awaiting instructions from them. The bills are all ready for introduction by the Departments on the first day that the Legislature is ready to receive bills.

It will be understood that in drafting these Departmental measures, I simply put into bill form the legislative wishes of the different Departments. Each Department was the judge of what it wanted. My Department merely acted as counsel in drawing the bills along the lines requested. These bills, therefore, do not emanate from my Department in any way. They are entirely the bills of the respective Departments at whose request they were drafted.

A. Legislation Recommended.

Legislative Counsel Bureau.

I have carefully considered what measures could be enacted which might help to make future legislation in this State of the highest possible character. The subject involves three considerations:

1. Supplying the legislators, for their information and guidance, with all statistics, data and research work bearing upon matters which are the subjects of proposed legislation.

2. Aiding the legislators in the actual drafting and amending of bills.

3. Minimizing, as far as possible, the congestion of bills during the closing days of the Legislature, when by far the greater portion of each session's bills are passed, and passed in such great number as to render consideration of most of them practically impossible.

It is, of course, highly important that legislators should have at their command all the information possible relating to bills which they may wish to introduce or which are pending before them. This gives them the benefit of the studies of those who have considered and investigated the same or similar subjects, enables them to know what has been done relative thereto in other States, and what the experience of other States has been. The average legislator has not the time to procure this information for himself, and usually he has not the facilities either. The Act of 1916, Chapter 474, already imposes work of this character upon the Executive Officer of the Department of Legislative Reference of Baltimore City.

It is of at least equal importance that all possible aid should be given those who draft legislation. No work calls for more specialized and expert skill than does the drawing of laws. If the language, form and arrangement of all statutes were passed upon by minds specially trained and qualified for the work, not only would clearness and brevity of statement be promoted, but litigation would be tremendously reduced.

For instance: the Court of Appeals has many times been called upon to decide whether the provisions of a statute are mandatory or only discretionary, whether, "may" means "shall," whether "power" means "duty." Numerous cases involve the exact application of general terms following specific terms, such as "of the same sort," "or other persons," "etc." The form of the enacting clause has been frequently before the Court. Any

number of cases involve the question whether a statute was intended to repeal a prior law or not. In innumerable cases statutes have been attacked on the ground that the title does not correctly describe the subject. If in these and in many other cases the statutes had been carefully drawn, so that their scope and application were clear, and all formal requirements complied with, they would generally not have found their way into court at all.

Even where the legislative intent is expressed with sufficient clearness, statutes are still all too often open to the criticism of excessive length, redundancy of expression, unnecessary repetition, and the overuse of provisos and qualifications.

Considerable trouble is often due to the imitation or copying of laws passed upon the same subject in other States, which themselves are not carefully drawn, or which may not be entirely suited to local conditions.

The shortcomings of our statute law are largely attributable to the fact that it comes from so many different hands and sources, working without a central supervision or a concerted plan. No matter how capable the legislator may be, he cannot give to the drafting of statutes the time which that work really requires. He is compelled either to do the work hurriedly himself, or else have it done for him by others.

The majority of States have attempted to solve the difficulty, some by a Legislative Bureau, some by a Clerk of Bills, some by Legislative Advisers.

It may be open to question whether this bill drafting work could best be done by placing it under the jurisdiction of the Attorney General, with power to engage such competent assistance as might be necessary, or by placing it under a separate Department. My own belief and recommendation is that this work and the legislative reference work should be co-ordinated and vested in the same department, to be known as the Legislative Counsel Bureau; that this department should always be at the service of the Legislature, of the departments of the State

Government and of those properly interested in legislative matters; and that it should be clothed with the following duties:

1. To investigate and compile statistics, data and information bearing upon subjects of proposed legislation.

2. To prepare, upon proper request, or to pass upon all bills before their introduction, or at least before their reference to Committees, or if amended, then before their final passage, with respect to phraseology and style, their coordination with existing laws which it is not desired to affect, their punctuation, their general arrangement, and their compliance with all legal requirements as to form and title.

Any bill carrying out this plan, should contain such safeguards as will assure, as far as can be done, complete nonpartisanship in the Bureau's work, and the Bureau should be strictly confined to its only proper function of *aiding* the Legislature, and the members thereof, so that it would not interfere in the slightest degree with the subject or course of proposed legislation. As to this, the Legislature must be entirely unhampered.

The Bureau would, of course, call upon the Attorney General for any needed advice or assistance, and it could aid very much in the examination of bills for the Governor, before his action thereon. It might also be entrusted with the indexing of the laws, and with their codification from time to time.

Congestion of Bills in Legislature.

It is a far more difficult matter to relieve the Legislature of the great congestion of bills during the closing days of the session. I do not find that any state has yet remedied this condition satisfactorily. Most of them have not tried, doubtless because it is chiefly due to conditions which are beyond legislative control.

A constitutional amendment prohibiting the introduction of bills within a certain number of days prior to adjournment might help some, but when the Legislature meets for only ninety days every two years, this has its objections. California has

recently provided for a thirty day session for the introduction of bills, then a thirty day adjournment during which committee work is done, and then another thirty day session during which the bills are acted upon, and during which new bills cannot be introduced without a three-fourth's vote. The plan has hardly been in existence long enough to show whether it works satisfactorily or not, and nothing of this kind should be considered in Maryland until the experience of California is known.

Something can, however, be done to aid in the earlier passage of bills affecting the various departments of the State government, and anything tending to do this is most desirable, because these bills usually constitute the major part of the important public legislation. To this end I would recommend:

The enactment of a law requiring each department of the State Government to report in writing to the Governor, not later than the 15th day of each November preceding the meeting of the Legislature, exactly what legislation it desires for the better and more efficient prosecution of its work, which reports will be promptly transmitted by the Governor to the Attorney General, with such recommendations or suggestions as the Governor may deem proper to make, to the end that the Attorney General, working in connection with the respective departments, shall draft the bills necessary to carry out the governmental needs in time to have them ready for introduction on the first day the Legislature is ready to receive bills.

This would result in having the bills affecting the State Government, which are always numerous and of public importance, completed before the Legislature meets. The Budget amendment requires proposed appropriations and expenditures to be submitted within twenty days after the Legislature convenes. The plan now proposed would simply extend this principle to all legislation affecting the government of the State, by providing for its introduction on the first day.

There need be no prohibition against the subsequent introduction of such legislation, if an unforeseen or unexpected need therefor arises. As a practical matter, there would be very

few, if any, cases of this kind, and the business of the Legislature would be tremendously accelerated if all state bills were ready for consideration as soon as the session convened.

Home Rule Bill. A bill should be passed by the next Legislature providing general powers for cities or counties which may vote to adopt the provisions of the Home Rule Amendment, embodied in the Acts of 1914, Ch. 416, and adopted at the November, 1915, election. As suggested in my Annual Report for 1916, and as subsequently suggested to you, I think that a commission of lawyers residing in different sections of the State should be appointed to draft this bill, as it may affect all sections of the State, and its draughtsmen should know local conditions thoroughly, and have the effect of the bill on them in mind. I understand that you concurred in this suggestion, and accordingly this bill will be drafted by a committee of lawyers appointed by you.

Soldiers' and Sailors' Vote Bill. The bill upon this subject, introduced but not passed at the extraordinary session of 1917, was the result of a thorough study by my Department of the laws and decisions in the thirty-odd States which have or have had absent voters' statutes. This bill requires each soldier's ballot to be mailed by him to the election precinct of his residence, and there cast on election day. In my judgment, this requirement is necessary, in order to comply with the Maryland Constitution, but the machinery provided for getting the ballots to the soldiers and having them mailed back by the soldiers and cast, is necessarily somewhat complicated and cumbersome. It cannot be otherwise. While not discussing the details, for lack of space, I frankly doubt how effective the measure would be in securing the votes of any considerable number of Maryland soldiers.

The only really effective plan for taking the votes of soldiers is one whereby the ballots are cast, under proper restrictions, in the camps, or wherever the soldiers may be, and then returned to this State to be counted. This plan requires a constitutional amendment. Such an amendment was prepared by me and

introduced at the extraordinary session of 1917, but did not pass.

In my judgment, this amendment should be introduced again and passed, and submitted to the people at the next election; and at the same time there should be introduced a bill providing for taking the soldiers' votes in the camps, or wherever they may be, which bill should provide that it would become effective upon the adoption by the people of the constitutional amendment authorizing it. If such a bill becomes a law, then, upon the adoption of the amendment, Maryland would have the most effective method which can be devised for giving her soldiers the right to vote.

I can, if desired, prepare such a bill very promptly, and in the meanwhile the bill which failed to pass at the extraordinary session is ready for reintroduction, in case that should seem advisable.

Reversion of Unexpended Balances of Appropriations. The question has frequently arisen, and has indeed been the subject of litigation, whether unexpended balances of appropriations to State departments have or have not reverted. The principal difficulty arises in cases where there are outstanding obligations, incurred during, but not paid at the end of the fiscal year, and of which the Comptroller has no knowledge.

I recommend the enactment of a law which will make it the duty of each Department to notify the Comptroller, at least ten days before the end of the fiscal year, whether any unexpended balance of its appropriation is needed to meet obligations incurred during the year; any unexpended balance, against which there are no such outstanding obligations, to revert at the close of the fiscal year.

I have prepared such a bill, and it is ready for introduction, if desired.

Contractor's Debts for Labor and Materials. Not infrequently a State contractor, who has been paid in full by the State, fails without paying his labor or material men, who then apply to the Legislature for an appropriation to cover the

amount due them. Such appropriations have sometimes been made, and their result, of course, is to make the State pay twice for the same work or materials.

I recommend the enactment of a law requiring each State contractor's bond to guarantee the payment of all debts for labor and materials. This will enable the unpaid labor and material men to receive payment from the surety. A guarantee of this kind is required for United States Government work, and in Maryland for state roadwork. It should be required for all state work.

I have prepared such a bill, and it is ready for introduction, if desired.

Transfer of Stock by Foreign Executors. The law requires every foreign executor, before transferring stock owned in a Maryland corporation by a non-resident decedent, to obtain an order of the Orphans' Court, and pay the State tax upon executors' commissions. The law imposes no penalty upon Maryland corporations which permit their stock to be transferred in such cases without the order of Court, and when this is done, as it not infrequently is, the State loses the tax, because the executor, being beyond the jurisdiction, cannot be reached.

I recommend an amendment to this law so as to impose a penalty upon corporations which violate its requirements. I have prepared such a bill, and it is ready for introduction, if desired.

Forfeiture of Corporate Charters for Non-Payment of Taxes. A large number of the corporations now carried on the books as delinquent in the payment of franchise, capital stock and gross receipts taxes, have no assets of any kind, and have ceased to do business, many of them years ago. The taxes are entirely uncollectible, yet because the corporations have never been legally dissolved, the assessments are still continued upon the books of the State Tax Commission, and are still certified annually by that Commission to the Comptroller for collection of the taxes. Dissolution proceedings brought by the State would,

in most cases, simply involve expense, without any return whatever.

In order to rid the books of this dead timber, as well as to aid in forcing the more prompt payment of taxes of this character, I recommend the passage of a law whereby the charters of such delinquent corporations will, upon proclamation of the Governor, be automatically forfeited when said taxes are overdue and unpaid for over two years.

I have prepared such a bill, and it is ready for introduction, if desired.

Penalties for Failing to File Corporate Reports Within Required Time. The Act of 1916, Ch. 631, provides that corporations, partnerships and individuals required to report to the State Tax Commission, must do so on or before March 1 each year, and that upon failure so to do, a fine shall be imposed upon them of $5.00, with $1.00 additional for every day thereafter that the default continues, until June 1st, when a further penalty of $100 is imposed, and then a still further penalty of $1.00 per day is imposed until the report is filed or assessment made without report. The Act further requires the State Tax Commission to certify these penalties to the Attorney General, and provides that he shall institute suits in debt to recover the same, wherever the principal office of the corporation is located, or where the partnership or individual carries on business or resides.

Under this Act, the State Tax Commission certified to the Attorney General, during the summer and fall of 1917, 538 claims for penalties against corporations and others. These claims ranged all the way from $6.00 to over $200, and the debtors were located in almost every part of the State.

I took the responsibility of not instituting suits for these penalties, for the following reasons:

1. Before 1916, practically no attempt was ever made to enforce penalties for not filing reports in time, and the provisions of the Act of 1916, Ch. 631, while technically, of course,

they should have been known, yet, as a matter of fact, were not known, to many of the delinquent corporations.

2. The enforcement of such stringent penalties for a neglect which in practice had not been penalized before, imposed a hardship upon corporations generally which did not know of them, and this hardship would have been beyond all reason in the case of numerous small organizations and associations, many of which had practically no assets at all.

3. The staff of the State Law Department is entirely inadequate to prosecute such a great number of comparatively small civil actions, many of them before justices of the peace, in every part of the State.

The law ought to be amended in such a way as fairly to meet the above conditions, and the amendment ought to give due consideration to the following two facts:

1. Some discretionary power should exist with respect to the reduction or abatement of these penalties. That power should not rest upon the Attorney General. He, certainly, is not the proper official to pass upon the propriety of reducing or abating hundreds of penalties. That falls within the province of the State Tax Commission.

2. The effective method of collecting penalties of this kind is not by civil suit. It is by making the penalties part of the taxes due.

I, therefore, recommend an amendment to this law which will give the State Tax Commission power to reduce or abate such of the penalties already imposed as the Commission considers should be reduced or abated; and power with respect to the reduction or abatement of such penalties in the future; and providing also that all penalties shall be collected as part of the taxes due.

I have prepared such a bill, and it is ready for introduction.

State Law Department. I would like to have the designation of the office held by Mr. Perlman changed from Assistant and Chief Clerk to Assistant Attorney General. Mr. Perlman has been trying cases in the lower courts and in the Court of Appeals, advising upon legal questions with state boards and com-

missions, aiding the Attorney General in legislative work, and in other respects performing the services of an Assistant Attorney General. My original plan for the State Law Department called for four Assistants, although I readily agreed to try it with three, but experience has shown that four Assistants are really necessary.

I have, therefore, prepared a bill changing the name of the position held by Mr. Perlman from Chief Clerk to Assistant Attorney General. The duties which the law places upon the Chief Clerk, I can distribute among my present office force.

I have also asked you, in your Budget, to fix the compensation at $2,500, instead of $1,500, which latter sum is now the salary provided for the Chief Clerk. I cannot expect Mr. Perlman, or any other lawyer of the necessary ability, to do the work and give the time which is required of this position for less than $2,500 a year.

This increase in Mr. Perlman's salary and certain increases asked for in the compensation of my office force aggregate a total requested increase of $1,900. I feel that this is not only necessary in order to maintain the efficiency of the State Law Department, but that it is reasonable as well, in view of the fact that the State Law Department has resulted, during its first year, in saving one-third the former cost of the State's law work.

B. Departmental Legislation.

The bills drafted for the different departments of the State, along the lines desired by them, follow:

Adjutant General. At the request of the Adjutant General, I have prepared a bill abolishing the present Fifth Regiment Armory Commission, and creating the State Armory Commission, composed of the Governor, the Adjutant General and the Comptroller, and charging the same with the management and control of all armories owned or leased by the State.

Agriculture, State Board of. I have communicated with this Board, but so far have not been advised what legislation they wish drafted.

Bank Commissioner. I have prepared for the Bank Commissioner a bill making numerous amendments to the banking laws of the State. The more important provisions of the bill are:

1. Authorizing the Commissioner's examinations of State banking institutions to be used as the basis of admitting such institutions into the Federal Reserve System.

2. Authorizing the Commissioner to disapprove charters for new banking institutions, if the character of the incorporators does not warrant belief that the proposed institution will be conducted in accordance with law, or if the public convenience will not be promoted thereby.

3. Authorizing trust companies to discount commercial paper.

4. Requiring savings institutions to report certain unclaimed deposits every four years.

5. Defining demand and time deposits.

6. Authorizing state banking institutions admitted into the Federal Reserve System to maintain the reserves required by said System.

Comptroller. At the request of the Comptroller, I have prepared bills:

1. Authorizing the state's stationery to be procured by private contract, instead of public bidding after advertisement, when the amount involved is less than $500.

2. Providing that bonds given by collectors of state taxes and of other state moneys shall have corporate sureties.

3. Requiring the Insurance Department to account quarterly, instead of annually, for the receipts of its office.

4. Requiring the clerks of the County Commissioners and of the Appeal Tax Court to return tax assessments to the Comptroller quarterly, instead of annually.

5. The Comptroller also requested a bill for the forfeiture of charters of corporations for non-payment of certain taxes for over two years. This bill has been drafted, and is explained *ante,* under the heading, "A. Legislation Recommended."

Conservation Commission. This Commission expects to submit a number of amendments to the oyster, crab, fish and game laws of the State. The amendments to the oyster, crab and fish laws have already been prepared by or under the supervision of the Commission's Chairman. I have approved these bills as to form, and they are in the possession of the Chairman, practically ready for introduction. The Chairman advises me that the amendments to the game laws are being prepared by the Commission, or under its supervision, and that these also are practically ready.

Health, State Board of. At the request of this Board, I have prepared bills:

1. Imposing penalties for interference with health officers in the performance of their duties.

2. Relating to the investigation of nuisances by local health boards.

3. Enlarging the Board's powers with respect to contagious and infectious diseases.

Insurance Department. At the request of this Department, I have prepared a bill:

1. Requiring brokers placing fire, lightning or tornado insurance in companies not authorized to transact business in this State, to make monthly reports of such policies to the Insurance Department.

2. Authorizing the Insurance Commissioner to summon witnesses, administer oaths and require the production of books, policies and papers, in connection with examinations, hearings and investigations.

3. Valuing certain policies issued after December 31, 1918, upon the American Experience Table of Mortality and three and one-half per cent.

Labor and Statistics, State Board of. At the request of this Board, I have prepared the following bills:

1. Providing for the inspection of steam boilers throughout the State. The present law only provides for such inspection in Baltimore City.

2. Making more stringent the laws regulating the hours of labor for females.

3. Amending the laws relative to the employment of minors, the principal changes being: to raise the minimum age of children employed in canning and packing establishments from 12 to 14, and authorizing children over 14 to receive a temporary permit to work, provided the Superintendent of Education certifies that they are unable to make further advancement in school.

Liquor License Commissioners of Baltimore City. The President of this Board advises me that the Board will itself draft such legislation as it may desire to submit to the General Assembly.

Lunacy Commission. Under the Act of 1916, Chap. 699, members of the Lunacy Commission, and its Secretary, are very frequently called upon by the courts to examine persons under indictment, in all parts of the State, with respect to their sanity. The Commission feels that its members, who are now non-paid officials, should receive a reasonable compensation for work of this character, and that when the same is done by the Secretary, he should receive compensation therefor, in addition to his present salary.

I have, at the Commission's request, prepared a bill which provides that the Court is to allow a reasonable fee for the above services, as part of the Court costs; the city or county to be reimbursed, if the person is declared insane, either under a bond or from the lunatic's estate.

Motor Vehicles, Commissioner of. At the request of the Commissioner, Mr. Perlman has drafted a bill containing a complete revision of the motor vehicle laws of the State, along the lines desired by the Commissioner. The bill has been printed in pamphlet form by the Commissioner, and it covers 42 printed pages. Among other things, it provides for a Traffic Court, which is given exclusive jurisdiction over violations of the motor vehicle laws and the traffic ordinances in Baltimore

City. and concurrent jurisdiction with Justices of the Peace over violations of the motor vehicle laws in the counties.

Police Commissioners of Baltimore City. At the request of this Board, I have prepared a bill providing that members of the force who enter the military service may be re-instated upon their return.

The Board also desires a bill increasing the salaries of members of the force, and providing new grades for detectives, but the Board has not as yet been able to furnish me with the data necessary to draft this bill.

Prison Control, State Board of. I have prepared for this Board the following bills:

1. Authorizing prisoners now confined in the Maryland Penitentiary, to be transferred from that institution to the House of Correction, when prison discipline will be furthered thereby. The present law only authorizes this as to prisoners sentenced since October 1, 1916, when the law took effect.

2. Amending the habeas corpus laws in the following particulars:

a. Requiring a copy of the commitment to be furnished a representative of the prisoner only when such representative is duly authorized by the prisoner to get it, and when he applies therefor in person. This is intended to put a stop to the practice whereby certain attorneys demand copies of commitments without the knowledge of the prisoners, whom they are not authorized to represent, in order to see whether they can find any ground or pretext for habeas corpus proceedings, and the charging of a fee therefor.

b. Requiring each application for the writ of habeas corpus to be accompanied by a copy of the commitment claimed to be defective, and to state whether the writ has previously been applied for in the same case; and providing that the court is not to grant the writ if the application or the commitment shows on its face that the prisoner is not entitled to be released. These provisions are aimed at restricting, within proper limits, the practice whereby the writ now has to be granted whether

there are grounds for the prisoner's release or not, and whereby the prisoner's attorney, notwithstanding the court's decision, after hearing, that the prisoner is not entitled to his release, may keep on applying for the writ as many times as he chooses, and require the prisoner to be produced again before whatever court in the State he selects for the purpose.

3. Requiring the Advisory Board of Parole to investigate the case of each prisoner sentenced, for one year or more, to the Maryland Penitentiary or the House of Correction, when one-third of his term has expired, in order to see whether he should then be recommended to the Governor for conditional pardon. If the pardon is granted, then the prisoner is placed, of course, under the supervision of the Board, and will be compelled to serve the balance of his term, if he does not faithfully comply with the conditions of his pardon.

At present, the Board usually acts only on application.

This bill, if passed, will require the Board to determine, on its own initiative, whether the conduct and reformation of any prisoner, sentenced to the above institutions for one year or more, is such, when he has served one-third of his term, as to justify his release, on condition that he must serve the balance of his term, if he violates the conditions of his parole. With this amendment, the Maryland law will be better than the indeterminate sentence, because a release granted under the indeterminate sentence is usually irrevocable, whereas under our law the prisoner, after his release, would continue under supervision.

State Aids and Charities. I have communicated with this Board, but have not been advised of any legislation they wish drafted.

State Industrial Accident Commission. This Commission advises me that they will let me know as soon as they are able to decide what legislation they wish drafted.

I think that at least one measure is important in connection with a phase of this Commission's jurisdiction which has come before my Department. The law gives the Commission jurisdiction over hazardous employments when carried on by the State, as well as by private employers. The State, however, has made no appropriation to cover awards made against State departments, and it is, at least, doubtful whether the departmental appropriations themselves are applicable for this purpose.

The policy of the State with respect to this subject should be definitely fixed. If State employments are not to continue under the law, then the law should be amended accordingly. If they are, then an appropriation should be made by the State to cover the payment of awards made against State departments, and proper machinery should be provided for following up the cases in which such awards are made, in order to see when disability ceases.

State Tax Commission. I have offered the services of my Department to the State Tax Commission for the drafting of any legislation it may desire. The Commissioners, however, have not requested me to prepare any bills, so that I assume, as I have written them, that such legislation as they may desire they will draft themselves.

Among the tax bills which should be submitted to the next Legislature, as I stated in my Annual Report for 1916 (Atty. Gen. Rep. Vol. 1, page 19), and as I have advised the Commission, is a bill providing uniform rules for the separate assessment of land and the classification and sub-classification of improvements on land and personal property, as directed by the amendment to Article 15 of the Declaration of Rights, embodied in the Acts of 1914, Ch. 390, and adopted by the people at the November, 1915, election. The failure of the Legislature of 1916 to pass such a law resulted in the litigation decided in State Tax Commission vs. Lowenstein et al., 129 Md. 244.

I have written the State Tax Commission that, as the provisions of this law fall within their province and experience, I am assuming that they will either draft it, or advise me of what they desire its scope to be, so that I may be able to draft it.

State Board of Education. State Auditor. State Roads Commission. Board of Election Supervisors of Baltimore City. I am advised by these departments that they do not expect to ask any legislation from the General Assembly of 1918.

Conclusion.

In conclusion, permit me to express my deep appreciation of your unfailing courtesy and consideration upon all occasions, and of that of the other State officers connected with your administration.

I have the honor to be,

Respectfully yours,

Albert C. Ritchie,
Attorney General.

Cost of the State's Legal Work During Fiscal Year Ended September 30, 1917.

(Note.—The State law offices were not opened until February, 1917.)

1. Department of Law—

Appropriation for equipment, salaries and expenses		$20,800.00
Capital expenditures:		
Office furniture and equipment	$1,209.43	
Law library	1,425.48	
		2,634.91
Balance for salaries and expenses		$18,165.09
Salaries:		
Attorney General and three Assistant Attorneys General	$12,500.00	
Assistant, clerks and stenographers	2,747.87	
Expenses:		
Office rent	874.95	
Telephone	154.82	
Travelling and hotel expenses	168.57	
Telegrams	5.05	
Stamps	116.30	
Extra typewriting	142.00	
Office supplies	212.53	
Water, towels, ice and miscellaneous	158.53	
Court testimony	79.95	
Printing Annual Report and Opinions	424.59	
		17,585.16
Balance		$579.93

2. Printing Briefs and Records—

Appropriation	$500.00
Expended	475.50
Balance	$24.50

3. Tax Collections—

Appropriation	$2,000.00
Commissions	1,481.36
Balance	$518.64

4. Special Counsel—

Condemnation cases and title examinations	$1,400.00
Condemnation of oyster leases in St. Mary's County (Atty. Gen. Rep. Vol. 1, p. 15)	250.00
Interstate Commerce Commission case, rates on crushed stone	500.00
Total	$2,150.00

5. Resumé—

Department of Law	$17,585.16
Printing Briefs and Records	475.50
Tax Collections	1,481.36
Special Counsel	2,150.00
Total	$21,692.02
Less appearance fees, all paid to State	118.25
Total cost	$21,573.77

Comparison of Cost of State's Legal Work Under Department of Law With Previous Cost.

Cost (as far as ascertainable) during fiscal years ended September 30, 1915, and September 30, 1916, before special counsel to State boards and commissions were abolished, exclusive of Public Service Commission, not less than.....	$33,000.00
Cost during fiscal year ended September 30, 1917, under State Law Department.....	21,573.77
Saving the State the sum of at least.....	$11,426.23

Which represents a saving of approximately one-third the former cost.

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

(Collateral Inheritance Tax Opinions included under Taxation.)

ADMINISTRATION—DISTRIBUTION OF ESTATES—HUSBAND'S AND WIDOW'S ALLOWANCES.

November 16, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Md.

DEAR MR. MCMULLEN: I beg to reply to your favor of November 12, enclosing letter from the Register of Wills for Wicomico County, who submits the following question:

Sections 308 and 309 of Art. 93 of Bagby's Code provides for an allowance of $150 to the widow, out of her deceased husband's personal estate remaining after the payment of funeral expenses, when there are infant children surviving; and an allowance of $75 when there are no infant children surviving. The Register of Wills desires to know whether like allowances should be made to a surviving husband, out of his deceased wife's personal estate.

Section 317 provides specifically that the provisions of the preceding sections, 301 to 316, inc., relating to the rights of widows in the estates of their husbands, shall apply to and be enforced in favor of surviving husbands, so as to give surviving husbands the same rights in the estates of their deceased wives, that said sections give widows in the estate of their deceased husbands.

Sections 308 and 309, therefore, appiy to surviving husbands as well as to widows, so that a surviving husband is entitled to $150 out of his deceased wife's personal estate remaining after the payment of funeral expenses, when there are infant children surviving; and he is entitled to $75 if there are no infant

children. If the children are adults, then the surviving husband is entitled to this $75 allowance.

These allowances are mandatory.

Beachley vs. Bollinger Estate, 119 Md. 151, 157;
Pyles vs. Bowie, 123 Md. 13.

I enclose you a copy of this opinion, in case you wish to send it to the Register of Wills.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—DISTRIBUTION TO LIFE TENANT, WHEN IT PASSES ESTATE IN REMAINDER.

August 20, 1917.

Z. Potter Steele, Esq.,
Register of Wills,
Denton, Maryland.

DEAR MR. STEELE: I beg to reply to your favors of August 10th and 16th.

I understand that John R. Fountain, who died in Caroline County, more than twenty years ago, by his will bequeathed certain shares of Denton National Bank stock to his daughter, Maria M. Wilson, for life, with remainder to her issue living at the time of her death. The stock was appraised at $1,500, and on April 8th, 1888, was distributed by the executrix of the estate as follows:

> "Distribution of the remaining balance in accordance with the provisions of the last will and testament of the said deceased, as follows, viz:
>
> "To Maria M. Wilson, daughter of said deceased, for and during her natural life, and after her death to such of her children as may then be living, to be equally divided among them, a legacy in Denton National Bank stock, of $1,500."

The life tenant has died, leaving two children surviving, and the question is whether distribution must now be made of the bank stock to the remaindermen, or whether the above distribution is sufficient to pass the stock to the remaindermen without any further distribution.

There is no doubt that a distribution of personal property which is expressly stated to be in accordance with the provisions of the will, and which is made expressly to the life tenant, and after the life tenant's death to the remaindermen, passes not only the life interest, but the interest in remainder also, so that the property belongs to the remaindermen upon the death of the life tenant without any further distribution.

Myers vs. Safe Deposit, &c., Co., 73 Md. 413, 424-428;
Crean vs. McMahon, 106 Md. 507, 518-524;
Sydnor vs. Graves, 119 Md. 321, 325-328;
Foley vs. Syer, 121 Md. 79, 84-87.

As pointed out in Crean vs. McMahon, page 524 of 106 Md., and in Sydnor vs. Graves, page 328 of 119 Md., the distribution in Drovers & Mechanics Bank vs. Hughes, 83 Md. 335, was to the life tenant "for life only," so that it was expressly restricted to the life tenant, and did not embrace the remaindermen. But the distribution in the Fountain estate did expressly include the remaindermen, and under the cases above cited no further distribution is now necessary. The bank stock passed to the remaindermen upon the life tenant's death under the distribution previously made.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—EXECUTOR'S COMMISSION, STATE TAX ON.

January 29, 1917.

E. E. Friend, Esq.,
Register of Wills,
Oakland, Maryland.

DEAR MR. FRIEND: I beg to reply to your favor of January 23rd.

Under the Act of 1916, Chap. 559, the State Tax upon the commissions of executors and administrators is no longer calculated upon the amount of the commissions, but upon the amount of the estate, and it is one per cent upon the first $20,000 of the estate and one-fifth of one per cent upon the balance.

Therefore, in the case of a $25,000 estate, the tax would be $200 (one per cent on the first $20,000), and $10 (one-fifth of one per cent upon the balance of $5,000), aggregating $210 in all.

The law requires the Orphans' Court to allow this amount of commissions, and does not permit the executor or administrator to waive his commissions except as to the excess thereof over this $210.00. In other words, sufficient commissions must be allowed to cover the amount of the tax.

If the commissions were 2 per cent, or $500.00, then the tax would, of course, consume $210, and the remaining $290 would go to the executor or administrator.

This Act went into effect on June 1, 1916, and in my opinion it applies to all commissions allowed after June 1, 1916, whether the testator or the intestate died previous to that date or not, and whether letters were granted previous to that date or not.

Gaines vs. Reutch, 64 Md. 517;
Montague vs. State, 54 Md. 481.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ADMINISTRATION—EXECUTOR'S COMMISSIONS ON DEBTS DISTRIBUTED—STATE TAX THEREON.

January 29, 1917.

Howard W. Jackson, Esq.,
Register of Wills,
Court House, Baltimore, Md.

DEAR MR. JACKSON: Mr. Lester L. Stevens writes me that the auditors requested him to obtain my opinion upon a question which has arisen in an estate in which he is interested relative to executor's commissions and the tax thereon.

The question is whether commissions should be allowed upon debts due the estate when such debts are distributed, and whether the state tax should be collected upon the amount of such debts.

I do not think that the question whether commissions should be allowed upon debts distributed is controlled by the decisions rendered under the law as it existed before 1884, such as:

In re Stratton, 46 Md. 551;
Handy vs. Collins, 60 Md. 229.

The question is, I think, controlled by the case of Hardt vs. Birely, 72 Md. 134, in which the Court of Appeals held that the executor is entitled to commissions on the actual value of mortgage and other notes and debts distributed, as such value is ascertained by appraisement. It is, therefore, my opinion that the executor is entitled to commissions upon all debts distributed which, as a result of an appraisement thereof, are found to have value. The commissions must, of course, be based upon this appraised value.

Such debts form part of the testator's estate, and, therefore, the state tax provided by the Act of 1916, Chap. 559, should be charged upon them.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS.

Banks—Branch Banks, Names of.

January 23, 1917.

Hon. J. Dukes Downes,
Bank Commissioner,
Union Trust Building,
Baltimore, Maryland.

Dear Mr. Downes: I beg to reply to your inquiry relative to the names of the branch banks of the Eastern Shore Trust Company.

I understand that at present the names of the several branch banks follow the names of the localities in which they are established, as for instance, "Charles County Bank," and then under these names there appear in smaller letters the words, "of the Eastern Shore Trust Company."

I also understand that you consider this designation as misleading, and that the Eastern Shore Trust Company is willing to change the designation of its branch banks, so as to call the Charles County branch, for instance, "The Charles County Bank, Branch of the Eastern Shore Trust Company," all of the lettering to be of the same size.

I think that you should accept this latter designation.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

Banks—Federal Revenue System, State Examination as Basis for Admission to.

October 22, 1917.

J. Dukes Downes, Esq.,
Bank Commissioner,
401 Union Trust Building,
Baltimore, Maryland.

Dear Mr. Downes: I beg to confirm the oral opinion I expressed to you today, namely, that upon the request of any

State bank or trust company, submitted to you by its proper officers, you may supply the Federal Reserve Bank with the results of your examination of such State bank or trust company, for the purpose of furnishing the basis of admitting such institution into the Federal Reserve System. This is a perfectly legitimate use to make of your examination, provided the institution itself requests it, and it will save the time, trouble and expense of a federal examination, which would simply duplicate your work. Section 14 of Article 11 of Bagby's Code, which requires your department to keep secret your examinations, was not intended to apply to a case where the bank itself makes the request, for the purpose of admission into the Federal Reserve System.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—FEDERAL REVENUE SYSTEM, STATE EXAMINATION AS BASIS FOR ADMISSION TO.

October 31, 1917.

William Ingle, Esq.,
President The Baltimore Trust Co.,
Baltimore, Maryland.

DEAR MR. INGLE: After conferring with the Bank Commissioner, we have reached the conclusion that it would be better for him not to sign the form of certificate you submitted with respect to state banks or trust companies which desire to be admitted into the Federal Reserve System. While the Bank Commissioner might be entirely willing to sign the certificate for some banks, such, for instance, as your own, yet in the case of other banks, he might not be willing; and for a number of reasons he very much prefers not to make any distinction between banks desiring to enter the system.

I have already advised him that upon the request of banks which wish to enter the Federal Revenue System, he may sup-

ply the Federal authorities with his examinations and reports, for the purpose of having such banks admitted into the system; so that the result of his not also signing the certificate will simply be that the Federal authorities themselves will decide from the examinations and reports whether to admit such banks or not.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—INCORPORATION OF.

January 5, 1917.

Allan C. Girdwood, Esq.,
Secretary State Tax Commission,
504 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of January 3rd, with respect to the incorporation of banks.

Ever since 1870 there have been special provisions in this State for the incorporation of banks. The Act of 1870, Chap. 206, provided in detail for the formation of "associations for carrying on the business of banking." This Act was limited as to its duration, but by the Act of 1886, Chap. 501, and the Act of 1906, Chap. 483, it was continued in force until the end of the legislative session of 1910. See Code 1904, Art. 11, Sections 19-32.

This general banking law was revised in 1910, by the Act of 1910, Chap. 219, pages 6, etc., and this Act, as subsequently amended, is codified in Bagby's Code, Art. 11. Sections 20-30 of this Article provide for the formation of "banks," and these sections prescribe exactly what their charters shall contain, how they shall be executed and recorded, and all the details incident to their incorporation. Sections 31-41 provide for the formation of "savings institutions" and sections 42-51 provide for the formation of "trust companies."

The general incorporation law, as contained in Article 23 of the Code, never did provide for the incorporation of banks. As originally enacted by the Act of 1868, Chap. 471, Section 29 authorized the formation of "savings institutions." The Act of 1876, Chap. 269, added "trust companies and guarantee companies" (Code 1888, Art. 23, Sec. 29), and the Act of 1890, Chap. 262, eliminated them again. The revision of Article 23 by the Act of 1908, Chap. 240, did not affect the general banking law, and, as already stated, that law, with its provisions for the incorporation of banks, was revised and re-enacted in 1910. The Act of 1916, Chap. 596, which again revised the general corporation law as contained in Article 23 of the Code, does not in any way attempt to bring banks under its incorporation provisions.

In view of this long continued existence of special provisions for the formation of banks, distinct from the provisions for the formation of incorporations generally, it is my opinion that banks should be incorporated under the banking law, Sections 20-30 of Article 11 of the Code, and that the provisions of these sections are the only ones to be complied with in the case of banks. None of the provisions of Article 23 relating to the formation of corporations generally are applicable or necessary to be followed when banks are incorporated.

Since, in my opinion, the banking law is the only law to be complied with when banks are formed, it follows, of course, that in case of a conflict between the banking law and the general corporation law, the former must control, and that any provision of the general corporation law relating to the formation of corporations generally, as to which the banking law is silent, such, for example, as the requirement for a resident agent, does not apply to banks.

A copy of the bank charter need not be sent to the Secretary of State. Section 22 of Article 11 of the Code provides for executing bank charters in triplicate, one copy to be filed with the Clerk of the Circuit Court or the Superior Court, one with

the Bank Commissioner and one with the State Tax Commission. The law does not require a copy to be sent the Secretary of State, and, therefore, no copy need be sent him.

Finally, I do not think that Section 99B of the Act of 1916, Chap. 596, page 1232, requires your Commission to approve bank charters. I think that Section 99B applies to corporations formed under the provisions of Article 23. Banks are not formed under that article, and under the banking law the only approval that bank charters require is that of the Bank Commissioner and the Judge. Your Commission's only duty with respect to bank charters, is to receive for record a copy thereof under Article 11, Section 22.

I return herewith the Charter of the Hamilton Bank.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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BANKS—INCORPORATION OF, BONUS TAX.

January 22, 1917.

Allan C. Girdwood, Esq.,
Secretary, State Tax Commission,
504 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: When I was in your office the other day, you told me that you understood the Commission to interpret my opinion of January 5, 1917,—to the effect that banks should be incorporated under the banking law, Sections 20-30 of Article 11 of the Code, and that none of the provisions of Article 23 relating to the formation of corporations generally are applicable or necessary to be followed when banks are incorporated,—to mean that banks are not required to pay the bonus tax upon their incorporation.

Of course, I did not mean this, and I think that there must be some mistake as to the Commission's understanding that I did, because Article 11 of the Code, under the provisions of

which I expressed the opinion that banks should be incorporated, explicitly provides in Section 23, that "upon making and filing of the articles of incorporation, *and upon the payment of the bonus and other taxes required by the laws of this State,* the bank shall become a body corporate."

However, in order to prevent any possible misapprehension, I will be very much obliged if you will bring this letter to the attention of the Commission.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BANKS—LIMITATION ON AMOUNT THAT MAY BE BORROWED DOES NOT APPLY TO NOTES OF GREAT BRITAIN.

February 9, 1917.

J. Dukes Downes, Esq.,
Bank Commissioner,
409 Union Trust Bldg.,
Baltimore, Maryland.

DEAR MR. DOWNS: I beg to reply to your favor of February 5th, in which you ask whether the Talbot Bank of Easton can hold more than 30 per cent of the Convertible Gold Notes of the United Kingdom of Great Britain and Ireland, dated February 1, 1917, and due February 1, 1918, and February 1, 1919.

Bagby's Code, Art. 11, Sec. 64, provides that the total liabilities "of any person, copartnership or corporation" to any bank for money borrowed shall not exceed 20 per cent of the capital and surplus, with the right to the directors to increase this to 30 per cent upon a two-thirds vote, this section, however, not to apply to negotiable coupon bonds.

The United Kingdom of Great Britain and Ireland is not a "person, co-partnership or corporation" within the meaning of this section, and, therefore, the prohibition does not apply to the Convertible Gold Notes of that Kingdom. Assuming Gov-

ernment notes of this kind to constitute "money borrowed," nevertheless their acquisition in excess of 30 per cent does not violate the statute, because governments are not within the statute.

This is in accordance with the ruling of counsel to the Federal Reserve Board under Section 5200 United States Revised Statutes, which provides that the total liabilities to any association "of any person, or any company, corporation or firm" for money borrowed shall not exceed one-tenth of the unimpaired surplus fund.

While this is true, it is also true, under Bagby's Code, Art. 11, Sec. 10, that whenever any bank "is conducting its business in an *unsafe* or unauthorized manner," you may act as provided by that section; and I think that if any bank holds such an amount of government notes as, in your judgment, results in the conduct of its business in an *unsafe* manner, you may require a reduction to such amount as you deem to be safe, in default of which you may act under Section 10.

I return you copy of the letter of January 26, 1917, to yourself from F. P. Kane, Deputy Comptroller, and also the prospectus of the notes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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BANKS—NAMES OF.

January 23, 1917.

J. Dukes Downes, Esq.,
Bank Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. DOWNE: I beg to reply to the letter to you of December 16, 1916, from the officers of the institution called the Indian Head Bank, which is the name given to the branch of the Eastern Shore Trust Company located at Indian Head.

These gentlemen say that an organization has recently been formed known as "The Indian Head Bank, Brokers," which is not yet incorporated, but which seems to transact, to some extent at least, banking business. I understand that this organization is about to incorporate as a bank, and that the branch in question of the Eastern Shore Trust Company objects to the use of "Indian Head Bank" in the proposed corporation's name.

I do not see any grounds upon which the new corporation can be prevented by you from adopting the name "The Indian Head Bank." Section 21 of Article 11 of Bagby's Code does provide that the name adopted by an incorporated bank "shall be in no material respect similar to the name of any other bank in the same county or city," but this, I think, means any other *incorporated* bank.

There is no bank at Indian Head bearing a corporate name similar to "The Indian Head Bank." The co-called Indian Head Bank is simply the name given by the Eastern Shore Trust Company to its branch at Indian Head. The corporation is the Eastern Shore Trust Company, not The Indian Head Bank. The latter, I understand, is not incorporated at all. It is simply a part of the Eastern Shore Trust Company, and that company has no legislative authority of any kind for the use of the name Indian Head.

Therefore, since there is no incorporated bank bearing the name, The Indian Head Bank, or any name similar to it, it follows that a bank can now be chartered bearing that name. I return you the protest.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION.

Conservation—Buoys as Markers.

January 17, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

Dear Mr. Killian: You asked me orally the other day whether your Commission had power to mark with buoys or otherwise the lines which the statutes prescribe as separating the waters for tongers and dredgers and for tongers and scrapers.

It seems to me that this work is important, if not necessary, for the proper enforcement of the statutes in question, and I think that your Commission has the power to have the marking done, under section 3 of the Act of 1916, Chap. 682, which charges you with the execution of all laws relating to oysters, and perhaps under other provisions of the law also.

I also think that in prosecutions for the violation of the above statutes, the magistrates should regard your Commission's markings as official, at least until their correctness is questioned.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

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Conservation—Chief Inspector of Commission May Be Notary Public.

June 4, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

Dear Sir: I beg to reply to your recent favor asking whether your Commission's Chief Inspector may hold a commission as Notary Public.

In my opinion he can. The Chief Inspector is not an officer within the meaning of Article 35 of the Declaration of Rights, which provides that no person shall, at the same time, hold more than one office of trust or profit created by the Constitution or laws of this State.

State Tax Commission vs. Harrington, 126 Md. 157.

You also ask whether the affidavit to an application for lease which Bagby's Code, Art. 72, Sec. 105, provides shall be made before a Justice of the Peace, may also be made before a Notary Public. This affidavit may be made before a Notary Public.

Bagby's Code, Art. 68, Sec. 3.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—CRABS, UNDERSIZED, CAUGHT OUTSIDE THE STATE.

July 5, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of June 29th, asking whether the State-wide crab law, passed by the Extra Session of the General Assembly of 1917, applies to undersized crabs which come from outside the State, as well as to those caught in Maryland waters.

This act makes it unlawful "for any person or persons to take, catch or have in his or their possession" crabs below a certain size.

The Court of Appeals has several times held that a statute which merely prohibits *having in possession* game or oysters, applies only to game or oysters caught within the State, and

does not apply to game or oysters caught outside of and brought into the State.

Dickhaut vs. State, 85 Md. 451;
Stevens vs. State, 89 Md. 669;
Tyler vs. State, 93 Md. 309.

Moreover, the State-wide crab law provides in the title that it is "applicable to all the waters of the State," and in Section 1 that it "shall apply to all waters of the State of Maryland."

It is, therefore, clear that the law does not prohibit having in possession within the State undersized crabs caught without the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—DEPUTY COMMANDERS, POWER TO ARREST WITHOUT WARRANT.

July 9, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Md.

DEAR SIR: I beg to reply to your favor of May 8th asking my opinion upon certain questions relating to arrests by Deputy Commanders of the State Fishery Force. I have been prevented from answering your letter sooner because of the extra session of the Legislature.

1. Deputy Commanders have, of course, the power to arrest, for misdemeanors, without warrant.

Bagby's Code, Art. 72, Sections 39, 40, 44, 45;
Kane vs. State, 70 Md. 546, 551.

2. This power to arrest without warrant, in case of misdemeanors, always exists whenever the offense is committed

within the officer's view. See cases cited in Opinions of Attorney General of Maryland, Vol. I, page 270.

3. Whether the officer can make the arrest for misdemeanors, when the offense was not committed in his view, upon the mere complaint of the lessee, and without warrant, depends upon the circumstances. If the offense amounts to a breach of the peace, then the officer would be justified in making the arrest, without warrant, upon the complaint and request of the lessee, who witnessed it.

B. & O. R. R. Co. vs. Cain, 81 Md. 87, 100.

But if the misdemeanor did not involve a breach of the peace and was not committed within the officer's view, then I think that a warrant would be necessary.

4. You also ask what instructions would be most advisable for your Commission to issue to the officers,—to arrest without warrant in cases where this can be done, or to require warrants, or to have the Grand Jury indict. I rather think it would not be advisable to issue any instructions of this kind intended to cover all cases. It seems to me that the officers should be advised as to their powers, along the lines above set forth, and that they should act in each case as the circumstances seemed to justify.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—DEPUTY GAME WARDEN—RIGHT TO CARRY CONCEALED WEAPONS.

August 23, 1917.

Charles H. Stanley, Esq.,
Deputy Game Warden at Large,
206 W. Lanvale Street,
Baltimore, Maryland.

DEAR SIR: I have your favor of August 20th, in which you ask whether a depaty game warden, duly appointed by the Con-

servation Commission, has authority to carry concealed weapons while in the discharge of his duties.

The statute against carrying concealed weapons does not prohibit a deputy game warden from carrying the same, but the statute provides that "the tribunal before which any case arising under the provisions of this section may be tried, shall have the right to judge of the reasonableness of the carrying of any such weapon, and the proper occasion therefor, under the evidence in the case."

Bagby's Code, Art. 27, Sec. 39 and Art. 99, Sec. 44.

If the question were raised, I think that there would be little doubt that the court or justice would decide that it was reasonable for a deputy game warden to carry concealed weapons while in the discharge of his duties.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—FISH—LADDERS AT MILL DAMS.

February 23, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of February 21st.

Section 81 of Article 39 of Bagby's Code, as amended by Act 1914, Chap. 366, requiring owners of dams upon any of the waters of this State to place at least one fish ladder upon such dams, applies now to Howard County. The exemption of Howard County, made by Section 86 of Artice 81 (Act 1914, Chap. 366), has been removed by Act 1916, Chap. 396.

There is nothing in the law which excuses compliance with Section 81. The law clearly assumes that compliance is practicable, and, in the case of all dams, "a free fish ladder of such character as to enable fish to have a free course up and down

said waters at all times" is required. It is the duty of the mill owner to construct such a fish ladder, and if he does not, he violates the law. Perhaps when the mill owner in question knows this, he may be able to procure engineers who can construct the fish ladder, if his present engineers cannot.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—NETS, LICENSES FOR.

March 12, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 7th.

Under Bagby's Code, Art. 39, Section 111, (Act 1914, Chap. 815), relating to fish licenses, the fee is $5.00 for the first net, and $1.00 for each additional net, to be used in the Chesapeake Bay, and when nets are to be used in the tributaries of the Chesapeake Bay, then, I think, the fee is $2.00 for all nets that may be so used, and not $2.00 for each net.

If this is not so, the result would be that the fee for each additional net in the Bay would be $1.00, and $2.00 for each additional net in the tributaries. I do not think the Legislature intended this. I think the intention was to require one fee of $2.00 to cover as many nets as the fisherman desires to use in the tributaries.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—NETS, FYKE, IN MILES RIVER.

April 12, 1917.

W. H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of April 5th, in which you ask whether fishing with fyke nets is permitted in the Miles River, Talbot County.

The Act of 1910, Chap. 667, page 1141, amending Sec. 115 of Art. 21 of the Code of Public Local Laws (which had previously been amended by the Act of 1900, Chap. 696, and the Act of 1902, Chap. 183), makes it unlawful to catch fish in the Miles River and tributaries and in the tributaries of the Wye and Great Choptank Rivers, with gill nets or hook and line, at any time; and in Skipton Creek, with haul seines from August 1st to May 20th; and in all other waters of said county with hook and line at any time, "and to take and catch fish with gill nets, haul seine, drag nets, fish baskets, fish pots, pound nets and fykes from the first day of August to the twentieth day of May following; provided, however, that the meshes in all seines, nets, pounds and fykes are in the bar not less than one and one-half inches."

In my opinion, the provision just quoted applies to all the waters of Talbot County, and is not limited to the waters not enumerated in the preceding part of Section 115. If this is not so, then fykes could not be used at all in the Miles River and its tributaries, or in the tributaries of the Wye and Great Choptank, nor could anything be used at any time in these waters except gill nets and hook and line. I do not think that the Legislature intended this.

It follows that, in my opinion, fishing with fyke nets is permitted in the Miles River from August 1st to May 20th. I return you Mr. Shehan's letter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—NETS, POUND OR STAKE, IN HEAD-WATERS OF CHESAPEAKE BAY.

March 13, 1917.

W. Thomas Kemp, Esq.,
Chairman Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 6th, in which you ask whether pound-nets or stake-nets are permitted east of a line drawn from Carpenter's Point to Grove Point and thence to Howel's Point.

The Act of 1843, Chap. 275, Sec. 1, now codified as Sec. 7 of Art. 39 of Bagby's Code, prohibited the placing of stake-nets "in the head-waters of the Chesapeake Bay or in the Sassafras, Elk, Bohemia, North East or Susquehanna Rivers, or in any of their tributaries," this prohibition not to apply to any portion of the Bay below Poole's Island, which lies south-west of Howel's Point.

The Act of 1896, Chap. 441, Sec. 101, now codified as Sec. 121 of Art. 39 of Bagby's Code, in defining the headwaters of the Chesapeake Bay, provides that all waters west and south of a line drawn "from Carpenter's Point, thence to Grove Point, and a line drawn from Grove Point to Howel's Point, but not to include any tributary of said Bay," shall be considered as belonging to the Chesapeake Bay.

Therefore, the waters east of that line constitute the head-waters of the Bay, and consequently the waters in which you desire to know whether stake-nets can be placed are the head-waters of the Chesapeake Bay, and the tributaries; and under the Act of 1843 stake-nets were not permitted in these waters, down to Poole's Island.

The Act of 1896, Chap. 441, Sec. 98, however, as amended by the Act of 1908, Chap. 313, now codified as Bagby's Code, Art. 39, Sec. 118, prohibited the use of pound-nets or stake-nets in the Chesapeake Bay "north of Poole's Island, except the

bay shore of Kent County up to Howel's Point, at the mouth of the Sassafras River, and also on the Susquehanna River," and except also certain waters on the west side of the Bay.

These Acts of 1896 and 1908 prohibited stake-nets in the *Bay*, but did not mention the *headwaters* or the *tributaries*,—which are the waters to which your inquiry relates,—and it is possible that these Acts may be held to have superseded the earlier Act of 1843, and thus to permit stake-nets in the headwaters and tributaries north of Poole's Island.

It is not, however, necessary to decide this question, because the local laws of Cecil County expressly permit pound-nets or stake-nets in the Elk, Sassafras and Bohemia Rivers and their tributaries, and in the North East River, within the limits of Cecil County, from August 1 to June 10.

Act 1884, Ch. 278;
Act 1888, Ch. 267;
Code P. L. L. 1888, Art. 8, Sec. 172;
Act 1890, Ch. 21, Sec. 172;
Act 1894, Ch. 360, Sec. 172;
Act 1898, Ch. 434, Sec. 172.

These local laws do, of course, supersede the general law. (Sections 7 and 118 of Art. 39 of Bagby's Code), as to the waters to which they refer, and these waters are in fact the headwaters of the Chesapeake Bay, as defined by the Acts of 1896 (section 121 of Art. 39 of Bagby's Code), and the tributaries; and they are, therefore, the waters east of a line drawn from Carpenter's Point to Grove Point and thence to Howel's Point, which are the subject of your inquiry.

It follows that pound-nets or stake-nets are permitted in the waters lying east of a line drawn from Carpenter's Point to Grove Point and thence to Howel's Point, within the season prescribed therefor by the local laws of Cecil County, that is, from August 1 to June 10.

This means, of course, that the words "or tributaries," under the heading "Stakes and Poles," in your circular of the fish laws should be eliminated.

I return you State's Attorney Finley's letter of March 9, and his abstract of the fish laws of Cecil County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—FISH—NETS IN SALT PETRE RIVER.

April 27, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: Fish nets may be used in Salt Petre River, which is a tributary of Gunpowder River in Baltimore County, under the conditions and limitations prescribed in the Revised Code of the Public Local Laws of Baltimore County of 1916, Sections 222, 223, 232 and 233, codifying Sections 147, 148, 157 and 158 of the Act of 1908, Chap. 495, pages 424, 425 and 427.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—FISH—ROCK FISH, PROTECTION OF.

March 17, 1917.

Thomas W. Kemp, Esq.,
Chairman Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 6, in which you ask what power your Commission has to prevent the catching of large rock fish in the deep waters of Chesapeake Bay near Bloody Point, the mouth of Eastern Bay, around Poplar Island and in the mouth of the Great Chaptank River. The

matter was brought to your attention by complaint from a large number of residents of St. Michael's, Talbot County.

The general law on the subject is contained in section 79 of Art. 39 of Bagby's Code, and it prohibits the catching of rock less than 10 inches in length or rock weighing over 20 pounds, in spawning season of April, May and June, but does not protect rock at other seasons of the year.

The Act of 1904, Ch. 410, however, refers to the catching of fish in Dorchester, Talbot and Caroline Counties.

Section 116A of this Act provides that no person shall catch, in any of the waters of these three counties, "any rock or bass under 11 inches in length * * * except when caught for private use and not for sale, with rod, hook and line, or hook and line baited with natural bait or tied with the artificial fly, or with spoon or spinner." Violations of this section are punishable by a fine of $5.00 for each fish unlawfully caught.

Section 116B of the same Act provides that no person shall catch, in any of the waters of the said three counties, "any roe rock or striped bass weighing over 12 pounds." Violations of this section are punishable by a fine of $50.00 for each fish unlawfully caught.

Other fish laws of Talbot County are contained in the Act of 1910, Ch. 667, page 1141, but they do not affect your inquiry.

The Act of 1904 appears to be the only law relating to rock in the vicinity of the localities in question, except the general law. You can readily check up the extent to which the waters covered by your inquiry are waters of Dorchester, Talbot or Caroline Counties. To the extent that they are, the Act of 1904 applies, and also the general law, in so far as it is in harmony with the the Act of 1904. To the extent that they are not, the general law alone applies.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH—STURGEON, CAUGHT OUTSIDE THE STATE.

July 6, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of June 18th, asking whether the Act of 1914, Chap. 556, making it unlawful, for a period of ten years, to catch, kill, take or have in possession any sturgeon, applies to sturgeon caught outside the State and brought within the State.

As I wrote you in construing the State-wide crab law, the Court of Appeals has held that a statute which merely prohibits *having in possession* game or oysters, applies only to game or oysters caught within the State, and does not apply to game or oysters caught outside of and brought into the State.

Dickhaut vs. State, 85 Md. 451;
Stevens vs. State, 89 Md. 669;
Tyler vs. State, 93 Md. 309.

In addition to this, it is clear from the Act of 1914, Chap. 556, itself, that this Act was not intended to apply to sturgeon brought within the State. The title and section 1 both refer to sturgeon "in the waters of the Chesapeake Bay and tributaries."

This Act, therefore, does not make it unlawful to have in possession sturgeon caught outside the State and brought within the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Conservation—Fish, Substances Deleterious to, Must Not be Thrown Into Waters.

February 27, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

Dear Sir: I beg to reply to your favor of February 15th, in which you refer to Section 82 of Article 39 of Bagby's Code, making it unlawful to place, throw or make use of, in any of the waters of this State, except for *bona fide* engineering, milling or mining purposes, any substances deleterious to or destructive of fish life; and you ask whether the continuous flow of such substances after notice to cease or after a first arrest, would constitute a separate offense.

I understand that you have in mind certain water front plants which discharge waste deleterious to fish into the waters adjacent to the City of Baltimore.

Under the above law, every time substances deleterious or destructive to fish are thrown into the waters, a separate offense is committed. A continuous flow of such substances must be the result of continuous or successive impulses which cause the flow, as distinguished from a single impulse, and each of these successive impulses may be the subject of a separate indictment.

Wharton, Criminal Law, Vol. 1, p. 49;
Wharton's Criminal Pleading and Practice, Secs. 474, 475;
31 L. R. A. (N. S.), 693;
22 Cyc. 319, 385, 401.

In the case you submit, the impulses that cause the continuous flow could be stopped on any day, at least; and the failure so to stop them constitutes a separate impulse every day. The

impulses are, therefore, successive each day, which means that a separate offense is committed each day.

It is, therefore, my opinion that each day during which the flow continues involves a separate offense, and that separate indictments will lie for each day's flow. This is true in the absence of either notice to cease or an arrest.

I also think that it is within the province of your Commission to enforce the above law, because its object is the protection of fish, and your Commission is charged with the execution of all laws relating to fish. Act 1916, Chap. 682, Sections 3, 3(2), 5, 8 and 12.

Please note, however, that the Act does not apply to *bona fide* engineering, milling or mining operations.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—FISH, UNDERSIZED, CATCHING OF, BY HOOK AND LINE.

September 11, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to confirm the oral opinion I expressed to you this morning, with respect to the application of Section 79 of Article 39 of Bagby's Code.

1. This section was first enacted, as part of Article 39, by Section 79 of the Act of 1906, Chapter 161, and as so enacted the section made it unlawful, except in certain specified counties, to "catch or in any manner take or kill" certain kinds of undersized fish. The Act of 1906, Chap. 161, was approved March 27, 1906, and on April 3, 1906, Chapter 479 of the Acts of that year was approved, which added Section 78-I to Article 39, providing that "this Article shall not apply to those persons who take fish by hook and line, commonly known as anglers."

The provisions of Chapter 161, making it unlawful to "catch or *in any manner* take or kill," standing by themselves would, of course, prohibit catching by hook and line, but Chapter 479 was approved on a later date than Chapter 161, and provided that nothing in Article 39 should apply to fishing by hook and line. Since Section 79 of Chapter 161 was already a part of Article 39, it follows that the provisions of Section 79 did not apply to fishing by hook and line.

Section 79 of Chapter 161 of the Act of 1906 was amended by the Act of 1910, Chap. 255, page 137, but the amendments simply related to the size and character of the fish which it was unlawful to catch, and did not affect the provisions of Chapter 479 of the Act of 1916, providing that Article 39 should not apply to fishing by hook and line. This latter provision is now Section 90 of Article 39 of Bagby's Code, and Section 79 of the Act of 1906, Chapter 161, is now Section 79 of Article 39 of Bagby's Code.

Section 86 of the Act of 1906, Chapter 161, excepting certain counties from the provisions of that Act, was amended by the Act of 1914, Chap. 366, and by the Act of 1916, Chap. 396, the exceptions were wiped out altogether, so that Section 79 of Article 39 now applies throughout the State.

The result is that the provisions of Section 79, making it unlawful to catch undersized fish, do not, under Section 90, apply to persons who catch fish by hook and line.

2. It is not necessary that the fish which Section 79 makes it unlawful to catch should be offered for sale, in order to make their catching unlawful. Section 79 prohibits the *catching*, no matter what may be the purpose.

3. In my opinion, Section 79 applies to all the waters of the State, and not only to the waters above a point where the tide ebbs and flows. I do not think that this limitation, which appears in Section 78, was intended to be read into Section 79.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME. ALLEGANY COUNTY. HUNTING IN THE SNOW.

E. Lee LeCompte, Esq., *December 19, 1917.*
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of December 15th, in which you ask whether hunting in the snow is lawful in Allegany County.

I am sending a copy of this letter to Mr. Anthony, as requested by you.

The Act of 1910, Chap. 616, page 519, which was a local law for Allegany County, provided in Sec. 16C that it should be unlawful to hunt any of the birds referred to in the Act "while there is a tracking snow upon the ground."

The Act of 1914, Chap. 472, which was a general law, repealing and re-enacting Section 20 of Article 99 of Bagby's Code, made it unlawful to shoot the birds therein referred to "when the ground is sufficiently covered with snow to track the birds or game above mentioned."

Section 20 was repealed and re-enacted by the Act of 1916, Chap. 143, the provision above quoted, however, being continued unchanged.

The Act of 1916, Chap. 143, was approved on April 4, 1916, and at that time, therefore, it was unlawful, both under the general law and under the local law for Allegany County, to shoot the birds therein referred to in Allegany County, while there was a "tracking snow" upon the ground.

On April 18, 1916, however, after the Act of 1916, Chap. 143, was approved, the Governor approved the Act of 1916, Chap. 282. This Act expressly repealed a number of game laws applicable to Allegany County, including Section 16C of the Act of 1910, Chap. 616, the local law for Allegany County, and also Section 20 of Article 99 of the Code, so far as the latter related to Allegany County, and then enacted a number of new game laws for Allegany County.

Section 16C (the local law) and Section 20 (the general law) were, so far as I can ascertain, the only laws which prohibited shooting in a "tracking snow" in Allegany County. Both were repealed by the Act of 1916, Chap. 282, and the new sections enacted by that Act did not refer in any way to shooting in the snow.

The result, of course, is that there is now no prohibition against shooting in the snow in Allegany County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—CLOSED SEASONS FOR SQUIRRELS AND OTHER GAME—ALLEGANY COUNTY.

August 14, 1917

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court for Allegany Co.,
Cumberland, Maryland.

DEAR MR. SHAFFER: I beg to reply to your favor of August 13th.

The Act of 1916, Chap. 143, provides two closed seasons for shooting squirrels in all of the counties of the State except seven. One of these closed seasons being between December 24th and August 25th, and the other between October 1st and November 10th.

Allegany County is not one of the seven counties excepted from the Act of 1916, Chap. 143, but the Act of 1916, Chap. 282, applying specifically to Allegany County, was approved on a later day than Chapter 143, and, therefore, supersedes it as to Allegany County.

Under Section 12-A of Chapter 282 the closed season for shooting squirrels in Allegany County is "from the 24th day of December to the 15th day of September following of each and every year in Allegany County."

In my opinion the word "from" means "after," so that the correct construction of this provision is, I think, that December 24th is not included in the closed season, but September 15th is included. In other words, December 24th is open and September 15th is closed.

Sindall vs. Baltimore, 93 Md. 526, 536.

In like manner, the closed season for shooting partridges, and the other game mentioned in the first part of Section 12-A, does not include December 24th, which is open, but does include November 10th, which is closed; and the closed season for shooting raccoons and possums, under Section 15-D, does not include April 1st, which is open, but does include September 1st, which is closed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—GAME—MUSKRAT LAW OF WICOMICO COUNTY, DISPOSITION OF FINES UNDER.

March 7, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: As requested by you recently, I have investigated the disposition which should be made of fines imposed by Justices of the Peace for violation of the muskrat law of Wicomico County.

The local law on the subject of muskrats in Wicomico County is contained in Code P. L. L., Art. 23, Sec. 2, as amended by the Act of 1908, Chap. 720, page 1082.

The local law for Wicomico County, P. L. L., Art. 23, Sec. 5, as amended by Act 1894, Chap. 51, gives Justices of the Peace jurisdiction over such cases, and provides that *all* fines shall go to the informer.

In 1900 the Legislature passed a general law on the subject of muskrats, Act 1900, Chap. 371, which has been amended by Act 1902, Chap. 264, and Act 1912, Chap. 843, and is now codified in Bagby's Code, Art. 99, Secs. 58 and 59. This law applies to Wicomico County, and under it *one-half* of the fine goes to the informer.

In my opinion that section of the local law of Wicomico County, finally amended in 1894, which provides that *all* of the fine shall go to the informer, has been repealed by the general law of 1900, amended in 1902 and 1912, providing that only *one-half* of the fine shall go to the informer.

The Act of 1884, Chap. 510, defines the jurisdiction of Justices of the Peace, and provides that "all fines and penalties received by any Justice of the Peace under the provisions of this Act shall be accounted for and wholly paid without abatement or deduction therefrom by such Justices to the County Commissioners."

This Act is codified in Code P. L. L., Art. 23, Secs. 57, 58 and 59, title "Wicomico County." It has never been repealed or amended by subsequent legislation, but, on the contrary, has been recognized by the Act of 1914, Chap. 244, which added Sec. 59A to Art. 23 of the Code P. L. L., providing for quarterly reports by the Justices and the turning over by them of fines and penalties to the County Commissioners of Wicomico County.

The effect of all this legislation is, I think, that fines imposed by Justices in Wicomico County must, in ordinary cases, be disposed of one-half to the informer and one-half to the county, or if there is no informer, then all to the county.

This, however, is subject to Section 51 of Art. 99 of Bagby's Code, which provides that "in all cases in which prosecutions for violations of any of the general or local game or fish laws of this State shall be instituted by the Game Warden or any Deputy Game Warden," the fine shall be paid to the Game Warden. This section further provides that all public and local game

laws shall be amended accordingly, but that the section shall not prevent the collection of informer's fees by persons other than the Game Warden and his deputies.

Under this section, the Game Warden is entitled to receive the fines, if he or his deputies institute the prosecution; provided, however, that if there is an informer, then the Game Warden shall receive one-half of the fine and the informer the other half.

The Act of 1916, Chap. 682, creating the Conservation Commission, makes no change in the above provisions of law.

The result as to Wicomico County is—

1. If the Game Warden or his deputies institute the prosecution, then the Game Warden will receive all of the fine, if there is no informer. If there is an informer, then the Game Warden will receive one-half the fine and the informer one-half.

2. If the Game Warden or his deputies do not institute the prosecution, then the Game Warden is not entitled to any part of the fine, but in such case Wicomico County will receive all, if there is no informer; and if there is an informer, then the county will receive one-half and the informer one-half.

In the present case, that of Charles W. Mitchell, whether you are entitled to receive any part of the fine depends upon whether you instituted the prosecution yourself or through one of your deputies. If you did, then you should receive one-half the fine and the informer the other half. If you did not, then Wicomico County should receive one-half and the informer the other half.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—JURISDICTION OF MARYLAND COURTS TO TRY MARYLANDER FOR VIOLATION IN VIRGINIA OF VIRGINIA GAME LAWS—MARYLAND-VIRGINIA COMPACT OF 1785.

October 2, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: As requested by you, I have examined the compact of 1785 between Maryland and Virginia in order to see whether the same authorizes the courts of Maryland to try a citizen of Maryland for the violation in Virginia of the Virginia game laws.

The compact deals only with piracies, crimes and offenses committed by individuals against individuals, and not against the State.

Wharton vs. Wise, 177 U. S. 156, 177.

Therefore, it does not cover violations of the State game laws.

Moreover, the Act of 1912, Chap. 4 (Bagby's Code, Art. 39, Secs. 59A-59F; Art. 72, Secs. 68A-68 I), which provides for concurrent legislation between Maryland and Virginia on the subject of fish, oysters and crabs, has no reference to game.

Therefore, the courts of Maryland have no jurisdiction to try a citizen of Maryland for the violation in Virginia of the Virginia game laws.

Whether the courts of Virginia can try a citizen of Virginia for the violation in Maryland of the Maryland game laws depends entirely upon whether there is any Virginia legislation authorizing it. This must be determined by the Virginia officials. I return you the letter from the District Inspector.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTERS—DREDGE TO AID CULTIVATION.

February 28, 1917.

W. Thomas Kemp, Esq.,
Chairman Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of February 21st.

I understand that oysters tend to sink in soft mud on the bottoms, and also to accumulate mud on their shells. Your Commission is now, on reserved areas, trying the experiment of dragging a dredge, without any bag attached to it, over the bottoms, the result of which is not to catch or take the oysters, but simply to stir them up, free their shells from the mud, and expose a cleaner surface for cultivation. One of the lessees of oyster bottoms desires to do the same thing, and you ask whether the practice is unlawful on leased areas.

I find nothing in the law which prohibits this practice on leased areas, and in my opinion it is lawful.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTERS—DREDGING IN CHOPTANK RIVER. ROPES PROHIBITED.

February 13, 1917.

W. Thomas Kemp, Esq.,
Chairman Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: You asked me today whether oysters could be taken by hand dredge operated with rope in the Choptank River, between Talbot and Dorchester Counties.

Bagby's Code, Art. 72, Sec. 6, provides that it shall be unlawful to take oysters in these and certain other waters "with

any implement or device other than *ordinary rakes or tongs* with wooden shafts, to be used entirely by hand, and *without any ropes or hoisting gear whatever.*"

Therefore, the statute expressly prohibits the taking of oysters in these waters by hand dredge operated by rope.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER INSPECTION TAX ON OYSTERS TAKEN FOR REPLANTING PURPOSES.

March 19, 1917.

W. H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 15, in which you ask whether the one cent inspection tax should be imposed upon oysters taken under the provisions of Bagby's Code, Art. 72, Sec. 113.

This section authorizes tongers to take oysters between April 15 and May 15 from such natural bars in the Chesapeake Bay and its tributaries as your Commission may prescribe, provided that they may only be sold to persons engaged in cultivating oysters upon leased bottoms.

I understand that the oysters thus authorized to be taken during this special season and for this special purpose are undersized oysters, the transportation of which outside the State is prohibited by Bagby's Code, Art. 72, Sec. 10, and that they are inspected with the same care as are other oysters caught during the regular season for sale to the public.

These particular oysters, however, are taken and sold for the purpose of replanting only, and when they are again taken for the purpose of sale to the public, they are again inspected. The one cent inspection tax is, of course, imposed at that time, and

if, therefore, a similar tax is imposed when the oysters are first sold for planting, the result will be to tax the same oysters twice.

Nevertheless, I think that the oysters are subject to the tax when they are inspected prior to their sale for planting, under section 113, as well as when they are later inspected prior to their sale to the public. Not only is there the practical difficulty if not impossibility of identifying the oysters as being the same, but even if they can be identified, the tax is a tax on inspections, and its purpose is to help defray the expense of inspection. There is nothing in the law to exempt from the tax oysters sold for replanting purposes only. Act 1916, Chap. 702, Sec. 70.

It is, therefore, my opinion that oysters taken and sold for replanting under Bagby's Code, Art. 72, Sec. 113, are subject to the one cent inspection tax.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTER LEASES—ADVERTISEMENT OF, ORIGINAL LEASES AND RE-LEASES.

July 9, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of May 21st, which I have been delayed in answering by reason of the extra session of the Legislature.

You ask whether it is necessary to advertise applications for leases of oyster areas which have already been surveyed and determined not to be natural bars and, therefore, leasable, and which have actually been leased, but which leases have either been forfeited or surrendered or have expired.

Section 105 of Article 72 of Bagby's Code requires "all applications hereafter made" to be advertised, and provides that your Commission "shall have no power to issue any lease without such advertisement."

The question is whether this language should be construed as not applying to applications for re-leases, but as applying only to applications for original leases, on the theory that the object of the advertisement is to enable protests to be filed on the ground that the area applied for is natural bar, and that the area having been determined to be barren bottom at the time of the original lease, this question has been adjudicated, and should not be tried over again.

It is, of course, true that before the original lease was made, the area leased must have been adjudged barren bottom, either on review of the survey, under Section 96-B of Article 72 of Bagby's Code, or, under Section 105, on protest against the original lease or because no protest was filed. If no protest is filed, Section 105 provides that the lease shall be "binding on the respective parties thereto and conclusive as to the nature of the area leased," and if the survey or the lease are protested, then Sections 96-B and 105 provide for the entry of a judgment determining the character of the area.

It does not, in my opinion, follow from these provisions that the judgment of the Court determining the area to be barren bottom or the failure to file any protest establishes the area to be barren bottom for all time.

In Maryland, a natural bar is defined by Section 85 of Article 72 of Bagby's Code to be a bar "whereon the natural growth of oysters is of such abundance that the public have successfully resorted to such beds or bars for a livelihood, whether continuously or at intervals, during any oyster season within five years prior to the time of filing of the application for a lease of the area in question," etc.

I understand that barren bottoms may become natural bars, and that it is entirely possible for there to be a "natural growth

of oysters," of the abundance specified in Section 85, upon bottoms previously determined to be barren.

When a lease has terminated there is nothing to prevent the public from resorting to the area previously leased for a livelihood, if the same has become a natural bar, (Sections 85 and 117-A), and if the public does so resort, and if the natural growth of oysters on such area is of such abundance that the public successfully resort thereto for a livelihood "during any oyster season within five years prior to the time of filing of the application for a lease of the area in question," then such area has become a natural bar under Section 85.

Under Section 105 any three or more residents have the right to protest any application for a lease on the ground that the area is natural bar, and if a single oyster season has elapsed between the termination of a lease and the application for a re-lease, then it is perfectly possible that the area has become natural bar, within the above definition. If it has, then "it is excluded from the operation of this sub-title, and no person shall be permitted to plant or cultivate oysters thereupon, or in any way to appropriate the same to his own use." (Section 85.) In other words, the area can not legally be leased at all.

I think that the law guarantees to the oystermen the right to protest any proposed lease upon the ground that the area is natural bar at the time the application is filed, and if the application for a re-lease is not advertised, then this right will necessarily be denied in all cases in which an oyster season has intervened, as it doubtless often does, between the termination of the original lease and the application for the new one.

There are other reasons why the application for a re-lease should be advertised.

The law does not say that the *only* object of the advertisement is to afford opportunity to protest the lease on the ground that the area is natural bar. A special procedure for a protest on this ground is, of course, provided, but the proposed lease may very well be subject to objection on other grounds also.

For example, no one not a resident of Maryland can secure a lease; no corporation or joint stock company can secure a lease; and the minimum and maximum acreage which can be covered by a lease are prescribed. Sections 85, 100, 102, 104, 112.

It is possible that the applicant while claiming to be a resident of Maryland, may not be so; or that the applicant may really represent a corporation or joint stock company; or that there may be a bona fide question as to the acreage.

An opportunity should be afforded to make objections of this kind, if they exist, to any proposed lease, and this, I think, is one of the reasons why Section 105 requires all applications to be advertised.

Moreover, Section 105 provides that if the area has already been adjudged barren bottom in a review of the survey under Section 96-B, then the proposed lease cannot be protested as covering natural bar; but Section 105 does not dispense with the necessity for the advertisement in such case.

There can be no question at all that applications for original leases must be advertised, and they must, as just shown, be advertised even though the area has been adjudged barren bottom under Section 96-B. The only reason which can be urged for dispensing with the advertisement of an application for re-lease, is that the area was adjudged barren bottom at the time of original lease. But the fact that the area has already been adjudged barren bottom at the time of original lease, under a review of the survey, while preventing the original lease from being protested as covering natural bar, does not dispense with the necessity of advertising the application for the original lease. This being true, I can perceive no reason why the fact that the area has been adjudged barren bottom at the time of original lease should dispense with the necessity of advertising the application for re-lease. The application in both cases should be advertised, and an opportunity thus given for objections to the lease or the re-lease on grounds which may have nothing at all to do with the character of the area.

Taking the aforegoing considerations in connection with the perfectly clear provisions of Section 105, that "*all* applications hereafter made shall be advertised," and that your Commission "shall have *no power* to issue any lease without such advertisement," I do not see any escape from the conclusion that applications for re-leases must be advertised exactly like applications for original leases.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTER LEASE—AMENDMENT OF APPLICATION—ADVERTISEMENT — FILING FEE — DEFECTIVE APPLICATION.

July 21, 1917.

W. Thomas Kemp, Esq.,
Chairman Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of July 16, with reference to the application of Daniel Barrett for a lease of oyster land on Hellen's Creek, Calvert County.

I understand that Barrett applied for a lease of land on the west side of Hellen's Creek, and that his application was in proper form, sworn to, accompanied by the required fee, and that it was duly advertised. The Commission subsequently found that all the land on the west side of Hellen's Creek had been pre-empted, and upon being notified of this, Barrett said that he would be satisfied with the same quantity of land on the east side of the creek. Thereupon this land was surveyed, and the description attached to the original application by way of amendment. The application as amended was not sworn to, nor was any additional filing fee paid, but the amended application was advertised, and Barrett paid the cost of advertising. Shortly after this amendment to Barrett's ap-

plication had been made, Gideon Tongue applied, in regular form, for a lease of the area on the east side of the creek, covered by Barrett's amended application.

Tongue now objects to the award of this area to Barrett on the ground that Barrett did not make a legal application for the area on the east side of the creek.

Bagby's Code, Art. 72, Sec. 104, requires your Commission to lease land to applicants "in the order of their applications received and opened by said Commissioners." As Tongue's application was not received and opened until after the amendment to Barrett's original application was filed, and the same re-advertised, it follows that if Barrett's application as amended constitutes a legal application for the land on the east side of the creek, then that land should be awarded to him.

Section 103 of Article 72 of Bagby's Code requires your Board to furnish blank forms for applications, and provides that "all such forms shall be printed and shall be substantially in the following language." The form then provides for the name and residence of the applicant, for the description and acreage of the land applied for, and contains a statement that the applicant wishes to use the land for planting and cultivating oysters, and requests that the Commission lease the same to him.

Section 105 provides that any person desiring a lease, shall file an application "substantially in the form prescribed by Section 103," that the applicant "shall indicate plainly the land he desires to lease," and that "the application shall be sworn to before a Justice of the Peace of this State." This section further requires a fee for the filing of the application, and that all applications shall be advertised, "said advertisement to describe the location of the area applied for and to give the name and residence of the applicant."

In advertising Barrett's amended application, your Commission really treated it as a new application. I think that you properly treated it in this way, because the amendment did not result in simply correcting or in making more definite the de-

scription of the area applied for, but converted the application into an application for an entirely different area. When an application is changed so as to make it cover an altogether different area from the area first applied for, I do not see how the change can be regarded simply as an amendment. The application then becomes a new and original application for the new area.

In this view your Commission was correct in not charging Barrett an additional filing fee. His application for land on the west side of the creek had been declined, because there was no leasable land there, and Barrett thereupon became entitled, under Section 105, to a return of the fee previously paid by him. When his application was changed into an application for land on the east side of the creek, the fee was properly treated as a fee for that application. There was no need of your Commission returning the fee to Barrett, and then receiving it back again from him.

The application as amended being properly treated as a new application, the only question involved is whether the failure to make affidavit to it invalidated it, as against a later application for the same area which was under affidavit. This depends upon whether the words in Section 105, "the application shall be sworn to before a Justice of the Peace," are mandatory or merely directory.

The recent Maryland cases on the subject of mandatory and directory provisions in statutes are:

Upshur vs. Baltimore, 94 Md. 743, 757;
Bond vs. Baltimore, 118 Md. 159, 166;
Graham vs. Wellington, 121 Md. 656, 667.

Without, however, discussing the principles of these and other cases, it seems to me that your Commission should regard the requirement of Section 105, that an application be sworn to, as mandatory. Your Commission is a statutory body, and should, I think, be governed by the provisions of the statutes which relate to your powers and duties, rather than exercise a dis-

cretion as to whether you will observe or require others to observe some of these provisions or not, thus giving others an opportunity to complain, however unjustly, of favoritism or discrimination.

It follows that in my opinion Barrett's application for the land on the east side of the creek, not being sworn to, was not in proper form, and that Tongue's application for that land, which was in proper form, should be granted, unless some valid objection is made to it on grounds other than that it was not the first to be received.

You will understand that this opinion is only intended to cover the case where an application for one area is converted into an application for an entirely different area, thus becoming the original and only application for the new area. It is not intended to question your Commission's right to amend or correct the application for a given area by inserting, with the applicant's consent, the correct or a more definite or accurate description of the same area or of substantially the same area which the application is intended to cover.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTER LEASES—CREEKS AND COVES LESS THAN 100 YARDS WIDE.

October 5, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your inquiry of September 24th.

I understand that Plain Dealing Creek, Talbot County, is more than 100 yards in width at the mouth, but that as the creek makes into the land it narrows down to 100 yards and less

in width; and you ask whether that part of the creek which is above the line where it narrows down to 100 yards in width (and which part is, therefore, less than 100 yards wide), is open for oyster bedding without lease, and whether that part of the creek which is below the line where it narrows down to 100 yards in width (and which part is, therefore, more than 100 yards wide), is subject to lease. In my opinion, an affirmative answer should be given to both questions.

The old five acre law, Act 1894, Chap. 380, provided in Section 47 (Bagby's Code, Art. 72, Sec. 49), that the owner or lawful occupant should have the exclusive right to use, for bedding oysters, any creek, cove or inlet (1) "not exceeding one hundred yards at low water in breadth at its mouth." or (2) if greater width than one hundred yards at low water mark, then "when the mouth of said creek, cove or inlet is one hundred yards or less in width"; or (3) if more than one hundred yards in width at its mouth at low water, then as soon as said creek, cove or inlet "shall become one hundred yards in width at low water."

This section was before the Court of Appeals in Powell vs. Wilson, 85 Md. 347.

I think it clear that the above section applies not only to coves which are less than 100 yards in width at the mouth, but also to coves which are more than 100 yards in width at the mouth if and when such coves narrow down to 100 yards in width, or branch into inlets or headwaters 100 yards in width or less.

When the Oyster Culture Law was first enacted by Acts 1906, Chap. 711, it was provided in Section 107 (Bagby's Code, Art. 72, Sec. 109), that "this sub-title shall not be so construed as to apply to any creek, cove or inlet, less than one hundred yards in width at its mouth at low tide."

This section, standing alone and strictly construed, might be said to apply only to coves which are less than 100 yards in width at the mouth at low tide, and not to coves which are more than 100 yards in width at the mouth at low tide, but which

narrow down to 100 yards in width, or branch into inlets or headwaters 100 yards in width or less.

Neither the Act of 1906 nor any subsequent legislation has expressly repealed the five acre law, which is, therefore, still in the Code (Art. 72, Secs. 47-51), but the Act of 1906 and subsequent legislation (Art. 72, Sec. 85, etc.), establishing the present system of oyster leases, have necessarily superseded or impliedly repealed those provisions of the five acre law which relate to the appropriation of five acre lots.

While, however, the provisions of the five acre law which relate to the appropriation of five acre lots have thus been superseded by the present Oyster Culture Law, yet I do not think that this legislation has repealed Section 47 of the five acre law (now Section 49 of Article 72 of Bagby's Code), which relates to the exclusive right to bed oysters in coves. This section has, of course, never been expressly repealed, it is still in the Code, and I see nothing in the present Oyster Culture Law which can be said to constitute an implied repeal of the section.

I think, therefore, that Sections 109 and 49 of Article 72 of Bagby's Code both stand and should be read together, with the result that your Commission can make no leases in coves which are less than 100 yards in width at the mouth; and that coves which are more than 100 yards in width at the mouth are subject to lease down to the point where they narrow to 100 yards in width, or to points where they branch into inlets or headwaters 100 yards in width or less; and within the limits which are not thus subject to lease (that is, within the parts of such coves which are less than 100 yards wide), the owners or lawful occupants have the exclusive right to bed oysters, in accordance with Section 49.

You also say that the parties entitled to the exclusive use of that part of Plain Dealing Creek which is less than 100 yards wide, have asked your Commission for a permit to erect a sign marking the line where such part of the creek begins, and reading: "Limit of public oystering. As decided by Conservation Commission of Maryland."

I do not find that the granting of permits of this kind is any part of the duties of your Commission. If the said line has in fact been established by your Commission, and the riparian owners choose to place a sign to that effect upon their own property, they have a right to do it without any permit from you. I think, therefore, that there is no occasion for your Commission issuing permits of this kind. If, however, such signs are erected by riparian owners, you should, of course, see that they contain no statements which are not correct.

I return you the plat of Plain Dealing Creek.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION — OYSTER LEASES — SUBMERGED OR WASHED LAND NOT SUBJECT TO.

March 8, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of February 24th, in which you ask my opinion as to whether certain oyster bottoms claimed to be owned by Mr. J. M. Clayton are subject to lease.

The bottoms in question are located at the north end of Hooper's Island, Dorchester County, in navigable water. I understand that they are included within the lines of a tract of land which Mr. Clayton's predecessors in title acquired over a century ago, the portion in question having become submerged by the waters, under which it now lies, and the remainder of the tract now constituting the shore land.

Mr. Clayton states that he and his predecessors in title have held and paid taxes on this washed land ever since 1806; that at least twice during recent years, 1894 and 1898, the lines of

the land have been verified and platted, because the visible stakes had been carried away by the ice; and that he himself has from time to time planted large quantities of shells upon it.

The principle of the common law is, of course, that the owner loses title to submerged or washed land, and that the same belongs to the State.

Tiffany, Real Property, Vol. 2, par. 45, page 1035;
Hodson vs. Nelson, 122 Md. 330, 338.

It is by way of compensation for such loss that the law gives the owner the benefit of accretion.

West. Md. R. R. vs. Baltimore, 106 Md. 561, 564;
Linthicum vs. Coan, 64 Md. 439, 450-451;
Bagby's Code, Art. 54, Sections 47-49.

From the very fact, however, that land under water, whether washed land or not, belongs to the State, it follows that it is competent for the Legislature to modify the common law principle, and to recognize the owner's title in washed land.

When we turn to the oyster laws of the State, we find that the revision made by the Act of 1894, Chap. 380, provided in Section 46 as follows:

> "The owner of any land bordering on any of the navigable waters of this State, the lines of which extend into and are covered by said waters, shall have the exclusive privilege of using the same for protecting, sowing, bedding or depositing oysters or other shell fish within the lines of his own land."

This provision, except that certain counties (not including Dorchester) have since been excepted from it, is still the law of this State, and is now Section 47 of Article 72 of Bagby's Code. In construing this section, the Court of Appeals, in Handy vs. Maddox, 85 Md. 547, 552, thus referred to the provision quoted:

> "The owner of land whose lines extend into the water has exclusive right within the lines of his land. This is a

proprietary right, and probably exists without regard to the provisions of the statute."

The oysture culture Act of 1906, Chap. 711, contains in Section 107 the following provision:

"This Act is not intended to apply to any lands owned by private persons, the bounds of which extend below low water into or beneath the waters of this State."

This is still the law of this State, and it is now codified as Section 109 of Article 72 of Bagby's Code.

The first of these two provisions is a clear recognition by the State of the right of an *owner* of land to plant oysters within the lines of his title, even if such lines "extend into and are covered by" the water. The second is a clear provision that the Act of 1906, under which, as amended, oyster areas are now surveyed and leased, does not apply to lands *owned* by private persons, the "bounds of which extend below low water into or beneath the waters of this State."

The Act of 1862, Chap. 129 (Bagby's Code, Art. 54, Sec. 49) provided that "no patent shall hereafter issue for land covered by navigable waters," and consequently no one has been able to acquire title from the State and become an *owner* of land under water since 1862. But before the Act of 1862 was passed, the State could and frequently did grant title to land under water, as the cases cited in the notes to Sections 47-49 of Art. 54 of Bagby's Code show; and to such land it is clear that Sections 47 and 109 apply.

The distinction must be kept in mind between the provisions of Sections 47 and 109 and the provisions of Sections 89 and 108 of the Act of 1906, Chap. 711, now codified as Sections 91 and 110 of Art. 72 of Bagby's Code, which provide that the holding of any person who has, prior to April 2, 1906, "lawfully appropriated or taken up any land" for oyster culture purposes, shall be void, unless he applies for a lease under the Act of 1906.

These latter provisions mainly refer, I think, to land appropriated under the old five acre law. They do not apply to washed land of the character here in question. Such washed land was not "lawfully appropriated or taken up" for oyster culture. On the contrary, it is "land bordering on the navigable waters of this State, the lines of which extend into and are covered by said waters," and it is land "the bounds of which extend below low water into or beneath the waters of this State." It is, therefore, covered by Sections 47 and 109 of Article 72 of Bagby's Code, and by those sections the owner can plant oysters upon it and it is not subject to lease.

It follows from the above that if Mr. Clayton's predecessors in title had a valid title to and were the owners of the whole tract in question prior to 1862, and if Mr. Clayton has now become the owner thereof, then, in my opinion, his title to the washed land has been expressly preserved and exempted from lease by Sections 47 and 109 of the law.

I have assumed that Mr. Clayton has a valid title to the land in question, but I have not before me the facts showing how his title was acquired from the State. The payment of taxes, the surveying and platting of the washed land in 1894 and 1898 and the planting of oysters thereon are all evidence of ownership, but are not conclusive evidence as against the State, although the case of Sollers vs. Sollers, 77 Md. 148, 151, seems to recognize that before 1862 title to land under water could be acquired by adverse possession.

If, therefore, the question is to be raised whether the lines of Mr. Clayton's title in fact cover the washed land, this point will have to be investigated. But if the lines of his title do cover the washed land, then I do not think that such washed land is subject to lease.

I return you the enclosures you sent me with your letter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONVERSATION—OYSTERS—LICENSES FOR PACKERS—PLACE OF BUSINESS.

November 21, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of November 12th, in which you ask whether an oyster packer, engaged in business in Baltimore City, and holding a packer's license under Section 79 of Article 72 of Bagby's Code, is required to take out another license in Kent County, where he operates a shucking house, the entire output of which is brought to the Baltimore house and marketed from there.

Section 79 requires the packer's license to be taken out in the "county in which the place of business of such applicant may be situated," or in Baltimore City, "if the place of business of such applicant shall be in Baltimore City."

Under the facts as you state them, I think it clear that the packer's place of business, for the packing or canning of oysters, is Baltimore City, and that the Baltimore City packer's license will suffice, no packer's license being required in Kent County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONVERSATION—OYSTERS—LICENSES FOR SYNEPUXENT BAY.

April 25, 1917.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I have your favor of April 23rd, in which you ask whether a license is required to catch oysters in the Synepuxent Bay.

The Act of 1894, Chap. 380, Sec. 68 (which is codified in Bagby's Code, Art. 72, Sec. 83, and which amends Sec. 42 of Art. 72 of the Code of 1888), provides that "nothing in this article shall be construed to apply to Worcester County as to the taking or catching of oysters in the waters of said County."

The provisions of Art. 72 requiring licenses to catch oysters relate, of course, to the "taking or catching of oysters," and for this reason neither the Conservation Commission nor its predecessor, the Board of Shell Fish Commissioners, have ever required licenses to catch oysters in Synepuxent Bay or in any of the other waters of Worcester County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—OYSTERS—LICENSES, TONGERS' FEES IN TALBOT COUNTY, DISPOSITION OF, TRED AVON RIVER BOAT.

December 19, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your recent inquiries relative to the application of tongers' license fees in Talbot County.

The questions are three:

1. After the expenses of the boat which does guard duty at the mouth of the Tred Avon River have been first paid from the tongers' fees, whether an amount equal to one-third of the *gross* fees is then paid to the Comptroller for the oyster fund, or whether only one-third of the *balance* is paid to the Comptroller, the remainder in either case being paid to the school commissioners of the county.

2. The *amount* which is authorized to be paid from the tongers' fees for the expenses of the boat.

3. The *season* during which such expenses are authorized to be paid from the tongers' fees.

1. Before 1894 all moneys received from tongers' licenses in Talbot County, less the clerk's fees and commissions, were payable to the school commissioners for the use of the public schools, under the general law. Code 1888, Art. 72, Sec. 15.

The Act of 1894, Chap. 314, Sec. 3, authorized the Board of Public Works to hire two boats to assist in guarding the waters at the mouth of the Tred Avon River, and adjacent thereto, and the waters of Chester River and tributaries. The Act fixed the amount of rent and the compensation of the crew, and also the season during which the boats should operate, and directed the Clerk of the Circuit Court for Talbot County to pay to the Comptroller "a sum sufficient to pay said salaries and hire of said boat, as aforesaid, from the licenses received from tongers in Talbot County; and provided, further, that the amount necessary to pay said salaries and hire of said boat shall be paid to the Comptroller, equally by the clerks of the Circuit Courts for Queen Anne's and Kent Counties, respectively, from funds received by them for tongers' licenses, and now directed to be paid to the school fund."

Subsequent legislation shows that the "said boat" first referred to was the Tred Avon River boat, and that the "said boat" secondly referred to was the Chester River boat.

The Act of 1894, Chap. 380, which was a general law repealing and re-enacting the oyster laws of the State, Art. 72 of the Code, provided in Section 2 that "two-thirds of the amount received for tonging licenses, shall be paid by the clerk to the school commissioners for the use of the public schools in the respective counties where such licenses are issued, * * * and the remaining one-third to be paid over by the clerk to the Comptroller of the State Treasury to be credited to the oyster fund."

The Act of 1906, Chap. 165, repealed and re-enacted Chap. 314 of the Acts of 1894, and continued the appropriation of the tongers' license fees in the manner directed by Chap. 314, except that it made clear that the "salaries and hire of *said boat*" which the Talbot County fees were to pay, referred to the

Tred Avon River boat, and that the "salaries and hire of *said boat*" which the Queen Anne's and Kent County fees were to pay, referred to the Chester River boat; and the Act also provided for an extension of the season during which the boats were to operate.

In carrying out these statutes, it was the custom of the Clerk of the Circuit Court of Talbot County, after first deducting from the license fees his own commissions, next to pay therefrom the hire and salaries of the Tred Avon boat, and then pay the Comptroller from the balance a sum equal to one-third of the gross license fees, the remainder being paid to the school commissioners.

In 1912 or prior thereto, in the case of School Commissioners vs. Wrightson, Clerk, the Circuit Court for Talbot County (Judges Pearce, Hopper and Adkins), held that this method was not correct. The Court held that Chapter 314 of the Acts of 1894, re-enacted by the Act of 1906, Chap. 165, was a local law, and that it prevailed over the general law enacted by section 2 of Chapter 380 of the Acts of 1894; and that the Clerk of Court should, under Chapter 165, first deduct from the gross license fees received from tongers in Talbot County the amount necessary to pay for the hire and salaries of the Tred Avon boat, and that one-third of the *residue then remaining* (not one-third of the *gross* fees), should, under Chapter 380, then be paid to the Comptroller for the oyster fund, and the remaining two-thirds of the residue should be paid under the same Chapter 380 to the school commissioners.

It is, of course, clear that the school commissioners were entitled to a larger portion of the fees under this method of payment, than they had been receiving under the method which the Court declared illegal. The decision was accepted by the Legislature, which in 1912 appropriated the sum necessary to pay the school commissioners the balance which, under the Court's decision, should have been paid them. (Act 1912, Chap. 591.)

The Circuit Court pointed out that the Act of 1910, Chap. 413, was not involved in the case before it. That Act was a general law, and repealed and re-enacted Section 2 of Article 72 of the Code, as the same had been enacted by the Act of 1894, Chap. 380. This section as amended provided, as it had previously done, that two-thirds of all tongers' license fees should be paid to the school commissioners in the respective counties, the remaining one-third to be paid to the Comptroller for the oyster fund; and then contained an additional provision that "one-third of the amount received from any tonging license in any county in this State" was to be paid by the Clerk to the Comptroller for the oyster fund, "any provision of any public local law or public general law to the contrary notwithstanding."

As already shown, the Circuit Court had held that, before the Act of 1910, the expenses of the boat should first be paid out of the fees, and that the remainder should be divided one-third to the Comptroller and two-thirds to the school commissioners. The Court did this on the theory that effect should be given both to the general law and to the local law, and the Court gave effect to both by requiring the expenses of the boat to be first paid, in accordance with the local law, and by construing the division prescribed by the general law, of one-third to the Comptroller and two-thirds to the school commissioners, as applying only to the balance of the fees remaining after the expenses of the boat had been paid.

It is thus clear that the reason why the Comptroller, after the expenses of the boat had been paid, received one-third of the *balance* then remaining, instead of an amount equal to one-third of the *gross* fees, was because the Court held the local law to create a first charge upon the fees for the expenses of the boat, and divided the balance in accordance with the general law.

Now, however, comes the Act of 1910, and provides that the Comptroller shall receive his one-third of all the fees, *any provision of any public local law to the contrary notwithstanding.*

I regard the Court's decision that the local law and the general law must both be read together, as binding, particularly as it was accepted by the Legislature in 1912. But we can no longer give an effect to the local law which will result in depriving the Comptroller of his one-third of *all* the fees which the general law now provides *shall* be paid to him, *notwithstanding any local law to the contrary.*

Therefore, effect can now be given to both laws, as the Court held must be done, only by requiring one-third of the *gross* fees to be first paid to the Comptroller, for the oyster fund, under the general law (Act 1910, Chap. 413, Sec. 2); by next paying the expenses of the boat, under the local law (Act 1906, Chap. 165); and by paying the remainder to the school commissioners.

I, therefore, advise you that you should first pay one-third of the gross tongers' license fees to the Comptroller, for the oyster fund; that you should next pay to the Comptroller a sum sufficient to pay the expenses of the boat (calculated as hereinafter explained); and that you should pay what then remains to the school commissioners.

2. I do not think that the amount which the Clerk is authorized to pay from the tongers' fees for the expenses of the boat presents any difficulty.

The Act of 1906, Chap. 165, expressly provides that the Clerk is to pay from the tongers' license fees "the sum sufficient to pay said salaries and hire of said boat as aforesaid," and the act fixes the hire, during the prescribed season of five months, from October 15th to March 15th, at not exceeding $40 per month, and the salaries at $50 per month for the commander, $40 per month for one of the crew, and $30 per month for each of the other two members of the crew.

These sums aggregate $190 per month, or $950 for the five months, and the statute does not authorize the Clerk of Court to pay from the tongers' license fees, for the five months, more than that sum for hire and salaries, nor does it authorize the

Clerk to pay from the fees, for the five months, any items of expense other than these items for hire and salaries.

If the boat continues on duty beyond the five months, then the statute is equally explicit in allowing the Clerk to pay from the fees only the hire of the boat, at the above rate, and the salary of the Commander and one man at rates to be fixed by the County Commissioners, but not to exceed the salaries allowed during the season.

3. The season during which the boat is to operate is from October 15th to March 15th. If it is desired to continue the boat beyond that time, and charge the fees with the hire and salaries prescribed for the off-season, this can only be done, under the express provisions of the Statute, "if requested by the County Commissioners."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTERS—SEASONS FOR CATCHING IN DORCHESTER COUNTY.

September 6, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of August 22nd, in which you ask when the season opens in Dorchester County for catching oysters on leased areas.

1. The open season for catching oysters for sale with rakes and tongs in the waters of Dorchester County, other than the Choptank River, is from October 1 to April 25, and in the Choptank River the open season for catching oysters for sale with rakes and tongs is from September 15 to April 25. See Act 1910, Chap. 522, page 820, which supersedes the general

law, Bagby's Code, Art. 72, Sec. 16, as to Dorchester County, and which applies to leased areas as well as to natural bars.

2. The open season for catching oysters for sale, with dredges or other similar instruments, on leased areas in the waters of Dorchester County, other than the Choptank River, is from September 15 to June 15. See Act 1912, Chap. 539, Sec. 112 (Bagby's Code, Art. 72, Sec. 114), which supersedes the local law, Act 1904, Chap. 522, as to dredges or other similar instruments on leased areas.

3. The open season for catching oysters for sale, with dredges, scoopes or scrapes, in the Choptank River, is from November 1 to March 15. See Act 1916, Chap. 403, amending Code P. L. L., Art. 10, Sec. 244, which applies to leased areas as well as to natural bars.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CONSERVATION—OYSTERS, UNMERCHANTABLE, CULLING OF.

February 5, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. KEMP: I beg to reply to your favor of February 1st.

I understand that in making up a cargo of oysters, the loads taken from some bars will often contain considerably more than five per cent of unmerchantable oysters, but that loads taken from other bars may contain so small a percentage of unmerchantable oysters as to reduce the percentage on the whole cargo to five per cent or below.

Under these circumstances, you ask whether the captain of the boat can be prosecuted for taking unmerchantable oysters, or whether the fact that the whole cargo does not contain more than five per cent exempts him from prosecution.

In my opinion, the captain can be prosecuted. The point was raised in Dean vs. State, 98 Md. 80, and the Court of Appeals there held that the whole cargo did not have to be culled, but that, under Section 9 of Article 72 of Bagby's Code, "so far from being required to cull the whole cargo, the officer may cull any portion of it to determine the extent to which the law has been violated." In that case only two and one-half bushels out of the whole cargo were culled.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—SEARCH AND SEIZURE, POWER OF COMMISSION.

May 1, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your recent favor asking whether the inspectors of your Commission may open packages of fish, found on steamboat wharves and railroad platforms, for the purpose of inspecting the fish contained in such packages, in order to ascertain whether any violations of the fish laws may have been committed.

It is the duty of the Conservation Commission, and of the State Fishery Force, to enforce the fish laws of the State.

Act 1916, Chap. 682, Sec. 3, 4(2), 5, 8;
Bagby's Code, Art. 39, Sec. 35, 59E, 63-71, 116;
Bagby's Code, Art. 72, Sec. 45.

Bagby's Code, Art. 99, Secs. 52-57, inc., Section 52 having been amended by the Act of 1916, Chap. 386, authorizes the inspectors and officers of your Commission, whenever they have reason to believe that any person or corporation has in his or its possession, contrary to law, any game or fish, to secure a

search warrant from a Justice of the Peace directing the constable to seize and search such game or fish. The subsequent procedure is then prescribed.

Section 52, as amended in 1916, also authorizes the inspectors and officers of your Commission, without any warrant, to search "any boat, car, box, locker, crate or package, and any building," where such inspectors or officers have reason to believe any game or fish are held in violation of law, and to seize any game or fish that are found to be so held, the same to "be disposed of by the Game Warden as he may deem advisable for the best interests of the State;" but this section shall not authorize entering a dwelling house, nor shall it apply to game or fish which are passing through this State under authority of the United States.

The packages of fish which you have in mind, are, of course, contained in a "boat, car, box, locker, crate or package," and, therefore, your inspectors may, without any warrant, search such packages, provided they are not passing through this State in interstate commerce, and seize such fish as are found to be contained therein in violation of the law; or your inspectors may secure a search warrant for the same, and proceed in the manner provided by the sections of the law above referred to.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—STATE FISHERY FORCE—POWER TO ARREST.

January 16, 1917.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. KILLIAN: I beg to confirm the oral opinion I expressed to you yesterday, namely:

When dredgers operating upon waters where they are lawfully entitled to dredge, are molested by tongers, I think that

the State Fishery Force, under the powers conferred by Bagby's Code, Art. 72, Secs. 34, 39, 40, 44, 45; Acts 1916, Chap. 682, Sec. 4 (2), has the power to make arrests.

The charge would depend upon the nature of the offense, that is to say, it would be breach of the peace, assault, shooting with intent to kill, or otherwise, as the case might be.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—SWAN'S POINT BAR, NORTHERN LIMITS OF.

January 27, 1917.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. KEMP: I beg to confirm the oral opinion I gave you yesterday, relative to the northern limits of the mile and a half zone surrounding Swan's Point Bar, within which dredging is prohibited by Section 21 of Article 72 of Bagby's Code.

I understand that there is no law defining the boundaries of Swan Point Bar, and under these circumstances I think that the lines which have always been understood to be and which have always been accepted and have been charted as the boundaries of the mile and a half zone should control.

I am advised that when the State Fishery Force made its surveys in 1909, two range poles were found by them, which had been erected many years before as marking the northern limit of the mile and a half zone. The State Fishery Force, therefore, adopted these range poles as marking the northern limits. The location of these poles appears on the Boat Sheet of the locality, and the corners Nos. 5 and 6 of Swan Point Natural Oyster Bar, as shown on Published Chart No. 2, are fixed to conform to them.

I think that your Commission should regard these corners Nos. 5 and 6 as marking the northern limits of the mile and a half zone around Swan Point Bar, which is what they have always been regarded and accepted and have been charted as doing.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS.

(See also Banks; Taxation.)

CORPORATIONS, FOREIGN—COMPLIANCE WITH MARYLAND LAW.

January 11, 1917.

Thomas N. Copenhaver, Esq.,
220 St. Paul Street,
Baltimore, Maryland.

DEAR MR. COPENHAVER: I have your favor of January 9th. Bagby's Code, Art. 23, Sec. 93, provides that "every foreign corporation which has a usual office or place of business in this State, except, etc., shall, before doing business herein," file with the Secretary of State a copy of its charter, pay a fee of $25.00, and comply with the other requirements of the section.

If the Board of Church Extension of the Methodist Episcopal Church, a Kentucky corporation, has an office or place of business in Maryland, and if the aid it gives in this State to churches by way of donations and loans is part of its object and purpose, then it seems to me that it should comply with Section 93.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS, FOREIGN—COMPLIANCE WITH MARYLAND LAW.

January 29, 1917.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR MR. SIMMONS: I beg to reply to your favor of January 24th, enclosing a letter from the Davey Tree Expert Company of Ohio to yourself, asking whether it is required to comply with the foreign corporation law of Maryland.

Bagby's Code, Art. 23, Sec. 93, requiring foreign corporations to appoint resident agents in this State, and to comply with certain other formalities, applies to "every foreign corporation *which has a usual office or place of business in this State,* except insurance companies hereinafter provided for, but including any corporation which is engaged in this State, permanently or temporarily, and *with or without a usual place of business therein,* in certain kinds of construction work.

My understanding is that the Davey Tree Expert Company has no office or place of business in this State, and the company is not one of the class of construction companies, which must comply with the law whether they have an office or place of business in this State or not.

If I am correct in my understanding that the company maintains no office or place of business in Maryland, then it is not required to comply with the foreign corporation law. If, however, the company does maintain an office or place of business in Maryland, then it must comply.

I return you the letter from the Davey Tree Expert Company to yourself.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CORPORATIONS, FOREIGN—COMPLIANCE WITH MARYLAND LAW.

February 15, 1917.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR MR. SIMMONS: I beg to reply to your favor of February 10th, enclosing letter from the general attorney of the Franklin Automobile Company, asking whether that company must comply with the foreign corporation law of Maryland.

As I understand it, the company desires to consign to a dealer in this State autom biles to be sold on commission. The

purchase price, less the commissions, is to be accounted for to the company, and until the automobiles are sold, they will remain the property of the company.

Under Bagby's Code, Art. 23, Sec. 93, foreign corporations which propose to do business in this State, are required to comply with our foreign corporation law when they have "a usual office or place of business in this State," except certain kinds of construction companies, which must comply with our law whether they have a usual place of business in this State or not. See also Section 92.

The Franklin Automobile Company is not one of the class of construction companies mentioned, but I think that the manner in which it proposes to operate in this State constitutes doing business in Maryland, within the meaning of our statute, the dealer being the company's agent here.

19 Cyc. 1271.

I also think that the dealer's office will be the office or place of business of the company in this State.

It is, therefore, my opinion that the Franklin Automobile Company should comply with the provisions of Sec. 93 of Art. 23 of Bagby's Code.

I return you the letter from the company's general attorney to yourself.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CORPORATION, RELIGIOUS—INCORPORATION OF.

March 26, 1917.

Allan C. Girdwood, Esq.,
Secretary, State Tax Commission,
504 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 24th, asking whether the certificate of incorporation of a religious

corporation should be delivered to the State Tax Commission for record, and whether the certificate should be approved by the judge.

Ever since 1802 the formation of religious corporations has been governed by different provisions of law from those which apply to corporations generally.

Baltzell vs. Church Home, 110 Md. 244, 262.

These provisions are now codified in Bagby's Code, Art. 23, Secs. 339-355, and they contain nothing requiring the certificate, or rather, to use the words of the statute, the "plan or agreement," to be submitted to the State Tax Commission.

The Act of 1916, Chap. 596, revising the corporation laws of the State, does not affect in any way the sections of the Code relating to religious corporations. Section 99-B of the Act of 1916, which provides that "no charter or other paper, which is not in conformity with law, shall be received by the State Tax Commission," only applies to those certificates which are required to be delivered to the Commission. The plan or agreement of a religious corporation is not one of these.

It follows, therefore, that the plan or agreement, that is, the certificate of incorporation, of a religious corporation, is not required to be delivered to the State Tax Commission.

You ask whether it would nevertheless be permissible to deliver the certificate to the Commission for record. The place where the certificate must be recorded is specified in Section 346, and also Section 355 (Act 1912) of Art. 23 of Bagby's Code. This place is the Clerk's office. If the certificate is recorded there, then I see no objection to its being recorded in your office also, if the Trustees and your Commission are both willing.

Finally, you ask whether the certificate should be approved by the judge. Section 4 of Article 23 of Bagby's Code (Acts 1908 and 1914), which required certificates of incorporation to be certified by the judge, did not apply to religious corporations. The manner of executing the certificates of religious

corporations is specified in Section 345. This section does not provide for the judge's certificate, and if such certificate is appended it is of no effect.

Boyce vs. M. E. Church, 46 Md. 359, 372.

The provision of law requiring certificates of corporations generally to be certified by the judge has, of course, been repealed by the Act of 1916, Chap. 596, Sec. 4. But, as stated above, the judge's certificate never was required in the case of certificates of religious corporations.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW.

CRIMINAL LAW—CONTRACTS WITH STATE AIDED INSTITUTIONS, UNLAWFUL FOR OFFICER OR TRUSTEE TO MAKE.

February 23, 1917.

D. John Markey, Esq.,
Frederick, Maryland.

DEAR MR. MARKEY: I received your favor of February 16th, asking whether the firm of which you are a member can accept, as the highest bidder, the shoe contract from the Maryland State School for the Deaf, while you are one of the Board of Visitors of that Institution.

Bagby's Code, Art. 27, Sec. 483, provides that "every person having any official connection, either as officer, agent, trustee or *member of the Board of Visitors* of any public institution, or private institution supported in whole or in part by money appropriated by the State of Maryland, who shall, after April 6, 1908, become *directly or indirectly concerned or interested, for profit, in any contract*, purchase or sale of anything for, by or on account of such institution, shall be deemed guilty of a misdemeanor; and any person so offending shall upon conviction in any court of this State be immediately dismissed from employment or forfeit his place as such officer, agent, trustee or member of the Board of Visitors, and be subject to a fine not to exceed $500.00, to be recovered as other fines are, or imprisoned for a term in the Maryland House of Correction not to exceed one year."

You have an official connection, as a member of the Board of Visitors, with an institution for which the State appropriated money, and if your firm receives the shoe contract from the institution, then, as a partner, you will be directly interested for profit in that contract. I, therefore, do not see any escape from the conclusion that if your firm receives the contract, while you remain on the Board of Visitors, you will violate the law.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—CORONER'S JURY, WHEN SUMMONED.

October 2, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington Street,
Baltimore, Maryland.

DEAR SIR: In response to your recent inquiry, I beg to advise you that when persons are killed in automobile accidents, those believed responsible should not be held for the action of the Grand Jury by the Coroner, until the Coroner has first summoned a jury of inquest.

Coroner's juries are summoned when "there are such circumstances attending the death or case as to amount to a strong probability or reasonable belief that the deceased came to his death by felony." (Bagby's Code, Art. 22, Sec. 3.) When the negligent operation of an automobile resulting in death is a crime, the crime is usually manslaughter, which is a felony.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—LIQUOR SEIZED IN WORCESTER COUNTY—DESTRUCTION OF.

November 21, 1917.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I beg to reply to your favors of November 12th and 16th, in which you ask my opinion whether whiskey seized under Chapters 561 and 831 of the Acts of 1914 may be converted into alcohol, and the alcohol then sold for the benefit of the county.

Section 4-A of Chapter 561 of the Acts of 1914 provides that liquors kept for sale, in violation of the Act, shall be seized, and, after being used as evidence in the manner provided in the Act, "shall be ordered to be destroyed."

From a consideration of this Act, and also of the Act of 1908, Chap. 27, page 1167, to which the Act of 1914 adds an additional Section, it seems to me clear that the intention was that the seized liquor should be destroyed, and there is nothing upon which to rest a legal opinion that instead of being ordered destroyed, it may be ordered distilled and converted into alcohol. No machinery is provided for carrying out such an order, or, if the same be passed, for disposing of the alcohol for the benefit of the county.

While, therefore, it may be that no one would object if the Justice, instead of ordering the liquor destroyed, ordered it to be converted into alcohol, and if the county thereafter disposed of the alcohol for its own benefit, yet I cannot advise you that such a course would, under the Act, be legal.

Chapter 831 of the Acts of 1914, which is the gallon a month law, contains no express provision authorizing the seizure or destruction of liquors brought into the county in violation of the Act. The Act simply imposes fines or imprisonment upon those who violate it. Assuming, however, the right to seize such liquor, yet I cannot advise you that it can legally be converted into alcohol and sold for the benefit of the county, because no machinery of any kind is provided for such disposition of the liquor.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—MOTION PICTURE LAW—JURY TRIAL, RIGHT OF APPEAL, AMOUNT OF FINE.

May 11, 1917.

Mrs. Thomas B. Harrison,
Secretary, Maryland State Board of Censors,
204 East Lexington Street,
Baltimore, Maryland.

DEAR MRS. HARRISON: I beg to answer the several inquiries you made a few days ago.

1. Persons charged with violating the Motion Picture Law cannot demand a jury trial. Sections 20 and 21 of the law (Act 1916, Chap. 209), which vest in police magistrates and Justices of the Peace summary jurisdiction to try and punish violations of this Act, do not provide for a jury trial, and in the absence of such a provision persons charged with offenses of this kind must submit to trial before the magistrate, and have no right to demand a jury trial.

State vs. Loden, 117 Md. 373, 384.

2. Persons convicted by the police magistrates of violations of the law, and fined not exceeding $50.00 are not entitled to an appeal to the Court. The Motion Picture Act itself does not provide for any appeal at all, and there is no law in Baltimore City applicable to police magistrate cases generally which authorizes appeals where the fine does not exceed $50.00. Under these circumstances, there is no right of appeal where the fine imposed is not over $50.00.

State vs. Glenn, 54 Md. 572;
State vs. Ward, 95 Md. 118;
State vs. Loden, 117 Md. 373, 384.

The Baltimore City Charter, Sec. 632A, authorizes appeals from police magistrates in all cases where the fine, exclusive of costs, is over $50.

Under the Motion Picture Act, no fine greater than $50.00 can be imposed for the first offense. In the case of first offense

fines, therefore, appeals to the Criminal Court can never be taken. For subsequent offenses, the fine is to be not less than $50.00, not more than $100. Therefore, if the subsequent offense fine is $50 there can be no appeal, but if it is more than $50 there can be.

If such fine is more than $50, and an appeal is taken, then upon such appeal the person convicted is entitled to a jury trial in the Criminal Court.

3. In Baltimore City, the police magistrates have no power to impose a fine less than the minimum fine which the law provides. Section 521 of Article 27 of Bagby's Code, which authorizes the Criminal and Circuit Courts to impose fines less than the minimum prescribed, does not apply to police magistrates in Baltimore City. Section 12 of Article 52 of Bagby's Code may possibly extend this power to Justices of the Peace in some of the counties, but Baltimore City is expressly excepted from its provisions.

Crichton vs. State, 115 Md. 428, 429;
State vs. Ward, 95 Md. 118;
Baltimore City Charter, Secs. 632-634, inc.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—POLICE MAGISTRATES, APPEALS FROM—EFFECT OF DISMISSAL OF CASE BY, UPON NEW PROSECUTION—INDICTMENT FOR VIOLATING WORCESTER COUNTY LIQUOR LAW, SUFFICIENCY OF.

September 27, 1917.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I beg to reply to the several inquiries contained in your letter of September 22, 1917.

1. Under Section 159 of the Act of 1916, Chap. 687, any person convicted by the police magistrate of violating the Motor Vehicle Law is given the right of appeal, but no right of appeal is given the State. This Act fixes the jurisdiction of police magistrates in cases arising under the Act (State vs. Ward, 95 Md. 118), and gives them power "to hear and determine" such cases; and since the Act does not give the State the right of appeal, the State has no such right. It follows, I think, that the judgment of the magistrate in dismissing a charge brought under the Act is final, and that the same case cannot be brought again before the Grand Jury.

2. The Court of Appeals, in construing Article 12 of Bagby's Code, has held that "the proceeding before the justice is simply a preliminary examination for the purpose of holding the accused for Court, if the evidence justifies it."

O'Brien vs. State, 126 Md. 270, 276;
Hamilton vs. State, 127 Md. 312, 314.

Therefore, the action of the magistrate in dismissing a case of this kind does not involve a judgment, but simply involves the magistrate's finding that the evidence offered was not sufficient to hold the accused; and I see no reason why the same case may not be brought again before the same or another magistrate having jurisdiction, if new and additional evidence justifies it.

I think that in this event, the case should not be taken before the Grand Jury direct, but that the preliminary proceedings before the magistrate should first be had. In O'Brien vs. State, 126 Md. 270, 281, the Court declined to decide whether an indictment could be found without proceedings being first taken before the magistrate, but said that "that would be an unwise and dangerous course to pursue in view of this statute."

3. You also refer to the Act of 1908, Chap. 27, Sec. 2, page 1169, which makes it unlawful to "keep at any place whatsoever for the purpose of bartering or selling any spirituous, fermented or intoxicating liquors, alcoholic bitters or compounds

within the limits of Worcester County," and you ask whether in an indictment under this Act it is necessary to allege the particular place in Worcester County where such liquors are kept. I do not think that this is necessary. It will be sufficient if the indictment, following the language of the statute, alleges that the liquor was unlawfully kept within Worcester County for the purpose of bartering or selling.

Mitchell vs. State, 115 Md. 360, 364;
State vs. Camper, 91 Md. 672;
Curry vs. State, 117 Md. 587, 590;
Bagby's Code, Art. 27, Sec. 496.

I, therefore, think that the copy of the indictment you sent me will be sufficient if the words "at the home of Asbury G. Barnes" are omitted, but I rather think that, as a matter of form, instead of charging that the liquor was kept "for the purpose of sale," I would charge that it was kept "for the purpose of bartering or selling," thus following the exact language of the statute.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—POLICE MAGISTRATES—FINES LESS THAN MINIMUM PRESCRIBED.

July 2, 1917.

Paul Johannsen, Esq.,
723 Gaither Estate Building,
Baltimore, Maryland.

DEAR MR. JOHANNSEN: I beg to reply to your favor of June 29, asking my opinion as to whether police magistrates in Baltimore City can impose less than the minimum fines.

I do not think that police magistrates in Baltimore City have power to impose a fine less than the minimum fine which the law provides. Section 521 of Article 27 of Bagby's Code, which authorizes the Criminal Court of Baltimore City and

the Circuit Courts of the counties to impose fines less than the minimum prescribed, does not apply to police magistrates in Baltimore City. Section 12 of Article 52 of Bagby's Code may possibly extend this power to Justices of the Peace in some of the counties, but Baltimore City is expressly excepted from its provisions.

Crichton vs. State, 115 Md. 428, 429;
State vs. Ward, 95 Md. 118.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CRIMINAL LAW—POLICE MAGISTRATES, POWER OF, TO HOLD NIGHT COURTS.

March 12, 1917.

Hon. Emerson C. Harrington,
Governor, Annapolis, Md.

DEAR GOVERNOR HARRINGTON: As requested by you, I have considered the legality of a night court in Baltimore City, to be held by the Station House Justices.

The Baltimore City Charter, Section 630, requires each Station House Justice to sit from 8 o'clock A. M. until 10 o'clock A. M. and from 3 o'clock P. M. until 5 o'clock P. M. on every day of the year except Sundays and legal holidays, and from 9 o'clock A. M. until 11 o'clock A. M. on Sundays and legal holidays. These provisions, however, merely prescribe the hours within which the Station House Justices must sit. They do not mean that the Justices may not sit at other hours, if the proper discharge of their duties require it.

No express statutory authority is necessary for this, but it is nevertheless given in the case of violations of the motor vehicle law, because the Act of 1916, Chap. 687, Section 159, provides that offenders against that law in Baltimore City shall be taken before the nearest Police Justice "forthwith," and be entitled to "an immediate hearing."

The Station House Justices have, therefore, ample authority to hold night sessions, and if you think that this would be desirable in the public interest, then I am sure that you will find them entirely willing to conform to your wishes, and that at a conference with them a plan for holding night sessions can be readily agreed upon, which would not impose undue hardship upon any one of the Justices.

Including the two Justices at Large, there are ten Station House Justices in Baltimore City, so that if they took turns in holding the night sessions no one Justice would be required to sit at night more than five weeks in the year.

From the reports that reach me I believe that the Station House Justices appointed by you are all doing excellent work and are deeply interested in discharging their duties faithfully and well, so that I am sure they will all co-operate in every way in meeting your plans for a night court.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—POLICE MAGISTRATES—WIFE BEATING.

November 10, 1917.

Oliver H. Bruce, Jr., Esq.,
Cumberland, Maryland.

DEAR MR. BRUCE: I beg to reply to your favor of November 8th, in which you ask whether a Justice of the Peace having criminal jurisdiction, may sentence to be whipped a prisoner convicted of beating his wife.

Bagby's Code, Art. 27, Sec. 15, which is the Act of 1882, provides that "any person who shall brutally assault and beat his wife shall be deemed guilty of a misdemeanor, and upon presentment and conviction thereof by any court of competent jurisdiction shall be sentenced to be whipped, not exceeding forty lashes, or be imprisoned for a term not exceeding one year,

or both, in the discretion of the Court." Section 15 provides that "if any Court" shall direct such punishment, the same shall be administered by the Sheriff.

While the law thus refers to the punishment of whipping being imposed by the Court, it is [illegible] and construction, yet Section 12 of Article [illegible] of Maryland [illegible] which is applicable in Allegany County (and which was last re-enacted in 1914, long after the passage of the wife-beating act), invests police magistrates with jurisdiction to hear, try and determine all cases involving the charge of assault and battery, crimes of misdemeanor, not punishable by confinement in the Penitentiary or involving a felonious intent.

The crime of wife-beating is a misdemeanor, and the statute does not provide that it is punishable by confinement in the Penitentiary.

Section 12 further provides that the magistrate "may pronounce judgment and sentence in criminal cases [illegible] herein, in the same manner, and to be [illegible] as the Circuit Courts for said counties exercise, in cases that have been tried before said courts," etc.

It is the opinion that, under these provisions, police magistrates in Allegany County have jurisdiction to pronounce judgment, sentence and execute punishment in the case of wife-beating, to be adjudged.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

I have examined the local laws providing for Justices of the Peace and Constables in Salisbury, and for police justices.

Code P. L. L., Art. 23, Sects. 54-59;
Act 1890, Chap. 128, Sec. 57;
Act 1914, Chap. 244, Sec. 59A;
Act 1908, Chap. 310, Sec. 144, 147, 158M.

There is nothing in any of these provisions which enables you to compel the Sheriff or the police to serve the writ.

Nor is there any such provision in the general law.

Bagby's Code, Art. 83, Secs. 5, 6, 7 and 9.

The law seems to be settled that while a civil Justice of the Peace may issue a warrant directed to the Sheriff, or the police, yet neither can be compelled to execute it, and that the Constable is the only officer who can be compelled.

Latrobe, Justice's Practice, 8th Ed., Sec. 1326, page 323.

Thomas, Proceedings in Justice's Cases, page 42.

I, therefore, do not think that you can compel the Sheriff or the police to execute the writ, although they have the authority to execute it. The only officer whom you can compel to execute the writ is the Constable.

Very truly yours,

ARTHUR C. RIDGELY, Attorney General.

Comptroller's Law Department, Annapolis, Md.,

February 1, 1927.

Honorable Guy Bowers, Jr.,
State's Attorney,
Cumberland, Maryland.

DEAR MR. BOWERS:—I beg to reply to your favor of January 22nd, relative to the presence of mirrors in pool rooms in Garrett County.

I agree with you that the Act of 1916, Chap. 205, does not repeal the provisions on this subject of the Act of 1894, Chap. 201, but that both of these Acts should be read together, with the result that under the Act of 1916 persons under the age of sixteen are prohibited altogether from engaging in or witnessing games of pool or billiards in pool rooms, or from loitering therein, as provided by that Act, and that under the Act of 1894 minors over sixteen are prohibited, except upon the written permission of their parents or guardians.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—SUNDAY, PLAYING BASE BALL ON.

February 9, 1917.

Dr. W. W. Davis,
Lord's Day Alliance,
P. O. Box 724,
Baltimore, Maryland.

DEAR SIR: I have your favor of February 7th, in which you ask for "a brief statement as to whether or no the playing of baseball on Sunday with an admission fee is a violation of Maryland's Sunday law."

The State law is contained in Bagby's Code, Art. 27, Sec. 436, and, as you know, it provides that "no person whatsoever shall work or do any bodily labor on Sunday. There is much difference of opinion, even among lawyers, as to what constitutes work and bodily labor, as you know from the recent argument in the Court of Appeals on the Baltimore City Sunday Baseball Ordinance, but the late Chief Justice McSherry decided some years ago, in the Circuit Court for Frederick County, in William Barnie's case, that baseball playing on Sunday, by professional, salaried baseball players, for paid admission, was work or bodily labor within the meaning of the statute, and constituted a violation of the statute.

This case was not appealed to the Court of Appeals, but it has, so far as I know, always been regarded by lawyers as a correct interpretation of the Maryland statute.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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CRIMINAL LAW—SUNDAY, SALE OF NEWSPAPERS ON.

October 8, 1917.

Fred E. Owens, Esq.,
State's Attorney,
Denton, Maryland.

DEAR MR. OWENS: I beg to reply to your favor of October 5th, which was not received by me until the night of October 6th, too late for me to answer before Sunday, October 7th.

You ask whether it is unlawful to sell newspapers on Sunday under Section 137 of Article 27 of Bagby's Code, which prohibits the sale on Sunday of "any tobacco, cigars, candy, soda or mineral waters, spirituous or fermented liquors, cordials, lager beer, wine, cider or any other goods, wares or merchandise whatsoever."

The question, of course, is whether newspapers are "goods, wares or merchandise," within the meaning of that term as used in the statute. You will find some light upon this question in—

L. R. A. 1916, C. 1151 (Notes);
37 Cyc. 550.

Section 137 was first enacted in 1723, and in view of the progress which the newspaper has made since that time, and of its character and influence today, I feel that the courts would hold that it is not included within the term "goods, wares or merchandise" as used in our statute, and that the courts would, therefore, decide that the sale of newspapers on Sunday is not prohibited.

At the same time, there is no subject as to which lawyers, as well as laymen, differ much more than they do upon the application of the Sunday laws. Whatever view any one may take upon particular questions which arise under such laws, those who hold the contrary view will still hold it, and be entitled to hold it, until the courts settle the question.

It is, therefore, impossible for me to give you an authoritative construction of the Maryland statute upon the subject of your inquiry. If the sentiment of your community is against selling newspapers on Sunday, and you wish the question settled, the only way is to bring the question before the Court through the institution of appropriate legal proceedings, and let the Court decide.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, UNLAWFUL TO ATTACH TO ADVERTISEMENTS.

March 12, 1912.

Charles E. Frederickson, Esq.,
President, The American Art Works,
Coshocton, Ohio.

DEAR SIR:—I have your favor of March 10th, enclosing samples of the United States flag with the words, "Compliments of the American Art Works, Coshocton, Ohio," printed on the back and asking whether this violates the American flag law.

Our law is contained in Bagby's Code, Art. 27, Sec. 74, and it provides that "the National flag or the coat of arms of the United States or any imitation or representation thereof shall not be attached to or imprinted or represented upon any goods, wares or merchandise or any advertisement of the same, and no goods, wares or merchandise, or any advertisement of the same shall be attached to the National flag, or the coat of arms of the United States, and no such advertisement shall be imprinted thereon."

The fine is not more than $100 and imprisonment for not more than 12 months or both, such penalty in the case of a corporation to be imposed upon the president or other chief officer.

I do not recall that this statute has ever been construed by the courts of this State, but it does seem to me that the words quoted above constitute an advertisement attached to or imprinted upon the National flag, and that the same violates at least the letter of our statute.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, UNLAWFUL TO IMPRINT ON GOODS SOLD.

April 24, 1917.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOV. HARRINGTON: You asked me the other day whether it was unlawful in this State for a manufacturer who sells small glass mirrors to imprint the American Flag on the back thereof.

I beg to advise you that this is unlawful in Maryland, under Bagby's Code, Art. 27, Sec. 74, which provides that the National Flag, or any imitation or representation thereof, "shall not be attached to or imprinted or represented upon any goods, wares or merchandise, or any advertisement of the same."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, UNLAWFUL TO IMPRINT ON GOODS SOLD.

April 26, 1917.

Spotswood Specialty Co.,
Lexington, Kentucky.

GENTLEMEN: I beg to reply to your recent favor asking whether it is unlawful under the law of Maryland for you to

print on the sounding paper of your Bing Bang Guns a picture of the American Flag, so that when the gun is exploded the flag will appear.

This use of the American Flag is prohibited in Maryland by Bagby's Code, Art. 27, Sec. 74, which provides that the National Flag, or any imitation or representation thereof, "shall not be attached to or imprinted or represented upon any goods, wares or merchandise, or any advertisement of the same."

There is, however, no law in this State which prohibits the printing of Uncle Sam's picture on the Bing Bang Guns.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, UNLAWFUL TO ATTACH TO GOODS SOLD.

May 2, 1917.

Eagle Suspender & Belt Co., Inc.,
1208 Race Street,
Philadelphia, Penna.

GENTLEMEN: I have your favor of April 30th. The Maryland law on the subject is contained in Bagby's Code, Art. 27, Sec. 74, and it provides that "The National Flag or the Coat of Arms of the United States, or any imitation or representation thereof, shall not be attached to or imprinted or represented upon any goods, wares or merchandise or any advertisement of the same; and no goods, wares or merchandise, or any advertisement of the same, shall be attached to the National Flag or the Coat of Arms of the United States, and no such advertisement shall be imprinted thereon."

I think that this provision makes it unlawful in Maryland to solder or fasten the National Flag or the Shield of the United States upon belt buckles offered for sale in this State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, UNLAWFUL TO IMPRINT ON GOODS SOLD.

July 31, 1917.

Messrs. Philip Kahn & Co.,
Howard & German Streets,
Baltimore, Maryland.

GENTLEMEN: I have your favor of July 28th, in which you ask whether it is lawful to imprint the United States coat of arms upon your Funston model overcoats.

I think that the use of the coat of arms in this manner is prohibited in this State by Bagby's Code, Art. 27, Sec. 74, which provides that "The national flag or the coat of arms of the United States, or any imitation or representation thereof, shall not be attached to or imprinted or represented upon any goods, wares or merchandise, or any advertisement of the same."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG ON MAGAZINE COVER.

April 5, 1917.

The Theatre Magazine,
6 East 39th Street,
New York City, N. Y.

GENTLEMEN: I beg to reply to your favor of March 31st, in which you ask whether the Maryland law prohibits your using on the cover of the July number of the Theatre Magazine, a portrait in colors depicting Betsy Ross sewing on the first American Flag.

The Maryland law on the subject is contained in Bagby's Code, Art. 27, Sec. 74, and it provides that the national flag shall not be attached to or imprinted upon any goods, wares or merchandise, or any advertisement of the same.

In my opinion, this law does not apply to the picture you propose using upon your July cover, and such use of this picture is not prohibited by the laws of Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG ON MAGAZINE COVER.

June 5, 1917.

G. B. Capen, Esq.,
Treasurer,
239 Fourth Avenue,
New York City.

DEAR SIR: I beg to reply to your favor of June 2nd.

In my opinion, the Maryland law, which prohibits attaching the American Flag to or imprinting it upon any goods, wares or merchandise, or any advertisement of the same (Bagby's Code, Art. 27, Sec. 74), does not make it unlawful for the Popular Science Monthly to print upon the cover of its July issue a scene at one of the training camps, showing, among other things, the American Flag.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—UNITED STATES FLAG, NEWSPAPERS MAY PRINT.

March 26, 1917.

Robt. N. Garstin, Esq.,
Gen. Mgr. Evening Times,
Cumberland, Maryland.

DEAR MR. GARSTIN: I beg to reply to your favor of March 20th, in which you ask whether it is unlawful for the Evening Times to print the American Flag on the first page of the paper, immediately following the name.

Bagby's Code, Art. 27, Sec. 74, provides that the National Flag shall not be attached to or imprinted upon any goods, wares or merchandise, or any advertisement of the same.

I do not think that a newspaper should be regarded as goods, wares or merchandise, within the meaning of the statute. Aside from this, the section prohibits the use of the flag for advertising purposes, and a newspaper would have no more right than anyone else to print the flag in connection with any advertising matter.

But the use you are making of the flag is not in connection with advertising matter and is not for advertising purposes.

Printing it as you are doing means that our country's flag is the very first thing all who open your paper will see, and the public mind may be thus directed, at this crisis in the nation's history, to the principles of liberty and high honor that the flag stands for, and to the bravery of those who have fought for it and made it stand for what it does.

This is the use your paper is making of the flag. It is a perfectly lawful use, and one that should be commended.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION.

EDUCATION—SCHOOL BOOKS, CARE OF, BY PUPILS.

March 16, 1917.

Thomas Gordon Bennett, Esq.,
County Superintendent of Schools,
Prince Frederick, Maryland.

DEAR MR. BENNETT: I beg to reply to your recent letter relating to the care of school books.

The Act of 1916, Ch. 566, Sec. 62, authorizes the County School Boards to deliver text books, etc., and to "provide for the issuing, safekeeping and care of the same under such rules and regulations as they may severally adopt."

This clearly authorizes your Board to adopt reasonable rules for the care of the books and their return in good condition.

I think that the regulation on the "Pupil's Receipt Slip," that the parent or guardian "will be personally responsible for the return of them (the books) in such condition as received," is a proper regulation, provided there be added the words, "natural wear and tear excepted." With these words inserted the regulation will be entirely reasonable and proper, and you will be justified in delivering no books unless the parent or guardian signs it.

If this regulation is violated, then the parent or guardian will be personally responsible for any damage done, and this damage would be recoverable in a civil action before a Justice of the Peace. While the damage would likely be too small in amount to justify actual proceedings in most cases, yet the liability of the parent or guardian would be clear, and this, I should think, would usually enable you to collect it without suit.

I also see no reason why your Board should not adopt a scale of small fines, as has been done in many counties, for injuries to the books, basing them, as well as you can, on the amount of damage.

You probably could not collect these fines through criminal proceedings, but you could provide for enforcing their payment through demerits or other form of punishing the pupil, as in the case of disobedient conduct in school; and also by a rule refusing future books until the damage was paid.

I should think that regulations such as these would enable you to enforce the proper care of the books and their return in good condition.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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EDUCATION—SCHOOL BUDGET—POWER OF COUNTY COMMISSIONERS TO REDUCE.

May 21, 1917.

W. Beatty Harlan, Esq.,
President, Board of Education,
J. T. Norris, Esq.,
Pres't. Board of County Commissioners,
Bel Air, Maryland.

GENTLEMEN: I beg to reply to your joint letter of May 7th, 1917.

The School Budget submitted to the County Commissioners of Harford County by the County Board of Education calls for $102,700, which represents a levy of 18 cents on each $100 of assessable property in the county. Of this sum, $27,200 is classified as "permanent improvements and repairs," and $75,500 as "current repairs, furniture for old buildings, maintenance and support of schools." The County Commissioners eliminated all of the former item, and reduced the latter item to $70,500, which represents a levy of 33.1-10 cents on each $100 of assessable property. The levy in Harford County for the school year ending July 31, 1916, was 38 cents on each $100. You ask whether the above reduction is legal.

The Act of 1916, Chap. 506, Sec. 26, referring to counties where, as in Harford, the tax levied and collected for the school

year ending July 31st, 1916, for "current repairs, furniture in old buildings, maintenance and support of the schools" was not less than 34 cents on each $100, provides that the amount requested in the annual budget by the County Board of Education for current repairs, etc., for the succeeding school year, and to be raised by local taxation, "shall not hereafter in any year be less than a minimum tax, levied and collected, of 34 cents on each $100 of the assessable property in the county."

Therefore, it is mandatory on the County Board of Education to request and on the County Commissioners to levy at least 34 cents for current repairs, etc., and it follows that the County Commissioners had no power to reduce the item for current repairs, etc., to 33 1-10 cents.

Section 26 also requires the County Commissioners to levy and collect such tax as will produce the amount requested by the County Board of Education, and further provides that the total amount requested for "permanent improvements and repairs, current repairs, furniture in old buildings and support of the schools shall not exceed a tax levied and collected of 40 cents on each $100 of the assessable property in the county, unless the Board of County Commissioners shall approve and sanction such additional tax." If the County Commissioners disapprove any additional tax over 40 cents, they must indicate in writing what items have been denied in whole or in part, and the reasons therefor.

Under these provisions, it is mandatory upon the County Commissioners to levy the tax necessary to meet the request of the County Board of Education for *all* purposes, that is, both for permanent improvements and repairs and for current repairs, etc., up to 40 cents, and the County Commissioners only have the power of reduction to the extent that the levy necessary to meet the request exceeds 40 cents. And where the levy for the total requested will exceed 40 cents, then in making a reduction to not less than 40 cents, the County Commissioners must leave at least 34 cents of the reduced amount applicable to current repairs, etc.

This means that whenever the Board of Education makes a total request which represents a levy exceeding 40 cents, the County Commissioners may reduce it to 40 cents. If they do this, then of this 40 cents at least 34 cents must represent current repairs, etc. The remaining 6 cents may represent additional current repairs, etc., or it may represent permanent improvements and repairs. But the County Commissioners cannot reduce the total below 40 cents.

In the present case, the total requested was $402,700, representing 48 cents, of which $375,500, or about 33½ cents, was for current repairs, etc., and the balance of $27,200, representing about 12½ cents, was for permanent improvements and repairs.

The County Commissioners had the power to reduce this 48 cents to 40 cents, of which at least 34 cents had to be for current repairs, etc., and the remaining 6 cents had to be either all for permanent improvements and repairs or part for permanent improvements and repairs and part for current repairs, etc. They had no power to strike out the permanent improvements altogether, and reduce the current repairs, etc., to below 34 cents.

The net result is, of course, that under the present law the County Board of Education has the power to fix the tax rate in Harford County up to 40 cents.

See the analogous situation presented in McEvoy vs. Baltimore, 126 Md. 111.

This being so, you ask whether the County Commissioners may designate this item on the tax bills: "County School Tax, *as requisitioned by the Board of Education*," or words to that effect.

Section 26 provides that the school taxes "shall be separately indicated on tax bills and tax receipts, and shall be known as the County School Tax." The law, therefore, directs the Commissioners, in designating this item on the tax bills, to describe

it as the "County School Tax," and confers no authority on the Commissioners to add anything to this description.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note. The powers and duties of County Commissioners in disapproving items on the school budget, are involved in the appeal of Board of Education of Prince George's County, argued at the October, 1917, Term of the Court of Appeals.

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EDUCATION—COMPULSORY SCHOOL ATTENDANCE LAW, PROSECUTIONS UNDER.

February 19, 1917.

Dr. M. Bates Stephens,

State Superintendent of Education,

McCoy Hall, Baltimore, Maryland.

DEAR DR. STEPHENS: I beg to reply to your recent inquiries relative to prosecutions against parents under the Compulsory School Attendance Law, Bagby's Code, Art. 77, Sects. 153-172, as amended by the Act of 1916, Chap. 506, Sects. 156, 162 and 173, which amend Sections 156, 153 A and 173 of Article 77.

1. The teacher's daily register, which contains the age of the child as given either by the child or by the parent, is not direct legal evidence of the child's age in a prosecution against the parent. If the statement in this register as to the child's age was given by the child, then it cannot legally be used at all against the parent. If the statement was given by the parent, then the register itself is still not direct evidence against the parent.

Weaver vs. Leiman, 52 Md. 708;
Hall vs. Trindle, 101 Md. 323.

In this latter case, however, the teacher herself could testify to what the parent told her was the child's age, and the teacher

could refresh her recollection on this point by referring to the register. But it is the teacher's testimony that is admissible, and not the register.

The statement in the register as to the child's age is not made admissible as legal evidence by reason of the fact that it may have been repeatedly verified by the child.

Legally admissible direct evidence of the child's age, in a prosecution against the parent, would consist of:

(a) The testimony of the child.

Lees vs. State, 120 Wisc. 122;
Commonwealth vs. Phillips, 162 Mass. 16[illegible];
Chicago vs. Beite, 192 Ill. App. 87.

(b) The testimony of the teacher of any oral admission by the parent to the teacher of the child's age.

(c) Any written statement or admission by the parent as to the child's age, such as, I understand, your Board intends to secure from each parent in making up the school census required by law.

(d) A certified copy of the child's birth record from the books of the Registrars of Vital Statistics, or the register itself. Bagby's Code, Art. 22, Secs. 10, 11, 14-16.

2. The school attendance officer has not the authority to arrest the parent. Section 157 of Article 77 of the Code authorizes him to arrest truant children, but he is not authorized to arrest parents. See Act 1916, Chap. 506, Sec. 73 (2), page 1019, and Sec. 156, page 1046. In such cases, the officer should swear out a warrant in the usual way.

3. The warrant for the parent should, I think, name the child who is alleged to be unlawfully absent from school. The warrant should also either specify the age of the child, or at least should state the age class to which, under Section 162, the child belongs.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION—COMPULSORY SCHOOL ATTENDANCE LAW—PROSECUTION OF PARENTS OR GUARDIANS.

May 2, 1917.

Thomas G. Bennett, Esq.,
Superintendent, Board of Education,
Prince Frederick, Maryland.

DEAR MR. BENNETT: I beg to reply to your favor of April 30th.

If the children to whom you refer fall within the provisions of the Compulsory School Attendance Law, Section 162 of the Act of 1916, Chap. 500, and if they do not attend school or receive instruction in accordance with that law, then there is no doubt whatever that those in control of such children, whose duty it is to see that they do attend school or receive instruction, can and should be prosecuted under Section 162, and be subjected to the prescribed penalty of $5.00 for each offense.

The fact that the parents or guardians refuse to sign the proper receipts for text books, or to purchase text books, is not the slightest justification for their failure to cause the children to attend school or receive instruction as required by the law.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION—STATE SUPERINTENDENT TO EXPLAIN SCHOOL LAW AND DECIDE CONTROVERSIES.

July 2, 1917.

L. S. Leatherman, Esq.,
Pres. County Board of Education,
Prince Frederick, Maryland.

DEAR SIR: Since the adjournment of the extra session of the General Assembly, I have considered your inquiry of June 15th.

Section 10 of the Act of 1916, Chap. 560, creating a State Law Department, provides that the Attorney General is not to

act as counsel to "the Boards of School Commissioners of the several counties of the State, or to any county Boards or officers, but the powers and authority of such boards or officers to appoint, employ and have their own counsel shall continue as now or hereafter prescribed or authorized by law."

It is, therefore, not within my province or authority to advise your Board upon the question you submit, and in a case involving, as this does, the title to office, I really feel that I ought not to go outside of my province, and render an official opinion, because any opinion I might render in such a case would not be binding on your Board, or on either Mr. Bennett or Mr. Bowen.

Nevertheless, I would suggest one view of the matter which may possibly have been overlooked.

Section 19 of the Act of 1916, Chapter 506, provides that the State Superintendent "shall explain the true intent and meaning of the school laws," and shall decide "all controversies and disputes involving the proper administration of the public school system, and his decision shall be final."

The substantial question in the case you submit, as appearing from the facts as stated in your letter, is whether your Board has power to appoint a person for one year to an office the term of which, under the school law, (Act 1916, Chap. 506, Sec. 72), is four years.

It can be said with a great deal of force that this is a question involving "the true intent and meaning of the school laws," and that as such it is a matter falling exclusively within the jurisdiction of the State Superintendent to decide.

In the case of Amon Burgee vs. County Board of Education, the Circuit Court for Frederick County, in September, 1916, held that it had no jurisdiction to determine whether the Act of 1916, Chap. 506, terminated the employment of high school principals at the close of the current scholastic year, because this was a question for the State Superintendent to decide, under Section 19.

In support of this conclusion, the court, cited the case of Sholer vs. Cochrane, 53 Md. 544, in which the Court of Appeals held that under Section 11 of the old law, (which was similar to Section 19 of the present law), the State Board's decision was final as to who was entitled to hold the office of Secretary, Treasurer and Examiner. The Court also cited:

Wiley vs. School Board, 51 Md. 401;
Underwood vs. School Board, 103 Md. 181;
Zantzinger vs. School Board, 123 Md. 169;
School Board vs. Morris, 123 Md. 398.

I simply suggest this line of decisions for the consideration of your Board and of your legal adviser.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS.

ELECTIONS—BALLOTS, DESTRUCTION OF.

March 8, 1917.

E. O. Diffendal, Esq.,
Secretary, Board of Election Supervisors,
Westminster, Maryland.

DEAR MR. DIFFENDAL: I beg to reply to your favor of March 7th.

Bagby's Code, Art. 33, Sec. 78, as amended by the Act of 1916, Chap. 116, provides that after the ballot boxes have been kept for four months, then, unless previously notified of a contest, "the Board of Supervisors shall destroy, or cause to be destroyed said ballots and poll book, also all of the said tallies and statements or returns, and shall report to the same Board a certificate of the fact."

The law does not specify the manner in which the ballots are to be destroyed, and I see no reason why they may not be taken by your representative to a paper mill, and there destroyed in the presence of your representative, so that your Board can make the required certificate by attending to the ballots yourself.

Very truly yours,

ALBERT S. ROBERTS, Attorney General.

ELECTIONS—BALLOTS, DESTRUCTION OF.

May 3, 1917.

D. C. Higinbotham, Esq.,
Clerk, Board of Election Supervisors,
Elliott City, Maryland.

DEAR MR. HIGINBOTHAM: I beg to reply to your favor of May 3rd.

Bagby's Code, Art. 33, Sec. 78, as amended by the Act of 1916, Chap. 116, provides that after the ballot boxes have

been kept as therein provided for four months, then, unless previously notified of a contest, the Board of Supervisors, "shall destroy or cause to be destroyed said ballots and poll books, also all of the said tallies and statements or returns, and shall record in the same book a certificate of the fact."

The law does not specify the manner in which the ballots are to be destroyed. Any method which really destroys the ballots, and enables your Board to so certify.

My opinion of March 8, 1917, to the Board of Election Supervisors of Carroll County was not that the ballots could simply be mutilated, instead of being destroyed, but that they could be destroyed by grinding up in a mixing vat as well as by burning.

I do not understand from your letter what the exact effect upon the ballots of the paper cutting machine would be. If the effect would be to cut and tear them in such a way that their contents could no longer be identified, that is to say, that no one could thereafter ascertain what the ballots contained, then I think they would be destroyed, within the meaning of the law, and that your Board could so certify.

The above law only applies to the ballots in the ballot boxes, that is, the ballots which were actually voted. I see no reason why you may not sell the unused or spoiled ballots, without destroying them.

Very truly yours,

VERNON G. ROSENDALE, Attorney General.

EXECUTIVE DEPARTMENT, OFFICE OF THE ATTORNEY GENERAL,

August 2, 1917.

T. Hampton Henry, Esq.,
Counsel, Board of Election Supervisors,
Easton, Maryland.

DEAR MR. HENRY:—I beg to reply to the inquiries contained in your letter of August 23rd.

1. The detachable stub or coupon required by Section 59 of the Election Law, should be attached to ballots to be used in the primary election, exactly as in the case of ballots for the general election. The provisions of Section 184 which formerly dispensed with these coupons for primary election ballots, in connection with the envelope system of voting at primaries, were repealed by Section 184 of the Act of 1916, Chap. 160, which abolished the envelope system.

2. Section 185 of the Election Law formerly required primary ballots to be marked with "black pencil."

White vs. Laird, 127 Md. 120, 125.

This provision, however, was repealed by Section 185 of the Act of 1916, Chap. 160, and primary ballots were required to be cast in the manner provided for general elections. Section 68 of the Election Law requires ballots in the general election to be marked with "an indelible pencil." An indelible pencil should, therefore, be used for marking the primary ballot.

3. Sections 184 and 185 of the Act of 1916, Chap. 160, omit the provisions of the corresponding sections of that Act with respect to the voter's right to take with him into the booth a primary ballot prepared or marked outside, and voting the same; and Section 185 provides that primary ballots are to be cast in the manner required for general elections. Therefore, the voter can now vote only the official ballot handed to him by the judges when he enters the booth, exactly as is the case in general elections. This means, of course, that the voter must mark the ballot himself in the booth.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

ELECTIONS—BALLOTS—SAMPLE BALLOTS—PUBLICATION OF.

October 30, 1917.

Dr. Charles E. Henkel,

Annapolis, Maryland.

DEAR DR. HENKEL: I have your favor of October 30th, and beg to reply to your inquiries, which are covered by Section 19 of Article 33 of Bagby's Code, applicable to Anne Arundel and certain other counties.

By that section it is made unlawful to publish, advertise or circulate "any sample or facsimile of the ballot or the form of ballot." I do not think that this makes it unlawful for any member of the Board of Election Supervisors, or any one else, who knows what the arrangement of the groups of candidates will be, to divulge this information to anyone. The thing prohibited is the publishing, advertising or circulating of a *sample or facsimile of the ballot or form of ballot*, not simply divulging to someone what the arrangement of the groups will be.

If, as was suggested, it was the intent of this law to keep the arrangements of the groups absolutely secret from everyone until election day—so that the voter would see the arrangement for the first time on the voting booth, this intent is not expressed in the law, further than to prohibit the publishing, advertising and circulating of a sample or facsimile of the ballot or form of ballot; and the statute being a criminal statute, is, of course, strictly construed.

You also ask whether in publishing, as required by Section 19, "the nominations to office which have been filed," it is lawful to publish the groups of the candidates as they will appear upon the ballot. Whether this is lawful or not depends upon whether the courts would hold such publication to be a "sample or facsimile of the ballot or the form of ballot." Strictly speaking, it may not be, but it is also quite possible that the courts would hold that such publication amounted substantially to publishing a sample or form of the ballot. In the absence

of any decision upon the question. I think it safer not to publish the groups in the order in which they will appear upon the ballot.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EXECUTIVE DEPARTMENT, [illegible]

[illegible] 1912.

Henry L. Whitaker, Esq.,

Bel Air, Maryland.

DEAR MR. WHITAKER: I beg to reply to your letter of May 29, asking my opinion as to whether the Election Supervisors of Harford County can lawfully adopt steel frame election booths with canvas partitions.

Section 66 of Article 33 of Bagby's Code provides that the booths "shall be constructed of plank not less than one inch in thickness, and shall be of such width, depth and height that the voter, in marking his ballot, shall be screened from the observation of others," etc.

I suppose that the object of this provision was to make as possible communication between booths, whether by speech, view, the passing of ballots or slates or in any other way.

If the requirement of a plank partition may in the discretion of the Supervisors be disregarded, and a canvas partition substituted, then I do not see what would prevent the Supervisors by a like discretion, substituting any other material they wished, with the result that the efficiency of the partition to prevent communication between booths and to insure secrecy, would in every case depend upon the judgment of the Supervisors, who might substitute for the plank something which would render it possible to defeat the very object which the Legislature must have had in mind in requiring plank partitions.

It seems to me that the only safe course is for the Supervisors to observe the requirements of the law upon this question.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—CANDIDATES, NOMINATION OF, BY PETITION, CONVENTION OR PRIMARY—PROHIBITION PARTY—PROGRESSIVE PARTY.

March 20, 1917.

Prohibition National Committee,
100 North LaSalle Street,
Chicago, Ill.

GENTLEMEN: I beg to reply to your favor of March 19th. Under the law of Maryland if a political party has polled ten per cent of the entire vote cast in the State at a preceding general election, it must nominate its candidates by the direct primary. If it polled more than one per cent and less than ten per cent, it may nominate by convention. If it polled less than one per cent it can only nominate by petition.

Bagby's Code, Art. 33, Sections 41, 43, 44 and 45.

The Prohibition Party polled more than one per cent of the total vote cast at the last election, but less than ten per cent. It is, therefore, entitled to have candidates nominated by party convention.

The Progressive Party had no candidates at the last election. Any candidates of this party will have to get on the ballot by petition.

There are no provisions in the Maryland law relating to a political party changing its name. If a political party desires to change its name, I think that the organization of a new party would be necessary, and that at the first election in which it participated its candidates under the party's new name would have to go on the ballot by petition.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—CANDIDATES, NOMINATION OF, BY PETITION, CONVENTION OR PRIMARY—PEOPLE'S PARTY.

September 10, 1897.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I beg to reply to your favor of September 7th.

1. I see no reason why all of the nominations of the People's Party in Worcester County, to be made under sections 12, etc., of the Election Law, may not be included in the same petition. The form of petition I sent you does provide for only one nominee, but it may be changed so as to include the nominees for each office to be filled. Section 15 provides that no certificate "shall contain the name of more than one nominee for each office to be filled," but this does not prohibit the inclusion in the same certificate of one nominee for each of several offices.

2. What I said in my former communication with respect to the designation of party or principle, does not apply to the People's Party candidates. While it is possible that a person may be nominated by petition who does not represent any particular party or principle, yet where a nominee does represent a party or principle, then the same should be stated in the nomination petition. The candidates in whom you are interested represent the People's Party, so that this designation should be stated in their nomination petition.

3. Section 17 of the Election Law requires nomination certificates to be filed with the Supervisors of Elections not less than fifteen days before election day. You can, of course, file the certificates of the People's Party earlier, if you wish, but if you do I find no provision of law under which you could require the Supervisors to pass upon the sufficiency of the certificates at once, so that if they were declared insufficient you would still have time to remedy the defects and file new certificates within the fifteen days.

4. Your last inquiry is whether the People's Party can nominate its candidates by convention.

Section 41 of the Election Law authorizes any party to nominate by convention, provided its highest candidate at any election held within two years next preceding the convention "polled more than one per cent and less than ten per cent of the entire vote cast in the State, county or other division or district for which the nomination is made."

I understand that the People's Party intends to nominate candidates for Worcester County, and that the party at the last election polled more than ten per cent of the entire vote cast in that county. Under these circumstances, I do not think that your party can nominate by convention under Section 41.

Apparently your party cannot nominate its candidates by direct primary either, because under Section 178 of the Election Law only those parties can nominate under the direct primary law which have polled "ten per cent of the entire vote cast *in the State*" at the general election next preceding the primary, and while the People's Party polled more than 10 per cent of the vote cast in Worcester County, it did not, of course, poll more than 10 per cent of the entire vote cast in the State.

Nevertheless, Section 41 is clear in providing that a party cannot nominate by convention for county offices, if the party did not poll less than 10 per cent of the vote cast in the county, and I, therefore, think that the People's Party should nominate by petition.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—CANDIDATES, NOMINATION OF, BY CONVENTION—SOCIALIST PARTY.

September [illegible], 1917.

Joseph Hettleman, Esq.,

27 Courtland Building,

Courtland Street, Baltimore.

DEAR MR. HETTLEMAN: I beg to reply to your recent inquiry relating to the nominating convention of the Socialist Party.

I understand from you that the Socialist Party polled a sufficient number of votes to entitle it to hold a convention under Sections 41 and 42 of the Election Law, for the purpose of nominating candidates for all the Baltimore City offices which are to be filled at the general election in November, 1917, said offices including offices which, like Judges of the Supreme Bench and Clerk of the Court, are to be filled by all the voters of Baltimore City, and including Delegates to the Legislature and one Senator from the Fourth District, who, of course, will be voted for in Districts. The question is whether nominations for the House of Delegates and for Senator from the Fourth District can be made by a convention composed of delegates from the whole City, or whether separate district conventions must be held.

Assuming that the vote of the Socialist Party has been sufficient to entitle that party to act under Sections 41 and 42, for all the Baltimore City offices which are to be filled at the general election in November, 1917, then I think there is no doubt that one convention, composed of Delegates from the whole City, may make such nominations.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—CANDIDATES, STATE CENTRAL COMMITTEE MAY DESIGNATE WHEN NO CANDIDATE FOR OFFICE IN PRIMARY.

September 6, 1917.

Captain E. J. Plowden,
Chairman State Central Committee for
St. Mary's County,
Bushwood, St. Mary's County, Md.

DEAR CAPTAIN PLOWDEN: I beg to confirm the oral opinion I expressed to you yesterday.

I understand that in St. Mary's County no Democratic candidates have entered the coming primaries for the House of Delegates, for the Democratic State Convention or for the office of Sheriff, and you wish to know whether candidates for these offices may be designated by the State Central Committee for St. Mary's County.

Section 155 of the Election Law provides that "any vacancy which may exist in respect to any office, delegate to convention, or position named in this subtitle occurring after the primaries have been concluded and finally determined as provided in this article, shall be filled by such person as shall be selected by the rules and regulations of the governing body of the organization for the county, or the counties, or State, in such manner as shall hereafter provide."

This section covers the situation in St. Mary's County, and under it candidates for the offices specified may be designated by the State Central Committee for St. Mary's County.

The Court of Appeals has recognized this as the proper construction of Section 155 of the Election Law in the cases of

Pattison vs. Brownley, 115 Md. 90, 80 Atl.
Graham vs. Wellington, 121 Md. 656, 667, 668.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

ELECTIONS—CANDIDATES, STATE CENTRAL COMMITTEE MAY DESIGNATE, WHEN NO CANDIDATE FOR OFFICE IN PRIMARY.

October 10, 1917.

Ira D. Turner, Esq.,

Democratic State Central Committee,

Salisbury, Md.

DEAR SIR: I beg to reply to your favor of October 8th.

You ask whether the Republican Party can nominate local candidates in Wicomico County by a convention composed of several delegates appointed from each district of the county.

Section 178 of the Election Law provides that political parties which at the general election preceding any primary election polled ten per cent of the entire vote cast in the State, shall nominate all their candidates for public office in Baltimore City and the several counties and for Judges, etc., by means of primary elections, "and not otherwise, except as herein specifically provided."

The Republican Party is within the provisions of Section 178, because it polled more than ten per cent of the entire vote cast in the State at the last general election.

The primary election law, however, as just shown, provides that nominees may be selected otherwise than by a primary, when the law specifically so provides. Section 188 contains such a provision. That section provides that any vacancy which may exist in respect to any office "by reason of there being no candidate for the same at any such primary election," may be filled as the rules and regulations of the governing body of the party may provide. This section authorizes the Republican State Central Committee for Wicomico County to fill a vacancy for any local office for which there was no Republican candidate at the recent primary.

Ouilton vs. Bramble, 117 Md. 14, 15;
Graham vs. Wellington, 121 Md. 667, 679.

The Republican convention you speak of is probably called to agree on candidates which it will recommend to the Republican State Central Committee for designation by it, and the Committee itself will probably make the formal designations or nominations. I do not see what authority the convention has to make nominations. It can, however, recommend them to the State Central Committee, and if the nominations are formally made by the latter body, then the nominees will be entitled to go on the ballots.

What has just been said answers your inquiry as to the manner of designating a Democratic candidate for County Surveyor, there having been no Democratic candidate for this office at the primary. The candidate may be designated by the Democratic State Central Committee for Wicomico County.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—CANDIDATES FOR JUDGE RESIDING IN SAME COUNTY.

September 6, 1917.

John L. Riley, Esq.,
Pres. Board of Election Supervisors,
Snow Hill, Md.

DEAR MR. RILEY: I beg to reply to your favor of September 4, in which you refer to the fact that of the three candidates for Associate Judge in the First Circuit, two (Messrs. Johnson and Staton) come from Worcester County, and you ask whether a ballot cast for both of these gentlemen at the primary election to be held September 11, 1917, should be counted for them, in view of Section 21 of Article 4 of the Constitution.

This section provides that no two associate judges for any circuit, except the Third Circuit, "*shall at the time of their election* or appointment, or during the term for which they may have been elected or appointed, reside in the same county."

This provision of the Constitution clearly applies to the general election, and not to the primary election. The prohibition is against two associate judges residing in the same county *at the time of their election.* There is no prohibition against two primary candidates for associate judge residing in the same county at the time of the primary. Indeed, the subsequent provisions of Section 21 of Article 4 of the Constitution quite clearly recognize that two or more candidates for associate judge may come from the same county, because this section expressly provides that if they do, then "that one only in said county shall be declared elected who has the highest number of votes in the circuit."

It is, therefore, clear that ballots cast for both Mr. Johnson and Mr. Staton at the primary election should be counted for both.

Very truly yours,

[illegible], *Attorney General.*

[illegible]

[illegible]

August 24, 1942.

D. C. [illegible], Esq.
Clerk, Board of Election Supervisors,
Elkton, Md.

[illegible] August 20th, and beg to reply to your several inquiries.

1. Each candidate is entitled to a challenger and watcher at primary elections, under Section 185 of the Election Law, which provides that "challengers and watchers representing the candidates at any said primary election shall be allowed to be present at the several voting places during the voting and counting of the ballots, as provided in this article with respect to general elections."

2. You next ask whether the expenses of candidates at primary elections should be based upon the number of voters in the county who are affiliated with the political party to which the candidate belongs, or upon the total number of voters in the county. Section 167 of the Election Law provides that such expenses, (with the exception of certain items which the candidate may pay in addition thereto), shall not exceed $10.00 for each 1,000 for the major portion thereof, up to 50,000 and $5.00 for each 1,000 for the major portion thereof in excess of 50,000 of the registered voters qualified to vote for the office in question at the next preceding election thereto."

While the question is not entirely free from doubt, yet I incline to the opinion that this provision contemplates the registered voters qualified to vote for the office in question at the next preceding general election thereto, because the primary does not involve the election to the office, and the statute refers to those qualified to vote for the office at the preceding election. I do not see, however, that the question relates to any of the duties of the Board of Election Supervisors.

3. The fee of $25.00 under Section 156 of the Election Law provides must accompany certificate of nomination should not be considered as part of the expenditures authorized by Section 167. Section 167 provides for the expenditures which candidates may make. The fee in question is required to be paid before the person becomes a candidate.

4. The primary election and the general election are separate and distinct elections. The expenditures authorized by Section 167 may be made for each election.

5. A voter moving from one county to another county must under Article 1, Section 1, of the Constitution, reside in the county to which he removes for six months next preceding the election, in order to vote at the election in the county to which he removes. This provision only applies to elections which the Constitution itself requires to be held.

Hanna vs. Young, 84 Md. 179.

It applies, therefore, to general elections provided for by the Constitution, but does not apply to primary elections, and with respect to the county registration to be held September 4, 1917, Section 17A of the Election Law expressly provides that those may be then registered who have not previously registered, "and who may be entitled to vote at the next general election," and that such persons so registered shall be entitled to vote at the primary.

Therefore, persons who will have acquired a six months' residence in the county to which they remove prior to the general election in November, 1917, may register in such county on September 4, 1917, and may vote at the primary on September 11, 1917.

6. Nomination certificates for the office of associate judge must, under Section 184, be filed not later than August 21, 1917. Any person who files a nomination certificate after that date cannot, of course, participate in the primary, and his certificate cannot be received.

Graham vs. Wellington, 121 Md. 636.

7. Persons coming of age before September 4, 1917, must register on September 4, 1917, in order to vote at the primary election on September 11, 1917. Persons who will become of age after September 4, 1917, and before the general election in November, 1917, may vote at the primary election on September 11, 1917, under Section 182, without registering on September 4, 1917. I explained this in my letter of August 14, 1917.

8. A person who is taking out his naturalization papers and who expects to become naturalized in October, 1917, cannot register on September 4, 1917, and cannot vote at the primary election on September 11, 1917. Such person may or may not be naturalized before the general election in November, and under these circumstances I do not think that he is

entitled to be registered under Section 17A, nor is he entitled to vote at the primary under Section 182.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—PRIMARIES—"DECLINED" OR "INDEPENDENT" VOTER MAY AFFILIATE AT ANY REGISTRATION BEFORE PRIMARY.

September 10, 1917.

Hon. Board of Election Supervisors,
Elliott City, Maryland.

Gentlemen: Mr. William C. Handley, a candidate for the nomination of Sheriff for Howard County, has asked my opinion upon a question which will arise at the primary election tomorrow, and inasmuch as I prefer any advice I give upon election questions to go through official channels, I am taking the liberty of answering Mr. Handley's inquiry direct to your Board, sending Mr. Handley a copy of this opinion.

The question is whether a voter who was marked "Declined" or "Independent," but who affiliated with one of the political parties at the registration held September 1, 1917, may, at tomorrow's primary election, vote the ballot of the party with which he thus affiliated.

Section 186 of the Election Law (Act 1916, Chap. 156) provides that at any intermediate registration any voter may alter or strike out any entry opposite his name in the column of the registry headed "party affiliations." The registration held September 1, 1917, under Section 17A (Act 1916, Chap. 56), was an intermediate registration; and, therefore, any voter marked "Declined" or "Independent" had the right, on September 1, 1917, to have these entries altered by affiliating with one of the political parties.

The Election Law does not prohibit voters marked "Declined" or "Independent" from affiliating with some political party within any particular time before the primary election.

CORRECTION

The preceding document has been re-photographed to assure legibility and its image appears immediately hereafter.

STATE OF MARYLAND

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(4-1-55)
Hall of Records Commission

entitled to be registered under Section 17A, nor is he entitled to vote at the primary under Section 182.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—"DECLINED" OR "INDEPENDENT" VOTER MAY AFFILIATE AT ANY REGISTRATION BEFORE PRIMARY.

September [illegible], 1917.

Hon. Board of Election Supervisors,
Elkton, City, Maryland.

Gentlemen: Mr. William C. Handley, candidate for the nomination of Sheriff for Howard County, has asked my opinion upon a question which will arise at the primary election tomorrow, and inasmuch as I prefer this advice I give upon election questions to go through official channels, I am taking the liberty of answering Mr. Handley's inquiry direct to your Board, sending Mr. Handley a copy of this opinion.

The question is whether a voter who was marked "Declined" or "Independent," but who affiliated with one of the political parties at the registration held September 4, 1917, may, at tomorrow's primary election, vote the ballot of the party with which he thus affiliated.

Section 186 of the Election Law (Act 1916, Chap. 138) provides that at any intermediate registration any voter may alter or strike out any entry opposite his name in the column of the register headed "party affiliations." The registration held September 4, 1917, under Section 17A (Act 1916, Chap. 138) was an intermediate registration and, therefore, any voter marked "Declined" or "Independent" had the right, on September 4, 1917, to have these entries altered by affiliating with one of the political parties.

The Election Law does not prohibit voters marked "Declined" or "Independent" from affiliating with some political party within any particular time before the primary election.

Under Section 186, voters cannot *change* their affiliation within six months prior to the primary, but the Court of Appeals has held that a voter marked "Declined" or "Independent" is not affiliated at all, and that when such a voter does affiliate, he is not changing his affiliation.

Murphy vs. Wachter, 126 Md. 563.

The only thing necessary to entitle a voter marked "Declined" or "Independent" to vote at the primary tomorrow, is that, under Section 186, he must have appeared before the board of registry at some meeting prior to the primary and become affiliated.

All voters who were marked "Declined" or "Independent" but who affiliated on September 4, 1917, will, therefore, be entitled to vote at tomorrow's primary election.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—DEPOSIT BY CANDIDATE, RETURN OF WHEN CANDIDATE UNOPPOSED.

Dated [illegible]

J. M. Stanton, Esq.,
President, Board of Election Supervisors,
Oakland, Maryland.

DEAR SIR: I have your favor of August 23rd. Section 184-A of the Election Laws (Act 1914, Chap. 261), provides that if the name of any candidate does not appear upon the official ballot at the primary election by reason of there being no opposing candidate, then such candidate shall not be entitled to a return of his deposit.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—DEPOSIT BY CANDIDATE, RETURN OF, WHEN CANDIDATE WITHDRAWS.

August 24, 1917.

Harry C. Dashiell, Esq.,
Counsel, Board of Election Supervisors,
Princess Anne, Maryland.

DEAR MR. DASHIELL: I have your letter of August 23rd, in which you ask whether Mr. Gordon Tull, who filed his Certificate of Nomination for Associate Judge of the First Judicial Circuit, is entitled to a return of his deposit in case he withdraws his candidacy before his name is printed on the primary ballot.

The law does not specifically provide for the return of the deposit in case a person who has filed his nomination certificate withdraws before his name is printed on the primary ballot. Section 181 A, however, of Act 1914, Chap. 261, provides that in case a candidate's name does not appear on the primary ballot because there is no opposing candidate, he shall not be entitled to a return of the deposit. I think that it may fairly be inferred from this that where the name does not appear upon the primary ballot because the person filing the Nomination Certificate withdrew his candidacy, then the deposit *may* be returned to such person. There is certainly no good reason why the deposit should not be returned in such event, and my opinion is that it may be.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

ELECTIONS—PRIMARIES—DEPOSIT BY CANDIDATE, RETURN OF, WHEN CANDIDATE WITHDRAWS.

August 25, 1917.

Robert H. McCullough, Esq.,
Counsel, Board of Election Supervisors,
Hagerstown, Maryland.

DEAR MR. MCCULLOUGH: I have your letter of August 22nd, asking whether a person who has filed his Certificate of Nom-

ination is entitled to the return of his deposit in case he withdraws his candidacy prior to the printing of the primary ballots.

The law does not specifically provide for the return of the deposit in case a person who has filed his nomination certificate withdraws before his name is printed on the primary ballot. Section 184A, however, (Act 1914, Chap. 261), provides that in case a candidate's name does not appear on the primary ballot because there is no opposing candidate, then "such candidate shall *not* be entitled to a return of his deposit." I think that it may fairly be inferred from this that when the name does not appear upon the primary ballot because the person filing the Nomination Certificate withdraws his candidacy, then the deposit *may* be returned to such person. There is certainly no good reason why the deposit should not be returned in such event, and my opinion is that it may be.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—NOMINATION CERTIFICATE FOR JUDGE, FORM OF.

August 14, 1917.

John L. Riley, Esq.,
President, Board of Election Supervisors,
Snow Hill, Md.

DEAR MR. RILEY: I have your letter of August 11th, in which you ask whether the candidates in the primary for the two Associate Judgeships in the First Circuit, made vacant by the deaths of Judge Jones and Judge Stanford, should state in their nomination certificates that they are candidates to succeed either Judge Jones or Judge Stanford, or simply that they are candidates for Associate Judge.

The Primary Election Law applies to candidates for judges (Section 178), and Section 184 provides that each candidate shall state in his certificate, among other things, "the office or

position for which he seeks to be nominated or selected." Therefore, the candidates at the primary election for the two associate judgships in your circuit will simply state in their nomination certificate the office for which they are candidates, namely, Associate Judge of the Circuit Court of the First Judicial Circuit.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—NOMINATION CERTIFICATES, SUFFICIENCY OF.

August 29, 1917.

Clarence M. Roberts, Esq.,
Counsel Board of Election Supervisors,
Upper Marlboro, Md.

DEAR MR. ROBERTS: You have asked me whether, in my opinion, certain nomination certificates filed by several persons who wish to enter the Republican primary on September 11, 1917, are sufficient to authorize the printing of such persons' names upon the primary ballots.

The question arises because of the form of the acknowledgment. The acknowledgment on the printed form has the caption "State of Maryland, Prince George's County, to wit:" and the printed form then certifies that the candidate appeared "before me, the subscriber, a ... of the State of Maryland, in and for Prince George's County." The acknowledgments in question were in fact made in the District of Columbia, before a Notary Public of the District, and the words in the certificate "of the State of Maryland, in and for Prince George's County," were erased, and in their place there was written "a Notary Public of the District of Columbia." The captions, however, were not changed, but remain as printed, so that while the caption in each case is "State of Maryland, Prince George's County, to wit:" the body of the acknowledgments certify that they were made before "a Notary Public of the District of Columbia."

Section 184 of the Election Law provides that the nomination certificate shall be "duly acknowledged by the person filing such certificate for such nomination or selection before an officer duly authorized to take acknowledgments, who shall append a certificate of such acknowledgment."

An acknowledgment taken in the District of Columbia before a Notary Public of the District, is, of course, sufficient under this section. The acknowledgments in question were in fact so taken. The certificates were, therefore, acknowledged before an officer duly authorized to take acknowledgments, and the officer appended a certificate of such acknowledgment.

As a matter of fact, therefore, the requirements of the statute were literally complied with, and this being so, I do not think that the Supervisors should refuse to print the names upon the ballot merely because of such purely formal irregularities as exist in the present case.

Indeed, I very much doubt whether the irregularities in question would invalidate the acknowledgments in any case.

While the acknowledgments do not expressly certify that they were taken in the District of Columbia, yet the presumption is that they were, because the District of Columbia is the place of the Notary's jurisdiction.

[illegible]

In the present case, this rule applies [illegible] accord with the facts. It would, therefore, seem that the acknowledgments are not invalidated because they do not expressly certify that they were made in the District.

Neither, it is [illegible], does the expression [illegible] Prince George's County invalidate the acknowledgments. The courts are liberal in sustaining the validity of certificates, and in similar cases it has been held that parol evidence is admissible to show where the acknowledgment was actually made.

Angier vs. Schiedlin, 72 Pac. 1005;

Rogers vs. Pell, 67 N. Y. Supp. 92, 165 N. Y. 587.

My opinion, therefore, is that the acknowledgments in question are sufficient to comply with Section 184, and that the names of the candidates should be printed on the primary ballot.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—PRIMARIES—NOMINATION CERTIFICATES—TIME FOR FILING—RIGHT OF "DECLINED" OR "INDEPENDENT" VOTER TO AFFILIATE AND VOTE ON PRIMARY ELECTION DAY.

August 15, 1917.

Reuben D. Rodgers, Esq.,
Ellicott City, Md.

DEAR MR. RODGERS:—I beg to reply to your favor of August 13th.

The last date prior to the primary election on September 11th, 1917, upon which nomination certificates for county offices can be filed is, I think, August 21st. Section 184 of Article 33 of Bagby's Code requires such certificates to be filed "not less than twenty days before said primary election," and under the decision in Graham vs. Wellington, 121 Md. 660, "not less than twenty days before" election day means twenty clear days before election day, so that both August 22nd and September 11th should be excluded.

Former Attorney General Poe ruled that a person registered as "declined" or "independent" could affiliate on primary election day with some political party and then vote at such primary election. Mr. Poe's opinion, however, was based upon the Act of 1914, Chap. 774 (Bagby's Code, Art. 33, Sec. 182) and the case of Murphy vs. Wachter, 126 Md. 563. Since that time the Act of 1916, Chap. 292, was passed, amending Sec. 186 of Art. 33 of Bagby's Code, and under that Act persons

registered as "declined" or "independent" are not permitted to affiliate and vote at the primary election.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PRIMARIES—RECOUNT OF VOTES—COSTS OF

November 27, 1922.

Winsom G. Gott, Esq.,
Counsel, Board of Election Supervisors,
Annapolis, Maryland.

DEAR MR. GOTT:—I beg to reply to your favor of November 15th, in which you ask my opinion as to who is liable for the costs of the recount recently had in Anne Arundel County of the votes cast at the last primary.

This recount was had under Section 189 of Article 33 of Bagby's Code, which authorizes a recount to be had either (1) upon the filing of a petition therefor accompanied by affidavits showing fraud, mistake, error or irregularity in the count or returns, or (2) upon the filing of a petition therefor without such affidavits, but in lieu thereof a bond to be given to pay the costs.

Provision is then made for the recount, and the section then provides that upon the completion of the recount the Supervisors "shall award the costs of the same as follows:" "If the result of the election is changed, or if it shows a change of two per cent of the votes recounted, then the costs shall be awarded against the municipality or county;" but if the result is not changed, nor are two per cent or more of the votes recounted found to have been erroneously counted, "then the costs shall be awarded against the petitioner, and his bond, if given as above, shall be liable therefor."

The recount in Anne Arundel County was had pursuant to petition accompanied by affidavits, so that no bond was given, and the result of the election was not changed by the recount, nor was there a change of two per cent of the votes recounted.

Under these circumstances, I have no doubt at all that the petitioners are liable for the costs.

The question does not depend upon whether bond is given or not. The bond is simply a condition of having the recount in case the affidavits are not filed, but the liability for costs depends entirely upon the result of the recount. The section expressly provides that if the result is not changed, nor is there a change of two per cent, "then the costs shall be awarded against the petitioner." Of course, "his bond, *if given as above*, shall be liable therefor." but if the bond is not given, because affidavits were filed instead, the petitioner is nevertheless liable, because, under the statute, "the costs shall be awarded against the petitioner."

I am clearly of opinion that in this case the Supervisors should award the costs against the petitioners, and if they are not paid, then suit may be instituted to recover them.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—AFFILIATIONS, CHANGES AND WHO MAY MAKE.

March 28, 1918.

Carey Kingdon, Esq.,
Clerk, Supervisors of Elections,
Rockville, Maryland.

DEAR MR. KINGDON: I beg to reply to your favor of March 19th.

The Supervisors of Elections are not authorized to change party affiliations. Such changes can only be made by the Board of Registry at sittings for registration purposes. See Bagby's Code, Art. 33, Secs. 182 and 186, the latter section having been amended by Act 1916, Chap. 292.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Elections—Registration—Affiliation. Right of "Declined" or "Independent" Voter to Affiliate and Vote on Primary Election Day—Nomination Certificates, Time for Filing.

August 7, 1917.

D. C. Higinbotham, Esq.,
Clerk, Board of Supervisors of Elections,
Ellicott City, Maryland.

Dear Mr. Higinbotham: I have your favor of August 2d. In my opinion a person registered as "Declined" or "Independent" cannot affiliate on primary election day with some political party, and then vote at such primary election.

Former Attorney General Poe's opinion that this could be done was, of course, based upon the Act of 1914, Chap. 771 (Bagby's Code, Art. 33, Sec. 182), and the case of Murphy v. Wachter, 126 Md. 503.

Since that time, however, the Act of 1916, Chap. 292, was passed, amending Section 186 of Article 33 of Bagby's Code. That Act, among other things, provides:

> "Any registered voter who has declined to affiliate with any political party and opposite whose name under the column 'party affiliation' is written the word 'declined,' or the word 'independent' or any other word showing a failure to affiliate with any political party, and who has not appeared before the board of registry as hereinbefore set forth and affiliated with some political party prior to the primary election shall not be permitted to vote at such primary election or any subsequent primary election until he has so affiliated with the party in whose primary he desires to vote."

You also ask the last date prior to the primary election of Sept. 11, 1917, upon which nomination certificates for county offices can be filed. Section 184 of Article 33 of Bagby's Code requires such certificates to be filed "not less than twenty days before said primary election." Under this provision the day

of the primary election must, of course, be excluded. The twentieth day before Sept. 11th will be August 22nd. The only question is whether August 22nd should be excluded or not.

In my opinion, under the decision in Graham vs. Wellington, 121 Md. 660, "not less than twenty days before" election day, means twenty *clear* days before election day and I, therefore, think that August 22nd should be excluded, as well as September 11th, with the result that nomination certificates for county offices should be filed not later than August 21st.

Very truly yours,

[illegible], *Attorney General.*

[illegible]

[illegible]

[illegible] Supervisors of Elections

[illegible]

[illegible]

Gentlemen: I have [illegible] your attention to the fact that by the Act of 1916, Chapter 562, enacted as Section 17 A of Article [illegible] Code and as Section 17 A in the 1917 Pamphlet of the Election Laws of Maryland, a registration is required to be held in each of the counties of the State on the Tuesday preceding primary election day. As primary election day this year falls on Tuesday, September 11th, this registration will be held on Tuesday, September 4th.

I am calling your Board's attention to this fact because the 1917 Pamphlet of the Election Laws inadvertently omits reference to the registration required to be held in the counties on September 4th.

Several of the Boards of Supervisors of Elections have made certain inquiries of my Department with respect to this registration, and I beg to submit my answers thereto, for your information:

1. Notice of the time and place of the registration to be held on September 4th must be given for the period and in the manner provided by Section 14 of Article 33 of Bagby's Code. While Section 17-A does not specifically provide for such notice, yet Section 14 applies to every registration held in the State.

2. Section 17-A, providing for the September 4th registration, applies both to adults and to persons attaining their majority, as follows:

(a) Adults who have not been registered prior to September 4th and who will be entitled to vote at the general election in November, are entitled to register on September 4th, and to vote at the primary election on September 11th, and also, of course, at the general election in November.

(b) Persons who become twenty-one years of age between the last preceding general registration day and the registration of September 4th, may register on September 4th, and may vote at the primary election on September 11th, and also, of course, at the general election in November.

Such persons will not be entitled to vote at the primary election of September 11th unless they do register on September 4th, because Section 182 (which allows persons not twenty-one years of age to vote at a primary, provided they will become twenty-one before the general election succeeding the primary) only applies to persons "arriving at the age of twenty-one years after the close of the next preceding registration." In the present case, the next preceding registration to the primary election of September 11th will be the registration of September 4th, so that persons who become twenty-one before September 4th will not arrive at the age of twenty-one "after the close of the next preceding registration." Therefore, persons who become twenty-one before September 4th will not be entitled to vote at the primary election on September 11th unless they register on September 4th.

(c) Persons who will become twenty-one years of age after the registration of September 4th and before the general election in November, may register on September 4th, and may

vote at the primary election on September 11th, and also, of course, at the general election in November.

(*d*) While persons who will become twenty-one years of age after September 4th and before the primary election of September 11th, may, as just explained, register on September 4th, yet such persons are not required to register on September 4th in order to vote on September 11th. They may vote at the primary election of September 11th, without registering at all, in accordance with the provisions of Section 182. But in order that such persons may be entitled to vote at the general election in November, they must, of course, register at one of the October registrations.

3. After the close of the registration of September 4th, the registration books must be returned by the Boards of Registry to the Supervisors. They should not be retained until after the primary election is held on September 11th. Section 61 requires the Supervisors to deliver to the judges of election, before the primary election of September 11th, sealed packages containing, among other things, the registers for each precinct. This provision could not, of course, be complied with unless the registration books are returned to the Supervisors, in order that they may be placed in the sealed packages.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION IN CONTESTED PRIMARY BEFORE PRIMARY—MUST BE HELD EVEN IF NO PRIMARY CONTEST.

August 21, 1922.

R. Grant Parks, Esq.,
Counsel, Board of Election Supervisors,
Chestertown, Maryland.

DEAR MR. PARKS: I beg to reply to your telephone inquiry of this morning.

I understand that there is no primary contest this fall in Kent County, in either the Democratic or the Republican or in

any other political party, for the nomination to any office to be voted for by the voters of Kent County at the November election, but that only one set of candidates of each political party have qualified for the primary; and under these circumstances you ask whether it is necessary to hold the county registration provided for by the Act of 1916, Chap. 569, adding Section 17A to Article 33 of Bagby's Code.

Section 188 of Article 33 of Bagby's Code provides that when only one set of candidates of any political party qualify for the primary election in any legislative district of Baltimore City or in any county of the State, then certificates of nomination shall be issued to the candidates who thus qualify, in a similar manner to that provided for successful candidates at primary elections, and "no such primary election shall be held for such political party;" and whenever only one candidate of a political party qualifies for an office to be filled at a primary election, then a certificate of nomination shall in like manner be issued to him, and his name and the position for which he is a candidate shall be omitted from the primary ballot, so that the ballot shall contain only the names of candidates for positions or offices "where there are qualified contestants for such positions."

As only one set of candidates of any political party have qualified in Kent County for the primary election to be held September 11, 1917, it follows, under the above section, that there will be no primary election in Kent County this fall.

But I think that the registration required by Section 17A must nevertheless be held in Kent County on September 11, 1917.

Section 17A provides that "on the Tuesday preceding any primary election to be held in any year in this State and which occur after the enactment of this law, each county Board of Registration shall meet" and hold a registration in its precinct or district of all voters not previously registered, "and who may be entitled to vote at the next general election." The law does not say that this registration is only to be held in coun

ties in which there are primary contests, and is not to be held in counties in which there are no primary contests, and, therefore, no primary election. On the contrary, the law provides that *each* county Board of Registration *shall* hold the registration on the Tuesday preceding *any primary election to be held in any year in the State.*

This, I think, clearly contemplates a registration in *all* the counties of the State whenever a primary election is held in the State. The law does not except from this registration counties in which there are no primary contests, nor does the law indicate that the only object of the registration is to enable qualified persons to vote at the primary. The persons who may be registered are persons "entitled to vote at the next general election," and when so registered, such persons may vote "at all primary and general elections held thereafter."

When, therefore, the condition for the holding of this registration occurs, then the registration must be held in each Board of Registration throughout the counties of the State. The condition upon which this registration depends is that a primary election is to be held in the State, and whenever a primary election is to be held in the State, then each county Board of Registration is required to hold this registration.

A primary election is, of course, to be held this year in the State, and this being so, it follows, I think, that on the Tuesday preceding that primary election each Board of Registration in the counties of the State must meet and hold the registration.

It is, therefore, my opinion that the registration provided by Section 17A must be held in Kent County on September 4, 1917, even though there may be no primary contested in that county on September 11th, 1917.

Very truly yours,

ARTHUR C. ROBBINS, *Attorney General.*

ELECTIONS—REGISTRATION—DECLARATION OF INTENT.

May 3, 1917.

William S. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I beg to reply to your favor of May 1st.

If the declaration of intention, required by Bagby's Code, Art. 33, Sec. 29, is filed more than one year before election day, then the party is entitled to be registered and to vote on election day, even though less than one year had elapsed when the sittings for registration were held. This is decided in the case of Pope vs. Williams, 98 Md. 59, on page 68.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION, HOURS FOR.

September 25, 1917.

Dr. John L. Riley,
Pres., Board of Election Supervisors,
Snow Hill, Maryland.

DEAR DR. RILEY: I beg to reply to your favor of September 24th, in which you ask whether the hours for registration in the counties this year are from 8 A. M. to 7 P. M., or from 8 A. M. to 8 P. M.

The only difficulty arises from not distinguishing between general registration years and intermediate registration years.

By the Act of 1896, Chap. 202, Sec. 16, the hours for general registration in Baltimore City were from 9 A. M. to 9 P. M., and in the counties from 8 A. M. to 8 P. M. This section was amended by the Act of 1901, Chap. 2, and the Act of 1910, Chap. 236, page 105; it became Section 17 of Article 33 of Bagby's Code, and was again amended by the Act of 1916, Chap. 158.

As a result of these amendments, the hours for general registrations in Baltimore City are from 12 M. to 10 P. M., and in the counties from 8 A. M. to 8 P. M.

By the Act of 1896, Chap. 202, Section 25, the hours for intermediate registrations in Baltimore City were the same as the hours for general registrations, that is, 9 A. M. to 9 P. M., and by Section 26 the hours in the counties were from 8 A. M. to 7 P. M. Section 25 has been amended by the Act of 1904, Chap. 254, the Act of 1910, Chap. 236, Sec. 26, page 109, and the Act of 1914, Chap. 724, and is now Section 27 of Article 33 of Bagby's Code. Section 26 of the Acts of 1896, Chapter 202, has never been amended, and is now Section 31 of Article 33 of Bagby's Code.

As a result of these amendments, the hours for intermediate registrations in Baltimore City are from 12 M. to 10 P. M., and in the counties from 8 A. M. to 7 P. M.

The present year is a year of intermediate registration. Therefore, under Section 31, the hours in the counties are from 8 A. M. to 7 P. M.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—REGISTRAR, WHEN AUTHORIZED TO REGISTER NATURALIZED.

October 12, 1917.

Messrs. Charles E. Hooper & Edward H. Rowe,
Officers of Registration,
Emmitsburg, Maryland.

GENTLEMEN: Mr. Edward H. Rowe requests me to write you my opinion upon the right of a young man to be registered under the following circumstances:

The young man was born in Austria 30 years ago, and came to the United States 24 years ago, with his parents. His father was naturalized 18 years ago. The young man has been living

in Massachusetts, but moved to Maryland several years ago, and duly declared his intention to become a resident of Maryland on October 5th, 1915. The registration officials, however, now decline to register him because he does not produce his father's naturalization papers, the reason being that his father, who is in Massachusetts, declines to entrust them to the mails. The question is whether the young man is entitled to be registered without the production of his father's naturalization papers.

Subdivision II of Section 17 of Article 33 of Bagby's Code is not applicable, because that section refers to applicants who are themselves naturalized. If the young man was under 21 years of age when his father was naturalized, then he did not have to become naturalized himself, but his father's naturalization made him a citizen. U. S. Comp. St., Vol. 5, Sec. 1367.

The only question, therefore, is whether his father was or was not naturalized before the young man became 21 years of age. If he was, the young man is entitled to be registered. The best evidence of whether or not his father was so naturalized is, of course, his father's naturalization papers, but I do not think that the registration officials are confined to this method of proof. If the officials are entirely satisfied from the evidence that the father was in fact duly naturalized before the young man became 21 years of age, then the young man is, I think, entitled to be registered, even if the naturalization papers are not produced.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—RIGHT TO REGISTER—REGISTRATION DAY.

October 12, 1917.

Edward J. Edelen, Esq.,
Hughesville, Maryland.

DEAR MR. EDELEN: I beg to reply to your favor of October 10th. I understand that two negroes made application for reg-

istration on October 20th, 1917, the last registration day this fall, but could not prove their ages. The registration officers, however, put their names on the books, and told them that they could appear next Tuesday, October 16th, and prove their ages then, and that they would thereupon be duly registered and qualified to vote. Next Tuesday is revision day, and you ask whether it is lawful for the registration officers to receive proof of the ages of the negroes on revision day, and, if the proof is satisfactory, register them.

The question is settled by the case of Barrett vs. Taylor, 85 Md. 173. In that case a person applied for registration on one of the regular registration days, and during the course of his examination it developed that he was under 21 years of age and unnaturalized, but that he would be of age on revision day, and expected to be naturalized on the same day. His name was thereupon entered, and on revision day he again appeared, proved that he was twenty-one years of age, and presented his naturalization papers. The Court of Appeals held that he was entitled to be registered on revision day.

The circumstances in the cases you state are essentially the same as those involved in the Barrett case, and under that decision I think the two negroes are entitled to be registered next Tuesday, if they satisfactorily prove their ages on that day.

With kindest regards, and many thanks for your good wishes, I am

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION—STATE EMPLOYEES HOLDING POSITIONS AWAY FROM HOME.

October 15, 1917.

M. Clyde Grove, Esq.,
Clear Spring, Maryland.

DEAR SIR: I understand that you wish my opinion as to the right of the registration officials to strike from the books a man

who is now registered in your district who maintains a room in the district and claims his residence there, but who is working for the State Road Commission outside of the District, and whose parents also live outside of the District.

If this man's home is really in the District, then he should not be stricken from the books. The fact that his parents live elsewhere does not make any difference, because he can have a residence apart from his parents, and the fact that he is away from the District working for the State Road Commission does not make any difference either, because he does not necessarily have to live at his home.

The whole question is one of fact, viz: whether the man in question really intends his home to be in your District, if he does, then he should not be stricken from the books merely because his parents live elsewhere, or because he is working for the State Road Commission elsewhere.

Very truly yours,

[illegible]

Executive Supervisor of Elections,
Commissioner of Work Houses, etc.

James A. Young, Esq.
Clerk, Board of Supervisors of Elections
Cumberland, Maryland

Dear Mr. Young: I beg to acknowledge receipt of your favor of July 14th.

You ask whether a member of the Board of Supervisors of Elections can become a candidate in the primaries for County Commissioner, and at the same time continue to act as Supervisor.

In my opinion to counsel, Sections 181 and 185 of Article 33 of Bagby's Code provide that primary elections are to be conducted and the ballots are to be counted and canvassed and the result of the election determined, in the same manner as

general elections. Under Section 80 the Supervisors act as the Board of Canvassers. Under Section 199-B they are given jurisdiction to hear and decide appeals for a recount or a recanvass, and for all the purposes of any such recount or recanvass they are expressly made judges of elections; they decide whether contested ballots should be rejected or counted, they award the costs, correct the returns and decide who has been nominated. Section 7 provides that no judge of election shall be a candidate at the next election.

The above powers, as well as others which might be mentioned, involve the exercise by the Supervisors of judgment and discretion upon questions relating directly to the nomination or election of a candidate. If the candidate can act as Supervisor, then he can sit as judge upon his own case in the event of a contest, although the judges of election themselves are prohibited from being candidates. He would have many other opportunities to favor his own candidacy.

In my opinion, the law does not contemplate that a candidate should occupy such a dual position, and I, therefore, think that a Supervisor of Elections cannot be a candidate at a primary election which he himself is charged with the duty of conducting and of canvassing, and also, in case of a contest, of recounting and recanvassing.

You also ask whether two members of your Board, constituting a majority, may lawfully act as Canvassers. In my opinion they can under Section 81.

Very truly yours,

[illegible]

[illegible]

Hon. J. Whitaker, Esq.

Bel Air, Maryland.

DEAR MR. WHITAKER: I beg to reply to your favor of October 2nd, asking my opinion as to the right of the Supervisors

of Elections of Harford County to receive additional compensation for their services in conducting the recount, held under Section 199-E of Article 33 of Bagby's Code, of the ballots cast at the recent primary election.

The recount having changed the election result, the costs are, under Section 199-E, awarded against the county, but I do not see how these costs can include compensation to the Supervisors for their services in conducting the recount.

Section 2 of Article 33 of Bagby's Code provides that each Supervisor in any of the counties shall receive an annual salary of $300, which salary may, in counties having more than fifteen polling places, be increased by the county commissioners, in their discretion, to an amount not exceeding $350.00, and Section 187 provides that for the performance of the duties imposed upon them by subtitle "Primary Elections," the Supervisors in the counties shall receive additional compensation amounting to 25 per cent. of the salary allowed them under Section 2. Section 199-E, under which the recount was had, is part of the subtitle "Primary Elections," and the additional compensation provided by Section 187 is expressly stated to be for the performance of the duties imposed upon the Supervisors by that subtitle.

Under these circumstances it is, I think, clear that under the existing legislation the Supervisors are not entitled to any compensation for their services in the recount in addition to the compensation provided for them by Sections 2 and 187.

Very truly yours,

Andrew C. Trippett, Attorney General.

FISCAL MATTERS.

FISCAL—ABATEMENT AND ADJUSTMENT OF STATE CLAIMS—POWER OF COMPTROLLER.

March 1, 1917.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to confirm the oral advice I gave you yesterday, namely, that under Bagby's Code, Art. 19, Sec. 37, as amended by Act 1916, Chap. 600, you are authorized to adjust, settle or abate uncollectible claims of the kind you have in mind, against collectors, sheriffs, clerks of courts, registers of wills and other collectors or receivers of public money and their sureties, and against corporations and individuals who may be indebted to the State," provided you are satisfied that the same cannot be collected by legal process, and provided the Governor and Treasurer approve in writing all abatements.

Very truly yours,

WILLIAM C. ROBERT, *Attorney General.*

FISCAL—APPROPRIATIONS, CONSTRUED—PER CAPITA SYSTEM—VARIOUS INSTITUTIONS.

June 5, 1917.

Hon. William A. Ogden,
Secretary, Board of State Aid & Charities,
Guardian Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of May 25th, in which you ask whether the per capita system of appropriations for state-aided institutions is applicable to appropriations made

Section 4-A, however, is perfectly clear in prescribing the per capita system for the current and for the next fiscal year, and the court would certainly be averse to nullifying entirely a clear provision of this kind, either by reason of the title or by holding a later act to be inconsistent with it. It seems to me that your Board, as a public body, should preferably act in accordance with such statutes as the Legislature passes prescribing your duties, unless their invalidity or non-application is clear, which is by no means the case with Section 4-A.

In view of these circumstances, my advice to your Board would be to proceed with the per capita system as required by Section 4-A of Chapter 705, unless your right to do so is questioned by court proceedings, in which event the validity and application of Section 4-A can be determined in those proceedings.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS, CONSTRUE—NOT APPLICABLE TO CONSTRUE CONTRACT—MARYLAND CALENDAR OF WILLS.

November 25, 1927.

Miss Nellie L. Mace,
State Librarian,
Annapolis, Maryland.

DEAR MISS MACE: As requested by you, I have examined the Act of 1916, Chap. 126, abolishing annual and continuing appropriations, in order to see whether it repealed the provisions of the Act of 1904, Chap. 161, which directed a State subscription of $150 for 150 copies of each of the four volumes of "The Maryland Calendar of Wills," succeeding the first volume, which latter was purchased by the State at the time of its publication, pursuant to the said Act.

I under-tand that the first three of the four volumes thus subscribed for have been published, and the State's subscription

therefor has been paid, and that Mrs. Baldwin, the publisher, has now completed the fifth volume, and desires the State to pay for the same.

The Act of 1916, Chap. 126, repealed, as of October 1, 1916, laws and parts of laws making annual and continuing appropriations from the general treasury, the intent of the law being stated to be to repeal the same "so far as such appropriations may not be protected from repeal by any of the provisions of the Constitution of the United States."

In the present case, the subscription made by the State in 1904, under the express direction of the Legislature, to the four volumes succeeding the first one, was the basis upon which Mrs. Baldwin compiled and published these four volumes, including volume five, now finished, and this constitutes, I think, a contract between Mrs. Baldwin and the State, which is within the protection of the United States Constitution, and which the Act of 1916, Chap. 126, as shown by its express terms, did not intend to impair.

In my opinion, therefore, Mrs. Baldwin is now entitled to be paid for the fifth volume of her work out of any moneys in the Treasury not otherwise appropriated.

Very truly yours,

WILLIAM S. BURNS, Attorney General.

FISCAL APPROPRIATIONS—HOLLYWOOD HOME, EST. AND APPROPRIATION OF ITS APPROPRIATIONS.

April 23, 1917.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I have your favor of April 13th in which you ask whether the unpaid balance of the appropriations made by the Legislature of 1916 to the Hollywood Children's Summer Home of Baltimore City, may be paid to the

St. Vincent de Paul Society, which is about to purchase the Hollywood's summer home near Catonsville.

From the letter which you enclose from Mr. Enoch Harlan, counsel for the Hollywood Home, and from the copy of the agreement of sale, it appears, however, that the question is not whether the unpaid balance of the appropriations may be paid to the St. Vincent de Paul Society, but whether it may be paid to the Hollywood Home, in the event of the consummation of the sale by it of its summer home to the St. Vincent de Paul Society. The agreement of sale provides that the amount of the appropriations still unpaid shall be paid to the Hollywood Home, and the Hollywood Home is awaiting your advice as to the legality of this before ratifying the sale.

The appropriations to the Hollywood Home, made by the Act of 1916, chap. 255, are contained in the fiscal year 1917 and statutes for the fiscal year 1918. I understand that the amount of these appropriations now unpaid is $[illegible].

These appropriations were not made for any specific purpose, and were in no way made dependent upon the continued maintenance of the summer home by the Hollywood Institution. The agreement of sale provides that the summer home shall be maintained by the St. Vincent de Paul Society, and the Hollywood Home states that it will use the balance of its appropriations, and its other assets, for other charitable uses.

Under these circumstances, I see no reason why the Hollywood Home should not receive the balance of its said appropriations, on the same full size, and I think that it is entitled to receive the same.

I return you the letter from Mr. Harlan and the copy of the Agreement of Sale.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

FISCAL APPROPRIATIONS—STATE INDUSTRIAL ACCIDENT COMMISSION—DEFICIT FROM PREVIOUS YEAR CANNOT BE CARRIED OVER—DIFFERENCE BETWEEN EXPENDITURES FOR CURRENT EXPENSES AND FOR PERMANENT INVESTMENT.

October 24, 1917.

Col. Harry A. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR COL. HOPKINS:—I beg to reply to your favor of October 6th, 1917, asking whether certain requisitions of the State Industrial Accident Commission may be paid out of that Commission's appropriation for the current fiscal year.

I understand from you that the State Industrial Accident Commission expended the entire appropriation made to it for the fiscal year ending September 30, 1917, and now asks the payment out of its appropriation for the fiscal year ending September 30th, 1918, of its office rent for the year ending September 30th, 1917, amounting to $1,200, of its telephone bill from July, 1916, to September, 1917, also amounting to $[illegible], and of the cost of rent in private quarters, amounting to $1,500.00. These items aggregate $[illegible].

In my opinion, the rent of the private quarters, $1,500, as I understand that item, may be paid out of the current year's appropriation, but the bills for rent and telephone, aggregating $1,925.82, cannot be.

The Commission's appropriation for the fiscal year ending September 30, 1917, was made by the Act of 1916, Chap. 685, page 1565, in the following form:

> "To the State Industrial Accident Commission for salaries and expenses as provided by Chapter 800 of the Acts of 1914, as amended by the Acts of 1916, $55,000."

Section 1 of the above Act, page 1564, referring to all the appropriations made by the Act, provides that for the fiscal year ending September 30, 1917, the several sums named, "or so much thereof as may be necessary," are appropriated.

The Commission's appropriation for the current fiscal year, ending Sept. 30, 1918, is made by the Act of 1916, Chap. 684, page 1554, is for the sum of $55,000, and is made in exactly the same form as quoted above for the fiscal year ending Sept. 30, 1917, and Section 1 of this Act, page 1549, is in the same form as the corresponding Section 1 of Chapter 685.

I do not think that the Commission could legally incur obligations which were referable solely to the fiscal year 1917, in excess of the appropriation for that year. Every board or commission must adjust its expenditures and obligations which are applicable to any one year so as to keep within that year's appropriation. Otherwise, a board would not be limited to what the Legislature deemed proper to authorize for any one year, but could incur obligations in addition thereto which the Legislature did not authorize for that year at all.

If a board does incur such unauthorized obligations, thus creating a deficit for the year, then it cannot lawfully make this deficit good out of the next year's appropriation, because the next year's appropriation is for the next year's obligations and not for the purpose of meeting an unauthorized deficit incurred during the preceding year.

The bill for rent and the telephone bill, aggregating $1,098.82, cover periods prior to October 1, 1917. These are obligations which cannot possibly be referred to the fiscal year 1918. On the contrary, they are applicable solely to the fiscal year 1917. They are, moreover, clearly part of the expenses of the Commission for 1917, and for that year only, and the law specifically provides, (Act 1916, Chap. 305, Sec. 27), that all the expenses of the Commission shall be paid out of the moneys appropriated to the Commission.

Notwithstanding this requirement, these particular 1917 expenses of the Commission were not paid out of the 1917 appropriation; and now they cannot be, because that appropriation has been entirely used up. This means, of course, that during the year 1917 the Commission incurred obligations, referable solely to that year, which exceeded that year's appropriation

by $4,928.82, thus resulting in a deficit of that amount. The limit of the Commission's authority to incur obligations in 1917 which were referable to that year alone was the appropriation of $55,000 made to it for that year; and, consequently, it is too clear for argument that to the extent that the Commission incurred rent and telephone obligations for 1917 in excess of the 1917 appropriation, it exceeded its legal authority.

It is equally clear that the deficit of $4,928.82, which resulted from this excess of authority, cannot be lawfully made good out of the 1918 fiscal year appropriation, because the 1918 appropriation is for 1918 obligations, and not for a 1917 deficit.

It is, of course, true that under the Act of [illegible], [illegible] Sec. 27, the expenses of the State Accident Fund are to be ultimately paid back to the State out of the premiums received, and that the expenses of the Commission are to be ultimately assessed against the employers, the [illegible] carriers and the State Accident Fund, [illegible] by the State. But, as already stated, all expenses are to be registered to be paid in the first instance out of the [illegible] appropriations, and the reimbursements are to be made to the State Treasury. The Commission cannot be authorized to use the money which is returned to the State. The Commission can only use the money appropriated by law.

Moreover, while it may be true that the Commission will cost the State nothing, because the State will eventually be reimbursed for all its expenses, yet if the 1917 deficit [illegible] the funds in the State Treasury [illegible] to be [illegible] the amount of the deficit [illegible], then the [illegible] have been if the Commission had kept within its appropriation, and incurred no deficit; so that the State is never really the loser.

The [illegible] bill, however, appears to me to stand upon a different footing from the [illegible] bills. I have conferred with the Commission's Auditor with respect to this bill, and I am advised by him that the whole preliminary work was largely done during 1916, yet the character of the work is such

that it cannot be referred to that year alone, as the rent and telephone bills must be.

The actuary's bill, I am advised by the Auditor, represents the cost of devising a rate making system which is the basis of the premium charges for the State Accident Fund *every* year. So long as the Commission continues the system so devised, there is no year in which the Commission will not avail itself of that work. The benefits and use of the work are continuous, so that the work may properly be regarded in the light of a necessary, permanent investment. Moreover, while most of the work was done last year, I am advised that all of it was not, but that some still remains to be done.

I see no reason why a necessary investment of this kind may not be as properly paid for out of this year's appropriation as out of last year's. It is analogous to the purchase of law books for the State Law Department. Such books are the Department's permanent investment, they are the basis of the Department's public work during each and every year, and cannot be referred to any one year more than another. As a matter of fact, the State Law Department has paid for all books bought last year out of last year's appropriation, but I see no reason why such books could not be purchased during one year, and paid for the next. I think that the same is true with respect to the payment for a necessary rate making system for the State Accident Fund.

I, therefore, advise you that the actuary bill of $1500 may be paid out of the Industrial Accident Commission's appropriation for the current fiscal year, but that the rent bill of $1,520 and the telephone bill of $608.82 cannot lawfully be paid out of this year's funds.

I return you the requisitions.

Very truly yours,

ALBERT C. ROGERS, *Attorney General.*

FISCAL APPROPRIATIONS—STATE INDUSTRIAL ACCIDENT COMMISSION—POWER TO CHANGE 1917-1918 APPROPRIATION WITHOUT LEGISLATIVE ACTION.

November 26, 1917.

Hon. Hugh L. McMurray,
State Comptroller,
Long Island City.

DEAR MR. MCMURRAY:—I beg to reply to your inquiry of the 21st November 1917, [illegible] the State Industrial Accident Commission [illegible] the appropriation for the fiscal year beginning [illegible] 1917, [illegible] printing its opinions rendered during the period from November 1, 1911, to September 1, 1917.

A written contract [illegible] between the Commission and the printer [illegible] agreement. The material [illegible] that the printer [illegible] opinions rendered [illegible] 1911, to September 1, 1917, [illegible] printer [illegible]

I [illegible] were issued and [illegible] the succeeding [illegible] printer received [illegible] 1917, [illegible]

The [illegible] in their [illegible] and in the present case the [illegible] of the Commission [illegible]

tion could not be determined until after the beginning of the present fiscal year, because of the advantageous terms of the contract whereby the Commission was to be credited with all sales made during the last fiscal year.

In view of these rather unusual circumstances, it is my opinion that the Commission's appropriation for the present fiscal year may properly be charged with the above obligation of the Commission, amounting, under the contract, to $5,200.00.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS—SYLVAN RETREAT—PAYMENT FOR PATIENTS.

October 22, 1917.

Col. Harry A. Hopkins,
Comptroller's Office,
Annapolis, Maryland.

DEAR COL. HOPKINS: I beg to reply to your favor of October 6, 1917, asking whether certain bills approved by the Lunacy Commission may be paid out of the Sylvan Retreat appropriation for the current fiscal year, or otherwise.

I understand from you that the Lunacy Commission has approved bills for the maintenance of patients at Sylvan Retreat, Allegany County, during the years 1915 and 1916, the bill for 1915 being $3,000.00 and the bill for 1916 being $4,699.91.

By the Act of 1914, chapter 775, the State was required to make up the difference between the actual cost of maintaining dependent insane patients at the Sylvan Retreat during the years 1914 and 1915 and the amount paid by Allegany and other counties therefor, and the sum of $10,000, "or so much thereof as may be necessary," was appropriated to the County Commissioners of Allegany County for this purpose for each of said years, said appropriations to be made "out of any money in the Treasury of the State of Maryland not otherwise appro-

priated." These appropriations were so worded as to cover the said differences during the *calendar* years 1914 and 1915.

No appropriation was made for said purpose either for the calendar year 1916 or for the fiscal year ending September 30, 1916, but by the Act of 1916, Chapter 223, there was appropriated to the County Commissioners of Allegany County, for each of the fiscal years ending September 30, 1917, and September 30, 1918, "the sum of $7,000, or so much thereof as may be necessary, for the fiscal year 1917, and the like sum of $7,000, or so much thereof as may be necessary, for the fiscal year 1918," for the support and maintenance at Sylvan Retreat of dependent insane persons, "said amount to make up the difference between $100 per year for each patient maintained for a year in said Sylvan Retreat, and the actual cost of maintaining them, as shown by vouchers to be submitted to and approved by the State Lunacy Commission."

The 1914 appropriation of $10,000 was only credited on the books of the Comptroller's office, and in May, 1916, the State paid the sum of $5,223.98 out of this appropriation, said sum representing the difference between the cost of maintaining patients at Sylvan Retreat during 1914, and the amount paid by Allegany and other counties. This payment was made in accordance with the decision of the Court of Appeals in Allegany County vs. State Lunacy Commission, 127 Md. 161. On September 30, 1916, the balance of the 1914 appropriation, $4,776.02, was reverted. There are no outstanding bills for 1914 patients, and this reversion was properly made.

The 1915 appropriation of $10,000, made by the Act of 1914, Chap. 778, was never credited on the books of the Comptroller's office, and no bills for 1915 patients were presented during that or the following year. In September, 1917, however, the Lunacy Commission approved and presented to you for payment bills for 1915 patients, amounting to $5,600.38.

Under the terms of the Act of 1914, Chap. 778, and under the case of McMullen vs. Zouck, 130 Md. 541, I think that it was the intention of the Legislature that the $10,000 appropri-

ation for 1915, or so much thereof as might be necessary, should be used to pay for the difference between the cost of the patients at Sylvan Retreat during 1915 and the amount received from the counties for that year, and that the Legislature did not intend this use of the appropriation to be defeated merely because the bills were not presented during 1915.

In other words, the Legislature did not intend that this money should be expended during 1915, or not at all. It intended this money to be used for the 1915 patients, whether the bill for these patients was presented during or after 1915.

The difficulty now arises because the stingent appropriation for 1915 was not expended at all, on the books of the Comptroller's office. I do not think, however, that the failure of the Comptroller's office to credit an appropriation for which the Legislature, by the Act of 1915, Chapter 775, expressly provided, should defeat the appropriation, particularly when the appropriation did not purport to be made out of the funds for any particular fiscal year, but "out of any money in the Treasury of the State of Maryland not otherwise appropriated."

It is, therefore, my opinion that this bill of Cameron for 1915 patients should now be paid, as the Act of 1915, Chapter 775, provides, "out of any money in the Treasury of the State of Maryland not otherwise appropriated." In other words, it should be paid out of funds other than those which are otherwise appropriated.

In September, 1917, the Lunacy Commission also presented bills, supported by claims, for the cost of patients at Sylvan Retreat during 1916, amounting to $4,000.00. As I understand, I am unable to find any appropriation for patients at Sylvan Retreat during either the calendar year 1916 or the fiscal year ending September 30, 1916, and as there is no appropriation at all for 1916 patients, this bill cannot be paid.

There will doubtless be hereafter presented bills for 1917 and 1918 patients, as the Act of 1916, Chapter 255, appropriated $7,000 for each of the fiscal years ending September 30, 1917, and September 30, 1918, for patients at Sylvan Retreat.

When these bills are presented they should be made out on the basis of the *fiscal* year, and not, as under the Act of 1914, on the basis of the calendar year.

I do not think that the Legislature intended that these 1917 and 1918 appropriations should be expended during these respective fiscal years, or not at all. Therefore, if the $7,000 appropriation for the fiscal year ending September 30, 1917, has been credited, it should not be so credited, but should be carried down to meet the 1917 bill when presented. If this appropriation was not credited at all, then it should now be credited. In like manner, the 1918 appropriation should be credited as of October 1, 1917.

I return you the requisition in this case.

Very truly yours,

[illegible]

Fiscal Appropriations—Unexpended Balances—Payment Without Voucher, When Does the Comptroller Have Discretion—State Board of Agriculture.

[illegible], 1917.

Hon. Hugh L. McMaster,
State Comptroller,
Cumberland, Maryland.

Dear Mr. McMaster: I beg to reply to your favor of July 14th, in which you ask whether the portion now unexpended of the $25,000 appropriation made to the Board of Trustees of the Maryland Agricultural College for the current fiscal year, may legally be paid to the Board.

Sections 1-45, inc., of Article 58 of Bagby's Code provided for the State Live Stock Sanitary Board. These sections charge the Board with the duty of protecting the health of domestic animals and of inspecting dairies, and contain regulations to that end. Sections 4, 23 and 45 make appropriations for carrying the law into effect.

The Act of 1916, Chap. 337, amended Sections 1-28, inc., and Sections 43 and 45 of Article 58 and added Section 28 A to said Article. These amendments, among other things, transferred the duties of the State Live Stock Sanitary Board to the State Board of Agriculture (provided for by the Act of 1916, Chap. 391), and also omitted the appropriations made as aforesaid by Sections 4, 23 and 45, so that the Law as thus amended made no appropriation at all for carrying out its provisions.

The Act of 1916, Chap. 68[illegible], page 1571, however, appropriated, for the fiscal year ending September 30, 1917, "to the Board of Trustees of the Maryland Agricultural College, for the purpose of carrying out the provisions of Article 58 of the Annotated Code of Public General Laws of Maryland, as amended by the Acts of the General Assembly of 1916, title 'Live Stock', the sum of $25,000."

This $25,000 appropriation should have been made to the State Board of Agriculture, instead of to the Board of Trustees of the Maryland Agricultural College, because the State Board of Agriculture is the body charged with carrying out the provisions of Article 58; but I think that the Act of 1916, Chap. 225, providing that the same persons shall be appointed to both Boards, makes this immaterial.

In the form in which this appropriation is drawn, I see no reason why the whole of it could not legally have been paid to the Board at the beginning of the current fiscal year, or why you may not legally pay to the Board the unexpended balance of the appropriation now.

Some appropriations are so drawn as to prohibit you from paying out any part of them except upon the presentation of vouchers. Others, like the present one, are not so drawn, and in such cases I think that it is a question of administrative policy, rather than of law, whether you will pay over the whole of the appropriation to the Board to which the same is made, and let the Board disburse it, or whether you will simply carry the appropriation to the Board's credit, and pay the Board's vouchers against it. In the case of appropriations like the pres-

ent one, I think that the Constitution, Article 6, Section 2, Bagby's Code, Article 19, Sections 17 and 18, and the Act of 1916, Chap. 685, Section 3, page 1575, authorize either method, and which method you adopt is a matter for you to determine.

If, however, you decide to pay over to the Board the portion of the appropriation now unexpended, this will not, in my opinion, authorize the Board to retain for the next fiscal year such balance of the appropriation as may remain unexpended at the close of the current fiscal year, except to the extent that there may then be outstanding obligations against it.

The appropriation is made for the fiscal year ending September 30, 1917, and for no other year, and Section 3, page 1575, of the Act provides that of the various sums named therein only "so much thereof as may be necessary" is appropriated for the said fiscal year. This clearly means that the Board, in carrying out the provisions of Article 58 of the Code, can not expend from said appropriation more than is necessary for the purposes of Article 58 during the current fiscal year. For the next fiscal year another appropriation is made by the Act of 1916, Chap. 684, page 1566.

Therefore, if the portion of said appropriation now unexpended is paid to the Board, then at the close of the current fiscal year it will be the duty of the Board to account to the Comptroller for whatever may then be the unexpended balance of the appropriation, less any obligations incurred during the current fiscal year which are properly chargeable against said balance, but not then actually paid.

McMullen vs. State Roads Commission, 130 Md. 541.

Very truly yours,

Verdi C. Ritz, Deputy Attorney General.

FISCAL—APPROPRIATIONS, UNEXPENDED BALANCE—REVERSION OF.

October 15, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of October 11th, in which you ask me to advise you in what cases the balances of appropriations unexpended on September 30, 1917, the close of the last fiscal year, should be reverted into the general treasury.

It is impossible for me to give you advice on this subject which will cover all appropriations, because there is no general law in this State declaring that money not drawn in the fiscal year for which it has been appropriated cannot be drawn thereafter, and the Court of Appeals has decided that whether an unexpended balance reverts or not depends in each case upon the intent of the Legislature, which is to be gathered from the terms of the Act making the appropriation.

McMullen vs. Zimmer, 120 Md. 544.

Practically all appropriations, however, are for a specific amount, or so much thereof as may be necessary, during the given fiscal year. In the case of appropriations made in this form, any balance remaining at the close of the fiscal year, over and above (1) what has been actually expended during the year, plus (2) any outstanding obligations incurred against the appropriation during the year and unpaid at the close of the year, should in practically every instance be reverted.

This, I suppose, will cover almost all the cases, but there will doubtless still remain cases in which an unexpended balance will not revert because the phraseology in which the appropriation was made shows that the Legislature did not intend any reversion to take place at the end of the year.

The difficulty about the general rule above stated, is that, in applying it to cases within it, you may not know whether or not any given appropriation has outstanding obligations against it incurred during the year. The Court of Appeals, in McMullen vs. Zouck, recognized this difficulty and suggested that it be met by requiring the various officers, boards and commissions to file a statement with you, prior to the close of the fiscal year, showing any outstanding obligations against the year's appropriation.

Very truly yours,

[illegible]

Fiscal Affairs—Appropriations, Unexpended Balances to Revert to State Treasury.

[illegible]

[illegible], 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Md.

Dear Mr. McMullen: I beg to reply to your letter of October 31st, in which you ask whether certain appropriations made by the General Assembly of this year revert into the general treasury at the close of the fiscal year ending September 30, 1917.

Annapolis Court House Fund. Act 1916, Chap. 505. This Act appropriated $30,000 for the purpose of purchasing a ferry boat and wharf facilities, and the Act does not authorize the expenditure of this money in the fiscal year 1916-1917. The sum of $19,981.85 was unexpended on September 30, 1917. This balance should not be reverted.

Interment of Veterans of Soldiers and Sailors. Act 1916, Chap. 200. This Act provides that the State, under certain conditions, shall pay the burial expenses of deceased soldiers and sailors who served in the Union and Confederate Armies. The Act provides that "the sum of $12,000, or so much thereof as may

be necessary, is hereby appropriated, and shall be available from June 1, 1916, to March 31, 1917, and a like sum from June 1, 1917, to June 1, 1918, or so much thereof as may be necessary, for the objects above mentioned." Of these sums, $750 was made applicable to the burial expenses of deceased Union soldiers, and $750 to the burial expenses of deceased Confederate soldiers. The sum of $500 was unexpended on September 30, 1917.

In the language of this Act, the sum of $750 of the first $1500 was for the burial expenses of Union soldiers and sailors, and the remaining $750 was for the burial expenses of Confederate soldiers and sailors, who died between June 1, 1916, and March 31, 1917. This date, March 31, 1917, was clearly intended to be May 31, 1917. This appears from the requirement of the Act that the said amounts were to be ratably applied to the burial expenses, and also from the fact that the Legislature would not possibly have interpreted the burial expenses to be paid to March 31, 1917, and to be paid during April and May, 1917, and to be paid again from June 1, 1917. I think, therefore that the first $1500 was for burial expenses up to $750 for Union soldiers and sailors, and up to $750 for Confederate soldiers and sailors, who died from June 1, 1916, to May 31, 1917. The balance of these two sums which was not needed for such burial expenses during that period must be reverted.

I think it would be well for you to communicate with the Commander of the Maryland Department of the Grand Army of the Republic and with the Commander of the Association of the Maryland Line, one or whom is required to endorse all certificates presented, in order to assert or whether there are any out-standing claims for burial expenses incurred within the said period, which meet the conditions of the Act. If there are, then the same should be paid out of the $500 one balance, provided this does not make the total Union expenditures during the said period exceed $750, or the total Confederate expenditures during the same period exceed the like amount. Any balances

not needed for such burial expenses incurred during this period from June 1, 1916, to May 31, 1917, may be reverted.

The second $1,500 appropriation covers the period from June 1, 1917, to June 1, 1918, and, of course, no part of this appropriation can be reverted as yet.

Tuberculosis Hospital of Montgomery County. Act 1916, Chap. 628. This Act makes a State appropriation of $2,500 for the erection of the hospital, and further appropriations to the hospital of $1,500 for the fiscal year ending September 30, 1917, and $1,500 for the fiscal year ending September 30, 1918, provided the Tuberculosis Commission of Montgomery County raises like amounts either through subscriptions or by appropriation from the County Commissioners, who were directed to make the necessary levies. On September 30, 1917, the sum of $1,000 has not been expended. If the required moneys were raised locally, and the hospital has been or is being erected, then the balance should not be reverted, but should be used for the purposes for which it was appropriated, subject to the conditions of the act. I would suggest communicating with the Tuberculosis Commission in order to ascertain the situation.

Southern Maryland Emergency Hospital. Act 1916, Chap. 251. This Act appropriates $10,000 for building the hospital, and provides that the appropriation is payable "at such time as the Board of Directors hereinafter provided for shall certify to the Treasurer of the State of Maryland that $5,000 has been realized either by private donation or by loan." It is clear from the Act that this $10,000, which has not been expended, did not revert on September 30, 1917. The same Act appropriates $3,000, payable "in quarterly instalments, from the time the said hospital shall be opened for the reception of patients, for the maintenance of said hospital until the next session of the General Assembly of Maryland." This appropriation has not been expended. It is clearly applicable for maintenance expenses from the time the hospital opens until the next session of the Legislature. It should not be reverted now.

I would suggest communicating with the institution in order to ascertain the situation.

Printing Records and Briefs. $50,000. This appropriation was made by the Act of 1916, Chap. 656, page 1571. It is clearly intended to pay for State records and briefs which were printed during the fiscal year ending September 30, 1917. The balance should not be reverted so long as there are any bills outstanding for records and briefs printed during that fiscal year. I have previously asked you not to revert the unexpended balance of this appropriation until I could advise you whether any bills incurred for printing records and briefs during said fiscal year are still unpaid. I hope to let you have this information shortly.

Ice Boat Annapolis. Act 1916, Chap. 656, page 1572. By and making necessary repairs to the ice boat Annapolis, said work to be done by the Harbor Board of Baltimore City through contracts let by the Board of Awards. The whole of this appropriation was unexpended on September 30, 1917. This appropriation, however, is not limited to the fiscal year 1916-1917, and it did not revert. I would suggest communicating with the Harbor Board in order to ascertain the status of the work.

Baltimore Manual Labor School. Act 1916, Chap. 265, page 448 (9). The sum of $2,000 was appropriated to this institution for the fiscal year 1917. By Section 3, page 100 of the same Act this was required to be paid in equal quarterly installments. One of these quarterly instalments has not been paid. The per capita system for charitable appropriations provided by the Act of 1916, Chap. 705, Sec. 1A, was not, I understand, put into effect during the last fiscal year, but the appropriations for that year were paid quarterly as theretofore. I do not understand why a quarterly instalment of this appropriation remains unpaid. Unless there is some reason for this that I am not aware of, this unexpended balance should not be reverted, but should be paid.

Maryland State University. Act 1916, Chap. 223, page 157 (101). The sum of $25,000 was appropriated to this University for the fiscal year 1917, for medical education, payable in equal quarterly instalments. Of this sum, $5,771.97 was unexpended on September 30, 1917. Unless there is some reason for this which I am not aware of, this balance should not be reverted, but should be paid.

National Junior Republic. Act 1916, Chap. 223, page 147 (7). The sum of $7,000 was appropriated to this institution for the fiscal year 1917, payable in equal quarterly instalments. Of this sum, $750.00, or one quarterly instalment, was unexpended on September 30, 1917. Unless there is some reason for this which I am not aware of, this balance should not be reverted, but should be paid.

Very truly yours,

MARCUS C. RICHARDS, *Treasury Department.*

FISCAL APPROPRIATIONS—UNEXPENDED BALANCES—DOES NOT REVERT WHEN CONTRACTS OBLIGATED—STATE ROADS COMMISSION.

NOVEMBER 26, 1917.

Hon. Hugh L. McMullen,
State Comptroller,
Baltimore, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of November 14th.

By the Act of 1916, Chap. 485, page 1570, there was appropriated to the State Roads Commission for the fiscal year ending September 30, 1917, the sum of $200,000, or so much thereof as may be necessary, for the building of State aided roads. I understand that at the close of the said fiscal year there was a balance to the credit of the State Roads Commission, for State aided road work, of $113,101.19, and that at the same time there were outstanding contract obligations for such work amounting to more than the said balance. You ask

whether the said balance is now available to meet these outstanding obligations.

I beg to advise you that the balance is available for this purpose, as decided by the Court of Appeals in McMullen vs. State Roads Commission, 130 Md. 541.

I return you Mr. Zouck's letter, and his statement of outstanding obligations.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—SINKING FUNDS—COUPON BONDS—MAY BE CANCELLED AND REGISTERED CERTIFICATES ISSUED IN STEAD.

February 19, 1917.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: As requested by you, I have carefully considered the State's right to extend those coupon bonds of certain State bond issues which are now owned by the State as part of the sinking funds, and to issue in lieu thereof registered certificates which shall, respectively, be for the aggregate amount of the bonds of each issue owned by the State.

The advantage in doing this lies in the much smaller safe deposit space which would be required for the certificates, and the consequent saving in rental, and in the payment of interest by check or draft, instead of through the cutting and deposit of a very great number of coupons.

The bond issues in question, part of which are now held in the sinking funds, are the following:

Three Million Dollar Loan of 1916, Act of 1916, Ch. 651.
Treasury Relief Loan of 1916, Act 1916, Ch. 142.
State Roads Loan of 1911, Act 1911, Ch. 267.
State Omnibus Loan of 1911, Act 1911, Ch. 791.

Technical School Loan of 1912. Act 1912, Ch. 90.
Second Insane Hospital Loan. Act 1912, Ch. 187.
State Loan of 1912. Act 1912, Ch. 370.
Consolidated State Loan of 1913. Act 1912, Ch. 749.
Maryland State Normal School Loan. Act 1912, Ch. 776.
State Insane Hospital Loan. Act 1910, Ch. 250, p. 234.
Sanatorium Loan. Act 1910, Ch. 111, p. 240.
Public Highways Loan. Act 1910, Ch. 116, p. 307.
State Roads Loan. Act 1908, Chap. 141, p. 254.

Each one of these acts provides that such portions of said certificates shall be registered and such portions shall have interest coupons attached thereto, as the Governor, Comptroller of the Treasury and Treasurer, or a majority of them, shall determine."

The Governor, Comptroller and Treasurer did in each case determine, at the time the above bonds were respectively issued, that they should be coupon bonds, and they were issued in that form. These officials, however, had the clear power to determine that the bonds, or any portions thereof, should be issued in the form of registered certificates. I have carefully examined all the provisions of the Code relating to the sinking fund and the public debt (Art. 19, Secs. 31-34; Art. 31, Secs. 1-2; Art. 78 A; Art. 81, Sec. 194; Art. 95, Secs. 8-11, 16-31), and I find nothing to prevent the surrender and cancellation of the coupon bonds of the above issues which now form part of the State's sinking funds, and the issue in lieu thereof of registered certificates, which shall be, respectively, for the aggregate amount of the bonds of said issues which are now owned by the State.

I, therefore, am of opinion that the Governor, Comptroller and Treasurer have the power to cancel the coupon bonds in question, and issue registered certificates in lieu thereof.

These certificates will not be negotiated, but will continue to be held by the State, and I see no reason why they may not be printed, instead of engraved.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL AGENTS—SUCCESSFUL BIDDER NOT ENTITLED TO INTEREST ON DEPOSIT.

January 12, 1917.

Hon. John M. Dennis,

State Treasurer,

Annapolis, Maryland.

DEAR MR. DENNIS: I beg to reply to your recent favor in which you ask my opinion as to whether Messrs. Owen, Daly & Company, successful bidders for Sewerage Bonds of the Three Million Dollar Loan of 1916, are entitled to an allowance of interest at 4%, which is the rate the bonds bear, on their deposit of $45,000, from December 27, 1916, when the deposit was made, to February 1st, 1917, when settlement will be made.

If such interest were proper to be allowed, it would only amount to a little over $200, but in my opinion it should not be allowed at all.

The bonds are to be issued under the Act of 1916, Chap. 681, and Section 1 of that Act provides that bids are to be received "under such regulations as may be made in the discretion of the Governor, Comptroller of the Treasury and Treasurer, or a majority of them." One of these regulations is thus expressed in the advertisement for bids: "Each bid must be accompanied by a certified check upon some responsible banking institution, drawn to the order of the Treasurer of Maryland, for five per cent. of the amount of such bid." The $45,000 in question is the amount of the certified check deposited by Messrs. Owen, Daly & Company when they made their bid, under the above requirement. The check has, I understand,

1. The said bonds are authorized by the Act of the General Assembly of Maryland of 1917, Chapter 3.

2. The said Act of Assembly is valid and constitutional.

3. All of the formalities prescribed by law for the issue of said bonds have been legally and duly complied with.

4. The said bonds have been duly delivered to the purchasers referred to, and the purchase price fully paid.

5. The said bonds, as issued, are in form in accordance with said Act of Assembly, are duly signed by the proper officers, and are the legal, valid and binding obligation of the State of Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—WAR LOAN OF 1917—DISCRETION OF EXECUTIVE COMMITTEE OF MARYLAND COUNCIL OF DEFENSE IN EXPENDING—PRISON FARM.

August 22, 1918.

Gen. Carl E. Gray,
Chairman, Maryland Council of Defense,
202 Union Trust Building,
Baltimore, Maryland.

DEAR MR. GRAY: I am advised that there is some misunderstanding among the Executive Committee of the Maryland Council of Defense or some of its members, as to the opinion I orally expressed at the Committee's meeting on August 21st upon the province and power of the Committee with respect to the expenditure of part of the War Loan of 1917 for a prison farm. I, therefore, wish to put my opinion upon the subject in writing.

By the Act of 1917, Chapter 15, the State Board of Prison Control, with the approval of the Governor, is authorized and empowered to acquire land for the purpose of establishing thereon a prison farm, the expense to be paid either out of any

moneys in the Treasury available therefor and not otherwise appropriated, or out of any moneys appropriated for such purpose; in the latter event, the Act provides that such payments shall be made on the order of the Executive Committee of the Maryland Council of Defense, with the approval of the Governor, such orders to be directed to the Comptroller, who is then to draw his warrant upon the Treasurer in the usual way.

The only moneys appropriated for the purpose of a prison farm are the proceeds of the War Loan of 1917, authorized by the Act of 1917, Chapter 32, and I understand that the State Board of Prison Control, acting under the authority conferred by the Act of 1917, Chapter 15, has determined or agreed to acquire land for a prison farm, and has applied to your Committee for the payment of the purchase price out of the proceeds of the $500,000 of the War Loan of 1917 already passed.

The question presented is, what is the jurisdiction and power of your Committee in the premises?

The Legislature of 1917, of course, had in mind the establishment of a prison farm as one of the emergency measures called for by the war. This is shown by the passage of Chapter 15 of the Acts of 1917, which authorized the State Board of Prison Control to establish a prison farm, and which Act, like all the other important legislation passed at the extra session, stated that it was an emergency law. It is also shown by Chapter 32 of the Acts of 1917, the War Loan Act, which included a prison farm as one of the various objects for which the War Loan was authorized to be spent, and declared all of these purposes to be necessary.

But the Legislature was confronted with the situation that in that early stage of the war it could not foresee with certainty what would really prove to be the purposes which ought to be provided for out of the War Loan. The Legislature recognized that at least some of the purposes which then seemed to it necessary, might in the future prove not necessary, or might in the future be surpassed by others more essential. At any moment

developments might occur which would change entirely the objects for which it was necessary to spend the War Loan.

For these reasons, the Legislature did not designate in the War Loan Act the purposes for which the War Loan must be spent, but left the determination of this question to your Committee, as well as the determination of how much should be spent from the War Loan upon such purposes as your Committee might select.

The War Loan Act specifies a number of purposes which the Legislature, at the time the Act was passed, deemed necessary, and one of these purposes was a prison farm. But the Act expressly provides that the proceeds of the loan are to be used, "as far as the same are required, and in the manner and subject to the discretion hereinafter more particularly described, for any or all" of the purposes named; and the Act then further provides that your Committee, with the approval of the Governor, "shall, from time to time, investigate and determine the purposes aforesaid for which, or for some or any of which, the proceeds of the loan hereby authorized, or any part or parts thereof, shall be expended, and may, from time to time, apportion said moneys among said purposes in such amounts as they deem proper. No moneys shall be expended from the proceeds of this loan, or any part or parts thereof, for any of the purposes authorized by this Act other than such of said purposes as may, from time to time, be so determined, nor shall any of such moneys be expended for any purpose so determined in excess of the amount apportioned, from time to time, to such purpose as aforesaid."

The prison farm Act provides, as already shown, that the expenses authorized by that Act may be paid "out of any moneys appropriated for such purposes," and the only moneys appropriated for such purposes are the proceeds of the War Loan. The proceeds of the War Loan can, of course, only be spent in the manner provided by the War Loan Act, and that Act, while naming the prison farm as one of the purposes for which the loan may be spent, yet expressly gives your Committee the dis-

[illegible]ration to select and determine which of the purposes named in the Act are the purposes for which the War Loan shall be expended, and to determine also the amount which shall be expended from the War Loan upon each of such purposes as your Committee shall, in its discretion, select.

It follows that whether any part of the War Loan shall be expended for a prison farm, or whether no part of the War Loan shall be expended for such purpose, is for your Committee, in its discretion, to determine.

In deciding this question, you should, of course, give due consideration to the fact that the Legislature when it met in June, 1917, believed that a prison farm should be provided; but you should also bear in mind that at the same time the Legislature entrusted to your Committee the discretion and the responsibility of determining, as final judges, whether, in the light of all the circumstances, any part of the War Loan should be used for that purpose or not.

In the event that your Committee determines that any part of the War Loan is to be spent for a prison farm, then it is for your Committee, in its discretion, to determine how much of the War Loan should be spent for that purpose.

Very truly yours,

[illegible]

Fiscal Bonds—War Loan of 1917—Discretion of Executive Committee of Maryland Council of Defense—Difference in Expenditure—Water Supply—House of Correction.

[illegible]

L. E. Meekins, Esq.,
Secretary, Maryland Council of Defense,
2001 Union Trust Building,
Baltimore, Maryland.

DEAR MR. MEEKINS: I beg to reply to your favor of November 20th, in which you ask whether the Executive Committee of the Maryland Council of Defense is authorized to ap-

propriate $2,300 from the proceeds of the War Loan of 1917, for the purpose of protecting from deterioration during the winter months certain uncompleted work on the water supply of the House of Correction.

The Act of 1917, Chapter 3, authorizes the Executive Committee to expend the proceeds of said loan upon any and all purposes, not specifically enumerated, "as may be deemed necessary and proper, in the discretion of the Executive Committee," with the Governor's approval, "for the defense of the State, the safety of its people and the protection of property, and to aid the State or the United States in the present war"; these purposes are to be "liberally construed," any appropriation which can "fairly be said to be desirable or appropriate to effectuate" them is authorized, and the Executive Committee is given full power to "investigate and determine" the purposes, subject only to the Governor's approval.

I do not know exactly what the circumstances surrounding the proposed appropriation are, but if the Executive Committee, in its discretion, considers these circumstances such as to make the appropriation fairly desirable and appropriate to be made for the safety of the people or the protection of property during the present war, and if the Committee considers that the necessity for the appropriation may fairly be said to be due to the war, then the Committee has the clear legal right to make it; and the Committee is the sole judge of these questions, subject only to the approval of the Governor.

Very truly yours,

ARTHUR K. REYNOLDS, Legislative Counsel.

Executive Department, Commonwealth of Massachusetts,
State House, Boston,
April 23, 1917.

Hon. Henry E. McMullen,
State Comptroller,
Commonwealth Museum.

DEAR MR. MCMULLEN: I beg to reply to your letter of April 21st, in which you ask whether Mr. William F. Watson,

Clerk of the Circuit Court for Queen Anne's County, can now correct his account to your office by crediting himself with certain office expenses for which the county has already paid.

I am myself in receipt of a letter from Mr. Watson, in which he asks whether Clerks of Court are allowed to charge any excess in the fees of their office received during any one year over $3,000 and office expenses, against the amount by which the fees received during a previous year fell short of $3,000 and office expenses.

This, of course, cannot be done, as it is prohibited by Art. 15, Sec. 1 of the Constitution, which requires the Clerks to account each year for the excess of receipts during the year over $3,000 and office expenses, and failure to comply with this requirement for 30 days after the expiration of the year results in vacating the office.

Answering your inquiry, I do not see how the Clerk can charge the State with the cost of general books, stationery, or other office expenses for which the county has already paid the Clerk, under Bagby's Code, Art. 17, Sec. 11. If this could be done, then the Clerk could be charging the State for expenses for which the county has paid, and in the present case the result would be to give the Clerk a compensation for the fees in excess of $3,000, because the compensation with which the Clerk has credited himself for the year $2,[illegible], plus the sum $221.66, is the amount which the Clerk now desires to charge against the State for the office expenses, for which he says, the county has already paid. To permit this would be to allow the Clerk $2,[illegible] plus the $221.66, or a salary of $3,000.

Inasmuch as the county is under no point this $221.66 to the Clerk, and as a charge for the same amount against the State would result in giving the Clerk a greater compensation than the law permits him to receive, he must, of course, account to the State for this $221.66.

Very truly yours,

ARTHUR C. KIRWIN, Attorney General.

FISCAL—CLERK OF CIRCUIT COURT FOR JUVENILE CAUSES.
COMPENSATION OF.

April 2, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. McMULLEN: I beg to reply to your favor of March 27th, in which you say that Mr. Clarence D. Perry, one of the Deputy Court Clerks of the Circuit Court for Wicomico County, has been selected as Clerk of that Court when sitting in Juvenile Causes under the Act of 1916, Chap. 326, and that the Court asks you to approve an increase in his salary of $300 per annum for his services as such Juvenile Clerk; and you ask whether this proposed increase is properly submitted to you for your approval, or whether the same is payable by Wicomico County.

The Act of 1916, Chap. 326, authorizes the Circuit Courts of the Counties to designate one of their number to try juvenile cases, the judge designated to be known, when so sitting, as the Circuit Court for the County sitting in Juvenile Causes. The Act confers new jurisdiction and duties upon the Circuit Courts and upon the Clerk and one of the Deputy Clerks. The new duty imposed upon the latter is the duty of acting as Clerk of the Circuit Court sitting in Juvenile Causes. The Act itself provides, in Section 15, that it "shall be construed as conferring additional and supplementary powers and jurisdiction on the Circuit Courts for the several counties."

The Act provides that certain of the expenses which it imposes shall be paid by the counties. These expenses are the cost of printing forms (Section 5), the salaries of the probation officers (Section 6), and the Court costs (Section 11), except in cases where the Court costs are placed upon the petitioner or the parent (Section 10).

While, however, the Act imposes upon one of the Deputy Clerks the additional duty of acting as Clerk of the Circuit Court sitting in Juvenile Causes, it makes no provision at all

for any increase in his salary for so acting, or for the manner of payment of any such increase.

Since the Act simply adds to the duties of one of the Deputy Clerks, without making provision for any increased compensation therefor, it follows that no change is made in either the amount or the manner of payment of the salary of such Deputy Clerk, so that his salary is still fixed by the Comptroller, under Bagby's Code, Art. 17, Sec. 16, and is payable in the same manner as heretofore.

It follows that it is for the Comptroller to determine whether or not he approves an increase of $300 per annum in the salary of the Deputy Clerk selected as Juvenile Clerk in Washington County, and the Comptroller's approval of such increase will, of course, depend upon whether or not he considers that the additional duties imposed upon the Deputy Clerk warrant it.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

FISCAL — OFFICE OF CLERK OF CIRCUIT COURT FOR WASHINGTON COUNTY — COST OF INDEXING LAND AND JUDGMENT RECORDS — OFFICE EXPENSES.

January 2, 1918.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your letter of December 15th, 1916, in which you ask my opinion upon the validity of the Act of 1916, Chapter 96.

This Act authorizes the Clerk of the Circuit Court for Washington County to make a general index of the Land and Judgment Records of Washington County from 1777 to 1916, according to the most approved system now in vogue.

The Act further provides that the work is to be done either by contract or individual employment, subject to the approval of the Judges, and that the County Commissioners are author-

[illegible] and required to levy upon the assessable property of said county, in the usual manner by law provided, a sum sufficient to pay for said indexing, unless the receipts of said clerk's office from fees for services rendered therein over a period not longer than three successive years shall be sufficient to pay for said indexing, after all the office expenses and salary of said clerk shall be paid, in which event said work of indexing said Land Records and said Judgment Records shall be paid out of the fees so remaining for such period, the deficit created thereby to be provided for by levy of the County Commissioners as herein provided."

Article [illegible], Section [illegible] of the Constitution requires every "fee of [illegible] to be paid into the State Treasury the expense of his office, and the surplus to be applied to the payment of salary paid for the expense of his office." Article [illegible], Section [illegible] and Article [illegible], Section [illegible] of the Constitution also recognize the clerk's right to have compensation for fees and other expenses out of the fees, and Bagby's case, [illegible] Md. [illegible], Section [illegible] and [illegible] recognize the same thing.

It is therefore clear that the clerk's "other expenses," as well as salaries, are required by the Constitution to be paid from the fees, and the State is only entitled to the excess which remains after such salary and other expenses have been paid.

Since the Constitution, as we have pointed out, shall control the office expenses, it does not lie in Legislature itself with the [illegible]

[illegible] Md. [illegible] v. [illegible]

[illegible] Md. [illegible]

The language in the Legislature from [illegible] the Act [illegible] Chapter [illegible] The [illegible] of this Act would indicate to make the [illegible] of the clerk's office [illegible] the clerk's office expenses for the next three years.

For this reason, it is my opinion that the Act is valid.

I do not think, however, that the clerk should simply report to your office that a budget of $[illegible] has been estimated for

the indexing. He should be required to render "a full and accurate" account of the expenditure of this sum, just as he must do with respect to all his other office expenses, under Bagby's Code, Art. 17, Sects. 13 and 16. Then if, at the end of the three year period, the fees retained are more than enough to pay for the indexing, the balance will belong to the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FIRST: COMMON FREE SCHOOL FUND ORIGIN AND DISTRIBUTION.

October 25, 1920.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I received your favor of September 24th, in which you say that the object of your letter of September 14th was to ascertain why the counties of Allegany, Charles, Calvert and Garrett did not share in the Common Free School Fund shown on Statement F A of the Comptroller's Annual Report.

Col. Hopkins has called my attention to the Report made in 1916 by the General Education Board of New York to the Maryland Educational Survey Commission, which on page 137 tries to explain the origin and method of distribution of the Common Free School Fund. This report in referring to the portion of the fund which is the subject of your letter says on page 137 [illegible]:

"The first item consisted of an investment of $[illegible] derived from taxes upon state bank stock, collected for the first instance in 1816, and yielding in 1914 an income of $[illegible]. The original intention was to distribute annually to the counties in equal shares the entire amount of taxes collected. It, however, so happened that for [illegible]

certain counties had no schools upon which they could properly spend their money. Their unexpended share was accordingly left with the State Treasurer and held for them as a permanent investment. The amounts now so held vary from $21,100 in the name of Frederick County, to $1,300 for St. Mary's. Baltimore City, Allegany, Charles, Calvert and Garrett counties do not now participate in this fund, they having used in times long past their full share in the current support of their schools. Hence, while the other counties now receive from this fund annually from $150 to $750, nothing at all is received by these four counties and the City of Baltimore."

You will see from this that the fund was created in 1816, and was intended for distribution among all the counties for school purposes; but that at that time many of the counties had no schools, and, therefore, such counties did not receive any distribution until they did have them. The counties of Allegany, Charles, Calvert and Garrett have long ago used up their allotments of the fund, and for this reason these four counties no longer receive any distribution. They have already received their full shares. The other counties have received their allotments in varying amounts and at varying times, and for this reason their present allotments are unequal.

To locate and examine all the early legislation upon this subject would involve a very great deal of time and labor, and in view of the Report of the General Education Board, I do not think this is necessary. That Report was prepared with great pains and after thorough investigation, and may be regarded as entirely trustworthy. You may safely rely upon the answer to your inquiry which the Report gives.

Very truly yours,

ARMIGER G. BRUCE, *Attorney General.*

FISCAL—LIBERTY BONDS. RIGHT OF BOARD OF FORESTRY TO INVEST IN.

June 5, 1917.

F. W. Besley, Esq.,
State Forester,
[illegible] N. Howard St.,
Baltimore, Maryland.

DEAR MR. BESLEY:—I beg to reply to your favor of May 28th, in which you ask whether the Board of Forestry can legally invest in Liberty Bonds the appropriation of $8,500, and accrued interest, made by the Act of 1912, Chap. 794, Bond's Code, Art. 39 A, Sec. 21, for the acquisition of a tract of land in Washington County, which is situated on Fort Frederick and also a balance of $11,000 remaining from the appropriation made by the Act of 1912, Chap. 789, Bond's Code, Art. 39 A, Sec. 20, and by the Act of 1914, Chap. 105, for the purchase of land along the Potomac River.

The acts mentioned do not specifically authorize the Board to invest or restrict their use to the purposes specifically designated in the acts. See Section 1 of Act 1912, Chapter 789, and Sec. 7 and 12 of Act 1912, Chapter 794.

The State Treasurer has, in fact, therefore, no legal right to apply these funds to the purchase of Liberty Bonds.

In view of the provisions of the two acts, and also the Act of 1906, Chap. 124, Sec. 15, Bond's Code, Art. 39, Sec. 15, I do not quite understand what right the Board had to pay these funds over to your Board, except as they needed for the purposes authorized, but your inquiry does not involve this question.

Very truly yours,

ARTHUR L. BRESNIK, Attorney-General.

FISCAL—LIBERTY BONDS, SINKING FUNDS MAY BE INVESTED IN.

October 11, 1917.

Hon. John M. Dennis,
State Treasurer,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. DENNIS: I have your favor of October 10th, in which you ask whether the Board of Public Works may lawfully invest the moneys now belonging to the sinking funds of the several State loans mentioned by you, in United States Liberty Bonds.

I have examined all of the acts under which the several loans in question were issued, and none of them limit the power of the Board of Public Works to invest the sinking funds. I, therefore, beg to advise you that in my opinion the sinking funds mentioned by you may be invested by the Board of Public Works in United States Liberty bonds, under Sections 26, 29 and 31 of Article 95 of Bagby's Code.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—MARYLAND STATE COLLEGE—APPROPRIATION APPLICABLE TO GROUNDS.

February 19, 1918.

Samuel M. Shoemaker, Esq.,
President Board of Trustees,
Maryland State College of Agriculture,
820 Fidelity Building,
Baltimore, Maryland.

DEAR MR. SHOEMAKER: As requested by you, I have considered your Board's power to expend part of your appropriation in making certain improvements to the athletic grounds at the college.

The appropriation is for "maintenance" (Act 1916, Chap. 685, page 1573), but I think that this word should receive a liberal construction, so as to include such expenditures as may be reasonably and fairly necessary to maintain the College as a modern, up-to-date and progressive institution.

It seems to me that athletic grounds are entirely proper for this purpose, and they should, of course, be kept up to the proper standard. If, therefore, the improvements in question are, in the Board's opinion, reasonable and proper to be made, then I think that your Board has the power to use part of your appropriation in making them.

Very truly yours,

ALBERT E. ROBINSON, Attorney General.

FISCAL RESEARCH STATE TEACHERS SCHOOL DISTRICTS AND PARTICIPATION IN STATE FUNDS

November 29, 1916.

Hon. Harold J. McMillan,
State Comptroller,
Troy, New York.

DEAR MR. MCMILLAN: I have to acknowledge your letter of October 19th, in which you ask what disposition you should make of the sum of $[illegible] which [illegible] the distributive share of Morris N. [illegible] of the Roosevelt State Teachers School, who resides in [illegible] relatives.

This sum should be paid to the guardian, the [illegible] brother of Miss [illegible]. See Section [illegible] of Article [illegible] of Rules [illegible] amended by the Act of 1916, Chap. 685. None of the students of Roosevelt are entitled to any of the counties [illegible] that the sum referred to in Section [illegible] should not be disbursed.

Very truly yours,

ALBERT E. ROBINSON, Attorney General.

FISCAL—SHERIFF OF ALLEGANY COUNTY—FINES, DISPOSITION OF.

February 1, 1917.

John E. Sullivan, Esq.,
Sheriff,
Annapolis, Md.

DEAR SIR: I beg to reply to your favor of January 22nd, relative to the disposition of certain fines received by you as Sheriff of Anne Arundel County.

I beg to advise you that under Article 38 of Bagby's Code, the Act of 1912, Chap. 615, Art. 87, Sections 39 and 42 of Bagby's Code, and the case of State vs. Green, 120 Md. 681, the fines in question should be disposed of as follows:

1. Fines for Sunday selling, under Bagby's Code, Art. 27, Sec. 137.

2. Fines for gaming tables, under Bagby's Code, Art. 27, Sections 214, etc., and 222.

3. Fines for selling liquor without license, under Act 1906, Chap. 119.

4. Fines for disturbing the peace, drunkenness and disorderly conduct, under Bagby's Code, Art. 23, Sections 101, 102 and 103.

In all of the above cases, one-half of the fines should be paid to the Clerk of the Circuit Court for the use of the law library and the other one-half to the informer, if any. If no informer, then this latter one-half to the State Treasurer.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SHERIFF OF BALTIMORE COUNTY—FEES, ACCOUNTING FOR—OFFICE EXPENSES—SALARY.

January 2, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. McMULLEN: I beg to reply to your letter of December 21st, 1916, in which you ask my opinion upon the validity of the Act of 1914, Chap. 581, amending Section [illegible] of the Act of 1908, Chap. [illegible], pages [illegible] and [illegible].

This Act provides that the Sheriff of Baltimore County shall receive:

1. An annual salary of $[illegible], to be paid in monthly payments by the County Commissioners.

2. An additional allowance of $[illegible] for the expenses of his office, to be paid in monthly installments by the County Commissioners.

3. The actual cost of transferring prisoners to and from penal institutions.

The Act further provides that the Sheriff shall account for fees monthly to the County Commissioners, and pay over the same to the Treasurer of Baltimore County upon the order of the County Commissioners.

In Cecil County Commissioners vs. Mackey, [illegible] Md. [illegible], reported in full in 87 Atl. Rep. [illegible], the Court of Appeals held that provisions in the Act [illegible] County [illegible] Act [illegible], Chap. 23, similar to the above provisions, were valid.

The Sheriff cannot, however, receive more than $[illegible] as annual compensation, and [illegible] therefore is not entitled to retain any balance of the $[illegible] allowed him for office expenses or of the $[illegible] allowed him for transferring prisoners, [illegible] must return [illegible] over the expenditures actually made for these purposes.

The result is that the Sheriff may retain $[illegible] out of the fees of his office for his annual salary (which amount to [illegible]

of course, use in reimbursing the County for the like amount of salary which the County paid him), and he may also be allowed for his office expenses up to but not exceeding $5,500, and for the expense of transferring prisoners up to but not exceeding $300.00.

The excess of the Sheriff's fees over and above his $3,000 salary, plus the amount actually expended for office expenses, which must not exceed $5,500, and plus the amount actually expended in transferring prisoners, which must not exceed $300, belongs to the State under Article 15, Section 1 of the Constitution. Under the same section the Sheriff must, of course, report annually to your office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FINES. SOMERSET COUNTY CLAM LAW. DISPOSITION OF FINES COLLECTED.

January 12, 1926.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your two recent letters asking my opinion as to the disposition which should be made of fines collected for violations of the Somerset County Clam Law, Act 1916, Chap. 179, Sec. 6.

This Act is silent as to how the fines are to be disposed of, and the question involves the application of several local and general laws.

The Act of 1924, Chap. 540, applicable to Somerset County, provides that "all fines and penalties received by any Justice under the provisions of this Act shall be accounted for and wholly paid without abatement or deduction therefrom by such Justices to the County Commissioners of the County wherein they are collected for the use of the County."

This Act is codified in the Code P. L. L. 1888 as Sections 135, 136 and 137 of Article 90, title "Somerset County," and

I do not find that it has ever been repealed or affected by the subsequent legislation, to which I will simply refer:

Act 1890, Chap. 618.
Bagby's Code, Art. 52, Sec. 12.
Bagby's Code, Art. 38, Sects. 2, 4.
Bagby's Code, Art. 87, Sects. 39, 42.
Sanner's Case, 83 Md. 618.
Green's Case, 120 Md. 681.

While the Conservation Commission has, of course, control over the Conservation Fund (Act 1916, Chap. 652, Sec. 5) yet the statutes specify what that fund shall consist of (Bagby's Code, Art. 72, Sec. 31 and other sections), and there is no provision for bringing the fines in question within it.

It is, therefore, my opinion that fines collected for violation of the Somerset County Clam Law should be paid to the County Commissioners for the use of the county, under the Act of 1884, Chap. 340, Sec. 4.

Very truly yours,

ARTHUR C. ELDRIDGE, *Attorney General.*

FEES OF STATE'S ATTORNEYS OF BALTIMORE CITY AND EXPENSES CONNECTED WITH MAY INQUEST INDEX.

February 29, 1924.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of February 14th, in which you ask whether your office has authority and control over the expenditures of the State's Attorney of Baltimore City.

The salary of the State's Attorney of Baltimore City is paid out of the fees of his office. Constitution, Article 6, Section 3. The State's Attorney is, therefore, one of the officers who report and account to the Comptroller, under Article 15, Section 1 of the Constitution. This section provides that the

cess of fees over what "he is by law entitled to retain" as salary and for the expenses of his office, shall be paid to the State.

There is no law regulating the expenses of the office of the State's Attorney of Baltimore City, or prescribing what they may or may not include. The question as to any particular item would, therefore, be, whether it could fairly be said to constitute a reasonably proper office expense charge.

The law does not confer upon the Comptroller any specific authority to determine this question, but it is nevertheless your right, as the financial officer of the State, to question the propriety of any charge in the disbursement account of the State's Attorney of Baltimore City. If any particular disbursement is not a proper office expense charge, then it should not have been paid, and its payment, therefore, would necessarily reduce the excess fees to which the State is entitled. Inasmuch as you are the officer to whom the State's Attorney of Baltimore City reports, I think it entirely proper for you to question any disbursement charge in his report which you may think improper.

As I have said, however, you have not the authority to decide the question, and if the State's Attorney of Baltimore City insists that any particular item is a proper expense of his office and you insist that it is not, the only way to settle the dispute is by resort to the courts.

I return you Mr. Brooking's report for 1916.

Very truly yours,

Albert C. Ritchie, Attorney General.

Fiscal Service Attorney, Fees, Examiner of Accounts, Fees.

March 21, 1922.

L. Milton Bratenahl, Esq.,
Chairman, State Industrial Accident Commission,
Equitable Building,
Baltimore, Maryland.

Dear Mr. Bratenahl: As I told you orally the other day, I have considered the legality of the payment to your Com-

mission by the State Treasurer, on warrant from the Comptroller, of the sum of $5,000 out of the State Accident Fund, which sum will be used by your Commission in paying awards, thus avoiding the delay necessarily incident to requisitioning the Comptroller for each award, and enabling you to pay all awards promptly as made. At the end of each month you will requisition the Comptroller for an amount equal to the amount drawn during that month from the $5,000, and you will maintain the $5,000 fund by thus reimbursing it each month for each month's disbursements.

Under the law the State Treasurer is the custodian of the State Accident Fund, and the legality of making your Commission the custodian of part of it is questionable.

Eagle's Comp. Act, 101, Sections 16, 17, 30, 31, 32, 33, 36, 37, 38, 41.

The prompt payment of compensation to dependents is, however, extremely desirable, and the plan I have proposed will accomplish this, with no risk of impairing the State Accident Fund, and something entirely unforeseen happens to affect its security. The Comptroller and the Treasurer are, therefore, willing to advance your Commission the sums to be used as above indicated, provided the members of your Commission will become a bond, approved by me, for the Treasurer and their successors in office, guaranteeing the repayment of the moneys so advanced upon the proper requisitions being made for it.

I have prepared such a bond, which seems, I think, fully protect the State, the Comptroller and the Treasurer from all possible loss, and the State Accident Fund from any possible impairment, by reason of the payments made out of it of the sums in question. I enclose this bond herewith, and if you will have it executed, with corporate surety, and send the same to the Comptroller, the moneys will be advanced on the proper requisitions being made for it.

Very truly yours,

ARTHUR C. KIRCHER, *Attorney General.*

INSURANCE.

INSURANCE—DEPOSIT REQUIRED OF SECURITY OR GUARANTEE COMPANIES—TITLE COMPANIES MUST MAKE.

January 16, 1917.

William Mason Shehan, Esq.,
Insurance Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. SHEHAN:—I have had under consideration for some time your Department's inquiry as to whether the Title Guarantee and Trust Company is required to deposit with the State Treasurer securities to the amount in value of $100,000, in accordance with Section 116 of Article 23 of Bagby's Code. I now beg to give you my opinion upon the question.

The Title Guarantee and Trust Company received its present name by virtue of the Act of 1906, Chap. 115. It was, however, incorporated under the name of the Maryland Title Insurance and Trust Company by the Act of 1904, Chap. 125. By Section 1 of that Act, the company is empowered to "examine the titles to property, and guarantee or insure owners and mortgagees of property, real and leasehold, against loss by reason of defective title, liens or other encumbrances," and by Section 7, "to guarantee and insure the fidelity of persons holding places or offices of trust or responsibility under any corporation or individual, and may become security for the faithful performance of any trust, duty, office, contract or agreement."

The Act of 1892, Chap. 166, made certain provisions for "every safe deposit, trust, guaranty, loan and fidelity company or association . . . receiving money on deposit or assuming any obligations in this State." This Act provided for reports by and examinations of such companies, and Section 56 E required "every such corporation" to transfer and assign to the

State Treasurer public stock or bonds to the amount in value of 15 per cent. on its paid up capital stock, but in no case less than $30,000.

The Act of 1894, Chap. 663, amended the Title Company's charter by increasing its capital stock, authorizing it to deal in real and personal property and securities, to loan money on mortgage, bonds, etc., and to receive money on deposit. This Act expressly provided that the Company "shall be subject at all times to provisions of the Act of 1892, Chap. 105."

The Act of 1896, Chap. 160, amended Sec. 56 E of the Act of 1892, Chap. 105, to which the Title Company was thus expressly made subject, by requiring "every such corporation transacting as part of its business the security or guarantee business," to transfer and assign to the State Treasurer public stock or bonds to the amount in value of $[illegible] "in trust as security for all the holders of policies or guarantees of said corporation," and of said corporations, modified the Act of 1892 [illegible] as part of its business "the security or guarantee business," were required to transfer and assign, as therein provided, public stock or bonds to the amount in value of 15 per cent. of the paid up capital stock, but in no case less than $30,000.

The Act of 1912, Chap. 170, Sec. 56, further amended Section 56 E of the Act of 1892, Chap. 105, by authorizing companies having a paid up capital stock of $[illegible] and not transacting the security or guarantee business, to pledge public stock or bonds to the amount in value of 10 per cent. of the paid in capital stock, [illegible] $[illegible] The Act of 1892 was amended in other [illegible] by the Act of 1894, Chap. [illegible], and the Act of 1896, Chap. 160, made certain changes in the law relative to trust companies. These amendments are not material in the present discussion. The Act of 1912, which amended the first mentioned Section Code, Art. 23, Sec. 116, Div. [illegible], Sec. [illegible] of the 1912 Section 116.

As already shown, the Title Company was expressly made subject to the Act of 1892, Chap. 109, which applied to "every safe deposit, trust, guaranty, loan and fidelity company," and the company not only has power, under its charter amendment of 1894, to deal in property and securities, to lend money and to receive deposits, but under its original charter it has power to guarantee titles and to guarantee the fidelity of officers and the faithful performance of any trust, duty, office, contract or agreement.

These last powers, in my opinion, bring the company within the class created by the Act of 1896, Chap. 160, Sec. 55 E, as amended by Act 1912, Chap. 194, Sec. 98, of "every such corporation transacting as part of its business the security or guarantee business." It is, I think, clear that a corporation authorized to guarantee titles, the fidelity of officers and the faithful performance of trusts and contracts, and actually exercising any of these powers, is transacting "as part of its business the security or guarantee business."

I, therefore, think that the Title Guarantee and Trust Company is required to make the stringent deposit which Section 110 of Article 23 of Bagby's Code requires to be made by every corporation transacting "as part of its business the security or guarantee business."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—EXAMINATIONS OF INSURANCE COMPANIES, PUBLICATION OF.

January 22, 1912.

Wilson L. Gordon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. GORDON: I beg to reply to your favor of January 17th, in which you ask whether the reports of examinations

made under Section 178, Sub-section Sixth of Article 23 of Bagby's Code, should be published.

This section provides specifically that "in order that the public may be fully informed as to the condition of all companies doing business in this State, the result of the official examination of any such company, in such condensed form as shall show the true condition of the company examined, shall be published within thirty days thereafter by the Insurance Commissioner at the expense of said company, in one daily newspaper published in the City of Baltimore."

I think that the terms of this law require your Department to see that the publication referred to is made. This publication is not unlike the publication of condensed bank reports required by Section [illegible] of Article [illegible] of Bagby's Code, which the Court of Appeals said, in Marine Bank v. Sterling, [illegible] Md. [illegible], is required to be made.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] May [illegible]

Your inquiry [illegible] the Town of Westminster [illegible] than the State, [illegible] Insurance Companies [illegible] the conclusion I [illegible].

The charter of Westminster [illegible] the Mayor and Common Council [illegible] insurance companies and agencies located in [illegible] Act 1892, Chap. [illegible], Act 1910, Chap. [illegible], Sec. [illegible]. [illegible] this authority the town passed Ordinance No. [illegible], imposing [illegible]

annual license fee of $10.00. This ordinance is clearly authorized by the express terms of the charter of Westminster, and I find nothing in the insurance laws of the State, subjecting fire insurance companies to the State Insurance Department, which prohibits a municipality from requiring a local license. I, therefore, think that such companies are required to pay the license fee in question before doing business in Westminster.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LABOR

LABOR—MINORS—FEMALES.

July 9, 1917.

Charles J. Fox, Esq.,
Chairman, State Board of Labor & Statistics
300 Equitable Building,
Baltimore, Maryland.

DEAR MR. FOX: Confirming the oral advice I gave you this morning, I beg to say:

1. The Child Labor Law does not require children to secure a permit to be employed in carrying water in cemeteries. This is not one of the occupations to which the law applies.

2. The Ten Hour Law for Females, Bagby's Code, Art. 100, Section 51, as amended by the Act of 1916, Chapter 117, does not apply to females employed by railroad and steamboat companies, for cleaning cars and boilers or for other work. The law only applies to females employed "in any manufacturing, mechanical, mercantile, printing, baking or laundering establishment," and these terms do not include railroad and steamboat companies.

Very truly yours,

ATTORNEY GENERAL.

LABOR—MINORS—WORKING PERMITS.

April 4, 1917.

Charles J. Fox, Esq.,
Chairman, State Board of Labor & Statistics
300 Equitable Building,
Baltimore, Maryland.

DEAR MR. FOX: With reference to the right of the Goldsmith Ammunition Company located at Texas, Baltimore County

ty, to employ children under the age of eighteen years, I beg to advise you that Section 21 of the Maryland Child Labor Law provides that no child under the age of eighteen shall work in or about establishments where gun powder is manufactured, compounded or stored.

I understand that the Gathmann Ammunition Company manufactures percussion fuses and that in this work it uses a certain amount of gun powder. The company claims that it does not use a sufficient amount of gun powder to be dangerous. The law, however, prohibits children under eighteen years of age from working at establishments where gun powder is used without regard to the amount of gun powder so used.

Under these circumstances, I do not see any escape from the conclusion that children under eighteen years of age cannot work at the Gathmann Ammunition Company.

Very truly yours,

ARTHUR C. RYAN, *Attorney General.*

LABOR—MINORS—PROHIBITED OCCUPATIONS.

February 9, 1917.

Charles A. Fox, Esq.,
Chairman, State Board of Labor & Statistics,
Suite Equitable Building,
Baltimore, Maryland.

DEAR SIR: I beg to confirm the oral advice I have given you with reference to the employment by the Klots Throwing Company of children under sixteen years of age at the company's plants in Cumberland and Lonaconing.

The Act of 1916, Chap. 222, Sec. 7, makes it unlawful for any child under the age of sixteen years to be employed, permitted or suffered to work "on any machine or machinery operated by power other than foot or hand power." I understand from you that the Klots Throwing Company is permitting children under sixteen years of age to work on machinery operated

by power other than foot or hand power, that these children hold employment certificates which were issued by your inspector through mistake, and that the company declines to surrender these certificates, although notified that they were erroneously issued and that they are contrary to law, but insists on continuing to work the children as aforesaid.

There is no doubt whatever that an employment certificate which authorizes a child under sixteen to work at an occupation which is prohibited to children under sixteen, is of no effect whatever, and upon an employer being notified by you that the certificate was issued through mistake and is contrary to law, it is, I think, the employer's duty to have the same surrendered to you. But whether the employer surrenders the certificate or not, his permitting the child to work at the prohibited occupation, after notice from you of the facts, is a violation of the law, and subjects him to the penalties prescribed by Section 37 of the law.

As the facts are stated to me, therefore, the Kilts Dressing Company is violating the law in now permitting the children in question to work on machinery operated by power other than foot or hand power.

I further understand from you that the Kilts Dressing Company also contends that it can transfer a child from the particular kind of occupation named in his employment certificate to a different kind of occupation, without having the child secure a new certificate. The contention is based upon this position: The Act of 1916, Chap. [illegible], Sec. [illegible], provides that employment certificates shall contain "the nature of the occupation in which said child is to be engaged," and that no certificate shall be valid except "for the occupation so described." Therefore, the transfer of a child from the occupation named in his employment certificate to an occupation not named therein, without securing a new employment certificate authorizing the new occupation, constitutes a violation of the law, and subjects the offender to the penalties of Section 37.

I return you the correspondence on the subject you left with me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LABOR—OFFICE BOY FOR MOVING PICTURE CENSORS, ACT OF.

February 10, 1917.

Mrs. Marguerite E. Harrison,
Secretary, Board of Motion Picture Censors,
201, East Lexington Street,
Baltimore, Maryland.

DEAR MRS. HARRISON: As requested by you, I have considered your Board's right to employ an office boy who will not be sixteen years of age for some months.

I think the boy may be employed, provided, of course, he secures the usual employment certificate. The Act of 1916, Chap. 222, Sec. 8, prohibits the employment of children under sixteen "in a pool or billiard room, theatre or moving picture establishment." By "moving picture establishment" is meant the ordinary moving picture parlor or theatre. This is clear both from the connection in which the words are used and from the purpose which the Legislature must have had in mind. Your Board does not conduct a moving picture establishment in this sense. Your conduct a state office, and a boy over fourteen (Sec. 1) may be employed as your office boy, provided he has the employment certificate required by the law.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LAND OFFICE.

LAND OFFICE—COMMISSIONER OF—COMPENSATION—NO RIGHT TO RETAIN FEES.

May 4, 1917.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOV. HARRINGTON: At one of its recent meetings, the Board of Public Works requested my opinion upon the right of the Commissioner of the Land Office to receive and retain as his own any part of the fees of his office.

After a very careful consideration of the question, in which I have had the benefit of the views of the present Commissioner, I have concluded that the Commissioner is quite clearly not entitled to retain or receive any part of his office fees.

In view of the importance of the question, I am giving you the reasons for this opinion at some length.

The Constitution of 1851, Art. 7, Sec. 6, provided that the Commissioner of the Land Office should receive $2000 per annum for his services as Judge of the Land Office; and for his other services this Constitution expressly provided that he should be entitled to receive the fees of his office.

In pursuance of this authority, the Act of 1853, Chap. 115, and the Act of 1854, Chap. 139, authorized the Commissioner to receive fees for recording papers and proceedings in land cases; and, further, to deduct, as his compensation, twenty-five per cent. from all moneys payable on account of the public lands, the remaining seventy-five per cent. to be paid to the State. These acts were codified in the Code of 1860 as Sections 5 and 8 of Article 54.

The Act of 1862, Chap. 208, made the Commissioner the custodian of the records of the Court of Chancery, and gave him a salary of $500 per annum for his services in this capac

(1). Maryland Code, Supplement 1861-67, Art. 52, Sections 1 and 2. The fees which were chargeable for copies of these records were contained in Section 4 of Article 52 of the Code of 1860. (Act 1854, Chap. 149.)

In the Constitutional Convention of 1864, the Committee on Offices advocated a salary for the Commissioner of $1,800, all fees to be paid to the State. (Debates, Vol. I, page 163.) The first debate on this proposition appears on pages 1089-1094 of Vol. II of the Debates. Some of the members of the Convention called attention to the fact that the duties of the office had been greatly diminished by recent legislation, and these members advocated the abolishment of the office altogether.

The debate shows quite clearly that the understanding of the Convention was that if a salary were provided, the same would be in lieu of all fees. Indeed, the Committee's recommendation had been that the Commissioner should pay to the State "all the fees of his office." It was suggested that this might not include his fees as Keeper of the Chancery Records. Mr. Daniel, of the Committee, said: "It was the intention of the Committee that all the fees should be paid into the Treasury, and he should receive the $1800 as a substitute." The report, in order to make this perfectly clear, the Committee's recommendation was amended so as to require the Commissioner to pay to the State "all the fees of his office, *both as Commissioner of the Land Office and as Keeper of the Chancery Records.*" (Debates, Vol. II, page 1092.)

The question was not decided at this debate. Later, however, the Committee submitted a statement from the Commissioner, giving the reasons why he considered that his office should be salaried and all fees go to the State. This statement also showed that the fees of the office had been $2,500 in 1858, but had gradually decreased to $1200 in 1863, and that the average of both salary and fees from 1858 to 1863, inclusive, had been $2,270 per annum. The Convention then amended the Committee's report by increasing the salary from $1,800 to $2,000, the provision that all fees, both as Commissioner of the Land

Office and as Keeper of the Chancery Records, should go to the State, being retained. (Debates, Vol. II, pages 1182-1184.)

It was explained, during the debate, by Mr. Clarke, of the Committee, that the Commissioner had been receiving annually $500 as Keeper of the Chancery Records, $200 as Judge of the Land Court and $50 for sending lists of certain certificates to the County Commissioners, making $750.00 received by him annually from the State, in addition to his fees. "Now," said Mr. Clarke, "we propose to take the fees of his office and give him a fair salary, which will cover all the important duties which he has to discharge." (Debates, Vol. II, page 1184.)

It is clear from the aforegoing that the Convention understood that the $2,000 salary as provided was to be in lieu of and as a substitute for all fees, and that thereafter all fees were to be paid to the State; and this is certainly the plain meaning of Section 11 of Article 7 of the Constitution of 1864, which provided that the Commissioner should perform all duties then or thereafter required of him, that he should be Keeper of the Chancery Records, and further provided that: "He shall receive a salary of $2,000 per annum, to be paid out of the treasury, and shall charge such fees as are now or may be hereafter fixed by law. He shall make a semi-annual report of all his fees of his office, both as Commissioner of the Land Office and as Keeper of the Chancery Records, and shall pay the same semi-annually into the treasury."

When this provision of the Constitution of 1864 is compared with the provision of the Constitution of 1851, which expressly permitted the Commissioner to retain the fees of his office, there can be no doubt at all that the intent of the Constitution of 1864, both from the language and from the understanding of the framers, was that thereafter the Commissioner was to retain none of his fees, but that all of them were to belong to the State; and that the salary provided was to be a substitute for the fees which under the Constitution of 1851 the Commissioner had been permitted to receive.

When the Constitutional Convention of 1867 met, a strong effort was made to abolish the Commissioner's office. The Committee on Offices was ordered to inquire into the expediency of this. (Proceedings, pages 238-239.) The Committee, finding the office important to the western section of the State, recommended its retention with additional duties, but at a reduced salary. (Files of Baltimore Sun, July 31, 1867.) The Convention, however, at first decided to abolish the office. (Proceedings, pages 186-187.) This action was subsequently reconsidered, and the office was retained, with the salary, however, reduced from $2,000 to $1,500. (Proceedings, pages 566-567. Files of Baltimore Sun, August 7, 1867.)

The provisions in the Constitution of 1867 relating to the Commissioner are Sections 1 and 5 of Article 7, and Section 4 provides, as did the Constitution of 1864 that the Commissioner "shall make a *semi-annual report of all the fees of his office, both as Commissioner of the Land Office and as Keeper of the Chancery Records, to the Comptroller of the Treasury, and shall pay the same semi-annually into the treasury.*

Section 5 of Article 7 provides that the Commissioner shall "without additional compensation" collect, classify and keep records connected with the early history of Maryland. This does not mean, as the present Commissioner suggests it may, that this is the *only* work which must be done "without additional compensation" to that provided for the Constitution, and that in *other* cases the Legislature is free to provide additional compensation. When this section was adopted by the Convention, the situation was that the Convention was considering the propriety of abolishing the office altogether, that it was finally deemed best to retain the office, for the benefit of the western section of the State; that the Convention then sought to find some new duties to give to the office, because there was then very little that the Commissioner did; that it was with this end in view that the duties prescribed by Section 5 were assigned to the office; and that the design was Mr. Bernard Carter said

in debate) was not to increase the Commissioner's salary, but simply to give him something more to do.

Proceedings, pages 130, 186-7, 566-7.

Files of Baltimore Sun, July 31, 1867, and August 7, 1867.

Therefore, both the Constitutions of 1864 and of 1867 were clearly required the Commissioner of the Land Office to pay to the State all of the fees of his office. From the report of the Commissioner, submitted to the Convention of 1867 (Proceedings, pages 12, 76-77), it appears that during the years 1866 and 1867 the Commissioner did in fact pay over all of his fees to the State, and received no more than the salary provided for him.

Notwithstanding this, the Legislature of 1874, by the Act of 1874, Chap. 66, making the Commissioner the custodian of certain deed books, provided that for making copies or extracts therefrom he should "receive *and retain*" certain fees.

The provisions of the Acts of 1853 and 1854 above referred to (Code 1860, Art. 54, Sections 4 and 8, Art. 52, Sec. 8) and of this Act of 1874, all authorizing the Commissioner to retain fees, were codified as Sections 6, 9, 11 and 15 of Article 54 of the Code of 1888.

Section 11 of this Code, which was the Act of 1853, Chap. 415, and which, as already shown, authorized the Commissioner to deduct, as his own compensation, twenty five per cent. of all moneys received on account of the public lands, the balance to be paid to the State, was amended by the Act of 1894, Chap. 191, so as to require the Commissioner to pay over all such moneys to the State. The Act of 1896, Chap. 318, now in force, purported to restore the Commissioner's right to twenty five per cent. of these moneys as well as of "all fees," by requiring the Commissioner to pay all such moneys received by him to the Treasurer, "and twenty five per cent. of such moneys so received, the Treasurer shall pay over on warrant of the Comptroller, semi-annually, to the Commissioner of the Land Office

Sections 6, 9, 11 and 13 of Art. 54 of the Code of 1888 (Section 11 being as thus amended by the Act of 1900, Chap. 318), are now codified as Sections 8, 11, 13 and 15 of Art. 54 of Bagby's Code.

It thus appears that notwithstanding the clear provisions of the Constitution that the Commissioner of the Land Office shall receive a salary, and shall account to the State for all the fees of his office, and notwithstanding the clear understanding and intent that the salary was to be a substitute for the fees, the Legislature has expressly authorized the Commissioner to retain part of his fees. Indeed, ever since 1900 the Treasurer has been *directed* by statute to pay over to the Commissioner twenty-five per cent. of the fees received by him; and I understand that for years the Commissioners have been receiving and retaining part of their office fees, as the statutes of the State have expressly authorized them to do, in addition to their salary.

There has been nothing secret or concealed with respect to this. The facts have necessarily been known for years to every Comptroller and to every Treasurer of the State, because for all such payments, since 1900 at least, the Comptroller has drawn his warrant and the Treasurer has signed the draft. The facts must also necessarily have been known to every individual who cared to familiarize himself with the public statutes of the State on the subject.

There are numerous authorities to the effect that a long continued and undisputed exercise of legislative power is strong evidence of the existence of that power.

Jones vs. Bradford, 1 Md. 301, 309.
State vs. Maxlow, 2 Gill, 187, 197.
Baltimore vs. State, 15 Md. 376, 455, 476.
Cathedral vs. Manning, 72 Md. 130.
Lewin vs. Howes, 118 Md. 641.

This principle, however, cannot apply where the Constitution contains a clear prohibition against the right of the Legislature to exercise the power. If the Constitution expressly provides

that a thing shall not be done, then the Legislature cannot legally do it, and if nevertheless the Legislature does it, the legislation is simply invalid, and no amount of acquiescence can make it valid.

In the present case, the Constitution, after putting the Commissioner of the Land Office upon a salary basis, is clear and explicit in requiring him to account for to the Comptroller and to pay over to the Treasurer "all the fees of his office, both as Commissioner of the Land Office and as Keeper of the Chancery Records." It is clear from the Debates that the Constitutional Conventions in fact intended what they thus clearly expressed, both in 1864 and 1867, namely, that the salary provided for the Commissioner should be in lieu of the other fees which he had theretofore received, and that no part of the fees should be retained or received by him as compensation for his duties.

Under these circumstances, I see no escape from the conclusion that the statutes which purport to authorize the Commissioner to retain or receive part of his office fees in addition to his salary are unconstitutional and void.

I, therefore, advise the Legislature [illegible] My opinion, the Commissioner of the Land Office cannot lawfully receive or retain as his own any part of the fees of his office that he is required to account for to the Comptroller and to pay over to the Treasurer, and that any part of the same can lawfully be paid to the Commissioner as compensation for the duties of his office.

Very truly yours,

[illegible]

LAND OFFICE—PROVINCIAL STATUTES, DELIVERY OF TO MARYLAND HISTORICAL SOCIETY.

Hon. James S. Shepherd, *May 1, 1917.*

Commissioner of the Land Office,

Annapolis, Maryland.

DEAR MR. SHEPHERD: I beg to reply to your favor of April 23rd, in which you ask whether you are authorized to deliver the Liber containing the Statutes passed by the Province of Maryland from 1731 to 1752 to the Maryland Historical Society.

The Act of 1882, Chap. 138, authorizes and directs the Commissioner of the Land Office to deliver to the Maryland Historical Society, "all the records, archives and ancient documents of the province and State of Maryland of any date prior to the acknowledgment of the independence of the United States by Great Britain."

This Act was confirmed by the Act of 1906, Chap. 356, the Act of 1908, Chap. 31, page 170, and the Act of 1910, Chapter 39, page 130. These Acts provide that the Archives of Maryland published by the Maryland Historical Society shall be the property of the State, with certain exceptions, and that published copies are to be deposited in the State Library, the Court of Appeals, the Land Office, and other named places. The appropriation Act of 1916, Chap. 223, page 159, contains similar provisions.

I think that the Liber containing the Statutes of the Province of Maryland passed from 1731 to 1752 are included within the terms "records, archives and ancient documents," as used in the above Acts, and that you are authorized to deliver the same to the Maryland Historical Society.

I think it advisable that the receipt which the Society gives you for these records should state that the same are received and are to be owned, kept, arranged, catalogued and accessible and the published copies are to be delivered in accordance with Act 1882, Chap. 138; Act 1910, Chap. 39, page 130, and Act 1916, Chap. 223, page 159."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES.

(Excluding opinions on Conservation, Motor Vehicles and Insurance Licenses, which will be found under those respective headings.)

LICENSES—CIRCUS LICENSE REQUIRED IN EACH COUNTY.

November 10, 1917.

J. Clayton Kelly, Esq.,
Salisbury, Maryland.

DEAR MR. KELLY:—Replying to your letter of November 7th, I beg to say that in my opinion the circus license required by Section 169 of Article 56 of Bagby's Code, as amended by the Act of 1916, Chap. 703, Sec. 169, must be taken out in each county in which a performance is held. One license will not cover the whole State. Separate licenses are required in every county in which the circus exhibits.

Very truly yours,

ALBERT C. RIGGIN, Attorney General.

LICENSES—PROMOTERS, CONTRACTORS.

Legislative Department,
Annapolis, Maryland,
January 9, 1918.

Hon. Bernard L. [illegible],
Clerk Court of Common Pleas,
Baltimore, Maryland.

DEAR MR. [illegible]:—I have your letter of April 9th, enclosing letter from the Interstate Construction Company, Detroit, in which that company asks whether it is required to have a license to make the laws of Maryland.

I understand from the company's letter that it contemplates to supply labor to erect steel cash. The company has no property, plant, materials or machinery, but simply collects and accepts orders for furnishing labor for erecting steel cash.

Section 184 of the Acts of 1916, Chapter 704, imposes a tax on construction companies, and provides that any corporation which accepts orders or contracts for doing any work on or in any building or structure, requiring the use, among other things, of structural iron or steel, sheet iron, galvanized iron, or any other building material, shall be deemed to be a construction company, and is required to secure a license for operating or doing business in this State, either directly or by agents or by sub-letting contracts.

It seems to me that the business carried on by the Fenestra Company falls within this definition. For foreign construction companies which maintain their chief office outside of this State, the annual license fee is $50.00 if they operate in Baltimore City, and a like amount of $50.00 for each county of this State in which such foreign corporations operate, but the law does not apply to corporations doing a construction business, the gross amount of whose orders accepted and executed does not exceed $5,000 per annum. It seems to me that the Fenestra Construction Company is engaged in the business of construction within the meaning of this law, and that it is required to take out a license and pay the license fee required of foreign corporations when they operate or do business in this State, unless the gross amount of the Fenestra Construction Company's business in this State does not exceed $5,000 per annum.

I return the company's letter herewith.

Very truly yours,

ARMAND C. KRUGER, Director of Accounts.

Fenestra Construction Company,

Jones Falls Building,

Baltimore, Maryland.

Attn: Government Exp.

Secretary State Tax Commission,

Jones Falls Building,

Baltimore, Maryland.

DEAR SIR: Sometime ago you referred to me the question of whether or not the General Electric Company was subject to

the license tax provided for construction companies by Section 184 of the Acts of 1916, Chapter 704. This section applies to concerns which accept orders or contracts for doing work of the character mentioned in the section.

The General Electric Company contends that they do not accept contracts to do work of the kind in question, but only sell materials. If this is so, then I do not think that the company is subject to this license fee. I understand, however, from Mr. Kilmer's letter of April 6th to you that the General Electric Company does accept work for installing motors and doing electrical wiring in buildings. If this is correct, then I think the company is subject to the tax. The question, therefore, is simply one of fact as to whether the company does or does not accept contracts for doing the work in question. If it does, it is subject to the license fee. I presume that Mr. Kilmer can readily ascertain what the facts are as to this.

Very truly yours,

Thomas G. Rich, Attorney General.

Licenses—Dealers in Wooden Ware—May Sell Goods Made in Western Union Licenses.

May 21, 1917.

Edward E. Brown & Company,
126 East Lombard Street,
Baltimore, Maryland.

Gentlemen:—I beg to reply to your favor of May 3rd, in which you ask whether wholesale druggists in Baltimore City are required to take out a wholesale druggists' liquor license if they sell grain alcohol for medicinal purposes.

I apologize for not having answered your letter before, but the question you ask is really a quite difficult one, and I have been so much engaged with work for the coming extra session of the Legislature, that I have only been able within the last few days to give it the consideration it required.

Section 688 of the Baltimore City Charter requires wholesale druggists to secure a license to sell "wines, spirituous or fermented liquors" under the same conditions as those specified for distillers, brewers and wholesale dealers or jobbers.

The difficulty is in determining whether grain alcohol is spirituous or fermented liquor, within the meaning of this law.

Grain alcohol is, of course, obtained by fermentation, so that it is a fermented liquor, and it is also a spirituous liquor, because that term is generally understood to include liquors containing a percentage of alcohol. The question, however, whether grain alcohol is the kind of spirituous or fermented liquor to which liquor license laws apply, or whether such laws only apply to such spirituous or fermented liquors as are used or intended to be used as beverages, is a question upon which the courts of other states take different views, and which has not been decided in Maryland.

It seems to be recognized, however, by the courts of other States, as common knowledge, that grain alcohol is not used as a beverage, and after a careful consideration of our liquor license laws, and of the evident non-application of these laws to certain mixtures, which the legislature, for example, contain a high degree of alcohol, I have reached the conclusion that a wholesale druggist in Baltimore City is not required to take out a wholesale druggists' liquor license in order to sell grain alcohol for medicinal purposes.

I am advising the Clerk of the Court of Common Pleas to this effect, and as a result he will not require a license in the case you submit. You will understand, however, that in this State the Attorney General does not control prosecutions, and the question is sufficiently close to make it uncertain which view the Court would adopt, should the Court be called upon to decide.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—FUR, HIDES AND LIVE CATTLE, SALE OF.

November 5, 1917.

Edwin H. Brown, Jr., Esq.,
State's Attorney,
Centreville, Maryland.

DEAR MR. BROWN: I have your favor of January 31st.

It seems to me that persons who purchase furs and hides in your county and then ship them for sale elsewhere *within this State*, are required to be licensed under Bagby's Code, Art. 56, Sec. 38. The law does not appear to require a license if the sales are made without this State.

It does not seem to me that Section 38 covers the second case you mention, that of the sale of live cattle. I hardly think that they would be classed as "goods, chattels, wares or merchandise" within the meaning of this section. Nor do I find any other provision of law requiring a license for such sales. I am advised by Mr. Samuel M. Shoemaker, President of the State Board of Agriculture, and himself a large dealer in cattle, that cattle dealers have never been asked to take out a license. I do not think they have to do so, unless you have some local law on the subject.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—GARAGE.

June 5, 1917.

J. Clayton Kelly, Esq.,
Clerk Circuit Court,
Salisbury, Maryland.

DEAR MR. KELLY: I beg to reply to your favor of May 25th.

The license fee imposed by Section 166 of the Acts of 1916, Chap. 704, is, I think, a charge exacted for the privilege of keeping a garage for the hire, storage or sale of automobiles,

and is in addition to the traders' license required for selling stock in trade which is in the garage.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—HAT CLEANING ESTABLISHMENT—SHOE SHINING PARLOR.

April 23, 1917.

William L. Seabrook, Esq.,
State's Attorney,
Westminster, Maryland.

DEAR MR. SEABROOK:—I have your favor of April 18th. It is a pleasure to give you my views upon the inquiries you make relative to the application of Section 181 of the Act of 1916, Chap. 704.

I think that a shoe shining parlor, containing more than two chairs, but with no hat cleaning establishment attached, must have a license under this section, and that a hat cleaning establishment, with no shoe shining parlor attached, or with only a one or two chair shoe shining parlor attached, must likewise have a license under this section, but that one license is sufficient to cover both a shoe shining parlor with more than two chairs, and a hat cleaning establishment, two licenses not being required if both of these occupations are to be pursued.

Also, the obligation to take out the license for a shoe shining parlor, with no hat cleaning establishment attached, does not depend upon the number of operatives, but depends, as the act expressly provides, solely upon the number of chairs, and in determining the number of chairs, I think that each part of that seat should be regarded as one chair, so that if such a parlor contains two three seat and five single seats, it must be licensed, without any regard to the number of operatives.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—HUNTERS' IN GARRETT COUNTY.

November 9, 1927.

E. Lee Lecompte, Esq.,
State Game Warden,
311 Munsey Building,
Baltimore.

DEAR MR. LECOMPTE:—I received your favor of November 6th, enclosing letter from Justice Hamill of Oakland, in which he asks the amount chargeable for non-resident hunters' licenses in Garrett County.

These licenses are provided for in the Act of 1912, Chap. 552, and in an opinion to Mr. Killam of August 29, 1916, Atty. Gen.'s Opinions, Vol. 1, page 11[illegible], I explained certain provisions of this law.

Section 1 of the Act expressly states that the non-resident hunter's license may be obtained from any Justice upon payment of a fee of $10. I do not understand from the inquiry above that a license is to be charged for the purpose, exclusive of the provision of Art. 56, Sec. 1, Code of Public General Laws, of Clerks of Court that a charge fee of $50 is to be for great game licenses. This however, does not affect the licenses granted by Justices of the Peace under the Act of 1912, Chap. 552.

Mr. Hamill also asks for a ruling as to about the fees charged, to be paid by the Justices. Section 1 of the Act provides the Justices may be entitled out of each license fee for their services, and it is, that the balance that is received, shall be paid over to the Board of Game Protection for the use of the Commission.

I return you Mr. Hamill's letter, and also my copy of my opinion, in case you wish to write to Mr. Hamill.

Very truly yours,

ALBERT S. RIDDLE, Attorney General.

Licenses—Horse Drivers.

August 6, 1912.

Joseph Lowry, Esqr.
[illegible] E. Broughton Street
Redfern, Waughood.

Dear Sir, I received your letter of July 22nd, in which you ask whether a peddler who uses a horse and wagon or a pedlar in buying junk, must take out a junk dealer's license under the Act of 1909, 9 Eds. 7 c. 24, Sec. 172, which provides that every person "dealing in junk" shall take out a license "for each place of business."

In a previous letter mention of persons dealing in junk and the rags appears. Figure to be purchased. It makes no difference whether he carries a business name, whether a wagon or a push cart. The Court of Appeal has decided that a wagon may be a place of business.

[illegible] Yours truly,

[illegible] *Attorney-General.*

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Mr. [illegible] I beg to remind Mr. [illegible] of the fact that the law provides a resident wholesale liquor dealer's license for Prince George's County, which will authorize the sale of liquor in quantities over a pint.

I send [illegible] a resident wholesale liquor license in Prince George's County, either in the local or in the general form. The rate is controlled by Regulation Code, Art. 56, Sec. 60, which provides for licenses to sell liquor "in quantities

not less than a pint." This license authorizes the sale of liquor in any quantity in excess of a pint.

State vs. Cahen, 35 Md. 226.

The cost of this license is based upon the amount of [illegible] in trade, Bagby's Code, Art. 56, Secs. 61-71, plus any additional license fee that may be required by the Act of 1916, Chap. 554.

Very truly yours,

Attorney General [illegible]

Licenses, Liquor License Fees, Increase of Business, Business Volume.

March 29, 1917.

George Hartman, Esq.

State's Attorney,

Frederick, Maryland.

Dear Mr. H[illegible]: I have to reply to your letter of March 16th, in which you ask an opinion as to whether the Monumental Brewing Company must pay the $500 additional license fee imposed by the Act of 1916, Chap. 554, the amount of which is prescribed by the Code of Maryland, Art. 56, Secs. 61-71, Bagby's Code.

The Monumental Brewing Company is a Maryland corporation, [illegible] the brewing of beer, [illegible] the business of a brewer, [illegible] the business of a wholesale liquor dealer, [illegible] The company does not own any place of business, nor does it sell any beer at retail, but it sells beer at wholesale only to retail licensees, and the wholesale sales are made from the place of manufacture, the brewery itself. [illegible] that such bottling as the company does is contained in the product.

The fees provided for the Act of 1916, Chap. 554 [illegible] based upon sales by a restaurant, wholesale liquor dealer, or

jobbers, bottlers and hotels, and are in addition to the license fees already provided by law for these occupations. In my opinion, the Monumental Brewing Company does not fall within any of them.

The brewery, of course, is not a saloon or restaurant. Nor is it a wholesale liquor dealer or jobber. The law is well settled that a brewery which manufactures to sell, and only sells its own product from its own factory, and not from any warehouse or other distributing point apart from its factory is not a dealer.

People vs. Voorhis, 151 Mich. 328.
People vs. DeGroot, 144 Mich. 245.
Lachat vs. Vincent, 80 Iowa, 285.

Moreover, the Baltimore County liquor law distinguishes between retail and wholesale licenses to sell and brewers' licenses, and clearly classifies brewers separately from those who sell at retail or wholesale.

Act 1916, Chap. 31, Sects. 5, 8, 11, 12, 20A, 20B, 20D, 20E, 21A.

Finally, the company pays no bottlers' license fee. I am inclined to think that a company which only bottles its own product should not, under the scheme of licensing which prevails in this State, be classed as a bottler, even where bottlers' licenses are required; but in any event an act which only provides for an increase in existing license rates cannot apply to a case in which there is no existing license at all.

For these reasons I do not think that the Monumental Brewing Company is required to pay additional license fees under the Act of 1916, Chap. 31.

I may add that this conclusion is in line with a decision rendered on February 27, 1917, by the Criminal Court of Baltimore, under the Baltimore City liquor laws, in the case of the G. L. S. Brewing Company.

license fee, I will be glad to do so, if you will refer me to whatever local law covers such fee as it existed before the Act of 1916 was passed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—DISPOSITION OF INCREASE IN HARFORD COUNTY.

July 24, 1917.

Hon. Hugh L. McMullen,

State Comptroller,

Annapolis, Maryland.

DEAR MR. MCMULLEN:—I beg to reply to your favor of June 23rd, asking whether certain liquor license fees collected by the Clerk of the Circuit Court for Harford County, and amounting for the last quarter to $[illegible], belong to the State.

These fees were collected under the Act of 1916, Chap. 404, which increased the license fees for the sale of liquor in the counties, cities, towns and villages of the State. They were collected in the town of Havre de Grace, and the license fees which they increased are provided for by the Act of 1916, Chapter 159.

While the title of the Act of 1916, Chapter 404, provides that the additional fees are to be paid "to the Treasurer of the State, for the general purposes of the State," Section 20 of the Act provides that the additional fees shall be imposed in addition to other license fees now provided for, and for the issuance of licenses for the sale by retail or wholesale, as the case may be, of distilled or spirituous, vinous or malt liquors or any mixture thereof."

In the case of Rocky v. State, 126 Md. 188, the Court of Appeals, on February 2, 1917, held that the Act of 1916, Chap. 404, was valid, and that the additional fees were to be

disposed of in the same manner as other income tax was disposed of in the several counties, towns and villages, at the time, if memory, the world upon the local laws.

The Act of 1910, chap. 199, which provides for the collection of license fees in Havre de Grace, provides in Section 3 that such fees are to be paid to the Clerk of the Council and that the said Clerk shall pay over the same to the Mayor and Council of Havre de Grace, within the [illegible] it has been received, [illegible] after the receipt of [illegible] tion whatever.

Under the Act of 1916, chap. [illegible], the collection is to be disposed of in the same way.

It follows that the additional tax of [illegible] to the State, but belongs to the Mayor and Council of Havre de Grace.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

Honorable Mayor and Council of Havre de Grace,
Havre de Grace, Maryland.

Gentlemen:—I acknowledge receipt of your letter of April [illegible]

Your Mayor has sent me a copy of the notice required by Section [illegible] of the Baltimore City Charter, which has been sent to the [illegible] taxpayers of your town requiring the license required by the Act of 1916, chap. 199, for certain subjects, among other things, [illegible] electric wiring. The former license is required for the privilege of engaging in the business of Master Electrician or [illegible]. The latter is required for the actual operation of the electric wiring business.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

LICENSES—MILLINERS—TAILORS.

April 27, 1917.

J. Clayton Kelly, Esq.,
Clerk, Circuit Court,
Salisbury, Maryland.

DEAR MR. KELLY: I beg to reply to your favor of April 25th.

In my opinion a milliner must take out a traders' license under Bagby's Code, Art. 56, Sec. 54. A milliner is not a manufacturer, and the obligation of a milliner to take out a license is shown by Section 54 of the Act of 1916, Chap. 632, relating to female milliners.

A tailor whose sole business is to make suits or clothes from goods which his customer selects from his line of stock, is, in my opinion, a manufacturer, and as such is relieved by Bagby's Code, Art. 56, Sec. 58 from the necessity of taking out a traders' license.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATRES.

New Empire Theatre Co., Inc.
Frederick, Maryland.

Maryland.

GENTLEMEN: I beg to reply to your favor of May 22nd. Under the Act of 1916, Chap. 761, Sec. 165, the license required for moving picture theatres depends upon the charged admission, whether the seats are reserved or not, and upon the seating capacity. A license based upon a free admission does not authorize the charge of a ten cent admission for any performance. Such license authorizes free exhibitions but does not authorize ten cent shows. If your theatre charges ten cents for some of your shows, then you are required to take out a license based upon the ten cent admission charge.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

Licenses—Pharmacists—Corporation's Right [illegible] Pharmacy.

[illegible]

Carlos W. [illegible], Esq.,
State's Attorney,
Salisbury, Maryland.

Dear Mr. [illegible]:—I beg to reply to your [illegible]
2nd.

While the pharmacist's certificate required by [illegible]
Art. 43, Sections 178-[illegible] cannot [illegible]
(Sheldon vs. [illegible], [illegible] Md. [illegible]), yet I think [illegible]
doubt that a corporation may, with [illegible], [illegible]
persons [illegible] charge [illegible]
pharmacist certificates.

Very truly yours,

A[illegible] C. R[illegible]

Licenses—P[illegible]—[illegible] P[illegible]
S[illegible] [illegible] L[illegible]

[illegible]

[illegible], Esq.,
Pres. State Board of Plumbing Commissioners,
B[illegible] Building, B[illegible],
Baltimore, Maryland.

Dear Mr. [illegible]:—I beg to reply to the [illegible]
[illegible] October 29th, November [illegible]

1. You ask whether [illegible]
plumbing [illegible] a person not qualified under the [illegible]
his store with plumbing goods, advertise himself [illegible]
in the plumbing business, etc. The answer may depend some-
what upon whether the accused is an employer only [illegible]
man.

With respect to employers: Sec. 225 of Art. 23 of the
Code makes guilty of a misdemeanor and imposes a fine [illegible]
employers, whether engaged in the plumbing business [illegible]

who employ persons, not qualified under the Act, to work "at the plumbing business" or to "do plumbing work," provided that employers not engaged in the plumbing business must have knowledge that such person is not so qualified; and the fine is imposed for every day or part of a day that "such employer shall so employ such workman."

The only thing necessary, under this Act, to subject employers to the specified fine, is the *employment* by them of non-qualified persons *to do plumbing work*. Whether any particular employer has thus been employed *to do plumbing work* or not, is, of course, a question of fact. It is not necessary, in order to hold the employer guilty, to show that the employee *actually did plumbing work*. It is sufficient to show that he was employed *for that purpose*. This, however, would not necessarily follow from the fact that the employer himself was engaged in the plumbing business, because the employer might be engaged in a clerical capacity. Whether the employee was engaged to do plumbing work or not, can only be ascertained by examining the employer, the employee and any other witnesses, as to what the purpose of the employment was.

With reference to those who actually do the work, as distinguished from employers only, Section 224 makes guilty of a misdemeanor and subjects to a fine any person not qualified under the Act who "shall work at the plumbing business," and the fine is imposed for every day or part of a day "that such workman shall work at the plumbing business." This statute, being a criminal statute, will be strictly construed, and an unqualified person cannot be convicted under it unless it is shown that he has *worked at the plumbing business*. This, likewise, is a question of fact, to be determined from the evidence. If it be shown, among other things, that the accused has stocked his store with plumbing goods and advertises himself as engaged in the work of a plumber, this might be entirely sufficient to justify the magistrate in finding that the accused had done plumbing work. But a fixed rule cannot be laid down upon the question, because guilt consists of the *doing of plumbing work*

without a certificate, and whether the evidence shows this or not necessarily depends upon the facts testified to in each case.

2. You also ask whether it is the obligation of the local police, police magistrates and State's Attorneys to assist your Board in enforcing the law. In reply, I beg to say that it certainly is their duty to do this.

3. So far as my own Department is concerned, I regret very much to say that I cannot assist in local prosecutions. The Maryland law entrusts this work entirely to the local State's Attorneys, and does not contemplate that any of it shall be done by the Attorney General, so that it is not only not within my province to assist in local prosecutions, but my Department has not the facilities for doing so.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—REAL ESTATE BROKERS.

July 27, 1917.

Clarence K. Bowie, Esq.,
1003 American Building,
Baltimore, Maryland.

DEAR MR. BOWIE: I beg to reply to your favor of July 17th.

I understand that the Baltimore and Sparrows Point Realty Company has employed an agent in Allegany County to sell in that county lots of ground from a tract of land owned by the company in Baltimore County. The agent will be paid a commission on his sales, but has no power to close contracts, the same being subject to acceptance by the home office, and the agent will maintain no office.

In my opinion this agent will be "carrying on the business of real estate broker," and as such should be licensed under Section 12 of Article 56 of Bagby's Code. I do not think that it is necessary for him to maintain an office in order to carry on business as a real estate broker, and, of course, a real estate

broker need not be authorized to close contracts. The business of this agent will be to act as broker, on a commission, in selling lots for his principal, and this I think brings him within Section 12.

I return you the letter from Mr. Shaffer, and am sending him a copy of this letter to you.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STAGE PLAYERS, CIRCUS, ETC.

September 18, 1917.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR SIR: Confirming my telegram of yesterday, in answer to your letter of September 15th, I beg to advise you that if the company which is to exhibit in your county contains, among its attractions, (a) stage players, ventriloquists, sleight-of-hand performers, rope dancers, tumblers and wire dancers, and (b) circus riders or equestrian performers, and (c) an exhibition of animals, such company should pay the license fees provided for by Sections 108, 109 and 110 of Chapter 704 of the Acts of 1916.

As Section 108 provides a fee of $2.00 for each performance, Section 109 a flat charge of $50.00 for one year, and Section 110 a flat charge of $25.00 for one year, the total for the first performance would be $77.00. Additional performances would cost $2.00 each, under Section 108.

I do not think that the company can escape the fees provided by Sections 108 and 109 by claiming that patrons are only charged for one class of exhibition and that the other classes, as described in those Sections, are exhibited free.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—STATIONARY ENGINEERS, WHETHER CERTIFICATES COVER WORK ON HOISTING OR PORTABLE MACHINERY.

March 26, 1917.

Joseph P. Burnett, Esq.,
State Board of Examining Engineers,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I have carefully considered your Board's inquiry relative to certificates for stationary engineers and portable or hoisting engineers, under Sections 426 to 430 of the Baltimore City Charter.

The State Board of Examining Engineers was created by the Act of 1892, Chapter 448, and was given jurisdiction over all stationary engineers in Baltimore City. Such engineers were required to submit to an examination and to secure from the Board a certificate of proficiency, for which the fee was $3.00, and $1.50 for each renewal.

The Act further provided that the certificate should be of three grades. A certificate of the first grade permitted the holder "to take charge of any plant of machinery, the second grade to take charge of any plant of machinery from one to 500 horse power, and the third grade to take charge of any plant of machinery from one to 30 horse power."

The Act of 1910, Chap. 622, page 615, amended the law so as to bring hoisting or portable plants within its provisions. This was done by providing that the certificate should be of four grades, the first three being the same as they were under the Act of 1892, and the fourth grade permitting the holder "to take charge of any hoisting or portable plant of machinery."

It is this Act of 1910 which has given rise to your present inquiry. The situation, as I understand it, is that stationary engineers and portable or hoisting engineers perform two distinct classes of engineering work, so that while a stationary engineer holding a first grade certificate would be qualified to take charge of a plant covered by the second and third grades,

yet he might not be at all qualified to operate hoisting or portable machinery. For this reason you ask whether a stationary engineer holding a first grade certificate, which under the law entitles him to operate "*any* plant of machinery," should be permitted to do the work covered by a fourth grade certificate, that is, take charge of a hoisting or portable plant of machinery, for which he might not be qualified.

I understand that you do not consider it practicable to require the holder of a first grade certificate to be proficient not only in stationary engineering but in portable or hoisting engineering also, because this would compel a person engaged in one recognized branch of engineering to learn another and distinct branch.

The situation is peculiar, and must, I think, be met in a practical way. Under all the circumstances, I do not think that you can do better than continue your present practice of issuing two forms of certificates, one covering stationary machinery, grades one, two and three, and the other covering hoisting or portable machinery, grade four; the holder of a stationary engineer's certificate (whether grade one, two or three), not to be permitted to operate hoisting or portable machinery until he first obtained an additional certificate (grade four), authorizing it, for which he should pay an additional fee.

I think that you are justified in requiring these two certificates, because the two lines of work are distinct, and separate examinations are necessary for each of them; and the Legislature could not have intended that the holder of a certificate under grades one, two or three, who had proved himself to be proficient in stationary engineering only, should be allowed to operate hoisting or portable machinery, without proving himself proficient in that line of work also. To permit this would be to endanger life and property, and the object of this legislation, as shown by the preamble to the Act of 1892, was to protect life and property.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS'—BASED ON STOCK KEPT FOR SALE.

May 3, 1917.

J. Clayton Kelly, Esq.,
Clerk, Circuit Court,
Salisbury, Maryland.

DEAR MR. KELLY: I beg to reply to your favor of April 30th, in which you ask whether the trader's license fee to be paid by the Salisbury Light Heat and Power Company should be based only upon the amount of the electrical appliances and supplies which the company has for sale, or upon the total amount of supplies which the company carries, including not only such as are kept for sale, but also such as are not kept for sale, but are kept simply for use in the upkeep of the company's lines and in its contract work.

The license fee should be based upon the amount of stock kept for sale only.

Bagby's Code, Art. 56, Sects. 38, 40.
Act 1916, Chap. 632, Sec. 40.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS'—BASED UPON AVERAGE AMOUNT OF STOCK FOR SALE.

May 7, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of May 4th, in which you ask the basis upon which the trader's license fee should be computed in the case of a merchant whose stock amounts to $80,000 when invoiced, and $115,000 to $120,000 at other times, and of these amounts $20,000 represents stock which is not placed on sale but is stored and drawn on from time to time to replenish the balance of the stock which is placed on sale.

The license fee is based upon the average amount of stock which is sold or offered for sale (Bagby's Code, Art. 56, Sects. 38, 40, etc., Act 1916, Chap. 632), but in the case you mention I think that all of the stock, including the portion from which stock sold is replenished, should be regarded as subject to sale.

The license fee should, therefore, be based upon whatever the average amount of the merchant's total stock may be. In your letter to me you state the amount at invoice time, and the highest amount at any other time, but you do not state the average amount. The average amount will be the basis.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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LICENSES—TRADERS'—MAY BE TAKEN OUT AFTER MAY 1ST.

July 5, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of June 21st, enclosing copy of a letter from the Clerk of the Circuit Court for Cecil County, and asking whether traders who neglected to take out their licenses before May 1st, may take them out thereafter.

Under the Act of 1916, Chap. 632, Sec. 1, a trader, already in business, who neglects to take out his license before May 1st may take out the same thereafter, but the license must be dated May 1st, and must, of course, be paid for on the basis of the whole year. Such trader will also be subject to the penalty prescribed by Section 6 of the Act of 1916, Chapter 632.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADING STAMPS—MANUFACTURERS.

August 15, 1917.

Charles A. Oberwager, Esq.,
233 Broadway,
New York City, N. Y.

DEAR SIR: I beg to reply to your favor of August 10th, in which you ask whether a New York manufacturer who sells his goods in Maryland, and in connection with such sales furnishes premium coupons, redeemable in merchandise, is subject to the payment of any tax under the Maryland law.

The Act of 1916, Chap. 704, Sec. 173, provides that every manufacturer carrying on business in this State, who furnishes, sells or delivers any stamps or coupons redeemable in merchandise in connection with the sale in this State of his own manufactured or processed product, must take out an annual license, and pay therefor an annual license fee of Fifty dollars.

The manufacturer you have in mind appears to come within this law.

If the manufacturer operates in Baltimore City, the license should be taken out at the office of the Clerk of the Court of Common Pleas. In the County the Clerk of the Circuit Court of the County is the official who issues the license.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

LICENSES—WHEAT, HAY AND GRAIN, SALE OF.

April 27, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of April 21st, in which you ask whether agents of persons non-resident of this State can sell wheat, hay or grain in this State without a license.

I think that wheat, hay and grain sold under such circumstances constitute goods, chattels, wares or merchandise, and Bagby's Code, Art. 56, Sec. 38, requires every person, "other than the grower, maker or manufacturer," who sells or offers for sale goods, chattels, wares or merchandise, within this State, to take out a traders' license.

In my opinion, therefore, if the vendors of the wheat, hay and grain are the growers or the representatives of the growers thereof, no state license is required. If they are not the growers, then they should take out a traders' license, in the manner specified in Sections 40 and 53 of the Act of 1916, Chap. 632.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MILITARY.

MILITARY—FEDERAL DRAFT—POLICE MAGISTRATES ARE EXEMPT FROM.

September 13, 1917.

Gen. Henry M. Warfield,
Adjutant General,
404 Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD: I beg to give you the reasons for the opinion I expressed to you the other day that in Maryland police magistrates should be regarded as exempt from the Federal draft.

The Act of Congress providing for the draft provides, in Section 4, that "the officers, legislative, executive and judicial of the United States and of the several states, territories and the District of Columbia * * * shall be exempt from the selective draft herein prescribed."

The rules and regulations prescribed for the draft, in Sec. 18, referring to the above officers, provide that "the word officers shall be construed for the purpose of said Act of Congress and these rules and regulations to mean any person holding a legislative, executive or judicial office created by the Constitution or laws of the United States or of any of the several states or territories."

The only question, therefore, is whether a police magistrate in this State is a judicial officer of the State holding an office created by the Constitution or laws of the State. I think there is no doubt that a police magistrate is such an officer.

Police Magistrates in Maryland are Justices of the Peace, upon whom criminal jurisdiction has been conferred by statute.

The office of Justice of the Peace is provided for by Section 42 of the Constitution of Maryland, under which the Governor,

with the consent of the Senate, makes the appointments, and by which the Justices are given such jurisdiction and duties as may be prescribed by law.

Numerous statutes have prescribed their duties, and have conferred criminal jurisdiction upon such of them as may be designated by the Governor as police magistrates. These police magistrates are as much a part of the judiciary of the State as are the courts themselves.

The Court of Appeals of Maryland, in McBee vs. Fulton, 47 Md. 403, 425, said:

> "By our Constitution Justices of the Peace are made part of the judiciary in whom the judicial power of the State is vested. The most useful and important part of their duties is to investigate charges for indictable offenses, and when so acting they are unquestionably judicial officers discharging judicial functions."

And again in the case of Crichton vs. State, 115 Md. 423, 434, the Court said:

> "Justices of the Peace are by our Constitution made part of the judiciary in whom the judicial power of the State is vested."

The Court of Appeals, therefore, has twice decided that Justices of the Peace, acting as police magistrates, are judicial officers of the State, and they are, of course, created by the Constitution of the State.

In my judgment, therefore, police magistrates in this State are entitled to exemption from the draft.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MILITARY—FEDERAL DRAFT—POLICE MAGISTRATES ARE EXEMPT FROM.

September 25, 1917.

Gen. Henry M. Warfield,
Adjutant General,
404 Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD: I received your favor of September 21st, enclosing correspondence between yourself and the Provost Marshal General with reference to the exemption of Police Magistrates from the Federal draft.

The Provost Marshal holds that Police Magistrates are not exempt, because, under the rulings of the Provost Marshal, the State officers who are entitled to exemption from the Federal draft, only include:

1. Supreme judicial officers.

2. Holders of offices filled by popular election for the entire State.

3. Holders of offices filled by appointment for the entire State and having no intermediate superior between them and the appointing power.

(See Rulings of P. M. G., Bulletin, No. 1, Sec. 2s and Sec. 7.)

Police Magistrates are, of course, not included within any of these classes.

As I wrote you on September 13, Police Magistrates in Maryland are judicial officers of the State, just as much so as are the Judges of the Supreme Bench of Baltimore City and of the Circuit Courts of the Counties, and the Act of Congress of May 18, 1917, provides in Section 4 that the judicial officers of the State "*shall* be exempt from the selective draft herein prescribed." There is nothing in the rules prescribed by the President which limit the application of this section.

I do not find that the Act of Congress confers any authority upon the Provost Marshal to decide who are and who are not

State officers within the meaning of the Act of Congress. On the contrary, the Act provides that the Local Boards shall have power to hear and determine "all questions of exemption under this Act," except claims for industrial exemptions, subject to review by the District Boards, whose decisions shall be final, subject to review by the President, in accordance with such Rules as the President may prescribe therefor.

The Rules prescribed by the President provide, in Section 18-A, for hearings by the Local Boards upon claims filed by persons claiming to be exempt on the ground that they are State officers, and in Sections 38-43 these Rules provide for the review of the Local Boards' decisions in such cases by the District Boards, and that the decisions of the District Boards "shall be final." By Section 48 the District Boards are required to certify to the Adjutant General the names of all persons who have not been exempted.

I can only repeat the opinion I expressed to you in my letter of September 13th, that police magistrates in Maryland are exempt from the draft; with the further advice that whether this opinion is correct or not is for the Local Boards to decide, subject to review by the District Boards.

While the question is one for these Boards to decide, and while I, as a State and not a Federal officer, have no authority to advise them, yet you, as Adjutant General of the State, have the clear right to ask my opinion upon the matter; and I think that any Police Magistrate who applies for exemption on the ground that he is a State officer, should be advised that it is his clear right to have such claim passed upon by the Local Board and the District Board, these being the two tribunals provided by Congress for deciding the question.

I return you the enclosures you sent me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MILITARY—HOME GUARDS, STATE AID TO.

November 6, 1917.

Gen. Henry M. Warfield,
Adjutant General,
404 Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD: I beg to reply to your favor of November 3rd, in which you ask whether the Governor is authorized to render State aid, both in money and equipment, to home guards which are being organized in certain sections of the State.

I do not know of any fund which the Governor has for this purpose. The Executive Committee of the Maryland Council of Defense, however, has authority, in their discretion, and with the approval of the Governor, to apportion part of the proceeds of the one million dollar War Loan of 1917 to local home guards.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

MILITARY—MARYLAND NATIONAL GUARD, HONORARY MEMBERS OF, HAVE CEASED TO EXIST.

September 5, 1917.

Gen. Henry M. Warfield,
Adjutant General,
404 Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD: I beg to reply to your recent favor asking my opinion as to the present status of the honorary members of the Maryland National Guard.

The honorary members of the Maryland National Guard are provided for by the Act of 1916, Chap. 311, Sec. 87, page 663. This section provides that every "legally organized volunteer company of the militia" may have as many honorary members

"as it has active and uniformed members, and no more, on payment, in advance, by each person desiring to become such honorary-member, of not less than ten dollars per annum," and every such honorary member is entitled to receive "a certificate of honorary membership of the company."

The legally organized volunteer companies of the militia compose, of course, the Maryland National Guard (Sec. VII, page 628, Chap. 311, Acts 1916), so that the honorary members of the National Guard are dependent entirely for their existence upon the existence of the National Guard itself. They have no status at all independently of the National Guard. As the honorary membership is thus attached to each company of the National Guard, and as the number of honorary members each company may have is limited by the number of such company's active and uniformed members, it follows, of course, that if the National Guard goes out of existence, then the honorary membership in each company of the National Guard must go out of existence also.

The National Guard has been drafted into the military service of the United States under Section 2 of the Act of Congress of May 18, 1917, which authorizes the President to draft in accordance with the provisions of Section 111 of the National Defense Act of June 3, 1916. Section 111 of the latter act provides that "all persons so drafted shall, from the date of their draft, stand discharged from the militia, and shall from said date be subject to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Volunteer Army, and shall be embodied in organizations corresponding as far as practicable to those of the Regular Army, or shall be otherwise assigned as the President may direct."

The members of the National Guard so drafted are, therefore, "discharged from the militia," and since the National Guard composes one class of the militia (Act of Congress of June 3, 1916, Sects. 57 and 58; Act 1916, Chap. 311, Sec. VII, page 628), it follows that the members of the National

Guard, when drafted under section 111 of the National Defense Act, are thereupon discharged from the National Guard, with the result that until the National Guard is again recruited it no longer exists.

Therefore, since at present there is no Maryland National Guard, and since, as already shown, the honorary membership of the Maryland National Guard depends upon the existence of the National Guard, it follows that there are no longer any honorary members of the National Guard. They ceased to exist when the National Guard itself ceased to exist, and until the National Guard, or some of its units, are again recruited, honorary membership certificates cannot be issued.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MILITARY—MARYLAND STATE GUARD, HONORARY MEMBERS OF.

November 10, 1917.

Gen. Henry M. Warfield,
Adjutant General,
404 Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD: I beg to reply to your favors of November 3rd and 7th, asking my opinion whether the Maryland State Guard is authorized to have honorary members entitled to the same privileges to which honorary members of the National Guard are entitled, under the law, and subject to the same dues.

The Act of 1916, Chap. 311, provides, in Section 87, for honorary members of every "legally organized volunteer company of the militia," not exceeding in number the "active and uniformed members."

When this law was passed, the militia, by Section VII, was divided into two classes, the "organized and uniformed military forces of the State," known as the National Guard, and the

"unorganized militia," consisting of all those liable to services in the militia, but not serving in the National Guard.

The effect of the Act of 1917, Chap. 26, providing for the Maryland State Guard, was to create still another class of the militia, comprising "legally organized volunteer" companies, which were to be "active and uniformed," but were not to be part of the National Guard.

Section 87 of the Act of 1916, Chap. 311, does not limit the right to have honorary members to the "active and uniformed" companies of the *National Guard*, but gives this right to the "active and uniformed" members of "any legally organized volunteer company of the *militia*." Each volunteer company of the Maryland State Guard will be a "legally organized volunteer company of the militia," and its members will be "active and uniformed."

In my opinion, therefore, each *volunteer* company of the Maryland State Guard may have as many honorary members as it has active and uniformed members, and such honorary members will be entitled to the privileges, and be subject to the dues, provided by Section 87.

Whether *drafted* companies of the Maryland State Guard may have honorary members under Section 87, may admit of some doubt, but as I understand that the companies are all to be composed of volunteers, this question need not be decided.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES.

MOTOR VEHICLES—COLLISIONS—DUTY OF OPERATOR.

May 4, 1917.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR MR. KERBIN: I beg to reply to your favor of May 2nd.

Section 146 of Article 56 of Bagby's Code, to which you refer, was repealed and re-enacted by the Act of 1916, Chap. 687, Sec. 151.

Under that section, whenever a collision occurs between an automobile and a buggy, the operator of the automobile must immediately stop. He must, upon demand, give his name, residence and license number; and whether there is a demand or not, he must "render such assistance as may be reasonable and necessary, within his power." This latter obligation exists whether the operator is known to the driver of the buggy, or is a stranger to him.

Whether the operator does render "such assistance as may be reasonable and necessary, within his power," is, of course, a question of fact. The operator would not comply with this duty, if the driver of the buggy was injured and needed assistance, and the operator did not give it. If the injury was serious, then the operator was under the further obligation of reporting the accident within twenty-four hours to the Commissioner of Motor Vehicles.

The statute prescribes the penalties for violations of its provisions.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—DUPLICATE REGISTRATION CERTIFICATES.

June 2, 1917.

Dr. Jacob H. Hollander,
Johns Hopkins University,
Baltimore, Maryland.

DEAR DR. HOLLANDER: I have your favor of May 31st, in which you ask whether the Commissioner of Motor Vehicles is right in refusing to issue a duplicate certificate of registration for use upon the new car you have purchased to take the place of your other car which, with its registration certificate, was stolen.

The Motor Vehicle Law, Act 1916, Chap. 687, provides in Section 141, for the issue of duplicate registration certificates in cases where the Commissioner "is satisfied the original certificate has been lost," or destroyed, and by Section 142 the Commissioner's right to transfer a registration certificate from one car to another, is confined to cases of "the transfer of ownership, destruction or permanent removal from the State" of cars.

In your case, there has, of course, been no transfer of ownership, and, as I understand it, you do not know that your stolen car has been destroyed or permanently removed from the State. Also, the Commissioner is not satisfied that the original certificate is lost or destroyed, but on the contrary apprehends that it may still be in use upon your stolen car.

Under these circumstances, it does not seem to me that the law confers any power upon the Commissioner to issue a duplicate registration certificate for your new car, or to transfer the old registration number to it.

While this may seem to involve some little hardship in your particular case, on the other hand if a duplicate certificate were issued to you, the result might very well be that your stolen car and your new car might both be operated in Maryland under the same registration number. I think it quite clear that the law does not intend this to be possible, but that each car is in-

tended to have a registration number of its own, so that the owner of any car can at all times be at once ascertained as soon as the registration number on his car is seen.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—HORNS AT CROSSINGS.

July 26, 1917.

M. Tilghman Johnson, Esq.,
Easton, Maryland.

DEAR MR. JOHNSON: I beg to reply to your inquiries of July 23rd.

The State Motor Vehicle Law does not require the horn to be sounded at every crossing in cities and towns. Section 148, sub-section 2, prohibits the making of unnecessary noise with the horn, prohibits the use of the horn "except as a warning of danger," and prohibits the use of loud signalling devices, within the limits of cities, towns and villages, from one hour after sunset to one hour before sunrise, "unless absolutely necessary to avoid accidents." The provision in the same section that the horn shall be sounded at intersecting highways, applies only "in the open country where the operator's view is obstructed."

Under these provisions the horn is to be used, in cities and towns, "as a warning of danger," and it should, of course, be sounded at crossings, as well as at any other points, whenever there is any need for sounding it. But the state law does not require the horn to be sounded at every crossing in cities and towns, and the failure to do so would not justify an arrest under the state law, in the absence of some need for sounding the horn.

You also ask whether town policemen may arrest without warrant for violations of the State law. No warrant is necessary in such cases. Under Section 162 the justice cannot try the case except upon warrant, but the arrest may be made with-

out warrant, and in such event the Justice simply makes out the warrant when the person arrested is brought before him.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—JURISDICTION OVER VIOLATIONS OF LAW—NEAREST JUSTICE.

May 1, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR MR. BAUGHMAN: As requested by you, I have considered your right to have violators of the Motor Vehicle Law summoned to appear before a Justice who does not happen to be the nearest Justice to the place where the offense was committed.

Section 159 of the Motor Vehicle Law provides that any person taken into custody because of a violation of any of the provisions of the act, shall "forthwith be taken in the counties of this State before the nearest Justice of the Peace, committing magistrate or police justice, or if in Baltimore City before the nearest police justice and be entitled to an immediate hearing."

In Crichton vs. State, 115 Md. 423, the Court of Appeals considered the similar provision then contained in the Act of 1910, Chap. 207, Sec. 140-p. The Court said that the object of this section "was to have a speedy hearing, and not unnecessarily inconvenience the accused," and that while the accused was entitled to be taken before the nearest Justice, "it does not necessarily follow that some other justice cannot issue a warrant for him. It may often happen that it is not known which justice is in point of fact the nearest. The offense may have occurred within a few miles of a number of justices, and some investigation would have to be made as to which was the nearest before a warrant could be issued, if such a strict construction

must be placed on the statute as the appellant contends for" (page 431). The court further said that if the justice who tried the case was not in fact the nearest justice, "the appellant could have been taken to the one who was, if he so demanded" (page 432).

In view of this decision, I think that when you or your deputies observe violations of the motor vehicle law, and the circumstances are such that an immediate arrest is not made, that you are not required to make an investigation in order to ascertain who is the nearest justice to the place of offense and then cause the violator to be summoned to appear before such justice: but that you may cause such violator to be duly summoned to appear before such justice as you select as the most convenient. Such justice, upon proper process, will have jurisdiction to try the case, even if he does not happen to be the nearest justice, unless the accused demands to be taken before the justice who is the nearest, in which event such demand should, I think, be complied with.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—LICENSES—CHAUFFEURS AND OWNERS, WHO ARE.

February 10, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: Confirming the oral advice I gave you the other day upon the subject of licenses to operate motor vehicles, under Section 134 of the Act of 1916, Chap. 687, defining the words "owner" and "chauffeur," and under Sections 143 and 144, relating to "Licenses" and "Fees," I beg to advise you as follows:

1. *Owners' Licenses.* An owner's or so-called operator's license should be secured by a person who operates his own car or another person's car, for pleasure and not for hire.

2. *Chauffeurs' Licenses.* A chauffeur's license is required, and the failure to have one is a violation of the law, in the following cases:

(*a*) An employee of the owner, whose regular or entire employment may not be to operate a car, but who does operate a car occasionally or at times, must take out a chauffeur's license.

(*b*) The mechanics or other employees of an automobile shop, who try out a customer's car which the customer has left for repairs or overhauling. Such mechanics and employees receive hire for their services, and, therefore, must have chauffeurs' licenses. (Section 134.)

(*c*) The salesmen or other employees of an automobile manufacturer or agency, including in the case of a corporation all officers from the President down, while using cars belonging to the company. In such case, the corporation is the owner, and the employees and officers are the employees of the owner, and as such must have chauffeurs' licenses. (Section 134; compare with Bagby's Code, Art. 56, Sec. 138.)

(*d*) The owner operating his car for hire must have a chauffeur's license. (Section 134.)

3. *Police and Fire Departments.* The operators of cars in these Departments are required to take out chauffeurs' licenses. (Sections 134, 135, 143, 144.) I advised you to this effect on July 15, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—LICENSES—CHAUFFEURS IN FIRE DEPARTMENT—IDENTIFICATION MARKERS.

August 13, 1917.

Henry Davis, Esq.,
City Clerk,
Hagerstown, Md.

DEAR MR. DAVIS: I beg to reply to your favor of August 9th. The motor vehicles of Fire Departments are not exempted

2. *Chauffeurs' Licenses.* A chauffeur's license is required, and the failure to have one is a violation of the law, in the following cases:

(*a*) An employee of the owner, whose regular or entire employment may not be to operate a car, but who does operate a car occasionally or at times, must take out a chauffeur's license.

(*b*) The mechanics or other employees of an automobile shop, who try out a customer's car which the customer has left for repairs or overhauling. Such mechanics and employees receive hire for their services, and, therefore, must have chauffeurs' licenses. (Section 134.)

(*c*) The salesmen or other employees of an automobile manufacturer or agency, including in the case of a corporation all officers from the President down, while using cars belonging to the company. In such case, the corporation is the owner, and the employees and officers are the employees of the owner, and as such must have chauffeurs' licenses. (Section 134; compare with Bagby's Code, Art. 56, Sec. 138.)

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3. *Police and Fire Departments.* The operators of cars in these Departments are required to take out chauffeurs' licenses. (Sections 134, 135, 143, 144.) I advised you to this effect on July 15, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES—CHAUFFEURS IN FIRE DEPARTMENT—IDENTIFICATION MARKERS.

August 13, 1917.

Henry Davis, Esq.,
City Clerk,
Hagerstown, Md.

DEAR MR. DAVIS: I beg to reply to your favor of August 9th. The motor vehicles of Fire Departments are not exempted

from any provisions of the State Motor Vehicle Law, except from the provisions of Section 141, requiring the payment of registration fees. (See Section 135.)

Identification markers, approved by the Commissioner of Motor Vehicles, must be secured and displayed, but no fee can be charged therefor. The operators of the Fire Department cars, however, should be licensed under Section 143, and the fees prescribed by Section 144 should be paid. The law makes no exemption in this case.

On July 15, 1916, I advised the Commissioner of Motor Vehicles to this effect, with reference to the operators of the Fire Department of Baltimore City.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES—CHAUFFEURS' IN UNITED STATES MILITARY AMBULANCE SERVICE.

February 15, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: I have considered your recent inquiry as to whether operating licenses must be obtained by the chauffeurs who operate automobiles of the ambulance service connected with the Walter Reed General Hospital, which I understand is a branch of the United States military service.

Under date of August 1, 1916, I advised you that government chauffeurs carrying the United States mails were required to take out operators' licenses (Acts 1916, Chap. 687, Sects. 135, 143, 144), and in that connection said:

"The license provided for by these sections is required of all persons who operate motor vehicles upon any highway in this State, without any exception whatever, and the license is re-

quired under the state's police power, for the protection and safety of its citizens and of the public.

"The exemption of federal agencies from state regulation only applies where such state regulation can properly be said to interfere with or impair the efficiency of the federal agencies in performing their public functions. I do not consider that the efficiency of carriers by motor vehicle of the United States mails would be interfered with or impaired at all by subjecting them to the requirement of being licensed under the Maryland law; and inasmuch as the law by its terms clearly applies to them, it is my opinion that they should be required to take out operators' licenses."

This opinion would also apply to the chauffeurs of the ambulance service of the Walter Reed General Hospital.

Your present inquiry, however, is due to the fact that you have lately been advised by the Surgeon in charge of that service that the Comptroller of the Treasury had ruled that operators' licenses were not required by government chauffeurs.

I have secured a copy of the ruling of the Comptroller referred to. It was rendered on January 10, 1917, and holds that whether or not a government chauffeur must take out a state license "is not a question upon which this office can render a decision or express an opinion," but must be settled "by the opinions of law officers of the Government or otherwise"; but that in any event the government appropriations cannot be used to pay for chauffeurs' license fees, because government employees must fit themselves for the discharge of their duties at their own expense; and, accordingly, when such licenses are required, the chauffeurs must pay the fees personally.

Decisions of Comptroller, Vol. 23, p. 386.

Of course, your Department is only concerned with whether or not the law of Maryland requires government chauffeurs to be licensed, and if so, whether such requirement is valid. You are not concerned with the question of whether the license fees,

if required, are to be paid by the government or by the chauffeurs personally.

On February 10, 1911, the Attorney General of the United States rendered an opinion to the President on the power of the State of Maryland to require a registration fee for government automobiles and a license fee for government chauffeurs, under the Maryland law as amended by the Act of 1910.

28 Opinions of Attorneys General, 604.

The Attorney General held that the registration fee could not be exacted, because that was a tax upon the vehicle, which was government property, and the State cannot tax government property; but that "the State has the power to enforce, as to these automobiles and the chauffeurs operating the same, all the provisions of the Act which look to the conservation of the public safety." The Attorney General further said that the Maryland law "was passed primarily as a police regulation, the purpose being to permit none but experienced and cautious persons to operate motor vehicles, and to exact of them proper care and caution in their operation," etc., and "undoubtedly, the state officials who are entrusted with the issuance of licenses cannot be required to do their prescribed work without compensation, and I think a reasonable fee for their services could be exacted for issuing the licenses, both to the chauffeur and for operating the automobiles."

This opinion of the Attorney General is exactly in line with my opinion to you of August 1, 1916.

I, therefore, repeat the advice I gave you then, namely, that the Maryland law requiring chauffeurs to have operators' licenses is a police regulation, passed in the interest of the public safety, and inasmuch as government chauffeurs are within its provisions, it is necessary for them to take out operators' licenses.

I return you the correspondence on the subject which you left with me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSES FOR NON-RESIDENT MOTOR BUSES.

January 12, 1917.

Alexander R. Hagner, Esq.,
City Attorney,
Hagerstown, Maryland.

DEAR MR. HAGNER: I have your favor of January 10th.

I am of opinion that non-resident motor buses carrying passengers or freight for hire, cannot operate regularly on the highways of this State without taking out the licenses required by Chapter 610 or Chapter 714 of the Acts of 1916.

The only provisions of law under which non-resident automobiles can operate in this State without a license are the reciprocity provisions of Section 146, Chapter 687 of the Acts of 1916, but this section expressly provides that it shall not apply to any "non-resident engaged regularly in the transportation of passengers or freight for hire wholly or partly in this State."

The requirement for licenses in cases of this kind is clearly not a burden on interstate commerce.

Hendrick vs. Maryland, 235 U. S. 610.
Kane vs. New Jersey, U. S. Supreme Court, Dec. 4, 1916.

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LIQUOR, CHAUFFEUR UNDER INFLUENCE OF.

August 28, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: You asked me the other day whether a person can be convicted, under Section 152 of the Motor Vehicle Law, of operating a motor vehicle on the public highways when intoxicated, under the following circumstances:

The person in question left his automobile with all power shut off outside of a resort. When he came out of the resort he was so intoxicated that he staggered. He cranked the machine and climbed into the driver's seat, but before actually starting the car he was arrested on the charge of operating a motor vehicle when intoxicated.

Section 152 provides that "no person shall operate a motor vehicle on the public highways of this State when intoxicated or at all under the influence of liquor," and the question is whether the person in question was operating his car within the meaning of this section at the time of his arrest, or whether it was necessary for him actually to start the car before the section applies.

In my opinion, the word "operate" as used in Section 152 is not confined to the time when the car is actually moving, but includes such stops as motor vehicles may make in the course of their operation.

Therefore, if the facts were as above stated, the accused, in my opinion, was guilty of operating a motor vehicle when intoxicated, and is subject to the penalties prescribed by Section 152.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—NON-RESIDENTS—RECIPROCITY—IDENTIFICATION MARKERS.

June 8, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: As requested by you, I have considered the right of residents of West Virginia to operate motor cycles in Maryland, without displaying identification markers, the laws of West Virginia not requiring the display of such markers.

Section 146 of the Act of 1916, Chapter 687, which relieves non-residents, under certain conditions, from the necessity of obtaining registration certificates or operator's licenses in this State, if they have complied with the laws of their home State relating to these subjects, provides that "the aforegoing exemptions of non-residents shall not apply to operators of motor vehicles or motor cycles who are residents of States which do not require the display of identification markers on the same."

All non-resident operators to whom this exemption does not apply, must, of course, comply with the laws of Maryland governing registration, operator's licenses and markers, exactly as if they were residents.

Since the laws of West Virginia do not require the display of identification markers, it follows, from the express provisions of Section 146, that the exemption conferred by Section 146 does not apply to West Virginia operators.

Therefore, residents of West Virginia who operate motor cycles within this State must obtain operator's licenses and registration certificates under the Maryland law and must display identification markers as required by the Maryland law. Failure so to do will subject such persons to the penalties prescribed by Sections 143 and 147, respectively.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—NON-RESIDENTS—RECIPROCITY—MINORS.

June 8, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: As requested by you, I have considered the right of residents of other States to operate motor vehicles upon the highways of Maryland, when such non-residents are under the age which the Maryland law requires for operators.

The Act of 1916, Chap. 687, Sec. 143, provides that "no person under the age of 18 years, except operators of motor cycles, who shall not be under the age of 14 years, shall operate, drive or direct any automobile, motor-car, taxicab or motor truck propelled by gas, gasoline, steam or electricity upon any road, highway, street, lane or other public way within the State of Maryland."

This section, according to its terms, applies to all operators, under the prescribed age, whether residents or non-residents of Maryland.

The exemption in favor of non-residents is contained in Section 146, and this section provides that any non-resident "who shall have complied with the laws of the State in which he resides, requiring the registration of motor vehicles or licensing of operators thereof," and the display of identification markers, "may use the highways of this State without obtaining a registration certificate or operator's license from the Commissioner of Motor Vehicles as hereinbefore prescribed." This section also contains reciprocal provisions, which I understand are not involved in your inquiry.

While Section 146 authorizes non-residents to use Maryland highways in certain cases without obtaining a Maryland operator's license, it was never intended to authorize the use of Maryland highways by anyone whom the laws of Maryland, in the interest of the public safety, prohibited from using them.

Section 143 contains regulations of this kind. The provision of this section that no person under the age of 18 shall operate an automobile was passed because the Legislature deemed this essential in the interest of the public safety. Section 146 deals simply with registration certificates and markers and licenses for operators. The Legislature never intended by Section 146 to permit non-residents under the age of 18 to operate in Maryland, when Marylanders under that age were, for reasons of public safety, prohibited from operating.

It is, therefore, my opinion that the age provisions of Section 143 apply to all persons who operate cars in this State,

whether residents or non-residents, and that any person, whether resident or non-resident, below the age provisions of that section, who operates a car in this State, is subject to the penalties provided by Section 143.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—NON-RESIDENT FORFEITS RIGHT TO RECIPROCITY PROVISIONS BY VIOLATING MARYLAND LAW.

June 8, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: As requested by you, I have considered what action you may take in the case of a certain resident of West Virginia, who frequently operates his car in Maryland, and who has twice been convicted and fined for violations of the Motor Vehicle Law of Maryland. I understand that West Virginia autoists are allowed the use of Maryland highways during certain periods, under a reciprocal arrangement between the two States; that in West Virginia the owner of an automobile is not required to obtain an operator's license, the display of the registration number being sufficient; and that the autoist in question has complied with all the laws of West Virginia, the State of his residence.

Section 146 of the Act of 1916, Chap. 687, which relieves non-residents, under certain conditions, from the necessity of obtaining registration certificates or operator's licenses in this State, if they have complied with the laws of their home State relating to these subjects, provides that "if any non-resident be convicted of violating any provisions of this sub-title, he shall thereafter be subject to and required to comply with all the provisions of this sub-title relating to the registration of motor vehicles and the licensing of operators thereof."

The sub-title referred to embraces the Motor Vehicle Law of this State, and, therefore, any non-resident who has been convicted of violating the provisions of the Motor Vehicle Law, becomes thereupon required to comply with all the provisions of the law of this State relating to the registration of motor vehicles and the licensing of operators, exactly as if such person were a resident. In other words, such person, by reason of his conviction, forfeits all right to the exemptions conferred by Section 146.

Consequently, in the case you mention, the West Virginia owner, who has been convicted and fined for violating the Maryland law, is now required to register his car under the Maryland law and to obtain an operator's license under the Maryland law, before he can lawfully operate in Maryland.

If such person operates his car in Maryland without a Maryland operator's license, he subjects himself to the penalties prescribed by Section 143; and upon such person's application to you for an operator's license, then if, in your judgment, "the safety of the public would be jeopardized" by its issuance, you have the power, under Section 143, to refuse to issue it, in which event, of course, such person could not lawfully operate in this State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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MOTOR VEHICLES—PASSING OTHER VEHICLES.

April 12, 1917.

Osborne I. Yellott, Esq.,
Counsel Automobile Club of Maryland,
1227 Calvert Building,
Baltimore, Maryland.

DEAR MR. YELLOTT: I beg to give you my opinion upon the several questions you submitted to me in your letter of March 29th, 1917, supplemented by your letter of March 30th, 1917:

brokers need not be authorized to cover commissions. The business of this agency will be to act as brokers, not as commission, in selling bids for box personnel, and this I think brings them within Section 12.

I return you the letter from Mr. [illegible], and am sending him a copy of this letter to you.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Section 1003 [illegible]

[illegible] Section 1003 [illegible] charge [illegible] a flat charge [illegible] for box [illegible] performances would be [illegible] [illegible] under Section 1003.

I do not think that the [illegible] in Sections 1003 and 1003 [illegible] that patrons [illegible] charged for one class of exhibition and that the other classes as described in those Sections are exhibited free.

Very truly yours,

[illegible]

The license fee is based upon the average amount of stock which is sold or offered for sale (Bagby's Code, Art. 56, Secs. 28, 40, etc., Act 1916, Chap. 622), but in the case you mention I think that all of the stock, including the portion from which stock sold is replenished, should be regarded as subject to sale.

The license fee should, therefore, be based upon whatever the average amount of the merchant's total stock may be. In your letter to me you state the amount at the low time, and the highest amount at any other time, but you do not state the average amount. The average amount will be the basis.

Yours truly,

Albert C. Ritchie, Attorney General.

Licenses—Traders—May 1st [illegible]

[illegible]

Hon. Harry L. M. [illegible],

State Comptroller,

Annapolis, Maryland.

Dear Mr. [illegible]: [illegible] June [illegible] [illegible]

Under the Act of 1916, Chap. [illegible] [illegible] May 1st [illegible] whole year. [illegible] Section [illegible] of the Act of 1916, Chapter [illegible].

Yours truly,

Albert C. Ritchie, Attorney General.

I think that wheat, hay and grain will under such circumstances constitute goods, chattels, wares or merchandise, and Hughes's rule, Art. 1a, Sec. 2a, requires every person, other than the grower, maker or manufacturer, who sells or offers for sale goods, chattels, wares or merchandise within this State to take out a trader's license.

In my opinion, therefore, if the farmer sell the wheat, hay and grain are the products of the representatives of the growers thereof, no state license is required. If they are not the growers, then they should take out a trader's license as the manufacturer provided in Section 1a, Art. 1a, Sec. 2a of Hughes's Code.

Very truly yours,

Wm. A. Ellis, Deputy Attorney General.

MILITARY.

with the consent of the Senate, makes the appointments, and by which the Justices are given such jurisdiction and duties as may be prescribed by law.

Numerous statutes have prescribed their duties, and have conferred criminal jurisdiction upon such of them as may be designated by the Governor as police magistrates. These police magistrates are as much a part of the judiciary of the State as are the courts themselves.

The Court of Appeals of Maryland, in McGee vs. Fulton, 47 Md. 403, 425, said:

> "By our Constitution Justices of the Peace are made part of the judiciary in whom the judicial power of the State is vested. The most useful and important part of their duties is to investigate charges for indictable offenses, and when so acting they are unquestionably judicial officers discharging judicial functions."

And again in the case of Crighton vs. State, 115 Md. 428, 434, the Court said:

> "Justices of the Peace are by our Constitution made part of the judiciary in whom the judicial power of the State is vested."

The Court of Appeals, therefore, has made clear that Justices of the Peace, acting as police magistrates, are judicial officers of the State, and they are, of course, covered by the Constitution of the State.

In my judgment, therefore, police magistrates in this State are entitled to exemption from the draft.

Very truly yours,

WILLIAM H. LANSBURGH, *Attorney General.*

MILITARY—FEDERAL DRAFT—POLICE MAGISTRATES ARE EXEMPT FROM.

September 27, 19[illegible]

Gen. Henry M. Warfield,
Adjutant General,
[illegible] Maryland Trust Bldg.,
Baltimore, Maryland.

DEAR GEN. WARFIELD:—I received your favor of September 21st, enclosing correspondence between yourself and the Provost Marshal General with reference to the exemption of Police Magistrates from the Federal Draft.

The Provost Marshal holds that Police Magistrates are not exempt because, under the rulings of the Provost Marshal, the [illegible] who is entitled to exemption from the Federal draft [illegible]:

[illegible]

[illegible] popular election [illegible]

State.

[illegible] appointment [illegible] superior [illegible]

the appointing [illegible]

[illegible] P. M. G. [illegible]

and Sec. [illegible]

Police Magistrates [illegible]

[illegible]

[illegible]

[illegible] Supreme Bench of Baltimore [illegible] Courts of the Counties, and the Act of Congress [illegible] Section [illegible] the [illegible] the [illegible] the application of this section.

[illegible] the Act of Congress confers [illegible] Provost Marshal [illegible] who are not [illegible]

State officers within the meaning of the Act of Congress. On the contrary, the Act provides that the Local Boards shall have power to hear and determine "all questions of exemption under this Act," except claims for industrial exemptions, subject to review by the District Boards, whose decisions shall be final, subject to review by the President, in accordance with such Rules as the President may prescribe therefor.

The Rules prescribed by the President provide, in Section 18-A, for hearings by the Local Boards upon claims filed by persons claiming to be exempt on the ground that they are State officers, and in Sections 18-B-E these Rules provide for the review of the Local Boards' decisions in such cases by the District Boards, and that the decisions of the District Boards "shall be final." By Section 18 the District Boards are required to certify to the Adjutant General the names of all persons who have not been exempted.

I can only repeat the opinion I expressed to you in my letter of September 13th, that police magistrates in Maryland are exempt from the draft; with the further advice that whether this opinion is correct or not is for the Local Boards to decide, subject to review by the District Boards.

While the question is one for these Boards to decide, and while I, as a State and not a Federal officer, have no authority to advise them, yet you, as Adjutant General of the State, have the clear right to ask my opinion upon the matter; and I think that any Police Magistrate who applies for exemption on the ground that he is a State officer, should be advised that it is his clear right to have such claim passed upon by the Local Board and the District Board, these being the two tribunals provided by Congress for deciding the question.

I return you the enclosures you sent me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MILITARY—HOME GUARDS, STATE AID TO.

November 6, [illegible]

Gen. Henry M. Warfield
Adjutant General,
[illegible] Maryland Trust Bldg.
Baltimore, Maryland.

DEAR GEN. WARFIELD: I beg to reply to your [illegible] of November 3rd, in which you ask whether the G[illegible] authorized to render State aid both in money and [illegible] home guards which are being organized in certain [illegible] of the State.

I do not know of any [illegible] which the Governor [illegible] purpose. The [illegible] Committee of the M[illegible] of Defense however, [illegible] in their [illegible] the approval of the Governor, to [illegible] part of [illegible] of the [illegible] War Loan of 1917 [illegible] guards.

Very truly yours,
A[illegible] C. R[illegible]

MILITARY—[illegible] G[illegible] H[illegible]
[illegible]

[illegible]

Gen. Henry M. W[illegible]
[illegible]
[illegible] Maryland Trust B[illegible]
Baltimore, Maryland.

D[illegible] G[illegible] W[illegible]: I [illegible]
[illegible]
[illegible] M[illegible] G[illegible]
[illegible] the Maryland N[illegible]
provided for by the Acts of 1916, Chap. 241, Sec. [illegible]
This [illegible] the [illegible] organized [illegible]
[illegible] these [illegible]

"as it has active and uniformed members, and no more, on payment, in advance, by each person desiring to become such honorary member, of not less than ten dollars per annum," and every such honorary member is entitled to receive "a certificate of honorary membership of the company."

The legally organized volunteer companies of the militia compose, of course, the Maryland National Guard (See, VII, page 628, Chap. 311, Acts 1916), so that the honorary members of the National Guard are dependent entirely for their existence upon the existence of the National Guard itself. They have no status at all independently of the National Guard. As the honorary membership is thus attached to each company of the National Guard, and as the number of honorary members each company may have is limited by the number of such company's active and uniformed members, it follows, of course, that if the National Guard goes out of existence, then the honorary membership in each company of the National Guard must go out of existence also.

The National Guard has been drafted into the military service of the United States under Section 5 of the Act of Congress of May 18, 1917, which authorizes the President to draft in accordance with the provisions of Section 111 of the National Defense Act of June 3, 1916. Section 111 of the latter act provides that "all persons so drafted shall, from the date of their draft, stand discharged from the militia, and shall from said date be subject to such laws and regulations for the government of the Army of the United States as may be applicable to members of the Volunteer Army, and shall be embodied in organizations corresponding as far as practicable to those of the Regular Army, or shall be otherwise assigned as the President may direct."

The members of the National Guard so drafted are, therefore, "discharged from the militia." And since the National Guard composes one class of the militia (Act of Congress of June 3, 1916, Secs. 57 and 58; Act 1916, Chap. 311, Sec. VII, page 628), it follows that the members of the National

Guard, when drafted under section 111 of the National Defense Act, are thereupon discharged from the National Guard, with the result that until the National Guard is again recruited it no longer exists.

Therefore, since at present there is no Maryland National Guard, and since, as already shown, the honorary membership of the Maryland National Guard depends upon the existence of the National Guard, it follows that there are no longer any honorary members of the National Guard. They ceased to exist when the National Guard itself ceased to exist, and until the National Guard, or some of its units, are again recruited, honorary membership certificates cannot be issued.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MEMORANDUM MARYLAND STATE GUARD HONORARY MEMBERSHIP

Memorandum for

Gen. Henry M. Wagstaff
Adjutant General
pro. Maryland Trust Bldg.
Baltimore, Maryland.

DEAR GEN. WAGSTAFF: I beg to reply to your letter of November 3rd and 7th, asking my opinion whether the Maryland State Guard is authorized to have honorary members, entitled to the same privileges to which honorary members of the National Guard are entitled under the law, and expires on the same date.

The Act of 1916, Chapter 311, provides, in Section 87, for honorary members of every "legally organized military company of the militia," not exceeding in number the "active and uniformed members."

When this law was passed, the militia, by Section VII, was divided into two classes, the "organized and uniformed military forces of the State," known as the National Guard, and the

"unorganized militia," consisting of all those liable to services in the militia, but not serving in the National Guard.

The effect of the Act of 1917, Chap. 26, providing for the Maryland State Guard, was to create still another class of the militia, comprising "legally organized volunteer" companies, which were to be "active and uniformed," but were not to be part of the National Guard.

Section 87 of the Act of 1916, Chap. 311, does not limit the right to have honorary members to the "active and uniformed" companies of the *National Guard*, but gives this right to the "active and uniformed" members of "any legally organized volunteer company of the *militia*." Each volunteer company of the Maryland State Guard will be a "legally organized volunteer company of the militia," and its members will be "active and uniformed."

In my opinion, therefore, each volunteer company of the Maryland State Guard may have as many honorary members as it has active and uniformed members, and such honorary members will be entitled to the privileges, and be subject to the dues, provided by Section 87.

Whether *drafted* companies of the Maryland State Guard may have honorary members under Section 87, may admit of some doubt, but as I understand that the companies are all to be composed of volunteers, this question need not be decided.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES.

Motor Vehicles—Collisions—Duty of Operator.

March 19, 19[illegible]

William C. Kerbin, Esq.,

State's Attorney,

Snow Hill, Maryland.

Dear Mr. Kerbin: I beg to reply to your favor of the 2nd.

Section 156 of Article 56 of Hagner's Code, to which you refer, was repealed and reenacted by the Act of 1916, Chapter 67, Sec. 151.

Under that section, whenever a collision occurs between an automobile and a buggy, the operator of the automobile must immediately stop. He must then determine if any one is injured, residents and business men, and whether there is a sufficient or not, he must consider with good judgment as to what is reasonable and necessary within his power. This latter obligation is a question for the operator to be left to the driver of the buggy, or a stranger to him.

Whether the operator has fulfilled such obligations as are reasonable and necessary within his power, is a question of fact. If the operator should not exercise his duty, if he drives on the buggy was injured and passes on, and the operator did not give it. If the injured is a man, then the operator was under the further obligation to report the accident within twenty-four hours to the Commission of Motor Vehicles.

The statute provides the penalties for violations of the violation.

Very truly yours,

Attorney General.

MOTOR VEHICLES—DUPLICATE REGISTRATION CERTIFICATES.

June 2, 1917.

Dr. Jacob H. Hollander
Johns Hopkins University
Baltimore, Maryland.

DEAR DR. HOLLANDER: I have your favor of May 31st, in which you ask whether the Commissioner of Motor Vehicles is right in refusing to issue a duplicate certificate of registration for use upon the new car you have purchased to take the place of your other car which, with its registration certificate, was stolen.

The Motor Vehicle Law, Act 1916, Chap. 657, provides in Section 111, for the issue of duplicate registration certificates in cases where the Commissioner has satisfied the original certificate has been lost, or destroyed, and in Section 112 the Commissioner's right to transfer a registration certificate from one car to another, is confined because of the transfer of ownership, destruction or permanent removal from the State of cars.

In your case, there has not been any transfer of ownership, and, as I understand it, you do not know that your stolen car has been destroyed or permanently removed from the State. Also, the Commissioner is not satisfied that the original certificate is lost or destroyed, but on the contrary apprehends that it may still be in use upon some car.

Under these circumstances, it does not seem to me that the law confers any power upon the Commissioner to issue a duplicate registration certificate for your new car, or to transfer the odd registration number to it.

While this may seem to cause some little hardship in your particular case, on the other hand if a duplicate certificate were issued to you, the result might very well be that your stolen car and your new car might both be operated in Maryland under the same registration number. I think it quite clear that the law does not intend this to be possible, but that each car is an

tended to have a registration number of its own, so that the owner of any car can at all times be at once ascertained as soon as the registration number on his car is seen.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—HORNS AT CROSSINGS.

July 28, 19[illegible]

M. Coleman Jackson, Esq.,

Easton, Maryland.

DEAR MR. JACKSON:—I beg to reply to your inquiry of July 23rd.

The State Motor Vehicle Law does not require the horn to be sounded at every crossing in cities and towns. Section [illegible] subsection [illegible] prohibits the sounding of unnecessary noise by the horn, prohibits the use of the horn "except as a warning of danger," and prohibits the use of bells signalling the passage of the limits of cities, towns and villages, from one hour after sunset to one hour before sunrise "unless absolutely necessary to avoid accidents." The prohibition in the same section that the horn shall be sounded at intersecting highways, applies only to open country where the operator's view is obstructed.

Under these provisions the horn is to be used, in cities and towns, "as a warning of danger," and to sound at every crossing would be a violation of the law, as well as of any other penalty, where there is no need for sounding it. But the state law does not require the horn to be sounded at every crossing in cities and towns, and the failure to do so would not justify an arrest under the state law, in the absence of some need for sounding the horn.

You also ask whether town policemen may arrest without warrant for violations of the State law. No warrant is necessary in such cases. Under Section 162 the justice cannot try the case except upon warrant, but the arrest may be made with

out warrant, and in such event the Justice simply makes out the warrant when the person arrested is brought before him.

Very truly yours,

ARTHUR L. BLOOM, *Attorney General.*

Motor Vehicles—Jurisdiction over Violations of Law—Nearest Justice.

May 1, 1917.

E. Austin Broughton, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR MR. BROUGHTON:—As requested by you, I have considered your right to have a defendant in the Motor Vehicle Law summoned to appear before a Justice who does not happen to be the nearest Justice to the place where the offense was committed.

Section 150 of the Motor Vehicle Law provides that any person taken into custody because of violation of any of the provisions of the act, shall "forthwith be taken in the counties of this State before the nearest Justice of the Peace, committing magistrate or police justice, or in Baltimore City before the nearest police justice and be entitled to an immediate hearing."

In Crichton vs. State, 115 Md. 453, the Court of Appeals considered the similar provision then contained in the Act of 1910, Chap. 207, Sec. 150 (p). The court said that the object of this section "was to have an speedy hearing and not unnecessarily inconvenience the person arrested," and that while the accused was entitled to be taken before the nearest Justice, "it does not necessarily follow that some other justice cannot issue a warrant for him. It may often happen that it is not known which justice is in point of fact the nearest. The offense may have occurred within a few miles of a number of justices, and some investigation would have to be made as to which was the nearest before a warrant could be issued. If such a strict construction

must be placed on the statute as the appellant contends for" (page 131). The court further said that if the justice who tried the case was not in fact the nearest justice, "the appellant could have been taken to the one who was, if he so demanded" (page 132).

In view of this decision, I think that when [illegible] your deputies observe violations of the motor vehicle [illegible] and the circumstances are such that an immediate arrest [illegible] made, that you are not required to make an investigation [illegible] to ascertain who is the nearest justice to the place [illegible] and then cause the violator to be summoned to appear before such [illegible] such violator [illegible] summoned to appear before such justice [illegible] proper [illegible] [illegible] the accused demands [illegible] before the justice [illegible] nearest [illegible] ground [illegible].

[illegible]

[illegible] E. [illegible]

[illegible]

[illegible] M [illegible]

D[illegible] I [illegible] [illegible] whether [illegible] to operate motor [illegible] under Section [illegible] of the Act of 1910, Chap. 687 [illegible] "owner" and "chauffeur," and under Sections [illegible] relating to [illegible], I beg to advise [illegible]:

1. [illegible] An owner's or [illegible] chauffeur's license should be secured by a person who operates [illegible] car or another person's car, for pleasure and not [illegible]

2. *Chauffeurs' Licenses.* A chauffeur's license is required, and the failure to have one is a violation of the law, in the following cases:

(*a*) An employee of the owner, whose regular or entire employment may not be to operate a car, but who does operate a car occasionally or at times, must take out a chauffeur's license.

(*b*) The mechanics or other employees of an automobile shop, who try out a customer's car which the customer has left for repairs or overhauling. Such mechanics and employees receive hire for their services, and therefore, must have chauffeurs' licenses. (Section 134.)

(*c*) The salesmen or other employees of an automobile manufacturer or agency, including in the case of a corporation all officers from the President down, while using cars belonging to the company. In such case, the corporation is the owner, and the employees and officers are the employees of the owner, and as such must have chauffeurs' licenses. (Section 134; compare with Bagby's Code, Art. 56, Sec. 128.)

(*d*) The owner operating his car for hire must be a chauffeur's license. (Section 134.)

3. *Police and Fire Departments.* The operators of cars in these Departments are required to take out chauffeurs' licenses. (Sections 134, 135, 143, 144.) Inclosed you are the form of July 15, 1916.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

Motor Vehicles—Licenses—Chauffeurs—Fire Department—Inclosure—Motor Vehicles.

Dated July 15, 1916.

Hon. Henry Davis, Esq.
City Clerk,
Hagerstown, Md.

DEAR MR. DAVIS: I beg to reply to your favor of August 9th. The motor vehicles of Fire Departments are not exempted

from any provisions of the State Motor Vehicle Law, except from the provisions of Section 141, requiring the payment of registration fees. (See Section 135.)

Identification markers, approved by the Commissioner of Motor Vehicles, must be secured and displayed, but no fee can be charged therefor. The operators of the Fire Department cars, however, should be licensed under Section 143, and the fees prescribed by Section 144 should be paid. The law makes no exemption in this case.

On July 13, 1916, I advised the Commissioner of Motor Vehicles to this effect, with reference to the operators of the Fire Department of Baltimore City.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

Motor Vehicles—Licenses—Chauffeurs—Section 143 State Motor Vehicle Law.

Exemption.

E. Austin Bonsteel, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: I have considered your recent request as to whether operating licenses should be obtained by the men who operate automobiles of the ambulance service connected with the Walter Reed General Hospital, which I understand is a branch of the United States military service.

Under date of August 5, 1916, I advised you that government chauffeurs carrying the United States mails were not to take out operators' licenses. Acts 1916, Chap. [illegible], 135, 143, 144, and in that connection said:

"The license provided for by these sections is required of persons who operate motor vehicles upon any highway in this State, without any exception whatever, and the license

quired under the state's police power, for the protection and safety of its citizens and of the public.

"The exemption of federal agencies from state regulation only applies where such state regulation can properly be said to interfere with or impair the efficiency of the federal agencies in performing their public functions. I do not consider that the efficiency of carriers by motor vehicle of the United States mails would be interfered with or impaired at all by subjecting them to the requirements of being licensed under the Maryland law; and inasmuch as the law by its terms clearly applies to them, it is my opinion that they should be required to take out operators' licenses."

This opinion would also apply to the employees of the United States Service of the Walter Reed General Hospital.

Your present inquiry, however, is due to the fact that you have lately been advised by the Sergeant-at-Arms that service that the Comptroller of the Treasury had ruled that operators' licenses were not required for government chauffeurs.

I have secured a copy of the ruling of the Comptroller referred to. It was rendered on December 10, 1937, and holds that whether or not a government chauffeur must take out a state license is not a question upon which the Comptroller can render a decision or express an opinion, but must be settled by the opinions of law officers of the Government or otherwise. It is that in any event the government employee cannot be used to pay for chauffeurs' licenses from public government employees must do themselves for the discharge of their duties as they are expected and, accordingly, where such licenses are required, the chauffeurs must pay the fees personally.

Decisions of Comptroller, Vol. 23, p. 386.

Of course, your Department is only concerned with whether or not the law of Maryland requires government chauffeurs to be licensed, and if so, whether such requirement is valid. You are not concerned with the question of whether the license fees.

if required, are to be paid by the government or by the chauffeurs personally.

On February 10, 1911, the Attorney General of the United States rendered an opinion to the President on the power of the State of Maryland to require a registration fee for government automobiles and a license fee for government chauffeurs, under the Maryland laws as amended by the Act of 1910.

28 Opinions of Attorney-General, 604.

The Attorney General held that the registration fee could not be exacted, because the State has no tax upon the vehicles, which are government property, and the State cannot tax government property; but that the State has the power to enforce such fees against automobiles and the chauffeurs operating the same, "as a police regulation, because the subject matter of the Act which deals with the conduct of the people is safety." The Attorney General further said that the Maryland law "was passed primarily as a police regulation for the protection of the public against incompetent and careless persons who operate motor vehicles, and in regard to their proper care and caution in their operation, and responsibility for damages, by the officials who are entrusted with the care and use of them, and be required to be the proprietors and without compensation, and I think it reasonable that they are properly liable for the expense of issuing the licenses to such chauffeurs and for marking the automobiles."

The opinion of the Attorney General is sound, and I am entirely in accord with it.

I, therefore, repeat the advice I gave you on the 9th of August 1, 1910, that the Maryland law requiring registration of motor vehicles is a police regulation passed in the interest of the public safety, and therefore government chauffeurs are liable to pay the license fee exacted by the Maryland statute.

I return you the correspondence on the subject which you sent with me.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

MOTOR VEHICLES—LICENSES FOR NON-RESIDENT MOTOR BUSES.

January 12, 1917.

Alexander R. Hagner, Esq.,
City Attorney,
Hagerstown, Maryland.

DEAR MR. HAGNER: I have your favor of January 10th.

I am of opinion that non-resident motor buses carrying passengers or freight for hire, cannot operate regularly on the highways of this State without taking out the licenses required by Chapter 610 or Chapter 714 of the Acts of 1916.

The only provisions of law under which non-resident automobiles can operate in this State without a license are the reciprocity provisions of Section 116, Chapter 687 of the Acts of 1916, but this section expressly provides that it shall not apply to any "non-resident engaged regularly in the transportation of passengers or freight for hire wholly or partly in this State."

The requirement for licenses in cases of this kind is clearly not a burden on inter-state commerce.

Hendrick vs. Maryland, 235 U. S. 610.

Kane vs. New Jersey, U. S. Supreme Court, Dec. 4, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—LICENSE, CONSTRUCTIVE—SUBSTITUTED INTERVENER.

August 28, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR: You asked me the other day whether a person can be convicted, under Section 152 of the Motor Vehicle Law, of operating a motor vehicle on the public highways when intoxicated, under the following circumstances:

The person in question left his automobile with all power shut off outside of a resort. When he came out of the resort he was so intoxicated that he staggered. He cranked the machine and climbed into the driver's seat, but before actually starting the car he was arrested on the charge of operating a motor vehicle when intoxicated.

Section 152 provides that "no person shall operate a motor vehicle on the public highways of this State when intoxicated or at all under the influence of liquor," and the question is whether the person in question was operating his car within the meaning of this section at the time of his arrest, or whether it was necessary for him actually to start the car before the section applies.

In my opinion the word "operate" as used in Section 152 is not confined to the time when the car is actually moving, but includes such steps as motor vehicles must make in the course of their operation.

Therefore, if the facts were as above stated, the person, in my opinion, was guilty of operating a motor vehicle while intoxicated, and is subject to the penalty prescribed in Section 152.

Very truly yours,

[illegible]

Motor Vehicles — Non-Residents — Registration — Identification Marks — Maryland

Hon. [illegible]
Commissioner of Motor Vehicles,
[illegible] Street,
Baltimore, Maryland.

Dear Sir: A request has recently been made that persons of residence of West Virginia be permitted to operate motor vehicles in Maryland, without displaying identification markers, the laws of West Virginia not requiring the display of such markers.

Section 146 of the Act of 1916, Chapter 687, which relieves non-residents, under certain conditions, from the necessity of obtaining registration certificates or operator's licenses in this State, if they have complied with the laws of their home State relating to these subjects, provides that "the aforegoing exemptions of non-residents shall not apply to operators of motor vehicles or motor cycles who are residents of States which do not require the display of identification markers on the same."

All non-resident operators to whom this exemption does not apply, must, of course, comply with the laws of Maryland governing registration, operator's licenses and markers, exactly as if they were residents.

Since the laws of West Virginia do not require the display of identification markers, it follows, from the express provisions of Section 146, that the exemption contained in Section 146 does not apply to West Virginia operators.

Therefore, residents of West Virginia who operate motor cycles within this State must obtain operator's licenses and registration certificates under the Maryland law and must display identification markers as required by the Maryland law. Failure so to do will subject such persons to the penalties prescribed by Sections 143 and 147, supra.

Very truly yours,

[illegible]

Attorney General.

[illegible]

E. Austin Baughman, Esq.

Commissioner of Motor Vehicles,

11 East Lexington Street,

Baltimore, Maryland.

DEAR SIR: As requested by you, I have considered the right of residents of other States to operate motor vehicles upon the highways of Maryland, when such non-residents are under the age which the Maryland law requires for operators.

The Act of 1916, Chap. 657, Sec. 143, provides that "no person under the age of 18 years, except operators of motor cycles, who shall not be under the age of 14 years, shall operate, drive or direct any automobile, motor car, taxicab or motor truck propelled by gas, gasoline, steam or electricity upon any road, highway, street, lane or other public way within the State of Maryland."

This section, according to its terms, applies to all operators under the prescribed age, whether residents or non-residents of Maryland.

The exemption in favor of non-residents is contained in Section 146, and this section provides that any non-resident shall have complied with the laws of the State in which he resides, requiring the registration of motor vehicles or proof of age of operators thereof," and the display of identification tags, "may use the highways of this State without obtaining a registration certificate or operator's license from the Commissioner of Motor Vehicles as hereinbefore prescribed." There are also contained numerous provisions, which I understand are not involved in your inquiry.

While Section 146 allows non-residents to use Maryland highways in operating cars within and through Maryland, it was never intended to authorize the use of Maryland highways by minors where the laws of Maryland, in the interest of the public safety, prohibit them from doing so.

Section 143 must be regarded as a police law. The purpose of this section that no person under the age of 18 should drive an automobile was passed because the Legislature deemed it essential in the interest of the public safety. Section 146 simply with registration certificates and markets and fees for operators. The Legislature never intended by Section 146 to permit non-residents under the age of 18 to operate in Maryland, when Marylanders under that age were, for reasons of public safety, prohibited from operating.

It is, therefore, my opinion that the age provisions of Section 143 apply to all persons who operate cars on the State

whether residents or non residents, and that any person, whether resident or non resident, below the age provisions of that section, who operates a car in this State, is subject to the penalties provided by Section 113.

Very truly yours,

ARTHUR G. REYNOLDS, *Attorney General.*

MOTOR VEHICLES — NON RESIDENTS PERMITTED TO OPERATE MOTOR VEHICLES IN WEST VIRGINIA — MOTOR VEHICLE LAW.

FEBRUARY 5, 1932.

E. Lester Broughton,
Commissioner of Motor Vehicles,
Charleston, West Virginia.

DEAR SIR:

In your letter of January 29 you submitted what appears to be a case of a resident of West Virginia who [illegible] West Virginia [illegible] during out-[illegible] between the two States that in West Virginia an automobile is not required to be [illegible] the registration [illegible] the State of [illegible] residence.

[illegible] relative [illegible] of [illegible] shall [illegible] the [illegible] motor vehicle and the [illegible] to the road.

The subtitle referred to embraces the Motor Vehicle Law of this State, and, therefore, any non-resident who has been convicted of violating the provisions of the Motor Vehicle Law, becomes thereupon required to comply with all the provisions of the law of this State relating to the registration of motor vehicles and the licensing of operators, exactly as if such person were a resident. In other words, such person by reason of his conviction, forfeits all right to the exemptions conferred by Section 146.

Consequently, in the case you mention, the West Virginia owner, who has been convicted and fined for violating the Maryland law, is now required to register his car under the Maryland law and to obtain an operator's license under the Maryland law before he can lawfully operate in Maryland.

If such person operates his car in Maryland without a Maryland operator's license, he subjects himself to the penalties prescribed in Section 146, and upon such person's application for an operator's license then, if in your judgment, the safety of the public would be endangered by the continuance of the present, under Section 146, he refuses to issue the license, which event, of course, such person may not lawfully drive in this State.

Very truly yours,

[illegible]

Motor Vehicle [illegible]

[illegible]

Colonel [illegible],

[illegible] Maryland,

[illegible], Maryland.

Dear Mr. [illegible]: I beg to give you this opinion upon the several questions you submitted to me in your letter of March 20th, 1917, supplemented by your letter of March 30th, 1917:

(*a*) A horse-drawn vehicle going south on St. Paul Street [illegible] at the rate of three miles per hour. Immediately behind an automobile likewise going south but at the rate of eight miles per hour. The horse-drawn vehicle is practically in the middle of the street, and the automobile cannot pass without going to the left of the centre of the street, or to the right of such horse-drawn vehicle. (*b*) [illegible] Shall the automobile pass the horse-drawn vehicle on the left or on the right?

Section [illegible] of the Motor Vehicle Law, 1916, Chapter [illegible], provides that "any vehicle overtaking another going in the same direction shall pass to the left of the vehicle so overtaken, provided the way ahead is clear of approaching traffic." I think that this applies where an [illegible] overtaken is a horse-drawn vehicle. Attorney General's Opinions, 1916, Vol. I, page [illegible], and [illegible] contained in Section [illegible] of Ordinance No. [illegible], approved June [illegible], which provides that "vehicles overtaking others shall, in passing, keep to the left."

The ordinance [illegible] Section [illegible] of the same City Ordinance, which provides that "others shall keep to the right of the centre of the street," [illegible] vehicle is practically in the middle of the street, so nearly the automobile cannot [illegible] at the same time keep to the right of the centre of the city.

I do not, [illegible] Section [illegible] of the Ordinance [illegible] should be read together, and the result of so doing them together is that the automobile must not [illegible] to the left of the horse-drawn vehicle, but it must [illegible] keep to the right of the centre of the street.

This, I think, is the correct meaning of the ordinance, and the only question, therefore, is whether the ordinance can legally impose the requirement which the statute does not impose, of keeping to the right of the centre of the street. There is, I think, no doubt that the ordinance can impose that additional

requirement, because Section 133 of the Motor Vehicle Law authorizes incorporated cities to "prescribe and enforce reasonable traffic regulations by fine or imprisonment, either or both in the discretion of the Court, applicable to all vehicular traffic, motor vehicles included," provided they do not involve charges for the use of the highway. The requirement in question is a reasonable traffic regulation, applicable to all vehicles, within the meaning of Section 133. See also:

Rosenberg vs. State, 111 Md. 294.

The result, of course, is that so long as the horse-drawn vehicle continues in the center of the street, the automobile cannot legally pass at all. This situation however, is covered by Section 168 of the Motor Vehicle Law, which provides that the vehicle overtaken "shall promptly, upon signal, turn as far to practicable possible to the right in order to allow free passage on the left," and failure so to do is a misdemeanor, and subjects the offender to a $25.00 fine. The situation is also covered by Section 18 of the City Ordinances, which provides that "vehicles moving slowly along streets having car tracks shall keep as close as practicable to the kerb line on the right side to allow faster moving vehicles free passage on the left." Under Art. VIII, Sec. 1 of the Ordinances the fine for violating Sec. 18 is from $1.00 to $10.00.

A horse-drawn vehicle going east on Baltimore Street at the rate of three miles an hour and occupying the east bound car tracks. An automobile immediately behind, likewise going east, but at the rate of ten miles an hour. The automobile desires to pass the horse-drawn vehicle. *Question:* Shall the automobile pass the horse-drawn vehicle on the right or on the left?

This question is exactly the same as the last, except that the street has car tracks, so that Section 18 of the City Ordinances does not apply, and the horse-drawn vehicle occupies the east bound tracks. The answer, however, is the same as ours. The automobile can only pass to the left of the horse-drawn vehicle and to the right of the center of the street, and so long as this

cannot be done, the automobile cannot legally pass at all. If the horse-drawn vehicle does not "promptly, upon signal, turn as far as reasonably possible to the right in order to allow free passage on the left," then the driver is guilty of a misdemeanor under Section 1663. If the street to the right is occupied by traffic, so that the driver of the horse-drawn vehicle cannot turn to the right, then it is not "reasonably possible" for the driver to turn to the right, and the automobile will simply have to wait until the driver can do so.

A street car going east on Baltimore Street at a low rate of speed. Immediately behind an automobile likewise going east, but at a higher rate of speed. The automobile operator to pass the street car which at the time is moving slowly and has not yet stopped but about to stop to take on or discharge passengers. Does this statement in mind be entirely from consideration in this connection all questions concerning the provisions requiring vehicles to stop at least three feet behind street cars which have stopped for the purpose of allowing persons to enter and alight from the cars? Shall the automobile pass the street car on the right or the left?

The question is the same as in the case of the vehicle to be passed is a street car. I think that Section 1 of the Ordinance, providing that "vehicles overtaking others shall, in passing keep to the left," does not apply where the vehicle overtaken is a street car. If this provision does apply in the case of a street car, then it would generally be impossible to pass the street car at all, because the automobile would generally not pass the street car to the left and at the same time keep to the right of the center of the street, as Section 1 of the Ordinance requires. Moreover, Section 20, as amended by Ordinance No. 1[illegible] approved February 3, 1913, clearly contemplates that a street car which has *not* stopped may be passed to the right. The object of Section 20 is to protect passengers who are alighting from or boarding a street car on the right, from an automobile approaching on the right, and if the automobile, under

Section 3, is required to pass the street car on the left, then there would be no object at all in Section 29. I, therefore, think that Section 1 does not apply when the vehicle overtaken is a street car. Likewise, I think that the exemption in Section 133 of the Motor Vehicle law of vehicles which "run only upon rails or tracks," may fairly be said to exempt street cars from the provisions of Section 163, requiring the vehicle overtaken to be passed to the left.

The result is that in [illegible] the automobile should pass the street car to the right.

(c) A street car going east on Baltimore Street stops on the west side of Charles Street to take on and discharge passengers. An automobile likewise going east on Baltimore Street desires to pass such street car. In attempting and the operator thereof has the same under control and is prepared to reduce its speed to a reasonable and proper rate of speed in passing such standing street car. Question: At the point of the automobile [illegible] in the same way under such circumstances, and if so, at what side?

The automobile cannot pass the street car on all sides [illegible] is standing. Section 29 of the [illegible] Ordinance No. 561, approved [illegible] provides that "no vehicle shall pass any street car going in the same direction on the vehicle side [illegible] for the purpose of allowing persons to enter into or leave such street car, but shall come to a halt at least three feet from the rear of said car." It is true that Section [illegible] of the Motor Vehicle Law provides that "on approaching or being [illegible] street car which has stopped or about to stop for the purpose of discharge passengers, the person operating any motor vehicle or motor-cycle shall have the same under control and shall reduce its speed to a reasonable and proper rate." But Section [illegible] authorizes incorporated cities to promulgate reasonable traffic regulations applicable to all vehicles, and under this authority as well as under the case of Rossberg [illegible] State, 111 Md. [illegible],

the City has ample power to impose the additional regulation provided by Section 20 of the City Ordinance, as amended.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—STATE STATE LAW SUPERSEDES LOCAL LAWS.

May 22, 1922.

Justin C. Beck, Esq.,
Clerk, Burgess & Commissioners,
Hancock, Maryland.

DEAR SIR:—I beg to reply to your favor of May 8th.

The Motor Vehicle Law supersedes and repeals all local laws and ordinances relating to or the speed of motor vehicles, or the registration or licensing of motor vehicles and operators, or the taxation, registration fees, license fees, assessments and charges for the use of a motor vehicle on any public highway.

Acts 1916, Chap. 687, Section 139 and 2, entitled "Repeal."

These subjects are covered by Sections 1 to 138 inclusive of the State law. Prosecutions relating to any of these subjects must be taken under the State law, and fines and penalties must be paid by the magistrates to the Commissioner of Motor Vehicles. Section 139.

This covers your inquiry as to speeding and reckless driving. Prosecutions for this should be under the State law, and the magistrates should pay the fines to the Commissioner of Motor Vehicles.

The State law, however, permits incorporated towns to prescribe and enforce "reasonable traffic regulations" provided they do not relate to any of the above subjects and do not involve any charge for the use of the highways, and also provided they do not relate to subjects which the State law covers and as to which it is intended that the State law shall be exclusive.

It is difficult for me to advise you whether the other ordinances you have in mind are "reasonable traffic regulations," which incorporated towns may thus pass, without knowing more specifically what the exact provisions of the ordinances are. If, however, you will ask your counsel to consider them in the light of the provisions of the Act of 1916, Chap. 687, he will doubtless be able to advise you as to this.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—SPEED AND HORNS AT CROSSINGS—STATE LAW SUPERSEDES LOCAL LAWS.

August 20, 1917.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 East Lexington Street,
Baltimore, Maryland.

DEAR SIR:—I beg to reply to your recent request for my opinion as to the validity of the Town Ordinance of Chesapeake City, passed September 7th, 1915, which fixes a maximum speed limit for automobiles, and requires horns to be sounded at every crossing in Chesapeake City.

The provisions of this Ordinance are as follows:

"On and after September 11, 1915, any person or persons riding in an automobile or any other motor driven vehicle at a rate of speed faster than fifteen (15) miles per hour through the streets of the town of Chesapeake City, and all automobiles or other motor driven vehicles failing to sound horn or klaxon at all corners, crossings or intersecting streets, shall be arrested and upon conviction fined not less than Two dollars ($2.00) or not more than Ten dollars ($10.00) in each and every case."

The portion of this Ordinance relating to the maximum rate of speed for automobiles is, of course, invalid, under Section 133 of the Motor Vehicle Law, Act of 1916, Chap. 687, which

danger at all in not sounding the horn, then it must not be sounded. In my opinion, these provisions of the State law cover the whole subject, and any town ordinance inconsistent with them is now void. The Town Ordinance of Chesapeake City is inconsistent with these provisions, because it arbitrarily requires the horn to be sounded at every crossing, and not "as a warning of danger" only.

Section 133 authorizes incorporated towns to prescribe "reasonable traffic regulations" which are "applicable to all vehicular traffic, motor vehicles included," provided they do not involve a charge for the use of the highway. The Town Ordinance of Chesapeake City is not within this provision, first, because it does not apply to all vehicular traffic, but applies to automobiles only, and, secondly, because it was not the intent of the State law to permit towns to pass traffic regulations upon a subject which is regulated by the State law and as to which the provisions of the State law were intended to be exclusive and supreme.

For these reasons, it is my opinion that the Town Ordinance of Chesapeake City of September 7, 1915, is repealed by Sections 133, 148 and Section 3 page 1008 of the State Law, and is, therefore, void.

The invalidity of the Town Ordinance should not result in jeopardizing the public safety to the slightest degree. The State law, as already shown, requires the horn to be sounded whenever and wherever it ought to be sounded "as a warning of danger." If the horn is not sounded whenever and wherever there is need to sound it as a warning of danger, then the State law is violated, and the violator should be prosecuted under the State law.

For example, Mr. Clifton C. Lowe, President of the Board of Commissioners of Chesapeake City, states that there are streets in Chesapeake City which have dangerous curves with blind approaches, and the inference is that the Town Ordinance was intended primarily to require horns to be sounded at these crossings. If these two crossings are such that the horn should

be sounded in approaching them, as a warning of danger, then no ordinance is necessary to require the horn to be so sounded. In such case, Section 148, subsection 2 of the State law requires the horn to be sounded, and if it is not sounded the driver is subject to prosecution under the State law.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY.

POLICE BOARD OF BALTIMORE CITY — DETECTIVES, APPOINTMENT OF, FROM UNIFORM FORCE BELOW GRADE OF LIEUTENANT.

April 5, 1912.

Josiah A. Kinsey, Esq.,
Secretary, Board of Police Commissioners,
Baltimore, Maryland.

DEAR MR. KINSEY: I beg to reply to your favor of March 27th, in which you ask whether the Police Board has power to appoint a round sergeant of the uniform force to the detective force.

Section 745 G of the Baltimore City Charter, which is the Act of 1905, Chap. 741, provides that detectives shall be appointed "solely from the uniform force below the grade of round sergeant and above the position of probationer," and that detectives shall have a grade in the permanent police force "equal to that of round sergeant."

The Act of 1911, Chap. 7[illegible], amending Section 745 of the Charter, provides that all detectives shall "rank as lieutenants with equal opportunities of promotion with other lieutenants," but this Act, while raising the rank of detectives from round sergeant to lieutenant, did not in express terms change the provision in Section 745 G that detectives should be appointed from below the grade of round sergeant. The Act of 1911 did, however, repeal "all laws or parts of laws inconsistent" with it.

It can be urged with considerable force that the Act of 1911, ranking all detectives as lieutenants, repeals by implication the provisions of the Act of 1905 requiring detectives to be appointed from below the grade of round sergeant. If this is not so, the result is that a round sergeant could never be appointed a detective, because detectives would have to be appointed from the force below the grade of round sergeant, and yet detectives,

when so appointed, would be graded as lieutenants, thus outranking the round sergeants. This would, of course, involve an unfair discrimination against round sergeants.

I do not believe that the Legislature really intended this, and under the circumstances I think that the Police Board is justified in appointing detectives from the round sergeants of the uniform force. In the unlikely event of the Board's right to do this being raised in legal proceedings, the question can then be definitely determined by the courts. In the meanwhile, I advise the Board to construe the law as authorizing detectives to be appointed from the uniform force below the grade of lieutenant and above the position of probationer.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

[illegible]

[illegible]

Dear Mr. [illegible]

[illegible]

The only provision of law under which [illegible] could be made is Section 776 [illegible] which provides that the Board shall have power, in its discretion, to pay to the widow of any member of said police force [illegible] within the limits of said City, who shall have been killed while in the actual performance of duty, or shall have died in consequence of injuries received while in the discharge of duty, an

allowance until she remarries. If there be no widow, but a child or children, then to pay to such child or children whilst under the age of 18 years, a sum such as parent would have been entitled to out of said special fund."

Whether or not the Board is authorized to make an allowance to Captain Parker's widow under this section, depends upon whether a liberal or a narrow construction be given the word "injuries" in the phrase "shall have died in consequence of *injuries* received while in the discharge of duty." The word may be construed narrowly, so as to limit it, for instance, to injuries inflicted by some one else, or it may be construed liberally, so as to include any injury of any kind which occurs to the officer while in the discharge of his duty, and if a liberal construction be adopted, I see no reason why the word may not include an injury received from sunstroke which results in death.

I think that the Police Board may very properly decide whether it will give the word "injuries" a narrow or a liberal construction, and that the Board may, if it sees fit, adopt the view that when an officer, while performing his duties, dies as the result of a sunstroke, his widow is as much entitled to an allowance as if the officer had died as the result of some other character of injury. It is, therefore, my opinion that the Board has the authority to make an allowance to Officer Parker's widow under Section 776 D.

It may be noted that if I am incorrect in this, then under the decision of the Court of Appeals in the McLenahan case June 28, 1917, Mrs. Parker could obtain a special pension act from the Legislature; and the Board may regard this as an additional reason for placing a construction upon Section 776 D which will be sufficiently liberal to include deaths from sunstroke.

Very truly yours,

ARTHUR C. RICHARDS, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY—OFFICER'S ENTRY INTO FEDERAL MILITARY SERVICE CREATES A VACANCY.

October 10, 1917.

Gen. Lawrason Riggs,
Pres., Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR SIR: Replying to your favor of October 8th, I beg to say that, in my opinion, the entry and acceptance of a member of the Police Department into the Federal Military service, pursuant to the draft, automatically creates a vacancy in the position held by such member in the Police Department which may be filled in the customary manner, without any formal resignation or removal of such member.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY—RESIGNATION OF RESERVE PATROLMAN.

July 31, 1917.

Josiah A. Kinsey, Esq.,
Secretary, Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR MR. KINSEY: I beg to reply to your favor of July 30th.

I understand that Patrolman Callahan's application for a ninety days' leave of absence was refused by the Board under a misapprehension, the Board thinking that the Patrolman desired to play professional baseball during the leave applied for, whereas he really desired to attend to certain business matters. Had the Board known this, they would have granted the leave.

When the Board refused the leave, Patrolman Callahan resigned. His resignation was duly accepted on June 29, 1917, and the vacancy caused thereby was filled on June 25, 1917, by the appointment of another patrolman in Mr. Callahan's place.

Under these circumstances, you ask whether Mr. Callahan can now be re-instated.

I do not see how the Board can lawfully do this.

Mr. Callahan, having resigned from the force, and his position thereon having been duly filled by the appointment of another patrolman in his place, his connection with the force thereupon ceased. He cannot, therefore, be re-instated, that is, get back his former position, because that position is no longer open, but has been duly filled.

Nor can Mr. Callahan be appointed to one of the little vacancies in the force which, I understand, now exist, because these vacancies must be filled from the graded lists, in the manner provided by Sections 743 D and 743 E of the Baltimore City Charter.

Very truly yours,

[illegible]

Police Board of Baltimore City, Security Building, No. [illegible]

[illegible]

Joseph [illegible] *Esq.*,

Secretary, Board of Police Commissioners,

Court House, Baltimore, Md.

Dear Mr. [illegible] Your letter of August 27th.

I understand that Andrew F. Caldwell was appointed a patrolman in 1875 and made a station house clerk in 1888. The latter was a four year appointment, and upon the expiration of Mr. Caldwell's third term, in 1896, he was not reappointed. Mr. Caldwell's length of service was more than sixteen years, and he was, therefore, eligible to be retired upon a pension, but he was not placed upon the pension list.

By the Act of 1900, Chap. 12, Mr. Caldwell was granted a life pension, payable out of the special fund, of $6.00 per week, and by the Act of 1902, Chap. 162, this was increased to $7.00

per week. This latter pension was paid until September 1, 1916, when it was discontinued upon the advice of the Board's Counsel that the special act was invalid.

Mr. Caldwell's case is substantially similar to the Behrens' case, decided by the Court of Appeals, on June 28, 1917, in Board of Police Commissioners vs. McLenahan, and under that decision the special acts granting a pension to Mr. Caldwell were valid.

Mr. Caldwell having died on October 1, 1916, one month after his pension was discontinued as above stated, his administrator is now entitled to the payments which were due him from the time the payments ceased until his death. This also was decided by the Court of Appeals in the McLenahan case, when they disposed of Mechan's case.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

Police Commissioners, Baltimore City, Special Pensions, Acts

Sections 1, 2, Chapter

August 1, Kinsey, Esq.

Secretary, Board of Police Commissioners,

Court House, Baltimore, Md.

DEAR MR. KINSEY: I beg to inform you that I advise the Police Board, on the point that the Board, in lieu of the decision of the Court of Appeals in the McLenahan case, June 28, 1917, is justified in paying the pensions provided by special acts in the amount of pensions to certain retired officers.

The officers are:

1. James M. Moore, who was retired on August 1, 1888, with a pension of $6.00 per week, the beginning salary of a patrolman's salary at that time. The Act of 1892, Chapter 1, Baltimore City Charter, Sec. 750, increased this pension to $12. per week, and Moore received this amount until September 1,

1916, when the Board refused to pay more than $10. per week (this being one-half of a patrolman's salary at the present time, see Act 1912, Chap. 567, Baltimore City Charter, Section 777) on the advice of the Board's counsel that special acts of this character were invalid. Since September 1, 1916, Moore has received $10. per week.

2. Perry W. Ruth, who was retired on January 8, 1896 with a pension of $6.00 per week, this being one-half of a patrolman's salary at that time. The Act of 1896, Chap. 105, increased this pension to $12. per week, and Ruth received this amount until September 1, 1916, when the Board refused to pay more than $10. per week, as in the Moore case. Since September 1, 1916, Ruth has received $10. per week.

3. Andrew Fishback, who was retired on January 2, 1912 with a pension of $10. per week. The Act of 1912, Chap. 122, increased this pension to $15. per week, and Fishback received this amount until September 1, 1916, when the Board refused to pay more than $10. per week. Since September 1, 1916 Fishback has received $10. per week.

4. John Stenolle, who was retired on October 22, 1908 with a pension of $6.00 per week. The Act of 1908, Chap. 243, increased this pension to $12. per week, and Stenolle received this amount until September 1, 1916, when the Board refused to pay more than $10. per week. Stenolle received $10. per week from September 1, 1916, until November 21, 1916, when he died.

It thus appears that in each of these four cases the officer was within the provisions of the Police Retirement System, and was in fact retired upon the pension provided by that system. These four cases, therefore, differ from the ten cases involved in the McCombs decision, because the Court of Appeals in that decision held that none of these ten cases was covered by the provisions of the Police Retirement System, and the special acts were sustained upon that ground. The Court of Appeals expressly declined to say what it would hold in the case of a special act granting a pension or an increased pension to an

officer who was embraced within the provisions of the Police Retirement System.

The present four cases are of this character, and, consequently, the validity *vel non* of the special acts increasing these pensions presents the question which the Court of Appeals declined to decide in the McGlenahan case.

I think it clear, however, from the decision in the McGlenahan case, that the Court of Appeals was by no means certain of the invalidity of a special act providing for the case of an officer covered by the provisions of the Police Retirement System. On the contrary, the Court expressly left itself free to decide such a special act valid, and if such a special act should hereafter come before the Court, it is entirely possible that the Court may uphold it.

In this situation, and under all the circumstances, it is my opinion that the Board is justified in treating the special acts involved in the Moore, Ruth, Fishback and Steinlle cases as valid, and is justified in paying for the future to Moore, Ruth and Fishback the amounts provided by these special acts, and in paying these retired officers from September 1, 1916, to date the difference between the amounts provided by these special acts and the amounts actually paid, and in paying this difference to Steinlle's estate from September 1, 1916, to November 24, 1916.

It seems to me that this is at least the fair thing to do, in view of the fact that the ten special acts involved in the McGlenahan case have been upheld.

Very truly yours,

[illegible], Attorney General.

POLICE BOARD OF BALTIMORE CITY—SPECIAL POLICE FORCE.

February 12, 1917.

Gen. Lawrason Riggs,

Pres., Board of Police Commissioners,

Court House, Baltimore, Md.

DEAR SIR:—I beg to reply to your letter of February 8th, asking my opinion as to whether the Police Board is authorized to organize a force of 240 special policemen, who are to serve as and when called upon during a period not exceeding six months, at a compensation of $3.00 per day when on actual duty, and to be provided with patrolmen's equipment.

I understand that this special force will only be established in the event that the internal war situation should develop to be such that the public peace, in the opinion of the Police Board, will require the force.

Section 715 of the Baltimore City Charter provides:

> "The said police force may be increased at any time if in the opinion of the said Board the public peace shall so require, to any number and for such periods of time as they may think proper, by the appointment of special policemen, who shall receive the sum of $3.00 per day for their services."

In my opinion, this provision clearly authorizes the Police Board to organize the special police force, if in the Board's opinion, the public peace shall so require. The number of the force and the duration of their services are left to the Board's discretion, the compensation is limited to a sum clearly authorized by the statute, and the power to appoint carries with it the power to equip, even if Section 715 of the Charter has not apply, as I think it does.

The Police Board is not obliged to select this force after the competitive examination, as is the graded list provided for by Section 715 A, etc., of the Charter, because the Charter because these sections only apply to the permanent force.

I understand that the appropriation made by the City of Baltimore to the Police Board for the current year may not be sufficient to pay the expense incident to this special police force. The City cannot expend for the police force during the current year anything in excess of that appropriation. This expense, however, is necessary, and Section 747 of the Baltimore City Charter provides that in case the Police Board's estimate to the City, "shall from any cause prove insufficient for the necessary expenses for the current year," then the Police Board may issue certificates "to meet the said exigency," not to exceed $50,000 in any one year, upon the terms named in Section 747, the amount of such certificates to be added to the estimate to the City for the year next ensuing. The expense of the special police force may be provided for in this way.

In this connection, see the case of Baltimore vs. Poultney, 25 Md. 18, especially pages 32-33, presenting a somewhat similar situation during the Civil War.

It may be doubtful whether the $50,000 contingent fund provided for the Board of Estimates by Section 38 of the Baltimore City Charter would be available for the expense of the special police force, even if the Board of Estimates should desire to apply it to that purpose, in view of the case of McKeever vs. Baltimore, 126 Md. 111, in which it is held that Sections 34 to 36 of the Charter do not apply to the Police Board. See also Thrift vs. Annapolis, 126 Md. 126.

This, however, is a question for the city authorities to decide.

Very truly yours,

Andrew [illegible]

STATE BOARD OF PRISON CONTROL.

PRISON CONTROL, STATE BOARD OF—ACCOUNTING FOR SURPLUS EARNINGS OF PENITENTIARY.

May 21, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of May 5th, in which you ask whether the State Board of Prison Control should account to your office for the earnings received by it from the Maryland Penitentiary, in excess of expenditures for that institution.

I have not replied sooner, because after considering your inquiry I took the matter up with the State Board of Prison Control, and found that the Board had already, on May 8, accounted to your office for the surplus earnings in question. My opinion now, therefore, will simply be of use for possible future reference.

Section 644 of Article 27 of Bagby's Code expressly required the Directors of the Maryland Penitentiary to account to the Comptroller and to pay to the Treasurer any surplus in the receipts over the expenditures. The Act of 1916, Chapter 566, which placed the Penitentiary under the control of the State Board of Prison Control, repealed Section 644, but I think that the provisions of Sections 626, 641 and 652 of Chapter 566 of the Acts of 1916, taken in connection with the fact that a direct appropriation is made for the Board, require the Board to account to your office for the surplus earnings of the Penitentiary.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—COMMITMENTS, DUTY TO FURNISH.

April 26, 1917.

E. D. Case, Esq.,
Secretary, State Board of Prison Control,
701 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: I have your favor of April 25th, in which you ask whether the Superintendent of the House of Correction is required to furnish G. L. Pendleton, attorney, with copies of the commitments of certain prisoners now in the House of Correction.

Bagby's Code, Art. 42, Sec. 10, provides that "any person committed or detained, or any person in his behalf, may demand a true copy of the warrant of commitment or detainer; and any officer or other person who shall neglect or refuse to deliver a true copy of the warrant of commitment or detainer, if any there be, within six hours after the same shall have been demanded, shall forfeit to the person detained $500.00."

Under this section the Superintendent of the House of Correction is required to furnish the attorney for any prisoner in the House of Correction, upon the demand of such attorney, with a true copy of the warrant of commitment or detainer.

Inasmuch as the penalty for refusing to do so is rather severe, I am sending a copy of this letter to Mr. Lankford, in order that he may send Mr. Pendleton copies of the commitments in question. I am also returning to Mr. Lankford Mr. Pendleton's letter to him of April 19th.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL—STATE BOARD OF—HOUSE OF CORRECTION—AUTHORITY OF GRAND JURY TO VISIT.

April 22, 1927.

R. D. Case, Esq.,
Secretary, State Board of Prison Control,
201 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: I beg to reply to your letter of April [illegible]

The authority of the Grand Jury of Anne Arundel County to visit the Maryland House of Correction comes from Section 630 of the Act of 1916, Chapter [illegible], which creates your Board. Section 630 requires the Criminal Court of Baltimore and the Circuit Court of Anne Arundel County, at each term of court, to charge the Grand Jury "to inquire into the conduct and management of each of the penal institutions within the jurisdiction of said Court." The House of Correction is of course within the jurisdiction of the Criminal Court of Anne Arundel County.

I find no authority for the Grand Jury of Baltimore City to visit the House of Correction, nor has the State's Attorney of Baltimore City, whom I saw about the question, found it either. The practice, however, has existed for a long time and inasmuch as it cannot result in any harm and might possibly result in good, your Board may consider it desirable not to undertake to stop it.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—PRISON LABOR CONTRACTS, NO RIGHT TO RESCIND.

May 11, 1917.

E. D. Case, Esq.,
Secretary, State Board of Prison Control,
701 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: As requested by Dr. Wade the other day, I have examined the various contracts which you left with me relating to prison labor, in order to ascertain whether your Board has power to rescind or annul any of them.

I beg to advise you as follows:

So long as the contractor complies with its obligations, the following contracts cannot be rescinded or cancelled at all by your Board:

Bromwell Brush & Wire Goods Company. Dated Sept. 30, 1915. Maryland Penitentiary.

Darragh, Small & Co. and Joseph Wild & Co. Dated May 1, 1915. House of Correction.

Cumberland Shirt Company. Dated January 6, 1912; renewed May 1, 1915. House of Correction.

Worcester Wire Novelty Company. Dated July 11, 1916. House of Correction.

Weir-Wolf Hosiery Company. Dated December 19, 1916. House of Correction.

The following two contracts may be rescinded under the conditions stated:

Jones Hollow Ware Company of Baltimore. Dated November 30, 1915. Maryland Penitentiary.

So long as the contractor complies with its obligations under this contract, the same cannot be rescinded by your Board, unless National legislation is passed relative to convict labor or convict made goods, and then one year's notice must be given. (Clause 15.)

Oppenheim, Oberndorf & Co., Inc. Dated Feb. 12, 1916. Maryland Penitentiary.

So long as the contractor complies with its obligations under this contract, the same cannot be rescinded by your Board, except upon one year's notice and the payment of $5,000. (Clause 11.)

I return all of the above contracts to you.

Section 630 of the Act of 1916, Chapter 556, does, of course, require your Board to establish a system of prison labor which will supersede the present system of contract labor, as soon as the Board shall deem the same expedient and proper; but the existing contracts are expressly recognized by Section 626, which provides that "nothing in this Act shall be construed to impair or abrogate any existing contract."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—PRISONERS, TEMPORARY RELEASE OF.

March 2, 1917.

E. D. Case, Esq.,
Secretary, State Board of Prison Control,
701 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: I beg to reply to your recent inquiry asking whether the courts of this State have power to order the temporary release of prisoners, under proper guard, from the Maryland Penitentiary and the House of Correction, on the occasion of the extreme illness or death of relatives, or other similar emergencies.

I understand that it has long been the custom of our courts to order such temporary releases in emergencies, but after a careful and thorough search I have been unable to find any authority for it.

The Department of Justice of the United States has a similar custom in the case of Federal prisoners, although there is no

Federal statute authorizing it. The Department simply takes the responsibility of permitting Federal prisoners to be taken out under guard in order to visit dying relatives or to attend their funerals, or in the case of necessary surgical operations or special medical treatment which cannot be performed or administered within the prison.

While, as I have said, there is no statute on the subject, yet I see no reason why your Board should not permit the superintendents of the Penitentiary and of the House of Correction to continue to recognize the temporary release orders which our courts have adopted the custom of passing, so long as the custom is not abused, but is confined strictly to such occasions as the sickness or death of relatives or essential surgical or medical treatment for the prisoners and so long, of course, as the release does not last longer than the absolute necessities of the case require, and the prisoner is under adequate guard all the time.

I return you the enclosures you sent me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—PRISONERS, TRANSFER OF.

October 12, 1917.

R. D. Case, Esq.,
Secretary, State Board of Prison Control,
701 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: I beg to reply to your favor of October 11th, in which you ask whether your Board has the power to issue an order transferring all female prisoners (except Federal prisoners), now in the Maryland Penitentiary to the Maryland House of Correction.

Section 654 of the Acts of 1916, Chapter 550, provides that "whenever the State Board of Prison Control shall determine that prison discipline will be furthered by transferring from" the Maryland Penitentiary to the House of Correction, or *vice*

verso, "any person sentenced to either of said institutions for a crime committed *after this Act takes effect*," then such transfer may be ordered by the Board.

If, therefore, your Board determines "that prison discipline will be furthered" thereby, you may order the transfer from the Penitentiary to the House of Correction of female prisoners, other than Federal prisoners, who have been sentenced for crimes committed after the Act of 1916, Chapter 556, took effect, that is, after October 1, 1916; but the Board cannot order the transfer of prisoners who have been sentenced for crimes committed before October 1, 1916.

Very truly yours,

ARTHUR W. BRUNE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—PRISONERS, TRANSFER OF INSANE PRISONERS BY ASYLUMS.

March 31, 1917.

E. D. Cox, Esq.,
Secretary State Board of Prison Control,
207 Lexington Trust Building,
Baltimore, Maryland.

DEAR MR. COX:—I beg to reply to your favor of February 28th, in which you ask whether there is any way in which your Board can compel the State Lunacy Commission to remove a number of insane convicts from the Maryland Penitentiary and the House of Correction to State insane hospitals.

The Act of 1911, Chapter 101 (Bagby's Code, Art. 59, Sec. 44 A), directs the Lunacy Commission immediately to remove all criminal insane convicts now confined or who may hereafter be confined in the Maryland Penitentiary and the House of Correction and to place the same in such State hospitals as said Commission may deem proper."

The Act of 1916, Chapter 556, Sec. 675 (amending Bagby's Code, Art. 27, Sec. 675, which codified the Act of 1896, Chap. 123), empowers the State Board of Prison Control to summon

the Lunacy Commission to pass upon the mental condition of any convict in the Penitentiary or in the House of Correction, and if the Lunacy Commission adjudges that any such convict is insane and that removal for treatment is advisable, then the Commission is directed to make complaint to the court, and the court "shall have the power to order the removal of such insane convict to some insane asylum within the State for treatment, and all expenses incurred in the removal and support of said insane convict shall be borne by the State."

The law, therefore, expressly provides for the removal of insane convicts to State insane hospitals, and the Act of 1916, Chapter 656, page 1565, appropriates, for the current fiscal year, "for the support of insane convicts as provided by Chapter 123 of the Acts of 1890, the sum of $5,000.00, or so much thereof as may be necessary." As already stated, the Act of 1916, Chap. 656, Sec. 618, now takes the place of the Act of 1890, Chap. 123. This is the only appropriation which the State has made for the purpose of caring for removed criminal insane.

I have conferred with Dr. Herring, Secretary of the State Lunacy Commission, and the situation appears to be that the per capita maintenance charge for insane convicts is $200.00 per year, so that the $5,000.00 appropriation is only sufficient to care for 25 cases. Dr. Herring says that the State is now caring for 24 such cases, so that there is only one more case that can be cared for.

The situation, therefore, is that while the State has provided for the removal of insane convicts, it has not provided sufficient funds to care for them after their removal. Dr. Herring tells me that the State Lunacy Commission is most anxious that all insane convicts should be removed, but that the lack of funds renders the Commission powerless.

The State can expend no money except for purposes for which appropriations have been made, and if there is in fact no fund which can be used for the care of removed criminal insane, then

the law providing for their removal simply cannot be carried out.

As already stated, the $5,000.00 appropriated for that purpose is practically exhausted, but it is possible that there may be some contingent or other fund which could be used, or that some arrangements could be made with some of the State hospitals to care for cases removed to them, and look to the next Legislature for the maintenance charges.

The only suggestion I can make is that your Board ask the Board of Public Works for a conference on the subject, which should be attended by Dr. Herring, in order to see whether some practical means can be devised for the removal and care of insane convicts, pending the meeting of the next Legislature, which should make some adequate provision in the matter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF: REFERRING TO BOARD OF STATE AID AND CHARITIES.

June 2, 1912.

Hon. William J. Ogden,
Secretary, Board of State Aid and Charities,
306 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of May 23d, in which you ask whether the State Board of Prison Control is required to make annual reports to the Board of State Aid and Charities.

Under the Act of 1910, Chap. 356, Sec. 63, the State Board of Prison Control is required to report annually to the Governor, who is to communicate such report to the Legislature. There is no statute obligating the State Board of Prison Control to report to your Board.

Your Board, however, has power, under Sections 4 and 4-A of Article 88-A of Bagby's Code, Section 4-A being enacted by

the Act of 1916, Chap. 705), to require reports from "any institution financially aided by this State." In case, therefore, either the Maryland Penitentiary or the House of Correction, which are the two institutions under the jurisdiction of the State Board of Prison Control, receive or may hereafter receive financial aid from the State, your Board has the power to require reports from them. But no report need be made to your Board on behalf of either of these institutions, unless your Board requests one, and then only in case such institution receives financial aid from the State.

I understand from the State Board of Prison Control that it has been notified by your Board that the House of Correction will be put upon a per capita basis for the fiscal years 1919 and 1920, and has been requested by your Board to apply for an appropriation for these years on the per capita basis. I do not quite understand the reason for this. The Act of 1916, Chap. 705, Sec. 4-A, providing for the per capita system, only applies to appropriations to "charitable institutions," and the House of Correction is not a charitable institution.

I am sending a copy of this opinion to the State Board of Prison Control.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—SENTENCES TO HOUSE OF CORRECTION, MINIMUM TERM THREE MONTHS.

June 29, 1917.

E. D. Case, Esq.,
Secretary, State Board of Prison Control,
701 Union Trust Building,
Baltimore, Maryland.

DEAR MR. CASE: I beg to reply to your favor of June 19th, in which you ask whether persons can be sentenced to the Maryland House of Correction for a shorter term than three months.

The Act of 1916, Chapter 556, provides, among other things, that "no sentence to the Penitentiary or House of Correction shall be for less than three months," except sentences under Bagby's Code, Art. 27, Sec. 414, relating to unlawful riding on railroad trains. This Act expressly repeals all public general and public local laws, or parts thereof, inconsistent with it.

Therefore, persons cannot be sentenced to the Maryland House of Correction for a shorter term than three months, except under Section 414 of Article 27 of Bagby's Code.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION.

STATE ROADS COMMISSION—NO POWER TO COMPEL COUNTY COMMISSIONERS TO REQUIRE OWNER OF ROAD TO KEEP IT IN REPAIR.

June 11, 1917.

Frank H. Zouck, Esq.,

Chairman, State Roads Commission,

Garrett Building, Baltimore, Md.

DEAR MR. ZOUCK:—Some days ago you left with my Department the correspondence between you and the County Commissioners of Wicomico County relative to the condition of the road over the mill dam at Allen.

This roadway does not belong to the State, but is private property, and under Section 127 of the local laws of Wicomico County the owner is required to keep the roadway or bridge in good repair, and if the owner neglects so to do, then the County Commissioners are required to make the repairs and charge the same to the owner.

The State Roads Commission has no jurisdiction over the County Commissioners under this statute, so that if the County Commissioners do not perform their duty of requiring the owner to keep the roadway in repair, your Commission has no power to make them do so. Should the State Roads Commission wish to take the roadway or bridge over, you can, of course, purchase or condemn it in the usual way.

I return you the correspondence on the subject.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—FINE FOR INJURY TO STATE ROAD, PAYABLE TO COMMISSION.

October 5, 1917.

Col. Harry J. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR COL. HOPKINS: I beg to reply to your favor of September 28th.

I agree with you that the $20 sent you by the State's Attorney for Worcester County, the same being a fine for injury to a State road, collected under the Act of 1912, Chap. 374, Sec. 37-A (Bagby's Code, Art. 21, Sec. 70-A), should be paid to the State Roads Commission, as the board in control of the road in question. The Act provides that such fines shall be paid "to the board or other public authorities in control of the road upon which such offense was committed and to be used for road maintenance."

Very truly yours,

VERNON G. ROGERS, *Attorney General.*

STATE ROADS COMMISSION—NEGLIGENCE IN CONNECTING RAILWAY—NOT LIABLE FOR.

Frank H. Zouck, Esq., *June 11, 1917.*
Chairman, State Roads Commission,
Garrett Building, Baltimore, Md.

DEAR MR. ZOUCK: You returned to my Department a short time ago the papers in connection with the claim of William A. Lowery against the State Roads Commission for damages to his railway, which arose in connection with the construction of the Hanover Street bridge.

This is simply a claim arising out of alleged negligence in the construction of the bridge, and the State Roads Commission is not legally liable for claims of this kind.

State, use Watkins, vs. State Roads Comm., 120 Md. 612.

I return you herewith all of the papers on the subject which you left with me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—SIGN-BOARDS ON PRIVATE PROPERTY.

June 7, 1917.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Garrett Building, Baltimore, Md.

DEAR MR. ZOUCK: I beg to return you the resolution passed May 15th by the citizens of the town of Kensington, Montgomery County, asking the State Roads Commission to cause the removal of several sign-boards placed on private property along the Kensington-Wheaton road in such manner as to obscure the view up the 7th Street Pike.

I assume that these sign-boards have been placed upon the private property by or with the consent of the owner thereof, and I can find nothing in the Road Law, the Motor Vehicle Law or the State Forestry Law prohibiting the placing of sign-boards on private property with the owner's consent, or authorizing your Board to cause them to be removed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—RIGHT TO CHARGE FOR USE OF STATE ROAD BY RAILROAD.

July 16, 1917.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Garrett Building, Baltimore, Md.

DEAR SIR: As requested by you, I have considered the letter of Messrs. Bernard Carter and Sons, representing the Philadelphia, Baltimore and Washington Railroad Company, with

reference to the question whether it is necessary for that company to obtain a franchise from your Commission for the erection of an overhead railway crossing over the North Point Road in Baltimore County, and whether your Commission may limit any such franchise to twenty-five years, and may charge a fee therefor.

I understand that the North Point Road in their new lease will become a State highway before the work of erecting the overhead crossing begins.

The right to use or occupy the public streets and roads is a franchise, and so far as the construction of an overhead railway crossing may be regarded as a use of the public road the turnpike road already has the necessary franchise under Section [illegible] and 314 of Article 23 of Bagby's Code, which authorizes turnpike railroad companies to convert their tracks over public highways.

The only thing the railroad needs from your Commission, in order to build the overhead crossing, is the permit to do the work, which permit is required by Section 17 Vol. Article [illegible] of Bagby's Code. Under this section the only matter your Commission can consider is the protection of public rights. The highway must be paid for by the railroad, but no charge is authorized to be made for the use of the permit, and the right cannot be limited under the provisions of the permit to a single crossing.

While your Commission has authority to impose conditions in the permit, it is possible that you may be asked to allow the railroad's use of the highway on terms other than the right for the use of highways by telegraph and telephone companies.

The right to make such charges which the [illegible] before the highway was built [illegible] the Postal Telegraph Co. [illegible] 127 Md. 244. The court in these cases decided that it was whether the Commission had power to impose such charges upon the users of the highways, so that this question has not yet been decided by the Court of Appeals.

If the Commission decides that the present case is a proper one in which to charge the railroad company for any occupation or use which the overhead crossing may make of the North Point Road, then I think that in issuing the permit you should advise the railroad to that effect, and of the rental charge which you consider reasonable. The railroad's right to obtain the permit does not, however, depend in any way upon its acceptance of any rental charge the Commission may decide to make for the use of the highway. If the railroad disputes your right to make such a charge, then whether the right exists or not should be determined in a separate proceeding.

I return you the letter from Messrs. Bernard Carter & Sons, together with the proposed franchise.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note. The power of the State Roads Commission to charge for uses of state roads by domestic telephone companies is involved in the case of Chesapeake & Potomac Telephone Company vs. State Roads Commission, argued at the October, 1917, Term of the Court of Appeals.

TAXATION.

(Collateral Inheritance Tax Opinions included.)

TAXATION—COLLATERAL INHERITANCE TAX—AMOUNT OF—ON REMAINDER, WHEN TESTATOR DIED BEFORE 1908—AND REMAINDER VESTS IN POSSESSION AFTER 1908.

April 27, 1912.

Howard W. Jackson, Esq.,
Register of Wills,
Court House, Baltimore, Md.

DEAR SIR: Your office has asked me whether, in my opinion, the collateral inheritance tax upon a certain remainder is to be imposed at the rate existing when the testator died, viz., was 2½ per cent., or at the rate now existing, which is 5 per cent.

The question is a difficult one, and not free from doubt.

The facts are these:

The testator died in 1905. His will, which was probated in 1905, gave a life estate to the testator's widow, with contingent remainder to collaterals. At that time the collateral inheritance tax was 2½ per cent. In 1906 it was increased to 5 per cent. The situation at present is that the life estate has terminated and the remainder-men are about to take possession. The question is, whether the collateral inheritance tax is 2½ per cent., which was the rate existing when the testator died, or whether it is 5 per cent., which is the rate now, at the time the remainder-men are to take possession.

The tax is imposed upon the property "passing" or "transferred" (English Code, Art. 81, Sec. 12) to collaterals, so that the question really depends upon the time when the property *passes* or is *transferred*, within the meaning of the statute to the collateral remainder-men. The rate of tax existing at such time is the rate to be paid.

In this connection, the important thing to determine is exactly what is meant by *passing* or *transferring*, as those words are used in the statute. They may mean the passing of *title* only, or they may mean the passing of *possession*.

If by *passing* is meant the passing of *title only*, then this, in the present case, was when the testator died, because the remainders were vested at that time, and the title passed at that time. In this event, the rate would be $2\frac{1}{2}$ per cent.

If, on the other hand, by passing is meant the passing of *possession*, then this, in the present case, will be when the remaindermen take possession under the distribution about to be made. In this case, the rate will be 5 per cent.

In Fisher, Trustee, vs. State, 106 Md. 104, the Court of Appeals said that by the terms of the statute the tax is imposed upon the estate passing by will or otherwise, "at the time it is transferred *and received* by the collateral beneficiary . . . " at the time the collateral beneficiary *received the benefit* of the bequest and devise, under the will" (page 121). This decision was based upon the statute itself, and not upon the fact that in that particular case the remainder did not happen to be vested at the testator's death, but was to be disposed of under a power of appointment.

This construction seems to be borne out by Section 1313 of Article 81 of Bagby's Code, which provides for the payment of the proportion of the tax due by the life tenant, and for the determination thereafter of the proportion of the tax due by any remaindermen, such proportion to be determined from time to time "after the *det ermination of the particular estate* and as the remainder of said estate shall vest," and the same to be a lien on the remainder for four years from the date when "such interest shall *cease to possess*." This seems to contemplate that the remaindermen's tax is to be determined when the particular or life estate ends and when the remainder vests in possession, that is, when the remaindermen *take* possession of his estate.

Also, Section 134 provides for determining the value of an interest less than the absolute interest, when part of the estate is owned by a person who is exempt from the tax. In such case, the value of the interest which is exempt is, on seasonable application, to be deducted from the whole value of the estate and the tax on the residue must then be paid within a prescribed time; and if not so paid, then the tax must be paid on the whole value at the time the owner "*comes into possession* of such estate." This section was not availed of in the present case, and under its terms the tax is now to be paid when the estate "*comes into possession*."

To impose a tax of 5 per cent. when the tax at the time the remainder technically vested was only 2½ per cent. will not result in taking private property for public use without just compensation, or in impairing vested interests, because the tax is not a tax on *property*, but on the *privilege* granted by the State for the *privilege* accorded by permitting property so situate to be transmitted by will or by descent or distribution."

Fisher, Trustee, vs. State, 109 Md. 1[illegible] [illegible]
State vs. Helvingston, 70 Md. [illegible] [illegible]
Tyson vs. State, 78 Md. [illegible] [illegible]

The tax is on the privilege of succeeding to the inheritance or of becoming a beneficiary under the gift."

Washington Hospital vs. Mosher, 121 Md. [illegible] [illegible]
Winger vs. State, 109 Md. [illegible] [illegible]
Orr vs. Gilman, 183 U. S. [illegible]

The State can change the price it has for this privilege whenever it sees fit to change, and can make the change effective at whatever time it wishes.

Cahen vs. Brewster, 203 U. S. [illegible] [illegible]

The State has changed the price by raising it from 2½ to 5 per cent., on all estates "passing" to any person or persons other than those exempted, and the Court of Appeals, in Fisher vs. State, has said that for the purpose of assessing the tax, the estate *passes* "at the time it is transferred and *received* by the

collateral beneficiary;" that the price or tax for the privilege of taking is imposed as of the time when the beneficiary "*received the benefit* of the bequest and devise, under the will." This, of course, is when the beneficiary takes possession.

See also:

Vanderbilt vs. Eidman, 196 U. S. 480, 495.
Kertz vs. Woodman, 218 U. S. 205, 219.
U. S. vs. Fidelity Trust Co., 222 U. S. 158.
U. S. vs. Jones, 236 U. S. 106; also p. 566.
Eberhart vs. U. S., 240 U. S. 598.

In view of the aforegoing, I advise you to impose the tax as of the time when the remaindermen, in the language of the Fisher case, *receive the benefit* of the estate, that is, when they take possession. This means, of course, that the tax you will impose will be the tax existing at the time possession is taken, or 5 per cent.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Note. The above question is presented in the case of State vs. Safe Deposit & Trust Company, Trustee, et al., argued at the October, 1917, Term of the Court of Appeals.

TAXATION—COLLATERAL INHERITANCE TAX—ASSESSMENT WHEN PAYABLE—ANNUITIES.

October 30, 1916.

William A. Pinder, Esq.,
Register of Wills,
Towson, Maryland.

DEAR MR. PINDER: I beg to reply to your favor of October 17th, asking my opinion as to the collateral inheritance tax due by the estate of Thaddeus Forrest.

Mr. Forrest, by his will, left the greater part of his estate to Trustees, upon trust to pay from the income several annuities to collaterals and friends, during their respective lives, and

from the proceeds of the real estate to pay several charitable bequests, and also from the surplus income to make certain distributions to collaterals every five years; the corpus of the estate, at the termination of the life estates, to be divided among the testator's nephews and nieces, or their descendants. The Executors are now ready to state an account distributing the estate to themselves as Trustees, so that they may carry out the terms of the trusts.

The question is whether the collateral inheritance tax must now be paid upon the entire estate, or whether the tax is at this time only required to be paid upon the legacies which are payable now and upon the annuities or life estates, the tax upon the distributions of the surplus income being payable at the times of distribution, and the tax upon the remainders being payable at the time the same vest in possession.

Section 133 of Article 81 of Bagby's Code provides that whenever there is an life estate or interest for a term of years given to one party, with the remainder or reversion to another, the Orphans' Court shall determine what proportion of the tax the party entitled to the life estate or interest for a term of years shall pay. The party entitled to such life estate or interest for a term of years is then required to pay his proportion of the tax within thirty days. Thereafter, at such time as the after the determination of the preceding estate and as the remainder of said estate shall vest, the Orphans' Court shall determine what proportion of the residue of the tax shall be paid by the respective remainderment, who shall pay their proportions within 30 days after the same are so determined.

Under this section, the parties entitled to the annuities or life estates are entitled to have their proportions of the collateral inheritance tax determined now, and pay the same, and as the annuities or life estates, respectively, cease, and the remainders vest, the proportions of the residue of the tax which the remainderment must pay should be determined by the Orphans' Court, and be then paid by the remainderment. If the remainderment wish to pay their tax now, then I think that

you can determine the tax due by the life tenants and the tax due by the remaindermen, and accept payment of both taxes. It has, I think, always been customary to permit this to be done, but if the remaindermen are unwilling to pay their tax now, then I do not see how they can be compelled to do so.

In like manner, the parties entitled to the distributions of surplus income every five years, are not required to pay the tax upon such distributions unless and until the same are made. There may not be any such distributions made at all, so that this tax, of course, cannot be collected now.

The parties entitled to the legacies which are payable at once, must, of course, pay the tax upon their legacies at once.

I return you the will; and with kind regards, I am

Very truly yours,

ARTHUR G. BREDIN, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—COLLECTION OF—BASIS AND DEDUCTIONS.

Russell P. Smith, Esq., *September 21, 1912.*

Register of Wills,

Lancaster, Pa.

DEAR MR. SMITH:—I beg to reply to your favor of September 11th.

I understand that the late W. Luke Robinson died intestate, leaving a widow and six brothers and sisters, and that there arose a dispute over the distribution of his real estate, which was finally settled by an agreement among all concerned, under which the real estate has been sold by Trustees, and the widow is to receive her dower interest, which is one-seventh of the proceeds of sale, plus the additional sum of $7,000, and the balance of the proceeds of sale are to be divided among the brothers and sisters.

You ask whether the costs of the sale and the above sum of $7,000 should be deducted in determining the collateral inheritance tax, in addition to the mortgages upon the property.

Section 130 of Article 81 of Bagby's Code provides that the appraisement "shall be deemed and taken to be the true value of the said real estate upon which the said tax shall be paid." This section has recently been before the Court of Appeals in Wingert vs. State, 129 Md. 28.

Under this section the appraised value of the real estate is the basis upon which the tax must be computed. The mortgage must, of course, be deducted, and there should also be deducted the widow's dower interest, amounting to one-seventh of the proceeds of sale. The remainder is, I think, subject to the collateral inheritance tax against the brothers and sisters.

I think you are right in not deducting the costs of the sale and the additional $7,000 paid the widow. Payments made because of an agreement or settlement of the kind cannot affect the basis upon which the law requires the tax to be computed. If no such agreement had been made, then the widow would have received her one-seventh interest, and the remaining interests would have vested in the brothers and sisters, and be subject to the tax. The fact that the parties agree among themselves to give the widow more than her one-seventh cannot reduce the amount of the tax which the collaterals are legally required to pay. Nor can the amount of the tax be reduced by the costs of a sale which the parties agree among themselves to make. The appraisement, less the mortgage and the widow's one-seventh, is, in my opinion, the correct basis.

Very truly yours,

ARMISTEAD RIVERS, Attorney General.

TAXATION—COLLATERAL INHERITANCE TAX—ESTATE NOT SUBJECT TO STATE TAX ON EXECUTOR'S COMMISSIONS.

Z. Potter Steele, Esq., *August 20, 1917.*
Register of Wills,
Denton, Maryland.

DEAR MR. STEELE: I beg to reply to your inquiries of August 15th relating to the estates of G. Edgar Williamson and Mary J. Williamson.

I understand that Mr. Williamson, who was a bachelor, died intestate on October 18th, 1916, leaving personal property to the amount of $22,500. He left surviving him his mother, Mrs. Mary J. Williamson, and a sister, a nephew and a niece. Under the Act of 1916, Chapter 224, amending Section 127 of Article 93 of Bagby's Code, the mother was her son's sole distributee, but she died, in December, 1916, before distribution was made to her.

Mrs. Mary J. Williamson, the mother, left a will which disposed of certain real property, but made no disposition at all of personal property. I assume from your letter that there was no residuary clause in Mrs. Williamson's will sufficient to carry the personal property to be distributed to her from her son's estate, and that there was, therefore, an intestacy as to this personal property, so that the same will be distributed to her daughter, her granddaughter and her grandson, in accordance with Section 127 of Article 93 of Bagby's Code.

In this situation you ask to what extent the $22,500 personal property left by G. Edgar Williamson is subject to collateral inheritance tax.

This personal property is not subject to collateral inheritance tax at all. It is not subject to the tax in the distribution of Mr. Williamson's estate, because it passes from him to his mother, or rather, as his mother is dead, to the administrators, c. t. a., of his mother's estate, and property passing to the mother is not subject to the tax. Nor is this property subject to the tax in the distribution of Mrs. Williamson's estate, be-

cause it passes from her to her daughter, granddaughter and grandson, and property so passing is not subject to the tax.

You also ask whether the state tax on administrator's commissions should be imposed in the case of each estate at the rate fixed by the Act of 1916, Chapter 559. It should be. The two estates are entirely distinct, the commissions allowed the administrators in each estate are entirely distinct, and in each case the commissions are subject to the state tax in accordance with the Act of 1916, Chapter 559.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—MONEY PASSING FOREIGN TO DOMESTIC ADMINISTRATOR.

November 19, 1917.

Harvey W. Shaw, Esq.,
Register of Wills,
Cumberland, Maryland.

DEAR MR. SHAW:—I beg to reply to your favor of November 14th, asking my opinion upon the following question:

George W. Sills, a resident of Indiana, died in Allegany County, and by his will, which was probated in Allegany County, he left his estate to his niece, Mrs. Definbaugh, who was also named as Executrix. Sills' wife had died before his death; her estate was being administered in Indiana, and Sills, at the time of his death, was entitled to the sum of $6000.00 from his wife's estate. This money was paid by the foreign administrator of Mrs. Sills' estate to Mrs. Definbaugh, the Executrix in Allegany County of Mr. Sills' estate. The question is whether this money, on being distributed through the Orphans' Court of Allegany County, under Sills' will, to Mrs. Definbaugh, as legatee, will be subject to the collateral inheritance tax.

I think that it will be. The money is in this State, it passes under Sills' will, which is probated here, and it is being admin-

istered and distributed by the Orphans' Court of Allegany County. I see no reason why the tax should not be paid.

See

Helser vs. State, 128 Md. 228.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—MONEY OR PROPERTY PASSING OTHERWISE THAN BY BEQUEST.

August 16, 1917.

Albert M. Patterson, Esq.
Register of Wills,
Frederick, Maryland.

DEAR MR. PATTERSON: I beg to reply to your favor of August 14th, in which you ask whether a payment of $300.00 and the distribution of a seal skin coat to be made to Mollie E. Winebrener from the estate of Mrs. Ann C. Carlin are subject to the collateral inheritance tax.

The money and the coat are to be delivered by the executor in accordance with the following paper:

Frederick, Md.,
November 12th, 1916.

To my Executor of my Estate:

Pay to Mollie Eva Winebrener or Order, Five Hundred Dollars ($500.00) for love and affection.

I also wish Mollie Eva Winebrener to have my seal skin coat, which is to be given her with the above money after my death.

Witness my signature:

Chas. D. Doll. Mrs. Ann C. Carlin.

While this paper cannot, of course, be treated as constituting a bequest (because, among other reasons, there is only one witness), yet the collateral inheritance tax is not confined to bequests. Under Section 120 of Article 81 of Bagby's Code, the

collateral inheritance tax must be paid on money and property of every kind which is transferred by grant or gift intended to take effect in possession after the death of the donor.

It seems to me that the five hundred dollars and the seal skin coat are subject to the collateral inheritance tax under this provision.

I return you the paper writing.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NON-RESIDENT—DEBTORS—ASSESSMENT—ADJUDICATION—COLLECTION.

September 7, 1917.

William T. Bishop, Esq.,

Register of Wills,

Cambridge, Maryland.

DEAR MR. BISHOP:—I received your letter of August 23rd asking my opinion upon certain questions which have arisen in connection with real estate in Queen Anne's County formerly owned by Mary E. Hobbs. Please pardon my delay in answering it. The case is complicated by conflicting claims and has been delayed by a number of passages between [illegible].

I understand upon the death of Mary E. Hobbs a number of [illegible] of Queen Anne's County filed in court an inventory showing a farm in Queen Anne's County. By [illegible] the farm was to go to Mary E. Hobbs, [illegible] to the [illegible] of the [illegible] and the [illegible] I [illegible] life, and upon her death the farm was to belong to the [illegible] absolutely. The [illegible] of the [illegible] of [illegible].

The testatrix appointed the [illegible] executor of her estate, but the testator [illegible] a resident of Pennsylvania. [illegible] appointed in Queen Anne's County.

On February 15, 1917, the Orphans' Court issued a warrant to appraise the farm for collateral inheritance tax purposes.

The farm was appraised at $9,000, and the appraisal was returned to William L. Holton, the nephew, who had been named Executor in the will, but who, as already stated, renounced.

The devise of the farm to the nephew in effect charged the farm with an annuity in favor of the niece, for her life, equal to the interest on $1,500 per annum; and I think that the proportion of the collateral inheritance tax which should be paid by the nephew and by the niece, respectively, is a matter for the Orphans' Court to determine in its discretion, in accordance with Section 133 of Article 81 of Bagby's Code.

The collateral inheritance tax is, of course, only due upon the "clear value" of the estate devised to collaterals. In determining what is the clear value of the interest passing to the nephew and to the niece, respectively, in the present case, I think you should, in the case of the niece, determine what is the value of her annuity during her probable life, and impose the tax on that value; and in the case of the nephew, you should, I think, bear in mind that the farm he gets is not only subject to a mortgage, but is subject to the annuity charge also, so that both should be deducted from the appraisal, also in order to ascertain the clear value of the farm to the nephew.

With reference to the procedure for appraising the property, the return to the nephew, I think, insufficient, because the nephew renounced as Executor. After carefully considering the whole situation, my advice would be to begin [illegible] and proceed as follows:

1. Have the Orphans' Court appoint an administrator under the Act of 1912, Chap. 116, Bagby's Code, Vol. 3, Art. 93, Sec. 108 A., which authorizes the appointment of an administrator where a non-resident dies owning real estate in Maryland, but no personal property.

2. Then have appraisers appointed, in the usual way, to appraise the farm, and they will return their appraisal to the administrator appointed by the Orphans' Court. The administrator can ascertain the encumbrances upon the property by correspondence, examination of the records, or in any other

way open to him, and can give the information he obtains to the appraisers.

3. When the tax is apportioned by the Orphans' Court between the niece and the nephew, as already explained, then the administrator will demand payment of the same from the niece and the nephew.

4. If the tax is not paid by them, then the administrator may proceed to sell, under Section 132 of Article 81 of Hagner's Code.

Very truly yours,

[illegible]

through the receivers; and the Clerk of Court certifies to the State Tax Commission that the decree of dissolution has been made.

The law, however, no longer requires State taxes to be paid and the Comptroller's certificate to be filed before the corporation can be dissolved.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—FOREIGN ELECTRIC LIGHT CORPORATIONS—NOT SUBJECT TO FOREIGN CORPORATION TAX—BUT TO GROSS RECEIPTS TAX.

Legislative Office,

Hon. Thomas H. Simmons,

Secretary of State,

Annapolis, Maryland.

DEAR MR. SIMMONS: I beg to reply to your favor of March 26th, in which you ask whether the Potomac Electric Power Company, a foreign corporation, is exempt from the payment of the foreign corporation tax.

Bagby's Code, Art. 23, Sec. 56, except certain light companies from the foreign corporation tax which is imposed upon foreign corporations generally, and which is graduated according to the amount of capital employed in this State.

Bagby's Code, Art. 81, Sec. 165, [illegible] gross receipts tax of one per cent. upon the gross receipts of carriages of all electric light companies [illegible] per cent. upon the annual gross receipts [illegible] electric, [illegible] and all companies, whether such companies are foreign or domestic, [illegible] Maryland. This upon the gross receipts from business done in Maryland. The State Law [illegible] companies subject to it are required to report to the Comptroller [illegible] before April 15th each year, their total receipts or income accruing from business done in this State for the year ending on the preceding January 31st.

The Potomac Electric Power Company is subject to the gross receipts tax upon its gross receipts from all business done in Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—REASSESSMENT—EXPENSES—COUNTIES MAY REIMBURSE TO MEET.

January 8, 1926.

Allan C. Litchfield, Esq.,
Secretary, State Tax Commission,
301 Union Trust Building,
Baltimore, Maryland.

DEAR SIR:—I beg to reply to your favor of January 6th.

I understand that during the spring of 1925 the State Tax Commission directed the County Commissioners of Allegany County to provide the sum of $2,000 for a reassessment expense, which sum was duly included in the county budget, and that on December 12, 1925, the Commissioners, at the request of the County Commissioners, passed an order directing the County Commissioners to use so much thereof as might be necessary, not to exceed $1,000, for the reassessment of the county. The County Commissioners, however, are doubtful as to their legal power to reimburse the money, the reassessment is based entirely upon the law of Allegany County contained in Chapter 324 of the Acts of 1922. You request my opinion upon the question.

The Act of 1911, Chapter 512, and the Act of 1916, Chapter 638, providing for the assessment of property throughout the State, were upheld by the Court of Appeals, on November 16, 1916, in the case of Lewis vs. Lewis, 130 Md. 1. Section 14 of the Act of 1916 provides that it shall be the duty of each county to appoint an agent, the local assessor, and to pay all expenses incident to the reassessment within such county, and to make the reassessment as per the report, under order from your Commission.

In my opinion, the County Commissioners of Allegany County have the power to make the loan in question. In addition to the authority, which the above statutes and your Commission's order confer, see the following cases:

Talbot County vs. Queen Anne's County, 50 Md. 245, 259-261.

Baltimore vs. Reitz, 50 Md. 574, 584.

Revell vs. Annapolis, 81 Md. 1, 9-12.

Baltimore vs. Keeley Institute, 81 Md. 106, 115-117.

Worcester County vs. Melvin, 89 Md. 37, 41-43.

Thrift vs. Laird, 125 Md. 55, 67-69, 241 U. S. 691.

There are many other similar decisions in this State.

I do not think that the Acts of 1902 referred to (which are identical), affect the question. These acts require the County Commissioners of Allegany County to specify in the annual levy the purposes for which expenditures are to be made, and prohibit the Commissioners "from spending during any fiscal year more money than they shall have previously levied upon the taxable basis of Allegany County to meet the necessary expenses of said county," unless it becomes "necessary or desirable for the public good to spend more money than shall have been levied," in which event the Commissioners shall "advertise warn the public of said necessary and the object of the proposed increased expenditure and the proposed levy occasioned thereby," and give "any persons or corporations" to be heard.

In my opinion, these provisions of the local law do not affect the legal power of the County Commissioners to borrow money to meet the expenses of the reassessment, which the general reassessment laws of 1914 and 1916 expressly require the Commissioners to meet, and which your Commission, acting under said laws, has expressly directed them to meet.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS.

Compulsory Work Law. County Commissioners. Electrical Wires and Appliances. Forestry, State Board of Holidays. Legislature Liquor License Commissioners. Live Stock. Lunacy Commission. Moving Picture Censors. Parole, Advisory Board of. Public Service Commission. Sheriff. State Industrial Accident Commission. State Tobacco Warehouse.

Compulsory Work Law—Who Must Register—Persons Absent From State—Ineligible Persons.

August [illegible]

William [illegible], Esq.
Eastern Penitentiary,
Pennsylvania Ave., Pa.

Dear Mr. [illegible]: I beg to reply to your letter of August [illegible] 1917.

Under the Compulsory Work Law, Act 1917, [illegible] Sec. 1, "everyone is required to register who is not an able-bodied male person between eighteen and fifty years, inclusive, within the State," and persons who, after registration, are assigned to work must be prepared to show to perform the work to which they are assigned."

My opinion upon your three inquiries is:

1. A person falling within the description of those required to register who is without the State, need not register until he returns to the State.

2. No one is required to register unless he is able-bodied. Whether a person is able-bodied or not, will always depend, of course, upon his physical condition. From your statement of your physical condition, I should think that you would not be required to register.

Very truly yours,

[illegible] C. Bryant, Attorney General.

COMPULSORY WORK LAW—WHO MUST REGISTER—STUDENTS.

August 13, 1917.

Hon. Hugh A. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of August 11th. The Compulsory Work Law, Act of 1917, Chap. 33, provides, in Sec. 2, that "all students and all persons fitting themselves to engage in trade or industrial pursuits shall not be included within the provisions of this Act."

The Act, therefore, does not apply to students, and consequently students who are attending Universities or Colleges are not required to register during specified time, or at any other time during their attendance at such Universities or Colleges.

Very truly yours,
ALBERT C. RITCHIE, Attorney General.

COUNTY COMMISSIONERS—VACANCIES—FILLING—TERM OF APPOINTEE—PER DIEM VACANCY.

Judge Pleas.

1. *Person, Esq.*
Le Ponta, Md.

DEAR MR. PERSON: I beg to reply to your favor of July 30th, asking whether the County Commissioners of Somerset County appointed by the Governor to fill the vacancies in the Board cannot be reappointed, still held office for an unexpired term.

You say that the terms of each County Commissioner of Charles County is six years. You do not refer me to the local law upon the subject, but I am assuming that it makes no provision for filling vacancies.

If it does not, then Section 4 of Article 25 of Bagby's Code applies. This section provides that in case of a vacancy in the office of county commissioner by death, resignation or other

wise, the Governor shall fill such vacancy. The Governor does this with the consent of the Senate, if the vacancy occurs during the session of the Senate, but if the vacancy occurs during the recess of the Senate, then the Governor's appointee must be referred to the Senate within 30 days after the next meeting of the Legislature.

As the vacancy to which you refer occurred during the recess of the Senate, the appointee whom the Governor nominates must be referred to the Senate within 30 days after the next meeting of the Legislature. When such appointee has been confirmed by the Senate, he will, I think, hold for the unexpired term of the Commissioner whose place he takes. If the Governor is authorized to make the fill such vacancy, and his appointee, when confirmed, will hold for the time for which there would be a vacancy if the Governor were authorized to nominate. This time is the unexpired term of the resigned Commissioner.

[illegible]

[illegible]

Hon. R. E. [illegible]

Comptroller [illegible]

Dear Mr. [illegible] November [illegible] the Board of [illegible] whose terms have [illegible] until the Board has [illegible] in their district.

The two [illegible] in question were elected at the general election in 1914, and they have now completed the term of office, because Section 105 of the Act of 1916, Chapter 129, provides that the [illegible] shall hold office

until the election in 1917, after which the said Board of Commissioners shall consist of three," etc. Since the remaining three Commissioners now constitute the Board, the two whose terms have expired cannot, of course, sit with the Board officially as Commissioners, or have any vote or official voice in the proceedings of the Board, or draw any salary from the county as Commissioners. There is no reason why these two former Commissioners may not sit with the Board in an advisory capacity, if the Board wishes them to do so, and if they are willing, but as they are out of office they, of course, cannot take any official part in the Board's proceedings.

Very truly yours,

[illegible]

To Primus [illegible]
Frederick, Maryland.

Dear Mr. [illegible]: I beg to reply to your favor of April [illegible]th, asking advice, about the [illegible] occurring in the County Commissioners. The [illegible] the appointee will hold for the unexpired term.

I understand that the only legal [illegible] Act of 1898, Chapter [illegible]. This Act provides [illegible] Commissioners for Frederick County, [illegible] a term of four years. This Act does not provide [illegible] vacancies, but Bagby's Code, Art. [illegible], Section [illegible] case of a vacancy in the office of county commissioner [illegible] resignation or otherwise, the Governor shall fill such vacancy. The Governor does this with the consent of the Senate if the vacancy occurs during the session of the Legislature; if the vacancy occurs during the recess of the Senate then the Governor's appointee must be referred to the Senate within 30 days after the next meeting of the Legislature.

As the vacancy to which you refer occurred during the recess of the Senate, the appointee whom the Governor names now must be referred to the Senate within 30 days after the next meeting of the Legislature. When such appointee has been confirmed by the Senate, he will, I think, hold for the unexpired term of the Commissioner whose place he takes. What the Governor is authorized to do is "to fill such vacancy," and his appointee, when confirmed, will hold for the time during which there would be a vacancy if the Governor were not authorized to nominate. This time is the unexpired term of the deceased Commissioner.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

COUNTY COMMISSIONERS—WASHINGTON COUNTY—POWER TO ACQUIRE TURNPIKES.

May 2, 1922.

Victor M. Cushner, Esq.,
Hagerstown Bank,
Hagerstown, Maryland.

DEAR MR. CUSHNER: I beg to reply to your favor of May 1st, in which you ask whether the County Commissioners of Washington County have power to acquire the turnpike road between Hagerstown and Williamsport.

I do not find any general or local law authorizing the County Commissioners to do this.

The general law gives the County Commissioners power "to open, alter or close any public road or roads," but the procedure prescribed for the exercise of this power shows that it does not authorize the acquisition of an existing turnpike road. Bagby's Code, Art. 25, Sects. 12, 88 101.

The local law authorizes the County Commissioners of Washington County to subscribe to the capital stock of any turnpike company now or hereafter chartered, to an amount not exceeding the equivalent of the capitalization at 5 per cent. of the

annual expenditure in appropriation made by the county on the public road over which the turnpike is to be constructed.

Code, P. L. L. 1888, Art. 22, Sects. 116, 117.

The 1910 Code for Washington County, Section 342, authorizes the County Commissioners to *construct* any road "hereafter to be opened."

I do not think that these provisions cover the acquisition of the turnpike in question.

It is possible that there may be some provision of your local law which I have overlooked. If so, and if either you or Mr. Brindle will refer me to it, I will be glad to consider the question further. Otherwise, it seems to me that there is no authority for the County Commissioners to acquire the turnpike.

The State Roads Commission is, of course, authorized to acquire turnpikes by purchase or condemnation (Bagby's Code, Art. 94, Sec. 33).

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTRICAL WIRES AND APPLIANCES—RULES GOVERNING

May 21, 1912.

Joseph M. Zimmerman, Esq.,
State Board of Electrical Examiners,
31 Lexington Street Building,
Baltimore, Maryland.

DEAR MR. ZIMMERMAN: I beg to reply to your Board's request for my opinion as to the respective powers of your Board, the Public Service Commission and the City of Baltimore to make rules governing the installation of electrical wires and appliances in Baltimore City.

Section 663 D of the Baltimore City Charter requires your Board to adopt rules "for the placing, installing and operating electrical wires, appliances, apparatus or construction in, upon and about buildings in the said City of Baltimore," which rules shall have the force of law.

The Baltimore City Charter, Sec. 6, subsection 1, "Buildings," authorizes the City to pass ordinances regulating "the safe construction, inspection and repairs of all private and public buildings within the City." See also Sections 79-82. Subsection 11 of Section 6 authorizes the City to "establish and regulate inspections within the City." Under these provisions the City has passed ordinances governing the installation of electrical wires and apparatus in buildings in Baltimore City, which ordinances are contained in the Building Code.

Under these provisions of law, I think that your Board and the City Board have concurrent jurisdiction over electrical wires and appliances in buildings. Each must act upon its own authority under the statute creating it and the City acting under the municipal ordinances.

The Public Service Commission has adopted rules governing the quality of electrical service, the complaints of meters, etc. Vol. 7 P. S. C. Reports 75-82. The law confers power upon the Commission to adopt these rules. Hagler's Code, Art. 23, Secs. 113, 115, etc.

The result is that the rules your Board adopts are subject to the approval of the Public Service Commission, but that, to some extent at least, the rules of the Commission and of your Board, as well as the jurisdiction of the City, are concurrent. As the law now stands, the powers of all three, each acting independently of the others, may overlap in part of the same ground.

Until the subject is adjusted by legislation, the safest way to avoid conflict or duplication of authority is for the City, your Board and the Public Service Commission to keep strictly to the field of their respective duties.

Very truly yours,

NORMAN R. JAMES, *Attorney General.*

FORESTRY, STATE BOARD OF—ROADSIDE TREES ON TURNPIKE ROADS—TRIMMING—ADVERTISEMENTS UPON.

F. W. Besley, Esq., *March 7, 1917.*
State Forester,
Johns Hopkins University,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of March 1st, in which you ask whether the State Board of Forestry, under Sections 2, 8 and 9 of your printed copy of the Roadside Tree law (which are Sections 15-E, 15-H and 15-I of the Act of 1913, Chap. 824; Section 15-H having been amended by Act 1916, Chap. 548), has jurisdiction over trees growing within the right-of-way of turnpikes operating as toll roads.

Section 15-E defines Roadside Trees as trees, of certain measurements, "that may be growing within the right-of-way of any public road." Inasmuch as a turnpike road is a public road, within this definition, and, therefore, the Act of 1913 applies to trees growing within the right-of-way of turnpike roads, including Section 15-H of that Act, as amended and limited by Act 1916, Chap. 548, relating to permits for cutting down or trimming roadside trees.

Section 15-I prohibits the placing of advertisements on any tree, fence, etc., "which point or upon any public highway, or which is on the property of another, without first obtaining the written consent of such owner." I think that a turnpike road is a public highway, within the meaning of this section, and that this section, therefore, applies to advertisements upon turnpike roads.

In connection with such advertisements, there will not be any conflict between your Board and the State Roads Commission such as arose sometime ago in the case of State highways (referred to in my opinion to you of November 8, 1916), because the State Roads Commission does not exercise jurisdiction over turnpike roads.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

HOLIDAYS—MARYLAND DAY FALLING ON SUNDAY.

Edward S. Delaplaine, Esq., *March 8, 1917.*
Frederick, Maryland.

DEAR MR. DELAPLAINE: I beg to reply to your favor of March 7th.

The Act of 1916, Chap. 653, making Maryland Day, March 25th, a legal holiday, amended Section 3 of Article 27 of Bagby's Code, but did not amend Section 10. Section 10 is the section which makes Monday a legal holiday when certain specified holidays fall on the preceding Sunday, and as Maryland Day is not one of the holidays specified in Section 10, it follows that Monday is not a holiday when Maryland Day falls on the preceding Sunday, as it does this year.

Therefore, Monday, March 26th, will not be a legal holiday this year, unless the Governor, under Section 3 of Article 27, so proclaims it. Inasmuch as the failure to include Maryland Day in Section 10 was a doubtless inadvertence, I think it is quite possible that the Governor, if approached, would proclaim the Monday following a legal holiday.

With kind regards, I am

Very truly yours,

ALBERT C. RITCHIE, Governor.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The Constitution, Article 3, Section 19, provides that "each House shall be the judge of the qualifications and elections of its members as prescribed by the Constitution and laws of this State," and it is clear that the effect of this is to make each House the sole, final and exclusive judge of the qualifications of its own members, and no court or other authority can dispute or review the decision of either House upon this question.

Covington vs. Buffett, 90 Md. 569.
Price vs. Ashburn, 122 Md. 526.
Warehouse Co. vs. Lumber Co., 118 Md. 119.
State vs. Jarrett, 17 Md. 309.
Spitzer vs. Martin, Daily Record, May 17, 1917.
26 L. R. A. (N. S.) 207-212.
29 Cyc. 600.

The questions of law which each House will be called upon to consider in determining whether any of its members are disqualified to sit by reason of their acceptance of other offices or positions since the session of 1916, are the following four sections of the Maryland Constitution:

Article 3, Section 10: "No member of Congress, or person holding any civil or military office under the United States, shall be eligible as a Senator or Delegate; and if any person shall, after his election as Senator or Delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat."

Declaration of Rights, Article 35: "That no person shall hold, at the same time, more than one office of profit, created by the Constitution or Laws of this State."

Constitution, Article 2: "Each and every person elected or appointed to any office or profit or trust, under this Constitution, or under the laws made pursuant thereto," shall take a prescribed oath, which if such person be a Senator or Delegate, shall, among other things, embrace the following: "That I will

not, directly or indirectly, receive the profits or any part of the profits of any other office during the term of his acting . . . . . ."

Constitution, Article 35, Section 11: "No Minister or Preacher of the Gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible as Senator or Delegate."

These sections refer to persons holding office, and the Court of Appeals has several times very clearly distinguished between those positions which are offices within the meaning of these or analogous provisions of the Constitution, and those provisions which are simply employments, and not within the provisions of the Constitution.

The Court of Appeals has held that "the most generally accepted definition of a public office is that it embraces the performance by the incumbent of a public function delegated to him as a part of the sovereignty of the State." (126 Md. 126.) And that in determining whether a position is an office or not, the duty to take an oath of office is considered as the strongest test of the greatest importance. (122 Md. [illegible].)

The Court has also held that if the incumbent of an office within the meaning of the Constitution accepts another office, then the acceptance of the new office creates a vacancy in the old one. (122 Md. [illegible].)

In applying these principles the Court of Appeals has held that the following positions are employments, and not offices: School Commissioner (100 Md. 200); Superintendent of Public Instruction in Baltimore (100 Md. [illegible]); members of the Harford County Racing Commission (115 Md. [illegible]); general counsel to the State Tax Commission (126 Md. 157). And the Court has held that the following positions are offices: City Councilman; Supervisor of Elections (122 Md. [illegible]).

In the present case, a Senator or a Delegate clearly holds an office, and, consequently, the answer to your inquiry depends upon whether the positions which the Senators and Delegates

in question have accepted since the session of 1916 are *offices* or *employments*.

Where these positions are *employments* and not offices, the Senators and Delegates accepting them are not disqualified from sitting in the extra session. Where these positions are *offices*, the Senators and Delegates accepting them are disqualified, except in the case of a Senator or Delegate who is also a Justice of the Peace, and who would be qualified to sit, under the Constitution, Article II, Section 11.

My opinion upon the case of each Senator and Delegate in question, is as follows:

Senate

[illegible] Mr. Zeihman is now a member of Congress. He is, in my opinion, disqualified from sitting in the extra session. See Constitution, Article II, Section 11.

[illegible] Mr. Collier has accepted the position of Land Bank Appraiser under the Federal Farm Loan Act. This position is provided for by the Act of Congress of July 17, 1916, Section 4 [illegible] It is not an office within the meaning of the Constitution, and Mr. Collier is not disqualified to sit in the extra session.

[illegible] Mr. [illegible] has accepted the position of Secretary to the Board of State Assessors. This position is provided for by the Act of 1916, Chapter 769, Section 4, [illegible] Article [illegible] A. [illegible] and Mr. [illegible] is not disqualified to sit in the extra session.

[illegible] Mr. Frock now holds the position of [illegible] Assessor on the Board of Farm Loan Department. This position is not an office, within the meaning of the Constitution. Mr. Frock is, in my opinion, not disqualified to sit in the extra session.

John F. Mudd, Charles County. Mr. Mudd has accepted a position upon the State Roads Commission. This Commission is provided for by Bagby's Code, Art. 91, Sec. 33 and the Act of 1916, Chap. 575. The members hold office, within the meaning of the Constitution, and Mr. Mudd, in my opinion, is disqualified from sitting in the extra session.

James S. Shepherd, Dorchester County. Mr. Shepherd is now the Commissioner of the Land Office. This position is provided for by the Constitution, Art. 7, Sec. 1, and by Bagby's Code, Art. 54, Secs. 1, etc. It is an office, within the meaning of the Constitution, and Mr. Shepherd, in my opinion, is disqualified from sitting in the extra session.

Delegates.

Philip D. Laird, Montgomery County. Mr. Laird is now a member of the Public Service Commission. This Commission is provided for by Bagby's Code, Art. 23, Sec. 111, as amended by the Act of 1916, Chap. 719. The members hold office, within the meaning of the Constitution, and Mr. Laird, in my opinion, is disqualified from sitting in the extra session.

William M. Jones, Baltimore County. Mr. Jones is now the Assistant Superintendent of Public Buildings. This position is provided for by Bagby's Code, Art. 11, Sec. 18. It is not an office, within the meaning of the Constitution, and Mr. Jones, in my opinion, is qualified to sit in the extra session.

Charles G. Crosdale, Baltimore City. Mr. Crosdale is now an examiner and clerk to the State Industrial Accident Commission. This position is provided for by Bagby's Code, Art. 101, Secs. 5 and 7. It is not an office, within the meaning of the Constitution, and Mr. Crosdale, in my opinion, is qualified to sit in the extra session.

Robert E. Lee, Baltimore City. Mr. Lee is Secretary to the Mayor of Baltimore. This position is not an office, within the meaning of the Constitution, and Mr. Lee, in my opinion, is qualified to sit in the extra session.

Frank F. Luthardt, Baltimore City. Mr. Luthardt is now a Justice of the Peace, and has been designated as Associate Juvenile Justice in Baltimore City, under Sec. 623 A of the Baltimore City Charter. This position is an office, within the meaning of the Constitution, but under Sec. 11 of Art. 3 of the Constitution a Justice of the Peace is eligible as Senator or Delegate, so that Mr. Luthardt is qualified to sit in the extra session.

E. Lacrie Mitchell, Charles County. Mr. Mitchell is now an attorney for the Federal Farm Loan Bank. This position is provided for by the Act of Congress of July 17, 1916, Sec. 4. It is not an office, within the meaning of the Constitution, and Mr. Mitchell, in my opinion, is qualified to sit in the extra session.

Joseph H. Blanford, Jr., Prince Georges County. Mr. Blanford is now superintendent of the State Agricultural Lime Board, provided for by the Act of 1916, Chap. 221. This position is not an office, within the meaning of the Constitution, and Mr. Blanford, in my opinion, is qualified to sit in the extra session.

Conclusion.

Summing up, the Senators who, in my opinion, are disqualified for the above reasons from sitting in the extra session, are Messrs. Zihlman, Mudd and Shepherd. All other Senators are qualified.

The only Delegate who, in my opinion, is disqualified for the above reasons from sitting in the extra session, is Mr. Laird. All other Delegates are qualified.

I repeat, however, that under the Constitution, each House is the sole, final and exclusive judge of the qualifications of its own members, and whatever decision either House makes upon this question in any case, cannot be questioned or reviewed by any court or other authority.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LEGISLATURE—RECESS APPOINTMENTS NOT CONFIRMED AT EARLY SESSION.

June 5, 1908.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOV. HARRINGTON:—Some days ago you asked me to consider the question whether you should send in appointments to the coming extra session of the Legislature for confirmation that you had made in respect to the Secretary of State, for which place there is no provision in the Constitution.

The Constitution, Art. [illegible], provides that the same person may continue in the office of Secretary of State for the term of four years, unless the Governor for the time being shall sooner remove him, or other person be appointed in his place by the Governor, with the advice and consent of the Senate, which person so appointed shall hold the said office for the residue of the said term, unless sooner removed as aforesaid, or until some other person shall be appointed in his place in manner aforesaid; and every Secretary of State so appointed may be removed at the pleasure of the Governor for the time being, and all the powers, duties and emoluments of the said office, when not otherwise prescribed by law, shall be such as the Governor and Senate may from time to time prescribe and direct; and in case of the death, resignation, or removal from office of any person appointed to the said office, the place shall be filled by the Governor, with the advice and consent of the Senate, at their next meeting, or at the next session of the Legislature.

In my opinion, the provision contained in the last sentence of the Legislature, which provides that the Governor may fill the place of Secretary of State in case of the death, resignation or removal from office of any person appointed to the said office, when the Legislature is not in session, by appointment with the advice and consent of the Senate, at their next meeting, or at the next session of the Legislature, is not applicable to the case of an extra session of the Legislature. Art. [illegible] provides that the Governor may convene the Legislature on extraordinary occasions, and when so convened, the Legislature shall have the same powers and be subject to the same regulations as at its regular session. Art. [illegible] provides that no session of the Legislature, except the regular session, shall continue longer than thirty days, and that no bill shall be passed at any session except the session for which it was convened. Art. [illegible] provides that no act of the Legislature shall take effect at all if applied to an extra session.

In my opinion, the provision of the Constitution which provides that the Governor may fill the place of Secretary of State in case of the death, resignation or removal from office of any person appointed to the said office, when the Legislature is not in session, by appointment with the advice and consent of the Senate, at their next meeting, or at the next session of the Legislature, has no application to the coming extra session of the Legislature. The appointment should be sent in to the regular session of 1908.

Very truly yours,

[illegible]

LEGISLATURE—SENATOR'S SEAT VACATED BY ELECTION TO CONGRESS.

February 1, 1917.

Hon. Frederick N. Zihlman,
Cumberland, Maryland.

DEAR MR. CONGRESSMAN: I have your favor of January 29th.

Article 3, Section 10 of the Maryland Constitution provides that "if any person shall, after his election as a Senator or Delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat."

Your qualification as Congressman will, therefore, vacate your seat in the State Senate, whether you resign or not.

Nevertheless, I think that it would be just as well, at the time of your qualification, for you formally to resign, although that is not really necessary, particularly as your term would end anyhow before the 1918 Legislature. Under Section 13 of Article 3 of the Constitution, your resignation should be sent to the Governor.

Very sincerely yours,
ALBERT C. RITCHIE, *Attorney General.*

LIQUOR LICENSE COMMISSIONERS—TRANSFER OF LICENSE.

December 5, 1916.

William Pepper Constable, Esq.,
President, Board of Liquor License Commissioners,
Court House, Baltimore, Md.

DEAR SIR: I beg to reply to your favor of December 4th.

You say that Martin V. Weitzel, who held a liquor license, signed a transfer in blank, but died before filling it out and delivering it. Six weeks after his death the transfer was filled out and handed to your Board, but you declined to recognize it, and in this your Board was, of course, correct. Thereupon,

bor's cattle. I understand it to be established that cholera can be transmitted from the carcass of a dead animal which died of cholera just as readily as from a live animal which has cholera. Therefore, if the animal dies of cholera, the owner must use due and ordinary care to prevent the disease being transmitted from the carcass to his neighbor's cattle. If the owner does not use due and ordinary care to prevent this, and it, as a result, the disease is transmitted to his neighbor's cattle, then the owner will be liable for the damage thus caused to such cattle.

Whether due and ordinary care has been used or not is a question for the jury to determine upon the facts of each case.

If the owner knows that his animal died of cholera, and knows that cholera can be transmitted from the dead body to his neighbor's cattle by flies, birds or animals, or if this is common knowledge, and if, with this knowledge, he leaves the dead body lying where it is the prey of birds, flies or animals, which are likely to transmit the disease to the neighbor's cattle, and the owner takes no proper precautions to prevent such transmission, and as a result the disease is in fact transmitted to his neighbor's cattle, then I should say that the owner's civil liability for the damage thus done to his neighbor's cattle is clear.

I cannot very well be more definite, because the owner's liability depends primarily upon whether or not he used due and ordinary care to prevent the transmission of the disease, and what is due and ordinary care cannot be defined. It depends entirely upon the circumstances of each case.

Very truly yours,

ARGYLE C. RICHARDS, Deputy Commissioner.

April 7, 1917.

Dr. A. P. Herring,
Secretary, Lunacy Commission,
338 N. Charles Street.

DEAR DR. HERRING: I beg to reply to your favor of March 29th, in which you ask how the Lunacy Commission can compel institutions under its supervision to make monthly reports as required by the Commission.

Bagby's Code, Art. 59, Sec. 24, authorizes the Lunacy Commission "to require a written report from all institutions, public, corporate and private, including almshouses, in which the insane or idiotic may be kept, and report to the Commission and at such time as they may adopt, and such other statement of facts concerning the care and treatment of the insane as it may require."

Section 25 makes it a misdemeanor for any person or persons to interfere with the inspection of any institution by the Commission. Section 24 makes it a misdemeanor and a punishable offense for any superintendent, officer, nurse, attendant or other person employed in any institution to refuse to give information to the Commission or its agents.

Your Commission has been, since its organization, very reasonable in its requirements, and has never had any difficulty with some of the institutions in making their reports.

Now, Section 24 provides that the Commission may require a written report from all institutions, and it does not specify the time when the report should be made, but it does say "at such time as they may adopt." The Commission has never adopted any rule requiring the institutions to make monthly reports.

I believe that if the Commission should now adopt a rule requiring the institutions to make monthly reports, there would be no difficulty in getting the reports, and will be entirely proper. If the institutions refuse to make the reports, then we shall be in a position to compel them to make the reports by mandamus.

Very truly yours,

VINCENT KERNAN, Attorney General.

LUNACY COMMISSION—MAY DELEGATE DUTY TO EXAMINE INTO PRISONER'S SANITY.

November 24, 1917.

I. Philip Roman, Esq.,
State's Attorney,
Cumberland, Md.

DEAR SIR: I beg to reply to your favor of November 23rd, in which you ask whether it is necessary for a majority of the Lunacy Commission to come to Cumberland in order to inquire, under the Act of 1916, Chap. 499, and Sec. 11 of Art. 59 of Bagby's Code, into the sanity of William Buckey, a prisoner under indictment in Allegany County; the Circuit Court having ordered such inquiry to be made under the authority of said Act.

The Act of 1916, in providing that the Circuit Court may "cause the Lunacy Commission to inquire" into the prisoner's sanity, does not mean that the actual mental examination must be made by the whole or by a majority of the Commission. The Commission may delegate to one of its members or under Section 17 to its Secretary, the duty of making the actual examination, and if the Commission considers the case to be such that it can correctly decide the question of sanity on the upon the report of such examination made to it, then the Commission may do so, the Commission, however, being required, by Section 11, to decide the question by a majority vote. If the Commission thus finds that the prisoner is insane, then upon the receipt of such finding, the Circuit Court may direct the prisoner to be confined in an institution for treatment, and the criminal proceedings to be stayed, as provided by the Act of 1916.

Very truly yours,

VERNON E. RIFFORD, Attorney General.

MOVING PICTURE CENSORS—POWER OF—TO DISAPPROVE PICTURES TENDING TO DISCOURAGE RECRUITING.

Mrs. Marguerite E. Harrison, [illegible]

Secretary, Board of Motion Picture Censors,
[illegible] E. Lexington Street,
Baltimore, Maryland.

DEAR MRS. HARRISON:—I beg to reply to your telephone inquiry of yesterday.

You say that there are a number of motion pictures which portray the incidents of war in such a way as to tend to discourage and prevent recruiting in the United States army and naval forces and in the National Guard, and that [illegible] to the actual experience of thousands of others. You ask whether your Board has the power to prohibit the exhibition of such pictures.

The [illegible] your Board the power to prevent such [illegible] the exhibition of such pictures, [illegible] the judgment of Congress, [illegible] of course prohibit the exhibition [illegible] pictures complained of.

Very truly yours,

[illegible]

[illegible] Board motion pictures which, in such a manner, [illegible] will, in immoral, within the meaning of the [illegible]

I therefore advise you that Congress [illegible] Board [illegible] exhibit, pictures that are [illegible] pictures [illegible] recruiting [illegible] the United States [illegible] which [illegible] approved.

With respect to pictures of this character which have not yet been submitted to your Board, you will, of course, simply reject them.

With respect to any pictures which your Board has already approved, but which, because of the military circumstances which have since arisen, are now, in your Board's judgment, immoral, as discouraging and preventing recruiting, your Board should call upon the exhibitors of such pictures to re-submit them for re-examination, and if on such re-examination you find them to be immoral, within the meaning of this opinion, you can then recall your approval seal, reject the pictures, and so notify the exhibitors. The exhibition of such pictures thereafter will be unlawful. If, in such case, any exhibitor declines to re-submit the picture for re-examination, then your Board may hold your re-examination of it at any place where such picture is being exhibited.

Very truly yours,

ALBERT C. ROSENTHAL, [illegible]

PAROLE ADVISORY BOARD OF NEW JERSEY FOR CONVICT PRISONERS WHO HAS GIVEN BASIS FOR YOUNG BASTARDS LAW.

July 14, 1915.

Charles D. Reid, Esq.,
President, Advisory Board of Parole,
Bruce Leach Building, Baltimore.

DEAR MR. REID: I beg to reply to your favor of July 9, in which you ask whether your Board has power to release a prisoner convicted of bastardy, and who has given bond for the support of the child, under Bagby's Code, Art. 12.

The powers of your Board with respect to recommending executive pardons or paroles to the Governor are of course advisory only, but nevertheless the effect of sections 76-77 of Article 12 of Bagby's Code is, I think, to confine your recommendations to persons who are prisoners.

A person who has given bond under the bastardy law is not a prisoner, and the pardon of such a person would relieve him altogether from the obligation of supporting the child.

For these reasons it is my opinion that your Board should not review cases of this kind.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PAROLE—ADVISORY BOARD OF—SUSPENDED SENTENCES.

July 17, 1917.

Charles D. Reid, Esq.,
Pres. Advisory Board of Parole,
Brown Arcade Building,
Baltimore, Maryland.

DEAR MR. REID:—I beg to reply to your favor of July 9th in which you state the case of a man who pleaded guilty to seven indictments for stealing liquor under bonds, and was sentenced for six months in one of the cases, sentence being suspended in the six other cases, and you ask whether, if this man is paroled, the court can impose sentence in the cases in which sentence was suspended. There is, I think, no doubt of the court's power to do this.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PARDON—SEXUAL CONVERSATION—FIRST FOR CONTRACTING PAYS—SEVEN INDICTMENTS—MORAL CONDITIONS, ETC.

March 7, 1917.

Hon. H. Carroll Bruce,
General Counsel, Public Service Commission,
Munsey Building,
Baltimore, Md.

DEAR MR. BRUCE:—I received your favor of March 3rd asking whether in my opinion it is the duty of the Attorney

General or of the counsel to the Public Service Commission to bring legal proceedings for the collection of certain fees, which proceedings the Commission has requested you, as its counsel, to bring. I beg to submit my views upon the matter.

I understand that the fees in question are fees for certifying copies of papers and records, which fees are imposed under Section 8 of the Public Service Commission Law, and also fees for inspecting gas and electric meters, which are imposed by Section 31[3]1 and 32 of the Law. Section 8 provides that the "Commission shall charge and collect" the fees therein provided for, and Section 32 provides that "a uniform reasonable charge shall be fixed by the Commissioner (Commission) for their service."

It seems to me that the law contemplates that in both cases the fees shall be collected by the Commission, and accounted for by it to the State. This is, of course, clear as to fees for copies, because Section 8 expressly requires the Commission not only to charge but also to collect such fees; and I think that this is also the intent with respect to fees charged under Sections 31[3]1 and 32.

The object of Section [illegible] of the Act of [illegible], Chap. [illegible], exempting the Public Service Commission from that Act, was simply to authorize the Commission to continue to have its own counsel as heretofore, and not to bring the Commission's legal work under the State Law Department at all. I do not think that this Act enlarges the power of either the Commission or its counsel in any way. It simply means that the Commission's counsel is to continue, with the same powers as if the Act had not been passed.

This being one the only question is whether the Attorney General or the Commission's counsel should represent the Commission in legal proceedings brought to recover the fees in question, which fees Section 8 expressly provides and Section 32, I think, contemplates, that the Commission itself shall collect.

I think that the Commission's counsel should bring these legal proceedings, not only because it is the Commission's duty

to collect the fees, and the Commission's counsel is its general legal representative, but also because Section 6 requires the Commission's counsel "to commence and prosecute all actions and proceedings directed or authorized by the Commission," and "generally to perform all duties and services as attorney to the Commission which the Commission may reasonably require of him." It seems to me that the Commission is acting within its power and duty when it requests its counsel to bring such legal proceedings as may be necessary in order to recover fees which the law makes it the Commission's duty to collect.

Very truly yours,

[illegible], Attorney General.

Secretary Executive Council, Montreal, and Mr. [illegible]
Notary Examiner, Notary in Montreal

Hon. Thomas L. McVey
Sir:

Court House, Montreal, M.

Dear Mr. McVey: Mr. William E. Dawson, [illegible] the purchaser of an execution sale of a mortgage, and the notes secured thereby, from the Mr. Hello Realty [illegible] to Paul E. Lord, administrator of Louis H. Redfern, that your Sheriff had executed to him. Lord endorsed the mortgage, together with the promissory notes and the [illegible] Dawson's interest in the property.

Mr. Dawson said that he wanted you to endorse the promissory notes over to him, and asked me to let you know whether I saw any objection to your doing so. I do not think there is any objection. On the contrary, since Mr. Dawson purchased the promissory notes at the execution sale, I think it is quite proper for you to endorse the notes to him and to

evidence of title. I think that the endorsement on each note should be substantially as follows:

"This note is hereby endorsed without recourse to William R. Duncan, the purchaser thereof under execution.

Thomas F. McNulty,
Sheriff."

Very truly yours,
ALBERT C. RITCHIE, *Attorney General.*

STATE INDEMNITY ACCIDENT COMMISSION—RELEASE BY EMPLOYEE—EFFECT ON STATE'S RIGHT OF STATE ACCIDENT FUND.

July 19, 1917.

Hon. Mark L. Hess,
Secretary State Industrial Accident Commission.

Dear Mr. Hess:

In your letter of the 14th inst. you make an inquiry with reference to the following situation:

Littleton Hall, employed by the B. & O. Railroad Company, which was insured in the State Accident Fund, was injured while unloading lumber from freight cars at Newell, Va., pursuant to the shifting [illegible] of the Baltimore and Ohio Railroad Company at Newell. Hall filed a claim with the Commission on March 20, 1916. Hall filed a claim with the Commission on April 24, 1916. The Commission entered an award on April 24, 1916. Hall gave a release of his claim on August 14, 1916. Hall received a sum from the B. & O. Railroad Company, the company paying an award from the State Accident Fund, and Hall for consideration of this sum executed a release in full to the Railroad Company.

Under these circumstances you ask whether the release executed by Hall deprived the State Accident Fund of its right to proceed against the Railroad Company for the amount paid by it to Hall, and whether, if the State Accident Fund is not de-

[illegible] of this right, it can proceed in the name of the employee for its own benefit, under the provisions of Section 58 of Article 101 of the Annotated Code.

Section 58 provides that where the injury for which compensation is payable under the Workmen's Compensation Law was caused under circumstances creating a legal liability in some person other than the employer, the employee may proceed either by law against that other person or against the employer for compensation under the Act, or in case of joint tort-feasors against both. If compensation is paid under the Act "any employer may enforce for the benefit of [illegible] the State Accident Fund [illegible] the liability of such other person, provided, however, if damages are recovered in excess of the compensation already paid or awarded to be paid under this Article, then any such excess shall be paid to the injured employee [illegible] less the employer's expenses and costs of action."

It seems clear from the tenor of the case stated that the Railroad and the Dishman Company were not joint tort-feasors. I am, therefore, assuming this, and on this basis Hall's option, under Section 58, was to proceed either against the Railroad Company or for compensation under the Act.

When Hall elected to proceed under the Act, he thereby forfeited his right to proceed against the Railroad Company, [illegible] that the Railroad Company was thereafter under no obligation to Hall, and under no obligation to pay him the $750.00 [illegible] any other amount, in settlement of his damages.

Notwithstanding this, the Railroad Company did pay Hall $750.00, and took from him a release in full for his damages. The first question is whether this release barred Hall's right to receive any further compensation from the State Accident Fund, after the Fund received notice of the release.

A good deal can be said on both sides of this question, and as the point is a new one in this State it is impossible for me to predict what view the Court of Appeals would take. My own view is that the release operated as a satisfaction of the damages sustained by Hall, and barred his right to [illegible]

further compensation from the Fund, exactly as would have been the case had the release been given before Hall applied for compensation under the Act, instead of afterwards.

(Cox vs. Md. El. Ry. Co., 126 Md. 300.

As I have stated, however, much can be said in favor of the view that the release did not bar Hall's right to further compensation from the Fund, and your Commission will be quite justified in adopting that view, if you feel that under all the circumstances Hall ought fairly to continue receiving compensation from the Fund. As will be shown in a moment, if your Commission decides to sue the Railroad Company, under Section 56, in order to reimburse the State Accident Fund, the question whether or not the release barred Hall's right to further compensation from the Fund will be necessarily involved in that case.

Whether you take the position that Hall was barred from receiving further compensation from the Fund after notice to the Fund of the release, or whether you take the position that the release did not bar Hall's right to compensation from the Fund, in either case the next question is whether the release barred the right given by Section 56 to enforce the liability of the Railroad Company for the benefit of the Fund.

While this question is also not free from doubt, in my opinion Hall's release to the Railroad Company did not bar the right to proceed against the Railroad Company, under Section 56, for the benefit of the Fund.

If a suit of this kind is brought, and is successful, then the Fund, of course, would not receive in such suit more than had been already paid or awarded to be paid to Hall. This, of course, raises the question of the effect of the release upon the further liability of the Fund to Hall. In one of the Court decisions holding that the release barred Hall's right to further compensation from the Fund, then the Fund could only receive the amount that had been paid to Hall up to the time the Fund received notice of the release. If, on the other hand, the court should hold that the release did not bar Hall's right to receive

further compensation from the Fund, then the Fund could receive the total amount that had already been paid or that had been awarded to Hall. In either case, the amount which the Fund would receive could not, of course, be greater than the amount of the verdict against the Railroad Company.

If in such suit a verdict be obtained against the Railroad Company, and if such verdict should be in excess of the amount required to reimburse the Fund, then in ordinary cases the excess would, under Section 58, be paid to Hall. In the present case, however, while Hall's release does not, in my opinion, bar the Fund, yet it does, I think, bar Hall's right to excess in the damages recovered over and above the amount necessary to reimburse the Fund. As a practical matter, therefore, the Railroad Company's liability could not, I think, be greater than the amount necessary to reimburse the Fund.

The final question relates to the manner in which the suit should be brought for the benefit of the Fund. Section 58 provides that the employer must enforce the liability for the benefit of the Fund, so that the suit should be brought in the name of C. R. Dickerson Company, but for the use and benefit of the State Accident Fund. In the Commissioner's decision in the suit brought, the question of advancing the expense of the Harvest Company, if that be necessary, might not be very much difficult, and I will take it up at the time.

I return your papers in the case, and submit these instructions.

Very truly yours,

Attorney General.

STATE TOBACCO WAREHOUSE—GROUND RENTS IRREDEEMABLE.

November 9, 1917.

Hon. Thomas W. Simmons,
Secretary, Board of Public Works,
Annapolis, Maryland.

DEAR SIR: Some time ago the Board of Public Works requested me to advise them whether the ground rent on State Tobacco Warehouse A is redeemable or not.

I have had a great deal of trouble in having the title traced back, and the search has been further delayed by other more pressing matters. It has now been completed, however, and I find that the ground rent is not redeemable.

The rent which the State has been paying is $445.11. The rent is really composed of four smaller rents, the first one having been created as far back as 1770, and the four being respectively, for $215.75, $25, $25 and $79.36. These amounts aggregate $445.11, instead of $445.11. This discrepancy occurred a great many years ago, and dates back far in them 1827, and it is practically impossible to trace it. It is too small to make any difference.

Very truly yours,

ARMAND J. ELLIOTT, Attorney General.

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O. A. G.

Vol. 3

ANNUAL REPORT

OFFICIAL OPINIONS

ATTORNEY GENERAL

MARYLAND

1918

ATTORNEYS GENERAL OF MARYLAND

STATE LAW DEPARTMENT

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Annual Report for 1918.

Baltimore, Md., *January 1, 1919.*

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

Dear Governor Harrington:

I have the honor to present to you, as required by Section 8 of the Act of 1916, Chapter 500, a report of the business and proceedings of the Department of Law during the past calendar year, together with a statement of receipts and disbursements during the past fiscal year.

As further required by said Section 8, the official opinions rendered by our Department during the preceding calendar year follow this report.

Service in Department of Justice on War Industries Board.

Early in June, 1918, I was called to Washington to serve as General Counsel of the United States War Industries Board, of which Hon. Bernard M. Baruch was Chairman. The call was so urgent and the work so important that it was clearly my duty to go, and accordingly I secured your permission for a leave of absence during the period of my war work. It lasted until November, 1918.

During this time Mr. Markwart acted as Attorney General and performed all the duties of the office.

With respect to Mr. Markwart's work as Acting Attorney General, I can only repeat what I publicly stated on my return from Washington in November, 1918:

> "The work of the Department of Law during my absence has been of a exacting and important nature and I cannot say too much in praise of the way in which my assistants have handled it."

"Mr. Ogle Marbury, the Acting Attorney General, performed the duties of Attorney General of the State with the most conspicuous ability. He gave practically his entire time to the work, and, in the case of a lawyer of his talents, that necessarily meant that the affairs of the office were conducted with entire satisfaction, both to the department and to the people of the State, who have benefited by his untiring zeal and marked legal learning.

"Association with Mr. Marbury has always been both a pleasure and a privilege. To that is now added the real pride which all of his friends can justly take in his work as acting head of the State Law Department."

Maryland Legislature of 1918.

The Attorney General attended at Annapolis almost uninterruptedly during the entire session of the Legislature of 1918, being there engaged in drafting bills, in advising with the State officials and members of the Legislature, in attending committee hearings, and in following certain of the administration measures through the Legislature. Every effort was made both by me and my assistants to be helpful to the members of the Legislature, and to be of service to them in connection with their work.

The more important bills drafted by my Department were:

Soldiers and Sailors Vote Law. Drafted a constitutional amendment authorizing this. Act 1918, Chap. [illegible], and also the law providing the method of such voting. Act 1918, Chap. 7[illegible].

Education. Increasing teachers' salaries. Act 1918, Chap. 81. Act 1918, Chap. 10[illegible]. Act 1918, Chap. 10[illegible]. Act 1918, Chap. 25[illegible]. Accepting Federal aid. Act 1918, Chap. 7[illegible]. State aid to high schools. Act 1918, Chap. [illegible].

Roads. Stimulating Road Improvement. Act 1918, Chap. 25[illegible]. Accepting Federal aid. Act 1918, Chap. 7[illegible].

Prison Laws. Providing for abolishment of contract labor in prison. Act 1918, Chap. 354. Road work for prisoners. Act 1918, Chap. 306. Transfer of prisoners from Penitentiary to House of Correction. Act 1918, Chap. 196. Amending laws relating to Parole Board. Act 1918, Chap. 216; Act 1918, Chap. 249.

War Emergency Loan of 1918, $1,000,000. Act 1918, Chap. 284. Refunding $1,000,000 War Loan of 1917. Act 1918, Chap. 298.

Home Rule Law. Act 1918, Chap. 456. In the preparation of this bill, my Department had the assistance of Dr. J. F. Goodnow and William Milne Maloy, of Baltimore; Edward M. Hammond, of Ellicott City; J. Frank Harper, of Centreville; T. Scott Offutt, of Towson; F. Neale Parker, of Westminster, and Jackson H. Ralston, of Hyattsville. These gentlemen served as a committee to aid in drafting the bill, and their services were most valuable.

Policemen. Increasing pay of policemen in Baltimore City. Act 1918, Chap. 129. Giving Police Board power to reinstate officers who entered military service. Act 1918, Chap. 23. Contracts for policemen's uniforms. Act. 1918, Chap. 223. Special policemen. Act 1918, Chap. 217.

Insurance. Revision of laws relating thereto. Act 1918, Chap. 101; Act 1918, Chap. 102; Act 1918, Chap. 400; Act 1918, Chap. 401; Act 1918, Chap. 451.

State Armory Commission. Act 1918, Chap. 143.

Moving Pictures, amending laws relating thereto. Act. 1918, Chap. 195; Act 1918, Chap. 309.

Tax Laws. Reducing penalties for failure to file reports and authorizing State Tax Commission to abate penalties. Act 1918, Chap. 32. Dissolution of corporations without court proceedings. Act 1918, Chap. 198. Returns by collectors. Act 1918, Chap. 253. Interest on overdue taxes. Act 1918, Chap. 261. Forfeiture of Charters. Act 1918, Chap. 316. Transfers of

stock. Act 1918, Chap. 31. Rates and items of State tax. Act 1918, Chap. 210.

Banks. General revision of banking laws. Act 1918, Chap. 33.

Motor Vehicles. Complete revision of laws relating thereto. Act 1918, Chap. 85. Passenger and freight jitney buses, regulations for. Act 1918, Chap. 199; Act 1918, Chap. 304.

Child Labor Laws, amendments of. Act 1918, Chap. 195.

Lunacy Laws. Examination of persons accused of crime. Act 1918, Chap. 68.

State stationery contracts. Act 1918, Chap. 76.

Contractors' bonds for state work to cover labor and materials. Act 1918, Chap. 127.

Department of Law. Act amended. Act 1918, Chap. 22.

People's Court. Power to punish for disorder. Act 1918, Chap. 57.

The Attorney General also advised with the Governor in the preparation of the Budget Bill, Act 1918, Chap. 206, and either drafted or assisted in drafting numerous other bills of less importance.

The total number of bills passed by the Legislature of 1918 was 197, and every one of these was personally examined by me or under my supervision, in order that questions relating to their constitutionality and effect might be brought to your attention.

Cases Sub Judice When 1917 Report Was Filed

At the time my last annual report was filed nine cases had been argued in the Court of Appeals, and were held sub judice (Attorney General's Reports, Vol. 2, pages 2-10). These cases have now been decided. The State won six, lost two, and one (the *Winger* appeal) was decided against the State, the Attorney General concurring in the correctness of this decision. These cases follow:

State vs. Edgar T. Mercer. October Term, 1917. Appeal from Circuit Court for Carroll County. Judgment affirmed. 132 Md. 263. Carroll County auctioneers' license law (Act 1914, Chap. 633) held invalid, because it discriminated against non-residents of the county.

State vs. Paul Case. October Term, 1917. Appeal from Circuit Court for Carroll County. Judgment reversed. 132 Md. 269. Law requiring construction business to be licensed (Act 1916, Chap. 704, Sec. 181), sustained.

Royston W. Jones vs. State. October Term, 1917. Appeal from Circuit Court for Harford County. Judgment affirmed. 132 Md. 142. Conviction under bastardy law upheld.

State vs. Hadley E. Hardesty. October Term, 1917. Appeal from Circuit Court for Prince George's County. Appeal dismissed. 132 Md. 173. The State won this case on the merits, which related to jurisdiction in bastardy proceedings. The appeal was, however, dismissed because not taken within thirty days, the Attorney General concurring in the correctness of this result.

Henry E. Wingert vs. State. October Term, 1917. Appeal from Orphans' Court for Washington County. Judgment reversed. 132 Md. 245. The Orphans' Court had ordered certain real estate to be sold for payment of collateral inheritance tax, notwithstanding a decree of the Circuit Court enjoining the collection of the tax. The Court of Appeals held that the Orphans' Court had no power to order the property sold, and that the liability for the tax should be determined on appeal from the order of the Circuit Court. The Attorney General concurred in the correctness of this decision. For the appeal from the Circuit Court, see post, "Court Cases Tried in the Court of Appeals." State vs. Wingert, 132 Md. 225.

State vs. Sarah Dennis et al. October Term, 1917. Appeal from Circuit Court of Baltimore City. Order affirmed. 132 Md. 261. The Court of Appeals held that the collateral inheritance tax upon estates in remainder, when the testator died before 1906, the rate then being

2½%, the remainderman coming into possession after 1905 (the rate then being 5%), should be at the 2½% rate.

William G. Albrecht vs. State. October Term, 1917. Appeal from Superior Court of Baltimore City. Judgment affirmed. 132 Md. 150. Liability on forfeited recognizance upheld.

Elmer Swann et al. vs. Board of Police Commissioners of Baltimore City et al. October Term, 1917. Appeal from Circuit Court of Baltimore City. Decree affirmed. 132 Md. 256. Power of Police Board to designate and regulate hack stands in Baltimore City, under Act 1910, Chap. 109, sustained.

Chesapeake & Potomac Telephone Company vs. State Roads Commission. October Term, 1917. Appeal from Circuit Court No. 2 of Baltimore City. Order affirmed. 132 Md. 194. Held, that the Legislature has power to require telephone companies to pay rental for the use of state roads for conduits and manholes, but that the statutes creating the State Roads Commission do not authorize that Commission to impose such a rental charge; they do, however, authorize the Commission to require a permit before the state roads can be opened.

United States Supreme Court.

But one case was argued in the Supreme Court during the year.

D. E. Foote & Company et al. vs. Emerson C. Harrington, Governor, et al. Writ of error. Involved question whether mandamus lies to compel the Governor, the Comptroller and the Treasurer to recommend to the Legislature the refunding of taxes paid under a statute afterwards declared unconstitutional. The Court of Appeals had held that it did not. 129 Md. 123. The Supreme Court dismissed the case, on April 29, 1918, for want of jurisdiction. Mr. Marbury appeared for the State.

Criminal Cases Tried in the Court of Appeals.

January, April and October Terms, 1918.

Seven criminal appeals were tried during the year. Of these all were decided before this report went to press. The State won three, lost two, consented to a reversal in one (the Easty

case), and one (the Jackson case) had been held to wait the decision of the United States Supreme Court in a similar case, and was decided against the State on that decision. These cases follow:

Thomas S. Jackson vs. State. January Term, 1918. Appeal from Criminal Court of Baltimore City. Involved validity of segregation ordinance of Baltimore City, prohibiting colored people from living in blocks where all or a majority of the residents are white. This case had been continued to await the decision of the United States Supreme Court in Buchanan vs. Warley, involving a similar ordinance of Louisville. The Supreme Court held the Louisville ordinance invalid in 245 U. S. 60, and the Court of Appeals, following this decision, held the Baltimore ordinance invalid also. 132 Md. 314. The Attorney General appeared for the State and City Solicitor Field on behalf of Baltimore City.

Erba Trumpeel vs. State. October Term, 1918. Appeal from Circuit Court for Baltimore County. Conviction for obtaining money under false pretenses by means of worthless check. Indictment held insufficient, and judgment reversed. 133 Md. 259. Mr. Marbury and Mr. Perlman appeared for the State.

Frederick W. Seibert vs. State. October Term, 1918. Appeal from Circuit Court for Harford County. Conviction under bastardy law. Judgment reversed, for error in rulings on evidence. 133 Md. 309. Mr. Marbury and Mr. Perlman appeared for the State.

William S. Squazzoglia and al. vs. State. October Term, 1918. Appeal from Circuit Court for Baltimore County. Appeal dismissed because sentences had been suspended and traverser paroled, and, therefore, there was no final judgment. 133 Md. 152. Mr. Marbury and Mr. Perlman appeared for the State.

Charles Basta vs. State. October Term, 1918. Appeal from Circuit Court for Baltimore County. Conviction upon criminal information filed by State's Attorney. Judgment reversed, January 15, 1919, the Attorney General consenting, because the

information contained two counts charging felonies, which were not authorized under the statute providing for prosecutions on information.

Roy Eau vs. State. October Term, 1918. Appeal from Circuit Court for Baltimore County. Conviction for carnal assault. Judgment affirmed, January 16, 1919. Mr. Perlman appeared for the State.

John Saunders vs. State. October Term, 1918. Appeal from Circuit Court for Baltimore County. Conviction of murder. Judgment affirmed, January 16, 1919. Mr. Marbury and State's Attorney Green appeared for the State.

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1918.

Seven civil appeals were tried during the year. Of these all were decided before this report went to press. The State won four and lost three.

State vs. American Colonization Society. January Term, 1918. Appeal from Circuit Court of Baltimore City. In American Colonization Society vs. Soulsby, 129 Md. 605 and 131 Md. 296, the Court of Appeals held that a trust covering certain property in Baltimore City was void, and that the heirs at law were barred from claiming the property. The Attorney General filed a petition in the proceedings asking that the property be decreed to belong to the State. The lower Court dismissed the petition, and this decision was affirmed by the Court of Appeals, that court holding that there can be no escheat where the deceased left heirs and did not die intestate. 132 Md. 524. Mr. Marbury and Mr. Perlman appeared for the State.

State vs. Henry F. Wingert et al. January Term, 1918. Appeal from Circuit Court for Washington County. Certain property held not subject to collateral inheritance tax, because not part of the deceased's estate. Held, also, that the State, being sovereign, cannot be injoined. 132 Md. 605. Mr. Marbury appeared for the State. See also, *ante*, "Cases *sub curia*."

when 1917 Report was filed." Henry F. Wingert et al. vs. State, 132 Md. 243.

Hugh A. McMullen, Comptroller, vs. James S. Shepherd. April Term, 1918. Appeal from Circuit Court for Anne Arundel County. Mr. Shepherd, Commissioner of the Land Office, instituted mandamus proceedings to compel the Comptroller to pay him one fourth of the fees of his office, under Act 1900, Chap. 318, in addition to his constitutional salary. The lower court ordered the writ to issue. The Court of Appeals reversed this decision, holding that the Commissioner of the Land Office is not entitled to any of the fees of his office, and that the Act of 1900, Chap. 318, is unconstitutional. 133 Md. 157. The Attorney General appeared for the State.

Chesapeake and Potomac Telephone Company vs. State Roads Commission. October Term, 1918. Appeal from Superior Court of Baltimore City. This case involved the right of the State Roads Commission to continue the collection of rental for the use of the York Turnpike after the acquisition of the Turnpike by the State. The Court of Appeals decided, on February 11, 1919, that the Commission could collect, and affirmed a judgment for $1,132.76. The Telephone Company has taken the case on writ of error to the Supreme Court of the United States, where it is now pending. Mr. Marbury and Mr. Perlman appeared for the State Roads Commission.

Potomac Telephone and Chesapeake Company vs. State Roads Commission. October Term, 1918. Appeal from Superior Court of Baltimore City. This case was a suit by the State Roads Commission for compensation for the use of the Conowingo Bridge since its purchase by the State. A judgment for $1,[illegible] was affirmed by the Court of Appeals on February 11, 1919. The Telephone Company has taken the case on writ of error to the Supreme Court of the United States, where it is now pending. Mr. Marbury and Mr. Perlman appeared for the State Roads Commission.

State Industrial Accident Commission vs. Julia Jacobs. October Term, 1918. Appeal from Circuit Court for Caroline County. Involved the question of who is a "casual employee," and, therefore, not entitled to compensation under the Workmen's Compensation Law. In this case, the lower court held that the appellee's employment was not casual, and this decision was affirmed on March 5, 1919. Mr. Marbury and Mr. Perlman appeared for the State Industrial Accident Commission.

Jones Hollow Ware Company vs. State Board of Prison Control. October Term, 1918. Appeal from Circuit Court No. 2 of Baltimore City. This case grew out of the passage of Chapters 306 and 354 of the Acts of 1918, which were enacted for the purpose of giving the State Board of Prison Control authority to begin as soon as possible to inaugurate a new system of prison labor to supersede the contract labor system. The State Board of Prison Control, after the passage of the legislation of 1918, began to withdraw prisoners from work on contracts at the Maryland Penitentiary and House of Correction for labor on State roads and under the Federal Government. The Jones Hollow Ware Company filed a petition for an injunction and for specific performance of its contracts, alleging that the legislation of 1918 was unconstitutional. The demurrer filed by the State Board of Prison Control and the State Roads Commission was sustained, and the ruling was affirmed on appeal, the Court of Appeals holding, in substance, that the State had the authority to institute a new system of prison labor without regard to the length of existing prison labor contracts. Mr. Marbury and Mr. Perlman appeared for the State Board of Prison Control.

Civil Cases Finally Disposed of in Lower Courts.

State vs. American Surety Company. Circuit Court for Worcester County. This case was instituted in 1914 to collect a deficiency from the bond of the collector of State taxes for Worcester County. Mr. John W. Staton was employed by the Comptroller as special counsel for the State and the case was

argued on demurrer on October 29, 1918. The Court decided the bonding company was not liable.

Valentine Keyser vs. George A. Mahone, Director of the Compulsory Work Bureau. Circuit Court of Baltimore City. This was a proceeding to test the validity of the Compulsory Work Law. Law sustained. Mr. Perlman appeared for the Director of the Bureau.

Thomas vs. Wells and Conservation Commission. Circuit Court for Anne Arundel County. Equity suit involving right to license as between two claimants. License given to Wells. Mr. Marbury appeared for the Conservation Commission.

Anthony Pessagno vs. Board of Liquor License Commissioners vs. Superior Court of Baltimore City. Writ of *certiorari* to the holder of a saloon license in Baltimore City to prevent one of the Liquor License Commissioners from sitting in a proceeding to revoke his license. The Commissioner had made personal investigations and testified under oath to what he had seen. Court held that the revocation of a license was not a judicial proceeding and dismissed the writ on motion to quash made by the Board. Mr. Marbury appeared for the Board of Liquor License Commissioners.

James vs. Goddard and the Maryland State College of Agriculture. Supreme Court of the District of Columbia. Bill to set aside a will and deed of trust by which property was left to the College. Will and deed of trust sustained and bill dismissed. Mr. Marbury and Mr. Clarence M. Roberts, special counsel, appeared for the College.

Lewis J. Selznick vs. Maryland State Board of Censors. Baltimore City Court. This case was an appeal from the decision of the Board refusing to permit the exhibition of the film entitled "War Brides". The Court dismissed the appeal. The Attorney General and Mr. Perlman appeared for the Board of Censors.

James C. Sutter vs. E. Austin Baughman, Commissioner of Motor Vehicles. Baltimore City Court. Appeal from decision

of Motor Vehicle Commissioner suspending operator's license. Appeal dismissed. Mr. Perlman appeared for the Commissioner.

Louis M. Foster vs. Board of Police Commissioners of Baltimore City. Baltimore City Court. Replevin suit. Dismissed. Mr. Whyte appeared for the Police Board.

Lee Moore vs. Board Police Commissioners of Baltimore City. Baltimore City Court. Replevin suit. Agreed and settled. Mr. Whyte appeared for the Police Board.

Louis Schriver vs. Officer Clausen et al. Superior Court of Baltimore City. Damage suit for false arrest against officers of the Police force. Dismissed upon payment of costs. The Attorney General and Mr. Whyte appeared for the Police officers.

State Board of Prison Control vs. Hutchins. State Board of Prison Control vs. Dasher. Circuit Court for Howard County. Condemnation suits for land required for the House of Correction water supply. These cases were settled the day of the trial by the purchase of the land desired. Mr. Marbury and Mr. James Clark, head counsel, appeared for the Board of Prison Control.

George L. Donaldson vs. State Board of Prison Control. Baltimore City Court. Petition for mandamus to permit petitioner to see prisoners at House of Correction for whom he alleged he was counsel. Petition dismissed by Court after hearing. Mr. Perlman appeared for the Board.

Vincenzo Lombardozzi vs. State Accident Fund et al. Circuit Court for Allegany County. Appeal from decision State Industrial Accident Commission. Findings of the Commission affirmed. Mr. Perlman appeared for the State Accident Fund.

County Commissioners of Baltimore County vs. State Roads Commission. Circuit Court for Baltimore County. Mandamus to compel State Roads Commission to take over all the State aid roads in the County. Settled at the suggestion of the Court after three days' trial, by the payment by the County for putting

the roads in repair, the roads to be immediately transferred to the jurisdiction of the Commission. Mr. Marbury and Mr. Perlman appeared for the State Roads Commission.

State Roads Commission vs. Postal Telegraph Cable Co. Superior Court of Baltimore City. Suit for use of Conowingo Bridge by the Postal Company. Settled by the collection of a reduced rental. Mr. Marbury and Mr. Perlman appeared for the State Roads Commission.

Phillips & Neal vs. State Roads Commission. Circuit Court for Worcester County. Suit for extra work done on a road contract. Settled by the State Roads Commission after a conference arranged with counsel for the plaintiffs. Mr. Marbury appeared for the Commission.

Page & Hubbard Co. vs. State Roads Commission. Baltimore City Court. Suit for balance on contract. Settled. Mr. Marbury appeared for the Commission.

Sun Life Insurance Co. vs. State Tax Commission. Baltimore City Court. Appeal from assessment. Dismissed. Mr. Perlman appeared for the Commission.

Blanks Development Co. vs. State Tax Commission. Per *Naughton vs. State Tax Commission.* Circuit Court for Montgomery County. Appeal from assessment of land as gold mining property. Motion of Commission to dismiss appeal granted after hearing. Mr. Marbury appeared for the Commission.

Crawford vs. Eastern Shore Development S. S. Co. District Court of the United States for the District of Maryland. In Bankruptcy. Petition of State for allowance of State taxes. Taxes allowed. Mr. Bequardt appeared for the State.

Harry Schmitz vs. E. Austin Baughman, Commissioner of Motor Vehicles. Baltimore City Court. Appeal from suspension of license. Decision reversed and license returned. Mr. White appeared for the Commissioner.

S. Walter Chapman vs. E. Austin Baughman, Commissioner of Motor Vehicles. Baltimore City Court. Appeal from sus-

pension of license. Appeal dismissed. Mr. Perlman appeared for the Commissioner.

William A. Lane vs. August Gerecht, Police Magistrate at Eastern Police Station. Baltimore City Court. Petition for writ of *certiorari* to review action in committing petitioner under the Compulsory Work Law. Petition dismissed after hearing. Mr. Perlman appeared for Justice Gerecht.

A. L. Deaton vs. Wm. P. Lankford, Superintendent of the Maryland House of Correction. Baltimore City Court. Writ of *habeas corpus* to test validity of Compulsory Work Law. Law held constitutional, but prisoner released because of a defective commitment. Mr. Perlman appeared for the Superintendent of the House of Correction.

George A. Livesay vs. John F. Leonard, Warden of the Maryland Penitentiary; George A. Livesay vs. Wm. P. Lankford, Superintendent of the House of Correction. Baltimore City Court. Writ of *habeas corpus* to test validity of transfer from House of Correction to Penitentiary. Prisoner released from custody on account of defect in transfer. Rearrested and confined in House of Correction. *Habeas corpus* to release prisoner from that institution. Remanded. Mr. Perlman appeared for the Warden and for the Superintendent.

Mack and Maddox vs. Superintendent of House of Correction. Baltimore City Court. Writ of *habeas corpus* to test right to jury trial under Compulsory Work Law. Right denied and petitioners remanded. Mr. Perlman appeared for the Superintendent.

State Board of Health vs. John Lane; State Board of Health vs. August Eger; State Board of Health vs. Charles E. Herbert; State Board of Health vs. Pauline E. Stevens; State Board of Health vs. Zella Waltemeyer; State Board of Health vs. George Green. Six separate cases in the Circuit Court for Baltimore County brought at different times to abate nuisances. Mr. White appeared in all the cases for the State Board of Health.

State Board of Health vs. George E. Schold. Circuit Court for Garrett County. Suit to abate nuisance. Nuisance abated. Mr. Whyte appeared for the State Board of Health.

CASES PENDING IN UNITED STATES SUPREME COURT.

Chesapeake and Potomac Telephone Company vs. State Roads Commission. Writ of error to Court of Appeals. Involves State Roads Commission's right to collect rental for telephone company's use of York Turnpike after its acquisition by the State.

Interstate Telephone and Telegraph Company vs. State Roads Commission. Writ of error to Court of Appeals. Involves State Roads Commission's right to collect rental for telephone company's use of Conowingo Bridge after the acquisition by the State.

CASES PENDING IN COURT OF APPEALS.

William E. Neubert vs. State. January Term, 1919. Appeal from Criminal Court of Baltimore City. Conviction of murder in second degree.

Fidelity Trust Company vs. State Tax Commission. January Term, 1919. Appeal from assessment of State Tax Commission on the ground that the same was unequal and discriminatory. The lower court dismissed the appeal on December 28, 1918, because no question of law was involved.

State vs. E. Irene Fastenau, Executor. January Term, 1919. Appeal from Superior Court of Baltimore City. Involves question whether the proceeds of certain real estate situated in another State, and owned by a deceased resident of Maryland, is subject to collateral inheritance tax because of its conversion from real property to personalty. The lower Court, on January 6, 1919, held that there was no liability.

Industrial Corporation of Baltimore vs. State Tax Commission. January Term, 1919. Appeal from assessment of State Tax Commission. Involves question whether the appellant is a "monied institution," and as such taxable on its shares of stock. The lower court, on January 8, 1919, affirmed the assessment.

Cases Pending in Lower Courts.

Smith et al. vs. Conservation Commission. Circuit Court for Talbot County. Bill to restrain the granting of an oyster license.

Pattison vs. Mayor & City Council of Baltimore. McNulty vs. Mayor & City Council of Baltimore. Browning vs. Mayor & City Council of Baltimore. Baltimore City Court. Suits brought by order of the Board of Public Works to determine liability of City for fees in criminal cases.

State vs. A. Winslow Williams. State vs. Robert P. Gardiner. Superior Court of Baltimore City. *State vs. Thomas W. Simmons.* Circuit Court for Anne Arundel County. Suits for fees retained by Secretaries of State.

Robert W. Wells vs. Maryland Agricultural College and the Maryland State College of Agriculture. Circuit Court for Prince George's County. Suit for salary.

Bradshaw vs. McMullen. Circuit Court for Anne Arundel County. Test of Mothers' Pension Law.

Samuel Cummins vs. Maryland State Board of Motion Picture Censors. Baltimore City Court. Appeal from decision of Board refusing permission to exhibit.

John William Baker vs. State Industrial Accident Commission et al. Circuit Court for Allegany County. Appeal from decision of the Commission.

Laura S. Lock vs. State Roads Commission. Circuit Court for Anne Arundel County. Replevin of certain personal property.

United Railways & Electric Co. vs. State Roads Commission. Superior Court of Baltimore City. Suit for cost of removing poles from Liberty Heights Avenue. Tried before Judge Hengler without a jury and held *sub curia*. Mr. Marbury appeared for the Commission.

George Hofsley vs. State Roads Commission. Circuit Court for Baltimore County. Injunction to prevent damage to land.

United Railways & Electric Co. vs. State Tax Commission. Case stated. Circuit Court No. 2 of Baltimore City. Liability of Railway for bonus tax on increased stock.

State vs. Alexander Lacey. Circuit Court for Montgomery County. Petition of State for proceeds escheated land.

David T. Benson vs. Veterinary Medical Board. Baltimore City Court. Mandamus to compel Board to grant Veterinary license.

CONDEMNATION AND TITLE WORK SPECIAL COUNSEL.

In condemnation and title work local counsel are always necessary, and sometimes also in other cases. The authority to employ special or local counsel is given by Section 9 of Chapter 560 of the Acts of 1916. Their fees were paid by the particular Board or Department for which the work was done. The cases of this character during the fiscal year ended September 30, 1918, were as follows:

Allegany County. Examination of title to Cumberland armory site for Maryland Council of Defense. Counsel, George A. Pearre. Fee: $50.

Cecil County. Acquisition of rights of way for State Road Commission. Counsel, William Pepper Constable. Fee: $200.

Howard County. Examination of title for State Board of Forestry. Counsel, James Clark. Fee: $10.

Examination of titles for State Board of Prison Control. Counsel, Charles E. Wood. Fee: $350.

Somerset County. Examination of title for Maryland Agricultural College. Counsel, Messrs. Miles and Myers. Fee: $50.

Washington County. Services in injunction case of Little vs. State Road Commission. Counsel, Alexander Armstrong, Jr. Fee: $50.

Worcester County. Case of Phillips and Neale vs. State Road Commission. Counsel, John W. Staton. Fee: $25.

District of Columbia. James vs. Goddard. See "Cases Finally Disposed of in Lower Courts." Counsel, Clarence M. Roberts. Fee paid from accumulated income, and not by State.

Tax Collections. Commissions paid Charles B. Hoffman, William L. Galvin, Robert D. Bartlett and James Clarke Murphy, aggregating $1,784.02. Of this amount $1,282.09 was paid October 31, 1918, after the close of the fiscal year. The entire amount was paid out of a special appropriation for the purpose.

State Boards and Commissions.

The legal work for the various State departments, boards and commissions continued exacting. The Bank Commissioner, the State Insurance Department, the Commissioner of Motor Vehicles, the Conservation Commission, the State Board of Prison Control and the State Board of Health, particularly, were in constant need of legal advice and assistance, and the advice of myself or of my assistants was always at their disposal, as well as at the disposal of all other State departments.

Conclusion.

In conclusion, permit me to express my appreciation of your unfailing courtesy and consideration upon all occasions, and of that of the other State officers connected with your administration.

I have the honor to be

Respectfully yours,

ALBERT C. RITCHIE,
Attorney General.

Cost of the State's Legal Work During Fiscal Year Ended September 30, 1918.

1. *Department of Law. Appropriations.*

Act 1916, Ch. 684, page 1552.		
Attorney General ($5,000), and three Assistant Attorneys General ($2,500 each)		$12,500.00
Additional Assistant Attorney General from March 22, 1918, at rate of $2,500 per annum (Act 1918, Ch. 22), paid from same appropriation.		
Assistants, Clerks and Stenographers	3,500.00	
Contingent Fund for general expenses	1,000.00	
Total Appropriations		$19,000.00

Salaries.

Attorney General (salary for August and September waived, Attorney General serving as Counsel to War Industries Board)	$4,166.66	
Three Assistant Attorneys General	7,500.00	
Additional Assistant Attorney General from March 22, 1918, to September 30, 1918	1,416.00	
Assistant (until March 22, 1918), Clerks and Stenographers	2,479.12	

Expenses.

Office Rent		1,399.92
Telephone		208.36
Travelling and Hotel		181.85
Stamps		88.72
Extra typewriting		73.63
Office furniture and equipment		167.55
Books		133.59
Office supplies		280.00
Annual Report and Opinions	600.00	
Miscellaneous	204.59	
		19,266.99
Balance reverted		$333.01

2. *Printing Briefs and Records.*

Balance October 1, 1917	$199.50
Appropriation, Act 1916, Ch. 684, page 1557	500.00
Amounts expended from other Departments' appropriations and reimbursements	201.71
	900.21
Expended	618.50
Balance reverted	$281.71

3. *Tax Collections.*

Appropriation, Act 1916, Ch. 684, pages 1557, 1576	$2,000.00
Commissions	1,784.02
Balance	$215.98

4. *Special Counsel.*

Condemnation cases and title examinations	$765.00

3. *Resume.*

Department of Law	$19,266.99
Printing Briefs and Record	518.50
Tax Collections	1,784.02
Special Counsel	765.00
Total	$22,334.51
Less Appearance Fees, all paid to State	113.00
Total Cost	$22,221.51

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

(Collateral Inheritance Tax Opinions included under Taxation.)

ADMINISTRATION—DISTRIBUTION OF ESTATES—WIDOW'S SHARE OF REAL ESTATE.

January 11, 1917.

Harvey W. Shauck, Esq.,
Register of Wills,
Cumberland, Md.

DEAR MR. SHAUCK:—I beg to reply to your favor of January 5th.

I understand that Mr. George F. Gephart, by his last will and testament, left his widow a life estate, and that she thereupon renounced the provisions of the will in her favor. Mr. and Mrs. Gephart had no children, and Mr. Gephart's heirs are his brothers and sisters, or children of deceased brothers and sisters. You ask what interest Mrs. Gephart is entitled to receive from Mr. Gephart's estate.

The only difficulty I have about the inquiry arises from your statement that Mrs. Gephart asked "that she be distributed her dower rights." Her dower, of course, would only be a life interest in one-third of the real estate, and Mrs. Gephart would hardly have preferred that to the life interest in the whole estate, which, I understand, the will left her.

What I suppose Mrs. Gephart did was, not to ask dower, but to elect, under section 3 of the Act of 1916, Chap. 325, not to accept the provisions of the will in her favor. If that is what she did, then she is entitled, under section 3, to the same share in the land as she is entitled to take in the personal property. Since the deceased left no children or descendants, but did leave brothers and sisters, or children of deceased brothers and sisters, this share is one-half. (Bagby's Code, Art. 93, Sec. 122.)

Very truly yours,

VERNON G. RIDDLE, *Attorney General.*

Administration—Distribution of Estates—Widow's Share of Real Estate.

January 28, 1918.

Isaac T. Riley, Esq.,
Register of Wills,
Snow Hill, Maryland.

Dear Mr. Riley:—I beg to reply to your letters of January 9th and 12th.

You state the case of a husband who recently died testate, bequeathing legacies to his widow and devising his farm to a collateral. The widow renounced the will. Under the law as it stood prior to 1916, the widow would receive one-third of her husband's estate, but if the Act of 1916, Chap. 325, applies, she will be entitled to one-half. The parties were married in 1881, and you ask whether the widow should receive one-half, which is the share provided by the Act of 1916, the law in existence at the time of her husband's death, or one-third, which is the share to which the widow was entitled under the law as it existed at the time of the marriage.

As far as the personal property is concerned, it is settled in the case of Harris vs. Whitely, 98 Md. 183, that the amount of widow's share is fixed by the law existing at the time of distribution. This means that the widow will receive one-half of the personal property.

As to the real property, I think that the law existing at the time of the husband's death, Act 1916, Chap. 325, controls.

In the case of Pittman, 120 Md. 650, the court was dealing with an estate created by the Act of 1898 in the deceased spouse's property which did not exist at all before the Act of 1898 was passed. In the present case, the Act of 1916 has not given the survivor any new estate in the property of the deceased, but its effect, in the present case, is simply to give the survivor one-half instead of one-third. I think that the amount to which the survivor is entitled is to be determined by the law as it stands at the time of the death, and that, therefore, the widow should receive one-half of the real estate.

The State, of course, is not concerned in the question, and the courts are open to the heirs if they do not agree with the above conclusion.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

APPRAISERS OF THE ORPHANS' COURT OF BALTIMORE CITY.

May 11, 1918.

Howard W. Jackson, Esq.,
Register of Wills,
Court House, Baltimore, Md.

DEAR MR. JACKSON: I beg to reply to your favor of May 8th, with reference to the Act of 1918, Chap. 250, repealing and reenacting with amendments Sec. 354A of the Baltimore City Charter, relating to the appraisers of the Orphans' Court.

The only effect which this Act has is that after June 1st, 1918, when the Act takes effect, the appraisers' salaries will be at the rate of $2,100 per annum, instead of $1,600 per annum as at present. The Act does not affect the status or terms of office of the present four appraisers at all.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE TAX ON COMMISSIONS—ORIGINAL EXECUTOR AND ADMINISTRATOR D. B. N.

June 25, 1918.

Hon. Hugh A. McMaster,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMASTER: I have your letter of June 24th, enclosing copy of a letter from Mr. Thompson A. Brown, Register of Wills for Washington County.

I understand that you and he wish to know what State tax should be collected on the commission of an original executor and on the commission of an administrator d. b. n., where the original executor has not settled an estate, and his executor or administrator turns over the assets of the estate to the administrator d. b. n., your especial inquiry being whether, under the Act of 1916, Chap. 359, you are to collect one per cent on the amount turned over by the administrator or the executor of the deceased executor, and also one per cent on the estate administered by the administrator d. b. n., or whether you are to collect one per cent on the total value of the estate.

The tax which comes to the state is a tax on the commission of the executor or administrator, and is not paid by the estate, but is paid by the officer who gets the commission. The Act of 1916, Chap. 359, changed the method of computation and based it on the amount of the estate and not on the amount of the commissions as heretofore. Article 3[illegible] of the Annotated Code, Section 7[illegible], makes provision for the further administration of estates in which the executor or administrator dies before the administration is completed. In such case letters d. b. n. are to be granted by the Court, and the administrator of the deceased administrator is to turn over to the administrator d. b. n. the unadministered estate which he found in his decedent's possession, retaining, however, a commission to be allowed by the Court. As soon as this commission is allowed a tax becomes due to the State, and this tax, under the Act of 1916, should be based on the amount of the estate turned over.

The administrator d. b. n. also gets a commission on the estate which he administers, to be fixed by the Court, and as soon as such commission is allowed, the state is entitled to a tax on this commission, fixed by the Act of 1916, at one per cent on the value of the estate coming into his hands.

The Register of Wills should, therefore, collect from the executor or administrator, when a second commission is fixed by the Court and such commission is allowed, a tax under the Act of 1916, Chap. 359, in amount a tax of one per cent of

the estate passing through the hands of such executor or administrator.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

DISTRIBUTION OF PERSONAL ESTATE UNDER ACT OF 1916.

August 24, 1918.

J. W. Dashiell, Esq.,
Register of Wills,
Salisbury, Md.

MY DEAR MR. DASHIELL: I have your inquiry in the matter of the distribution of personal estate.

I understand that a resident of your county died intestate, leaving as next of kin five brothers and sisters, two children of a deceased sister and two children and one grandchild, the child of a deceased child of another sister.

You ask whether this great niece stands in the place of her deceased parent and inherits from her great aunt just as her parents would, in other words, whether the one-seventh share which would have gone to the second above-mentioned deceased sister of the intestate had she been living, is now divided in two parts between the children of such sister or whether it is divided in three parts among the two children and the one grandchild.

I assume that the parties now in existence at the time of the distribution are all the next of kin who were living at the time of the death of the intestate, and that all of these parties were in existence at the time of such death.

The Act of 1916, Chap. 224, now codified in part as Sec. 129 of Art. 93 of the Annotated Code (Vol. 1) reads as follows:

"Every brother and sister of the intestate shall be entitled to an equal share, and a child or children of a deceased brother or sister of the intestate shall stand in the

place of such brother or sister and a grandchild or grandchildren and every other descendant or other descendants of a deceased brother or sister of the intestate in existence at the death of the intestate shall stand in the place of his, her or their deceased ancestor."

Under this section, the great-niece stands in the place of her father and is entitled to one-third of one-seventh of the estate and the distribution should be made accordingly. I return herewith paper sent me.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

TAX ON COMMISSIONS—ONE PER CENT ON ESTATE AT TIME FILING ACCOUNT.

October 18, 1918.

J. W. Dashiell, Esq.,
Register of Wills,
Salisbury, Maryland.

MY DEAR MR. DASHIELL: I have your enquiry as to the proper amount of the State tax on the commissions of the executrix in the estate of Sallie Cannon.

The will of the testatrix was admitted to probate on December 1, 1913, and the first administration account was passed on December 8, 1914. In July, 1918, the executrix, under the power contained in the will, sold the real estate of the testatrix, the proceeds of which by the terms of the will are to be divided among the testatrix' children.

The State tax on commissions is fixed by Chapter 559 of the Acts of 1916 (going into effect June 1, 1916) at 1% on the first $20,000 of the estate and one-fifth of 1% on the balance. Although this tax is based on the value of the estate it is a tax on the commissions of the executrix, and is, therefore, not payable until the executrix files her account and is allowed com-

missions, which must, by the terms of the act, be not less than the amount of the tax. Mrs. Cannon's executrix, therefore, was not entitled to commissions on the proceeds of the real estate sold until she proceeded to distribute in the Orphans' Court. At that time, which, of course, was more than two years after the Act of 1916 went into effect, the tax on her commissions should be determined by the law then in effect, and the tax should, therefore, be at the rate of 1% on the amount of the estate in the hands of the executrix, as shown by her account.

Very truly yours,

OLIN MARBURY, *Acting Attorney General.*

ANNEXATION ACT.

PUBLIC OFFICIALS OF BALTIMORE COUNTY TO ACT UNTIL JANUARY 1, 1919.

August 1, 1918.

T. Scott Offutt, Esq.,

Towson, Maryland.

MY DEAR MR. OFFUTT: I have your letter of July 31 which you state is written at the request of the County Commissioners of Baltimore County and of the State's Attorney of that County. You ask certain questions in connection with the construction of Chapter 82 of the Acts of 1918, generally known as the Annexation Act. The questions you ask have particular reference to the suits, indictments and proceedings and jurisdiction of the Circuit Court for Baltimore County.

I do not feel it is proper for this office to give any general advice upon the construction of this Act. The courts can and undoubtedly will construe it for themselves and each person affected by it and each attorney employed by such person will construe it in connection with such person's interest. It would be manifestly improper for me to attempt to give any construction of it in a general way which would infringe on the rights of the courts or which would in any way pass upon purely private rights. The Attorney General is, however, made by the Constitution the adviser of the State's Attorney upon request, and I feel that I should advise him and other State officers as to their duties. To that extent only am I answering your letter.

Chapter 82 of the Acts of 1918, by section 8 provides:

> "The obligation of maintaining a police force for preserving the peace and of maintaining a fire department as a protection against fire, and of maintaining the public highways and public schools and of performing every other governmental or municipal function heretofore performed by the County Commissioners or other public officials in the territory which is by this Act annexed to Baltimore City (except the duties hereinafter imposed upon the Super

visors of Elections of Baltimore City), shall continue to rest upon the County Commissioners of Baltimore County and the County Commissioners of Anne Arundel County, respectively, or other public officials, until December 31, 1918, inclusive. Beginning with January 1, 1919, all these obligations shall pass to the Mayor and City Council of Baltimore or other public officials of Baltimore and the County Commissioners of Baltimore County and Anne Arundel County, respectively, shall be thereafter relieved therefrom."

By section 18 all pending proceedings shall be proceeded with in the same manner as if the Act had not been passed.

I do not think it makes much difference whether the time at which these proceedings are pending is fixed as of March 29, 1918, when the Act was approved, or as of June 1, 1918, when the Act went into effect, because if they were instituted between March 29 and June 1, they would, under one construction, come under the provisions of section 8, above quoted, and under the other construction would come under the provisions of section 18.

In respect, therefore, to public officials in Baltimore County, whom it may be my duty to advise, my advice is that they shall continue to perform the functions of their respective offices over the annexed territory until January 1, 1919.

Very truly yours,

CHAS. MARBURY, *Acting Attorney General.*

NOTARIES PUBLIC—NO NEW COMMISSIONS.

Dec. 26, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your request for an opinion on the letter of Mr. John G. Nagengast, in which he asks whether notaries public of Baltimore County, appointed

for those sections of the county annexed to Baltimore City by Chap. 82 of the Acts of 1918 must be recommissioned.

Sec. 18 of Chap. 82 provides that "every person holding any state or county office in Baltimore County or Anne Arundel County, and who may be a resident within the territory annexed by this Act to Baltimore City at the time of the passage of this Act, shall continue to hold such office until the termination of his then pending term, as if this Act had not been passed."

Under these provisions, notaries public resident in the annexed territory, do not have to be recommissioned, but continue to exercise their functions until the end of their terms as if the Annex Act had not been passed.

I return Mr. Vaughan's letter.

Very truly yours,

GEO. MAHRENKY, *Deputy Attorney General.*

NEW POLICE DISTRICTS IN ANNEX—APPOINTMENT OF OFFICERS—MAINTENANCE.

DECEMBER 27, 1918.

Gen. Lawrason Riggs,
President Board of Police Commissioners,
Baltimore, Maryland.

DEAR SIR: I have your letter of August 26th, asking whether the Board of Police Commissioners may establish new Police Districts in the territory annexed to the City of Baltimore, by Chap. 82 of the Acts of 1918, and may appoint and maintain such officers, captains, lieutenants and round-men as may be necessary to carry on the newly established Police Districts.

Chap. 82 of the Acts of 1918, in Sec. 8, provides that the obligation of maintaining a police force for preserving the peace in the territory annexed by that Act shall continue to rest upon the County Commissioners of Baltimore County and the

County Commissioners of Anne Arundel County, or other public officials, until December 31, 1918, inclusive, and that beginning January 1, 1918, such obligation shall pass to the public officials of Baltimore City. Under this Section, therefore, your Board has no police duties in the annexed territory until January 1, 1919.

Sec. 14 of Chap. 82 directs your Board, when you submit your annual estimate for the expenses of the Police Department for the year 1919, to submit an estimate of the cost to properly arm, equip and maintain an additional force of sixty men. This section further provides: "Of said sixty men, so many may be appointed as sergeants as, in the judgment of said Board of Police Commissioners, may be necessary, and the remainder shall be patrolmen." The section then directs your to appoint and equip the additional force so that they may be ready for service on Jan. 1, 1919, giving preference to the force now employed by the County Commissioners of Baltimore County and Anne Arundel County, and residing in the annexed territory. Then—

> "The said additional force of sixty men, when enrolled in pursuance of this Section, shall be to all intents and purposes and shall thereafter remain a portion of the police force of Baltimore City, and shall be subject to duty at any place to which they may be ordered by said Board of Police Commissioners of Baltimore City. On and after January 1, 1919, all the duties heretofore resting upon the Board of Police Commissioners of Baltimore City, with reference to the territory comprised within the limits of Baltimore City as they existed prior to the passage of this Act and the inhabitants thereof, shall rest upon the said Board of Police Commissioners with reference to the territory comprised within the limits of Baltimore City, as established by this Act and the inhabitants thereof."

You can, therefore, as soon as the Ordinance of Estimates for 1919 for Baltimore City is passed, appoint sixty additional

men, of whom so many as you think necessary may be appointed as sergeants, and the balance as patrolmen. Thereafter these members of the police force are subject to all the rules and regulations of the police force of Baltimore City, and are promoted or transferred in the same manner as present members are promoted and transferred. They become, to all intents and purposes, members of the police force of Baltimore City.

Sec. 754 of the Baltimore City Charter authorizes your Board to divide the city into such number of police districts as you may think necessary, and it practicable to provide additional station houses. This section is made applicable to the annexed territory by the provisions of Sec. 14 above quoted, and you can, therefore, establish new police districts in the annexed territory if you think it necessary for the public good and appoint the proper officers for their maintenance.

Very truly yours,

[illegible] Marshall, Deputy Attorney General.

Education in Annexed Suburban Fire Districts in Annexed Territory.

Dr. M. Baker Stephens,
State Superintendent of Education,
Mt. de Hall, Baltimore, Md.

Dear Dr. Stephens: I have your letter of September [illegible] in which you ask me to review Chapter [illegible] of the Acts of [illegible] annexing certain territory to Baltimore City, and [illegible] duties in the matter of certification of attendance of pupils in this territory.

Sec. 71 of Art. 77 of the Annotated Code, as amended by Chap. [illegible] of the Acts of 1918, requires that the Comptroller the average enrollment in the public schools of the City of Baltimore and of each of the several counties during the preceding school year." This certification is to be

purpose of enabling the Comptroller on or before the last day of September to apportion the text book fund.

Sec. 138 of Art. 77, as enacted by Chap. 188 of the Acts of 1918, provides for the apportionment of the general school fund by the Comptroller, two-thirds on the basis of the population given by the school census, and one-third on the basis of the aggregate days of school attendance, "during the preceding school year as certified to by the State Superintendent of Schools."

Your present duty in connection with these two Sections is merely to make a report of the average enrollment and the aggregate days of school attendance during the *last* school year, so that the Comptroller may apportion in accordance with their provisions. You have nothing to do with the apportionment, as this is made by the Comptroller, and for this year he must make it on the basis of last year's attendance, there being no different direction in the Annexation Act.

There is, therefore, no occasion for you now to make any second or additional report.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

TRADERS' LICENSES AND MARRIAGE LICENSES—JURISDICTION OF COURT OF COMMON PLEAS.

September 11, 1918.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of September 17th enclosing a letter from Mr. Adam Deupert, Clerk of the Court of Common Pleas of Baltimore City. In this letter Mr. Deupert asks his authority to issue traders' licenses and marriage licenses in the newly acquired annex of Baltimore City. You ask my opinion on this question.

Traders' licenses are, by the provisions of Article 56, Section 39, to be issued by the Clerk of the Circuit Court for the county in which the applicant proposes to carry on his selling or bartering, or if he proposes to carry on such selling or bartering in the City of Baltimore a license is to be issued by the Clerk of the Court of Common Pleas. The license when issued is good as a license to offer for sale in every part of the State provided, but does not authorize the holder to open any store or fixed place of business in any other city or county than the city or county in which the license shall be issued.

In Section 1 of Article 62 the performance of a marriage is prohibited "until a license shall have been obtained from the Clerk of the Circuit Court for the County in which the marriage is to be performed, or, if in Baltimore City, from the Clerk of the Court of Common Pleas," or unless the banns be published. The Court of Appeals has decided, however, that a marriage otherwise validly contracted and celebrated is not void if the prescribed license shall not have been procured.

Decisions Holding Law Not Local.

The question presented by Mr. Deupert and by some of the persons now desiring to sell goods, wares and merchandise in the territory outside of the new limits of Baltimore City, or persons now desiring to be married within that territory, should obtain a license from the Clerk of Common Pleas of Baltimore City, or from the County Clerk, should be obtained from the Circuit Court for Baltimore or Anne Arundel Counties, as the case may be.

Chapter 8 of the Acts of 1918 entitled "An Act to extend the limits of Baltimore City by including therein parts of Baltimore County and Anne Arundel County" was approved March 11, 1918. The first section provides that the territory therein mentioned "be hereby added to the territory of Baltimore City." The second section provides "that except as herein otherwise provided all the provisions of the Constitution of Maryland" and of the City Charter, and the local laws of Baltimore City "shall be and the same are hereby extended and made applicable to the annexed territory and thereupon" the local laws of Baltimore

more County and of Anne Arundel County "shall cease to be in force" in the annexed portion of those counties. Section 8 of the Act reads in part as follows:

> "The obligation of maintaining a police force for preserving the peace and of maintaining a fire department as a protection against fire, and of maintaining the public highways and public schools and of performing every other governmental or municipal function heretofore performed by the County Commissioners or other public officials in the territory which is by this Act annexed to Baltimore City (except the duties hereinabove imposed upon the Supervisors of Elections of Baltimore City), shall continue to rest upon the County Commissioners of Baltimore County and the County Commissioners of Anne Arundel County, respectively, or other public officials, until December 31, 1918, inclusive. Beginning with January 1, 1919, all these obligations shall pass to the Mayor and City Council of Baltimore or other public officials of Baltimore and the County Commissioners of Baltimore County and Anne Arundel County, respectively, shall be thereafter relieved therefrom."

It will be observed from these quotations that the question of the jurisdiction of the City courts and officials and the jurisdiction of the county courts and officials over the annexed territory from June 1, 1918, to January 1, 1919, is by no means easy of ascertainment. Inasmuch as by other provisions of Section 8 the counties are given the taxes up to January 1, 1919, it has been my opinion that it was the intention of the Legislature, by the quoted part of Section 8, to impose upon the counties all the duties which they exercised over the annexed territory up to January 1st, except those specially excepted in the act. These included, I thought, the criminal jurisdiction of the Circuit Courts for the counties as well as the duties exercised by the State's Attorneys and by the clerks of these courts, who are certainly public officials performing governmental functions.

This view has, however, not been the view of the City Solicitor of Baltimore or of the State's Attorney of Baltimore City or of the County Commissioners of Baltimore and Anne Arundel Counties. A test case involving the right of the grand jury of Baltimore City to indict a person committing a crime within the annexed territory was heard on writ of *habeas corpus* before Judge Urner sitting in the Circuit Court for Frederick County. Judge Urner, who was one of the members of the Court of Appeals who sat in the case involving the validity and Chapter 82 of the Acts of 1916, decided that the Baltimore City courts have jurisdiction. He construed the provisions of Section 8 above quoted as meaning that only those functions remaining to the county officials which had heretofore been performed within *the limits* of the territory annexed. This decision is not viewable on appeal. There has been no decision of the Court of Appeals, on the question but Judge Urner's opinion is always generally followed, and, I think, should be followed by public officials generally unless the Court of Appeals shall decide contrary to his views in some appropriate case before it.

Under these circumstances, I advise you that the Clerk of the Court of Common Pleas, when applied to, should issue trader's licenses to persons desiring to sell goods in the annexed territory, and he should issue marriage licenses to persons desiring to be married within that territory. If, however, I should be asked by the Clerks of Baltimore County or of Anne Arundel County what they should do under similar circumstances, I should advise them to issue similar licenses in cases where the territory in question was formerly within the limits of their respective counties, inasmuch as applicants for these licenses may prefer to get under county licenses and the question is one which I have no power or authority to decide. It must eventually be decided by the courts.

My duty is to advise public officials when they ask what they should do under the circumstances. Private individuals must choose for themselves the jurisdiction which they prefer and take the consequent risk. Public officials, in the absence of a decision

sion by the appellate court, should allow an applicant to choose his own jurisdiction, and issue the license asked for.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

NEW POLICE DISTRICTS—APPOINTMENTS HIGHER THAN SERGEANT—ROUND SERGEANTS.

October 8, 1918.

Board of Police Commissioners,
Court House,
Baltimore, Maryland.

JOSIAH A. KINSLEY, Esq., SECRETARY.

DEAR SIR: I have your letter of October 7th in which you state that it is the intention of your Board to establish two new police districts in the territory annexed to Baltimore City by Chapter 82 of the Acts of 1918. You ask:

1. Whether, under the provisions of the Annexation Law and the General Law, any policeman coming in from the Anne Arundel force or the Baltimore County force can be appointed to any grade in the City Department higher than that of sergeant.

2. Whether the grade of sergeant as used in Chapter 82 covers both round sergeant and squad sergeant.

Chapter 82, Section 14, provides for the appointment of an additional force of sixty men. "Of said sixty men, so many may be appointed as sergeants as, in the judgment of the said Board of Police Commissioners may be necessary, and the remainder shall be patrolmen. . . . In making such appointments said Board of Police Commissioners are hereby directed to give preference to the members of the police force now employed by the County Commissioners of Baltimore County and of Anne Arundel County, respectively, and residing in the territory annexed by this act to Baltimore City, and who may be properly qualified to discharge the duties of the positions."

It seems quite clear that the appointments to be made by the Board are to be only of sergeants and patrolmen, and the members of the county force who are appointed under Section 14 can be originally appointed only as sergeants or patrolmen. When appointed they become members of the force just as any other members, and can then be promoted in the same way as other members of the force are promoted.

The word "sergeant" as used in Section 14 is ambiguous, but in the provisions of the Charter providing for the police force where the word "sergeant" is used alone it is apparently meant to cover squad sergeants only. In Section 7 of the Charter, which makes provision for the permanent police force, the various ranks are set forth; round sergeants are specifically mentioned, and then sergeants are mentioned. Where the word "sergeant" is used without qualification in the section, it evidently means squad sergeant. Section 7 was repealed and re-enacted by Chapter 129 of the Acts of 1911 for the purpose of increasing the pay of the members of the force, and there is a distinction between round sergeants and other sergeants, as found in that act, so that provisions made for the sergeants are found before the amendment.

I think that the reasonable construction of this act is that the Legislature used the term sergeant in Section 14 to include squad sergeant and not round sergeant, and that used the word sergeant in Chapter 82 without qualification in a sense which meant squad sergeants and did not include round sergeants. It is, therefore, my opinion that the word "sergeant" as used in Chapter 82 is confined to squad sergeants and does not include round sergeant.

Very truly yours,

CHAS. MARRIOTT, Deputy Attorney General.

COLLECTION OF STATE TAXES BY COLLECTOR OF BALTIMORE.

October 11, 1918.

A. T. Benzinger, Esq.,
Deputy Tax Collector,
City Hall, Baltimore, Maryland.

MY DEAR MR. BENZINGER: I have your letter asking for my construction of Section 8 of Chapter 82 of the Acts of 1918 in so far as it applies to the collection of State taxes by the City Collector of Baltimore for the year 1919. You state you wish to know when the State taxes begin to run.

I do not see why you should have any difficulty about this situation. Section 8, Chapter 82 (the new annex act) authorizes the Commissioners of Baltimore and Anne Arundel Counties respectively to collect all State taxes levied for the year 1918. You, of course, collect the State taxes for 1919 and you treat the property in the Annex just as you do the property in the City of Baltimore in so far as the sending out of tax bills is concerned; that is you send out your bills for the year 1919 and include in them the State taxes for 1919. The time of the coming due of these State taxes is exactly the same for the annex as it is for the old part of Baltimore, and there should be no difference whatever in your method of treatment of the two parts of the City so far as the collection of State taxes is concerned.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

JUSTICE OF THE PEACE—JURISDICTION—CRIMINAL CASES—FINES—COSTS—CIVIL CASES.

October 1, 1918.

H. H. Emich, Esq.,
Justice of the Peace,
Lexington, Maryland.

MY DEAR MR. EMICH: I have your letter of September 27th in which you state that you are a Justice of the Peace

resident in that portion of Baltimore County annexed to Baltimore City by Chapter 82 of the Acts of 1918. You ask:

1. To whom or what department should you make return of fines collected in said annexed territory.

2. From whom should you collect costs in dismissed cases.

3. Can civil cases against parties within the annexed territory and in Baltimore County outside of the annexed territory be entered and determined by you.

Chapter 82 of the Acts of 1918 extended the limits of Baltimore as of June 1, 1918. Section 2 states:

> "That, except as hereinafter otherwise provided, all the provisions of the Constitution of Maryland and of the Baltimore City Charter, and other local laws applicable to Baltimore City, and all the existing ordinances of Baltimore City, shall be and the same are hereby extended and made applicable to such portions of Baltimore County and of Anne Arundel County as shall, under the provisions of this Act, be annexed to and made part of Baltimore City, and thereupon all the provisions of the Public Local Laws of Maryland relating to Baltimore County, except as hereinafter otherwise provided, shall cease to be in force in such portions of Baltimore County as shall, under the provisions of this Act, be annexed to and made part of Baltimore City, and all the provisions of the Public Local Laws of Maryland relating to Anne Arundel County, except as hereinafter otherwise provided, shall cease to be in force in such portions of Anne Arundel County as shall, under the provisions of this Act, be annexed to and made part of Baltimore City."

Section 8 provides:

> "The obligation of maintaining a police force for preserving the peace [illegible] and of performing every other governmental or municipal function heretofore performed by the County Commissioners or other public officials in the territory which is by this Act annexed to Baltimore

City [illegible] shall continue to rest upon the County Commissioners [illegible] or other public officials until December 31, 1918, inclusive. Beginning with January 1, 1919, all these obligations shall pass to the Mayor and City Council of Baltimore or to other public officials of Baltimore and the County Commissioners of Baltimore County and Anne Arundel County, respectively, shall be thereafter relieved therefrom."

Section 18 provides in part:

"[illegible] every person holding any State or County office in Baltimore County or Anne Arundel County and who may be a resident within the territory annexed by this Act to Baltimore City at the time of the passage of this Act, shall continue to hold such office until the termination of his then pending term as if this Act has not been passed."

Following a cardinal rule of construction, these provisions must be construed together if possible.

There is no doubt that you will continue to hold the office of Justice of the Peace until the termination of your pending term.

There is also no doubt that you have jurisdiction until January 1, 1919, at any rate, to try and determine civil cases against residents of the annex, or criminal cases growing out of crimes committed in the annex just as you had before the act was passed.

I think you have jurisdiction to hear civil cases against residents of Baltimore County outside of the annex and criminal cases arising out of crimes committed in Baltimore County outside of the annex, and that such jurisdiction continues to the end of your term.

I think, as to the cases arising in the annexed territory you should until January 1, 1919, return the fines collected to the County Commissioners of Baltimore County and should collect your costs from them. I think this because the provisions

of Section 8 constitute, in my judgment, an exception to the provisions of Section 2. The contrary view would make Section 2 and Section 8 inconsistent. Section 8 specifically states that the obligations of performing governmental or municipal functions shall pass to the Mayor and City Council of Baltimore on January 1st. These obligations certainly include the obligation of paying costs and of receiving and properly disposing of fines. Section 2 makes the provisions of the City Charter applicable to the territory on June 1st "except as otherwise provided." If this exception does not include the payment of costs and the receiving of fines there would be in Section 2 a direction that the City of Baltimore should pay the costs and receive the fines, and in Section 8 a provision that it should not.

As to cases arising in that part of Baltimore County annexed, you should return fines and costs collected, to the County Commissioners of Baltimore County until the end of your term.

I am sending a copy of this opinion to City Solicitor Field and to Mr. T. Scott Offutt, counsel for the County Commissioners of Baltimore County.

Very truly yours,

OSCAR MARBURY, *Deputy Attorney General.*

UNDERTAKERS' LICENSES.

November 5, 1918.

Raymond F. Saville, Esq.,
President Town Council,
Brooklyn, Anne Arundel County,
Maryland.

My dear Mr. Saville: I am informed by you that persons engaged in the undertaking business in a portion of the territory taken from Anne Arundel County by the annex act, Chapter 8 of the Acts of 1918. You wish to know whether they are required to have a license under the provisions of Article 43, requiring licenses for undertakers in the City of Baltimore.

Chapter 82 added to the territory of Baltimore City that portion of Anne Arundel County in which you live as of June 1, 1918, and, by Section 2, made the local laws of Baltimore at once applicable thereto, with certain exceptions. These exceptions do not include anything relative to undertakers. I think, therefore, you should get a license from the State Board of Undertakers before doing business in the annexed territory.

You inform me that the Secretary of the State Board of Undertakers did not think he was authorized to issue you a license until January 1st. He is mistaken in this, and I shall be glad to advise him to the contrary if he desires my opinion.

Very truly yours,

CHAS. MARRIOTT, *Deputy Attorney General.*

APPOINTMENTS TO POLICE FORCE—MEMBERS OF COUNTY FORCES—NECESSITY OF EXAMINATIONS.

November 22, 1918.

Gen. Lawrason Riggs,
President, Board of Police Commissioners,
Baltimore, Maryland.

DEAR SIR: I have your letter of November 16th, in which you ask whether, under the provisions of Sec. 14 of Chap. 82 of the Acts of 1918, you are authorized to appoint on the police force, after January 1, 1919, such members of the police force of Baltimore and Anne Arundel counties, residing in the annexed territory, as you, in your judgment, may think qualified; or, whether such members must make application to the Board of Police Examiners, pass the regular examinations and then be given preference, if you think it advisable. The wording of Section 14 in this connection is as follows:

"In making such appointments, said Board of Police Commissioners are hereby directed to give preference to the members of the police force now employed by the County Commissioners of Baltimore County and of Anne Arundel County, respectively, and residing in the territory

annexed by this Act to Baltimore City, and whom they may deem properly qualified to discharge the duties of the positions."

I think this clearly means that you are to select such members of the county forces, residing in the annexed territory, as you, in your judgment, think are properly qualified, and that you can enroll them at once as part of the additional sixty men allowed you by the Act, without requiring them to undergo the usual examination. I do not think these men have to make application to the Board of Police Examiners for their first appointment.

It was the intention of Chap. 82 that in making the appointment of the additional sixty men after Jan. 1, 1919, you would have two lists: One, the ordinary list from the Board of Police Examiners, and the other the roll of the county officers residing in the annexed territory. The first list is to be given preference, and out of that list you are to select such men as you think are properly qualified and appoint them.

Very truly yours,

GUY MORRISON, Acting Attorney General.

Annexed Territory—Sixty Men—Appointment—Duty of Commissioners.

December 1, 1918.

Hon. Emerson C. Harrington,
Comptroller of Maryland,
Annapolis, Maryland.

DEAR SIR: I have, at your request, carefully considered your authority and duty in connection with the appointment of station-house matrons and porters in the portions of Anne Arundel and Baltimore Counties annexed to the City of Baltimore by Chapter 82 of the Acts of 1918.

Section 14 of Chapter 82 provides for an additional force of sixty patrolmen and sergeants for service on January 1, 1919. The section concludes:

"On and after January 1, 1919, at the date of the force coming upon the Board of Police Commissioners, it

Baltimore City, with reference to the territory comprised within the limits of Baltimore City as they existed prior to the passage of this Act and the inhabitants thereof, shall rest upon the said Board of Police Commissioners with reference to the territory comprised within the limits of Baltimore City, as established by this Act and the inhabitants thereof."

Section 751 of the Baltimore City Charter authorizes the Board of Police Commissioners to divide the City into such number of police districts as they may think necessary for the public good, and to provide such additional station houses as may be found needful and necessary.

I have heretofore advised the Board of Police Commissioners that they can, on or after January 1, 1919, establish such new police districts and additional station houses in the annexed territory as they may think advisable. I have been informed by the Board that it is their intention to establish two new police districts in the annexed territory.

Section 623 of the Baltimore City Charter authorizes you to appoint twelve justices of the peace for each of the legislative districts of Baltimore City, one from each of the wards comprising each of said districts, and six justices of the peace at large from each of said districts, and fifty-three justices of the peace, and no more, from Baltimore City at large.

Section 1, Chapter 82, of the Acts of 1918, divides the new territory added to the City by the Act into four wards to be numbered 25, 26, 27 and 28. Section 3 provides that ward 26 shall be a part of the first legislative district, ward 27 a part of the second legislative district, ward 28 a part of the third legislative district, and ward 25 a part of the fourth legislative district. Section 12 provides that the Governor is authorized to nominate and appoint one additional justice of the peace for Baltimore City for each of said wards 25, 26, 27 and 28.

Section 626 authorizes the Governor, after the appointment of the justices provided for in Section 623, to select from the

justices of the peace so appointed a justice of the peace to act at each station house in the City of Baltimore.

It is quite clear, under these provisions, that as soon as the Board of Police Commissioners establishes new police districts and provides station houses, you are required to appoint a justice of the peace for each of these station houses. I think the intention of Chapter 82 was not to restrict you in your appointment of such additional station justices to those justices of the peace whom you had previously appointed under Section 623. The provisions of Section 12, as we understand, are intended to increase the number of justices which you are authorized by Section 623 of the Charter to appoint, and I think, when you make your appointments of station house justices, you may take them from the list of justices for Baltimore City appointed by you under the provisions of Section 623 and under the provisions of Section 12 of Chapter 82, which is an amendatory of Section 623. In other words, if you appoint a justice of the peace for each of the new wards, the number of those justices are there to be selected as police justices, if you prefer to confer on them.

Section 294 of the Baltimore City Charter provides for the appointment and commissioning of such competent policemen as are necessary for the City of Baltimore, and you are to assign them duty by the Commissioner of the Police District of the City of Baltimore. This follows this provision:

> "And it is further provided that whenever the police district of the City of Baltimore shall be increased in pursuance of the order of the Board of Police Commissioners of Baltimore City, the Governor shall appoint and add to the number for each of the police districts so created."

It is my opinion, therefore, that when the Board of Police Commissioners establishes new police districts in the city, you are required to appoint a commissioner for each of these districts.

Very truly yours,

CHAS. J. MARSHALL, Acting Attorney General.

Right of Police Board to Establish New Police Districts and to Man the Same.

December 31, 1918.

Gen. Lawrason Riggs, President,
Board of Police Commissioners,
Court House, Baltimore, Maryland.

Dear Sir: As requested by you, I have reviewed the opinion given your Board by Acting Attorney General Marbury on August 31st, 1918, in the light of the subsequent correspondence between your Board and the Board of Estimates, all relating to your Board's power (1) to establish new Police Districts in the territory annexed to Baltimore City by virtue of the Act of 1918, Chap. 82, (2) to provide officers and policemen for the same.

I agree with the opinion given you by Mr. Marbury on both of these questions, and inasmuch as I infer from the correspondence that my opinion may form the basis for the issue of certificates of indebtedness, I have thought it best to give you my views at length.

The Board of Estimates takes the position that you have no power to establish new police districts in the annexed territory, on the ground that the Act of 1918 does not authorize the same.

It is true that this Act does not specifically mention police districts, but Section 14 provides that "on and after January 1st 1919, all the duties heretofore resting upon the Board of Police Commissioners of Baltimore City, with reference to the territory comprised within the limits of Baltimore City as they existed prior to the passage of this Act and the inhabitants thereof, shall rest upon the said Board of Police Commissioners with reference to the territory comprised within the limits of Baltimore City, as established by this Act and the inhabitants thereof."

One of the duties resting upon your Board with reference to the limits of Baltimore City as they existed before the Annexation Act of 1918 was passed, is the duty, under Section

754 of the Baltimore City Charter, to divide the city into such number of police districts as the Board may think necessary, and by the provisions of Section 14 of the Act of 1918 this duty, in my opinion, clearly rests upon your Board, on and after January 1st, 1919, with reference to the new city limits.

I have no doubt, therefore, of your power to create two new police districts in the annexed territory, if you deem this necessary.

The Board of Estimates also takes the position that your Board is not authorized to appoint more than sixty men for the annexed territory, because of the following provisions of Section 14 of the Annexation Act:

> "And be it further enacted, That the Board of Police Commissioners of Baltimore City are hereby directed, in submitting their annual estimate to the Board of Estimates in the fall of 1918, for the expenses of the Police Department for the year 1919, to submit an estimate of the cost to properly arm, equip and maintain an additional force of sixty men. Of said sixty men, so many may be appointed as sergeants, as, in the judgment of the said Board of Police Commissioners, may be necessary, and the remainder shall be patrolmen; and the Board of Estimates shall provide in the Ordinance of Estimates for 1919 for the additional expense so estimated by the Board of Police Commissioners to properly enroll, arm, equip and maintain said additional force of sixty men, and the same shall be allowed in the Ordinance of Estimates for the year 1919. After the passage of said Ordinance said Board of Police Commissioners shall appoint and equip the additional force herein provided for, so that the same may be ready for service on January 1, 1919. In making such appointments said Board of Police Commissioners are hereby directed to give preference to the members of the Police force now employed by the County Commissioners of Baltimore County and of Anne Arundel County, respectively, and residing in the territory annexed by this Act to Baltimore

City, and whom they may deem properly qualified to discharge the duties of the positions. The said additional force of sixty men, when enrolled in pursuance of this Section, shall be to all intents and purposes and shall thereafter remain a portion of the police force of Baltimore City, and shall be subject to duty at any place to which they may be ordered by said Board of Police Commissioners of Baltimore City. On and after January 1, 1919, all the duties heretofore resting upon the Board of Police Commissioners of Baltimore City, with reference to the territory comprised within the limits of Baltimore City as they existed prior to the passage of this Act and the inhabitants thereof, shall rest upon the said Board of Police Commissioners with reference to the territory comprised within the limits of Baltimore City, as established by this Act and the inhabitants thereof."

In your estimate to the Board of Estimates for 1919, you did provide for an additional force of ten men, of whom, in compliance with the Annexation Act, you designated 8 to be sergeants and the remaining 32 to be patrolmen, but in addition to these ten men you also provided for 55 more, namely:

2 captains.
4 lieutenants.
4 round sergeants.
2 station house clerks.
6 telephone and signal operators.
1 turnkeys.
1 station house matrons.
2 janitresses.
1 drivers.
2 clerks for headquarters.
2 machinists.
2 firemen.

The number of patrolmen who may be appointed in Baltimore City is limited by Section 745 of the Charter, as amended

by the Act of 1913, Chap. 122, to 700 men. It was, therefore, necessary for the Annexation Act to provide for additional patrolmen for the Annex, because if it did not, no additional patrolmen could be appointed. The Annexation Act did provide for these additional patrolmen by directing the additional force for the Annex of 60 men, of whom such number as was necessary should be sergeants and the remainder patrolmen, and I think that the sergeants and patrolmen for the Annex cannot together exceed 60 men for 1913. Your Board has undertaken to appoint more, because you have only provided for sergeants and 50 patrolmen.

But the Annexation Act, as already shewing, also provides, as you, on January 1, 1913, recognize new police districts. It was not necessary for the Act to provide for allocating any of the districts which you thus created, because of the provisions in Section 11 that on and after January 1, 1913, the duties imposed upon you with reference to the old city limits should not apply to you with reference to the new city limits. Against these it is contained in Sections 7A to 7D of the Charter, which provide for each police district, one captain, two lieutenants, three sergeants, two turnkeys and one of the old and new ranks of signal and telephone operators at each station house. As this each duty is contained in Sections 7A, which provides that station house matrons for each station house, Another section, that in Section 7A-A, providing that an matron shall be appointed for each station house.

Therefore, the total number of captains, lieutenants, sergeants, turnkeys, matrons, signal and telephone operators, matrons and janitresses, in Boroughs, etc., is not limited by the Charter, but depends entirely upon the number of police districts in the City, and the power to create a new police district necessarily carries with it the power to make these appointments to the number provided in Sections 7A, 7B, 7C and 7D.

Therefore, when the Annexation Act authorized you, as you did, to create new police districts, Sections 7A, 7B, 7C and 7D of the Charter, which were made to apply to the Annex when

January 1, 1919, authorized you to appoint the force therein named for each such new district. This is what you have provided for in the case of the two new districts you have created, and these appointments are, in my opinion, all lawful and properly included in your 1919 estimate.

This disposes of all of the appointees except the 4 drivers, the 2 clerks for headquarters, the 2 machinists and the 2 linemen.

The 4 drivers and the 2 machinists are intended for two patrol wagons which the Police Board proposes to operate in connection with the two new police stations, and the 2 linemen for the telephone alarm service. The Board is authorized to maintain both services under Section 770 of the Charter, and, in my opinion, this power is effective in the Annex on January 1, 1919, under Section 14 of the Annexation Act.

The situation, I think, is different with respect to the 2 clerks for headquarters. These clerks are desired because of the increased duties which the policing of the Annex will entail, but the Act of 1918, Chap. 129, amending Section 745 of the Charter, only authorizes the Board to appoint 10 clerks for the entire city. The Board already has these 10 clerks, and I do not find any authority for the appointment of the 2 additional ones.

The Board's 1919 estimate also makes provision for a new police beat, and for motor vehicles and cycles. The beat is intended to be substituted for one of the two existing beats, which is no longer adequate for its duties. I do not find any specific authority for the acquisition of police beats, although the Charter refers to them in several places. The Charter does, however, in Section 744 require the Board to preserve the public peace, within the boundaries of Baltimore City, as well on water as on land, and in Section 745, amended by Act 1918, Chap. 129, to arm and equip the police force as the Board may judge necessary, this latter section, as well as Section 778, also providing for the maintenance of the police beats.

In my opinion, the Board is authorized, under these Sections, to establish and maintain such police boats as may be necessary for the discharge of its duties. I am advised that the two existing boats were both procured by the Board and paid for by the City under the Board's general powers, and without any special act.

There is nothing in the Annexation Act which affects the Police Board's power to procure such police boats as it finds necessary, and if the proposed new boat is necessary, then, in my opinion, it is properly included in the 1919 estimate.

The same is true as to the motor vehicles and cycles.

My conclusion, therefore, is that, with the exception of the two clerks for headquarters, the items above mentioned are lawfully included in your 1919 estimate, and that if the Board's requisitions for the same are not duly honored by the City, then under Section 747 of the Charter, as construed in McEvoy vs. Baltimore, 126 Md. 111, 125, you may issue certificates of indebtedness therefor.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION.

GAME—CONSERVATION OF BIG OR SWIVEL GUNS.

January 28, 1918.

W. H. Kellam, Esq.,
Conservation Commission,
512 Maryland Building,
Baltimore.

DEAR SIR:—I beg to reply to your favor of January 22d, in which you ask whether Bagby's Code, Art. 39, sec. 18, authorizes the confiscation and destruction of the guns referred to in that section, when found on the field or on the property of the owner.

The section makes it unlawful to shoot game "with big or swivel guns, or any gun other than such as can be easily raised to the shoulder and held horizontally at arm's length, and without a rest, and fired from that position by a person of ordinary strength and stature."

I do not think that it was the intention of this section to require or authorize the destruction of the guns described, without regard to their use for the purpose of shooting game. The thing declared unlawful is not possessing such a gun, but using it to shoot game. In my opinion, the meaning of the section is that if a person is convicted of shooting game with the prohibited character of gun, then the gun is to be confiscated and destroyed, but the gun is not to be confiscated and destroyed unless and until such person is convicted.

This does not seem, I think, the reasonable construction of the section, but it accords with the title of the law which created the section (Act 1916, Chap. 254, page 433). The title describes the act as intended "for the further protection of wild fowl in the State of Maryland," not to prohibit the mere possession of the big or swivel guns described, which might not be used or intended for use in shooting game at all.

Very truly yours,

NORMAN C. RIDDICK, *Attorney General.*

GAME—DESTRUCTION OF BIG OR SWIVEL GUNS.

March 7, 1918.

E. Lee LeCompte, Esq.
State Game Warden,
312 Munsey Building,
Baltimore, Md.

DEAR MR. LECOMPTE: I beg to reply to your recent request for my opinion as to whether Bagby's Code, Art. 39, sections 18, 29 and 31 authorize the seizure and destruction of the guns referred to therein, when found in the field or on the property of the owner.

These sections refer to big or swivel guns, which are not actually fired from the shoulder, and they make the use of such guns in shooting game illegal. Section 29 provides that every such gun "shall be liable to seizure by any State or County officer authorized to execute warrants and the forfeiture and destruction by any Justice of the Peace before whom such gun shall be produced."

There is no doubt that under this section you may seize such guns, wherever found, and that the Justice may order their destruction upon proof of their illegal use.

Very truly yours,

[illegible]

CONSERVATION [illegible] STATE [illegible] COUNTY [illegible]
WARDENS

[illegible]

W. Thomas Kemp[illegible],
Chairman, Conservation Commission,
312 Munsey Building,
Baltimore, Md.

DEAR SIR: I beg to reply to your letter of April 23, in which you ask my opinion whether the Act of 1914, Chapter 568, making it unlawful to catch, kill, take or have in possession any

sturgeon in the waters of the Chesapeake Bay and tributaries, applies to sturgeon caught in the Virginia waters of the Chesapeake Bay and its tributaries, and then brought within this State.

Under date July 6, 1917, I gave Mr. Killian an opinion that this act only applied to sturgeon caught within the State, and not to sturgeon caught outside the State and brought within the State, citing

Dickhaut vs. State, 85 Md. 451;
Stevens vs. State, 89 Md. 669;
Tyler vs. State, 93 Md. 309.

After reading again these cases, it seems clear to me that the Act of 1914 does not make it unlawful to have in possession in this State sturgeon caught outside this State, although caught within the Virginia waters of the Chesapeake Bay and tributaries.

You know, however, how far from infallible I am, so if you doubt the correctness of this opinion, you may think it worth while to have the question tested.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

GAME—ELIGIBILITY OF MEMBER OF LEGISLATURE FOR APPOINTMENT AS DEPUTY GAME WARDEN.

May 8, 1918.

[illegible] Esq.,
[illegible] Conservation Commission,
Munsey Building,
Baltimore, Md.

Dear Sir:—I beg to reply to your letter of May 7th, in which you ask my opinion as to whether a member of the House of Delegates of 1918 is eligible to be appointed one of the Deputy Game Wardens provided for by Section 46 of Article 39 of Bagby's Code, as amended by the Act of 1918, Chap. 468, known as the State-wide Game Law.

The only ground which could be urged for the Delegate's ineligibility must be based upon Article 3, Section 17 of the Constitution, which provides that "no Senator or Delegate, after qualifying as such, notwithstanding he may thereafter resign, shall during the whole period of time for which he was elected be eligible to any office which shall have been created, or the salary or profits of which shall have been increased, during such term."

Deputy Game Wardens existed, of course, before the passage of the Act of 1918, Chap. 165. That Act simply amended the law relating to them. But even assuming that this Act could be said to create the position of Deputy Game Warden, or to increase the compensation thereof, still it is clear that such position is not an office within the meaning of Art. 3, Sec. 17 of the Constitution.

State Law Commission vs. Harrington, 126 Md. 157.

There is, therefore, no legal reason why a Delegate to the General Assembly of 1918 may not be appointed Deputy Game Warden.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ENGINEER UNDER CONSERVATION COMMISSION—COMPENSATION—STATE FISHERIES BOARD—STATE GAME WARDENS—APPOINTMENTS.

March 11, 1919.

W. *Thomas Kemp, Esq.,*
Chairman Conservation Commission,
312 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to the inquiries contained in your favor of April 22nd.

1. You first ask whether the position of Engineer under your Commission, which has been vacant since April 1, 1918, by reason of Mr. Earle's resignation to enter the Government serv-

ice, can continue vacant, the duties being performed by one of your employees whom you have designated as assistant engineer, or whether you must fill the position.

The Act of 1916, Chap. 682, Sec. 4, provides that "the Commission shall appoint the following staff officers who shall conduct the work of their respective departments under the authority and supervision of the Commission." Among the officers provided for is the Engineer. Nothing is said as to his term of office, but his general duties are outlined. You say that the surveys and resurveys have all been completed, and that such engineering work as there is can be competently done by the employee whom you have designated assistant engineer.

It seems to me that under these circumstances you would be justified in not filling the position of Engineer, so long as the work can be properly done by the Assistant, and I think that no objection could be made to this.

2. Your next inquiry relates to the Commander of the State Fishery Force, who is also provided for by the Act of 1916, Chap. 682, Sec. 4. The Commander's term of office is not fixed by the statute, but Captain Howard, the present Commander, was appointed by your Commission for two years, expiring in June next. The State Fishery Force has been leased to the United States Government, under the Act of 1917, Chap. 2, the deputy commander and crew have been enrolled in the Government service, and Lieutenant Killam has been designated commanding officer of the fleet. Captain Howard was examined for enrollment, but was rejected for physical defects, and he has now no active duties to perform. You ask whether your Commission must fill the position of Commander when Captain Howard's term expires in June, and if not, whether Captain Howard's term of office will then end.

The statute provides that the Commander of the State Fishery Force "shall have charge of all boats now or hereafter constituting the State Fishery Force or Oyster Navy." I think that the fact that the State Fishery Force has now been leased to the Government, under authority of the Act of 1917, Chap. 2, and

that it is now being operated by the Government under officers commissioned by the Government, relieves your Commission of any obligation to appoint a Commander. In order, however, to prevent the possibility of Captain Howard holding over, under such cases as Robb vs. Carter, 65 Md. 321, I think that you should notify Captain Howard that you do not intend to fill the position upon the expiration of his term, and that his incumbency will thereupon cease.

3. Finally, you ask whether the Act of 1918, Chap. 105, known as the State-wide Game Law, is inconsistent with Sec. 4 of the Act of 1916, Chap. 682, providing for the positions of State Game Warden and Deputy Game Wardens. I do not see any inconsistency between the provisions of the two Acts in this connection, but it seems to me that the State Game Warden and the Deputies will now be appointed under Sections 14 and 16 of the Act of 1918, and not under the Act of 1916.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

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GAME—DEER—CLOSED SEASON.

May 12, 1920.

E. Lee Lecompte, Esq.,
State Game Warden,
612 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of May 11th, in which you enclose a letter from Mr. George A. Lawyer, Assistant in Game Conservation of the United States Department of Agriculture, asking whether the Act of 1918, Chap. 109, impliedly repeals the Act of 1916, Chap. 320, prescribing a six years' closed season for deer.

Sec. 20 of Art. 66 of Bagby's Code, as amended by the Act of 1916, Chap. 143, provides closed seasons for various kinds of game, including deer. This Act was approved on April 4,

1916, and the Act of 1916, Chap. 399, establishing the six years' closed season for deer, was approved on April 18, 1916, so that the closed season for deer became effective under the later Act.

The Act of 1918, Chap. 109, repealed and re-enacted Sec. 20 of Art. 99 of Bagby's Code, as enacted by the Act of 1916, Chap. 143, Sec. 20, as thus re-enacted being exactly as before with the single exception that a proviso was added relating to the season for woodcocks in Anne Arundel County. This 1918 re-enactment of Sec. 20 includes, therefore, deer among the game for which closed seasons are provided.

I do not think, however, that this repeals the Act of 1916 providing for six years' closed season for deer. The word "deer" appears in the Act of 1918 only because it was already in the existing section of the Code which it was desired to amend, and under the legislative practice in this State sections of the Code are amended by repealing and reenacting them, with the amendment added. The inclusion of the word "deer" in the 1918 reenactment does not affect the six years' closed season for deer provided by the Act of 1916, Chap. 399. That closed season still exists.

I return you Mr. Lawyer's letter and the copy of the Act of 1918, Chap. 109.

Very truly yours,

Verdel C. Richards, *Attorney General.*

Game—State Wide Game Law—Effect.

May 27, 1918.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Mansey Building,
Baltimore, Maryland.

Dear Mr. LeCompte: I beg to reply to your favor of May 17th.

You ask to what extent the Act of 1918, Chap. 168, known as the State Wide Game Law, repeals general and local laws. This is covered by Section 4, which provides that the new law repeals all general and local laws inconsistent with it, and all resident and non-resident hunting license laws, whether general or local; except that the new law does not affect the present law relating to the killing of wild fowl and licensing of gunning rigs used in shooting wild fowl on the Susquehanna Flats, and of course, the new law does not repeal general or local laws not inconsistent with it.

You also ask what effect the Act has upon the monies collected in certain counties of the State, for local licenses issued prior to June 1, 1918. The new law does not take effect until June 1, 1918, but it provides in Section 7a that the Clerks of the Circuit Courts of the counties and the Clerk of the Court of Common Pleas of Baltimore City shall, on June 1, 1918, and on the first day of each month thereafter, transmit to the Comptroller all moneys received by them for licenses, after deducting the authorized fees, said moneys to be credited to "The State Game Protection Fund," created by the Act.

You do not refer me to the local laws under which the moneys in question have been or will be collected before June 1, 1918. Assuming, however, that they will be repealed on June 1, 1918, by Section 5 of the new Act, then, since there can be no fees collected under the new act on June 1, 1918 (because that is the first day it takes effect), I do not see what the provisions of the new law, understood always, can mean other than that fees collected under the repealed local laws, and which have not been disbursed under those laws before June 1, 1918, will on that date be payable to the Comptroller, in order to form the nucleus of "The State Game Protection Fund."

I do not see how there could well be any vested right to these monies under the local laws, and it seems to me that the Legislature can transfer them from the purposes to which they were devoted under the local laws to the fund created by the new

law. I can, however, advise you more definitely upon this point if you will refer me to the local laws in question.

Finally, you ask whether the new Act legislates the present deputy game wardens out of office. Deputy game wardens are now provided for by sections 16-50 of Article 39 of Bagby's Code, and Sections 16 and 17 are repealed and reenacted by the Act of 1918, Chapter 468. I do not think that this legislates the present deputy game wardens out of office, but the question is probably not very material, because neither under the present nor under the new law are deputy game wardens appointed for any specific term, but their services may be dispensed with at any time.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

GAME—STATE WIDE GAME LAW—CECIL COUNTY GAME PROTECTIVE ASSOCIATION.

June 12, 1918.

E. Lee LeCompte, Esq.,
State Game Warden,
312 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE:—I beg to reply to your letter of June 7th, in which you ask me the effect of Chap. 468 of the Acts of 1918, known as the State Wide Game Law, upon the local law of Cecil County.

Section 70 of Chapter 468 of the Acts of 1918 provides that the clerks of the Circuit Courts of the counties shall, on June 1, 1918, and on the first day of each month thereafter, transmit to the Comptroller all moneys received by him for licenses, after deducting the authorized fees. Sec. 4 of Chap. 668 of the Acts of 1908 provides that the Cecil County Game Protective Association shall be entitled to demand and receive from the Clerk of the Circuit Court for Cecil County all moneys received by him from licenses issued to non-residents.

I advised you, in a letter dated May 21st, that it is my opinion that license fees collected under repealed local laws, and which have not been disbursed under those laws before June 1, 1918, are on that date payable to the Comptroller. I understand that the receipts from license fees in Cecil County have been turned over, from time to time, by the Clerk of the Circuit Court for Cecil County to the Cecil County Game Protective Association, in compliance with the provisions of Sec. 4 of Chap. 668 of the Acts of 1908. These funds are not affected, therefore, by the Act of 1918, which refers only to moneys in the hands of the Clerk on and after June 1, 1918. The Law does not impose any duty on the Association to turn them over to the Comptroller. I think it is clear, however, that moneys received by the Clerk of the Circuit Court of Cecil County from such licenses should be transmitted to the Comptroller on the first day of each month after June 1, 1918. This provision is inconsistent with the provision in Chap. 668 of the Acts of 1908, authorizing the payment of such fees to the Cecil County Game Protective Association, and to that extent the Act of 1908 is repealed.

It is also pertinent in this connection to note that under Section 4 of Chapter 668 of the Acts of 1908 provides that the Association shall be entitled to all moneys received by the Clerk or by any justice of the peace from fines, forfeitures and penalties imposed under the local game laws of Cecil County, except such sums as are allowed by law to any informer of violations of Chap. 668 of the Acts of 1908, the new State game law, in Sec. 71, provides that fines collectable or collected from any person other than the game warden or deputy game warden or officer under the Conservation Commission receiving compensation, who shall procure the conviction of any person for violating any provision or provisions of this Act shall receive half of the fine recovered, the remaining half shall be paid over to the State Comptroller for the account of the State Game Protection Fund, to be used as herein provided. The total fines hereafter collected by the State Game Warden or any of the

Deputy Game Wardens who receives other compensation shall be paid into the State Game Protection Fund."

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISH LICENSES IN ALLEGANY COUNTY.

July 1, 1918.

Lloyd L. Shaffer, Esq.,
Clerk, Circuit Court,
Cumberland, Md.

DEAR SIR: I have your letter of June 28th in which you ask for information as to Chapter 327 of the Acts of 1918 providing for fishing licenses in Allegany County.

The Act requires that applications for licenses shall be sworn to before a Notary Public. The necessity of swearing to the application is not done away with by the personal appearance of the applicant. The requirement is that certain statements should be made and sworn to. These are your official records to be kept in your office. You should, therefore, require each application to be sworn to.

Section 39 of Article 17 of the Annotated Code empowers the Clerks of the several courts of the State and the deputies to administer oaths upon all legal papers for file in their respective offices upon which affidavits are required by law. Under this section you or your deputies can take the affidavits of the applicants for fishing licenses.

In the absence of any provision in the Act for the disposition of the license fee it should be treated as are other similar license fees.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

TERRAPIN CAUGHT IN VIRGINIA—CLOSED SEASONS.

July 1, 1918.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I am in receipt of your inquiry of the 18th inst.

You are correct in your view that it is not illegal to have in possession in Baltimore City diamond-back terrapin caught in Virginia. The Maryland law against having in possession refers only to terrapin caught within this State.

Annotated Code, Art. 92, Secs. 1 & 2
Dickhaut vs. State, 85 Md. 161.

Article 92 is the Terrapin article of the Code and the sections, considered together, show three different laws for three different groups of political subdivisions:

(1) Worcester, Dorchester, Wicomico and Somerset Counties have a closed season from May 1st to June 1st, Inclusive.

(2) Calvert, Charles and St. Mary's Counties have a closed season (Sec. 1).

(3) Baltimore City and all the other counties have a closed season from April 1st to November 1st (Sec. 1).

Groups (2) and (3) must be borne in mind in consideration.

In Group (2) there is no prohibition against the possession of the having in possession, but there is a prohibition against persons may have terrapin in possession during the closed season, indicating that others may not.

In Group (3) there is a prohibition against persons possessing during the closed season.

The closed season in Group (3) includes the closed season in Group (2).

In the Dickhaut case, the Court of Appeals, construing a statute similar to Sec. 1 of Art. 92, said:

> "* * * the prohibition as to possession relates to the same class that the prohibition as to killing embraces * * *."
>
> 85 Md. 461.

If one considers the whole of Art. 92 as one general law for the protection of terrapin, it would follow that during the closed season in Wicomico, that is, from May 1st to July 1st, it is unlawful for any person in Baltimore, except a bona fide dealer, to have in possession terrapin caught in Wicomico County. I think this is the correct view.

The words quoted from Judge Fowler's opinion might be used as an argument for holding that each Section stands by itself. Under this view, however, you could not prosecute for having in possession in Baltimore, although you could prosecute in Wicomico, both for catching and for having in possession the same terrapin. I do not think that such a situation could have been intended by the Legislature.

This opinion refers only to terrapin of a greater size than five inches in length on the bottom shell. As to those of a lesser size, for Group 1 it is unlawful during the entire year, for Group 2 it is never unlawful, and for Group 3 it is unlawful during the closed season from April 1st to November 1st.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

GAME—OPEN SEASON FOR SQUIRRELS IN ALLEGANY COUNTY—GENERAL LAW.

August 30, 1918.

B. L. Wolford, Esq.,
223 N. Mechanic Street,
Cumberland, Maryland.

DEAR SIR:—I beg to reply to your letter of August 25th, in which you ask me whether the season for hunting squirrels in Allegany County is fixed by the General Law or by the Local Law for Allegany County.

In an opinion given by the Attorney General on August 14, 1917, it was held that Chap. 282 of the Acts of 1916, applying specifically to Allegany County, superseded the general law contained in Chap. 143 of the Acts of 1916.

2 Op. Atty. Gen. p. 80.

The general law, which is codified as Sec. 20 of Art. 39 of the Annotated Code of Maryland, provides two closed seasons for shooting squirrels in all of the counties of the State, except seven; one of these closed seasons is between December 24th and August 25th, and the other between October 1st and November 10th.

The local law for Allegany County, under Sec. 12A of Chap. 282 of the Acts of 1916, provides one closed season for shooting squirrels, which is from the 24th day of December to the 15th day of September following of each and every year.

The General Assembly of 1918, by Chap. 109, repealed and reenacted Sec. 20 of Art. 39 of the Annotated Code of Maryland, and the answer to some question depends upon whether the General Assembly, in thus reenacting this Section, repealed all of the local laws then in force and inconsistent with its provisions. This question is not free from doubt, but after a careful consideration, I have come to the conclusion that the local law of Allegany County, as enacted by Chap. 282 of the Acts of 1916 has been repealed by Chap. 109 of the Acts of 1918.

Sec. 12 of Art. 1 of the Annotated Code of Maryland provides that where the Public General Law and the Public Local Law are in conflict, the Public Local Law shall prevail. In discussing this provision, the Court of Appeals said that this rule was never intended to remove local laws from the effect and operation of the ordinary rules of construction derived from the common law when applied to subsequent legislation.

"If the intention of the legislature in the passage of later laws, by its language clearly indicated, either expressly or by necessary implication, a purpose to substitute a new scheme of laws for the preexisting law, general and local, or to repeal the local by the adoption of a

new general law, clearly intended to operate equally throughout the State, the local law must yield to that intention thus ascertained."

The Court of Appeals, in the same case, also said:

"As respects subsequent legislation, the rule becomes but the declaration of the common law rule that local laws or special laws shall not be held repealed except by clearly indicated purpose on the part of the Legislature."

State vs. Falkenham, 73 Md. 163.

Chapter 109 repealed and reenacted a section of the public general laws. Certain counties were excepted, but Allegany County was not one of them. It is true that the only change in the wording of Section 30 of Art. 66, made by the Act of 1918, was the addition of a clause relating to the open season for woodcock in Anne Arundel County. If, however, the section had been reenacted in exactly the same words as it stood in the Code, the effect would have been undoubtedly to repeal all inconsistent local laws passed between the time of the original enactment and the time of the reenactment. The mere addition of such a clause as the one added cannot, in my opinion, change the effect of the repeal and reenactment in the same words of the original section. The Legislature must be presumed to know the result of its deliberate action. Had the intention been to exempt Allegany County from such result, that county could have been added to those exempted by the section itself. It was not so added, and, therefore, by what seems to me to be a necessary implication, the Act of 1918 is in force in Allegany County.

I, therefore, advise you that, in my opinion, the closed season for squirrels in Allegany County is that set out in Chapter 109 of the Acts of 1918.

Very truly yours,

THOS. H. MARGRATH, Deputy Attorney General.

FISH—HAULING SEINE IN BALTIMORE COUNTY—PERMISSION OF OWNER OF SHORE.

Talbott Benneat, Esq., *August 20, 1918.*
Chief Deputy Game Warden,
712 Munsey Building,
Baltimore, Maryland.

DEAR SIR: You ask me whether Chapter 150 of the Acts of 1896, which is a local law for Baltimore County, is being violated under the following circumstances:

A net has been placed at Sollers's Point about two hundred feet from the shore of Baltimore County. Those operating the net have failed to obtain permission to so operate from the owner or occupier of the land described as Sollers's Point.

Chapter 150 of the Acts of 1896 (which is now Section 252 of the Revised Code of Public Local Laws of Baltimore County) provides as follows:

> "It shall not be lawful for any person to hold or use or to fish with gill nets, tikes, traps or set nets of any kind or description in any of the rivers, creeks, coves, inlets or waters within the limits of or adjacent or contiguous to Baltimore County, without first obtaining the permission in writing thereto from the owners or occupiers of the banks or shores in Baltimore County of such rivers, creeks, coves, inlets or waters aforesaid, in front or opposite to which any such seine, gill net, tike, trap or set net of any kind or description is or may be placed."

The limits of Baltimore County, as shown on the map issued by the Maryland Geological Survey, extend to the middle of the Patapsco River on the other side of Fort Carroll.

A net placed two hundred feet off Sollers's Point is, therefore, within the limits of Baltimore County, and all persons hauling a seine or fishing with a net of such [illegible] must obtain permission in writing from the owners or occupiers of the banks or shores in Baltimore County.

Very truly yours,

CHAS. MARBURY, *Deputy Attorney General.*

GAME—FEDERAL MIGRATORY BIRD TREATY AND PROCLAMATION.

September 6, 1918.

Talbott Denmead, Esq.,
Chief Deputy Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your letter of August 21st in which you ask me whether Maryland Deputy Game Wardens have authority to arrest for violations of the proclamation issued by the President of the United States pursuant to the provisions of the Migratory Bird Treaty Act. You refer me to Article 2 of the Declaration of Rights, which provides that the Constitution of the United States and the laws made in pursuance thereto, and all treaties, shall be the supreme law of the State. This article, in my opinion, does not confer any authority upon State officials to make arrests for violations of Federal laws, and there is no provision in the Migratory Bird Treaty Act, or the proclamation, which confers any such authority.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

GAME—STATE WIDE HUNTERS' LAW—SUSQUEHANNA FLATS—LOCAL LAWS.

November 13, 1918.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

MY DEAR MR. LECOMPTE: I have your request of the 11th inst., for an opinion as to the effect of the State Wide Hunters' License Law on the licensing of gunners on the Susquehanna flats.

The State Wide Hunters' License Law was enacted by Chapter 168 of the Acts of 1918. It provides that no person shall, at

any time, pursue or kill any game without first having procured a license from the clerk of the Circuit Court of the county, or the clerk of the Court of Common Pleas. For these licenses, fees are provided. The word "game" is defined in the Act and includes water fowl.

Section 4 of the Act provides:

> "That all general or local laws or parts of such laws inconsistent with the provisions of this Act, and all resident and non-resident hunting license laws now in force, whether general or local, be and the same are hereby repealed. Provided that this Act shall not affect the present law relating to the killing of wild fowl and licensing of gunning rigs used in the shooting of wild fowl on the Susquehanna Flats."

There has been in effect for a number of years a local law applicable to Cecil and Harford counties, under the terms of which it is necessary for any person desiring to use a sink box to shoot wild fowl, to obtain a license for the box. The proceeds of these licenses are used to pay special policemen, popularly known as the shooting police, who patrol the Susquehanna Flats.

There have also been in effect local hunters' license laws for Harford and Cecil Counties, and the practice has been that any one desiring to hunt from a sink box on the flats, should take a gunners license under the local law, and also a license for the sink box under the special wild fowl law.

The contention is now made that the provisions of Sec. 4 of Chap. 165, above quoted, relieve those persons hunting wild fowl on the flats from the necessity of obtaining a hunters' license. I do not think this contention is correct. If the proviso means that the present law is not affected by Chapter 165, then the wild fowl law is in effect, and the local license law, so far as it relates to wild fowl, is also in effect, and licenses must be obtained under both of these laws.

It seems to me, however, that the intention of the section is that the local hunters' license law is repealed, but that the law relating to the licensing of sink boxes is left in force. The

result of this, is that instead of getting a license under the local laws, the wild fowl hunter must get a license under the general law to hunt, and must also get a license under the special law for the sink box from which he hunts.

It is quite certain that gunners must obtain a license to hunt, either under the local law or under the general law, in addition to the license for his rig or sink box. It is my opinion that the local law is repealed and that he must obtain his license under the general law.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

CORPORATIONS.

BONUS TAX ON INCREASE IN CAPITAL STOCK.

January 28, 1918.

Charles C. Wallace, Esq.,
Secretary State Tax Commission,
307 Union Trust Bldg.,
Baltimore.

DEAR MR. WALLACE:—I beg to reply to your favor of January 23, in which you ask whether the Youghiogheny Water and Electric Company is required to pay the bonus tax upon a recent increase in its capital stock.

You say that the question is whether a corporation created, like the Youghiogheny Company, by special act, is liable to the bonus tax provided by the general law. I think there can be no doubt upon this question. The Act of 1914, Ch. 324 (Bagby's Code, Vol. III, Art. 81, sec. 88A), applies to "every corporation of this State having a capital stock," and this, like the express provisions of the bonus tax law codified in Bagby's Code, Art. 81, sec. 100, includes corporations created by special act as well as under the general law.

In any event, the increase in the capital stock of the Youghiogheny Company was made under the Act of 1914, Ch. 765, and section 3 of this Act expressly provides that the company shall pay the bonus tax upon the increase.

It is, therefore, my opinion that the bonus tax must be paid on the increase in the company's capital stock.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS—FOREIGN—AGENCIES OF THE UNITED STATES.

February 5, 1918.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I am in receipt of a communication from Edwin P. Shattuck, Esq., counsel to the Food Administration Grain Corporation, in which he says that this corporation, which is formed under the laws of Delaware, recently filed in your office a copy of its charter and other papers, which show the corporation to have been formed pursuant to an Executive Order issued, on August 14, 1917, by the President of the United States, in the exercise of the food control powers conferred upon him by the Act of Congress of August 10, 1917; and which further show that the entire capital stock is owned by the United States, and that the business of the corporation is conducted solely for Governmental account and purposes, under the said Act of Congress.

Mr. Shattuck asks me to advise you that under these circumstances the corporation is not subject to the Maryland foreign corporation tax, and is not required to make the annual reports and payments required by the Maryland law for foreign corporations.

Mr. Shattuck is correct in this position. The corporation being an agency of the United States, owned entirely by the United States, and operated entirely for United States purposes, is not subject to taxation under the laws of Maryland, and is not required to make the annual reports and payments required by the Maryland law for ordinary foreign corporations.

It will be proper for you to make a note to this effect upon your records.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Gross Receipts Tax—When Interest and Penalties Accrue.

June 2[illegible], [illegible]

Charles C. Wallace, Esq., Sec.,
State Tax Commission,
Union Trust Building, City.

Dear Sir:—I have your request for an opinion as to the date when interest and penalties accrue on gross receipts taxes due by railroad companies calculated in accordance with Section 167 of Article 81 of the Code.

Section 167 provides that such taxes shall be due and payable on or before the 1st day of July in each and every year.

Section 173 of the same Article adds a 5 per cent penalty *one month after the taxes are due and payable* and not to be collected after that time.

The Court of Appeals has construed this section to mean that interest commences as of August 1st.

Balto. & Pa. R. R. Co. vs. State, 92 Md. [illegible].

There is nothing in the Acts of 1918 which, in my opinion, changes this date.

I am, therefore, of the opinion that interest and the penalty on unpaid gross receipts taxes accrue on and after August 1st in each year.

Very truly yours,

[illegible] Maryland, Letter [illegible]

Foreign Selling Oil Stock.

July [illegible], [illegible]

Hon. Thomas H. Simmons,
Secretary of State,
Annapolis, Md.

Dear Sir:—I have your letter of July 12th enclosing one from the Colonial Oil and Refining Company, which I return herewith.

A company which is engaged only in selling oil stock in this State does not have to comply with the foreign corporation provisions of Article 23.

Very truly yours,

OLIVER MARBURY, *Acting Attorney General.*

FOREIGN CORPORATIONS—COMPANIES—INTERSTATE COMMERCE—LICENSES.

August 2, 1918.

Edward F. Clark, Esq.
Insurance Commissioner,
Annapolis, Md.

DEAR SIR:—I have your letter of July 29th in which you ask whether or not the practice in this State to enforce Section 93 of Article 23 of the Code in cases of corporations in the exclusively interstate business. You refer to the case of Sioux Remedy Company against Cope, 235 U. S. 197, and other Federal decisions on the point whether the section above mentioned should be enforced in the foreign corporation law of this State does, if applied to such a company as the one you represent, impose a burden upon interstate commerce, such as is prohibited by those decisions.

I do not think that this should, I should not in any event advise the proper authorities of the State to hold that an act of the General Assembly was void under the Federal Constitution until after an actual attack had been tested. I think, however, there is an essential difference between the Maryland law and the kind of statutes struck down by the Supreme Court. The Maryland law affects only such concerns as either actually have a place of business in the State or have something which is, to all practical intents and purposes, equivalent thereto.

I, therefore, advise you that the Maryland authorities require the compliance of Section 93 of Article 23 by any company

doing the business which your client is contemplating. I should also inform you that, under the provisions of Chapter 701 of the Acts of 1916, Section 184, such a corporation or company must take out a license. This section has been upheld by the Court of Appeals of Maryland in the recent case of State vs. Case, heard in the October Term, 1917.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

FORFEITURE OF CHARTERS—ACTS OF 1918—NOT RETROACTIVE.

August 5, 19[illegible]

Charles C. Wallace, Esq.,

Secretary, State Tax Commission,

Baltimore, Maryland.

DEAR MR. WALLACE: You ask me whether Chapter [illegible] of the Acts of 1918, which repealed and reenacted Section [illegible] of Article 81 of the Annotated Code of Maryland [illegible] for the forfeiture of the charters of Maryland corporations [illegible] ing to pay certain taxes for two years can be given a [illegible] operation.

It is a general rule of law that a penal statute [illegible] ater will be construed strictly and will not be held to be [illegible] active in its effect unless some clear evidence of the [illegible] of the Legislature is found in the Act. I do [illegible] the language used in Section 109, as reenacted by the [illegible] 1918, manifests any certain or positive intention [illegible] Legislature to make the penalty of mortality retroactive [illegible] fore, advise you that this penalty may only be enforced [illegible] corporations becoming delinquent after the Act [illegible]

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

doing the business which your client is contemplating. I should also inform you that, under the provisions of Chapter 701 of the Acts of 1916, Section 184, such a corporation or company must take out a license. This section has been upheld by the Court of Appeals of Maryland in the recent case of State vs. Case, heard in the October Term, 1917.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

FORFEITURE OF CHARTERS—ACTS OF 1918—NOT RETROACTIVE.

August 5, 19[illegible]

Charles C. Wallace, Esq.,

Secretary, State Tax Commission,

Baltimore, Maryland.

DEAR MR. WALLACE: You ask me whether Chapter [illegible] of the Acts of 1918, which repealed and reenacted Section [illegible] of Article 81 of the Annotated Code of Maryland [illegible] for the forfeiture of the charters of Maryland corporations [illegible] ing to pay certain taxes for two years can be given a [illegible] operation.

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Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

FOREIGN CONSTRUCTION COMPANIES—WHEN REQUIRED TO REGISTER.

August 10, 1918.

William W. McKim, Esq.,
Eighth and Lehigh Avenues,
Bethlehem, Penna.

DEAR SIR: I have your letter of August 5th, in which you ask me whether a foreign corporation which does not maintain an office or usual place of business in Maryland, but which has been given a contract for the steel and erection of a building in this State, is required to register under the Maryland laws applicable to foreign corporations. I understand that the company has sublet the contract for the erection of the steel to a Maryland company.

Section 93 of Article 23 of the Annotated Code of Maryland provides that annual certificates and a certified copy of their charter must be filed by every foreign corporation which has a usual office or place of business in this State, except insurance companies hereinafter provided for, but including any corporation which is engaged in this State permanently or temporarily, and with or without a usual place of business therein, in the construction, alteration, erection or repair of any building, bridge, railroad, railway or structure of any kind."

I think that under the circumstances outlined in your letter, the corporation to which you refer is engaged in the erection of a building, and, therefore, is within this section.

I also beg to call your attention to the provisions of Section 184 of Chap. 704 of the Acts of 1916, which reads in part as follows:

"Each foreign construction company, firm or person with its chief office outside of this State, operating or doing business in this State, directly or by agent, or by subletting contract, shall before doing so take out a license therefor and pay an annual license fee of $50.00 if operating in the City of Baltimore, and the like amount

of $50.00 in each county of this State in which said person, firm or corporation shall operate."

This Section, however, does not apply to corporations doing a construction business, the gross amount of whose orders accepted and executed does not exceed five thousand dollars per annum.

Very truly yours,

OSCAR MARBURY, *Acting Attorney General.*

FOREIGN UNITED STATES HOUSING CORPORATION.

Aug. 26, 1918.

Hon. Thomas H. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I have your letter of the 22nd inst., enclosing copy of a letter from Stuart Chandler, Acting Chief Counsel of the United States Housing Corporation, and have replied thereto.

You ask whether the United States Housing Corporation is subject to the business tax in Maryland without paying the usual charges. From Mr. Chandler's letter it appears that the corporation was organized under the laws of the State of New York, pursuant to the provisions of the Act of Congress known as the "Housing Act." The corporation has one thousand shares of stock of one par value, all of which are held by the Secretary of Labor for the benefit of the United States, with the exception of two for qualification purposes.

The corporation is, I think, an agency of the United States, is owned entirely by the United States, and is operated for United States purposes. It is, therefore, not subject to the tax taxation, and is not required to make reports and payments required by the laws for ordinary foreign corporations. I think these facts should be noted upon your records when the [illegible]

tion has filed the necessary forms showing that the corporation is a governmental agency, as stated by Mr. Chevolier.

In this connection, I desire to refer you to an opinion given to you by Mr. Ritchie on February 5, 1918, passing upon the same question relative to the Food Administration Grain Corporation.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

CRIMINAL LAW.

GAME LAW—JUSTICES OF THE PEACE—RIGHT TO IMPOSE LESS THAN MINIMUM PENALTY.

W. H. Killian, Esq., *January 28, 1918.*

Conservation Commission,

312 Munsey Building,

Baltimore, Maryland.

DEAR SIR: I beg to reply to your favors of January 7th and 19th, in which you ask my opinion whether Justices of the Peace in Garrett, Charles and St. Mary's Counties can impose less than the minimum penalty provided by Section 251 of Article 99 of Bagby's Code, for convictions under Section 250, as the same was amended by the Act of 1916, Chapter 133.

Article 27, Section 521 of Bagby's Code authorizes the Judges of the Criminal Court of Baltimore and of the Circuit Courts of the counties, in lieu of the minimum penalty prescribed by law, to impose a less penalty of the same character. This section, by its terms, does not apply to Justices of the Peace, but Art. 52, Sec. 12 of Bagby's Code, which confers upon Justices of the Peace, except in Baltimore City, Baltimore, Harford, Montgomery and Frederick Counties, jurisdiction to try certain classes of criminal cases, provides that they may pronounce judgment and sentence in all such cases coming before them, in the same manner and to the same extent as the Circuit Courts for said counties could, if such cases had been tried before said courts.

I do not think, however, that Section 52 confers upon Justices of the Peace the power given to the Circuit Courts by Section 521 of Article 27, to impose less than the minimum penalty, when the Justices are trying prosecutions under Section 250 of Article 99 of Bagby's Code.

Section 52 does not apply to prosecutions for which the Legislature, by special act, has made special provision.

State vs. Ward, 95 Md. 118;

Crichton vs. State, 115 Md. 128, 129.

Sections 20 and 21 are part of the subtitle "Birds and Game" of Article 99 of the Code, and Section 38, in giving Justices of the Peace jurisdiction over prosecutions under this subtitle, does so, I think, in language which shows the Legislature's intent that the powers and jurisdiction of Justices in such cases should be confined to those embodied in this subtitle, and should not embrace powers conferred by other laws with respect to other and different classes of prosecutions.

Since the only jurisdiction of Justices of the Peace in prosecutions under Section 20 is the jurisdiction conferred upon them by the subtitle of which Section 20 is part, and since no power is given them by that subtitle, to impose less than the minimum penalty, it is my opinion that they have no such power, and that they cannot, therefore, impose less than the minimum penalty prescribed by Section 21 for convictions under Section 20 of Article 99.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

No. 1. Can Wells Jurisdiction Concurrent Justice in Special Statute.

June 29, 1918.

William G. Gordon, Esq.,
State's Attorney,
Snow Hill, Maryland.

Dear Sir: I have your letter of June 24th. Sec. 136 of Art. 27 contains no statement to the effect that any offender the remainder is entitled to a jury trial. Sec. 12 of Art. 52, conferring additional criminal jurisdiction upon Justices of the Peace, does not apply to cases where jurisdiction is conferred by special statute.

Ward vs. State, 95 Md. 118;
State vs. Loden, 117 Md. 303.

I think, therefore, that under Art. 27, Sec. 136, the Justice does not have to notify the accused of his right to a jury trial and there is no appeal.

I cannot anticipate that a State official will decline to do his duty. I think, therefore, I should not answer your other inquiry.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

FELONIES—INFAMOUS CRIMES—DEFINITIONS.

August 5, 1915.

Hon. Henry M. Warfield,
Adjutant General,
Annapolis, Maryland.

DEAR SIR: I have your letter of August 3rd, asking me what offenses under the laws of this State are felonies or infamous crimes.

The Court of Appeals in a recent case has said:

> "The distinction made in some jurisdictions that crimes punishable by death or confinement in the penitentiary are felonies, and others misdemeanors, has never existed in this State, but here only those are felonies which were so at common law, or have been so declared by statute. The fact that a crime is punishable in the penitentiary or is 'infamous' does not make it a felony in this State."
>
> Dutton vs. State, 123 Md. 373.

Felonies, therefore, in this State are the common law felonies: arson, burglary, larceny, robbery, murder and manslaughter, rape, sodomy, mayhem and prison breach, rescue and escape in the case of prisoners held for felony and such other offenses as the Legislature by statute has specifically declared to be felonies.

In practice you can easily ascertain whether any particular offense which you are investigating under Section 79, Rule

XII (h), Selective Service Regulations, is a felony by ascertaining:

1. Whether it is one of the common law felonies mentioned above.

2. If not, whether the statute making it a crime specifically declares it to be a felony. If you find it in neither one of these classifications, it is not a felony.

The Court of Appeals has also given a general definition of an infamous crime in the following words:

> "'An infamous crime' is such crime as involves moral turpitude, or such as renders the offender incompetent as a witness in court upon the theory that a person would not commit so heinous a crime unless he was so depraved as to be unworthy of credit."
>
> State vs. Bixler, 62 Md. 354.

The last mentioned case also changed the definition of infamous crime which had previously been the law of the State as decided in Evans vs. Bonner, 2 H. & McH. 378. This definition made the term practically synonymous with felony and excluded all crimes below the grade of felony. The Court in the Bixler case said this definition was too narrow because perjury was a misdemeanor and by all authority was infamous.

As to infamous crimes, therefore, I can only say that they are such crimes as involve moral turpitude or render the offender incompetent as a witness.

If you have any case under the Selective Service Regulations in which you desire information as to whether any particular offense is an infamous crime and will give me the data about the offense, I will be glad to give you my opinion on it.

Very truly yours,

GEORGE MAHAFFEY, *Acting Attorney General.*

JUSTICES OF THE PEACE—LARCENY—JURISDICTION.

October 19, 1918.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Maryland.

DEAR SIR:—I have your letter of October 16th in which you ask whether Justices of the Peace are given by Article 52, Section 12, jurisdiction to try cases of larceny under the last part of Section 285 of Article 27.

Section 285 is the grand larceny section of the Code, while Section 286 is the petty larceny section. The last Section 286 contains the same provision about sentencing to jail instead of to the penitentiary as is contained in the part of Section 285 to which you refer.

Article 52, Section 12, as it was originally enacted by Chapter 128 of the Acts of 1896, contained a specific provision giving Justices of the Peace the right to try cases of petit larceny. The Court of Appeals held that this provision was unconstitutional and beyond the legislative power to enact.

See Danner v. State, 86 Md. 220.

If the Legislature cannot give Justices of the Peace the right to try cases of petty larceny, it can scarcely give them the power to try cases of grand larceny.

I beg to advise you, therefore, that Justices of the Peace have no jurisdiction to try cases brought under Section 285 of Article 27 of the Code.

Very truly yours,

OGLE MARBURY, Attorney General.

GAMBLING—PLAYING CARDS FOR MONEY.

October 19, 1918.

Fred N. Holland, Esq.,
Justice of the Peace,
Crisfield, Maryland.

DEAR SIR: Your letter addressed to the Attorney General has been received. In reply I beg to advise you that the playing of cards for money is gambling within the meaning of Article 27 of the Code of Public General Laws, Bagby's Annotated Edition, Sections 244, etc.

Very truly yours,

WM. PINKNEY WHYTE, *Assistant Attorney General.*

NEW INDICTMENTS ON OLD PRESENTMENTS—LIMITATIONS.

November 24, 1918.

Ernest Ray Jones, Esq.,
State's Attorney,
Oakland, Maryland.

DEAR MR. JONES: As I understand it, the situation presented to me in your recent letter, is as follows: You have indicted certain people on the charge of violating Chap. 156 of the Acts of 1916, which repealed and reenacted Section 4 of Chapter 34 of the Acts of 1914. You now desire to quash these indictments, because they fail to allege that the offense was committed "knowingly," and to have the December grand jury substitute new indictments. You ask whether you can quash the old indictment, and have the new grand jury return another indictment on the old presentment, for the reason that unless this can be done some of the prosecutions will be barred by limitations.

There does not appear to be any decision exactly on this point—the case nearest to it being Byers vs. State, 63 Md. 267. I have come to the conclusion, however, that a grand jury cannot indict on a presentment found by some other grand jury, but that each grand jury must act upon its own presentment. In some States, cases are tried upon the presentments alone, but this is not the case in Maryland. In this State, a presentment is merely a notice to the State's Attorney by the grand jury that the jurors desire to find a true bill. I do not think that such a notice given by one grand jury would be a notice for a succeeding grand jury, and that, therefore, unless a presentment is followed by an indictment, the effect of the presentment would end with the term of the grand jury which made it.

Under Section 664 of Article 27 of the Annotated Code of Maryland, any imprisonment provided by law may be in the penitentiary. This provision, enacted in 1916, seems to have ended the one-year limitation mentioned in Section 11 of Article 27 of the Annotated Code for offenses punishable by imprisonment. I find, however, that Section 9 of Chapter 464 of the Acts of 1914, which contains the penalties, provides that those convicted shall pay a fine of not less than one hundred dollars or more than five hundred dollars. Failure to pay the fine renders the person convicted liable to imprisonment. However, since the offense is first made punishable by a fine only, I believe that that Section 664 of Art. 27 would apply.

I have come to the conclusion, therefore, that the prosecution under Chapter 464 of the Acts of 1914, offenses committed prior to expired from the date of the offense, is barred by the

Very truly yours,

Hon. Marion [illegible]

Ordering of Whiskey by Physician—Exemptions in Gallon a Month Law.

December 30, 1918.

Dr. S. C. Oglesby,

Girdletree,

Worcester Co.,

Maryland.

Dear Sir: In answer to your recent letter, in which you ask whether a physician is subject to the same restrictions as other persons in ordering whiskey for use in his practice, I beg to advise you.

The only exception in the gallon a month law is contained in Section 4, as repealed and reenacted by Chapter 116 of the Acts of 1918. This section now reads as follows:

"And be it further enacted, That nothing in this Act shall be construed to apply to the shipment or delivery to duly licensed pharmacists or druggists to be used in compliance with existing laws and to hospitals in said counties, of spirituous or vinous liquors and alcohol; nor to the delivery to churches or proper officers thereof of wine in unbroken packages for sacramental purposes."

It will be noted that no exception is made for physicians, so that the only method in which they can obtain whiskey to be used as a stimulant for patients is by a prescription to druggists or through hospitals. The fact that physicians were not excepted and that druggists and hospitals were added to clearly indicate the intention of the Legislature that physicians were to get whiskey only in the same manner as other people.

Very truly yours,

CHAS. MARBURY, *Deputy Attorney General.*

RIGHT OF MARYLAND TRAINING SCHOOL FOR BOYS TO RECEIVE COMMITMENTS FROM UNITED STATES COURTS.

December [illegible], [illegible]

[illegible] W. Perkins, Esq.,
Secretary, Maryland Training School for Boys,
[illegible] South Street, Baltimore, Maryland.

DEAR MR. PERKINS: I have your letter of December [illegible] in which you ask whether the Maryland Training School for Boys has the legal authority and power to receive [illegible] wards of the State of Maryland committed to it by the United States Courts [illegible] the District of Maryland.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

EDUCATION.

Vaccination in Public Schools. Power of County Boards to Waive Law. Removal of Members of County Boards.

February 18, 1918.

Dr. John S. Fulton,
Sec. State Board of Health,
Jos. W. Saunders Street,
Baltimore, Maryland.

Dear Dr. Fulton: I have your letter of February 13th, with reference to the institution of proceedings against the public school authorities in Washington County, to compel them to enforce the state vaccination law.

This law is contained in Bagby's Code, Art. 43, Sec. 50. It provides that no pupil shall be admitted to the public schools of this State, shall not be under such schedule a pupil any person who has not been successfully vaccinated." There follow certain administrative provisions, and the section finally provides that "the Superintendent shall in writing to comply with the provisions of this section shall be ... before any pupil ... and the parent or guardian ... and offender be fined ... And no public school ... permit to any person ... to enter as a pupil ... under the same penalty."

I understand that the County Board of Education of Washington County has passed a resolution to the effect which is to waive the enforcement of the law in the case of children whose parents are conscientiously opposed thereto, and that the local school authorities have acted in accordance with this resolution, notwithstanding the local vaccinator from the State Superintendent to the County Superintendent that all unvaccinated pupils be vaccinated.

The County Board of Education has, of course, no power to waive compliance with the State vaccination law, and the

Board's resolution purporting to do this is simply nugatory. The result is that the teachers who do not comply with the requirements of this law, and the members of the County Board who grant permits to children who have not been successfully vaccinated, are subject to a fine of $10 for each such offense.

So far as the teachers are concerned, it would seem to me that they should not be prosecuted, because they are simply acting under instructions from the County Board; and, personally, I think that a situation in which the Department of Health finds itself compelled to prosecute criminally members of a coordinate branch of the government, such as the County Board of Education, would, to say the least, be unfortunate.

Section 6 of the Acts of 1916, Chap. 200, provides that the State Superintendent of Schools, by and with the approval of the Governor, may remove any member of a county board appointed under the provisions of this section, for immoral misconduct in office, incompetency or wilful neglect of duty, after notice and a hearing.

If the County Board of Education of Washington County issues permits to unvaccinated pupils, contrary to the express provisions of the state law, notwithstanding the direction of the State Superintendent that the state law shall be obeyed, this certainly constitutes a wilful neglect of duty, and they are subject to removal, under the act last quoted.

My advice is that each Board confer with the State Superintendent of Education, and with the Governor, with a view to the laying of charges by the State Superintendent against members of the County Board for wilful neglect of duty in not complying with the state vaccination law. In this case the Superintendent and the Governor, to whom the power of removal is vested, and that only, should be properly consulted as to the advisability of the taking of this step by the County Board, doubtless result in a rescission of the resolution.

Very truly yours,

ARTHUR G. HOLT, Attorney General.

POWER TO REMOVE MEMBERS OF COUNTY BOARDS OF EDUCATION IN WHOM VESTED.

July 31, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR SIR: In answer to your query over the telephone as to the power of the State Superintendent of Schools to remove with your approval any member of a County Board of Education for immorality, misconduct in office, incompetency or wilful neglect of duty, I beg to advise you as follows:

That by virtue of Chapter 500 of the Acts of 1916, the same being its title being designed to harmonize existing laws relating to public education, to provide for and distribute in a more systematic and equitable manner public school funds, and to provide for a more thorough and efficient system of administration and supervision of public education in the State of Maryland, Section 6 of Article 77 of the Annotated Code of Maryland was repealed and reenacted and by virtue of such repeal and reenactment Boards of County School Commissioners in each County of the State became County Boards of Education, subject, however, in all respects, in my judgment, to the provisions of Chapter 500 of the Acts of 1916.

Section 6 of Chapter 500, the same taking the place of Section 6 of Article 77 of the Code, provides:

"That the [illegible] of persons who are members of the County Board of the time when this Act shall take effect shall not be affected by the provisions."

In all other respects, it is my opinion that members of County Boards of Education, irrespective of whether they were appointed or members of Boards of County School Commissioners and whose terms of office have been extended by legislative action, come within all the provisions of Chapter 500 of the Acts of 1916.

It is provided in Section 6 of Chapter 306 of the Acts of 1916 that

> "The State Superintendent of Schools, by and with the approval of the Governor, may remove any member of a Board appointed under the provisions of this section for immorality, misconduct in office, incompetency or willful neglect of duty, giving to him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten days' notice."

and under this provision all members of County Boards of Education may be removed from office.

Very truly yours,

W. Preston Woods, Jr.,
Legal Department,
State Superintendent of Schools.

Hon. Hugh L. McMullan,
State Comptroller,
Charleston, West Virginia.

My Dear Mr. McMullan: I have carefully considered the question submitted to me in your letter with the fund derived from the public school tax and I beg to submit to you the conclusions I have reached.

Chapter [illegible] of the Acts of 1916 provided for the years 1917 and 1918 a levy of fifteen cents for public school and two cents for public schools and governmental [illegible]. Chapter [illegible] and [illegible] of the Acts of 1916 [illegible] "Schools," appropriated out of the moneys to be raised under these levies [illegible] amounts as named therein [illegible] into the State Treasury, providing that if more than [illegible] is paid into the State Treasury, the excess over [illegible] shall remain there, with the proviso that the amount [illegible] shall be one million seven hundred and [illegible]

000) dollars and no more." The appropriations in Chapter 684 and Chapter 685 are for the support of the State government for the fiscal years ending on the 30th day of September, 1918 and 1917, respectively, and, of course, it follows that the school tax paid over under these acts must be remitted from the collections in these fiscal years, and must not exceed, out of these collections, the total of $1,750,000.

By Chapter 506 of the Acts of 1916, which repeals and re-enacts Article 77 of the Annotated Code, title "Public Education," in Sections 135, 136, 137, 138 and 139 the distribution of this public school tax is provided for. Certain deductions are to be made and then you are to apportion on or before the last day of September the remainder to the Counties and the City of Baltimore. "On or before the first day of January, March, June and October in each year" the Treasurer upon your warrant shall pay as you have apportioned, after making the deductions required, the remainder in his hands to the various Boards of Education.

The General Appropriation Acts, Chapters 684 and 685, under the subheading "Schools," each contain the proviso that the Treasurer shall not be required to pay any of this school distribution "other than quarterly except in his own discretion."

I understand that the receipts in the Treasury from the school tax levied for the fiscal year ending September 30, 1917, were $1,841,953.69, of which the school fund was entitled to $1,750,000. On September 30, 1917, you had not paid over the full amount of this, but on October 1, 1917, you carried down to the credit of the school fund $704,546.70, which was the balance of $1,750,000 for the previous fiscal year which the schools had not yet gotten. You then reverted to the general treasury fund $91,953.69, which was the difference between the school appropriation and the amount collected from the school tax. This reversion was clearly correct.

This left a balance due the school fund for the fiscal year ending September 30, 1917, of $701,546.79, which I understand has since been paid.

From October 1, 1917, to June 15, 1918, you have received from the school tax for this current fiscal year $1,023,[illegible], which you have also paid over. Not later than October 1, 1918, the schools will be entitled to receive from you the balance of the $1,750,000, if so much be collected up to that time, and you will not later than October 1, 1918, be required to pay over this balance which cannot be more than $726,[illegible], and if less must be all of the receipts received from the school tax up to that time.

You are authorized at any time between now and October 1, 1918, to pay over such of these receipts as your business and may also be proper. [illegible] are not required to be [illegible] October 1, 1918.

I have talked these matters over separately with [illegible] Hopkins of your office and with Mr. [illegible], Superintendent of Schools, and with Mr. [illegible], Superintendent. I have [illegible] with the [illegible] above statement.

I am [illegible]

Very [illegible],

[illegible]

[illegible]

[illegible]

[illegible]

High School as a high school of the first group. You state that the average attendance last year at this school fell to fifty.

Section 126 of Article 77 of the Annotated Code as repealed and re-enacted by Chapter 105 of the Acts of 1918 fixes the aid to be extended by the State to high schools, and directs the State Superintendent of Schools to arrange high schools receiving State aid into two groups according to the number of pupils enrolled, teachers employed and the years of instruction given. It then says:

> "High schools of the first group shall fulfill the following minimum requirement:
>
> "They shall have an enrollment of not less than eighty pupils, and an average daily attendance of not less than seventy . . . ."

When the Legislature has specifically provided for the minimum requirements for a high school of the first group the State Board of Education has no authority to change these requirements, and you have to certify according to the direction of the Legislature. I do not think you have authority to certify the Rockville High School as a first group high school.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

AVERAGE DAILY ATTENDANCE—CONSTRUCTION SCHOOL LAW.

November 7, 1918.

Dr. M. Bates Stephens,
State Superintendent of Education,
Melroy Hall,
Baltimore, Md.

MY DEAR DR. STEPHENS: I have your letter of October 30th, in which you ask whether you would be acting within the authority of the section of the School Law authorizing you to interpret that law, if you count an average daily attendance of 29 plus as an average daily attendance of 30.

Sec. 126 of Art. 77 provides for the extension by the State of aid to high schools of the second group. The minimum requirements of each group are set out in the law. Among those requirements for high schools of the second group is, they shall have an enrollment of not less than thirty-five pupils and an average daily attendance of thirty pupils.

Section 19 of Art. 77 provides, in part:

"The State Superintendent of Schools shall explain the true intent and meaning of the school laws and [illegible] adopted and published as by-laws of the Board of [illegible]. He shall decide, without expense to the parties [illegible], all controversies and disputes involving the proper administration of the public school system, and his decision shall be final."

[illegible]

the Annotated Code (Vol. [illegible]), to publish a list of approved colleges, and determine by by-laws the standard for such approval.

I see no reason why the Legislature has not authority to give the State Board this power, and the exercise of it in no way infringes the chartered rights of the colleges passed upon — whether they are approved or not.

I have some doubt about the provisions of Sects. 124A and 124B of Art. 77. These provisions authorize the State Board to prescribe the minimum requirements for issuing degrees, and such authority might infringe the rights of the colleges and universities granted to them by their charters.

I have not, however, examined this question, as I do not understand you intend to do anything of the kind.

There is a distinct difference between prescribing requirements to which colleges must live up to before they grant degrees, and the giving by the State Board of its approval to colleges. The absence of the Board's approval does not in any way prevent a college from exercising its chartered functions. I think, therefore, they [illegible] legal power with the State Board of Education [illegible] approval of [illegible] colleges and universities, in pursuance with Sections 124A.

Very truly yours,

[illegible] Attorney General.

[illegible]

Dr. [illegible]

Hon. Hugo [illegible]
State Superintendent
Department of Education

Dear Mr. McMurray: I have your letter of December 23d, in which you state that, through a mistake made by the Statistician of the Department of Education of Baltimore City, the State Superintendent of Schools was led to certify as [illegible] the

aggregate days of attendance in Baltimore City for the school year 1917-18 as 19,[illegible],647, when it should have been [illegible]-24. The distribution of school money made by [illegible] as of October 1, 1918, was made in accordance with this erroneous basis, and Baltimore City, therefore, received in that distribution considerable more than it should have received, and the proportion of the counties was correspondingly lessened.

You have since been notified of the error by the proper school authorities, and you ask how you can extend the matter.

It seems to me that you should now contract the apportionment in accordance with the attested figures. In the payment to be made January 1, 1919, you can give to the [illegible] the balance of the amounts which they should have received and withhold from Baltimore City the difference between the amount made the counties in the apportionment made the counties. In the [illegible] to apportionment made the counties. In the [illegible] the Jackson distribution [illegible] be adjusted in the [illegible] of [illegible].

Very truly yours,

(Sgd.) Marion L. Brown, [illegible].

ELECTIONS.

Ballots—Poll Books—Destruction.

Josiah A. Kinsey, Esq., Secretary, *March 16, 1918.*
Board of Police Commissioners,
Court House, Baltimore, Md.

DEAR MR. KINSEY: I beg to reply to your favor of March 13th, in which you ask whether the ballots, poll books, tallies and returns of the September, 1917, primary election, from the First Legislative District of Baltimore City, can now be destroyed.

Section 75 of the Election Laws (Act 1916, Chap. 116), provides that the ballot boxes, duly sealed, shall be delivered by the Board of Supervisors of Elections to the Police Board, and that your Board "shall safely keep them for the space of four months from the date of such delivery, at which time, unless previously notified to produce the same to be used as evidence in some contested election or judicial or legislative investigation then pending, said Board of Supervisors shall destroy, or cause to be destroyed said ballots and poll books, also all of the said tallies and statements or returns," etc.

After the primary election, the ballot boxes, containing the ballots, etc., were produced by your Board in the Superior Court, for use in a recount had under Section 1001 of the Election Law. After this recount, which did not change the result, the ballots, etc., were returned to the boxes, and the boxes, sealed, were returned to the custody of your Board.

It is now much more than four months since the date of the delivery of the boxes to you, and the time allowed for any contest or judicial or legislative investigation has long since passed.

I think, therefore, that the ballots, etc., may now be destroyed, and that your Board is authorized to deliver the boxes to the Election Supervisors for this purpose.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Registration Before Primary.

July 23, 1919.

Joseph F. Eichelberger, Esq.,
President, Board of Election Supervisors,
Frederick, Maryland.

Dear Sir: I have your letter of July 22, in which you ask whether it is necessary to have registration prior to the primary election in view of the fact that you expect to have no primary contest in your County this year.

The Attorney General gave an opinion to Mr. H. Grason Parke, counsel to the Board of Election Supervisors of Kent County, on August 21, 1917, on this question. His opinion was that Section 17A of Article 33 of the Annotated Code as enacted by Chapter 146 of the Acts of 1916, requires a registration in all the Counties of the State wherever a primary election is held in the State. Quoting from the opinion of the Attorney General, I quote the following:

> "The law does not except from the registration provision cases where there are no primary contests. The question upon which this registration depends is, shall a primary election be held in the State and the answer is, if a primary election is to be held in the State there must be a Board of Registration as required to hold the registration."

The registration provided for in the Section 17A [illegible] therefore, be held in Frederick County on the Tuesday preceding the primary election to be held this year in the State even though there may be no primary contest in that County.

Very truly yours,

[illegible] Maryland, Defendant [illegible]

WITHDRAWAL OF CANDIDATES — WHEN PRIMARY NECESSARY.

NOTE:— There were two candidates for the Republican nomination for Congress in the First Congressional District, Mr. Ward and Mr. Andrews. A few days before the primary Mr. Ward announced his withdrawal from the contest. In reply to a telephone message from Mr. T. Hughlett Henry, counsel to the Board of Supervisors of Elections of Talbot County, asking for an opinion as to whether the primary should be held under these circumstances, the Attorney General sent the following telegram:

September 6, 1918.

T. Hughlett Henry,

Easton, Maryland.

I think Congressional primary should be held notwithstanding Ward's attempted withdrawal. The only section authorizing Ward to withdraw is Section 50 Article 33 of the Annotated Code, which becomes part of the primary law by virtue of Section 181, but I understand Ward did not withdraw within the ten days named in Section 50. This being so, Andrews could not under Section 178 and last part of Section 188 receive a nomination certificate without a primary election. In other words, Ward having qualified did not withdraw in accordance with the only section authorizing him to withdraw, and if the primary is not held I do not think that Andrews will be entitled to a nomination certificate.

Samuel K. Ridgely,

Attorney General.

Increase in Salaries of Election Officials.

September 21, 1918.

Joseph F. Eisenhauer, Esq.,
President, Board of Supervisors of Election,
Frederick, Maryland.

Dear Sir: I have your letter of September 20th in which you ask whether you have the authority to increase the salary of election officials.

Section 118 of Article 33 of the Annotated Code as enacted by Chapter 541 of the Acts of 1908 fixes the compensation of all judges, whether acting as or sitting as officials of registration, and clerks of election at $3.00 a day with fractions of a day to be allowed for at the rate of thirty cents an hour.

Your Board has no authority to increase the amount which the General Assembly has definitely fixed for the payment of these public officials.

Very truly yours,

(Signed) Manfred M. Dobson, Attorney-General.

Dec. 2, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Md.

Dear Sir: You asked me whether John B. Morrison, a resident of Lakewood, New Jersey, is entitled to register and vote this fall, without going through the formal first declaring his intention to become a resident of this State. As I understand the situation, Mr. Morrison came into Maryland a few weeks before his twenty-first birthday, which was on August 25, 1918, having formerly lived at Syracuse, New York.

In an opinion given you on September 19, 1916, Attorney General Ritchie ruled that the act requiring a declaration of intention applies only to those persons who move into this State after they become of age. That act, therefore, would not apply to Mr. Morrissey, inasmuch as he came into Maryland while still a minor.

The Constitution of Maryland, Article 1, Section 1, provides that every male citizen of the age of twenty-one years and upwards who has been a resident of the State for one year, and of the legislative district of Baltimore City, or of the county in which he may offer to vote, for six months next preceding the election shall be entitled to vote [illegible]. Under this provision Mr. Morrissey will not be entitled to register or vote this fall for the reason that he has not been a resident of the State for a year, or of the county in which he resides for six months.

Very truly yours,

[illegible] *Attorney General.*

Hon. [illegible] State's Attorney, Cumberland, Maryland.

Dear Sir: Congressional Primary
Letter Designating Polling Places.

October 5, 1918.

Hon. Emerson C. Harrington,
Comptroller of Maryland,
Annapolis, Maryland.

My Dear Comptroller Harrington: In response to your request for an opinion as to the duty of the Board of State Canvassers in entering upon the records pertinent to the First Congressional District, I beg to advise you that I have given the matter my careful consideration.

I understand that just before the date of the primary Mr. Ward, who was one of the candidates of the Republican Party, declined to run, and publicly announced his withdrawal, although it was too late to take his name off of the ballot. The counsel for the Supervisors in one of the counties asked this

office for an opinion whether it was necessary to hold a primary under these circumstances. Both Mr. Ritchie and I agreed that it was advisable to have a Republican primary to avoid any possible failure of nomination. I understand that in two counties such a primary was held, and Mr. Andrews received a majority of the votes cast. In the other counties of the First District no primary was held at all, the Supervisors certifying Mr. Andrews' name as if he were the only candidate.

Section [illegible] of Article [illegible] of the Code provides that primary elections shall be held subject to the requirements prescribed for Article [illegible] for general elections. Section [illegible] provides for the Board of State Canvassers, consisting of the Secretary of State, the Comptroller, the Treasurer, Clerk of the Court of Appeals and the Attorney General, there to be a quorum. This Board is to canvass the statements made by the Boards of State and County Canvassers in case of elections of representatives in Congress and where [illegible], making to us the statements furnished a statement of the whole number of votes from all several counties for the offices named. The Board is directed to proceed to determine and declare what persons have been by the greatest number of votes elected to such offices and each of them, and make a [illegible] determination.

If, when the Board of State Canvassers meets on [illegible] 9th, it appears from the [illegible] of the statements before it that there was a Republican primary, and that certain votes were cast, and that Mr. Andrews received the greatest number of votes in such primary, it will be the duty of the Board to declare that Mr. Andrews has been nominated as the Republican candidate for Congress in the First Congressional District. It does not matter whether the primaries were held in all of the counties or not provided it appears from all the statements before the Board that primaries were held in the District, and that Mr. Andrews received the highest number of votes in such primaries.

Very truly yours,

[illegible] Marbury, Acting Attorney General.

Vacancy in Nomination in Second Congressional District — Method of Nomination—Unexpired Term.

October 2, 1918.

Dr. J. Hubert Wade,
Chairman, Democratic State Central Committee,
Regal Arcanum Building,
Baltimore, Maryland.

Dear Sir: I beg to reply to your request for an opinion as to the method of filling the vacancy caused by the death of Congressman J. F. C. Talbott, who was a candidate to succeed himself.

Section 201 of Article 33 of the Annotated Code of Maryland provides that in the event of any vacancy occurring because of the death of any person nominated for any State or judicial office, or as a candidate for member of the Congress of the United States, under the provisions of preceding sections of Article 33, such vacancy shall be filled by the State Central Committee, or governing body for the State, of the political party to which said nominee belongs. Section 201 further provides that in the event of a vacancy occurring because of the death of any person nominated for any office in any county of this State, the vacancy shall be filled by the State Central Committee, or governing body to which said nominee belongs of the county in which any such vacancy occurs. These provisions make it clear, it seems to me, that the vacancy caused by the death of Mr. Talbott should be filled by a nomination made by the State Central Committee of the Democratic Party for the entire State.

The manner in which the nomination is to be made by the State Central Committee is governed by its own rules and regulations, as provided by Section 188 of Article 33. After the State Central Committee has proceeded to make a nomination, the certificate of nomination should be filed with the Secretary of State, in accordance with the provisions of Section 14 of Article 33, and the Secretary of State shall thereafter certify the

fact of such nomination to the proper Boards of Supervisors of Election.

Section 51 of Article 33 requires the certificate of nomination in the case of death to be filed within six days after the vacancy shall have occurred. While it is not absolutely certain that this provision of Section 51 is applicable to a nomination made by the State Central Committee, the safer course would be to follow its requirements in every particular, so that there cannot in the future be any possible question as to the validity of the nomination.

You also ask me what steps can be taken to fill Mr. Fallon's unexpired term. Section 152 of Article 33 provides as follows:

> "If a vacancy should occur by death, resignation or otherwise, at such period as to make it necessary that a Representative or Representatives in Congress from this State should be chosen before the regular time for such election, the Governor shall by proclamation direct that a special election be held to fill such vacancy, which proclamation shall require at least twenty days' notice of such election to be given by the Superviseors of Elections to the electors of the respective wards or districts of Baltimore, comprising the Congressional district in which such vacancy may exist."

Under the above section the Governor in his proclamation direct that a special election be held on the same day as the approaching Congressional election, so that it will be possible to fill both the unexpired and the regular terms at the same time and by voting the same ballot. The law does not contain a provision for the nomination of candidates to represent political parties at such special elections. There is no question, however, in my mind that Section 51, which authorizes the State Central Committee to nominate to fill the vacancy caused by the death of the original nominee, also applies to a special election called for the purpose of filling the unexpired term of a Congressman. If the Governor, therefore, issues a proclamation

within the next few days calling a special election to fill Mr. Talbott's unexpired term, it will be possible for the State Central Committee, at its meeting, to make a nomination for the unexpired term, and another nomination for the regular term.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

APPOINTMENT OF JUDGES AND CLERKS BY LOCAL BOARD OF SUPERVISORS—VACANCY—REAPPOINTMENT.

October 21, 1918.

Col. Henry L. Waters,

President, Board of Supervisors of Elections,

Princess Anne, Maryland.

DEAR COLONEL WATERS: I am informed that the following situation exists in your County:

At the last session of the General Assembly Governor Harrington sent to the Senate the names of Messrs. Waters, Ford and Quinn as the Board of Supervisors of Election for Somerset County. The Senate confirmed your appointment and the appointment of Mr. Ford who was the Republican or minority member, but refused to confirm Mr. Quinn who was nominated to succeed Edward E. Lankford.

No other nomination was made by the Governor to the Senate, but after the Legislature adjourned the Governor, acting under the advice of Attorney General Ritchie, appointed Mr. John W. Riggin to succeed Mr. Lankford.

Mr. Lankford declined to give up the office, holding that Mr. Riggin had not been legally appointed. Mr. Ford agreed with him in this view, so did not act. On May 20, 1918, Messrs. Ford and Lankford met and attempted to organize a Board, and on May 23, 1918, you and Mr. Riggin met, Mr. Ford not being present, although notified, and you organized the Board. The Ford-Lankford Board undertook to comply with Section 7 of Article 33, and appointed registration judges and the other judges and clerks of election.

Mr. Riggin filed a petition for mandamus against Mr. Lankford to obtain possession of the office, and, this case coming to the Court of Appeals as No. 77, October Term, 1918, it was there decided on October 15, 1918, that Mr. Riggin had been legally appointed. The writ of mandamus was directed to issue requiring Mr. Lankford to give up the office to Mr. Riggin.

You wish my opinion as to the validity of the appointments of the judges and clerks of election named by the Ford Lankford Board.

After Mr. Riggin qualified Mr. Lankford ceased to be a Supervisor of Election. Any meeting held by him and Mr. Ford after the qualification of Mr. Riggin was not a valid meeting of the Board of Supervisors of Election as only one Supervisor was present. No appointments of judges and clerks could lawfully be made by one Supervisor.

Under these circumstances I advise you that your Board should proceed at once to appoint all judges and clerks of election in Somerset County, acting in accordance with Sections 7, 8 and 9 of Article 33.

It, of course, will be impossible for you to comply with Section 11 in point of time but you should at once publish the names. You still have time to have them published once a week for two successive weeks before election.

Very truly yours,

OLIN MAGINNIS, *Deputy Attorney General.*

FISCAL MATTERS.

Fiscal—Appropriations to Agricultural Fair Associations—Bona Fide Fairs.

January 12, 1918.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Md.

DEAR MR. MCMULLEN: I have carefully considered your inquiry as to the right of the Cumberland Fair and Agricultural Association to share in the appropriation of $5,000 for 1917, made by the Act of 1916, Ch. 225, pages 150-160, "to the various agricultural fair associations entitled to the same by the provisions of Chapter 7 of the Acts of 1906."

The Law and Order Committee of the Ministerial Union of Cumberland has formally protested against the payment of any part of this appropriation to the Cumberland Fair and Agricultural Association, on the ground that the association is not a bona fide fair association, that it does nothing to promote or foster agriculture, that it holds no agricultural fairs and exhibits no products, and that it in fact, does nothing but conduct a race track and gambling devices.

At present the Association is in the hands of a receiver, appointed because of a default in its mortgage bonds, but no dissolution decree has been entered, the property has not yet been sold, and the Association's operations appear to have been carried on since the receivership exists as they were previously therefore, the receivership must be disregarded, for the purposes of your inquiry.

The Association is duly incorporated as a fair association, and its request to share in the appropriation complies with the formalities which the law requires, so that the legal question involved is whether the Association must hold agricultural fairs and exhibits in order to be entitled to share.

Appropriations to fair associations were first provided for by the Act of 1902, Ch. 670. That act was entitled "An Act to

promote, encourage and foster agriculture in the State and to appropriate a sum of money therefor." The object of the Act was more fully set forth in the preamble, which recited that "the annual holding of *agricultural fairs* in different parts of this State afford an opportunity for those engaged in agriculture and the raising of improved breed of stock and large produce to *exhibit their products*," and that "such exhibits in the past have been highly beneficial to the development and progress of the farming interest and thereby contributing to the taxable basis of personal property in this State," and that "the prosperity of all other industries depends in a great measure upon agriculture."

Section 1 of the Act then appropriated $[illegible] annually, to be divided equally among the "agricultural fair associations," with the view "of promoting, encouraging and fostering agriculture in this State."

The object of the appropriation made by the Act of 1879 is thus perfectly clear from the title, the preamble and the section provisions. That object was to foster, promote and encourage agriculture and agricultural fairs.

The Act of 1879 then went on to provide that an association should be entitled to the [illegible] of the appropriation, provided (1) it was duly incorporated under the laws of this State, (2) had a paid up capital stock of [illegible], (3) filed with the Comptroller a certified copy of its charter and the affidavit of its President that its capital stock had been fully paid, and (4) forwarded to the Comptroller, on the month of December, a statement of its financial condition for the preceding year.

It is true that the holding of agricultural fairs with exhibits is not expressly mentioned as one of the conditions necessary to entitle an association to share in the appropriation. I think, however, that this [illegible] is clearly implied. As already shown, the whole object of the appropriation was to foster, promote and encourage agriculture and agricultural fairs. There can be no such thing as an agricultural fair without agricultural exhibits. The very preamble of the Act clearly shows

that the idea was to enable those engaged in agriculture and improved stock and farm produce "to exhibit their products"; and this fact is emphasized by section 3, which, in excluding from the benefit of the appropriation associations which had a surplus of $500 in the treasury, or which had declared a dividend during the preceding year, described such associations as those "for the purpose of holding agricultural fairs."

For these reasons, I have no doubt that an association was not entitled to share in the appropriations made by the Act of 1882 merely because it was chartered as a fair association; but that it was only entitled to share if it in good faith conducted the business of a fair association, and, as a necessary incident to this, held agricultural fairs with exhibits.

The Act of 1882 was repealed and re-enacted by the Act of 1884, Ch. 120. By this Act the benefit of the appropriation, which under the Act of 1882 could only be awarded to fair associations having a paid up capital stock of $10,000, were extended to fair associations which had acquired and paid for real estate and improvements for the use of $10,000, and in order to obtain payment of the charter the association had to be not merely incorporated under the laws of this State, as the Act of 1882 provided, but incorporated "as a fair association."

The Act of 1884 was repealed and re-enacted by the Act of 1890, Ch. 216, which is the present law, the only substantial amendment being to add the provisions contained in the Acts of 1882 and 1884, that associations which had a $500 surplus, or which had declared a dividend, should be excluded from the benefits of the appropriation.

The amendments made in 1884 and in 1890 did not change in the slightest degree the object of the appropriation, as that object was declared in the Act of 1882, or the necessity for holding fairs with exhibits, which, as already stated, was, in my opinion, a necessarily implied condition of the right to share.

It is, therefore, my opinion that the purpose of the appropriation is now, as it always has been, to foster, promote and encourage agriculture and agricultural fairs, and that the Act of

1906, just like the Acts of 1894 and 1902, contemplate and require that such fairs with exhibits must actually be held.

A corporation calling itself a fair association, but actually conducting horse racing and gambling only, not holding an agricultural fair at all, and having no exhibition of products, is, in my opinion, not entitled to any part of the appropriation. The appropriation is to encourage agriculture and agricultural fairs conducted by fair associations. It is not to aid horse racing by an association which is a fair association in name only, although horse racing may very properly be an incident or part of a *bona fide* fair.

It follows that if the claims of the Ministerial Union as to the character of operations conducted by the Cumberland Fair and Agricultural Association are well founded, then the Association, in my opinion, is not entitled to share in the appropriation.

Whether these claims are well founded or not is, of course, a question of fact. The Law and Order Committee states positively that no fair and no exhibits have been held for some time. On the other hand, the financial statement of the Agricultural Association contains a disbursement item of $[illegible] for "Premiums on Live Stock, Agricultural, Horticultural and Mechanical Departments."

What the actual facts at present probably will be determined by an investigation through your Department. All that I can do is to advise you as to the law. As to that my advice is, that if the Association holds an agricultural fair with exhibits, then it is entitled to its share of the appropriation; but if it simply operates a race track, with no fair and no exhibits, then then it is not entitled to share in the appropriation.

I return you the Association's request for its share of the appropriation, together with the Association's financial statement.

I am also sending a copy of this opinion to the Law and Order Committee of the Ministerial Union, as they asked me for an opinion upon the question at the same time that you did.

Very truly yours,

ARTHUR C. RITCHIE, *Attorney General.*

DISBURSEMENTS OF MARYLAND COUNCIL OF DEFENSE—
QUORUM.

March 11, 1918.

Hon. Francis E. Waters,
Chairman, Maryland Council of Defense,
Second Union Trust Building,
Baltimore, Maryland.

DEAR GEN. WATERS: I beg to reply to your favor of March 7th.

When the Executive Committee of the Maryland Council of Defense acts upon disbursements, its membership, as you say, consists of seven, the Comptroller and the Treasurer being in such case added to the regular five members. This is provided for by the Act creating the Council (Act 1917, Ch. 24, Sec. 3), and also by the War Loan of 1917 Act (Act 1917, Ch. 3, Sec. 21).

This does not mean, however, that the presence of either the Comptroller or the Treasurer is necessary in order to act upon disbursements. It simply means that the Committee's membership, when disbursements are to be acted upon, is seven, and any four who are present at a duly notified meeting will constitute a quorum, and such quorum is authorized to make disbursements under the law. The fact that neither the Comptroller nor the Treasurer is one of the four is immaterial.

Very truly yours,

WILLIAM H. ADKINS, *Attorney General.*

LEWIS COOPERSMITH, *Deputy Attorney General.*

March 16, 1918.

Hon. William P. Jackson,
State Treasurer,
Annapolis, Maryland.

DEAR MR. JACKSON: I beg to reply to your favor of March 6th, enclosing a letter from the Bank Trust Company of Taneytown, and asking whether that company is required to continue

its deposit with you of $34,000 par value United Railways and Electric Company bonds.

This deposit was made under sections 106, 110, 111 and 115 of Article 32 of Bagby's Code, which require all trust companies to deposit with the State Treasurer securities of the character specified in said sections to the amount in value of fifteen per centum of the paid up capital stock, but never less than $30,000, the same to constitute a trust fund for the protection of depositors.

The law requires this deposit to be maintained as long as the company continues in business.

I return you the letter from the Home Trust Company.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

I understand [illegible] National Bank of [illegible] to the department [illegible] the State Accident Fund [illegible] of the [illegible] Company, and the Bank wishes to withdraw this [illegible] and substitute United States Government bonds therefor. Now ask, whether this substitution may be made without withdrawing the money and redepositing it.

I think that the substitution can be made without a withdrawal and redeposit of the money, under the authority of the last sentence of the Act of 1916, Chap. 115.

The Bank should give its own bond, conditioned for the safe keeping of the money (the form for which I sent you under date of July 31, 1916), and the securities deposited should, of course, be registered in accordance with the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

BUDGET BILL—APPROPRIATION TO MARYLAND HOUSE OF CORRECTION.

E. D. Case, Esq., *June 13, 1918.*
Sec. Board of Prison Control,
Baltimore, Maryland.

DEAR SIR:—I have your letter of June 11th, asking whether you are compelled to purchase the Hamilton farm tract of land at the acreage and at the price per acre set out in the Budget Bill, or whether you can exceed that price or buy more or less land.

The item in the Budget Bill gives to the House of Correction $12,000 "For purchase of the Hamilton farm tract of land, 200 acres, at $60.00 per acre, described."

The third section of the Budget Bill provides that the items and amounts following the sums appropriated do not constitute appropriations, but represent the initial plan of distribution and apportionment, and that any Board may submit to the Governor an amended schedule for the distribution of the appropriations made to it, and if he approves it, then the appropriation can be expended in accordance with such amended schedule.

Your $12,000 appropriation is not absolutely specific in accordance with Section 3, but, I think, under this Section, while you are limited to the general tract of land known as the Hamilton farm tract, you can purchase a portion of it at a higher price than $60.00 an acre, provided, of course, you do not exceed the entire appropriation, and provided you obtain the sanction of the Governor, as required by the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FEES AND FINES COLLECTED BY SHERIFF OF BALTIMORE COUNTY.

June 28, 1918.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: I have your letter of June 26th, enclosing letter and partial report from the State Auditor, concerning the distribution of fees and fines by the sheriff of Baltimore County.

The fees and expenses of the Sheriff of Baltimore County are regulated by the Act of 1914, Chap. 281, on which the Attorney General gave an opinion under date of January 22nd, 1917. This opinion was to the effect that the Sheriff may retain, out of the fees of his office, $2,000 for his annual salary, his other expenses which are not to exceed $2,500, and the expense of transferring prisoners, not to exceed $500, and these amounts thus retained by him, viz: his salary, his actual other expenses and the actual expense of transferring prisoners, in neither case exceeding the amounts named, are to be paid by him to the County Commissioners, to reimburse the County for such amounts already allowed to him under the Act of 1914.

There are, then, two questions arise in which the State is interested:

1st—Whether the Sheriff's actual expenses were less than the $2,500 and the $500 paid him by the County Commissioners. If so, he must pay over to the State the excess received by him from the County Commissioners.

[illegible] v. [illegible] County, 121 Md. 606; 87 Atl. [illegible]; Op. [illegible]

2nd—Whether the fees which he received from all sources exceeded the sum of $5,000 paid him by the County Commissioners. If this did, then such excess must be paid by him to the State, instead of to the County Commissioners.

By the statement of the State Auditor, it appears that the Sheriff, in the year 1917, collected $9,107.17, which is $2,107.17 more than he was entitled to receive for his salary and other

expenses, and if made up solely of fees, this difference should have been paid to the State. It appears, however, from Mr. Ray's report, that these figures represent the entire collections of the Sheriff's office, including, not only fees, but one-half of the fines collected by the Sheriff, and to be returned to the County under the local law, and from his report this half of the fines makes up the bulk of the collections.

The State has no interest in the fines, as there is nothing in the Constitution which requires their payment, and both the general law and the local law provide for their payment for county purposes.

Code, Art. 23, Secs. 2 and 12.
Act of 1900, Chap. 146.

There is, therefore, nothing in the fees of the Sheriff of Baltimore County, up to Nov. 30, 1917, the date of the end of Mr. Ray's report, in which the State is interested, except the question of whether the Sheriff actually expended for the expenses of his office, and for transferring prisoners, less than the $3,000 and the $800 paid by the County Commissioners for said purposes, in which case, as I have stated above, the State would be entitled to the unexpended amount.

Whether there is any necessity for having any such examination made by the State Auditor is a matter which you can readily see from the Sheriff's report for 1917, which should show the amounts received in fees and turned over to the County Commissioners, the amounts received from the County Commissioners and the amount of actual office expenses and the actual cost of transferring prisoners, incurred and paid.

Very truly yours,

(Signed) Wm. H. Lamb, Attorney General.

BONDS OF TREASURER OF HARFORD COUNTY.

July 24, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your letter of July 20th in which you enclose the bond presented for approval by the Treasurer of Harford County and ask whether this bond should not be signed by an officer of the bonding company or have attached the certificate of the appointment of the Attorney-in-fact who signs it.

I agree with you that either one or the other of these things should be done by the bonding company before the bond is approved. There is nothing to show whether the Attorney-in-fact who signs the bond has been appointed Attorney-in-fact by the company to sign such a bond. In such case he should file with the bond a power of attorney from the company giving him authority to execute such an instrument or the bond itself should be executed by an officer of the company.

I return the bond and the letter of the Comptroller.

Very truly yours,

[illegible]

[illegible]

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of July 23, in which you inquire whether the income from the State Bonds to be sold on August 5, 1918, is free from Federal taxes.

Paragraph 6002(b) of the United States Compiled Statutes, as enacted by the Act of September 8, 1916, Chapter 463, and amended by the Act of October 3, 1917, Chapter 63, in the sec

tion of the Federal Income Law which provides for exemptions from the several Federal Income taxes. Among the other income which is there stated to be exempt is "interest upon the obligations of a State or any political subdivision thereof."

The income upon the contemplated bond issues of the State of Maryland is, therefore, free from the Federal Income taxes.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

TRANSPORTATION OF STATE OFFICIALS—WHEN PROPER CHARGE AGAINST STATE.

July 20, 1925.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of July 20th in which you ask whether the cost of mileage books or commutation tickets used by State officials for transportation from their homes to their State offices is a proper charge in the expense accounts of the State officers or employees.

I wish I could answer this question in the affirmative as I use a commutation ticket myself from my home to these offices. Such a charge, however, is clearly improper. The only traveling expenses authorized are those incurred by State officials going somewhere on State business. If a State official chooses or happens to live at a distance from the location of his office the expense of going from his home to his office is one of the things which he should consider before he accepts the office. Such expense should not be charged against the State.

In the case of commutation tickets or mileage books the expense account should show only the mileage or the proportionate part of the commutation fare actually used for traveling on State business and should exclude the amount used in going from the home of the holder to the State office.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

BOND OF TREASURER OF HARFORD COUNTY.

August 4, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your letter of August 1st enclosing bond of William A. Wheeler, Treasurer of Harford County with power of attorney to the attorney in fact of the bonding company authorizing him to sign it.

I do not think the bond is set in proper form for approval. The object of attaching a power of attorney is to show that the attorney in fact was authorized to sign the bond *on the date on which he signed it.* The Assistant Secretary of the company certifies the appointment of the attorney in fact by his certificate dated February 14, 1916. The bond was executed on April 29, 1918. There is nothing to show whether or not this power of attorney has been revoked during this period. The certificate of the Secretary should be dated on the same date as the date of the bond, namely, April 29, 1918.

When a certificate dated as above stated has been attached to the bond, the power of attorney and certificate should be recorded together. It will then be ready for your approval.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

ROAD LOAN OF 1918. VOUCHERS. ISSUANCE OF BONDS.

August 13, 1918.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: With reference to the State of Maryland bonds, thus described—

$1,000,000 part of "Road Loan of 1918," dated August 15, 1918, 4½% Bonds, $1,000 denomination, maturing serially from August 15, 1921, to August 15, 1938,—

which were awarded to the successful bidders at public sale on August 9, 1918, I beg to advise you as follows:

1. The said bonds are authorized by the Act of the General Assembly of Maryland of 1918, Chap. 295.

2. The said Act of Assembly is valid and constitutional.

3. All of the formalities prescribed by law for the issue of said bonds have been legally and duly complied with.

4. The said bonds have been duly delivered to the purchasers referred to, and the purchase price fully paid.

5. The said bonds, as issued, are in form in accordance with said Act of Assembly, are duly signed by the proper officers, and are the legal, valid and binding obligation of the State of Maryland.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

STATE LOAN OF 1918—VALIDITY—LEGALITY OF ISSUE.

August 15, 1918.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: With reference to the State of Maryland bonds, thus described

> $1,000,000 "State Loan of 1918," dated August 15, 1918, 4½% Bonds, $1,000 denomination, maturing serially from August 15, 1921, to August 15, 1933,

which were awarded to the successful bidders at public sale on August 9, 1918, I beg to advise you as follows:

1. The said bonds are authorized by the Act of the General Assembly of Maryland of 1918, Chap. 295.

2. The said Act of Assembly is valid and constitutional.

3. All of the formalities prescribed by law for the issue of said bonds have been legally and duly complied with.

4. The said bonds have been duly delivered to the purchasers referred to, and the purchase price fully paid.

5. The said bonds, as issued, are in form in accordance with said Act of Assembly, are duly signed by the proper officers, and are the legal, valid and binding obligation of the State of Maryland.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

COMMISSIONS OF CLERKS OF COURTS FOR COLLECTING GRANTEES' LICENSES.

September 5, 1918.

J. F. Ralph, Esqr.
Clerk, Circuit Court,
Centreville, Md.

MY DEAR MR. RALPH: I have your letter of August 30th, in which you ask what are the fees and commissions of clerks of the courts of the State for the issuance of Grantees' Licenses under the provisions of Chap. 166 of the Acts of 1918, with special reference to Art. 17, Sec. 10 of the Code, and Art. 89, Sec. 78, which is Sec. 7 of Chap. 166 of the Acts of 1918.

You are entitled to collect twenty-five cents from each non-resident licensee, and ten cents from each resident licensee for the issuing of licenses. When you transmit the license fund to the Comptroller, you are entitled to deduct from this five per cent for the collection.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

BONDS OF TREASURER AND WORKS COMMISSIONERS.

September 12, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your letter of September 13th enclosing a certified copy of the bond of Henry E. Pilchard, Treasurer and Clerk to the County Commissioners

of Worcester County. You ask my opinion whether this bond is in proper form, and state that, in your opinion, it is not.

The bond might be sufficient, but I cannot advise you to approve it. Article 81, Section 34, of the Annotated Code sets out specifically the condition of the separate bond to be given by every collector of State taxes. This condition is

> "that if the above bound . . . . . shall well and faithfully execute his office and shall account for to the Comptroller and pay to the Treasurer of the State the several sums of money which he shall receive for the State, or be answerable for by law, at such times as the law shall direct, then the said obligation to be void, otherwise to remain in full force and effect."

I cannot advise you to accept a bond containing any other provision but that set out in the Statute. The condition in Mr. Pilchard's bond is not the statutory one.

In addition to this in the certified copy there are several errors such as the omission of the word "appointed" or "elected" after the word "duly," and the omission of Mr. Pilchard's name after the word "bounden".

I return you the certified copy of the bond herewith.

Very truly yours,

OGLE MARBURY, Deputy Attorney General.

WAR LOANS OF 1917—APPROPRIATIONS BY COMMITTEE ON DEFENSE BONDS—TRUST COSTS.

September 13, 1918.

Hon. Francis E. Walter,
Chairman, Maryland Council of Defense,
Sun Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I have your letter of September 10th in which you ask me whether or not the Executive Committee of the Maryland Council of Defense has authority to appropriate the

sum of $[illegible]$ from the proceeds of the "War Loan of 1917" to the Maryland State Board of Agriculture to be used in the eradication of bovine tuberculosis in Maryland.

The War Loan of 1917 was created by Chapter [illegible] of the Laws of 1917. The Executive Committee of the Maryland [illegible] of Defense is given authority by Section 7 of Chapter [illegible] the approval of the Governor, to allocate the purposes for which the proceeds of the loan shall be expended, and to [illegible] authority to apply [illegible] for the purposes [illegible] by the [illegible] Committee [illegible] The purposes for which the "War Loan of 1917" may be expended are set forth in Section [illegible] Certain of these purposes are specifically [illegible] for the [illegible] State [illegible] as follows:

[illegible]

Chapter 3 of the Acts of 1917 to make the appropriation, or such part of it as may be deemed sufficient.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

PUBLIC BUILDINGS LOAN SINKING FUND—CANNOT BE LOANED ON MARKET.

September 20, 1918.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of September 19th enclosing a letter from Hon. William P. Jackson, State Treasurer, in which he suggests that $110,000 now standing to the credit of the Public Buildings Loan Sinking Fund be loaned out on the market. You ask my opinion of the right of the Treasury Officials to loan this money.

The Public Buildings Loan was created by Chapter 228 of the Acts of 1904. The provision in that act relating to the sinking fund is the usual provision in state loan acts and merely directs the County Commissioners and the Mayor and City Council of Baltimore to levy state taxes "to meet the interest and create a sinking fund for the redemption of the 'Public Buildings Loan' created under the provisions of this act."

Article 95 of the Annotated Code, Section 26, provides for the investment of the general sinking fund by the Treasurer "in the overdue bonds and stocks of the State and when such overdue bonds and stocks of the State are not procurable, then in the obligations of the State not yet matured at the best possible rates for the State, or in the securities issued by the United States, or in such other productive stocks or bonds as the Treasurer, the Governor and the Comptroller concurring, may consider safe and reliable at the best possible rates for the State." Section 29 of Article 95 provides for the keeping of a registry of the bonds, certificates of stock and other securities belonging to the

By Section 20, Chapter 284, it is provided that the Executive Committee of the Maryland Council of Defense, by and with the sanction of the Governor, shall from time to time determine the amount or amounts of the loan which from time to time shall be issued. The first requisite, therefore, for the issuance of any certificates of indebtedness under this act is for your Executive Committee to decide the amount of the loan which shall be issued, and to secure the sanction and approval of the Governor to such action. This, of course, should be done by formal resolution and approval. The act then provides for the procedure of selling the loan.

In Section 3 it is provided that in case it becomes necessary to spend any money for any of the purposes for which the loan may be used before the funds necessary from the proceeds of the loan are in hand, the Treasurer, upon the orders of your Executive Committee and with the approval and sanction of the Governor, can advance out of any moneys in the Treasury available and not otherwise appropriated a sum not exceeding $500,000 or any part of such sum. I think this can only be done after the Executive Council, with the approval of the Governor, has determined that expenditure shall be started for a certain amount, as provided in Section 3, and the first step for the Council of Defense to take should, therefore, be to consult with the Governor and secure his approval for the issuance of certain amount of indebtedness.

While it is not necessary in case of State issues it is advisable, in my judgment, that any issue of bonds by the State should be submitted to the Capital Issues Committee of the Federal Reserve Board for their approval, that security issues of securities must be submitted.

Very truly yours,

OGLE MARBURY, Defense Attorney General.

Bonds of The Hagerstown Bank to Transfer. Department,

October 2, 1905.

Hon. Emerson C. Harrington,

Comptroller of Maryland,

Baltimore, Maryland.

My dear Comptroller Harrington: I have your letter of September 17th in which you express doubt given by the President, Directors and Company of the Hagerstown Bank, Hagerstown, Maryland, for the present and future bonds. Now, the corporate name of The Hagerstown Bank of Hagerstown and not whether it is generally accepted. The only thing to be the corporate name of the Bank, Hagerstown, Maryland, Bank, Maryland, approved in 1905."

I have been unable to make up the mind after reading the opinion of Attorney General Worthington, which I have been studying the question for me, I feel very difficult in getting the exact information. He has evidently succeeded in getting it.

I find that all the Bank is generally known as the Hagerstown Bank, that is the corporate name of the Bank, of the corporate name of the Bank, "The President, Directors and Company of the Hagerstown Bank." I find that the law requires the Bank to be authorized to do business under this name, and the bonds issued under the corporate name of the Bank.

It was held in the case of the Bank, in the matter of which it was held that the bonds issued for the state.

It is the opinion of the Bank, in which the bonds issued for the state.

I return the opinion.

BUDGET BILL—APPROPRIATION FOR INSANE PATIENTS—SECTION FIXING HOW CREDITED.

Hon. Hugh A. McMullen, *November 2, 1918.*

State Comptroller,

Annapolis, Maryland.

DEAR MR. MCMULLEN: I apologize for my delay in answering your letter of October 29th. It has been caused by several cases in the Court of Appeals and the lower courts which have taken up my time since I received it.

You quote Section 15 of Article 59 of the Annotated Code, title "Lunatics and Insane," subtitle "Lunacy Commission." This Section provides that for each patient in any State hospital for the insane from Baltimore City or any one of the counties, the City or such county shall pay to the State Treasury the sum of $300. The method of payment as provided therein is for the City or county to bill for the money due by it to the State hospital and to pay the same into the State Treasury at the time and in the manner required for the payment of State taxes collected. The State Treasurer is then required, on the first day of April and October thereafter, to transfer the full amount received from the counties under the provisions of this Article to the credit of the State hospitals for the insane.

I understand from you that some of the counties have several epileptics here in different positions. The Insane Commission have not placed many Baltimore City and Eastern Shore people over the motion of some of these counties. I take these counties statutes (Chapter 500 of the Acts of 1916), known as the Budget Law, came into effect on October 1, 1916, and was evidently what to do in dealing with money coming into the Treasury under the provisions of Section 15, cited above, that all.

The Budget Law is an act making appropriations for the support of the State government and for the aid of State institutions, and it makes appropriations for the fiscal years beginning October 1st and ending September 30th. In the appro-

BUDGET BILL—APPROPRIATION FOR INSANE PATIENTS—SECTION FIXING HOW CREDITED.

Hon. Hugh A. McMullen, *November 2, 1918.*

State Comptroller,

Annapolis, Maryland.

DEAR MR. MCMULLEN: I apologize for my delay in answering your letter of October 29th. It has been caused by several cases in the Court of Appeals and the lower courts which have taken up my time since I received it.

You quote Section 15 of Article 59 of the Annotated Code, title "Lunatics and Insane," subtitle "Lunacy Commission." This Section provides that for each patient in any State hospital for the insane from Baltimore City or any one of the counties, the City or such county shall pay to the State Treasury the sum of $300. The method of payment as provided therein is for the City or county to bill for the money due by it to the State hospital and to pay the same into the State Treasury at the time and in the manner required for the payment of State taxes collected. The State Treasurer is then required, on the first day of April and October thereafter, to transfer the full amount received from the counties under the provisions of this Article to the credit of the State hospitals for the insane.

I understand from you that some of the counties have several epileptics here in different positions. The Insane Commission have not placed many Baltimore City and Eastern Shore people over the motion of some of these counties. I take these counties statutes (Chapter 500 of the Acts of 1916), known as the Budget Law, came into effect on October 1, 1916, and was evidently what to do in dealing with money coming into the Treasury under the provisions of Section 15, cited above, that all.

The Budget Law is an act making appropriations for the support of the State government and for the aid of State institutions, and it makes appropriations for the fiscal years beginning October 1st and ending September 30th. In the appro-

Budget Bill—State Roads Commission—Appropriations—Requisitions.

November 15, 1918.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

Dear Mr. McMullen: I have your letter of November 14th, in which you ask whether the State Roads Commission are to furnish you a requisition in conformity with the Budget, or whether they are to disburse their funds without making a requisition.

The Budget Bill, Chap. 206, appropriates for state aid to roads and for part payment of salaries and expenses out of the general funds $500,000, and for maintenance and part payment of salaries and expenses out of special funds $1,350,000. Schedules follow these appropriations just as they follow appropriations to other state departments. There is then added a provision that the amounts of the schedules are to be paid pro rata out of the appropriations of $500,000 and $1,350,000.

I see no reason why the State Roads Commission should not make a requisition as other boards do, and receive their money from you, and I think this is the method intended by the Legislature.

Very truly yours,

Oscar Mitchell, Deputy Attorney General.

Money Paid Under State Government for State Roads Bureau.

December 9, 1918.

Hon. William P. Jackson,
State Treasurer,
Annapolis, Maryland.

My Dear Mr. Jackson: I have your letter of December 4th, in which you enclose communications in the matter of check for $11,084,000 received by you from the United States Treas-

ury Department. You ask whether this check should be turned over to the State Board of Health.

This money is appropriated to the States for the use of their respective boards or departments of health. The regulations for its use contemplate that it should be expended under the supervision of the United States Interdepartmental Social Hygiene Board. This Board has provided for its use and apportionment which the State Boards of Health are to execute. I think, therefore, that it was the intention of the Act of Congress that this money should be paid over by you directly to the State Board of Health, and that the Board should account for it to the Federal agency. You are requesting and depositing this money in accordance with the Act of Congress, and it is the opinion of the Attorney General that it is the proper method of turning it over in full.

I think, however, it would be proper to suggest to you that a bond to the State Board of Health, with the authority to the Board to expend the money in accordance with the Act of Congress, would be a proper method of the use of the money by the State Board of Health in accordance with the Act of Congress. This proper system of paying over the money to the State Board of Health would relieve you of the liability to pay over the money to the State Board of Health without the bond to secure the expenditure of the money in accordance with the legal authorities.

A [illegible]

[illegible]

Mr. [illegible]

[illegible]

Hon. H. [illegible] M. M. [illegible] *Director*

[illegible]

Dear Mr. M. [illegible] I have received your letter of the [illegible] in which you request an opinion as to the propriety of paying over the money appropriated by the Act of Congress [illegible] to the State Board of Health.

I have talked with Mr. Stephen C. Lattimore, the Attorney General, and he concurs in the opinion that the money should be paid over to the State Board of Health.

number of papers have been filed for record in the record office of the Superior Court, and recording fees have been paid the Clerk by the parties leaving these papers. It is a physical impossibility for the Clerk to have all of these papers recorded by the end of the year, and, therefore, he has in his hands the money paid him, which he must use for this purpose, but which he cannot use before the expiration of the year. He wishes to know, therefore, whether he can retain this money, which he can estimate with reasonable certainty, and use it in recording these papers, and then account for it within a reasonable period after the end of the year, when the work is done.

I think he can do this. The Constitution, of course, provides that fee officers must pay over to the Treasurer of the State the amount of the excess received during any year over and above the sum which such officers are by law entitled to retain for their salary or compensation, and for the expenses of their offices. The money which Mr. Little desires to retain is not such excess, but is part of the expenses of his office which he has not been able to expend, but which it is his duty to expend, and which the owners of the Deeds and other papers left with him for record have a right to compel him to expend for the purpose of recording these papers.

I think, therefore, that a proper method of procedure is the one outlined by Mr. Little, that he deduct from the amount in his hands an amount which he estimates as closely as possible will cover the cost of recording the unrecorded papers left with him during the year. He will then pay over the balance to you, and out of the sum deducted and retained, he will pay the cost of recording these papers, and if there is any difference between the estimate and the actual cost, and this difference is in favor of the State, he will pay over the balance to the State within a reasonable time after the work has been done.

I am sending a copy of this letter to Mr. Little.

Very truly yours,

DENNIS MACNEILL, *Acting Attorney General.*

LICENSES.

subject to an occupation license tax in Maryland under the Act of 1916, Chap. 704. The company in question is, I understand, a Maryland corporation, but its business is carried on entirely in the State of Texas.

The only section of the Act of 1916, Chap. 704, which could possibly apply to this company, is section 184, relating to corporations carrying on construction work. I do not think, however, that this section embraces a shipbuilding company which does no part of its business in this State, and it is, therefore, my opinion, upon the facts presented to me, that the Lone Star Shipbuilding Company is not subject to any license tax under the Act of 1916, Chapter 704.

I return you the letter from the company's attorneys.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—GRAIN COMPANIES.

April 12, 1918.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR MR. DEUPERT: I beg to reply to your favor of April 9th, enclosing letter from the attorneys for the Norris Grain Company, in which they ask whether that company is required to take out an occupation license tax in this State. The Norris Grain Company is, I understand, a Maryland corporation, whose business affairs "are practically all managed from Chicago at present." It has no stock in Maryland and does not deal in grain on its own account.

If the company acts as grain broker, then a license is required under Bagby's Code, Art. 56, sec. 156; and if it sells in this State "any concentrated commercial feeding stuff," then a license is required under Bagby's Code, Art. 18, sec. 84.

LICENSES—PETTY LOAN BROKERS.

April 27, 1918.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Court House, Baltimore, Md.

DEAR MR. DEUPERT: I was asked by your office some days ago to give you my opinion as to the license fees now required of petty loan brokers.

The present law providing licenses for petty loan brokers is contained in Bagby's Code, Art. 56, Sections 214-216 and Article 19, Section 7. The license fee required is $50 per annum, and the licenses expire on May 1st next.

The Act of 1918, Chapter 88, repeals this law, and enacts what is known as the Uniform Small Loan Law. This Act provides for the regulation of the business of making loans of $300 or less, at a greater rate of interest than 6 per cent. per annum, and requires a license fee therefor of $50 per annum, the licenses to expire on the first day of May succeeding their issuance. This law, however, does not take effect until June 1, 1918. The result, of course, is that until June 1st, 1918, the present law will continue in force.

Petty loan brokers cannot lawfully conduct their business without the license required by the present law. If they do, they are guilty of a misdemeanor, and their loans are made void. Therefore, any petty loan broker who desires to conduct his business lawfully from May 1, 1918, when the existing licenses expire, until June 1, 1918, when the Act of 1918, Chap. 88, takes effect, will have to take out his license under the present law, and pay to the Clerk of Court the fee of $50 provided therefor.

On June 1, 1918, the new loan will take effect. This law, as already stated, repeals the present law entirely, and makes it unlawful to conduct the small loan business, at a greater rate of interest than 6 per cent. per annum, unless the conditions of the new law are complied with. One of these conditions is that a license fee of $50 per annum must be paid to the Bank Com

missioner, and a license obtained from him, the Bank Commissioner being given supervision over the small loan business under the new law. The result is that small loan brokers will have to secure licenses on June 1, 1918, from the Bank Commissioner and pay him the fee of $50 provided therefor.

This will undoubtedly work a hardship upon [illegible] loan brokers who desire to continue their business during the month of May, 1918, [illegible] will be required to pay the [illegible] Comp[illegible] $50 for their licenses on May 1st, under the provisions [illegible] which [illegible] until June, and on June 1st they [illegible] be required to pay [illegible] fee to the Bank Commissioner for the licenses which, under the new law, will be [illegible] June 1st. [illegible]

The [illegible] under the present [illegible] rate the [illegible] May [illegible] computing [illegible] licenses [illegible] Section 21 A [illegible] abatement [illegible] made of said license [illegible] issued [illegible]

The [illegible] provides in Section 2 [illegible] license [illegible] for a period of less than twelve [illegible] license fee shall be [illegible] according to the number of [illegible] the [illegible] As already stated, the [illegible] under the [illegible] on the first day of the succeeding [illegible] therefore, the fees charged [illegible] the [illegible] June 1st will be [illegible] the basis of [illegible]

[illegible]

A[illegible] C. R[illegible], [illegible]

[illegible]

[illegible] [illegible]

[illegible]

[illegible]

Dear Mr. [illegible]: I hope you will pardon [illegible] [illegible] March 11th, in which you [illegible]

opinion whether parties in Garrett county who solicit and receive orders for goods sold by wholesale houses, which orders are later filled by such wholesale houses, are required to take out licenses in Maryland. My delay in answering your inquiry has been due, as I wrote you on March 19, to pressure of work incident to the Legislature.

It is difficult to advise you on the subject, without knowing more definitely the exact manner in which the business to which you refer is conducted.

If the wholesale houses in question are located in this State, although not in Garrett County, then I think that traders' licenses are required under Bagby's Code, Art. 56, sec. 55, as amended by the Acts of 1916, Ch. 652.

If, however, the houses are located outside this State, then it would seem that traders' licenses ordinarily cannot be required, under

Robbins vs. Shelby County, 120 U. S. 694;
Corson vs. Maryland, 120 U. S. 502, reversing 57 Md. 351.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS—CORPORATIONS MUST HAVE OVER FIFTY OF LICENSES IN SAME COUNTY.

May 2, 1918.

Hon. Hugh L. McMullen,
State Comptroller,
Baltimore, Maryland.

DEAR MR. MCMULLEN:—I have your letter of May 1st, enclosing letter from Mr. Edward O. Cash, clerk of the Circuit Court for Carroll County.

Under Bagby's Code, Art. 56, Secs. 55, 58, 59 and 60, the latter having been amended by the Act of 1916, Chap. 652, a trader's license will be good for more than one place of busi-

LICENSES—GARAGE—REPAIR SHOP.

June 1, 1918.

Charles C. Wallace, Esqr.
Secy. State Tax Commission,
Cor. Lexington and Eutaw Streets,
Baltimore, Maryland.

DEAR MR. WALLACE: I have your letter of May 31st, in which you ask my opinion as to whether the proprietor of a building, two floors of which are used as a garage and the third floor of which is used as a repair shop for automobiles, is required to pay a license fee based upon the square feet of all three floors.

The provisions for the license are contained in Sec. 166 of Chap. 204 of the Acts of the General Assembly of Maryland of 1916.

If the third floor of the building is used only as a repair shop where cars are not kept for sale or for hire, or for storage, I do not think that the license fee can include the floor space so used. If, however, the business of repairing motor vehicles is part of the storage business, and cars, after being repaired, are kept in storage or for sale or for hire, then the license fee should include that floor space as well as the first and second floors.

Sec. 166, Chap. 204, Acts of 1916.

Very truly yours,

ATTORNEY GENERAL.

LICENSES—PARK—DANCING PAVILION.

June 15, 1918.

Charles E. Evans, Esqr.
Clerk, Board of Comrs. for Washington Co.,
Hagerstown, Maryland.

DEAR SIR: I have your letter of May 29th, asking whether the proprietor of an amusement park and dancing pavilion, who

operates a check room in connection with the other enterprise is required to take out a license under Sec. 172 of Chap. 24 of the Acts of 1916.

This Section provides that persons conducting a check room for the deposit of packages and baggage" shall pay a privilege tax, and the amount of license tax is based on the rates charged.

In my opinion this Section was not intended to impose a license tax on those conducting check rooms merely for the purpose of safeguarding temporarily hats, coats and other articles of wearing apparel, which are being worn and are not wrapped in packages.

The check room mentioned in your letter is not covered by the law, and I do not think that any license is required.

Very truly yours,

[illegible] E. Brown, [illegible]

[illegible] State Wide Dog Law.

Hon. [illegible]

Dear Sir:

Enclosed [illegible]

Law of Dog Wide.

[illegible] June 1, 1918, [illegible] authorized by the [illegible] of Ellwood City [illegible] Chap. 107 of the Acts of 1918, [illegible] State Wide Dog Law.

The [illegible] Ellwood City [illegible] Chap. [illegible] of the Acts of 1917. [illegible]

[illegible] Ellwood City [illegible] all [illegible] to regulate or prevent the [illegible] within the corporate limits of Ellwood City [illegible] regulations [illegible] prevent the going at large [illegible] and to provide for killing the same in default of payment [illegible] tax."

By virtue of the authority so conferred, the Commissioners of Ellicott City have passed an ordinance taxing the ownership of dogs.

Sec. 195 of Art. 81 of the Annotated Code, as amended by Chap. 197 of the Acts of 1918, provides for a license fee to be paid by owners of dogs, and also provides that "The said license or fee shall be the *only* license or tax required for the ownership or keeping of said dog or dogs."

Sec. 201 provides that "all laws or parts of laws, whether public general laws or public local laws, inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

I think that the local law contained in Sec. 81 E of Chap. 836 of the Acts of 1914, so far as it authorizes a tax, is unquestionably in conflict with Chap. 197 of the Acts of 1918, and to that extent has been repealed. It follows, of course, that the provisions of the Ordinance of Ellicott City imposing the tax on the ownership of dogs have also become void.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR—PERIODS OF ISSUE—DETERMINATION PREMISES—SUSPENSION OF ORDERS.

June 18, 1918.

William Pepper Constable, Esq., President,
Board of Liquor License Commissioners,
Law Court House, Baltimore, Maryland.

DEAR SIR: I have your recent letter, requesting my opinion on certain questions involving the construction of the Liquor Laws. You ask

1. "Can a wholesale trader's or dealer's grant which has been duly issued by the Board be used after the last day of May following its issue and a license issued thereupon; or are such grants null and void after such date?

By the provisions of Chap. 125 of the Acts of 1915, [illegible] sale druggists' licenses, wholesale traders' licenses or licenses for bottlers of fermented liquors were directed to be issued by your Board in the same manner in general as retail [illegible] have been directed to issued. Paragraphs 67-8 of Article [illegible] Code were not changed by that Act, and since the passage [illegible] Act it is now applicable to wholesale licenses. It provides [illegible] if your Board decide to grant the license, passed [illegible] shall to try the applicant and make decision in writing, and [illegible] applicant shall, within thirty days from the date [illegible] license granted is to be in force, effective, produce to the [illegible] the Court of Appeal. Then the most notification and [illegible] Code the [illegible] licence provided for the [illegible] licence granted to be in force by the said Board.

It is clear under the Section that grants of licenses wholesale [illegible] from the date [illegible] effective.

2. Has the fee [illegible] grant and issue of licenses [illegible] Inasmuch as [illegible] the Act [illegible] for [illegible] how the [illegible] and being [illegible]

3. May [illegible] respectively [illegible]

Paragraph [illegible] Chapter [illegible] and [illegible] and there [illegible] this [illegible] if issued [illegible] month for which [illegible] charge for [illegible] the first day of M[illegible] charge the licence.

"[illegible] licence shall expire

The six and twelve month licenses provided for in paragraph 672 were not changed by the Act of 1918, but paragraph 672 referred, before the passage of that Act, and I think, refers since, to the kind of licenses which the Board had power to grant before the passage of that Act, viz: those licenses usually called retail licenses. It did not, before the passage of the Act of 1918, in any way effect wholesale licenses, and the re-enactment of the provisions above quoted in the Act of 1918, seems to show conclusively that wholesale licenses are governed by the quoted provisions of paragraph 688, and as to such licenses can have authority to grant them for proportionate periods of the year.

"Can a grant duly issued from the first day of May for a twelve months' license be held and presented to the Board at the time of a renewal Plea in November following the date of the issue and a six months' license taken out thereupon?"

I have already answered this question in the negative in my answer to question No. 1.

"Can a wholesale licensee selling wholesale traders or dealers' licenses give such a drink of spirituous or fermented liquor to be drunk on the premises to a customer who had purchased it bulk or gross?"

A wholesale licensee is not permitted to dispense of liquor by the drink on the licensee's premises.

"Are we entitled that a number of wholesale traders or dealers have canvassers on the streets soliciting trade. Is such solicitation authorized?"

Ordinance No. 246 of the Mayor and City Council of Baltimore, approved March 26, 1894, prohibits solicitation on the street.

Very truly yours,

ARMAND C. ROLLINS, *Attorney General.*

LICENSES—STATE-WIDE DOG LAW—EFFECT ON LOCAL LICENSES.

July 5, 1915.

Hon. F. Walters, Esq., Counsel for
Town Commissioners of Westminster Co.,
Baltimore, Md.

MY DEAR MR. WALTERS:—I am in receipt of your letter of July 2nd.

You are correct in your understanding of the opinion of this office upon the effect of the State-wide dog law, Chapter 147 of the Acts of 1915. It provides that the licenses or tax required by it shall be the only license or tax required for the ownership or keeping of any dog, and further that all laws or parts of laws, whether general or local, inconsistent with its provisions are hereby repealed to the extent of such inconsistency. This means that in the counties of Maryland the tax prescribed by Chapter 147 of the Acts of 1915 is since July 1, 1915, the only dog tax required for the keeping of a dog.

You ask if municipalities can collect, in addition to the State-wide tax and licenses, after July 1st, another tax under some local law. I do not find in the Acts of 1915 any provision which would authorize municipalities to collect a tax on dogs and which would authorize municipalities to collect a license tax for the keeping of a dog. The following taxes are imposed by the State-wide law, which municipalities can collect:

I do not see how any municipality can differentiate, and from the purposes for which taxes are collected and expended as it matters not [illegible] the taxes [illegible] upon the same class of property which the [illegible] pay the county tax.

The State-wide law gives [illegible] to municipalities to the [illegible] July to July [illegible] the State tax [illegible] under your local law [illegible] required to pay the tax [illegible] the State-wide law [illegible] paying double during the [illegible]

six months of 1918 and is getting double protection during this period.

You will, of course, know whether your Commissioners have power to repay out of any other funds persons who have paid the local tax. If they have not I know of no way you can adjust it unless the next Legislature passes an act authorizing such refund. This, however, is, of course, a matter of county policy with which I have nothing to do.

I regret very much that the situation is what it is but, of course, I can only interpret the laws as I find them.

Very truly yours,

[illegible] Attorney General.

[illegible] State Wide Dog Law—Enforcement of Local Laws.

[illegible], July 12, 1920.

W. E. Hamilton, Esq.
Secretary to Governor,
Harrodsburg, Kentucky.

My dear Mr. Hamilton: I have your letter of July 8th in which you make certain inquiries as to the effect of the State Wide Dog Law, with particular reference to the continued operation of local ordinances on the subject of dogs running at large at night.

Chapter 127 of the Acts of 1918, known as "The State Wide Dog Law," does not repeal all similar dog laws. It repeals all laws inconsistent with it. It does provide that the license or tax established therein "shall be the only license or tax required for the ownership or keeping" of any dog.

A local law or ordinance regulating the running at large of dogs, passed in pursuance of a proper charter provision, and not in disagreement with a local tax or tax necessarily dependent upon the collection of such tax for its enforcement, is not necessarily inconsistent with the State Wide Dog Law. I cannot, however, pass generally upon all inquiries of this character be-

cause each case depends upon the particular local law or the particular ordinance and must be considered by itself. Neither can I undertake to pass upon town charters or local ordinances except where some State question is involved, as practically every town in Maryland has its city solicitor or town counsel or corporation attorney for this purpose.

The State Wide Dog Law is intended to be enforced by the ordinary and regular officers of the law.

Very truly yours,

O. H. Murray, Acting Attorney General.

—

[illegible]

W. H. [illegible]

[illegible]

Wm. [illegible], Esq.,

President Board [illegible]

[illegible]

Dear Sir: [illegible] the law [illegible] subject [illegible].

I am not [illegible] of regulating [illegible] your board, and [illegible] to the public welfare is a question [illegible] into [illegible].

[illegible] Section 12 of Article [illegible] the [illegible] of Maryland, which provides that

"No [illegible] under the age of eighteen years shall be [illegible] to work in, about or [illegible] [illegible] or in any [illegible]

brewery or other establishment where malt or alcoholic liquors are manufactured, packed, wrapped or bottled [illegible]."

There does not appear to be any prohibition against employing persons between 18 and 21 years of age by wholesale liquor dealers since Section 22 of Article 100 only provides that no minor under twenty-one years of age shall be employed in any saloon or bar-room where intoxicating liquors are sold. The words "saloon" and "bar-room" are universally applied in this country to places where liquor is sold at retail. The General Assembly did not, therefore, intend Section 22 of the Act to apply to wholesale liquor dealers, and it does not prohibit the employment of a minor under 21 years of age by such dealers on premises where no liquor is sold at retail.

Very truly yours,

[illegible] Attorney General.

[illegible]

[illegible]

Hon. E. Neil, Esq.
Clerk, Comptroller's
Department of
Maryland.

My dear Mr. Neil:—I have your letter of July 13th, asking whether you are entitled to deduct 5% from the notes collected by you for bounties" [illegible] and returning over the money to the State Comptroller.

Article 17, Section 10, Bagby's Code provides that "for receiving and paying over all public moneys received by them, [illegible] shall receive where [illegible] Article 30, Section 12 allows a [illegible] tains this provision under the salaries for allowed clerks. There is also a provision in Article 30, Section 12 allowing a clerk to charge "for granting the license of any hotel, tavern, restaurant, [illegible] This

last named charge is a charge to be made to the person applying for the license whereas the 5% is a commission paid by the State out of the license fees turned over. Chapter 168 of the Acts of 1918, amending Article 99 of Bagby's Code, adds a new section known as Section 67. This section provides for hunters' licenses and contains the following provision:

> "In addition to the license fee so received, the clerk issuing the same shall collect and retain the sum of twenty-five cents from each non-resident licensee, and the sum of ten cents from each resident licensee for issuing the same, and shall deliver the license properly executed to the applicant in person or by mail without further cost."

This provision of Section 67 takes the place, so far as hunters' licenses are concerned, of the fifty cent charge on licenses provided by Section 12 of Article 56. It does not, in my opinion, take the place of the 5% commission allowed by Section 4 of Article 56 and by Article 17, Section 19.

The State Game Warden has raised [illegible] whether the provisions of Section 70 of Article 99 as enacted by Chapter 168 of the Acts of 1918 do not require clerks to turn over the gross amount without the 5% deduction. These provisions are:

> "The Clerks of the Circuit Courts of the counties [illegible] shall [illegible] remit to the Comptroller of the State [illegible] moneys received by them from licenses after deducting the fees herein provided [illegible]."

My attention is also called to Section 4 of Chapter 168 providing that all [illegible] or parts [illegible] inconsistent with the provisions of that Act are repealed. The point made by the State Game Warden is that the provisions of Section 70 are inconsistent with Article 17, Section 19, and, therefore, the latter is repealed. I do not think this point is well taken. Section 70, I think, is intended merely to provide for the keeping and disbursing as a separate fund of "The State Game Protection Fund." The direction to remit to the Comptroller is incidental to this purpose, and is not intended as a repeal of a long-standing provision of the general law.

I am, therefore, of the opinion that you may deduct the 5% from the amount you transmit to the State Comptroller.

Very truly yours,

OLEY MARBURY, *Deputy Attorney General.*

LICENSES—CASH REGISTERS—ADDING MACHINES—TYPEWRITERS—TRADING STAMPS.

July 22, 1918.

Roderic Clark, Esq.,
Supervisor of Assessments,
Cumberland, Maryland.

MY DEAR SIR: I have your letter of July 20th in the matter of licenses to be taken out under the Act of 1916, Chapter 704, by cash register and adding machine companies, typewriter companies and trading stamp companies. You state that certain of these companies are doing business in Allegany County without taking out licenses and you ask whether they are exempt.

The Attorney General, in his opinion given to the Comptroller on July 15, 1916 (Opinions, Volume 1, page 1[illegible]) held that the license fee upon cash register and adding machine companies required by section 167 was for the company and not for the place of business and one license in the State was sufficient. This same ruling applies to typewriter companies under section 165.

It may be that the Burroughs Adding Machine Company and the Remington Typewriter Company have taken out licenses elsewhere in the State. In such case, they would not be required to take out licenses in your County.

I have not sufficient information before me in the matter of the trading stamp company, the Sperry & Hutchinson Company, to determine what they are required to do.

Section 173 of Chapter 704 requires a fifteen hundred dollar license for every person, firm or corporation not a manufacturer or packer and selling or delivering trading stamps to any other person, firm or corporation in connection with sales by such other person, firm or corporation.

The same section also requires a fifty dollar license for every manufacturer or packer who sells trading stamps in connection with the sale of his own manufactured products to any other person, firm or corporation.

I do not know whether the Sperry & Hutchinson Company come in the fifteen hundred dollar class or in the fifty dollar class or whether they are required to pay a license at all, since you do not say exactly what they do, but only one license for the whole State is to be paid by those in either license paying class.

If your county officers will make inquiry at the offices of these companies I have no doubt they will give you the necessary information.

Very truly yours,

[illegible] Attorney General.

License [illegible] Not Required [illegible] Outside [illegible]

[illegible]

[illegible] Esq., August [illegible]
[illegible]
[illegible]

Dear Sir: I have your letter of August 7th in which you ask whether a person keeping a public restaurant or eating place several miles from the incorporated town, should take out a license under Chap. 201 of the Acts of [illegible]

Section [illegible] of the Act provides for licenses for restaurants or eating places in two classes, viz: in cities or towns of less than 8,000 [illegible] cities or towns of 8,000 inhabitants or more.

The Act [illegible] to be construed strictly [illegible] the State [illegible] There is no provision for a license other than in cities or towns. Other sections of the Act [illegible] words "in cities or towns." This indicates that the Legislature [illegible] "cities or towns" in Section [illegible] strictly.

It is my opinion that public restaurants or eating places in the open country, and not in a city or town, are not required to take out a license under this Act.

Very truly yours,

OSCAR MARBURY, *Deputy Attorney General.*

LICENSES—STATE WIDE DOG LAW—RECORDS OF JUSTICES OF PEACE.

Opinion 21, 1918.

E. A. Fuller, Esq.,
Treasurer, Prince George's County,
Upper Marlboro, Maryland.

DEAR SIR:—I have your letter of August 8th in which you ask me whether Justices of the Peace are required to make a detailed report at the end of each month of the dog licenses and tags issued by them under Chapter 127 of the Acts of 1918, which is known as the State Wide Dog Law, or whether the Justices may merely remit the total amount collected with the statement that so certain number of licenses have been issued.

Section 127 of Chapter 127 of the Acts of 1918 provides that the Justices of the Peace issuing a dog license may retain as fees for the issuance of said license, printing the same, and remitting payment therefor, to the County Treasurer, the sum of twenty-five cents. The report and remittance is required to be made by the Justices of the Peace at the end of each month. The County Treasurer is required to make a record of, and otherwise treat said license as though it had been issued from his office, except that he is also required to note upon his record the name of the Justice issuing the license.

I do not see how it is possible for the County Treasurer to make and keep the record required by this section unless the information is furnished him by the Justice of the Peace, and there is no doubt in my mind that the act requires this to be done. The mere remittance of a sum of money with the statement of the number of licenses is insufficient, and is not, therefore

[illegible], in compliance with the law. The section also requires the Justice of the Peace to deliver the books from which he had issued licenses, together with the stubs properly filled out, to the County Treasurer before the first day of July of each year.

Very truly yours,

OGLE MARBURY, Acting Deputy Attorney [illegible]

[illegible]

[illegible]

Henry E. [illegible], Esq.

[illegible]

[illegible]

[illegible]

LICENSES—GARAGE—REPAIR SHOP—STORAGE ROOM.

August 14, 1918.

Preston E. Kay, Esq.,
Clerk,
Rockville, Maryland.

MY DEAR MR. KAY:—I have your letter of August 10th, in which you ask for a construction of Sec. 66 of Chap. 704 of the Acts of 1916, in the matter of garage licenses.

The question you ask has been considered several times by this office before.

If part of the building is used as a repair shop, and this part can easily be separated from the part where cars are kept for sale or for hire, or for storage, the part used for a repair shop is not included in the number of square feet, on the basis on which a license fee is to be taken out.

If the business of repairing motor vehicles is part of the storage business, and cars, after being repaired, are kept in storage, or for sale or for hire, then the license fee should include that portion of the garage in which such cars are so repaired.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

LICENSES—JUNK DEALERS—DEFINITION OF JUNK.

August 14, 1918.

Robert Kaufer, Esq.,
625 Law Building,
Baltimore, Maryland.

MY DEAR MR. KAUFER:—I have your letter of August 13th, in which you inquire the meaning of the word "junk," as it is used in Section 172 of Article 56 of the Code, enacted by Chapter 704 of the Acts of 1916.

In the case of State vs. Shapiro, 131 Md. 165, the question, among others, was raised that the Act was void because of uncertainty, inasmuch as the terms "junk" or "junk dealers" were sufficiently descriptive.

The Court, speaking through Judge Turner, disposed of this contention in the following words:

> "The business of dealing in junk is a distinct and recognized branch of commercial enterprise. Its nature and incidents are commonly known and may be judicially noticed. A junk dealer is one who is engaged in the business of buying and selling junk, which is defined to be old iron or other metal, glass, paper, cordage, or other waste or discarded material, which may be treated or prepared so as to be used again in some form."

It seems to me that this definition from the Court of Appeals, which is the same set forth in that which was given in Webster's Dictionary, is not vague and uncertain, but is very definite.

Your honor doubtless will see the exact question which I wish to know, although in the third paragraph of your letter of some form of [illegible] to put any specific question, please [illegible] I shall be glad to [illegible] within the above definition.

In general, the [illegible] of discarded material which might be treated or prepared so as to be used again in some form, is [illegible] junk.

Very truly yours,

[illegible]

[illegible]

[illegible]

Hon. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

whether it is necessary to have a license to do this, and if so, where you obtain it.

Sections 38-53, both inclusive, of Article 56 of the Code, provide for traders licenses. In Section 38 it is provided that:

> "No person or corporation, other than the grower, maker or manufacturer, shall barter or sell, or otherwise dispose of, or shall offer for sale any goods, chattels, wares or merchandise within this State, without first obtaining a license in the manner herein prescribed."

Tomatoes are goods, chattels, wares or merchandise within the meaning of this Section.

Section 39 provides that any person proposing to sell anything mentioned in Section 38 shall apply to the Clerk of the Circuit Court, for the county in which he proposes to sell, for a license. This license shall be good as a license to offer for sale such goods in any part of the State, provided that it shall not authorize the holder to open, or carry on a stage or fixed place of business.

A wagon has been held to be a fixed place of business, under this Section.

Saltzer vs. State, 81 Md. 502.

A license is based upon the amount of goods generally kept on hand for the principal season of sale, or if the applicant is not previously engaged in business, the amount of stock he expects to keep on hand. The minimum license is $12.00, and it is then graded upwards.

It is my opinion, therefore, that under these provisions of the Code, you will be required to get a license in the county or city where you intend to sell or canvass. Such license, when procured, will permit you to sell or canvass in other counties, provided you do not carry your merchandise around with you, which I suppose you do not intend to do.

Very truly yours,

CHAS. J. MARBURY, Deputy Attorney General.

Licenses—State Wide Dog Law—Local Law for Allegany County.

August 2[illegible], 19[illegible].

John McGill, Jr., Esq.,
County Agent,
Cooperative Extension Work,
Cumberland, Maryland.

Dear Sir:—I have your letter of August 21st, in which you ask me whether the Allegany County Dog Law is to be enforced, or whether it has been superseded by Chap. [illegible] of the Acts of 1918, which is known as "The State Wide Dog L[illegible]

The Allegany County Dog Law is embodied in [illegible] of the Acts of 1916. Sec. 190[illegible] provides for [illegible] tax of $2.00 per year for each female dog, $1.00 [illegible] male dog, $1.00 for each additional [illegible] and a $[illegible] kennel license.

Sec. 190[illegible] requires the County Commissioners [illegible] the [illegible] [illegible] license [illegible]

Sec. 190[illegible] [illegible] the license [illegible] the metal tag [illegible] by them.

Sec. 190[illegible] [illegible] killing of dogs [illegible] ing [illegible] the property [illegible]

Sec. 190[illegible] [illegible] County Commissioners [illegible] such [illegible] of dogs [illegible] order [illegible] County [illegible]

Sec. 190[illegible] [illegible] enforcement [illegible] all the [illegible] under [illegible]

The State Wide Dog Law provides, in Sec. [illegible] license [illegible] dogs [illegible] shall be [illegible]

or tax required for the ownership or keeping of said dog or dogs."

Sections 196 and 197 provide for the issuance of metal tags.

Section 198 authorizes persons to kill dogs seen in the act of pursuing, worrying, wounding or killing poultry or live stock,—the provisions of these sections being similar, in some respects, to those contained in Sec. 1001 of Chap. 500 of the Acts of 1916.

Section 201 of the State Wide Dog Law provides that all laws or parts of laws, whether public general laws or public local laws, inconsistent with the provisions of this Act, are hereby repealed to the extent of such inconsistency.

It is clear that the alternate section of Chap. 500 of the Acts of 1916 depends upon the collection of the license tax and the issuance of the metal tags. There is no doubt that this provision has been repealed by the Acts of 1916, which provides a method for licensing dogs in all parts of the state, and which is intended to supersede all previous provisions on that subject which may have existed before its passage.

I, therefore, advise that no license taxes must be collected and no metal tags issued under the Allegany County Dog Law. Inasmuch as the State Wide Dog Law provides that the license taxes shall be kept in a separate fund in the treasury of the respective counties and shall be used for the payment of damages for the wounding and killing of sheep, poultry or other live stock, I cannot understand why it should not be made an effective measure in Allegany County as the Acts of 1916.

Very truly yours,

UGO MARETTI, Deputy Attorney General.

LICENSES—THEATRICAL PERFORMANCES—CARNIVALS.

August [illegible]

Joshua Clayton, Esq.,
State's Attorney,
Elkton, Maryland.

DEAR MR. CLAYTON: I have your letter of August [illegible], in which you ask what license should be charged [illegible] corporation giving melodramatic theatrical performances which have no connection with moving pictures.

I understand that your inquiry is directed to [illegible] showing [illegible] give nightly and matinee performances in your county through the medium of a company of [illegible] performers.

Section [illegible] of Chap. [illegible] of the Acts of 19[illegible], known as the "McMullen Act," reads as follows:

> "Any person or company of stage players, [illegible], [illegible] performers, rope dancers, [illegible] dancers shall, before exhibiting or performing [illegible] and [illegible] County in this State, pay to the Clerk of the Circuit Court for such County fifty dollars for [illegible] dollars for each [illegible] at his or their [illegible]."

This would seem to cover the question, but you call my attention to a portion of Sec. [illegible] of the Act. This Section is under the heading "Moving Picture Shows and Carnivals," which provides for license fees for moving picture shows at which an admission of [illegible] cents is charged, based on the seating capacity of the place of amusement, and other fees upon the same basis for [illegible] shows, with a still different license when exhibitions are [illegible] three nights or [illegible]. Then follows the proviso:

> "Provided, however, that [illegible] moving picture [illegible] [illegible] other performances [illegible] [illegible] [illegible] [illegible] where such shows [illegible] [illegible] connection with the sale of Patent Medicine, there shall be a license fee of fifty dollars [illegible] per week."

This is followed by a free provision for charity performances, and a provision for carnivals which must take out a license for $100.00.

You suggest that Sec. 105 was not intended to apply to theatrical performances which are conducted nightly, with one or more matinees, and that the quoted part of Sec. 165 does cover this situation.

The question is not free from difficulty, as the two sections apparently conflict in such a case as the one you suggest. Sec. 105, however, is a reenactment of an old section, increasing the fees, and under it all shows and theatrical exhibitions have been accustomed to be licensed.

I think the Legislature intended Sec. 165 to provide for the other kinds of performances which were being given in the State and which did not come under the title "Shows and Theatrical Exhibitions," which you will find over Sec. 105 in the Annotated Code, Vol. 2. These kinds of shows are sufficiently described by the title, "Moving Picture Shows and Carnivals" placed above Sec. 165. The words "Vaudeville Shows or Other Performances" were, I think, intended to mean such shows given in connection with moving picture shows.

This view of the matter is the view of the Comptroller's office, in which was prepared the McMullen Act, and I think should be followed in the absence of a clear intention in the Act to the contrary. I, therefore, advise you that such a performance as you mention in your letter should be licensed under the provisions of Sec. 105, unless it is in connection with a moving picture show.

Very truly yours,

GEORGE MASON, Acting Attorney General.

LICENSES: BUYING AND SELLING TOBACCO. PLEAS. MONTH.

October 11, 1926.

Hon. Hugh A. McMahon,

State Comptroller,

Annapolis, Maryland.

DEAR SIR: I have your letter of October 8th in which you call my attention to Chapter 194 of the Acts of 1926, entitled "An Act to regulate the buying and selling of leaf tobacco in Anne Arundel, Prince George's and Calvert Counties, and to provide a penalty thereby." You ask whether the money arising from the sale of such licenses is payable to the State or the counties mentioned in the act, and whether the licenses issued are good for a month or good during pleasure.

Chapter 194 provides in Section 1:

> "That any person or persons wishing to engage in the business of buying and selling leaf tobacco in manning stripped or unstripped and in small hogsheads in Anne Arundel, Prince George's and Calvert Counties, before doing so shall apply for a license from the Clerk of the Court for the county in which he or they reside, and license to cost him or them Twenty Dollars, and the costs of said license."

The Act is silent as to the disposition of this money by the Clerk, and is also silent as to the duration of the license.

As far back as 1867 the Court of Appeals decided that all Acts of Assembly relating to licenses form one entire system and must be compared together.

State vs. Mitchell.

The license article in the Code is Article 56, Section 1 of that Article (Annotated Code, Volume 1) provides:

> "All licenses for selling goods and chattels shall be issued by the Clerk of the Circuit Court for the County and the Clerk of the Court of Common Pleas in the City of Baltimore, except where a different mode is especially provided, but they are hereby expressly forbidden to date any such license other than the first day of March

each and every year, except when the trader engages in business in any other month subsequent to May first, when such license shall be issued from such month and a ratable sum shall be charged therefor. All licenses granted or issued by said Clerks shall expire the first day of May next thereafter, except licenses for fisheries and horse-racing."

I think, under this general provision, the licenses required by Chapter 194 of the Acts of 1918 are yearly licenses expiring the first of May next after the date of issue.

By Article 17, Sections 8, 9 and 10 it is made the duty of every Clerk of the Court, before the first Monday in June or the first Monday in December, to transmit to the Comptroller a list and account of all public money received by him. Public money includes licenses money. He must pay to the Treasurer the public money on the first Mondays in March, June, September and December in each year, and for receiving and paying it over he is allowed 2%, except the Clerk of the Court of Common Pleas who is allowed 1%.

There is nothing in Chapter 194 to show that the money arising from the sale of licenses provided for by that act is not public money, as contemplated by Article 17. It, therefore, is such public money and should be paid over to the Comptroller for the use of the State.

Very truly yours,

[illegible] Attorney General.

Licenses—State Wide Dog Law—Commissioner Annapolis Municipal Commissioners.

Oct. 28, 1918.

1. *Discretion Board to Issue*
Dog Commissioner,

Annapolis, Maryland.

My Dear Sir:—I have your letter of October 26th, in which you ask for the opinion of this office upon the effect of the Act of 1918, Chapter 187, providing a State-Wide Dog Law,

upon the provision of the Charter of the City of Annapolis, which authorizes enactment of ordinances to prevent the running at large of dogs and to impose an annual tax thereon.

Chap. 197 of the Acts of 1918 repeals all laws inconsistent therewith and provides that the license or fee fixed therein "shall be the only license or tax required for the ownership or keeping" of any dog.

It is quite clear that no town or city can under its charter impose a tax or license fee for the keeping of dogs, and, therefore, the old ordinance of the City of Annapolis providing a license of one dollar and a half for dogs in the corporate limits, is repealed by the Act of 1918. In so stating, I do not mean to say that the municipal authorities of the City of Annapolis may not have some power to enact dog ordinances which are not inconsistent with the State Wide Dog Law. Some ordinances, however, cannot impose a tax. The only ones which might be legally passed by municipal authorities are those which are not inconsistent with the Act of 1918, and which further its purposes.

Very truly yours,

[illegible]

[illegible] State Wide Dog Law. Mr. [illegible]
[illegible] Law. Re: [illegible]

[illegible]

Hon. [illegible]
[illegible]

[illegible]

Mr. [illegible]: I have your letter of [illegible], in which you ask whether you must pay a tax under the State Wide Dog Law, inasmuch as you have already paid one under your local law.

The State Wide Dog Law, known as Chap. 197 of the Acts of 1918, went into effect June 1, 1918, and provided that on or before the first day of July, 1918, and before the [illegible]

of July for every year thereafter, every dog should be licensed. It repealed all general or local laws inconsistent with its provisions, and the license required under it is stated therein to be the only license or fee required for the ownership or keeping of dogs. Your local law was, therefore, repealed on June 1, 1918, and you must pay another license fee for your dog for this year, and hereafter you need only pay the one fee under the State-Wide Dog Law.

I cannot tell you just how you can get back the money you paid under your old law. You had protection under it until the first day of June. The distribution of any balance which may be in that fund, or the refund of any part of it, is a matter for the local authorities of your county to determine.

Very truly yours,

OTTO MANNEBACH, *Deputy Attorney General.*

LICENSES—LICENSES UNDER FEDERAL EXPLOSIVES ACT—FEES OF OFFICE—NOT CHARGEABLE TO STATE.

Hon. Hugh L. McMullen, *November 22, 1918.*
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of November 16th enclosing correspondence with Mr. Edward O. Cash, Clerk of the Circuit Court for Carroll County, in the matter of certain moneys in his hands, which he claims he is not obliged to account for to you. I have also received a letter from Mr. Cash setting forth in detail his side of the case. I am sending a copy of this letter to Mr. Cash.

It appears that, under the provisions of an Act of the Sixty-fifth Congress, approved October 6, 1917, and entitled

"AN ACT To prohibit the manufacture, distribution, storage, use, and possession in time of war of explosives, providing regulations for the safe manufacture, distribution, storage, use, and possession of the same, and for other purposes,"

In the case of VanSant vs. State, 96 Md. 110, the bond of the Clerk of the Court of Common Pleas of Baltimore City was sued by the State for interest on fees collected by him. It had been the custom of Clerks of Courts in Baltimore to deposit fees received by them and to pay over the amounts of the fees as required by law, retaining the interest that they received from these deposits. The Court of Appeals said:

> "Can it be said then that the interest received by him was not 'in any way growing out of or connected with his office'? Most assuredly not, and the Constitution expressly requires money so received to be accounted for. This Court said in Banks vs. State, 60 Md. 305: 'It, in the language of the Constitution, the money came into his hands "in any way growing out of or connected with his office," he is required to account for it as part of the income or receipts of the office.'"

The money in Mr. Cash's hands came there because he was a State officer, and, as such, had the power to administer oaths. The fees provided for the Act of Congress did not come into his hands for the discharge of his official duties, but I think they were moneys coming into his hands in a way growing out of or connected with his office, and I think, therefore, they should be accounted for to the State Treasurer, as provided by the Constitution. A somewhat similar question arose in fees in naturalization cases arose in San Francisco, and was decided in the Supreme Court of the United States in the case of Mulcrany vs. San Francisco, 224 U. S. 663, 56 L. Ed. 925. See also Barron County vs. Eau Claire, 56 L. R. A. N. S. 850 and note.

It is my opinion, therefore, that Mr. Cash should account for the moneys received by him under the Act of Congress just as he accounts for other moneys coming into his hands as Clerk of the Circuit Court for Carroll County.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

LICENSES—JUNK DEALERS—DEFINITION.

December 19, 1935.

Charles C. Wallace, Esq.,
Secretary, State Tax Commission,
Union Trust Building,
Baltimore, Maryland.

MY DEAR MR. WALLACE: I have your letter of the 18th instant, in which you ask whether the following individuals are junk dealers within the meaning of Section 172 of Article 56 of the Code:

(a) An individual engaged in purchasing rag clippings from manufacturers, who makes the same up into bales and then disposes of them for treatment.

(b) An individual engaged in purchasing old automobiles, who disposes of the good parts as accessories, while the other parts which cannot be used are disposed of by him as old iron and metal.

The definition of the words "junk dealers" in Article 56 was before the Court of Appeals in the case of State against Shapiro, 131 Md. 165. The Court, speaking through Judge Urner, said:

> "The business of dealing in junk is a distinct and recognized branch of commercial enterprise. Its nature and incidents are completely known and may be judicially noticed. A junk dealer is one who is engaged in the business of buying and selling junk, which is defined to be old iron, or other metal, glass, paper, rubber, or other waste or discarded material, which may be treated or prepared so as to be used again in some form." Webster's New International Dictionary; Century Dictionary; 2 Words & Phrases, 3871; Commonwealth v. Kingold, 182 Mass. 3003; City of Duluth v. Bloom, 55 Minn. 97. It was not necessary that the provision as to this class of licenses should

have more specifically defined the business to which it is intended to apply."

I think, under this decision, both of the individuals above set out are clearly junk dealers within the meaning of Article 56.

Very truly yours,

OLIN MARBURY, *Acting Attorney General.*

MILITARY.

FEDERAL DRAFT—DEPENDENT CLASSIFICATION—COUNTY TREASURER A STATE OFFICER.

February 9, 1918.

W. Jerome Sterling, Esq.,
Clerk, Circuit Court,
Princess Anne, Md.

DEAR MR. STERLING: I have received your favor of February 6, asking my opinion as to whether the County Treasurer of Somerset County is entitled to deferred classification under the draft. As you know, I have no authority to advise the Local Board upon this question, but inasmuch as you say that the Board wishes my opinion, I am, of course, glad to give it.

I think that the County Treasurer is a State officer, and as such entitled to be placed in Class V, subdivision A. Note 1 to Rule XII (page 39 of the Selective Service Regulations) states that "State officers must be determined by reference to local law." Under the local or state law the County Treasurer is made the collector of state taxes, and he is bonded to the State for the faithful performance of this work. It is clear, I think, that an official who performs for the State a function as important as the collection of state taxes, is a State officer. His status in this respect is not changed by virtue of the fact that he also collects county taxes and is the County Treasurer. Being constituted a State officer by the local or state law, he should, in my opinion, be classified in Class V, subdivision A.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MILITARY—FIFTH REGIMENT ARMORY—INSURANCE—CONTROL.

September 16, 1918.

Gen. Henry M. Wagstaff,

Adjutant General of Maryland,

Annapolis, Maryland.

DEAR GENERAL WAGSTAFF:—I have your letter of September 7th, in which you ask me what is the proper title in which to have insurance for the Fifth Regiment Armory written. Until recently the Fifth Regiment Armory was under the control of a board of trustees created by Chapter 456 of the Acts of 1896. This act was repealed by Chapter 136 of the Acts of 1918, which created the State Armory Commission.

I have examined the deed by which the State acquired the property on which the Fifth Regiment Armory was built, and find that it was made to the Board of Trustees of the Fifth Regiment Armory. In view of the action of the Legislature in repealing the law creating the Board of Trustees, I suggest that in the future insurance on the Fifth Regiment Armory be written in the name of the "State of Maryland and its representatives, the State Armory Commission."

Very truly yours,

OGLE MARBURY, Deputy Attorney General.

MOTOR VEHICLES.

Disposition of Fines and Costs Before Justices of the Peace—Frederick City.

April 26, 1923.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
11 E. Lexington Street,
Baltimore, Maryland.

Dear Col. Baughman: As requested by your favor of April 5th, I have considered the question whether the three Police Justices in Frederick City are authorized to retain for their own use the costs or fees imposed by them for violations of the motor vehicle law.

These three Justices are paid salaries of $2000.00 each, of which $200.00 is paid by the City of Frederick and $1800.00 by the County Commissioners.

The law providing for the payment of $200.00 by the City of Frederick is the Act of 1908, Chapter 356, page 793, which gives the Justices jurisdiction over offenses against the laws and ordinances of Frederick City; and this Act provides that the Justices shall pay to the Register of Frederick City "all fines and costs collected by them in corporation cases," failing so to do subjecting the offending Justice to fine or imprisonment or both. It is, therefore, clear that the Justices cannot retain any fees or costs in cases involving violations of the laws or ordinances of Frederick City. The $200.00 salary paid by Frederick City is clearly intended to be in lieu of all such fees and costs.

The legislation relating to the $1800.00 paid by the County Commissioners is Section 289A of Article 11 of the Code of Public Local Laws (Act 1892, Chap. 741), the Acts of 1896, Chapters 4 and 68; the Act of 1900, Chapter 330; the Act of 1908, Chapter 356, page 793, and the Act of 1916, Chapter 191. This legislation provides that the Justices shall each be paid $600.00 per annum by the County Commissioners, "and shall receive no other or further fees for any service rendered

by them in criminal cases or arrests for the violations of any of the laws of the State of Maryland" (Act 1908, Chap. 350, page 793). It is, therefore, clear that the $300.00 paid by the County Commissioners is intended to be in lieu of all fees or costs in criminal cases, because the statute expressly says so.

The motor vehicle law, Act 1918, Chapter 85, makes no change in the law on this point. Section 162 of this Act fixes the *amount* of the fees and costs which Justices may charge in motor vehicle cases, but does not undertake to dispose of the fees and costs at all. The Legislature is still entirely free to put Justices upon a salary basis, and to require them to pay their fees and costs to the Clerk of the Circuit Court, instead of keeping them for their own uses; and local laws doing this are not affected in any way by the Act of 1918, Chapter 85.

There is, therefore, nothing in the motor vehicle law inconsistent with the provisions of the Act of 1908, Chap. 350, page 793, prohibiting the Justices from retaining any fees in criminal cases in addition to their salary. The motor vehicle law does nothing more than provide what the *amount* of these fees shall be in motor vehicle cases. This does not affect at all the local law which provides how the fees shall be disposed of, and this local law, as I have said, in express terms prohibits the Justices from retaining these fees.

It follows that the three Police Justices in Frederick City are not permitted to retain for their own use, in addition to their salary, the fees or costs received by them in motor vehicle cases. The law expressly says that they shall not do so.

I am sending a copy of this letter to Justice Brust.

Very truly yours,

ARTHUR L. BLOOMER, *Attorney General*

MOTOR VEHICLES—LIGHTS ON VEHICLES—ENFORCEMENT OF LAW—DISPOSITION OF FINES.

April 26, 1926.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
77 E. Lexington Street,
Baltimore, Maryland.

DEAR COL. BAUGHMAN: I beg to reply to your letter of April 19th, in which you ask my opinion upon certain questions arising under the Act passed by the General Assembly of 1918, entitled "An Act to require all vehicles to display lights at night."

1. This Act only applies to vehicles other than motor vehicles, because Section 2 provides that it shall not be construed "as altering or affecting the obligation of the owner of any vehicle to display the lights required by the laws of this State relating to motor vehicles." Motor vehicles, therefore, are not as to lights in the requirements of the motor vehicle laws. All vehicles other than motor vehicles are governed as to lights by the Act of 1918.

2. The enforcement of this Act of 1918 falls within the province of your Department as well as within the province of the local police. Section 187 of Article 56 of Bagby's Code, as amended by the Act of 1916, Chapter [illegible], provides that the Commissioner of Motor Vehicles shall "administer the provisions of the motor vehicle and traffic laws throughout the entire State," and the Act of 1918 in question is, of course, a traffic law. It is, therefore, the duty of your Department to enforce and to call the police authorities in enforcing this Act.

3. This Act of 1918 does not provide what disposition is to be made of fines imposed for its violation. The fines, therefore, do not belong to your Department. They are to be disposed of in the same manner that ordinary fines are disposed of, that is, under Article 38 of Bagby's Code, except in counties

where local laws may provide for a different disposition. Your Department, however, has nothing to do with them.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTOR VEHICLES—TRAFFIC COURT—JUVENILE COURT—JURISDICTION OVER MINOR OFFENDERS AGAINST THE MOTOR VEHICLE LAW.

March 25, 1924.

Hon. T. J. C. Williams,
Judge Juvenile Court,
Court House, Baltimore, Md.

DEAR JUDGE WILLIAMS:—I understand that your wish my opinion as to whether the Traffic Court, created by the Act of 1918, Chap. 56, or the Juvenile Court, has jurisdiction over the violation by minors under sixteen years of age of the motor vehicle laws of the State.

Section 623A of the Baltimore City Charter gives the Magistrate for Juvenile Causes exclusive jurisdiction over all offenses committed in Baltimore City by minors under the age of sixteen years, and it is now the settled policy of the State, so far as Baltimore City is concerned, that such minors shall always be tried in the Juvenile Court. This settled policy should not be disturbed unless there is clear and unmistakable evidence of the intent of the Legislature to change it and to confer jurisdiction over minors under sixteen years of age upon some other tribunal.

While Section 150 of the Act of 1918, Chapter 56, creating the Traffic Court, does vest that court with exclusive jurisdiction in Baltimore City to try complaints of violations of the motor vehicle laws, yet I do not think that by this the Legislature intended to take away from the Juvenile Court its jurisdiction to try such complaints when made against minors under

House of Correction may be for a term of imprisonment up to, but not exceeding the maximum term in jail which a Justice might have imposed had the Section not been enacted.

No Justice can, however, sentence any person, for violating the Motor Vehicle Law, to imprisonment in the Maryland House of Correction for more than three years, nor for less than three months. The provisions of the general Motor Vehicle Law, referring to imprisonment in a county or city jail, contained in Sec. 161 of Chap. 85 of the Acts of 1918, applies only to imprisonment in default of the payment of fines.

Very truly yours,

PHILIP B. PERLMAN, *1st. Assistant Attorney General.*

MOTOR VEHICLES—AUTOMOBILE LAW—TRAFFIC COURT—SENTENCES OVER SIX MONTHS.

August 22, 1929.

George W. S. Mussman, Esq.,
Associate Judge, Traffic Court,
Baltimore, Maryland.

MY DEAR MR. MUSSMANN:—I have at your request carefully considered whether sentences in the Traffic Court for more than six months should be to the House of Correction or to the Baltimore City Jail. This question resolves itself into a determination whether or not Sec. 655 of Art. 27 of the Annotated Code (Vol. 1), is repealed by Chap. 296 of the Acts of 1929.

Sec. 655 was enacted by Chap. 566 of the Acts of 1916. Chap. 566 is the statute providing for the State Board of Prison Control. It repealed various sections of Art. 27 of the Code, and, among others, Sections 624 to 629, inclusive, and enacted in lieu of the sections repealed, various other sections, with new numbers, 623 to 657, inclusive, putting the control of the House of Correction and the Maryland Penitentiary in the hands of the new Board therein created, and enacting a great many provisions for the sentence and keeping of prisoners in these two institutions.

Sec. 653 provides for sentence by Courts to the jail, the House of Correction or the Penitentiary, with a proviso that all sentences exceeding six months must be to the House of Correction or the Penitentiary, and no sentences less than three months shall be to the Penitentiary or the House of Correction. This section also contains a provision for the transfer of prisoners from the House of Correction to the Penitentiary and from the Penitentiary to the House of Correction, but only where such prisoners are sentenced for a crime committed after the passage of the Act.

Sec. 655 provides for sentence by Justices of the Peace to the House of Correction in cases where the offense is punishable by imprisonment in jail, or by fine and imprisonment in jail. The same limitations as to sentences in the House of Correction which are provided in Sec. 653 for Court sentences are contained in Sec. 655 for sentences by Justices of the Peace.

Prior to the enactment of Chap. 356 of the Acts of 1916, Sec. 552 of Art. 27 (Annotated Code, Vol. 3) had been in force. This was enacted by Chap. 739 of the Acts of 1896. It gave Justices of the Peace general power to sentence to the House of Correction instead of to jail, provided the term in the House of Correction was not less than two months, nor more than three years. This section was repealed by Chap. 356 in such a way that if Sec. 655 is now repealed, Sec. 552 will not be revived, and Justices of the Peace will not have power to sentence offenders to the House of Correction, instead of to jail, unless the Act creating the offense specifically provides for sentence to the House of Correction.

It is, therefore, apparent that if the General Assembly of 1918 did repeal Sec. 655 of Art. 27, it effected quite a considerable change in a policy of the State which has been in existence for eight years, and which the preceding Legislature saw fit to embody in the general Act providing for the two State institutions for the detention of criminals.

Chap. 196 of the Acts of 1918 is entitled

"An Act to repeal and reenact with amendments Section 654 and Section 655 of Article 27 of the Annotated Code of Maryland, title 'Crimes and Punishments,' subtitle 'III. Places of Reformation and Punishment,' subhead 'The State Board of Prison Control,' as said Section 654 and Section 655 were enacted by Chap. 506 of the Acts of the General Assembly of 1916; the same providing that the State Board of Prison Control shall have power to transfer to the Maryland House of Correction all persons sentenced to the Maryland Penitentiary."

The body of the Act contains:

"Section 1. Be it enacted by the General Assembly of Maryland, That Section 654 and Section 655 of Article 27 of the Annotated Code of Maryland, title 'Crimes and Punishments,' subtitle 'III. Places of Reformation and Punishment,' subhead 'The State Board of Prison Control,' as enacted by Chap. 506 of the Acts of the General Assembly of 1916, be and the same are hereby repealed and reenacted with amendments, to read as follows:"

Then follows what purports to be Section 654 as reenacted, starting with the section number still. The first change from the old section is the striking out of the provision that sentences for a term exceeding six months shall be to the House of Correction or to the Penitentiary. The provision for the transfer of prisoners to the Penitentiary or to the House of Correction is left in the Section. The other change in the Section is the insertion of the provisions at the end of the first paragraph:

"All persons now confined in the Maryland Penitentiary may be transferred to the Maryland House of Correction by the State Board of Prison Control upon the receipt of the warrant as above provided."

There is not in this provision an extension of the right of transfer to all prisoners in the Penitentiary, no matter when the offense for which they are sentenced was committed.

There is no further mention in Chap. 196 of Sec. 655. Sec. 654 refers entirely to sentences by Courts, whereas Sec. 655 referred to sentences by Justices of the Peace. Sec. 654, with the changes as above set out, could not, therefore, have been intended to take the place of Sec. 655, as these changes are in no wise concerned with the subject matter of the latter section.

It is obvious that some error was made in the passage of this Act through the Legislature. If the Legislature intended to repeal and re-enact Sec. 655, it did not do so. It clearly did not intend the re-enacted Sec. 654 to take the place of both the old Sections 654 and 655.

An examination of the Journals of the Senate and House for the Session of 1918 shows conclusively not only that this is so, but shows also just how the Sec. 655 came to be mentioned in the Act at all.

Chap. 196 was introduced by Mr. Legg as S. B. No. 15. As introduced, it was an Act to repeal and re-enact Sec. 654 alone, and after the formal statement of this in the title, the purpose of the Act was added in the following words:

> "The same providing that the State Board of Prison Control shall have power to transfer to the Maryland House of Correction all persons sentenced to the Maryland Penitentiary."

The Bill, as thus introduced, was referred to the Senate committee on judicial proceedings (Senate Journal, p. 28[illegible]). The Bill was reported favorably by the Committee (p. 16[illegible]), was recommitted on motion of Mr. Frick, the chairman (p. 16[illegible]), was again reported favorably and again recommitted (p. 312[illegible]), and finally was reported favorably with amendments (p. 5[illegible]). The amendments were three: No. 1 added the words "and Sec. 655" after the words "Sec. 654" wherever they occurred in the title and in the enacting clause, Section 1. No. 2 struck out, in Sec. 654, the six months and the three months provisions for Court sentences already referred to. No. 3 added a new Section 655, which was apparently introduced to strike out the proviso in the

Section as it was enacted by the Act of 1916, that all Justices sentences over six months must be to the House of Correction.

It is evident from these amendments that the Committee did not intend to prevent either Courts or Justices from sending persons to the House of Correction or the Penitentiary instead of to jail, but did intend to strike out the requirement that sentences exceeding six months must be to the House of Correction or the Penitentiary in the case of Courts, or to the House of Correction in the case of Justices of the Peace. When the Senate acted upon these amendments, the first one was adopted without roll call, the second was adopted by a vote of [illegible] to [illegible], the third was withdrawn, and the fourth, or the amended, was adopted. Senate Journal, p. [illegible].

The Senate, therefore, did not concur in the action of the Committee in striking out the Penitentiary, but by an error of draftsmanship put in the Bill the phrase "House of Correction" instead of "Penitentiary" in the amendment. The Bill, as then amended, was ordered engrossed and passed. Senate Journal, p. [illegible]. When the Bill reached the House, it was referred to the Committee on Judiciary II. A. [illegible]. It was reported to the House with the amendment and recommitted. [illegible] Senate amendment. [illegible] the House passed the Senate amendment. [illegible] Senate Journal, p. [illegible]. When the Bill came back to the Senate with the amendment of the House, the Senate concurred. Senate Journal, p. [illegible].

In the light of these facts, there are [illegible] points of consideration:

First: Has the Senate the power to amend the Act of 1916 by striking out the provision that sentences of Justices of the Peace

If the Senate passed Senate Bill No. 15 by one title, and the House passed Senate Bill No. 15 by another title, no Act was passed. The Journals, however, are not sufficient evidence to justify striking the Act down. It is necessary to show by clear and undisputed evidence that the original title *alone* was read in the House, and the evidence of the Journal alone is not sufficient. This question was very thoroughly gone into by the Court of Appeals in the case involving the validity of Chap. 750 of the Acts of 1914, providing for the salaries of the Public Service Commissioners. In that case, the Court, speaking through Judge Burke, decided that it would not strike down that Act, although the Journals of both Houses showed that the Bill passed and was read by its original title, when the title had been previously amended. The Court, however, indicated that if sufficient evidence had been shown that the Bill was read and passed by its original title alone, such evidence being in addition to the Journals, it would have held the Act void.

Tiernit vs. Towers, 127 Md. 54.

I cannot, therefore, conclude that Chap. 194 of the Acts of 1916 has not been validly passed under the title by which it was signed and by which it has been published.

Second. Is Chap. 194 void for non-compliance with the provision of Sec. 29 of Art. 3 of the Constitution, requiring that every law should embrace but one subject and that should be described by its title? This inquiry being pertinent, because the purpose of the Act is stated to be the providing that the State Board of Prison Control shall not have power to transfer to the House of Correction all prisoners sentenced to the Penitentiary, and if Sec. 653 is repealed by it, much more than this is done, and the powers of magistrates as to commitments are much curtailed.

There have been a number of decisions in which part of an Act is held void because not sufficiently described in the title, and the other part which is described by the title held valid. Some of these are discussed in the recent case of Nutwell vs. Anne Arundel County, 110 Md. 667. It might be claimed, in

accomplished by it. To permit a mistake of this nature to defeat a clearly expressed purpose of the legislative body would be to set the letter above the spirit of an enactment, and to put a premium upon tampering with a measure while on its course through the Legislature."

Levin vs. Howes, 118 Md. 624.

I do not think, without considering the entries in the Journals, that where the Legislature says in the enacting clause of an Act and in the title that it repeals and reenacts a certain section, and where it does not do this either in letter or in fact (because Sec. 656 as reenacted deals with an entirely different thing) it would be said that the intention of the Act is to repeal entirely a section of the statute law which has been upon the books for a considerable period of time, the principle of which successive sessions of the Legislature have added to rather than diminished, and which moreover embodies a settled policy of the State. In the Journal can be considered, it is clearly apparent that it was not the intention of the Legislature, nor even the intention of the Senate Committee on Judicial Proceedings, to abolish the jurisdiction giving Justices of the Peace power to commit to the Houses of Correction instead of to jail.

While I realize that there is some doubt about it, I have come to the conclusion that Sec. 656 of the Act of 1918 does not operate as a repeal of Sec. 656 of Art. 27, and I, therefore, advise you that in my opinion Sec. 656 is still in force.

In an opinion given to the Commissioner of Motor Vehicles on July 27, 1918, I advised him that offenders under the Motor Vehicle Law should be sentenced in accordance with Sec. 656. A full consideration of the question suggested by you does not lead me to any other or different conclusion, and I, therefore, reiterate the advice given in that opinion.

Very truly yours,

OGLE MARBURY, Deputy Attorney General.

POLICE BOARD OF BALTIMORE CITY

I am informed, however, that what is desired is a letter such as is frequently issued by your Board to persons conducting entertainments on Sunday, not prohibited by law,—saying, in effect, that the Board permits them to give such entertainments, the possession of such letter being sufficient to prevent arrests or interference.

The real purport of your query is, therefore, whether such a performance as contemplated is prohibited, or whether you will be justified in telling the Committee that the police force will not interfere with it because it does not violate the law.

I have looked into Ordinances of the Mayor and City Council of Baltimore bearing in any way upon the subject. The State law in reference to Sabbath breaking is contained in Sections 165, 166 and 168 of Article 27 of the Annotated Code. Section 166 reads as follows:

> "No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command, or willingly suffer and see them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation," adding a penalty.

The words "unlawful pastime and recreation" refer to some pastime or recreation made unlawful by some other provision of law. The only portion of this Section, therefore, with which we are concerned is the prohibition against working or doing bodily labor. In the view I take of this, it is unnecessary to consider whether the performance at the Garden Theatre is a work of necessity or charity.

In the case of Wm. Barnie on Petition, decided on habeas corpus by Judge McSherry, in the Circuit Court for Frederick County, several years ago, the question at issue was whether a

[illegible] within this State on the Sabbath day, commonly called Sunday." The accepted interpretation of this for at least ten years has been that no person can conduct on Sunday in an opera house the kind of performance usual and habitual there on week days, but this has not been extended to prohibit sacred or patriotic performances, where no admission is charged.

I think this interpretation is the correct one, and, as I understand from your letter and the letter of General Lowndes that the performance at the Garden Theatre is to be of the excepted character, this section does not prohibit.

My conclusion, therefore, is that there is no reason for your Department to interfere with the performance, or with the selling of stamps at the Theatre, if a stamp can be used as a pass whether it be purchased at the Theatre or not.

Very truly yours,

[illegible] Manager Fifth Regiment Armory Board

Police Board, Performance and Dances, Fifth Regiment Armory.

Mayor's Office,

Baltimore, [illegible] 1897.

Joseph A. Kinsey, Esq.,
Secretary Board of Police Commissioners,
Council House, Baltimore, Md.

DEAR MR. KINSEY: I beg to reply to your recent request for my opinion as to whether a permit from your Board is required for the holding of dances in the Fifth Regiment Armory, under the auspices of the military authorities, to which dances an admission fee is charged, and which are open to all who pay such fee.

of Baltimore may be permitted by your Board to hold a bazaar for the benefit of the Red Cross Society at the Fourth Regiment Armory on Sunday, May 26, upon which day no tickets will be sold or admission charged, but articles such as are ordinarily sold at bazaars will be offered for sale and sold.

Inasmuch as it is not proposed to charge any admission fee, no formal permit to hold the bazaar on Sunday would be required from your Board, because Section 770 a of the Baltimore City Charter, relating to permits for certain kinds of public entertainments, only applies when an admission fee is charged.

It seems clear, however, that the sale of articles at the bazaar on Sunday would violate Bagby's Code, Art. 27, Sec. 137, which makes it unlawful to "sell, dispose of, barter," etc., any "tobacco, cigars, candy, soda or mineral waters . . . or any other goods, wares or merchandise whatsoever" on the Sabbath Day.

Very truly yours,

ARTHUR E. BRUNE, Attorney General.

PARKER BOYNTON, Executive Secretary of the Citizens' Association of Greater Baltimore, Argonaut Building, Mount Royal and Charles Streets.

Josiah A. Knauer, Esq.

Secretary, Board of Police Commissioners

Court House, Baltimore, Md.

DEAR MR. KNAUER: I beg to reply to your favor of May 6th, enclosing report of Captain Hurley, and asking whether Mr. Eugene Gamble, who is Telephone and Signal Operator in the

Police Department, and who has recently been appointed by the Governor on the Board of Moving Picture Machine Operators, can legally hold both positions.

The position of Telephone and Signal Operator is not an "office" within the meaning of Art. 35 of the Constitution, which provides that "no person shall hold at the same time more than one office of profit, created by the Constitution or Laws of this State."

Truitt vs. Collins, 122 Md. 526.
Sup. Ins. Comm. vs. Harrington, 126 Md. [illegible]

And there is nothing in the statutes relating to the Police Department which makes it unlawful for a Telephone and Signal Operator to hold another position not incompatible [illegible] nor is there anything in the statutes relating to the Board of Moving Picture Machine Operators which makes it unlawful for a member of that Board to hold another position [illegible] [illegible] member of that Board.

It is, therefore, my opinion that Mr. G[illegible] may hold both positions. [illegible] Captain H[illegible]

Very truly yours,

ALBERT C. RITCHIE,
[illegible]

POLICE BOARD—[illegible]—[illegible] [illegible]
W[illegible]

June [illegible]

[illegible] Edwin A. K[illegible], Esq.,
S[illegible]

Board of Police Commissioners,
Court House,
Baltimore, Maryland.

GENTLEMEN:—I am in receipt of your letter of June 19, outlining a plan to pay the patrolmen in the Police Department [illegible]

advances on the increase provided by Chap. 129 of the Acts of 1918, by securing from local financial institutions the sums necessary to pay these advances, and having each patrolman sign a note on each pay day for the advance at that time received by him and having these notes presented for payment to the Board on Jan. 1, 1919, when the money for the increased pay is payable by the Mayor and City Council of Baltimore, under the Act.

Under the provisions of Art. 8 of the Annotated Code, Secs. 11 to 17, both inclusive, no assignment of wages or salary is valid unless such assignment is in writing, signed by the assignor (and his or her wife or husband) acknowledged before a Justice of the Peace and noted upon the Justice's docket, and a copy served within three days upon the person, firm or corporation paying the wages or salary, personally notified, and the admission of service entered by the Justice of the Peace on his docket within two days thereafter. No more than 6 per cent. per annum can be charged, and every assignment of wages to be earned in whole or in part more than 30 months after the making of such assignment shall be absolutely void.

The financial institutions holding the notes of the patrolmen will not be protected, unless the patrolmen make assignments, as provided by Art. 8, and if you, ignoring this, undertake to pay such financial institutions on Jan. 1, 1919, some patrolman, or his personal representatives, might hereafter compel you to pay over a second time his accrued increase.

It should be possible, however, to work out a plan by which each patrolman, on or after the first of July, can make an assignment of such salary as he may earn between that time and the first of January, 1919, such assignment to be executed and served in accordance with Article 8 and retained by the financial institutions advancing the money. As the money is advanced to each patrolman, he can sign a note for the amount which can also be delivered to the financial institution, and then the assignment and the notes, which will be evidences of the

exact amount, can be presented to your Board Jan. 1, [illegible] and then pay to it the whole amount advanced.

In this connection, I suggest that the form of note [illegible] which I return herewith, should begin with the words "For Value Received,"—thus reading, "For Value Received, [illegible] 1, 1919," etc.

I think it would be well to refer back to any method [illegible] increase pay for the patrolmen who advanced [illegible] arrangement, for you to communicate with the Mr. Counsel to determine whether there is any legal part to contract the payments provided for by [illegible] the Act, and whether, or not, the contract would [illegible] and conflict with the provisions of the Act, and [illegible] the opinion of the Corporation Counsel, I do not feel [illegible] position of advancing the money with [illegible] months when they are presented.

Very truly yours,

Authority of Executive

[illegible]

Patrolmen's Benefit Fund and [illegible]

Executive Board

[illegible]

Joseph A. Kennedy, Esq.,

Secretary, Board of Police Commissioners,

Baltimore, Maryland.

Dear Sir:—I have your inquiry of June 14th, [illegible] of increased pay to retired officers.

Sec. 777 of the City Charter, as Revised Laws, provides that:—

"In the event of any future or any increase [illegible] officers of police, policemen, detectives, clerks [illegible]

every officer of police, policeman, detective, clerk or turnkey who shall have been or shall subsequently be retired by the said Board of Police Commissioners shall be entitled to, and the said Board of Police Commissioners shall pay to him in the manner and at and for the length of time provided in this section for the pay of the members of the police force who shall be retired or shall have been retired, a sum equal to one-half of the remuneration of the active members of the Police Department holding the same rank or grade at the time of their retirement, to the end and effect that every retired officer of police, policeman, etc., shall receive the same remuneration as every other retired officer of police, policeman, etc., of like grade (italics).

Chap. 129 of the Acts of 1918 repeals and re-enacts Sections 745 and 745½ of the Charter, for the sole purpose of increasing the pay of various active members of the Police Department. Sec. 2 of the Act provides that the increases from June 1, 1918, to Dec. 31, 1918, inclusive, shall be paid to the officers and men entitled on Jan. 1, 1919, and thereafter such increases shall be regularly paid. Sec. 3 of the Act provides that the Act shall take effect from and after June 1, 1918.

There is no doubt that under this Act the increase in pay of the officers and men on the active list begins June 1, 1918, and they are entitled to any increase earned by them after that date, —although they cannot demand it until Jan. 1, 1919.

It is my opinion, therefore, that the pay of the officers and men mentioned in Chap. 129 of the Acts of 1918 was increased as of June 1, 1918. Since this is so, by the provisions of Sec. 777 above quoted, the retired officers and men of the same grade become entitled to have their retired pay increased accordingly: and *this* increase, under the terms of that section, is to be paid in monthly instalments out of the special fund.

I think your Board should pay, from June 1st, to those on the retired list one-half of the increased pay of similar officers and men on the active list, as provided by Chap. 129 of

the Acts of 1918, and that such payments should be made monthly, as provided by Sec. 777.

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Dear Sir: [illegible] the Board of [illegible] the proposed game [illegible] [illegible] International League [illegible]

This question [illegible] Mayor and City Council No. [illegible] under the provisions of which I [illegible] and is intended to be played. The legality [illegible] now being attacked in proceedings brought [illegible] the Superior Court of Baltimore City. All [illegible] nances of the city or acts of the General Assembly [illegible] sumed to be valid until they are found to be [illegible] courts, and I do not think that the Board of [illegible] sioners would be warranted in interfering with the operation of Ordinance No. [illegible] before its legality had been [illegible] the proper tribunal. Especially is this true [illegible] has been presented and is pending.

You will, of course, see to it that the provisions of the ordinance are observed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—INCREASED SALARIES—VALIDITY OF LAW.

June 18, 1918.

Board of Police Commissioners
of Baltimore City,
Court House, Baltimore, Md.

GENTLEMEN: In response to your inquiry, I beg to say that in my opinion Chap. 129 of the Acts of 1918 is a valid enactment, and the increased pay therein provided for when earned will be payable on January 1, 1919, by the Mayor and City Council of Baltimore to your Board.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—CONTRACTS FOR UNIFORMS—ADVERTISEMENT.

June 28, 1918.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Baltimore, Maryland.

DEAR SIR: I have your letter of June 25th in which you ask whether Chapter 223 of the Acts of 1918, which provides for

the manner of making contracts for uniforms for members of the Police Department and also for payment in instalments, nullifies an existing contract intended to be in force from January 1, 1918, to December 31, 1918.

This contract is valid and is binding upon the board and cannot be affected by Chapter 223 of the Acts of 1918.

Inasmuch as the law requires the Board to advertise during the month of July, 1918, and provides that the contract shall be awarded within two weeks from the date of the receipt of the bids, and that the contract shall be for a term of two years from the date of the award, I suggest that you advertise this month and place bidders until December 15th to submit bids. The new contract can then be made to run for a term of two years from January 1, 1919.

I return herewith the enclosures in your letter.

Very truly yours,

CECIL MARCHANT, Deputy Attorney General.

Patrick Eldridge, Esq., Town Clerk, Sandwich, Massachusetts.

In re

Board of Police Commissioners

Court House, Fitchburg, Mass.

August 1, Kenneth Eaton, Esq.

Dear Sir: I have your letter of June 29th asking advice as to the selling of soda, cigars and Sunday ball games, and also as to entitling the bidders to without charge or tax the floor space used by non-bidders is illegal.

Such cards, for which money would be paid, would give admission to preferred seats, and would, in my opinion, constitute paid admissions.

It is my opinion, therefore, that such a plan would be in violation of the ordinance prohibiting games to which admissions are charged.

Very truly yours,

CHAS. MARBURY, *Deputy City Solicitor.*

PENSION BOARD, ISSUING PENSION OF MANNO A. BEHRENS.

July 5, 1918.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Court House, Baltimore, Md.

DEAR SIR: I have your letter of July 2nd in which you ask whether Manno A. Behrens is entitled to receive a pension equal to one-half of the present weekly pay of a regular patrolman, or whether the amount of pension is fixed by the amount of pay of a regular patrolman at the time the pension to Mr. Behrens was granted.

Chapter 212 of the Acts of 1916 directs the Board to pay Mr. Behrens a weekly pension equal to one-half of the weekly pay of a regular patrolman. In 1916 patrolmen were paid $20.00 per week. The Act of 1918 raised the pay of patrolmen to $24.00 per week, and I think that Mr. Behrens is now entitled to $12.00 per week under the provision of the Act of 1916.

It is not necessary for the purposes of this case to consider Chapter 266 of the Acts of 1912, because Mr. Behrens is on

titled to the increase under the Act of 1916, Ch. 212, irrespective of the other act.

Very truly yours,

CLAY MAXWELL, *Acting Attorney General.*

POLICE BOARD—EXPENSES—APPROPRIATIONS—SUPPLEMENTAL—SUPPLIES.

July 29, 1919.

Lucian L. Kinney, Esq., Secretary,
Board of Police Commissioners,
Court House, Baltimore, Md.

MY DEAR MR. KINNEY: I have your letter of July 28 [illegible]

The Act of 1918, Chapter 627, requires the [illegible] for uniforms for members of the [illegible] July, but does not state that the [illegible] passed in that month. The provision is [illegible]

"The Board of Police Commissioners shall prepare [illegible] specifications and conduct the bidding [illegible] regulations as it may deem necessary."

It would have some [illegible] suggestion that [illegible] comply with the [illegible]

Very truly yours,

CLAY MAXWELL, *Acting Attorney General.*

Police Board—Pension Fund—When Headquarters Clerks Are Eligible.

July 29, 1918.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
City Hall, Baltimore, Md.

My Dear Mr. Kinsey: I have your letter of July 24, enclosing a letter from Elmer F. Welsh, clerk in the Detective Bureau, and your own memorandum in connection therewith.

From this correspondence, I understand that Mr. Welsh was appointed a telephone and signal operator in 1910, at which time such operators were not members of the Force. They became members of the Force in 1912, but were not admitted to participate in the Pension Fund until 1916, at which time they, by Chapter 153 of the Acts of that year, were permitted to come in provided they paid two per cent. on their salary from the time of appointment, with interest in addition to their percentage of current salary. Mr. Welsh, however, did not join the Pension Fund as a telephone and signal operator, and in 1917 was appointed a clerk in the Detective Bureau. Clerks in the Detective Bureau were, at that time, not members of the Force and were not eligible to pension, as the clerks referred to in Section 777 of the Charter, or those who are included in the Police Force as described in Section 716 of the Charter.

Chapter 120 of the Acts of 1918 repeals and re-enacts Section 716 of the Charter and includes in the membership of the Police Force clerks assigned to Detective Headquarters. This Act took effect June 1, 1918.

Mr. Welsh is, therefore, now eligible to participate in the Pension Fund. He wishes to know whether it is necessary for him to make back payments for the period of his service when he was not permitted to contribute, and whether he has to be on the Force sixteen years or twenty years before he can be retired and from what period his service commences.

Mr. Welsh's service, as a member of the Police Force, evidently commences from the date on which persons occupying his present position became members of the Police Force. He was a member of the Police Force from 1912 to 1917, but he then left it until June 1, 1918. His term of service for the purpose of the Pension Fund begins on June 1, 1918.

There is now no twenty year provision in the Pension Law. Section 7[illegible] of the Charter, as enacted by the Act of 1912, chapter [illegible], required as a precise for receiving a pension that officers, detectives, clerks and turnkeys thereafter appointed must serve not less than twenty years. Section 777, enacted by the Act of 1912, chapter [illegible], required a uniform service of sixteen years for all such officers, whether they were already on the Force or whether they were appointed after the passage of that Act. These two sections, therefore, conflict, and in the Police Pension Cases, 132 Md. [illegible], the Court of Appeals said:

> "It would seem, therefore, to be clear that Section 777, as enacted by Chapter [illegible] of the Acts of 1912, is now the statute in force on the subject, and in so far as there is any conflict between it and what was called Section 7[illegible] in the earlier statute, Section 777 must prevail. It could not have been intended to have two such sections in the Charter."

Mr. Welsh will, therefore, have to serve sixteen years from June 1, 1918, and not twenty years.

There is no provision in the Act of 1918, Chapter 1[illegible], or in any other part of the Pension Law, requiring any member of the Force to make contributions for any time prior to his going on the Force. Mr. Welsh, therefore, starts on June 1, 1918, with the regulation contribution from his salary, without which, under the provisions of Section 77[illegible] of the Charter, he can not participate in the benefits of the Pension Fund.

Very truly yours,

OLIVER MARBURY, *Acting Attorney General.*

POLICE BOARD—ADVERTISEMENTS FOR BIDS FOR UNIFORMS.

July 29, 1918.

Josiah A. Kinsey, Esq., Secretary,
Board of Police Commissioners,
Baltimore, Maryland.

MY DEAR MR. KINSEY: Confirming my telephone conversation with you this morning and in answer to your letter of July 26th, which I received only this morning, I beg to advise you that, in my opinion, the provisions of Section 747A of the Charter, as enacted by Chapter 223 of the Acts of 1918, reading as follows:

> "It shall be the duty of the Board of Police Commissioners to advertise at least three times in not more than three daily newspapers published in the City of Baltimore during the month of July, 1918."

require the advertisement three times in each of three daily newspapers. I do not think advertising in three newspapers on three successive days, inserting the advertisement only once in each newspaper, is a sufficient compliance with the Act.

Very truly yours,

CARL MAMMEN, Jr., Police Commissioner's Counsel.

POLICE BOARD—APPOINTMENT OF WOMEN AS POLICE CLERKS.

August 21, 1918.

Geo. Lawrason Riggs,
President, Board of Police Commissioners,
Baltimore, Maryland.

DEAR SIR: You ask me whether the position of police clerk may be filled by the appointment of a woman.

This position is created by Sec. 745 of the Revised Charter of Baltimore City, as amended by Chap. 129 of the Acts of 1918, which provides that there shall be one clerk for each police district.

Sec. 745E of the Revised Charter requires competitors for appointment to the police force to file in the office of the Police Examiners a formal application containing the information required by that Section, and also such other information as may reasonably be required touching the applicant's merit and fitness for appointment or promotion in the said police force.

There is nothing in the Acts of the Legislature requiring the rule to be made. Sec. 745E, in setting forth the statements to be made in the application, uses the singular, third person pronoun, masculine gender, as for instance: "First, his full name and residence." "Second, his age and the place and date of *his* birth," etc.

Sec. 1 Article 1 of the Annotated Code of Maryland, which is the section on Rules of Interpretation, provides that "the masculine gender includes all genders, except where such construction would be absurd or unreasonable." Where this rule of construction was passed for the purpose of interpreting sections in the Code of Public General Laws of Maryland, yet it is a rule which the Courts adopt in the absence of any express direction from the Legislature. I think it is a rule which may be followed in the present instance.

I understand that, on account of the conditions created by the war, it is difficult to fill the eligibles with male appointments. Of course, the Legislature never intended to allow the existence of a situation which might cripple the effectiveness of the Police Department in enforcing the law, because of the absence of express authority to fill these places by appointing women when there is a lack of available men.

Appointments are made by your Board from lists furnished by the Board of Police Examiners. Sec. 745D gives the Board of Police Examiners power to prescribe, amend and enforce

rules and regulations which, when adopted and promulgated, have the effect of law. It may be that there are rules now in force which make it difficult, if not impossible, for women to pass the tests required; if this is so, the Board of Police Examiners may amend any such rules, accept applications which may be made by women, and then present lists containing their names to your Board for such action as you may deem expedient.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

POLICE BOARD—NO DUTIES IN NEW ANNEX BEFORE JAN. 1, 1919.

August 22, 1918.

Lewis L. Kinsey, Esq., Secretary
Board of Police Commissioners,
Baltimore, Maryland.

MY DEAR MR. KINSEY: I have your letter of August 19th, in which you ask me to advise the Board of Police Commissioners of Baltimore City what duties, if any, it will have in connection with the registration of voters before January 1, 1919, in the territory annexed by Chap. 82 of the Acts of 1918.

I beg to advise you that, in my opinion, under the provisions of Chap. 82 of the Acts of 1918, the Board of Police Commissioners of Baltimore City has no duties in this territory in connection with the registration of voters before January 1, 1919.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

and it is in all respects a private house. Such a house as this I think is clearly not within the provisions of Ordinance 120. On the other hand, while the line of demarcation is not at all clear in practice, there are, undoubtedly, public boarding houses containing five or more furnished rooms which are rented in connection with meals. Such boarding houses are public, I should say, where they advertise publicly either in the newspaper or by signs that they have accommodations. I think such boarding houses, where it clearly appears that they contain five or more furnished rooms which are offered to the public for rental or hire even though this is done in connection with the furnishing of meals, are within the provisions of Ordinance 120.

Whether any particular boarding house is in the public category is a question of fact to be determined in each particular case.

Where it appears that it is, I think it comes under the provisions of the ordinance irrespective of whether or not the guests receive meals or not. Where the rooms are not offered to the public I do not think it does come within the provisions of the ordinance.

I return the papers herewith.

Very truly yours,

Oscar Mitchell, Jr., *Attorney General.*

Patrol Boats: Patrol Patrol Boat Insurance.

OPINION.

October 13, 1915.

Honorable Robert Lansburgh,

Baltimore, Maryland.

Inside A. Kinney, Esq., Secretary.

DEAR SIR: I have your letter of October 11th in which you state that insurance on the police patrol boat has heretofore

been taken in the name of the Board of Police Commissioners of Baltimore City, but that the Board is in doubt whether this is correct or whether the insurance should be in the name of the Mayor and City Council of Baltimore. You ask my opinion on this question.

I have carefully examined the provisions of the City Charter and find there is no specific mention of the purchase of a patrol boat or the ownership of such boat when purchased. The boat is referred to in several sections especially where officers are required to be appointed for it and where the expenses of it are to be paid. I assume that the boat was purchased under general authority of the Board to keep the peace and order and to prevent violations of the state laws and city ordinances, and that it was to be used with other property and equipment belonging to it.

My opinion is that the ownership of the boat is in the City, but if it were doubtful the Board could requisition the City authorities to get it in its name. Under the circumstances insurance should be paid for by the City.

The ownership is not, as I understand it, in question, but if it is, the same should be determined in the proper manner.

I therefore advise you that in my opinion the policy for the boat should be insured in the joint names of the Board of Police Commissioners of Baltimore City and the Mayor and City Council of Baltimore.

Very truly yours,

GEO. MARBURY, Acting Attorney General.

STATE BOARD OF PRISON CONTROL.

State Board of Prison Control—Prison Labor Contracts—Validity—Legislation to Change System—Prison Made Goods.

March 11, 1918.

Honorable Peter J. Campbell,
President of the Senate of Maryland,
Annapolis, Maryland.

Dear Sir: In compliance with the order of the Senate of Maryland adopted on March 7, 1918, I have the honor to submit to you my opinion upon the questions stated in the order, which refer to the present contracts for prison labor.

The State Board of Prison Control assumed jurisdiction over the Maryland House of Correction and the Maryland Penitentiary on October 1, 1916. On that date there were three contracts existing for prison labor in the House of Correction and three in the Maryland Penitentiary. The former were made by the Board of Managers of the House of Correction and the latter by the Directors of the Maryland Penitentiary, and each of these six contracts were for longer periods of time than the terms of office of the Boards which made them.

The Senate's first inquiry is whether the Board of Managers of the House of Correction and the Directors of the Maryland Penitentiary had the power to make contracts for prison labor which were to last after the terms of office of the members of the Boards had expired.

In my opinion, the Boards did have this power. The statutes in force at the time (Bagby's Code, Article 27, Sections 334 and 641) expressly authorized the Boards to make prison labor contracts, without any limitation as to the time they were to last, and in such case it is settled that contracts of this kind are not invalid because of the fact that they are for a period exceeding the terms of the officers who make them, especially

While the practical effect of such a change would, of course, be to prohibit the assignment of prisoners to work under the contracts, yet the legal distinction between annulling a contract and providing a new State policy and system for prison labor is clear, and in the latter case I think that the obligations of the contracts themselves would not be impaired. The contracts having been annulled, the obligations would, in a legal sense, remain, and the Board of Prison Control would be bound to assign prisoners to satisfy them out. The situation would then be the same as where an individual is deprived of the means of carrying out his contract. In such case, the other party would have the right to legal redress for his damages. So the contractors would have the right to apply for a legislative appropriation to cover such damages, if any, as the Legislature should think they were justly entitled to on account of the rights of contracts, deprived of a change in the State's penal system and correctional system.

As I have said, whether or not the system of prison labor should be modified in this State is purely a legislative question, for the Legislature to decide. If the Legislature is prepared to take up this questionable task and endeavor, good as it is, to improve upon the work of the past, I trust that it will take the liberty of using the text of this bill and adopt a system which will provide for prisoners upon the public roads, which is the most logical and state-wide system.

Respectfully yours,

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

There is no legislation requiring the prisons to close at [illegible] of the year when the place or character of work is not [illegible].

I also take the liberty of suggesting that the appropriations to the Maryland Penitentiary and the House of Correction [illegible] by the Governor's Budget and Budget Bill, are based [illegible]

continued receipt by these institutions of their contract revenues, so that if the present penal system is superseded, the matter of caring for these institutions will be another point for consideration.

In connection with this whole question, the Senate may wish to consider some other method which would result in the discontinuance of prison labor upon private contract work, without legally impairing the obligation of the existing contracts. This is legislation prohibiting the manufacture and sale in this State of Prison Goods, 131 Md. 105, which sustains the law as proposed in the above opinion.

I beg to remain,

Very truly yours,

[illegible]

Attorney General.

Honorable Secretary of Senate Holding Warrant from State Board of Prison Control, Annapolis, Md. Court of Appeals.

State Board of Prison Control,
Prison Contract Labor,
Board of Hospitals for Insane,
State Penitentiary,
Baltimore, Md.

State Board of Prison Control,
Post Office Box 1000,
Baltimore, Maryland.

Gentlemen: I am in receipt of your letter of July 8th enclosing a letter received from Oppenheim, Blendon & Co., Inc. The reasons for your communication from this Company to the withdrawal of six men from its contract to work upon the State roads. It interprets this action as an indication of the settled policy of your Board to make further withdrawals in larger number during the contract and indicates that such action will be considered by it as a breach of its contract for prison labor. You ask me for advice in the matter.

The Attorney General in compliance with an order of the Senate of Maryland adopted on March 7, 1918, submitted that body an opinion on the subject of contracts for prison labor. In answer to the second enquiry propounded by the order of the Senate, namely, whether it is possible for the State to enact legislation abrogating contracts for prison labor, he said: "While, however, I think that the existing contracts are not be legally annulled, yet if the Legislature, in its judgment, decides to establish an entirely new system and policy of prison labor in this State, then I think that, as a matter of law, it has the power to do this."

The General Assembly, after the receipt of this opinion, passed Chapter 461 of the Acts of 1918, which repealed, modified and amended Article 27 of the Code, carrying out the provisions as to existing contracts and the policy of making any interpretation for the General Assembly to be equalizing their powers. Section 636 of that article reads:

> "The said Board shall establish and maintain a system of industrial processes to supersede the present system of contract labor in the Maryland Penitentiary and the State House of Correction, as soon as it shall deem the same expedient and proper, and the Board is hereby vested with all power and authority necessary to that end and to put such system of prison labor when established upon an and effect. The said Board shall have power and authority to place prisoners at labor upon State roads whenever in the judgment of said Board the same be expedient and proper, upon such terms as to it shall seem wise. The Board is hereby directed to put whenever in its judgment the same may be expedient, such forms of labor as will offer an opportunity to prisoners to earn a surplus over the cost of their maintenance for the State, and said Board shall further provide in its discretion for the payment of any surplus so earned, and

prisoner earning the same or to such person or persons as he may direct."

This means that your Board can establish a new system of labor for prisoners to supersede the present system of contract labor and you are, therefore, at liberty, if you desire to do so, to put your prisoners on State road work and take them all from the work done under the contract of Oppenheim Oberndorf & Company.

On the other hand, I do not think you can take part of them away and hold Oppenheim Oberndorf & Company to the performance of its part of a valid and subsisting contract when you are not performing your part of it by giving the Company the [illegible]. You must, unless you can make a new arrangement with Oppenheim Oberndorf & Company, either adopt a new system [illegible] or you must continue to give Oppenheim Oberndorf & Company the [illegible] to which it is entitled under its contract.

I [illegible] Oppenheim Oberndorf & Company.

Very truly yours,

[illegible] Attorney General.

State Board of Prison Control—1917 Appropriations [illegible] Salaries and Expenses of House of Correction and Penitentiary.

July 29, 1918.

State Board of Prison Control,
[illegible] Building,
Baltimore, Maryland.

Gentlemen: I have your letter of July 24, in which you ask whether you have the right to use your appropriation for the year ending September 30, 1918, for the payment of salaries and expenses of the employees of the House of Correction and the Penitentiary.

Chapter 556 of the Acts of 1916, creating your Board, provides that the sum of $[illegible]$ for the fiscal year ending September 30, 1917, and a like sum for the next year.

"For so much of said sums as may be necessary for the payment of the salaries, compensation and expenses of the State Board of Prison Control and all employees thereof, is hereby appropriated, and shall be payable on the order or orders of the State Board of Prison Control, drawn at such intervals and in such amounts upon the Comptroller of the State as the said State Board of Prison Control may deem necessary, and the Comptroller shall draw his warrant upon the Treasurer of Maryland at such intervals and for such amounts as may be deemed necessary for the State Board of Prison Control, as aforesaid."

"Sec. The salaries of the members of the State Board of Prison Control and the [illegible] employees of said Board and every [illegible] placed in [illegible] Maryland Penitentiary [illegible] the Maryland House of Correction shall be paid by said Board out of any funds in the hands of said Board under the State Treasurer upon warrant of the Comptroller of the Treasury, out of the funds herein [illegible] provided.

"Every member of said State Board of Prison Control and every employee of said Board, and every [illegible] other employee [illegible] shall have reimbursed to him all actual and necessary [illegible] and other expenses which the said Board may [illegible] to have been incurred by him in the discharge of his official duties, and the said reimbursements shall be paid by the said Board out of any funds in the hands of said Board under the State Treasurer, upon warrant of the Comptroller of the Treasury, out of the funds herein [illegible] provided."

It seems clear from these provisions, especially those which I have [illegible], that your Board can use its appropriation, not

only for its own salaries and the salaries of its employees, as such, but also for the salaries and expenses of the employees of the two institutions under its control.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

STATE BOARD OF PRISON CONTROL—PRISON LABOR—HOUSE OF CORRECTION CONTRACTS—FARM AND STATE ROAD WORK.

July 29, 1918.

State Board of Prison Control,
Union Trust Building,
Baltimore.

GENTLEMEN: You have asked my opinion as to your rights in connection with contracts for prison labor at the House of Correction. I am informed that you have a number of men working at farm labor and in connection with the installation of a sewerage and water system in and about the institution, and that you also have a number of other men working on the public roads, and some doing special work at Camp Meade and elsewhere. You wish to know the effect of using men in these occupations upon the contracts which you have with the Worcester Wire Novelty Company, the Cumberland Shirt Company and the American Cocoa and Matting Company in view of Chapter 354 of the Acts of 1918 and Chapter 306 of the Acts of 1918.

The first of these Acts, as I have previously advised you, means that you can establish a new system of labor to supersede the present system of prison labor, but it does not mean that you can take away prisoners from contractors when a contract does not permit you to do so and thereafter expect the contractors to carry out their contract to the letter.

Chapter 306 authorizes the State Roads Commission to make requisitions on you for inmates of the Penitentiary and House of Correction for the purpose of building and constructing or maintaining roads, bridges and highways or for the purpose of

working in any stone quarry operated by the Commissioner and directs you to furnish them. If, under the provisions of this Act, you are required to furnish more men than your present contracts permit you to furnish, it might relieve the contractors from being men from the further performance of their contracts.

The decision of this question is not, however, necessary in the present case because under the three Heads of Contracts, above mentioned, the contractors are not [illegible] men until after you take from the whole number [illegible] men first, and make contracts for men that remain [illegible] domestic labor and for the performance of other [illegible] about the district and county, such men contracts [illegible] furnished or supplied to road repairs and in the construction [illegible] roads.

The three contracts are a little different as to the [illegible] what roads are for use. The Contract Blank Form [illegible] contract allows you to take contracts only for State Road [illegible] One, while the other contracts permit you to take [illegible] any other road work. I understand, however, that [illegible] taking them for work upon State Road Number [illegible] present time.

I think you can properly make contracts as you propose for [illegible] and domestic labor and for the performance of other [illegible] in and about the Heads of Contracts and for State Road [illegible] without in any way violating these contracts. In [illegible] turnpike and there is not at these contracts. I do not [illegible] even that you can not, for work upon its connection with [illegible] roads and from the Heads of Contracts without violating [illegible] the rights of these contractors.

Very truly yours,

[illegible] Attorney General.

STATE BOARD OF PRISON CONTROL—LOAN FOR MAINTENANCE MARYLAND PENITENTIARY—APPROVAL BOARD OF PUBLIC WORKS.

Oct. 23, 1918.

Hon. William P. Jackson,
Treasurer of Maryland,
Annapolis, Maryland.

MY DEAR MR. JACKSON: I have your letter of October 22nd, in which you ask whether you have any authority to sanction the issuance by the State Board of Prison Control of notes for money needed for the maintenance of the Maryland Penitentiary.

Section 629 of Article 27 of the Annotated Code, as enacted by Chapter 566 of the Acts of 1916, vests the title to all property of the Maryland Penitentiary and the Maryland House of Correction in the State Board of Prison Control, as trustee for the State. This Section further provides:

> "The said Board shall not borrow any money that may be needed for the maintenance of said institutions without the consent first obtained of the Board of Public Works."

By a clear implication, the Board is authorized to borrow money needed for the maintenance of the Penitentiary, or the House of Correction, with the consent of the Board of Public Works.

It is my opinion, therefore, that you and the other two members of the Board of Public Works are authorized by this Section to approve, if you see fit, the issuance of notes by the State Board of Prison Control for the purpose of borrowing money needed for the maintenance of the Penitentiary.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

STATE ROADS COMMISSION.

Apportionment of Funds According to Road Mileage—Legislative Intent.

March 19, 1919.

To the Honorable the President and
Members of the Senate of Maryland,
Annapolis, Maryland.

GENTLEMEN: As requested in your Order of March 14, 1919, I have the honor to submit my opinion upon the question whether the State Roads Commission is bound to apply the funds made available by the counties of the State in proportion to road mileage, in accordance with the provisions of Section [illegible] of the Act of 1916, Chapter 141.

The Act of 1916, Chapter 141, was the beginning of the state road system in this State and it created the Maryland State Road Fund of 1916. Section 121, in providing for the funds to be apportioned among the counties in proportion to road mileage, was specially applied to the proceeds of that particular fund only. The exact language is that the State Roads Commission "shall apportion and use in the counties of the State of Maryland as much of the funds arising from the fund herein mentioned as may be available for road purposes in proportion to the new existing road mileage of said counties, respectively," etc.

Section 121 of the Act applied only to the [illegible] fund. Such an Act, it follows, of course, that the number of miles of road in each county depends always upon the proper use of the particular code existing at the time.

Difficulties in this respect have not will [illegible] in cases [illegible] the Legislature has specified the money [illegible] which the [illegible] is to be apportioned.

The Maryland Public Highways Law, 1916, [illegible] the Maryland Highway Bondfund Act 1916, Chap. 156, Section 121, page 107.

$3,170,000 "State Loan of 1912" provided that, with the exception of part specially dedicated, this loan was to be apportioned among the counties in proportion to road mileage, in accordance with the provisions of Section 321, of the Act of 1908. (Act 1912, Chap. 370, Sec. 5.)

The $6,000,000 "State Roads Loan of 1914" provided that $1,000,000 thereof should go to Baltimore City, $2,000,000 to the counties in accordance with road mileage, the amount for each county being named in the Act, and $3,000,000 to the counties in amounts also named in the Act. (Act 1914, Chap. 267, Sec. 7.)

The "$3,000,000 Loan of 1916" provided that $540,000 should go to Baltimore City and $2,[illegible] to the counties in such manner as the State Roads Commission should determine, the section providing expressly that this was to be "without reference to the existing road mileage of any of said counties." (Act 1916, Chap. 651, Sec. 7.)

It is clear, therefore, that the State Roads Commission is not bound to apportion its funds among the counties in proportion to road mileage, in accordance with section 321, of the Act of 1908, unless that is the method provided by the particular act creating the loan which is being expended. In other words, each loan act provides how the loan it creates is to be apportioned. Sometimes this has been by road mileage and sometimes not. The last loan act expressly provided that the apportionment should be in the Commission's discretion, without reference to road mileage.

I beg to remain,

Very respectfully yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—MERIT SYSTEM OF APPOINTMENTS—BILLS OVER FIFTY DOLLARS—LABORERS.

Frank H. Zouck, Esq., Chairman, April 1[illegible], 192[illegible].
State Roads Commission,
Cathedral Building, Baltimore, Md.

DEAR MR. ZOUCK: I have your letter of April 1[illegible], in which you ask my opinion upon two questions which will arise under House Bill No. [illegible], providing a merit system for appointments under the State Roads Commission, at present and Bill recently passed by the Legislature.

Section [illegible] of Article [illegible] of Hagner's Code [illegible] provides, among other things, as follows:

"No bill or claim on account of any of the expenses of the commission or in any way relating to [illegible] or transactions shall be passed upon by the commission at a meeting of its members, and no claim [illegible] the expenditure of more than fifty dollars, and no contract involving a larger expenditure than fifty dollars, shall be allowed or made except by a majority vote of [illegible] members of the commission at a meeting thereof, and [illegible] agreements, grants, leases made or entered into by the commission shall be recorded in books kept for [illegible] purpose, which shall always be open to the inspection of the public."

House Bill No. [illegible] repeals and reenacts section [illegible] of the Code but the amendments made do not affect the provisions of the [illegible] just quoted. That provision is reenacted in its [illegible] House Bill No. [illegible] however, does add to Article [illegible] new section, known as section [illegible], which provides that:

"Any person violating the provisions of this [illegible] or any rules established thereunder, shall be guilty of a misdemeanor, and shall, on conviction, be punished [illegible] of not more than one thousand dollars ($1,000.00) or by imprisonment for a term not exceeding six months, or by fine and imprisonment."

At present the statute provides no penalty for a violation of the above quoted provision of section 333, and you apprehend that if House Bill No. 154 is approved, then Section 820 thereof will provide such a penalty; and you ask whether the members of the Commission will be subjected to the penalties set forth in section 820, if bills involving more than fifty dollars are incurred for materials or other purchases or for work, without the prior authorization of the commission given at a meeting of its members.

The bills to which you refer would be incurred for various purposes, such as surveys, incidental or emergency repair work, stone, freight, etc. If bills of this kind cannot be incurred, as has been done in the past, without the prior authorization of the commission, then the commission would have to be in practically daily session. Moreover, in many cases bills of this kind are incurred by the field forces, throughout the State, and in these cases it would often be impracticable to secure the Commission's prior authorization.

I do not think that the provision of section 333 in question requires the Commission's prior authorization before bills of this kind can be incurred. It simply means that bills or contracts involving more than fifty dollars shall not become binding on the State until approved by the Commission. They may be authorized before they are incurred, or, in such cases as you have in mind, they may be incurred first, and afterwards ratified. The only effect of section 333 is, that such bills are not obligations of the State until approved by the Commission. This has always been so.

It follows that the commission will not incur the penalties set forth in Section 820, by continuing to act in the above respects as you have been acting in the past.

All bills involving more than fifty dollars, which are incurred without the commission's prior authorization, should, however, be ratified at a subsequent meeting.

You also ask whether paragraph 7, section 820, of House Bill No. 154, which provides that the rules adopted by the

STATE ROADS COMMISSION—NATIONAL DEFENSE HIGHWAY—
CONSTRUCTION OF ACT OF 1918.

May 17, 1918.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Garrett Building,
Baltimore, Md.

DEAR MR. ZOUCK: I understand that you wish my opinion as to whether the State Roads Commission can construct a portion only of the National Defense Highway, provided for by the Act of 1918, Chap. 221, the same to commence at Bladensburg, or whether, if the Commission decides to construct this Highway, it will be required to construct the whole of the Highway.

This Act leaves it discretionary with the State Roads Commission as to whether the National Defense Highway shall be constructed or not, but if the Commission decides to construct the Highway, then, under Section 2, it is provided that "the same shall be commenced at the east end and west end at the same time, that is to say, at Camp Parole and be built westward and at Bladensburg built eastward, according to the lines as laid down by the said Act of 1916, Chap. 700."

This provision raises a doubt as to whether the Commission can construct part of the Highway only, or whether it must arrange to construct the whole if it undertakes the work at all. Unfortunately, it is impossible for me to advise you definitely on the point, because it chiefly depends upon whether the Court would construe the above provisions to be mandatory or merely directory, and there is considerable doubt as to which view the court would take. I incline to the belief that if the Commission did construct part of the Highway only, then it would not be compelled to construct the remainder, but I cannot assure you of this.

All that I can do, therefore, is to advise you that if the Commission constructs part only of the Highway, beginning at the Bladensburg end, then the probability, in my opinion, is that the Commission would not be compelled to construct the re-

mainder. But there is doubt about this, and if the Commission does construct the Hindenburg end only, there is still the chance of legal proceedings to compel it to construct the remainder, which possibly might be successful.

I return you the copy of the Act you left with me.

Very truly yours,

ALBERT C. RITCHIE.

Special Report of Commission on Extension of State Water Works Mountain Lake Park.

Supplementary.

To the Honorable Emerson C. Harrington,

State Engineer of Maryland,

Baltimore, Maryland.

[illegible]

to maintain or repair state aided roads until they are first put in good repair by the County in which they are located, after which you are required to take them over and maintain and repair them.

The appropriations in the Budget, (Chap. 206 of the Acts of 1918, page 142) are $400,000 for state aid to roads, which is of course for the construction of new roads under the State Aid provisions of Art. 91, and $1,350,000 for maintenance of 1500 miles of state and state aided roads, which, of course, is to be construed in conjunction with Section 78 of Art. 91, and means those roads which you are authorized to take and maintain after they are put in good repair by the counties in which they are located.

It is my opinion, therefore, that you have no funds at your disposal with which you can repair state aided roads which have not been put in good repair by the counties in which they are located and formally accepted by your Commission. If they have been previously accepted, then they are not state aided roads any longer and should be maintained by you as other state roads.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

TAXATION.

(Collateral Inheritance Tax Opinions Included)

TAXATION—COLLATERAL INHERITANCE TAX—MEANING OF
COLLATERALS.

July 26, 1917.

Hon. Harry Clark, Insurance Judge,
Orphans' Court for Queen Anne's County,
Queen Anne, Queen Anne's Co., Md.

My Dear Judge Clark: I have your letter of July [illegible], 1917, in which you ask my advice as to the method of taxing the collateral inheritance tax on a farm in Queen Anne's County, the owner of which died in Pennsylvania on [illegible] 1914, and devised it to her nephew residing in Maryland.

While from the notes on the dates and facts given I assume that I assume the case is the same as that on which the General ruled, William L. Bishop, Register of Wills, Queen Anne's County, on September 7, 1917, [illegible] Attorney General, Volume 2, page [illegible]. He ruled as follows:

"Your Court should appoint an administrator under Art. 93, Section 166A, Bagby's Code, Volume 2, and the appointed appraisers who will return their appraisement in the usual manner. Upon the appointment the tax on the administrator will be paid, and will collect it from the devisee."

As I understand the facts, the property is in Pennsylvania and subject to the tax. I do not see any reason why the rule of the ruling quoted should not apply.

Very truly yours,

[illegible]

TAXATION—COLLATERAL INHERITANCE TAX—PROPERTY PASSING UNDER A DEED WITH LIFE ESTATE AND REMAINDER.

July 29, 1918.

Walter R. McComas, Esq.,
State's Attorney,
Bel Air, Maryland.

MY DEAR MR. MCCOMAS: In answer to your several letters in the matter of the property of the Hugh T. Bay I understand the situation to be as follows:

Mr. Bay executed a will by which he bequeathed all of his personal property to his wife absolutely and by which he devised his real estate to his wife for her natural life, with remainder to his nephew John W. Bay.

Some years after the execution of this will he executed a deed by which he granted, bargained and sold and covenanted to stand seized of all of his property for the use of himself during his natural life with remainder as to the personal property to his wife absolutely and with remainder as to the real estate to his wife for her natural life, and after her death to his nephew, John W. Bay. This deed was duly acknowledged and recorded in the Land Records of Harford County. After Mr. Bay's death the will was filed and later Mrs. Bay took out letters testamentary and filed a bond but does not now desire to administer the estate, she and the nephew both claiming the property under the deed, not under the will.

The Register of Wills wishes to know his duty whether he should require the executrix to bring the estate into the Orphans' Court and pass an account so that the State may get the tax on her commissions, and whether a collateral inheritance tax is payable on the real estate or any part of it.

In regard to the personal property the only question is whether it passed under the deed or the will as no collateral received any share in it. While there may be some question as to the validity of this conveyance as against creditors it is good until upset, and as the state is not a creditor I think we must accept the deed as a valid conveyance, in which case there is no per

sonal property passing under the will and no personal estate to administer in the Orphans' Court.

As to the real estate whether it passes under the deed or under the will the nephew's part of it is part of an estate or interest therein "transferred by deed, will, grant, bargain, gift or sale made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor" to a person other than father, mother, husband, wife, children and lineal descendants of the grantor, etc., under the provisions of Sec. 120 of Article 81 of the Annotated Code.

The Opinions of the Attorney General, Vol. [illegible] 229.

The nephew's interest in this real estate is, therefore, subject to the payment of the collateral inheritance tax while Mrs. [illegible]'s portion is not.

The method of determination of the value of the [illegible] interest is set out in Section 128 of Article 81. I note that [illegible] tion if the nephew elects to have his interest valued [illegible] date now or if he does not respond if he will then [illegible] into possession of the entire estate after the death of Mrs. [illegible] pay the tax upon the whole value of the estate.

It is the opinion, therefore, that there is no personal [illegible] to be administered in the Orphans' Court and there [illegible] do in the matter of the real estate until the death of Mrs. [illegible] unless the nephew elects to take advantage of Sec. [illegible] have his interest in the real estate assessed now, [illegible] the tax will be payable in arrears. If this is not done, [illegible] course, after the death of Mrs. Ray the Register will be [illegible] to collect the tax on the whole value of the estate.

I return to you the papers sent me.

Very truly yours,

[illegible] Wm. [illegible] Inheritance Tax

Taxation—Collateral Inheritance Tax—Proceeds of Sale of Foreign Real Estate.

Aug. 27, 1918.

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore, Maryland.

Dear Sir: I have before me your letter of July 24th, asking whether a collateral inheritance tax is payable on certain proceeds of sale in the estate of Augusta Stowman, late of Baltimore City, deceased. I apologize for the delay in answering your letter. It was occasioned partly by my not being able to see Mr. Wm. J. O'Brien, attorney for the executor, and partly by the press of other business.

By the will of Mrs. Stowman certain specific bequests are made, and then, by Item 18, it is provided:

> "As soon after my death as may conveniently be done, with advantage to my said estate, I direct and authorize the sale by my said executor of all the rest and residue of my said estate and property, the proceeds thereof to be divided as follows."

The proceeds are then divided into six shares, and given to the collateral relations of the testatrix.

I am informed by you and Mr. O'Brien that part of this rest and residue of the estate consisted of real estate located in the State of Arkansas; that this real estate has been sold by the executor, a collateral inheritance tax paid on it in Arkansas, under the laws of that State, and the executor in his account has charged himself with the proceeds in the administration account about to be filed.

I think the executor was correct in charging himself with such proceeds of sale, inasmuch as it was part of his duty to make the sale, and such proceeds would be liable for debts of the estate. I think that the proceeds of sale having been brought into the Orphans' Court of Baltimore City as a part of the estate

of a resident of the city, are subject, upon distribution, to the usual inheritance tax upon the clear value of the amount distributed.

I am sending a copy of this letter to Mr. O'Brien.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

NOTE. The Court of Appeals has since held that the proceeds in this case are exempt from taxation. See State vs. Fusting, No. 31, January Term, 1919.

TAXATION—COLLATERAL INHERITANCE—STEPDAUGHTER.

T. Hamblett Henry, Esq., *September 16, 1918.*
Easton, Maryland.

MY DEAR MR. HENRY: I have your letter of September 7th in which you ask whether an inheritance tax should be paid under the following circumstances:

The sum of $3,000 was inherited by a stepdaughter from her stepmother, the latter having previously inherited it from her husband who was the father of the stepdaughter. You ask to know whether the daughter must pay the collateral inheritance tax on this money which is legally belonged to her mother, she and her mother having always lived together since the death of the father and husband, and presumably having had the use of the money.

Article 81, Section 100, makes it the duty of every person to pay a lateral inheritance tax upon the value of any property passing after the death of the owner to persons other than those enjoying certain exempted relationships. A stepdaughter is not one of these exempted relationships, and, therefore, she must pay the tax on the money in question which she got from her stepmother, because it was the original property of the father. I am assuming, of course, that the money got to her stepmother and that it was not in fact inherited by her directly from her father. In the latter case, of course, no tax would be payable.

I do not think that the use of the money or the surrounding circumstances set out in your letter alter the case at all, as the law is perfectly plain, and takes no account of exceptional cases.

It is, therefore, my opinion that the collateral inheritance tax of 5% must be paid on the amount of money which the stepdaughter gets from her stepmother's estate.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

TAXATION—COLLATERAL INHERITANCE—TIME OF APPRAISEMENT—LATER SALE.

October 8, 1918.

Richard Davis, Esq.,
Register of Wills for Howard County,
Ellicott City, Maryland.

MY DEAR MR. DAVIS: I have your letter of October 2nd in which you ask my opinion on the following facts:

A decedent left real estate inherited by collateral heirs. This real estate was duly appraised by appraisers appointed by the Orphans' Court at $1,300. Before the collateral inheritance tax was paid the real estate was sold by trustees for $3,242.19 and a distribution of $2,856.28 was made to the collaterals after the Court expenses had been paid. The collateral tax, as provided in the Auditor's Account, was granted on the basis of the appraised value rather than the actual amount received. You ask whether this is correct.

The property must be considered as it was at the date of the death of the owner, and on that date it was real estate. It was appraised, as required by law, and the inventory and appraisement returned. The Code, Article 81, Section 150, provides:

> "The appraisement thus made shall be deemed and taken to be the true value of the said real estate upon which the said tax shall be paid."

I think it is clear that the appraised value is the value upon which the collateral inheritance tax must be calculated, and that the State is only entitled to the sum of $65.00 which was allowed in the Auditor's Account.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—BENEVOLENT RELIGIOUS CORPORATIONS.

October 25, 1915.

Dr. A. J. Palmer, Treasurer Secretary
Board of Lessons in Missions of the Methodist
Episcopal Church, 150 Fifth Avenue,
New York City.

DEAR SIR:—I have your letter of October 21st in which you ask how long a time must elapse in Maryland between a gift to a benevolent or religious corporation and the death of the donor, before such gift becomes free from a claim for collateral inheritance tax.

The collateral inheritance tax in Maryland is a direct inheritance tax imposed upon the passing of all estates from any person who may die seized and possessed thereof, within the State when such estate are transferred to, vested in, or made or intended to take effect in possession or enjoyment after the death of the grantor, etc. This tax, which is at the rate of five dollars on the hundred dollars of the estate, is not a tax upon the benevolent or religious corporations, but it is only payable if the gift takes effect in possession after the death of the grantor. If the gift takes effect before the death of the grantor it is not payable. If there is a period of long or short time elapses between the gift and the death of the grantor, it takes effect upon the death, for upon the tax is upon the passing after the death of the grantor.

The collateral inheritance tax law is found in Article 81 of the Annotated Code of Maryland, Sections 120 to 124, both inclusive. There is no separate digest published.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

TAXATION—COLLATERAL INHERITANCE—SECURITIES OUT OF STATE—LOCAL TITLE OUT OF STATE—POWER OF APPOINTMENT EXERCISED BY RESIDENT.

December 18, 1918.

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore, Maryland.

MY DEAR MR. JACKSON: The Safe Deposit & Trust Company of Baltimore and Mr. W. Stewart Symington, Jr., executor of the estate of Edith Symington have informed me that you wish an opinion as to a proposition presented by them to you for settlement. I am, therefore, writing this letter and giving it to their counsel for presentation to you.

I understand that Elizabeth M. Symington, late of the State of Virginia left certain securities to trustees resident in the State of Virginia in trust for her daughter, Edith Symington, with power to the latter to dispose of them by her will but not otherwise. Edith Symington died in Maryland and did exercise the power so conferred upon her in executing a will. Her executors have included in their First Administration Account the securities thus disposed of by Miss Symington, which amount to $[illegible]. This application has been made for the purpose of showing the disposition of the securities but the executors claim that these securities constituted no part of the estate of Edith Symington were not in the State at her death and did not pass from her to collaterals of her death, within the meaning of Section 120 of Article 81 of the Code.

I concur in the view which the executors have of this question. The only estates upon which a collateral inheritance tax is payable are those "passing from any person who may die seized and possessed thereof, being in this State." The securities were in the possession of trustees in the State of Virginia who had legal title thereto and actual possession thereof. Mrs. Symington had a life interest in the income from them, but she did not die seized and possessed thereof. Under these circumstances I cannot see that the State of Maryland has any claim for a collateral inheritance tax upon the value of these securities, and I, therefore, advise you that it is my opinion that no such tax is collectible from the executors.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

TAXATION—REASSESSMENT—POWER OF COUNTY COMMISSIONERS TO BORROW MONEY.

March 19, 1918.

Charles C. Wallace, Esq.,
Sec. State Tax Commission,
Rm. 1, Union Trust Building,
Baltimore, Maryland.

DEAR MR. WALLACE:—I beg to reply to your favor of March 11th, enclosing a letter from the President of the County Commissioners of Calvert County, in which he asks whether the County Commissioners have power to borrow money to pay the expenses of the reassessment of personal property in Calvert County, and in their next levy include an item to cover the same.

The Legislature has made it the duty of the County Commissioners to carry out the reassessment, Act 1916, Chapter [illegible], and I think it follows that the County Commissioners have the implied power to do all acts necessary to enable them to perform this duty. This would, I think, authorize them to borrow

money necessary to meet the expenses of the reassessment, unless there is some provision in the local law prohibiting it. The counsel of the County Commissioners, who is their legal adviser in reassessment matters (Act 1916, Chap. 629, Sec. 252), can readily advise them as to this.

Any money so borrowed can, of course, be repaid by means of an item covering it in the next county levy. The County Commissioners not only have the power to levy for the reassessment expenses, but it is their duty to do so.

Act 1916, Chap. 629, Secs. 250-251;
Bagby's Code, Art. 25, Sec. 7.

I return you the letter from the President of the County Commissioners.

Very truly yours,

ARTHUR C. ELLIOTT, *Attorney General.*

TAXATION—ASSESSMENT—SCHEDULES OF PERSONAL PROPERTY.

April 19, 1918.

M. Tilghman Johnson, Esq.,
Easton, Maryland.

DEAR MR. JOHNSON: I have your letter of April 13th. I think there is no doubt that the taxpayers in your county can be required to itemize their security holdings, as required by the form of schedule and return you sent me.

Bagby's Code, Art. 81, Sec. 21, requires a "full and particular account" of assessable property to be given, and Section 255 authorizes the State Tax Commission "to establish the form of the report of assessment, [illegible] schedule, notices and other papers," and to require the County Commissioners to use the forms so prescribed. The form of schedule you sent me is in

fact the form prescribed by the State Tax Commission for use by the County Commissioners.

With kindest regards, I am,

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—TAX ON COMMISSION OF JUDGE OF ORPHANS' COURT APPOINTED TO FILL VACANCY.

June 21, 1918.

J. Clayton Kelly, Esq.,
Clerk, Circuit Court,
Salisbury, Maryland.

DEAR SIR: I have your letter, stating that there is some doubt as to whether you are required to collect the state tax on the commission of I. Joseph Hearn, recently appointed Judge of the Orphans' Court for Wicomico County to succeed Louis F. Russells, deceased.

Art. 81, Sec. 146 of the Annotated Code fixes the tax at $10.00, and the succeeding Section seems to be quite explicit in its direction that Clerks of Courts shall not deliver commissions until the tax is paid.

I do not see that there is any doubt about the matter and I, therefore, advise you that it is my opinion that you should collect the tax from Mr. Hearn before delivering his commission.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—TAX ON COMMISSION OF MEMBER OF STATE INDUSTRIAL ACCIDENT COMMISSION.

June 28, 1918.

W. L. Gillespie, Esq.,
Deputy State Auditor,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of June 25th, asking whether a tax should be collected on the commission of Mr. Joseph E. Harrington, recently appointed by the Governor as a member of the State Industrial Accident Commission.

By Article 81, Sections 146 to 149, both inclusive, provision is made for the clerks of the several Circuit Courts of the counties and of the Superior Court of Baltimore City to collect certain taxes on official commissions delivered to them, and by them delivered to the officials for whom these commissions are intended. Section 146 sets out specifically the names of the officers who are to pay the tax and the amount of the tax for each officer. This Act was passed long before there was such a body as the State Industrial Accident Commission, and was not intended to apply to members of that body, and no provision is made for collecting a tax from them or fixing the amount of such tax.

Article 17 of the Annotated Code, Section 71, prohibits the clerks of the several Circuit Courts and of the Superior Court of Baltimore City from administering the oath to any officer until he pays the tax on his commission prescribed by law." This is a codification of the Act of 1874, Chapter 456, Section 179, as modified by Sec. 147 of Art. 81. In the last named section, instead of "prescribed by law" the earlier uses the words "prescribed by the preceding section," and this, I think, is the obvious meaning of the provision. Since there is no tax on a commission prescribed by law to be paid by a member of the State Industrial Accident Commission, this section obviously does not apply.

It is, therefore, my opinion that there is no commission tax due from Mr. Harrington as a member of the State Industrial Accident Commission.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

TAXATION—PENALTIES IMPOSED BY STATE TAX COMMISSION COLLECTIBLE AS TAXES.

August 9, 1921.

Charles C. Wallace, Esq.,
State Tax Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR SIR: You ask me whether penalties imposed under Sec. 151 of Art. 81 of the Annotated Code of Maryland are to be paid as preferred claims by the receiver of a delinquent corporation.

Sec. 151, as amended by Chap. 32 of the Acts of 1918, provides that "Upon the expiration of said period of ninety days after this Act takes effect, the State Tax Commissioner shall certify, under its seal, to the Comptroller the names of the said corporations, partnerships or individuals penalized, together with the amount of the penalties thereby due by each as aforesaid, and the same shall be added by the Comptroller to the bills for any taxes in his hands next due by such corporations, partnerships or individuals, and shall be collected in the same manner that the taxes therewith are collected, and if the same be such taxes, then the said penalties shall be collected by the Comptroller as taxes are collected by him."

It follows from this that penalties imposed by the State Tax Commission under this Section are to be treated, for the purposes of collection, in the same manner as taxes, and that penalties imposed before this Act took effect are also after the

expiration of ninety days, to be regarded as taxes, provided that the Commission makes the certification under seal to the Comptroller that the Act required.

Sec. 6B of Art. 81 provides that "whenever a sale of either real or personal property of a corporation, from which state taxes are due and payable, shall be made by any sheriff, constable, trustee, receiver or other ministerial officer, under judicial process or otherwise, all sums due and in arrears for state taxes from the corporation whose property is sold shall be first paid and satisfied, after the necessary expenses incident to the sale, and the officer or person selling said property shall pay the same to the person whose duty it is to collect or receive said taxes under the laws of this State."

In my opinion, therefore, whenever a receiver of a corporation makes any sale of either personal or real property, he is required to pay first all taxes due and payable, which taxes include the penalties, if properly certified, which may have been imposed by the State Tax Commission for the failure to file the annual report within the time required by law.

Very truly yours,

OTTO MAYNARD, *Deputy Attorney General.*

TAXATION—CORPORATE FRANCHISE TAX—ASSESSMENT—RIGHT TO CONTEST.

September 22, 1925.

Hon. Harry Eno, Secretary,
State Tax Commission,
Lincoln Trust Building,
Baltimore, Maryland.

DEAR SIR: I have your letter of September 21st enclosing a copy of a letter from Mr. Ernest Dodd, Clerk to the Comptroller of Anne Arundel County. I return this letter to you herewith.

Mr. Todd states that in his county the Clerk to the County Commissioners who preceded him made a number of clerical errors in preparing the assessment books from which the County Treasurer sent out tax bills for the years 1916-1917. He cites an instance where an assessment account for 1916 which should have been totalled at $7,342, was totaled at $2,342, a difference of $5,000 in the taxable basis in favor of the taxpayer. The State and county taxes on the basis of $2,342 were paid by the taxpayer, and he holds a receipt of the County Treasurer therefor. 1915 taxes of the same taxpayer and his 1917 taxes were both on the basis of $7,342. Mr. Todd wishes to know can the taxes on the omitted $5,000 for 1916 be collected and how.

A clerical error such as this would certainly not prevent the proper officials from correcting the error and collecting the taxes. The Board of County Commissioners should correct the error on their books, and certify the correction to the collecting agent, the Treasurer, and he should then proceed to collect under the Caroline County law. If he can sell for taxes overdue more than one year, he can sell the property, if the tax is not paid. If he cannot do this, he can bring suit in his own name on behalf of the County Commissioners and the State of Maryland. This will be his duty, as he is charged with collecting taxes unless they are written off by the County Commissioners.

I cannot be any more specific without more information about the particular claims, but the attorney for the County Commissioners of Caroline County can, undoubtedly, work out the proper procedure. If I can be of any further assistance to you or to him in the matter I shall be very glad to advise you.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

WORKMEN'S COMPENSATION.

Commutation to a Lump Sum of an Award for Permanent Total Disability.

June 21, 1918.

State Industrial Accident Commission,
Charles D. Wagaman, Esq., Chairman,
Equitable Building,
Baltimore, Md.

My Dear Mr. Wagaman: I have your inquiry as to your authority to commute to lump sum payment an award made to a person who has sustained a permanent total disability.

The Compensation Law, Act 1914, Chap. 800, modified as Act 1916, Vol. III, Annotated Code, Section 58 (Code, Sec. 58), reads as follows:

"In every case providing for compensation to an employee or his dependent, excepting temporary disability, the Commission may, if in its opinion the facts and circumstances of the case warrant it, allow the compensation to be paid in a partial or total lump sum."

Section 13 (Code, Section 11), modifies this as to non-resident beneficiaries. As to such beneficiaries who must have resided out of the State for one year, the Commission can commute payments thereafter to become due into a lump payment, however, to exceed $2,000.00, by paying a sum equal to three-fourths of the then value of such payments.

A non-resident beneficiary, permanently totally disabled, the Commission can, therefore, commute the award into lump payment pertinent, except the total of $2,000 provided in the Code, Sec. 58. No method of computation is provided, and this is, therefore, left to your judgment.

As a non-resident beneficiary, permanently totally disabled, it applies, and you can only commute under the conditions set out, and the lump sum awarded must be equal

to three-fourths of what you determine to be the value of his payments thereafter to become due, in no case, however, to exceed $2,400.00.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

WORKMEN'S COMPENSATION—FORM OF POLICY.

July 8, 1918.

State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

GENTLEMEN: I have examined the form of policy submitted to you by the Contractors Mutual Liability Insurance Company of Boston, Massachusetts, and transmitted to this office.

I find that the policy contains the provisions required by Section 30, Chapter 800 of the Acts of 1914, and in all other respects seems to be in proper legal form and in conformity with the Maryland Workmen's Compensation Law.

You have, however, called my attention to paragraph 8, reading as follows:

> "The employer agrees to be bound by all the provisions of the by-laws of the company in force at the time this policy is issued and which may become in force during the policy term, to which by-laws reference is hereby made, and which are to be taken as incorporated herein, with the exception, however, that the contingent liability shall not exceed in the whole twice the amount of the cash premium due under this policy."

This paragraph makes the by-laws of the company a part of the policy, and as such they should be in conformity with our law and should be approved by your Commission. This applies not only to the by-laws in force at the time the policy is issued, but also of any additional or changed by-laws. I think that this paragraph should be changed to read as follows:

"The employer agrees to be bound by all the provisions of the by-laws of the company in force at the time this policy is issued and which may become in force during the policy term, provided such by-laws are not in conflict with the laws of Maryland and are approved by the State Industrial Accident Commission of Maryland, with the exception, however, that the contingent liability shall not exceed in the whole twice the amount of the cash premium due under this policy. To all such by-laws reference is had and they are to be taken as incorporated herein."

With this change, I approve the form of the policy, and advise you in my opinion it is in conformity with the provisions of the Maryland law.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

WORKMEN'S COMPENSATION—FORM OF POLICY.

July 15, 1918.

State Industrial Accident Commission,

Equitable Building,

Baltimore, Md.

GENTLEMEN: I have before me for my opinion a form of policy submitted to you by the Casualty Reciprocal Exchange of Kansas City, Missouri. Your Secretary, Mr. Hill, has gone over this policy and has handed me a statement of the particulars in which it differs from the standard form already adopted by you.

The changes are those necessary when changing a company to an exchange policy of this character.

I know nothing, of course, about the responsibility of the company and have nothing whatever to do with this

The policy appears to me to comply with the law of Maryland and contains the provisions required to be included in such policy. I return you herewith the form of policy.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

WORKMEN'S COMPENSATION—BUILDING RESIDENCE—NOT EMPLOYMENT FOR GAIN.

August 14, 1918.

Hon. Robert E. Lee,
State Industrial Accident Commission,
Equitable Building,
Baltimore, Maryland.

MY DEAR MR. LEE: I have your letter of August 9th enclosing letter from Mr. J. Bond Smith of Takoma Park, and asking my opinion.

I understand from this letter that Mr. Smith is building a residence at Takoma Park which, upon completion, will be occupied by him. The excavation, brick work and carpenter work is being done for him by the day under the supervision of a young man in a real estate office, who is, however, not a contractor, and, I understand from Mr. Smith's letter, has no responsibility for the work, but only for the supervision. Mr. Smith wishes to know whether he is required to take out insurance under the Workmen's Compensation Law.

The Workmen's Compensation Law, which is Chapter 800 of the Acts of 1914, contains in its preamble the following statement:

> "The State of Maryland, exercising herein its police and sovereign power, declares that all phases of extrahazardous employments be and they are hereby withdrawn from private controversy."

Section 32 of this Act reads, "Compensation provided for in this Act shall be payable for injuries sustained or death

incurred by employees engaged in the following extrahazardous employments." Following this statement is a long list of employments, and in Subsection 42 are specifically included brick-laying, structural carpentry and construction of buildings. Subsection 43 adds "in addition to the employments set out in the preceding paragraphs, this Act is intended to apply to all extra hazardous employments not specifically enumerated herein." Section 62 sets out the definitions used in the Act. Paragraph 4 defines "employment" as follows:

> "'Employment' includes employment only in a trade, business or occupation carried on by the employer for pecuniary gain."

The building of a residence is not a trade, business or occupation carried on for pecuniary gain, although it may result in pecuniary benefit to the builder. I am, therefore, of the opinion that Mr. Smith does not have to take out insurance under the Act of 1914.

The further question of Mr. Smith as to the change of his common law liability is not one which I think is within my province to answer, as such a question, if it arose, would be a matter for his counsel, his employee's counsel and the Courts to determine, without the intervention of any State Department.

Very truly yours,

OLIN MAGNUSON, Acting Attorney General.

Workmen's Compensation—Power Lessee—New Mexico Power Lease—Necessity of Insurance.

October 9, 1925.

Honorable Hugh Dickinson,
Chairman Home Economics Committee,
Room 1, Kiser Bldg., Santa Fe.

DEAR SIR:—I have your letter of October 2nd in which you ask whether the Police Department is required to insure, under the provisions of the Workmen's Compensation Law, as com-

tained in Article 101 of the Code, members who do not contribute to the pension fund.

Section 55 of Article 101 provides, in part, as follows:

> "... Whenever and so long as by State law, City Charter or Municipal Ordinance, provisions equal or better than that given under the terms of this Article is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this Article."

It is my opinion that the City Charter, by those sections constituting the pension fund, makes equal or better provisions than those contained in Article 101 for members of the police force, and the mere fact that some members of the force do not exercise their option of coming into the police pension fund does not change the fact that provision is made for them.

I do not think the Board of Police Commissioners is required to insure such noncontributing members.

Very truly yours,

OSCAR MAGUIRE, *Acting Attorney General.*

MISCELLANEOUS.

ADVISORY BOARD OF PAROLE—TO INVESTIGATE ALL CASES IN WHICH APPLICATION IS MADE.

June 28, 1918.

Edward M. Parrish, Esq.,
President, Advisory Board of Parole,
Brown Arcade Building,
Baltimore, Maryland.

DEAR SIR: You ask me whether your board is compelled to investigate cases of prisoners serving terms of less than one year, where such prisoners make applications for parole.

Chapter 216 of the 1918 amended Section 7F of Article 41 of the Annotated Code seems to impose upon the Board the duty of investigating of its own initiative cases of prisoners sentenced for one year or more to the Maryland House of Correction or to the Penitentiary. The old part of Section 7F, as it stood before the Act of 1918, was not altered. It provides that "It shall be the duty of the Board to collect all information that may aid it in determining the advisability of recommending to the Governor the conditional pardon of any person sentenced under the laws of Maryland."

I think that this provision makes it the duty of the Board to investigate the cases of all prisoners who make application for parole, without regard to the length of sentence.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

MISCELLANEOUS—ALIEN ENEMY—TITLE TO LAND—CONVEYANCES.

October 10, 1918.

Otway B. Zantzinger, Esq.,
Ninth and New York Avenue,
Washington, D. C.

MY DEAR MR. ZANTZINGER: I have your letter of October 7th, with enclosures. I understand from these enclosures that in April, 1915, you sold a piece of property in Prince George's County to a Mr. Manns; that he took the title to it, and gave you a mortgage back; that he now has an equity of about $200 in the property, and owes you $1,300 on the mortgage, and that he wishes to dispose of the property by making a conveyance with his wife. He is a subject of one of the Central Powers with which we are at war, and is, therefore, an alien enemy. You ask whether he is able to convey property.

Aliens at the common law were not permitted to hold property, but by statute in most States this has been changed to permit such holdings. In Maryland, by the Annotated Code, Article 3, Section 1, it is provided:

> "Aliens, not enemies, may take and hold lands, tenements and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by descent; and may sell, devise or dispose of the same, or transmit the same to their heirs, as fully and effectually, and in the same manner, as if by birth, they were citizens of this State."

Mr. Manns being at the time he acquired this property an alien, but not an enemy alien, was entitled to receive it and hold it. By clear implication of law an enemy alien cannot convey property, as only aliens, not enemies, are permitted by the statute to convey; therefore, I should not think Mr. Manns could give a good title to the property to the grantee.

The general rule is that the real estate of an alien enemy is not confiscable, 40 Cyc. 323. I am not, however, prepared to say, without a much more extensive examination than I think I am warranted in making, just what is the status of the title to

Mr. Manns' property. I think you could foreclose your mortgage, which would relieve the situation except in so far as the right to any balance over and above the mortgage debt might be concerned, and, as it seems the small balance of $200 would be about used up by the foreclosure proceedings, the State would not be interested in any event. It seems to me, therefore, that the matter is one for private investigation by the attorneys of the parties interested.

I return you your papers.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—RIGHT OF STATE BANKS TO COMMISSIONS ON LOANS.

July 24, 1918.

Hon. J. Dukes Downes,
Bank Commissioner,
Baltimore.

DEAR MR. DOWNES: Answering your inquiry whether a State Bank can charge a commission of three per cent. on real estate loans, in addition to the legal rate of interest of six per cent., I beg to say:

Section 57 of Article 3 of the Constitution of Maryland provides:

> "The legal rate of interest shall be six per cent. per annum unless otherwise provided by the General Assembly."

Article 49, Section 1 of the Code, provides:

> "Interest may be charged or deducted at the rate of six per centum per annum and the same may be calculated according to the standard laid down in Rowlett's Tables."

Article 11 of the Code, the State Banking Law, gives no authority to State Banks to charge any other or different rate of interest.

Chapter 88 of the Acts of 1918, known as the "Uniform Small Loan Law," specifically repeals Section 7 of Article 49 and Sections 214, 215 and 216 of Article 56 of the Code. This last Act provides in Section 19:

> "This Act shall not apply to any person, copartnership or corporation doing business under any law of this State, or of the United States, relating to banks, trust companies or building or loan associations, etc."

I am, therefore, of the opinion that the "Uniform Small Loan Law" does not apply to banks, and that no State Bank can charge, in addition to the legal rate of six per cent., any commission or fee for making a loan on whatever security it may elect to take.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—REFERENDUM—TIME OF TAKING EFFECT OF PROHIBITION ACT FOR CHESAPEAKE BEACH.

April 12, 1918.

J. Frank Parran, Esq.,
State's Attorney,
Prince Frederick, Md.

DEAR MR. PARRAN: I received your favor of April 8th, in which you ask when the Act of 1918, Chap. 418, making Chesapeake Beach dry, takes effect.

This Act provides that it shall take effect from the date of its passage. The Referendum Amendment to the Constitution (Act 1914, Chap. 673), under which legislation ordinarily does not take effect until June 1st, unless containing the emergency clause, does not apply to a statute regulating or prohibiting the sale of intoxicating liquor. Such a statute will, if it so provides, take effect from the date of its passage. This was expressly decided by the Court of Appeals on December 22, 1917, in the case of Beall, Sheriff, vs. State, ex rel. Jenkins,

an appeal from St. Mary's County, reported in the Daily Record of January 2, 1918.

It follows, of course, that the Act of 1918, Chap. 418, making Chesapeake Beach dry, took effect from the date of its approval by the Governor, which was April 10, 1918.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—CHIROPRACTIC SCHOOL—QUESTION OF FACT.

July 19, 1918.

Dr. Robert E. Keningham,
720 E. North Avenue,
Baltimore.

DEAR SIR: In reply to your letter of July 16, I beg to advise you that by Section 302 of Chapter 522 of the Acts of 1916, it is provided:

> "That from and after April 13, 1914, no person shall enter upon or continue the practice of osteopathy, etc., or who shall practice or attempt to practice osteopathy under the name or term chiropractic, etc., provided, however, that nothing in this Act shall apply to graduates who have diplomas or certificates from a *recognized chiropractic school, college or institution.*"

There is nothing in the law that I can find that defines a college or school of chiropractic. I have heard that such schools exist, but personally I have been unable to find out anything about them. The question of what constitutes under the statute a recognized "chiropractic school, college or institution" will be a question of fact and not a question of law, and will have to be established by proof. In other words, if you arrest A. for violating this section, and as a defense he offers a diploma from some school claiming the same to be a recognized chiropractic school, you can contest that as a matter of fact. The Law has defined just what an incorporated school or college of osteopathy is, but it

has not defined *what a recognized chiropractic school, college or institution is*, and, therefore, I cannot help you.

Yours very truly,

WM. PINKNEY WHYTE, JR., *Asst. Attorney General.*

MISCELLANEOUS—CHIEF CLERK, HOUSE OF DELEGATES—VACANCY—RECESS OF LEGISLATURE.

December 4, 1918.

Hon. Herbert E. Woodcock,

Speaker, House of Delegates,

Hampstead, Maryland.

MY DEAR MR. WOODCOCK:—I have your letter of November 27th, in which you ask what should be done in case an emergency arises requiring the services of a chief clerk of the House of Delegates. The chief clerk of the last House of Delegates died during the last month.

There is no provision so far as I know for the nomination of a chief clerk in the recess of the Legislature. The House of Delegates itself is the only body which can name its officers.

I do not think it likely any emergency will arise which may make necessary the services of a chief clerk. All certification of records is done by the Journal clerk, and I know of no duty which the chief clerk has to perform in recess.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—COMPULSORY WORK LAW—REGULAR AND CONTINUOUS EMPLOYMENT.

June 11, 1918.

Joseph L. Kinsey, Esq.,
Sec. Board of Police Commissioners,
Court House,
Baltimore, Md.

DEAR MR. KINSEY: I have your letter of June 10th, in which you ask me whether a person who is employed two or three days during the week and is idle the rest of the week is regularly and continuously employed within the meaning of the Maryland Compulsory Work Law.

The Act itself does not define what regular and continuous employment is, and each case will have to be decided according to the surrounding circumstances.

In my judgment, however, persons working two or three days a week and loafing the rest of the week, without any good reason for such idleness, are violating the law. There is little doubt in my mind but that the magistrates, before whom these cases are tried, would adopt that view, since periodic idleness is one of the things which this law was aimed to correct.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—COMPULSORY WORK LAW—ALIENS SUBJECT TO WORK LAW.

George L. Mahoney, Esq., *June 12, 1918.*
Director, Compulsory Work Bureau,
301 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I have your letter of June 8th, in which you ask me whether aliens may be prosecuted under the provisions of Chap. 33 of the Acts of 1917, known as the Maryland Compulsory Work Law.

The work law was passed as an emergency measure at the special session of the General Assembly, held for the purpose of framing legislation to meet conditions growing out of the declaration of war. The Act can only be called into operation by the proclamation of the Governor, upon his finding that it is necessary because of the existence of a state of war for the protection and welfare of the people of the State that all able-bodied male persons, between the ages set forth in the Act, be employed in essential occupations. The Act specifically authorizes the Governor to require every able-bodied male person between 18 and 50 years of age, inclusive, within the State to comply with the provisions of the law.

The Act is purely a war measure and is to be construed in the light of war conditions. Its obvious purpose is to make producers out of drones, workers out of the idle, so that every person may be engaged, without exception, in laboring for the protection and welfare of all.

This law cannot be construed to allow any class of persons living in this State to remain idle at a time when the State needs the labor of all within its borders. The words "citizens of the State" occurring in Section 1 of the Act mean, in my opinion, all able-bodied male persons, between the ages mentioned, who *reside* within the State. The law applies to aliens as well as to citizens. If there are any aliens in Maryland who are unemployed, they must work or leave the State. Otherwise they are authorized to prosecute to the limit of the penalties provided for in the law.

Very truly yours,

ARMIGER C. RICHARDS, *Attorney General.*

MISCELLANEOUS—PROCLAMATION OF AMENDMENT TO CONSTITUTION—PUBLICATION IN GERMAN LANGUAGE.

July 15, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I am in receipt of your letter of July 9th, enclosing a form of proclamation for a proposed amendment to the Constitution of the State. You ask the opinion of this office as to the section of the Constitution requiring a bill proposing a constitutional amendment to be published "in three newspapers published in the City of Baltimore, one of which shall be in the German language."

The bill proposing the amendment which you are about to proclaim and have published is Chapter 20 of the Acts of 1918. It proposes an additional section to Article 1 of the Constitution, title "Elective Franchise," the new section to be Section 1-A, and intending to give to the General Assembly power to provide by suitable enactment for voting by qualified voters who may be absent or engaged in the military or naval service of the United States at the time of any election. The purpose of the enactment of this bill was to enable the Maryland soldiers and sailors engaged in the war against Germany to vote at elections in the State of Maryland.

Article XIV of the Constitution, Section 1, provides for the method of proposing amendments to the Constitution. It requires that:

> "the bill or bills proposing amendment or amendments shall be published by order of the Governor, in at least two newspapers in each County, where so many may be published, and where not more than one may be published, then in that newspaper, and in three newspapers published in the City of Baltimore, one of which shall be in the German language, once a week for at least three months preceding the next ensuing general election, at which the proposed

amendment or amendments shall be submitted, in a form to be prescribed by the General Assembly, to the qualified voters of the State for adoption or rejection."

There is no newspaper in the German language now published in the City of Baltimore.

The Constitution will not require you to perform an impossibility. You have no control whatever over the language in which newspapers in Baltimore are printed. Since there is no longer a German newspaper, the bill will have to be published in three newspapers printed in the English language. This would be the interpretation of Article XIV, Section 1, were there no clause specifically requiring any other language.

Bennett vs. Baltimore, 106 Md. 184.

The people, when adopting the Constitution, undoubtedly intended it to apply to conditions then existing which were expected to continue. These conditions did not continue and do not exist now. It would clearly be against the public interest and welfare to allow the non-existence of such conditions to render nugatory any attempt of the people to change their fundamental law, especially when such attempt is made in a manner, with this single exception, entirely regular and within the Constitution.

Any other view would lead to a ridiculous situation. If no amendment can now be validly adopted, except it be published in a newspaper printed in the German language, it follows that no amendment can ever be adopted except by the calling of a constitutional convention, until someone starts a publication printed in that language. This is true because Section 1, Article XIV, itself, as a part of the Constitution, must be amended in the same way as the other parts.

I have, therefore, no hesitation in advising you that a failure under the existing circumstances to publish Chapter 250 of the Acts of 1918 in a German newspaper in the City of Baltimore will not invalidate the ensuing election upon the constitutional amendment thereby proposed.

In accordance with this view, I have changed your proclamation in order that the record may show why the requirement was disregarded, and, as changed, I return it to you herewith.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—PROCLAMATION OF AMENDMENTS TO CONSTITUTION—PUBLICATION IN GERMAN LANGUAGE.

July 12, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR HARRINGTON: Since writing to you on July 15th I have been informed that there is a German newspaper published in the City of Baltimore. It is the "Bayerisches Wochenblatt" published weekly at 327 N. Gay Street by Baumann and Heisch.

I have examined a copy of this paper. It contains general news and advertisements, and is sold by subscription to the general public or in the usual way. It has a permit to use the mail and does so. The United States District Attorney's office has no complaint against it. I think it meets the requirements of Article 14, Section 1 of the Constitution, and Chapter 26 of the Acts of 1918 proposing an amendment to the Constitution should, therefore, be published in it.

I enclose you form of proclamation covering such publication.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—BOARD OF DENTAL EXAMINERS—QUALIFICATIONS OF APPLICANTS—GENERAL EDUCATION.

September 11, 1918.

Maryland State Board of Dental Examiners,
F. F. Drew, D. D. S., Secretary,
201 N. Howard Street,
Baltimore, Maryland.

DEAR SIR: I have your letter of September 9th in which you ask whether the Maryland State Board of Dental Examiners has authority under Section 4, Article 52 of the Annotated Code to examine candidates for a certificate to practice dentistry with reference to their primary education as well as to their professional skill. Section 4 reads as follows:

> "Any person twenty one years of age who has graduated at and holds a diploma from a university or college authorized to grant diplomas in dental surgery by the laws of any one of the United States and who is desirous of practicing dentistry in this State, may be examined by said board with reference to qualifications, and, upon passing an examination satisfactory to said board, his or her name, residence or place of business shall be registered in a book kept for the purpose and a certificate shall be issued to such person. Any graduate of a regular college of dentistry may at the discretion of the examining board be registered without being subjected to an examination."

The Court of Appeals has construed this section to mean that any person twenty-one years of age who has graduated at or holds a diploma from an university or college authorized to grant diplomas in dental surgery by the laws of any one of the United States and who is desirous of practicing dentistry in this State *must* be examined by your Board with reference to qualifications.

The qualifications with reference to which the Board has authority to examine are construed by the Court of Appeals to

mean those appropriate and requisite for the practice of dentistry, and not for other purposes.

> "The language of the Act might well have been more specific, but it is impossible to suppose that it refers to any other qualifications than those appropriate to and requisite for the practice of dentistry. To hold that this language would permit an examination in astronomy, classics, mathematics, or even in the kindred study of medicine, would be to adopt a forced and violent construction of the law, not for the purpose of sustaining, but defeating it."
>
> State vs. Knowles, 90 Md., page 656.

I am, therefore, obliged to advise you that I cannot concur in your view that the language of Section 1 empowers your Board to examine candidates to ascertain if they have at least the equivalent of a high school education. The qualifications concerning which you are to examine the applicant are those and only those which apply to the actual knowledge of the practice of dentistry. They do not include primary education however desirable it might be for all applicants to have such education of at least a high school standard. The Legislature has, however, not prescribed such a standard and your Board has no power to enforce it until it is so prescribed.

Very truly yours,

CODY MACGILL, Jr.,
Assistant Attorney General.

MISCELLANEOUS. LAW PROHIBITING DIRECTORS OF STATE BOARDS FROM SELLING SUPPLIES TO THEIR INSTITUTIONS.

December 9, 1918.

Hon. John M. Dennis,
Union Trust Building,
Baltimore, Maryland.

MY DEAR MR. DENNIS: I have your enquiry of November 22nd, in which you ask whether there is any law prohibiting Directors of State Boards from selling supplies and merchandise to the institutions of which they are Directors.

The Act of 1908, Chapter 517, codified as Section 183 of Article 27 of the Annotated Code, Volume 3, provides as follows:

"Every person having any official connection, either as officer, agent, trustee or member of the board of visitors of any public institution, or private institution supported in whole or in part by money appropriated by the State of Maryland, who shall, after April 6, 1908, become directly or indirectly concerned or interested, for profit, in any contract, purchase or sale of anything for, by, or on account of such institution, shall be deemed guilty of a misdemeanor; and any person so offending shall upon conviction in any court of this State be immediately dismissed from employment or forfeit his place as said officer, agent, trustee or member of the board of visitors, and be subject to a fine not to exceed five hundred dollars, to be recovered as other fines are, or imprisoned for a term in the Maryland House of Correction not to exceed one year."

You will see by this quotation that not only is it bad taste, as you suggest, but it is also a misdemeanor for any Director of a State institution to sell supplies to the institution.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—HAVRE DE GRACE BRIDGE—TOLLS AGAINST UNITED STATES GOVERNMENT.

Major John deP. Douw, *March 11, 1918.*
Office of the Adjutant General,
Annapolis, Maryland.

DEAR MAJOR DOUW: I have your favor of March 6th, enclosing correspondence and vouchers with reference to the charges against the Federal Government of toll for the use of the bridge of the Havre de Grace and Perryville Bridge Company.

You ask whether the Bridge Company's charter exempts the Federal Government from the payment of tolls.

The company was incorporated under the general law (Bagby's Code, Article 23, sections 125-133). Its charter was amended by the Act of 1908, Ch. 535, page 1313, and the amount of its charges are subject to regulation, and are in fact now in process of regulation, by the Public Service Commission of Maryland, under the Act of 1916, Ch. 272.

The Company's charter contains no provision exempting the Federal Government from the payment of tolls over this bridge.

I return you, as requested, the correspondence and vouchers.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—HOLDING TWO OFFICES—MEMBER OF LEGISLATURE—NOTARY PUBLIC.

Hon. Emerson C. Harrington, *September 5, 1918.*
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your letter of September 3rd, in which you inquire whether or not a member of the Legislature can hold the office of Notary Public during his term.

The Declaration of Rights, Art. 35, provides:

"That no person shall hold, at the same time, more than one office of profit created by the Constitution or Laws of this State."

A Senator or member of the House of Delegates holds an office of profit, created by the Constitution and Laws of the State. I am of the opinion that a Notary Public also holds an office of profit created by the Constitution and laws of the State. The Court of Appeals, in construing Art. 35, has said that the acceptance of a second office of profit, vacated the first office.

Truitt vs. Collins, 122 Md. 330.

The Constitution, Art. 3, Sec. 19, provides that each House of the General Assembly shall be the judge of the qualifications of its members. Under this provision, no Court has the power to determine that a member of the Legislature, accepting another office, has vacated his seat, — this being entirely within the power of the House of the General Assembly in which the member holds a seat. It could be presumed, however, that the General Assembly would accept the ruling of the Court of Appeals, construing the Constitution of the State.

In my opinion, therefore, a member of the Legislature, whose term has not yet expired, and who accepts an appointment as a Notary Public, runs the danger of having his seat in the Legislature declared vacant, in case of an extra session; but, if he chooses to take this risk, there is no reason why he cannot be legally appointed and why he cannot legally accept the office of Notary Public, and qualify and act as such.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

MISCELLANEOUS. HOLDING MORE THAN ONE PUBLIC POSITION. ADMINISTRATION STATE WILD DEG. LAW.

August 7, 1918.

J. Alfred Eckerly, Esq.,
Justice of the Peace,
Upper Marlboro, Maryland.

DEAR MR. ECKERLY: I have your letter of August 2nd, in which you ask whether it is legal under the Constitution of Maryland for a person to hold three positions, to wit, clerk to the Treasurer of Prince George's County, Registrar of Vital Statistics for the Third Election District of Prince George's County, and Notary Public at the same time.

The prohibition against holding at the same time more than one office of profit created by the Constitution or laws of this State is contained in Article 35 of the Declaration of Rights.

This provision has been construed a number of times by the Court of Appeals.

State Tax Commission vs. Harrington, 126 Md. 157;

2 Opinions of the Attorney General, page 64.

The clerk to the Treasurer of Prince George's County and the Registrar of Vital Statistics for the Third Election District of Prince George's County are not officers within the meaning of the Declaration of Rights, and it follows, therefore, that there is no legal objection to one person holding the three places that you name at the same time.

You also ask me whether it is fair, just or legal for one Justice of the Peace to come into the district of another Justice of the Peace or to send his wife into such other district for the purpose of issuing licenses under the State Wide Dog Law, which is Chapter 197 of the Acts of 1918. It is, of course, not within the province of this office to pass upon questions of fairness or propriety.

In the case you cite a Justice of the Peace for the Fourteenth Election District came into the Third Election District, which is the district for which you were appointed. Sections 196 and 197 of Chapter 197 of the Acts of 1918 provide that the County Commissioners shall furnish to the Justices of the Peace of the respective counties metal tags, and that any Justices of the Peace of the several counties after having received and receipted for necessary blanks and tags must issue such licenses and tags in the manner as prescribed for the issuance of licenses by the County Treasurer. It seems clear that no Justice of the Peace must issue any tags except those given him by the County Commissioners, and if the Justice of the Peace of the Fourteenth Election District undertook to issue licenses which had been given to the County Treasurer or the County Commissioners, that I would have no hesitation in saying that he exceeded his authority.

If the Justice of the Peace of the Fourteenth Election District came into the Third Election District and there issued the

licenses which had been given him by the County Commissioners, his action in so doing is of doubtful legality. The precise question does not appear to have been passed upon by the Courts, and there is no authority in this State upon which a definite answer can be based. I should say the better practice would be for the Justice not to go out of his district, thus avoiding the raising of any question as to the legality of his action.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—INFANTS OF INSANE PATIENTS CONFINED IN STATE HOSPITALS—SEPARATION FROM MOTHERS.

May 1, 1918.

Dr. J. Clement Clark,
Superintendent, Springfield State Hospital,
Sykesville, Maryland.

DEAR DR. CLARK: I understand that you wish my opinion as to whether orphan asylums in this State may receive infants under the age of six months, who have been born of insane mothers confined in your institution. The asylums apprehend that this might be a violation of the Act of 1916, Chapter 210, making it unlawful to separate a child under the age of six months from its mother for the purpose of placing such child in an institution for its maintenance.

I very much doubt whether this Act was intended to apply to the case of a child born of a mother during the latter's confinement in an institution for the insane, but even if it could be held to apply to such a case, nevertheless under the Act the child can be separated from the mother at any time if the Board of State Aid and Charities deems such separation necessary, and gives its written consent thereto.

There cannot be very many cases of this kind, and when they occur my suggestion is that you obtain the consent of the Board of State Aid and Charities to the separation, and to the placing

of the child in an orphan asylum. With this consent, the asylum need not have the slightest apprehension that it might be violating the law. It would not be.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—JUSTICES OF PEACE—POWER TO SUSPEND SENTENCES.

June 5, 1918.

William H. Killian, Esq.,
Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your letter of May 27th, in which you ask whether a Justice of the Peace has the power to suspend sentence imposed under the provisions of Chap. 550 of the Acts of 1914.

This Act makes it a misdemeanor to catch oysters in the waters of the Chesapeake Bay and tributaries, and provides a penalty of $50 for each offense.

Sec. 52 of Art. 27 of the Annotated Code provides that the courts may suspend sentence generally. Section 12 of Art. 52 of the Annotated Code provides that Justices of the Peace shall have jurisdiction over all cases not punishable by confinement in the Penitentiary or involving a freehold interest, and the same section further provides that Justices may pronounce judgment and sentence in the same manner and to the same extent as the Circuit Courts. The offense to which your letter refers was committed in Dorchester County, one of the counties to which Sec. 52 of Art. 52 applies.

I do not think that the power to pronounce judgment and to sentence includes the power to suspend sentence. Justices of the Peace exercise only special statutory jurisdiction, and the extent of their powers is limited to those expressly given by

law. There being no statute in Maryland conferring upon Justices of the Peace the power to suspend sentence in criminal cases, it follows, therefore, that the Justices do not have any such power.

I return herewith the enclosure in your letter to me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS. CONSTITUTIONAL LAW. PRIVATE CONTRACTS. FARM LABOR.

February 9, 1916.

M. Tilghman Johnson, Esq.,
Easton, Maryland.

DEAR MR. JOHNSON: I have received your letter of February 6th. It is always a pleasure for me to consider any question as to which you would like my opinion.

I have carefully considered Mr. Martin's idea of having a law passed which will fix the price of farm labor in Talbot County for the various kinds of work done on a farm. I understand that Mr. Martin's idea is that the law would prescribe the wage for planting corn, for cutting wood, for cutting wheat, and so on.

However desirable such a law might be, I think there is no doubt that it would be unconstitutional. The price to be paid for farm labor is a matter of private contract between the farmer and the laborer, and cannot be controlled by a state statute. This is, I think, quite clear upon well established principles of law, and it is recognized in the discussion of the general question by the United States Supreme Court in the recent case of Wilson vs. New, 243 U. S. 332, relating to the train men's eight hour law of September 3, 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—LAND OFFICE—PROCESS—CERTIFICATION OF PROCEEDINGS OF THE COURT OF CHANCERY.

January 28, 1918.

Hon. James S. Shepherd,
Commissioner of the Land Office,
Annapolis, Md.

DEAR SIR: Replying to your favor of January 2, I beg to say that, in my opinion, process issued from your office under Section 9 of Article 54 of Bagby's Code, may be attested by the Commissioner's Chief Clerk in the name of the Commissioner, and copies and proceedings of the Court of Chancery may, under section 11, be certified by the Chief Clerk in the Commissioner's name. I think that the Chief Clerk should, in both cases, actually sign the Commissioner's name, rather than use an autograph stamp signature.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MOTION PICTURES—FEES FOR REEXAMINATION OF MOTION PICTURES.

June 5, 1918.

Mrs. Hammond E. Hammond,
Secretary Board of Motion Picture Censors,
809 E. Lexington Street, Baltimore, Md.

DEAR MRS. HAMMOND: You ask me whether the examination fee for films which are reputed to match pictures previously approved by your Board should be a flat one, the amount fixed for original films, or a flat one, the fee fixed for duplicates.

The fees to be charged by your Board are fixed by Section 11, of Chapter 200 of the Acts of 1916, as amended by Chapter 126 of the Acts of 1918. This Section provides that

"For the examination of each film, reel or set of views, the Board shall receive in advance a fee of twenty dollars and

one dollar for each duplicate or print thereof, *which must be applied for at the same time and by the same person* * * *."

It is clear that the law contemplates that the one dollar fee for duplicates is allowed only in those instances where application for them is made at the same time that the original is submitted. Films which are duplicates or reprints of pictures previously approved are, therefore, when submitted for examination, to be charged for at the same rates as originals.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS — NOTARIES PUBLIC — REPEAL OF LAW — EFFECT OF SUBSTANTIAL RE-ENACTMENT OF PRECEDING LAW.

April 22, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOVERNOR HARRINGTON: As requested by you, I have examined the Act of 1918 relating to Notaries Public, which takes effect June 1, 1918.

I do not think that this law will, when it takes effect, legislate out of office the Notaries appointed by you in May under the present law.

The present law, Bagby's Code, Art. 68, Sec. 1, authorizes you to appoint "a competent number" of Notaries Public for the State, the number thereof in Baltimore City being regulated by local law. The new law repeals and re-enacts this section with two amendments, the first amendment simply authorizing the Governor to appoint "any number of persons, male or female," and the second amendment making the cost of each commission $5.00, together with a 50 cent fee to the Clerk.

In a number of Maryland cases, beginning with Dashiell vs. Baltimore, 15 Md. 615, 624, it is held that where, as in this case, the repealing law contains a substantial re-enactment of the previous law, the operation of the latter continues uninterrupted. I think that this is true in the present case, with the result that the terms of the Notaries appointed by you in May under the present law will not be affected by the new law which takes effect on June 1, 1918.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—NOTARIES PUBLIC—TERMS.

May 2, 1918.

Thomas L. Campbell, Esq.,
Deputy Clerk, Superior Court,
Court House, Baltimore, Md.

DEAR MR. CAMPBELL: I am sending you my opinion upon the question whether a Notary Public who has been reappointed may lawfully perform Notarial acts between the time when his present commission expires and the time when he qualifies under his new appointment.

Notaries Public are provided for by the Constitution, and they come within Article 2, Section 12, of the Constitution, which provides that the terms of all civil officers shall commence on the first Monday in May, and continue for two years. This same clause also provides that civil officers shall hold until their successors qualify, but the difficulty about applying this provision to Notaries is that no Notary is appointed to succeed any particular Notary, so that in many cases it is impossible to tell who a Notary's successor is.

In the case, however, of a Notary appointed to succeed himself, I think it may fairly be said that he is his own successor, and that he will, therefore, hold over until he qualifies under

his new appointment, and that his notarial acts in the meantime will be valid, either for this reason, or because he is a *de facto* officer, under the case of Claude vs. Wayson, 118 Md. 477, deciding that Justices of the Peace do not hold over.

The question is an entirely new one in this State, and any Notary who has been reappointed, and who performs official acts after the expiration of his present commission and before he qualifies under his new appointment, must understand that the validity of those acts may be questioned. My own opinion, however, is that they will be valid.

Of course, a new appointee cannot act until he has qualified, and a Notary not reappointed cannot act after his present commission expires.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS. NOTARY PUBLIC'S BOND—TERMINATION OF LIABILITY.

May 9, 1925.

Hon. Thomas W. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I have your favor of May 7th, enclosing letter from the Receiver of the New England Equitable Insurance Company, in which they ask whether that company's liability on the surety bond of Irene M. Bell, Notary Public of Baltimore City, written in November, 1924, has terminated.

I have not the form of the bond before me, but I presume it was given in conformity with the requirements of Bagby's Code, Art. 30, Sec. 24, which provides that the bond of a Notary Public shall be "conditioned for the payment into the treasury of that portion of the notarial fees received by him for the use of the State."

While the term of a Notary Public is, of course, two years, yet I think that legally the liability of the bond will continue for the statutory period of twelve years after the expiration of the term, so as to cover any notarial fees which should have been paid the State, but which were not so paid, during the term.

As a matter of law, therefore, I cannot say that the liability of this bond has terminated; but at the same time I suppose it may safely be taken for granted that this Notary, like almost all the others, did not earn enough fees to make her owe the State anything, and that for all practical purposes the Receivers may regard the surety's liability as at an end.

I return you the letter from the Receivers.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—NOTARY PUBLIC—MAY ACT IN COUNTY OTHER THAN THAT FOR WHICH APPOINTED.

June 28, 1918.

Brent Waters, Esq.,
Field Auditors Office,
Comptroller Receivables,
Annapolis, Maryland.

DEAR SIR: In answer to your inquiry of June 26th, I beg to advise you that by the provisions of Article 68, Section 8 of the Annotated Code, a Notary may exercise all the functions of his office in any other county or city than the county or city for which he may be appointed, with the same power and effect as if the same were exercised in the county or city for which he may be appointed.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General.*

MISCELLANEOUS—NOTARY PUBLIC—CHANGE OF NAME BY MARRIAGE—NECESSITY OF NEW COMMISSION.

November 23, 1918.

Mrs. Clyde G. Williams,
Laurel,
Maryland.

DEAR MRS. WILLIAMS: I have your letter, in which you ask me whether it is legal for you to continue to sign your name as Ruth Crowther when taking affidavits.

I understand that since receiving your appointment as Notary Public, you have been married and your name is now Ruth Crowther Williams.

There are no precedents covering such a situation, but, after careful consideration, I have come to the conclusion that, notwithstanding your marriage, you are still entitled to sign affidavits under the name of Ruth Crowther, which is the name in which your commission was made out.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—RABIES—DESTRUCTION OF DOGS—ORDERS OF STATE BOARD OF AGRICULTURE.

February 26, 1918.

T. Scott Offutt, Esq.,
Towson, Maryland.

DEAR MR. OFFUTT: I beg to reply to your favor of February 16th, in which you ask my opinion as to the validity of certain orders passed by the State Board of Agriculture for the destruction of dogs found running at large in certain areas of Baltimore County.

The orders state that rabies exists in the areas in question, that the areas are accordingly quarantined, and that all dogs found running at large within such quarantined areas will be

destroyed, and Sheriffs, Deputy Sheriffs, Constables and other officers are instructed to enforce the quarantine.

Under Section 2 of the Act of 1916, Chap. 337, the State Board of Agriculture is authorized to establish, maintain and enforce such quarantine regulations as it may deem necessary, for the purpose of protecting the health of the domestic animals of the State from all contagious and infectious diseases.

Rabies is a contagious or infectious disease, as is recognized by Section 7 of the law, which requires veterinarians to report as such all cases of "rabies or hydrophobia"; and I must assume that the orders of the State Board of Agriculture mean that the Board has, in good faith, determined that the protection of domestic animals requires a quarantine against rabies in the areas in question. This being so, I think that the quarantines are authorized by Section 2.

Section 3 authorizes the State Board of Agriculture to prescribe such regulations as they may deem necessary or expedient to prevent infection or contagion being communicated in quarantined places, and "to call upon all sheriffs and deputy sheriffs, constables, policemen or other officers of the State, the City of Baltimore, or of any county, for information and assistance to carry out and enforce the provisions of such orders and regulations; to prescribe regulations for the destruction of animals affected with or exposed to an infectious or contagious disease . . . and it shall be the duty of all sheriffs and deputy sheriffs, constables, policemen or other officers of the State, City of Baltimore, or counties, to obey and observe all orders and instructions which they may receive from said State Board of Agriculture, or its duly authorized officers or agents, in the enforcement of the provisions of this Act within their respective jurisdictions."

It seems to me that this section is broad enough to include not only live-stock, as you suggest, but dogs affected with rabies also; and that it authorizes the State Board of Agriculture to pass the orders they have passed requiring the officers named to destroy dogs found running at large within the quarantined areas. Such areas have been quarantined, under Section 2, because

found by the Board to be infected with rabies, and dogs running at large therein are, in the language of the statute, "exposed to an infectious or contagious disease," so that the Board may, under Section 5, prescribe regulations for their destruction.

I also refer you to the case of Hagerstown vs. Witmer, 86 Md. 293, and the authorities there cited.

You will understand, of course, that I am simply expressing my opinion upon the legal power of the Board to make and enforce the orders.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—APPOINTMENT OF SPECIAL POLICEMEN FOR CERTAIN CLASSES OF CORPORATIONS.

December 16, 1918.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

MY DEAR GOVERNOR HARRINGTON: I have your letter of the 13th inst., in which you ask my opinion as to your authority to commission members of the civilian guard at Camp Holabird.

Art. 23, Secs. 106 to 112, both inclusive, authorize you to commission policemen for corporations using any railroad, steamboat, canal, furnace, colliery or rolling mill in the State.

Chap. 217 of the Acts of 1918 adds a special section to these provisions, extending them so that they are available to any corporation, firm or individual operating any storage house or plant of any kind, enumerating a number of different kind of establishments and businesses, in addition.

I think, under these Sections, you have power to appoint policemen on the request of any corporation, firm or individual who might be conducting any of the named establishments or businesses, or who might be conducting any plant of any kind at Camp Holabird.

I am not made sufficiently familiar by the enclosed letter with the kind of work which makes it necessary to have policemen at the Camp, to say whether such work comes within the provisions of the Act of 1918 or not. I think, therefore, you should get more definite information on this point from the officials of the Camp before making any appointments.

If you find that the work being done can be included within the requirements of Chap. 217, and determine to appoint policemen, you are to appoint those that are designated to you, but they must be citizens of Maryland; they must be paid by the parties upon whose recommendations they are appointed, and such persons are liable for any wrongful or negligent act of the appointees.

Very truly yours,

OGLE MARBURY, *Acting Attorney General.*

MISCELLANEOUS—RENT OF STATE TOBACCO WAREHOUSE WHARF.

January 7, 1918.

Hon. Thomas W. Simmons,
Secretary, Board of Public Works,
Annapolis, Md.

DEAR MR. SIMMONS: I beg to reply to your recent favor, in which you ask my opinion upon the request of the State Board of Agriculture that the rents received since June 1, 1916, from wharf property connected with the State Tobacco Warehouse, be turned over to the State Board of Agriculture, under the Act of 1916, Ch. 309.

I presume that the State Board of Agriculture refers to the wharf property now leased to the Maryland, Delaware and Virginia Railway Company, successor to the Baltimore, Chesapeake and Atlantic Railway Company.

The Act of 1916, Ch. 309, does not give the State Board of Agriculture any right to the rent from this wharf property.

The property is rented by the Board of Public Works under the Act of 1906, Ch. 748, which expressly provides that the rent shall be paid to the Comptroller, and by him placed to the credit of the tobacco fund. This disposition of the rent from this property is not affected by the Act of 1916, Ch. 309.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—USE OF UNITED STATES FLAG—UNIFORM FLAG LAW.

May 14, 1918.

Mr. Alan H. Reed,
Asst. General Business Manager,
Curtis Publishing Company,
Philadelphia, Penna.

DEAR SIR: I beg to reply to your favor of May 10th, in which you ask whether it is unlawful in Maryland for your magazine publications to have a cover design showing a soldier holding the United States Flag.

Under the present Maryland Flag Law (Bagby's Code, Art. 27, Sec. 74), this, in my opinion, is not unlawful.

The present law will continue in force until June 1, 1918, when a new law, known as the Uniform Flag Law, Act, 1918, Chap. 281, will take effect.

The only provisions of this Act which could apply to the case you submit are as follows: It is made unlawful to "expose to public view for sale, manufacture or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for holding or carrying merchandise, upon or to which shall have been produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance," but the statute does not apply to "any printed or writ-

ten document or production, stationery, ornament, picture or jewelry whereon shall be depicted said flag, standard, color, ensign or shield, with no design or words thereon and disconnected with any advertisement."

My opinion is that this Act does not make unlawful such a cover design as you suggest.

Perhaps I should add that in this State prosecutions for violating criminal statutes do not come within my province, but are conducted entirely by the States Attorneys for Baltimore City and for the several counties of the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—USE OF UNITED STATES FLAG—UNIFORM FLAG LAW.

July 20, 1918.

The City Print Shop,
Parkersburg,
West Virginia.

GENTLEMEN: I have your letter of July 17, in which you ask for information as to any statutes of this State prohibiting the use of the United States Flag. You express your wish, if it is not in violation of such statutes, to print the flag in colors on paper fans, these fans to be used in Maryland.

The General Assembly of 1918, by Chapter 281, of the Acts of that Session, enacted a uniform flag law. This law provides that no person shall in any manner for exhibition or display, among other things

"Place or cause to be placed upon any article for sale, manufacture, or otherwise, or to sell, give or have in possession for sale, for gift or for use for any purpose, any substance, being an article of merchandise, or receptacle, or thing for bedding or carrying merchandise, upon or to which shall have been

produced or attached any such flag, standard, color, ensign or shield, in order to advertise, call attention to, decorate, mark or distinguish such article or substance."

It is later provided in the Act that it shall not apply to "any printed or written document or production, stationery, ornament, picture, apparel or jewelry whereon shall be depicted said flag, standard, color, ensign or shield with no design or words thereon and disconnected with any advertisement."

I think perhaps a fan with no design or words on it, nothing on it but the flag, would not be within the Statute, but I assume that your purpose is to advertise your printshop, and you intend to have some words on the fan, which you wish to circulate in Maryland.

I beg to advise you, therefore, that it will be unlawful for you to circulate such fans in this State.

Very truly yours,

OLEE MARTIN, *Acting Attorney General.*

MISCELLANEOUS—UNIFORM SMALL LOAN LAW—FEES LAW—FEES CHARGED.

May 1, 1918.

L. Dukes Downes, Esq.,
Bank Commissioner,
306 Union Trust Building,
Baltimore, Maryland.

DEAR MR. DOWNES: I beg to give you my opinion upon the several questions arising under the Act of 1918, Chapter 88, known as the Uniform Small Loan Law, which you submitted to me.

1. Small loan brokers may charge borrowers the Notary's fee allowed by law for the acknowledgment by borrowers of chattel mortgages, bills of sale or other papers which, under the law, are required to be acknowledged. This fee, of course, can

only be charged in cases where the acknowledgment is actually made.

2. The brokers may also charge borrowers the amount lawfully charged and actually paid for filing or recording the instruments securing loans. This charge, of course, cannot be made unless the instrument is actually filed or recorded.

3. Where the broker accepts payment of the loan before maturity, he cannot charge interest for the whole of the current month. Interest can only be charged to the day of payment.

4. The law does not apply to pawnbrokers. They are provided for and regulated by entirely different provisions of law. (Bagby's Code, Art. 56, sections 96 and 96A; Baltimore City Charter, sections 866, 867.)

Very truly yours,

Albert C. Ritchie, *Attorney General.*

Miscellaneous Loans — [illegible] — Wages — Department of Bank Commissioner.

May 2[illegible], 1918.

J. Dukes Downes, Esq.,
Bank Commissioner,
Baltimore, Md.

Dear Mr. Downes: — You ask [illegible] what effect the Act of 1918, Chapter 88, known as the Uniform Small Loan Act, has upon Sections 11 to 15 of Article 8 of Bagby's Code, relating to assignments of wages, and upon Section 33 of Article 9 of Bagby's Code, relating to the assignment of wages.

The Act of 1918, Chapter 88, contains full and special provisions regulating loans of $300 or less, and all acts and parts of acts inconsistent with its provisions upon this subject are expressly repealed. To the extent, therefore, that the above sections of Articles 8 and 9 of the Code are inconsistent with the provisions of the Act of 1918, Chapter 88, they are repealed; otherwise, they are not affected by the Act of 1918.

1. With reference to assignments of wages, I have compared the provisions of Sections 8-11 of Article 8 of Bagby's Code with Section 17 of the Act of 1918, both of which deal with this subject, and find that there are only two really material respects in which the Code is inconsistent with the Act of 1918:

a. Under the Code, the assignor of wages is prohibited from paying more than 6 per cent. per annum upon the sum borrowed. This provision is, of course, repealed by the Act of 1918, which permits 3½ per cent. per month.

b. The Act of 1918 permits the lender to collect 10 per cent. of the borrower's wages from the employer at the times when wages are paid, provided the lender serves upon the employer a copy of the assignment, under affidavit, and a certified statement of the amount due upon the debt.

2. With reference to garnishments of wages, Bagby's Code, Art. 9, Sec. [illegible] provides that no garnishment shall issue against wages not due at the date of the garnishment, and exempts from the garnishment action of the wages due. I find nothing in the Act of 1918 inconsistent with these requirements, so that the rights are not affected by the Act of 1918.

3. Since the exemption of wages will be taken from under the new law, authorizes the lender to collect 10 per cent. of the wages from the employer, the question arises whether the 10 per cent. can be collected up to the employer in cases where the wages due are less than $[illegible]. This is a question which I think is not within your province to decide. I relate to the legal rights of the parties to the loan, and the Code [illegible] the question by securing from borrowers a waiver of the exemption.

Very truly yours,

ALBERT C. BRO[illegible], [illegible]

MISCELLANEOUS—UNIFORM SMALL LOAN LAW—CONFESSED JUDGMENTS AND POWERS OF ATTORNEY.

July 11, 1918.

J. Dukes Downes, Esq.,
Bank Commissioner,
Baltimore, Maryland.

MY DEAR MR. DOWNES: I have been asked for the construction of Section [illegible] of Chapter [illegible] of the Acts of 1918 known as the "Uniform Small Loan Law," the particular point in question being whether this section prohibits absolutely the licensee from taking any confession of judgment or power of attorney or whether it permits the taking of a confession of judgment or power of attorney where it states the amount of the loan, the time for which it is made, the rate of interest charged and has no blanks left to be filled after signing.

The grammatical construction of the section would lead to the conclusion that it was intended to prohibit the taking of any confession of judgment or power of attorney. It is urged that [illegible] and that [illegible] when the statute [illegible]

[illegible]

[illegible]

[illegible]

it is so interpreted and construed as to effectuate its general remedial purpose and to make uniform the laws of those states which enact it. The remedial purpose is to prevent hardship and injustice to borrowers of small amounts of money. So far as I am able to ascertain there have been no constructions of this section by courts of last resort of other states having the same law.

After careful consideration of the act and its purposes and the wording of Section 16 I am of the opinion that it prohibits absolutely the taking by any licensee of any confession of judgment or any power of attorney.

Very truly yours,

[illegible]

MISCELLANEOUS—[illegible]

[illegible]

Hon. Hugh A. McMullen,

Comptroller of Management,

Indianapolis, Maryland.

MY DEAR MR. MCMULLEN: [illegible] enclosing a letter from the State Forester.

The point about which you desire advice is whether State officials are obliged to pay the war tax on railroad transportation where this transportation is to be used by them on their official business.

Such officials are not required to pay this war tax and the railroads provide for the exemption by a form of certificate which they require to be executed and signed by the officer or employee at the time he gets his transportation. This certificate is not furnished by the railroads, but is supposed to be furnished by the State or the Government, and I think that it would, per

haps, be advisable for you to have such a form printed and distributed among the State departments in order that this charge may be saved to the State. I enclose you a form which is used by officials of one of the Departments of the United States Government. We can very readily adapt it to our Departments by making appropriate changes which I have indicated upon the slip. The line at the left-hand side at the top under the word "State of Maryland" should be filled in by each department.

I return you Mr. Besley's letter.

Very truly yours,

OGLE MARBURY, *Deputy Attorney General*

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O. A. G.

Vol. 4

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1919

ALBERT C. RITCHIE

ATTORNEY GENERAL

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Annual Report for 1919

Baltimore, Md., *December 29, 1919.*

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Md.

Dear Governor Harrington:

I have the honor to present herewith, as required by section 8 of the Act of 1916, Chapter 500, a report of the business and proceedings of the Department of Law during the past calendar year, together with a statement of receipts and disbursements during the past fiscal year.

As further required by said Article 8, the official opinions rendered by my Department during the preceding calendar year follow this report. I also append several important opinions handed down by *nisi prius* courts in cases which were not appealed.

I am making this report as of December 29, 1919, because my term of office as Attorney General of Maryland expires today.

Supreme Court of the United States.

Dakota Central Telephone Company vs. State of South Dakota, etc. Nos. 367 and 367, October Term, 1918. The Chesapeake and Potomac Telephone Company of Baltimore City, acting under the war-time authority of the President and the Postmaster General, established and put into effect on May 1, 1919, a new schedule of telephone rates and charges without first obtaining the permission of the Public Service Commission. Similar action had previously been taken by telephone companies in other states, and cases involving the legality of such proposed new schedules were instituted in South Dakota and Massachusetts. These cases had ultimately reached the Supreme

Court of the United States and had been there consolidated and set for hearing together. As the questions involved were of great importance to the public, the Attorney General obtained leave to file a brief in these cases as *Amicus Curiae*, and did file a brief on behalf of the State of Maryland in opposition to the establishment of rates without the consent of the Public Service Commission. The Supreme Court held that authority of the Public Service Commission was suspended during Government control of the roads.

CRIMINAL CASES DECIDED BY COURT OF APPEALS.

Decisions Long and Short Term, 1919.

Five criminal appeals were decided during the year. The State won three of them and lost two. Four were decided. These cases were:

William E. Scott [illegible] Appeal Term, 1919. Appeal from the Criminal Court of Baltimore City. Conviction of murder in second degree. Judgment affirmed. Mr. Pearlman appeared for the State.

State [illegible] *Appeal Term, 1919.* Appeal from the [illegible] Baltimore City. Involved the validity of the [illegible] Act of 1916, Chapter 761, taxing trading stamps [illegible]. The Act was upheld and the judgment of the [illegible] reversed. Mr. Pearlman appeared for the State.

Isaiah [illegible] Appeal Term, 1919. Appeal from the Circuit [illegible] Conviction for rape. Judgment reversed [illegible] proceedings surrounding the trial were such, in the [illegible] Court of Appeals, as to preclude the [illegible]. A motion was later filed by the appellant [illegible] for a change of venue. This was heard [illegible] and the Court denied the motion [illegible] and remanded the case to Talbot County. [illegible] and Mr. Marbury appeared for the State.

Walter E. Miller, et al., vs. State. October Term, 1919. Appeal from the Criminal Court of Baltimore City. Conviction for burglary. This case involved the effect of communications made to jury during trial by constables. Judgment affirmed. Mr. Marbury appeared for the State.

John Gerard Lynch vs. State. October Term, 1919. Appeal from the Criminal Court of Baltimore City. Conviction for felony and false pretenses. Mr. Marbury appeared for the State. *Sub Curia.*

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1919.

Five civil appeals were tried during the year. The State won four and lost one. These cases were:

Fidelity Trust Company vs. State Tax Commission. January Term, 1919. Appeal from an order of the Baltimore City Court dismissing an appeal from an assessment of shares of stock made by the State Tax Commission. Order affirmed. Mr. Marbury appeared for the State Tax Commission.

State vs. F. Ferris Thompson, Executor. January Term, 1919. Appeal from the Superior Court of Baltimore City. Collateral inheritance taxes on foreign real estate directed to be sold by will of resident of Maryland. Held not payable, and judgment affirmed. Mr. Marbury appeared for the State.

Industrial Corporation of Baltimore vs. State Tax Commission. January Term, 1919. Appeal from an order of the Baltimore City Court affirming an assessment of the State Tax Commission. Order affirmed. Mr. Perlman appeared for the Commission.

J. Mauldin Smith, et al., vs. State. April Term, 1919. Appeal from an order of the Circuit Court of Baltimore City. Collateral inheritance taxes on property conveyed by revocable deed of trust, where power of appointment is to be exercised in will. Held payable and order affirmed. Mr. Marbury appeared for the State.

State Industrial Accident Commission vs. Donaldson. October Term, 1919. Appeal from an order of the Circuit Court for Allegany County reversing an award of the Commission. Meaning of "dependent" under Workmen's Compensation Law. Order reversed and cause remanded. Mr. White appeared for the Commission.

Court Cases Pending Decision on Appeal in Lower Courts.

United Electric and Electric Company vs. State Tax Commission. Suit for cost of removing poles from Liberty Heights Avenue. Tried on agreed statement of facts. Judgment for plaintiff for $4,100.50. Mr. Marbury appeared for the Commission.

State Board of Prison Control vs. A. Booker Cockey. Circuit Court for Howard County. Suit for labor of prisoners from House of Correction. Judgment for plaintiff and amount of judgment collected. Mr. White appeared for the State Board of Prison Control.

Charles H. Kauffman vs. Charles Bonaparte, Comptroller of Motor Vehicles. Baltimore City Court. Petition for damages to compel the Commissioner to register a Pullman truck. Petition dismissed after testimony and argument. Mr. Pollitt appeared for the Commissioner.

Morgan and Co. vs. Commissioner of Motor Vehicles. [illegible] *State Saw Manufacturing Co. vs. Commissioner of Motor Vehicles.* Baltimore City Court. [illegible] *Hugh H. Wilson vs. Commissioner of Motor Vehicles.* Baltimore City Court. [illegible] Court for Anne Arundel County. [illegible] *Hugh H. Wilson vs. Commissioner of Motor Vehicles.* [illegible] Court for Anne Arundel County. [illegible] cases presented, in different phases, the question whether [illegible] general school fund apportioned on the basis of the population in the [illegible] 1, 1918. The question was decided in favor of the [illegible]

Marbury and Mr. Perlman appeared for the State Superintendent of Schools and the Comptroller.

Edgar Callison vs. William A. Fraser, State Tobacco Inspector, etc. Baltimore City Court. Suit for payment of award of State Industrial Accident Commission. Demurrer of defendants sustained without leave to amend declaration and case dismissed. Mr. Perlman appeared for the Tobacco Inspector and the State.

In the Matter of the Revocation of the Operator's License of John P. Quinn. Baltimore City Court. Appeal from decision of the Commissioner of Motor Vehicles. Decision reversed. Mr. Marbury appeared for the Commissioner.

State for use of Thomas Bodmer vs. State Roads Commission, et al. Superior Court of Baltimore City. Damage suit. Demurrer of State Roads Commission sustained. Mr. Perlman appeared for the State Roads Commission.

Thomas H. Parker vs. State Industrial Board. Superior Court of Baltimore City. Appeal from decision of State Industrial Accident Commission. Appeal dismissed upon payment of costs. Mr. Marbury appeared for the State Accident Fund.

In the Matter of the Suspension and Revocation of the Operator's License of Edward G. Jones. Circuit Court for Baltimore County. Appeal from action of Commissioner of Motor Vehicles. Decision reversed. Mr. Wilson appeared for the Commissioner.

Thomas Bennett vs. Mary Jane Bennett, Executrix, William F. Bennett, Sheriff, Defendants. Baltimore City Court. Friendly suit for delivery of chattels. Mr. Perlman appeared for the State Treasurer.

Fortune Ex Schlamp vs. Joseph Kemp, Commissioner of Motor Vehicles. Baltimore City Court. Appeal from action of Director. Department's action affirmed. Mr. Perlman appeared for the Commissioner.

State vs. Anderson and Lawrence Surety Co. Circuit Court for Worcester County. Suit on collector's bond. Judgment for defendants. John W. Staton, Jr., appeared and contested. Mr. Perlman appeared for the State.

In addition to the above cases, there were tried during the year a number of replevin suits against the Board of Police Commissioners of Baltimore City. Mr. Whyte handled these cases. They were all brought to recover property taken by the Police Board in connection with criminal prosecutions or charges. These cases were as follows:

Samuel H. Jones, Baltimore City Court. Judgment for Police Board.

Kohler and Belvin, Baltimore City Court. Judgment for plaintiffs. Costs on other defendants.

London and Lancashire Fire Insurance Company, Superior Court of Baltimore City. Costs on plaintiffs.

Eva Lanahan, Baltimore City Court. Judgment for plaintiff. Costs on other defendants.

Effie E. Estes, Superior Court of Baltimore City. Judgment for plaintiff. Costs on other defendants.

Hymen Cohen, Baltimore City Court. [illegible]

Joseph Wise, Baltimore City Court. Dismissed by plaintiff.

[illegible]

Chesapeake and Potomac Telephone Company, [illegible] *Commission*. Writ of error [illegible] Appellee [illegible] State Roads Commission's right to collect general [illegible] [illegible] State [illegible]

[illegible] *Commission*. Writ of error [illegible] Appellee [illegible] State Roads Commission's right to collect [illegible] [illegible] State [illegible]

[illegible]

Mayor and City Council of Baltimore, [illegible] *Clerk of the Circuit Court of Baltimore City*, [illegible] Term, 1920. Appeal from the Baltimore City Court [illegible]

determine liability of the City for fees in criminal cases. Judgment for Mr. Pattison in the lower Court for $19,234.91. The two related cases of Sheriff McNulty and State's Attorney Broening against the City are pending in the Baltimore City Court under agreement to abide by the result of the Pattison case. The McNulty case involves about $2,500 and the Broening case about $3,800. Mr. Marbury and Mr. Perlman appeared for the State officials in these cases in the lower courts.

N. Winslow Williams vs. State. January Term, 1929. Appeal from the Superior Court of Baltimore City. Suit for fees retained by Mr. Williams while Secretary of State. Judgment for the State in the lower Court for $6,729.77. Both Mr. Williams and the State have appealed. Similar suits against former Secretaries of State Graham and Simmons are pending in the lower Courts, waiting the result of the Williams' case. Mr. Perlman appeared for the State in the lower Court. See *post* for lower Court's opinion and also Attorney General's opinion. Vol. 1, page 142.

Nobura Ishida vs. State. January Term, 1929. Appeal from the Circuit Court for Baltimore County. Conviction of manslaughter.

Cases Pending in the Lower Courts.

Robert W. Wells vs. Maryland Agricultural College and the Maryland State College of Agriculture. Circuit Court for Prince George's County. Suit for salary. An agreement of settlement has been reached in this case, but the case cannot be finally disposed of until the Legislature makes an appropriation.

Bradshaw vs. McMullen. Circuit Court for Anne Arundel County. Test of Mother's Pension Law.

United Railways and Electric Company vs. State Tax Commission. Circuit Court No. 2 of Baltimore City. Case stated for determination of liability of the railway company for bonus tax on increased stock.

State vs. People's Savings Bank of Baltimore, Inc. Circuit Court of Baltimore City. Bill for receivership after examination by the Bank Commissioner.

Rufus H. Varwood vs. Daniel Eller, Jr. Baltimore City Court. Suit for false arrest against police officer.

Milton C. Nalitch, etc., vs. Wallace Brummel, et al. Superior Court of Baltimore City. Suit for malicious prosecution against employees of Commissioner of Motor Vehicles.

Hugh F. Smith vs. Ernest Bohannan vs. Conservation Commission of Maryland. Circuit Court for St. Mary's County. Bill for injunction against hearing granted on St. Jerome's Creek.

Arthur S. Stevenson vs. E. Austin Baughman, Commissioner of Motor Vehicles. Circuit Court for Carroll County. Appeal from refusal of dealer's license in the Carroll County Motor Vehicle Registration Office in Westminster.

Patrick Hanley vs. State Roads Commission. Circuit Court for Baltimore County. Bill to establish interdepartmental boundary.

Ex Parte in the Matter of the Trust Estate Under the Will of William Thompson, Deceased. Circuit Court for Baltimore County. Petition of State for collateral inheritance tax.

Lorenzo Gaston Pitt vs. Special Deputy Fire Marshal. Circuit Court for Allegany County. Appeal from decision of Industrial Accident Commission.

Mayor, Councillor and Aldermen of the City of Laurel, etc., vs. State Board of Health. Circuit Court for Anne Arundel County. Bill to enjoin the construction of a sewer in the City of Laurel.

Samuel Cunningham vs. Maryland State Board of Horse Racing Censors. Baltimore City Court. Appeal from decision of Board refusing permission to exhibit.

Lucas vs. Lucas vs. State Roads Commission. Circuit Court for Anne Arundel County. Replevin of court reporter's notes.

David T. Benson vs. Veterinary Medical Board. Baltimore City Court. Mandamus to compel Board to grant Veterinary license.

State vs. People's Savings Bank of Baltimore, Inc. Circuit Court of Baltimore City. Bill for receivership after examination by the Bank Commissioner.

Rufus W. Vocelsel vs. August Ellis, Jr. Baltimore City Court. Suit for false arrest against police officer.

Milton C. Nalitch, etc., vs. Wallace Brammell, et al. Superior Court of Baltimore City. Suit for malicious prosecution against employees of Commissioner of Motor Vehicles.

Hugh F. Smith vs. Ernest Bohannan vs. Conservation Commission of Maryland. Circuit Court for St. Mary's County. Bill for injunction against leasing ground in St. Jerome's Creek.

Arthur S. Stevenson vs. E. Austin Baughman, Commissioner of Motor Vehicles. Circuit Court for Carroll County. Bill to enjoin the Commissioner from taking away registration number on tractor engine.

Patrick Hanley vs. State Roads Commission. Circuit Court for Baltimore County. Bill to enjoin condemnation proceedings.

Ex Parte in the Matter of the Trust Estate Under the Will of William Ferguson, Deceased. Circuit Court for Baltimore County. Petition of State for collateral inheritance tax.

Lawrence Cornell vs. State Board of Forestry. Circuit Court for Allegany County. Appeal by petitioner of the State Industrial Accidents Commission.

Mayor, Councillor and Aldermen of the City of Annapolis, etc., vs. State Board of Health. Circuit Court for Anne Arundel County. Bill to enjoin the construction of a filtration plant in the City of Annapolis.

Samuel Chandlee vs. Maryland State Board of Horticulture Censors. Baltimore City Court. Appeal from decision of Board refusing permission to exhibit.

Lauer vs. Lockwood vs. State Roads Commission. Circuit Court for Anne Arundel County. Replevin of certain personal property.

David T. Benson vs. Veterinary Medical Board. Baltimore City Court. Mandamus to compel Board to grant Veterinary license.

William I. Smith, et al., vs. Conservation Commission. Circuit Court for Talbot County. Bill to restrain the granting of an oyster license.

John William Baker vs. State Industrial Accident Commission, et al. Circuit Court for Allegany County. Appeal from decision of the Commission.

George Kotskey vs. State Roads Commission. Circuit Court for Baltimore County. Injunction to prevent damages to land.

In the Matter of the Mortgage from Alexander Lacey and Thos. Vincent, etc. Circuit Court for Montgomery County in Equity. Petition of State for proceeds of sale of escheated land.

State vs. The Stevensville Bank. Circuit Court for Queen Anne's County. In Equity. Bill for receiver-ship after examination by Bank Commissioner.

In addition to the above cases, there are a number of replevin suits against the Board of Police Commissioners which have not yet been tried.

In each of these cases certain property held by the Police Board in connection with criminal prosecutions is claimed by the plaintiffs. The respective plaintiffs and the courts in which the actions are pending are as follows:

D. Murray A. Sears. Superior Court of Baltimore City.

Frank M. Lindsay. Superior Court of Baltimore City.

Baltimore Fire Department Sick Benefit Association. Superior Court of Baltimore City.

Andrew E. Magee. Baltimore City Court.

Jacob Levine. Superior Court of Baltimore City.

George Wallace. Baltimore City Court.

Harry Commercioto. Court of Common Pleas.

Counsel in Baltimore City Large Work. Special Counsel.

In undertakings and title work local counsel are always necessary, and sometimes, of course, in other cases. The authority to employ special or local counsel is given by section 9 of Chapter 566 of the Acts of 1916. Their fees are usually

paid by the particular Board or Department for which the work is done. The cases of this character during the fiscal year ended September 30, 1919, were as follows:

Carroll County. Collection of claim for Comptroller by Edward O. Weant, Esq. Commission, $57.96.

Garrett County. Examination of title for State Board of Forestry. Counsel, F. A. Thayer. Fee, $10.00.

Howard County. Examination of title for State Board of Forestry. Counsel, Charles C. Wallace. Fee, $75.00.

Examination of titles for State Board of Prison Control by Title Guarantee and Trust Co. Fee, $146.25.

Worcester County. Suit on Collector's bond. John W. Staton, Esq., had been employed to represent the State when the suit was instituted, some years before my term of office began. Fee, $75.00.

State Roads Commission, ex rel. E. C. A. E. Ewing, vs. Interstate Commerce Commission. Railroad rates on crushed stone. See Attorney General's Opinion, Vol. 1, page 12; Vol. 2, page 16. John E. Deale, Esq., represented the State Roads Commission, and a fee of $750 was paid his estate, Mr. Deale having died after the conclusion of the case.

Tax Collections. Commissions paid Charles E. Hoffman and James Clarke Murphy, $1,770.00. This was paid out of special appropriation for the purpose.

State Boards and Commissions

The legal work for the various State Departments, Boards and Commissions continued exacting, but there is no necessity for any detailed reference to it.

Legislation and Legislature

In view of my election as Governor of Maryland, I have concluded not to include any legislative recommendations in this report, but intend to make them later in the capacity of Governor.

Conclusion.

In conclusion, permit me to express my appreciation of your unfailing courtesy and consideration upon all occasions, and of that of the other State officers connected with your administration.

I have the honor to remain

Respectfully yours,

Arthur C. Ricketts,

Attorney General.

Cost of the State's Legal Work During the Fiscal Year Ended September 30th, 1919.

Appropriations under Act 1918, Ch. 206	$24,000.00	
Appearance fees paid into State Treasury	[illegible]	
Costs of briefs reimbursed State Treasurer	[illegible]	
Special Counsel fees paid from appropriations of other departments	1,111.21	
Total Receipts		[illegible]
Salary of Attorney General (salary for October and November waived, Attorney General serving as Counsel to War Industries Board)	$1,[illegible]	
Salaries of Assistant Attorneys General	[illegible]	
Stenographers and other help	[illegible]	
Rent	[illegible]	
Postage	[illegible]	
Office Supplies	[illegible]	
Books and Periodicals	[illegible]	
Printing Annual Report and Opinions	[illegible]	
Office Furniture	[illegible]	
Water, Ice, Towels, Miscellaneous	[illegible]	
Travelling and Hotel Expenses	[illegible]	
Extra Typewriting	[illegible]	
Records, Briefs, Testimony and Court Costs	[illegible]	
Commission to Attorneys on claims of the State	1,770.[illegible]	
Telegraph and Telephone	[illegible]	
Special Counsel, Condemnation cases, title examinations, etc.	1,111.21	
Total Cost		$23,[illegible]

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

Administrators' Commissions, Removed and De Bonis Non Being Subject to State Tax.

January 16, 1919.

Walter C. Mylander, Esq.,
318 Law Building,
Baltimore, Maryland.

Dear Mr. Mylander: I beg to reply to your recent letter in which, at the request of the Orphans' Court of Baltimore, you ask my opinion as to whether if the commissions allowed a removed administrator and the commissions allowed the administrator de bonis non are both subject to the state tax under the Act of 1916, Chap. 668, and if so, what would be the situation if no commissions are allowed the removed administrator.

The tax is not imposed upon the estate, but upon the commissions allowed the administrator, and the act expressly makes all commissions allowed executors and administrators subject to the tax. I have no doubt, therefore, that the removed administrator must pay the tax on the commissions allowed him and that the administrator de bonis non must pay the tax on the commissions allowed him. No question of double taxation is involved. Each administrator simply pays the tax on the commissions he receives. This conclusion is in accord with an opinion rendered by Attorney General Markbreit to the State Comptroller on June 27, 1918, and with an opinion given by me under the former law, and reported in Attorney General's Opinions, Vol. 1, page 262.

Assuming, as you do, I think, that commissions at least equal to the amount of the tax must be allowed the removed administrator, in the absence of some act on his part which results in their forfeiture, such, for instance, as was involved in Kealhofer vs. Emmert, 76 Md. 248, 252. The Act of 1916 seems to me quite clear on this point.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

ADMINISTRATION OF ESTATES—STATE TAX ON COMMISSIONS.

September 9, 1919.

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore, Maryland.

DEAR MR. JACKSON: I beg to reply to your favor of September 3rd, relative to the estate of August Stowmate. I understand that this estate consists of personalty amounting to about $56,000 and real property in Arkansas amounting to about $86,300, and that part of the personalty has been accounted for, and upon this the state tax on executors' commissions of one per cent on the first $2,000 and one fifth of one per cent on the balance has been collected. The proceeds of the real estate are now about to be accounted for, and you ask whether a state tax of one per cent should be imposed on the first $2,000 of these proceeds, or whether the tax should be one-fifth of one per cent on the whole of these proceeds.

If my understanding of the facts, as just stated, is correct, then the tax which should be imposed on the whole proceeds of the real estate should be one-fifth of one per cent. I refer Bagby's Code, Art. 81, Sec. 116, the state tax of one per cent is only imposed upon the first $2,000 of the estate, and having been once collected it cannot be collected again.

Very truly yours,

VERNON E. KRESS, Attorney General.

CONSERVATION.

FISH—SHAD AND HERRING—LICENSES IN POTOMAC RIVER—EFFECT OF ACT OF 1914, CH. 815.

January 29, 1919.

Col. Harry J. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR COLONEL HOPKINS: I beg to reply to your favor of January 16th, in which you ask whether Sections 50 and 51 of Article 39 of Bagby's Code, relating to licenses to fish for shad and herring in the Potomac River or its tributaries, were impliedly repealed by the Act of 1914, Ch. 815, codified in Bagby's Code, Vol. 3, Art. 39, Secs. 111, relating to licenses to fish in the Chesapeake Bay, and the tributaries thereof. The question arises because of the doubt in your mind as to whether the Potomac River would be regarded, within the contemplation of this legislation, as a tributary of the Chesapeake Bay, and whether the Act of 1914, which provides for licenses to fish in the tributaries of the Chesapeake Bay, would thus apply to the Potomac River, and supersede Secs. 50 and 51, which apply specifically to the Potomac River.

The Act of 1914 did not affect the license mentioned in Secs. 50 and 51. This license, which is referred to in Secs. 49 to 58, inc., is required for fishing, whether for sale or otherwise, with seines, gill nets or nets of any kind, for shad or herring in the Potomac River and its tributaries, and no hauling seine license can be issued to anyone who is not the owner or occupier of a fishing shore on the river, and no gill net license can be granted except to bona fide citizens of the counties bordering on said river.

Secs. 110 to 121 require a license to fish for sale only, with pound nets, fykes, haul seines or other contrivances, except hook and line, in the Chesapeake Bay, below Pool's Island, and the

tributaries thereof, such license to be confined to residents of Maryland, and not to authorized fishing, except with hook and line, within the jurisdictional limits of any county of the State.

The Act of 1914, Ch. 815, amending Sec. 111, extended this last mentioned license to the tributaries of the Chesapeake Bay, but the Legislature did not intend thereby to do away with the license for shad and herring fishing which Sec. 10[illegible] so specifically provided for the Potomac River. This license is still necessary in cases covered by the terms of these sec[illegible]

In Attorney General's Opinions, Vol. 2, page 69, I [illegible] with the amount of fees required by Sec. 111.

I return [illegible] Mr. Killian's letter on the subject.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

Conservation — Fish — Dams — Wantage Above Dam — Fish on Tree.

February 17, 1916.

E. Lee Lockwood, Esq.,
State Game Warden,
312 Munsey Building,
Baltimore, Md.

Dear Mr. Lockwood: I beg to reply to your favor of February 15:

You say that there are three mill properties and dams on Winter's Run, in Harford County, and the owners desire to place fish ladders upon said dams, under Article 4, Sec. 39, Sec. 81, on the ground that they own the property on both sides of the dams, and that for this reason the Act does not apply.

Winter's Run is a small stream with shoal water coming from springs in the upper section of Harford County. I

into Otter Creek, which is part of Bush River. At the point where the dams are located, Winter's Run is not tide-water, but runs only in one direction.

You ask whether the owners of these dams are relieved from complying with the Act above mentioned, on the ground that they own the property on both sides of the dams.

Sec. 81 of Art. 39 of Bagby's Code was originally the Act of 1902, Ch. 355, Sec. 7810. This Act provides, as Sec. 81 still does, that "every owner of a dam or dams upon any of the said waters of this State" should be required to maintain at least one fish ladder upon said dam or dams. The "said waters" referred to are, as Sec. 7810 of the Act of 1902 now Sec. 78 of Art. 39 shows, "any waters of this State, above a point where the tide ebbs and flows," and the preamble of the Act of 1902 recited that the Act was passed "to secure greater uniformity in the laws of this State governing the protection and increase of the food fishes in all the waters of this State, above the point where the tide ebbs and flows, in order to a more equitable and a more equal enjoyment thereof."

This legislation was re-enacted by the Act of 1906, Ch. 161, with the same preamble and provision as to its application to "any waters of this State, above a point where the tide ebbs and flows," and Sec. 81 was again re-enacted by the Act of 1914, Ch. 366, with an amendment requiring Harford County to pay one-half the cost of constructing such fish ladders upon dams in said county.

The object of this legislation is very clearly for the protection and increase of fish in all the waters of the State above the point where the tide ebbs and flows, and the owners of the dams in question are, I think, clearly required to place fish ladders thereon. The fact that they own the property on both sides of the dams does not relieve them from this obligation.

Very truly yours,

ARTHUR W. BRESNIK, Attorney General.

CONSERVATION—FISH—SEIZURE OF FISH POTS.

February 24, 1919.

E. Lee LeCompte, Esq.,
State Game Warden,
542 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of February 6.

The Act of 1916, Ch. 401, Sec. 5, makes it unlawful in the waters of Frederick County with fish baskets or fish pots and you ask whether the Department Game Warden can seize fish pots, in case the owners do not remove the same after reasonable notice to do so.

The Act does not make the mere possession of fish pots unlawful. The penalty which the Act provides for a violation of this section is a fine (Sec. 8), and the power to search for and seize fish caught contrary to the law is given by Sec. 10 of Art. 96 of Bagby's Code, Sec. 9, having been repealed by the Act of 1916, Ch. 401, Sec. 9, and Sec. 10 of the Act of 1916, Ch. 401.

While this is true, it is also true that such state's land is a structure built into the waters of Frederick County, and is placed in the waters of Frederick County, ostensibly for the lawful purpose. It is not possible that it could be used for illegal purposes in violation of the Act of 1916.

Under these circumstances, it is clear that the Game Warden may remove the fish pots. Sec. 10, Art. 96, Michie's 542, and if the owner has no more than, and proceeds to further illegal use, to destroy them, then he may do this can be done.

Very truly yours,

[illegible] Bagby, Attorney General.

CONSERVATION—FISH—SHAD AND HERRING LICENSES IN POTOMAC RIVER.

February 27, 1919.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
542 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your letter of February 26, in which you ask whether the general law, requiring licenses for shad and herring fishing in the Potomac River, Bagby's Code, Art. 39, Secs. 49 to 56, is in force in that portion of the Potomac River lying within Charles County, or whether the local law for Charles County, Code, P. L. L. 1888, Art. 9, Secs. 66 to 77, is in force as to such waters.

The general law was enacted by the Act of 1870, Ch. 205, and, with the exception of an amendment made by the Act of 1872, Ch. 202, has not been amended since. It provides that "no person shall fish in the Potomac River or its tributaries for shad and herring during the season prescribed in Sec. 56" (May 15 to June 1 each year) "with seines, gill nets or nets of any kind," without the license prescribed.

The local law for Charles County was enacted, two years later, by the Act of 1872, Ch. 198, and was amended by the Act of 1878, Ch. 302. Sec. 2 of the Act of 1878, codified as Sec. 68 of the Code, P. L. L. 1888, Art. 9, requires the license therein referred to for all seines and nets in the waters mentioned in Secs. 1 and 2 of the Act (now Secs. 66 and 67 of Art. 9), and these waters are "the Patapsco River or its tributaries" and "the Wicomico River or its tributaries, lying in Charles County, between Maryland Points, in Charles County, and Chisiddine's Island, in St. Mary's County."

The general law of 1870 and 1872, therefore, requires licenses for shad and herring fishing, with seines and nets, in the Potomac River or its tributaries, and the subsequent local law of

1878 requires a special license for all seines and nets in that part of the Potomac River or its tributaries, lying in Charles County. It seems to me clear that the license for such fishing in the Potomac River or its tributaries, within Charles County, is the license required by Sec. 68 of Art. 72 of the local law and not the license provided by the general law.

I do not think that the local law can be construed as applying only to the tributaries of the Potomac River within Charles County, leaving the general law to apply to the Potomac River itself, within as well as without that county. The local law as first enacted by the Act of 1878, ch. 188, did refer to "the inlets or tributaries of the Potomac River, lying in Charles County," and it might well have been claimed that the law at that time applied only to the tributaries, and not to the river itself; but the words quoted were stricken out by the amendment of 1878, ch. 302, and in their place the present words "Potomac River or its tributaries" were substituted. This makes it clear that the local law applies to the Potomac River, as well as to its tributaries, lying within Charles County.

I may add that the constitutionality of the local law for Charles County was attacked in the case of Kaiser vs. State, 52 Md. 305, but the appeal was dismissed on the ground that the constitutional question could only be raised by certiorari. I cannot find that the question was ever raised again. The main ground of attack, however, was that the law discriminated against the fishery rights of citizens of the State residing outside Charles County, and in view of recent decisions of the Court of Appeals on this point, particularly State vs. Shepard, 164 Md. 165, 171, 172, and State vs. Mowell, 137 Md. 263, 266, I would be unwilling to advise that the local law be so applied.

Very truly yours,

ARTHUR C. H[illegible],
Attorney General.

CONSERVATION—FISH—SHAD AND HERRING LICENSES IN THE POTOMAC RIVER.

March 19, 1919.

W. Thomas Kemp, Esq.,
Chairman, Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I have your favor of March 6, with reference to my opinion to the Comptroller of January 29, 1919, and my opinion to you of February 27, 1919, both relating to Potomac River licenses.

You first ask whether the fishermen of St. Mary's, Charles and Prince George's Counties must obtain both the Potomac River license (Bagby's Code, Art. 39, Secs. 50 and 51) and the State-wide license (Bagby's Code, Art. 39, Sec. 111). In my opinion, the State-wide license is not required for shad or herring fishing in the Potomac River and its tributaries, but the only license required for such fishing is the Potomac River license, except as to the waters of the Potomac River and its tributaries lying in Charles County, for which provision is made by local laws (Code, P. L. L., 1888, Art. 9, Secs. 66-77).

You also ask whether the State-wide license supersedes the Potomac River license. My opinion is that it does not, as more fully stated in my letter to the Comptroller of January 29, 1919.

I note that the above conclusions are not in accord with what has been the custom in recent years, inasmuch as the Charles County local law has been disregarded and licenses have been taken out upon the basis of the State-wide law; and that you think it would be much more satisfactory if this custom can continue, until the Legislature of 1920 has the opportunity of correcting the discrimination between counties which, you say, will follow from the opinions I have given.

You will recall that before I wrote the Comptroller on January 29, I advised you what my opinion was, and you said that

you agreed with it. If, after considering the matter further, you think that opinion was erroneous, I shall be more than glad to have the benefit of your present views, and change the opinion previously given, if you show me that it was wrong. But nothing now occurs to me to make me feel that that opinion was not correct.

Even if my opinion of January [illegible] stands, I still do not think that the Commission could be subjected to criticism if it [illegible] allow the custom of the past years to continue until the Legislature of 1920 [illegible]. I can well understand the difficulties which might be caused by an unexpected ruling on these [illegible] changing what has been the construction placed upon them for years; and if you feel that these difficulties must be [illegible] I think you would be quite justified in avoiding them by [illegible] permitting the customary construction to continue for another year until the next session of the Legislature can correct the [illegible].

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The Court of Appeals has held that whether an unexpended balance reverts or not depends upon the intention of the Legislature.

McMullen vs. Zouck, 130 Md. 544.

In this case the intention is, I think, clear that the unexpended balance shall not revert, but shall be carried down at the beginning of the new fiscal year for the purposes of the Act.

This decision may not now apply to appropriations from the State Treasury made under the Budget Bill, Act 1918, Ch. 206, because Section 2 of that Act provides for the reversion of unexpended balances of such appropriations, but I do not think that a fund composed solely of license fees and fines is money appropriated from the Treasury, within the meaning of the Budget Amendment and the Budget Bill.

For these reasons, I think that any balance of this fund unexpended at the close of the fiscal year does not revert.

The law also provides that after the salaries and expenses of the State Game Warden have been paid, the Conservation Commission shall make "an equitable distribution of said funds among the counties of the State, in proportion to the amounts contributed to said fund by the respective counties," and you ask what becomes of an unexpended balance of the amount apportioned to some particular county, and also, if there is an unexpended balance from the amounts apportioned to all or several counties, whether this can be used, during the next fiscal year, for general game purposes in the State.

I think that any expended balance of the State Game Protection Fund remaining to the credit of any county at the close of the year, should be carried down as a credit to that county. The law contemplates that, except for the salary and expenses of the State Game Warden, the moneys contributed from any county shall go back to and be expended in that county. I think, therefore, that unexpended balances cannot be used for general game purposes in the State.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—GAME—REAPPOINTMENT GAME WARDENS
ACT 1918, CH. 168.

March 17, 1919.

E. Lee LeCompte, Esq.
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: You ask me whether it is necessary for the Conservation Commission to reappoint deputy game wardens named by it since the passage of Chapter 628 of the Acts of 1916.

I understand that some question has been raised as to whether the appointments made in 1916 were terminated by reason of the passage of Chapter 168 of the Acts of 1918. Previous to the legislation of 1916, deputy game wardens were authorized by Section 16 of Article 39 of the Annotated Code of Maryland. That section authorized the Governor to appoint deputy game wardens upon application by the Game Warden, and provided that such deputy game wardens may be appointed for the State or for such county or counties as the Governor designated in the commission. It was also provided that the deputy game wardens should be paid such compensation out of the fines collected or otherwise, as the Game Warden may agree with them.

Subsection 2 of Chapter 628 of the Acts of 1916 provided that the Conservation Commission should appoint and issue commissions to such deputy game wardens as may be designated by the State Game Warden. The Legislature did not amend Section 16 of Article 39 of the Code, but authorized the appointment of deputy game wardens to be made by the Conservation Commission instead of by the Governor, as the act provided.

After the passage of the Act of 1916, the Conservation Commission issued commissions to those persons designated by and appointed by it as deputy game wardens.

Chapter 168 of the Acts of 1918 repealed and reenacted Section 16 of Article 39 of the Annotated Code. The Conservation Commission was substituted for the Governor, and the Commission was authorized to appoint deputy game wardens for the

whole State or for counties or cities. It was provided that such deputy game wardens shall not receive a salary from the state, cities or counties, but shall be paid out of the State Game Protection fund such compensation as the Game Warden may agree with them, subject to the approval of the Commission.

Section 16, as amended in 1915, also authorized the appointment of local game wardens in any section or county of this State, and provided that the local game wardens shall receive as their compensation one-half of all fines derived from the prosecution of violators of the game and fish laws arrested by them. The Act of 1915, therefore, created two classes of subordinate game wardens, the deputy game wardens and local game wardens, and the compensation of each class is derived from different sources.

It is unfortunate that change in the law authorizing the appointment of deputy game wardens was not made when the commissions were issued in 1915, but been made by the Act of 1915, there would be little room for doubt that the commissions issued in 1916 would still be valid. The rule seems to be that where a repealing law contains an exception or provision of the previous law, the operation of the former statute continues uninterrupted.

Doubtful as Validity of Wardens.

In view, however, of the prevailing opinion of the Attorney General, in filing the appointments made by the Conservation Commission under the Act of 1915, such appointments being put upon a different basis of compensation, I am unable to say that no substantial change in the law has been made.

In my opinion, therefore, the Conservation Commission should proceed to issue new commissions under the Act of 1915, and such commissions, besides designating the political division of the State for which under should be made out to deputy game wardens or to local game wardens, as the case may be.

Very truly yours,

VERNON C. KEENER, *Attorney General.*

CONSERVATION—GAME—STATE GAME PROTECTION FUND—
PURCHASE OF EGGS.

July 5, 1929.

E. Lee LeCompte, Esq.,
Game Warden,
Conservation Commission,
Baltimore, Maryland.

MY DEAR MR. LECOMPTE: I have your letter of June [illegible] in which you state that your department of the Conservation Commission is contemplating the establishment of game farms for the rearing of game for distribution in the counties of the State, this being, in your opinion, made necessary by the small amount of game which you have been able to secure for propagation purposes during the season of 1929. You ask whether you can purchase and operate a game farm under the provisions of chapter [illegible] of the Acts of 1929.

Sections [illegible], [illegible], [illegible] and [illegible] of Article [illegible] of the Code, as enacted by chapter [illegible] of the Acts of 1929, provide for the establishment of game farms, the purpose of which is stated in the last paragraph of Section [illegible] as follows:

"[illegible] for meeting annually the requirements and the expenses of producing and propagating certain birds and animals, and permitting authorized persons to purchase such game."

Section [illegible] directs the levies of the counties collected by the State Comptroller to be turned over to the Comptroller after deducting certain deductions, and the amount so received by the Comptroller is to be placed to the credit of a separate fund to be known as the "State Game Protection Fund" [illegible] to be disbursed on warrants signed by the Game Warden and then follows this provision:

"The moneys in said fund shall be used [illegible] salaries and expenses of the State Game Warden and his assistants, and for the protection and propagation of birds and game of all kinds. The Comptroller shall [illegible] the sum of said fund among the counties of the State, in proportion to the amounts contributed to said fund by the respective counties."

This provision evidently contemplates the distribution of the moneys, but of the birds and game, because there

person in the counties who is given authority to receive and use the money.

The present situation, as I understand it, is that there is no method of getting game except by starting a state farm and raising it, and your plan contemplates the establishment of such a state farm with the money in the fund. You think it inadvisable to lease because of the necessary pens and buildings which you would have to place on some other person's property, and you, therefore, wish to purchase a tract of land suitable for the purpose, and on such tract to raise birds and game for distribution among the counties, in proportion to their contributions.

I think the intention of the Legislature was to leave to the judgment of the Conservation Commission the proper method of protecting, propagating and distributing game, and if, in your judgment, this is the proper method, I do not see why you cannot purchase a farm out of the money in "The State Game Protection Fund" and use it for the purposes indicated.

It is my opinion, therefore, that you have this authority. The title to the farm should, of course, be in the State of Maryland.

Very truly yours,

MARYLAND ATTORNEY GENERAL.

CONSERVATION COMMISSION, STATE OF MARYLAND, FRANKLIN BUILDING, BALTIMORE.

December 4, 1916.

E. Lee LeCompte, Esq.,
Conservation Commission of Maryland,
312 Munsey Building,
Baltimore, Md.

DEAR SIR: I beg to reply to your letter of recent date in reference to Chapter 161, Section 9 of the Acts of 1916. This Department agrees with your view that rabbits killed otherwise than in Frederick County can be sold in that county.

Yours very truly,

PHILIP E. PERLMAN, Asst. *Attorney General.*

CONSERVATION—OYSTERS—LEASE TO MINOR.

April 29, 1919.

Mr. Wm. H. Killam, Secretary,
Conservation Commission,
512 Munsey Building,
Baltimore, Md.

DEAR MR. KILLAM: I beg to reply to your letter of April 25th in which you ask whether a minor can be the lessee of an oyster area.

Numerous sections of Article 72 of Bagby's Code authorize leases of oyster areas to be made to "any resident of Maryland." There is nothing to indicate whether this does or does not include minors who are residents.

There being no prohibition against leasing to minors, it is my opinion that the Conservation Commission has the power to lease to minors, if it deems it wise to do so, and the fact that it does this would not constitute a valid ground for protest.

I take it for granted that the Commission would not give such lease to a minor unless he was old enough to understand his responsibilities as a lessee. Aside from this, the only exception to such a lease which occurs to me is that under Sections 100, 101 and 107, the relations of landlord and tenant established between the State and the lessee, and it is possible that your terms of lease may impose upon the lessee some obligations which, under familiar rules of law, would not be enforced against a minor.

CREW LEVIS—HALL VS. MILLS.

The law, however, requires rent to be paid in advance, and the State's principal remedy for a violation of any of the terms of the lease is to forfeit the same, so that the objection I suggest may not be important, as a practical matter. I leave that, however, for you to decide.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CONSERVATION—STATE GAME PROTECTION FUND—BOARD OF GAME WARDENS FOR ALLEGANY COUNTY.

March 31, 1919.

H. A. Pitzer, Esq.,
First National Bank,
Mount Savage, Maryland.

DEAR MR. PITZER: I beg to reply to your favors of March 12th and March 20th, in which you say that you were Treasurer of the Board of Game Wardens for Allegany County, which board was created by the Act of 1916, Ch. 282, providing for hunting licenses in Allegany County; that you have over $2,000 in your possession from license fees and fines collected under this Act; and you ask what disposition should now be made of this fund, in view of the Act of 1918, Ch. 168, known as the State-Wide Game Law, which repealed "all general and local laws or parts of such laws inconsistent with the provisions of this Act, and all resident and non-resident hunting license laws now in force, whether general or local."

You enclose an opinion from State's Attorney Roman, to the effect that, notwithstanding the repeal of the Act of 1916 by the Act of 1918, you are still required to dispose of the funds in question in accordance with the terms of the Act of 1916.

The Act of 1918, Ch. 168, became effective on June 1, 1918, and Sec. 70 provides that the several clerks of court "shall *on the first day of June*, 1918, and on the first day of each and every month thereafter," transmit to the Comptroller "all moneys received by them for licenses, after deducting the fees herein authorized," said moneys to be credited to the "State Game Protection Fund," created by the Act; and on May 21, 1918, I advised the State Game Warden that fees collected by the clerks of court, under local hunting license laws, before June 1, 1918, and *in the hands of the clerks on June 1, 1918*, when such local laws were repealed, should, under Sec. 70 of the Act of 1918, be paid to the Comptroller, in order to form the nucleus of the "State Game Protection Fund."

On June 12, 1918, I advised the State Game Warden that where, as in Cecil County, there existed a County Game Protective Association, authorized by statute, to receive the fees from the clerk of Court and to disburse the same, and when the

fees under the local law had been paid by the clerk to such Association *before* June 1, 1918, that then the same were not payable to the Comptroller, because the Act of 1918 only required local fees collected before June 1, 1918, to be paid to the Comptroller, *if such fees were in the hands of the clerk on June* 1, 1918.

In the case you submit, the license fees were not in the hands of the clerk on June 1, 1918, but had all been paid by him to the Board of Game Wardens for Allegany County before that time. Since the only fees collected by the clerks before June 1, 1918, which the Act of 1918 required to be paid to the Comptroller for the "State Game Protection Fund," were the fees not disbursed by the clerk before June 1, 1918, but which were still in the clerk's hands on that date, and since the fees here in question were not in the clerk's hands on June 1, 1918, it follows that the same are not payable to the "State Game Protection Fund."

The Act of 1918 repealed the *license* provisions of the Act of 1916, Ch. 282, and also any other provisions of the Act of 1916 inconsistent with the Act of 1918, but did not affect the local Board's power and duty, after June 1, 1918, to disburse funds received by it before that date in accordance with the Act of 1916.

In my opinion, therefore, the funds in question should now be disbursed by the Board of Game Wardens for Allegany County for the purposes named in the Act of 1916. These purposes, as stated in Sec. 141E of the Act, are "for protecting and propagating game in Allegany County, and for any incidental expenses as may be incurred by the Board, and for the hunters' licenses and applications, and the clerk of the Court's record book for said licenses."

There are no longer any hunters' licenses and applications or any clerk's record book, under the Act of 1916, because the provisions therefor have been repealed by the Act of 1918, so that the fund should now all be expended by the Board in protecting and propagating game in Allegany County.

I return your State's Attorney Roman's opinion.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS

DISSOLUTION BY STATE TAX COMMISSION—PROCEEDINGS TO RECORD DECREE.

April 1, 1919.

Charles E. Wallace, Esq., Secretary,
State Tax Commission,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. WALLACE:—I beg to reply to your recent favor, in which you ask my opinion whether the Clerks of Court are entitled to collect fees from the Commission for recording decrees of dissolution of corporations passed by the Commission under the Act of 1918, Ch. 198, codified as Section 27B of Article 23 of Bagby's Code, Vol. IV.

This Act authorizes the State Tax Commission to pass an order dissolving corporations having no assets and no debts, and a copy of such order is required to be sent "for recordation" to the Clerk of Court, where the Charter is recorded, or to the Secretary of State, if the Charter is recorded in his office. The Act provides that accompanying such application, there shall be a fee of fifteen dollars, out of which shall be paid the cost of advertising, and for the balance the State Tax Commission shall account quarterly to the Comptroller of the Treasury and pay the same to the Treasurer for the use of the State.

The Act, therefore, makes no provision for paying the cost of recording, and, indeed, provides that after paying for the advertising out of the $15.00 deposit, the balance shall be paid to the State.

At the same time, the Act does not provide that the clerks are to do the recording free of charge, and Bagby's Code, Art. 36, Sec. 12, expressly provides that the clerks of Court may charge recording fees; and, of course, it is these and other fees which pay the expenses of the clerks' offices.

Under these circumstances, it seems to me that the clerks of Court are entitled to ask for their recording fees, and as a means of paying the same I think that the Act of 1918, Ch. 198, should be read in connection with Bagby's Code, Art. 36, Sec.

12. so far as the dissolution expenses are concerned, with the result that the State Tax Commission will pay both the advertising and the recording fees out of the $15.00 deposit, and account for the balance to the State.

My opinion, therefore, is that your Commission is authorized to deduct the clerks' recording fees, together with the advertising, from the $15.00 deposit, accounting to the State for the balance.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS—FOREIGN—ANNUAL FRANCHISE TAX.

November 11, 1919.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN:—I have your letter of November 5th, enclosing letter of the Chevrolet Motor Company. It appears from these letters that this company filed its certificate as a foreign corporation on December 29th, 1917, but since that time has not been active in any other way in Maryland.

The question upon which you desire an opinion is whether or not the company should pay the annual franchise tax provided by Sec. 95 of Art. 23 of the Annotated Code. The company states that it was advised that this office had ruled that a foreign corporation which had filed its certificate in Maryland and had paid the initial tax would not be subject to an annual franchise tax thereafter if it did not actively engage in business in Maryland. I know of no such ruling by this office.

Under Sec. 95 of Art. 23 every foreign corporation which has a usual office or place of business in this State must, before doing business, file with the Secretary of State a certified copy of its charter and an annual certificate showing the name and address of the agent. The Chevrolet Sales Corporation, according to your letter, filed an annual statement for the year 1918. Sec. 95 of Art. 23 provides that every foreign corporation shall, at the time of filing its annual certificate, pay to the State

Treasurer a franchise tax which is based upon the amount of capital employed by it in the State, "but in no case less than twenty-five dollars."

It is my opinion that if the Chevrolet Sales Corporation still keeps an office in this State, it is still obliged, under Sec. 93, to file its annual certificate, and must pay at least the minimum annual franchise tax of twenty-five dollars.

I return you herewith the company's letter, as you request.

Very truly yours,

OTTO MAGRUDER, *Asst. Attorney General.*

CORPORATIONS—FOREIGN—FRANCHISE TAX—DEDUCTION FOR PROPERTY OWNED IN THE STATE.

March 27, 1919.

Hon. Thomas H. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I beg to reply to your favor of March 22, enclosing letter from Messrs. Piper, Yolbert, Hall & Carey, in which they state the case of a foreign corporation doing business in Maryland, which owns in this State land, a building, cash and personal property, and in which they ask whether this corporation is entitled to deduct the value of the same from its capital employed in this State for the purpose of computing the tax due by it under Bagby's Code, Art. 23, Sec. 93, as amended by the Acts of 1918, Chap. 163.

I do not think that this corporation is entitled to such deduction. The tax in question is a franchise tax and the tax on franchises is entirely distinct from the tax on property. Under our laws, both property and franchises may be taxed at the same time.

I return you the letter from Messrs. Piper, Yolbert, Hall & Carey.

Very truly yours,

VINCENT C. BURKE, *Attorney General.*

CORPORATIONS—FOREIGN—FRANCHISE TAX—SUBSIDIARY OF FRANCHISE

April 26, 1929

Hon. Thomas H. Simmons
Secretary of State
Annapolis, Maryland

DEAR MR. SIMMONS: I beg to reply to your letter of April 1st, enclosing letter from Vincent L. Goodstein, Esqr., of Baltimore, in which Mr. Goodstein asks that the H. V. Greene Company, a Massachusetts corporation, owned by the business of Mr. Goodstein, in November, 1928, obtained office here, that the company may in the future operate in Maryland without the payment of this franchise tax, and that the transfer of this franchise tax be made to the subsidiary corporation, and Mr. Goodstein asks advice, under these circumstances, if the corporation should pay the franchise tax for the year.

In the opinion of this office, the franchise tax should be paid for the year. Art. 23, Sec. 24 of the Code provides that the tax shall be paid on the 1st day of April in each year, for the year beginning on the 1st day of April next succeeding the date of the payment of the tax, and the tax is payable on the 1st day of April.

In the opinion of this office, the franchise tax should be paid by the parent company, and not by the subsidiary company, because the franchise tax is a tax on the privilege of the parent company to do business in Maryland, and the subsidiary company is not doing business in Maryland, but the parent company is doing business in Maryland, and the franchise tax should be paid by the parent company.

I enclose herewith the letter of Mr. Goodstein, Esqr., and Mr. Greene's letter.

Very truly yours,

ALBERT C. RITCHIE.

CORPORATIONS—FOREIGN—FRANCHISE TAX—COMPANY IN HANDS OF RECEIVERS.

April 14, 1919.

Hon. Thomas H. Simmons,
Secretary of State,
Annapolis, Maryland.

DEAR MR. SIMMONS: I beg to reply to your favor of April 11, enclosing letter from Messrs. Clagett & Thomas, in which they ask whether the Davy Pocahontas Coal Company, a West Virginia corporation, is subject to the franchise tax imposed on foreign corporations by Sec. 95 of Art. 23 of Bagby's code, as amended by the Act of 1918, Ch. 169, in view of the fact that said company is in the hands of receivers, by whom the company's office in this State is being maintained and by whom its business here is being conducted.

I understand that the company has not yet been dissolved in the receivership proceedings, and assuming this to be the case, then, in my opinion, the company is subject to the foreign corporation tax in Maryland, and the same must be paid by the receivers.

It is settled that the appointment of receivers for a corporation does not work its dissolution. A judicial decree is necessary.

Woodland vs. Wise, 112 Md. 55, 67;
Rossell vs. McKim, 115 Md. 306;
Dietrich vs. O'Brien, 112 Md. 48;
Chemical Bank Co. vs. Hartford Deposit Co., 161 U. S. 1.

As the corporation thus continues to exist, its franchises do also, and, accordingly, franchise taxes are due, notwithstanding the receivership. This has been decided in the following cases:

In re U. S. Car Co., 60 N. J. Eq. 511, reversing 57 N. J. Eq. 557;
C. & O. Ry. Co. vs. Atl. Trust Co., 62 N. J. Eq. 751;
Hardin vs. Morgan, 70 N. J. Law, 184;

King vs. Amer. El. Vehicle Co., 70 N. J. Eq. 365;
Duryea vs. Amer. Woodworking Machine Co., 133
Fed. Rep. 325;
Conklin vs. U. S. Shipbuilding Co., 118 Fed. Rep.
129.

In the case of Merchants' National Bank vs. Roxbury Rye Distilling Co., United States Circuit Court for the District of Maryland, in which receivers were appointed on February 23, 1910, it was held that the West Virginia franchise tax was a preferred lien on the assets in the receivers' hands.

And in H. Lanier Jenkins vs. Plant and Land Fruit Co., Circuit Court No. 2 of Baltimore City, filed October 1, 1910, it was held that the assets were liable for the franchise tax on capital stock imposed by Bagby's Code, Art. 23, Sec. 361, notwithstanding the appointment of receivers.

I return to the letter from Messrs. Bagby & Thomas

Very truly yours,

[illegible]

[illegible]

[illegible]

[illegible]

Hon. [illegible]
Secretary of State,
Annapolis, Maryland.

In the Mr. Sparks case, I beg to refer to your letter of date 27th, enclosing letter from Mr. F. W. Sparks of New York in which Mr. Sparks asks whether the Commonwealth Hotel Construction Company, a Delaware corporation, must comply with the Maryland foreign corporation law before [illegible] subscriptions to its shares of stock in this State.

The Maryland foreign corporation law (Bagby's Code, Vol. 23, Sec. 361) applies only to foreign corporations "doing business herein". If the corporation in question simply sells its

shares of stock in Maryland, then it is not doing business in this State, and, therefore, is not required to comply with our law.

Baden vs. Wash. Loan & Trust Co., Court of Appeals, Jan. 16, 1919, Daily Record, April 3, 1919.

I return you Mr. Sparks' letter.

This will answer your letter of July 2nd on the same general subject.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CORPORATIONS—FOREIGN CONSTRUCTION COMPANIES.

December 9, 1919.

Atlantic Bridge Company,
Latta Trustee Building,
Charlotte, N. C.

E. P. Cowles, Esq., Secy. & Treas.

DEAR SIR: I have your letter of December 5th addressed to the Attorney General.

Under Sec. 93 of Art. 23 of the Annotated Code of Maryland, annual certificates and a certified copy of the charter must be filed by

> every foreign corporation which has a usual office or place of business in this State, except insurance companies hereinafter provided for, but including any corporation which is engaged in this State permanently or temporarily and with or without a usual place of business therein, in the construction, alteration, erection or repair of any building, bridge, railroad, railway or structure of any kind.

You will see by this quotation that a bridge company such as yours engaged in work authorized by your charter, must comply with the Foreign Corporation Law of Maryland whether it has a usual office or place of business in Maryland or not.

CRIMINAL LAW.

ALLOWANCE TO STATE LUNACY COMMISSION FOR EXAMINATION OF ACCUSED.

MAY 13, 1919.

Dr. Jos. P. Harris, Superintendent,
State Lunacy Commission,
330 A. & Eagle Street,
Baltimore, Maryland.

DEAR DR. HARRIS:—I am in receipt of your letter of May 8th with reference to the Commission's bill in connection with the examination and trial of Dr. Ishida.

I understand that the Circuit Court has allowed fees to the members of the Commission for their examination of Dr. Ishida, but had declined to allow fees for their testimony at the trial.

The allowance of fees in cases of this kind is regulated by the Act of 1918, Ch. 65, codified in Bagby's Code as Sec. 16, of Art. 59. From a reading of this section and also Secs. 6 and 14 of Art. 59, it seems to me reasonably clear that the services for which the members of the Commission are entitled to a fee are services in connection with the examination of an accused person, and not services for testifying in Court. Moreover, as the Court points out, the members of the Commission declined to testify at the trial as experts, and the Court sustained them in this.

It is therefore my opinion that the Court's finding was correct, but even if I thought otherwise, questions relating to Court costs are for the Court to decide, and the Court having decided it, my opinion would not alter the result.

I return you the correspondence on the subject which you sent me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—COMPLAINT IN DEFAULT OF FIRST WARRANT
NOT CONTAINING OFFENSE DOES NOT SUPPLY PROOF.

William H. Killian, Esq., January 20, 1926.
Commissioner of Immigration,
27 Warren Building,
Baltimore, Maryland.

Dear Mr. Killian:—I beg to reply to your letter of the 14th, in which you ask whether a person convicted under Section [illegible] of Act [illegible] of Congress, and whether, upon such conviction, the alien should be deported.

This question relates to the building of numerous arises because of the fact that the only penalty provided is a money fine, and because the statute provides that on conviction the person convicted shall be [illegible] and thereupon deported.

Notwithstanding the provisions of the statute, the complaint in the case [illegible] charges an offense under the statute, [illegible] as security should be obtained.

Section [illegible] of the Act of [illegible] provides that [illegible] which [illegible]

Very truly yours,

[illegible]
Commissioner of Immigration.

Honorable [illegible],
Assistant Attorney General,
Washington, D. C.

Sir:—[illegible]

after the trial upon the understanding that he would pay the fine and costs within a few days. He did not do so, and you wish to know whether you can commit him to jail in default of payment. The trial took place on January 26th, 1918.

Your term of office has not yet expired, and you still have this case before you unsettled. I think it is clearly within your power to commit the party convicted to jail for non-payment of his fine and costs in the same manner as this could have been done at the time of trial.

Very truly yours,

[illegible]

[illegible]

February 6, 1918.

Hon. [illegible]

[illegible]

[illegible]

Dear Mr. K[illegible]: I beg to reply to your favor of recent date.

You first ask whether a justice of the peace has jurisdiction to try offenses under Sec. 15 of Art. 27 of Bagby's Code. This section provides for the crime of false pretenses, and the punishment is fine and imprisonment, or confinement in the penitentiary. Jurisdiction is conferred upon justices under this section because Bagby's Code, Art. 27, Sec. 15, excepts cases punishable by confinement in the penitentiary from the criminal jurisdiction of justices of the peace.

You also ask whether a justice of the peace has jurisdiction to try offenses under Sec. 15 of Art. 27, of Bagby's Code, relating to assault on wife. In my opinion, the justice has jurisdiction in such cases, for the reasons set forth in an opinion on the same subject to Mr. Oliver H. Emmons, Jr., of November 10, 1917. Attorney General's Opinions, Vol. 2, page 126.

You next ask whether the justice, when the accused prays a jury trial, sends the case, under Sec. 12 of Art. 52 of Bagby's Code, to Court on an appeal, or holds the accused for the Grand Jury. In such case there is no trial before the justice, and therefore, there is not, properly speaking, an appeal. The statute, however, requires the case to be put upon the appeal docket, and the accused, in the counties, is not held for the action of the Grand Jury, but is either committed for trial or held to bail for trial, the papers being transmitted to Court, and the case being there tried on the information or warrant, as the statute directs. This was recognized as the proper procedure in Sneed [illegible] liper vs. State, 126 Mo. [illegible]

Finally, you ask what should be the bills of indictment against a railroad agent who delivered a package of [illegible] a person other than the consignee, knowing that he [illegible] consignee, in violation of the Act of 1911, [illegible] the gallon a month law. The indictment should [illegible] the statute, and allege in substance that the agent delivered the whiskey to a person other than the person to whom it was consigned, contrary to the Act. You can add, if [illegible] the agent knew that the person to whom it was to be made delivered the consignee, but single I hardly think this [illegible] cause the question of the agent's knowledge would be a defense.

Very truly yours,

[illegible] K[illegible]

CRIMINAL LAW—PAYMENT OF FINE TO JUSTICES OF THE PEACE BY BAD CHECKS—COMMITMENT TO JAIL IN DEFENSE.

February 3, 1919.

E. Lee LeCompte, Esq.,
State Game Warden,
542 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of January 30th.

You say that a certain Charles Williams, of Hancock, Md., pleaded guilty before a justice of the peace to the charge of hunting without license, was fined by the justice, and gave his check to the justice in payment of the fine, but stopped payment thereon before the same was cashed. Mr. Williams then requested an appeal, which the justice refused to grant, and afterwards the justice entered suit against Mr. Williams on the check, and secured judgment. Mr. Williams appealed from this judgment.

You ask what should now be done to secure payment of the fine. The procedure is perfectly clear. There was no reason to sue upon the check, and this suit should be abandoned. Mr. Williams having stopped payment, was in the same position he would have been in had he not given any check, and he should have been committed to jail for non-payment of his fine, in accordance with Bagby's Code, Art. 38, Secs. 1 and 3. This is the course which should be followed now.

You also ask whether Mr. Williams could appeal from the judgment entered against him upon his plea of guilty. Wherever the accused, voluntarily and with a full understanding of its effect, pleads guilty, he has no right of appeal.

State vs. Darling, 130 Md. 254, 264;
Lowe vs. State, 111 Md. 1.

I assume that Mr. Williams' plea of guilty was made under these circumstances, and, if it was, he has no right of appeal from the judgment imposing the fine.

Very truly yours,

ARTHUR W. BRUNER, *Attorney General.*

CRIMINAL LAW—SUPPLEMENT OF LEGISLATURE OF WASHINGTON COUNTY—ACT 1916, CH. 130.

Grover T. Kaylor, Esq., March 17, 1916.
State's Attorney,
Hagerstown, Maryland.

DEAR MR. KAYLOR:—I beg to reply to your letter of March 13th, in which you ask whether a railroad company may make shipments of intoxicating liquors for delivery in Washington County, when such shipments are not prepaid and are delivered by the railroad company, but provided the same are intended for personal consumption by the owner.

The question contained in the Act of 1914, Ch. 130, was duly adopted by the Washington County Delegation for that county.

Sec. 2 of the Act makes it unlawful "to receive or deliver any such liquors, or any intoxicating liquors, for any person or persons within the said county, directly or indirectly, by express or any other conveyance, except as hereinafter provided," and makes the violator subject to penalties.

The Act contains a provision that it shall not be lawful for the railroad company to make the shipments which are prohibited, but the exception applies only to the case where the shipment is made for personal consumption, and not for sale.

The statute then provides that the shipment may be made upon the shipper's affidavit, which must be presented to the railroad company, that the liquor is for personal consumption, and not for sale.

The question is, whether the railroad company may make shipments of intoxicating liquors for delivery in Washington County, when such shipments are not prepaid and are delivered by the railroad company, but provided the same are intended for personal consumption by the owner.

The question is not expressly covered by the Act of 1914, Ch. 130, but it is my opinion that the railroad company may make such shipments, provided the shipper makes the affidavit required by the statute, which would protect the railroad company, if the situation warrants the appropriate prosecution to be brought to test the case.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

CRIMINAL LAW—TRIAL BY JURY IN CASES OF PROSECUTION FOR CATCHING UNDERSIZED FISH.

March 19, 1919.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: I beg to reply to your favor of March 18th, in which you ask whether persons accused in Baltimore County of violating Sec. 79 of Art. 39 of Bagby's Code, prohibiting the catching of undersized fish, can elect a trial by jury, in lieu of a trial before the justice.

In my opinion, they can. By Sec. 84 of Art. 39 justices of the peace are given jurisdiction to try offenses of this kind, and by Sec. 316 of the Baltimore County Code of 1916, (which is substantially the same in this respect as Sec. 12 of Art. 52 of Bagby's Code), the accused is given the right to be tried by a jury, if he so elects, instead of by the justice.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

EDUCATION.

SCHOOL ON GOVERNMENT RESERVATION.

July 31, 1919.

Dr. M. Bates Sanderson,
State Superintendent of Schools,
Baltimore, Maryland.

My Dear Dr. Sanderson: You have asked my opinion on certain phases of the proposition suggested by the Board of Education of Cecil County for the Public Health Service of the United States Government, in the matter of a school on the government reservation at Port Deposit, Maryland.

I understand that the title to the reservation is in the United States. There is now a free school building upon this reservation which the Public Health Service has offered to the County Board. The proposition includes the contingent use of this school with the school of Perryville.

When land is purchased by the United States Government, the laws of the State within which it is located remain in force. The State of Maryland has given a general consent to the exercise of jurisdiction by the United States under Art. 1, Sec. 8, of the Constitution of the United States. The consent given by the State in this instance is that of giving effect to the laws of the State in this respect as that of giving effect to the land serving process. It follows, therefore, that there is no obligation upon the State or County to provide school facilities for children resident on the reservation.

On the other hand, there is no objection to allowing the County to use this school building and the County Board of Education, if it so desires, may enter into an agreement with the Public Health Service and permit children resident on the reservation to attend. I understand there is no question of protecting the health, and the whole matter resolves itself into the question of economy and efficiency or a graded high school, as the case may be. While the question is not entirely free from doubt, it is my opinion that under these circumstances, the County Board of Education, if it so desires, may locate its school on the reservation.

Very truly yours,

Attorney General, Baltimore County.

Education Law on the General School Fund by the County Boards of Education.

December 26, 1919.

W. S. H. Lanier, Esq.,
Superintendent of Schools,
Westminster, Md.

Dear Sir:—I have your letter of November 14th in which you state you have a doubt as to the question whether the Board of Education of Carroll County has the discretion right to determine for what purposes the equal apportioned State school money may be expended.

Neither your letter nor the statement which you enclose is signed by your Board for the information of the public given sufficient information to enable me to answer your question definitely. I assume, however, that the Schools which you mention is part of the general school fund which you receive from the State, and it is upon this assumption that I am answering your inquiry.

Sec. 70 of Art. 77 of the Code Vol. 1 provides for the County Budget. In making up this County Budget the County Boards of Education are to include in it not only the amount which will be needed for the ensuing school year, and the amount which they consider will be needed to be raised by local taxation, but they are also to put in this Budget the estimated total amount that will be received from the State which shall be used for paying teachers' salaries and purchasing text books, materials of instruction and school supplies.

It is quite clear from this section that the general school fund which you receive from the State must be used only for paying teachers' salaries and purchasing text books, materials of instruction and school supplies. It is within the discretion of your Board of Education to determine how the money shall be distributed as between teachers' salaries and the purchasing of text books, etc.; but it is not within your Board's discretion to use the money for any other purposes than those specifically mentioned in the Act of the Legislature.

You will, of course, appreciate that the Attorney General is not the official adviser of your Board, although we are glad to give you our opinion if you desire it.

You will also recall that to some extent at least the State Superintendent of Schools is, by the provisions of Section 19 of Article 77, required to explain the true intent and meaning of the school laws.

Yours very truly,

OLIN MARBURY, *Asst. Attorney General.*

ELECTIONS.

ATTORNEYS—MEMBERS OF CONGRESS—NOTICE TO VOTERS ON
SEVERAL LISTS.

August 9, 1919.

James A. Parker, Esq.,
The Board of Registrars of Voters,
Cambridge, Ma.

My dear Mr. Parker:—I have your letter of August 7th in which you ask what is the proper way to change party affiliation.

Article 33, Section 1 of the Administrative Code provides that a person registered as affiliated with a political party may appear before the Board of Registrars and make a written request and make other arrangements and the entry in the column headed "Party Affiliation" opposite his name on the Registrars. Section 182, however, provides that no person either having had his affiliation registered, shall be permitted to make any change in such affiliation unless the change be made six months prior to the day of the Primary election. No change in affiliation can be made, therefore, at the registration before the next Primary, although persons not registered as affiliated can affiliate at the time of such registration. Persons now affiliated who desire to change their affiliations can do so by applying before their respective Boards of Registrars at the registration above before the next general election.

You also ask whether a person whose name is upon the list of suspected persons should be asked to prove to the officers of registration, or whether a notice sent by mail is sufficient. Section 21 of Article 33 provides that a notice sent by mail to the address as given in the Register, and also to a similar notice to be served, and if the person cannot be found at the place designated upon the Register, the name must be left there if such place can be found. It is not necessary to hand up the man personally, but it is necessary for the officers of registration to go to his address appearing upon the Register and if they find it to be correct, and he is not there, or if he is not there, if he is not there.

Very truly yours,

ARTHUR K. REYNOLDS, Attorney General.

Elections. Affiliations Necessary for Candidates in Primary. Registered Democrats Eligible on Primary.

August 8, 1910.

Clarence W. Roberts, Esq.,
Attorney for Superintendent of Elections,
Upper Marlboro, Md.

Dear Mr. Roberts:—I have your letter of August 5th in which you ask whether a man registered as an Independent is eligible as a candidate for nomination as a candidate in the Primary.

Article 33, Section 34 b, provides the requirements of a certificate of nomination to be filed in a primary election before the Supreme Court of Baltimore City, but does not specifically state what party affiliation is necessary for a candidate in the primary. Among the requirements of such certificate is that it must state the party with which the candidate is affiliated, and the party to which the voters who signed the petition belong.

Primary elections are for the purpose of enabling the members of a political party to select candidates for the ensuing election, and I do not think that a person who is not affiliated with the party can be a candidate in the primary of that party, although he may be a member of the party and entitled to vote at the primary.

Very truly yours,

Thomas G. Hayes,

ELECTIONS—BALLOTS—CROSS MARKS OPPOSITE BLANK SPACES.

October 20, 1919.

Benjamin F. Sterling, Esq.,
Judge of Election,
Cristfield, Md.

MY DEAR MR. STERLING: I have your letter of October 18th in which you ask what should be done during the count of ballots with a ballot in all other respects marked properly which has a cross-mark in the square opposite a blank line reserved for the voter to write in the name of some person not on the ticket for whom he wished to vote, there being, however, no name written in this blank line.

In my opinion this ballot should be rejected.

Section 73 of Article 33 of the Code provides as follows in respect to the duties of judges in the count of ballots:

> "... if there shall be any mark on the ballot other than the cross mark in a square opposite the name of a candidate, or other than the name or names of any candidate written by the voter on the ballot as provided in Section 54, such ballot shall not be counted."

Yours very truly,

OGLE MARBURY, Jr.,
Deputy Attorney General.

ELECTIONS—BALLOTS—NUMBER OF COLUMNS ON THE BALLOT—DISCRETION OF THE SUPERVISORS.

October 16, 1919.

Charles E. Tucker, Esq.,
The Board of Supervisors of Elections,
Centreville, Md.

DEAR SIR: I have your letter of October 15th in which you state that you have the names of 29 candidates to be placed upon the ballot in Queen Anne's County, representing 14 groups, requiring 14 headings and 19 blank spaces. If you place all these

[illegible]

[illegible]

longs." Since Mr. Wildman is not now a registered voter, and cannot become one until the Tuesday preceding the primary, he is not able, of course, to comply with these conditions. He is, therefore, not eligible, in my opinion, to enter the Republican primary.

My opinion is that Mr. Wildman is entitled to register on the Tuesday preceding the primary and to vote in the primary. He is entitled to vote in the general election in November (see 2 opinions of the Attorney General, p. 176), and Sec. 17A of Art. III, provides for the registration of those "who may be entitled to vote at the next General Election."

Very truly yours,

ARTHUR C. RITCHIE, *Attorney General.*

ELECTIONS—CANDIDATES IN PRIMARY FOR TWO OFFICES.

August 22, 1919.

Hon. Jesse D. Price,
Salisbury,
Maryland.

MY DEAR SENATOR: I have before me your letter of August 19th, which I am answering in the absence of Mr. Ritchie.

Under the provisions of Sec. 184 of Art. 33, which is the section of the Election Laws providing for the preparation of the ballots for primary elections, the Supervisors of Elections must print upon the ballot the names of all candidates who become qualified by the payment of the amount set out in that section and by the filing of a certificate therein minutely described.

There is nothing in this section to prohibit a person from filing a certificate for two or more offices, and if this is done it is the duty of the Supervisors to place his name upon the ballot as a candidate for both offices.

Section 15, which refers to nomination by certificate or petition, provides that no person shall accept a nomination to more than one office, and it is probable that if the gentlemen in your county who has filed for the offices of state senator and county treasurer should receive the highest number of votes

for both offices, he would be compelled to choose between the two before the Supervisors could put his name upon the ballot at the general election as the candidate of his party. This question, however, has not yet arisen and there is nothing in the election law which prohibits his being a candidate for nomination for more than one office. With kind regards I

ELECTIONS—DIVISION OF DISTRICT INTO PRECINCTS.

September 17, 1919.

Benjamin H. Sewell, Esq.,
Clerk, Board of Supervisors of Elections,
[illegible] County, Md.

MY DEAR SIR:—I have your letter of September 15th, in which you ask by direction of your board for an opinion as to the division of one of the election districts of your county into two voting precincts.

This subject is fully covered by Sec. 127 of Art. 33 of the Code. You can find in this section all the information you need on the subject. It is, of course, too late to establish any new precincts this year, as the boundaries of such precincts must be advertised once a week for three successive weeks before the first day of September in the year in which the subdivision is made.

Yours truly,

OGLE MARBURY, Ass't Attorney-General.

ELECTIONS—BOARD OF SUPERVISORS—CANNOT DELEGATE POWER TO ADMINISTER OATHS TO ELECTION OFFICIALS.

July 25, 1919.

R. G. [illegible], Esq.,
Counsel to Board of [illegible]
[illegible] County,
[illegible], Maryland.

DEAR MR. [illegible]:—I have received your letter of July 23rd, asking my opinion whether the Board of Election Supervisors can lawfully delegate to the clerk the power to administer oaths to judges and clerks of elections.

I think it quite clear that this cannot be done. Secs. 10 and 11 of the Election Laws provide that the judges and clerks are to be sworn in by the supervisors themselves, or by a justice of the peace or a notary public. Sec. 6, which provides for the clerk to the board, does not give the clerk any power to admin-

ister oaths, and, of course, no one can administer oaths unless authorized to do so by statute. Therefore, the supervisors cannot delegate this power to the clerk.

If, however, the clerk happens to be either a justice of the peace or a notary public, then I think that he could swear the judges and clerks under Sec. 10, but he would do this in his capacity as justice of the peace or notary public, and not by virtue of any delegation of authority to him from the board.

Very truly yours,

VERNON C. KEYES, Attorney General.

EXECUTIVE — EXAMINING OF COUNTY ROAD DIRECTOR — ACTS OF EXECUTIVE

MAY 10, 1922.

Clarence M. Roberts, Esq.,
Attorney for the Board of Supervisors of Elections,
Lyons, Washington, Wis.

MY DEAR MR. ROBERTS: I have before me your letter of May 17th addressed to Assistant Attorney General Mathews in which you ask for an official opinion whether a road director of Prairie Creek County is eligible for appointment as an election judge at elections.

The qualifications of judges of election are given in Section [illegible] of Art. [illegible] the Code. One of these qualifications is that an judge shall be a man "not holding any office of public employment, and not a candidate for any office at the election to be held."

A road director under Sec. [illegible] Law [illegible] is a public employee, must devote his whole time to his duties, and receives a salary from the county. In my opinion, he holds public employment, and therefore is not eligible as a judge of election.

Yours very truly,

VERNON C. KEYES, Attorney General.

ELECTIONS—JUDICIAL PRIMARIES—ASSOCIATE JUDGES FROM THE SAME COUNTY.

August 23, 1919.

Mr. Franklin H. Ankeney, President,
Board of Election Supervisors,
Cumberland, Md.

DEAR MR. ANKENEY: I beg to reply to your telegram which I received this morning, in which you refer to the fact that there are two vacancies for Associate Judge in your Circuit to be filled this fall, and that three Republican candidates have filed their papers to fill these vacancies. One of these, Judge Henderson, lives in Allegany County, and the other two, Mr. Wagaman and Mr. Brindle, both live in Washington County. Under these circumstances, you ask my opinion whether, under Section 155 of the Election Laws, a certificate of nomination can be issued to Judge Henderson without placing his name upon the ballot, and thus reduce the primary for these positions to a contest between Mr. Wagaman and Mr. Brindle.

If Judge Henderson is entitled to a certificate of nomination without entering the primary, then this can only be because of Section 21 of Article 4 of the Constitution, which provides that the two Associate Judges for any circuit, except the third circuit, shall at the time of their election or appointment, or during the term for which they may have been elected or appointed, reside in the same county.

This provision of the Constitution evidently applies to the general elections, and not to the primary elections. The prohibition is against two Associate Judges residing in the same county at the time of these elections. There is no prohibition against two primary candidates for Associate Judge residing in the same county at the time of the primary. Indeed, the subsequent provisions of Section 21 of Article 4 of the Constitution quite clearly recognize that there may be two candidates for Associate Judge who come from the same county, because the section expressly provides that if there shall be two of them who shall be from one only in said county shall be declared elected who has the highest number of votes in the circuit. It seems to me clear, therefore, that the names of all three of the candidates should go upon the primary

ballot, and that the two of them, who at the primary receive the highest and the next highest number of Republican votes cast in the Circuit should be declared the nominees of the Republican party.

It is, of course, true, that if Mr. Wagaman and Mr. Brindle are the nominees, and if at the General Election Mr. Wagaman and Mr. Brindle, both continuing their residence in Washington County, receive the highest and the next highest number of votes cast in the Circuit, then both could not be elected Associate Judge, because this would result in two Associate Judges coming from the same county, which the Constitution forbids. In this event, the one receiving the highest number of votes would be the only one elected, because the Constitution in express terms declares that if two of more Judges shall reside in the same county, the one receiving the highest number of votes shall be the only one elected. Art. 4, Sec. 1. Mr. Wagaman and Mr. Brindle, under Republican tickets, [illegible] elections, [illegible] Judge [illegible] without opposition.

I am sending a copy of this opinion to Judge [illegible] because it may be of benefit to him, [illegible] want them to have every opportunity to test the [illegible]

This, I think, could readily be done by appropriate proceedings to prevent the Supervisors, if they adopt this opinion, from putting Judge Henderson's name upon the primary ballot.

Yours very truly,

ALBERT C. RITCHIE, *Attorney General.*

(Note: See Attorney General's Opinion, Vol. 2, p. 157.)

ELECTIONS—NOMINATION BY PETITION—INDEPENDENT CANDIDATE.

October 8, 1919.

Clarence M. Bowie, Esq.,
Attorney to Supervisors of Elections,
Upper Marlboro, Md.

DEAR SIR: I understand from you that a petition has been filed with your Board, signed by the requisite number of voters, nominating John M. Bowie as a candidate for County Commissioner. This certificate of nomination states that the party or principle which Mr. Bowie represents is "Independent Republican." You ask what is the duty of your Board in the matter.

Section 13 of Article 33 provides for nomination by such a petition. The certificate to be filed under that section must contain such information as is required to be given in certificates of nomination made by a convention or primary meeting under Section 12 of the same article.

Section 12 of Article 33 prescribing the contents of the certificate of nomination states that it shall designate "not in more than one word" the party or principle represented.

Under these circumstances I do not think that Mr. Bowie can be placed upon the ticket as an "Independent Republican."

Section 55 of Article 33 provides for the form and the arrangement of the ballots. By that section the Supervisors are directed to place the name of his political party to the right of the name of the candidate, even if there shall have been any nomination for the same office by a convention or primary election claiming the same party name, duly certificated as hereinbefore provided, there shall then be printed to the right of the

name of the candidate so nominated in accordance with Section 12, except Presidential electors, only the word "independent" and no other."

Under this provision, there having been nominated by the Republican party in its primary in Prince George's County two candidates for the two vacancies to be filled at the coming election in the Board of County Commissioners, it seems to me that it is the duty of the Board of Supervisors to print Mr. Bowie's name upon the ballot as a candidate for the office of County Commissioner, and to the right of his name to print the word "independent."

Yours very truly,

[illegible] Mandatory Act, Democratic Nominee.

Election Petition for Independent Candidates—Act covers Democrats.

October 13, 1926.

Hon. [illegible], Esq.,
Editor, Marlboro.

My dear Mr. [illegible]: I have your letter of October 11th in which you ask whether an affidavit to a petition of an independent candidate must be made before a Justice of the Peace, or whether it can be made before other officers authorized to take an affidavit. Section [illegible] of Article [illegible] specifically requires the affidavit to be made before a Justice of the Peace by one or more persons who must personally be the [illegible] certified by him and signed by the affiant or affiants.

I think this section should be strictly construed that the affidavit must be made before a Justice of the Peace, as he is required not only to administer the oath, but also to personally know the parties. I think the Legislature intended by saying a Justice of the Peace that it intended to exclude other officers permitted to administer oaths, and it is very probable that a Justice of the Peace was selected because of the more than usual knowledge such an officer has of persons in his district.

Is [illegible]

You also ask whether an independent candidate is required to deposit with the Board of Supervisors of Elections the sum of $25.00 as if he were a candidate in the primary. The requirement for the $25.00 is contained in Section 124, and is made only of candidates for nomination for public office "at a primary election." There is no such requirement under Section 43 which provides for nomination otherwise than at a primary election. It is therefore clearly not necessary for the independent candidate to make the $25.00 deposit.

Yours very truly,

OGLE MARBURY, *Asst. Attorney General.*

ELECTIONS—PRIMARY—RESIGNED MEMBER OF BOARD OF SUPERVISORS CAN BE CANDIDATE.

September 2, 1919.

C. Frank Cross, Esq.,
Board of Supervisors of Elections,
Cambridge, Md.

DEAR SIR: I am asked whether a member of the Board of Supervisors of Elections can become a candidate in the primaries for the State Senate, provided that upon becoming a candidate he resigns from the Board. In my opinion he can. I gave an opinion some time ago to the effect that a member of the Board of Supervisors of Elections cannot become a candidate for office in the primaries if he continues to act as supervisor, because the law does not contemplate that a Supervisor of Elections should be a candidate at a primary election which he himself is charged with the duty of conducting and canvassing, and also, in case of a contest, of recounting and recanvassing. (Op. Atty. Gen., Vol. 2, p. 180).

It seems to me that these objections are removed by the resignation from the Board of the candidate. I do not think that the fact that the candidate, when Supervisor, helped to appoint the judges and clerks of election disqualifies him, since it will not be presumed that these officials are incapable of discharging their duties fairly and honestly.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—PUBLICATION OF NOTICE OF REGISTRATION—DISCRETION OF SUPERVISORS OF ELECTIONS.

[illegible] 20, 1896.

[illegible] *Esq.*,
Los Angeles,
[illegible], *Cal.*

[illegible] *Sir*: I have your letter of [illegible] in which you state that there are three newspapers published in Los Angeles County, all of which are of the democratic political faith. One of these papers [illegible] the "Weekly [illegible]" and the [illegible] "Herald" are published in the [illegible] Publishing Company, which is a corporation [illegible] agent. A third paper, the "[illegible] Capital," is published by the Capital Publishing Company. You [illegible] that the Board of Supervisors of Los Angeles County [illegible] in the matter of the public printing the time and place and [illegible] elections under these circumstances.

Section 14 of Article 22 of the Constitution provides that the Board of Supervisors shall fix the time and place of registration in each election district, in advertisements to be published in two newspapers, if possible, that are of opposite political faith, and that of the majority of good Supervisors of general circulation therein. In the case [illegible] two newspapers in Los Angeles County, it seems [illegible] required [illegible] that the two newspapers shall be of general circulation. There is no provision for the necessity of separate publication.

Under these circumstances, I think it is a matter [illegible] discretion of the Board of Supervisors of Los Angeles County [illegible] of general circulation in Los Angeles County [illegible] of the registration and [illegible].

Very [illegible],

[illegible] R. [illegible]

ELECTIONS—REAPPORTIONMENT OF PRECINCTS IN BALTIMORE COUNTY—ACT 1918, CH. 82.

MAY 13, 1919.

Hon. Carroll D. Benson,
1301 *Fidelity Building,*
Baltimore, Md.

DEAR SIR: You ask me whether the Board of Supervisors of Elections of Baltimore County may add the portion of the first and the second precincts of the fourteenth district remaining in the county after the passage of the Annexation Act to the portion of the fourth precinct remaining in the county, and then subdivide the fourth precinct as amended into three new precincts.

As I understand it, the portion of the fourth precinct remaining in Baltimore County contains 500 and some odd voters; the portion of the first precinct now in the county has approximately 200 voters, and the portion of the second precinct approximately 100 voters. I also understand that the polling places of the first and second precincts existing before the passage of the Annexation Act were located in territory brought within the limits of Baltimore City.

Section 7 of Chapter 82 of the Acts of 1918 provides that the Board of Supervisors of Elections of Baltimore County are directed to provide new polling places for, or to so amend their election precincts as to include within existing election precincts, all registered voters residing in Baltimore County outside the limits of Baltimore City as fixed by the Act, and whose polling places were located within the territory annexed to Baltimore City. The power to amend election precincts so to include within existing election precincts the registered voters whose polling places were annexed to Baltimore City, conferred upon the Board of Supervisors of Elections by the Annexation Act, gives it the authority to add the portions of the first and second precincts remaining in Baltimore County to the fourth precinct, the polling place of which was not annexed to the City.

When the Board adds the portions of the first and second precincts remaining in Baltimore County to the portion of the fourth precinct left in the county, then the fourth precinct will

contain more than 1,100 voters. Section 127 of Article 33 of the Annotated Code of Maryland makes it the duty of the Boards of Supervisors of Elections of the several counties to examine the boundaries of election districts and election precincts in their respective counties from time to time, and whenever, in their judgment and discretion it shall be deemed expedient to subdivide any said election districts or election precincts, or to subdivide and change the boundaries of any two or more precincts in any election district into three or more precincts, then the Boards are empowered and authorized to make such subdivision. It is provided that no election district shall be subdivided into two or more precincts that has not an excess of 600 or more voters; and that no precinct or group of precincts in any district shall be subdivided unless one or more of such precincts so intended to be divided shall contain an excess of 600 voters.

As amended, the fourth precinct of the fourteenth district would contain nearly twice the minimum number of voters required by law before any subdivision either of the district or of the precinct is authorized, and therefore it is my opinion that the Board of Supervisors of Elections of Baltimore County may subdivide the fourth precinct of the fourteenth district under the power vested in it by Section 127 of Article 33 of the Annotated Code.

Yours very truly,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION IN ANNE ARUNDEL COUNTY—1918, CH. 55.

July 25, 1918.

W. G. Scott, Esq.,
Counsel to Board of Elections
Supervisors of Anne Arundel Co.,
Annapolis, Maryland.

DEAR MR. SCOTT:—I beg to reply to your letter of July 22nd, referring to the fact that portions of certain precincts of Anne Arundel County were annexed to Baltimore City under the Act

of 1918, Chap. 82, and asking my opinion whether the Board of Election Supervisors can order a registration for the portions of these precincts which still remain in the county.

There will, of course, be a registration day in Anne Arundel County on the Tuesday preceding the next primary election day, under Section 17A of the Election Laws, so that I suppose you refer to a new general registration.

Under Sec. 7 of the Act of 1918, Ch. 82, the Board may, of course, provide new polling places and rearrange existing precincts in this territory, but no power to order a new registration is given. Therefore, no such power exists.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—REGISTRATION BOARD—PRIMARY—TRANSFERS—CHANGE AFFILIATION—WHO MAY REGISTER.

August 29, 1919.

Board of Election Supervisors,
Sent to each County Board.

GENTLEMEN: On account of some misunderstandings as to the application in the counties of Sec. 17A of Art. 33 of the Annotated Code of Maryland, I beg to advise you on the following points:

1. Transfers can be made on the registration day preceding the primary. Sec. 31 of Art. 33 provides that the Certificates of Transfer shall be granted by the Board of Registry *when in session*, or by the Board of Supervisors before the session of the Board of Registry. The Board of Registry is, of course, in session on the registration day preceding the primary, and, therefore, any transfer issued on that day should be issued by the Board of Registry. If, however, the applicant already has a transfer certificate issued by the Board of Supervisors, then I see no reason why he may not present that to the Board of Registry on the registration day and be transferred.

2. Voters registered as "declined" or "independent" are entitled, under Section 186, to affiliate with any political party

precinct in which they claim the right to vote, provided they shall declare their intentions to vote for the candidate or candidates of the party at whose primary they tender their ballots."

Section 229 of Article 3[illegible] provides:

"Whenever possible, the existing election laws and the provisions of this Act shall be construed together in such a way as to promote the purpose for which this Act is intended, to the end that the citizens of the State shall not be deprived of their right or opportunity to vote because of service, as herein provided, for their State or the United States."

This last section is part of the Soldiers' and Sailors' Absent Voting Act passed by the Legislature of 1943 and is now in full force and effect because of a Proclamation issued by the Governor of Maryland.

It was clearly the intention of the Legislature that no citizen should be deprived of his constitutional rights of his absence from the City while in the service of his Country and applying that intention to the present instance it is clear that those who were in the armed forces of the United States during such period were entitled to opportunity to present themselves to the respective Boards of Registrars at the last registration.

I am, therefore, of the opinion that soldiers and sailors who became twenty-one years since November 7, 1944, and who were in the service during the general registration of 1944, or will be liable in the armed forces during the registration of 1946, may vote in the Primary Election to be held April 2, 1946. Of course, the Board of Registrars [illegible] of the voter was not [illegible] during the registration of 1944 and had become of age after November 7, 1944, because the Act of 1944 cannot be construed to permit persons who were living prior to its enactment, and who became twenty-one prior to the general election in 1944, had the opportunity to register during that year. And, of course, if a man was not actually absent from the City because of military or naval service, the Act would not possibly apply to his case.

The Boards of Registrars will proceed in the cases covered by this opinion in the same manner as they now proceed in the

case of voters coming of age before an election but not actually registered.

Very truly yours,

JOHN M. KEOGH, Asst. Attorney General.

FRANCIS [illegible], Chairman, Finance and Government Bodies Committee, Texas.

October 15, 1[illegible]

Mr. [illegible],
Chairman, Democratic State Central Committee,
Dallas, Texas.

MY DEAR MR. [illegible]: I have your letter of [illegible] which you state that there were several offices for which there were no candidates for nomination in the Republican primary and the Republican State Central Committee has asked the names of certain persons on the nominees of the Republican party for these offices. You ask whether the committee has authorized this procedure.

Section 1[illegible] of Article [illegible] provides as follows:

> "Any candidate which may exist in respect to any office, delegate to a convention or panel on ballot in the primary election, occurring after the returns have been canvassed and the nominees ascertained, or where any person by reason of [illegible] for candidate for the office in the [illegible] primary election, or office to be filled by the rule and regulation of the governing bodies for the respective parties in the election, or in a State that now or shall hereafter provide."

This section has been construed by the Court of Appeals in the following cases:

> [illegible] v. Ermalde, [illegible] Tex. [illegible]
> Terrell v. Wallingford, [illegible] Tex. [illegible]

I beg to advise you therefore that the parties nominated by the Republican State Central Committee for these offices are entitled to have their names placed upon the ballot as the Republican nominees.

Yours very truly,

OLIN MARTIN, Asst. Attorney General.

CORRECTION

The preceding document has been re-
photographed to assure legibility and its
image appears immediately hereafter.

STATE OF MARYLAND

BR-RM 33
(4-1-54)
Hall of Records Commission

FISCAL MATTERS.

BOND OF TREASURER AND COLLECTOR OF DORCHESTER COUNTY.

Hon. Emerson C. Harrington, March 1, 1919.
Governor of Maryland,
Annapolis, Maryland.

DEAR GOVERNOR HARRINGTON: I beg to reply to your favor of February 27th, in which you ask whether I think the Bond given by Mr. Thomas E. Kerr as Treasurer and Collector of Dorchester County on January 1, 1918, is a proper Bond.

The Bond is given under the Act of 1914, Ch. 834, and follows exactly the requirements of Section 107 of that Act. The only possible objection I see to it is one which you point out, as follows: That at the end of the second paragraph, it is recited that Mr. Kerr was elected and qualified under Section 121E of Chapter 834 of the Acts of the General Assembly of Maryland, but the year of the Act referred to is not given. The same thing occurs also at the end of the third paragraph, where the condition is that Mr. Kerr should perform the duties required of him by Chapter 834, but again the year of that Act is not given.

My own opinion is that the validity of the Bond is not affected by these omissions. While the year of the Act is not stated, the chapter number is correctly given, and there is no Act to which the Bond could possibly refer except Chapter 834 of the Acts of 1914. This is the Act under which the Treasurer and Collector of Dorchester County is elected, and under which he performs his duties, and there is no other Act on the subject; this being so, I think that the statute is sufficiently identified.

Indeed, I do not know that there is any legal necessity for referring to the Act at all. The condition of the Bond is that Mr. Kerr will faithfully execute the duties of his office, and this guarantees compliance with those duties, no matter what statute may impose them, and whether it is specifically mentioned or not.

While, however, my opinion is that the Bond is valid, yet it is certainly always desirable, not only to refer to the statute, but to refer to it by year, as well as by Chapter, and unless some

objection to it to be one of which I am not advised, it will be out only reasonable for me to ask Mr. Kerr, the surety and the County Commissioners to prepare a brief statement, which could be attached to the Bond, that "which Chapter 551 of the Acts of the General Assembly of Maryland is mentioned in the attached Bond, it is understood that Chapter 551 of the Acts of the General Assembly of Maryland of 1914 is intended." This would avoid the possibility of any question being raised.

Contents noted. Return the Bond.

Very truly yours,

Attorney General.

Hon. Harry A. Hopkins,
Comptroller of Treasury,
Annapolis, Maryland.

Dear Comptroller Hopkins: I beg to reply to your letter of July 1st, in which you ask whether an administrator of a deceased tax collector, who is collecting and paying over to the State taxes charged against his intestate, is required to file a separate bond as a collector of State taxes, or whether his bond as administrator covers the collection of State taxes.

Under Code, Vol. 3, Art. 93, Sec. 3, it is unlawful for the principal intestate of a deceased collector of taxes to secure from the Circuit Court an order revoking the bond allowed by law to complete the collection of taxes charged against the deceased collector.

I do not find anything in the law requiring an administrator who has succeeded to the position of a collector of taxes, who is collecting the taxes charged against his intestate, and who is collecting the taxes charged against his intestate without the necessity of such order, to give bond for the State as a collector of State taxes. I think, therefore, that no such bond is required, but that the administrator's bond covers the collection.

Very truly yours,

Attorney General.

FISCAL MATTERS—BUDGET—APPROPRIATIONS FOR SOUTHERN MARYLAND EMERGENCY HOSPITAL—ACT 1918, CH. 138—INDUSTRIAL SCHOOL AND HIGH SCHOOL.

January 16, 1919.

Hon. Harry J. Haskins,
State Comptroller,
Annapolis, Maryland.

DEAR COMPTROLLER HASKINS:—Mr. Edward J. Eckenrode has sent me copy of a letter from the Comptroller to him, dated November 25, 1918, relating to the $25,000 appropriation made by the Act of 1918, Ch. 138, and asks that I advise him what is necessary for the payment of that appropriation.

I am writing my views of the matter to you instead of to Mr. Eckenrode, because before advising him I want to know whether there is any reason why the conclusion I have reached does not meet with your approval.

The Act of 1916, Ch. 254, appropriated $10,000 for a hospital in Charles County to be known as the Southern Maryland Emergency Hospital, the same being payable when $5,000 had been raised either by private contribution or by county levy, and the whole sum of $15,000 to be used for building and equipping the hospital.

In accordance with my opinion to the Comptroller of November 9, 1917 (Attorney General's Opinions, Vol. 2, p. 202), the State's appropriation was not reverted.

When the Legislature of 1918 met, the representatives of Charles County desired to change the application of this $10,000 appropriation, in such manner that $2,000 of it should be applied to the establishment of a central colored industrial school in Charles County, and the remaining $8,000 for a high school for white pupils.

Accordingly, the Act of 1918, Ch. 138, provided that $2,000 of the said $10,000, instead of being applied to building the hospital, should be applied to the purpose of establishing the central colored industrial school, said sum to be paid to the County Board of Education of Charles County as soon as the Act took effect, and any additional amount which the school might cost, not exceeding $1,000, to be raised by county levy.

And the Act of 1918, Ch. 115, provided that the remaining $8,000 of the said $10,000, instead of being applied to the hospital, should be applied to the purpose of establishing a High School for white pupils, said sum to be paid to the County Board of Education as soon as the Act took effect, and any additional amount which the school might cost, not exceeding $1,000, to be raised by the sale of the Indian Head and Glyndon public school lots and buildings and by local levies.

There is, I think, no doubt that both of these appropriations are now payable. Indeed, both Acts expressly provide that they shall be paid to the County Board of Education as soon as the Acts take effect, which was June 1, 1918.

The provision of the Act of 1916, Ch. 251, that $5,000 should first be raised by private contribution or county levy is, of course, no longer a condition. That $5,000 was to be raised for the hospital, and was to be added to the State's $10,000 appropriation for the same purpose. But under the Acts of 1918 the hospital is not to be built. Instead, the $10,000 is now to be applied, $2,000 to the industrial school and $8,000 to the high school. The manner of raising any additional amounts which either may cost is specified, and the State's payments are required to be paid as soon as the Acts take effect.

I understand that the $8,000 appropriation has, in fact, already been paid. The $2,000 appropriation should be paid also.

I will be very much obliged if you will let me hear either from yourself or the Comptroller, in order that I may advise Mr. Edelen.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

FISCAL MATTERS—BUDGET—APPROPRIATIONS TO HOSPITALS—PER CAPITA SYSTEM—NO DEDUCTION FOR HOSPITAL DAYS PAID BY BALTIMORE CITY OR THE COUNTIES.

February 26, 1919.

Hon. William L. Gaither, Secretary,
Board of State Aid and Charities,
105 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your letter of February 23d, in which you ask my opinion upon questions arising in the application of the per capita system of appropriations to hospitals receiving State aid.

The Budget Acts for 1919 and 1920 (Acts 1918, Ch. 206, pages 174-180 and pages 549 to 557) make appropriations to different hospitals on the basis of various amounts "per capita per hospital day," and in the case of one of them, the Franklin Square Hospital, the word "free" patients is used. You ask whether free patients are contemplated by all these appropriations. I think there is no doubt that they are. This has always been the construction in the past. The State does not contribute for patients who pay for themselves.

You also ask whether or not, in computing the free hospital days to be paid for by the State, the hospital days paid for by the City of Baltimore or by the counties of the State should be deducted. The aid extended by the counties to the county hospitals has been very small, but during the last quarter of 1918 the City of Baltimore paid the city hospitals on a per capita basis of $7½c, and since January 1, 1919, this basis has been increased to $1.00.

If hospital days for which the City of Baltimore pays are to be regarded as paid days, and are, therefore, to be deducted in calculating the free hospital days for which the State is to pay, the result will be very serious to many of the hospitals.

For example: The State's per capita for Saint Agnes Hospital is 70c. The total free hospital days of this institution for the first quarter of 1918-1919 were 5,614, and Baltimore City paid for 5,165 free hospital days. If these 5,165 days are to be deducted from the total of 5,614 days, then there will only

remain 146 days as the basis for the State's per capita payments of 70c. This would represent a contribution by the State for the quarter of $312.20, whereas one-quarter of the State's annual appropriation to Saint Agnes is $2,500.00. If, however, the 5,468 days paid for by Baltimore City are not deducted, so that the State bases its per capita of 70 cents on the total of 5,614 days, then Saint Agnes will receive the whole of this $2,500.00 for this quarter.

A like situation exists in the case of others of the hospitals in Baltimore City, and the hardship of this situation upon so many worthy institutions would be so serious, that I delayed answering your letter until I could make a thorough examination into the way the State's per capita payments were calculated. This examination has convinced me that the payments made by the City of Baltimore should not be deducted, in calculating the amounts due by the State.

The State's per capita upon the Baltimore City Hospitals (Act 1918, Ch. 200, pages 171 [illegible] and 549 to 557) is as follows:

Franklin Square	[illegible]
Hebrew	[illegible]
Maryland General	[illegible]
Mercy	[illegible]
Saint Agnes	[illegible]
Saint Joseph's	[illegible]
Union Protestant Infirmary	[illegible]
University	[illegible]
Women of Maryland	[illegible]

The fact that some of these hospitals receive [illegible] cents and others [illegible] cents is accounted for by differences in overhead expenses. These amounts were inserted in the Budget by the Governor, and are the amounts recommended to him by the Board of State Aid and Charities. See Supplementary Data at end of 1918-1920 Budget, Table No. 1, pages [illegible]. These recommendations were based upon statistics given in Table No. 11, page [illegible] of the said Supplementary Data, from which it appears that the average per capita cost to the State of the Balti

more City Hospitals, *after the payments made by the City had been deducted*, was 69¼ cents, or approximately 70 cents. It is clear, therefore, that the State's per capita of 70 and 80 cents, first recommended by your Board, then adopted by the Governor and finally enacted by the Legislature, was arrived at as the State's per capita contribution *after* allowance for Baltimore City's payments had been made.

This fact appears even more clearly when the State's per capita to the County Hospitals is considered. There are thirteen such hospitals, and after deducting comparatively small contributions made by the counties, the average per capita cost to the State of these hospitals, together with contributions made to two counties, is shown by Table No. 11 to have been $1.81½. This is over twice the average per capita cost to the State for the Baltimore City hospitals, the difference being in large part accounted for by the payments made by Baltimore City to the city hospitals, but not made, of course, to the county hospitals.

The State's per capita for twelve of these thirteen county hospitals was fixed by the Legislature at $1.60, or practically double the State's per capita (70 and 80 cents) to the Baltimore City Hospitals, and the amount by which the State's per capita to the county hospitals exceeds the State's per capita to the Baltimore City hospitals is approximately the per capita of 62½ cents paid by Baltimore City to the city hospitals, and deducted before the State's per capita to these hospitals was fixed, plus additional overhead expenses.

In view of these facts, it is entirely clear that in providing per capita payments by the State to the Baltimore City hospitals of 70 and 80 cents, the Legislature took into consideration the payments made to these hospitals by Baltimore City, and since such payments were deducted in arriving at the State's per capita, it, of course, would not be proper to deduct them a second time.

I, therefore, beg to advise you that the per capita payments to be made by the State to the Baltimore City hospitals should, in each case, be based upon the total free hospital days, without making any deduction for the hospital days paid for by Baltimore City.

In like manner, payments made by the counties should not be deducted in computing the State's per capita payments to the county hospitals.

Of course, the total amount received on this basis by any hospital during the year cannot exceed the year's total appropriation to such hospital.

Very truly yours,

ARTHUR L. BRESNIK, *Attorney General.*

FISCAL MATTERS—BUDGET APPROPRIATION BILLS—NOT PRESENTING THE MEANS FOR RAISING THE MONEY.

March 29, 1919.

Clyde H. Wilson, Esq.,
Secretary, State Roads Commission,
Garrett Building, Baltimore, Md.

DEAR MR. WILSON: I beg to reply to your favor of March 21st, in which you ask whether the State Treasury can be required to pay the $50,000 appropriation made by the Act of 1918, Ch. 389.

This appropriation was made for the building of a road in Frederick County, from Brunswick to Knoxville, as soon as the State Roads Commission found the same practicable, and for this work the Act appropriated $50,000 "out of any money in the State Treasury not otherwise appropriated."

At the time this Act was passed the Budget Amendment to the Constitution had been adopted, by which the General Assembly was prohibited from appropriating any money out of the Treasury, except under the Budget Bill. It follows, of course, that the appropriation made by the Act of 1918, Ch. 389, not being in the Budget Bill, cannot be paid, although the State Roads Commission has, of course, the power to build the road out of its general funds.

Very truly yours,

ARTHUR L. BRESNIK, *Attorney General.*

FISCAL MATTERS—BUDGET—HEALTH DEPARTMENT—APPROPRIATIONS AND REVENUE FROM OUTSIDE SOURCES—REVERSION.

February 11, 1919.

Walter N. Kirkman, Esq.,
Chief Clerk, Department of Health,
15 W. Saratoga St., Baltimore, Md.

DEAR MR. KIRKMAN: I am replying to your favor of January 24 to Mr. Whyte, because the question you ask involves a principle that may apply to a number of the State Departments.

I understand that every year the Department of Health receives income from several sources outside of the State appropriations. These sources are: The administration of the Pasteur treatment, the sale of tuberculosis prophylactic supplies, engineering services in connection with the installation of sewerage and water supply systems at certain State institutions and the occasional sale of certain property, such as used office furniture, motor cars, tires, etc. The income derived from these sources ranges from three to five thousand dollars a year, and I am assuming that your department is authorized to make these sales and charges.

You say that, in the past, you have forwarded these moneys to the State Comptroller, who has placed them to the credit of the proper State appropriation. By this I understand that when, for example, you have sold prophylactic supplies, the money received has been credited to the appropriation from which these supplies were purchased. You ask whether this procedure can be continued under the Budget system.

In my opinion it can.

Take, for example, the case of prophylactic supplies. The Act of 1918, Ch. 206, page 135, appropriates the sum of $6,000 for this purpose for 1919. When part of the supplies purchased with this money are sold, the receipts must either go into the general treasury or be credited to the appropriation. Crediting such receipts to the appropriation does not result in increasing the appropriation, but is simply a "turn over" of your stock, enabling you to use the appropriation to the broad-

est possible extent for the purpose for which it is intended. The same is true with respect to the other cases you mention.

When, therefore, moneys of this kind are received, you should remit the same to the Comptroller, who will credit them to the proper appropriation.

Section 2 of the Act of 1918, ch. 206, however, provides that any unexpended balance of an appropriation, against which there are no outstanding obligations, shall revert to the Treasury at the close of the fiscal year. There is left, at the close of each fiscal year, the appropriations, including the amounts credited thereto, as above, and does not revert except to the extent that there may be outstanding obligations against them.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—BUDGET—STATE DEPARTMENT OF EDUCATION—DISTRIBUTION OF SCHOOL FUNDS—VOUCHERS.

July 10, 1919.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

MY DEAR MR. MCMULLEN: I have your letter of June 26th, and its accompanying statement, relative to the time of payment of the appropriations under Chapter 206 of the Acts of 1918 to the State Department of Education and to the several State Normal Schools.

I have taken this matter up with the Assistant Superintendent of Schools, Mr. Bonsteel, and enclosing him a copy of this opinion.

The Budget for 1918-19 is contained in Ch. 206 of the Acts of 1918. Appropriations are made to the State Department of Education and to the several Normal Schools, all to be paid out of special funds. These appropriations are scheduled just as are all similar appropriations in the Budget. The special funds out of which they are paid are those provided for in Ch. 210 of the Acts of 1918, having State aid. A tax of [illegible] on each

$100,00 being levied thereby for the support of the public schools, and a tax of 2c. to aid in support of the public schools and for governmental requirements. The method of distributing the money thereby raised is provided by Art. 77, Secs. 88, 133, 136, 137, 138 and 139. The three which apply to the Normal Schools and to the expenses of the State Department of Education are Secs. 88, 133 and 136.

Section 133 provides that the money appropriated from the public school tax shall constitute the general school fund, and directs the Comptroller to charge against it the appropriations made for the State Department of Education, and the appropriation for the maintenance and support of the State Normal Schools.

Section 88 provides that the sums appropriated for the maintenance and support of the State Normal Schools shall, unless otherwise specified and provided, be paid in equal instalments on the first days of January, March, June and October.

Section 136 provides that the appropriations for the State Board of Education and for the support and expenses of the office of the State Superintendent of Schools shall be paid each year in equal instalments on the first days of January, March, June and October to the Treasurer of the State Board of Education.

The appropriations for the expenses of the State Board of Education (including the State Superintendent of Schools) and for the Normal Schools, are, therefore, not payable in advance, but are payable in four instalments, beginning on January 1st, and the last payment out of the 1918 tax levy is to be made on October 1, 1919. The payment which you are directed to make on the first day of June is, therefore, not in advance, but is for the third quarter.

I do not think the Legislature could be said to have intended, by any necessary implication in the Budget Bill, to repeal the dates for these payments fixed by Art. 77. There is nothing in Ch. 206 of the Acts of 1918 which prevents these payments from being made on the dates directed by the above quoted sections. The two Acts can be construed together, and I think should be. In other words, you can require from the Treasurer of the State Board of Education his certificate that the quar-

terly apportionment of the sums appropriated by Ch. 206 for the several State Normal Schools and for the expenses of the State Department of Education are due and payable by him for the several purposes set out in the schedules, and upon receiving such certificate you will be relieved of responsibility in making the payment.

It is, therefore, my opinion that upon receipt by you of a requisition from the Treasurer of the State Department of Education for the quarterly payments due on the first days of January, March, June and October, in which requisition the Treasurer shows that these payments are to be made in accordance with the schedules of the Budget, and sends you his receipt therefor in accordance with the Budget, you should pay him the one-fourth of the appropriation asked for. His requisition must, of course, show that it is to be used in accordance with the schedule contained in the Budget, or any amended schedule adopted under the authority of the Budget Bill, with the approval of the Governor.

You will recall that in my opinion to your office of March 17, 1919, upon the question of requiring vouchers before paying appropriations, I stated that there were some cases in which this should not be required, one of them being the case of the State Board of Agriculture. The present is, I think, another instance of the same kind.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—BUDGET—PAYMENT AND CERTIFICATE CHECKS.

August 19, 1919.

Dr. A. F. Woods,
Md. State Board of Agriculture,
Fidelity Building,
Baltimore, Md.

DEAR DR. WOODS: I beg to reply to your favor of August 14th in which you ask whether a special legislative appropriation is necessary for the payment of awards made for condemned cattle under the Act of 1916, Ch. 337, Sec. 15, or

whether the same can be paid out of money in the State Treasury, not otherwise appropriated.

The law in question provides that the appraised value of condemned cattle shall be paid by the State, and an appropriation appears to have been made for this purpose by the appropriation acts for 1917 and 1918 (Act of 1916, Ch. 655, p. 1574, and Ch. 684, p. 1550). After these Acts were passed in 1916, the Budget Amendment to the Constitution was adopted, and by the terms of this Amendment, no money can be paid out of the State Treasury unless appropriated, and then only for the purpose for which it is appropriated in the Budget Bill. The result is, that the State Treasurer has now no power to pay these awards unless an appropriation is made for this purpose in the Budget Bill. The obligation upon the State to pay them still continues, but in the absence of a legislative appropriation, there is no money available for carrying out this obligation.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—BUDGET—REGULATIONS ON VOUCHERS.

March 17, 1919.

Col. Harry J. Hopkins,
State Comptroller's Office,
Annapolis, Maryland.

DEAR COLONEL HOPKINS: I beg to reply to your favor of March 14th, in which you ask whether the institutions, boards and commissions of the State should file vouchers with their monthly requisitions, or whether they can draw each month for one-twelfth of their annual appropriation.

The Budget Act (Act 1918, Ch. 206) appropriates the amounts therein named, "or so much thereof as shall be sufficient to accomplish the purposes designated by the respective appropriations." Since only so much of an appropriation can be used as is sufficient for the purpose designated, it follows that, as a general rule, the Comptroller should require vouchers, because in this way he can feel assured that the expenditures were really necessary.

I say "as a general rule," because in an opinion given the Comptroller on July 17, 1917 (Attorney General's Opinions, Vol. 2, pp. 196-198), I discussed some phases of the question at length, and reached the conclusion that in the case of the State Board of Agriculture there was no *legal* reason why the whole appropriation should not be paid at one time, if the Comptroller, as a matter of administrative policy, deemed this advisable, although in such event the Board would have to account, at the end of the year, for the disbursements made by it, as well as for any unexpended balance.

As I do not know what particular appropriations you have in mind, I cannot very well answer your question more definitely than to say that in the case of some appropriations you may be prohibited from paying out any part of them, except upon the presentation in advance of vouchers, and in other cases, where you are not so prohibited, the question is ordinarily one of administrative policy for you to decide, bearing in mind, however, that if you pay any part of the appropriation without requiring vouchers in advance, then the board must account for its expenditures after it has made them, and should at that time be required to file its vouchers.

In other words, in cases where the Comptroller, as a matter of administrative policy, has the power to and does permit a board to receive its appropriation or some part of it, without filing vouchers in advance, the board must nevertheless file the vouchers afterwards.

I may add that, even in exceptional cases, it is certainly the better and safer practice to require vouchers in advance.

Very truly yours,

ARTHUR C. KORELITZ, *Attorney General.*

FISCAL MATTERS—BUDGET—STATE BOARD OF PRISON CONTROL—HOUSE OF CORRECTION APPROPRIATION—REVERSION.

April 14, 1919.

Mr. Robert D. Case, Secretary,
State Board of Prison Control,
701 Union Trust Bldg., Baltimore, Md.

DEAR MR. CASE: I beg to reply to your favor of April 8th, in which you ask whether the State Board of Prison Control can use the balance remaining in its hands, at the close of the fiscal year ending September 30, 1918, to the credit of the Maryland House of Correction, in part payment of the deficit of the Maryland Penitentiary for the same fiscal year.

This balance represents the amount by which the revenues of the House of Correction, consisting of the appropriations made to it by the Act of 1916, Ch. 654, page 1553, and of its other income, exceeded the expenses of the institution for said fiscal year. The deficit of the Maryland Penitentiary is being carried, at interest, by one of the Baltimore banks.

The board's right to use the balance as desired depends, first, upon whether the balance reverted to the general treasury on September 30, 1918, under the decision in McMullen vs. State Roads Commission, 130 Md. 541, and, secondly, if it did not, then whether the balance can be used to meet a deficit in the Penitentiary, under the provisions of Secs. 616, 627, 628, 629, 631, 651, 652, 656 and 657 of the Act of 1916, Ch. 556, placing both the Penitentiary and the House of Correction in the hands of your board.

While these two questions, particularly the first one, are not entirely free from doubt, yet under the circumstances of this case I think that the board may properly use the balance in question in part payment of the Penitentiary deficit.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—CLERKS OF THE CIRCUIT COURT OF BALTIMORE CITY—EXPENSES OF HIS OFFICE.

February 20, 1919.

William S. Gaither, Esq.,
State Auditor,
Union Trust Building, City.

DEAR SIR: I am returning herewith the letter sent you by Mr. Charles E. Whiteford, clerk of the Circuit Court, in which he asks whether or not he is authorized to buy linoleum for the floor of his office out of the funds in his hands. I have notified Mr. Whiteford that under the circumstances he is authorized to make this expenditure.

The City of Baltimore furnishes him with office space and heat and light, free of charge, and I understand that the clerk assumes all other expenditures. The clerk is empowered to pay the necessary expenses of his office by virtue of the provisions of the State Constitution and of Art. 17 of the Annotated Code; see Opinions of the Attorney General, Vol. 4, page 16. In the present instance Mr. Whiteford, as I am informed, has a balance after all other expenses and salaries are paid, sufficient to pay for the linoleum.

Very truly yours,

PHILIP B. PERLMAN, *Assistant Attorney General.*

FISCAL MATTERS—COMPTROLLER—DEPOSITORY REQUIREMENT—NATIONAL BANKS—VOLUNTARY FIDUCIARY CORPORATIONS—FEDERAL RESERVE ACT.

October 22, 1919.

L. Lane, Esq.,
Assistant Comptroller,
State Employees Retirement System, Hall of Records.

DEAR MR. LANE: In further answer to your recent inquiry whether the Salisbury National Bank, which desires to act in a fiduciary capacity under the Federal Reserve Act, may give a surety bond instead of putting up a collateral deposit, I beg to advise you that the Federal Reserve Act as amended Sep

tember 26, 1918, provides that where the Federal Reserve Board has granted authority to national banks to act in a fiduciary capacity, such banks shall make deposits with the State authorities just as State corporations make deposits under similar circumstances.

Art. 23, Sec. 110 of the Annotated Code, Vol. 3, page 201, provides for deposits made for such corporations. There is nothing in this article which authorizes you to receive a surety bond instead of collateral and I know of no other law authorizing the giving of such bonds. Under these circumstances it is my opinion that the Salisbury National Bank must deposit collateral in the same manner and to the same extent as a State bank or trust company desiring to act in a fiduciary capacity.

Yours very truly,

VIRGIL C. BROHAWN, *Attorney General.*

FISCAL MATTERS—COMPTROLLER ON STATE TAX ON SECURITIES, ACT 1914, CH. 444—15 CENT RATE.

January 20, 1919.

Hon. Hugh A. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR MR. MCMULLEN: I beg to reply to your favor of January 16th, in which you say that on June 18, 1918, the Appeal Tax Court of Baltimore certified to you the holders of Baltimore City stock, Western Maryland loan of 1927, computing the State tax on such stock at the full rate of 30¾ cents on the market value, and that on January 14, 1919, the Appeal Tax Court sent you a corrected certificate, in which they have computed the State tax on said loan at 15c on the market value. You ask which certificate is correct.

This certificate is made to your office under Bagby's Code, Art. 81, Secs. 105, etc., which provide for the payment of the State tax on Baltimore City stock.

Before 1914, the law (Bagby's Code, Vol. 2, Art. 81, Sec. 214) provided that all bonds, certificates of indebtedness or

evidences of debt issued by any public or private corporation, not exempt from taxation, and owned by residents of Maryland, and paying interest, should be assessed at their market value, and the regular State tax should be paid thereon. The Act of 1902, will be amended this session by providing that the State tax on such bonds shall be paid at the rate of 15 cents, the tax on such at 15 cents on the market value.

In answer to your inquiry as to the operations within the meaning of this section, and the contention of the company, the State tax on the value of its capital in excess of the market value of the Western Maryland bonds. This is what the assessment of Baltimore City, 1902, does, and it is a fair one. The company, in computing the State tax of the Baltimore City assessments, the correct, I think, being that in the assessment use an old form, which was not changed when the form was changed.

Very truly yours,

Yours to Respectfully, Thomas Gahan,

Fiscal Matters—Examination of Government Contracts—Deposit With State Treasurer—Examination of Contracts of Corporation or Company.

January 29, 1919.

Frank G. Drennan, Esq.,
623 Kansas Avenue,
Topeka, Kansas.

Dear Sir: Your favor of January 14 to the State Treasurer has been referred to me. You enclose copy of exemption from the District Court of Shawnee County in favor of the City of Topeka against the Fidelity and Deposit Company of Maryland for $11,157.37 and costs, which exemption was issued upon a judgment obtained against the company on one of its surety bonds, and affirmed by your Supreme Court in 102 Kan. 384. You say that the Fidelity and Deposit Company is delaying payment of the judgment, and you ask what procedure is necessary in order to subject the company's deposit with the State Treasurer to its payment.

The deposit in question was made by the Fidelity and Deposit Company, pursuant to the Act of 1892, Ch. 169, Sec. 55E, amended by the Act of 1896, Ch. 160, Sec. 55E, codified in Code P. G. L. 1904, Art. 23, Sec. 98, and in Bagby's Code of 1911, Vol. 1, Art. 23, Sec. 110, amended again by the Act of 1912, Ch. 194, Sec. 98, and now codified in Bagby's Code of 1914, Vol. 3, Art. 23, Sec. 110. This will enable you to trace the legislation, if you have not already been able to find the references.

The deposit is a *trust fund* for the benefit of "all the holders of policies or guarantees of said corporation," and in the case of Vandiver, State Treasurer, vs. Poe, et al., Receivers, 119 Md. 348, 87 Atl. Rep. 410, the Maryland Court of Appeals, on January 14, 1913, decided that the deposit could not be availed of by the creditors of a surety company which, although in the hands of receivers under voluntary dissolution proceedings, was yet not insolvent.

It is, therefore, clear that the deposit of the Fidelity and Deposit Company cannot be subjected to the payment of your claim.

I return the copy of the execution.

Very truly yours,

MORRIS A. KIRWAN, *Attorney General.*

FISCAL MATTERS. LIABILITY OF STATE FOR CITY TAXES ON STATE ARMORY.

July 8, 1919.

Hon. Hugh L. McMullen,
State Comptroller,
Cumberland, Maryland.

DEAR MR. MCMULLEN:—I beg to reply to your favor of June 28th, in which you enclosed a letter from Adjutant General Warfield to yourself, and also bill from the Mayor and City Council of Cumberland against the State for $107.00, taxes levied by the City of Cumberland on the State armory at Cumberland. You ask whether the State is liable for these taxes.

The State is not liable, because property owned by the State cannot be taxed by a municipality, unless the municipality's right to tax is conferred upon it by express legislation.

County Comm. vs. Md. Hospital, 62 Md. 127, 129.

There is no legislation authorizing the City of Cumberland to tax this Armory, and, therefore, the Armory is not subject to taxation.

I return you General Warfield's letter and the tax bill.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—LOST COUPONS ON STATE BONDS.

March 22, 1919.

Hon. William P. Jackson,
State Treasurer,
Annapolis, Maryland.

DEAR MR. JACKSON: I beg to reply to your favor of March 19th.

The procedure to be followed when coupons on State bonds are lost is set out in Sec. 16 of Art. 95 of Bagby's Code. The Treasurer may issue duplicate coupons to the owner of the bonds, provided he proves, to the satisfaction of the Treasurer, that the coupons are lost, and gives satisfactory security to indemnify the State.

I return you the letter from the First National Bank.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—ROAD LOAN OF 1918—VALIDITY.

February 15, 1919.

Hon. Hugh L. McMullen,
State Comptroller,
Annapolis, Maryland.

DEAR SIR: With reference to the State of Maryland Certificates of Indebtedness, thus described:

> $1,300,000 part of "Road Loan of 1918," dated February 15, 1919, 4½%, Certificates of Indebtedness, $1,000 denomination, maturing serially from February 15, 1922, to February 15, 1931—

which were awarded to the successful bidders at public sale on February 11, 1919, I beg to advise you as follows:

1—The said Certificates of Indebtedness are authorized by the Act of the General Assembly of Maryland of 1918, Chapter 295.

2—The said Act of Assembly is valid and constitutional.

3—All of the formalities prescribed by law for the issue of said Certificates of Indebtedness have been legally and duly complied with.

4—The said Certificates of Indebtedness have been duly delivered to the purchasers referred to, and the purchase price fully paid.

5—The said Certificates of Indebtedness, as issued, are in form in accordance with said Act of Assembly, are duly signed by the proper officers, and are the legal, valid and binding obligation of the State of Maryland.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—SALE OF STATE LIME PLANT.

October 29, 1919.

Hon. Emerson C. Harrington,
Governor of Maryland,
Union Trust Building,
Baltimore, Md.

MY DEAR GOVERNOR HARRINGTON: I have before me your letter of October 27th in which you state that the State Lime Board has filed a report with you recommending that the State close the lime plant in Southern Maryland and sell the property, as the object and purpose for which the plant started has been fulfilled. You ask whether or not there is any authority to dispose of the plant.

In my opinion there is none.

The Lime Plant was established under the provisions of Ch. 221 of the Acts of 1916. That Act contemplated a continuous manufacture of lime and an annual report to the State Treasurer. There is no power in any State official or Board to dispose of any property acquired under the authority of the Legislature, unless specific authority is given by the Legislature. Chapter 221 does not indicate in any way that the Legislature intended the plant to be disposed of, or that it did not intend the lime plant to be a permanent part of the State government. On the contrary, the wording of it showed its intention to be that the lime plant should be in continuous operation from year to year.

In order to dispose of the plant, it will be necessary to have a special Act of the Legislature passed.

Yours very truly,

OGLE MARBURY, Jr., *Attorney General.*

FISCAL MATTERS—STATE DEPOSITORIES—DISTINCTION BETWEEN SUBSTITUTION OF PUBLIC SECURITIES AND GIVING OF NEW SURETY BOND.

March 13, 1919.

Hon. William P. Jackson,
State Treasurer,
Annapolis, Maryland.

DEAR MR. JACKSON: I beg to reply to your favor of March 8th.

You say that the Equitable Trust Company is at present bonded, as one of the State depositories, with the Fidelity and Deposit Company to the amount of $100,000, and that it wishes to withdraw and release this bond and substitute therefor two bonds, of $100,000 and $200,000, respectively, with the Maryland Casualty Company; and you ask whether this substitution can be made without a withdrawal of all the State's money on deposit with the Equitable Trust Company.

On May 17, 1918, I wrote you, with reference to the Citizens National Bank of Frederick, that where the surety bond of a State depository was to be released and *public securities* substituted therefor, such substitution could, in my opinion, be made without a withdrawal and redeposit of the State's money; and on June 8, 1918, I wrote you, with reference to the Union Trust Company, that where the surety bond was to be released and a *new surety bond* substituted therefor, then I thought that the State's money should be withdrawn before the release of the old bond, and redeposited under the new bond.

When *public securities* are substituted for the surety bond, a withdrawal and redeposit are not necessary, because the Act of 1916, Ch. 115 (Bagby's Code, Vol. 1, Art. 30, Sec. 8A), expressly provides that such public securities, together with the bank's own bond, shall be *in substitution* for the surety bond, and since the surety bond was liable for any loss of the State's money which may have occurred while it was in effect, it follows that the public securities which, under the law, are accepted *in substitution* for such surety bonds, are likewise liable for any such loss, because otherwise the public securities would not *be a substitute* for the surety bond. Therefore, in such case, the

public securities are answerable for any loss which occurred before as well as after their substitution.

But when the surety bond is released and a *new surety bond* substituted therefor, then such new surety bond will not be answerable for any loss of the State's money which may have occurred previous to its execution, while the old surety bond was in effect; and, therefore, before releasing the old surety bond, the State must be assured that there has been no such loss. If the State draws on the bank for its proper balance, and the same is honored, this shows that there has been no loss of the State's money, so that the old surety bond can then be safely released, and the money redeposited, under the new surety bond.

These are the reasons why there should be a withdrawal and redeposit of the State's money when a new surety bond is substituted for an old one, and why a withdrawal and redeposit are not necessary when public securities are substituted.

The present case involves the release of one surety bond, with the Fidelity and Deposit Company, and the substitution therefor of two new surety bonds, with the Maryland Casualty Company. Therefore, the release and substitution should not be made without a withdrawal and redeposit of all of the State's money in the Equitable Trust Company secured by these bonds.

Very truly yours,

ATWELL C. BRUCE, *Attorney General.*

FISCAL MATTERS—WAR LOAN OF 1917—COMPLETION OF SPRING GROVE HOSPITAL.

March 20, 1919.

Lynn R. Meekins, Esq., Secretary,
Maryland Council of Defense,
303 Union Trust Building,
Washington, D. C.

DEAR MR. MEEKINS:—I beg to reply to your favor of March 19th, in which you ask whether the Executive Committee of the Maryland Council of Defense has authority to expend $20,000 from the proceeds in its hands of the War Loan of 1917, in completing the unfinished hospital at Spring Grove, this being

the only way in which Maryland can meet the demand made upon her by the Federal Government, and indeed her own necessity, to care for returned insane soldiers.

I do not know that I can add anything to my opinion upon a similar question of November 26th, 1917.

The Committee has this power, if, in its discretion, it determines that the work in question "can fairly be said to be desirable or appropriate" for "the defense of the State, the safety of its people and the protection of property and to aid the State and the United States in the present war." Act 1917, Ch. 3, Secs. 6m, 6n and 7.

I have no doubt that the work is of this character, but the Committee is the judge of this.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS—WAR LOAN OF 1917—EXPENSES OF RECEPTION OF MARYLAND TROOPS.

May 19, 1919.

Mr. Lynn R. Meekins, Secretary,
Maryland Council of Defense,
703 Union Trust Bldg., Baltimore, Md.

DEAR MR. MEEKINS: I have your favor of May 17th.

It is my opinion that expenses incident to the reception of Maryland troops on their return from the war are within the purposes for which the proceeds of the War Loan of 1917 may be expended, and your Committee is the judge of the character of expenditures which may be made in this connection.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FORESTRY.

FOREST WARDENS—FIRES IN BALTIMORE CITY.

March 5, 1919.

Mr. E. W. Besley, State Forester,
332 N. Howard Street,
Baltimore, Maryland.

DEAR MR. BESLEY: I beg to reply to your recent letter in which you ask whether those sections of Art. 39A of Bagby's Code which provide for the extinguishment of fires by the Forest Wardens, one-half of the expense to be paid by the county, apply to the portion of Baltimore City recently annexed, and whether Baltimore City can be required to pay one-half of the above expense for fires occurring within such annexed district.

It seems to me quite clear from Secs. 5 and 7 of Art. 39A that this law only applies to fires occurring in the counties, and not to fires occurring within the limits of Baltimore City.

I think, therefore, that Baltimore City would not be required to pay one-half of the expense incurred by the Forest Wardens in extinguishing fires within any part of the city limits, including the part recently annexed.

Very truly yours,

VICTOR J. BOWIE, Attorney General.

FORESTRY—BOARD OF ADVISORY COUNSEL ON PUBLIC ROADS—TO CUT TREES.

February 27, 1919.

E. W. Besley, Esq.,
State Forester,
Mercantile Hall, Baltimore, Md.

DEAR MR. BESLEY: In response to your favor of February 24th, I have considered the inquiry submitted by Mr. Bowie F. Waters, counsel of the County Commissioners of Montgomery County.

Mr. Waters states that one of the unimproved public roads in Montgomery County, which has never been surveyed, was formerly entirely the property of one of the now abutting landowners, the opposite abutting landowner owning simply to what is now the road's edge; and that the abutting owner who formerly owned what is now the road bed claims the right to cut down all road-side trees standing within the road bed, and has applied to the County Commissioners to stop the opposite abutting owner, who never owned any part of the road bed, from cutting down such of these trees as are on his side of the road. Mr. Bowie asks what are the rights of the respective abutting owners to cut down these trees.

Sec. 15H of Art. 39A of Bagby's Code, as amended by the Act of 1916, Ch. 548, provides that road-side trees standing within the right of way of unimproved public roads of this kind "may be cut down and removed by the abutting land owner for his own use without first obtaining a permit" from the State Board of Forestry.

The question is, who is "the abutting land owner" within the meaning of this section? Strictly speaking, both are abutting land owners, and yet the object of the statute may have been to give the former owner of the road bed, who is now the owner of the underlying easement, the right to the road-side trees which are on what was his property.

But one or the other of these two owners is entitled to cut down the trees, without a permit from your board, and no permit being necessary, your board is not interested in the question which one of these two owners is entitled to the trees. So far as your board is concerned, that is purely a private controversy between them. Nothing that you might say, and no opinion that I might give, would be in any way binding on either.

Under these circumstances I have concluded that this is not a case in which I should express an official opinion, and I have so notified Mr. Waters.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

FORESTRY—SHADE TREES ON PUBLIC HIGHWAYS IN HAGERSTOWN.

September 17, 1919.

Mr. Simms Jamieson,
The Chamber of Commerce,
Hagerstown, Maryland.

DEAR MR. JAMIESON: I have your letter of August 30th, in which you ask whether the Mayor and City Council of Hagerstown have the right to pass local ordinances to regulate the planting and care of shade trees along the public highways.

The State Board of Forestry has general authority over this subject. A reference to Art. 32A, Sec. 15A, of Code, will show you the extent of this authority.

Under these sections any action by the Mayor and City Council would have to be taken under the authority of the State Forester.

It may be that the Charter of Hagerstown contains some provision passed since 1914 (in which year these sections were enacted, by Ch. 824 of the Acts of that year) which gives the Mayor and City Council the right to act on this subject without consulting the State Forester. This is a local matter, however, which can only be determined by an examination of your Charter, and I regret to say that the other public matters with which this office is occupied will not permit us to make such an examination for you. It is, of course, entirely outside of our official duty, but I would be glad to make it were I less occupied.

Yours very truly,

OGLE MARBURY, *Asst. Attorney General.*

HEALTH.

Cold Storage Plants—Smoked and Cured Meats and Fish.

September 4, 1919.

Dr. Frederick C. Blanck,
State Food and Drug Commissioner,
State Board of Health,
15 W. Saratoga St., Baltimore, Md.

Dear Dr. Blanck: I received your letter of August 28th, calling to my attention my letter to you of August 18th, in which it is stated the cold storage plants using refrigeration for the purpose of curing their meats will have to be licensed.

I understand now, from your letter, that the business of curing meats has to do with pork products such as ham, shoulders and bacon, that they are placed in storage at a lower temperature than 45 degrees where they are kept salted for a longer period than 30 days, after which they are smoked and can then be kept for an indefinite period, either in or out of cold storage.

Sec. 177-I of the Act declares that cold storage shall mean the storing or keeping of articles of food at or below a temperature above zero or 45 degrees in a cold storage warehouse for more than 30 days. Articles of food shall mean *fresh meat and fresh meat products*, and all fish, game, poultry, eggs and butter. As I now understand it, pork products, while certainly *fresh meat*, are salted for the purpose of keeping them prior to being smoked, when they then ceased to be fresh meat. It is evident to me that the statute only has reference to meat products and fish which are kept from spoiling by reason of a low temperature. Fresh pork would certainly come under this law, but I agree with you that smoked and cured meats are not within the meaning of the law. The section also refers to *all fish*, but this cannot mean smoked fish or salted fish, which are so cured as not really to require cold storage to prevent them from spoiling.

Very truly yours,

Wm. Pinkney Whyte, Jr.,

Ass't. Attorney General.

HEALTH—STATE BOARD JURISDICTION—REFUSE DISPOSAL—HOG FARM.

January 23, 1919.

State Board of Health,
16 W. *Saratoga Street,*
Baltimore, Maryland.

DR. JOHN S. FULTON, *Secretary.*

DEAR SIR: In answer to the request of the State Board of Health as to whether or not a "contractor who proposes to feed city garbage on a farm to hogs is required, under the law, to submit plans of his piggery and ask for a permit before proceeding with such refuse disposal," I beg to advise as follows:

That by Chapter 810 of the Acts of 1914, the same being

"An Act for the better preservation of the public health by preserving the purity of the waters of the State; providing for the supervision and control by the State Board of Health over water and ice supplies, sewerage, trades wastes and refuse disposal; and for the maintenance, alteration, extension, construction and operation of systems and works relating thereto."

And by Section 2 of that Act it is provided:

"That the State Board of Health shall have general supervision and control over the waters of the State, in so far as their sanitary and physical condition affect the public health or comfort . . . It shall examine all existing public water supplies, sewerage systems and refuse disposal *plants*, and shall have power to compel their operation in a manner which shall protect the public health and comfort, or to order their alteration, extension or replacement by other *structures* when deemed necessary. After the passage of this Act it shall pass upon the design and construction of all public water supplies, sewerage systems and refuse disposal plants which shall be built within the State."

Section 4 requires:

"That every county, water, sewerage or sanitary district authority, municipality, corporation, company, institution and individual supplying or authorized to supply, at the

time of the passage of this Act, water, sewerage or refuse disposal service to the public, or owning water or sewerage systems, or refuse disposal plants, serving or authorized to serve the public, within the State, shall, within six months after the passage of this Act, file with the State Board of Health a certified copy of the plans of its water supply or sewerage system, or refuse disposal plant, completed."

Section 8 of the Act provides that no one shall

"install a system of water supply, sewerage or refuse disposal, for public use, nor materially alter or extend any such existing system, without having received a written permit from the State Board of Health so to do; nor shall any permit for this purpose be issued until complete *plans and specifications* for the installation, alteration or extension, together with such information as the State Board of Health may require, have been submitted and approved by the Board. . . . Incases it shall become necessary or desirable to make material changes in plans or specifications, such changed plans or specifications, together with a statement of the reasons for the alterations, shall be submitted to the State Board of Health, and no material changes shall be embodied in the actual construction until they are approved by the Board and a permit issued therefor."

From the above it would seem that the refuse disposal plant contemplated by the statute must mean some kind of a structure or establishment where garbage and other refuse is to be destroyed, or partially so, in a sanitary manner and in a structure, plant or establishment especially designed for that purpose. It is my opinion that the feeding of refuse to hogs on a farm is not within the meaning of the Act. The refuse disposal plants spoken of in the Act contemplate both a public and a private plant, and it cannot be that the Legislature intended, by the use of such words, to cover practically every farmer in the State, because of the words "refuse disposal" can be made to cover the feeding of a large number of swine equally as they must cover a small number.

The State Board of Health will have jurisdiction over any nuisance detrimental to health, and it can prevent the pollution

of the waters of the State or their threatened pollution if, in its judgment, this contemplated piggery produces, or is likely to produce such effect. The keeping of hogs in large numbers on a farm is certainly not, in itself, a nuisance and whether it will become a nuisance will entirely depend upon its operation and effect. If, however, it is proposed to keep a great quantity of hogs on a comparatively small acreage, and, in the opinion of the State Board of Health, the drainage from such acreage will be of such a character as to be detrimental to health, then such threatened invasion of the rights of the State can certainly be prevented by injunction.

Yours very truly,

WM. PINKNEY WHYTE, JR., *Asst. Attorney General.*

LICENSES.

BUYING AND SELLING PRODUCE—GENERAL AND LOCAL LAWS.

September 17, 1919.

Mr. W. M. Pennell,
The White House,
Washington, D. C.

DEAR SIR: I have your letter of August 28th in which you ask for a copy of the law of Maryland in reference to the buying and selling of produce and its transportation to and from the District of Columbia.

The general law on the subject is contained in Art. 56, Secs. 24, *et seq.*, of the Annotated Code under the provisions of which a State license is required.

This general law does not apply to Prince George's County, which is one of the counties adjacent to the District of Columbia. This county has a local law of its own imposing a higher license than the general law. This local law can be found in Duckett's Prince George's County Code, Secs. 138 and 139, enacted by the Act of 1892, Ch. 110, and the Act of 1904, Ch. 297.

An examination of these statutes will give you the information you desire.

Yours very truly,

OGLE MARBURY, *Last Attorney General.*

LICENSES—CALCULATING MACHINES—ADDING MACHINES.

July 11, 1919.

Charles C. Wallace, Esq.,
Secretary, State Tax Commission,
Union Trust Bldg., Baltimore, Md.

DEAR MR. WALLACE: I beg to reply to your favor of July 7th in which you ask whether the Marchant Calculating Machine Company is required to take out a license under the Act of 1916, Ch. 704, Sec. 167, which imposes a license on places of business "displaying cash registers and adding machines."

This company's representative called to see me. He contends that his company is not required to take out this license on the ground that its machines are not adding machines. They are, he contends, calculating machines, their principle functions being to subtract, multiply and calculate percentages. He says that they do add also, but that this is not their real purpose, and that a person who wanted an adding machine would not buy the machine put out by this company.

The question is, of course, one of fact, depending upon whether this company's machine is really an adding machine or not. I think that your commission may well exercise its own good judgment in deciding this question. My own feeling would be that a machine which does add does not cease to be an adding machine within the meaning of the law, merely because it also makes other calculations, so that I am inclined to the view that this company is required to take out an adding machine license.

Yours very truly,

[illegible] Attorney General.

[illegible]

July 7, 1919.

Frank E. Smith, Esq.,
110 *E. Lexington Street*
Baltimore, Maryland.

Dear Mr. Smith: I am in receipt of your letter of June 26th. On June 2[illegible], 1916, I advised the Sun Mercantile Agency of Frederick, Maryland, that in my opinion the Act of 1916, Ch. 704, Sec. 168, does not cover a concern conducting a collecting agency only. I presume that this covers your inquiry.

Yours very truly,

[illegible] Attorney General.

LICENSES—DOG LAW—COMPENSATION TO COUNTY TREASURER—REPEAL OF LOCAL LAWS.

January 25, 1919.

L. Howard Estep, Esq.,
President, Board of County Commissioners,
Ellicott City, Howard County, Maryland.

MY DEAR MR. ESTEP: You have asked for my opinion on the question whether you are authorized to pay to the Treasurer of Howard County 25% of the dog license fees collected by him as compensation for the collection.

The State-wide Dog Law was re-enacted by Ch. 197 of the Acts of 1918. It repealed all public general laws and all public local laws inconsistent with its provisions. One of the provisions is that a license fee provided under it shall be the only license or tax required for the ownership or keeping of a dog. It, therefore, follows that all local laws taxing dogs, such as you have previously had in Howard County, were repealed on June 1, 1918. I am informed by you that, under your local dog law thus repealed, a reference to which I have not been given, you had authority to pay the County Treasurer compensation for his collections out of the dog fund. Such authority, of course, passed with the tax itself, and your authority to pay the Treasurer anything out of the present dog fund for collecting, under Ch. 197 of the Acts of 1918, must be derived, if you have it at all, from that Act alone.

I understand that the facts which caused your inquiry are, that your board sometime in the past year did give your County Treasurer a warrant on himself, to be charged to the dog fund for approximately $100, which was twenty-five cents on each dollar of the license fund collected. At the time you issued this warrant you thought it was authorized, but some question has now arisen as to your authority, and you wish to correct the error if it was an error.

Ch. 197 of the Acts of 1918 provides that the licenses and tags are to be issued by the County Treasurer, the clerk to the County Commissioners in counties having no treasurer, and justices of the peace. The County Commissioners furnish the tags and licenses to the County Treasurer or county clerk and

to the justices of the peace. Sec. 197 of Art. 81, as re-enacted by this Act, provides:

> "When a license is issued by the justice of the peace, the said justice of the peace may retain as his fee for the issuance of said license, reporting the same, and remitting payment therefor, to the County Treasurer, or clerk of the County Commissioners in counties having no treasurer, the sum of twenty-five cents."

No provision is made for any compensation to the Treasurer, and the wording of this section seems to indicate that this was intended, and that the County Treasurer, as the tax collecting official, should collect these fees for the compensation which he receives for performing the duties of his office, which is fixed by local laws in each of the counties. This is borne out by Sec. 199 of Art. 81, as re-enacted by Ch. 197, which provides that any fund in excess of $1,000 remaining in the hands of the Treasurer after the payment of claims for damages, and unused for such purpose at the end of every fiscal year, shall be used by your board for one of two purposes; namely, either for the public schools or the public roads. It is obvious, therefore, the intention of the Act that the entire fund coming into the hands of the Treasurer either directly or from justices of the peace (in which case the justice makes the deduction of his compensation, as above set out) shall be used, first, for the payment of claims, and then any balance which may be left shall be used by the County Commissioners only for one of the two objects set out in the Act, namely, the public schools or the public roads. No part of it can be diverted for any other purpose, and, therefore, no part of it can be paid to the County Treasurer.

I am, therefore, of the opinion that your board had no authority to pay out of this fund to the County Treasurer the sum for which you gave him the warrant.

You suggest that you may have authority to pay the Treasurer for the additional help which the issuance of these tags and licenses made necessary, out of some other fund at your disposal. This, of course, is entirely possible, but it is a matter involving solely the construction of your local law on the sub-

to the justices of the peace. Sec. 197 of Art. 81, as re-enacted by this Act, provides:

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I am, therefore, of the opinion that your board had no authority to pay out of this fund to the County Treasurer the sum for which you gave him the warrant.

You suggest that you may have authority to pay the Treasurer for the additional help which the issuance of these tags and licenses made necessary, out of some other fund at your disposal. This, of course, is entirely possible, but it is a matter involving solely the construction of your local law on the sub-

ject, and is, I think, a matter for your counsel to decide. I, therefore, have not examined this question, and have no opinion one way or the other.

I am sending a copy of this opinion to Mr. Augustus Howard, Treasurer of Howard County, in accordance with your request.

Very truly yours,

ARTHUR W. BRESNIK, *Attorney General.*

LICENSES—GARAGE—STORAGE WITHOUT GARAGE.

June 16, 1919.

Mr. Charles C. Wallace, Secy.,
The State Tax Commission,
Lexington Trust Bldg., Baltimore, Md.

MY DEAR MR. WALLACE: I have your letter of June 14th in which you ask whether a garage license must be obtained by a person maintaining a place where automobiles are stored for an uncertain period, and no charge is made therefor.

Garage licenses are provided for Sec. 166 of Art. 56 of the Code, as enacted by Sec. 761 of the Acts of 1916. This section defines the meaning of garage as used therein, and the definition is that it means "a place of storage for hire, or a place where there is kept for hire any automobile, etc."

Therefore, if a place is maintained where automobiles are stored, but such storage is not for hire, such place does not come within the definition of a garage, and is not obliged to be licensed.

Yours very truly,

ARTHUR W. BRESNIK, *Attorney General.*

LICENSES—LICENSE—LICENSE REGULATIONS—CLUB FURNISHING LIQUOR TO MEMBERS.

February 26, 1919.

Joseph L. Kinsey, Esq.,
Secretary, Board of Police Commissioners,
Court House,
Baltimore, Md.

DEAR MR. KINSEY: I beg to reply to your favor of February 14th, in which you state the three following cases:

sioners is authorized to issue. One is a full year's license, from May to May, and the other is a six months' license, from November 1st to May 1st. After a retail dealer surrenders his license on July 1st, he cannot get a new license before November 1st, but of course there is no reason why he cannot apply for such license and obtain it for the six months from November 1st. If he obtains such a license it will of course be subject to the going into effect of the 18th Amendment of the Constitution of the United States.

Very truly yours,

ARTHUR W. BROWN, *Attorney General.*

LICENSES—LIQUOR LICENSES IN BALTIMORE COUNTY—RE-
FUND OF LICENSE FEES—CLERK OF COURT.

March 15, 1919.

Hon. Stevenson Ely,
Treasurer, Maryland.

DEAR MR. ELY: I received from you a letter of March 6th, with reference to the inquiry submitted to you by the Clerk of the Circuit Court of Baltimore County.

You say that if persons obtaining to take out liquor licenses in Baltimore County on May 1, 1919, are assured that in the event they are prevented by Federal legislation from selling liquor after July 1, 1919, the proportional portion of the license fee for the unexpired part of the year will be refunded, it is likely that many more licenses will be issued than would be the case with such assurance, and there would be a consequent benefit to the revenues of the State and you ask whether such refund can be made.

Section [illegible] of the Baltimore County Code of 1916 provides that a license holder "who shall cease to traffic in such liquors during the term for which such license was issued," may surrender his license in the manner prescribed, and "shall be entitled to have the amount paid for such license refunded pro rata for the unexpired portion of the term for which such license was granted, less ten dollars." The refund is to be made by the Clerk of Court "out of such funds from the proceeds of liquor license fees as may be in his hands as clerk of said court

at the time, or if insufficient funds are in his hands at the time of presentation of such voucher and warrant, then out of the first funds from the proceeds of liquor license fees that come into his hands, and in his next regular statement and accounting to the State of Maryland he shall be entitled to full credit for the amount thus paid, such warrants to be paid in the order in which they are issued."

It is clear, I think, that if the sale of liquor is prohibited after July 1, 1919, then the holder of a liquor license in Harford County will cease to traffic in such liquors during the term for which such license was issued. And, consequently, the clerk of court will be required to make to such licensee a proportional refund from out of such funds from the proceeds liquor license fees as may happen to be in the hands of said clerk at the time.

The only question, therefore, is whether there will be such liquor license fees in the hands of the clerk on July 1, 1919, when the sale of liquor will be prohibited, or for a short time thereafter for the procedure necessary to secure refunds to be complied with.

Section 1361 of the Baltimore County Code of Public General Laws provides that "one-fourth of all moneys paid to the said clerk for license fees under the provisions of this Act shall be by him paid to the treasurer of the State, and paid over and accounted for by the treasurer as other moneys received for license fees are now accounted for, the remainder to go to the county, as now provided by law."

Liquor license fees are payable annually, and are provided for in Article 27, Section 19, which provides that "on the first Monday in March, June, September and December in each and every year each clerk shall pay to the treasurer of public funds of the State, between the 1st and 5th days of the month, all moneys received by him during the preceding quarter." Legislation must be put into effect, however, and measures considered, which will provide a method for the refund of the license fees which appear to be in the clerk's hands when the sale of liquor is prohibited.

The first Monday in June falls this year on June 2, and the 5th day thereafter expires on June 10. Accordingly, the clerk will be required to account to the State Treasurer by the 5th of June.

2, 1919, he incurs no penalties under the above statute. Therefore, the fees collected from the May 1st licenses may be retained by the clerk, without penalty, until the close of business on July 2d, by which time he must account to the Treasurer, so that it is perfectly clear that the clerk may make refunds from such fees for all vouchers and warrants therefor which are presented to him before his accounting on July 2nd.

You apprehend, however, that this time will be too short for the procedure necessary, under Section 360, to secure the vouchers and warrants for all the refunds, and you ask whether the clerk's time for accounting can be extended until July 15, 1919, which would be sufficient.

The penalties which Section 9 of Article 17 of the Code prescribes for failure of the clerk to account within the thirty days, or, this year, on July 2d, are:

1. "His bond may be put in suit for the use of the State."

2. Such failure "shall amount to a forfeiture of the commissions to which he would otherwise be entitled."

3. Recovery on the bond "shall be evidence of misdemeanor in office, for which, upon conviction, he may be removed."

No one other than the State can put the clerk's bond in suit under this section (Schneider vs. Yellott, 124 Md. 92), and it is discretionary with the State whether to do this or not; and, of course, if the State does not sue, then the first and third penalties will not be enforced. Likewise, while the statute provides that the commissions are to be forfeited, yet such forfeiture must be to the State, and if the State does not enforce it, then I do not see who else can do so.

It is my opinion, therefore, that the clerk may safely delay his accounting until July 15, 1919, for the purpose of making the refunds, provided the proper officials of the State consent and are willing to assure the clerk that the penalties prescribed by Section 9 will not be enforced.

My own opinion is that the extension is both proper and desirable under the circumstances, and this will be my advice to any state officials who ask for my views. The power of deciding the question, however, is not mine, but rests rather with the

Governor, the Comptroller and the Treasurer, and it seems to me that your safe course would be to apply to them for some assurance in the matter.

I may add that the Comptroller's office advises me that it regards the extension as proper and reasonable.

Very truly yours,

ARTHUR C. RICHARDS, *Attorney General.*

LICENSES—LIQUOR—POWER OF PRO-RATE SHORT LICENSE—REFUND.

March 27, 1916.

Hon. H. Nat. Ed.

Chief Accountant,

Illinois State Warehouse.

DEAR MR. NORTH: I beg to reply to the two inquiries contained in your letter of March 25th.

You first state the case of a liquor license issued to Nagel on May 1, 1915, and transferred on July 15, 1915, to Aug. E. Wagener, who had purchased Nagel's saloon property. Subsequently, on March 15, 1916, the County Court held the transfer void, on the ground that the license expired per se. Thereupon you issued Wagener a two months' local license at the pro rata rate, and requested the Comptroller for a six months' state additional license, under the Act of June 30, 1914. The Comptroller has asked me whether he should issue a six months' additional license under this Act, and he puts the fact, contending that the whole year's fee must be paid. I ask whether this is correct.

In my opinion, if an application of this kind comes before you for transitional parts of the license year, unless the statute therefore the same, and the whole fee ought to be required paid, unless the statute authorizes it to be prorated. The local law authorizes the local license to be prorated for transitional parts of the license year, and the fee, in this event, prorated, but the Act of 1914, § 3, only providing for the state license, contains no provision authorizing its issue for the license year, and no provision authorizing the fee prorated. In Rudd v. State, 126 Md. 188, the c

Appeals recognized these additional licenses as licenses separate from the local licenses, and as there is no authority in the statute to pro-rate the fee, it follows that the whole year's fee must be paid, even though, as in the case you submit, the license be taken out at a time which leaves only two months to run.

You also ask whether persons who take out their local licenses ($500) and their additional licenses ($100) on May 1, 1919, will be entitled to a refund on July 1, 1919, for the remaining months of the license year, in case the sale of liquor is prohibited by federal enactment after July 1, 1919.

A refund for the unexpired portion of the license year can never be made unless the statute authorizes it. The licensee may cease business during the year, but in the absence of statutory authority there is no way for him to have any part of his fee refunded.

In Baltimore City and in Baltimore County, the local laws provide for refunds, so that in those localities the same can be made if the sale of liquor is stopped on July 1, 1919. On the other hand, when, under Act 1917, Ch. 13, the sale of liquor was stopped in Prince George's County on November 1, 1917, the Act made no provision for refunds, and accordingly, the licensees were compelled to apply for a legislative appropriation, which was made by the Act of 1918, Ch. 206, page 561.

The local law for Howard County is contained in the Act of 1892, Ch. 281, amended by the Act of 1902, Ch. 249, and there is no provision in either law authorizing refunds to be made in case the licensees cease business during the license year. If, therefore, the licensees, on May 1, 1919, take out their local and additional licenses for the whole year, paying the whole year's fees therefor, they cannot under the law receive any refund, in case the sale of liquor is stopped on July 1, 1919. In this event, their only resource would be to apply for a legislative appropriation in 1920.

I think, however, that under Sec. 98D of the Act of 1902, Ch. 249, local licenses in Howard County need not be issued for the whole license year, but may be issued for fractional parts of the year, the fee, in such case, being pro-rated.

Therefore, local licenses may be issued on May 1, 1919, for two months only, the fee being prorated accordingly. If two months' licenses are taken out, then the same will expire on July 1, 1919, so that if the sale of liquor is prohibited after that day, there will be no question of any refund. This will take care of the situation so far as the local licenses are concerned.

The Act of 1916, Ch. 324, however, requiring the $100 additional licenses, contains no provision for a refund, and, as already pointed out, these licenses cannot be issued for less than the whole license year, or for less than the whole year's fee. With respect to these additional licenses, therefore, the entire $100 fee will have to be paid on May 1, 1919, and no part of this can be refunded, except by a legislative appropriation.

Very truly yours,

VERNON C. RIDGELY, *Attorney General.*

LICENSES—LIQUOR—REFUNDING OF LIQUOR LICENSE FEES—RESOLUTIONS OF BOARD OF PUBLIC WORKS.

June 20, 1919.

Adam Denmead, Esq.,
Clerk, Court of Common Pleas,
Baltimore, Maryland.

DEAR MR. DENMEAD: I beg to reply to your favor of June 17th.

The resolution of the Board of Public Works authorizing you not to return liquor license fees until July 20th, 1919, was intended to afford the time necessary to comply with the procedure for making refunds for any and all license fees as to which refunding is authorized by law, in the event that the sale of liquor is prohibited on July 1st.

Licenses to ordinary keepers are provided for by Bagby's Code, Art. 56, Secs. 72 to 86. Sec. 73A, which was added by the Act of 1914, Ch. 555, expressly provides for refunds when "the business conducted in such premises shall cease during the term for which said license was granted."

The resolution of the Board of Public Works was intended to cover just such a case as this, and you are, therefore, fully

authorized to hold ordinary license fees until July 20th, and in the meanwhile, to make the proper refunds under Sec. 73A, on account of all such ordinary licenses as may be surrendered as of July 1st.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MOVING PICTURE THEATRES—VARIETY—DEPARTMENT COMPANIES—TRANSFERABLE AND NON TRANSFERABLE.

February 17, 1919.

William L. Scotland, Esq.,
State's Attorney
Westminster, Maryland.

DEAR MR. STATTSWORTH: I beg to answer the several questions submitted in your letter to me of February 10, 1919.

1. You first ask whether the license for a moving picture theatre, issued under Act 1916, Ch. 704, Sec. 165, can be transferred by the holder to the person to whom he assigns his theatre business, or whether the assignee must take out a new license.

Sec. 2 of Art. 56 of Bagby's Code provides that no license shall protect any person acting thereunder "unless he be named therein, or be entitled as a representative, or assignee, under the provisions hereinafter contained in this article." The person to whom the license is assigned is, of course, not named in the license, nor is he the representative of the holder of the license, and the only assignees who can receive the benefit of the license are those entitled thereto "under the provisions hereinafter contained in this article." The provisions referred to are found in Secs. 66 and 67, and they apply only to liquor licenses, traders' licenses and cigarette licenses.

See Opinions of Attorney General, Vol. 1, page 207.

For these reasons, it seems to me that a moving picture license cannot be transferred to the assignee of the theatre lease, because it is not embraced in the only kinds of licenses which the law permits to be transferred. I see no reason why the Legislature should not authorize such licenses to pass with the theatre, but until the Legislature does this, and provides machinery for effecting the transfer, it seems to me that the assignee of the theatre must take out a new license.

2. You next ask whether a moving picture theatre, which is licensed as such, is entitled to have vaudeville performances by a stock company under the moving picture license, or whether it must also take out a play or license. While the law is not entirely clear, my opinion is that the moving picture license is for moving pictures only, and that if vaudeville performances are to be given, the players' license required by Bagby's Code, Art. 56, Sec. [illegible] (Ch. 204), must also be taken out. See Opinions of Attorney General, Vol. 1, page 147.

3. You also ask whether the theatre proprietor can take out one $50 annual license under Sec. [illegible] of Art. 56 of Bagby's Code, and exhibit different companies of stage players under that throughout the year. I should think that he can. The license in question is not imposed upon the theatre, but upon the company, and each company must take out a $50 annual license or a $2,000 license for each exhibition.

4. Finally, of the second kind of licenses you name, I think the following are transferable: Dealers' licenses and cigarette licenses, under Bagby's Code, Art. 56, Secs. [illegible], 56, 57 and 58. See Opinions of Attorney General, Vol. 1, page 207.

And I think that the following are not transferable: Billiard licenses (see Opinions, Vol. [illegible]) and all the licenses required by the Act of 1916, Ch. 204, for the reasons given above in discussing the transferability of moving picture licenses.

Very truly yours,

ARTHUR P. ROBERTS, *Attorney General.*

LICENSES—PEDDLERS SELLING FROM AUTOMOBILES.

June 20, 1919.

Charles C. Wallace, Esq.,
Secretary, State Tax Commission,
Baltimore, Maryland.

DEAR MR. WALLACE:—I beg to reply to your favor of June 17th.

Whether or not Bagby's Code, Art. 56, Secs. 24, 25, etc., apply to peddlers who in counties other than those excepted sell from automobiles, depends, of course, upon whether automobiles are included in the words "wagon or other vehicle."

It seems to me that these sections were evidently intended to cover all peddlers, and I think that the words "other vehicle" should be construed as applying to automobiles, and that the peddlers selling from automobiles should be required to take out a license. If this is not so, then a peddler would avoid the necessity of a license by selling from an automobile instead of from a wagon, and I do not think that this was intended by the Legislature.

This question is in accordance with that being on the same subject to the Comptroller, [illegible] Opinions, Vol. [illegible] Opinions, Vol. [illegible] 198.

[illegible]

[illegible]

[illegible]

[illegible]

MAY 20, 1919.

[illegible] A. Bartlett,
[illegible], Maryland.

GENTLEMEN:—I beg to reply to your favor of May 19th, in which you ask whether the [illegible] Street Farm Agency, which [illegible] real estate brokerage agencies in different counties of the State, is required to take out a real estate brokerage license in each county in which it operates, or whether one license will cover the entire State.

The State law requiring licenses for real estate brokers is codified as Sections 12, 18, 20 and 21 of Article 56 of Bagby's Code, and it is my opinion that these sections contemplate that a separate license must be taken out in each county of the State in which the real estate brokerage business is conducted.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—REAL ESTATE BROKERS.

MAY 5, 1919.

Preston E. Eby, Esq.,
Clerk, Circuit Court for Montgomery Co.,
Rockville, Maryland.

DEAR SIR:—I have your letter of April 28th, in which you ask me whether a person who is a lock tender on the Chesapeake & Ohio Canal, and who furnishes meals to a number of fishermen during the fishing season, is required to take out a license under Section 18 of Chapter 264 of the Acts of 1916.

If this person merely has a contract to furnish certain fishermen with meals, then I do not think that he would be required to obtain a license; but, if he undertakes to furnish meals to any fisherman, or anyone else who may desire to patronize his place, then I think that he is required to take out a license. See 1 Opinions of Attorney General, p. 204.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—REAL ESTATE BROKERS.

MAY 23, 1919.

Messrs. McCormick & Crum,
207 Gazette Building,
Cumberland, Md.

GENTLEMEN:—Section 12 of Article 56 of the Annotated Code of Maryland provides that any person or partnership pay

ing the sum of thirty dollars may obtain a license for carrying on the business of stock broker in the City of Baltimore.

Section 17 provides that any person who shall make it a business to deal in any manner upon his own account, or for others, in the purchase or sale of stocks, bills, notes, bank notes or other obligations shall be deemed and taken to be a broker.

I think that this description covers the business in which you are engaged and that, therefore, it will be necessary for you to obtain a license before doing business in the City of Baltimore.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS—ASSEMBLING MOTOR ATTACHMENTS NOT MANUFACTURING.

April 28, 1919.

The Gorham Bros. Sales Co.,
140 W. Mt. Royal Ave.
Baltimore, Md.

GENTLEMEN:—I have Mr. Lippscomb's letter of April 15th, asking whether in my opinion you are a manufacturer, and therefore not required to take out a Trader's license, under Bagby's Code, Art. 56, Sec. 55.

I understand that you do not actually manufacture anything, but what you do is to buy and assemble attachments for the purpose of converting cars of one kind into another kind. For instance, of converting a pleasure car into a truck.

Under these circumstances, it does not seem to me that you are a manufacturer.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—TRADERS—BROKERS—STOCKS—DEFINITION OF BROKERS.

February 2, 1920.

Wm. A. Lumsden,
Front and Howard Streets
Baltimore, Md.

GENTLEMEN:—I beg to reply to your favor of January 31st, in which you say that you have opened a branch office at West

cester County, and desire to know whether you are required to take out a trader's license in that county, in addition to the license you already have authorizing you to do business in Baltimore City.

The Court of Appeals has held, in Saltzman v. State, 84 Md. 299, that a trader's license is required in every county in which the holder has "any store or fixed place of business." In that case the Court held that even a wagon, from which sales and deliveries were made, was a fixed place of business within the meaning of the statute.

You do not say how you propose to operate in Worcester County, but if you will have a store or fixed place of business there, from which sales and deliveries are to be made, then you will be required to take out a trader's license from the Clerk of the Circuit Court.

Very truly yours,

ARTHUR W. BRUNER, Attorney General.

LICENSES—TRADERS—DEALERS IN FERTILIZERS.

August 26, 1920.

Charles C. Wallace, Esq.,
Secretary State Tax Commission,
Union Trust Building, Baltimore, Md.

DEAR MR. WALLACE: I have your letter of August 4th, in which you ask me whether dealers in fertilizers are required to procure a trader's license when the inspection fee of $10.00 provided for by Sec. 8 of Art. 83 of the Annotated Code of 1911, Vol. 1, has been paid by the manufacturer.

Sec. 3 provides that when the required inspection fees have been paid, no other person selling the same goods under his name and brand shall be required to pay such fee. It provides that the Act shall exempt payment so far as the inspection is concerned, and has no reference whatever to the provisions of Art. 56 requiring trader's licenses.

Very truly yours,

ARTHUR W. BRUNER, Attorney General.

LICENSES—TRADERS—HAWKERS AND PEDDLERS.

October 13, 1919.

Preston E. Ray, Esq.,
Clerk of the Circuit Court,
Rockville, Maryland.

MY DEAR MR. RAY: I have your letter of October 7th enclosing a letter from Mr. Walter A. Johnston, an attorney of Washington, D. C., in which he asks whether a client of his can deliver butter, eggs and cheese to store-keepers in Montgomery County, and receive the cash therefor on delivery, and if so, what license, if any, must be paid in order to engage in this business.

Art. 56, Sec. [illegible] of the Code prohibits any person other than the grower, maker or manufacturer from bartering or selling any goods, wares or merchandise within this State without first obtaining a license. The Court of Appeals has held that a wagon is a place of business under this section.

Saltzer vs. State, 94 Md. [illegible]

I should say, therefore, that Mr. Johnston's client must take out a trader's license before doing such a business as he contemplates.

If his business is not based on run on regular lines, but is more or less in the nature of that of a hawker or peddler, then he should obtain a license under Secs. 24 and 25 of Art. 56. I think, however, from Mr. Johnston's letter that his client would be a trader and will have to take out a license based upon the average amount of goods he would carry on his delivery wagon.

I am returning Mr. Johnston's letter, so that you can write him.

Very truly yours,

OTTO MARBURG, Asst. Attorney General.

MOTION PICTURE CENSORS.

Religious Exhibitions Where Admission Fee is Charged
Rules of Board

April 18, 1919.

T. E. Stacy, Esq.,
Secretary, B. & O. Y. M. C. A.,
1800 Webster St., Baltimore, Md.

Dear Mr. Stacy: You asked me whether the reels exhibited by the B. & O. Y. M. C. A. must be submitted to the Board of Motion Picture Censors, in case an admission fee is charged to see them, the proceeds being devoted solely to necessary expenses, and any balance to your Y. M. C. A. work.

Sec. 22 of the Motion Picture Law provides that the Act shall not apply to exhibitions for "purely educational, charitable, fraternal or religious purposes, by any religious association, fraternal society, library, nurse, or public school, private school or institution of learning."

The purpose of your exhibitions is, of course, a religious purpose, but it is not clear from the language of the Act whether exhibitions for religious purposes are intended to be exempted when an admission fee is charged, or only when they are free. Since the Act is not clear on this point, I think the Board has the power, under Sec. 16, to resolve the doubt by adopting a rule upon the subject. The Board advises me that it has such a rule, and that this rule requires the reels to be submitted to the Board in all cases mentioned in Sec. 22, if an admission fee is charged. I think that this settles the question, and requires your reels to be submitted.

I may add that the reason for the rule seems to be that if religious films do not have to be submitted where an admission fee is charged, then educational, charitable and fraternal films do not have to be submitted either, but all such films can be exhibited for pay without any censorship at all; and innumerable exhibitors would claim to fall in one of these four classes and would ask exemption, with the result that the Board's supervisory powers would be very much limited. For this rea

on the board feels that it can only allow such exemptions where the exhibitions are free.

Very truly yours,

[illegible] Attorney General.

Motion Picture Commission. Right of Employees of Board to Enjoy Theatre Without Admission Fees or War Tax.

January [illegible], 1919.

[illegible] Esq., Chairman,
Mo. State Board of Motion Picture Censors,
[illegible] Street, Baltimore, Maryland.

Dear Sir: You asked me whether employees of some board may be permitted by the owner of a theatre to enjoy free entertainment without paying the admission fee, in the place where moving pictures are exhibited.

In my opinion, under the laws of this State, provided that the members or employees of the board may enter any place where moving pictures are exhibited. In case the law imposes a penalty upon the proprietor of the theatre for admitting any of the members of the board or employees of the board, the proprietor should make the payment for employees of the board from entertainment received in his capacity as owner of the theatre, because the penalty provided by the law would be large enough to induce him to pay it.

You inform me that a doubt has been made in the past over the question on the ground that they should pay the war tax. The Federal Law imposes taxes on employees and employers but attempts to tax officers of the State. Your board is a State Board, and its employees are to be considered State officers within the meaning of the tax law. In addition, therefore, the tax does not apply.

Very truly yours,

[illegible] Attorney General.

POLICE BOARD OF BALTIMORE CITY.

CONSTABLES—RIGHT TO STAND AUTOMOBILE FOR HIRE IN FRONT OF OWNER'S PREMISES.

October 13, 1919.

Josiah A. Kinsey, Esq.,
Secretary, Board of Police Commissioners,
Court House, Baltimore, Maryland.

DEAR SIR: I have before me your recent inquiry whether under the provisions of Ch. 166 of the Acts of 1916, and Ordinance 139 (approved June 4, 1918) of the Mayor and City Council of Baltimore, your board can interfere with a person who attempts to stand his automobile for hire in front of his own premises.

Sec. 286 of Ch. 166 authorizes your board to designate certain places to be used as public or private stands for hackney carriages. Sec. 6 of Ordinance 139 prohibits any hack, while waiting employment for passengers, from standing upon any public street other than at public or private stands designated by your board. The ownership of a house does not give the owner any right over the use of the public highway in front of that house superior to that permitted by law to other citizens in respect to using that highway for public business. Such an owner must conform to all police regulations of the city, and be subject to them. If the proper authorities find that his street is not suitable for hackstands, he cannot use it for such a purpose. Whatever interest he may have in the bed of the street is subject to the public regulations of traffic to which he must abide.

It is therefore my opinion that the board has the right to refuse to grant applications of a person who desires to stand an automobile for hire in front of his own house, if your board should feel that the granting of such application will interfere improperly with public traffic.

Yours very truly,

OGLE MARBURY, *Asst. Attorney General.*

POLICE BOARD—CITY DOG ORDINANCE—RELATION TO ORDER OF STATE BOARD OF AGRICULTURE.

June 2, 1919.

Isaiah A. Kinsey, Esq.,
Secy. Board of Police Commissioners,
Court House, City.

DEAR MR. KINSEY: I beg to reply to your favor of May 30th, in which you ask whether Ordinance No. 135, approved June 3rd, 1918, and known as the "Dog Ordinance," affects in any way the opinion I gave you on May 29th, with reference to the quarantine established by the State Board of Agriculture against rabies within the limits of Baltimore City.

The Ordinance in question does not affect the quarantine. Sec. 11 of the Act of 1916, Chapter 337, provides that "all rules and regulations formulated and issued by said board in pursuance of the powers herein conferred on it shall have the force and effect of laws, and all violations of such rules or regulations shall be punished as misdemeanors are punished at common law."

The quarantine against rabies results from an order of the State Board of Agriculture, and under Sec. 11 this order has the effect of law.

It seems to me quite clear that the quarantine is legal, and that it is the duty of the Police Board to enforce the same by killing dogs found running at large within the city limits to be destroyed. The only difficulties I see are those relating to the manner, time and place in which the dogs should be killed. It seems to me that the Police Board should confer with the representatives of the State Board of Agriculture and those of the City of Baltimore, which has, I believe, a contract for the destruction of dogs, and this conference can work out the practical consideration involved.

Yours very truly,

VICTOR C. RICHARDS, Attorney General.

POLICE BOARD—DESTRUCTION OF DOGS WHEN ORDERED BY THE STATE BOARD OF AGRICULTURE.

MAY 29, 1919.

Josiah A. Kinsey, Esqr.,
Secy. Board of Police Commissioners,
Baltimore, Maryland.

DEAR MR. KINSEY:—I beg to reply to your favor of May 23rd, in which you ask my opinion as to the responsibility and duties of the Police Board under the order passed by the State Board of Agriculture for the destruction of dogs found running at large within the limits of Baltimore City, as well as within certain areas of Baltimore County.

The order states that rabies exists in the areas in question, that the areas are accordingly quarantined and that all dogs found running at large within such quarantined areas will be destroyed, and sheriffs, deputy sheriffs, constables and other officers are instructed to enforce the quarantine.

Under Sec. 2 of the Act of 1916, Ch. 317, the State Board of Agriculture is authorized to establish, maintain and enforce such quarantine regulations as it may deem necessary, for the purpose of protecting the health of the domestic animals of the State from all contagious and infectious diseases.

Rabies is a contagious or infectious disease, as is recognized by Sec. 7 of the law, which requires veterinarians to report as such all cases of "rabies or hydrophobia;" and I must assume that the orders of the State Board of Agriculture mean that the board has, in good faith, determined that the protection of domestic animals requires a quarantine against rabies in the areas in question. This being so, I think that the quarantines are authorized by Sec. 2.

Sec. 3 authorizes the State Board of Agriculture to prescribe such regulations as they may deem necessary or expedient to prevent infection or contagion being communicated in quarantined places, and "to call upon all sheriffs and deputy sheriffs, constables, policemen or other officers of the State, the City of Baltimore, or of any county, for information and assistance to carry out and enforce the provisions of such orders and regulations; to prescribe regulations for the destruction of animals affected with or exposed to any infectious or contagious disease

and it shall be the duty of all sheriffs and deputy sheriffs, constables, policemen or other officers of the State, City of Baltimore, or counties, to obey and observe all orders and instructions which they may receive from said State Board of Agriculture, or its duly authorized officers or agents in the enforcement of the provisions of this Act within their respective jurisdictions."

It seems to me that this section is broad enough to include dogs infected with rabies, and that it authorizes the State Board of Agriculture to pass the orders they have passed requiring the dogs named to be destroyed dogs found running at large within the quarantined areas. Such areas have been quarantined, under Sec. 2, because found to the board to be infected with rabies, and dogs running at large therein are, in the language of the statute, "exposed to the infection of contagious disease," so that the board may, under Sec. 3, provide regulations for their disappearance.

If this opinion is in the case of Mr. Wilmot, so Mr. Wilmot and the authorities there acted.

My opinion, therefore, is that it is the duty of the Police Board of Baltimore City to enforce the quarantine within the county of Baltimore City, and to carry out the orders of the State Board of Agriculture, which relate to the destruction of dogs found running at large within the City limits.

The manner in which such dogs are to be apprehended and destroyed is a practical question, and should, I think, be determined by the Police Board in consultation with the judgments as to the best methods.

Very truly yours,

Wm. L. Marbury, Attorney General.

Hon. Henry Lamb,
Secretary of State Board of Agriculture,
Annapolis, Maryland.

Mr. Kinsinger: I have some favor of Judge Pitts in my mind which, if the department will represent others

Pepperack at his trial in the Criminal Court upon indictment charging him with shooting with intent to kill in connection with an arrest for violation of the speed laws.

I note that before the organization of the State Law Department, it was the custom of your Board to assign your own counsel to defend officers under indictment for offenses committed in the line of police duty.

It seems to me, however, impossible to continue this custom now. The Attorney General tries all criminal appeals in the Court of Appeals, so that if Officer Pepperack is convicted and takes an appeal, it will be the duty of my department to represent the State in the Court of Appeals. For this reason my department could not defend the officer in his trial in the lower Court.

Yours very truly,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—HACKNEY CARS, INSTALLATION OF TAXI METERS.

July 23, 1919.

Joseph T. Kessler, Esq.,
Secy., Board of Police Commissioners,
Baltimore, Maryland.

DEAR MR. KESSLER: I beg to reply to your favor of July 23rd, asking whether the Police Board has power, under Secs. 281 to 286 of the Baltimore City Charter, to require the owners of motor hackney vehicles to equip their cars with taxi meters, so as to register the distance travelled and the amount charged.

Sec. 281 of the Charter authorizes the board to "fix rates of fare and amounts to be charged" by the owners of such vehicles, and Sec. 282 requires "the rates of fare and charges prescribed" by the board to be posted inside the vehicles themselves.

This is simply an authority to fix rates and does not extend to requiring taxi meters. Since the statute confers no power to require taxi meters, it follows that the board cannot order them to be installed.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

Public Boxing Hackney Stands, Establishment of.

June 16, 1919.

The Board of Police Commissioners,
Court House,
Baltimore, Maryland.

GENTLEMEN: I have your letter of June 12th in which you state that some of the private hackney stands established by you under the provisions of Chapter 109 of the Acts of 1910 conflict with the new City Parking Ordinance, No. 502, approved May 8th, 1919.

You ask whether your authority to establish such stands under the Act of 1910 is restricted by the ordinance.

In the case of Swann vs. Police Board, 122 Md. 206, the Court of Appeals determined that the Act of 1910, Chapter 109, superseded all other legislation or ordinances in the matter of establishing hackney stands. Since the decision in that case there has been no additional legislation conferring on the Mayor and City Council any right to pass ordinances which interfere with the Act of 1910. This Act, therefore, is not in any way affected by the passage of Ordinance No. 502, and in case the latter conflicts with it, the ordinance must give way.

Yours very truly,

ARMAND C. RIDGELY, Deputy City Solicitor.

Public Boxing—Hackney Stands—Establishment of—City Parking Ordinance.

July 11, 1919.

Francis J. Kelly, Esq.,
Secretary, Board of Police Commissioners,
Court House, Baltimore, Md.

DEAR MR. KELLY: I beg to reply to your letter of June 30th, asking whether hackney stands for the exclusive use of colored people can be established in Druid Hill Park.

I must regard that the Federal Constitution, in its application of the equal protection of the law, is not at present interfering with the right of hackney stands for the exclusive use of colored people, the United

States Circuit Court having held that that law only prohibits the sale of beer which is intoxicating, and having declined to hold that 2¾ per cent beer is intoxicating.

Whether such beer can be sold in Baltimore City without a liquor license depends, however, not upon whether it is in fact intoxicating, but upon whether a liquor license is required by the Baltimore City Charter, and under Sec. 667 of the Charter a liquor license is required for the sale of all fermented and distilled liquors, and every mixture of liquors, "which shall contain more than 2% by weight of alcohol."

It is clear, therefore, that under the express provisions of the Charter beer containing more than 2% of alcohol cannot be sold in Baltimore City without a liquor license, and, therefore, persons selling 2¾ per cent beer are required to have such a license.

This is in accord with opinions rendered the Police Board by its former counsel, Mr. Alonzo L. Miles, on July 10th, 1905, and Judge Robert F. Stanton on July 25, 1913.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—MAGISTRATE—RIGHT OF POLICE MAGISTRATE ASSIGNED TO ONE DISTRICT TO ACT IN ANOTHER DISTRICT.

April 21, 1919.

Josiah L. Kinsey, Esq.,
Secy. Board of Police Commissioners,
Court House, Baltimore, Md.

DEAR MR. KINSEY—Some time ago you asked my opinion whether a police magistrate assigned to one district can go into another district and there release a prisoner for hearing.

The question arose in the case of a man who had been arrested in the Central District, and the magistrate of the Western District came to the Central District and, in the absence of the magistrate of the Central District, released the accused for a hearing on the following morning. On the following morning the accused appeared, and the magistrate of the Central District, who was then in attendance, committed him for Court.

Not the slightest harm, therefore, resulted in that case from the release, but the question of the authority of the magistrate of the Western District to make it was raised, and you submitted this question to me for the Police Board's future guidance.

The question involves the construction of Secs. 27-H to 27-L, and Secs. 606-612, 612-F, 615, 617, 618, 641, 642 and 757 of the Baltimore City Charter, and a consideration of the following authorities:

British vs. Carter, 98 Md. 145, 152;
Levin vs. Howes, 118 Md. 621, 632;
Smith vs. Hackett, 129 Md. 76, 79;
Queen vs. State, 116 Md. 675, 679;
Thomas, Procedure in Justice's Cases, Sec. 75;
Baldwin vs. Phelan, Baltimore City Court, Judge Dobler, Appeal Docket Issue, 145, 20 Daily Record, 202;
Ex Parte Hassett, Baltimore County, Judge Burke, October 15, 1895, 21 Daily Record, 305;
Judges Henderson and Motter, Frederick County, March 1, 1899, 36 Daily Record, 64.

I am citing these authorities for purposes of future reference only, because for the reasons about to be stated, I feel that it may be best at this time not to decide the question.

The question is a doubtful one, and lawyers differ well within with regard to it. Indeed, in Queen vs. State, 116 Md. 675, the Court of Appeals, when the same question was raised as to county magistrates, declined to pass upon it, and decided the case on other grounds.

On the one hand, if a magistrate regularly assigned to one district may not be here and there in another district, and there accept bail, then there would seem to be little question that such magistrate might not also, at his own discretion, illegally and The power to do this would lend itself to with any degree of district assignments, and of such practice some frequent or to more serious evil it might lead to abuse.

On the other hand, if the regularly assigned magistrate could not be accessible, a serious hardship may be inflicted upon prisoners who are entitled to bail unless the magistrate from some

other district can give it, and instances in which harm could result from this, if they ever occurred at all, would be exceedingly rare.

I think, as a practical matter, it would be unfortunate if the conclusion I reached should be that magistrates could not release on bail under the circumstances last mentioned; and if the conclusion I reached should be that magistrates could release under these circumstances, then it would also be unfortunate if it should follow from that, as might be the case, that magistrates could not only release on bail, but could also try the case, in districts other than their own.

As a practical matter, I feel that there is no reason to deny the right of a magistrate to go into a district other than his own, provided it be done for the sole purpose of accepting bail, and not of trying the case. To be only does this in cases where the magistrate regularly assigned to that district is sick or inaccessible, and if the practice be understood by all the magistrates.

I am advised that these are the circumstances under which the practice is resorted to, and if so, then I think that the practice may properly be allowed to continue, without any undertaking to settle the really doubtful question at law involved.

Very truly yours,

[illegible] Attorney General.

Police Board, Department of Police, Commissioner, Western Department, Mt. Royal and Druid Streets.

May 20, 1915.

Mr. Joseph T. Kemp,
Secy. Board of Police Commissioners,
Court House, Baltimore, Md.

My dear Mr. Kemp: I have your letter of May 8th, in which you ask whether under the provisions of Section 7[illegible] of the Baltimore City Charter as amended by Chapter 1[illegible] of the Acts of 1914, the Board of Police Commissioners is authorized to give credit to a probationary policeman who has been in the military or naval service of the United States, and has been

reinstated by the Board, for the time spent in the Government service.

Chapter 23 of the Acts of 1918, authorizes the Board to reinstate "in their former rank or grade" all the members of the Department who may have left for the purpose of entering the military or naval service of the United States upon their return from such service, provided such persons shall pass a satisfactory physical examination.

Section 745½ provides for the grades of patrolmen based upon the length of service "on said force."

The returning patrolmen are reinstated to their former grade, and thereafter they can only be advanced after they have served *on the police force* the required length of time. It seems to me that the Legislature did not authorize the Board to count in the time of service the period spent in the military or naval service of the United States. On the contrary, the wording of Chapter 23 of the Acts of 1918 seems to indicate that the Legislature did intend this time not to be counted.

I regret very much, therefore, that I have to advise you that the Board of Police Commissioners cannot legally give probationary policemen credit for the time they spent in the Government services when it is advancing their grades.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD—RESIDENTIAL REQUIREMENTS—NECESSARY FOR MEMBERS OF THE FORCE—RULES OF POLICE DEPARTMENT.

JANUARY 28, 1919.

Mr. Jacob V. K[illegible],
Sec., Board of Police Commissioners,
Court House, Baltimore, Md.

DEAR MR. K[illegible]:—I beg to reply to your letter of January 24th, in which you say that a number of men recently discharged from military service desire to join the police force, but that these men, while intending to make Baltimore their home, are not yet citizens of Maryland, and, of course, are not registered voters of Baltimore City, and you ask whether they are eligible for appointment.

The police laws contain no residential requirements for members of the force, and, of course, Section 26 of the Charter, requiring municipal officials, except females, to be registered voters of Baltimore City, does not apply because policemen are not municipal officials. Nor does Section 12 of Article 65 of Bagby's Code, requiring persons appointed by State and county officials to be residents, apply to the police force of Baltimore City, because the police force is governed by the special provisions of the Baltimore City Charter.

There is, therefore, no legal prohibition against men who intend to become citizens of Maryland and residents of Baltimore but who have not yet done so, unless the Board of Police Examiners, under Section 745D of the Charter, have adopted a rule making such citizenship or residence a necessary qualification. In the absence of such a rule, the men in my opinion are legally eligible for membership on the police force.

Since the Board of Police Examiners have the power to adopt the rule upon the subject, it seems to me that the question is really for them, in their discretion, to decide; and I suppose they would be governed in their action as to whether the capacity and fitness of applicants can properly be determined, in accordance with the standards and requirements of Sections 745D and 745E of the Charter, if the applicants have lived for a short time in the State.

Very truly yours,

Wm. S. Kilpatrick,
Attorney General.

Porter Emerson Brandis, Esq.,
City Counsel,
Baltimore, Maryland.

Mr. Joseph L. Kinsey,
Secretary Board of Police Commissioners,
Court House, Baltimore, Md.

June 23, 1926

Dear Mr. Kinsey: In the absence of the Attorney General, who is out of the city, I beg to reply to your letter asking whether it is the duty of the Board of Police Commissioners to recognize the joint resolution of the City Council asking that the operation of the Parking Ordinance be suspended in certain particulars.

No resolution of the City Council can have the effect of repealing or amending an existing ordinance which has been regularly passed and approved by the Mayor. The law, therefore, is the same now as if the resolution had never been passed.

I gather from the language of the resolution that the ordinance has been found to be discriminatory and to work unnecessary hardships. If this is true, the only remedy is by way of an amendment, and until that action is taken, the manner in which your Board will enforce the provisions of the ordinance is a matter exclusively of administration which the Board will determine for itself.

Very truly yours,

Philip B. Perlman, Sol. [illegible]

Police Board, Special Officers, Roland Park Company.

March 20, 1919.

Mr. Joseph G. Kenney,
Secy. Board of Police Commissioners,
Central Home, Baltimore, Md.

Dear Mr. Kenney:—I beg to reply to your letter of March 15th, in which you ask whether the Police Board is authorized, in accordance with the request of the Roland Park Company, to appoint a special police officer for the suburban residential district known as Roland Park, which is a portion of Baltimore County, and is owned and used by said company, including the company's office, the streets, except York Road and Falls Road.

The Board is of the opinion that it is authorized to appoint such a special police officer at the request of the Roland Park Company under the Act of 1916, Ch. 171, subject, of course, to the conditions set forth in that Act.

The Roland Park Company also inquires as to whether such special police officer is authorized to preserve the peace in Baltimore, will have power to regulate traffic there, and to keep down trouble of the private police of the Roland Park Company, and this presents three points for consideration.

The Act of 1904, ch. 171, provides that any special police officer appointed thereunder shall enforce the laws and ordinances of Baltimore City in and about the locality specified in the application, and also shall have the power "to preserve the public peace, prevent crime, arrest offenders and *protect the rights of persons and property* in and about such locality and premises as fully as a regular police officer of Baltimore City."

I have no data before me to show whether or not the roads in question are the private roads of the Roland Park Company, in the sense that the public has no right to use them; but assuming that they are, then the company has, of course, the right to deny the use of these roads to the public; and in this event the special police officer would have the authority to keep traffic off of them, under his power to "protect the rights of persons and property."

I return you the letter to your board from the Roland Park Company, as well as the plat of Guilford.

Very truly yours,

Andrew E. Kerr, Attorney General.

Police Board, Supervisor, Roland Park.

March 15, 1919.

Joseph A. Kinney, Esq.
Secy. Board of Police Commissioners,
Council House, Baltimore, Md.

Dear Mr. Kinney: I received your letter of February 26th asking me advice as to the board's "duty and responsibility" in the matter of the continuance next summer of the amusements at River View Park on Sundays.

This involves the right of the owner of the Park, on Sundays, to maintain a band, to sell soft drinks, ice-cream, sausage, candy, soda-water, etc., and to operate gravity railway and canal, ferris-wheel, merry-go-around, circle swings, etc., for the use of which a small fee is charged.

The right to do these things on Sundays exists unless made unlawful by the Sunday law of 1723, codified as Secs. 136-137

of Art. 27 of Bagby's Code, and recently construed in part by the Court of Appeals in the Sunday Baseball Case, Lovering, et al., vs. Park Board, decided February 27, 1912.

These laws have always been understood as permitting work of necessity on Sundays, and the only legal question, as I view it, is whether the labor involved in the above amusements can properly be regarded as work of necessity.

The facts are that all these things have been done at River View Park during the summer season for several years, with our knowledge, and no attempt, pleading as the ground that the Sunday laws were being violated. The park has always been operated in a thoroughly law abiding manner so far as the presence of every kind of disorder or misconduct is concerned. The amusements on Sunday afford a healthy recreation from work and needed and welcome relief from the summer heat to thousands of persons, the Sunday attendance in fair weather reaching legions.

Under these circumstances the Police Board's duty and responsibility, in my opinion, do not require it to prohibit such the continuance of these amusements at River View Park on Sundays, but the Board may, with entire regard to its duties and responsibilities, permit them to continue in the same orderly manner in which they have been conducted without objection for so long, any one feeling that the same constitute a violation of the Sunday law being free at any time to have that question determined through appropriate legal proceedings.

Very truly yours,

_____ E. [illegible] Corporation Counsel.

STATE LUNACY COMMISSION.

LIABILITY OF COUNTY FOR CARE OF INSANE SOLDIER RESIDENT THEREIN.

June 2, 1919.

Dr. Arthur P. Herring, Secy.
State Lunacy Commission,
330 N. Charles St., Baltimore, Md.

DEAR DR. HERRING:—On April 17th last you asked my opinion as to the liability of Charles County for the care of an insane soldier. I told you that I would endeavor to adjust the matter with Charles County, but having been unable to do this, I now give you my opinion upon the question.

The correspondence shows that the soldier in question is insane; that he is being held at Fort Ontario, N. Y., by the military authorities, and that his mental trouble was not due to war service, but existed before his entrance into the Army. I also understand that the man is a resident of Charles County.

Under these circumstances, it is my opinion that this soldier is a proper charge upon Charles County, and if the County Commissioners of Charles County will not consent to his commitment at the County's expense under Secs. 1 and 27 of Art. 59 of Bagby's Code, then he can be committed under Section 31, upon the certificate of two physicians, without the County's consent, and in this event Charles County will be liable for his maintenance, in accordance with Section 15 of Article 59.

The military authorities say that this soldier will be sent to any point in Maryland you designate. Accordingly, you can give the appropriate directions to meet the man upon his arrival and arrange for his examination by two physicians. Upon their certificate, he can be committed and his expense charged to Charles County, under Section 15.

While this is the procedure which, in my opinion, you have a right to follow, yet it may be, as you indicated over the telephone this morning, that you might prefer taking up the matter again with the Government authorities.

I return you the correspondence you sent me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE LUNACY COMMISSION—EXAMINATION OF PRISONERS—FEES.

October 14, 1919.

Hon. A. E. Hennes,
State Lunacy Commission,
230 N. Gaither Street,
Baltimore, Md.

MY DEAR MR. HENNES: I have your letter of October 3rd, in which you state that the Lunacy Commission has had several prisoners brought to its office for examination under Chapter 68, Laws of 1918, and you ask whether the members of the Commission, who make this examination, are entitled to charge a reasonable fee for their services, just as they should when they go to Court to make a similar examination.

This question is covered in Sec. 16 of Art. 59, enacted by Ch. 68 of the Acts of 1918. This Act was an act providing for compensation and expenses, for each member of the Commission is a physician, including the Secretary. The Court, under this Act, is the proper authority to allow a fee to the Commission for their services. It is not necessary that you be summoned to make this examination in Court, but in order to get a fee it is necessary that the examination be ordered by the Court either under Sec. 1 of Art. 59, or at the instance of the prisoner or under Art. 6 of Sec. 16.

It seems to me that when you examine prisoners, whether at your office or at any other place, you must examine them under an order of Court passed under one of these two sections. If this is done, you have the right to charge a reasonable fee, which, however, the Court must authorize by an order passed in the case in which the examination is directed as provided in Chapter 68.

Yours very truly,

(Signed) MERRILL LEE, Attorney General.

STATE LUNACY COMMISSION—RETURN TO PRISON OF PATIENT IN INSANE HOSPITAL WHO SHOWS NO SYMPTOMS OF INSANITY.

June 16, 1919.

Dr. Arthur P. Herring, Secy.,
State Lunacy Commission,
3330 N. Charles Street,
Baltimore, Md.

DEAR DR. HERRING: I have your letter of June 13th, in which you ask what the Lunacy Commission can do in order to return to the Penitentiary a prisoner transferred to the Crownsville State Hospital as an insane patient, but who has shown no mental symptoms since his transfer.

Sec. 44A of Art. 59 of the Code makes provision for the transfer from the Penitentiary to the Insane Hospital, but there is no specific provision for a return. I think, however, your Commission should notify the State Board of Prison Control that the patient is not a proper subject for treatment at the hospital, and that you are ready to return him to the penitentiary. I think, under these circumstances, you will have no difficulty in making the transfer.

Yours very truly,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION.

ANNAPOLIS—CLAIBORNE FERRY—ACT OF 1916, CH. 708—RENTING STEAMER.

January 9, 1919.

Hon. Emerson C. Harrington,
Governor of Maryland,
Annapolis, Maryland.

DEAR GOVERNOR HARRINGTON: You asked me a few days ago for my opinion as to whether the Act of 1916, Ch. 708, providing for a ferry between Claiborne and Annapolis, authorized the appropriation made therefor to be used in renting a ferry boat, or only for purchasing one.

The Act authorizes the State Roads Commission "to provide a suitable steamer or steamers," as a connecting link between the state road systems on the Eastern and Western Shores, and it is my opinion that such steamer or steamers can be provided either by renting or by purchasing, as the State Roads Commission may find most practicable.

I have previously given an opinion to the Comptroller that this appropriation did not revert. (2 Attorney General's Opinions 200, Nov. 9, 1917.) This opinion I now reaffirm. The appropriation is still available for the purposes of the Act.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—EXCHANGE OF LANDS ON ROADS—ADVERSE POSSESSION AGAINST TURNPIKE COMPANY OR STATE.

April 11, 1919.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Garrett Bldg., Baltimore, Md.

DEAR MR. ZOUCK: I beg to reply to the inquiries contained in your letter.

I understand that a resident of Reisterstown owns property there, the title to which lands on the Reisterstown Road, but that the improvements extend beyond the line of the property

and into the bed of the road. This has been the case for a great many years, and you desire to know whether the property owner may have acquired title by adverse possession to that part of the road on which the improvements encroach. Before the improvements were built, I understand, this road was a turnpike road, owned by the Baltimore and Reisterstown Turnpike Company, but several years ago the turnpike was taken over and has since been owned by the State.

It is settled in Maryland that title by adverse possession can not be acquired to any portion of the bed of a public road or highway, whether owned by the State or by a turnpike company.

> Hunt vs. Charles St. Ave. Co., 82 Md. 130, 144;
> Patapsco Co. vs. Baltimore, 110 Md. 306, 314;
> Baltimore vs. Knell, 111 Md. 383, 399;
> Brady vs. Baltimore, 130 Md. 506, 513.

Therefore, if the facts are as I have stated, then the property owner in question can have no title to the portion of the Reisterstown Road upon which his improvements encroached.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—PURCHASE OF POCOMOKE RIVER BRIDGE—TOLL CHARGES.

April 3, 1919.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Baltimore, Maryland.

DEAR MR. ZOUCK: I beg to reply to your favor of March 31st.

You say that the State Roads Commission wishes to purchase from the Potomac City Bridge Company the bridge owned by it across the Pocomoke River, connecting Somerset and Worcester Counties, and you ask whether the commission can continue to collect the tolls now being paid to the company, for the use of the bridge, until such time as the commission is ready to remove the bridge.

TAXATION.

COLLATERAL INHERITANCE TAX—COLLECTION—PROCEDURE.

March 27, 1919.

Charles N. Demont, Esq.,
Register of Wills,
La Plata, Maryland.

DEAR MR. DEMONT:—I beg to reply to your recent favor with reference to the estate of Samuel H. Cox, in which you ask by whom proceedings should be brought for the collection of collateral inheritance taxes and of the State tax on executor's commissions.

With reference to collateral inheritance taxes, the distributees or legatees may be sued, if their interest has been paid to them, and the tax has not been paid.

Fisher, Trustee, vs. State, 106 Md. 101, 120.

Or the executor's letter may be revoked and his bond sued.

Bagby's Code, Art. 81, Sec. 137.

In either case the suit is brought by the State.

With reference to the State tax on executor's commissions, the executor may be sued on his bond.

Bagby's Code, Art. 81, Sec. 117.

This suit should also be brought by the State.

The State's Attorney is the proper party to bring any of the above suits, under Bagby's Code, Art. 10, Sec. 20. The cases would be tried by the State's Attorney in the lower Court and by the Attorney General (associated, of course, with the State's Attorney) in the Court of Appeals. This is the procedure recognized in the Wingert Case, 125 Md. 536; 127 Md. 80; 129 Md. 28, and 131 Md. 213.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

to follow. The capitalization was to be $100,000. The testator's partner, a collateral, was to have $10,000 par value of stock, in addition to the shares to which he was entitled for putting in his own interest. $10,000 par value of stock was to be given to Mr. Merryman, an employee of the firm, and also a collateral. The remainder of the stock was to be allotted to the testator's wife and daughter, equally, but subject, presumably, to the specific bequests of stock first above mentioned.

Further, "in consideration of my wife and daughter *relinquishing* the immediate benefit of the above valuable devises and bequests and putting same into the William H. Whiting Company," — that is, the testator's interest in the firm business and the insurance policies, — the company was to provide, as part of its running expenses, and before the payment of dividends, yearly allowances of $2,000 to the wife and $2,000 to the daughter, for a period of five years.

3. *In case the said corporation was not formed,* "and it becomes necessary to close out my interest in the partnership," then the testator expressed the desire that his interest be sold *by his wife and daughter* to his partner and other business associates, on terms as favorable to the purchasers as possible.

4. The residue of the estate, that is, the portion not taken over by the corporation, if formed, and also, of course, excluding the pecuniary legacies, was left two-thirds to the testator's wife and one-third to his daughter.

The corporation referred to was not formed by the testator during his life, but was formed by the executors after his death, and the wife and daughter are about to invest their interests therein, in accordance with the testator's wishes. In further accordance with the testator's wishes, the shares of stock in this corporation, to the extent of $27,000 par value, will be allotted to collaterals, and the question is whether these shares of stock are subject to collateral inheritance taxes.

Looking at this will as a whole, I think it clearly makes a bequest to the testator's wife and daughter of his interest in the firm and in the insurance policies, which bequest became operative, unconditionally, upon the testator's death.

It is true that the testator earnestly desired the corporation to be formed, and that he *directed* his executors to form it; but

there is no condition attached to the bequest to the wife and daughter that they must invest the same in the shares of stock.

On the contrary, the testator simply *advised* them to do this, after first *requesting* all parties to cooperate. If the wife and daughter follow the testator's advice, then they are to receive annual allowances in consideration of having *relinquished* the immediate benefit of the bequests made to them. But the testator clearly contemplates that they may not follow his advice, but may, on the contrary, decline to invest their interests in the corporation, because, in this event, he desires them to sell his interest in the firm to his partner and associates.

For these reasons, I think that the testator's interest in the firm business and in the insurance policies are bequeathed absolutely to his wife and daughter with no legal obligation, but only a request, to invest the same in the corporation. The property, in other words, passes under the will to the wife and daughter absolutely, and it is for them to decide whether they will afterwards dispose of it, in accordance with the testator's desires or not.

If they do, then they will be disposing of their own property, and if the corporation is formed, and if certain of its shares of stock are allotted to collaterals, in accordance with the testator's wishes, such shares of stock will not pass under the will, but will be allotted to the collaterals as the result of the choice of the wife and daughter to use what is their own property in this particular manner.

It is my opinion, therefore, that the shares of stock in question are not subject to collateral inheritance taxes.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General*

TAXATION—COLLATERAL INHERITANCE TAX—DEED RESERVING LIFE ESTATE IN GRANTOR.

January 9, 1919.

Richard Davis, Esq.,
Register of Wills,
Ellicott City, Md.

DEAR MR. DAVIS: I beg to reply to your recent letter with reference to collateral inheritance tax upon a conveyance made by John T. Streaker to his niece, Lucy Ann Moxley.

The deed conveyed fee simple property to the niece, subject to a life estate reserved by the grantor, Mr. Streaker, in himself. Mr. Streaker is now dead.

An estate of this kind takes effect in possession upon the grantor's death. It is, therefore, an estate transferred by deed "made or intended to take effect in possession after the death of the grantor," and as such is taxable under Bagby's Code, Art. 81, Sec. 120. (See Attorney General's Opinions, Vol. 1, page 239.)

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—ESTATE VALUED MORE THAN $500, DISTRIBUTION LESS THAN $500.

February 24, 1919.

Lawrence E. Towers, Esq.,
Clerk, Circuit Court,
Denton, Maryland.

DEAR MR. TOWERS: I beg to reply to your favor of February 20th, in which you say that the surplus of an estate remaining after a mortgage foreclosure is over $500.00, of which $200 will be consumed in the payment of debts, and $300 will be distributed to collaterals. You ask whether this distributive interest is subject to collateral inheritance tax.

If the testator's whole estate is valued at less than $500.00, then no distributee pays any tax at all. But if the whole estate is valued at more than $500.00, then the tax is imposed upon

what passes to the collaterals, and it makes no difference in such case whether the estates passing to the collaterals, that is, their respective distributive shares, are more or less than $500.00.

Attorney General's Opinions, Vol. 1, page 258

Therefore, in the case you mention, the distributive shares of the collaterals who receive the $500.00 are subject to the tax.

Very truly yours,

[illegible]

Attorney General.

This conclusion is not inconsistent with my opinion to the Comptroller of March 25, 1916, Attorney General's Opinions, Vol. I, p. 259, because there the grantor reserved a life estate in herself, and also the power to revoke, and thus she was possessed of the property when she died. The property did not pass into the possession of any one else until the grantor's death. In the present case, however, both title and possession passed irrevocably when the deed of trust was executed.

Very truly yours,

ARTHUR W. BRUNER, *Attorney General.*

Note.—See Southern vs. State, Court of Appeals, April Term, 1919.

INHERITANCE COLLATERAL INHERITANCE TAX PAYABLE UPON INTEREST AS COLLATERAL SHARES DISTRIBUTED.

April 24, 1919.

Charles S. Parran, Esq.,
Register of Wills,
Prince Frederick, Md.

DEAR MR. PARRAN:—I have your favor of April 17th, in which you ask my opinion whether collateral inheritance taxes should be imposed upon the entire amount which passes to collaterals, including not only the distributive shares but also interest payable thereon, or whether the taxes should be imposed on the distributive shares only, thus allowing interest to pass free of the tax.

In my opinion, the tax is imposed upon the whole value which passes to the collaterals, at the time they receive it, and this, of course, includes the interest. I think the case of Fisher, Trustee, vs. State, 106 Md. 104, 119-121, leaves no doubt on this point.

Very truly yours,

ARTHUR W. BRUNER, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—STOCK OF NON-RESIDENT SENT HERE TO PAY COSTS.

January 18, 1919.

P. S. Ogle, Esq.,
Safe Deposit & Trust Co.,
Baltimore, Maryland.

DEAR MR. OGLE: I received your favor of January 13th.

You say that the Safe Deposit and Trust Company is Ancillary Administrator of the estate of a deceased resident of New Jersey, having been appointed for the purpose of passing title to real estate in Maryland; that the deceased owned some Baltimore City stock, and this stock was sent you by the administrator of the domicile in New Jersey, to be sold for the purpose of paying the expenses of the ancillary administration in Maryland; that the stock was sold, the expenses paid, and the balance of the proceeds are about to be distributed by your company to the New Jersey administrator, who in turn will distribute the same to collaterals; and you ask whether this stock or its proceeds is subject to collateral inheritance tax in Maryland.

Neither the stock nor its proceeds is subject to the tax, because the stock was not property in this State. The fact that the stock was sent here for sale under the circumstances stated, does not make it or the proceeds taxable here.

Very truly yours,

ARTHUR C. ELLIOTT, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—STOCK ASSIGNED TO COLLATERAL—INCOME PAYABLE TO ASSIGNOR UNTIL HER DEATH.

MAY 23, 1919.

Russell P. Smith, Esqr.

Register of Wills,

Cambridge, Maryland.

DEAR MR. SMITH: ON APRIL 12TH you asked my opinion whether any collateral inheritance tax was due on the sale of stock certificates which were assigned to collaterals, with the understanding that the assignor should retain the same and receive all income therefrom until death, but immediately upon death, the certificates were to belong to the collaterals.

ON APRIL 14TH I wrote you that the question was involved in the case then before the Court of Appeals. I now beg to advise you that the Court of Appeals has since rendered a decision, holding that property is subject to collateral inheritance tax under the circumstances stated by you. The title of the case is J. Maulsby Smith, et al., Executors, vs. State of Maryland, April Term, 1919.

Yours very truly,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS.

CONTRACT FOR PRINTING MARYLAND REPORTS—DISCRETION OF STATE REPORTER.

May 29, 1919.

W. H. Perkins, Jr., Esq.,
1010 Munsey Building,
Baltimore, Maryland.

DEAR MR. PERKINS: I beg to reply to your letter of May 26th, in which you ask whether the law gives you any discretion in awarding the contract for printing the Maryland Reports, or whether you must award it to the lowest bidder.

Bagby's Code, Art. 50, Sec. 6, which provides for advertising for bids in this case, provides that "the said contract shall be awarded by the reporter to the person whom he shall determine to be the most responsible bidder, who will agree to publish the said report in the manner aforesaid and sell the same on terms most advantageous to the public and at the lowest price."

It is my opinion that under this section the reporter has the discretion to determine which bidder is the most responsible, and who will sell the reports on terms most advantageous to the public, and that the reporter has the right to award the contract to such bidder, even though his bid may not be the lowest.

Very truly yours,

[illegible]

[illegible]

January 13, 1919.

State Board of Examining Engineers,
1010 Munsey Building,
Baltimore, Maryland.

GENTLEMEN: I have your letter of January 8th, in which you ask for advice as to your standing with the engineers within the territory annexed to Baltimore City by Chapter 82 of the Acts of 1918.

This territory is now a part of Baltimore City, and the engineers in it are subject to your jurisdiction just as are engineers in Baltimore City proper, to no greater and to no less extent.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—HIGHWAYS—LICENSES—SANITARY—GENERAL LAW.

August 12, 1919.

William H. Kellam, Esq.,
Chairman, Commission on Legislative Acts,
512 Munsey Building, Baltimore, Md.

DEAR MR. KELLAM:—I have made an exhaustive examination of the statutes and common law of Maryland for the purpose of advising you what and may be adopted therefrom in reducing the high cost of living, and in preventing criminally unpractices, detrimental to the public, which may be found to exist. I now beg to submit the results to your committee.

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1. *State Board of Agriculture.*—Art. 11B, Sec. 1 et seq. This board is given broad powers in the direction of conditions affecting the production and distribution of all kinds of food products. The board has power to investigate the conditions surrounding the breeding, raising and marketing of livestock, and the products thereof. [illegible] the breeding, distribution and sale of farm, orchard, forest and garden products generally. [illegible] the production, marketing, grading, inspection, control and distribution of animal and vegetable products." The board is given general control over "all matters in any way affecting or relating to the health, protection and development of the agricultural interests of the State." The board is also authorized to issue rules and regulations in respect to these matters, which shall have the force of law, and violations of which are punishable as misdemeanors, and may call upon all sheriffs, constables and police officers to assist in enforcing the same.

I see no reason why this board, under these powers, may not conduct an investigation of alleged marketing agreements, alleged price fixing agreements among wholesalers or retailers for food and food products, and the like; and if it seems wise to make illegal any practices which are detrimental to the public, then the board's power to make rules and regulations, enforceable as law, opens the way for executive action. I think that this board may prove a most valuable aid in your work.

2. *State Bureau of Labor and Statistics.* Act 1916, ch. 100. This board has broad powers to investigate factories and workshops, and employers of labor in factories, workshops, stores and mercantile establishments are required to furnish the board any information in their possession. Code, Art. 27, Secs. 264, 265, etc. These powers may well be exercised in securing information important to your work.

3. *State Board of Health.* The Act of 1916, ch. 163, providing for the regulation of cold storage plants, has already been brought to your attention. It prohibits a maker of butterine to keep food in cold storage for longer than one year, with an extension, if granted, of 180 days, and when food has been sold for 30 days, it must, when offered for sale, be marked "Cold Storage Goods," and cannot be returned to storage.

4. *Unfair Competition.* Monopolistic contracts made by corporations may be controlled by appropriate proceedings, and the charters of corporations making them are subject to forfeiture.

5. *Commission for Workmen.* The Act of 1917, ch. 7, makes it a felony to dump food for the purpose of controlling the market, increasing the price above the market price or limiting the output.

Conclusion.

I have now made an examination of such of the laws of Maryland as I believe can be used in Maryland under the common law, independently of the power statutes. This subject I will consider only from the criminal side, because this is the important side now.

Historically the common law on this subject is most interesting. The old English custom of food distribution was that the farmer brought his products to the market on market days,

and sold them to the consumer. Early in the sixteenth century the middleman first appeared. He was believed to perform no serviceable function, was viewed with suspicion and alarm, and in 1552 certain English statutes were passed to put him out of business.

These statutes made criminal the trade practices known as engrossing, forestalling and regrating. Engrossing consisted of buying up food and necessities of life with the intent to resell them. Forestalling consisted of meeting the farmer on his way to market and either buying his wares or inducing him not to bring them to market. Regrating consisted of buying food and necessities of life in one market and selling them in any other market within four miles.

Prosecutions under these statutes were frequent, but by the end of the eighteenth century John Stuart Mills had shown that the middleman performed a real service, and in 1772 some of the statutes above mentioned were repealed. In 1801 however, Lord Kenyon held that engrossing was a common law offense, independently of the statutes of 1552, and that it had not been affected by the repealing statute of 1772. In that case the defendant was convicted of the charge of buying up a considerable proportion of the hops of three counties, thereby materially increasing the price of hops in those counties.

It is clear, therefore, that engrossing, which was the most important of the three offenses mentioned, was a crime under the English common law, and the English common law was, of course, adopted in the main as the law of this State by our Constitution of 1776.

The question, therefore, is, whether this particular common law offense of engrossing was adopted as part of the law of Maryland. This has never been decided by our courts, and I have been unable to find any prosecution in Maryland for engrossing. This does not show that engrossing is not an offense here. It simply means that we must resort to the decisions in other states to form an opinion as to whether it is or not.

In Kentucky and Minnesota it is held that engrossing is no longer an offense. In Rhode Island, however, the courts hold that it is, where a sufficiently large supply of food or necessaries of life are bought up, to prevent general competition and to con-

ted and raise prices; and the United States Supreme Court, in the Standard Oil Case, intimates strongly that it is an offense in this country to lay up the necessaries of life if there is the intent to enhance the price unduly, and thus bring about one of the injuries resulting from monopoly. There are other cases which give force to this.

There is, therefore, ample ground for the view that the old common law offense of engrossing, that is, the laying up of food or other necessaries of life with the intent to resell them, is still an offense in this country, provided it is accompanied with the intent to monopolize, and thereby control or raise prices to the detriment of the public.

This element of monopoly, although not necessary at common law, seems to be necessary in this country, and all of the cases have proceeded on the theory that this means a combination among several persons.

In other words, it is extremely doubtful whether a successful prosecution would lie against a person who engrosses and without any agreement or understanding with anyone else, buys up a supply of food or other necessaries and holds them for his own profit.

But if two or more individuals combine for the purpose of buying up or holding food or other necessaries with the intent and effect of restricting free competition, and of controlling and raising prices to the detriment of the public, then the offense is a monopolistic one, and there are strong reasons to believe that our courts would hold this to be a criminal offense in Maryland.

As I have said, our Maryland courts have not yet had this question before them for decision, but if your committee finds, as I expect it will find, that my opinion will be sought upon a presentment to the Grand Jury, I will do so.

I regret, to repeat, that there seems to be a scarcity in this particular product, and consequently a probable increase in prices, with intent to realize a present increase in price, was a criminal offense at common law, and there are strong grounds for the belief that the courts would hold this an offense in Maryland.

Very truly yours,

Albert C. Ritchie, *Attorney General.*

MISCELLANEOUS—HOUSE OF REFORMATION—RIGHT TO WORK BOYS ON NEIGHBORING FARMS.

December 8, 1919.

Joseph A. Toomey, Esq., Sec. & Treas.,
House of Reformation for Colored Boys,
Cheltenham, Maryland.

DEAR SIR:—Some time ago you asked this Department whether there was any legal objection to placing boys under fifteen years of age, who are inmates of your institution, out to work among farmers.

I can find no provision of law prohibiting such action. On the contrary, the Board of Managers of the House of Reformation seems to have been given express authority to employ inmates in employments as may be suited to their years and capacities, under the provisions of Secs. 566 and 567, Art. 27, Vol. 3 of the Annotated Code of Maryland.

Very truly yours,

PORTER E. PRESBURY, Asst. Attorney General.

MISCELLANEOUS—LAND OFFICE—WARRANT TO SURVEY. PURCHASE—ACT 1918, CH. 151.

January 24, 1919.

Hon. James S. Shepherd,
Commissioner of the Land Office,
Annapolis, Maryland.

MY DEAR SENATOR SHEPHERD:—I beg to reply to your favor of December 30th. A number of matters have caused my delay in answering, which I trust you will pardon.

Before 1918, Sec. 33 of Art. 54 of Bagby's Code provided that "every person who has obtained a warrant to survey or escheat land shall within one year from the date of such warrant pay for the vacant land included in the certificate of the survey 50 cents per acre," etc. The Act of 1918, Ch. 151, which took effect June 1, 1918, amended this section so as to make the payment "fifty cents per acre, or such sum per acre as shall be assessed by the Commissioner of the Land Office based

upon, but not exceeding, the value of similar land as assessed by the county or city authorities for land in the vicinity of such vacant land," etc. You ask whether the price is to be computed under this Act of 1918 or under the former law, in cases where the warrant was issued before June 1, 1918, and the certificate of survey filed either before or after that date, but the price not to be paid until after June 1, 1918.

Neither the issue of the warrant nor the return of the survey constitutes a contract between the applicant and the State. In Day vs. Day, 22 Md. 530, 538, it is held that even the payment of composition money constitutes no such contract, and does not bind the State to a transfer of her title. This decision was approved in Barton vs. Swartzwelder, 120 Md. 636, 644.

In Day vs. Day a patent was applied for upon land under navigable waters, at a time when the issue of a patent for such land was not forbidden, the warrant was issued, the survey returned, and the composition money paid, but the Court of Appeals held that the Legislature, by subsequent act, could prohibit the issue of patents upon land under navigable waters, and that in such event no patent could issue. If the Legislature can thus take away altogether the applicant's right to the land even after he has paid for it, then I see no reason why the Legislature may not, before the issue of the patent, provide a new method for computing the price.

Moreover, the power used in Section 11 of Article 54 of Bagby's Code (being the Act of 1915, ch. 604), would not apply after that Act shall cease to exist, because the Act of 1918 repealed the former law altogether.

It is clearly the opinion that in the case mentioned in your letter, that is, where the price of the land has been paid until after June 1, 1918, the price must be fixed in accordance with the Act of 1918, ch. 148.

Very truly yours,

Albert C. Ritchie, Attorney General.

MISCELLANEOUS—LEASE OF OFFICES BY BOARD OF PUBLIC WORKS.

March 28, 1919.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington Street,
Baltimore, Maryland.

DEAR MR. BAUGHMAN: I beg to reply to your favor of March 20th, 1919, in which you ask whether the Board of Public Works has authority to lease the Maryland Historical Society building for a period of ten years, for offices for the Commissioner of Motor Vehicles.

A lease is not invalid because made for a period extending beyond the term of office of the board or official making it (29 L. R. A. (N. S.) 652, 655), and the question is simply one of statutory authority.

The Board of Public Works has power, under the Act of 1912, Ch. 330, to lease "a building or part of a building" in Baltimore City, for State offices, for a term of years not exceeding fifteen, and under the Act of 1918, Ch. 55, Sec. 136, the Commissioner of Motor Vehicles is required to "maintain an office in the City of Baltimore."

There may be some question, under these acts, as to whether the lease should be made by you or by the Board of Public Works, and to avoid this, I think it would be better for both to join. If this is done, and if, in the judgment of the Board and yourself, a ten year's lease is reasonable and necessary, then, in my opinion, such lease will be valid.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—ORPHANS' COURT—JUDGE OF, CANNOT BE MEMBER OF BOARD OF EDUCATION.

December 20, 1919.

Hon. George W. Eneslow,
Bailey, Prince George's County,
Maryland.

DEAR JUDGE ENSLOW: I have your letter of recent date in which you ask me whether you are eligible to continue as a member of the County Board of Education, you having recently been elected a judge of the Orphans' Court of Prince George's County.

Article 33 of the bill of rights provides that no judge shall hold any other office, civil or military or political trust, or employment of any kind whatsoever under the constitution or laws of this State or of the United States or any of them. I think that a member of the County Board of Education holds a political trust and that, therefore, a judge of the Orphans' Court is disqualified under the above article from continuing as a member of such a board.

Very truly yours,

ALBERT C. RITCHIE, Attorney General.

MISCELLANEOUS—NATIONAL GUARD—STATE OF MARYLAND.

Hon. Henry M. Warfield, August 21, 1919.
Legal Counsel of Maryland
National Guard Executive
Headquarters, Maryland.

MY DEAR COLONEL WARFIELD: I have your letter of August 7th enclosing an opinion given to the Colonel Commanding of Kentucky, on the status of the National Guard of that State. In this opinion the Attorney General of Kentucky concurs, and the Governor of Kentucky has followed it by issuing his proclamation.

You ask my views on the subject, in order that you may be properly advised as to the State's attitude towards the old

National Guard, in taking up the organization of the National Guard which you have been called upon to do by the War Department.

It is Colonel Colston's opinion that Sec. 111 of the National Defense Act, providing that all members of the National Guard drafted into the military service of the United States under that section "shall, from the date of their draft stand discharged from the militia" contemplates merely their temporary discharge until such time as the United States releases them from service. At such time he considers that the State can hold in a National Guard all officers and possibly all enlisted men who were drafted, and whose terms of officers or service as prescribed by the State laws have not expired. He recommends, as a matter of policy, however, that the State does not attempt to hold any man or officer against his will.

Colonel Colston's opinion has a great deal of force, and is probably correct, although the point, which has never arisen before, is not free from doubt.

It hardly seems to me necessary, however, to decide the legal question, because the Governor and Attorney General of Kentucky seem to me entirely right in their conclusion that even if Colonel Colston is correct in his opinion that the members of the National Guard can, under the circumstances, still be held, it would be most unwise, as a matter of State policy, to attempt to hold these men against their wishes, even if this can be done legally, and if you and Governor Harrington concur in this, then it is unnecessary to decide the purely legal question. It seems to me that the men in question should be dealt with as they are in Kentucky, namely, they should be given the opportunity to enlist in the new National Guard, but should only be actually enlisted therein in case they signify their willingness to do so.

I return Colonel Colston's opinion and the Proclamation of the Governor of Kentucky.

Yours very truly,

Newton D. Baker, *Secretary.*

MISCELLANEOUS. NOTARIES PUBLIC. NUMBER OF BLANKS TO BE PROVIDED.

July 26, 1919.

Hon. Hiram E. McMullen,
Comptroller,
Annapolis, Md.

DEAR SIR: I have your letter of July 23, in which you ask whether a Notary Public who was a resident of Baltimore County at the time of his appointment, but who became a resident of Baltimore City by virtue of the Annexation Act, is entitled to the number of Protest Blanks allowed the notaries of Baltimore City, or whether he is only entitled to the lesser number of such blanks allowed notaries from the counties.

Under the provisions of the Annexation Act (Ch. 82, Acts of 1918, Sec. 18) every person holding any State or County office who was a resident within the territory annexed to Baltimore City at the time of the passage of the Act, continues to hold such office until the termination of his then pending term as if the Act had not been passed.

In view of this clause, it seems clear that the notary about whom you write is, for this purpose, to be treated as a notary from Baltimore County. I am, however, unable to find any provision of law limiting the number of blanks notaries are entitled to receive, and it seems to me, therefore, that the whole matter is an administrative one, to be determined by your office.

Yours very truly,

ALBERT C. RITCHIE, Attorney General.

MISCELLANEOUS—PAROLED PRISONERS—FAILURE TO MAKE LAST REPORT—ARREST FOR VIOLATION OF PAROLE.

February 17, 1919.

Harry S. Hartman, Esq.,
Secy., Advisory Board of Parole,
Brown Trade Bldg., Baltimore, Md.

DEAR MR. HARTMAN:—I beg to reply to your favor of February 10.

You say that when prisoners are paroled you require monthly reports from them during the period of their parole, and that the last report is due on the day the parole expires, which is also the expiration of the term for which they were sentenced; and you ask whether you can arrest, as parole violators, those who do not submit this last report.

Failure to submit this last report is, of course, a violation of one of the conditions of the parole, and under Sec. 7E of Art. 41 of Bagby's Code the paroled person may be arrested, as a parole violator, and required to serve the unserved portion of his sentence.

Very truly yours,

ARTHUR C. RICHARDS, *Attorney General.*

MISCELLANEOUS—POLICE MAGISTRATES IN FREDERICK CITY—COSTS.

April 5, 1919.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
11 E. Lexington St.,
Baltimore, Md.

DEAR MR. BAUGHMAN:—I beg to reply to your favor of March 20th, in which you ask whether the police magistrates in Frederick City should try automobile cases without charging any costs, in view of the fact that they receive salaries for their services instead of fees.

The local laws governing the jurisdiction of these magistrates are the Act of 1908, Ch. 537, p. 785, and the Act of 1908, Ch.

339, p. 793, the latter having been amended by the Act of 1916, Ch. 191. This legislation provides annual salaries for the magistrates, and they "shall receive no other or further fees for any services rendered by them in criminal cases," but nothing is said with regard to costs.

In my opinion to you of June 26, 1916 (Attorney General's Opinion, Vol. 1, p. 227), after enumerating the costs chargeable in automobile cases, I said that "the amount of costs aforesaid is not affected by the fact that the justice may be paid a fixed salary in lieu of fees."

I think it clear that the police magistrates in Frederick City should impose the costs provided by the motor vehicle law, and should account for the same to the Clerk of the Circuit Court, in accordance with Sec. 250A of the Act of 1916, Ch. 191.

Very truly yours,

Albert C. Ritchie, Attorney General.

Mr. Charles Mc. Cast, Board of Correctional Institutions, Penitentiary, Baltimore, Maryland.

December 8, 1920.

Board of Correctional Institutions,
State Board of Prison Control,
Lexington Street Building,
City.

Mr. Oscar Mc. Cast: Your communication asks if the Board is authorized by law to pass a rule authorizing the personal property of escaped prisoners for the purpose of creating a fund from which to pay rewards for those who are recaptured. Of course, this question relates only to such property of escaped prisoners which is held at the House of Correction or the Maryland Penitentiary.

I think that the Board was given this authority under the provisions of Sec. 656 and 657 of Art. 27, Vol. 3 of the Annotated Code of Maryland, Ch. 3 of the Acts of 1920.

Section 656 provides that:

"The said board shall have full power and authority to make, repeal, alter or amend such rules and regulations not inconsistent with law, for the maintenance, discipline

and conduct of institutions, prisoners, officials and employes, by this subtitle placed under its supervision and control, as may be necessary and convenient for the proper administration of the power, authority and discretion, conferred upon it by this subtitle."

Section 610 provides that:

"The State Board of Prison Control shall prescribe the character of punishments for violations of prison discipline in the said institutions, etc."

Very truly yours,

PHILIP B. PERLMAN, *Asst. Attorney General.*

MISCELLANEOUS — STATE BANKING LAW — BRITISH IMPERIAL OR COLONIAL BANKS.

Hon. Gilbert Fraser,
Market Building,
111 E. Fayette St.
Baltimore.

March 10, 1919.

DEAR SIR: I have your favor of March 5th, asking whether British Imperial or Colonial banking institutions are permitted to do business in Maryland as Federal and State Banks are.

While there is no express prohibition in the Maryland law against foreign banks doing business in this State, yet the examinations which the Bank Commissioner must make of the affairs of State banks which do business here are such as to make it quite clear that only Maryland corporations can conduct the State banking business in Maryland. This has always been the construction of the Bank Commissioner, and it applies, of course, not only to banks of foreign countries, but to banks of other States of this country as well.

It is possible that the Federal Reserve Act or the National Banking Act may contain some prohibition on the subject, but as those are Federal laws, I can, as to them, only refer you to the Federal authorities. My province has only to do with State laws affecting State banks.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

MISCELLANEOUS—WORKMEN'S COMPENSATION—TERMINATION AT DEATH OF MINOR'S CHILD AND REMARRIAGE OF WIDOW.

May 2, 1919.

Charles D. Wagamaster, Esq.,
Chairman, State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

MY DEAR MR. WAGAMASTER:—Under your recent letter in which you request me to construe Sec. 15 of Art. 101 of the Annotated Code in connection with the following facts:

Your Commission on March 8, 1919, ordered weekly compensation for three hundred and thirty-eight and one-ninth weeks to be paid to the State Accident Fund, insurer, and the Piedmont & George's Creek Coal Company, employer, to Mrs. Josephine Caggendello, widow of Nick Caggendello, seven being for the use of the widow and 331/9 for the use of the child. The child died on October 20th, 1918, and the widow was married on April 19th, 1919, the widow remarried. The State Accident Fund has now asked to have the order modified so that compensation may be terminated as of the date of the death of the child, and of the remarriage of the widow respectively.

Section 15 provides in part: "In case of the remarriage of a dependent widow or a deceased employee without dependent children, all compensation under this article shall cease." You ask whether the words "without dependent children" refer to the date of the death of the employee or the date of the remarriage of the widow.

The phraseology of the Workmen's Compensation Act is not such as to lend any assistance to the issue. The adoption of the solution quoted would permit either contingency to be placed upon it. It seems unlikely, however, that the Legislature would compel the payment of an award to the widow after she remarried when there were no dependent children at the time of such remarriage. The reason for such payment has ended, and it seems to me that the payments should terminate when the reason for making the increase has ceased.

I therefore advise you that in my opinion a dependent widow who remarries, and at the time of such remarriage has no de-

pendent children, forfeits all right to further compensation upon such remarriage.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

NOTE. In connection with the above opinion see cases pending in lower Courts—Josephine Gigandelli vs. State Accident Fund, Circuit Court for Allegany County."

OPINIONS

IN

UNAPPEALED CASES

IN

NISI PRIUS COURTS.

NISI PRIUS DECISIONS NOT APPEALED

papers and proceedings in said petition set out and stated, in order that the regularity of the proceedings of said board in the said proceedings might be inquired into; and that such other and further relief might be had for the petitioner as his case might require. On the same day the Court ordered that the writ issue as prayed, and pursuant to said order and on March 1st, 1918, return was made by the said board, and the papers and proceedings were then duly filed in this Court. On March 1, 1918, a motion to quash the said writ was filed by the defendant, the Board of Liquor License Commissioners; and at the same time another motion to quash the writ was filed, individually, by William Pepper Constable, the reasons assigned in both motions being the same. On March 7, 1918, a motion *ne recipiatur* as to the above-recited individual motion of William Pepper Constable and a rule of that same to strike from the files, was filed by the petitioner upon the allegation that there was no sanction in law for such a motion. The motion of the board was filed by the Attorney General of Maryland and his assistant; the individual motion of Constable was filed by other counsel representing him, and it was urged that the appearance in this proceeding on behalf of some of the Attorney General or his assistants, was violative of the provisions of the Acts of Assembly of Maryland of 1916, Ch. 566, Secs. 2 and 3, and it was further urged that no individual member of the board was legally entitled to file an individual motion. § Pleading and Practice, Sec. 726, at from 8[illegible] and [illegible] the parts injuriously affected in the removal of the record under the *certiorari* raises the question by a motion to quash the writ." An inspection of the record justifies the conclusion that the motion of *ne recipiatur* and to strike from the files the individual motion of William Pepper Constable, for the reasons stated, cannot be entertained, and said motion is accordingly overruled.

The record in this case is exceedingly voluminous and much time was necessary for the critical and detailed examination which it has had.

Pessagno, in his petition for the writ, alleges: "That he is entitled by law to specific, definite and certain charges," and that those as filed are not such as he should be required to answer; and that by forcing him to stand trial he is "being

deprived of his constitutional rights in that he is being deprived of his property without due process of law." That he is entitled to a fair and impartial hearing; that William Pepper Constable, the president of the board, has undertaken to act as (a) detective in said case (the Constable admitting that he directed efforts to get testimony); (b) prosecuting witness in said case; (c) witness in said case (in that he stated "I am the last witness in the case in presenting the testimony in support of the charges against the prosecuting attorney in said case, especially his statement, "No power in Baltimore has been able to get testimony on Passagroix's place. There have been communications to the Police Department and reports have come back: 'Nothing, no information regarding him.' I made up my mind to see if I could not find out something" [illegible] in said case in that after testifying he returned to his seat to sit in final judgment on the hearing).

Since stated, the claims of the petitioner are:

That he is entitled to a fair and impartial hearing.

That he is deprived of his Constitutional rights in being deprived of his property without due process of law.

That he is entitled to a fair and impartial hearing.

That he is prejudiced by the illegal and improper functions of an individual member of the Liquor Licence Board.

The proceeding is in further explanation of these allegations, it should be stated that the defect of the grant of certiorari and the extent of the Court's inquiry in the proceeding is thus set out in the case of Higgins vs. Governor, 115 Md. [illegible] "Where the case is brought before the appellate tribunal without the regular course of procedure in the conduct of the judicial proceeding in which it must be engaged, [illegible] the general rule is that the Court from which the proceeding comes, in reviewing the proceedings on the motion to launch, does not go into the merits of the case, unless authorized by statute to do so, for positive result to determining whether the inferior tribunal has jurisdiction and has acted and followed the regular or legal procedure." Mr. Dee, in his work on Pleading and Prac-

ties, 2nd Vol., Sec. 724, states: "That the object of the writ is not to authorize the Court issuing it to take cognizance of the case and to decide it on its merits, but simply *to enquire whether the inferior Court or tribunal has kept within the just limits of its authority and jurisdiction*." And in Corpus Juris, Vol. 11, folio 199, it is said: "Except where otherwise prescribed by statute or authorized by practice, it is the general rule that in ascertaining whether or not the inferior Court or tribunal has jurisdiction and proceeded regularly in making the determination complained of, the reviewing Court is confined to the consideration of the Record, returned in obedience to the writ, in which the errors, if any, must appear."

Fundamentally, then, it is the duty of this Court to enquire whether the inferior tribunal is proceeding within the just limits of its authority and jurisdiction, and to pursue that enquiry in the consideration of the record.

The record in this case shows that it is an incomplete and suspended proceeding begun *for the purpose of hearing charges* made against Pessagno, *touching the revocation of a license to* sell intoxicating liquors or spirituous or fermented liquors already issued to the said [illegible] Pessagno. Examining the law creating the Board of License Commissioners of Baltimore City, at Sec. [illegible] we find, inter alia, the following words: "[illegible] *it shall be lawful at any time for said Board on proof [illegible] that the party licensed [illegible] any law of the State relating to the sale of intoxicating liquor, the said Board shall [illegible] revoke said license*." And further, [illegible] Acts of 1896, Ch. 348, we find, inter alia, the following: "*The license of any person who permits [illegible] in his licensed premises [illegible] place [illegible] upon proof [illegible] revoked by the [illegible] Board [illegible]*."

These two sections constitute the authority and jurisdiction conferred by law upon the board touching the matter of revocation of license.

It appears from the record that the following charges were preferred against the petitioner, Anthony Pessagno:

1. For allowing, suffering or permitting disreputable or disorderly persons to make the licensed premises a customary place of visitation or resort.

2. For allowing, suffering or permitting minors to frequent or loiter around the licensed premises.

3. For fraud in procuring his license.

4. For false statements made under oath in his petition applying for a license, in that he sold or allowed to be sold liquor to minors or allowed minors to drink in said licensed house or on said licensed premises.

5. For a false statement made under oath in his petition applying for a license, in that he has kept or permitted to be kept a bawdy house in said licensed house or on the said licensed premises.

6. For a false statement made under oath in his petition applying for a license, in that he has allowed, suffered or permitted in the gathering together or the visitation to the said licensed house or on said licensed premises of women for lewd or immoral purposes.

It appears from the record that Pessagno had notice of these charges, and also that a hearing was in progress and that testimony had been submitted tending thereto.

It is objected in the petition for the writ:

"That he is entitled to specific, definite and certain charges," and, granting that concededly it is shown that the charges as set out are specific, definite and certain, phrased indeed at times in the very verbiage of the law itself, and followed "by proof" or it held to be "sufficient cause," as by the law provided, this record of the proceedings as to the charges shows the board to be within the just limits of its authority and jurisdiction.

It is further urged by the petitioner that:

"He is deprived of constitutional rights in being deprived of his property without due process of law."

This contention is legally erroneous, and the error lies in the failure to distinguish between the ownership and property in spirits and distilled liquors, the thing itself, and the right to

1890, a short time after the passage of the law now under examination, and that learned judge in the course of his opinion, referring to the case of Tragesser vs. Gray, 73 Md. 250, quotes from the opinion of Bryan, J., in that case as follows: "Their power over the whole subject under the Constitution cannot be questioned. They may prohibit the sale of spirituous liquors entirely if they see fit to do so, and they may control it in any manner which their discretion may dictate. No one can claim as a right the power to sell either at any place, at any place or in any quantity. If he be allowed to sell liquors under any circumstances it is simply by the free permission of the legislature and upon such terms as it may see fit to impose."

In the case of Mc[illegible] vs. [illegible], reported in 21 New York at page 637, it was held that licenses to sell liquors are not contracts between the State and the persons licensed, giving the latter vested rights protected by the Constitution, but are [illegible] permits, [illegible] revocable at pleasure, that [illegible] to impose [illegible] penalties for what would otherwise be an offense against the general law."

The conclusion of the Court in the case now under consideration is that the Act of 1890 will legalize [illegible] the [illegible] permit granted in the exercise of the general police powers of the State to carry on an occupation under such regulations and subject to the penalties in such manner as the power granting the same may see fit by legislative enactment to provide.

So long as the proceeding for such granting, withdrawing or revocation conforms to legislative requirements, it cannot properly be questioned in any tribunal as a violation of constitutional rights.

The record shows that the proceedings do conform to legislative requirements, and because of the entire absence of any grounds of the constitutional rights asserted in the petition, the relief of the petitioner in that respect will be denied.

The claim that the "Board of Liquor License Commissioners of Baltimore City" is in the exercise and true meaning of the legislative enactment made a judicial body, and that by reason of the illegal and improper activities of an individual member

of the said board" (as set out in the record) the said member is legally disqualified from further participation in the hearing now in progress, seems to be the main grievance of the petition. That claim, more briefly stated, is this: The president of the board is disqualified to further sit in this hearing because of his activities, prejudgments and prejudices apparent from the record, and if he continues to sit with the board in further hearing, the action of the board, when reached, will be null and void.

This claim is made by reason of the following section of Article 4 of the Constitution of Maryland:

"Sec. 7. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within such degrees as now are or may hereafter be prescribed by law, or where he shall have been of counsel in the case."

The disqualification of Constable under this section is urged because (as shown by the record) he is interested in the case and has acted practically as prosecuting counsel in the case, and had been theretofore of counsel in the case.

The record shows that Constable himself had drawn the complaint and prepared the charges upon which the hearing was proceeding; that he had gathered information by a personal visit to the licensed premises; that he had made up his mind to see if he could not find out something; and that he had, as a witness, detailed before the board the said personal information.

This alleged disqualification depends upon one finding, and that is, what is this Board of Liquor License Commissioners of Baltimore City? Is it a *judicial tribunal* or an *administrative board* to carry out the provisions of the Liquor License law according to the intention of the legislature?

"Judicial power is the authority vested in some court, officer or person, to hear and determine when the rights of persons or property or the propriety of doing an act are the subject matter of adjudication. Official action the result of judgment or discretion is a judicial act. The duty is ministerial when the law exacting the discharge prescribes and defines the time, mode and occasion of its performance, with such certainty that nothing

formal and exact as would be the case in a *trial involving* interference with *life, liberty or property.*"

It should be noted that the county Court referred to in this case, and to which by the Missouri State the revocation of liquor licenses was committed, was intrinsically a "judicial tribunal" and notwithstanding it was held by the Court dealing with the writ that the county Court was not bound in this particular character of hearing to follow strictly the procedure, the purpose of that proceeding and being to determine and adjudge property or personal rights for grave consequences the judgment of the Court as to whether the liquor had embezzled and the dealt house and should be or not [illegible]

The case of Bachelder [illegible] Lane, Comptroller, The Southwestern Liquor [illegible] People of Texas, [illegible] ministrative official [illegible] ther length than is deemed [illegible] was a suit for an injunction [illegible] liquor dealers, to restrain the [illegible] forfeiture of their license, [illegible] capacity as such [illegible] ing for the revocation of the license [illegible] *proceed as upon a criminal [illegible] depositions [illegible]*

The Court [illegible] capacity and that [illegible] the revocation of the license [illegible] which is very similar [illegible] ceeding being in [illegible] or intoxicating [illegible] inquiry [illegible] liquor dealer [illegible] is authorized [illegible] license, and the question of the guilt or innocence of the dealer is only incidental to the main object of the proceeding. The inquiry is not made [illegible] tunity to him to offer evidence [illegible] *ing not being judicial, no rules of procedure are required to be provided, such as are necessary in judicial investigation.* The

of the public and not any preexisting right of the petitioners were the subjects that were charged to ascertain. There needed no inquiry and surveillance [illegible] judgment [illegible] of a disposed private [illegible] the [illegible] that [illegible]

The [illegible] the [illegible] remained as to the statutory [illegible] of the board independent in relation to the petitioners [illegible] Art. [illegible] Constitution of Maryland. This court [illegible] that in the purposes and provisions of the organic law [illegible] meaning of the legislative mind [illegible] have the legislative power of control over the [illegible] of liquor licenses, as possible in its classification and [illegible] and discretion in all the features of the trade entrusted to the Board of Liquor Licenses [illegible] the administrative agent of the legislature, and it was not its purpose to circumscribe that administrative agent with the strict and formal rules of judicial proceedings and subject its proceedings to the machinery of the courts of justice. This, as urged by the counsel of the board, would frustrate and nullify the fundamental purpose and intention of the legislature in creating the board and vesting in it the powers which the law defines." *The disqualification [illegible] Maryland [illegible] judges of courts of record [illegible] and disqualified merely because [illegible] in the case.*

Counsel [illegible] Wilmer [illegible] Atlantic Bldg., Md., [illegible]

Both, or either of these propositions of the Court of Appeals of Maryland made [illegible] dispose of the petitioners' contentions [illegible]

is prejudiced by the *illegal* and improper activities of an individual member of the Liquor License Board."

The remaining contention of the petitioner, "that he is entitled to a fair and impartial hearing," seems to be a "begging of the question" and cannot prevail, for the record shows that the hearing has not been concluded; that, although entitled to do so, petitioner has offered no evidence in his own behalf touching the matter of the charges made against him, and no conclusion has been reached by the board in the matter.

For the reasons and conclusions hereinbefore set out the Court is now of opinion that there was no just ground for the issuance of the writ in this case, and an order will be signed quashing the said writ and directing the cause to be remanded to the Board of Liquor License Commissioners of Baltimore City, to be there proceeded with according to law; the costs of this proceeding to be paid by the petitioner. Anthony Pessagno.

BALTIMORE CITY COURT

Filed May 28, 1938.

LEWIS L. SELZNICK

v.

CHARLES E. HARPER ET AL.

Appeal From the Ruling of the Board of Commissioners of the Municipal Court of the Baltimore City Wage Boards.

Solomon Hess, Leonard Levy and *Morris Wolf*, for appellant.

Charles Edelson, Thomas Cocoran and *Philip B. Perlman*, for the Board of Commissioners, for appellees.

The authority of the Board of Commissioners depends upon the construction of Section 6 of the Statute, which reads as follows:

"Sec. 6. The Board shall examine or supervise the examination of all wages, rates or prices to be exhibited in the State of

Let us suppose (in the photoplay) the President is to pass through Baltimore in an automobile, and that Joan (the widow of one of our soldiers who has been killed in France, and that she arouses a host of other women who have suffered like misfortune, or who fear this will, or whose husbands and relatives are about to be called to the colors, and that a great throng of them fill the street, stop the President, and that Joan makes an impassioned appeal to him to stop the war. The President says this can not and must not be done; whereupon Joan draws a revolver and shoots herself, that she may not become the mother of another soldier, and then her body is held aloft to the multitude before the President to emphasize the appeal. Could it not be correctly said that Joan violated the recruiting and enlisting service of the United States? To borrow the language of the indictment against Rose Pastor Stokes? With the President unconscious for the King, this is the climax of the photoplay.

It is true that this suggestion is placed over the name of the explanatory statements which are thrown upon the screen from time to time, but nevertheless the suggestion is there for the average the typical mind to take it.

The Board of Censors has a very difficult task in determining whether or not a play comes within the purview of the statute, and in this the Court reconsidering the Board's ruling on appeal.

The interest of the municipality in protecting its people from a writing or a drama which people differ as to its effect. The birth of a "Nation" was produced here, followed by travel to Massachusetts, and in the face of the "War Brides" be permitted to remain after entry, or not, is a matter for permitting it to be. The decision on a question as to whether a play is moral or immoral, or not, is a judicial question, and requires judicial consideration. For this reason where a judicial officer sits on appeal from a Board that is charged with the duty of determining a question such as this, he must feel great hesitancy in adjudicating that the Board has committed an error.

I should hesitate to declare "War Brides" immoral in the narrower sense. It is not of course on a level of salacious. I also feel that it tends to the degradation of the moral sense of the public.

yet I am strongly of the opinion that the finding of the Board that this play is immoral is not arbitrary, and should be sustained.

On this point a consideration of the opinion of the Court in Message Photo-Play Co. vs. Bell, above referred to, will be found useful. There the Court was called on to review the finding of the New York License Commissioner on a photoplay called "Birth Control." The Commissioner declared it to be immoral, indecent and directly contrary to the public welfare. From reading the Court's opinion I should say it was no more lewd or salacious than "War Brides," but the Court refused to set aside the finding of the Commissioner, saying:

"I am of the opinion that it has not been shown that the threatened action of the Commissioner will, if consummated, constitute an abuse of the discretion vested in him, or that it will be capricious and arbitrary or founded upon erroneous information, or that he has not reasonable ground to apprehend that public morality or decency, or the public welfare, will be endangered by the presentation of this motion picture film."

The appeal in this case will be dismissed, with costs to the respondent.

CIRCUIT COURT FOR ALLEGANY COUNTY

April Term, 1918. Filed August 5, 1918.

VINCENZO IMBROGNO

STATE INDUSTRIAL ACCIDENT COMMISSION ET AL.

Walter C. Capper and *L. Philip Kemler*, for appellant.

Philip B. Perlman, Assistant Attorney General, for appellees.

HENDERSON, J.

This is an appeal from a decision of the State Industrial Accident Commission, denying its jurisdiction and dismissing the petitioner's claim for compensation. The facts are extremely

simple. The boy for whose death the claim was made was under 14 years of age at the time of the accident, but held a permit from the proper authority dated November 23, 1917, to work as a laborer in the brick yard of the defendant, which permit gave his age as 14 years on November 16, 1917. He had been employed, however, without the permit and had worked in September, 1917, and he had been working about the machine on which he was killed, although it may be that his duty did not require him to work on it.

There are but two questions in the case:

1. Does the State Industrial Accident Law apply to employers under the legal age?

2. Does the fact of a permit to work having been issued affect the question?

The preamble to the original law of 1914, ch. 1, chapter 800, after setting out the fact that the industrial enterprises of the State produce numerous injuries to workmen and that the rules of the common law distribute the burden of such injuries unequally, at great cost to the workmen and taxpayers for litigation, and to the taxpayers for the support of the injured and their dependents, and further the inadequacy of the common law rules and remedies provided with modern industrialism, uses the language:

"Now, therefore, the State of Maryland, exercising herein its police and sovereign power, declares that all phases of extra-hazardous employments are and shall be deemed withdrawn from the jurisdiction and control of certain rights for workmen in such hazardous employment and their families and dependents, who hereby provided for, regardless of questions of fault and to the exclusion of every other remedy, except as provided in this act."

In ascertaining of the intention there must be used to throw light on the legislative intent. It should also be borne in mind necessarily be presumed that every case of extra-hazardous employment was covered by the law. With the broad statute and other power and constitutional laws at the very highest interpretation, Child Labor Law, contained in Article 100 of the Code, as amended by Chapters 222 and 701 of the Acts of 1916.

In this case it is made a criminal offense to employ minors of specified ages in certain employments. Section 4 prohibits the

employment of children under 14 in or about or in connection with any "mechanical establishment," "manufactory or workshop," and Section 7 provides that "no child under the age of 16 years shall be employed, permitted or suffered to work" "in proximity to any hazardous or unguarded belts, machinery or gearing; or on any machine or machinery operated by power other than foot or hand power."

Under Section 9 children between 14 and 16 are permitted to work at the employments named in Sections 4 and 5 upon obtaining a permit, but children under 14 are not allowed to obtain permits and there seems to be no provision for children under 16 obtaining permits to work at the employments prescribed in Section 7.

The boy injured was actually under 14 and so was not entitled to any permit at all, and even if he had been over 14 he was not entitled to a permit to work at [illegible] manufacturing plant, which would be employment in Section 7.

The first question, therefore, is this: Does the State Industrial Accident Law, by the broad language of its preamble and by its language in Section 14, make it applicable to cases where the employment is illegal under the Child Labor Law? Upon general principles it would seem to be clear that the only relations covered by the Act are those which are legal and authorized. The State can hardly be said to have provided for a large class of cases which it has said must not be permitted to exist. It may be true that equity regards that as done which ought to be done, but is it not fair to hold that the [illegible] did not contemplate, as subjects for remedial legislation, those relations which it has said cannot come into existence [illegible]. A contrary construction would seriously weaken the Child Labor Law. It seems, therefore, much more likely that the legislature, when it used the broad language of the preamble and of Section 14, meant all phases of extra-hazardous employment as permitted by law to be created. This construction, besides being in accord, as I think, with right reason, has been sanctioned by authority. In Hetzel vs. Wasson Piston Ring Co. (N. J.) 98 Atl. [illegible], L. R. A. 1917D 75, quoted by the Commission, Judge Gummere, in a well reasoned opinion puts the matter very forcibly and conclusively, and I am constrained to follow his lead, only refraining from getting

at large from him because of the space it would take. From his statement the language of the act he was construing was as broad in its claim of jurisdiction as ours. See also the Corpus Juris Article on Workmen's Compensation Acts, Section 10, and Stutz v. F. Mayer & Co., Wis., 156 N. W. 971.

Another consideration brings me to the same conclusion. The law provides for a system of insurance, and of premiums based on the wages paid and the probability of loss. Now how could an insurance company, or any mutual aid system, estimate the probable losses, if it did not know what the conditions of employment would be? It is in the nature of things likely that the probability of accident will be increased in proportion to the tender age and inexperience of the workmen, but it is doubtful if a premium assessed for young boys in hazardous work, would be sufficient to cover the likelihood of accidents. But given the limits of age as we have fixed them, statistics are easily available from which the insurer can properly protect himself. It cannot be thought that the law is intended to cover such a case indirectly and in the criminal law.

I am quite convinced that the whole scope of the law is properly interpreted by what statutes existing at the time of its passage and then all repealed together. This is the law laid down by Sutherland. Accident Commission v. Hall, the judgment founded upon it is correct, unless the existence of the act of 1913 changes the original position. I do not think it does. The mere fact that employment is prohibited in order to avoid criminal proceedings, or at the risk of the employer, has brought it within the employment under the compulsory law, though it may well protect the employer against the consequences of employing a child under age. It does not indicate the granting of the license to employ a person of age, but of a tender age. It merely gives a child who should under certain circumstances, be allowed to work, and that no permit shall be granted to children under age. In State v. Milwaukee, 170 N. W. 236, this court recently decided that the Wisconsin statute provided that the Workmen's Compensation Law should be applicable to minors "legally employed." But that is what I think our statute, by a proper interpretation, provides.

The rulings upon the prayers are intended to carry into effect these views. Exceptions are noted for the appellant to the rulings. Under Section 56, providing for appeals, the Court sitting as a jury can do nothing but pass upon such questions of fact as are, upon motion, submitted to the jury, which has not been done in this case. As a jury I find that the deceased was employed or permitted to work about a manufactory or workshop, and that he was under 14 years of age, and as a Court I find this to have been an illegal employment outside the scope of the Workmen's Compensation Law, and that the Commission has acted within its powers and has correctly construed the law and the facts, and the Court affirms the decision of the Commission. If either side wants the matter more formally put for an appeal, I will do so. Without knowing what the practice in such cases is, it would seem to me that issues should be submitted to the Court as a jury and answers to these issues of fact obtained.

IN THE BALTIMORE CITY COURT

(Filed October, 1915)

LEE, MOORE

LAWRASON BROWN et al., Constituting the Board of Police Commissioners of Baltimore City.

Kenfield & Kenfield, for plaintiff.

William Pinkney Whyte, Atty. Gen. (*Leonard Wise*, Asst. Atty. Gen.), for defendants.

RULINGS

Opinion on Demurrer to Plea.

DUFFY, J.

In this proceeding it appears that the plaintiff was arrested in a criminal prosecution for larceny, and the goods in question were seized by the police. In due course he was tried and ac

quitted, and sued out the writ in this case against the Police Board, and seized the goods which were the subject of the charge of larceny against him.

Replevin will lie against the Police Board for a detention of property which is not warranted by law. Soper vs. Michael, 125 Md. 515.

Section 755 of the Charter, relied on by the defendants, is a regulation of the department prescribing the duties of police officers, detectives and the secretary of the board. It is not intended to affect the rights of an individual whose goods are unlawfully detained by the board.

The plaintiff in this action can recover if he can show a right of possession in himself as against the defendant. The Transportation Company, which also makes a claim for the goods, can not interfere with the right of the plaintiff to a judgment in this case, because it is not a party to this proceeding, and has no right to intervene to have its rights litigated. Wells on Replevin, Sec. 671.

Not being a party, the company is not bound by the judgment and can replevy the goods from the plaintiff, notwithstanding this proceeding, if it can prove its right to possession as against him, unless it is estopped on the principle laid down in McKinzie vs. B. & O., 28 Md. 174.

The defendant can plead property in a third person, and upon the issue thus joined the burden will be upon the plaintiff to show title or right of possession superior to that of such third person. Pleasants Practice, Sec. 112; 108 Md. 100, Hopkins vs. Crouch.

Upon such plea, if the assessors determine in favor of the defendant, he is entitled to return of the goods, regardless of whether the plaintiff's title, and consequently the possession which he had before the seizure of the goods was wrongfully disturbed by the replevin. Lancaster vs. Wooster, 31 Md. 361; 1 Hill, 353, Ingraham vs.

The second plea sets up title and possession in defendant and is good.

The third plea is bad. It is permissible but not usual to join principal and agent as defendants in replevin. 113 Mass. 103, White vs. Dolliver; Wells on Replevin, Sec. 144.

Demurrer to first and third pleas sustained, and to second plea overruled.

IN THE BALTIMORE CITY COURT.

(Filed January 4, 1929.)

Proceedings on Writ of Mandamus to Compel Issuance of Extension of Automobile Trucks Motor Vehicle Commissioner of Maryland.

CHARLES H. KAUFMAN

vs.

E. AUSTIN BAUGHMAN, Commissioner of Motor Vehicles, Constituting the State Roads Commission of Maryland.

Osborne L. Nellott, for the petitioner.

Philip B. Perlman, Assistant Attorney General, for the defendant.

Gorter, J., orally:

It appears that the manufacturer has sold to his purchaser that the truck would carry three tons or three and one-half tons. I do not see anything in the law to the effect that the roads must necessarily be perfect. I think the impression that it would make upon a purchaser is that he would safely offer to load put a body on the chassis that represent to him that he would safely carry in that body, without violating the warranty, three and one-half tons. Of course the truck might be so bad that it could not carry two tons, and it might be that the roads would be so good that you could carry four tons with safety. But the fair meaning, it seems to me, to be put on the ordinary man is that the truck will carry three and one-half tons under favorable conditions.

As the Commissioner of Motor Vehicles has given the ruling that the manufacturer gave, and as the manufacturer gave to the purchaser that he warranted the truck to carry three and one-half tons, it seems to me the classification would be justified in classifying this truck as one that exceeded the tonnage limit.

The question has been raised by counsel as to the way in which the manufacturer has classified the truck, and it has caused a

very interesting argument. I believe the intent of the law was to leave a question of that character not to an inexperienced man in automobiles, but to one who is supposed to be skilled, like Commissioner Baughman. I believe it is not a question for the Court to determine, but is a question for the commissioner to determine.

Therefore, as it seems to be a question that he could reasonably determine in the way he has, and he has so determined it, it does not lie within the province of the Court to overrule his decision.

I will dismiss the petition.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

Filed April 30, 1919.

MAYOR AND CITY COUNCIL OF BALTIMORE

vs.

M. BATES STEPHENS, STATE SUPERINTENDENT OF PUBLIC SCHOOLS.

Petition for Mandamus Against State Superintendent of Schools to Correct School Census — [illegible] Powers and Duties of [illegible] — School Fund Distribution — [illegible]

[illegible], City Solicitor, for the petitioner.

[illegible], for the defendant.

[illegible], J.

The petition prays that the writ of mandamus be issued to command the State Superintendent of Schools to modify or supplement the school census of 1918, so that the population between the ages of six and fourteen years in the areas annexed to the City in 1918 shall be credited to the City in the basis for apportioning two-thirds of the residuum of the State School Fund under Article 77, Sec. 138 of the Code.

It appears from the testimony taken, as well as from the exhibits filed with the pleadings, that the school census of 1918 was based upon an enumeration of colored children as of April 15th, and of white children as of May 15th. Effort was thus made to gather the figures before the end of the current school year. Reports of the results were, in some instances, not placed in the hands of the State Superintendent of Schools until after June 1st, and the tabulation of all figures was not completed until later. The figures were tabulated according to the geographical divisions as they existed before June 1st, regardless of the shift of territory and population from Baltimore and Anne Arundel Counties to Baltimore City on that date. Without a special inquiry, out of the ordinary course of proceeding under the statutes, it was inevitable that this should be so. The statutes (Article 77, Secs. 21B, 22M and 75) would ordinarily require merely that the teachers in the counties should report on the facts within their several domains, to their principals, and that the principals and superintendents in turn should gather the figures and forward them to the State Superintendent as the reports of the separate county organizations. Collection of figures to meet a shift of boundaries and populations to take effect later would seem to require special and additional directions for a particular census. The times of taking the existing census, that is, as of April 15th and May 15th, would be evidently proper in regular course. And for all that appears in the case the census was correctly taken as of those dates. It does not divide the children so that the figures can now be compiled from it to conform to the changes in boundaries. The new boundary lines run right through populations enumerated in the present county school census, and leave on each side children counted in the census of schools on the other side; and facts and figures which would be necessary for a census according to the new lines have not been collected.

Counsel for the City argue that the present census must be regarded as a census "taken" within the meaning of Section 21B, after June 1st, and after the shift of population, because the reports and tabulations came after that date. On this argument the application for the writ of mandamus is largely based. Section 21B gives the State Superintendent express power to

a census should present an enumeration in one part of the State of only the children between the ages of six and twelve years, whereas Section 211B itself requires that it enumerate all in the State between six and eighteen years, can it reasonably be held that the power to make the correction needed is to be found under the clause which empowers the State Superintendent to act when in his judgment the need exists? The answer can only be, as I see it, that the clause under discussion is limited to the correction of defects, not in essentials of the scope of the census, but in the original enumeration within the correct limits. As has been said, I think that in this case we are not concerned with the clause in question.

To meet the objection of the Courts, then, it would be necessary for the census takers to return to the work and ascertain the residences of children who attend school near the new boundary lines, on each side. Is there to be found in the law any requirement that the census of 1915 be so extended? And, if so, does the law anywhere impose upon the State Superintendent a clear duty to bring about that extension, a clear duty the performance of which a court can enforce? The statutes which order the taking of the census, Sects. 211B, 25M and 75, give no specific directions for the scope and classification of it. Section 211B, which contains the directions to the State Superintendent, reads:

> "The State Superintendent of Schools, subject to the rules and regulations of the State Board of Education, shall direct the taking of a biennial school census of all children in the State between the ages of six and 18 years inclusive, to be taken in the year 1915 and every two years thereafter, etc."

And no more explicit directions are contained in Sections 25M and 75. The latter of these sections would be satisfied by an enumeration in a single figure of all the children in the State between the ages of 6 and 18 years. As the census is to be taken by counties, through the separate county superintendents, it is clearly contemplated, perhaps, that it shall be tabulated to show the population distributed among the counties. But the letter of these statutes does not require collection of figures for any further classification.

the figures on which it was intended he should proceed. And if the census had to be made in the Spring, before June, then to fulfill its function, it should have anticipated the changes of June 1st, and made the inquiries which is demanded in the present petition.

But is there imposed upon the State Superintendent a corresponding duty to procure the addition, by supplemental census, which upon this representation appears to be required? And can the Court enforce the performance of this duty? Section 211, provides merely that the State Superintendent of Schools shall direct the taking of a census every two years. In no place can that duty be found in the duties of the State Superintendent, as laid down in Section 1 and 2 of the act, which relate to the taking, arranging, and tabulating of the census, and make no mention of the State Superintendent, nor of any other officer, and the only duty which will enable him to perform the duties prescribed according to the new census, is that of preparing and publishing the census.

Should this duty devolve upon the State Superintendent?

One of the questions suggested is that the petition, and the duty which may rest upon the State Superintendent under Section 211, is discretionary, and not a ministerial one, and that the Court. This has been discussed in the briefs of counsel. It has been said the last clause of that section, which relates to the taking of the census, is a mere direction, as to the time of the first taking, relating to the period, leaving the matter in the executive to the discretion of the Board of Supervisors, practically, and teachers. The decisions cited, I find, in the contrary, I regard as the result of an error in the construction of the language of the State Superintendent's duties. There is no mention of an essential, analogous, or substantial, in the enumeration of counties or other large districts allegating from enumeration. And, outside

of the clause in question I can find no reason for denying the writ.

Another objection to its issue is that the correction demanded would work an injustice to county taxpayers. Much of the argument in the case was based upon this objection; and if well founded it would probably make the Court hesitate to interfere. It is assumed in the objection that the fund under discussion is to be paid out to meet the burden of education in the annexed areas from and after the first of October, 1918. The Annexation Act defers the transfer of schools and education in those areas, however, until January 1st, 1919. It would be a partial defeat of the legislative purpose, and injustice to the county taxpayers if in consequence of a transfer in the figures of population the City should receive the portion of the fund due for the education of so much population during three months while the burden of education is borne by the counties. But I agree in the statements of Judge Thomas and Judge Moss in their opinions filed on the writ by the City for an injunction against the State Comptroller, that the fund is to be paid to it to aid in meeting the burden and cost of education only after January 1st, 1919, and not for the months of October, November and December, 1918. The fund is not to be paid out for the education [illegible] for the school year. I have concluded that there [illegible] the city from this [illegible].

The writ of mandamus will issue commanding the [illegible] to supplement the school census of 1918 by instituting an inquiry, and causing to be collected figures showing the population of children between the ages of 6 and 18 years, the [illegible] resident within the areas annexed to Baltimore City under the Act of 1918, Chapter 82. It will be impossible now, perhaps, to present the figures as they would have been [illegible] before September 30, 1918. But it is after all the proportionate distribution of population on which apportionment of the fund is to be based, and the proportion may not have changed materially in the last year. It will be sufficient if the inquiries to be made bring in the best practicable supplementary information [illegible] to compliance with the purposes of the statute.

IN THE SUPERIOR COURT OF BALTIMORE CITY.

(Filed July 28th, 1919.)

STATE OF MARYLAND

vs.

N. WINSLOW WILLIAMS.

Stamp and Fees as the Secretary of State.

Suit for Return of Fees Received.

Philip B. Perlman, Assistant Attorney General, for plaintiff.

Edgar Allan Poe, for defendant.

BOND, J.

The Constitution provides a salary and emoluments for the Secretary of State; and the General Assembly by the Acts of 1916, Chapter 119, Sections 159 and 159A provided that the moneys fees paid by owners and operators of motor vehicles, and dealers should be retained by the Secretary of State [illegible] in issuing the licenses, etc.

The plaintiff contends that the collection of these fees constitutes an unconstitutional increase of compensation to the officer; and on this point counsel have argued and submitted the broad question whether the General Assembly may add to the compensation of any one of the officers the amount of whose salary is specified in the Constitution without regard to the legislative increase or diminution.

Standing alone, a statement that the salary shall be so much clearly amounts to a statement that it shall not be so much or any indefinite amount beyond so much. That would be the ordinary meaning and effect of the words and we must, I think, take that as their meaning here unless the evidence available shows a different conception of them on the part of the framers of the Constitution. It seems to me that the source of all the difficulty in holding to this construction — the proposition that the salaries specified for the judges shall not be diminished during

Several other State constitutions had provisions that the compensation of judges should not be diminished during their continuance in office; and the same provision had been adopted in Maryland by a constitutional amendment ratified in 1866. (See collection of "American Charters, Constitutions, etc.," edited by Thorpe.) Compensation for the judges had been added to in Maryland by several legislative enactments before 1851 (e. g., Act 1828, Chap. 127). There had also been several increases of the salaries of Federal Judges by Acts of Congress (e. g., Act approved May 29, 1828). In all of these instances the legislative bodies had the fixing of the compensation in the first instance, and when they made modifications they modified only their own previous enactments. It was toward the middle of the century that the practice of specifying the amounts of salaries in constitutions began.

Sections 1 and 3 of Article 4 of the Maryland Constitution of 1851 specified the amounts of salaries of judges and added that these should not be increased or diminished during the continuance of the judges in office. The Committee on the Judiciary Department in the convention of 1864 had recommended that the limiting provisions should be simply that the salaries should not be *diminished*. In order to give the compensation a specified amount with a limit on upward changes, a clause was moved.

The Constitution of 1867 provided for a salary for all judges, but only with relation to the Judges of the Circuit Courts in the counties and the Judges of the Orphans' Courts. Diminishing by legislative action. There was no prohibition against the increase or diminution of the salaries of these judges during their continuance in office. (Art. 4, Secs. 21, 24 and 25.)

The Committee on the Judiciary Department of the Constitutional Convention of 1867 reported a page [illegible] the proceedings a draft in which the salaries of all judges were stated in amount with a provision that they should not be diminished during their continuance in office. During the consideration amendments were offered, some to fix the amount of salary without any clause limiting change, some to fix the amount with a clause prohibiting increase or diminution during a term of office, and some to leave the fixing of amount to the Legislature.

have agreed with him in the main and the following quotation may be taken as a statement of their views and purposes.

Mr. Cristield (Vol. 2, page [illegible]):

"Now a system like this was the worst that could be conceived, because the judge's salary was dependent on the discharge of his judicial functions. The most mischeivous system on the face of the earth for the payment of judicial labor was that by which the pay of the judge depended on granting the requests of suitors. This system had been growing up for prescriptional ever since 1828. Vol. was had it been growing up. Because the judges had not been affected directly from the Treasury, a reasonable compensation for their services. Hence this reprehensible system of legislation. He did not intend to cast odium upon those judges. He had never heard that there so much complained of. But the [illegible] could be counteracted and he hoped [illegible] to prevent all temptations to exercise the [illegible] direct means. He [illegible] the judges to receive a compensation. He [illegible] a compensation sufficient to [illegible] should not be diminished while the [illegible] go further and say it should not be [illegible] commission. The judge should [illegible] and he should know that [illegible] fixed, and not to be [illegible] there."

After the [illegible] the amendment of Mr. Brooks, that [illegible] the word "[illegible]" [illegible] motion of Mr. [illegible] judges." Later Mr. [illegible] consider Mr. Brooks' [illegible] in future increase the salaries. He suggested that it would be [illegible] to legislate [illegible] sufficient to [illegible] to increase them. The [illegible] said he [illegible] to it.

(Mr. Miller.) Does not this clause apply to judicial officers as well as to others? Certainly it does. It prohibits the Legislature from making them any greater. I think the provision of the Constitution of the United States is a proper one. It gives to Congress the power to increase the salaries of officers whose minimum salary is fixed in the Constitution. If the amendment is adopted I hold the Legislature ought to have the power to increase.

(Mr. Sterling.) The Constitution says that the judges shall receive so much, and no more, and then the salary is to remain fixed; the Legislature cannot increase it.

(Mr. Miller.) Does this power not imply superfluous?

(Mr. Schleicher.) I agree to pass. It is decided not in the committee that under a certain [illegible] the salaries of public officers can be increased or diminished, but not at any public office during his term of office.

(Mr. Miller.) The provision in the Constitution of the United States is very much modified. I should place upon this provision of the Constitution should the amendment be adopted. The clause of the Constitution of the United States in reference to the salary of the President, provides that he shall receive a certain compensation, which shall not be increased or diminished during the term for which he shall be elected. That [illegible] to the portion of the Constitution relating to the judiciary, and find the provision to be that the judges shall receive for their services a compensation which shall not be diminished during their continuance in office. But Congress has increased the salaries of the judges of the Supreme Court of the United States and of district judges [illegible] there being nothing in it prohibiting [illegible] making such additions [illegible] may choose to give to them [illegible] allow the Legislature [illegible] of the currency, to [illegible] to keep them up to the standard of [illegible] salaries."

Debate then proceeded upon the subject of accomplishing the result.

Mr. Stirling then offered an amendment to make the clause read:

"Nor shall the salary or compensation of any public officer be increased or diminished during his term of office, except in cases specially authorized by this Constitution." And he added:

"That will embrace every case. It looks like an invidious distinction in favor of judges, to mention them in this particular manner, and it will be an unpopular thing. It will be saying that the Legislature can give judges what they please, but no other else. Make it a general provision, and not one especially in favor of judges."

Mr. Miller: I will accept the suggestion of my friend from Hillsboro (Mr. Stirling) if this section does not lead us up when we come to the article on the judiciary. I will therefore modify my amendment so as to read as follows, the following words:

"Except as otherwise provided for in this Constitution."

Mr. Stirling: Now, Mr. President, I hope gentlemen think the judges are going to sell themselves for their old salaries when they are elected under the present constitution, there are not many applicants. Now the making a precedent in your organic law which will last with some twenty years at the hands of the Legislature, such power to exclude amended by the people at one time, may be a danger of consequence. And I am sorry that we may model that perhaps for the future.

Mr. Stirling: Now, Mr. President, I have presented to the convention all my arguments.

A constitutional convention represented debates in the convention of 1847 has not the right to give the individual members of the Legislature to charge debates.

I have stated my side of it. I think the course of the material upon which a construction has to be made.

The debates, I think, do not always furnish us with the explanations and constructions we need. The expressions of opinion by a few members in the course of discussion can hardly be taken as giving the final opinions even of those members; and

certainly by no means reveal the opinions of the majority of the convention. And the expressions we have are conflicting on most points.

The actions taken by the conventions seem to me to give us some guidance, however.

In the Constitution of 1851 we find the original of the combination of salaries specified as to amount for the various executive officers, with the general clause in another place prohibiting increase or diminution of officers' compensation during their terms; and the salaries of judges also specified in amount, but with the same prohibition against increase or diminution attached. When, then, the members of the Constitution of 1857 drafted the clauses in question fixed the salaries of the executive officers, they failed to add directly to them the restriction upon increase and diminution which in the Constitution of the United States and in the Constitutions of two-thirds of the States had long been familiar incident of the provisions for compensation of these officers. We must take this action, I think, as a deliberate exception of the restriction as to such salaries, unless we can assume that the general restriction adopted as to the salaries of "public officers" was intended to repeal these salaries the amounts of which the Constitution had fixed so stated. But it seems hardly likely, if this were intended, that the same restriction would be specifically applied to one group of officers, the judges, with fixed salaries. There would be no reason for doing so. And I think we must infer from this that the general restriction was not intended to be applied. If this is correct, if the general restriction did not affect the fixed salaries of all other officers, there is hardly room for doubt that the Legislature was left with unlimited power over the amount of compensation of those officers, or that it was left with none at all. Unlimited power in the Legislature to vary officers' salaries was contrary to the old practice of the time, and seems inconsistent with the object of the Constitution in fixing the amount in the Constitution itself. These considerations seem to lead to the conclusion that the salaries fixed in the Constitution of 1851 were intended to be beyond legislative power to the Legislature to modify. It may be said that this argument subjects the Constitution to too severe a test of logical consistency, and the

without verbal change and given a new and enlarged significance. It almost certainly means the same as before; and if the earlier reasoning is correct it did not affect salaries fixed in the Constitution but left them beyond the power of the Legislature.

My conclusion upon this argument is, therefore, that the prohibition against the diminution of the salaries of judges in the last Constitution does not support a construction that the Legislature has power to modify fixed salaries generally, except in so far as it is restrained in the Constitution expressly. This is arguing from such indications as we have outside the clauses themselves which fix the salaries without more.

It seems to me merely to confirm the conclusion from the ordinary meaning of such clauses, as I have said. And so in my opinion, the Legislature did not have power to add to the compensation fixed by the Constitution for the office of Secretary of State. If construed as attempting such an addition then Sections 131 and 139A of Chapter 119 of the Act of 1906 are invalid.

But there is still another question to be answered in order to determine the validity of a statute which attempts to add to the compensation of such an officer. The fixing of a salary in the constitution does not prevent the allowance of additional compensation for services performed outside the duties of the office. If, for instance, a distinct new office is conferred upon the same officer, he may be given the compensation proper to such. And, by the same reasoning, when the Legislature imposes distinct duties without establishing a new office, additional compensation may be given for the additional services, notwithstanding a prohibition in any such clause as has been discussed against an increase in compensation for any one office. An illustration is in the case of United States v. Brindle, 110 U. S. 688, in which the holder of the office of receiver of public moneys at a Government land office was appointed to assist a special commissioner to dispose of lands of certain Indian tribes ceded to the Government in trust for that purpose. The Supreme Court approved payment of additional compensation upon this reasoning.

"When, therefore, Brindle was appointed special receiver and superintendent, to assist the special commissioner in disposing

of the trust lands, he was employed to render a service in no way connected with the office he held.

He was not appointed to any office known to the law. No such duty was imposed on him as receiver of the land office. So far as anything appears in the record, the appointment was not made because Brindle was receiver of the land office. The duties to be performed were of a different character and at a different place from those of the land office, and while the exact amount of compensation for this service was not fixed, it was clearly to be inferred that such compensation as the law implies where labor is performed by one at the request of another, that is to say, a reasonable compensation, would be paid."

In Lane vs. Baxter, 17 Cal. 364, the Court approved an extra allowance of $1,500 to the Attorney General of the State who had been designated to act with a board of examiners to approve or reject claims against the State, examine books of officers, count moneys, and invest funds. This was held to be extra work though he was at liberty to decline consistently with the full performance of the duties of his office. Referring to the Superintendent of Schools and the State Geologist the court said: "Can we be blamed with any show of reason that the Legislature could compel either of them to become a collector or warden of the State prison or superintendent of the State lunatic asylum."

So a register of deeds has been held entitled to receive additional compensation for making reports of mortgages to assessing officers and registers in other counties. Boothe vs. Auditors, 74 Mich. 129.

Magistrates have been allowed additional compensation for attendance at committee meetings. Thomas vs. O'Brien, 12 Nev. 1[illegible].

The Mayor of a city, who was a lawyer by profession, was held entitled to receive extra compensation for defending a suit brought against the city. Mayor vs. Muzzy, 33 Mich. 61.

A judge properly received additional compensation for the work of issuing liquor licenses. Miami vs. Collins, 17 Kans. 1[illegible].

On the other hand neither a judge nor a clerk of court were allowed additional pay for added work in connection with the

selection of juries. This work was considered appropriate to their office. Moore vs. Nation, 50 Kans. 672; United States vs. King, 147 U. S. 676.

The Maryland Constitution, Article 2, Section 23, provides that:

"The Secretary of State shall carefully keep and preserve a record of all official acts and proceedings, which must at all times be inspected by a committee of either branch of the Legislature; and he shall perform such other duties as may be prescribed by law, or as may properly belong to his office, together with all clerical duty belonging to the Executive Department."

This gives a broad charter to the Legislature to impose new duties on this official. But it is not an unlimited charter. The necessity and of compensation in the proper sense of expression shows that a limited field of power was in the minds of the framers of the Constitution. We think, therefore, we should defend the purpose of the section to mean that the office if we add duties without one limit and not indicate the compensation throughout at this figure or expense. We must say, with some of the decisions cited, that the Legislature has not the power to compel the performance of extraordinary and unusual duties, which seems to be the case in question, and as the present case is extra compensation, with which we are concerned. Legislature to an unusual extraordinary duties of these kind the office to the Legislature is so nearly unlimited, it might lead to abuse, as sometimes it is likely to lead to abuse. We could hardly say whether the new duties are in other cases to be the Legislature are reasonable treat them as outside the scope contemplated in the creation of the office and the compensation provided, and regard it as a side or additional compensation. We have the right to consider do so the courts must defer to the judgment of the Legislature on the character of the new duties and their relation to the office as originally created. The Legislature is likely to be much better informed on these things. And following these principles we conclude that the Legislature might well have concluded that the work of registration and licence of motor vehicles under the Act of 1906 was distinct from that of the original office. It is a matter of a kind unthought of in 1867, when the Constitution was adopted, and it is a matter of magnitude

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O. A. G.

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William Pinkney	1805
John Thomas Mason	1806
John Johnson	1806
John Montgomery	1811
Luther Martin	1818
Nathaniel Williams, Assistant Attorney General	1820
Thomas B. Dorsey	1822
Thomas Kell	1824
Roger B. Taney	1827
Josiah Bayley	1831
George R. Richardson	1845
Robert J. Brent	1851
*Alexander Randall	1864
Isaac D. Jones	1867
Andrew K. Syester	1871
Charles J. M. Gwynn	1875
Charles B. Roberts	1883
William Pinkney Whyte	1887
John P. Poe	1893
Harry M. Clabaugh	1896
George R. Gaither, Jr.	1899
Isador Rayner	1900
William S. Bryan, Jr	1904
Isaac Lobe Straus	1908
Edgar Allan Poe	1912
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STATE LAW DEPARTMENT.

Alexander Armstrong	Attorney General.
Allan H. Fisher	Assistant Attorney General.
J. Purdon Wright	Assistant Attorney General.
Lindsay C. Spencer	Assistant Attorney General.
Amos W. W. Woodcock	Assistant Attorney General.
Miss Hattie F. Fuxman	Stenographer.
Miss Anna Davis McSherry	Stenographer.

OFFICES:—633-649 Title Building, Baltimore, Md.

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ERRATA.

Page 35—For "June 9, 1920," read "July 9, 1920."
Page 54—Line 6. For "Act of 1898" read "Act of 1916."
Page 229—Lines 6 and 7. For "beginning November 30th, 1916, and ending on December 1st, 1919," read "beginning December 1st, 1918, and ending on November 30th, 1919."
Page 276—Line 11. For "formerly" read "formally."
Page 354—Heading. For "markets" read "markers."
Page 442—Line 14. For "Acts of 1920" read "Acts of 1910."
Page 477—Line 11. For "section" read "ordinance."
Page 477—Line 32. For "62" read "462"
Page 503—Second heading. For "vote" read "veto."
Page 511—Address. For "Carroll County" read "Caroline County."

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Annual Report for 1920.

BALTIMORE, MD., *January 1, 1921.*

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR RITCHIE:

In fulfillment of the duty imposed upon me by Section 8 of Chapter 560 of the Acts of 1916, I take pleasure in submitting to you a report of the activities and accomplishments of the State Law Department during the period beginning December 20th, 1919, the date upon which I was inducted into office, and ending December 31st, 1920, together with a statement of the receipts and disbursements of the Department during the fiscal year beginning October 1st, 1919, and ending September 30th, 1920.

The official opinions rendered by my Department since I became Attorney General follows this report, in accordance with the requirements of Article 8.

ORGANIZATION.

After I took charge of the office, Mr. Ogle Marbury, who acted as one of your Assistants while you were Attorney General, was very helpful in familiarizing me with the methods and routine of the Department and gave such assistance as was possible until January, 1920. Mr. William Pinkney Whyte continued to serve as a regular Assistant until July 1st, 1920, when he tendered his resignation. On January 15th, 1920, Mr. Allan H. Fisher became one of the Assistants, and on January 20th, 1920, Mr. J. Purdon Wright also accepted an appointment as Assistant Attorney General. The complement of four Assistants was filled by the appointment, on February 1st, 1920, of Mr. L. C. Spencer. Following the resignation of Mr. Whyte, Colonel Amos W. W. Woodcock, of Salisbury, was named as his successor, and began the discharge of his duties on September 1st, 1920.

SUMMARY OF LITIGATION DURING 1920.

Supreme Court of the United States.

American Telegraph and Telephone Company vs. *State of Maryland.* No. 108, October Term, 1920. The American Telegraph and Telephone Company, under the terms of an agreement with the Conowingo Bridge Company, had been paying certain rentals annually to said Company for the privilege of conveying its wires across the Company's bridge over the Susquehanna River. Upon the acquisition of the bridge by the State Roads Commission, the Telephone Company declined to make any further payments, contending that it was relieved of any such charge by reason of its contractual relations with the State. Suit was brought and a judgment secured in favor of the State. This judgment was affirmed by the Court of Appeals in the case of the American Telegraph and Telephone Company vs. State Roads Commission, 134 Md. 11. The case was thereupon carried to the Supreme Court on a writ of error. Briefs had been prepared and the case would have been argued by Mr. Wright and the Attorney General, but about a week before the date set for argument Mr. Carter, representing the Telephone Company, notified us that he had decided to dismiss his appeal. A stipulation authorizing this disposition of the case and imposing the payment of costs upon the plaintiff in error was thereupon signed by both parties and filed in the Supreme Court.

Chesapeake and Potomac Telephone Company of Baltimore City vs. State Roads Commission of Maryland. No. 119, October Term, 1920. The Chesapeake and Potomac Telephone Company entered into an agreement with the Baltimore and Yorktown Turnpike Company, under the terms of which it agreed to pay to said Company twenty-five cents a year for each and every pole maintained by it on said turnpike. Subsequently, when the State Roads Commission purchased said turnpike road, the Telephone Company declined to make any further payments to the State for the use of the road. Suit then was brought, and judgment was rendered in behalf of the State, which judgment was affirmed by the Court of Appeals of Mary-

land in the case of Chesapeake and Potomac Telephone Company vs. State Roads Commission, 134 Md. 1. Upon a writ of error the case was carried to the Supreme Court. The Company contended that its contractual rights with the State of Maryland guaranteed to it the free use of the highways of the State. Briefs had been prepared and the case would have been argued by Mr. Fisher and the Attorney General. About a week before the case was called, however, Mr. Carter, representing the Telephone Company, notified this office of his purpose to dismiss his appeal and pay the costs thereof. A stipulation to this effect was thereupon filed in the Supreme Court.

William E. Johnson vs. The State of Maryland. No. 289, October Term, 1920. William E. Johnson, as the driver of a truck owned by the United States Government, and operated in its mail service from Mount Airy to Washington, was arrested in Frederick County for operating a motor vehicle without having first obtained a chauffeur's license, as required by the Maryland Motor Vehicle Law. He was found guilty by a magistrate, and an appeal then was taken. The case was heard by the Circuit Court for Frederick County on January 3, 1920, the Attorney General appearing for the State, and the judgment of guilty was affirmed. Thereupon the case was taken upon a writ of error to the Supreme Court of the United States, where the case was argued in behalf of the State by the Attorney General and Mr. Wright. The Court reversed the judgment of the State Court and held that Johnson, as an employee of the Federal Government, was exempted from the operation of the State law requiring all operators of motor vehicles to secure an operator's or chauffeur's license from the Commissioner of Motor Vehicles.

Criminal Cases Tried in the Court of Appeals.

January, April and October Terms, 1920.

Seven criminal appeals were disposed of during the year. The State secured the dismissal of one of these appeals, won three and three have not been decided.

Nobura Ishida vs. State. No. 4, January Term, 1920. Appeal from the Circuit Court for Baltimore County. Conviction of manslaughter. Upon motion of the Attorney General the appeal was dismissed for failure to print the record within the prescribed time.

George M. Baehr vs. State. No. 15, January Term, 1920. Appeal from the Criminal Court of Baltimore City. Conviction for bastardy. Judgment affirmed. The Attorney General appeared for the State.

Hollis Bowser vs. State. No. 3, April Term, 1920. Appeal from the Circuit Court for Harford County. Conviction for breaking and entering a dwelling house during the day time. Judgment affirmed. The Attorney General appeared for the State.

Vernon Kenny Leister vs. State. No. 20, April Term, 1920. Appeal from the Circuit Court for Carroll County. Conviction for bastardy. Judgment affirmed. The Attorney General appeared for the State.

Andrew Reid Myers and Herbert Myers vs. State. No. 51, October Term, 1920. Appeal from the Criminal Court of Baltimore City. Conviction for receiving stolen goods. The Attorney General and Mr. Spencer appeared for the State. Sub curia.

Andrew Reid Myers vs. State. No. 52, October Term, 1920. Appeal from the Criminal Court of Baltimore City. Conviction for receiving stolen goods. The Attorney General and Mr. Spencer appeared for the State. Sub curia.

Andrew Reid Myers vs. State. No. 53, October Term, 1920. Appeal from the Criminal Court of Baltimore City. Conviction of larceny. The Attorney General and Mr. Spencer appeared for the State. Sub curia.

Bernard Ulman and David Ulman vs. State. No. 92, October Term, 1920. Appeal from the Criminal Court of Baltimore City. Judgment of guilty of selling liquor for non-beverage purposes without a license. Judgment affirmed. The Attorney General appeared for the State.

Civil Cases Tried in the Court of Appeals.

January, April and October Terms, 1920.

Eight civil appeals were disposed of during the year. Two cases were settled, the State won five and lost one. These cases were:

The Mayor and City Council of Baltimore City vs. Sam W. Pattison, Clerk of the Criminal Court of Baltimore City. No. 3, January Term, 1920. Appeal from the Baltimore City Court, where a judgment for $19,234.91 had been secured in favor of Mr. Pattison establishing the liability of the Mayor and Council of Baltimore for fees in criminal cases. Judgment affirmed. The Attorney General appeared for Mr. Pattison.

S. Marvin Peach, State's Attorney for Prince George's County, and W. Wesley Beall, Sheriff of Prince George's County, vs. Southern Maryland Agricultural Association of Prince George's County. No. 42, January Term, 1920. An injunction had been granted by the Circuit Court for Prince George's County, restraining the Sheriff and State's Attorney from interfering in any way with the Southern Maryland Agricultural Association in the conduct of its race meeting at Bowie, more particularly from arresting persons found betting on races on its grounds. Order reversed. Mr. Wright appeared for the appellants. This decision led to the passage by the Legislature of Chapter 272 of the Acts of 1920, which protected the Southern Maryland Agricultural Association in the holding of its spring meet.

N. Winslow Williams vs. State of Maryland. No. 1, April Term, 1920. Appeal from the Superior Court of Baltimore City, where a judgment for $6,729.77 had been secured by the State, establishing its right to collect from Mr. Williams, as a former Secretary of State, all fees paid to him during his tenure of office except fees received for issuing motor vehicle licenses. Under the authority of Chapter 288 of the Acts of 1920, the costs having been paid by Mr. Williams, this case was entered "agreed and settled."

State of Maryland vs. N. Winslow Williams. No. 2, April Term, 1920. Appeal from the Superior Court of Baltimore City. This was a cross-appeal taken from the decision of the lower Court in the same case, to the effect that the State was not entitled to collect from former Secretaries of State the fees received by them for issuing motor vehicle licenses. The costs having been paid by Mr. Williams, this case was entered "agreed and settled."

Josephine Giggndelle, Claimant, vs. Piedmont and George's Creek Coal Company, and The State Accident Fund, Appellees. No. 40, April Term, 1920. Appeal from an order of the Circuit Court for Allegany County sustaining an order of the State Industrial Accident Commission, refusing payment of compensation to the claimant upon her re-marriage, following the death of the only child of the claimant and the deceased employee. Order affirmed. The Attorney General appeared for the State Accident Fund.

George D. Iverson vs. Philip B. Perlman. No. 49, April Term, 1920. Appeal from the Superior Court of Baltimore City dismissing petition for mandamus to compel the Secretary of State to place the name of Mr. Iverson on the official ballot in the Democratic primary as a candidate for United States Senator. Mr. Perlman had declined to do so because of an alleged failure on the part of Mr. Iverson to file his certificate of nomination within the statutory time. Order affirmed. The Attorney General and Mr. Fisher appeared for the Secretary of State.

Thomas E. Good vs. Lawrason Riggs, Edward T. Burke and Edmund J. Wachter, Constituting the Board of Police Commissioners of the City of Baltimore, and Thomas F. McNulty, Sheriff of the City of Baltimore. No. 11, October Term, 1920. Appeal from a judgment of the Baltimore City Court sustaining a demurrer filed in behalf of the Police Commissioners to the petition of Mr. Good, praying for a mandamus to compel the Police Commissioners to deliver to the Sheriff of Baltimore City, who was seeking to execute a writ of replevin, a certain stolen automobile held by the Commissioners for evidentiary

purposes. Judgment affirmed. The Attorney General appeared for the Police Comissioners.

Joshua Levering et al., Constituting a Committee of the Lord's Day Alliance, vs. Board of Supervisors of Elections of Baltimore City. No. 54, October Term, 1920. Appeal from a judgment of the Superior Court No. 2 of Baltimore City, sustaining a demurrer filed by the Supervisors to the petition of the Lord's Day Alliance for a mandamus to restrain the Supervisors of Elections from placing upon the official ballot for 1920 the referendum on the Sunday movies for Baltimore City. This case involved the constitutionality of Chapter 522 of the Acts of 1920. Judgment reversed. The Attorney General appeared for the Board of Election Supervisors. Judge Alfred S. Niles and Mr. Joseph C. France, representing private clients, also filed a brief and made arguments in behalf of the appellees.

Cases Finally Disposed of in Lower Courts.

Twenty-four cases were finally disposed of during the year, so far as the lower courts are concerned. Of these, the State lost one, won sixteen, and in the remaining seven settlements were effected which were favorable to the State and entirely satisfactory to the State officials involved.

Arthur S. Stevenson vs. E. Austin Baughman, Commissioner of Motor Vehicles. Circuit Court for Carroll County. Bill to enjoin the Commissioner from taking away registration markers on traction engine. Injunction made perpetual. Mr. Fisher appeared for the Commissioner of Motor Vehicles.

State vs. Charles F. Adams. In the Circuit Court for Frederick County. September Term, 1920. Conviction for murder in the first degree. This case arose out of the Sandy Spring Bank robbery. The Attorney General appeared, with Thomas L. Dawson, State's Attorney for Montgomery County, and Aaron R. Anders, State's Attorney for Frederick County, for the State.

William Oliver Downton and Marion Grace Downton, Infants, vs. State Industrial Accident Commission, Insurer. On

December 10th, 1919, the Court of Appeals filed a decision in which they held that the matter of total or partial dependency was a question of fact to be determined by the jury, and a new trial was awarded. The case was then settled by an agreement to have entered in behalf of the claimants an award for payments which would aggregate $500.00, to be paid by the State Accident Fund.

Frank M. Fisher vs. Board of Police Commissioners. In the Superior Court of Baltimore City. Judgment by consent in favor of the plaintiff. The plaintiff to pay the costs. Mr. Whyte appeared for the Board of Police Commissioners.

Thomas E. Good vs. Board of Police Commissioners. Replevin for a stolen automobile. Plea, *in custodia legis.* Case continued pending outcome of petition for mandamus filed by Mr. Good vs. the Board of Police Commissioners to compel delivery of car to Sheriff under writ of replevin. This case was decided in favor of the Commissioners in No. 11, October Term, 1920. Mr. Whyte appeared for the Board of Police Commissioners.

Baltimore Dry Dock and Shipbuilding Company vs. Board of Police Commissioners. In the Superior Court of Baltimore City. Replevin for automobile. Verdict by consent for the plaintiff. Plaintiff to pay costs. Mr. Whyte appeared for the defendants.

Florence Daniels vs. Maryland State College. In the Circuit Court for Prince George's County. Suit for personal injuries. Upon motion filed by the Attorney General, judgment of *non pros* was entered for failure to file narr.

Henry Lee Hoffman vs. Board of Police Commissioners. In the Superior Court of Baltimore City. Judgment for plaintiff by agreement. Plaintiff to pay all costs. Mr. Whyte appeared for the defendant.

William Kesmodel vs. Charles D. Gaither, Police Commissioner. In the Baltimore City Court. Action of replevin. By agreement plaintiff was permitted to repossess car, upon his agreement to take no judgment against the Police Commissioner

and to pay all costs. Mr. Fisher appeared for the Police Commissioner.

Charles Henry Koehler, an Infant, by Charles Koehler, His Father and Next Friend, vs. E. Austin Baughman, Commissioner of Motor Vehicles. In the Baltimore City Court. The infant plaintiff's license had been suspended for a period of thirty days. The infant plaintiff, by his father, attempted to sue out a writ of prohibition demanding the return of his license. The writ was filed on the theory that the infant had been acquitted by Justice Staylor, that therefore his license could not be revoked for the same offense. Decision for the State to the effect that in spite of the dismissal by the magistrate the Commissioner of Motor Vehicles could penalize the offender by revocation or suspension of license. The infant plaintiff thereupon appealed his case from the Commissioner of Motor Vehicles to the Baltimore City Court. However, as the infant plaintiff had already been deprived of his license for thirty days from the date of suspension before the appeal was reached, the appeal was abandoned. Mr. Fisher represented the Commissioner.

Jacob Levin vs. Lawrason Riggs, Edward F. Burke and Edmund J. Wachter, Constituting the Board of Police Commissioners of Baltimore City. In the Superior Court of Baltimore City. Replevin suit. *Nol pros* entered by order of the plaintiff. Mr. Spencer appeared for the State.

National Bank of Commerce vs. James J. McCrary. In the Superior Court of Baltimore City. The Police Commissioner was made garnishee. By agreement the automobile in question was delivered to the plaintiff upon receipt of contract of indemnity to the Police Commissioner. Mr. Fisher appeared for the State.

Milton C. Naditch, Infant, by Oscar Naditch, His Father and Next Friend, vs. Wallace Brummel and Roger Williams. In the Superior Court of Baltimore City. Action for false arrest against two members of the force of the Commissioner of Motor Vehicles. It was urged in this case that inasmuch as Milton C. Naditch, the infant plaintiff, was acquitted of the

charge preferred against him, his arrest was false and malicious. However, under cross-examination of Naditch in the civil case evidence of his guilt was so clearly presented that his counsel entered a *non pros* in open court. Mr. Fisher represented the defendants.

Norwood vs. Ellis. In the Baltimore City Court. Action of false arrest against August Ellis, former police officer. In this case Norwood took the stand and under cross-examination made such contradictory statements that after a conference with the Court his counsel entered a *non pros.* Mr. Fisher appeared for Ellis.

State of Maryland vs. Paul Krieger, Manager of the Fox Film Corporation's Washington Office. Before Justice Rohleder, in the Northeastern Police Station. The traverser was charged with two crimes—exhibiting an uncensored film, and unlawfully using the seal of the State Board of Motion Picture Censors. Verdict guilty. The traverser was fined $25.00 and costs on the first offense, and $50.00 and costs on the second offense. Mr. Fisher represented the State.

State of Maryland vs. Frank J. Willis. Before Justice Rohleder, in the Northeastern Police Station. Charged with unlawfully leasing film without the eliminations made by the Board of Motion Picture Censors to Harry Kahn. Fined $25.00 and costs. Mr. Fisher appeared for the State.

State of Maryland vs. Safe Deposit and Trust Company. Suit in the Court of Common Pleas of Baltimore City to recover collateral inheritance tax due from defendant as trustee and executor of the estate of Florence S. Di San Gallo. Upon agreement of counsel verdict was entered in favor of plaintiff for $6,174.26. The Attorney General appeared for the State.

Mary Parker, Claimant, vs. State Accident Fund. In the Superior Court of Baltimore City. Appeal from a decision of the State Industrial Accident Commission. Claim for compensation as a result of Vincent Parker's death. First trial, jury disagreed. Second trial, case taken from jury on prayer of defendant. Mr. Spencer and Mr. Whyte appeared for the State Accident Fund.

State vs. Stevensville Bank. During the year the receivership was terminated by order of the Circuit Court for Queen Anne's County, and the bank was placed again under the control and government of its board of directors.

John William Baker vs. State Industrial Accident Commission et al. In the Circuit Court for Allegany County. Appeal from decision of the Commission. Case stetted at April Term.

D. Myers & Sons vs. Board of Police Commissioners et al. In the Superior Court of Baltimore City. Judgment for plaintiff. Costs on other defendant.

Millicent Goddard James vs. Morgan R. Goddard, Maryland Agricultural College, et al. No. 32877. In the Supreme Court of the District of Columbia. Case settled upon payment by the Maryland Agricultural College to Miss James of $2,500.00 for her interest in property in controversy, said amount to be invested for the benefit of Miss James during her life, and upon her death to revert to the College.

Laura S. Luck vs. State Roads Commission. Circuit Court for Anne Arundel County. Replevin of certain personal property. Case stetted.

The Fisher and Carozza Brokers Company vs. State Roads Commission. In the Circuit Court of Baltimore City. Demurrer to bill praying an injunction to restrain Commission from proceeding with the building of the Pocomoke River bridge sustained. Appeal taken to Court of Appeals. Appeal now pending.

Thompson et al. vs. Hook. In the Circuit Court for St. Mary's County. Protest as to oyster lease applied for by Hook in 1916. The assignor of Seipp had made application on the day before the application of Hook was filed for a lease, which was granted without protest. The protest to Hook's lease, in describing the area covered, included the area embraced in Seipp's lease. The Commission sought to protect Seipp as to his rights, and by a ruling of the Court succeeded in doing so, although final judgment was in favor of the protestants. Colonel Woodcock appeared for the Commission.

Cases Pending in the Court of Appeals.

Grace Cothron vs. State of Maryland. No. 17, January Term, 1921. Conviction for murder in the first degree. Appeal from the Circuit Court for Montgomery County.

Robert Robinson vs. State of Maryland. No. 24, January Term, 1921. Conviction for murder in the first degree. Appeal from the Criminal Court of Baltimore City.

The Fisher and Carozza Brothers Co. vs. John N. Mackall et al., Constituting the State Roads Commission. Appeal from the decree of the Circuit Court No. 2 of Baltimore City, sustaining the demurrer to bill of complaint for an injunction to restrain the State Roads Commission from proceeding with the building of the Pocomoke River bridge. No number yet assigned.

Cases Pending in Lower Courts.

Bradshaw vs. McMullen. In the Circuit Court for Anne Arundel County. Test of Mother's Pension Law.

United Railways and Electric Company vs. State Tax Commission. Circuit Court No. 2 of Baltimore City. Case stated for determination of liability of the Railway Company for bonus tax on increased stock.

Hugh F. Smith and Ernest Bohannan vs. Conservation Commission of Maryland. In the Circuit Court for St. Mary's County. Bill for injunction. Demurrer filed.

Patrick Hanley vs. State Roads Commission. Circuit Court for Baltimore County. Bill to enjoin encroachment on land.

Mayor, Counsellor and Aldermen of the City of Annapolis, etc., vs. State Board of Health. Circuit Court for Anne Arundel County. Bill to enjoin the construction of a filtration plant in the City of Annapolis.

Samuel Cummins vs. Maryland State Board of Motion Picture Censors. Baltimore City Court. Appeal from decision of Board refusing permission to exhibit.

David T. Benson vs. Veterinary Medical Board. Baltimore City Court. Mandamus to compel Board to grant veterinary license.

William I. Smith et al. vs. Conservation Commission. Circuit Court for Talbot County. Bill to restrain the granting of an oyster lease. Demurrer filed by defendants.

George Kofskey vs. State Roads Commission. Circuit Court for Baltimore County. Injunction to prevent damages to land.

In the Matter of the Mortgage From Alexander Lacey and Thomas Vincent, etc. Circuit Court for Montgomery County in Equity. Petition of State for proceeds of sale of escheated land.

Julia Jacobs. Claim No. 6429, before the State Industrial Accident Commission. Petition to have the State Accident Fund pay the award in this case to the personal representative of the deceased beneficiary. It was urged by the State that the death of the beneficiary abated the award and that therefore the State Accident Fund should not be compelled to pay the award to the personal beneficiary. The case was decided by the Commission adversely to the State, and an appeal was prayed to the Circuit Court for Caroline County, where the case is now pending. Mr. Fisher appeared for the State Accident Fund before the Commission. Colonel Woodcock will represent it before the Caroline County Court, the case being set for January 10, 1921.

Edward A. Ryan vs. Galen L. Tait, John H. Hanson, Robert D. Carter, Leroy Eagan and Albert Holland. In the Baltimore City Court. The plaintiff in this case is suing for false arrest arising out of his being taken into custody during the address of Hon. Warren G. Harding, President-Elect, at the Fifth Regiment Armory.

Richard J. Carnaggio vs. E. Austin Baughman, Commissioner of Motor Vehicles. Appeal from revocation of license. This case was originally set for December 8th, 1920. However, at the suggestion of this office, detectives were assigned to determine whether or not Carnaggio drove a car during the period of revocation. As a result, three charges were brought against

him, upon all of which he was convicted, as set out below. His attorney thereupon decided not to press the appeal until after final disposition of the criminal charges.

State of Maryland vs. Richard Carnaggio. Before the Traffic Court. Operating a motor vehicle after October 19th, 1920, after license had been revoked. Found guilty, sentenced to sixty days in jail. Appeal to the Criminal Court of Baltimore City.

State of Maryland vs. Richard Carnaggio. Before the Traffic Court of Baltimore. Operating a motor vehicle after license had been revoked on November 29, 1920. Trial Wednesday, December 1, 1920. Found guilty and sentenced to sixty days in jail. Appeal filed.

State of Maryland vs. Richard J. Carnaggio. Charged with having knowingly permitted his car to be driven by a chauffeur whose license had been revoked. Case postponed to December 8, 1920. Sentenced to sixty days in jail. Appeal filed. Mr. Fisher represented the State in all four of the Carnaggio cases.

County Commissioners of Baltimore County vs. William E. Beck, Chairman; J. Enos Ray and Oscar Leser, Constituting the State Tax Commission. Appeal from the State Tax Commission in re apportionment of certain taxes between Baltimore City and Baltimore County. Case tried before Hon. Frank I. Duncan, Saturday, November 6th, and Tuesday, November 9th. *Sub curia.* Mr. Fisher appeared for the State Tax Commission.

Charles W. Gallagher vs. Herman H. Posmo, Police Officer. In the Court of Common Pleas of Baltimore. Judgment by default entered on August 23rd. Default occasioned by failure of a police captain to transmit the writ of summons to police headquarters, as a result of which no notice of suit was brought to this office. A motion to strike out the judgment was filed. Motion granted. Case now pending.

C. Foster Matthews, Milton Matthews and O. Paul Tull vs. John N. Mackall, Omar D. Crothers and D. C. Winebrenner, Constituting the State Roads Commission of Maryland, Acting

for and on Behalf of the State of Maryland. In the Circuit Court for Somerset County. No. 3428, Equity. Injunction proceeding against State Roads Commission. Colonel Woodcock has filed an answer in behalf of the Commission.

Reuben Deibert vs. John N. Mackall, Omar D. Crothers and D. C. Winebrenner, Constituting the State Roads Commission of Maryland. In the Circuit Court for Cecil County. Injunction proceeding to restrain the Commission from laying concrete road at a certain point in Elkton. The Commission is willing to have the injunction made perpetual and will build around the space in controversy.

Abraham Hemp, Jr., and Walter C. Doty vs. State Roads Commission. In the Circuit Court for Frederick County. Action of ejectment to test title to certain land now occupied by State Roads Commission. Mr. Leo Weinberg, special counsel, will represent the State Roads Commission.

Jacob Briskman vs. Thomas F. McNulty, Sheriff; Joseph Schapiro and Bernard Schapiro. In the Superior Court of Baltimore City. Action of damages for unreasonable seizure. Demurrer filed to the declaration. Hearing, demurrer sustained. Amended declaration. General issue pleas and plea of justification filed for the Sheriff. Mr. Wright appeared for the Sheriff.

State of Maryland vs. W. Wesley McAllister, Former Sheriff of Cecil County. In the Circuit Court for Cecil County. The Attorney General rendered an opinion that the provision of the Motor Vehicle Law requiring all fines for violations of the law to be paid to the Commissioner of Motor Vehicles repealed all local laws in conflict therewith, and that the Sheriff of Cecil County should not have diverted one-half of a fine received by him to the Bar Association of Cecil County. The Sheriff being unwilling to pay the entire fine to the Commissioner, suit was instituted to recover the full fine of $500.00 received by him. This case was recently argued before the full bench of the Second District. Colonel Woodcock represented the State. *Sub curia.*

Yorkshire Insurance Company vs. Board of Police Commissioners. In the Baltimore City Court. Replevin for automobile.

Oscar Leser et al. vs. J. Mercer Garnett et al., Constituting the Board of Registry of the Seventh Precinct of the Eleventh Ward of Baltimore City. In the Court of Common Pleas. Petition to strike from the registry of the Seventh Precinct of the Eleventh Ward the names of two women registered by the Board of Registry for that precinct on the ground that the Nineteenth Amendment to the Constitution of the United States is invalid. The case has been argued and is now awaiting decision. Mr. Spencer represented the Board of Registry. Other counsel representing the suffrage cause also participated in the argument in behalf of the Board of Registry.

John E. Caulk et al. vs. Conservation Commission of Maryland. In the Circuit Court for Talbot County. Protest application of Morton B. Steele for oyster lease in Back Creek, tributary of Broad Creek, Talbot County.

Harry Gammerman vs. Board of Police Commissioners. In the Court of Common Pleas. Replevin for diamond ring held as evidence.

London and Lancaster Fire Insurance Company vs. Board of Police Commissioners. In the Superior Court of Baltimore City. Replevin for automobile.

John Paska vs. Board of Police Commissioners. Circuit Court No. 2 of Baltimore City. Bill for injunction restraining the Sheriff from executing writ of *fieri facias* issued on judgment in favor of Lee C. Clark against John Paska, recorded in the Superior Court of Baltimore City. It developed that the said Paska had not been summoned and that the People's Court of Baltimore City had, subsequent to the date of recordation, stricken out the judgment. Under the circumstances a restraining order was entered by consent. Mr. Wright appeared for the State.

John Paska vs. Thomas F. McNulty and Lee C. Clark. In the Superior Court of Baltimore City. Action in tort for dam-

ages for wrongful seizure. Mr. Wright represents Sheriff McNulty.

George Winters vs. Board of Police Commissioners. Baltimore City Court. Removed to Superior Court. Replevin for automobile held as evidence.

In the Matter of the Appeal of the Maryland Pythian Building Association From the State Tax Commission. In the Baltimore City Court. Appeal from an order of the Commission refusing to exempt the above corporation from the payment of the franchise tax.

Frank Johnson vs. J. A. McAllen & Brother vs. State Accident Fund. Policy had been issued to J. A. McAllen & Brother. This firm was dissolved. Accident happened to employee of succeeding firm, George U. McAllen & Son. The old policy had not been assigned and no new policy had been issued. Argued before the State Industrial Accident Commission. Decision unannounced. Colonel Woodcock represented the State Accident Fund.

Bank Receiverships Now Pending.

State vs. People's Savings Bank of Baltimore, Inc. Mr. Page, Bank Commissioner, acting as substituted receiver. The bonding company has announced that it will pay in full each of the $2,000 bonds given by the president and treasurer and the receiver will now proceed to wind up the affairs of the bank.

State vs. Citizens' State Bank of Govans. Mr. Page acting as substituted receiver. A sale of all the assets of this bank has been made, but the receivership has not yet been terminated.

State vs. Savings Bank of Libertytown. J. Duke Downes, former Bank Commissioner, was heretofore named as receiver. Application will be made for the appointment of Mr. Page as substituted receiver. This action is rendered necessary by the probable receipt of additional assets as a result of a recent Court decision in favor of the receiver of one of the largest debtors of the bank.

Scope of Work.

The responsibilities of the State Law Department, which acts as the legal adviser of all State officials, Boards and Commissions, are constantly multiplying, due to the increasing volume of business of Boards and Commissions formerly established, and to the creation by each succeeding Legislature of new State agencies. The Legislature of 1920 brought into being the Maryland Racing Commission, the Central Purchasing Bureau, the State Employment Commission, the Headlight Commission, the State Athletic Commission, and the State Board of Boiler Rules, of which the Attorney General was made a member. All of these Commissions have asked this Department for advice and suggestions in connection with their organization. The Blue Sky Law, which I shall discuss later, and which was passed by the General Assembly of 1920, also imposed new obligations upon the Attorney General.

Assignments to Departments.

The Attorney General has personally acted as the adviser of the Bank Commissioner throughout the year, and has endeavored to keep in close touch not only with the various problems raised by the work of that Department, but as far as possible with its varied activities. He has also maintained a personal familiarity with the legal requirements of the other Boards and Commissions, and in many instances has conferred personally with their representatives and disposed of the problems presented.

Mr. Wright has been specially assigned to the Insurance Department, to which he has given valuable assistance during the year. He also acts as special adviser of the State Roads Commission. He represented it in several important settlements during the year, including the settlement effected with the National Surety Company of New York for the losses sustained in Allegany and Arundel Counties by reason of the failure of the Luch Construction Company, and in Montgomery County by reason of the failure of H. C. Voigt, which losses amounted to approximately $91,000. Under the compromises

arranged, the sum of $77,500 was received by the State without the necessity of delay for legal proceedings.

Mr. Wright also succeeded in preventing the Commission from being enjoined from proceeding with the building of the Pocomoke River Bridge in the case instituted against it by The Fisher & Carozza Company, which case is referred to in the list of cases disposed of in the lower courts. During the year forty-three contracts made by the State Roads Commission for the building of 61.53 miles, and providing for the expenditure of $1,581,292.40, were examined and approved. An agreement was drawn between the County Commissioners of Baltimore County and the Commission providing for the repairs, both present and future, of the sewers under the York Road, Towson.

Mr. Wright acted as counsel for the Maryland Industrial School for Girls in connection with its acquisition of the Montrose farm, in Baltimore County, as a new site for this institution.

Mr. Fisher has acted as the adviser of the Commissioner of Motor Vehicles. This Department has presented more requests for opinions and has required more attention than any other Department. Mr. Fisher appeared in a number of cases before the magistrates and in the courts of Baltimore City in behalf of the Commissioner of Motor Vehicles, and in nearly all cases has succeeded in sustaining the contention of the Commissioner.

Upon the suggestion of this Department the Commissioner required the manufacturer of license tags to furnish a bond for the prompt and certain delivery of the tags. Mr. Fisher has also acted as special counsel to the Police Commissioner and has conferred with him on a number of occasions concerning various matters relating to the conduct of his Department, especially with reference to traffic regulations and ordinances. He also was present at conferences between the Police Department and the Public Service Commission with reference to the formulation of taxicab regulations.

Considerable work was done by Mr. Fisher in prosecuting violators of the Motion Picture Law. Convictions have been secured in most of these cases. Mr. Fisher also assisted Mr. Yellott, Chairman Zouck of the State Roads Commission, and

the Commissioner of Motor Vehicles, in the preparation of a report on the use of the State roads by traction engines. This report, prepared at the request of the Governor, consisted of thirty-three pages and was accompanied with plates and illustrations.

Mr. Spencer has been specially assigned as counsel to the Board of Election Supervisors of Baltimore City, and to the State Board of Health. In his capacity as adviser of the Board of Election Supervisors, he attended the meetings of the Board, prepared instructions to be issued to Judges and Clerks of Elections and to voters, approved the form of ballots, and from time to time rendered such advice as was necessary. He also rendered valuable assistance to the Attorney General in the preparation of many opinions involving constructions of the election laws. The instructions of the Attorney General which are printed in the bound volume of the election laws prepared by the Secretary of State were completely redrafted by Mr. Spencer and made much more thorough and accurate in their presentation of the various duties of the election officials. As counsel to the Board of Health, Mr. Spencer attends the meetings of the Board and has taken charge of all special matters presented to this Department by that Board, including the proceedings necessary to abate nuisances.

Mr. Spencer also prepared for the "Board of Boiler Rules" the rules and regulations governing proper construction and installation of boilers of over 15 pounds per square inch for sale in Maryland as authorized by Chapter 676 of the Acts of 1920.

Upon the request of your Excellency, Mr. Spencer made a personal investigation of the circumstances surrounding the escape of Isaiah Fountain from the jail at Easton, where he was confined upon conviction of rape. A full report of his findings was later transmitted to you.

Colonel Woodcock has been assigned as counsel to the Conservation Commission, to the State Board of Agriculture, and to the Department of the Adjutant General. As a lifelong resident of the Eastern Shore, he is personally familiar with the waters of the State, and many of the problems of the Conservation Commission. He was a professor at St. John's Col-

lege for some years and made a brilliant record in the Army during the Great War. He is, therefore, peculiarly well qualified to advise the three Departments to which he has been assigned.

Colonel Woodcock will also personally represent the State in all cases or other proceedings in which the State is a party on the Eastern Shore.

Maryland Legislature of 1920.

The Attorney General did not attend all the sessions of the Legislature, but he was in Annapolis every week during the winter, and rendered such assistance as was requested by officials or members of the General Assembly.

Among the bills drafted or revised by my Department were those for the State Board of Health, Mr. Whyte being at that time in charge of this work.

Health Laws:

Providing for the reporting of cholera, smallpox and other dangerous diseases by local and county health officers, the same being Chapter 314 of the Acts of 1920, and a repeal and re-enactment of Section 40 of Article 43.

Providing for the reporting of cases of tuberculosis and prescribing the duties of local health officers and the State Board of Health in connection with the same, being Chapter 315 of the Acts of 1920, and a repeal and re-enactment of Section 91 of Article 43 of the Code.

Providing for the condemnation of adulterated, unsound and unwholesome food by the State Board of Health and its destruction, and also authorizing the State Board of Health to prohibit the sale or disposal of articles of food, condiment or drink that are misbranded, being Chapter 316 of the Acts of 1920, and a repeal and re-enactment of Section 153 of Article 43.

Providing for the registration of vital statistics, being Chapter 317 of the Acts of 1920, and a repeal and re-enactment of Sections 9, 13, 14, 15 and 19 of Article 43 of the Code.

Repealing the standard for Ice Cream and providing for a new standard thereof, same being Chapter 333 of the Acts of 1920, and a repeal and re-enactment of Section 171 of Article 43.

Providing for the organization of City Boards of Health and the appointment of City Health Officers in certain cases, being Chapter 495 of the Acts of 1920, and a repeal and re-enactment of Section 35 of Article 43.

Providing for and requiring notification of deaths from contagious diseases to be sent to Health Officers, being Chapter 496 of the Acts of 1920, and a repeal and re-enactment of Sections 41 and 42 of Article 43.

The following bills were drafted or revised by Mr. Spencer:

Providing for the transfer of insane, lunatic or feeble-minded persons in this State, who are citizens or residents of other States, to such States, and the transfer to this State of insane, lunatic or feeble-minded persons in other States who are citizens of this State, the same being Chapter 206 of the Acts of 1920, to be codified as Section 45-A of Article 59 of the Code.

Repealing and re-enacting Article 32 of the Code, title "Dentistry," the same being Chapter 481 of the Acts of 1920.

Prohibiting the attachment of any certificate or statement of approval to any film, reel or view which has not been approved by the Maryland State Board of Censors, the same being Chapter 651 of the Acts of 1920, and codified as Section 20-A of Article 66-A of the Code.

Providing for the custody, pending trial, of persons alleged to be insane who are charged with crime and are unable to procure bail, and making other changes in the law with regard to lunatic and insane persons, the same being Chapter 735 of the Acts of 1920, which adds an additional section to Article 59 of the Code, to be known as Section 7-A and repeals and re-enacts with amendments Sections 8, 9, 40 and 44 of said Article 59.

To amend the law with regard to the State Veterinary Medical Board and to confer enlarged powers upon said Board, by repealing Sections 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150 and 150A of Article 43 of the Code, title "Health," sub-title "State Veterinary Medical Board," and enacting new Sections of said Article and sub-title under the numbers 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146. This bill failed to pass.

To give the Insurance Commission and his Deputy, power to subpoena witnesses by repealing and re-enacting with amend-

ments Section 177-A of Article 23 of the Code, as enacted by Chapter 101 of the Acts of 1918. This bill failed to pass.

Blue Sky Law.

By Chapter 552 of the Acts of 1920, the duty was imposed upon the Attorney General, of taking such action as was authorized therein, to prevent misleading and fraudulent representations in the sale and promotion of securities throughout the State. Maryland's plan differs from that followed in other States where certificates from proper officials are required as necessary pre-requisites for the sale of all securities. In Maryland, there is no restriction placed upon any sale of securities until complaint is made to the Attorney General. If, upon investigation, he believes that misleading and fraudulent representations are being made in the sale or promotion of securities to the detriment of the public, he is authorized to pass an order requiring the guilty party to cease and desist from said practices. No appropriation was made to meet the expenses involved in carrying out the provisions of the Act, but a voluntary association of Bankers and Brokers has been incorporated under the name of the Blue Sky Committee, Inc., to co-operate with the Attorney General in giving to the law a strong and vigorous enforcement. The measure became effective on the first of June, 1920. Since that date the organization of certain companies has been greatly strengthened and improved upon suggestions emanating from this office. Six or eight companies which had previously been offering securities in this State replied, upon receiving questionnaires from this office, that they were no longer engaged in business in Maryland. Other companies were investigated, and although they were allowed to continue in business, I am confident that the realization that they were under the constant scrutiny of this Department has led to a decided improvement in the methods employed by them.

Tax Collections.

Mr. James Clarke Murphy has continued during the year to act as Special Assistant to collect from domestic corporations, delinquent taxes, and the penalties imposed by the State Tax

Commission, while Mr. Charles B. Hoffman as Special Assistant has performed the same duties with reference to foreign corporations. Mr. Murphy's work has been very effective, resulting in a substantial cleaning up of all delinquent taxes for 1919 and preceding years. There was due him for commissions on July 1st, 1920, the sum of $2,322.82. Certain payments had already been made to him during the fiscal year 1920. The balance in the appropriation for this item on July, 1920, amounting to $635.53, was paid to Mr. Murphy, and there is still due him an unpaid balance of $1,687.29. Unfortunately, through a misunderstanding, I had transferred from this item, the sum of $631.08 to another item in an amendment of the Budget for this Department. The situation presented is rather unfortunate, because the total commissions were greatly in excess of the appropriation for this purpose. The following statement received from the Comptrollers' Office will explain fully all appropriations and disbursements for this purpose, since the law authorizing these Special Assistants was passed:

Appropriation for the fiscal year 1917	$2,000.00	
Expended during fiscal year 1917	1,481.36	
Balance carried forward to fiscal year 1918		$ 518.64
Appropriation for the fiscal year 1918	$2,000.00	
Balance brought forward from fiscal year 1917	518.64	
Total available during fiscal year 1918		$2,518.64
Amount expended during fiscal year 1918		501.93
Balance carried forward to fiscal year 1919		$2,016.71
Appropriation for the fiscal year 1919	$1,800.00	
Balance brought forward from fiscal year 1918	2,016.71	
Total available during fiscal year 1919		$3,816.71
Amount expended during fiscal year 1919		3,185.64
Balance carried forward to fiscal year 1920		$ 631.07

Appropriation for the fiscal year 1920	$1,800.00	
Balance brought forward from fiscal year 1919	631.07	
Total available for fiscal year 1920		$2,431.07
Amount expended during fiscal year 1920	$1,164.47	
Amount deducted from amount available by amendment of Budget	631.07	
		1,795.54
Balance carried forward to fiscal year 1921		$635.53

I am hoping that the commissions on collections for 1920 will be considerably less than the appropriation and that the deficiency in the account may thus be soon corrected. I have also arranged that no bills for these commissions shall be hereafter presented to the Comptroller without first receiving the approval of the Attorney General, so that I may at all times be familiar with the current status of this account.

The delinquent taxes for the year 1920 will be collected by Mr. Robert A. Gracie and Mr. J. Russell Carroll. These gentlemen will together handle all of the accounts and divide the commissions.

Opinions.

During the year a large number of opinions were rendered by the Department. Some of them were of unusual general interest because they dealt with questions arising from the adoption of the Eighteenth and Nineteenth Amendments. All official opinions rendered to State Officers, Boards and Commissions were either prepared personally by the Attorney General, or carefully examined by him before receiving his approval and signature. These opinions have been classified according to the method already established by this Department, and follow this report. They do not include, however, a number of unofficial opinions and statements of the law of the State which were sent as a matter of courtesy to individuals and corporations within the State and to many parties residing outside the State.

Title Work—Special Counsel.

Baltimore County. Examination of title of Montrose Farm, acquired by the Maryland Industrial School for Girls. Counsel, William H. Lawrence. Fee $150.00.

Carroll County. Examination of title for the purchase of property adjoining Springfield State Hospital, Sykesville. Counsel, State's Attorney Theodore F. Brown. Fee $10.00.

Frederick County. Examination of title of property of Oliver Z. Coblentz, purchased by the State Roads Commission. Leo Weinberg counsel. Fee $20.00.

All of the above fees were paid by the particular institution or Department for which the work was done.

Offices and Equipment.

The offices occupied by you, while you were Attorney General, seemed to be so admirably adapted to the needs of the Department that they have been retained, and the State Law Department is still located on the sixth floor of the Title Building. One additional officee has been secured, which enables us to have an office for the Attorney General, an office for two of the Assistants, an office for the other two Assistants, a library and an office for the two stenographers. The library was equipped during the year with a new library table and additional chairs. The office of the Attorney General has been carpeted, several bookcases have been installed, the walls have been repainted, and in other respects the appearance and equipment of the entire Department have been improved.

I regret to state that the raise in rent in February, 1920, is to be followed by an additional increase, which becomes effective in February, 1921.

Conclusion.

It is a pleasure to state to you that in spite of the differences in our political affiliations, I have been shown the greatest courtesy and consideration by every official connected with your administration, and my relationships with them have been exceedingly friendly and cordial and always mutually helpful.

I desire to express also my appreciation of your unfailing consideration and co-operation, and to express the hope that you and your associates, in the administration of the affairs of the State, will not hesitate to call upon this Department for any assistance that may be within our power to render.

I have the honor to be,

Respectfully yours,

ALEXANDER ARMSTRONG,

Attorney General.

Cost of the State's Legal Work During the Fiscal Year Ended September 30.

Appropriations under Act 1918, Ch. 206		$24,000.00
Appearance fees received from cases won by the State and turned into the State Treasury		110.75
Unexpended balance, 1919	$2,579.94	
Unexpended balance, 1919, reverted to State Treasury	521.58	
Balance carried forward to 1920	$2,058.36	
		2,058.36
Total receipts		$26,169.11
Salary of Attorney General	$4,999.92	
Salaries of Assistant Attorneys General	9,583.18	
Stenographers and office help	2,595.32	
Rent	1,774.95	
Postage	230.15	
Office Supplies	517.94	
Books and Periodicals	226.42	
Printing Annual Report and Opinions	1,780.00	
Office Furniture	277.06	
Water, Ice, Towels, etc	186.37	
Travel, Hotel Expenses, etc	366.05	
Extra Typewriting, etc	155.35	
Records, Briefs, Testimony, etc	661.15	
Commissions to Attorneys on claims of the State	1,164.47	
Telegraph and Telephone	429.35	
Total Cost		$24,947.67

OFFICIAL OPINIONS

of the

ATTORNEY GENERAL OF MARYLAND.

ADMINISTRATION OF ESTATES.

ADMINISTRATION—ESCHEAT—DEVOLUTION OF TITLE TO REAL ESTATE OF BASTARDS.

March 20, 1920.

J. O. Snyder, Esq.,
Hagerstown, Md.

MY DEAR SIR: In your letter of March 15th, you present the following facts: A party recently died intestate in Washington County, seized and possessed of real estate. He was an illegitimate son, the only child of his mother. At the time of his death he left no descendents, brothers or sisters or any other relations. His wife was already dead leaving a sister who survived him. You then ask what disposition under the Maryland law must be made of the real estate owned by the party in question at the time of death.

Prior to 1916, the law dealing with a situation of this character was covered by Section 23 of Article 46 as now found in Volume 2 of the Code, which provided that (giving only the language applicable to your case) "if there be no descendants or kindred of the intestate to take the estate, then the same shall go to the wife, and if the wife be dead, then to her kindred in the like course as if such wife had survived the intestate and then had died entitled to the estate by purchase." This statute applies equally to the surviving wives and husbands of bastards and of those born in wedlock, the illegitimacy of the intestate creating no exception to its general operation. Southgate vs. Annan, 31 Md. 113. Had this law remained undisturbed, the sister of the deceased wife would unquestionably have been entitled to take the real estate in question.

In 1916, however, the Legislature, by Chapter 325 of the Acts of that year, now codified as Section 1 of Article 46 in the fourth volume of the Code, provided that the land of an intestate should descend in fee simple to those persons who, under the laws of the State, would be the distributees of the surplus personal estate of such intestate. This statute, being subse-

quent to the one above referred to, dealing with the same subject matter, and being in its terms inconsistent therewith and repugnant thereto, operates as a revocation, by implication, not only of Section 23 of Article 46, above quoted, but also of all other sections of said article, as now codified in Volume 2 of the Code, directing the descents of real estate.

It is necessary then, to ascertain who, under the facts in your case, would have been entitled to any surplus personal estate left by your decedent. The answer is found in Section 135 of Article 93 which, in dealing with distribution of personal estate, provides that "if there be no widow or relations of the intestate within the fifth degree * * * the whole surplus shall belong to the State, and shall be paid to the Board of County Commissioners of the county where any letters of administration shall be granted upon the estate of the decedent, for the use of the Public Schools of said county."

I must, therefore, decide that the real estate in question escheats and becomes the property of the State to be used by it in the manner prescribed in the statute.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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ADMINISTRATION—TRANSFER OF STOCK IN FOREIGN CORPORATIONS OWNED BY MARYLAND DECEDENTS—NO MARYLAND TAX OR OTHER REQUIREMENTS.

May 14, 1920.

Hon. John M. Dennis,
State Treasurer,
Annapolis, Md.

DEAR MR. DENNIS: I acknowledge receipt of your favor of May 1st, enclosing letter from the Wabash Railway Company, in reference to the transfer of one hundred and sixty-three shares of preferred stock A of said railway company, standing in the name of Alexander Gordon, late of Baltimore City, deceased. The railway company has been supplied with—(1) a certified copy of an order of the Orphans' Court of Balti-

more City, authorizing the transfer of the shares above mentioned to Alexander Gordon, Jr., and Margaret McKim Gordon; (2) a certificate of the appointment and qualification of Alexander Gordon, Jr., and Margaret McKim Gordon as executors of the decedent.

The railway company is a corporation, organized under the laws of the State of Indiana, and maintains no office within the State of Maryland; nor does it engage in business in this State. It has no property in Maryland, except its rolling stock as may enter the State from time to time in furtherance of interstate commerce. The decedent died a resident of Maryland, and his estate is in process of administration in the Orphans' Court of Baltimore City. The railway company has requested information as to whether it should make the desired transfer of stock without requiring the authorization or waiver of the taxing authorities of Maryland under the inheritance tax laws of this State.

The State of Maryland has no estate tax in the sense that this expression is ordinarily used. In the settlement of an estate, two forms of taxes are imposed. First, and in every case, a tax on the commissions of executors and administrators. Second, in certain appropriate cases, a collateral inheritance tax of five per cent. of the clear value of the property passing to collaterals.

The law contains ample provisions to safeguard the State as to the collection of both of these taxes, but does not declare the payment of these taxes or either of them, to be a condition precedent to the assignment of stock in such manner as to impose upon the company, whose stock is to be transferred, the duty to ascertain in advance whether said taxes have been paid.

The Maryland law does prescribe a form of procedure for the transfer of stock in Maryland corporations owned by non-resident decedents, and when the situation is reversed, and a citizen of Maryland dies owning stock in a company domiciled in another State, it seems to be the policy of our law to permit said stock to be transferred when the requirements of the laws of the home State of said company have been complied with.

Of course, the foreign corporation about to issue the stock, should always be provided with papers showing the authority of the executor or administrator, and with a copy of the order

of the Orphans' Court, where the estate is being administered, authorizing the transfer, but in the case to which you refer above, these conditions have been met.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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ADMINISTRATION—TRANSFER OF STOCK IN MARYLAND CORPORATIONS OWNED BY NON-RESIDENT DECEDENTS—ACT OF 1920 RELIEVING "ORDINARY BUSINESS CORPORATIONS."

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore Md.

June 11, 1920.

DEAR MR. JACKSON: In your letter of May 28th, you refer to an application made by the attorneys for the executor of the estate of Mary E. Cole Craig, for the transfer of 250 shares of stock of the Consolidation Coal Company, a Maryland corporation. You state that the decedent was a resident of Rhode Island, and that the transfer is requested in accordance with Sections 76-80, inclusive, of Article 93 of Bagby's Code. You then present certain questions involving the title to this stock and affecting the amount of commissions to be paid as a condition precedent to the passage of an order by the Orphans' Court authorizing the transfer of this stock.

I do not think that it is necessary for me to investigate and answer the particular questions raised by your letter. At the last session of the Legislature, the law relating to the transfer of stock in Maryland corporations, held by the estates of non-resident decedents, was extensively modified. In Section 6 of Chapter 545 of the Acts of 1920, appears this sentence, "the provisions of Sections 78-80, inclusive, of Article 93 (the sections requiring advertisement and payment of commissions in connection with the transfer of stock owned by non-resident decedents in Maryland corporations), shall not apply to ordinary business corporations."

The section referred to, will be codified as Section 88-G of Article 23 of the Code. The phrase, "ordinary business corporations," is defined in Section 88-B of Article 23 as follows:

"All corporations having a capital stock shall, for the purpose of this Act, be ordinary business corporations and are hereby so defined, except railroad companies whose roads are worked by steam, electric or other power, street and passenger railways, steamship and steamboat companies, and all other common carriers, telegraph, cable, telephone, express, transportation, parlor car, sleeping car and oil pipe line companies, turnpike companies, bridge companies, and sewerage disposal companies, safe deposit and trust companies, guaranty and fidelity companies, insurance companies of all kinds, electric light, electric construction, heating, refrigerating, water and gas companies, building and homestead associations, State, national and savings banks, or savings or moneyed institutions." The term is further extended by the provisions of Section 88-G as recently amended to include the same companies excepted in Section 88-B, which are Maryland corporations, but neither own, maintain or operate properties, lines or works within this State, and also all corporations in this State of every class, having a capital stock, which do no part of their business within the State.

The Consolidation Coal Company is an "ordinary business corporation" within the definition just given, and therefore, the stock therein owned by the estate of Mrs. Craig may be transferred without any formality whatsoever.

I am returning herein, the file relating to the matter enclosed in your letter.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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ADMINISTRATION—TRANSFER OF STOCK OWNED BY NON-RESIDENT DECEDENT—TERM "ORDINARY BUSINESS CORPORATION" CONSTRUED.

July 9, 1920.

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore, Md.

DEAR MR. JACKSON: In your letter of July 1st, you state that you have had some correspondence with the Consolidation

Coal Company in reference to the proper method of transferring stock of that company owned by a non-resident decedent since the passage of Chapter 545 of the Acts of 1920. You then ask me to give you a ruling which will indicate the construction which I believe should now be placed upon the phrase "ordinary business corporations," as a result of the passage of the legislation above referred to.

Section 88-B of Article 23 of the Code, states that "all corporations having a capital stock, shall for the purposes of this Act, be ordinary business corporations and are hereby so defined, except railroad companies whose roads are worked by steam, electric or other power, street and passenger railways, steamship and steamboat companies, and all other common carriers, telegraph, cable, telephone, express, transportation, parlor car, sleeping car and oil pipe line companies, turnpike companies, bridge companies and sewerage disposal companies, safe deposit companies, guarantee and fidelity companies, insurance companies of all kinds, electric light, electric construction, heating, refrigerating, water and gas companies, building and homestead associations, State, national and savings banks, or savings or moneyed institutions." Chapter 545 of the Acts of 1920, repealed and re-enacted Section 88-G of Article 23, causing it to read as follows: "all railroad companies whose roads are worked by steam, electric or other power, street and passenger railways, steamship and steamboat companies, and all other common carriers, telegraph, cable, telephone, express, transportation, parlor car, sleeping car and oil pipe line companies, turnpike companies, bridge companies and sewerage disposal companies, electric light, electric construction, heating, refrigerating, water and gas companies (constituting a certain number of the corporations excepted in Section 88-B) *which neither own, maintain or operate properties, lines or works within this State*, shall for the purpose of Sections 88-B to 88-G, inclusive, of this Article, be ordinary business corporations, and are hereby so defined."

It is then further provided that "all corporations of this State of every class, having a capital stock which do no part of their business within this State, shall for the purposes of Sections 88B to 88G, inclusive, of this Article, be ordinary business cor-

porations, and are hereby so defined." In my view of the law, the original provisions of Section 88B remain undisturbed by the Act of 1920. The effect of that measure is to extend the definition of ordinary business corporations heretofore presented by Section 88G, and in addition thereto, to add a third group of organizations to be included in the term "ordinary business corporations," to wit, those corporations of this State of every class having a capital stock but doing no part of their business within the State.

It has been suggested that this latter provision accomplishes an implied repeal of Section 88B and limits the meaning of the words "ordinary business corporation" to those organizations embraced exclusively within the provisions of Section 88G as recently amended. I am utterly unable to agree with this suggestion. In the first place, it is a long-established rule of construction, that statutes apparently conflicting should, unless entirely irreconcilable and repugnant, be given that interpretation which will harmonize them. In the second place, the construction suggested, would have the effect of seriously disrupting some of the most fundamental taxing laws and methods of the State. It will be noted that the definitions of ordinary business corporations given in Section 88G are fixed for the purposes of Sections 88B-88G, inclusive, and, therefore, if the narrow construction suggested, be adopted, the provisions of Section 88C and 88D, subjecting every ordinary business corporation to taxation upon its property, real and personal, establishing the franchise tax and creating the methods to be followed in assessing and collecting the taxes in question, would be applicable only to the limited number of organizations included in the definitions given in Section 88G. All of the active corporations of the State which are now subject to taxation and provide a large proportion of the income of the various taxing political sub-divisions, will still remain taxable under the provisions of Section 88F, but can no longer be reached in the manner especially authorized in Sections 88C and 88D. This result was certainly never contemplated by the Legislature, and Chapter 545 was never intended by that body, to have the meaning which would render such a result necessary.

I, therefore, feel that the term "ordinary business corporation" is now composed of three groups as follows:

1. All corporations having a capital stock except the companies mentioned in Section 88B.

2. The companies designated in Section 88G which neither own, maintain or operate their properties, lines or works within this State.

3. All corporations of the State of every class having a capital stock which do no part of their business within the State.

In the latter part of Section 88G, it is provided that the provisions of Sections 78-80, inclusive, of Article 93 (relating to the transfer of stock owned by non-resident decedents in Maryland corporations) shall not apply to "ordinary business corporations." As the Consolidation Coal Company is a Maryland corporation having a capital stock, and does not fall within the exceptions of Section 88B, it is, in my judgment, an ordinary business corporation, and therefore, the stock of said company, when owned by non-resident decedents, may be transferred without a compliance with the provisions of Sections 78-80, inclusive, of Article 93.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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ADMINISTRATION — ADMINISTRATOR'S ACCOUNT — PROPER CHARGES—FUNERAL EXPENSES—TOMBSTONES—MUTUAL RESPONSIBILITY OF ESTATES OF HUSBAND AND WIFE.

August 27, 1920.

J. W. Dashiell, Esq.,
Register of Wills,
Salisbury, Md.

MY DEAR SIR: I trust you will pardon my delay in answering your letter, which was occasioned by absence from the office. It seems that William J. Gilmore, a resident of your county, died intestate, leaving an estate amounting to $619.61, and that a few hours later, his wife, Ella P. Gilmore, also passed away, intestate, leaving an estate of the value of $2,648.91. These

parties left no heirs and the residue of their estates will escheat to the State.

You state in your letter that accounts have been submitted to the Orphans' Court in your county by the administrators of Mr. and Mrs. Gilmore. In Mr. Gilmore's account, after an allowance giving credit for premium on bond, register's fees, commissions and notice to creditors, the entire balance amounting to $528.55 is applied on account of funeral expenses. In the account filed in Mrs. Gilmore's estate, an allowance is made for the funeral expenses of Mrs. Gilmore of $930.00, for the balance of the funeral expenses of her deceased husband of $352, for medical attention, $147, to the administrator for expenses in connection with the performance of his duties, $180.15, counsel fee, $350, tombstone for Mrs. Gilmore, $200; tombstone for her husband, $200.

You further state that you believe these bills to be excessive, and ask my views concerning them.

1. In my judgment, both funeral bills, the husband's amounting to $880.00, and the wife's to $930.00 are outrageously high, particularly when considered in connection with the circumstances of the deceased. The Code (Article 93, Section 5) limits the funeral expenses to $300, the exact amount to be determined by the Orphans' Court. In small estates of this character, there would seem to be no justification of such extravagance on the part of those arranging the funerals nor for its legal recognition by the Orphans' Court.

2. The $352.00 balance of the funeral bill of Mr. Gilmore is no charge against Mrs. Gilmore's estate. The husband is required to discharge the bills for funeral expenses, medical attendance and tombstone of his wife (Willis vs. Jones, 57 Md. 368; Stonecipher vs. Schriver, 100 Md. 30). The reverse, however, is not true, and I know of no law making the funeral expenses of the husband a charge upon the estate of the wife.

3. The bill for medical attention seems to be a proper one.

4. The administrator is not entitled to any additional compensation or allowance over and above his commissions for expenses in connection with the performance of his duties. Section 5 of Article 93 in designating the order of distribution to be made by an administrator provides as follows: "Sixth, his

allowance for cost and extraordinary expenses (*not personal*) which the Court may think proper to allow, laid out in the recovery or security of any part of the estate." The commissions are expected not only to compensate the administrator for his services, but also to reimburse him to the extent of small personal expenditures made by him in connection with the performance of his duties. See also Shaeffer vs. Shaeffer, 54 Md. 679. Of course, if the administrator had incurred expenses prior to the death of his decedent in her behalf and with her knowledge and approval, he would be entitled to file an account against the estate, and have it paid therefrom.

5. The papers sent to me disclose no facts which, in my judgment, would justify the allowance of a counsel fee. I understand that it has been the practice in Maryland to allow no special counsel fee except when there has been actual litigation necessary for the protection of the estate. Under the provisions of Section 5, Article 93, quoted above, it has been held that a counsel fee may be allowed under proper circumstances, but the granting of such an allowance, and the amount thereof, lies in the discretion of the Orphans' Court. Miller vs. Gehr, 91 Md. 716.

6. The allowance for the tombstone of Mrs. Gilmore is a proper one. Crothers vs. Crothers, 123 Md. 608. In this case, the Court after stating that the cost of a suitable stone is properly allowable as a portion of the funeral expenses added, "but such an expenditure must not be disproportionate to the amount of the estate or unsuitable to the condition in life of the deceased." The sum of $200.00 would seem to be a reasonable amount to expend for this purpose, but the words quoted could be applied, I think, with equal force by the Court to the expenditures to be made generally for funeral expenses.

7. The cost of the tombstone for the husband is no legal charge upon the estate of the wife, and, in my judgment, need not be allowed.

Of course, the Orphans' Court of Wicomico County must exercise its own judgment with reference to the allowance of some of these items, and in fixing the amount thereof, but the answers which I have given indicate what it may do in restricting an apparent attempt to absorb these entire estates, and

thereby deprive the State of property to which it is entitled. If it is necessary to take any action, for the protection of the interest of the State, I will be glad to place the entire matter under the supervision of Colonel Amos W. W. Woodcock, whose appointment as one of the Assistant Attorneys General has just been announced.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

BANKS.

BANKS—METHOD OF CLASSIFYING, FOR PURPOSES OF TAXATION, DETERMINED BY CHARACTER OF BUSINESS—TIME DEPOSITS.

June 18, 1920.

Charles C. Wallace, Esq.,
State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. WALLACE: I beg to reply to your recent letter asking me to advise your Commission how to classify, for purposes of taxation, the Frederick-Town Savings Institution of Frederick. This institution was organized in 1828 as a Mutual Savings Institution, and has always been classified as a savings institution, subject to the franchise tax on deposits as prescribed in Article 81, Section 91 of the Code. The institution has recently petitioned your Commission to change its classification from a "savings bank, institution or corporation organized for receiving deposits of money and payment of interest thereon," subject to the franchise tax, to a bank taxable upon its capital stock according to the method established by Section 153 of Article 81. It seems that a number of years ago, the institution determined to receive no other deposits on the original mutual savings plan, and the weekly depositors at that time became thereafter the owners of the bank. The aggregate of such deposits is now $150,000, and each depositor holds a certificate of stock for his individual deposit which is alienable and transferable in the same manner as a certificate of stock. Semi-annual dividends at 4 per cent. are declared thereon, and the market value thereof is about $1.90 for each $1.00. For a long period of time the Institution has exercised general banking privileges.

My attention was directed particularly to an opinion of former Attorney General Straus, under date of July 5, 1910, in which he held that certain "Savings Banks" with "Weekly Deposits" were to be regarded as having capital stock. I agree

with his conclusion, and believe that the holders of certificates of deposits in the Frederick-Town Savings Institution are to be treated as the stockholders thereof. The present character of the "weekly deposits," the rights conferred thereby, and the relations they establish between their owners and the Institution itself, are of such a nature as to constitute such deposits the capital stock of the Institution, and this class of depositors its shareholders.

The possession of capital stock by a financial institution does not necessarily prevent it from being a savings bank, institution or corporation, subject to the tax on its deposits. It has been expressly decided that a savings bank which has capital stock may be subject to the franchise tax imposed by Section 91 of Article 81 of the Code. (Fidelity Savings Bank of Frostburg vs. State of Maryland, 103 Md. 206.) Even though the weekly deposits of the Institution be treated as capital stock, it may still be classified as a Savings Bank and be taxable as such. Conversely, the duty to pay the tax on deposits will not of itself relieve the stock of the corporation from taxation under the provisions of Section 153. Westminster vs. Westminster Savings Bank, 92 Md. 67.

Since the Frederick-Town Savings Institution must be treated under the construction hereinbefore adopted, as a corporation with capital stock, we have this result; under all circumstances the State Tax Commission must assess the shares of stock and levy thereon, the State taxes imposed by law. If at the same time, it is determined to be a "savings bank, institution or corporation," it must also pay the tax of one-fourth of one per cent. on all its deposits, if not a "saving bank, institution or corporation," no such additional tax is necessary.

How then shall this matter be decided? It is in each case a question of fact dependent upon the "true character of the bank's business as determined by the nature of the transactions of which that business consists." State vs. German Savings Bank, 103 Md. 205, and in applying this test, it has been indicated in the case of State vs. Central Trust Company, 106 Md. 268, that where the total volume of business of a financial institution is composed of various elements, and its income derived from different sources, the predominating volume of business or

source of income must control and determine the nature of the institution. In the German Savings Bank case just cited, the Court says that "banks of discount have, in recent times, been driven by the competition of other financial institutions to allow interest on some portions of the deposits received by them to so great an extent, that the practice has become almost universal, but by so doing they have not brought themselves under the operation of the laws passed for the regulation of savings banks," and elsewhere in the opinion, the Court adds that if "the business carried on by the appellee bank has been and is a general banking business, the mere fact that it allows interest on deposit accounts of over six months' standing would not reconvert it into a savings bank.

The Frederick-Town Savings Institution has for many years exercised general banking powers, but no longer receives savings deposits on a regular installment or mutual basis, and it could only be declared to be a savings bank at this time because its statement shows that a very large proportion of its deposits are "Savings Deposits." These deposits are not, however, savings deposits in the strict sense in which that term is generally used, but are what are ordinarily known as "time deposits," bearing interest at a stated rate and subject to certain regulations as to withdrawal, etc. My own experience has taught me that this class of deposits now forms a substantial part of the assets of practically every bank and trust company in the State, and I consider their presence in large volume to be, nowadays, a usual and necessary element of the general banking business carried on by every bank of discount.

In my judgment, therefore, the Frederick-Town Savings Institution is no longer a savings bank, institution or corporation as contemplated by Section 91 of Article 81, and is, therefore, entitled to a reclassification as prayed.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

BANKS—TIME FOR PAYMENT OF SECOND HALF OF CAPITAL.

July 31, 1920.

George W. Page, Esq.,
Bank Commissioner,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. PAGE: I desire to confirm the verbal opinion which I gave you yesterday with reference to the Industrial Bank at Curtis Bay.

Section 20 of the banking law of the State provides that a new bank may start business when one-half of its capital shall have been paid in full, and the remaining one-half within one year from the date of its organization. This bank was incorporated in August, 1919, but did not pay in one-half of its capital and receive your official authorization to commence business until a week or so ago. You ask me to determine whether the remaining one-half of its capital should be paid within one year from the date of its incorporation or one year from the time it opened its doors for business.

You will note that the Act uses the word "organization." I think this means organization for business, and that the proper construction to be followed is to allow the bank one year from the date of your certificate of approval within which to complete the payment of its capital stock.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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BANKS—STATUS OF NATIONAL BANKS EXERCISING FIDUCIARY POWERS—NOT NECESSARY TO DEPOSIT SECURITIES.

August 27, 1920.

George W. Page, Esq.,
State Bank Commissioner,
Union Trust Building, City.

MY DEAR MR. PAGE: In a recent conversation, you requested me to inform you on certain matters affecting the status of National Banks of Maryland, exercising fiduciary powers.

Section 11, paragraph K of the Federal Reserve Act, provides "that no permit shall be issued to any national banking association having a capital and surplus less than the capital and surplus required by State law of State banks, trust companies and corporations exercising such powers." This provision was included in an amendment passed on September 28th, 1918, and, therefore, is only effective as to banks receiving fiduciary permits subsequent thereto. Banks granted permits prior to the amendment need not comply with its provisions. The same section and paragraph of the Federal Reserve Act stipulates that, "whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities *for the protection of private or court trusts*, national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law."

The Maryland law relating to this subject is found in Section 110 of Article 23 of the Code, which, after requiring certain stock to be deposited with the Treasurer of the State, directs that said stock shall be held by the Treasurer" in trust as security for *the depositors with or creditors of said corporation.*"

An examination of the Trust Company laws of other States and Territories discloses the fact that in many of the States and Territories, among them, Ohio, New Jersey, New Mexico, Rhode Island and Texas, the securities required to be deposited are to be primarily liable for the obligations of the corporation when acting in a fiduciary capacity and as security for the faithful performance of all trusts assumed by the corporation.

It is evident that this class of State legislation was in the minds of the framers of the Federal Reserve Act. It is legislation, which, in my judgment, differs very materially from the Maryland Act, which stipulates that the securities are to be held, not for the protection of the trusts assumed and managed by the corporation, but for the benefit of stockholders and general creditors.

I am, therefore, of the opinion that the above quoted provision of the Federal Reserve Act is not applicable in Maryland, and that it is not necessary for the national banks of Maryland, when acting in a fiduciary capacity, to make deposits of securities.

So far as the enforcement of the provisions of the Federal Reserve Act are concerned and so far as they relate to national banks exercising fiduciary powers, I feel that there is no function which you can perform except to bring any violation to the attention of the Federal Reserve Board, because the Act itself provides that any non-compliance with or violation of the Act shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which such bank is located under the direction of the Federal Reserve Board by the Comptroller of the Treasury in his own name.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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BANKS—DEPOSITING SECURITIES WITH STATE TREASURER—ALL FINANCIAL INSTSTUTIONS MUST DEPOSIT—NATIONAL BANKS EXCEPTED.

October 3, 1920.

Hon. John M. Dennis,
State Treasurer,
Union Trust Building,
Baltimore, Md.

DEAR MR. DENNIS: I am in receipt of your letter of September 17th, in which you ask me to instruct you fully as to the financial institutions which are required to deposit securities with the Treasurer of the State under Section 110, Article 23 of the Code.

Section 110 of Article 23 applies to "every safe deposit, trust, guaranty, loan and fidelity company or association, incorporated under any law of this or any other State, District or Territory, the United States or any foreign country receiving money on deposit or assuming any obligations in this State."

Two classes are created under Section 110 relative to the depositing or securities with the Treasurer of the State.

First: Every corporation named above, transacting as part of its business the security or guaranty business, is required to

transfer and assign to the Treasurer of the State, registered public stock of the United States or of the State of Maryland or of Baltimore City, or bonds of any county or municipal corporation of this State, which shall be approved by said Treasurer to the amount in value of one hundred thousand dollars. These securities are required to be held by the Treasurer in trust as security for all the holders of policies or guarantees of said corporation. This requirement is subject to the exception that no such foreign corporation shall be required to make said deposit if it has already made with the proper officers of any other State, District or Territory in the United States, a deposit of approved securities for the same purpose and in the same amount.

Second: All such corporations mentioned above not transacting as part of their business the security or guaranty business, shall transfer and assign to the Treasurer of the State, registered public stock of the United States or of the State of Maryland or of Baltimore City, or the bonds of any county or municipal corporation of this State, which shall be approved by said Treasurer to the amount in value of fifteen per centum of the paid in capital stock of such corporation, but which shall never be less than thirty thousand dollars, in the case of all such corporations having a capitalization of over $100,000, but in the value of ten per centum of the paid in capital stock, never to be less in amount than $10,000 where the capitalization is $100,000 or less. These stocks are required to be held by the Treasurer in trust *as security for the depositors with, or creditors of said corporation.*

This provision is subject also to an exception. The national banks of the country are controlled exclusively by Federal legislation, and cannot be required by a statute of the State to meet conditions and terms specified therein. Section 11, Paragraph K of the Federal Reserve Act provides "that whenever the laws of the State require a corporation acting in a fiduciary capacity to deposit securities with the State authorities *for the protection of private or court trusts,* national banks so acting shall be required to make similar deposits and securities so deposited shall be held for the protection of private or court trusts, as provided by the State law." In a recent opinion to the State Bank Commis-

sioner I decided that this provision does not apply to national banks acting in a fiduciary capacity in the State of Maryland, because there is no law in Maryland requiring a corporation acting in a fiduciary capacity to deposit securities with the State authorities *for the protection of private or court trusts.* The only purpose for which securities are required to be deposited in Maryland is declared in Section 110 of Article 23, to be as *security for the depositors with or creditors of said corporation.*

I, therefore, feel that all financial institutions in Maryland embraced within the general definition set forth in the beginning of this letter must comply with the provisions relating to the depositing of securities in your hands as Treasurer of the State, except national banks.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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BANKS—TENANCY BY THE ENTIRETIES PERMISSIBLE IN ISSUANCE OF BANK STOCK.

December 10, 1920.

George W. Page, Esq.,
Bank Commissioner,
Union Trust Building,
Baltimore, Maryland.

MY DEAR MR. PAGE: This morning you presented to me a letter addressed to you by the Sharpsburg Bank asking whether a certificate of stock in that bank may be issued in the name of a man and his wife so that upon the death of either it would become the property of the survivor. I desire to confirm the oral opinion which I gave you in answer to this question.

In the case of Brewer vs. Bowersox, 92 Md. 567, a bank in Frederick issued a certificate stating that it had received a certain sum from Jacob or Emily J. Bowersox, and used this language: "Which sum, with the interest thereon at 3 per centum per annum, will be paid to them or their order at sixty days' notice after the expiration of six months from date." The Court stated that in view of the terms of the certificate there

was no relation of agency between the parties, there was no opportunity for either party to repent, there was, in fact, no act which either the husband or the wife could do that would rescind the right of the other, and held that a tenancy by the entireties had been created. The court also declared that a tenancy by the entireties may be created in personalty. If the certificate of stock is issued in the manner suggested, neither party is the agent of the other. There is no opportunity for either alone to repent and cause a change in the certificate's title. There is, in fact, no act by which one party can defeat the right of the other. The transfer of the stock will require the signatures of both parties.

It would seem, therefore, that the case of the stock certificate meets every requirement suggested in the case above cited, and I am, therefore, of the opinion that a certificate of stock may be issued to a husband and wife with the result that upon the death of either the survivor will become the absolute owner of the stock.

Inquiry is also made as to the form of endorsement that should be used. It is merely necessary to insert in the space provided for the purpose the words "John Jones and Mary Jones, his wife," although in the absence of the words "his wife" the title will be held to be by the entireties if, as a fact, the marriage relationship exists between the two parties whose names are used.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION.

CONSERVATION—FISHING, CLOSED SEASON IN POTOMAC RIVER —COMPACT OF 1785—CHAPTER 269, ACTS 1904, INVALID.

July 15, 1920.

R. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

MY DEAR MR. LECOMPTE: In your letter of June 14th you direct my attention to Section 40 of Article 39 of Bagby's Code, which reads: "It shall not be lawful for any person to catch or kill any black bass, green bass, rock bass, pike or pickerel or wall-eyed pike (commonly known as salmon) between the fifteenth day of April and the first day of June of each year, nor catch or kill any of said species of fish at any other time during the year, save only with a rod, hook and line or dip net. The words "hook and line" shall not include trot lines or out lines."

You then ask me to note that Section 78 of the same article provides that "no person shall catch, take or kill in any waters of this State, above a point where the tide ebbs and flows, any black bass, etc., between the first day of April and the fifteenth day of June, both inclusive, in each and every year." You then ask me to determine for you which of these laws prevails, and to construe the meaning of the latter part of Section 40.

I ascertained upon inquiry that a point on the Potomac River, known as Little Falls, marks the limit in the Potomac River of the ebb and flow of the tide. I then discovered that in the Code, Section 42 of Article 39 states that the provisions of Section 40 quoted above are applicable *below* the Little Falls near Washington, but that the same section in Chapter 427 of the Acts of 1896, the original statute codified as Sec. 78, stipulates that "the provisions of this law shall *not* be applicable below the Little Falls near Washington.

In view of the direct conflict between these provisions, I deemed it advisable to write to the proper authorities in Virginia and West Virginia to ascertain the language of the same Act as passed by the Legislatures of those States. Their replies indicate that the language of the Statute itself rather than of the Code is correct, and that the provisions of Section 40 are *not* applicable below the Little Falls, but are applicable above the Little Falls which is the head of tidewater in the river.

Section 78, which is a codification of Chapter 161 of the Acts of 1906 is, therefore, in conflict with the provisions of Section 40. It is impossible to harmonize them, and one act or the other must fall to the extent of the inconsistency. Ordinarily the latter Act would prevail, but under the Compact of 1785 between the States of Maryland and Virginia, it was provided that "all laws and regulations which may be necessary for the preservation of fish in the River Potomac shall be made with the mutual consent and approbation of both States." West Virginia obtained her right to participate because of the fact that she was, in 1785, a part of the State of Virginia. Chapter 427 of the Acts of 1896, now codified as Section 40, was duly approved by the Legislatures of both Virginia and West Virginia, and, therefore, so far as the Potomac River is concerned, must prevail over Chapter 161 of the Acts of 1906, codified as Section 78, because the latter statute has never been submitted to Virginia or West Virginia, and ratified by their State Legislatures.

I am, therefore, of the opinion that the various species of fish named in Section 40 may not be caught between the fifteenth day of April and the first day of June of each year at any point in the Potomac River above the Little Falls. I am unable to find any law restricting the right to fish in the Potomac River below Little Falls.

The provisions of Section 78 would seem to apply to all of the other waters in the State except the Potomac River.

I might add that I feel that Chapter 269 of the Acts of 1904, which declares that Section 40 shall not be applicable to Montgomery County, is invalid so far as it contravenes a statute adopted under the Compact existing between Maryland, Virginia and West Virginia.

In view of the direct conflict between these provisions, I deemed it advisable to write to the proper authorities in Virginia and West Virginia to ascertain the language of the same Act as passed by the Legislatures of those States. Their replies indicate that the language of the Statute itself rather than of the Code is correct, and that the provisions of Section 40 are *not* applicable below the Little Falls, but are applicable above the Little Falls which is the head of tidewater in the river.

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The latter part of Section 40 does not seem to present any serious difficulties. It simply provides that during the open season it shall be unlawful to catch or kill any of the species of fish named except with rod, hook or line or dip net, and then lest the phrase "hook and line" be misinterpreted, declares that it shall not include trot line or out lines. All of the terms used seem to have a distinct meaning and present no confusion or conflict.

The prohibition contained in Section 40 applies, of course, only to the species of fish therein named.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—STATE GAME WARDEN—PERMITS TO CAPTURE WILD FOWL—WHEN PROPER.

August 4, 1920.

E. Lee LeCompte, Esq.,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR MR. LECOMPTE: In your letter of July 28th you directed my attention to the Act of 1898, Chapter 206, Section 15-Q, which prohibits the trapping, netting or ensnaring of game birds therein defined. You then state that you have been requested by the Chief Game Warden of the United States, representing the United States Department of Agriculture, to issue scientific permits to such persons as may be agreed upon to capture wild fowl in the State of Maryland, and band them on the legs, said band to carry certain numbers and other information so that the migrations of these birds may be scientifically investigated. This request is based upon the provisions of Chapter 385 of the Acts of 1916, which authorizes the granting of certificates by the State Game Warden to any properly accredited person, permitting the holder thereof to collect birds, their nests or eggs, for strictly scientific purposes.

I think that you unquestionably have the right to grant the permit requested. The purpose underlying the request is concededly a scientific one, and the Act of 1916, being a much later measure, repeals the Act of 1898 so far as the two are inconsistent. I cannot imagine a more appropriate occasion upon which to exercise the powers conferred upon you by the Act of ~~1898~~ 1916 than the one described in your letter.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—GAME—MAY HUNT IN WASHINGTON, ALLEGANY AND GARRETT COUNTIES WHILE SNOW IS ON THE GROUND—TIME TO KILL SQUIRRELS IN ALLEGANY COUNTY.

August 14, 1920.

J. E. Turner, Esq.,
State Deputy Game Warden,
Cumberland, Maryland.

MY DEAR SIR: You recently called my attention to Chapter 570 of the Acts of 1920, which provides a closed season for certain game, and states that no hunting shall occur "when the ground is sufficiently covered with snow to track the birds and game above mentioned," and also to Chapter 699 of the Acts of 1920, which declares that "it shall not be unlawful to hunt during the open season in Garrett, Washington and Allegany Counties when the ground is covered with snow." You ask whether it is lawful to hunt in Allegany County when the ground is covered with snow. The first Act referred to is a general Act, the second a local one. Both were passed at the same session of the Legislature and both were approved by the Governor on the same day; each declares that all laws, both local or general, inconsistent therewith, are repealed. The records show that the local measure was approved a few minutes earlier than the general measure. It will be observed, however, that the general measure is a re-enactment of Section 20 of Article 99 of of the Code, for the purpose of changing the first day of the closed season from the 24th day of December to the first of January, and for the purpose also of adding certain new pro-

visions concerning the sale of partridges and other birds. No change was made in that sentence relating to hunting when the ground is sufficiently covered with snow. The local Act, however, refers to the unusual conditions that pertain in the mountainous counties, Garrett, Washington and Allegany, and was passed for the sole purpose of permitting hunting in those counties when the ground was covered with snow. I think, therefore, that the Legislature clearly intended the general provisions to stand in all counties of the State except Garrett, Washington and Allegany, where the local law, permitting hunting when the ground is snow covered, will hereafter prevail.

This conclusion may be in conflict with the rule of construction usually applied in a case of this character, but this rule, established to assist in ascertaining the Legislative will, must yield when that intent has elsewhere been clearly revealed and the application of the rule will defeat the purpose for which it was created.

You also ask whether squirrels may be killed in Allegany County before November 10th. Chapter 507, referred to above, states that no squirrel shall be killed anywhere in the State of Maryland between the first day of January and the 10th day of November in any year, exclusive of both dates. The first day, therefore, upon which squirrels may be legally killed is the 10th day of November. If there is any local law inconsistent with this provision it was repealed by Chapter 507.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—U. S. LIGHTHOUSE AT TURKEY POINT—RELATIVE RIGHTS OF UNITED STATES AND MARYLAND AS TO CONTROL OF ADJOINING WATERS.

September 2, 1920.

Harrison W. Vickers, Jr., Esq.,
Chairman, Conservation Commission of Maryland,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of July 28th, 1920, enclosing a copy of a letter dated February

17, 1920, from Samuel K. Dennis, then United States Attorney. You ask an expression of opinion from me on these subjects:

1. Who has control of the shore and waters adjacent to the three acres comprising the United States lighthouse property at Turkey Point?

2. Does the present owner of Turkey Point Farm, of which tract the lighthouse property was originally a part, retain "control and ownership" of the waters adjacent to the lighthouse from low-water mark to the channel?

Mr. Dennis in his letter states that the General Assembly of Maryland, by the Act of 1834, granted no rights of the State of Maryland to the bottoms and waters over them beyond the low-water mark. I concur in his conclusions that these bottoms and waters are the property of the State; that the grantor of the lighthouse property could not convey them; that the United States can exercise no power over these bottoms and waters except in respect to its control over navigation, and that the United States retains the exclusive right to control the shores of the lighthouse property above low-water mark.

It would follow without question, I believe, that were the owner of the lighthouse property a natural person, he would have the exclusive use of the shore, a right in common with the public to fish in the waters, and by virtue of Art. 8, Section 173 of the Code of Public Local Laws relating to Cecil County, the right to prohibit to others the placing of certain pound nets opposite his shore. The only question, then, is whether these conclusions follow when the owner of the property is the United States of America.

It is my opinion that the situation is not changed because the United States is the owner. The United States has as an incident to its sovereignty the power to hold and acquire property (39 Cyc. 729). The Constitution gives Congress power of exclusive legislation over such property, acquired with the consent of the State "for the erection of forts ..... and other buildings"; the State of Maryland has given its consent not only specially in this case, but generally, Art. 92, Sec. 2, of the Code. The usual incidents of ownership of property, both rights and liabilities, follow (39 Cyc. 729). In the sec-

tion of the Code excepting from taxation the property of the United States (Art. 96, Sec. 2) it is significant that the language is "lots, parcels or tracts of land so ceded to the United States, together with the tenements and appurtenances," implying that the usual incidents of ownership attach.

It would indeed be difficult reasoning to conclude that the United States when it acquires land for a lighthouse has less control over the shores than would an individual.

It is, therefore, my opinion, in answer to your first question, that the United States has control over the shores to low-water mark adjacent to its property at Turkey Point, and that the State of Maryland has control over the waters beyond in respect to fisheries subject to the superior right of the United States over navigation. This, of course, answers your second question also.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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CONVERSATION—RESURVEYS OF BOTTOMS—NO LEASE WITHOUT A SURVEY.

Salisbury, Md., October 1, 1920.

Mr. J. E. Haddaway,
Oxford, Maryland.

DEAR SIR: Your letter of August 23rd, 1920.

The primary purpose of the State Law Department is to advise the Governor and the various State Departments, but we are very glad to make an exception in your case and thus endeavor to answer your letter.

Section 89 of Chapter 265 of the Acts of 1914 do not provide for a resurvey following the passage of that Act, but for a survey as soon as possible after April 1st, 1906, it being thus substantially a re-enactment of Section 89, Chapter 711, of the Acts of 1906, which authorize the original survey with certain rights of protest added. Section 94a of Chapter 265 of the Acts of 1914 authorizes a resurvey at any time for the purpose of correcting surveys already made. Section 98 of Chapter 265

of the Acts of 1914 makes it the duty to lease "after the survey or resurvey herein provided for shall have been completed."

It is very clear, therefore, that after a survey of any bottom has been made a lease may be properly issued, provided that the Commission has not, before the lease is issued, begun but not completed the resurvey which it was its option to make. If the area has never been surveyed it could not properly be leased.

You are wrong in stating that the law requires the application to be published in the county paper nearest the bottom. The requirement is simply for publication in the county "in which or nearest to which the area applied for is located."

If natural bars had been leased prior to the Act of 1914, and that fact established by resurveys, then it is the duty of the State's Attorney to institute proceedings to condemn the leases.

Sections 89 of Chapter 265 of the Acts of 1914 makes the surveys and reports of the Shell Fish Commission conclusive evidence as to what are natural bars. Prior to January 1st, 1915, three residents of the State could have compelled a court review of the Shell Fish Commission finding as to what were natural bars. But that right no longer exists.

If you have any remedy at this time it is to ask the Commission for a resurvey to correct an error in the existing survey. It is entirely within the discretion of the Commission whether they would make such resurvey.

Trusting this letter answers your questions, I am

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—LOCAL LAW—FEEDING GROUNDS OF DUCKS—UNLAWFUL TO ANCHOR MOTOR BOAT REGISTERED BY UNITED STATES.

October 12, 1920.

MR. NICHOLAS STONESTREET,
Rock Point, Maryland.

DEAR SIRS: I wish to acknowledge the receipt of your letter of the 7th instant, in which you ask my opinion as to whether Section 4 of Chapter 264 of the Acts of 1920, which makes it

unlawful to have a motor boat or house boat at anchor or adrift on the feeding grounds of ducks would prevent your anchoring your motor boat, which you say is registered in the Custom House, in the waters of the Wicomico River or Chaptico Bay.

The Act in question is a local law, and by its title applicable only to the waters of Wicomico River and its tributaries in St. Mary's County.

The waters within the boundaries of a State are under its jurisdiction, subject only to the rights of Congress under its broad power to regulate commerce. Until Congress acts a State may properly pass and enforce such local regulations as is the section in question.

Registry or enrollment at a United States Custom House fixes the nationality and identity of the vessel for various purposes, but gives it no special privilege to anchor where a State in the exercise of its unrestricted power has said it may not. There are numerous instances of harbor regulations made under State authority which say where a vessel may or may not anchor.

It is my opinion, therefore, that your boat is restricted by the section you mentioned above.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—FEEDING GROUNDS OF DUCKS—BOATS MAY NOT BE ANCHORED UPON.

October 26, 1920.

Mr. Nicholas Stonestreet,
Rock Point, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of October 16th, in which you ask me "what would be considered feeding grounds for wild fowl" to enable you to avoid violating the provisions of Section 4 of Chapter 264 of the Acts of 1920. Your letter follows my previous letter to you on the general applicability of this law.

The section in question makes it "unlawful for any person to have a motorboat or houseboat at anchor or adrift on the feeding grounds of ducks"—not wild fowl, as your letter states. What are the feeding grounds of ducks becomes simply a question of fact which would have to be determined in the usual way by the court in the event of a prosecution.

I would suggest that Mr. Le Compte's designation of what are the feeding grounds of ducks would be safe to follow since the enforcement of this law is largely in the hands of the State Game Warden and his deputies.

It is, of course, true that a boat may anchor anywhere temporarily under stress of weather without violating the law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—DUCK BLINDS—LOCATION AND REMOVAL OF

November 4, 1920.

Mr. E. Lee LeCompte,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

MY DEAR MR. LECOMPTE: Your letter of the 29th ulto. has been received.

You ask first whether one Charles Seward, who established a duck blind under the provisions of Chapter 767 of the Acts of 1914, and which position was with the approval of the Deputy Warden of Dorchester County, may, after his blind has been swept away, establish a new blind on a location less than three hundred yards from the nearest blind owned by one Richard Dale. I am assuming that Mr. Seward is an owner of riparian rights, which, under Section 321 a-7 of this Act, entitled him to a choice of a set or position in front of his property, provided he exercises this right within not less than twenty days prior to the open season. I also understand that Mr. Seward selected his new location within this time.

I believe that a fair construction of the law will not allow Mr. Seward to select a location within three hundred yards of a blind already legally established. You do not state whether Mr. Dale is a riparian owner or not. I do not think this point material, however, since it is assumed that his location and holding of the blind are legal. It would certainly be working a great injustice to him if Mr. Seward should have the right to change his location and come within the three hundred yard limit. I believe that Section 321 a-7 should be construed so as to give riparian owners a right to selection, provided the selection they make is not in conflict with Section 321, a-2, which prescribes that blinds must be not less than three hundred yards apart.

You next ask my opinion whether one H. F. Hancock with riparian rights may compel the removal of a blind placed about one hundred yards in front of his shore blind. Section 8 of Chapter 88 gives owners of riparian rights the choice of a set in front of his property. Section 3 makes it unlawful to maintain booby blinds in certain waters at a greater distance than two hundred yards from the natural shore or distant from other blinds less than four hundred yards. This section refers to blinds in waters and not to blinds on the shore. Furthermore, shore blinds may be maintained without a license, since Section 4 of the Act refers again to blinds in the waters of Talbot County.

It appears that Mr. Hancock has never exercised his right to a choice of a set in front of his property, but simply established a shore blind. I believe, therefore, that your construction of the law is correct in that Mr. Hancock cannot compel the owner of the blind in the water to remove it, nor can the party owning the water blind compel Mr. Hancock to remove his shore blind.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION—FISHING—UNDERSIZED FISH CAUGHT WITH HOOK AND LINE MUST BE CULLED OVER AND RETURNED TO WATER.

November 4, 1920.

Mr. Joseph A. Massal,
Deputy Game Warden,
Baltimore, Md.

DEAR SIR: I wish to acknowledge receipt of your letter of the 18th ulto., in which you ask my opinion as to whether Section 83 of Article 39 of Bagby's Code, which requires the culling over and return to waters of undersized fish, applies to fish caught with a hook and line.

The language of this section applicable to your question is "but every person so using any seine or net of any description, or hook and line, shall immediately cull over and return to waters where the same is not less than twelve inches deep all of the aforesaid fish.

Section 90 of Article 39 of the Code is as follows: "Provided, however, that this article shall not apply to those persons who take fish by hook and line, commonly known as anglers." Section 90 is Chapter 479 of the Acts of 1906. Section 83 first appears as Section 83 of Chapter 161 of the Acts of 1906, but there the words or "hook and line" are not present.

This section was amended in 1910 to its present form. The Legislature in that year or since has not changed Section 90. It would seem, however, that the latter specific inclusion of anglers or those using the hook and line would control over an earlier general exclusion of anglers from the article in question.

It is, therefore, my opinion that anglers are bound to return undersized fish to the water as required by Section 83.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CONSERVATION—SKUNKS—WHEN UNLAWFULLY TRAPPED MAY BE RETURNED TO FREEDOM.

November 4, 1920.

Mr. E. Lee LeCompte,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 27th ulto., in which you ask my opinion whether a justice of the peace has the power to order the release to freedom of skunks in the possession of one who has been convicted of trapping them contrary to the provisions of Section 1 of Chapter 128 of the Acts of 1916; that is to say, in the closed season, extending, according to the act, from March 1st to November 15th.

The clear purpose of the act is to protect the wild animals mentioned in it by giving them a period in each year to live free from pursuit by the huntsmen. If a hunter may trap them in the closed season and be allowed to keep them upon paying a fine, the purpose of the law is defeated, which is, of course, the protection of the animals and not the collection of the fine.

Section 52 of Article 99 of Bagby's Code, being Section 52 of Chapter 386 of the Acts of 1916, gives authority to a justice to issue a search warrant in respect to animals unlawfully held, and to the constable seizing such animal to hold it pending "further orders by the justice," and to deputy game wardens to seize such animal without warrant and to dispose of it as he may deem advisable for the best interests of the State. The skunk comes within this law, since it is an animal protected by a closed season.

You do not state exactly how this prosecution began, but there is certainly ample authority in this section to effect the return of these skunks to their natural homes.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General*

CONSERVATION—CHAPTER 720, ACTS OF 1920—CORRECT AS PUBLISHED—LEGISLATURE—HISTORY OF.

November 18, 1920.

Mr. E. Lee LeCompte,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I wish to acknowledge receipt of your letter of recent date, in which you state that House Bill No. 193, introduced at your request, was passed by the General Assembly in the form in which you had prepared it, and became known as Chapter 720. According to an enclosed third reading file copy of the bill, Section 68 is composed of nineteen lines. You state, however, that in Chapter 720 as signed by the Governor, Section 68 closes with the word "animals," on line seven, and after declaring that this omission was the fault of the printers, you ask whether that portion of the law which does not appear in the bound volume of the Acts of 1920 can be enforced.

It is clear from what you write that the omitted portion was not in the bill as presented to the Governor and as signed by him. The Governor could approve the law only in the physical form in which it was presented to him, and only those provisions embodied in the bill signed by the Governor possess validity and are capable of enforcement.

An examination of the Senate and House Journals, however, dissipates all doubts concerning this matter, and proves conclusively that the law in its printed form represents the valid and binding Act of both the General Assembly and the Governor. At page 1997 of the House Journal a statement is made that House Bill No. 193 was read for the third time and passed unanimously. It was then sent to the Senate, and the Senate Journal, at page 1262, furnishes the information that two amendments to House Bill No. 193 were proposed by Mr. Nuttle, as follows:

"On page 5, Section 68, line 7, after the word 'animals,' strike out a comma and insert a period."

"Also strike out all of Section 68 on page 5, after the word 'animals' in line 7."

These amendments were read and adopted. The bill in its amended form was then read and passed as amended by unanimous vote. It was then returned to the House of Delegates, and, according to the record of that body, on page 2068, the amendments made by the Senate were concurred in, the bill was then read again and passed in its amended form by a unanimous vote.

Very truly yours.

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—HUNTER'S ARM TAG—NOT REQUIRED TO BE WORN.

November 20, 1920.

Mr. E. Lee LeComple,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: Yours of November 19th. I recently ruled that House Bill No. 193, afterwards known as Chapter 720 of the Acts of 1920, was properly amended to eliminate from Section 68 thereof a provision describing the tag to be issued with the license, and requiring each hunter to display his tag on his sleeve between the elbow and the shoulder in such manner that the figures thereon shall be visible at all times while he is hunting.

You now call my attention to the provision of Section 67 of Chapter 720, which directs the clerk of the respective courts mentioned in the Act, upon the payment of the specified license fees, to issue "a license and tag," and you then ask whether this provision could be construed to compel hunters to wear the arm tag which accompanies the license. I do not think so. The law as it was finally passed and approved does not even indicate what the form of the tag shall be, nor does it make any reference whatever to the use to which the tag is to be applied. The Legislature by amending the law in the manner indicated above clearly intended that it was not its desire that hunters be

compelled to wear the arm tag, and I assume that the words "and tag" in Section 67 would also have been eliminated if their presence had been brought to the Legislature's attention. It certainly would be improper to read into the law by construction a provision which had been removed therefrom by the unanimouse vote of both the Senate and House of Delegates. It must also be remembered that a violation of any of the provisions of the Act is, by Section 61, made a misdemeanor, punishable by fine, and in default of payment, confinement in jail. All penal statutes must be strictly construed, and it would certainly be improper to create a criminal offense by implication of the extreme nature necessary in this case to comply with your suggestion.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—SKUNKS—POSSESSION OF DURING CLOSED SEASON NOT UNLAWFUL.

November 20, 1920.

Mr. E. Lee LeCompte,
State Game Warden,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 8th instant, in which you ask my opinion as to whether the possession in Frederick County of live skunks during the closed season, which were trapped during the open season, is unlawful.

My letter to you of the 4th instant referred only to skunks trapped in the closed season and the right to compel their return to their native covers.

Section 1 of Chapter 128 of the Acts of 1916 makes it unlawful in Frederick County "to *catch, trap* or *trap for, gun* or *gun for* any fur-bearing animals such as skunk between the first day of March and the fifteen day of November in any year."

You will recall that my previous letter referred to Section 52 of Article 99 of Bagby's Code as giving the right to compel the release of the skunks in question, which you stated were trapped in the closed season. This section refers to "game as defined by Section 44" in possession "contrary to law." Section 44 covers skunks in Frederick County by defining game as "animals protected by a closed season." To ascertain, therefore, what is possession of skunks contrary to law, we must go back to the section establishing a closed season for them.

That section I have referred to above. It simply makes it illegal to take skunks within certain limits. The taking of skunks in the open season is not unlawful. The possession of such skunks being originally lawful, and not being made unlawful by express law, would continue lawful.

It is admitted that in the open season a hunter might have trapped and slain skunks. If instead of killing them he keeps them in his possession, the propagation of skunks is certainly not more seriously retarded.

It is my opinion, therefore, that the possession of skunks trapped in the open season is not unlawful.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION COMMISSION—DUTY TO PROTECT STATE'S NATURAL RESOURCES—RIGHTS AS A POLICING ORGANIZATION.

November 22, 1920.

Mr. E. O. Weant, Commissioner,
The Conservation Commission,
512 Munsey Building,
Baltimore, Maryland.

DEAR SIR: The correspondence between your office and the War Department regarding the sale of rifles has been referred to me by Hon. Albert C. Ritchie, Governor of Maryland, for a statement as to the right of the Conservation Commission to act as a policing organization under the Maryland law.

The Conservation Commission was created by Chapter 682 of the Acts of 1916 of the General Assembly of Maryland, Ar-

ticle 19A of Bagby's Code, to have "general supervisory power, regulation and control over the following natural resources of the State, viz.: (1) oysters and clams; (2) fish, crabs and terrapin; (3) wild fowl, * * * (Sec. 3 of Art. 19A of Bagby's Code.)

Section 4 of this Article authorizes the appointment of the Commander of the State Fishery Force, "who shall have charge of all boats now or hereafter composing the State Fishery Force or Oyster Navy." "The fleet under his command shall be charged with the execution of the laws relating to oysters, clams, fish, crabs * * *"

By Section 8 of this Article, the Commissioner is given "control over the inspection of oysters, fish or crabs whenever caught or sold in the State of Maryland and of the enforcement of the cull law and other protective measures."

By Section 10 "the Commissioner is empowered to provide for the vessels of the State Fishery Force such arms, ammunition and equipment as may be required * * *"

It thus appears that by express statute the Commission is charged with the enforcement of the law relating to the protection of the State's natural resources and authorized to arm its vessels to this end. It is in fact the State's policing organization in respect to all such laws.

The correspondence is returned herewith.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—SALE OF RABBITS—NOT UNLAWFUL UNDER CHAPTER 570 OF ACTS OF 1920.

James M. Munroe, Esq.,
State's Attorney,
Annapolis, Md.

December 1, 1920.

MY DEAR MR. MUNROE: I wish to acknowledge the receipt of your letter of the 22nd inst., in which you ask my opinion as to whether it is unlawful to sell rabbits in Anne Arundel County.

Chapter 570 of the Acts of 1920, repealed and re-enacted Section 20 of Article 99 of the Code of Public General Laws. As amended, Section 20 contains three paragraphs.

In the first, it is made "unlawful to shoot, trap, etc. * * * any partridge or quail, English or Mongolian pheasant, American pheasant, dark neck Bohemian pheasant, pheasant or ruffed grouse, *rabbit,* wild turkey, woodcock, squirrel or deer within the State" between certain dates. In the re-enactment a slight change of dates was made, the rest of the paragraph remaining the same.

In the second paragraph, it is declared to be unlawful to shoot, trap, etc., on Sunday or when the ground is covered with snow "the birds and game above mentioned," and it also declares that there shall be a daily closed season at night on all of the "above enumerated game birds and animals."

In the third paragraph appears the clause which raises the question asked by you. It first stipulates that no person "shall sell, offer for sale, purchase or offer to purchase, within the State of Maryland any bob white or partridge, or Chinese ringneck pheasant, native pheasant or ruffed grouse, or wild turkey, either dead or alive," except for propagation purposes. Then follows this sentence: "It shall be unlawful to sell, offer for sale, purchase or offer to purchase, or buy *such named birds and animals* at any time whether same are caught or killed within the State of Maryland or any other State, Territory or county." The whole problem turns upon the proper construction of the words "such named birds and animals" affected by the prohibition of the sentence last quoted.

As animals are specifically mentioned in the first paragraph of the section, my first impression was that it would be necessary to hold that the phrase just quoted was intended to embrace all of the birds and animals named in that paragraph, which, of course, would have included rabbits. After considerable reflection, however, I have come to the conclusion that the language of the third paragraph of the section indicates that such a construction would really defeat the purpose of the Legislature. If that body intended the prohibition of sale and purchase to apply to all of the birds and animals of the first paragraph, it would undoubtedly have used language somewhat like the following:

"It shall be unlawful to sell, offer for sale and etc., the above enumerated game birds and animals," just as it did in the second paragraph when prohibiting hunting on Sunday, when snow is on the ground and at night time. When, however, the Legislature came to the paragraph in which it desired to forbid the sale and purchase of certain game, it abandoned the original list of birds and animals and created a new class, consisting of four or five birds, including the ringneck pheasant, not mentioned in paragraph one, and limited the prohibition to this class, creating at the same time a certain exception in favor of sales and purchases for propagation purposes. This action of the Legislature is clear and definite, yet it will be practically nullified if the succeeding sentence is applied to a larger classification and made to prohibit, without exception, what the first sentence prohibited with an exception. It seems to me that the obvious intention of the Legislature was, in effect, to make the second sentence of the third paragraph read: "And this shall be true, 'whether the same are caught or killed within the State of Maryland or any other State, Territory or county.'" In other words, the first sentence of paragraph three, which is very clear in its terms, must be given full force and effect, if possible. The other construction suggested, would practically render it useless and would certainly destroy its exception. Therefore, it appears to me that the words "and animals" were inadvertently injected into the statute by the Legislature, and should be disregarded.

This construction is consistent with the doctrine of the "last antecedent," in accordance with which relative and qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding, and are not to be construed as extending to or including others more remote, unless such extension is clearly required by a consideration of the entire act. 36 Cyc. 1123. It is also important to recall that this is a penal statute, and that its terms should, therefore, be very strictly construed. In view of the great doubt as to the intended meaning, it would be unwise to hold an act to be a crime and the perpetrator of it to be subject to fine and imprisonment when no such meaning may have been contemplated. A serious doubt of this character would almost certainly be resolved by a jury in

favor of the defendant. I am, therefore, of the opinion that Chapter 570 does not prohibit the sale or purchase of rabbits throughout the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—SALE OR PURCHASE OF RABBITS NOT PROHIBITED BY CHAPTER 570, ACTS OF 1920—UNLAWFUL TO TRANSPORT IN GARRETT COUNTY.

December 4, 1920.

William R. Offutt, Esq.,
State's Attorney,
Oakland, Md.

DEAR SIR: I beg to reply to your letter of November 15th, in which you ask my opinion whether "it is a violation of the provisions of Chapter 570 of the Acts of 1920 to sell or ship rabbits in and from Garrett County."

The construction of this law has given our department considerable difficulty but we have just ruled, in an opinion to the State's Attorney of Anne Arundel County, that Chapter 570 does not prohibit the sale or purchase of rabbits in the State of Maryland. A copy of this opinion is attached hereto.

This Act makes no direct prohibition of the shipping of rabbits, although it prohibits the sale of rabbits in your county which have been brought into the State. Chapter 480 of the Acts of 1912, however, in referring to Garrett County, makes it unlawful "to transport * * * rabbit, after the same has been killed, for any purpose, except for consumption of food, within the State of Maryland"; or to have in possession * * * with the intention of sending * * * the same * * * beyond the limits of the said State," with a saving exception as to non-resident hunters taking out their bag.

The part of this local law relating to transportation is not inconsistent with the general law and is not, therefore, repealed by it. Therefore, it would seem that although rabbits may be bought and sold in your county and may be transported for food

consumption, they may not be transported within the State or be retained in possession within the State for the purpose of sending them beyond the limits of the State subject to the exception noted.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—LAND OFFICE WARRANT—RIPARIAN RIGHTS—OYSTER GROUNDS.

December 15, 1920.

Mr. Lorie C. Quinn, Jr.,
Crisfield, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 3rd instant, in which you ask me whether a "warrant" from the Land Office for a piece of vacant marsh in Tangier Sound "carries with it the riparian right, and if under any patent I would be entitled to whatever oyster ground is contained in the riparian right."

I am not sure that your question is definite enough, or that sufficient facts have been given me, to make it possible for me to answer as positively as you wish.

I assume that your patent has been legally issued to you. You thus become the proprietor of the land in question and as such would have certain riparian rights in respect to that particular land. The Code (Art. 54, Secs. 47 and 48) provides that proprietors of land bounding on navigable waters have the rights to accretions to the land and to make improvements into the waters in front of the land.

Section 49 of Article 54 provides, however, as follows:

> "No patent hereafter issued out of the Land Office shall impair or affect the rights of riparian proprietors, as explained and declared in the two preceding sections (47 and 48 above); and no patent shall hereafter issue for land covered by navigable waters."

The tract that you have patented may be so situated with respect to other land as to make this section applicable and thus

cut down or restrict the riparian rights referred to in Sections 47 and 48.

As to the oyster ground "contained in the riparian right" the meaning of your expression is not clear. It is true that you cannot patent the land covered by navigable water. Furthermore, it would seem under the provisions of Section 102 of Article 72 of the Code, that riparian owners have no longer any *exclusive* right to lease barren bottoms, except as to areas that may be opened for leasing in the future. You will recall that this section gives riparian owners the exclusive right to lease for a period of thirty days after the completion of the survey therein referred to, "or after any other area shall have been opened to leasing." I assume that the survey has long since been completed. I do not know whether any areas adjacent to your land have been opened within the last thirty days.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONSERVATION—HUNTER'S LICENSE—MUST BE IN ACTUAL PHYSICAL POSSESSION OF HUNTER.

December 16, 1920.

Lieut. W. D. Williams, A. S.,
Office of the Director of Air Service,
War Department,
Washington, D. C.

MY DEAR SIR: In your letter of December 9th, you state that a non-resident state hunting license had been issued to you on November 23, 1920, and that on November 27th you were arrested near Rock Point, while hunting, by a Deputy Game Warden and taken before a Justice of the Peace. You did not have your license in your actual possession at the time, and this fact was made the basis of the charge which was preferred against you. You contend that inasmuch as you were the owner of a license and were in a position, upon your return home, to send the license to the Justice of the Peace for his inspection, that you were not guilty of any violation of the law. You further state that you deposited the amount of the fine and costs

with the understanding that the question would be submitted to me and finally determined by the ruling which I might give.

Section 76 of Article 99 of Volume 4 of Bagby's Code, states that no person to whom such a license has been issued shall be entitled to hunt, etc., without at the time of such hunting, etc., having *such license* and written permission from the property owner or tenant on whose property said person may be hunting, in his or her possession, and, upon demand, exhibit such license, etc., for the inspection of the Deputy Game Warden.

Section 79 of the same Article declares that any person found guilty of hunting, etc., without having a license and written permission in his or her possession, or refusing to show said license and written permission when demanded by any Deputy Game Warden, shall be deemed guilty of a misdemeanor, etc. The possession referred to in these laws, in my judgment, means actual possession, not mere ownership. This construction is consistent with the underlying purpose of this and similar acts, and is clearly indicated here by the requirement that upon demand the license must be exhibited to the State Game Warden or other officer. The same requirement is made in the Motor Vehicle Law as to operators' licenses, and the Courts have always held that actual possession was necessary, and that it was no defense to prove that the operator in question actually owned a license which was not upon his person or in his actual possession at the time of his arrest.

I am, therefore, of the opinion that you violated the law when you hunted without having in your possession your hunting license, and when upon demand you failed to show it to the officer demanding to see it.

Although the Act of 1920 requires the Clerk to issue a tag, that section of the original bill requiring said tag to be worn upon the arm of the hunter to whom issued, was stricken out of amendment, and is not incorporated in the Act as passed. There is, therefore, no legal requirement that the tag be worn by the person receiving it.

I am returning herein your license which was attached to your letter.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS.

NON-RESIDENT CORPORATIONS—WHEN ENGAGED IN INTERSTATE COMMERCE—AUTOMATIC SPRINKLER COMPANY MUST COMPLY WITH MARYLAND LAW.

March 9th, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

DEAR SIR: Your letter of February 28th, enclosing an annual statement of the Automatic Sprinkler Company of America, to which was attached a protest against the filing of its statement in accordance with the provisions of the Code, Article 23, Section 93, referring to non-resident corporations, on the ground that the company is doing only an interstate business, has received due consideration.

I have also received a brief filed on behalf of the Automatic Sprinkler Company of America by Messrs. Olney & Comstock of New York. The brief filed by the attorneys for the non-resident corporation is to the effect that it is protected by the commerce clause of the Constitution of the United States and, being engaged solely in interstate commerce, it is not necessary for it to comply with the Maryland law. In support of its contention, numerous Federal authorities are cited. These authorities undoubtedly show that a foreign corporation which merely takes orders in the State of Maryland and ships said orders into Maryland from a foreign State, is engaged in interstate commerce. With that contention this office agrees. However, the Automatic Sprinkler Company also erects and installs these sprinkler systems in Maryland. The correspondence does not indicate the amount of labor necessary for the installation of these sprinklers, nor does it indicate whether or not part of the apparatus is purchased locally.

The question as to whether or not installation of an automatic sprinkler by a foreign corporation is interstate commerce need not be determined to pass upon the question here presented. The

foreign corporation, along with its brief, sent a printed copy of its specifications. This printed copy shows that it has "Department Offices" in numerous cities, including Baltimore, Maryland." An examination of the local telephone directory discloses that this corporation has a local office listed in the telephone directory. Under Article 23, Section 93, of the Code, it is provided that "every foreign corporation which has a *usual office or place of business in this State* * * * shall before doing any business herein file with the Secretary of State a certificate," etc., etc.

The obvious purpose of this section is to compel all foreign corporations which exercise their franchises in Maryland, by having an office or usual place of business, to comply with this section of the Code.

I desire to refer you to the case of State use of Bickel vs. the Pennsylvania Steel Company, 123 Md., page 212, at 218. In this case, the Court lays great stress on the fact that the alleged non-resident corporation had an office in Baltimore City, in the Continental Building, and that its name was painted on the door. This was held to indicate that the corporation was doing business in Maryland, although the rent for the particular office was paid by another corporation. The Court also commented on the fact that upon the letterheads used by the R. C. Hoffman & Co. in corresponding with the foreign corporation and others appeared the following: "Baltimore Office, Pennsylvania Steel Co., R. C. Hoffman & Co., Inc., Southern Sales Agent."

There can be no doubt that the Automatic Sprinkler Company of America has knowledge of these facts, because the letterhead containing the quotation above set out was received from them.

An investigation was made by this department to determine whether or not any repair work was done by this corporation. This office was informed by the local office of the Automatic Sprinkler Company that they have a regular gang of skilled workmen to repair sprinklers. This company has in Baltimore City, a resident manager; a great deal of the work done in this State consists of repair work. Certainly the repair work is purely local in character, and subject to the local corporation laws. See Cheney Bros. vs. Massachusetts, 264 U. S., page 147.

62 L. Ed. 632. See note of Reymann Brewing Company vs. Bister, 45 L. Ed., page 268.

It must be remembered that this corporation is engaged in an occupation which is extra-hazardous in its nature, and that the installation of automatic sprinklers is obviously for the prevention of fire. Therefore, the type of sprinklers installed, the materials used, and the mechanical construction are all clearly within the police powers of the State. Undoubtedly, the State of Maryland should require such corporations to comply with its laws.

Under these circumstances, my opinion is that this corporation should be required to file its certificate in accordance with Article 23, Section 93, of the Code of Public General Laws, and further that the annual statement transmitted should be filed and recorded forthwith.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FORFEITURE OF CHARTER THROUGH MISTAKE OF FACTS—ACTION VOID—MANDAMUS TO RESTORE.

March 11, 1920.

Hon. E. Brooke Lee,
Comptroller of State,
Annapolis, Md.

DEAR MAJOR LEE: In your letter of March 5th, you state that Governor Harrington on September 8, 1919, under the provisions of Chapter 316 of the Laws of 1918, forfeited the charter of the Peach Bottom Slate Company of Harford County upon the certificate of Comptroller Hugh A. McMullen, that said corporation had failed to pay its taxes for the year 1908. The notice mailed by the Comptroller to the corporation thirty days prior to his certification of its failure to pay its corporate taxes for the year 1908 as required by said statute, was mailed to the Secretary of the company who was then deceased, and as a result it was never received by the company. The Peach Bottom Slate Company has now produced a receipt issued to it by State Treasurer Murray Vandiver showing that its corporate taxes for the

year 1908 were actually paid. You ask, whether in my opinion it will be necessary, in order to revive the charter of said company and to set aside the proclamation of Governor Harrington, to secure an act of the Legislature, or whether the company may secure a correction of the error through legal proceedings directed against the Governor and Comptroller.

Section 99 of Article 81 as amended by Chapter 316 of the Laws of 1918, declares that "if any corporation of this State shall *refuse or neglect to pay* to the State or the proper officers thereof * * * any franchise tax due by it or any other tax, etc. * * * it shall be the duty of the Comptroller of the State to certify immediately thereafter to the Governor, etc." It will be observed that the authority of the Comptroller to perform the duty imposed upon him, is made dependent upon the refusal or neglect of the company to pay its taxes and if as a matter of fact the tax had actually been paid, the Comptroller was entirely without jurisdiction, and any subsequent action based upon his erroneous certification to the Governor was absolutely void.

I therefore feel that there is no occasion for application to the Legislature for a remedial act in this case, but that the proper course to pursue would be to file a petition for a mandamus against the Governor, the Comptroller and the Secretary of State, asking that the name of the company be restored to the list of corporations lawfully exercising their franchises in the State. I include the Secretary of State as one of the defendants as I understand he is the official custodian of the record of such corporations.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—DOMESTIC CORPORATIONS—NO DUTY TO MAINTAIN OFFICE IN STATE.

Mr. James J. Whyte,
Second Street Postoffice,
Philadelphia, Pa.

March 24, 1920.

DEAR SIR: Your letter of February 25th, duly received, and I regret that in the press of other matters, same has heretofore been overlooked.

I find nothing in the law of Maryland relating to corporations which requires a company incorporated in Maryland to maintain an office here. Under Section 17 of Article 23 of the Code, meeting of stockholders must be held in the State; under Section 12 of this Article meetings of directors may be held either in the State or elsewhere.

There is no law which requires a corporation to have its name on the door of the office used by it, but I would not think it advisable to give notice of a meeting at the company's office mentioning the location of that office if, as a matter of fact, the company did not have an office at the place mentioned.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FOREIGN CORPORATIONS—RIGHT TO CONTINUE TO DO BUSINESS IN MARYLAND—DUTY TO PAY FRANCHISE TAX.

March 27, 1920.

A. L. Mitchell, Esq.,
Maxwell Motor Sales Corporation,
Detroit, Michigan.

DEAR SIR: The Secretary of State has requested me to answer your letter of March 18th, addressed to him. You state that the Maxwell Motor Corporation, a foreign corporation, does not now maintain an office or place of business within the State, and that all of the business transacted by it in Maryland, is interstate in character. This corporation, for a number of years, filed its annual statement and paid the annual franchise tax. It now claims that it is unnecessary to perform either of these acts; nevertheless, you state that it desires to maintain "its charter." I presume you mean by this phrase, that your company wishes to continue in operation the certificate authorizing it to do business in the State of Maryland, which was issued to it when it first came into the State, and has been continued from year to year by the receipts delivered to it upon the payment of the annual filing fee.

In my judgment, your company has assumed an anomalous position not sanctioned by our law, in that it plans to keep alive its certificate in the State, without continuing an office herein. This it cannot do. The Maxwell Motor Sales Corporation is a foreign corporation; it either maintains an office in the State of Maryland and exercises its privileges here, or it does not do so. If it is maintaining an office in the State of Maryland and exercising its franchises here, then under the provisions of Section 93 of Article 23, it must file an annual statement and pay an annual recording fee. And under the provisions of Section 95 of the same Article, it must pay an annual franchise tax. It is only by a compliance with the provisions of these sections, that any foreign corporation can secure and retain authority from the State of Maryland to do business within its borders. If the corporation no longer maintains an office here, it cannot file the annual sworn statement required by Section 93, because of its inability to answer satisfactorily the questions prescribed therein.

Obviously, it will not be entitled to a renewal receipt, and must therefore, relinquish the right to maintain an office within the State until re-acquired, if desired, at a later date, by a new and original compliance with the provisions of Section 93.

It would, therefore, seem that your Company must select one of the two alternatives presented above, with its attendant privileges and duties. It cannot claim the advantages of both and assume the obligations of neither.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—SPECIAL RAILROAD POLICEMEN—EACH COMPANY MUST DESIGNATE TO GOVERNOR.

H. H. Keedy, Jr., Esq.,
Hagerstown, Md.

March 1st, 1920.

MY DEAR SIR: You recently handed to me a commission issued by Governor Harrington to Charles W. Kettering, ap-

pointing him a special policeman to protect the property of "The Cumberland Valley Railroad Company," stating that The Cumberland Valley Railroad Company had recently been absorbed by the Pennsylvania Railroad, and no longer existed as a separate corporation.

You then ask whether the commission referred to above authorizes Mr. Kettering to continue to act as a special policeman with respect to the property formerly owned by The Cumberland Valley Railroad Company. I do not think so. The commission was issued under the authority contained in Sections 406-407 of Article 23 of the Code, in which the Governor is empowered to "commission such persons as said corporations may designate to act as policemen for the protection of the property of said corporations." This contemplates that a particular company shall designate a party to act as policeman to protect the property belonging to said corporation.

At the present time the property in which you are interested belongs to the Pennsylvania Railroad. Mr. Kettering's name was suggested by another corporation, and his powers as special policeman were confined to the protection of the property of that corporation.

If the Pennsylvania Railroad Company desires to avail itself of his services with reference to the property now owned by it, it should suggest his name to the Governor and have a new commission issued in proper form.

I am enclosing herein Mr. Kettering's commission.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS — "TRANSPORTATION COMPANY" — TERM DEFINED—STATUS OF BALTIMORE STEAMSHIP COMPANY, INC.

April 16, 1920.

Hon. E. Brooke Lee,
Comptroller,
Annapolis, Maryland.

DEAR MAJOR LEE: In your letter of April 6th you state that some uncertainty has arisen in interpreting Section 95 of

Article 23 of the Code as to what should be considered a transportation company.

You ask if a steamship company, such as the Baltimore Steamship Company, Inc., is "a transportation Company" within the meaning of the language exempting transportation and other companies from the operation of the act.

While there has been no adjudication on this subject in Maryland, I feel that the matter is one which is entirely free from doubt. The term "transportation" includes all instrumentalities of shipment or carriage. This has been decided in numerous Federal cases dealing with interstate commerce.

In the case of United States against Baltimore and Ohio Railroad Company, 165 Fed. Rep. 113, the word "transportation" is used in the Act of June 29, 1916, Chapter No. 591, amending the Interstate Commerce Act of February 4, 1887, Chapter 104, is declared to have this meaning. The same ruling was also made in the Union Pacific Company against Updike Grain Company, 222 U. S. 215.

The word "transportation" also involves the taking up of persons or property at one point and putting them down at another. It has never been held, so far as I know, that carriage by water facilities is excluded from the scope of this term, but, on the contrary, this method of travel or carriage has always been deemed to be embraced therein.

It would seem clear, therefore, that the Baltimore Steamship Company, Inc., is a transportation company within the meaning of Section 95 of Article 93, and is, consequently, exempted from the provisions of that act. In dealing with this matter I have assumed, of course, that the Baltimore Steamship Company, Inc., is a foreign corporation, as the sections referred to only apply to such organizations.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CORPORATIONS—FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE EXEMPT FROM PAYMENT OF FRANCHISE TAX.

May 1, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: Very careful consideration has been given to the annual statement of the Crocker-Wheeler Company which you have sent to me for examination. This company is organized under the laws of the State of New Jersey, with its principal office at Ampere, N. J. The corporation has an office in the State of Maryland, which is located in Baltimore City.

None of the capital of this company is employed in the State of Maryland. The business of the corporation transacted within the State of Maryland is strictly an interstate business. Its local office at Baltimore is maintained merely as a matter of convenience in connection with its traveling salesmen and engineers operating and working within the State of Maryland. It has no stock in trade within the State. All orders received from residents of the State of Maryland are accepted in New Jersey, and the contracts of sale are New Jersey contracts. The machinery, dynamos and motors which are manufactured in New Jersey are sold largely by catalogue.

No repair work is done in Maryland, and the corporation does not buy locally. When as a part of the company's contract it installs engines the erecting engineer comes directly from the factory. If local labor is needed the labor is procured by the customer and paid for by the customer, and under the control and in the service of the customer.

The local sales office is in charge of the sales manager and one stenographer. The rent is paid locally from an expense account, which is replenished from time to time by drafts sent from New Jersey.

My view is that this company is engaged in interstate commerce, and whatever is done locally is merely incidental to interstate shipments. It is true that under Article 23, Section 93, of the Code, every foreign corporation which has a usual office

or place of business in this State must file its certificate with the Secretary of State.

Under Section 95 of Article 23 every foreign corporation must pay an annual franchise tax at the following rate: the sum of twenty-five dollars ($25.00) for every full fifty thousand dollars ($50,000.00) of capital employed by it in the State of Maryland up to five hundred thousand dollars ($500,000.00)—but in no case less than twenty-five dollars ($25.00). There is a sliding scale for corporations employing capital in excess of five hundred thousand dollars ($500,000.00) in the State.

The obvious purpose of this section is to compel all foreign corporations which exercise their franchise in Maryland by having an office or usual place of business to comply with those sections of the Code referred to above. In the case of Bickel vs. Penna. Steel Co., 123 Md., page 212, the Court of Appeals laid great stress on the fact that the non-resident corporation had an office in Baltimore City, and that its name was painted on the door. This was held to indicate that the corporation was doing business in Maryland, although the rent of that particular office was paid by another corporation. The Court also commented on the fact that upon the stationery used by the non-resident corporation was printed the address of its local office. However, these sections of the Code cannot be held to apply to corporations engaged solely in interstate commerce. The levy of a franchise tax on such corporations would be a burden on interstate commerce and repugnant to the Constitution of the United States. In this connection I desire to refer you to the case of Chaney Bros. vs. Mass 264 U. S., page 147, and Crenshaw vs. Arkansas, 227 U. S. 389-400.

The Crocker-Wheeler Company has filed an annual statement and has appointed a resident agent to accept service. It also declares its willingness that, so long as any liability remains outstanding against it in the State of Maryland, the authority of the agent shall continue until a substitute is appointed and certified to you.

I must advise you that this corporation has complied with the laws of this State in so far as it can be compelled to do so, and I, therefore, advise you that the certificate should be filed in its present form and that the corporation, so long as it conducts its

business as outlined above, is exempt from the payment of the franchise tax. The annual statement transmitted by you to me is enclosed herewith.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FOREIGN CORPORATIONS SELLING STOCKS AND BONDS IN MARYLAND—LICENSE IN BALTIMORE CITY—OTHER REQUIREMENTS.

June 30, 1920.

J. Edward Donahue Company,
Executive Offices,
Compton Building,
161 *Devonshire Street,*
Boston, Mass.

DEAR SIRS: Your letter of the 7th instant, addressed to the Secretary of State, in which you desire to be advised if it is necessary to procure a license for the sale of stock and bonds in the State of Maryland, and also what the requirements are if your company establishes an office in the State, or in case you do not maintain an office, what requirements your representative must comply with to do business in this State, has been referred to me for an answer.

Under Section 15 of Article 56 of Volume 1 of the Annotated Code of Maryland, any person or partnership applying for the same and paying the sum of $30.00 may obtain a license for carrying on the business of stock broker in the City of Baltimore. Such a broker is defined under Section 17 of the same article as "any person who shall make it a business to deal in any manner upon his own account or for others in the purchase or sale of stocks, bills, notes, bank notes or other obligations." These sections you will notice refer only to Baltimore City. There is no general law requiring such a license throughout the State.

If your company is a corporation, and I take it that it is, and you establish an office in the State, you must comply with the requirements of our law relative to foreign corporations doing

business in this State, which are codified in Section 93 of Article 23 of Volume 1 of the Annotated Code of Maryland, which provides "That every foreign corporation which has a usual office or place of business in this State must at the time of filing its papers here pay to the Secretary of State a fee of $25.00." Annually thereafter such companies under the Act of 1918, Chapter 469, Section 2, codified as Section 95 of Article 23 of the Annotated Code of Maryland, Volume 4, must pay an annual franchise tax of not less than $25.00. This tax is based on the amount of capital employed in the State.

If, however, you maintain no office in the State, but simply have your representatives travel through the State and take orders, which orders are not filled by them, but are sent on to the home office and filled from there, then no license can be required or other regulations imposed, as in such a case the business would come under the classification of interstate commerce.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—CONSOLIDATION OF UNIVERSITY OF MARYLAND AND STATE COLLEGE—NOT NECESSARY TO FILE PAPERS WITH STATE TAX COMMISSION.

July 9, 1920.

Dr. A. F. Woods,
President Maryland State College,
College Park, Maryland.

MY DEAR DR. WOODS: In reply to your letter of the 25th ultimo., in which you inquire whether it is necessary for you to file a certified copy of your acts and proceedings in connection with the consolidation of the University of Maryland and the Maryland State College, I desire to advise you that such is not necessary or required under the Act of 1920, Chapter 327, providing for the consolidation of corporations.

Section 6 of Chapter 480 of the Acts of Assembly of 1920 sets forth all the requirements to be complied with to make the law consolidating the universities effective.

However, I believe it would be good policy to file a certified copy of your proceedings in connection with the consolidation of the two universities with the State Tax Commission, as this would make it a matter of public record. This has been done before in similar instances.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FOREIGN CORPORATIONS DOING BUSINESS IN MARYLAND—STATUTORY REQUIREMENTS.

July 9, 1920.

Shoemaker-Satterthwait Bridge Co.,
Pottstown, Pa.

GENTLEMEN: I have been requested by the Secretary of State to answer your letter of July 2nd, addressed to him.

The only general rules which I can lay down in answer to the inquiries contained in your letter are the following: If a foreign corporation desires to engage in business in the State of Maryland it is necessary for it to do three things:

1. It shall file a certified copy of its charter or certificate of incorporation.

2. It shall file a certificate to be renewed annually before the first day of March in each year, subscribed and sworn to by its president or treasurer or by a majority of its board of directors, and pay the annual fee of $1.00 for recording such renewal, showing certain information as specified in the act.

3. At the time of filing the original papers the corporation shall pay the Secretary of State a fee of $25.00, and the Secretary shall thereupon issue a certificate authorizing the corporation to do business in the State.

After the first year the corporation may continue in force its authorization to do business in Maryland by filing the renewal certificate and paying $1.00 recording fee. If, however, it fails to renew its rights in the manner indicated, its power to do business in Maryland lapses, and if thereafter it should again seek authority to engage in business in Maryland, in my judg-

ment, it is necessary for it to act as if it were making an original application, filing again copy of its charters, filing the certificate and paying $25.00. Your understanding of the fees and taxes which it will be necessary for you to pay is correct.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FOREIGN CORPORATION DOING BUSINESS IN MARYLAND — STATUTORY REQUIREMENTS — AGENCIES — SALESMEN.

July 30, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Maryland.

DEAR SIR: I beg to reply to your letter of July 24th, in which you enclose a communication from Francis E. Hamilton, attorney at law, New York City, in which he states that a client of his, a New York manufacturing corporation, desires to sell its merchandise in Maryland, and then requested you to advise him as to the requirements of the Maryland laws covering the transaction of business under the following conditions:

1. If my client maintains a branch office within your State for the sale of its product;

2. If my client grants an agency to some established business concern within your State;

3. If my client sends its salesmen into your State to sell to dealers therein;

4. If my client solicits through the mails and by advertising in your State.

You request me to give you my views on these matters, and I beg to do so, as follows:

1. The client must comply with the laws of Maryland relating to foreign corporations, doing business in this State, as found in Section 93 of Article 23 of the Code; that is, file with the State Tax Commission a certified copy of its charter and a certificate, to be renewed annually before the first day of March

in every year, accompanied by an annual fee of $1.00 for recording such renewal, and answering certain questions specified in the act. The application must be accompanied originally by a fee of $25.00.

2. No action is necessary by the foreign corporation, the local business concern having complied with the appropriate license laws.

3. If the salesmen sell to dealers in Maryland, taking their orders and having them filled from the home office, these transactions are not amenable to the Maryland laws, but come within the protection of interstate commerce.

4. The same answer can be given to this question as given to question No. 3. The business so conducted is interstate commerce.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—RECORDING CERTIFICATE OF INCORPORATION—TWO COPIES NO LONGER REQUIRED.

October 11, 1920.

State Tax Commission,
Union Trust Building,
Baltimore, Md.

GENTLEMEN: In your letter of September 28th you call my attention to Chapter 327 of the Acts of 1920, which became effective October 1st, 1920. This act amends Sections 24, 25 and 29 of Article 23. It abolished the requirement theretofore existing that a copy of the certificate of incorporation or amendments thereto or consolidation certificate shall be transmitted for recordation with the Secretary of State. It merely provides that after the recordation in your office the copy shall be transmitted to the clerk of the Superior or Circuit Court where the principal office of the corporation is situated for recordation among the charter records.

The draftsmen of the act apparently overlooked the fact that the method outlined in the act renders unnecessary the filing

of a copy of the certificate of incorporation amendments or consolidation agreement. As the law now stands, it required two copies. Only one of these copies is necessary; the other is of no use whatsoever. You ask if it will not be altogether proper for the Commission to require only the original paper to be filed instead of complying literally with the statute and requiring two copies, one of which is useless.

After giving this matter careful consideration I have come to the conclusion that no good purpose will be served by requiring two copies to be filed. The law does not set forth any place where the copy is to be kept or what is to be done with it. The Commission is not required to retain a second copy nor is there any indication as to where it should be sent or the proper official to keep it in custody. The requirement that two copies be filed may, in my judgment, be dispensed with by the Commission without invalidating the incorporation or the consolidation. My opinion, therefore, is that you may dispense with the second copy.

However, I suggest, subject to your better judgment, that a formal order of the Commission be passed dispensing with the necessity of filing the additional copy so that you will have a permanent record of the reason for waiving this requirement of the law which has ceased to function.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORPORATIONS—FRIENDS OF IRISH FREEDOM, INC.—CERTIFICATE OF INCORPORATION—LAWFUL PURPOSES.

November 20, 1920.

Charles C. Wallace, Esq.,
Secretary State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. WALLACE: In your letter of November 15th you enclosed the certificate of incorporation of "Friends of Irish Freedom, Incorporated," and stated that the Commission de-

sired an opinion as to whether or not paragraphs "B" and "C" of said certificate are repugnant to Sections 2 and 99B of Article 23 of the Public General Laws of Maryland.

Paragraph B stated "that one of the purposes of the organization is to uphold the right of the Republic of Ireland to international recognition, and to inform the American people to the end that the Government of these United States, applying American principles shall accord full official recognition to the elected Government of the Republic of Ireland," and

Paragraph C states that another purpose is "to diffuse a more intimate knowledge of Irish history and the history of the Irish race in America, and stimulate a just pride of Irish ideals and achievements, thus enabling our people to contribute in the highest degree to the enrichment of American culture."

Section 2 of Article 23 stipulates that corporations may be formed under the provisions of said Article 23 for any one or more lawful purposes except such as are excluded from the operation of a general law by the Constitution of this State, and Section 99-B states that "no charter or other paper which is not in conformity with law shall be received by the State Tax Commission for record." The constitutional exceptions referred to in Section 2 (Const., Art. 3, Sec. 48) are not in my judgment, applicable to the charter presented by you, and need not be considered.

The real question is whether or not the purposes of the charter of "Friends of Irish Freedom, Incorporated," as quoted above are "lawful purposes." The language of Section B seems to indicate that it is merely the purpose of the proposed organization to create by lawful means, a sentiment in this country favorable to the recognition of the Republic of Ireland. It does not propose the use of violence or any disregard or infraction of any law, either state, national or international.

In a democracy, the laws and policy of the Government are deemed to be an expression of the will of a majority of its citizenship expressed through duly accredited legislative and executive officials. It seems to me that any effort to create and develop a sentiment as to any particular line of state policy is

within the right of any citizen or group of citizens so long as the usual and orderly methods of constitutional and legislative procedure are in no sense violated.

I, therefore, feel that the purpose expressed in paragraph B is a lawful purpose even though its final accomplishment, through proper governmental action, may involve a departure from the present status of our international relationships.

The purposes set forth in paragraph C appear to me to be entirely free from objection, and I therefore, feel that it would be proper for the Commission to give the enclosed charter its official sanction.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW.

STATE PROHIBITION LAW—EFFECT OF SUBSEQUENT FEDERAL LAW.

January 24, 1920.

D. Angle Wolfinger, Esq.,
State's Attorney for Washington County,
Hagerstown, Md.

MY DEAR SIR: I desire to reply to your letter of the 15th. Chapter 30 of the Acts of 1916 is a law which, when adopted in manner provided therein, by one of the political sub-divisions to which it is made applicable, declares it to be illegal within the territorial limits of said political sub-division, for "any person, persons, social club, firm or corporation to manufacture for sale, sell or purchase for sale, transport for sale, dispense or otherwise dispose of any" liquor, etc.

The Federal laws to which you refer accomplish for the nation what the above Act does locally. The Act of 1916 may be supplemented, but it is not repealed or suspended by the Federal laws. Therefore, any act committed within Washington County, in violation of its terms, is still punishable there, although indictable also in the Federal Courts.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

CRIMINAL LAW—JUSTICE OF THE PEACE—STATUTE CONFERRING JURISDICTION OF CHARGE OF LARCENY UNCONSTITUTIONAL—NON-SUPPORT—ACCUSED MAY AFTER EXPIRATION OF PAROLE BE AGAIN INDICTED IF HE FAILS TO SUPPORT.

February 27, 1920.

William G. Kerbin, Esq.,
Sate's Attorney.
Snow Hill, Md.

MY DER MR. KERBIN: I desire to reply to your letter of February 17th. Your suggestion that a law should be passed conferring jurisdiction upon Justices of the Peace in larceny cases where the amount involved is less than $25.00, has merit from a practical standpoint, but the Court of Appeals has already declared such a law unconstitutional.

In Danner vs. State, 89 Md. 220, it was decided where a person is charged with commission of an offense rendering him liable, upon conviction, to infamous punishment, trial by an impartial jury is rendered indispensable by the "Declaration of Rights."

In reply to your question concerning the support and maintenance law, I would say that my understanding of the law has always been, that upon a conviction, the husband and father can be compelled to make certain payments during the course of one year. Upon the completion of that year, if he again fails to support his wife and child, he can be rearrested and tried for the commission of a new offense, and upon conviction thereof, can have the same punishment imposed. I know no reason why a conviction or a failure to support the wife or child in the year 1918 should act as a bar to prosecution for failure to support the wife and child in 1920. I think that I would make a test case of this matter if necessary, by indicting any husband who a second time has failed to fulfill his duty to his wife and children. If the plea of former jeopardy is interposed, you can take appropriate action and secure a ruling from the Court.

The propriety of adopting a criminal slander law for females whose chastity has been attacked has always been questionable, and is a matter which should be determined by the Legislature. If you approve such a measure, I suggest that you prepare it and have it introduced by one of your county's Representatives at Annapolis.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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CRIMINAL LAW—FINE—MAY BE ENFORCED AGAINST PROPERTY, NOTWITHSTANDING IMPRISONMENT IN DEFAULT OF PAYMENT.

February 28, 1920.

Sidney P. Townshend, Esq.,
Attorney-at-Law,
Chestertown, Md.

MY DEAR MR. TOWNSHEND: I beg to reply to your letter of February 12th, in which you state that the judgment against a

party convicted in your county of an unlawful sale of liquor was a fine of two hundred and fifty ($250.00) dollars and costs, and upon failure to pay the same, commitment to the Maryland House of Correction for a period of twelve months. The defendant, being unable to pay the fine, served his term in the House of Correction.

You now ask whether this service operated as an extinguishment of his fine or whether the fine remains as a lien against his property.

I find no decision in Maryland bearing upon this subject. The following view of the law, however, is given in 19 Cyc., page 556: "Undergoing imprisonment for non-payment of a fine does not in most jurisdictions operate as a satisfaction of the fine, but the liability of defendant remains and may be enforced against his property." The same authority states (page 550): "Executions in these cases are as a general rule governed by the principles applicable to executions in civil cases."

The only party authorized to institute a proceeding to collect a fine is the party having an interest therein. Sanner vs. State, 83 Md. 648. It is important, therefore, to determine the persons interested in the fine imposed in your case.

In this connection, I would refer you to Article 38, Section 2, which declares to whom fines, penalties and forfeitures shall be paid, and to the provisions of the local law under which the defendant was convicted.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CRIMINAL LAW—DEADLY WEAPON—REASONABLE PRECAUTION AGAINST APPREHENDED DANGER—PROTECTION OF UNITED STATES MAILS.

March 9th, 1920.

James I. Blakslee, Esq.,
Fourth Assistant Postmaster General,
Washington, D. C.

SIR: Replying to your several letters of February 25th, initialed B-H, referring to the carrying of firearms for the pro-

tection of the United States mails by drivers on Government operated motor express routes, transmitting valuable registered letters and packages in the State of Maryland, I desire to call your attention to Article 27, Section 39, of Bagby's Annotated Code of Maryland, title, "Criminal Law," sub-title, "Concealed Weapons."

You will note that in the second paragraph, exception is made in favor of persons who carry such weapons as a reasonable precaution against apprehended danger, but that the tribunal before which any case arising under this section may be tried shall have the right to judge of the reasonableness of the carrying of any such weapon, and the proper occasion therefor, under the evidence in the case.

Undoubtedly, the protection of the mails is sufficient occasion for the carrying of concealed weapons. It is clearly to the interest of the State of Maryland that the mails transmitted to its citizens shall be protected from robbery. Under these circumstances, I am of the opinion that postmen and drivers in the employ of the United States Government are permitted to carry firearms for the protection of the mails, especially after night fall and before dawn. The Courts of Maryland will undoubtedly hold that such Government officials may carry concealed weapons. However, this statement of the law must be understood to limit the carrying of weapons to men who are actually engaged in collecting or delivering mail. When such officials are in the State of Maryland on other than these duties, they will not be permitted to carry concealed weapons.

I deem it my duty to ask you as a precautionary step to give such men as are permitted to carry mails a letter which they should carry with them while on duty, stating that the carrying of concealed weapons by them is necessary for the proper protection of the mails. This letter, in my judgment, should be limited as to time—that is to say, a new letter should be written at least once a year, and the signature of the mail carrier for purposes of identification, be placed upon the letter. The letter should also state with reasonable particularity the route over which the carrier's duty takes him, and should contain in it an instruction to him that he cannot carry a weapon in Maryland, unless he is on official postal business. The carrier should be

compelled to certify on the bottom of the letter that he has read the letter and knows that his authority to carry concealed weapon is limited to the times and places required by his official duty.

I also suggest, subject to your better judgment, that such carriers as require firearms for the protection of the mails, should also carry with him a photostat copy of this letter.

For your convenience, I am enclosing you a copy of Article 27, Section 39 of Bagby's Code.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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JURISDICTION OF OFFENSE—METHOD OF PROCEEDING.

April 8, 1920.

Jonathan H. Brown, Esq.,
Pindell, Maryland.

MY DEAR SIR: I have your letter of April 6th, addressed to the Attorney General at Annapolis. You state a locked freight car was broken into at Pindell, Anne Arundel County, and a bicycle stolen therefrom. You then ask by what authorities this larceny should be handled.

As the crime was committed in Anne Arundel County, the case is one which should be handled by the local authorities of that county. The man who committed the theft should be arrested there, held for the action of the Grand Jury before some local Justice of the Peace, later indicted by the Grand Jury of Anne Arundel County, and tried in the Circuit Court of that county.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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UNION LABELS—REGISTRATION—ASSIGNMENT.

April 12th, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

DEAR SIR: I desire to acknowledge receipt of your letter enclosing original certificate of the trade-mark "Palmolive" and

the assignment of the trade-mark from the B. J. Johnson Soap Company to the Palmolive Company.

This certificate was issued by virtue of the provisions of Chapter 357 of the Acts of 1892, entitled, "An act to protect associations and unions of workingmen and persons in their label, trade-mark and form of advertisement, and to punish offenders for violation of the same."

You request me in your letter to inform you whether these trade-marks may be assigned or transferred on your records.

The Act of 1892, Chapter 357, referred to above, is codified as Sections 50 to 55, Article 27, of Bagby's Code. An examination of these sections does not disclose any provision of the law as to the registration of an assignment.

Section 55 provides as follows:

55. Any person or persons who shall in any way use the name or seal of any such person, association or union, or officer thereof, in and about the sale of goods or otherwise, not being authorized to use the same, shall be guilty of a misdemeanor, and be punished on conviction by imprisonment in the city or county for a term of not less than three months nor more than one year, or by a fine of not less than fifty dollars nor more than three hundred dollars, or both, in the discretion of the Court.

It will be noted that the above section expressly excepts from its operation all persons who were authorized to use such label. This impliedly recognizes a right in the owner of the label to assign his right, title and interest in the label in whole or in part.

Section 52 of the act provides for the filing or recordation of a label, trade-mark or form of advertisement which has been adopted by any person, association or union. This section also provides that no label shall be recorded that probably would be mistaken for a label already recorded, of which question the Secretary of State shall be the judge. This section also provides that the certificate of record shall be in all suits and prosecutions under Sections 50 to 55 sufficient proof of the adoption of the label.

It will be observed, therefore, that the only method in which the assignee of this label could protect its rights would be by

an assignment. If it applied for an original certificate of registration the Secretary of State would discover its similarity to the trade-mark already of record, and the act would prohibit him from issuing a second registration. There is no prohibition in the law against assignment, and no indication whatever that assignment is looked upon with disfavor. In accordance with the intention of the Legislature as manifested by the language of the bill, I think it clear that evidence of change of ownership or title may be registered with the Secretary of State.

My opinion, therefore, is that the assignment of trade-mark enclosed herewith should be filed with the original copies, and that the Secretary of State should endorse on the original certificate a supplementary certificate showing the assignment of this trade-mark, and that he should make such other appropriate entries on his record as are necessary.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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EXPLOSIVES—ORDINANCES OF BALTIMORE CITY.

April 27, 1920.

F. R. Foster, Esq.,
District Chief Engineer,
20-22 South Fifteenth St.,
Philadelphia, Pa.,

DEAR SIR: Your letter of April 14th, addressed to the State Bureau of Labor and Statistics, has been forwarded to this office for reply.

I beg to advise you that there are no State laws, rules or regulations which have to do with the handling, transportation and storage of explosives, but in this connection I call your attention to Sections 69-70-71-72-73 of the Baltimore City Code, 1906, which prohibits, in Section 69, the manufacture of explosives, and in Section 70, prohibits the storing of explosives without first obtaining permission, in writing, from the Mayor of said city, under a penalty of $50.00 for each offense and a further penalty of $50.00 for each and every day that such

explosive may remain stored after proper notification from the Mayor or Fire Inspector.

Section 71 provides for signs on the doors of any place where such explosives may be stored. Section 72 prevents blasting within the limits of the City of Baltimore without the written consent of the Mayor, and Section 73 provides a penalty of not less than $25.00 nor more than $100.00 for a violation of Section 72.

I have no copies of this City Ordinance for distribution. You might take this matter up with Mr. Horace Flack, Bureau of Legislative Reference, City Hall, Baltimore, Md.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ADVERTISEMENTS—USE OF MARYLAND COAT OF ARMS ON LETTERHEAD.

April 28th, 1920.

Lucas Brothers,
E. Baltimore Street,
Baltimore, Md.

GENTLEMEN: Your representative has just presented to me for my examination a letterhead which you had contemplated using in behalf of the Maryland Credit-Finance Corporation. The letterhead included the use of the Maryland coat of arms enclosed in two circles. In the space between the larger and smaller circle appear the words "Maryland Credit-Finance Corporation, Easton, Maryland." Over this emblem are printed the words "Maryland Credit-Finance Corporation, Commercial Bankers, Easton, Maryland."

I was then asked whether this letterhead would be in violation of the Maryland law. I think that its use would be illegal. Chapter 281 of the Acts of 1918 declares that "no person shall, in any manner, for exhibition or display, place, or cause to be placed, any * * * advertisement of any nature upon any * * * standard or shield of the United States or of this State. One of the exceptions, as provided in Section 74-C of

the Act, is stationery whereon shall be depicted said standard or shield with no design or words thereon and disconnected with any such advertisement.

It would appear that the letterhead in question is embraced within the general provisions of the Act, and is not removed from its operation as one of the exceptions.

The Maryland shield as used in the letterhead does have words used in connection therewith and printed thereon, and, furthermore, it is not disconnected with any advertisement, because, in a general sense, the letterhead is in the nature of an advertisement.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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PLUMBING—PROVISIONS OF SECTION 224 OF ARTICLE 43—NO APPLICATION TO ONE WORKING ONLY ON HIS OWN HOUSE.

April 29, 1920.

William L. Marcy, Esq.,
79 Market Street,
Annapolis, Md.

MY DEAR SIR: When you called at the office several days ago you stated that a friend of yours desired to install some plumbing in his own home, and you asked whether, in doing so, he would be guilty of violating any of the laws of the State.

Section 224 of Article 43 of Bagby's Code provides that "if any person shall work at the plumbing business in this State without being qualified as required by this sub-division of this Article (without having received a certificate of competence from the State Board of Commissioners of Practical Plumbing), he shall be deemed guilty of a misdemeanor."

You will note that the language used is "work at the plumbing business," which, in my judgment, means making a business of plumbing, involving the receiving of compensation for work performed. The section does not, in my judgment, apply to work which a man does for himself, because in so doing he is not making a business of that trade, nor is he holding himself

out as engaged therein. I feel, therefore, that your friend may proceed with entire safety so far as he performs the work himself and confines it to his own home.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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SUNDAY WORK—APPLICATION OF LAW WITHIN A MUNICIPALITY—WORKS OF NECESSITY.

May 11, 1920.

Mr. Frank W. Sweitzer,
Glen Echo, Md.

MY DEAR SIR: Your letter of April 28th. You advise me that a Deputy Sheriff of Montgomery County has recently stopped persons from working on Sunday in their gardens, etc., near Glen Echo, and that you are advised that he expects to pursue the same course within the incorporated limits of that town. You inquire whether the laws of the State regarding labor on Sunday are now being enforced and whether they can be enforced in some localities without being generally enforced throughout the County or State, and also whether it is possible for your town to procure a copy of those State laws.

The law with regard to working on Sunday is Section 436, of Article 27 of the Annotated Code of Public General Laws, and reads as follows:

"No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday; and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace shall forfeit five dollars, to be applied to the use of the county."

This law is of general application throughout the State and the Sheriffs of all counties are charged with the enforcement

of this as of other State laws within their respective counties. You will note that this law permits works of necessity on Sunday, and, therefore, the question whether the law has been violated by any particular work is one which rests, in the first instance, in the judgment of the officers charged with its enforcement.

If, however, a Sheriff or other officer, charged with the enforcement of the law in any county, knows of a violation of any law within that county, it is his duty to arrest without regard to whether the violation takes place within the limits of an incorporated town, or elsewhere within his jurisdiction, and also without regard to the strictness with which officials of other counties are enforcing that or any other law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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SELLING SHORT WEIGHT—STANDARD TON OF COAL.

May 17, 1920.

Wharton Moore, Esq.,
U. S. Department of Agriculture,
Bureau of Public Roads,
Washington, D. C.

DEAR SIR: In reply to your letter of May 12th, addressed to the Attorney General, in regard to a certain shortage of weight in some coal that you bought recently at Bethesda, Md., I beg to advise you that, by Section 24 of Article 97 of the Code of Maryland, a standard ton of coal is fixed at 2,240 pounds. However, there seems to be at this time no penalty for selling less weight.

By Chapter 724 of the last Acts of Assembly, effective June 1, 1920, any person, firm or corporation who shall knowingly and willingly give short weight, etc., shall be guilty of a misdemeanor, and on conviction be fined not less than $25.00 nor more than $500.00, and a warrant for the arrest of any such person, firm or corporation may be issued at the instance of the purchaser receiving the short weight or measure or at the

instance of any inspector of weights and measures in the State of Maryland.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

DEADLY WEAPON—OFFICERS OF THE PEACE OF OTHER STATES.

June 17th, 1920.

Milton A. Reckord, Adjutant General,
Annapolis, Maryland.

DEAR SIR: In reply to your recent communication inviting my attention to a communication from Captain Thomas W. Norton, Department of Public Safety, Elkins, West Virginia, in which he desires to be informed as to the procedure necessary to permit members of his department to carry arms while passing through this State, I beg to advise you that this is fully covered under Section 39 of Article 27, Code of Public General Laws, Vol. 3.

This section prohibits generally the carrying of weapons, but specifically excepts officers or conservators of the peace of other States temporarily sojourning in this State. The officer's official credentials from his department would be sufficient, in my opinion, to permit him to carry whatever arms are prescribed by his department.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

GAMBLING DEVICE—MONEY PAID FOR INFORMATION AS TO WHETHER SOMETHING OF VALUE MAY BE OBTAINED BY PAYING MORE MONEY.

June 18, 1920.

Josiah A. Kinsey, Esq.,
Secretary to the Police Commissioner,
Baltimore, Md.

MY DEAR SIR: I beg to reply to your letter of June 12th, in which you ask me to inform you whether a certain gum vend-

ing machine, which it is desired to place in certain stores in the City of Baltimore, violates the gambling or other laws of the State.

I have had an opportunity to examine one of these machines and ascertain its method of operation. It contains an aperture into which a nickel may be placed, and upon the pulling of a lever a package containing five pieces of chewing gum is discharged from a container of the gum on the side of the machine. Three wheels with certain characters upon their outer surface are made to revolve rapidly and upon stopping form various combinations, a few of which cause the discharge into a basin of one, two or four metal checks. Upon the insertion of another nickel and the pulling of the lever, not only is another package of gum secured, but the metal check or checks are released, become the property of the player and may be redeemed in merchandise in the same store or played again as nickels in the machine. Behind a small glass in the face of the machine there is an indicator, however, which tells the player before he inserts his nickel whether he is to receive any metal checks, and if so, how many. The player knows, therefore, in advance exactly what return he is to receive from the money which he invests.

The manufacturer of the machine insists that this feature distinguishes it from other contrivances held to be gambling devices.

I feel that each play into the machine must be tested as a single and complete act, and the question determined from the character of that act. If legal, then its repetition will not render it illegal. The illegality, if it exists at all, must emanate from some ingredient or quality of the individual act. It is true that the player knows in advance that he will receive his chewing gum and the number of checks shown on the indicator, and to that extent the result is definite. There is an element of uncertainty, however, which constitutes the stimulus for play and gratifies the gambling propensity of the player. On every occasion the player's attention is concentrated upon the indicator, which may or may not disclose as a result of the drawing of the lever the premium to be paid upon the next succeeding play.

The stake of a gambler may be money, property or positive knowledge easily convertible into a material gain. The machine in question uses valuable information, which may possibly be revealed by the hazard of the game, as the lure to attract its patrons. It would appear, therefore, that the contention that the player knows with precision in advance the full return of his investment is incorrect, and because the outcome of the play cannot be foretold with accuracy and the element of chance is constantly present, the machine is, in my judgment, a gambling device.

While the authorities differ somewhat, this is the construction adopted by many of the State Appellate Courts:

Ferguson vs. Indiana, 42 L. R. A. 720;
State vs. Googin (Me.), 102 Atl. 970;
People vs. Jenkins (N. Y.), 153 App. Div. 520;
State vs. McTier (Tenn.), S. W. 121.

The Court of Appeals of this State, in Long vs. State, 74 Md. 565, has decided that Section 185 of Article 27 of the Code is valid and constitutional in so far as it prohibits every scheme and device bearing any semblance to gambling. Since, in my judgment, this machine is a gambling device, it necessarily follows that its use is rendered illegal by said statute.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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PRISONER ON PAROLE—SHERIFF WHO ARRESTS ON NEW CHARGE MAY HOLD FOR TRIAL, NOTWITHSTANDING RIGHT OF BOARD TO ARREST FOR VIOLATION OF PAROLE—IF PRISONER IS RELEASED ON BAIL, BOARD MAY ARREST.

June 30, 1920.

Harry S. Hartman, Esq.,
Secretary, Advisory Board of Parole,
Baltimore, Md.

DEAR SIR: Your letter of June 19th.

You inform me that Thomas McAfee, who was sentenced to serve three years in the Maryland House of Correction, begin-

ning June 3d, 1918, and paroled by the Governor August 11th, 1919, the parole to expire on December 10th, 1920, was arrested in Washington County, and is being held in jail for trial in November, 1920, on two charges of larceny pending against him, and as a State's witness in a case of carnal knowledge; that a warrant has been issued against him for violating his parole; that your Board wishes to arrest him upon this warrant so that he may serve out his unexpired term, and that the county officials show no disposition to turn him over to your Board. You inquire whether, in my opinion, your Board can demand him or whether the local authorities can hold him until the above-mentioned cases now pending in Washington County are disposed of.

The authority of the Advisory Board of Parole to arrest is given by Section 73 of Article 41 of the Code of Public General Laws, as amended by Chapter 249 of the Acts of 1918, which section contains the following language: "The members of the Advisory Board of Parole, and the parole officers appointed by it, are authorized and empowered to arrest, without warrant, all persons who violate the terms of their parole or conditional pardon, wherever found within the State." This is a broad power, but within any particular county it is not broader than the power of the Sheriff of that county to arrest upon a warrant issued by the Court. In my opinion, therefore, your Board cannot demand that the Sheriff of Washington County surrender McAfee to you as long as he is detained in jail pending the disposition of the above-mentioned cases.

I understand, however, from Mr. Spencer of this office that you have verbally informed him that McAfee may be released on bail pending the disposition of these cases, and you wish to know the rights of your Board in the event that he should be so released.

In my opinion, your Board would then have the right to arrest him by virtue of the above-mentioned warrant. It is true that one who is released on bail is in legal contemplation in the custody of his sureties, who have a right to arrest him at any time, but this right to arrest is not, in my opinion, superior to the right which your Board has to arrest him under the warrant already issued, and, therefore, if your Board should exercise its

right before the sureties exercise theirs, you would be entitled to his custody.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CRIMINAL JURISDICTION OF JUSTICE OF THE PEACE—EXTENDS TO ALL PARTS OF COUNTRY EXCEPT WHERE SPECIFICALLY EXCLUDED.

July 2nd, 1920.

Frank G. Pratt, Esq.,
Justice of the Peace,
Elkton, Md.

MY DEAR SIR: In your letter of June 28th you state that you and Mr. Scotten were both appointed Justices of the Peace for the Third (Elkton) Election District of Cecil County, and under the provisions of Chapter 321 of the Acts of 1916 Mr. Scotten was designated as Police Magistrate by Governor Ritchie. You then ask me to pass upon the relative powers and privileges of yourself and Mr. Scotten as established by said Act.

First: I am of the opinion that Mr. Scotten as Police Magistrate has exclusive criminal jurisdiction in the Third District, but not elsewhere in the county. This is proven by the provision in the Act that nothing shall preclude the said Police Justice (Mr. Scotten) from trying criminal cases which arise in any other district of said county. This would not have been necessary if he possessed exclusive criminal jurisdiction over the entire county, nor would the succeeding clause have been introduced, which declares that nothing in the Act shall confer any right of removal of any case from the said Police Magistrate to any other Justice of the Peace of Cecil County.

Second: Section 12 of Article 52 of Bagby's Code makes the criminal jurisdiction of all Justices of the Peace co-extensive with the territorial limits of the counties in which they are respectively appointed. This rule having been modified as to Cecil County only to the extent of excluding the criminal authority of all of the Justices of the Peace except the Police

Justice from the Third District, it follows that that authority remains unimpaired in all other districts of the county.

I feel, therefore, that you have full jurisdiction to hear and determine all criminal offenses arising in your county without the Third District.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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BASTARDY — JURISDICTION — PROSECUTION MAY BE MAINTAINED IN COUNTY WHERE CHILD WAS BEGOTTEN OR WHERE CHILD IS DOMICILED OR WHERE FATHER RESIDES.

July 15, 1920.

James Clark, Esq.,
State's Attorney,
Ellicott City, Md.

MY DEAR MR. CLARK: In your letter of July 8th you ask in what jurisdiction bastardy proceedings should be instituted, under the following state of facts, namely: The fornication occurred in Howard County, where both the mother and alleged father lived at that time; the child was born at a hospital in Baltimore City; the father has since moved to Baltimore City, and the mother and child to Baltimore County.

In my judgment, the prosecution may be instituted in Baltimore City, Baltimore County or Howard County. Under the decision in Hardesty's case, 132 Md. 172, the jurisdiction of the father's residence and that of the child's domicile, within the limits of the State, are equally available for purposes of prosecution. The conclusions reached in this case were based upon the broad provisions of the bastardy law, which authorized the accusing of any person "before a Justice of the Peace having criminal jurisdicition." It would appear, from expressions used by the Court in that case, that the prosecution may also be instituted in the county where the fornication occurred, and possibly the language of the statute and of said decision is sufficiently comprehensive to embrace additional jurisdictions, although it is not necessary for me at this time to extend my

Justice from the Third District, it follows that that authority remains unimpaired in all other districts of the county.

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Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

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State's Attorney,
Ellicott City, Md.

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views beyond the three counties in which you appear to be interested.

You state that you are somewhat confused by a sentence used by Judge Offutt in his opinion in Leister's case (Daily Record, June 28, 1920), as follows:

"Unless the State proved that the fornication referred to in the indictment occurred at Carroll County, the traverser would be acquitted; if it did prove it, he would be convicted, and whether the State did or did not prove it could only be determined by a jury or the Court sitting as a jury."

I do not think that this language is inconsistent with the decision in Hardesty's case. Judge Offutt was not passing upon the question as to where the prosecution should be started, but upon the proof necessary to sustain an indictment already laid. In Leister's case, the prosecution was instituted in Carroll County, and since the defense was that the fornication occurred in Pennsylvania rather than in Carroll County, as claimed by the State, it was absolutely necessary, under the decisions of Shea vs. State, 74 Md. 52, and Lynn vs. State, 84 Md. 80, to establish beyond a reasonable doubt the fact that the fornication had actually occurred in Maryland, which in this particular case meant Carroll County. I, therefore, feel that the language quoted in Leister's case may be entirely disregarded by you in determining the question in which you are interested.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

JUSTICES OF THE PEACE—NO POWER TO SUSPEND SENTENCE.

Reinhold J. Halm, Esq.,
Justice of the Peace,
Hagerstown, Md.

July 23rd, 1920.

MY DEAR MR. HALM: I have your letter of July 16th, in which you state that you recently suspended sentence in the case of a minor who had violated the Motor Vehicle Law, and that thereafter you received a letter from Colonel Baughman, Commissioner of Motor Vehicles, objecting to this action on your

part, and stating "that under the Maryland Motor Vehicle Law, when a violator is proven guilty, the minimum fine must be imposed, as there is no provision for the suspension of sentence or parole." You ask for an expression of my views on the question involved.

In my judgment, it is the duty of every Court and Justice of the Peace to enforce the laws as he finds them upon the statute books, and upon the conviction of any person for the violation of said laws to impose such penalty as may have been prescribed by the Legislature for such offense.

This general duty is subject, however, to such limitations or modifications as the Legislature itself may have provided. The Courts of the State, by Section 520 of Article 27, have been clothed with the power to suspend sentence generally or for a definite time. Section 510 of the same Article has given them certain special powers in connection with the suspension of the sentence of infants under the age of fifteen years. It will be noted, however, that these statutes refer only to the Courts of the State, and I have been unable to find any legislative authorization for the suspension of sentence by Justices of the Peace.

I, therefore, feel that it is the duty of Justices of the Peace in all cases where convictions are had before them to impose the penalties prescribed by law. This ruling would apply not only to violations of the Motor Vehicle Law, but to all other statutory offenses. The Motor Vehicle Law has no higher standing in this respect than the other statutory provisions of the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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STATE PROHIBITION LAW—NOT REPEALED BY EIGHTEENTH AMENDMENT OR VOLSTEAD ACT.

July 23, 1920.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: In your letter of July 22nd you state that there has been a violation of your local liquor laws,

and you desire to know if a Justice of the Peace in your county can issue a warrant for the offender, and whether it would be the duty of your Sheriff to serve it.

The Act of 1908, to which you refer, is a local law for Worcester County, prohibiting the sale of liquors, and providing penalties for its violation. The Federal laws which have since been enacted serve the same purpose for the nation as a whole, and while they may supplement your Act of 1908, they do not repeal or supersede it. In the recent case of Rhode Island vs. Palmer, the Supreme Court, in Conclusion No. 6, declared that the Eighteenth Amendment, by its own force, invalidated every State statute which sanctioned or authorized that which the Eighteenth Amendment prohibited. Your statute was clearly not embraced within the legislative measures affected by the Eighteenth Amendment, and, therefore, remains in full force and effect. Any act committed within Worcester County in violation of its terms is still punishable there, although indictable also in the Federal Courts. I might add that I gave a similar opinion last January, which was concurred in by the United States District Attorney at that time. Your local officials should proceed, therefore, in the usual manner with the enforcement of your local law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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PERSON BELIEVED TO BE INSANE, WHEN CHARGED WITH CRIME—REPORT OF LUNACY COMMISSION.

August 5, 1920.

Dr. A. P. Herring,
State Lunacy Commission,
Baltimore, Md.

DEAR DR. HERRING: Your letter of July 28th, enclosing a copy of a request from Justice Johannsen, for an examination by your Commission of Edwin Hutson, and asking me whether it is sufficient for your Board to report to the Court that he is mentally irresponsible, and suggest that he be remanded to the

Spring Grove State Hospital for care and treatment, or whether there is some special form for you to use in such cases.

The recent Act of the Legislature, Chapter 735, simply provides that your Commission shall report its findings within two weeks after your Commission shall have been notified by the Court, or Justice, then having jurisdiction of the charge. No special form is required. The law provides that in cases where the Commission finds the person insane or lunatic, he shall remain in the institution to which he has been committed, or in some other institution to which he may be transferred on recommendation of your Board, until he shall be tried.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

GAMBLING DEVICES—DUTY OF SHERIFF.

August 11, 1920.

William H. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: In your letter of August 7th you state that when the attention of your Sheriff is called to the use of slot machines in your county he refuses to act until a warrant has been sworn out. You ask if it is not his duty to seek to discover this violation of the law and then arrest the party and take the machine as evidence.

I do not believe that the Sheriff in the case cited by you is required by law to arrest without a warrant, although I think that he should, in order to carry out properly his duties as Sheriff, follow up complaints of this character if they are well founded. It does not seem to me, however, that there is any legal requirement for him to do so. In case he himself observes a violation of the law, it is then his duty to arrest the offender at once and take the machine as evidence.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

GAMBLING DEVICES—MERE POSSESSION IS NO CRIME.

August 12, 1920.

William H. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: In your letter of August 9th you ask certain questions concerning the presence in your community of slot machines, the gist of which will be indicated by the answers which I hereby submit to you.

The presence of a slot machine in a house, or any particular place, does not constitute a violation of the law. It is the use of the machine, not its existence or presence, that constitutes a violation of the law.

I think that the machine must be played before a violation of the law is committed, and if you desire to prove your case you should have a witness who has played the game himself or seen others play it. The presence of money in a machine when taken is some evidence that gaming has occurred, but it is not conclusive, because it may have been introduced in the machine innocently. Where you have proper witnesses and an arrest is made, I think the Sheriff should also sieze the machine for purposes of evidence.

Prosecutions for the improper use of slot machines may be sustained, in my judgment, under the provisions of Section 214 of Article 27, which prohibits the keeping of any gaming table; "gaming table" is given the broadest possible meaning by the provisions of Section 225.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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SUNDAY SALES—MUNICIPALITY CANNOT AUTHORIZE OR PROHIBIT—SUBJECT CONTROLLED BY STATUTE.

Hon. Edward P. Wyatt,
Mayor of Crisfield,
Crisfield, Md.

August 19, 1920.

MY DEAR MR. WYATT: In reply to your letter of July 31st, in which you ask me to ascertain whether the Mayor and City

Council of Crisfield may validly pass an Ordinance prohibiting Sunday selling, I submit herewith my opinion:

I assume that the Legislative Act to which you refer is Chapter No. 700 of the Acts of 1920, re-enacting with amendments Article 27, Section 437, of the Annotated Code of Maryland.

Section 437, as amended by the above-mentioned Act, provides, in part, as follows: "No person in this State shall sell, dispose of, barter, or deal in, or give away any article of merchandise on Sunday, except retailers, who may sell and deliver on said day tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice-cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases." The Act (after prescribing penalties) further provides: "This section is not to apply to apothecaries, and such apothecaries may sell on Sunday drugs, medicines and patent medicines as on week days, and this section shall not apply to the sale of newspapers and periodicals."

Clearly, the City of Crisfield cannot nullify the Legislative Act. You cannot prohibit what the Legislature permits, nor can you permit what the Legislature prohibits. The Legislature has in terms permitted retailers to sell and deliver, on Sundays, tobacco, cigars, cigarettes, candy, sodas and soft drinks, ice, ice-cream, ices and other confectionery, milk, bread, fruits, gasoline, oils and greases. Apothecaries may sell on Sundays, in addition to the articles set out above, drugs, medicines and patent medicines. The sale of newspapers and periodicals is also permitted. Thus the Legislature has permitted the sale of these enumerated articles of merchandise and has prohibited the sale, disposition or giving away of any other articles of merchandise. Therefore, the Legislature has covered the entire field and you can do nothing to extend or limit the sale of merchandise on Sundays.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

SLOT MACHINES—UNLAWFUL ONLY WHEN USED FOR PURPOSE OF GAMBLING.

September 25, 1920.

Franklin H. Smith, Esq.,
Town Clerk,
Capitol Heights, Md.

DEAR SIR: Yours of September 15th.

I do not believe that Maryland has any laws relating specifically to slot machines. The matter is covered by the general provisions contained in Section 214 of Article 27, Volume 3 of the Code, against the keeping of any gaming tables or any house, vessel or place for the purpose of gambling.

Section 225 of the same article declares that all games, devices and contrivances at which money or any other thing shall be bet or wagered shall be deemed a gambling table within the meaning of Section 214.

Section 227 requires the Courts to construe all sections relating to betting and gambling liberally, for the purpose of preventing gambling mischiefs intended to be prohibited.

Under these general provisions the legality of the use of any slot machine or machine of similar nature can be tested.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FAILURE TO PROCURE DOG LICENSE — IMPRISONMENT IN DEFAULT OF FINE IS NOT IMPRISONMENT FOR DEBT.

October 1, 1920.

W. Brewster Dean, Esq.,
State's Attorney,
Denton, Md.

MY DEAR SIR: Yours of September 27th, in which you question the constitutionality of Chapter 497 of the Acts of 1918, which provides for the licensing of dogs, because you feel that the penalty of a fine or imprisonment stipulated in the Act for a violation thereof may be in conflict with Article 3, Section 38, of the Constitution, prohibiting imprisonment for debt.

It seems to me that this contention has been fully answered in the case of Ruggles vs. State, 120 Md. 564, where the Court of Appeals decided that the penalty of imprisonment in jail in default of the payment of the fine provided by Chapter 133 of the Acts of 1912, for violations of the Motor Vehicle Law, is not an imprisonment for debt within the intention of Section 38 of Article 3 of the Constitution. You will note that the Ruggles case dealt with a penalty to be imposed for a failure to secure a license authorizing the operation of a motor vehicle, which omission was declared by the Act to be a misdemeanor and made punishable as such. Similarly, the dog law of 1918 required the taking out of a license and declared the failure to do so to be a misdemeanor and punishable as such.

In the Ruggles case the Court declared that the term "debt" as used in the Constitution means "an obligation arising otherwise than from the sentence of a Court for breach of the public peace or commission of crime." The imprisonment authorized in the dog law is a penalty to be imposed for the commission of a crime. This conclusion is not affected by the fact that the dog law is codified as a part of Article 81 of the Code under the title "Revenue and Taxes," sub-title "Taxation of Dogs." The actual provisions of the sections, rather than their titling, determine their true significance.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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GAMBLING DEVICE—A GIFT ENTERPRISE WHICH INVOLVES CHANCE IS ILLEGAL.

October 14, 1920.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 6th inst. You ask my opinion regarding the lawfulness of the operation of a chewing gum vending machine, which you describe as "made with small nails and you drop a penny in it

and it trickles down to the base and in so doing is likely to run in a space allotting one or two or three, etc., pieces of chewing gum." It appears also that the purchaser always receives at least one stick of gum for his cent and that this is the usual price of that size stick.

It is clear from this description that a customer gets a certain sure value for his cent and stands the chance of getting one or two or three sticks in addition. That is, both the premium and the amount of the premiums are entirely matters of chance.

Section 315 of Article 27 of Bagby's Code prohibits the sale or offering for sale "in any way, any wares, goods * * * holding out as an inducement * * * any scheme or device by way of gift enterprise of any kind or character whatsoever."

In Long vs. State, 74 Md. 565, this statute was declared unconstitutional as applying to gift enterprises not involving chance. But, clearly, the device you describe is a gift enterprise involving chance, and its operation is, in my judgment, therefore, illegal.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORONER—CONTROL OVER CHARGE OF MURDER DOES NOT BEGIN UNTIL CORONER'S JURY HAS RENDERED VERDICT—CANNOT COMMIT FOR ACTION OF GRAND JURY WITHOUT SUMMONING CORONER'S JURY—CANNOT ADMIT TO BAIL.

October 21, 1920.

Dr. J. Knox Insley,
Coroner, Northeastern District,
Baltimore, Md.

DEAR SIR: Replying to your several inquiries with reference to the powers and duties of Coroners.

1. Should a person arrested for causing the death of another be held for the action of the Coroner, or may he be released pending the action of the Coroner?

A Coroner does not acquire any authority or control over a charge of homicide until the jury summoned by the Coroner

finds a verdict which justifies an accusation of murder or manslaughter. Therefore, until an inquest has been held, the matter is entirely in the hands of the Magistrate, who may, in his discretion, admit such person to bail if the facts before him indicate that the offense committed by such person is bailable.

2. Can a Coroner commit for the action of the Grand Jury, without summoning a Coroner's jury?

Section 3 of Article 22 of the Public General Laws provides that no Coroner shall summon a jury in cases where it is known that the deceased came to his death by accident, mischance or in any other manner, except where deceased died in jail, or where the circumstances attending his death amount to a strong probability or reasonable belief that the deceased came to his death by felony. In my opinion, this language clearly indicates that, when in the course of an investigation by the Coroner it appears that there is a strong probability or reasonable belief that the deceased came to his death by felony, it is the Coroner's duty to summon a jury of inquest, and he cannot, therefore, commit any person upon a charge of felony until such jury has found a verdict which justifies such action. In other words, a Coroner, in the absence of a reason to believe that a felony has been committed, has no power to commit any one for the action of the Grand Jury, and if he has reason to believe that a felony has been committed it is his duty, under the above cited section, to summon a jury of inquest. It follows from this that a Coroner cannot commit any one for the action of the Grand Jury without the previous action of a Coroner's jury.

3. Can a Coroner fix bail?

As there is no statute in Maryland authorizing a Coroner to admit an accused person to bail, he has no power to do so. 13 Corpus Juris, page 1255. Vickers on Police Officers and Coroners, page 232.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

NOTARY PUBLIC — CERTIFYING TO AN OATH NOT ACTUALLY MADE BEFORE HIM.

October 21, 1920.

Murray McNabb, Esq.,
Dundalk, Md.

DEAR SIR: Replying to your letter of September 20th, I beg to advise you that there is nothing in the Code making it a separate offense for a Notary Public to certify to an oath which has not been taken before him, but I desire to direct your attention to the following considerations, which I feel are important in connection with your inquiry: First, Notaries Public are appointed by the Governor, acting under statutory direction that he appoint men of excellent character and of known honesty, and for this reason it would seem to me that the practice such as you have mentioned would be sufficient cause for a notary's removal from office, inasmuch as it is the certification by the Notary that the affiant has made oath to the matters and facts set out in the affidavit which gives the affidavit legal effect.

It would also seem to be clear that where certificates are not made in accordance with law, and that fact is subsequently proven, the instrument attacked would necessarily be held defective for lack of proper affidavit, resulting in many instances in a serious loss to the parties affected thereby.

Certifying that the affiant personally appeared before you, when, as a matter of fact, such was not the case, would be giving a false certificate and amount to malfeasance in office, which is a misdemeanor at common law and punishable by fine or imprisonment.

It seems to me, therefore, that the better practice would always be to have the person who makes the affidavit appear before you, so that there can be no question raised as to the propriety of your taking his affidavit.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

SUNDAY ENTERTAINMENTS — GENERAL PRINCIPLES TO BE CONSIDERED IN DETERMINING QUESTION OF LEGALITY. WORKS OF NECESSITY AND CHARITY.

December 2nd, 1920.

General Charles D. Gaither,
Police Commissioner,
Court House,
Baltimore, Md.

MY DEAR GENERAL GAITHER: In your letter of October 22nd you ask my opinion as to whether Sunday entertainments, open to all applicants without direct charge, which are held for the purpose of raising money for one purpose or another, come within the prohibition of the Sunday laws, on the ground that the collection of money from the audience is an indirect charge of admission. Because of the pressure of other work, I could not give the matter my immediate attention, and thereafter, realizing its importance, I deliberately delayed my answer until I was able to give the subject full consideration.

It is not simply a theoretical question of law which you have propounded to me, but rather a condition which must be met squarely and treated with an intelligent understanding of both the law and the facts of which it is composed.

General State Legislation dealing with the subject of Sunday observance is found in Sections 436, 437 and 438 of Article 27 of the Annotated Code. Section 436 reads as follows: "No person whatsoever shall work or do any bodily labor on the Lord's Day, commonly called Sunday; and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's Day (works of necessity and charity always excepted)." It is provided in Section 438 "That it shall not be lawful to keep open and use any opera house, etc., ... within the State on the Sabbath Day, commonly called Sunday."

Certain constructions of the language quoted have been furnished to us by the Court of Appeals. In Levering vs. Park Commissioners, 134 Md. 48, an ordinance of the City of Baltimore, authorizing the playing of baseball and other games on Sundays, and construed by the Court of Appeals as permitting

also the playing of games by professionals on the day was declared void, not only as to professional games, but also as to all amateur games, on the ground that, so far as professionals were concerned, the ordinance was assumed to authorize on Sunday certain acts which constituted the usual employment and occupation of those who would have performed the same, and which, when occurring on the date, would have been in contravention of the general state-wide inhibition against work or bodily labor on the Sabbath. The constitutionality of the Sunday law was upheld in Judefind vs. State, 78 Md. 510, and a conviction by a jury for husking corn on Sunday was sustained by the Court. From these cases it might be concluded that any activity whatsoever, irrespective of its nature and character, representing in fact the usual secular vocation or employment of the party responsible therefor, constitutes work and bodily labor on the Sabbath, and is, therefore, illegal when performed on that day.

The Court, however, did not establish any such extreme rule. Both cases refer to the fact that Sunday statutes are essentially civil regulations, providing for a fixed day of rest in the business of the ordinary avocations of the community, and stating that "nature, experience and observance suggest the propriety and necessity of one day of rest," which seems to be essential for the well being of society. There are decisions of an earlier period in other States which hold that it is unlawful to publish a newspaper on Sunday, to sell a newspaper on Sunday and to operate a steam train on Sunday, but I cannot believe that those acts would now be considered violations of the Sunday laws. The complexity of our modern life has presented new living conditions whose requirements have led to a more liberal construction and application of these restrictive measures. If they were given a literal interpretation it would be illegal for churches to maintain paid choirs. The church member who is driven to service by his paid chauffeur would be a violator of law, and many other acts now sanctioned by public approval, would formerly have been declared improper, and even at this time, by rigid construction, might be considered to be embraced within the operation of the statutes.

Our Courts have not been called upon to define the meaning of the phrase "works of necessity and charity," which constitutes the exception in the act, and forms the basis of a broader interpretation. A tendency to assume a more liberal attitude on this subject is noticeable in all sections of the country, but even if the law were still applied in other States with the old severity, such decisions would not necessarily furnish precedents for us. Under our system of criminal jurisprudence the law is composed of the statutes, the decisions of the courts relative thereto and the constructions placed thereon by juries under the constitutional authorization which makes them judges of the law as well as of the facts. By reason of this provision the administration of the criminal law is peculiarly responsive to public sentiment, which is reflected occasionally in the jury box before it manifests itself in legislative action. One illustration of this statement is the Jaffe case, tried before a jury in the Criminal Court of Baltimore. The indictment charged the sale of certain articles specifically mentioned in Section 437, prohibiting Sunday selling. The sales were not denied, and the only defense was the obsolescence of the law arising out of its continued violation, acquiesced in for a long period of time by the public, and upon this defense the traverser was acquitted. Subsequently the Legislature of 1920 legalized in express language this construction of the statute.

From the finding of a jury there is no appeal, and in order to deal with the situation before me I feel that I am justified in considering not merely the statutes of the State and the constructions placed thereon by Courts, but also the attitude of juries toward them in the past and the probable interpretations thereof that will be adopted by juries in the future. It would be futile for me to advise you to order arrests when there is little, if any, probability of conviction. Such a course, without accomplishing any substantial results, would tend to bring into disrepute both the law and its enforcing officials. With these thoughts in mind, I desire now to address myself more definitely to the matter which you have presented to me.

Sunday is meant to be a day of religious observance and of rest and cessation from labor. The rest contemplated would not at this time, in my judgment, be construed to mean physical and

mental inaction. Idleness begets mischief. Use of certain hours of the Sabbath Day for the intellectual, moral and cultural improvement of the community, so far as it does not conflict with the religious ceremonies of the day, tends not only to improve the individual, but to develop a finer citizenship.

It is the purpose underlying and responsible for meetings held in theaters, halls or other buildings on Sunday and the principal end to be accomplished thereby which, in my judgment, determine their legality or illegality. If this purpose is a purely commercial one—if its ultimate end is to bring financial benefit either personal or corporate to those responsible therefor, meetings held in pursuance thereof on the Sabbath Day are unlawful. If however, the real purpose of a meeting is devotional, inspirational, educational, cultural or charitable, and tends to inspire and improve those attending the same, and to promote some cause identified with the general welfare and uplift of the community, I feel that such a meeting may be held on the Sabbath Day without any infraction of law. A gathering in the interest of charity must, of course, contemplate the relief of the distressed or needy and be of a character which conforms to the spirit of the day.

Practically every activity on the Sabbath Day involves the performance of some bodily labor. If, however, this work is not the fundamental thing, seeking to find a reward for itself in some material gain, but is merely incidental to the accomplishment of some worthy purpose designed to promote the intellectual or moral welfare of the community, it is not illegal. It follows that an individual pursuing his usual employment under such circumstances, whether paid or unpaid, commits no violation of law. The taking of a collection or offering is not in itself, therefore, a determining factor. It may or may not be one of the facts from which the bonafides of the alleged purpose of a meeting may be determined. It is impossible for me, of course, to tell you definitely in advance what particular gatherings are or are not illegal. You must, in applying the principles which I have here laid down, exercise a sound discretion.

I have only endeavored to furnish a general working formula by which your department may be guided. Doubtful situations

will unquestionably arise, and it may become necessary in some instances to cause arrests to be made and test cases to be tried.

I trust that the advice which I have given you will be helpful and that as a result thereof, with the sympathetic co-operation of juries—the great law enforcing agencies provided by the constitution—we may preserve the respect of the entire community for law and constituted authority without in any way sacrificing the sanctity of the Sabbath or profaning the use to which its hours should be dedicated.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CRIMINAL LAW—SALES OF LIQUOR WITHOUT LICENSE—WHEN SALE IS MADE FOR BEVERAGE PURPOSES—EIGHTEENTH AMENDMENT AND VOLSTEAD ACT—RIGHT TO PROSECUTE STILL EXISTS.

December 7, 1920.

MY DEAR GENERAL GAITHER: During the past few days, certain articles have appeared in the public press, discussing the recent decision of the Court of Appeals in the case of Ulman vs. State with respect to its applicability to bootlegging, and the right of the Police to make arrests therefor. These statements, although doubtless intended to clarify the situation, have only tended to confuse it, and my own views have been so imperfectly presented, that I feel compelled, because of the seriousness of the subject, to submit to you at once a correct statement of my ideas relative thereto. This obligation would seem to weigh upon me the more heavily, because it is the duty of the Attorney General, as the head of the State's law department, to interpret clearly and vigorously the statutes of the state, and assist its officials in the effective enforcement of law and order within its borders.

In the Ulman case, the defendants had secured from the proper federal officials, the permits necessary under the Volstead Act, to authorize them to sell liquor. They were wholesale dealers who planned to sell intoxicants only for non-bev-

erage purposes. It was contended in their behalf that the State license laws existing at the time the Eighteenth Amendment became effective had, by that Amendment, been rendered absolutely void, and that it was no longer necessary for them to secure from the State a wholesale dealers license. The Court, however, decided that the laws of Maryland had been repealed only to the extent of their inconsistency with the provisions of the Eighteenth Amendment and sustained the conviction. It is evident that the decision was confined to those few persons who, as wholesale dealers, proposing to sell solely for non-beverage purposes, had secured their federal permits but had failed or refused to become licensees of the State.

The bootlegger, however, sells for beverage purposes in violation of the federal law. Whether the State laws requiring a license are also applicable to him is a very different question therefor from that decided in the case of Ulman vs. The State.

I have been quoted in the press as being of the opinion that a man cannot be convicted for selling liquor for beverage purposes when it is no longer possible for him to secure from the State a license to make such sales, and that there is no longer any State law which renders bootlegging illegal.

This is not, however, a correct statement of my views on the subject. It is my conviction that a man who sells liquor for beverage purposes without a license is still violating the law of Maryland which declares such a sale to be unlawful. In this connection my judgment has been strengthened by the recent decision of the Supreme Court of Massachusetts in the case of Commonwealth against Nickerson, 128 N. E. 273, where the Court, and a very learned and comprehensive opinion, maintained the right of the State to try and convict under its own laws a person selling liquor for beverage purposes without a license. It is unnecessary for me to set forth at length the reasoning of the Court. It is sufficient to say, that the Court considered legislation which tended to prevent the commission of acts prohibited by the Eighteenth Amendment to be "concurrent legislation" and, whether passed prior to the adoption of the amendment or subsequent thereto, to be enforceable as tending to accomplish the same end for which the amendment itself was adopted. The underlying principle in the Ulman case and in the Nickerson

case is the same, in that, State legislation regulating the liquor traffic is repealed only in so far as it is in direct and irreconcilable conflict with the provisions of the Eighteenth Amendment, and that all portions of said laws which can be regarded as in harmony with the purpose of the Eighteenth Amendment remain effective. It is my opinion that the selling of liquor in Baltimore City without a license from the State is illegal, whether such sales be made for beverage or non-beverage purposes.

It follows that the Police of Baltimore are not only still clothed with the power, but charged with the duty, to arrest such offenders and bring them to trial in the Criminal Court of the City.

It is important that this ruling should not be confused with the opinions heretofore given by me to you relative to the rights and powers of the Police in the enforcement of the provisions of the Volstead Act. It is true that the unauthorized sale of liquor is also a violation of this federal statute, but the arrest to which I new refer is justified because the act for which it is made is a violation of the State law and because the arrest itself contemplates a trial for the offense in a State Court. The Volstead Act prohibits not only the sale but also the transportation of liquor, the possession of liquor and many other acts affecting the same.

My former opinions had reference to arrest for violations of this federal law; this opinion is limited to arrests for violations of the State law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

Note.—A per curiam order was filed in the case of Ulman vs. State on December 2, 1920. The above opinion was rendered on December 7th. Its conclusions seem to be sustained by the opinion of the Court in the Ulman case filed January 13th, 1921. (See Daily Record Feb. 8, 1921.)

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ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION.

EDUCATION—TEACHERS' SALARIES, MINIMUM SCHEDULE—ALLEGANY COUNTY—LEGISLATIVE POWER TO MODIFY.

February 26, 1920.

Hon. James Campbell,
Chairman of Allegany County Delegation,
Annapolis, Md.

MY DEAR SIR: I beg to reply to your letter of February 20th. You state that the Allegany County Delegation favors a schedule of salaries for the School Teachers of Allegany County which is not approved by the School Board of that county, and you then ask whether the General Assembly can pass a bill authorizing the payment of the salaries proposed, and make the same applicable to Allegany County.

Chapter 8 of the General Educational Bill, passed in 1916, as Chapter 506 of the Acts of that year, provides a minimum scale of salaries for the different classes of Public School Teachers throughout the State.

You direct my attention to Section 25-J of the same Act in which it is provided that, subject to the provisions of Chapter 8, "the County Board of Education shall appoint, on the written recommendation of the County Superintendent, all principals and assistant teachers and fix their salaries."

It must be remembered that all of the above provisions are legislative enactments. The Legislature has, at all times, within the constitutional limits, full power and authority to repeal and amend any existing law, and I know of no reason why the present Legislature may not prescribe a new minimum salary schedule for the teachers of Allegany County, or pass any other local law for that county relative to the subject of education, which it may deem desirable.

The educational law referred to above was evidently intended to prescribe a uniform standard for all the schools of the State, and I, therefore, think it would be prudent to make it perfectly clear in any new measure by affirmative language that the exist-

ing general provisions relating to teachers salaries are repealed as to Allegany County.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION—CHILDREN LIVING ON GOVERNMENT RESERVATION NOT ENTITLED TO ATTEND COUNTY SCHOOLS.

April 29, 1920.

Edwin H. W. Harlan, Esq.,
Attorney at Law,
Bel Air, Md.

DEAR SIR: Yours of April 21st. You inquire whether the children of persons living in the thirty thousand acres of land, formerly a part of Harford County, and acquired by the United States Government in 1917 for government purposes as a proving ground and arsenal, are entitled to attend the public schools of Harford County. This tract, upon its acquisition by the Government, was stricken from the tax assessment books of Harford County. Several families, both civil and official, living permanently on this reservation, are sending their children to High Schools of Harford County. You ask whether they have the legal right to do so.

Section 31 of Article 96 of Bagby's Code gives the consent of the State of Maryland to the acquisition by the United States by purchase or otherwise of any land in the State required for sites for Custom Houses * * * or *for any other purpose* of the Government. It was apparently under this section that the tract in question was acquired. Section 32 provides that "exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby ceded to the United States for all purposes except the service upon such sites of all civil and criminal process in this State."

The only adjudication on the matter of the school attendance arising out of a similar set of facts which I have been able to find is reported in "Opinions of Justices," 1 Metc. 580. It

is there decided that residents of lands purchased by or ceded to the United States for Navy Yards, Forts and Arsenals, where there is no other reservation of jurisdiction to the State than that of a right to serve civil and criminal process on such lands, are not entitled to the benefits for their children of the common schools of the district in which said ceded lands are located. This decision seems to me to be sound and equitable. There is no reason why the State of Maryland should provide school facilities for children living beyond its borders, and upon lands which no longer contribute by the payment of taxes to its annual income.

I am, therefore, of the opinion that the School Board of Harford County is justified in refusing to permit the children in question to enjoy the benefits of the Public Schools of your county. I see no reason, however, why some arrangement may not be made either with the parents of these children or the United States Government by which the children may be received in the schools upon the payment of proper compensation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION—QUALIFICATIONS OF ALBERT S. COOK FOR STATE SUPERINTENDENT OF SCHOOLS.

June 2, 1920.

Dr. Henry M. Fitzhugh,
President State Board of Education,
Westminster, Md.

MY DEAR SIR: I wish to acknowledge receipt of your letter of June 1st, in which you outline generally the training and experience of Mr. Albert S. Cook, Superintendent of Schools of Baltimore City, and request me to advise you whether Mr. Cook possesses the qualifications required for the position of State Superintendent of Schools as stipulated in Section 18 of Article 77 of the Public General Laws of Maryland.

The law just referred to declares that the State Superintendent of Schools shall "be an experienced and competent educator, a graduate of a standard college; that he shall have had

not less than two years of special academic and professional graduate preparation in a standard university, and not less than seven years experience in teaching and administration."

Mr. Cook has received from Princeton University the degree of Master of Arts, which, since it was conferred for work and not *pro causa honoris,* necessarily implies that he had previously received from a standard college the degree of Bachelor of Arts. I will assume, therefore, that Mr. Cook is a graduate of a standand college, and there seems to be no question about his having had more than seven years experience in teaching and administration — in fact, I understand that he has held his present position for a much longer period of time. The only question, therefore, which could arise would be as to whether Mr. Cook has had "not less than two years of special academic and professional graduate preparation in a standard university," and I shall direct my attention, therefore, to this particular inquiry.

I think that the first effort should be to ascertain the real intention of the Legislature in the passage of this law. I feel that the primary desire of the Legislature was that the appointee should have the necessary theoretical training and actual experience to qualify him fully to act as State Superintendent of Schools. The Legislature was more concerned about the possession of such training than with the method by which it was acquired, and, therefore, although it was necessary to prescribe a standard by which this training could be measured, it is proper, in dealing with such standards, to give them the most liberal interpretation.

According to a signed statement of George D. Strayer, head of the Department of Educational Administration, submitted to me, Mr. Cook was in residence in the summer sessions of Columbia University of 1904, 1905, 1906, 1907 and 1914. During these same years "he did work in the field in the development of courses of study, the organization of his supervisory program, the construction of school buildings, the organization of special schools for the teaching of agriculture and industrial arts, and the like," under the direction and supervision of Mr. Strayer. Mr. Strayer states that on the books of Teachers' College of Columbia University Mr. Cook's residence of five

summer sessions is one summer session more than a minimum year's residence. This actual residence, together with the field work done under his supervision, Mr. Strayer declares to be the equivalent of more than two years' graduate work. It is a well-known fact that in many lines of university investigation the practical or field work is quite as essential as the work done during actual residence at the university, especially when the field work is conducted according to the methods prescribed by and under the supervision of university authorities. Such study and experience ought to be, and generally are, entitled to as much credit as the work done within the halls of the university.

All doubt on this subject is, however, removed in the case of Mr. Cook by a statement issued by Paul Monroe, Esq., Director of the School of Education of Columbia University, to the effect that Teachers' College of Columbia University does recognize the academic value of field work done under the supervision or direction of one of the staff of the college and assigns appropriate academic credit to it. I feel that, under a liberal and proper construction of the law quoted above, Mr. Cook has had two years of special academic and professional graduate preparation in a standard university, and that he is fully qualified, under the law, for appointment as State Superintendent of Schools should that position be tendered to him by the State Board of Education.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION—QUALIFICATION OF STATE SUPERINTENDENT—SHOULD TAKE OATH—NO BOND REQUIRED.

June 11th, 1920.

Prof. Albert S. Cook,
Towson, Md.

DEAR PROFESSOR COOK: On the occasion of your recent call at my office you asked me to inform you with what formalities,

if any, it will be necessary for you to comply in order to qualify legally as State Superintendent of Schools, to which position you have recently been elected by the State Board of Education.

The State Educational Law, as embodied in Article 77 of the Code, nowhere expressly requires the State Superintendent of Schools to take an oath, but the use of the phrase, "until a successor shall qualify," at the end of Section 18, would seem to indicate impliedly that some act of qualification was contemplated by the Legislature.

Section 7 of Article 70 of the Code declares that "all other officers (meaning those for whom special provision had not previously been made) elected or appointed to any office of trust or profit under the Constitution and Laws of this State shall take and prescribe the oath" provided by the Constitution, Article 1, Section 6, "in the several counties before the Clerk of the Court or before one of the sworn deputies of such Clerks."

Under the cases determining what positions are "offices," requiring the oath, as distinguished from "employments," which do not, I am rather inclined to believe that you would be placed in the latter class. Your duties are, however, most far-reaching and important, and the consequences flowing from a failure to take the oath, if one should later be determined to be necessary, would be so serious that I advise you to pursue the safe course and take the oath before the Clerk of the Circuit Court for Baltimore County. The Clerk of the Court, under the provisions of Section 12 of Article 70, will report to the Secretary of State within the month your name and office, and the fact that you have taken and subscribed the oath before him.

You refer also to the matter of filing bond. It may be that the State Superintendent of Schools is required to furnish a bond by the rules and regulations of the State Board of Education, but I have been unable to find any statutory provision relating thereto.

I am returning herewith your letter from Dr. Fitzhugh notifying you of your election.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION—STATE BOARD DECIDES CONTROVERSIES ARISING UNDER SCHOOL LAWS — RESORT TO COURTS TO ENFORCE BOARD'S DECISION.

August 20, 1920.

Albert S. Cook,
State Superintendent of Education,
210 W. Madison Street,
Baltimore, Md.

MY DEAR MR. COOK: The correspondence enclosed in your recent letter reveals the fact that a controversy has, for some months, been pending between the School Boards of Worcester and Somerset Counties as to the duty of the latter to pay to the former tuition for pupils of Somerset County attending the High School in Pocomoke City.

In connection with this matter, you ask me for my opinion on the following points:

1. Does the change in the law, Chapter 249, Acts of 1920, Paragraph 11 (codified as Article 76, Section 11), which says: "The State Board of Education shall explain the true intent and meaning of the law," etc., alter the force of By-Law 11, Section 25F, page 22, of the Maryland Public School Law, 1920?

2. Would the proper remedy for Worcester County be a legal action against Somerset County, since a sum of money is involved?

1. Section 11, as formerly enacted by Chapter 463 of the Acts of 1874, directed the State Board of Education to "Enact By-laws for the administration of the Public School System, *not at variance with this Act,* which latter clause Judge Alvey, in Wiley vs. School Commission, 51 Md. 401, refers to as meaning "not contrary to the law."

While this phrase is not found in the present law, the same limitation must impliedly exist. It has been decided that the State Board may legally make and promulgate By-Laws, but this power cannot be exercised in derogation of definite legislative action, but only to the extent of interpreting or supplementing the same. Since By-Law 11 provides that the State Superintendent of Schools shall decide, where the two County

Boards of Education fail to agree, as to the support each should give to a school on or near the dividing line of said counties, and Section 11 of Article 77 states that the State Board of Education shall decide * * * all controversies and disputes arising under the school law of the State, and the two declarations are thus in direct conflict, the latter, being the more recent and being also the direct expression of the legislative will, must prevail. In my judgment, the State Superintendent no longer possesses authority to act in the premises.

The validity and finality of the visitorial power conferred by the statute upon the State Board of Education has been upheld by the Court of Appeals as to all disputes and contentions among those entrusted with the administration of the Public School System, between functionaries, and patrons or pupils. Wiley against School Commissioner, *supra;* Underwood against School Board, 117 Md. 97), and between functionaries themselves. (Shober vs. Cochrane, 53 Md. 545.) It is only where a purely legal question is raised and where the issue is not one involving the proper administration of the Public School system that resort may be had to the Courts.

2. The proper procedure would seem to be an application for a writ of mandamus. In Underwood against School Board, *supra*, the Court of Appeals said: "It may sometimes be necessary to have the process of a Court to enforce a decision of the State Board of Education. If Shober had retained possession of the office after the State Board had decided in favor of Cochrane, and the latter had applied for a mandamus, his right to such writ would have been altogether different from that of Shober, who applied for it after the State Board had decided against him."

This language indicates that when the State Board of Education has adjusted a controversy between two agencies of the State School System a mandamus will be granted by the Courts to compel the observance of the State Board's findings by the recalcitrant party.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

EDUCATION — CHILDREN LIVING ON PROPERTY PURCHASED FROM UNITED STATES HOUSING CORPORATION ENTITLED TO ATTEND COUNTY SCHOOLS.

August 25, 1920.

Board of Education of Harford County,
Bel Air, Md.

GENTLEMEN: I have given very careful consideration to your letter of August 11th, 1920. You request me to give you my opinion based upon the following facts:

The United States Housing Corporation purchased a tract of land just outside of the corporate limits of Aberdeen, and outside of what is known popularly as the "Aberdeen Proving Grounds."

This corporation has erected eighty-six dwellings to provide homes for men working on the Proving Grounds. These properties were assessed by the County Commissioners of Harford County, but Honorable John C. Rose, United States District Judge, on petition of the United States Housing Corporation, enjoined the collection of the taxes. The Housing Corporation has since sold these houses to individuals by a contract which calls for an initial payment of part of the purchase price, with a reservation of title in the United States Housing Corporation until the entire purchase money is paid. The purchaser has certain options, one of which is to anticipate the deferred payments. Another option is to take title to the property and give a purchase money mortgage to the Housing Corporation.

You ask whether the children of the occupants of these premises have the right to attend the State Schools, inasmuch as they refuse to pay taxes on the property in which they reside.

If the occupant purchases the property, it, of course, becomes liable for taxes as soon as the title passes out of the Housing Corporation. If the purchaser avails himself of his option to take title and give a purchase money mortgage to the Housing Corporation, the property likewise is subject to taxation.

If the purchaser continues to pay his installments and the title remains in the Housing Corporation, the property is not taxable, and the question then arises whether this exemption

from taxation deprives the children of such occupants of their right to attend school without payment of tuition.

In an opinion rendered on April 29th, 1920, addressed to Edwin H. W. Harlan, Esq., of the Bel Air Bar, I ruled that the School Board of Harford County was justified in refusing to permit children residing on the Proving Grounds to enjoy the benefits of the public school. I called attention to "Opinions of Justices," 1 Metc. 580, in which it was decided that residents of lands purchased by or ceded to the United States for Navy Yards, Forts and Arsenals, where there is no other reservation of jurisdiction to the State than that of a right to serve civil and criminal process on such lands, are not entitled to the benefits for their children of the common schools of the district in which said ceded lands are located.

I have made a careful examination of the deed to the Housing Corporation. This land was acquired by purchase. There is no reservation. The land in question was not ceded to the United States Government. The State of Maryland has not lost its jurisdiction over this land. The occupants of this land are citizens of the State of Maryland, and, if they have the other requisites, are entitled to vote. The State of Maryland has criminal jurisdiction over the land in controversy, and its occupants are subject to jury duty and military duty. Moreover, all personal property on such lands belonging to the occupants thereof is taxable in accordance with the laws of this State. Any chattels not affixed to the realty may be taxed by the taxing authorities. If the occupants of this land own securities of any kind, these may also be taxed.

The mere fact that the land and buildings are exempt from taxation does not mean that the children of the occupants cannot attend the school. A sexton of a church may dwell with his family on church land which is exempt from taxation, but his children would be entitled to the benefits of the public schools. Other illustrations might be given, such as the warden of the State Penal Institutions. He may send his children to the County Schools, even though the land on which he dwells is exempt from taxation.

The Code, Volume 4, Article 77, Section 33, provides as follows: "All white youths between the ages of six and twenty-

one shall be admitted into such public schools of the State, studies of which they may be able to pursue." This section is sweeping. The benefits of free education should not be taken away from children, unless the authority to do so is clear. Although the occupants of these properties are under a moral obligation to pay their proportionate share of the expense of maintaining this school, I do not think that children can be legally excluded from enjoying the privilege of free education according to the laws of this State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION — APPROPRIATION TO PROMOTE AMERICANIZATION—NOT AVAILABLE UNLESS FEDERAL LEGISLATION ENACTED.

August 26, 1920.

Hon. E. Brooke Lee,
Comptroller,
Annapolis, Md.

DEAR MAJOR LEE: The 1920-21 budget carries among its appropriations for education an item in the following language: "State's contribution necessary to accept Federal aid under proposed act of Congress to promote Americanization, $15,000."

At the time this allowance was made the passage of one of the several measures then pending in Congress, carrying financial aid to the various States in furtherance of their work in Americanization, was immediately contemplated, but no such bill was ever enacted into law.

The State Superintendent of Education now desires that a part, not to exceed $5,000, of the $15,000 appropriation be placed at once at the disposal of the State Board of Education for use by it in its Americanization work, and you recently requested me to inform you whether, in view of the above facts, you may legally comply with his request.

Regardless of the plan and purposes of the parties who were instrumental in securing the $15,000 appropriation or of any private understanding which may have existed between them and the State officials with whom the matter was discussed, the question which has now arisen can be determined solely, in my

judgment, by ascertaining the legislative intent as disclosed by the language used in the budget bill itself. This being true, the obvious design of the appropriation was to place Maryland in a position, to the extent of $15,000, to secure the benefit of the proposed Federal aid, as and when the same should become available. Two conclusions in connection therewith seem to be irresistible.

In the first place, co-operative effort was clearly contemplated and no use of this appropriation was expected to be made at all, except in conjunction with Federal aid. Secondly, if Federal assistance is finally proffered, then, in order to avail ourselves of it, the expenditure of our funds must be made in such manner as to comply with the stipulations prescribed in the Act of Congress, as it must be assumed that Congress will designate the terms to be met by the various States before its appropriations will become available. In either event, definite Federal legislation is a condition precedent to the use of the money set apart by our Legislature for this purpose. Congress has not yet acted, and, therefore, in my judgment, the time has not arrived when this appropriation of $15,000, or any part of it, may be expended, even though it be contemplated to employ the money desired at this time in the extension of work in Americanization.

I am returning herewith the letter to you from Albert S. Cook, Esq., State Superintendent, dealing with this subject.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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EDUCATION — ESTABLISHMENT OF PUBLIC SCHOOLS IN ELECTION DISTRICTS — NOT MANDATORY — DISCRETIONARY WITH COUNTY BOARDS OF EDUCATION — DECISION OF BOARD FINAL.

December 9th, 1920.

Mrs. Lena Keplinger, Chairman,
Committee of Education of the
Newcomb Club,
Bethesda, Maryland.

DEAR MADAM: I wish to acknowledge receipt of your letter of the 21st ultimo, in which you state that the law is that "it

shall be the duty of the Board of Education to establish one or more public schools in each election district," and in which you ask my opinion how that law may be enforced.

The law you quote is a part of Section 131 of Article 77 of the Code of Public General Laws. It is as follows:

"It shall be the duty of the County Board of Education to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free, and which shall be kept open not less than one hundred and forty (140) actual school days, or seven months in each school year; provided, that the colored population of any such district shall, in the judgment of the County Board of Education, warrant the establishment of such a school or schools."

You will notice that this section is not a mandatory provision. The determining factor is that the colored population, in the judgment of the County Board of Education, warrants the establishment of such a school or schools.

This section is in entire harmony with the Public School Law, which leaves, and must necessarily leave, to the discretion of the County Boards of Education most matters regarding provision of school facilities. Thus, Section 24 of Article 77, is, in part, as follows:

"The County Boards of Education are authorized, empowered, directed and required to maintain a uniform and effective system of public schools throughout their respective counties."

I can find, however, no specific direction in the law to maintain any school, or any particular number of schools, in any particular sub-division of the county. The discretion of the County Board of Education is, in a sense, limited by the visitorial power of the State Board of Education. Thus, Section 11 of Article 77 provides:

"The State Board of Education shall, to the best of their ability, cause the provisions of this article to be carried into effect. They shall determine the educational policies of the State; they shall enact by-laws for the administration of the public school system, which, when enacted and published, shall have the force of law. For the purpose of enforcing the provisions of this article, and the enacted and published by-laws of

the Board, the State Board of Education shall, if necessary, institute legal proceedings."

In the case of the School Commissioners vs. Morris, 123 Md. 398, an attempt was made by a mandamus proceeding to compel a County Board to keep open a particular school. The mandamus was refused. The Court, through Judge Burke, said, in part:

"In each of these cases it was distinctly held that when the controversy or dispute is one involving the proper administration of the public school system of the State, the Court has no power to interfere, and that all such questions must be referred to and finally settled by the State Board of Education."

Upon the authority of the case just quoted, I would say that the opinion of this Board is final in matters such as you have brought to my attention, and that if you should feel that the County Board is not exercising its discretion wisely you should bring the facts to the attention of the State Board.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS.

CANDIDATES TO BE VOTED FOR AT SPECIAL ELECTION—
METHOD OF NOMINATION.

December 24, 1919.

James A. Gary, Esq., Chairman,
Republican City Committee,
722 Equitable Building, City.

MY DEAR MR. GARY: I desire to confirm the opinion given to you yesterday over the telephone in response to the inquiry contained in your letter of December 22nd.

Senator Peter J. Campbell, of the Second Legislative District of Baltimore City, who had been chosen to succeed himself at the last election, died on the morning of December 20th. The death having occurred during the recess of the Legislature, and more than ten days before the termination of said recess, the Governor of the State, in conformity with the mandatory duty imposed upon him by Section 13 of Article 3 of the Constitution, issued, on December 22nd, a warrant of election to supply the vacancy thus created, fixing Monday, January 5th, as the date for the holding of said election.

You ask me in your letter to indicate to you the proper manner of nominating candidates to be voted upon at this special election. I find that the election laws of the State do not provide directly for such a contingency. The election must be held, however, and candidates therefor must be selected.

Where there is no express declaration, the intention of the Legislature must be sought for, and this intention may be ascertained, as was said by Judge Burke, in 115 Md. 445, "by a consideration of the general scope and policy of the Act."

It is indicated by language used in Section 47 of the Election Laws that the Legislature did not intend certain provisions applicable to regular elections to obtain in the case of special elections. I believe this is true not only as to the time of filing Certificates of Nomination referred to in Section 47, but also as to the time of certification referred to in Section 48. The

provisions of both sections being subject to the exception contained in Section 47.

Under the circumstances, it would be impossible to select the candidates at a primary election, and an examination of the primary law would seem to indicate that its machinery is not adapted for use in an event of this character.

It is provided in Section 201 of the Election Laws that "in the event of any vacancy caused by the death or resignation of any person nominated in this State, under the provisions of the preceding sections of this article, such vacancy shall be filled by the State Central Committee or governing body of the party to which said nominee belongs of the county in which any such vacancy occurs."

Section 201, above referred to, has been construed in such manner as to clothe the governing body of the party with the power to fill a vacancy caused not merely by the death or resignation of any person nominated, but also any vacancy existing by reason of there having been no candidate for the particular office at the primary election.

There is also a provision, passed in connection with the Primary Election Laws of 1912, which is codified as the last sentence of Section 188 of Article 33. This provision authorizes the governing body of the respective parties in the counties, city or State to fill any vacancies which may exist in respect to any office occurring after the returns have been canvassed and announced, or which may exist by reason of there being no candidate for the same in any primary election or otherwise. The governing body is to fill such vacancies as their rules and regulations provide.

My conclusion, therefore, is that the proper method for your party to pursue in making its nomination for this special election is to have the selection made by the Republican committee of the Second Legislative District of Baltimore City, if, under your party organization, such a committee exists and is clothed with power to act on matters pertaining to the particular district. If, however, the representatives from the Second District are merely a part of a general committee which acts for the entire city, as well as for matters arising in any one of the Legislative Districts, then the nomination should be made by the entire City Committee.

Of course, any person may become a candidate for this office upon the filing of a petition in the proper form addressed to the Supervisors of Election and signed by two hundred or more signers. Such a candidate may select his own party designation and this designation must be printed on the ballot to the right of the candidate's name, unless a nominee for the same office, selected by a convention or at a primary election, claims the same party name, which contingency, under the peculiar circumstances now existing, would seem to be an impossibility.

I feel that all Certificates of Nomination or Petitions of Nomination should be in the hands of the Supervisors of Baltimore City in time for them to comply with the provisions of Section 49 of the Election Laws, which requires notice by publication eight days before the election.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TIME FOR FILING PAPERS BY CANDIDATES IN THE PRIMARIES —METHOD OF COMPUTATION.

March 25th, 1920.

Colonel John Philip Hill,
Chairman of the Third Congressional District,
712 Keyser Building,
Baltimore, Md.

DEAR COLONEL HILL: I beg to answer the inquiries contained in your letter of March 24th.

Every candidate for Congress from any district of Maryland and every candidate for the position of Delegate to the Republican State Convention must file his papers not less than twenty days before the day of the primary election (Article 33, Section 184). Every candidate for United States Senate must file his papers not less than thirty days before the day of the primary election (Article 33, Sections 184 and 214).

Under the above provisions, twenty *clear* days are required in the one instance and thirty *clear* days in the other.

See Walsh vs. Boyle, 30 Md. 262; Graham vs. Wellington, 121 Md. 668.

The primary election in Presidential years is held on the first Monday in May (Article 33, Section 179), which occurs this year on May 3rd. Under the above rule the day of the election itself and the day of filing must both be excluded in the twenty-day calculation, so that the last day for filing would be April 12th.

A candidate for the Republican Presidential nomination must file his certificate not less than fifteen days before primary election (Article 33, Section 178), or, in this instance, not later than April 17th.

I feel sure of the correctness of these statements, but some question might possibly be raised as to the last, by reason of the provisions of Section 184 of Article 33, which was enacted later than Section 178, and in order to avoid such question it might be advisable for Presidential candidates also to file their papers not later than April 12th. These provisions apply equally to Baltimore City and the counties.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

NOTE.—The above ruling was sustained by the Court of Appeals in the case of Iverson vs. Perlman, No. 49, April Term, 1920.

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TIME FOR FILING CERTIFICATES OF CANDIDACY—NO PRIMARY ELECTION IN ANY COUNTY, WHEN ONLY ONE CANDIDATE FOR EACH NOMINATION OTHER THAN THE NOMINATION FOR PRESIDENT — REGISTRATION MUST BE HELD, WHETHER OR NOT PRIMARY IS HELD IN COUNTY.

April 8th, 1920.

W. Evans Anderson, Esq.,
Clerk, Board of Supervisors of
Elections for Baltimore County.
Towson, Md.

DEAR SIR: I beg to acknowledge receipt of your letter of the 5th inst., inquiring as to the dates on which the certificates of candidates for nomination at the Primary Election to be held on Monday, May 3rd, must be filed

Candidates for Congressional nominations and for election as Delegates to the State Convention must file such certificates not later than April 12th. Candidates for the nomination for President need not, as I read the law, file such certificates until April 17th, although there may be some slight ground for contending that such candidates should also file not later than April 12th. I do not think that this contention, if made, would be upheld, as I think the clear intention of the law is against it, and simply note it as a possible contention.

You also inquire whether it will be necessary to hold a primary election or the registration preceding the primary election in case there should be no Presidential candidate, nor more than one Congressional candidate and no opposing candidates for election as Delegates to the State Convention. It seems clear that it would not be necessary to hold a primary election under such circumstances as those mentioned. Section 188 of Article 33 of the Annotated Code provides that when only one set of candidates of any political party qualify for the primary election in any county of the State, certificates of nomination shall be issued to such candidates in a similar manner to that provided for successful candidates at primary elections, and no such primary election shall be held for such political party, and also that whenever only one candidate of a political party qualifies for an office to be filled at a primary election, a certificate of nomination shall in like manner be issued to him and his name and the position for which he is a candidate shall be omitted from the primary ballot, so that the ballot shall only contain the names of candidates for positions or offices where there are qualified contestants for such positions.

If, therefore, only one set of candidates of any political party shall qualify in any county for the primary election to be held on May 3rd, 1920, there will be no primary election in that county for the candidates of that party, and if the same state of things should obtain in that county with regard to every political party, there will be no primary election at all in that county on that day. It is to be noted, however, that if the name of one candidate for President is filed, a primary election

must be held, in order that the voters may have an opportunity to vote either for that candidate or for an uninstructed delegation. See Article 33, Section 178.

The registration, however, must take place, if any primary election is to take place in the State, since Section 17-A of Article 33 provides that "on the Tuesday preceding any primary election to be held in any year in this State, and which shall occur after the enactment of this law, each (county) Board of Registration shall meet," and hold the registration in its precinct or district of all voters not previously registered, "and who may be entitled to vote at the next general election." It will, therefore, be necessary in any year in which any primary election is held in the State for each County Board of Registration to hold a registration on the Tuesday preceding such primary election, even though there be no primary election to be held in that county.

This view is in accordance with an opinion rendered to R. Groome Parks, Esq., counsel to the Board of Election Supervisors for Kent County, on August 21st, 1917. Opinions of the Attorney General, Volume 3, page 173.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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BOARD OF CANVASSERS—TWO MEMBERS MAY ACT—FILLING A VACANCY IN BOARD OF SUPERVISORS.

April 10, 1920.

Henry L. Constable, Esq.,
Counsel to Board of Supervisors of Elections,
Elkton, Md.

DEAR SIR: Yours of April 2nd, 1920.

You state that the Board of Supervisors of Elections of Cecil County is composed of John H. Black, Z. T. Cooling, Democrats, and V. R. Bennett, Republican, and that Mr. Cooling has moved out of the State, but has not, to your knowledge, resigned, but you presume would be willing to do so.

You further state that it has been customary for the retiring Board of Supervisors to continue in office until the returns of the Presidential primary have been canvassed, the incoming Board qualifying later.

You inquire whether Mr. Cooling should send in his resignation and ask the Governor to appoint his successor to fill out his unexpired term, and whether it would be advisable for two members of the Board to canvass the returns in case this is not done and in case the commissions of the newly appointed members should not arrive in time for the new Board to qualify and canvass the returns.

In my opinion, it would not be necessary for Mr. Cooling to resign. Section 81 of Article 33 of the Code, although its provisions are not as clear as they might be, would seem to indicate the method by which two members of the Board of Supervisors can act as a Board of Canvassers.

If, however, you deem it advisable to have a full board present, that result could, of course, be accomplished by the resignation of Mr. Cooling and the appointment by the Governor of his successor, if this could be done in time for such successor to quality. In this connection, however, the question whether Mr. Cooling was appointed as the representative of the Democratic party becomes important, by reason of the provisions of Section 4 of Article 33 of the Code, by which provisions the successor to any supervisor appointed as the representative of a political party must be appointed from a list furnished by the State Central Committee representing such political party in that county, as in the case of an original appointment. Unless, therefore, this provision is in conflict with Section 11 of Article 2 of the Constitution, which I do not think that it is, then, if Mr. Cooling was appointed as the representative of the Democratic party, his successor could only be appointed subject to the above restrictions, which would doubtless occasion some delay.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

NECESSITY OF REGISTRATION BEFORE ANY PRIMARY HELD IN STATE, WHETHER PRIMARY IS HELD IN COUNTY OR NOT—NECESSITY FOR PRIMARY, WHEN THERE IS ONLY ONE PRESIDENTIAL CANDIDATE.

April 17, 1920.

James A. Young, Esq.,
Clerk, Board of Supervisors of Elections
for Allegany County,
Cumberland, Md.

DEAR SIR: I have your letter of April 15th. Your Board is correct in its opinion that a registration of voters must be held on Tuesday, April 27th, in Allegany County, notwithstanding the fact that at the time of writing your letter there seemed to be no prospect of a primary election being held in your county. The law (Section 17-A, Article 33) provides that "on the Tuesday preceding any primary election to be held in any year in this State * * * each Board of Registration shall meet," and hold a registration in its precinct or district.

You will notice that the law refers to any primay election to be held *in the State*, and as there would unquestionably have been certain primary contests in counties other than in your own, the registration was necessary. Of course, all uncertainty on this subject has been removed since the writing of your letter by the filing of certificates of candidacy by Senator Johnson and General Wood.

The law specifically requires in connection with a Presidential primary (Section 178, Article 33) that "beneath the name or group of names of any qualified candidate or candidates for the nomination of President there shall appear the words 'for an uninstructed delegation,' and to the right of said words a square for the cross-mark of the voters."

Therefore, in a Presidential primary, even though there be one Presidential candidate, it is necessary to hold a primary and give to the voters an opportunity to vote for the candidate in question or in favor of an uninstructed delegation.

This conclusion does not apply to any other office, and, therefore, if only one candidate or the necessary number of candidates for any office file their certificates for said office, no pri-

mary election is necessary. In such event, the person or persons filing are deemed to have been nominated and are entitled to receive from your board certificates to that effect.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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PRIMARY ELECTIONS — BALLOTS — DETACHABLE STUB OR COUPON.

April 17, 1920.

Carey Kingdon, Esq.,
Clerk to Board of Supervisors of
Elections for Montgomery County,
Rockville, Md.

DEAR SIR: In reply to your letter of April 14, 1920.

The detachable stub or coupon required by Section 58 of the Election Law is to be attached to ballots to be used in the primary election, exactly as in the case of ballots for the general election. The language of this section is that all ballots, in all elections in Maryland, are to be prepared in accordance with its provisions, which include the use of the detachable stub or coupon. The only exception to this general requirement was the stipulation formerly contained in Section 184, excluding the use of such coupons in primary elections while the envelope system was authorized.

The Act of 1916, Chapter 160, repealed and re-enacted Section 184, abolishing the envelope system, eliminating the prohibition of the use of the detachable stub or coupon, and thereby re-establishing the general provisions of Section 58.

This view is in accord with an opinion to be found in Reports and Opinions of the Attorney General, Volume 2, pages 147 and 148.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

BOARD OF SUPERVISORS — TIME FOR ORGANIZATION — PROVISIONS DIRECTORY AND NOT MANDATORY.

April 19, 1920.

Fuller Bernard, Esq.,
Cumberland, Md.

DEAR SIR: In reference to your telephone conversation this morning, in which you asked this office to advise you whether or not the new appointees for the Board of Supervisors of Elections are required, under the Act of 1896, Chapter 202 (Code of Public General Laws, Article 33, Section 3), to organize as a board within twenty days after their appointment, or whether or not they can organize after such time; and, in the meantime, the duties of the Supervisors of Elections can be handled by the old board, I beg to advise you that, in my opinion, the provision of the law that the Supervisors shall, "within twenty days after their appointment, organize as a Board," is not a mandatory provision, but directory.

Statutory requirements designating the time within which or at which officers are required to do certain acts are not, as a rule, interpreted to be mandatory, as they are seldom of the essence of the thing, but are usually held to be directory merely.

In the case of State vs. County Commissioners, 29 Md. 516, at p. 522 the Court says:

"Where the duty prescribed is of a public nature, and intended for the public benefit, and is directed to be performed within a specified time, Courts have adopted as a general rule in the construction of statutes that they are, in respect to the time, to be regarded as directory merely, unless, from the nature of the act to be performed, or the language employed in the statute, it plainly appears that the designation of time was intended as a limitation of power of the officer."

See also:—

State vs. County Commissioners, 34 Md. 569;
Union Trust Company vs. State, 116 Md. at 376.

There can be no question concerning the right of the old Board to retain office until the members of the new Board have qualified and organized as provided for by Section 3 of Article 33, as this section clearly provides that such Supervisors

shall hold office for two years and until their successors are appointed and qualified.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

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PRIMARY ELECTIONS — PARTY DESIGNATION AFTER NAME OF CANDIDATE.

April 21, 1920.

LeRoy L. Wallace, Esq.,
Atty. Board of Election Supervisors,
Cambridge, Md.

MY DEAR SIR: I beg to reply to your letter of April 19th, in which you inquire whether it is necessary to print on the official ballot in primary elections, after the name of each candidate, his party designation.

I think that this must be done. In Chapter 51 of the Acts of 1918, which repealed and re-enacted Chapter 124 of the Acts of 1912, and is codified as Section 55 of Article 33 of the Code, the exact form and arrangement of the ballot to be used in general elections is specified, and among the necessary requirements is the provision that, "to the right of the name of each candidate upon the official ballot, and properly separated from said name and immediately to the left of the square, opposite the name of the candidate and in line therewith, shall be added the *designation of the party* * * * which the candidate represents." Chapter 160 of the Acts of 1916, codified as Section 184 of Article 33, declares that official ballots for primary elections "shall be prepared and printed * * * as is now provided by this Article for general elections, except as otherwise provided for in this sub-title."

In the sub-title thus referred to there is no provision whatsoever eliminating the use of the party designation in primary elections, and, therefore, it would seem to be clear that if the law is to be strictly complied with the party designation must be used, not only in the general election, but also in the primary election.

I agree with you that the use of the party designation would seem to be entirely superfluous, because ballots printed on different colored paper are used by the different parties and all of the names appearing on any of said ballots necessarily belong to the same party. Nevertheless, the law seems to require the party designation to be used in primary elections, and, so far as I know, it has been the universal practice throughout the State to observe this requirement.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

P. S. My view of the law as above expressed is further strengthened by the fact that prior to 1916, Section 184 of Article 33 required official ballots for primary elections to be prepared "as is now provided by said Article 33 of the Code of Public General Laws," and that Chapter 160 of the Acts of 1916 struck out the words quoted and substituted therefor the phrase "as is now provided by this Article for general elections." The Legislature evidently intended to remove all doubts on this subject and to express in the clearest possible language its purpose to make the general election provisions applicable to primary elections.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

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SPECIAL ELECTION IN SNOW HILL UNDER ACT OF 1920—SEPARATE BALLOTS—QUALIFICATION BASED ON RIGHT TO VOTE PRIOR TO 1868 UNCONSTITUTIONAL.

April 23, 1920.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: I wish to acknowledge your letter of April 15th, and to apologize for the delay in answering the same. The office has been very much overwhelmed with work since the close of the Legislature and during the present session of the Court of Appeals.

It was not until yesterday afternoon that I was able to secure a copy of Senator Harrison's bill, Senate Bill No. 357, authorizing the Mayor and City Council of Snow Hill to purchase and maintain the existing electric plant in Snow Hill, and issue bonds for the payment of the same. Section 8 of this Act provides that the aforegoing sections shall not become effective unless they are approved by the majority of voters of Snow Hill, at the town election to be held on the first Monday in May. It contains, also, a provision for the setting up, in at least six public places in the town, at least ten days before the election, by the Mayor, of a copy of the Act and a statement of the appraisement made under this provision, and also that at least seven days' notice of the proposed submission of a bond issue be given by advertisement published in both newspapers in Snow Hill, and then makes it the duty of the Mayor to cause to be printed for use in voting on said question official ballots, and declares what each ballot shall contain.

It further provides that such official ballots shall be in the custody and supplied by the town election officials at the opening of said polls. I see nothing unusual about the submission of this question to the voters of your city, except that the Act seems to contemplate a separate official ballot rather than the submission of the necessary question on the regular ballot used for the election of town officials. In all elections with which I have been familiar, it has been the practice to put the names of the candidates and the various other questions submitted to the voters on the same ballot.

This law contains no reference whatever to registration requirements, nor have I been able to find any Act passed since 1904 modifying the registration requirements for the town of Snow Hill.

I must confess that I was surprised to learn, after an examination of Chapter 153 of the Laws of 1904, that two of your qualification tests are, that the voter was entitled to vote prior to January 1st, 1868, or that he is the male lawful descendant of a person who was entitled to vote prior to January 1st, 1868. Provisions exactly similar to these were contained in the election laws for the City of Annapolis, which were declared by the Supreme Court of the United States to be in violation of

the Fifteenth Amendment of the United States Constitution. You will find this decision in the case of Charles E. Myers et al. vs. John B. Anderson, in 238 U. S., page 367.

Of course, you realize that it is not my purpose to express any criticism concerning Senate Bill No. 357, above referred to, or of your present elections laws. It is not in my province to do so. I have no authority under the law to act as the legal representative for the town of Snow Hill or any other municipality.

With kindest personal regards,

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

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DECLINING NOMINATION — MODE AND TIME OF DECLINING — STRICT COMPLIANCE WITH THE PROVISIONS OF STATUTE.

April 27, 1920.

J. Kemp Stevens,
Attorney to Election Supervisors
of Caroline County,
Denton, Md.

MY DEAR SIR: In your letter of April 26th you stated that Mr. Alfred Stengle Marine, of Dorchester County, filed with the Board of Supervisors of Elections of your county, in proper form, a certificate for nomination as the Republican candidate for Congress from the First Congressional District. You further state that on Friday, April 23rd, Mr. Marine telegraphed the Board that he had withdrawn as a candidate, directing that his name be not placed upon the primary ballot, and further stating that a letter would follow the telegram. Such confirmatory letter, dated April 23rd, was actually received at the office of the Supervisors of Elections on April 24th.

This letter, although signed by Mr. Marine, was not acknowledged by him. In view of the facts above stated, you ask whether Mr. Marine's name should be placed on the Repub-

lican primary ballot or whether his name should be considered to have been withdrawn.

Section 50 of Article 33, Bagby's Code, requires that "whenever any person named for public office * * * shall, at least ten days before election, in writing signed by him and acknowledged before a justice of the peace, or, if he be out of the State at the time, before a notary public, notify the officer with whom he filed his nomination certificate that he declines such nomination, such nomination shall be void and the name of any person so declining shall not be printed upon the ballots." This section relates more especially to general elections, but, by virtue of Section 181 of Article 33, its provisions have also been extended to primary elections.

The wisdom of this provision is obvious, because if candidates were authorized to withdraw by telegrams or by a statement signed but not acknowledged, many frauds might easily be perpetrated, and at the last moment, when time becomes an important element, the Board of Supervisors could easily be imposed upon and led to omit bona-fide candidates in the printing of the ballots. I feel, therefore, that the provisions referred to above as conditions precedent to the omission from the ballot of the names of candidates whose certificates of nomination have been filed in proper form are essential and mandatory. Therefore, as the letter received from Mr. Marine was not acknowledged by him as required by law, I feel that it is necessary for his name to be printed upon the official Republican primary ballot.

I feel also that Mr. Marine's withdrawal was not received within the time contemplated by law. The telegram is in no sense a compliance, because it is neither signed nor acknowledged by Mr. Marine, and the letter, which was signed, did not arrive until April 24th. If the day of election be excluded, the 24th day of April is the ninth day prior to the primary election day, and, therefore, the withdrawal of Mr. Marine's name did not occur "at least ten days before election."

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

REGISTRATION—DECLARATION OF INTENTION—NATURALIZED CITIZEN.

April 29, 1920.

Hon. Frederick N. Zihlman,
House of Representatives,
Washington, D. C.

MY DEAR SIR: I beg to reply to your letter of April 28th, in which you ask me whether a naturalized citizen can register without making the declaration of intention to become a citizen as required by the Act of 1902.

The Declaration of Intention Law, found in Section 29 of Article 33 of the Code, only applies to "persons who after the passage of the Act of 1902, Ch. 133, shall remove into any county of this State or into the City of Baltimore *from any other State, District or Territory.*" The Act does not in terms apply to foreign countries. If an alien comes directly into Maryland from some other country without having first acquired residence in some other territorial jurisdiction of the United States, I do not believe it is necessary for him to file a declaration of his intention, and upon subsequent naturalization he may be registered without producing any certificate evidencing such a declaration.

Very truly yours,
ALEXANDER ARMSTONG, *Attorney General.*

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SUPERVISORS — INCREASE IN SALARIES OF CLERKS — HOME RULE AMENDMENT TO CONSTITUTION — POWERS RESERVED TO LEGISLATURE.

May 17, 1920.

Roland R. Marchant, Esq.,
City Solicitor,
Court House,
Baltimore, Md.

MY DEAR MR. MARCHANT: I have recived from the Supervisors of Elections a letter addressed to Mr. Hubbert, Chief Clerk, by Mr. Wesley S. Hanna, Clerk to the Board of Estimates, containing the following extract from the minutes of the Board of Estimates, dated May 13, 1920:

"Under date of May 8, 1920, Mr. James E. Hubbert, Chief Clerk of the Board of Supervisors of Elections, wrote directing the Board's attention to Chapter 512 of the Acts of 1920, which calls for a salary increase for registration officials of $72.00 for each precinct. There are 382 precincts in the city, which means an aggregate increase of $27,504. Mr. Hubbert stated that the Board would therefore be compelled to draw on the city for $73,344 for pay of registration officials, instead of $38,640, as provided in the Ordiance of Estimates, and that the warrants for these payments will be drawn on or about November 15, 1920. He also called the Board's attention to Chapter 512 of the Acts of 1920, by the terms of which the salary of the Chief Clerk to the Board is increased from $2,800 to $3,000, and one additional office created at the annual salary of $2,500, and one office at the annual salary of $1,500 abolished. This change effects a net increase of $700 over the sum provided in the Ordinance of Estimates in the Salary Account of the Board.

"On motion of City Solicitor Marchant, the Secretary was directed to notify Mr. Hubbert that the city has made no appropriation to cover these expenditures, and the request was therefore disapproved."

I quite realize the reason for the action of the Board of Estimates at this time, but I suppose that there will be no objection on the part of that Board to the inclusion in the Ordinance of Estimates for 1921 of these items of expense for 1920.

I have carefully gone over the provisions of Chapter 512 of the Acts of 1920, and it seems clear to me that the subject there dealt with is within the powers reserved to the Legislature under Article 11-A of the Constitution, inasmuch as that Article reserved to the Legislature the power to enact laws on any subject not covered by express powers granted to the counties or to the City of Baltimore by the provisions of that Article.

Certainly no power to enact any law with regard to the conduct of elections or the compensation of any election official or any person employed by the Board of Supervisors of Elections is contained in Section 6 of the Baltimore City Charter, referred to in Section 2 of said Article, as limiting the grant of powers to the City of Baltimore. Moreover, that grant is made subject to the Constitution and Public General Laws of the

State, and the Act in question is an amendment of a Public General Law.

As the Supervisors of Elections will, of course, desire, if possible, to make a temporary provision for the payment of the sums which they are required to pay, over and above the amount provided for in the Ordinance of Estimates for the year 1920, I should be glad to learn, at your convenience, whether you agree with me in the opinion above expressed, so that I may be in a position to advise the Board of Supervisors whether these sums will be appropriated in the Ordiance of Estimates for the year 1921.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

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PROVISIONS OF CHARTER OF CRISFIELD APPLICABLE TO MUNICIPAL ELECTIONS — MARKING BALLOT — WHAT MARKS ARE CAUSE FOR REJECTION.

June 4, 1920.

L. C. Quinn, Jr., Esq.,
President of the City Council,
Crisfield, Md.

MY DEAR MR. QUINN: In your conversation with me over the telephone this morning you stated that in your recent election the ballot contained three groups of candidates, as follows: Three candidates for Mayor, with instructions to "Vote for One"; one candidate for City Council (short term), with instructions to "Vote for One," and eight candidates for City Council (long term), with instructions to "Vote for Two." You further state that on a number of ballots the voter had written in a blank space under the printed name of the nomine for City Council (short term) the name of another candidate, but failed to place a cross-mark in the square provided for that purpose directly opposite, and that on several ballots more candidates of one of the groups had been voted for than was proper under the instructions given on the ballot. You ask me to inform you to what extent these matters affect the legality of the particular ballot upon which they appear.

I find that the election laws of the City of Crisfield were amended by Chapter 163 of the Acts of 1918, in which Act a new Section 58½ was added to your City Charter. In this section it is provided that "if it shall appear that any unauthorized marks, writing or device has been made or placed on any ballot by the voter, then said ballot shall not be counted." It is important, therefore, to determine whether the marks and writing to which you refer are authorized or unauthorized.

The section mentioned expressly provides that below the names of candidates (meaning, I think, the names of every group of candidates) there shall be printed a light black line extending from one border of the ballot to the other, with a square or parallelogram at the furthest border, on which the voter may insert, in writing, the name of a candidate, if he so desires, which is not printed on the ballot. It would appear, therefore, that the writing of the name of a candidate on the ballot is expressly authorized by the Legislature, and such action on the part of the voter furnishes no ground for the rejection of his ballot, even though he may fail to vote for the candidate whose name he has added; no such requirement is made necessary by the Act.

In the law referred to, it is also expressely required that the words "Vote for One, Two or Three," as the case may be, shall be printed under each and every office on the ballot, which is required by law not only for the purpose of instructing the voter, but also of indicating to him the number of cross-marks which he may legally place upon his ballot. It is true that the Act elsewhere states that the voter shall mark his ballot by placing a cross-mark opposite the name of the candidate he desires to vote for. This cannot be construed literally to mean as many candidates as the voter may desire to mark, but rather the candidates whom he may select within the limits of the instructions, "Vote for One, Two or Three," placed at the head of each group of candidates.

If, therefore, the voter shall vote for more candidates in any particular group than is proper, the additional cross-mark is "an unauthorized mark" within the meaning of the law. Such a mark, when taken in connection with others, could easily be made a distinguishing device, the use of which the law was

designed to prevent. I, therefore, feel that under the provisions of your local election law the additional mark for any particular group of candidates is a fatal defect and would justify the rejection of the entire ballot.

In order that you may understand the requirements of the State law, which, of course, do not control your case, I would say that it was formerly expressly provided that no ballot should be counted if the voter marked more names than there were persons to be elected to an office, but an amendment now prevents the rejection of the entire ballot and only excludes the counting of the ballot for that particular group of candidates affected by the error. I trust that these conclusions will fully cover the questions which you presented to me.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

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BOARD OF SUPERVISORS — MEMBER HOLDS OFFICE UNTIL SUCCESSOR APPOINTED AND QUALIFIED — MEMBER APPOINTED TO SUCCEED HIMSELF AND APPOINTMENT REJECTED BY SENATE.

June 5, 1920.

Joseph H. Ching, Esq.,
Leonardtown, Md.

DEAR MR. CHING: In your letter of June 2nd you state that Mr. William F. Herbert, during the last four years a member of the Board of Election Supervisors of St. Mary's County, was re-appointed last winter by Governor Ritchie, to succeed himself, but that his name was rejected by the Senate, and that since that time the Governor has made no further appointment. You ask whether or not Mr. Herbert is at this time a legal member of the Board of Supervisors of Elections of your county.

The failure of the Senate last winter to confirm Mr. Herbert's nomination prevented him from becoming an appointee for a new term. It could not, however, have a dual effect by terminating the term which he was then serving, and which, under the provisions of Section 3 of Article 33 of the Code, was for a period of two years, and until his successor was appointed and

qualified. At this time no successor of Mr. Herbert has been appointed and qualified, and until this event occurs he will, in my judgment, continue to be a legal member of your Board; otherwise, a vacancy would exist, which it is the purpose of the law affecting the subject to prevent.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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BOARD OF SUPERVISORS—PUBLICATION OF LIST OF JUDGES AND CLERKS—EXCESSIVE CHARGE FOR PUBLICATION—NO EXTRA COMPENSATION FOR SERVICES AS CANVASSERS—MEMBER OF BOARD CANNOT CONTRACT WITH BOARD.

June 10th, 1920.

L. P. Cronmiller, Esq.,
Supervisor of Elections of Prince George's Co.,
Laurel, Md.

DEAR SIR: In the course of conversation of June 5th, you requested my opinion on the following questions:

1. In how many papers must lists of judges and clerks of election be published, and in how many papers must the names of candidates to be voted for be published, and what control has the Board over the charge for publication of these names?

2. Are the members of the Board of Supervisors entitled to extra compensation for the duties performed by them as members of the Board of Canvassers?

3. Has a member of the Board of Supervisors a right to contract with the Board?

Taking up these matters in the above order:

1. Section 11 of Article 33, Code of Public General Laws, requires that the Board of Supervisors shall, before the first day of August in each year, give notice of the names of all the judges of election, and shall, before the first day of October, give notice of the names of all the clerks of election, together with the residence of such judges and clerks and the precinct for which they are selected, by causing the same in the several counties (except Howard County) to be published once a week

for two successive weeks in two or more newspapers in each county, one of which papers, if possible, shall be of opposite political faith from that of the majority of such supervisors; and in Baltimore City, to be published on two successive days in all the daily newspapers in said city which shall be willing to publish the same at the current rates for advertising. Section 49 of Article 33 of said Code provides that at least eight days before an election to fill any public office the Supervisors of Elections of each county and in the City of Baltimore shall cause to be published in two or more newspapers within such county (except Howard County) and in all the daily papers published in said city which will publish the same at the current rate for advertising, the nominations to office which have been filed with or certified to them under the provisions of this Article, and also provides that the two newspapers selected shall, if possible, represent the political parties which at the last preceding election cast the highest and next highest number of votes.

Both of these sections, therefore, provide in very positive terms that the Board shall cause these names to be published, and, except in Baltimore City, no provision is made as to the rate of payment. Of course, if the Board should tender the advertisement required by the statute to every newspaper in the county, and none of them would publish it on any terms, the Board would have done everything within its power to comply with the requirements of the statute. In my opinion, the case would be practically the same if these several newspapers, instead of declining to publish on any terms, should decline to publish except on terms which were plainly prohibitive. It seems to me, therefore, that the Board would be justified in fixing a liberal sum as the price of such advertisement, and refusing to publish in any paper at a higher price than that so fixed.

If by reason of the refusal of all newspapers in the county to accept the advertisement on these terms, no advertisement should appear in such newspapers, that fact in itself would not, in my opinion, invalidate the election. Irregularities in the appointment of election officials will not cause the rejection of the election returns, unless it appears that some injurious result

has accrued therefrom either by the reception of illegal votes or the rejection of legal votes or that any of the candidates lost or gained votes thereby. 15 Cyc., page 312.

Certainly, the same principle would seem to be applicable to the failure to publish the names of officers of election when appointed. The question might be more serious with regard to the omission to publish the names of candidates, were it not for the fact that these names are generally known throughout the county by reason of information given in the same newspapers in which the advertisement would appear, as well as by other means.

2. I find no provision in the law which entitles Supervisors of Elections to any additional compensation for the duties performed by them as members of the Board of Canvassers, and, in my opinion, they are, therefore, not entitled to such additional compensation.

3. I find no statute which forbids a member of a Board of Supervisors of Elections to contract with the Board, but it is a rule of the common law that discretionary officers are disqualified to act in a matter in which they are personally interested, and this rule has been applied so as to invalidate contracts by a Board or Commission with one of its own members, and it has also been held that ownership, by an officer making the contract, of stock in a corporation with which the contract was attempted to be made, rendered the contract void. 29 Cyc., pages 1435 and 1436.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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MUNICIPAL ELECTIONS IN RIVERDALE — QUALIFICATIONS OF VOTERS.

July 2nd, 1920.

E. W. Reibetanz, Esq.,
President, Riverdale Park Co.,
Riverdale, Md.

MY DEAR SIR: I beg to acknowledge your letter of June 29th, in which you enclose a copy of Chapter 731 of the Acts

of 1920, providing for the incorporation of Riverdale, and ask me to pass upon certain questions relating to the right to participate in the first municipal election to be held on July 5th.

In pursuance of the provisions of the last section of the Act, a special election was held on June 14th for the purpose of permitting the voters to determine whether or not they desired the town to be incorporated. This election was conducted by a special committee of citizens named in the Act, and I feel that the provisions in the latter part of Section 12, relating to registration, was intended to apply only to this special election. It was necessary to regulate in some way the persons who were to participate therein, and this need was cared for by the provisions of Section 12.

As soon, however, as the incorporation of Riverdale was ratified at the special election, the entire Act as a charter for the new municipality became operative, and thereafter its general provisions relating to elections must be followed. In Section 4 it is provided "that all male citizens above the age of twenty-one who shall have resided within the corporate limits of said town for at least one year prior to any election shall be qualified to vote for all elective officers of said town, and the judges of election hereinafter provided for shall be the sole judges of the right of any person to vote at any town election."

You will note that there is no general registration feature of the law, and apart from the special election held on June 14th, the charter does not seem to contemplate any registration of voters.

I am, therefore, of the opinion that all persons fulfilling the requirements of Section 44 shall be entitled to vote at the election to be held on July 5th for the purpose of selecting municipal officers, subject, however, to the right of the judges of election to determine at the time the voter presents himself all questions relating to his eligibility.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

ELECTIONS—REGISTRATION AND POLLING PLACES—CHAPTER 529 OF ACTS OF 1920.

July 8, 1920.

Saul Praeger, Esq.,
Attorney at Law,
Cumberland, Md.

MY DEAR MR. PRAEGER: Yours of July 2nd. Chapter 529 of the Acts of 1920, to which you refer, is codified as Section 12A of Article 33, and reads as follows: "It shall be the duty of the Boards of Supervisors of Elections of the City of Baltimore and of the several counties to use, wherever possible and practicable, public buildings such as school houses, fire engine houses, etc., for registration and polling places. It shall be the duty of all public officers who have charge of such buildings to place them at the disposal of said Boards of Supervisors of Elections on the days of registration and elections, when it does not interfere with the proper and regular use of such building or buildings." As this law is now operative, it is the duty of the Boards of Election Supervisors to comply with its requirements in connection with the next sitting of the Boards of Registration; but the extent to which the requirements of the Act must be followed is left largely to the discretion of the respective Boards, since the Act itself states that it shall be their duty to use public buildings "wherever possible and practicable."

We are now at work preparing copy for the Registration and Election Laws of Maryland, to be issued for the use of the election officers this fall, but the pamphlet will not be ready for distribution until some time in August. I will be glad to place your name on the mailing list and see that you are supplied with several copies as soon as they have been completed.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

JUDGES AND CLERKS—CONSTABLE INELIGIBLE.

July 14, 1920.

Saul Praeger, Esq.,
Attorney to Board of Election Supervisors,
Cumberland, Md.

MY DEAR MR. PRAEGER: Your letter of July 10th. You inquire whether, in my opinion, a Constable is barred from acting as a Judge or Clerk of Elections under the provisions of Section 7 of Article 33 of the Code of Public General Laws.

One of the provisions of this Section is: "Each Judge and each Clerk must be a legal voter residing in the precinct or district, as the case may be, for which he is selected * * * not holding any other public office or employment." In my opinion, a Constable holds, as such, public employment, and is, therefore, ineligible to act as a Judge or a Clerk of Elections.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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NINETEENTH AMENDMENT SELF-OPERATIVE—WOMEN ENTITLED TO VOTE WITHOUT ADDITIONAL STATE LEGISLATION.

August 12, 1920.

Hon. Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: I beg to reply to your recent letter, in which you ask whether women will be entitled to register and vote in Maryland immediately upon the ratification of the proposed Suffrage Amendment, or whether additional State legislation will be necessary. The proposed Amendment is as follows:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of sex. Congress shall have power to enforce this Article by appropriate legislation."

This language is the same as that used in the Fifteenth Amendment, except that the word "sex" is substituted for the words "race, color or previous condition of servitude." Shortly after the adoption of the Fifteenth Amendment Congress enacted a law, of which the first section is as follows:

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people, in any State, Territory, District, County, City, parish, township, school district, municipality or other territorial sub-division, shall be entitled and allowed to vote at all such elections, without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

This enactment would seem to be of no importance in determining rights arising out of the Fifteenth Amendment, as it is difficult to perceive how any right which was not acquired by virtue of the terms of the Amendment itself could be conferred by Congress under the power to enforce the provisions of the Amendment by appropriate legislation. The section above quoted has accordingly been treated by the Supreme Court of the United States as merely declaratory of rights which arise from the first section of the Fifteenth Amendment, providing that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color or previous condition of servitude.

The Supreme Court has also frequently announced that the first section of said Fifteenth Amendment in effect conferred on the colored man the right to vote, by annulling the discriminative word "white" in the Constitutions of those States in which that word had been used as a qualification for voting, and that the effect of the Amendment itself on such Constitutions was to leave the colored man in the enjoyment of the same right of suffrage possessed by a white person.

Neal vs. Delaware, 103 U. S. 370;
Ex-Parte Yarborough, 110 U. S. 651;
Guinn vs. U. S., 238 U. S. 347;
Myers vs. Anderson, 238 U. S. 368.

In the case of *Ex-Parte* Yarborough, the Court said that while the Amendment was designed primarily to prevent discrimination against the colored man, "it is easy to see that under some circumstances it may operate as the immediate source of a right to vote. In all cases where the former slave-holding States had not removed from their Constitutions the words 'white man' as a qualification for voting, this provision did, in effect, confer on him the right to vote." In the Guinn case, the Court stated that "while in the true sense the Amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the Amendment was self-executing and reached without legislative action, the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause, a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out."

It may be urged that in some of these cases the expressions used with regard to the effect of the Fifteenth Amendment upon State Constitutions were *dicta* rather than actual decisions, but the decision in Myers vs. Anderson, *supra,* directly involved this point. In that case, the Court had before it a Maryland Statute enacted in 1908, prescribing qualifications for voters in municipal elections in the City of Annapolis, which was attacked on the ground that it violated the provisions of the Fifteenth Amendment. Prior to the passage of said Statute, the right to vote in Annapolis was vested in persons entitled to vote for members of the General Assembly of Maryland.

The Constitution of Maryland conferred the right to vote upon white male citizens, and, therefore, no colored man would have been entitled to vote in the municipal elections of Annapolis except for the adoption of the Fifteenth Amendment, and, for the same reason, no colored man could have complained that the Act of 1908 deprived him of any right.

It seems clear to me, therefore, that the Supreme Court has decided beyond question that the Fifteenth Amendment, of its own force, struck the word "white" from the words "white male citizens" as they appeared in the Constitution of Mary-

land, and it seems equally clear that the proposed Amendment, if and when adopted, will strike the word "male" from that provision of the Constitution which now contains it.

In the same manner and for the same reason, I believe that the word "male" will be stricken from the Statutes of the State prescribing the qualifications of voters, and that women will be entitled to vote under the generic provisions that will remain. The Amendment, as the law of this State, cannot be curtailed by any action or failure of action on the part of the State Legislature. If State legislation is necessary to entitle women to exercise their right of suffrage, it would be possible, by the failure of the State authorities to act, to deprive them of this right, and practically nullify the supreme law of the land.

I am, therefore, of the opinion that if the proposed Amendment shall be adopted and proclaimed before the time for registration, the women of Maryland will be entitled to register and vote. It will probably be found that some changes in the law will be advisable; for instance, it will perhaps be well to make provision for the case of a change of name by marriage, but these are matters of convenience only, and it will not be necessary, for the purpose of fully enfranchising women, to have such legislation or any legislation either by Congress or the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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NOMINATIONS BY CONVENTION — TEST OF RIGHT SO TO NOMINATE — FORMAL REQUISITES OF CERTIFICATE OF NOMINATION.

August 26, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

MY DEAR SIR: Your letter of August 21st, enclosing certificate of nomination of Noah S. Twigg, Socialist candidate for Congress from the Sixth Congressional District, filed by the Socialist Convention held at Frostburg on June 26th, together with Mr. Hardy's notes thereon, and requesting my opinion as to whether this certificate of nomination is in proper form.

I do not know whether or not the Socialist party is entitled to nominate for this particular office by convention. Section 41 of Article 33, Code of Public General Laws, provides for nominations by convention or primary meeting of a "party * * * whose highest candidate at any election held within two years next preceding the holding of such convention polled more than one per cent and less than ten per cent of the entire vote cast in the State, county or other division or district for which the nomination is made."

The test, therefore, is not the vote polled throughout the State, but the vote polled in the Sixth Congressional District.

I agree with Mr. Hardy that the certificate is too vague in stating the office for which the nomination is made. It should state that the nomination is made for the office of member of the Sixty-seventh Congress of the United States for the Sixth District of Maryland.

As Mr. Hardy states, the presiding officer and secretary should add to their signatures their respective places of residence, their business and business address, as required by Section 42 of Article 33.

In addition to these objections, the certificate of acknowledgment is defective in setting forth that the persons making the acknowledgment acknowledged the statement to be true and correct; the acknowledgment should state that they acknowledged this statement to be their act and the act of each of them respectively.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATIONS OF VOTER — RESIDENCE — LAND CEDED TO UNITED STATES.

August 31, 1920.

Henry A. Whitaker, Esq.,
Counsel, Supervisors of Elections of Harford County,
Bel Air, Md.

MY DEAR MR. WHITAKER: Replying to your recent inquiry as to whether persons residing on Government property at the

Aberdeen Proving Grounds and Edgewood Arsenal are entitled to vote at elections held in Harford County.

In my opinion, such persons are not entitled to vote at such election. "Land which has been ceded by the State to the United States for the use of some department of the general government, without any reservation of jurisdiction, except the right to serve civil and criminal process thereon, cannot become a voting residence in the State in which such land is located." 15 Cyc., page 294.

In the case of residents of Indian Head, the right is allowed under the direct terms of a statute. Like you, I have been unable to find any legal authority for the exercise of such right by the residents of the Naval Academy grounds, to which reference is made in the act with reference to Indian Head (Code, Art. 96, Sec. 28), and Mr. Melvin, of the Annapolis Bar, to whom I addressed an inquiry with respect to the matter, informs me that, so far as he knows, there is no law authorizing such residents to vote in Annapolis, and further, that it has always been accepted there without question that they are precluded from registering and voting because of such residence.

Of course, what I have said above applies only to those who actually reside on land ceded to the Government. Persons residing on land purchased by the United States Housing Corporation adjacent to the Proving Grounds are residents of Harford County and entitled to vote therein, if otherwise qualified, this land being no part of any Government reservation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

REGISTRATION—AFFIDAVIT OF REMOVAL AND DECLARATION OF INTENTION—APPLICATION TO WOMEN.

September 8, 1920.

Hon. Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: Upon my return to the office this morning I found upon my desk your recent letter, in which you

ask me to advise you whether Sections 28, 29 and 29A, of the Election Laws, embodying the Affidavit of Removal Act and the Declaration of Intention Act, will apply to the registration of women this fall. I had already given this question serious consideration, and take pleasure in submitting at once my conclusions with reference thereto.

The Affidavit of Removal Act, found in Section 28 of Article 33, declares that all persons who shall, after the passage of the Act (March 21, 1901) leave the State and take up a dwelling place out of the State, shall be disqualified to vote, unless, at the time of removal or within ten days thereafter, they shall make an affidavit before the Clerk of the Court that they do not intend to change their legal residence, but have a fixed purpose to return to this State on or before six months preceding the next succeeding election in November. A failure to return and take up an actual abode in the State on or before six months preceding such November election furnishes a conclusive presumption of an abandonment of such declared intent, involving at once a disqualification to vote in the State.

Chapter 133 of the Acts of 1902, codified as Article 33, Section 29, and popularly known as the "Declaration of Intention Act," requires "all persons who, after the passage of the Act (March 29, 1902), shall move into a county of the State or into the City of Baltimore from any other State, district or territory, to indicate their intent to become citizens and residents of this State by registering their names, etc., with the Clerks of the Courts," etc., and provides further "that no person coming into this State from any other State, district or territory, shall be entitled to register as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced," etc. The law has been supplemented by Chapter 486 of the Acts of 1908, codified as Section 29A of Article 33.

The word "person" as used in these Acts is capable of two constructions. It may mean literally every individual regardless of every other consideration, who, since 1901, has removed from the State to take up an abode elsewhere, or who, coming from some other State, district or territory, has established a domicile in Maryland since 1902. In a more restricted and

at the same time more liberal sense, it may apply only to those individuals who, upon leaving the State, possessed all the qualifications essential for voting and to those who at the time of their coming into the State were able at once to comply with all of the Maryland franchise requirements, then existing, except those relating to residence. The purpose and operation of the Acts indicate to me that the latter construction is the one contemplated by the Legislature and the one which would receive judicial approval.

The registration of the intent to remain or become a citizen was required solely as a condition precedent to the rétention or acquisition of the right to vote, and clearly was intended, in the case of the Affidavit of Removal Act, to be made only by those already voters or qualified to become voters, and, in the case of the Declaration of Intention Law, to be made only by those who, by reason of so doing, would at the end of the year become entitled to register. Whenever the declaration of an intention to remain or become a citizen by a person or class of persons would have been a mere idle ceremony leading to no substantial result, continuing in the one case, no right already enjoyed and conferring in the other case, upon the maker or makers of the declaration, at the end of the year, no additional privilege, it is evident that the declaration was never expected to be made at all. Hence it has been the uniform practice throughout the State to permit young men, becoming of age in the State and satisfying all other legal requirements, to register without reference to the time of their entry into the State, without the making of any declaration of intent or presentation of certificate relating thereto, and regardless of the continuity of their residence in the State before attaining the age of twenty-one years. It is true, this question has never been presented to the Court of Appeals, but the lower courts have uniformly held that these laws do not apply to minors. If the disability of infancy furnishes an exemption from the operation of said laws, why should not the disability of sex be equally efficacious? Indeed, there would seem to be more reason for applying this principle in the case of women than in the case of minors, because boys have always known that upon attaining their majority the voting privilege would at once become their ina-

lienable right, whereas women could never contemplate with certainty their enfranchisement until the thirty-sixth State had ratified the Nineteenth Amendment.

My conclusions, therefore, are:

1. With reference to the Affidavit of Removal Act:

A. That any woman coming into the State prior to August 26th, 1920 (the date of the proclaiming of the Nineteenth Amendment), and satisfying the Constitutional requirement of one year's residence herein, is entitled to be registered at this or any subsequent registration without reference to the continuity of said residence, subject to the next succeeding conclusion.

B. That all women of the age of twenty-one years or over, leaving the State on or after August 26th, 1920, and taking up a fixed abode without the State, must make the Affidavit of Removal and otherwise comply with the provisions of that Act in order to retain the privilege of voting in Maryland.

2. With reference to the Declaration of Intention Law:

A. That no woman coming into the State after March 29, 1902, and prior to August 26th, 1920, was required to make a declaration of intention for the purpose of registration either this year or any year hereafter, provided her residence in the State, now established, continues unbroken.

B. That all women of the age of twenty-one years or over coming into Maryland on and after August 26th, 1920, must comply with the provisions of the law as fully as men are now required to observe the same.

In accordance with your request, I am transmitting a copy of this opinion to the Board of Election Supervisors of Baltimore City for their guidance in the coming registration of voters.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATION OF VOTER—RESIDENCE—LAND NOT CEDED TO UNITED STATES, BUT IN TEMPORARY POSSESSION OF A DEPARTMENT OF THAT GOVERNMENT.

September 20th, 1920.

Albert D. Mackey, Esq.,
Counsel to Board of Supervisors of Elections,
Elkton, Md.

DEAR SIR: Your letter of September 9th.

You ask my opinion as to whether persons residing on a Government Reservation in Cecil County, which you believe is under the charge of the United States Health Department, are entitled to vote in Cecil County or whether they are in the same position as those residing on the Aberdeen Proving Ground.

As I do not know the circumstances under which the United States Government obtained the use of the land covered by this reservation, I can give only a hypothetical opinion. In my opinion, as to residents of the Aberdeen Proving Ground, I quoted from 15 Cyc., page 294, as follows: "Land which has been ceded by the State to the United States for the use of some department of the general government, without any reservation of jurisdiction, except the right to serve civil and criminal process thereon, cannot become a voting residence in the State in which such land is located."

Whether persons residing on the Government Reservation in Cecil County to which you refer would have a right to vote in that county would depend upon whether the land covered by that reservation came within the description contained in the above quotation. From what you say, I imagine that the land in question has not been ceded to the United States at all. If this is so, and if this land is merely in the temporary possession of a department of the Federal Government through some arrangement with the owners thereof, I should not consider that the above quotation would apply. You can doubtless ascertain the exact facts with regard to this matter, and if you wish to submit them with a request for a definite opinion I shall be glad to give it.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

REGISTRATION — DECLARATION OF INTENTION — TIME OF MAKING.

September 22, 1920.

John H. Segwalt, Esq.,
Judge of Election, Sixteenth Ward,
713 N. Fulton Ave.,
Baltimore, Md.

DEAR SIR: You have requested my opinion as to whether a person now applying for registration, who made a declaration of intent on November 3, 1919, is entitled to registration this year.

In my opinion, he is not so entitled. Section 29 of Article 33 of the Annotated Code provides that no person coming into this State from any other State, district or territory shall be entitled to registration as a legal voter of this State until one year after making the declaration of intent required by that section. In the case of Pope vs. Williams, 98 Md. 59, the Court of Appeals decided that this provision must be construed in connection with the provision of Article 1, Section 1, of the Constitution, which limits the elective franchise with regard to residence to those persons who have been residents of the State for one year * * * next preceding the election. The words of the Constitution, therefore, control this question, and the declaration of intent must be made at least one year next preceding the election. In order for this year to be complete on the last day next preceding the election to be held on November 2nd of this year (that is to say, on November 1st, 1920), the year must have begun on November 2nd, 1919, and the declaration made on November 3rd, 1919, would be made too late.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATION OF VOTER—RESIDENCE—AFFIDAVIT OF REMOVAL AND DECLARATION OF INTENTION — APPLICATION OF LAW TO WOMEN.

September 23, 1920.

M. M. Browning, Esq.,
Washington Grove, Md.

MY DEAR MR. BROWNING: Yours of September 21st, in which you set forth four questions concerning the right of women to be registered, as follows:

1. Will a woman whose husband is a legal voter, but who resides in the county and state only six months of the year (from May 1st to election day in November), residing in Washington the remaining months, be entitled to register and vote at the approaching election?

It is stated in 19 Corpus Juris, page 414, that the law fixes the domicile of the wife by that of the husband. Therefore, if the husband is a legal voter in Maryland, his wife who resides in Maryland with him must also be qualified to become a registered voter of this State. This, of course, assumes that the husband has been legally registered.

2. Will a woman who is a taxpayer, owning and residing in her own home in the State a major portion of the year, having no positive or permanent home elsewhere, but temporarily residing in Washington and other places during the winter months, and who was residing in her own home in the State when the Amendment was adopted, be entitled to register?

If the registration officers are satisfied that the woman has been a resident of Maryland for a period of one year prior to her application to register, she will be entitled to register. The Affidavit of Removal Act does not apply to a woman who had left the State temporarily at any time prior to the proclamation of the Nineteenth Amendment, and if she was in the State when the Amendment became effective the only question remaining was whether she was able to comply with the one year's residence requirement.

3. Will a woman whose husband is not a voter because of his failure to comply with the Declaration of Intent law, but who has been residing in the State for more than one year, be entitled to register?

Under the opinion recently rendered by me, this woman will be entitled to register, because in my judgment the Declaration of Intention law has no application to women who came into the State prior to the adoption of the Nineteenth Amendment.

4. Will a woman be entitled to be registered under this state of facts: Her husband is not a voter, but owns his own home in the State where he and his wife reside when here, and where they were residing when the Suffrage Amendment was adopted. The woman and her husband spend their winters out of the State and have never lived a full year in the State.

The only requirement which the woman must meet under this state of facts is the provision which requires one year's residence within the State. In order to have been a citizen and resident of the State for one year, it is not necessary to be here for that period of time continuously. Each question of this kind has to be determined according to its own facts, and the intention of the party and their reasons for leaving the State are important determining factors.

I have departed somewhat from the practice of the office in expressing my views on these matters to an individual, but I have done so because you have been a member of the Board of Supervisors of Elections for Montgomery County for a period of six years, and because I believe that it is my duty to render as much assistance as I can in the way of enlightening voters in respect to the numerous and peculiar questions which have arisen as a result of the adoption of the Nineteenth Amendment.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CITIZENSHIP—WOMEN—CHANGE OF CITIZENSHIP BY MARRIAGE.

September 24, 1920.

Saul Preager, Esq.,
Cumberland, Md.

MY DEAR SIR: Replying to your inquiry over the telephone today, I beg to advise that the additional days of registration in

the counties are October 9th and 12th, making the full list, September 28th, October 5th, 9th and 12th, with revision day on October 19th. The hours are from 9 A. M. to 9 P. M.

As to the question of a woman's change of citizenship by marriage. If a woman who is a citizen or subject of a foreign country marries a citizen of the United States (whether he is native or naturalized), or if the husband of such a woman, being a naturalized alien at the time of marriage, subsequently becomes naturalized, such a woman is a citizen of the United States. If on the other hand a woman who is a citizen of the United States, marries a citizen or subject of a foreign country, she loses her citizenship in the United States, but if after the death of her husband she takes up her residence in the United States, or continues to reside there (having resided there during her husband's life) she regains her American citizenship.

In accordance with your request, I enclose copy of my opinion on the question of the application to women of the Affidavit of Removal Law and the Declaration of Intention Act.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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PRIMARY ELECTIONS — PARTY AFFILIATION — VOTER WHO HAS DECLINED TO STATE—RIGHT TO STATE AT SUBSEQUENT REGISTRATION.

R. Groome Parks, Esq.,
Attorney for the Board of Election Supervisors of Kent County,
Chestertown, Md.

October 1, 1920.

DEAR SIR: Yours of September 27th.

You refer to Section 182, Chapter 792, of the Acts of 1914, and ask me to advise you as to when a voter, whose name appears in the register as "declined," must affiliate in order to vote in any primary.

I am unable to find any such section of Chapter 792; that chapter contains only one section which repeals and re-enacts

Section 160 E of Article 23 of the Code of Public General Laws. As this section is now codified in Bagby's Code as Section 182, and relates to the subject of party affiliation in connection with registering, I assume that it is the law to which you intended to refer.

After providing for the entry on the registers of party affiliations it provides that whenever a party declines to state his party affiliation, the word "Declined" shall be written opposite his name in the column provided for that purpose, and then declares in terms that "No person or voter after having had his affiliation registered shall be permitted to make any change in his party affiliation unless the same shall be made at least six months prior to the day of the primary election." This latter clause has received a literal construction in so far as it applies to persons who, upon registering, give a definite party affiliation, but when a voter at the time of registration is marked "Declined," he is regarded as not having made any affiliation at all, and, therefore, such a voter is not considered to be changing his affiliation when he appears and gives a definite party affiliation. This question was raised and settled in the manner indicated in Murphy vs. Wachter, 126 Md. 563.

It therefore follows that any voter who is marked "Declined" is entitled to vote in a primary election if at the sitting of the Board of Registry prior to the primary election he shall have appeared and changed from "Declined" to an affiliation with one of the regular parties. In the counties provision is made for one sitting of the registers prior to each primary election, and on this occasion the declined voter may affiliate with a party and vote in the primary of that party.

No such extra registration day exists for Baltimore City, and the last opportunity of making the change in the city is on one of the registration days during the preceding fall. See also Opinions of Attorney General, Vol. 2, page 161.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

REGISTRATION—DECLARATION OF INTENTION ACT—APPLICATION TO WOMEN AND MINORS.

October 1st, 1920.

Charles F. Peters, Esq.,
Member of House of Delegates,
Westernport, Md.

MY DEAR MR. PETERS: I have your letter of September 29th, in which you present the following question: A man came into Maryland several years ago and has never declared his intention to become a citizen of this State. He had a son who became twenty-one years of age one year after entering the State. Are his wife, who came into the State with him, and his said son, now entitled to be registered?

As neither the wife nor the son were able at the time of entering the State to satisfy the registration requirements of our law, in all other respects except that relating to residence, they were not affected by the Declaration of Intention Law, and, therefore, as both have now lived in the State more than one year, they are both entitled to registration.

I am enclosing several copies of the opinion recently given by me to the Governor, construing the Affidavit of Removal Law and the Declaration of Intention Law, with reference to their applicability to women voters.

With kind regards, I am,

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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QUALIFICATIONS OF VOTER—RESIDENCE—LENGTH OF TIME IN STATE—WOMEN AND MINORS—NATURALIZED CITIZEN.

October 1, 1920.

J. Wilson Ryon, Esq.,
State's Attorney,
Upper Marlboro, Md.

MY DEAR MR. RYON: Yours of September 29th, in which you submit three questions, as follows:

1. If a man is a resident of the State of Maryland and marries and brings his wife to live with him in the State prior to the passage of the Constitutional Amendment enfranchising women, can his wife register and vote, although she came into the State two weeks before the passage of the Amendment?

This lady is not entitled to be registered, because she does not satisfy the Constitutional requirement of one year's residence within the State. I am assuming that she came to Maryland immediately upon her marriage.

2. If a man and wife and one son, a minor, should move into the State of Maryland, neither the man nor woman being residents of the State nor voters therein, and their son lacked three or four months of the legal age before registration day, could this son register and vote in the election, although his actual residence in the State has continued for only about four or five months?

This boy cannot be registered, for two reasons: First, he has not lived in the State for one year, as required by the Constitution; second, if he lacks three or four months of legal age at the time of his application for registration, he cannot possibly be of age by election day, and, therefore, does not possess the age necessary for registration.

3. A man was granted his final naturalization papers on September 27th, 1920, by the Circuit Court for Prince George's County, and his application showed that he had been a resident of the State of Maryland for nine years. Can this man be registered?

I am of the opinion that this man is entitled to be registered. He is now a citizen of the United States, and he has been a resident of the State for more than one year.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATIONS OF VOTER—RESIDENCE—BOUNDARY LINE OF COUNTY PASSING THROUGH HOUSE.

October 1, 1920.

Mr. E. W. Stoll,
Judge of Elections,
First Precinct, Fifth District,
Brooklyn, Md.

DEAR MR. STOLL: Replying to your letter of September 29th, directed to the Board of Supervisors of Elections of Baltimore City, with regard to the registration of Joseph L. Gibson and Max F. Drewitz, who, as you inform me, live in a house through which passes the line dividing Baltimore City from Anne Arundel County.

The law on this subject may be stated as follows: "When the boundary line between two localities passes through the residence of a person whose domicile is at issue, if the portion of the house on one side of the line is sufficient to constitute a habitation by itself, while the other portion is not, the first will be considered the domicile. If the line divides more equally, then that portion is deemed the domicile where the occupant mainly and substantially performs those offices which characterize his home, such as sleeping, eating, sitting, and receiving visitors; but in the event of a still closer division, then that part where he habitually sleeps is so considered, in the absence of other facts showing a positively contrary intention. The location and uses of the different rooms in the house may be considered."

As you know the exact circumstances of the case in question, you can doubtless apply the above statement of law to those circumstances.

I shall take the matter up with the Judges of Election of the two precincts in Baltimore City in which, as you state, Messrs. Gibson and Drewitz are registered, and shall furnish them with a copy of this letter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATIONS OF VOTER—RESIDENCE—LENGTH OF TIME IN STATE—WOMEN AND MINORS—CONSTITUTIONAL PROVISION CONTROLS WITHOUT REGARD TO AGE OR SEX.

October 2nd, 1920.

James M. Crockett, Esq.,
Attorney at Law,
Pocomoke City, Md.

DEAR SIR: Your letter of September 30th, requesting a ruling upon a question concerning the registration laws.

You state that the lady as to whose rights you inquire came to the State of Maryland on January 1st, 1920, and that she claims the right to register and vote in Worcester County this fall. You say further that she claims that the provision of the Constitution requiring a residence of one year does not apply to women, but that they are in the same position as persons becoming twenty-one years of age in this State.

In my opinion, the lady as to whose rights you inquire is not entitled to vote. I think that you are quite right in stating that she is in the same position as one who came to this State before he was twenty-one years of age, but I see no reason for holding that one who came to this State before he was twenty-one should be exempt from the Constitutional provision requiring one year's residence. To hold otherwise would be to make it possible for a person whose twenty-first birthday will occur some time this month to come into the State tomorrow and register and vote at the election this fall.

The Constitutional provision requiring a residence of one year in this State is plain, clear and unequivocal; it contains no exceptions whatever, and, therefore, applies in terms to every one, and I see no reason for holding that it should receive any other than a literal construction. Every person, therefore, without regard to sex and without regard to age, must fulfil the condition of a year's residence in the State of Maryland before he or she can vote therein.

I have gone into this subject at more length than may seem to be warranted by the nature thereof, but I have done this because there seems to be a good deal of misapprehension with

regard to this question, which I am anxious to dispel as far as possible.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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QUALIFICATIONS OF VOTER—RESIDENCE—QUESTION OF FACT. HOLDER OF PUBLIC OFFICE.

October 5, 1920.

Robert H. McCauley, Esq.,
Attorney to the Board of Election Supervisors,
Hagerstown, Md.

MY DEAR MR. MCCAULEY: I beg to reply to your letter of October 4th, in which you present for my consideration the following problem concerning the right to registration:

Clyde H. Wilson, while owning and occupying a home in Wilson District, Washington County, was several years ago appointed Secretary to the State Roads Commission, and thereupon came to Baltimore to perform his official duties, bringing with him his wife and daughter. Mr. and Mrs. Wilson occupied an apartment in Baltimore, but retained in Wilson District, Washington County, a furnished home, which they did not rent to any one else, and very frequently Mr. Wilson, his wife and daughter returned to Wilson District for short visits, either to his own home or to the home of his father.

On June 15th of this year Mr. Wilson lost his position as Secretary to the Commission, and shortly after opened a law office in the City of Baltimore, which he still maintains. The questions that present themselves are:

First: Is Mr. Wilson entitled to remain upon the registration books in Wilson District, Washington County, where he has been a registered voter since attaining his majority?

Second: Is Mrs. Wilson entitled to become a new voter in the same district?

The domicile of the husband is considered in law to be the domicile of the wife, and, as the case before us falls within no exception to this general rule, the answer to the first of your questions will also answer the second.

Residence is almost entirely a question of fact. It has long been the practice in this State, when a resident of a county accepts a State position and the performance of his duties requires him to move elsewhere, to consider this party to be a resident of the county from which he was appointed, especially where the party himself continuously asserted his intention to retain that residence. Mr. Wilson, although actually living most of the time in Baltimore, was required to be here until June 15th for the performance of the official duties of his State position, and not only claimed his voting residence to be in Washington County, but by the retention of his home and his frequent visits there demonstrated the good faith of his claim. It is for this reason that Mr. Wilson's name has been permitted to remain upon the registration books in Wilson District. See Opinions of Attorney General, Volume 2, page 179.

The loss of Mr. Wilson's official position, however, on June 15th, and his determination at that time to open a law office in Baltimore City, altered the situation and manifested, in my judgment, an intention to change his residence. From and after that date he became in all respects a resident of Baltimore City, and could no longer claim a constructive residence in Washington County.

It is the law of the State, however, that a person who has acquired a voting residence in a county and moved elsewhere does not lose his voting residence in said county until he shall have resided for a period of more than six months in his new home and thereby acquired the right to register there, and inasmuch as Mr. Wilson has not been a resident of Baltimore City for the necessary six-month period, I feel that he is still entitled to remain on the books in Washington County.

It follows from what has been said that Mrs. Wilson is entitled to register this year in Wilson District, Washington County.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CITIZENSHIP — NATURALIZATION — WIFE OR CHILD OF ALIEN.

October 6, 1920.

Board of Supervisors of Elections,
Court House,
Baltimore, Md.

GENTLEMEN: I beg to advise you, first, that the children of alien parents coming to this country become citizens of the United States upon the naturalization of the father during their minority. If the father does not become naturalized at all, or completes his naturalization after the children have reached the age of twenty-one years, the children do not become citizens of the United States until they themselves have become naturalized.

Second, upon the naturalization of a foreign-born resident, his wife also becomes a citizen of the United States. If her husband dies before having become naturalized, the only way in which she can become a citizen of the United States is for her to take out naturalization papers herself. The naturalization of her son or any other relative except the husband will confer upon her no rights of citizenship.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CHALLENGERS AND WATCHERS—POSITION IN REGISTRATION OR POLLING ROOM.

October 7, 1920.

Paul Sleman, Esq.,
Chairman, Republican State Central Committee,
Montgomery County,
Chevy Chase, Md.

MY DEAR SIR: I have your letter of October 6th. You call my attention to Section 64 of the Election Laws of 1920, which reads as follows:

"Each political party or other body of voters having a candidate or candidates duly nominated shall have the right to designate and keep a challenger and watcher at each place of regis-

tration and election, who shall be assigned to such position near the Judges of Election, inside the registration or polling room, as to enable them to see each person as he offers to register or vote, and they shall be protected in the discharge of their duty by the Judges of Election and the police."

You state that in one of the precincts in your county registration officers have located the challenger and watcher at a point in the rear of the registration room so far removed from the registers themselves that the challenger is only able to see the back of the applicant and is unable to hear the answers made by him. You ask whether duly authorized challengers and watchers are not entitled to such position in the registration room that they may see the face of the applicant and hear his answers to the question propounded to him.

It is true that the section quoted simply provides that the challengers and watchers must be so located as to enable them to *see* the persons applying to register or vote, and a very narrow and literal interpretation of this language would seem to permit the placing of these parties at any point in the room where the voter would come within the range of their vision. Such a construction would, however, in my judgment, be an absolute violation of the purpose of the section itself, which clearly contemplated that the challengers and watchers should justify their presence in the room by the actual performance of the duties intended to be performed by them. No man can act as a challenger unless he is in a position to follow the proceedings and hear the questions propounded and the answers given. With this end in view, the statute itself says that they shall be assigned to a position *near* the Judges of Election. Where it is possible, I think that the challengers and watchers should be so located that they will be able to see the faces of the persons applying for registration or desiring to vote, but if this be impossible, then they should at all times be placed so close to the judges and clerks of election that they will be able to hear all the proceedings. Any other construction of the section would practically render its provisions nugatory and inoperative.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

QUALIFICATIONS OF VOTER—RESIDENCE—MARRIED WOMAN—SECRETARY PERFORMING DUTIES AT PRIVATE OFFICE OF MEMBER OF CONGRESS IN MARYLAND.

October 7, 1920.

Irvin J. Sullivan, Esq.,
1301 Fidelity Building,
Baltimore, Md.

MY DEAR MR. SULLIVAN: Your letter of September 13th. You ask where your wife should register for the purpose of voting. You state that you are registered in Harford County in the precinct in which you lived prior to 1917; that you have voted in two general elections, 1918 and 1919, at the precinct in which you lived in that county; that you are now living in Baltimore, having been in the naval service at the time when you came to Baltimore and having continued to live there since your appointment as Secretary to Congressman Benson, in order to be of more convenient service to him.

If, as you assume, you have a right to retain your domicile in Harford County, I think that your wife's domicile would also be in that county, and in the same precinct thereof. It is stated in 19 Corpus Juris, page 414, that the law fixes the domicile of the wife by that of the husband, and denies to her during cohabitation the power of acquiring a domicile of her own separate from him, although it is also stated (page 416) that the domicile of the husband is that of the wife only when the husband provides a domicile where the wife may go and stay at her will.

I do not think, however, that you are entitled to retain your domicile in Harford County. In the volume above referred to, it is stated, on page 421, that Government officials and employees residing at Washington do not generally acquire a domicile there, but retain their former domicile, and the same rule applies to Government officials and employees stationed elsewhere.

I wish to emphasize the word "stationed." I do not see how you can be said to be stationed in Baltimore, as Congressman Benson's duties, and yours in connection therewith, are, of course, performed in Washington; nor do you, so far as your

letter discloses, live in the district which Mr. Benson represents. I do not think that you can be considered as stationed in Baltimore merely by reason of the fact that Congressman Benson attends to some of his official correspondence and other matters at his office in that city, and I can think of no other theory upon which you might be said to be stationed in Baltimore. Congressman Benson, himself, could not be considered as stationed in Baltimore by reason of such portion of his official duties as he might transact there, and if he takes up his residence in that city would certainly become domiciled there.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CERTIFICATES OF NOMINATION — TWO CANDIDATES FOR SAME OFFICE DESIGNATED AS "INDEPENDENT"—USE OF WORD "ANTI-PROHIBITION."

October 11, 1920.

Philip B. Perlman, Esq.,
Secretary of State,
Annapolis, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 5th instant, asking my opinion as to whether you may legally accept two certificates of nomination for different persons filed as the candidate of the "Independent Party," in the Fourth Congressional District.

I assume that these nominations were made by petition, and that the petitions are correct in respect to the number of signatures, and that the signatures are made in accordance with the statutory requirement. Section 43 of Article 33 of Bagby's Code provides that the certificate of nomination made by petition should contain the same information as is required to be given in certificates of nomination as provided in Section 42 of the same Article.

Section 42 provides that the certificate shall designate "in not more than one word the party or principle which such convention or primary meeting represents."

If the certificate should be filed designating the party or principle as "Independent," I can see no reason and find no provisions in the law which would prevent more than one candidate filing with such designation. To decide otherwise, it seems to me, would be to go contrary to the spirit of our institutions, which make for equality of opportunity for public office.

It is, therefore, my opinion that more than one candidate for the office of Representative in Congress from the Fourth Congressional District may file his certificate of nomination, designating himself as "Independent," and that you could properly receive such certificates.

With reference to your further inquiry as to whether it is proper to receive a certificate designating the candidate as representing the party or principle of anti-prohibition, and to place the word "anti-prohibition" on the ballot in connection with the name of such candidate, my opinion is that such a course would be perfectly proper. I do not think that two words, either of which, in itself, might be used to designate a party, can be used together for that purpose with a hyphen between them, but "anti" cannot be considered as a word in itself, but merely as a prefix, and the words "anti-prohibition" should, therefore, be properly considered as one word.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CANDIDATES—CONTRIBUTIONS OF CANDIDATE FOR CONGRESS TO NATIONAL CAMPAIGN FUND.

October 12, 1920.

Colonel John Philip Hill,
712 Keyser Building,
Baltimore, Md.

MY DEAR COLONEL HILL: I wish to acknowledge the receipt of your letter of the 6th instant, in which you ask, first, whether you, as a candidate for Congress, may contribute to

the Republican party in general and for your own success in the Third Congressional District, the former contribution not to be charged against the total allowed by law.

The Act of Congress, approved June 25, 1910, and as amended by the Act approved August 19, 1911, and by the Act approved August 23, 1912, provides that no candidate for Representative in Congress may lawfully contribute any sum in excess of the amount which he may lawfully give, contribute, expend or promise under the laws of the State in which he resides.

Section 167 of Article 33 of Bagby's Code provides that the payments, expenditures, promises and liabilities which any candidate for nomination or for election may make or incur, *directly* or *indirectly*, whether in money or other thing of value, shall not exceed in the whole ten dollars for each one thousand or a major portion thereof up to fifty thousand of the registered voters qualified to vote for the office in question at the next preceding election. The expression "directly or indirectly" would imply, in my judgment, that a contribution to the Republican party in general would be charged against the amount you are allowed to spend under this section.

To hold otherwise would, in my opinion, disregard the spirit of the law. Contributions made in aid of a party in general are used in the various districts, and it is difficult to see how they could be so used without indirectly aiding the candidacy of the candidates for Congress in those districts.

You next ask what would be the limit in dollars and cents that you may subscribe under the law.

In 1918 the total registered votes in Wards 1, 2, 3, 4, 5, 6, 7, 8 and 22 was 27,498. I have not the figures for the Precincts 9, 10, 11 and 13 of the Eighteenth Ward, which are also included in the Third Congressional District. I estimate the registered voters from the votes cast in the election of that year at 700 for these four precincts, thus making for this computation a total registered vote in the district of 28,198. Applying the formula of Section 167, your contribution would be limited to $280.00. I believe that the actual figures for the registered votes in the four precincts of the Eighteenth Ward would not materially change this sum.

In addition to the payment allowed, a candidate may pay his own expenses for postage, telegrams, telephone, stationery, printing, advertising, publishing, expressage, traveling and board, by Section 167 of Article 33.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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QUALIFICATIONS OF VOTER—RESIDENCE IN COUNTY—CONSTITUTIONAL PROVISION IS APPLICABLE TO WOMEN.

October 13, 1920.

Richard F. Green, Esq.,
Kensington, Md.

MY DEAR MR. GREEN: I desire to confirm the statement made this morning over the telephone to you as one of the Registers of Montgomery County. You asked me whether you could register a woman who had not been living in Montgomery County for six months. Although women were not subject to the Declaration of Intention Law and the Affidavit of Removal Act until August 26, 1920, it is, of course, necessary for them to satisfy the Constitutional requirements of one year's residence within the State and six months' residence within the county in which they propose to register. It would not be proper, therefore, for you to register the lady concerning whom you asked me.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CITIZENSHIP—WOMAN MARRIED TO ALIEN AND DESERTED BY HIM, BUT NOT DIVORCED.

October 14, 1920.

John R. Adams, Esq.,
204 Spruce Avenue,
Takoma Park, Md.

DEAR SIR: Your letter of October 12th.

You ask whether a woman born in the United States, who married a British subject, who has never been naturalized as a

citizen of the United States, and who is still his wife, although deserted by him some years ago, and who, herself, has never left the United States, is or is not a citizen of the United States.

Section 3960 of the United States Compiled Statutes provides as follows: "Any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relationship she may resume her American citizenship, if abroad, by registering as an American citizen within one year with a Consul of the United States, or by returning to reside in the United States; or, if residing in the United States at the termination of the marital relation, by continuing to reside therein."

The woman as to whom you inquire took the nationality of her husband upon marriage. The words "termination of the marital relation" means the termination of the marriage either by death or divorce, and as this has not occurred in the case of this woman the provisions contained in the second sentence of the section above quoted cannot apply to her and she continues to keep the nationality of her husband, and, therefore, is not a citizen of the United States. It is needless to say that under these circumstances she is not entitled to register as a voter in the State of Maryland.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

CLOSING THE POLLS — PERSONS WHO ARE WAITING THEIR TURNS TO VOTE.

Hagerstown, Md., October 19, 1920.

H. Maurice Talbott, Esq.,
Board of Election Supervisors,
Rockville, Md.

MY DEAR MR. TALBOTT: I beg to acknowledge receipt of your letter of October 16th, in which you ask the following question:

"When the hour for closing the polls has arrived—

"First. May those voters then in the polling place be allowed to vote?

"Second. May those voters who are standing in line on the outside of the polling place be allowed to enter and vote?"

I think it has always been the practice to close the doors of the various polling places at the closing hour, this year, 7 o'clock, and to permit those persons who are already inside of the room to vote, but to decline to permit any other persons who may be on the outside to enter. It is my view, therefore, that persons in the first group mentioned above may vote, but those included in the second group may not.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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QUALIFICATIONS OF VOTERS—RESIDENCE OF THE HUSBAND DETERMINES RESIDENCE OF THE WIFE.

October 20, 1920.

H. Maurice Talbott, Esq.,
Board of Election Supervisors,
Rockville, Md.

MY DEAR MR. TALBOTT: Upon my return to Hagerstown last Saturday I found a letter from you which was written to me on October 8, but by reason of the fact that it was mailed to Hagerstown instead of my Baltimore office, it did not come to my attention before Saturday. This will explain your failure to hear from me more promptly.

In your letter you state that you have in your county a number of men who live there, who are registered to vote in various other States, and you ask whether their wives may register in your county and vote there, assuming that both the husbands and wives have resided in the State for one year and the county for six months.

It is hard to understand how men can be actual residents of the State of Maryland for a year or more and continue to vote in other States. I assume, however, that they are Government

employees, and for that reason are considered, constructively, to continue their residence in the States from which they were appointed. We have always proceeded on the theory that where the husband and wife were living together, the domicile or residence of the husband was also the domicile or residence of the wife. Where a husband and wife are maintaining a single home in the usual manner, it is difficult to understand how the husband can legally be a resident and vote in one State and the wife be a resident and vote in another State.

I see no reason, therefore, in the case which you present, to depart from the usual rule suggested above, and my view is that the wives should not be permitted to register and vote in Maryland.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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ADDITIONAL POLLING PLACES — TRANSCRIBING NAMES IN NEW REGISTRATION BOOKS — ACT OF 1920 (SPECIAL SESSION).

October 21, 1920.

Board of Supervisors of Elections,
Queen Anne County,
Centreville, Md.

GENTLEMEN: I beg to confirm the conclusions reached this evening as a result of my conference with Mr. Smith, from your office.

It seems that you have, in your county, five districts, containing, at this time, more than 800 registered voters, necessitating, under the Act passed at the recent special session of the Legislature, the creation of new polling places, and the separation of the voters in said districts into two lists, the one from "A" to "M," and the other from "N" to "Z," inclusive.

I was informed that you have made every possible effort to purchase additional books into which the names might be transcribed, but that you have been unable to procure them. I advised Mr. Smith that, in my judgment, the present books may be used as the books containing the names from "A" to

"M," inclusive, and that new books should be prepared into which the names from "N" to "Z" should be transcribed. He advised me that you had, in your possession, five books in form similar to the books used in Baltimore City, which, by slight changes, could be adapted to your needs. I suggested that, if these books contained sufficient pages for the purpose they should be torn apart and be bound into new books which will furnish just the number required by you.

If the names from "N" to "Z," inclusive, and the various entries made in connection with each are transcribed properly and duly certified as being correct by the Supervisors, as required by the recent Act, I believe there will be a substantial compliance with the law's provisions.

I might suggest that in transcribing the names from the present books to the new ones you do not draw lines through said names or in any way deface the present books, as it may become necessary to use the old books in connection with the registration prior to the election in 1921.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CITIZENSHIP—CHILD OF ALIEN PARENTS—RESUMPTION BY PARENT OF AMERICAN CITIZENSHIP.

October 21, 1920.

James E. Hubbert, Esq.,
Chief Clerk of Supervisors of Elections,
Court House,
Baltimore, Md.

MY DEAR MR. HUBBERT: I just had presented to me by a young lady who came to me upon your suggestion, the following facts involving her right to register and vote:

She was born in Japan, her father being a Japanese and her mother an American. When she was nine years old her mother returned to America, bringing her along, and both she and her mother have continued to reside in this country ever since. A short time after the mother left Japan she was awarded a decree of absolute divorce in the Japanese courts.

I think that the question presented is controlled by the provision of Paragraph 3962 of the Compiled Statutes of the United States, which reads as follows:

"A child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent; provided, that such naturalization or resumption takes place during the minority of such child."

When the Act refers to the resumption of American citizenship by the parent, it means, of course, that parent who, by reason of previous American citizenship, is able to resume the same. It would seem, therefore, that the young lady in question has satisfied all the requirements of the Act and is now an American citizen, and as such is fully entitled to register and vote.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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REGISTRATION—DECLARATION OF INTENTION AND AFFIDAVIT OF REMOVAL—APPLICATION OF LAW TO WOMEN.

October 22, 1920.

Richard F. Green, Jr., Esq.,
Register of Elections,
Kensington, Md.

MY DEAR MR. GREEN: Yesterday, over the telephone, you presented to me the following facts, and asked my opinion whether the lady in question was entitled to register:

It seems that Mr. and Mrs. A. came to your county from another State in March, 1919, purchasing a home there, in which they lived until September, 1919, when the home was sold. Thereupon a portion of their furniture was stored in Montgomery County, and the rest was taken into Washington City for the purpose of furnishing their rooms, which were occupied by Mr. and Mrs. A. until November 15th, 1919, when both of them returned to Montgomery County, where they have

ever since resided. Neither Mr. or Mrs. A. made, more than one year prior to this year's election, the Declaration of Intention to become citizens of Maryland, and, therefore, Mr. A. is unquestionably barred from registering this year. When Mr. and Mrs. A. went to Washington last Fall, neither of them made the Affidavit of Removal.

I am enclosing herein a copy of the opinion rendered by me as to the applicability of the Declaration of Intention Law, and the Affidavit of Removal Act to women voters, from which it will appear that Mrs. A.'s failure to make the Declaration of Intention when she came into Maryland in March, 1919, and her failure to make the Affidavit of Removal when she left the State temporarily in September, 1919, did not in any way affect her right to register and vote this Fall. The only real question in her case is, therefore, whether or not she has had that continuous and unbroken residence in the State for at least one year which is required by the Constitution as a condition of registration. The answer to this question depends largely upon the facts of the particular case before you. If Mr. and Mrs. A., upon selling their home in Montgomery County, moved into Washington expecting at the time to make that city their home, then there is a fatal break in the one year's residence, and a subsequent change of intention as to residence will not change the legal effect of the establishment of the Washington home. If, however, the sojourn in Washington was merely in the nature of a temporary makeshift until a new home could be procured in Montgomery County; if, at the time of the sale of their home Mr. and Mrs. A. consulted real estate agents with reference to the purchase of a new home, or in any other way indicated their purpose to continue their actual residence in Montgomery County, then it would seem to me that the absence from the State in Washington should be regarded in the nature of a visit rather than an abandonment of the Maryland residence. If the facts justify the adoption of this latter view, Mrs. A. is, of course, entitled to be registered; otherwise, she should be denied that right.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

DIVIDING PRECINCTS — ACT OF 1920 (SPECIAL SESSION).

October 27, 1920.

Mr. M. O. S. Sabler,
Board of Election Supervisors,
Ednor, Md.

DEAR SIR: I beg to confirm the oral opinion recently given by me over the telephone to one of the members of your Board.

It was stated that after complying with the law recently passed at the special session of the Legislature, and dividing the voters of a precinct into two groups, the first containing all voters whose names begin with the letters from "A" to "M," inclusive, and the second of voters whose names begin with the letters from "N" to "Z," inclusive, one of the groups so formed still contains more than eight hundred voters. I was asked if it would be possible for your Board to make a further division of this group, making three groups in all. Such a procedure would be unquestionably illegal, as the law provided only for a division of the voters of a precinct into two groups, and defined exactly how each of those groups was to be constituted. Any further division would be absolutely without legal warrant.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CORRUPT PRACTICES ACT—TRAVELING EXPENSES OF VOTER.

October 29, 1920.

Frank T. Benson, Esq.,
Assistant Secretary,
Republican State Central Committee,
910 Fidelity Building,
Baltimore, Md.

MY DEAR MR. BENSON: I desire to confirm the oral opinion recently given to you relative to the right of a political party to pay the railroad transportation charges of a voter returning from another State to vote in Maryland.

Chapter 228 of the Acts of 1912, codified as Section 168 of Article 33, declares that it shall be lawful for any treasurer or political agent, in connection with any election, to pay,

among other enumerated expenses, "the conveyance charges for carrying persons to and from the polls or to and from the office of registration." This language, in my judgment, applies only to that continuous carriage of voters which, regardless of its place of beginning, actually terminates at the polls. This would usually include carriage of voters from their places of business or residence within or near the precinct or district in which they happen to be registered. Any transportation, however, which precedes such carriage is not contemplated by the Act. This view seems to be substantiated by the language of the section immediately preceding, which authorizes the expenditure of funds to meet the "traveling and other legitimate expenses of political agents, committees and public speakers," drawing, apparently, by the use of the word "traveling," a distinction between transportation charges in general and those incident to actual carriage of the voters to the polling places.

It seems to have been the intention of the Legislature to permit the carriage, at the expense of a political party, of voters to the polls themselves, as a matter of convenience to the voters, but the payment of no other transportation charges would seem to be justified under the law.

I am, therefore, of the opinion that the railroad transportation charges of a voter returning from another State to Maryland may not be legally paid by a political agent or treasurer.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MARKING BALLOT—PRESIDENTIAL ELECTORS—MARK OPPOSITE NAMES OF CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT.

James M. Munroe, Esq.,
State's Attorney,
Annapolis, Md.

October 30, 1920.

MY DEAR MR. MUNROE: Your letter of October 29th, with enclosure. You call my attention to statements in The Baltimore Sun and The Baltimore American to the effect that by placing a cross-mark in the square opposite the surnames of the Presidential and Vice-Presidential candidates a vote will be given for all of the electors placed under those names.

In my opinion, this statement is correct, and I base that opinion on the language which you quote from Section 55 of Chapter 51 of the Acts of 1918, to wit: "There shall be left at the right of the surname of the candidate for President and Vice-President, so formed as to include both names, and to the right of the name of each Elector a sufficient clear square in which each voter may designate by a cross his choice for Electors."

You will note that by the terms of the above quoted passage there is to be left at the right of the surname of the candidate for President and Vice-President, so formed as to include both names a sufficient clear space in which each voter may designate by a cross his choice for Electors. Such a sufficient clear square is also to be left at the right of the name of each Elector. The purpose of leaving such a square opposite the names of the Presidential and Vice-Presidential candidates can only be, I think, that the voter may designate, by a cross in that square, his choice of all the Electors whose names appear in the group headed by the names of the Presidential and Vice-Presidential candidates. It is distinctly provided that by a cross in that square he may designate his choice for Electors, and I do not think that that language is susceptible of any other construction than that which I have given to it.

I may add that the language quoted by you appears in Section 54 of Article 33 of the Code of 1904, and that it was retained in the amendatory Acts of 1912, Chapter 124, and 1914, Chapter 307. The provision has, therefore, been retained during four Presidential elections, those of 1904, 1908, 1912 and 1916, and, so far as I know, has always received this construction. Instructions to this effect were issued by the Supervisors of Elections of Baltimore City in 1916, and, I believe, in previous Presidential years, and, as these instructions agreed with the construction which I have always placed on the law, I have advised the Board to issue the same instructions this year. These instructions are, I believe, the basis of the statements in the newspapers to which you refer.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

DIVIDING PRECINCTS—SECTION 127 OF ARTICLE 33—EFFECT OF ACT OF 1920 (SPECIAL SESSION), CH. 1, SEC. 3.

November 11, 1920.

W. Evans Anderson, Esq.,
Chief Clerk, Board of Supervisors of Elections
for Baltimore County,
Towson, Md.

MY DEAR SIR: Yours of November 9th.

You direct my attention to Chapter 58 of the Acts of 1920, which repeals and re-enacts Section 127 of Article 33 of the Code, and authorizes the Boards of Supervisors of Elections of the several counties to sub-divide any election district or election precinct containing more than 400 voters into new precincts, with new and distinct boundaries.

You then ask whether this law is repealed by Section 3 of Chapter 1 of the Acts of the special session of the Legislature held in September, 1920, which created a new section, known as No. 127A, and directs the Boards of Supervisors of Elections of the counties, wherever more than 800 voters are registered in any one election precinct or district, to provide one additional polling place in such election precinct or district, requiring all voters whose surnames begin with the letters "A" to M," inclusive, to vote at one polling place, and all voters whose surnames begin with the letters "N" to "Z," inclusive, to vote at the other polling place.

According to my view of the matter, these two provisions of the law stand together and neither is repealed or modified by the other. The power conferred upon the Supervisors by the Legislature of 1920 continues and may be exercised whenever the Boards of Supervisors deem it desirable to do so. This section of the law contemplates the creation of new precincts according to geographical lines. The provisions of the Act passed at the special session in which you are interested are not confined in their operation to the election of 1920, but are general in their terms. Therefore, if in a new precinct created by a Board of Supervisors in pursuance of the authorization

conferred by Section 127 it is discovered after registration is completed that the total number of registered voters exceeds 800, it is the duty of said Board of Election Supervisors to establish an additional polling place in said precinct, as required by Section 127A as found in the Act adopted at the special session.

In my judgment, the various Boards of Election Supervisors should, as far as possible, establish, before registration begins, new election precincts in the manner provided in Section 127, so as to render it unnecessary to call into operation the requirements of Section 127A, because such procedure on their part would be in accordance with the election system which has always been followed in this State.

The mandate of Section 127A was legalized, however, to meet an emergency, and it must continue to be applied in case the same emergency arises in the future, that is, whenever it is discovered, after registration, that more than 800 persons are registered in any one election precinct or district.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CHARTER OF CAPITOL HEIGHTS—EFFECT OF NINETEENTH AMENDMENT.

December 8, 1920.

Mr. Edward L. Payne,
Member of the City Council,
Capitol Heights, Md.

MY DEAR SIR: In your letter of November 29th you state that Section 5 of the charter of Capitol Heights, being Chapter 549 of the Acts of 1912, imposed upon the judges of registration and election the duty "to register all *male* citizens of the town of twenty-one years and upwards so applying," etc.

You ask whether there is any authority conferring upon you the right to register women. In the case of Rhode Island vs. Palmer, the Supreme Court stated that the Eighteenth Amendment invalidates every legislative act which authorizes or sanctions what the section prohibits. This language has been construed to mean a repeal to the extent of the inconsistency. As a result of the same principle, the Nineteenth Amendment, declaring that no person shall be denied the right of franchise on account of sex, has had the effect of nullifying all legislation repugnant thereto to the extent of the repugnancy. Statutes in force in the various States at the time the Nineteenth Amendment became effective have continued in force with the objectionable word "male" stricken out. Our elections in Maryland in 1920, in which the women participated, were held under the old election laws without any new legislative action.

In my opinion, therefore, the Nineteenth Amendment has had the effect of eliminating from that portion of your charter quoted above the word "male" and the section should now read as if the word "male" had never appeared therein. Under such a construction, all citizens of your county over twenty-one years of age are entitled to register.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

CHARTER OF NORTH BEACH—EFFECT OF NINETEENTH AMENDMENT.

December 31, 1920.

Edwin F. Pywell, Esq.,
72 V Street N. W.,
Washington, D. C.

MY DEAR SIR: Yours of December 29th, in which, as a Councilman of the town of North Beach, in Calvert County, you ask me to construe for you that section of your town charter which governs your municipal elections.

Section 3, quoted in your letter, provides that "all *male* persons of the age of twenty-one years and upwards who * * * shall be the owner of any real estate in said town shall elect, by ballot, etc., * * *" You are interested in knowing what effect the adoption of the Nineteenth Amendment has had upon these provisions of your charter.

The amendment declared that "the rights of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of sex." I have already ruled with reference to similar statutes that the effect of the amendment is simply to eliminate the word "male" and that the statute is then to be enforced as if the word "male" had never appeared therein. I would, therefore, advise you that all persons in your town over the age of twenty-one years, and possessing the necessary property qualifications, are entitled to vote at your election.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL MATTERS.

FISCAL MATTERS—BUDGET BILL—NO POWER TO CHANGE ITEMS OF APPROPRIATION TO HOUSE OF DELEGATES—HOW SUCH POWER MAY BE CONFERRED.

January 23, 1920.

Hon. Millard F. Tydings,
Speaker of the House of Delegates,
Annapolis, Md.

DEAR MR. TYDINGS: I have your letter of January 22nd, in which you ask for an opinion as to whether you, as Speaker of the House of Delegates now in session, can vary the number of House employees for whom appropriations were made in the 1918 Budget Bill, increasing some and decreasing others, but, in the aggregate of salaries paid, keeping within the total appropriation for this purpose. By way of illustration, you ask whether you can reduce the number of clerks and enlarge the number of stenographers. Inasmuch as the House employees do not draw their pay until sworn in, and many of them whose appointment was contemplated in the last Budget cannot now receive the full pay therein provided for them, you also inquire whether this unearned portion of the appropriation can be used, in your discretion, to compensate additional employees, whose appointment would cause the total number in the particular class to which they belong to exceed the number named in the Budget itself.

Under the Constitutional Amendment relating to the Budget, the Speaker of the House is required to submit to the Governor an itemized estimate of the amount which will be required to meet the expenses of the next succeeding House of Delegates, and the Governor is required to include the estimate so provided in the Budget, without revision. The Amendment, in express terms, denies to the Governor the right to revise the estimate for the legislative department, but provides that the General Assembly may amend the bill by increasing or diminishing the items relating to the General Assembly. The evi-

dent purpose of these provisions was to protect the Legislature from executive domination as to the amounts originally appropriated for its use, and to leave it absolutely free to determine its own financial requirements.

It will be noted that the Budget Amendment simply provides that the General Assembly shall not *appropriate* any money out of the treasury except in accordance with its terms. After an appropriation has actually been made to any department, there is nothing in the Budget Amendment to prevent a readjustment within the limits of said departmental appropriation of the various items making up the total. This principle was recognized in the Budget Bill of 1918, where it is provided (Chapter 206, Section 3) that "Any Department, Board, Commission or Officer may, at any time, submit in writing, to the Governor, an amended schedule for the distribution and apportionment of the appropriation made to it or him, or any unexpended balance thereof, different from the manner set forth in the schedule contained in this Act," said amended schedule becoming effective upon the approval of the Governor.

I believe that the same general principle would apply to the legislative appropriations, and a similar right of revision can be conferred upon the Senate and the House of Delegates, without any infraction of the Budget Amendment. I do not believe, however, that this privilege belongs to either branch of the Legislature at this time, as a matter of right. Subject to the restrictions of the Constitution, the General Assembly alone has the power to confer upon either of its branches the discretionary privilege contemplated in your letter. While exercising this power in the case of Departments, Boards, Commissions, etc., as indicated above, the Legislature of 1918 failed to make any provision for a readjustment of the legislative schedule, and, therefore, no such power now exists.

My conclusions are as follows:

(1). When properly authorized by legislative action, and within the limits of a departmental appropriation, there may be a revision of the schedule of the various items enumerated in said appropriation.

(2). No legislative provisions for a readjustment of the appropriation to the Senate or the House of Delegates have

ever been made, and, therefore, this privilege cannot now be exercised by either of said bodies, acting independently, or by their respective presiding officers.

(3). The only method by which such a provision can be made is by legislative action concurred in by both the Senate and the House of Delegates. Under the Constitutional provision original budget bills become operative without approval of the Governor. For this reason, I do not think it necessary to secure his consent to a revision of the schedule set forth in said Budget Bills.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL — MEMBERS OF STATE BOARD OF EXAMINERS OF MOTION PICTURE OPERATORS NOT ENTITLED TO ADDITIONAL COMPENSATION.

January 30, 1920.

William A. Gillespie, Esq.,
State Auditor,
Union Trust Building,
Baltimore, Md.

DEAR SIR: In your letter of December 9, 1919, you referred to the fact that you are making an audit of the books and accounts of the State Board of Examiners of Motion Picture Operators, and that you find that the members of the Board have been drawing additional compensation for inspecting booths and acting in the capacity of secretary to the Board, and you ask me to advise you whether such additional compensation is authorized.

The subject of the compensation of members of this Board is covered by Section 7, Chapter 693, of the Acts of 1910, which provides that "the said Board of Examiners shall be paid a per diem of five dollars ($5) for each day actually in session, and shall pay the expenses of maintaining their office out of the proceeds derived from the licenses and renewals, including office rent, salary, etc.; and no money shall be paid from the State Treasury for any expense of this Board."

Members of the Board are, therefore, not entitled to any other compensation than as provided in this section, to wit, a per diem of $5.00 for each day they are actually in session. No additional compensation for any purpose is allowed. Under the provision, however, permitting them to pay the expenses of maintaining their office, which includes office rent, salary, etc., they can properly pay a secretary's salary, provided the fees received from licenses and renewals of licenses are sufficient. This secretary could not be a member of the Board, and accept the per diem compensation as provided by the Act for the members of the Board, and receive in addition thereto a salary as secretary to the Board.

I am clearly of the opinion that the members of the Board have no legal warrant for allowing themselves an additional compensation for the special services claimed to have been rendered by them.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—MOTOR VEHICLE COMMISSIONER ENTITLED TO ENTIRE AMOUNT OF ALL FINES FOR VIOLATION OF MOTOR VEHICLE LAW—SHERIFF ENTITLED TO NO COMMISSION FOR COLLECTION.

April 5, 1920.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR MR. BAUGHMAN: Under date of March 12th you sent to me certain correspondence between yourself and Joshua Clayton, Esq., of Elkton, and asked me for a ruling upon the questions disclosed thereby.

It seems that Section 3 of Chapter 156 of the Acts of 1904, which incorporated the Cecil County Bar and Law Library Association, provides that "one-half of all fines and penalties hereafter paid, imposed by the Circuit Court for Cecil County, upon any person or persons convicted in said Court of any crime * * * shall be paid to said * * * Association and by it expended in purchasing law books."

A complete revision of the Motor Vehicle Law of the State was made by the Legislature of 1918, in Chapter 85 of the Acts of that session. Section 139 of this general statute declares "that all fines * * * imposed or collected under any of the provisions of this sub-title shall be paid over within five days after the receipt thereof to the Commissioner of Motor Vehicles," and then follows the sentence "and this section shall not be considered as repealed by the passage hereafter of any law providing for a different disposition of fines and penalties in any county or other municipal division of this State, unless the same contains a repeal of this section by express reference thereto." The Commissioner of Motor Vehicles is then authorized, in the name of the State, to take all necessary steps to enforce the collection and prompt return of all such fines.

At the September term of the Circuit Court for Cecil County a certain George Cohee was convicted of a violation of the motor vehicle law; a fine of $500.00 was imposed, and this fine was subsequently collected by the Sheriff of Cecil County. The Sheriff received $25.00 as a commission, paid one-half of the residue to the Cecil County Bar and Law Library Association, upon the advice of Mr. Clayton, then State's Attorney for Cecil County, and remitted to you his check for $237.50, representing the remaining portion of the fine. You took the position that you were entitled to the entire amount of this fine, and that the full sum of $500.00, within five days of its collection, should have been paid to you by the Sheriff. Two problems are, therefore, presented:

First. Were you, as the Commissioner of Motor Vehicles, entitled to receive the full amount of this fine, or was it proper for the Sheriff to pay one-half thereof to the Cecil County Bar and Library Association? There is here involved the effect upon a local law of a Public General Law passed at a later date. Section 12 of Article 1 of the Code provides "that when the Public General Law and the Public Local Law of any county, city, town or district are in conflict, the Public Local Law shall prevail." This has been held to apply, however, only to general and local laws adopted by the Code, but as to subsequent legislation it does not alter the common law rule of construction that "in cases of repugnancy the statute later in

date should operate to repeal the earlier law." Alexander vs. Mayor and City Council of Baltimore, 53 Md. 100. In other words, when Public and Local laws are enacted simultaneously the local law prevails. "If, however, the intention of the Legislature, in the passage of later laws, by its language clearly indicates, either expressly or by necessary implication, a purpose to substitute a new scheme of laws for the pre-existing law, general and local, or to repeal the local by the adoption of a *new general law* clearly *intended* to operate equally throughout the State, the local law must yield to that intention thus ascertained." State vs. Falkenham, 73 Md. 463.

Another well-recognized rule of construction applicable to this situation is stated in the case of Appeal Tax Court vs. Western Maryland Railway Company, 50 Md. 274, 296, "The general doctrine on the subject of implied repeal is that where there are two acts on the same subject both are to be given effect if possible. If, however, the two acts are plainly repugnant to each other in any of their provisions, the later law, without any repealing clause, will operate to the extent of the repugnancy as a repeal of the first." See also Younger vs. State, 78 Md. 574.

As determined by both of the tests above prescribed, the Act of 1918 repealed by implication the local law of Cecil County to the extent to which the two measures are inconsistent and repugnant. The motor vehicle law passed in 1918 evidenced a definite purpose on the part of the Legislature to enact a new general law intended to operate equally throughout the State. This law, by requiring all fines imposed or collected for a violation of any of its provisions to be paid in full to the Commissioner of Motor Vehicles, was repugnant to the provisions of the Cecil County Local Law, and, therefore, to the extent of this repugnancy operated as a repeal of the Cecil County law. It did not disturb this law, however, with respect to the disposition of other fines and penalties. The provision of the Act of 1918, to the effect that Section 139 should not be considered repealed by the passage *hereafter* of any law providing a different disposition of fines and penalties, as above quoted, unquestionably sustains the views that I have taken. It indicates that the Legislature intended to establish a rule of

procedure with reference to fines of this character, which should be uniform throughout the State, and that its desire that this uniform rule thus established should be undisturbed was so strong that it inserted the sentence quoted for the particular purpose of preventing an amendment of the rule without clear and express language. The Cecil County Bar Association is not the only one to be affected by the passage of the Act of 1918, which repeals, in the same manner and to the same extent, the provisions of Section 4, Article 38, of the Code of Public General Laws, directing that one-half of the fines imposed by the Circuit Courts of the counties be expended by the Clerks of said Courts under their direction for the augmentation of their respective libraries.

I am clearly of the opinion, therefore, that the Cecil County Bar and Law Library Association was not entitled to any portion whatsoever of the fine paid by George Cohee.

Second. Was the Sheriff of Cecil County entitled to retain any portion of the fine so collected by him as a commission for his services, and, if so, how much? The payment of a fine to a Sheriff provides him with the means whereby he may absolve himself from a responsibility automatically placed upon him, as Sheriff, by the imposition of said fine. Section 39 of Article 87 of the Code makes the Sheriff "answerable for all fines, penalties and forfeitures imposed on the inhabitants of his county or of Baltimore City by any Court of record of this State, unless he can show the party on whom the same was imposed is insolvent." As soon as a fine is imposed the Sheriff, by reason of said provision, becomes responsible therefor to the party entitled thereto, only two defenses being permissible for a failure on his part to account therefor, to wit: the insolvency of the prisoner or his custody by the Sheriff. Surely no man is impliedly entitled to compensation for receiving money and therewith discharging his personal obligation.

The question is, however, determined by the adjudication of the Courts. It has been held that officers have the "right to compensation, fees or emoluments where provision is made *by law* for such compensation," but that "officers have no claim for official services rendered, either against the Government, legal corporation, or individual, where no provision has been made

by law for compensation for such services." 29 Cyc., 1422. This clearly means that the Sheriff, like any other officer, must perform all of the duties incident to his office as established by prior legislation or by enactment during his term, regardless of compensation. The matter of pay must also be determined by definite provision of law, but in many respects it is largely independent of the extent or nature of the services rendered. In other words, the Sheriff must perform all duties imposed upon him. He is only paid, however, for those acts and at those rates expressly prescribed by law.

It is the duty of the Sheriff to collect all fines, Section 39, Article 87, *supra,* yet apparently no express provision has been made for compensation to the Sheriff for this service. The schedule of Sheriffs' fees enumerated in Section 28 of Article 36 of the Code contains no reference thereto. On the contrary, Section 42 of Article 87 provides that "all fines, forfeitures, penalties and *costs* imposed as aforesaid are to be paid to the Sheriff, who shall pay the same, *except the costs,* to the Treasurer, on or before the 10th of November in each year, and the costs to the person entitled to receive them." The obvious meaning of this provision is that all of the fine itself is to be paid to the Treasurer of the State (or such person as may be elsewhere designated to receive it), and that the only item to be reserved is the amount of costs taxed by the Clerks in connection with the trial of the case, which by no construction embraces commissions to the Sheriff. In the case of State vs. Green, 120 Md. 690, the Court, referring to the Sheriff of Baltimore City, says "it was his duty to receive and pay over to the incorporated dispensaries and the Mayor and City Council of Baltimore the whole or such part of the fines to which they were respectively entitled, and we know of no law nor has our attention been called to any by which he is authorized or permitted to charge commissions therefor to said parties. Therefore, the commissions charged and collected by the defendant from the incorporated dispensaries and from the Mayor and City Council of Baltimore for the fines paid over to them, respectively, in this case, were wrongfully and illegally charged and retained, and thus, to the extent of said commission, so

much of said fines are still owing unto them and not unto the State."

I feel, therefore, that the Sheriff of Cecil County was not entitled to retain any commission whatever in connection with the collection of this fine. My general conclusion is that you, as the Commissioner of Motor Vehicles, are entitled to receive the entire fine of $500.00 imposed upon Mr. Cohee by the Circuit Court of Cecil County for a violation of the Motor Vehicle Law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

The above opinion was sustained by a judgment rendered in the case of State of Maryland vs. McAlister, by the three Judges of the Circuit Court for Cecil County, on December 17, 1920.

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FISCAL — NOT PROPER FOR STATE OFFICIALS TO RECEIVE PRIVATE CONTRIBUTIONS TO AID LAW ENFORCEMENT.

April 29, 1920.

Dr. Fred. C. Blanck,
Food and Drug Commissioner,
16 W. Saratoga St.,
Baltimore, Md.

MY DEAR DR. BLANCK: Yours of April 20th. You inquire whether, in my opinion, it would be legal for the State to accept a contribution of $1,000 or $1,200 from certain tomato packers, such contributions to be used in the employment of additional inspectors during the tomato canning season in order to carry out more effectively the provisions of the law passed at the last session of the Legislature, prohibiting the packing of tomatoes in puree made from skins, cores and trimmings, and, if so, what method would have to be followed to make this money available for this specific purpose.

It is provided in Section 3 of Article 6 of the Constitution that "the Treasurer shall receive the moneys of the State.

* * * deposit them to the credit of the State * * * and shall disburse the same for the purposes of the State * * * upon warrants drawn by the Comptroller and on checks countersigned by him and not otherwise." Under this provision, it would appear that any contribution to the State could only be made to and received by the Treasurer, and could be disbursed by him only upon warrants of the Comptroller. The authority for the receipt and disbursement of this money would have to be given more specifically in a statute.

Of course, if such contributions were received and expended in any other manner, I do not very well see how any one would be entitled to make any legal objection thereto, but State officers are hardly justified in performing an act which is not authorized by law simply upon the ground that no one is entitled to object to it. Moreover, if certain packers are prosecuted and possibly convicted as a result of these contributions made by their competitors, who might appear to be seeking thereby some unfair advantage for themselves, great bitterness toward your Department might be engendered, and its usefulness impaired.

I feel, therefore, that the proper course for you to pursue is to decline to receive this contribution, even though the donors, in tendering it, appear to be actuated by the most commendable motives.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—USE OF SANITARY FUND OF CRISFIELD FOR OTHER PURPOSES NOT PERMISSIBLE.

May 11, 1920.

Robert B. Morse, Esq.,
State Department of Health,
Baltimore, Md.

DEAR MR. MORSE: Mr. Wollman, of your Department, has handed to me a letter from the Clerk and Treasurer of the City of Crisfield, asking if it is possible to use the $16,000 now belonging to the Sanitary Fund of Crisfield, under orders of

the State Board of Health, for the purpose of taking up other outstanding bonds of the City of Crisfield, which also amount to $16,000, and which are payable next Saturday, May 15th, 1920. Mr. Wollman states that you desire an opinion as to whether such transfer could be made.

In reply, I beg to advise you that, under Section 9 of Chapter 810, Acts of 1914, it is distinctly provided that "*any money made available by bonds, stocks or notes issued in obedience to an order of the State Board of Health, and approved by the Governor and the Attorney General, shall constitute a sanitary fund, and shall be used for no other purpose than for carrying out the order or orders of the State Board of Health.*"

This language seems to me too clear for dispute, and, in my judgment, none of the money now in the Sanitary Fund of Crisfield can be used for any other purpose.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL -- DISPOSITION OF BALANCE IN HANDS OF STATE BOARD OF ELECTRICAL EXAMINERS.

May 17, 1920.

Joseph M. Zamoiski, Esq., Treasurer,
State Board of Electrical Examiners and Supervisors,
512 Union Trust Building,
Baltimore, Md.

DEAR SIR: I am in receipt of a letter from the Governor, advising me that he is informed by you that your Board has a balance on hand of $675.11, and that the renewals of licenses for the coming year will be sufficient to offset the Board's expenses, and asking what disposition should be made of the aforesaid balance. The Governor has requested me to advise your Board on the subject.

Section 16 of Chapter 244 of the Acts of 1906, codified in the Baltimore City Code as Section 663-P, provides that any balance of money remaining in the hands of your Board at the end of the year, after payment of expenses, shall be reserved by the treasurer of said Board to meet the expenses for the ensuing year.

Section 3 of Chapter 487 of the Acts of 1920, known as the "Budget Act," provides "that if any additional funds from any source whatever in excess of the appropriations herein made shall come into the hands of any Department, Board, Commission, officer or institution of the State, the same may be expended by such Department, Board, Commission, officer or institution, with the approval of the Governor; any such excess not so expended shall revert to the treasury of the State at the end of the fiscal year in which the same is received by such Department, Board, Commission, officer or institution, unless there be an outstanding obligation against the same incurred with the approval of the Governor."

There is no other section of that Act, and, so far as I know, there is no other provision of law, which could in any way affect such balance in the hands of your Board, and in view of the language "in excess of the appropriations herein made," it seems to me that this section was intended to apply only to those Boards, etc., for which such appropriations were made in the "Budget Act."

It is my opinion, therefore, that your Board should follow the provisions of Section 663-P, above mentioned, and retain this fund in its hands.

It might be well to apply to the General Assembly at its next session for legislation authorizing and directing the return of such excess funds to the General Assembly of the State, and I suggest that you might, if you see fit, give this matter your consideration.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—PATAPSCO FOREST RESERVE FUND—FORT FREDERICK FUND—PROPER DISPOSITION OF BALANCES.

F. W. Besley, Esq.,
State Forester,
815 Calvert Building,
Baltimore, Md.

May 22, 1920.

DEAR SIR: Your letter of May 12th. You inquire to what extent, if any, recent legislation has affected the unexpended balance of $8,407.07 of the appropriation of fifty thousand dollars ($50,000.00) made by Chapter 749 of the Acts of 1912 for the purpose of acquiring land along the Patapsco River for forest reserve purposes, and the entire original appropriation of eighty-five hundred dollars ($8,500.00) made by Chapter 794 of the Acts of 1912 for the purpose of acquiring the Fort Frederick property, in Washington County, together with the accumulated interest on both funds.

In each case mentioned by you money was set aside for a definite purpose, which was not required, by the terms of the Acts cited, to be fulfilled within a prescribed period of time. I am unable to discover any legislative declaration specifically altering the original legislative intent in this respect, and, therefore, assume that by recent legislation you refer to Chapter 487 of the Acts of 1920, known as the "Budget Act."

Section 3 of this Act provides "That if any additional funds from any source whatever in excess of the appropriations herein made shall come into the hands of any Department, Board, Commission, officer or institution, with the approval of the Governor; any such excess not so expended shall revert to the Treasury of the State at the end of the fiscal year in which the same is received by such Department, Board, Commission, officer or institution, unless there shall be an outstanding obligation against the same incurred with the approval of the Governor."

This section clearly applies only to such additional funds in excess of the appropriation made in the Act as may *hereafter* come into the hands of any Department, Board, Commission, officer, etc., and not to moneys already under the control of such parties. The Budget Bill makes appropriations for the two fiscal years extending from October 1, 1920, to September 30,

1922, and although the law became effective on June 1st, 1920, I think that its provisions are intended to apply generally to the period of time just mentioned. Since the balances stated above have been in your hands for some years, I feel that you are legally entitled to retain them, with full power and authority to expend them at any time for the fulfillment of the objects originally designated. This ruling would also apply to all interest on said balances received prior to October 1, 1920. Interest accruing subsequent thereto is, in my judgment, subject to the provisions of the Budget Act above quoted, and, if unexpended at the end of the fiscal year during which it is received by you, must revert to the State Treasury.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL — LAW ESTABLISHING SPECIAL ROAD FUND FROM OYSTER REVENUES NOW SUPERSEDED BY CHAPTER 682, ACTS OF 1916.

May 22, 1920.

Conservation Commission of Maryland,
512 Munsey Building,
Baltimore, Md.

GENTLEMEN: I beg to reply to your recent letter, inquiring to what extent, if any, the "Special Road Fund" authorized by Section 118 of Article 72 of the Code, as adopted by Chapter 539 of the Acts of 1912, is affected by Section 9 of Article 19A of the Code, created by Chapter 682 of the Acts of 1916.

The Legislature created the Board of Shell Fish Commissioners by Chapter 711 of the Acts of 1906 (Volume 2 of the Code, Article 72, Section 86). At that time all revenues arising from oyster culture were placed in a special fund, known as the "Oyster Fund" (Bagby's Code, Volume 2, Article 72, Section 31).

By the Acts of 1912, Chapter 539, the Acts of 1906, Chapter 711, was amended by adding thereto certain sections, including Section 118, to which you refer. This section, codified in Volume 3 as Article 72, Section 120, provided that all revenues arising under the Act, whose purpose was "to establish and promote the industry of oyster culture in Maryland," after the

payment of all expenses and disbursements authorized by the Act, be paid at the end of the year into the State Treasury, to be divided into two funds, to be known as the "Special Road Fund" and the "Fund for the Conservation of Natural Oyster Bars."

In 1916 the Legislature, by Chapter 682 of the Acts of that year, being the same Act which created the Conservation Commission and abolished the Board of Shell Fish Commissioners, in that portion of Section 1 which is codified in Volume 4 as Section 9 of Article 19A, consolidated the funds then known as the "Oyster Fund," the "Oyster Conservation Fund" and the "Fund for Conservation of Natural Oyster Bars," into a fund to be known as the "Conservation Fund," and directed that the moneys now paid or which would be hereafter payable into the State Treasury to the credit of any of said funds, *including all revenue from oyster culture*, shall be placed in the "Conservation Fund." No mention is made of the "Special Road Fund" created by the Act of 1912, but as it was to be established and maintained solely from revenues arising from oyster culture, all of which revenues are required by the Act of 1916 to be placed in the "Conservation Fund," the Act of 1912, in so far as it relates to the "Special Road Fund," is necessarily repealed by implication. The latter Act is clearly inconsistent with and repugnant to the earlier one, and must, therefore, prevail. Furthermore, the Act of 1916 constitutes a complete revision of the agencies and methods by which the State's natural resources are to be handled and conserved, and was clearly intended as a substitute for all prior Acts dealing with the same subject-matter.

This construction is established beyond question by Section 2 of Chapter 682 of the Acts of 1916, which expressly repealed all Acts or parts of Acts inconsistent therewith.

My opinion, therefore, is that Section 9 of Article 19A, as created by Chapter 682 of the Acts of 1916, supersedes Section 118 of Article 72 as embodied in Chapter 539, of the Acts of 1912, so far as any distribution of revenues arising from the oyster culture laws to the "Special Road Fund" is concerned.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—NEW CHARGES DUE MARYLAND TRAINING SCHOOL FOR BOYS EFFECTIVE JUNE 1, 1920.

May 22, 1920.

Clarence W. Perkins, Esq., Secretary Board of Directors of Maryland Training School for Boys,
10 South Street,
Baltimore, Md.

MY DEAR SIR: I beg to reply to your recent letter, in which you ask when the charges imposed upon the City of Baltimore and the several counties of the State by House Bill No. 239, now Chapter 360 of the Acts of 1920, become effective.

The Act in question fixes the sum of one hundred and eighty dollars ($180.00) as the amount to be paid into the State Treasury by the counties and Baltimore City for the care and training of each boy committed to your school, and, subsequently, directs your Board to certify to the State Comptroller, on the first days of June, April, July and October, of each year, the amount not previously certified to that is due the school from the several counties and the City of Baltimore having boys chargeable thereto.

As the Act itself does not indicate when it shall become effective, it is controlled by Section 31 of Article 3 of the Constitution, making the date June 1st, when not otherwise expressly declared.

From and after June 1st, therefore, the one hundred and eighty dollars ($180.00) rate is the only one which can be legally recognized. The latter provision refers to dates of accounting and not to the amount to be charged in said accounting. On the first of July, 1920, your Board should, in my judgment, submit to the Comptroller bills based upon the old basis for April and May, and upon the new basis for the month of June. Thereafter, of course, the accounting will be regular and free from difficulty.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—SEWERAGE WORK IN CRISFIELD—WHAT BILLS TO BE PAID.

May 29, 1920.

Robert B. Morse, Esq.,
Chief Engineer,
State Board of Health,
Baltimore, Md.

DEAR SIR: Your letter of May 27th has been received. In this letter you desire an opinion as to whether or not the sum of $291.61 should be paid by W. J. Stirling & Company, of Crisfield, Md., for shovels, picks, etc., which were used or to be used in the construction of the sewerage system for Crisfield under orders of the State Board of Health.

In this connection, I beg to advise you that, by Chapter 810 of the Acts of 1914, the State Board of Health is required to approve all bills before payment chargeable to the sewerage fund. The contractor for this work was DeWine & Company, of Washington, D. C., and from the extract from the Minutes of the City of Crisfield of April 24th, 1919, it appears that the DeWine Company were to construct the sewerage system on the cost plus 10 per cent plan, the contractor to place his organization and *equipment* at the disposal of the city. It would seem from this that the picks and shovels should be deemed a part of the equipment of the contractor, and, therefore, not chargeable to the sanitary fund.

The other account on which you desire an opinion—a bill in the amount of $852.26 in favor of L. W. Gunby—would seem, from your letter, to be a part of an account for sewer pipe which was heretofore paid to W. A. Muir, by check for $1,243.67, and it is stated that the check was improperly signed and returned to Muir by the bank, but has not yet been returned to the Town Treasurer. Your letter also states that Mr. Mallison, the Town Treasurer, has a receipted bill from Mr. Muir for the amount of this check, but the bill has disappeared from his files. It is my judgment that this account should not be paid until the improperly signed check has been returned to the Town Treasurer.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—MANNER OF CALCULATING AMOUNTS TO BE PAID BY STATE AND COUNTIES TO STATE INSANE HOSPITALS—RATE CHARGED EFFECTIVE JUNE 1.

Harry J. Hopkins, Esq., June 23, 1920.
Comptroller's Office,
Annapolis, Md.

MY DEAR COLONEL HOPKINS: In your letter of June 21st you state that Chapter 351, of the Acts of 1920, repeals and re-enacts Section 45 of Article 59 of the Code, increasing the amount to be paid by the several counties of the State and Baltimore City for each patient in the State Insane Hospitals from $100 per annum to $125 per annum. This law became effective on June 1st, 1920. You state that you assume that the bills to be submitted by the several insane hospitals to each county of the State and Baltimore City for the quarter ending June 30, 1920, should be on the old basis of $100.00 for the months of April and May, and at the new rate of $125.00 for the month of June, the custom having been to submit these bills quarterly.

My views on the subject are entirely in accord with your own. I recently rendered a similar opinion to Clarence W. Perkins, Secretary of the Board for the Maryland Training School for Boys, with reference to the preparation of the bills to be submitted by him to the several counties and Baltimore City for the quarter ending July 1st, 1920.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—NO APPROPRIATION COVERING INCREASES IN SALARIES OF CLERKS IN BALTIMORE CITY COURTS AND SALARIES OF NEWLY AUTHORIZED CHIEF CLERKS—NO AUTHORITY FOR COMPTROLLER TO PAY SAME.

Hon. E. Brooks Lee, July 15, 1920.
Comptroller,
Annapolis, Md.

DEAR MAJOR LEE: Yours of July 13th.

I shall endeavor to answer in the same order the two questions presented therein.

First. Chapter 70 of the Acts of 1920 repeals and re-enacts Section 371 of Article 4 of the Public Local Laws of Maryland (Baltimore City Charter, Revised Edition, 1915), thereby increasing the annual salary of the trust clerk of the Circuit Courts of Baltimore and of the Chief Clerks of each of said courts from $2,500.00 to $3,000.00. The Harrington Budget for 1918-1920 provides salaries for these three men at the old rate of $2,500.00 until October 1st, 1920. Governor Ritchie's budget, which becomes effective on October 1st, 1920, contains an appropriation covering these three salaries at the new rate of $3,000.00 per annum.

You state it is your view that the new salary of $3,000.00 cannot begin until October 1st, 1920, although the Act authorizing the increases became effective on June 1st, 1920. I concur in this view.

Chapter 70 of the Acts of 1920 cannot be regarded as a Supplemental Budget Bill, because it does not provide the revenue necessary to pay the appropriations therein made. This is further indicated by the fact that the salaries at the increased rates were provided for in the general budget. It will be noted that all of these salaries are authorized by statute, which also directs that they shall be paid upon warrant of the Comptroller by the State Treasurer. Under our budget system, all salary expenditures out of the State Treasury must be made solely in accordance with the specific appropriations contained in the Budget Bill, and since the budget covering the period from June 1st to October 1st makes the appropriation at the old rate, there is no source from which the increase may legally be taken during those months.

Second. Chapter 638 of the Acts of 1920, codified as Section 371A of the Baltimore City Charter, Revised Edition, 1915, authorizes the Clerks of the Baltimore City Court, of the Superior Court of Baltimore City and of the Court of Common Pleas of Baltimore City to appoint Chief Clerks for each of their respective courts, at annual salaries of $3,000.00, for which the Comptroller is directed to draw his warrant upon the State Treasurer. The law itself does not provide the revenue necessary to pay the appropriation, and through some oversight no provision whatever was made in Governor Ritchie's

Budget for the payment of these salaries. Under these circumstances, you ask whether they can be legally paid by your office.

I think not. Under the budget system, the only expenditures that can legally be made from the State Treasury are those specifically appropriated, and then only to the persons and in the amounts indicated in the Budget Bill itself. If all appropriations made in various legislative measures and not embraced in the budget authorizations were directed to be paid by your office and actually paid by the Treasurer, the safeguards of the budget system would soon be undermined and destroyed.

This new law, although it became technically operative on June 1st, will only become effective in a substantial way when the next Legislature has made the necessary appropriations.

I will, however, suggest the following plan as a practical method of meeting this difficulty: The Clerks of the Baltimore Courts already possess the power to appoint such assistants as the business of their respective offices seems from time to time to require, and these helpers are compensated at rates determined by the Clerks and approved by the Supreme Bench out of the fees of the respective offices. Let the Clerks named in the bill exercise this power and appoint Chief Clerks for their respective courts, compensating them at the rate of $3,000.00, out of the fees of their respective offices. If these fees prove insufficient in some of the courts named, the deficit may be made up out of the excesses arising in other courts in accordance with the provisions of Section 370 of the Baltimore City Charter.

I offer this suggestion because the Legislature has clearly indicated what its desires on the subject are, and because I realize that a delay of two years will constitute a serious handicap, not only to the Clerks affected, but also to their subordinates, who are justly entitled to an immediate increase in their compensation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—LICENSE FEES UNDER UNIFORM SMALL LOAN LAW—BANK COMMISSIONER MAY USE TO DEFRAY EXPENSES.

July 23, 1920.

George W. Page, Esq.,
Bank Commissioner,
Baltimore, Md.

MY DEAR MR. PAGE: You stated to me this morning that the license fees received by your office under the Uniform Small Loan Law, Chapter 88 of the Acts of 1918, aggregate about $1,600.00 annually. Section 12 of the Act provides "That all license fees received under this Act are hereby appropriated for the uses and purposes thereof, and the expenses which may be incurred in relation to the supervision of licenses and enforcement of this Act. Any surplus remaining at the end of the fiscal year shall be paid into the State Treasury." You asked me whether these license fees can be used in defraying the general expenses of your office. It seems that all of the business necessitated by the Act in question is conducted by your office staff, and that it is impossible to segregate from your general office expenses the items which belong peculiarly to the enforcement of the Uniform Small Loan Law. It is much more inexpensive to conduct the business in this manner than to provide a special clerical force for that purpose. You state that you are quite confident that the actual cost af administering the law in question, if it could be ascertained, would largely exceed the sum of $1,600.00.

In view of all the above facts, I feel that you will be within both the letter and spirit of the law if you retain the license fees which you have received and use them in defraying the general expenses of your office.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—RIGHT OF EX-REGISTER OF WILLS TO APPLY TO HIS SALARY FEES COLLECTED AFTER EXPIRATION OF HIS TERM.

August 27, 1920.

Hon. E. Brooks Lee,
Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: In your recent letter, you state that Mr. John Archer, having served as Register of Wills for six years in Harford County, retired from office on December 1st, 1919, and that since that time Mr. Archer has collected $1,293.06 in fees which had become due during his term. During the fiscal year beginning November 30th, 1916, and ending on December 1st, 1919, the total amount of salary which Mr. Archer received from the fees of his office was $2,338.29. You state that Mr. Archer now desires to retain from the fees collected by him since December 1st, 1919, the sum of $661.71, which will complete the salary of $3,000.00, to which he would have been entitled in any one year had the fees of his office justified it. You then ask whether this claim should be allowed by your office.

Section 6 of Article 36 of the Code allows six months from the time of his retirement to every Register of Wills to complete the unfinished business of his office. Just what is meant by the phrase "unfinished business of his office" is somewhat uncertain, but it does not seem to be necessary for me to construe it at this time, because I understand that, although a slight amount of new work was performed by Mr. Archer after December 1st, practically all of the money collected by him subsequent to that date represented fees which had actually been earned during his incumbency of his office. The Register is entitled to an annual salary not to exceed $3,000.00, payable from the fees or moneys coming into his hand for the discharge of his official duties (Const., Art. 15, Sec. 1).

It seems to me that the fees earned but not collected by the Register of Wills at the time of the completion of his term constituted the fees of his final year, out of which he may compensate himself within the constitutional limitation.

Mr. Archer's bond was responsible to the State for all fees accruing during his incumbency and remaining uncollected, and I presume he could, on the last day of his term, have settled with the State in full, reimbursing himself later as he was able from time to time to make his collections. In this event he would unquestionably have been entitled to his full salary of $3,000.00.

I do not think that the result is altered when he waits and permits his fees to come to him in due course. It must be remembered that no Register is required, except when rendering service to a non-resident or a person not assessed with property in the State, to be compensated immediately upon the performance of his work (Article 36, Section 7); nor can any Register in the counties enforce collection of the same by execution more than once in every year between the first of January and the first of May (Article 36, Section 3). Mr. Archer was, therefore, compelled by law to wait until after January 1st before he could insist upon the payment of his fees, and, according to the long-established practice, he was expected to await until the account closing the estate was actually stated.

I am, therefore, of the opinion that the fees collected after December 1st should be considered as a part of the earnings of Mr. Archer's last year, and that he is entitled to be paid from them such sum (in his case $661.71) as will complete his constitutional salary of $3,000.00.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — STATE ENTITLED TO ALL INTEREST ACCRUING ON ITS FUNDS.

September 10, 1920.

Hon. E. Brooks Lee,
State Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: I beg to reply to your recent communication, in which you enclose a letter from J. O. Snyder.

Esq., of Hagerstown, asking you to secure my opinion as to the right of Washington County to collect interest on State funds from the time they are collected by the State Tax Collector until paid over to the Comptroller.

An opinion has just been filed in the Circuit Court for Washington County in a case involving the question as to the proper depository of State taxes in that county, in the course of which opinion the Court states that the County Commissioners can "in no view of the matter be entitled to any interest arising from funds belonging to the State." In the case of Vansant vs. State, 96 Md. 110, the Court of Appeals decided that a Clerk of the Court is responsible to the State for the interest received by him on funds collected by him for the use of the State and deposited in bank. It would appear, therefore, to be perfectly clear that the County Commissioners of Washington County have no right to collect and retain interest on State funds accruing from the time they are collected by the State Tax Collector until they are paid over to the Comptroller.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—BOND OF TREASURER OF CALVERT COUNTY—CORPORATE SURETY NOT REQUIRED.

September 21st, 1920.

Hon. Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR RITCHIE: Your letter of September 10th, enclosing bond received by you from William H. Dowell, Esq., Treasurer for Calvert County, as Collector of State and County Taxes in that County, which is returned herewith.

You call attention to the fact that personal instead of corporate surety is given, and request my opinion as to whether you are authorized to approve a bond with personal surety only.

Chapter 173 of the Acts of 1898 provides that the Treasurer of Calvert County shall execute to the State of Maryland such bond as is now or may hereafter be required by law as the collector of State taxes, which bond shall be approved and filed in like manner as other bonds of collectors of State taxes.

Section 34 of Article 81 of the Code provides that every collector of State taxes appointed by the County Commissioners shall give bond to the State with good and sufficient securities, to be approved by the Governor. It appears, therefore, that the law does not call for corporate surety, the only requirement with regard to surety being that the bond shall be given "with good and sufficient securities to be approved by the Governor." In my opinion, therefore, you are authorized to approve a bond with personal sureties, provided they come within the above description.

This view is strengthened by a consideration of the fact that the above-mentioned section uses language as to bonds for the collection of county taxes similar to that used with regard to bonds for the collection of State taxes, and this language must be construed in connection with the stipulation of Section 19 of Article 25, which provides for the payment of the premium by the county, *when* the bond is given with corporate surety, which seems clearly to imply that such bonds *may* be given with other than corporate surety.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—INCOMING REGISTER OF WILLS MAY RETAIN FEES OF HIS PREDECESSOR COLLECTED AFTER SIX MONTHS FROM EXPIRATION OF LATTER'S TERM.

September 24, 1920.

C. S. Warner, Esq.,
Register of Wills,
Bel Air, Md.

MY DEAR MR. WARNER: In our recent conversation you presented to me the following question: You were elected

Register of Wills for Harford County last fall, assuming the duties of your office on December 1, 1919, and succeeding John J. Archer. You are now receiving, from time to time, fees for services rendered by Mr. Archer, but remaining uncollected by him, and you desire to know whether you may retain the same as a basis for your own salary.

I have already ruled that Mr. Archer could complete his constitutional salary of $3,000 out of the uncollected fees which had accrued at the end of his term, and which he actually collected during the six months next succeeding. Section 8 of Article 36 of the Code declares that each Register of Wills shall have six months from the time of office to complete the unfinished business of his office, and Section 9 of the same Article imposes upon each Register of Wills the duty to "complete all of the unfinished business which shall be in his office unfinished by his predecessor within the sixth months" given in Section 8, and declares that such Register shall be allowed the usual fees for so doing, the same to be paid by his predecessor. Inasmuch as the six months period following the expiration of the term of Mr. Archer has now expired, I feel that you are now clothed with authority to collect all fees, whether accruing during the term of Mr. Archer or during your own term, and to treat the same as constituting the fees of your office, out of which your salary shall be paid.

I cannot think of any business pertaining to the administration of your predecessor which you could be called upon now to perform, except the collection of his earned but uncollected fees. You are the only person in a position to collect these fees, and I think that the effect of Section 9 is to place the duty to do so upon you, and the provision that you receive the usual fees for so doing, the same to be paid by your predecessor, means that your predecessor, after the expiration of six months, forfeits any right that he might have in the fees which he had earned but permits you to collect. I, therefore, feel that all such fees constitute a portion of the basis upon which your salary is to be calculated.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL—BOND OF TREASURER OF WICOMICO COUNTY—GOVERNOR'S APPROVAL NOT REQUIRED.

Hon. Albert C. Ritchie, October 7, 1920.
Governor of Maryland,
Annapolis, Md.

MY DEAR GOVERNOR: I wish to acknowledge the receipt of your letter of October 2nd, enclosing a letter from E. Stanley Toadvin, Esq., and a copy of the bond of Harry Dennis, Treasurer of Wicomico County, Maryland.

You ask my opinion particularly as to the provision in the bond exempting the bonding company from losses owing to the failure of a depository bank, and whether you should approve this bond in its present form.

Section 34 of Article 81 of the Code, which is Chapter 8 of the Acts of 1902, provides that "every collector of State taxes appointed by the County Commissioners shall also give a separate bond to the State of Maryland * * * with good and sufficient securities to be approved by the Governor, with the condition that if the above bound * * * shall well and faithfully execute his office and shall account for to the Comptroller and pay to the Treasurer of the State the several sums of money which he shall receive for the State or be answerable for by law, at such times as the law shall direct, then this obligation to be void * * *." I refer to this section hereafter as the general law.

Ch. 14 of the Acts of 1904, applicable only to Wicomico County, provides in Section 2 that the Treasurer of Wicomico County shall be the collector of all State taxes * * *

Section 3 provides that "he shall also execute a bond to the State of Maryland in the penalty of fifty thousand dollars for the faithful performance of his duties as Treasurer * * * , and further conditioned that he shall well and truly account and be liable for any and all moneys coming into his possession as Treasurer and collector of and for which he shall be answerable at law * * *."

Section 3 also states that the bond required shall be approved by the Judges of the Circuit Court of Wicomico County or a majority of them.

The local law was enacted two years after the general law. The general law by its terms does not apply to certain counties, showing that this law was not intended to have universal application. Again, the general law applies only to "collectors of the State taxes appointed by the county commissioners," whereas the Treasurer of Wicomico County is elected by the people. The Act of 1904 provides a special form of approval of the bond to be filed by the Treasurer of Wicomico County. It would seem clear, therefore, that the collection of State taxes in Wicomico County is not regulated by Section 34 of Article 81 of the Code, and it follows that your approval of the bond of the Treasurer of Wicomico County is not required.

It is my opinion that the bond filed by Treasurer Dennis is in substantial compliance with the local law for Wicomico County. Since the law directs him to deposit the State taxes, the proviso you mention is not an unreasonable limitation on the bonding company's liability.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—APPROPRIATION TO EDWARD H. PFUND APPROVED.

October 21st, 1920.

Carl M. Distler, Esq.,
Suits 300-303 Mutual Life Building,
15 South Street, Baltimore, Md.

MY DEAR MR. DISTLER: The budget for the current year contains on page 888 of the Laws of 1920 an item which reads as follows:

"To Edward H. Pfund, balance for printing the Governor's proclamations, providing same receives the approval of the Attorney General, $328."

In connection with the appropriation, I have ascertained the following to be the facts:

During the year 1913, Mr. Pfund contracted with the State of Maryland to publish in the Sunday Post, a German weekly

newspaper, then owned by him, the Governor's proclamation of proposed constitutional amendments once a week for the period of thirteen or fourteen weeks, for the sum of $655.20. Mr. Pfund performed his part of the contract and presented bills for the contract price to the Executive Department, and also the Comptroller's Office. About the time this service was being rendered to the State, Mr. Pfund engaged a certain Arthur H. Boemmel to assist him in the publication of his paper, and when Mr. Boemmel later severed his connection with the Sunday Post he made demand upon Mr. Pfund for the sum of $238.85, which he then claimed to be due him.

This bill was disputed by Mr. Pfund, and after the adjournment of the Legislature in 1914, Mr. Pfund ascertained that the appropriation made by the Legislature, Ch. 428 of the Acts of that year, for the payment of the publications in the Evening Post, was ordered to be divided equally between Mr. Pfund and the said Arthur H. Boemmel, each to receive the sum of $327.60. Checks had been issued by the Comptroller for the amount named to both Mr. Pfund and Mr. Boemmel, but payment was stopped upon both checks until the matter could be investigated by Mr. Edgar Allan Poe, who was then the Attorney General of the State.

Mr. Poe recommended that Mr. Pfund be paid, but that payment of the check issued in the name of Arthur H. Boemmel be permanently stopped. The amount appropriated to Mr. Boemmel later reverted to the Treasury. It is undisputed that the service entitling Mr. Pfund to the full payment by the State of the sum of $655.20 was actually performed by him. No facts have been disclosed to show that the State ever contracted with Mr. Boemmel or ever became indebted to him. The State is not concerned with any private controversy that may exist between a party with whom it contracts and one of the latter's employees. I believe, therefore, that the State, in making the appropriation referred to above to Mr. Pfund, is simply discharging an obligation of long standing, and that Mr. Pfund has actually been entitled to this money since 1914. Therefore, I hereby officially approve the aforementioned appropriation and consent to the immediate payment to Mr. Pfund of the amount named therein.

I am enclosing herein a shorter form of approval which you may desire to present to the Comptroller of the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—TALBOT COUNTY ROAD COMMISSION MAY DEPOSIT PROCEEDS OF BOND SALE IN ANY BANK IN TALBOT COUNTY.

October 30, 1920.

Mr. J. Ramsey Speer,
Trappe, Md.

DEAR SIR: Governor Ritchie has referred to me your letter to him of the 15th inst., in which you ask an opinion, first, whether Section 8 of Ch. 646 of the Acts of 1920, requires the funds arising from the sale of bonds authorized by this law to be deposited in the Easton National Bank.

The relevant language of the section in question is, "and the said funds shall be immediately deposited in some bank in Talbot County, Maryland, to the credit of the Road Commission hereinafter named, and shall only be withdrawn therefrom and paid out by checks or orders upon said fund signed by the President of the said Road Commission and countersigned by the Secretary or Treasurer thereof * * *"

You reason that this language requires a deposit in one bank, and that this bank should be the depository of the county funds, provided by law, and you further state that the Easton National Bank is "the only lawful county depository."

After reasonably careful search, I can find no law making the Easton National Bank the only lawful county depository. The earliest reference to the deposit of county funds in Talbot County I find in Sec. 12 of Ch. 619 of the Acts of 1900, which requires the County Treasurer to deposit once in each week in a "national bank in Talbot County." That same language is repeated in Ch. 344 of the Acts of 1902, and in Ch. 656 of the Acts of 1904, and is apparently the law today.

Section 8 of Chapter 646 simply requires the deposit in "some bank in Talbot County, Maryland." It is my opinion, there-

fore, that the Road Improvement Commission may select any one bank in Talbot County for the deposit of these funds. It goes without saying, of course, that the selection should be made in the exercise of the Commission's wisest discretion, keeping in mind security and the purpose for which Chapter 646 was enacted.

If the funds are thus deposited and withdrawn only as is specified in the law, there would be no personal liability attaching to you.

The fact that you are a director in the Easton National Bank has, of course, no bearing in the matter. I thoroughly appreciate your entire disinterestedness in asking my opinion.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL — STATE ROADS COMMISSION — ITS FISCAL YEAR FOR BUDGET PURPOSES DEFINED — CORRESPONDS WITH STATE'S FISCAL YEAR.

October 30, 1920.

Hon. E. Brooke Lee,
State Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: I beg to reply to your recent letter, which could not receive my immediate attention because of the court work in which I was engaged at the time of its arrival.

You ask me to pass upon your authority to issue a warrant in favor of the State Roads Commission for $64,046.00 under the following circumstances:

In the Budget Bill of 1918, which is Chapter 206 of the Acts of 1918, there is an appropriation to the State Roads Commission (page 481) of $100,000.00, which reads as follows:

"12B. To State Roads Commission, in the event that its share of the Special Funds for maintenance, etc., does not equal the sum of $1,350,000.00 appropriated therefor, then as much of the appropriation hereby made as may be necessary to equal said sum * * * $100,000.00."

The appropriation of $1,350,000.00 referred to is specifically made in the same budget, on page 442, in the following language:

"For maintenance of 1,500 miles of State and State-Aided Roads and for part payment of salaries, wages and expenses of the Roads Commission and its office force and employees to be paid out of Special Funds * * * $1,350,000.00."

The quotations given above are taken from the appropriations for the fiscal year 1919. Similar appropriations in exactly the same language for the fiscal year 1920 appear on pages 558 and 559, respectively, of the Laws of 1918. The total revenue for maintenance received from the Special Fund by the State Roads Commission during their fiscal year from April 1st, 1919, to March 31st, 1920, was $1,265,954, and the Commission now contends that in order to bring its maintenance fund for the year to $1,350,000.00 it is entitled to receive out of the appropriation of $100,000.00 the necessary balance of $64,046.00.

The fiscal year of the State Roads Commission, like that of the Department of the Commissioner of Motor Vehicles, has always extended from April 1st to March 31st of the succeeding year, while the State fiscal year extends from October 1st of one year to September 30th of the ensuing year. The records of the Comptroller's Office show that during the State fiscal year from October 1st, 1919, to September 30th, 1920, the State Roads Commission has received, for the purpose of maintenance from the Special Fund, the sum of $1,350,000. The Special Fund mentioned is that created by Section 139 of Article 56 of the Code, in which provision is made that "all moneys received by the Commissioner of Motor Vehicles pursuant to the provisions of this sub-title * * * shall be accounted from and remitted by said Commission to the State Treasurer, who shall create a Special Fund thereof, and pay the amounts for salaries and expenses, within the limits of the appropriation made by the General Assembly, and the balance in quarterly installments one-fifth thereof to the Mayor and City Council of Baltimore for use on its roads and the balance to the State Roads Commission to be used for the oiling, main-

tenance and repair of State Roads and State-Aided Roads, and for no other purpose."

Pursuant to this statutory direction, the amount due the State Roads Commission is remitted to it by the Treasurer in quarterly installments on or about the first days of January, April, July and October, each installment covering the State Roads Commission's share of the receipts of the Commissioner of Motor Vehicles for the preceding three months.

The question actually presented is whether the maintenance fund of $1,350,000.00 appropriated shall be computed upon the fiscal year of the State Roads Commission or the fiscal year of the State of Maryland. The budget amendment to the Constitution requires that the Governor shall submit to each General Assembly two budgets, one for each of the ensuing years, and stipulates that each budget shall contain a complete plan of proposed expenditures for the *particular fiscal year to which it relates.* In pursuance of this mandate of the organic law, the Legislature, in the first section of the budget bill of 1918, declared that "the several amounts mentioned herein * * * are hereby appropriated and authorized to be paid to the respective Departments, Boards, Commissions and officers of the State and for the specific purposes for the fiscal year beginning *October 1st, 1918, and ending September 30, 1919, and for the fiscal year beginning October 1st, 1919, and ending September 30th, 1920.*" The determination of your question requires primarily an ascertainment of the Legislative intention as to the subject-matter involved, and, in the language just quoted, the Legislature was careful to declare, in the most concise and definite terms possible, that the appropriations authorized were made for the fiscal years of the State, impliedly indicating that no other fiscal years were contemplated. The problem in no way deals with expenditure of the revenue coming to the State Roads Commission. On the contrary, the budget stipuation deals exclusively with the moneys to be received by the State Roads Commission and the sources from which its appropriations are to be derived. If the matter of expenditures was involved, it might be necessary to wait until the end of the Commission's fiscal year to ascertain exactly what the outlay was during said year, and whether there was finally a deficit due to over-expen-

diture; but no such requirement seems to be essential in connection with the income to be received by the Commission from the Special Fund. This income can be definitely determined at the end of any quarter, and at the expiration of the State fiscal year it is possible, by reference to the four checks received from the Treasurer for the four quarters of that year, to fix with certainty the income of the Commission from the Special Fund for said year.

The Legislature must be presumed to have known when it adopted the budget of 1918 that the income of the State Roads Commission from the Special Fund during the State fiscal year was capable of definite ascertainment in the manner indicated.

The two State fiscal years covered by the appropriations and extending from October 1st, 1918, to September 30th, 1920, include portions of three fiscal years of the State Roads Commission extending from April 1st, 1918, to March 31st, 1921. If the years contemplated in the budget appropriations to the State Roads Commission were not intended to coinicide with the State fiscal year to which the budget itself specifically refers, then how are we to determine which two of the three fiscal years of the State Roads Commission are covered by the appropriations? In other words, are we to say that the two years contemplated are to begin on April 1st, 1918, and end on March 31st, 1920? May it not be contended with equal force that what was actually meant was that the appropriations should cover the fiscal years of the State Roads Commission, which begin on April 1st, 1919, and end on March 31st, 1921? If the appropriations could be drawn back six months from the beginning of the State fiscal years to which they refer and made to start at that time, they could also have been projected six months and thereby have been made to commence six months after the beginning of said fiscal year. No construction involving such uncertainty and confusion can be justified. The only conclusion which seems to be sound and logical is that the Legislature, in making its appropriation of $1,350,000.00 to the State Roads Commission, intended that the sum should be received by the Commission from the Special Fund created out of the revenues from the office of the Commissioner of Motor Vehicles during the fiscal year of the State, beginning

October 1st, 1918, and ending September 30th, 1919, and that if during that period the Special Fund failed to supply the appropriation made, the deficiency should be made up out of the special appropriation of $100,000.00. The same conclusion would also apply to the State fiscal year beginning October 1st, 1919, and ending September 30th, 1920.

These are my views on the subject, and in pursuance thereof I am constrained to rule that you are without authority to issue the warrant in favor of the State Roads Commission, as requested by that Board.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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FISCAL—EASTERN SHORE TRUST COMPANY—SURETY BONDS FOR STATE MUST BE GIVEN BY PARENT COMPANY AND NOT BY BRANCHES.

December 3rd, 1920.

Hon. John M. Dennis,
Treasurer of Maryland,
Annapolis, Md.

MY DEAR MR. DENNIS: I wish to acknowledge receipt of your letter of November 30th, in which you ask my opinion as to whether the correct practice is being followed in having the various branches of the Eastern Shore Trust Company give separate surety bonds for the security of State moneys received by them.

Section 3 of Article 6 of the Maryland Constitution provides, in part, as follows:

"The Treasurer shall receive the moneys of the State, and, until otherwise prescribed by law, deposit them, as soon as received, to the credit of the State, in such bank or banks as he may, from time to time, with the approval of the Governor, select (the said bank or banks giving security, satisfactory to

the Governor, for the safekeeping, and forthcoming, when required, of said deposits) * * *."

Section 32 of Article 95 of the Code provides:

"The Treasurer may deposit the moneys of the State in such bank or banks as he may so select, or in such Trust Company or Trust Companies incorporated under the laws of this State and doing business therein, as he may, from time to time, with the approval of the Governor, select; such depositories giving security, satisfactory to the Governor, for the safekeeping, and forthcoming, when required, of said deposits."

This section is "the otherwise prescribing by law" referred to in Section 3 of the Constitution, above, and, of course, is now the controlling law. The main points are that the depository must give the security and that the security must be satisfactory to the Governor.

The Eastern Shore Trust Company was incorporated by Chapter 351 of the Acts of the General Assembly of 1900. There is provision in the charter for one president, an indefinite number of vice-presidents, and one class of the capital stock. There is nothing in this Act which indicates the exact relation of the branches to the parent organization. It seems certain, however, that these branches are, in fact, *branches* and not separate banks with separate corporate identity. The depository of the State's money, therefore, is the Eastern Shore Trust Company and not a particular branch of that Company. It would, therefore, seem that the Eastern Shore Trust Company should give the security.

In the absence of complete information as to the organization of the Eastern Shore Trust Company and of the form of bond furnished, at present it is, of course, impossible to determine with accuracy whether the bonds now given are not, in fact, the obligation of the Eastern Shore Trust Company. I can, therefore, only at this time lay down the general proposition that the depository must give the security, which must be satisfactory to the Governor, and that these branches, from the information at my command, are not separate corporations and in point of law not the depositories.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FISCAL — EASTERN SHORE TRUST COMPANY—VARIOUS BONDS OFFERED BY ITS BRANCHES PASSED UPON.

December 31, 1920.

Hon. John M. Dennis,
Treasurer of Maryland,
Annapolis, Md.

MY DEAR MR. DENNIS: I wish to acknowledge the receipt of your letter of the 20th inst., enclosing copies of bonds covering deposits of State funds in the branch banks of the Eastern Shore Trust Company, as follows:

Annapolis Bank (State Capital Bank);
The La Plata Branch;
The Indian Head Branch;
The Upper Marlboro Branch.

You ask my opinion as to the legality of these bonds.

In my letter to you of December 3rd, on this general subject, I stated the general propositions that under the law the depository must give security, which must be satisfactory to the Governor, and that the branches of the Eastern Shore Trust Company, from the information at my command, were not separate corporations, and, therefore, not the depositories. That these branches are not separate corporations has been confirmed by the conference with the State Bank Commissioner.

It goes without saying that since the branches are not separate corporations the bond given must be the obligation of the Eastern Shore Trust Company. It is the law, moreover, that a bond signed by the surety and not signed by the principal is not binding upon the surety.

With these principles in mind, it is very clear that the bond filed by the Annapolis State Capital Bank is not sufficient. This bond does not even purport to be the obligation of the Eastern Shore Trust Company, but simply that of the Annapolis (State) Capital Bank of the Eastern Shore Trust Company by D. J. Thompson, Cashier; W. Meade Holladay, President. W. Meade Holladay is not President of the Eastern Shore Trust Company. He could not be President of the Annapolis (State Capital) Bank of the Eastern Shore Trust Company, since that is not a corporate entity.

The bond of the La Plata Branch is probably sufficient. The principal named in the bond is the Eastern Shore Trust Company, Cambridge, Maryland (La Plata Branch). It is executed by the Eastern Shore Trust Company, W. Mitchell Digges, Vice-President, Richard H. Halley, Cashier. If the seal of the Eastern Shore Trust Company is upon this instrument, I believe it sufficient.

The bond of the Indian Head Branch is, in my opinion, not sufficient. There the principal first named in the body of the bond is the Eastern Shore Trust Company, a body corporate of the State of Maryland. Later in the bond the name appears the Eastern Shore Trust Company (Indian Head Branch). The execution is by the Eastern Shore Trust Company Indian Head Branch by George W. Patterson, President, John T. Panay, Cashier. George W. Patterson is not the President of the Eastern Shore Trust Company. The indication is that he may be President of the Indian Head Branch, which, as I have suggested above, is a legal impossibility, the branch not being a corporation. Furthermore, it does not appear on the copy whether the seal of the Eastern Shore Trust Company is upon this bond or not.

The bond of the Upper Marlboro Branch is objectionable for the same reason just assigned. Here the principal named in the bond is the Eastern Shore Trust Company, Upper Marlboro Branch. The execution is the Eastern Shore Trust Company, Upper Marlboro Branch, by Joseph C. Mattingly, President, John T. Hall, Jr., Cashier. Joseph C. Mattingly is not the President of the Eastern Shore Trust Company. It is evident that the intention was to bind merely the branch bank.

Trusting that I have made my position clear, I am,

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

FORESTRY.

FORESTRY—"ROADSIDE TREES"—MEANING OF—NO PERMIT OR SUPERVISION NECESSARY FOR OTHER TREES.

August 26, 1920.

Mr. P. W. T. Loy,
Claim Agent,
Hagerstown and Frederick Railway Co.,
Hagerstown, Md.

MY DEAR MR. LOY: You stated to me in Hagerstown that the owners of trees privately owned and standing on the private side of fences along the highway of the State had granted permission to the authorities of the railway company to trim or remove said trees. You wish to know whether the company was at liberty to proceed at once with this work without securing a permit from the State Board of Forestry and without the necessity of supervision of the State Forester or his representative.

The laws on this subject relate only to "roadside trees," and roadside trees are defined by Section 15B of Article 39A of the Code to include "all trees planted by the Forest Wardens, or existing trees three inches or more in diameter measured two feet from the ground that may be growing within the right of way of any public road or between the curb lines and property lines of any street in an incorporated town in this State."

You will observe that this definition does not include trees which stand on the private side of fences, and, therefore, it is clear that you can proceed at once without first securing the authorization of the State Board of Forestry.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH.

POISON — METAL POLISH — LABEL AND ENTRY OF SALE— ART. 27, SECS. 410 AND 411.

January 17, 1920.

Dr. Fred. C. Blanck,
State Food and Drug Commissioner,
16 W. Saratoga St.,
Baltimore, Md.

DEAR DR. BLANCK: In answer to your letter of January 17th, 1920, asking whether or not Section 410 of Article 27 of the Code of General Laws applies to the sale of metal polish, such as silver polish.

I beg to advise you that, in my judgment, if such metal polish contains any of the poisonous substances mentioned in Section 410, that it will be unlawful to sell the same unless the word "Poison," and the name and place of the business of the seller, be distinct upon the label of the box, vessel or paper in which said poison is contained. It will also be necessary, under Section 411, for a person selling such polish to make an entry in a book kept for the purpose, stating the date of sale, the name and address of the purchaser, the name of the poison sold, the purpose for which it is represented by the purchaser to be required, and the name of the dispenser. This book must always be kept open for inspection by the proper authorities, and be preserved for at least five (5) years.

This provision will not apply to poison in not unusual quantities upon the prescription of a practitioner of medicine. The violation of either section will make the offender liable to a fine of not less than $5.00 and not more than $100.00.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

POWERS OF STATE BOARD OF HEALTH—WATER METERS.

January 24, 1920.

Robert B. Morse, Esq.,
Chief Engineer,
Department of Health,
Baltimore, Md.

DEAR SIR: In reply to your letter of January 17, 1920, asking this office whether or not the State Board of Health can issue an order on town authorities requiring them to put in meters on the water system of the town of Brunswick.

I beg to advise you that, in my judgment, the State Board of Health has no such power. The installation of water meters is primarily for the purpose of enabling the authorities to collect a proper revenue for the use of such water, and to prevent the careless waste of the same. There being no direct law authorizing the State Board of Health to direct the installation of meters, there is no health jurisdiction for it to assume.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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POWERS OF STATE BOARD OF HEALTH—CONDEMNATION OF DECAYED OR UNRIPE TOMATOES.

February 25, 1920.

Dr. Fred. C. Blanck,
State Food and Drug Commissioner,
16 W. Saratoga St.,
Baltimore, Md.

DEAR DOCTOR BLANCK: In answer to your letter of February 25th, in regard to the condemnation of tomatoes, when the same contain a large percentage unfit for human consumption, either by reason of being decayed or on account of being too green, I beg to advise you as follows:

That, by Section 151 of Article 43 of the Code, it is made a criminal offense for any person to sell or offer for sale any kind of vegetables which may be diseased, corrupted or un-

wholesome, and any person so selling, or offering for sale, shall be punished by imprisonment in the county jail not more than one year, or be fined not exceeding five hundred dollars ($500.00), or be both fined and imprisoned, in the discretion of the Court having jurisdiction, and the unwholesome provisions offered or exposed for sale are to be declared forfeited and destroyed or so disposed of as to prevent their being used for food; provided, however, that nothing in this section shall apply to the shippers or consignors of green fruits or vegetables that may be spoiled "in transitu." It will thus be seen, by this section, that all who sell or offer for sale unwholesome vegetables can be punished for doing so, as well as lose the unwholesome vegetables, except that the penalty shall not apply to shippers and consignors, whose green fruits or vegetables may be spoiled while "in transitu."

By Section 152, the State Board of Health is specially charged with rendering effective this section, as well as Sections 153 and 154, and they may take such steps and do such things as the Board may deem necessary to detect and publicly expose any adulteration or corruption of all articles sold or liquid intended or offered for sale as food or drink, and may have the same subjected to chemical or other scientific examination.

By Section 153, whenever the Board of Health or its officer is satisfied that any vegetable or fruit is adulterated or otherwise unsound or unwholesome, the Board, or its officer, have the power to forbid the sale or disposal of such article, and can order it to be destroyed or disposed of so as to prevent it from being exposed for sale. And it is an offense, as under Section 151, to disobey the order of the Board.

By Section 154, the Board is given the power, at all reasonable times, to inspect and examine any fruits and vegetables, etc., and if it appears to the Board or its officer that the same is diseased, unsound or unwholesome, and unfit for the food of man, the Board or its officer has power to issue an order preventing the sale of such articles for human food, and any person refusing to obey such order will be guilty of a misdemeanor, punishable by a fine of not less than fifty dollars ($50), and in

default by imprisonment in the public jail for not more than six months.

The real question presented by your letter is whether or not the green and decayed tomatoes, being hauled from the field to the cannery, and presumably in the possession of the grower, can be condemned by the State Board of Health, and my answer to that is that they can be condemned or destroyed by the State Board of Health, either in the hands of the grower, who is taking them to the cannery, or in the possession of the canner himself. The grower, however, in my opinion, would not be liable to the penalty as provided in Section 151, unless the tomatoes were diseased prior to the sale by the grower to the canner. The whole sub-title, it seems to me, shows that the Legislature intended first, to fix a penalty for selling unfit goods, and only excepts shippers or consignors of green fruits and vegetables which might decay in transit, and secondly, to give power to the State Board of Health to condemn, destroy and render unfit any such articles when so found, and making it a criminal offense to disobey the Board or its proper officer, and thirdly, to give power to the State Board of Health and its officers to stop the sale of food and other articles that appear unfit for human consumption until a proper chemical examination can be made of the same.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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SMALLPOX—ORDER OF STATE BOARD OF HEALTH TO CORPORATION TO HAVE EMPLOYEES VACCINATED—CORPORATION USING REASONABLE DILIGENCE NOT RESPONSIBLE FOR NEGLECT OF EMPLOYEES — PERSON RESPONSIBLE FOR SPREAD OF DISEASE ANSWERABLE IN DAMAGES.

April 3rd, 1920.

John S. Fulton, Esq.,
Secretary, State Board of Health,
Baltimore, Maryland.

DEAR SIR: I beg to acknowledge your letter of February 24th, in which you call my attention to the fact that about a

year ago the State Board of Health ordered a general vaccination of railroad employees at Hagerstown, which measure was deemed necessary to prevent the introduction or spread of smallpox, which was then present in Washington County, as well as being quite prevalent in the adjoining States, so that its introduction and spread was likely to be caused by the exposure of the unvaccinated trainmen and other railroad employees living in Hagerstown.

You state that in consequence of this order of the State Board of Health the Western Maryland Railroad ordered its trainmen and yardmen to present themselves for vaccination, and that eleven hundred and seventy-two of these men were vaccinated, but that a man by the name of A. N. Cullison, a Western Maryland trainman, who was sick with smallpox in Hagerstown at the time your letter was written, and who had been sick for nine days before his disease was made known to the health officials, and another man by the name of Stonire, who was at the time your letter was written suffering with the symptoms of smallpox, were two of the men of the Western Maryland Railroad who did not obey the order of the State Board of Health. It is your opinion that Cullison's sickness was caused by his own act or neglect, and that he should not be a beneficiary of Washington County, or of the City of Hagerstown, or the State of Maryland, for any of the costs attendant on his illness, nor should the county or city or State be without recourse in the probable event that Cullison's illness caused additional sickness, danger to life and health, and additional expense to the city, county and State.

You state that the State Board of Health wishes to be advised what steps can be taken to place the costs in this case where they properly should fall, and also to prevent a future occurrence of similar dangers to life and health. You also desire to know whether or not any responsibility can be placed upon the railroad company in a case such as this, by reason of a failure of the railroad to secure compliance with its own order.

As to your inquiry concerning the responsibility of the railroad company in case of public damage, danger or expense incurred as a consequence of the company's failure to secure

the compliance of its own employees with its own order, I beg to advise you that there can be no responsibility placed upon the railroad company where the company has done everything reasonably within its power to put into force and effect the orders of the State Board of Health. The State law provides (Act of 1904, Article 43, Section 21, codified as Article 23 of Section 43 of the Code) that any person or persons, or corporation, refusing or neglecting to obey rules and regulations as to notices thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined. This section was passed for the purpose of giving the State Board of Health, in case it had cause to believe that there was any danger of cholera, smallpox or other contagious or infectious disease invading the State or county, authority to take such action and adopt and enforce such rules and regulations as might be necessary to prevent the introduction of such infectious diseases within the State. Consequently, if the order of the State Board of Health has been served upon the railroad company or other corporation, and such corporation has, to the best of its ability, used reasonable care and diligence in communicating the order to its employees and in publishing notice of the same, it seems to me that such action would relieve said corporation from further responsibility under said order in case some of the employees did not comply with the same.

As to your question in reference to what steps can be taken to place the costs in this case where they properly should fall, I desire to advise you that there is no statute covering this particular point, but that a recovery could probably be made in a civil suit against the party who had violated the order of the State Board of Health on the legal theory that such party would be responsible in damages for failing to do that which the law requires should be done.

As to the method of preventing a further occurrence of similar negligence upon the part of individuals to comply with the orders of the State Board of Health, the only course to follow would be that provided for in the section of the Code already referred to, that is to say, in case of neglect to comply with the orders and regulations of the State Board of Health, criminal prosecution could be instituted. Such prosecution should have

a salutary effect upon the members of the community in making them have a profound respect for the orders of the State Board of Health.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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BEDDING—MANUFACTURE FROM OR FILLING WITH FABRIC PREVIOUSLY WORN ON PERSON PROHIBITED — LABEL MUST STATE SPECIFIC FABRIC WITH WHICH ARTICLE IS FILLED OR STUFFED—ARTICLES OF FURNITURE TO WHICH LAW APPLIES.

April 8, 1920.

Charles J. Fox, Esq.,
State Board of Labor and Statistics,
Baltimore, Md.

MY DEAR MR. FOX: I beg to acknowledge receipt of your letter of the 20th instant, in which you enclose a letter from the National Association of Upholstered Furniture Manufacturers, and ask that we furnish this Association with the information it desires.

I am herewith sending my reply to you, and you can transmit is to the Association, if you desire. Several questions are asked. (1) Has this State a law similar to the Bedding Law, requiring the labeling of upholstered furniture, the labels to show information as to the nature of filling used? The answer to this question is that the only law in our State covering such matters is contained in the Acts of 1906, Chapter 358, codified in Bagby's Code, Volume 1, Article 43, as Sections 51 and 52, which I am herewith quoting: "No person, firm or company, or corporation, shall be permitted to manufacture, in part or in whole, any mattress, bed, cot, lounge or sofa, wool shoddies, or shoddies manufactured from cast-off clothing or other fabric which has previously been in the use of or worn by any other person or persons. And all such manufacturers or dealers in mattresses are hereby prohibited from making or offering for sale any such mattress, bed, cot, lounge or sofa, where wool, shoddies, or shoddies manufactured from cast-off clothing, are

used for filling or topping in stuffing the said mattresses, beds, cots, lounges and sofas." "Manufacturers of mattresses and the other articles mentioned in the foregoing section of this article are hereby required to sew a label on the exterior of said mattresses and other articles of manufacture, describing by name each and every material used for filling or stuffing purposes and contained therein. The said label shall be of linen paper or some other white manufactured fabric, shall be in size 2½x3 inches, and shall have every article used in the manufacture of said mattress or other article plainly printed or written in the English language on said label, so that the purchaser can read the same; and in case said purchaser cannot read, the seller shall read said label to him, and such label shall be a guarantee of the material used in the manufacture of the article sold, and shall remain on said mattress when sold and delivered. Any person offending against the provisions of this sub-title of this Article of the Code shall be deemed guilty of a misdemeanor, and on conviction before a justice of the peace shall be fined for each offense not less than twenty-five nor more than fifty dollars, and in default of payment be committed to a jail for not less than ten nor more than thirty days, unless sooner discharged by payment or by due process of law. No manufacturer or seller of said articles shall be required to state on said label the quantity of the different materials used, but only the character and quality."

Second. Does the Bedding Law apply to upholstered furniture? The law applies to the following upholstered furniture: Beds, cots, lounges and sofas.

Third. Is it permissible to adopt a label reading as follows: "Materials used in filling are either of the following items, and are guaranteed by this company to be strictly new materials, TOW, COTTON, MOSS, HAIR"? It was stated that the use of this label, so worded, is to avoid the necessity of having each different kind of filling or combination of fillings separately described, so that a furniture tag may be used to cover all kinds of fillings. This is plainly answered by the wording of our Act which states that every article used in such manufacture shall be plainly printed or written in the English language on said label, so that the purchaser can read the same.

This would not allow the manufacturer to use a label with the wording such as is suggested by this Association, as the purpose of the law is to apprise the purchaser of exactly with what material the article purchased is filled or stuffed.

Fourth. Do stuffed rockers, chairs and davenports and loose cushions come within the law? The law plainly states that it applies to mattresses, beds, cots, lounges and sofas. It would, therefore, not apply to rockers, chairs and loose cushions, but would include davenports, which can be classed as sofas or lounges.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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OPTOMETRY — APPLICANTS FOR EXAMINATION — LENGTH OF STUDY REQUIRED — APPLICABLE TO EXAMINATIONS HELD ON OR AFTER JUNE 1, 1920.

May 12, 1920.

State Board of Examiners in Optometry,
Baltimore, Md.

DEAR SIR: I beg to acknowledge receipt of House Bill 154, which was an Act passed at the last meeting of the Legislature to repeal Section 8, Chapter 652, of the Acts of the General Assembly of Maryland of the Session of 1914, as codified in the Annotated Code of Maryland, Volume 3, Article 43, Section 259, title "Health," sub-title "Optometry," which was approved on April 16th, 1920, and becomes Chapter 132 of the Acts of the General Assembly of the Session of 1920.

This Act makes it necessary for an applicant for examination to have studied for a period of not less than one thousand hours in a school or college of "Optometry" in good standing as determined by the Board, which maintains a course in Optometry of not less than eight months, or of having served for not less than two years as an assistant in the office of some registered optometrist.

This was not required by Section 8 of Chapter 652 of the Acts of 1914. The Act goes into effect on June 1, 1920. Therefore, if your examinations are not held prior to that time

it will be necessary for your Board to require applicants for examination to show that they have studied for a period of not less than one thousand hours in a school or college of Optometry in good standing to be determined by your Board, which schools maintain a course of Optometry of not less than eight months, or in lieu of this requirement the applicant must show that he has served for not less than two years as an assistant in the office of some registered optometrist.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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OPTOMETRY—APPLICANTS FAILING IN EXAMINATION CANNOT BE RE-EXAMINED FOR SIX MONTHS—MUST COMPLY WITH PROVISIONS OF LAW IN EFFECT ON DATE OF RE-EXAMINATION.

May 13, 1920.

State Board of Examiners in Optometry,
Baltimore, Md.

GENTLEMEN: You state that your last examination was held on the 13th and 14th of December, 1919, and then ask whether several candidates who failed at that time will be eligible for re-examination at the examination to be held on the 28th and 29th of May, 1920. You feel that as these candidates qualified themselves for the examination under the provisions of the old law, which will be superseded on June 1st by Chapter 132 of the Acts of the General Assembly of the Session of 1920, it would be desirable, if possible, to permit them to appear again at the examination to be held during this month.

As the Act provides that applicants rejected shall be entitled to another examination "not earlier than six months thereafter," it is clearly not in the power of your Board to allow any applicants for re-examination to take an examination before the expiration of six months from the time of the examination at which they have failed. It is, therefore, my opinion that the candidates to whom you refer are not eligible for re-examination in May. Under the provisions of both the former Act and the Act as it was amended in 1920, it is permissible for

such applicants for re-examination to take their examination at any time subsequent to the expiration of six months after the first examination. All such applicants for re-examination, however, who are debarred from being examined prior to June 1, 1920, by reason of the fact that sufficient time has not expired since their first examination, must comply fully with the new requirements of the law as modified by Chapter 132 of the Acts of 1920, above referred to.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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SACCHARIN—SALE FOR USE AS FOOD PROHIBITED—UNLAWFUL TO GIVE AWAY IN CONNECTION WITH SALE OF TEA OR COFFEE.

May 13th, 1920.

Dr. Wyatt A. Randall,
Acting State Food and Drug Commissioner,
Baltimore, Md.

DEAR DOCTOR RANDALL: In reply to your letter of May 11th, 1920, addressed to the Attorney General, enclosing a letter from Mr. R. M. Glacken, raising various questions in regard to the use of saccharin, in relation to food products, namely, coffee and tea, and not for use as a drug, I beg to advise you as follows:

That by a F. I. D. 135 of the Department of Agriculture all foods and food products containing saccharin are to be regarded as adulterated within the meaning of the Federal Food and Drug Law on and after July 1st, 1911. This date, by F. I. D. 138, was subsequently extended to January 1st, 1912. This decision of the Government was brought about by an investigation as to the use of saccharin, and its effect upon health, and it was found that the continued use of saccharin in quantities over three-tenths of a gram per day would impair the digestion, and the addition of saccharin as a substitute for cane sugar or other forms of sugar reduces the food value of the sweetened product and hence lowers its quality.

Under the food and drug law, both Federal and State, articles of food are adulterated if they contain added poisonous or other added deleterious ingredients which may render them injurious to health. Articles of food are also adulterated if substances have been mixed and packed with the foods so as to reduce or lower or injuriously affect their quality or strength. The findings of the Referee Board appointed by the Secretary of Agriculture show that saccharin in food is such an added poisonous or other added deleterious ingredient as is contemplated by the Act, and also the substitution of saccharin for sugar in foods reduces and lowers their quality.

By regulation No. 12, adopted by the State Board of Health for Maryland, the use of saccharin in foods after June 15th, 1912, was prohibited.

Section 140-A of the Food and Drug Law of Maryland, being Chapter 156 of the Acts of 1910, makes it unlawful for any person, persons, firm or corporation within this State to manufacture for sale, produce for sale, expose for sale or sell, any article of food, water, drug or disinfectant, which is adulterated, misbranded or insufficiently labeled within the meaning of this Act.

By Section 140-B of the Act it is provided that the term "food" shall include all articles used for food, drink, confectionery or condiment by man or animals, whether simple, mixed or compound.

It is provided by regulation No. 12 of the State Board of Health that saccharin may be used if intended for the prevention, cure or mitigation of disease, and under such circumstances is to be considered a drug, and any product containing saccharin to be used as a drug must be plainly labeled, to show the mixture is intended for the use of those persons who, on account of disease, must abstain from the use of sugar.

The questions presented in the letter of Mr. Glacken have entirely to do with the use of saccharin as food. The first question presented is whether or not a grocer selling coffee or tea in this State can give away with each pound of coffee or tea sufficient saccharin tablets to sweeten the same. In answer to this first question, it may be said from the outset that the manufacture of such saccharin tablets for use as food in this State

is, in my judgment, a clear violation of the law, both State and National, and hence any manufacturer selling such tablets to such grocer, or selling them in connection with either coffee or tea, would be guilty of a violation of the law.

It is also my judgment that the grocer, by the giving away of such saccharin tablets for use in such coffee or tea and as a part of the consideration for the sale, would also be guilty of a violation of the law.

By Sections 151 to 155, inclusive, the State Board of Health is empowered to stop the sale or use of any article of food, condiment or drink which has been adulterated or is otherwise unsound or unwholesome, and to prosecute criminally those responsible for the sale of the same, or even those who may expose the same for human consumption.

It is my opinion that saccharin cannot be used in this State for human consumption as a food, but only as a drug, and then under a proper label, in accordance with regulation No. 12 of the Food and Drug Act of Maryland.

As this answer to Mr. Glacken's first question covers all the others contained in this letter, it will not be necessary to go any further.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

BEDDING—MATERIAL USED FOR TAG OR LABEL.

May 28, 1920.

National Association of Upholstered Furniture Manufacturers,
1600 Westminster Building,
Chicago, Ill.
Attention of J. L. Maltby, Secretary.

DEAR SIR: I beg to acknowledge receipt of your letter of the 4th instant, in which you enclose a small piece of sample material and ask me whether such material would be acceptable in tagging upholstered furniture and bedding. I have retained a piece of this sample, and am returning part of it to you with this letter.

I beg to advise you that the Act of 1906, Chapter 358, codified in Bagby's Code, Volume 1, Article 43, Section 52, makes provision for the fabric of the label required. The section reads as follows: "The said label shall be of linen paper or some other white manufactured fabric, shall be in size 2½x3 inches." It seems to me that the material which you have submitted would meet with the requirements of the Act, as the material certainly is a white manufactured fabric, and if it will take printing plainly so that the printed matter which must appear on the label can be easily read, it would, in my opinion, meet the requirements of our law.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INTERSTATE SHIPMENTS OF FOOD THE SALE OF WHICH IS FORBIDDEN BY MARYLAND LAW—SHIPMENT FROM ANOTHER STATE TO MARYLAND AND RE-SHIPMENT TO ANOTHER STATE—RE-SHIPMENT TO ANOTHER PART OF MARYLAND.

July 20, 1920.

State Department of Health,
Baltimore, Maryland.

GENTLEMEN: In reply to your letter of July 7th, in which you request me to submit answers to two questions, I am herewith submitting my opinion, answering the questions in the order in which you propounded them.

1. A dealer located in the western part of the State desires to know whether he can receive shipments of an article of food the sale of which is forbidden by the Maryland law, in original cases from Wisconsin, and hold them in storage in Maryland, and later make shipments in case lots at different times to parties outside of the State.

The shipment from Wisconsin to Maryland is an interstate shipment. The reshipment beyond the borders of the State is also an interstate shipment. Accordingly, the commodity must conform to the Federal law, and the State of Maryland has no jurisdiction.

2. Would the resale of a product within the State in original packages by a consignee who had received it from out of the State be prohibited?

The Supreme Court of the United States, in the case of Chicago, Milwauke and St. Paul Railway Co. vs. State of Iowa, 233 U. S. 334, 58 L. Ed. 988, held that the shipment by the consignee to other points within the State of coal consigned to it on interstate shipments, to a distributing point within the State, although such shipments were in the cars in which the coal was received, does not establish such continuity of transportation as to place such reshipments outside the pale of State regulation where the consignee paid the freight to the point of reshipment to the initial carrier, which placed the cars on an interchange track, where they were held by the consignee until the sales were made, when bills of lading were tendered to another railway company for further transportation. This same doctrine was reaffirmed in the case of Pennsylvania Gas Co. vs. Public Service Commission, 330 October Term, 1919. Supreme Court of the United States, decided March 1, 1920. In this case the Court determined that the transmission and sale of natural gas, produced in one State, transported by means of pipe lines, and directly furnished to the consumers in another State, is interstate commerce, but the Court reaffirmed its former decision in the case of Public Utilities Commission vs. Landon, 249 U. S. 236, in which the Court held that the piping of natural gas from one State to another and its sale to independent local gas companies in the receiving State, which was subsequently retailed by the local companies to their consumers, was intrastate commerce, and not a continuation of interstate commerce, although the mains of the local companies receiving and distributing the gas to local consumers were connected permanently with those of the transmitting company. The Court held that the interstate movement ended when the gas passed into the local mains.

My opinion, therefore, is that the reshipment in original cases to other points in Maryland, *where the entire course of the reshipment is within the territorial limits of Maryland, is intrastate commerce.*

If the *termini* of the reshipment are within the State of Maryland, but the goods while in transit move beyond the borders of the State, it is very doubtful whether the shipment is interstate or intrastate; the weight of authority is to the effect that the shipment is interstate. The decisions of the Supreme Court of the United States are, perhaps, in conflict, but careful examination indicates that the weight of the decisions is to the effect that such commerce is interstate.

Accordingly, a reshipment, the *termini* of which are Hagerstown and Baltimore, might move over a route partly in Pennsylvania, and would, therefore, in my judgment, be an interstate shipment. See Lehigh Valley Railway Co. vs. Penna., 145 U. S. 192; Hanley vs. Kansas City Railway Co., 187 U. S. 617.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CONDENSED SKIMMED MILK—PRODUCT KNOWN AS "HEBE"—ACTS OF 1920, CH. 348.

July 22, 1920.

State Department of Health,
Baltimore, Maryland.

GENTLEMEN: Replying to your letter of July 19th, with enclosures and data concerning a skimmed milk product known as Hebe, I desire to submit herewith my opinion. The contention of the manufacturer appears to be that Hebe should be classified not as Condensed Milk, but as a compound analogous to vegetable and other fats which are marketed lawfully under the name of compounds as substitutes for lard.

You will recall that on April 5, 1920, I rendered an opinion construing Chapter 532 of the Act of 1900. In this opinion I called attention to the case of Reiter vs. State, 109 Md. 235, and Hebe vs. Shaw, 248 U. S. 297. Since the rendition of this opinion, Chapter 348 of the Acts of 1920, repealing Chapter 532 of the Acts of 1900, went into effect. The Act of 1920 is identical with the Act of 1900 in preventing the manu-

facture of condensed milk from which any part of the cream has been taken, the only difference being that the Act of 1920 does not prohibit the sale of condensed skimmed milk in bulk for manufacturing purposes if sold as such, in containers which hold not less than ten pounds avoirdupois, and which are conspicuously labeled "Condensed Skimmed Milk" with capital letters of a definite size.

The contention that Hebe was not a condensed milk product was brought to my attention when I wrote the former opinion. The data submitted adds nothing to the information which I had before me. I specifically stated that condensed skimmed milk, although a deleterious food for babies, was a legitimate commercial product, necessary for the manufacture of confectionery and ice-cream, and for that reason that it might be expedient for certain purposes to permit the sale of this product. Apparently, the Act of 1920 carried out the suggestion contained in this opinion, by permitting the sale of condensed skimmed milk in large containers, and by this classification preserved its use for commercial purposes and rendered it useless as a food for babies.

The Supreme Court of the United States, in the Hebe case, 248 U. S. 297, by a divided Court, determined that Hebe was a condensed milk product. To quote the words of Mr. Justice Holmes in construing a similar statute, "It seems entirely clear that condensed skimmed milk is forbidden out and out." Mr. Justice Holmes further states, "We may assume that the product is improved by the addition, but the body of it still is condensed skimmed milk, and this improvement consists merely in making the cheaper and forbidden substance more like the dearer and better one, and thus at the same time more available for a fraudulent substitute." It may be well at this point to state that the decision of a divided Court has the same binding force and effect as a unanimous decision.

The manufacturer contends that it has added fat to its product. The fat is not in any way chemically compounded. the product is merely a cooking mixture of the fat with the condensed skimmed milk, but even if a chemical change had taken place, still the body of the product is condensed skimmed milk. The Maryland statute cannot be circumvented by the

addition of other elements. The evaporated skimmed milk solids comprise the basis of the product.

There is but one exception in the Maryland statute; that exception is a quantitative and not a qualitative one. As far as quality is concerned, the Act of 1920 is the same as the Act of 1900. The Legislature, after twenty years' interval, saw fit to make no distinctions. Its language is clear and unequivocal.

The correctness of the conclusion that Hebe is a condensed milk product is confirmed by the advertising matter of the Hebe Company itself. Their label says that it is for cooking, baking and coffee; fats are not used in the preparation of coffee. Clearly, if this product is to be used in coffee, it is intended as a substitute for milk. Another advertisement calls attention to Hebe for creaming soup; here again it is used as a substitute for cream or milk. This same advertisement states that in the production of Hebe pure skimmed milk is enriched with cocoanut fat, again indicating that, in the opinion of the manufacturer, it is a milk product.

In the circular letter of January 28th, 1920, the following language is used: "To have its product used for the specific purposes for which it is recommended, serving in the home as an auxiliary to the daily milk supply, for use in cooking and baking." Is the housewife to be charged with notice that this product is to be used only in cooking and baking? The above sentence is ambiguous; it might mean that Hebe has two purposes, one an auxiliary to the daily milk supply, the other for cooking and baking; or a more careful examination might indicate that the manufacturer intended the second clause to be a limitation on the first. At all events, this sentence would undoubtedly mislead. I must, therefore, adhere to my former ruling and hold that Hebe is a condensed skimmed milk product, and that its sale is forbidden in the State of Maryland except as above stated.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

HEALTH—ADULTERATION OF TOMATOES—DUTIES AND POWERS OF STATE BOARD OF HEALTH—ACTS OF 1920, CH. 408.

December 8, 1920.

Dr. John S. Fulton,
State Board of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 27th ulto. in which you raise the question as to the proper official person or body upon whom the duty of enforcing Chapter 408 of the Acts of 1920 which prohibits the adulteration of tomatoes, falls.

As you suggest, this statute does not designate any official person or body to enforce its provisions. Section 172 of Article 43 of the Code, enacted by Chapter 156 of the Acts of 1920, provides that the duties of the State Food and Drug Commissioner shall be exclusively the administration of this law under the direction and supervision of the said State Board of Health. The words "this law" would seem to refer to Chapter 156 of the Acts of 1910, by which this section was enacted.

It would seem, therefore, that no duty to enforce the provisions of Chapter 408 of the Acts of 1920, is imposed upon the State Food and Drug Commissioner. I should say, however, that the State Board of Health may, if it thinks it advisable, assume supervision of the subject matter of Chapter 408, under the provisions of Section 2 of Article 43 of the Code, to the effect that the State Board of Health shall have the general care of the sanitary interests of the people of this State, and if the State Food and Drug Commissioner should have knowledge of any infraction of the provisions of that statute (Ch. 408), he would have the same right as is enjoyed by any private citizen to make complaint under oath before a Magistrate that the law had been violated.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

INSURANCE.

PAYMENT OF PREMIUMS—WHEN LAPSE OF POLICY WILL OCCUR.

February 12, 1920.

Wilson L. Coudon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building,
Baltimore, Md.

DEAR MR. COUDON: I have your letter of February 9th, in which you quote the following clause from an insurance policy, "should the payment of weekly premiums upon this policy be due four Mondays or longer, this policy and all payments made hereunder shall be forfeited and the company freed from the liability hereunder," and then ask whether the company can lapse the policy under the clause that it must be due four Mondays, if the premium on said policy is paid on the fourth Monday. In other words, has the policy holder the right to pay the premium on the fourth Monday and thereby prevent the lapse of the policy.

In the consideration of doubtful provisions in an insurance policy, that construction should be adopted if possible, which is most favorable to the insured. Pref. Acc. Ins. Co. vs. Fielding, 9 A. & E. Ann. Cases 16 (Colo.).

As a general rule, fractions of days are not recognized in law. Therefore, in order to work a forfeiture in this case, the premium would have to be due in three Mondays and a part of the fourth Monday, and not on four Mondays which means four full Mondays. A "day" in contemplation of law means a period of twenty-four hours extending from mid-night to mid-night: Monday would therefore mean from mid-night (closing Sunday) until mid-night, beginning Tuesday. The language used in the Statute would seem to indicate that the premium must be due all of that period or if business usage be applied, during all of the hours commonly devoted to business during said period, which should be construed as meaning due *during*

or *throughout* four Mondays and no premium can be said to be due four Mondays until four Mondays during which default has existed, have been completed.

I therefore decide that the policy holder does have the right to pay his premium on the fourth Monday and that by so doing, a lapse of the policy under the clause quoted will be prevented.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

Note—See McEvoy vs. Security Fire Ins. Co., 110 Md. 275; Palatine Ins. Co. vs. O'Brien, 107 Md. 341.

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INSURANCE—POLICY OF INSURANCE—WHAT CONSTITUTES.

March 18, 1920.

Hon. Wilson L. Coudon,
Deputy Insurance Commissioner,
Baltimore, Maryland.

DEAR SIR: I have in hand the agreement you submitted to me of the National Automobile Association, Incorporated, with one of its clients, J. Howard Shunk, and your inquiry as to whether or not this agreement constitutes or can be classed as an Insurance Policy. I beg to call to your attention that Section "8" of this agreement, entitled "Towing," which provides that the company will allow the "Owner of the automobile or automobiles listed herein a sum not to exceed fifty cents per mile for the towing of said automobile or automobiles, when totally disabled, for a distance not greater than ten miles, from place of breakdown, which towing is to be arranged for by said member. This service to extend to all parts of the United States," makes this agreement an Insurance Policy.

Certainly this section brings the agreement within a class having all the necessary requisities of an agreement constituting an Insurance Policy. The subject matter is clear, the risk against which the insured is protected is clear, the amount to be paid the insured is certain, the duration of the risk is certain and there is no question about the amount or the fact that

a premium is paid. Without this section, however, the contract could not be classed in any way as an Insurance Policy, as it is otherwise merely an agreement or guarantee to furnish legal advise free of charge to the members of the Association and to be of a mutual assistance to them in furthering beneficial legislation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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INSURANCE—ART. 23, SECS. 229 TO 244-N—INSURANCE COMPANIES DISTINGUISHED FROM FRATERNAL BENEFICIARY ASSOCIATIONS.

April 16, 1920.

Thomas J. Keating, Esq.,
State Insurance Department of Maryland,
Baltimore, Md.

DEAR SIR: In your letter of March 18th, you state that at a hearing held at your Department on March 11th, there was taken up with certain Insurance Organizations operating in your State the question of their proper classification and the kind of license which your Department should issue to them.

It was shown at the hearing, that these organizations, while styling themselves Fraternal Beneficiary Associations and chartered to act as such, really insure lodges as a class and do not issue their obligations to the individual members for the amount of the benefits due the members from the lodge, nor do they confine their operations to any one fraternal order, nor compel a lodge to use any special ritual. In other words, their operations appear to amount to what might be properly styled, "Reinsurance on the group plan." You desire to be advised whether or not organizations operating in this manner should be classed as insurance companies or as fraternal beneficiary associations within the meaning of Sections 229 to 244-N of Article 23 of the Code of Public General Laws, and whether your Department should issue to them licenses as Insurance Companies within the meaning of that term or as Fraternal Beneficiary Associations.

In my opinion licenses should be issued to them as Insurance Companies and not as Fraternal Beneficiary Associations. In order to be classified as Fraternal Beneficiary Associations, such companies would have to carry on their business solely for the benefit of their members and not for profit, and they must have "a lodge system with a ritualistic form of work and a representative form of government." Section 1-A of the Act of 1912, Chapter 824, Codified as Section 229 of Article 23 of the Code of Public General Laws, sets this out very clearly.

The fact that the companies in question really act as reinsurers of lodges or Fraternal Beneficiary Associations, and consequently, I take it, are operated for a profit, as well as the fact that they have no lodge system with ritualistic work, clearly excludes them from the operation of those sections of the law dealing with Fraternal Beneficiary Associations. In the latter sections of the same article the "lodge system" is defined as well as the necessary "representative form of government." See Sections 230 and 231.

The facts given in your letter are rather meagre, but they indicate that none of the vital conditions prescribed in the sections mentioned, are fulfilled by the organizations to which you refer.

It seems clear, therefore, that such companies do not come within the provisions of Section 229 to 244-N of Article 23 of the Code of Public General Laws, and must therefore, be treated as ordinary insurance companies.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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INSURANCE—ART. 23, SEC. 185, CODE—AS TO LEGALITY OF REBATE OF PREMIUM.

June 9, 1920.

Thomas J. Keating, Esq.,
Insurance Commissioner,
Baltimore, Md.

MY DEAR MR. KEATING: In your letter of May 28th, you referred to certain insurance proposed to be issued for a term

of five years in order that the reduced rates usually allowed therefor, may be secured. You state that the premium fixed on all policies, whether the term be long or short, is understood to be the amount due for the policy at the time it is issued, and you state further that in the case mentioned by you, the method of settlement proposed, provides for the payment of one-third of the premium in cash and the remaining two-thirds in four equal annual installments without interest. You then ask whether this arrangement may be affected without a violation of the insurance laws of the State.

Section 185 of Article 23 of the Code, declares that "no corporation, association, partnership or individual and no agent or employee of any company, etc., shall * * * collect, or agree to collect from any person, whether or not the same may be the owner of the property insured or his agent, or other person, any amount, less than that expressed in the policy or policies as being the premiums therefor."

In the case you cite, a certain amount is stipulated in the policy as being the authorized premium for the insurance which said policy represents, three-fifths of the ordinary premiums for five years, if the policy to be written is for a five year term. The important point is, that a definite sum is fixed, which under the law and the practice universally recognized, represents the premium due as soon as the policy becomes effective. If terms are granted to the assured, as a result of which, the present value of the premium is diminished, then to that extent the insurer receives less and the assurer pays less than the amount legally recognized as the true premium, and in my judgment, a rebate has been granted. The form which the rebate assumes is unimportant, if in fact it amounts finally to a rebate. A cash payment of one-third and a division of the remaining two-thirds into four equal annual installments payable in one, two, three and four years from the date of the policy, is a far different proposition from the cash payment of the entire premium. If the notes in question were all discounted upon the date of their execution, and their present value ascertained, and the results added to the one-third paid in cash, the aggregate thereof, would be a sum much smaller

than the premium named in the policy. In my judgment, this arrangement would be a clear violation of the law quoted above.

I realize that under this ruling many questions may arise as to the extent to which insurance companies and agents may extend to their customers, credit, wholly unplanned, sometimes as an accommodation to the customer and frequently as a necessary method of accomplishing collection. There is only one rule that will keep the companies and agents clearly and unequivocally within the law, and that is for them in all cases to charge interest on all deferred payments, either from the date when the policy is made effective or after the lapse of such brief period of time as may be customarily granted for payment without the addition of interest charges.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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INSURANCE—INTERPRETATION OF SECS. 184 AND 191 OF INS. LAWS OF MD. COMPILED IN 1918 BY STATE INSURANCE DEPARTMENT.

July 24, 1920.

P. H. Haylor, Esq.,
Deputy Commissioner,
Office of Insurance Commissioner,
Frankfort, Ky.

MY DEAR SIR: I beg to reply to your letter of July 20th, in which you ask for a construction of Sections 184 and 191 of the Insurance Laws of Maryland, compiled in 1918 by the Insurance Department of this State, and copied at length in your letter.

Although there has always seemed to be some conflict between the two sections to which you refer, it has been the invariable practice of the Insurance Department of this State to recognize the exemptions established by Section 191, and not to impose the charge of $100.00 upon any fidelity, surety, liability or casualty company incorporated under the laws of another State or territory of the United States, doing business in the State of Maryland, except in cases where in spite of the

exemptions set forth in Section 191, some other State insisted upon imposing a license fee upon Maryland corporations operating therein. In such cases, a similar charge was then imposed by this State upon the corporations of such other State seeking to exercise their functions in Maryland.

This exemption has never applied to life, fire and marine insurance companies.

However, the difficulty to which you refer in your letter, is now a thing of the past. At the last session of our Legislature, Section 184 was repealed and in lieu thereof, certain new sections were enacted which provided, "that every company doing a fire, marine or inland insurance business in this State, except such as may be incorporated under the laws of this State, and every fire, marine, inland, fidelity, surety, casualty, liability or compensation company incorporated under the laws of any foreign country, shall pay an annual license fee of one hundred dollars." You will observe that fidelity, surety, casualty, liability and compensation companies of the United States, incorporated in the States other than in Maryland, are not mentioned in this new law, and are, therefore, clearly entitled to the exemption conferred by the provisions of Section 191.

I am enclosing a copy of Chapter 533 of the Acts of 1920 which covers the matters discussed in this letter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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INSURANCE—FEES OF INSURANCE COMMISSIONER.

September 25, 1920.

State Insurance Department,
Baltimore, Md.

Attention of Wilson L. Condon, Esq.

GENTLEMEN: In your letter of the 22nd inst. you state that Mr. Keating has requested an official intrepretation from me as to the meaning of that portion of Section 219 of Article 23 of the Code which relates to the collection of the $1.00 fee in connection with the issuance of licenses to Insurance Brokers which section reads as follows:

"Any natural person, *bona fide* co-partnership or corporation applying therefor as hereinafter set forth, and paying to the Insurance Commissioner the sum of one hundred dollars ($100) for the use of the State, and an additional sum of one dollar ($1) as a fee to the said commissioner for issuing said license * * *."

You desire to know whether the $1 fee mentioned therein should be accounted for to the Comptroller or may be considered by the Commissioner as belonging to him and be appropriated to his use.

While the wording of this section, to wit, "An additional sum of $1.00 is a fee to the said Commissioner," differs somewhat from the language used in Section 183G of Chapter 533 of the Acts of 1920, which repeals Section 184 of Article 23, and which provides for the payment of certain fees to the Insurance Commissioner in the following language: "Shall also pay the following fees to the Insurance Commissioner," nevertheless, it is my opinion that the legal effect of this language is the same in both of these sections, in that it does not give the Commissioner any greater rights over the fees provided for in one section than in the other.

The weight of opinion interpreting such provisions is that salaried employees are not entitled to retain such fees for their own use unless the services for which they are paid relate to duties outside of the line of their official duties. See 30 L. R. A. (N. S.) 811 and note. The Maryland law also seems amply to take care of the disposition of such fees by paragraph 10 of Section 178 of Article 23, which sets forth the duties of the Commissioner regarding all monies received by him and specifically provided that he shall report annually on December 1st, to the Comptroller, the fees received and expenses of his Department for the year then to end, and pay into the Treasury all excess receipts over disbursements.

It is my opinion, therefore, that the fee of $1.00 referred to in your letter and provided for in Section 219 of Article 23, must be accounted for by you to the State Comptroller.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

Insurance—Interest Charged on Premiums Include Surety Bonds.

October 13, 1920.

Thomas J. Keating, Esq.,
Insurance Commissioner,
Baltimore, Md.

My Dear Mr. Keating: I beg to acknowledge your letter of October 8th, in which you ask for an opinion as to whether or not the ruling of your department issued with reference to charging interest on deferred premiums can be made applicable to all premiums including premiums on surety bonds, whether such premiums are actually named in the policy or are determined by the application under which the obligation is issued by the insurance company.

Your ruling was based upon an opinion issued from this office to the effect that unless interest was charged on all insurance premiums after an allowance of a reasonable time for cash payment, fixed in your ruling at sixty days, there would be a violation of the Statutes of the State prohibiting rebating.

Section 162 of Article 23 of the Code relates to life and accident insurance. Section 163 refers to "fire, casualty, surety or other insurance companies authorized to do business in this State," and prohibits any of said companies from making any contract for insurance or agreement as to such contract, "other than is plainly expressed in the policy issued or to be issued thereon." It also prohibits any of such companies from paying or allowing any rebate "from the premium which is specified in the policy or any valuable consideration or other inducement whatever not specified in the policy or contract of insurance." The question is whether the operation of this Statute extends to surety bonds and other kinds of insurance which do not stipulate in the bond or policy the premium which is to be paid. While this premium is not stipulated in the policy itself, it is usually determined by an application made in writing at the time of the issuance of the policy or bond, and occasionally by an oral pact confirmed subsequently by the submission of a bill by the company. Inasmuch as the language of Section 163 referred to above, refers to premiums

specified in the policy, it has been claimed that the operation of the Statute is limited to those cases where the contract or the premium are established by the policy itself.

A careful examination of Section 163 indicates that it was intended to prevent rebating on the part of all the companies mentioned therein, even though its framers overlooked the fact that surety companies do not actually issue policies in which the premium is named; unless this construction was intended by the Legislature it would have been useless to include the word "surety" among the list of companies to be effected thereby, and if surety companies that charge premiums definitely established by fixed standards should grant discriminations with reference thereto, it would be a clear violation of the spirit of the law. I believe, however, that the express terms of the law are broad enough to cover this situation, since it is definitely stated that no valuable consideration or inducement shall be allowed by the Act which is not specified in the "contract of insurance." In the case of surety companies, the contract between the company and the assured, is not the bond upon which the company becomes surety, but the agreement between the company and the party applying to it. This agreement or contract is composed usually of the written application of the applicant, and the acceptance thereof, by the company in which the premium to be paid is definitely stated.

The same situation exists where the contract is formed by verbal application and verbal acceptance, in pursuance of which the company acts and subsequently submits its bill for the premium agreed upon. I am, therefore, of the opinion that surety companies are included within the terms of Section 163 even though there is no premium named in their policies. This condition is not necessarily the determining factor. If the surety company fails to charge interest on the premium fixed in the original contract or understanding between it and its patron, it has, in my judgment, committed a breach of the State's anti-rebating regulations.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LABOR.

CHILD LABOR LAWS—INDUSTRIAL TRAINING—RIGHT OF STUDENTS TO WORK IN SHOPS.

February 26, 1920.

Professor Joseph Blair,
Sparrows Point, Maryland.

MY DEAR MR. BLAIR: I desire to reply to your recent inquiry involving a construction of the Child Labor Laws of the State. You state that in order to facilitate the industrial training of the boys in your school, an arrangement has been made with the Bethlehem Steel Company, whereby the boys alternately spend two weeks in the school, and two weeks in the shops of the company, receiving compensation for the services there rendered by them. The work done in the shops forms part of the regular curriculum requirements, which, when fulfilled, entitle the student to his diploma. This plan has been formerly approved by the State Superintendent of Education.

You do not describe definitely the nature of the duties required by the boys while in the shops, but it may safely be assumed that their work there is "on a machine or machinery operated by power other than foot or hand power," or upon some of the machines particularly mentioned in Section 7 of Article 100 enumerating the occupations in which children under sixteen may not be employed.

Section 36 of the same Article however, reads as follows: "Nothing in this Act shall prevent children *of any age* from receiving industrial education furnished by the United States, by this State, or by any city or town in this State, or by any private or parochial school and duly approved by the State Board of Education, or by other duly constituted public authority." The work of your boys in the Bethlehem shops is a part of their industrial education furnished by the State, and has been duly approved by the proper public authority. The exemption of Section 36 was evidently intended to include just the sort of situation which has developed in your institution.

I see no reason why it should not be given, in this instance, its contemplated legal effect.

I therefore decide that your students of any age, may work in the Bethlehem shops for the purposes and in the manner indicated by you without violating the Child Labor Laws.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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CHILD LABOR LAWS—NO REGULATION OF HOURS OF CHILDREN OVER 14 WORKING IN DAIRIES.

April 17, 1920.

Charles J. Fox, Esq.,
Chairman, State Board of Labor and Statistics,
Baltimore, Md.

MY DEAR MR. FOX: I desire to acknowledge your letter of the 9th instant, in which you enclose a copy of the Child Labor Laws of the State.

Section 22A of said laws, in regulating the hours during which children may be employed, declares that no child under sixteen shall be permitted to work in any establishment or occupation *mentioned in Section 4* of the Act for more than six days in any one week. Section 5, as amended by Chapter 495 of the Acts of 1918, provides that no children under fourteen shall be employed or suffered to work in any canning or packing establishment. As these establishments are not mentioned in Section 4, they are obviously not affected by the provisions of Section 22A, and no limitation is therefore imposed upon the hours during which children may work therein.

You state that the Baltimore City Dairy has informed you that its milk must be handled seven days in the week, and, because it is anxious to employ children under the age of sixteen for each of these seven days rather than for six days only, it suggested that the bottling of milk should be considered as a canning or packing establishment, and, therefore, be entitled to the exemptions conferred upon those industries as indicated above.

To your letter was attached one of your employment certificates. You direct my attention to the note at the bottom thereof, reading as follows: "No child under sixteen years shall be employed, or permitted or suffered to work in, about or in connection with any establishment or occupation, excepting canning or packing establishments, for more than six days in any one week," etc., and then ask for an expression of my views as to the soundness of the Dairy Company's contention.

In the first place, I feel that the note above quoted is not a correct statement of the law, since it declares that children under sixteen shall not be employed "about or in connection with any establishment or occupation," while the law (Section 22A) adds thereto the words "mentioned in Section 4 of the Act." Section 4 becomes, therefore, a part of Section 22A, and the operation of Section 22A is necessarily restricted to those establishments and occupations specifically mentioned in Section 4.

A dairy is, in my opinion, a distinct and definite business establishment, and as there is no provision in Section 4 broad enough to include such an enterprise, it must follow that dairies are not affected by the restrictions as to the hours of labor imposed by Section 22A.

A milk bottling plant is not, in my judgment, a canning or packing establishment, as suggested by the Baltimore City Dairy, but, for the reasons stated above, I must decide that the laws of the State provide no regulation of the hours during which children of fourteen or over may be employed by dairies.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES.

LIQUOR—WHOLESALE—STILL NECESSARY FOR DEALER SELLING FOR NON-BEVERAGE PURPOSES.

January 15, 1920.

Mr. William D. Travers,
Chief Clerk,
Board Liquor License Commissioners,
Baltimore, Md.

DEAR SIR: In answer to your letter addressed to the Attorney General, asking whether or not a wholesale liquor dealer or jobber can sell, for non-beverage purposes, under an order of the Treasury Department, wines for sacramental purposes, without a liquor license from this Board.

I beg to advise you that, in my opinion, it will be unlawful for such dealer or jobber to sell any wines which contain more than two per cent by weight of alcohol, without first obtaining from your Board a license, as provided by Article 4 of the Code of Public Local Laws.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

NOTE.—This decision was sustained by the Court of Appeals in the case of Ulman vs. State, No. 92, October Term, 1920. Opinion, Daily Record, February 8, 1921.

LICENSES—HAWKERS AND PEDDLERS.

January 24, 1920.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

DEAR MR. KERBIN: I have your letter of January 13, 1920. The man who drives his wagon around the streets of Snow Hill,

selling therefrom furniture and other articles, whether old or new, should take out a hawker's and peddler's license, as required by Section 24 of Article 56 of Bagby's Code.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADERS—HAWKERS AND PEDDLERS.

January 27, 1920.

William G. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

DEAR MR. KERBIN: Yours of January 26th. If the party to whom you refer goes about in his wagon from place to place selling furniture, or other property, it is necessary for him to take out a hawker's and peddler's license, as required by Section 24 of Article 56, of the Code. If, however, he conducts his business from an established place, he should take out the ordinary trader's license, as required by Section 38 of the same Article.

It is not essential for a trader to operate within a store room; if his place of business has a definite and fixed location, I see no reason why it may not be located in a wagon or in a booth along the street, as well as in a store room.

In other words, if a dealer takes his goods to his customers and makes a direct sale and delivery to them (not by sample merely), he is a hawker and peddler, but if, by maintaining a fixed place of business, he compels his purchasers to come to him, he is a trader within the meaning of Section 38.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—HAWKERS AND PEDDLERS.

January 28, 1920.

M. E. Carey, Esq.,
Snow Hill, Md.

DEAR SIR: I have your letter of January 20th. In reply thereto, I am enclosing copy of a letter which I have this day mailed to William G. Kerbin, State's Attorney of Worcester County, which relates to the subject referred to by you.

If you propose to transport the goods from one place to another throughout the town or in the county, and auction them off at different points, it would still be your duty to take out a hawker's and peddler's license, even though you should also have to qualify as an auctioneer by taking out the license required for all auctioneers.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES — LIQUOR DEALER UNDER INDICTMENT OR CONVICTION FOR VIOLATION OF FEDERAL WAR-TIME PROHIBITION ACT—ENTITLED TO REFUND OF LICENSE FEE.

January 28, 1920.

William Pepper Constable, Esq.,
President, Board of Liquor License Commissioners,
Baltimore, Md.

DEAR SIR: In your letter of January 15th, you ask me to advise you whether a liquor dealer of Baltimore City, licensed by your Board, is entitled to a proportionate refund of his license fee when there is an indictment pending against him for a violation of the Federal War-Time Prohibition Law, or when he has actually been convicted of such a violation during the year for which his license was issued.

It is provided in Section 690B of the Baltimore City Code that "any holder of a license to sell intoxicating liquors at retail, by the drink or otherwise, against whom no indictment is pending for the violation of the liquor laws during the year for

which said license was granted, and who shall not have been convicted for any such violation of said liquor laws during the said year for which the said license was issued, who shall cease to traffic in liquors during the term for which said license was issued," etc., shall be entitled to a pro rata rebate.

The problem now presented arises from the uncertain meaning of the words "the liquor laws" as used in said statute. This law was passed in 1908. At that time the regulation of the liquor traffic was substantially a State function. Except in matters pertaining to internal revenue, the United States Government had no jurisdiction over the sale of liquor, and general Federal statutes on this subject were not then contemplated, certainly not to an extent affecting State legislation for the City of Baltimore. Our officials were concerned solely with the enforcement of our own statutes, and as a further penalty for their violation withheld from the offender his right to a refund. Furthermore, in the case of a conviction for a violation of the State laws and the imposition of a fine, the offending dealer would become the debtor of the State, and the State would therefore be fully justified in withholding the payment of any rebate which might otherwise become due from it to the same party. If convicted and sentenced to imprisonment, he would become a charge upon the State and the State would again have cause to deny the rebate. No such reasoning would apply in the case of a violation of the Federal regulation. I, therefore, feel that the phrase "the liquor laws," as quoted above, was intended to embrace only the liquor laws of Maryland existing in 1908, and such additions thereto or amendments thereof as might subsequently be adopted.

If this was the proper construction of Section 690B in 1908, the year of its passage, it is the same now, unless a new interpretation is rendered necessary by subsequent legislation. The amendment adopted in Chapter 124 of the Acts of 1918, extending the power of the Board of Liquor License Commissioners to revoke licenses for a violation not only of the laws of the State, as originally provided, but also "of the United States" (being the only legislative Act in any way reflecting upon the question at issue), cannot, by implication, inject into Section 690B a meaning which it had never before enjoyed.

The amendment of one section of the same law in the manner indicated, and the failure to amend the other section, only serves to emphasize the evident intention of the Legislature to permit the latter section to retain its original meaning.

Your Board, under the 1918 amendment, has the power to revoke any license issued by it for a violation of any Federal liquor law by its holder, and by so doing can terminate finally the latter's right to a refund. The amount involved would, by this procedure, be saved to the State. If, however, your discretionary power to revoke is not exercised, the dealer's refund rights under Section 690B remain unimpaired.

My conclusion, therefore, is that the refund to which you refer in your letter should be paid.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—AUCTIONEER — MAY CONDUCT WEEKLY SALES FOR FURNITURE COMPANY AT ITS STORE.

February 28, 1920.

Adam Deupert, Esq.,
Court of Common Pleas,
Baltimore, Md.

MY DEAR SIR: In your letter of February 26th you inquire whether or not an auctioneer in Baltimore City may conduct an auction sale of furniture once every week for a furniture company at the latter' place of business.

Section 7 of Article 56 of the Code, under the sub-title "Auctioneer," provides that "every person who shall open a room or place of business for the purpose of selling goods, wares and merchandise at auction, shall be required to take out a license in the same manner as resident traders." The trader's place of business in this case was not opened *for the purpose* of selling merchandise at public auction, and, therefore, no special license under Section 7 is required by him, even though he may from time to time authorize the disposition of some of his goods at auction.

You will notice that, under the State law quoted above, only those auctioneers are required to be licensed who maintain a fixed establishment for the purpose of prosecuting their business. The only special privilege conferred by their license is the right to maintain a fixed place of business; but they and all other auctioneers who are not licensed may conduct auction sales for others wherever and whenever they please. The provisions relating to the same subject found in the Baltimore Charter are somewhat similar. All the auctioneers of Baltimore are named by the Governor. Under Section 264 of the City Code "no license (of an auctioneer) shall be construed to authorize the holder to sell at more than one regular establishment, but an auctioneer may sell public stocks, houses, lots and *furniture*, or ships or vessels, on the premises where the same may be," etc.

I see no reason, therefore, why an auctioneer of Baltimore should not conduct sales of furniture under the circumstances indicated in your letter. Of course, if such sales should be made by the same auctioneer with such frequency as to appear to constitute an opening, by said auctioneer, of a second place of business, and, therefore, an attempted evasion of the law, a different question would be presented.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—BROKERS—ONLY REQUIRED FOR INTRASTATE BUSINESS.

February 28, 1920.

Charles C. Wallace, Esq.,
Secretary State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. WALLACE: I have your letter of February 19th, containing your inquiry as to whether it is the duty of the National City Company of New York, under the requirements of Sections 15 and 17 of Article 56 of the Code, to procure a broker's license in connection with the operation of its

Baltimore office. The laws referred to impose upon every broker the obligation to obtain a license, and define a broker to be "any person who shall make it a business to deal in any manner, upon his own account or for others, in the purchase or sale of stocks," etc. The representative in Baltimore of the National City Company simply solicits from his customers orders for the purchase of securities owned by said Company; the orders received are transmitted to New York, where they are subject to confirmation. If approved, delivery is made from New York direct to the purchaser or through a local bank, and settlement is effected in the same manner. No securities are held by the local agent for immediate delivery and no payments are made to him.

The agent of the National City Company is clearly a broker within the meaning of the language above quoted, but the business conducted by him seems to be included in that group of transactions classified generally as interstate commerce, and held by the Federal Courts to be immune from taxation by any State or a political subdivision thereof. Where a sale is not consummated in one State, but only purchasing orders are received therein, and transmitted thence to the home office or manufacturer in a different State, from which State the goods purchased are shipped, the decisions have been uniform in declaring the statutes or ordinances of the former jurisdiction attempting to impose a tax or require a license to be void and unconstitutional. We are familiar with this ruling, as it affects tangible goods of any kind ordered either from catalogue or through local agents, and thereafter shipped from one State to another, to order of or for the purchaser, but the decisions are sufficiently far-reaching to include sales of bonds and securities.

It might be suggested that because of the language used to describe a broker the intention of the Legislature was not to tax the company which the individual represents or the business which he conducts, but to require the taking out of a license as a necessary pre-requisite to his personal right to solicit orders or to deal in any manner for his company in the sale of securities. But such a contention has already been answered, the Supreme Court declaring, in the case of Stockard vs. Morgan,

185 U. S. 37, that "when the tax is applied to an individual within the State selling goods of his principal who is a non-resident of the State, it is, in fact, a tax upon interstate commerce, and that fact is not in any wise altered by calling the tax one upon the occupation of the individual residing within the State while acting as the agent of the non-resident principal. The tax remains one upon interstate commerce, by whatever name it may be designated." Crutcher vs. Kentucky, 141 U. S. 47; Brennan vs. Titusville, 153 U. S. 289; Crenshaw vs. Arkansas, 227 U. S. 389.

It is evident, therefore, that the operation of the Maryland statute mentioned above must be confined to those persons whose business activities are wholly intrastate in character, and that the representative of the National City Company is under no legal compulsion to secure a broker's license.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—DOGS—SHERIFF, COUNTY TREASURER AND STATE'S ATTORNEY NOT BOUND TO REPORT FAILURES TO TAKE OUT—DUTY OF SHERIFF.

March 6th, 1920.

James Clark, Esq.,
State's Attorney for Howard County,
Ellicott City, Md.

DEAR SIR: I beg to acknowledge receipt of your letter of March 4th, containing inquiry as to the duties of reporting failures to take out licenses for dogs under the provisions of the Act of 1918, Chapter 497, amending Sections 195 to 201, inclusive, of Article 81 of the Annotated Code. I note also your references to the Act of 1908, Chapter 258, with regard to the Sheriff of Howard County; the Act of 1896, Chapter 317; the Act of 1900, Chapter 455, and the Act of 1908, Chapter 344, creating the office of Treasurer of Howard County and regulating its duties, and the Act of 1916, Chapter 298, regulating the duties of the State's Attorney for Howard County.

I find nothing in these Acts imposing upon any of these officials the duty of reporting unlicensed dogs or the owners thereof, either by express language or by any general terms under which such an obligation could be included.

The Sheriff, in the fulfillment of the duties ordinarily incident to his position, is not compelled to make a special search for all violators of the law. He should arrest, without warrant, all persons committing offenses within his presence, and it is his duty to apprehend all offenders for whom warrants are issued. It does not seem to be necessary for him to go any further in ascertaining and arresting persons who have violated some criminal law. If it is not the duty of the Sheriff, then I should say it is the duty of no one except the individual citizen, who will probably not be very greatly interested in the matter, inasmuch as the law contains no provision awarding any part of the fine to the informer.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—NON-RESIDENT WHOLESALE DEALER SELLING IN PRINCE GEORGE'S COUNTY — WHEN NECESSARY TO HAVE A HAWKER'S AND PEDDLER'S LICENSE—COST THEREOF.

March 15, 1920.

S. D. Hall, Esq.,
Clerk of the Circuit Court,
Upper Marlboro, Md.

MY DEAR SIR: I have been asked to answer the letter of the Washington Tobacco Company, under date of March 1st, addressed to you and forwarded by you to the State Comptroller.

This letter contains the following inquiries: (1) What kind of a license, if any, is required for a non-resident wholesale candy dealer, or confectioner, for Prince George's County, with the cost of the same? (2) Can a salesman take orders and fill the same from an automobile at the time of sale under this license, or should he have another license, a peddler's license, for instance, to cover such transaction? (3) What would be

the cost of a peddler's license? The second and third questions were evidently intended to apply also to Prince George's County.

The general statutory provisions relating to hawkers and peddlers, as embodied in Article 56, Sections 24 and 25, do not apply to Prince George's County. This subject is covered in the Code of Local Laws of Prince George's County, in Sections 438 and 439. One of the provisions of Section 439 is that "no person or persons or corporation, non-residents of the State of Maryland, shall offer for sale, by agents or otherwise, within the State, to consumers, any goods, wares or merchandise, by sample or otherwise, either with the purpose of an immediate sale and delivery, or with intent to make future sales and deliveries, unless such person or persons or corporations shall first obtain" a hawker's and peddler's license, as required by Section 438. The effort to prevent non-residents from sending agents or drummers into the State to display samples of goods, wares and merchandise and take orders therefor, said orders, after confirmation by the non-resident principal, to be filled by direct shipment to the purchaser within the State of Maryland, is clearly improper, and that portion of the statute intended to accomplish this purpose must be regarded as stricken out because of its unconstitutionality. Such a provision would be an interference with interstate commerce. The State has no right to tax a non-resident unless the non-resident is actually doing business within the State, and the taking of orders in the manner above indicated is not deemed in law to constitute the transaction of business within the State. The State also lacks authority to impose a tax upon the representative of the non-resident principal who comes into the State and here displays his samples and receives orders. If, however, the salesman travels about from place to place in an automobile, taking orders and filling the same at once with goods carried with him in the automobile, he unquestionably comes within the language of the statute, in that he "offers to trade, barter or sell within the State, to consumers, goods, wares and merchandise," and it is, therefore, necessary for him, before operating in Prince George's County, to secure a license required in that county for hawkers and peddlers.

Section 438 fixes the fee to be paid for this license, as follows: "For every license to travel with a horse or other beast of burden and wagon, or other vehicle, the sum of $300.00; with two horses or other beasts of burden and wagon or other vehicle, $300.00." This section was adopted in 1892, before the general use of the automobile. Its provisions, however, were clearly intended to cover all peddlers, and while the matter is not entirely free from doubt, I think that the language can fairly be construed as requiring hawkers and peddlers in Prince George's County, using automobiles, to secure a license and pay therefor the sum of $300.00.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—MOVING PICTURE HOUSES—LICENSE FEES.

March 19, 1920.

James M. Munroe, Esq.,
State's Attorney,
Annapolis, Md.

DEAR MR. MUNROE: In your letter of March 15th you call my attention to the provisions of Section 165 of Article 56 of the Code, title "Licenses," sub-title "Moving Picture Shows and Carnivals." This section establishes a schedule of license fees to be paid in connection with such exhibitions "where the price of admission * * *, does not exceed the sum of five cents," and another schedule of license fees to be paid "where the price of admission * * * is ten cents or more." You then ask what license fee should be charged where the price of admission is more than five cents and less than ten cents.

It was clearly the purpose of the Legislature, by the enactment of the above law, to require every moving picture house to pay a license fee, and it was evidently through error that the language was not made sufficiently definite to include by express terms every such exhibition. A provision that certain fees are to be charged where the price of admission "does not exceed the sum of five cents" was, I think, intended to apply to all

cases where the admission was five cents or less, unless otherwise provided.

The exhibition to which you refer can, under no conditions, be included among those subject to the larger schedule of fees, because the price charged is never "ten cents or more." The admission fee in such a case does, however, include the sum of five cents, and to that extent makes the exhibition subject to the provisions of the lesser schedule. The excess part of the admission fee over and above five cents may be disregarded so far as licensing purposes are concerned.

I would, therefore, rule that the house which you mention, whose admission fee is more than five cents, but less than ten cents, should secure a license in accordance with the lesser schedule established in said Act. These are the minimum fees, and the owner of the exhibition cannot object to their payment.

Of course, if the admission fee charged is six cents, made up of a five-cent admission fee and a one-cent Government tax, it is clear that the admission fee is only five cents, and the express language of the statute applicable to such cases would apply.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES — PLUMBERS — HOUSEHOLDER WORKING FOR SELF DOES NOT REQUIRE.

April 20, 1920.

Robert B. Morse, Esq.,
Chief Engineer,
State Board of Health,
16 W. Saratoga Street,
Baltimore, Md.

DEAR SIR: In answer to your letter of April 9th, asking whether or not a householder can do plumbing work in his own house without being a licensed plumber, I beg to advise you as follows: That the only licensed plumber that we have in Maryland is provided for by an examination before a State Board of Examiners, and this has to do with engaging in the

"plumbing business." There is nothing else that I can find on the subject, and it is my opinion that any householder, anywhere in the State, can repair his own plumbing or put in new plumbing.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—UNDERTAKERS—WHEN REQUIRED—USE OF WORD "AGENT"—MISLEADING ADVERTISEMENTS.

April 23, 1920.

State Board of Undertakers of Maryland,
733 Calvert Building
Baltimore, Md.

DEAR SIRS: I beg to acknowledge receipt of your letter of April 13th, in which you state that a certain Charles B. Kuchauckas, of 1205 Glyndon Avenue, Baltimore, Md., and one Luigi Libertini, of 1307 Jefferson Street, Baltimore, Md., neither of whom are now, nor have ever been registered and licensed by your Board, have been circulating cards and writing letters containing the following advertisements, respectively:

"CHARLES B. KUCHAUCKAS, AGT.
Funeral Director.
Embalm and Bury in All Cemeteries.
1205 Glyndon Ave., Balto., Md."

"LUIGI LIBERTINI, Agent,
Funeral Director & Embalmer,
First Class Carriages, Limousines
For Weddings, Parties, Etc.
1307 Jefferson St.,
Baltimore, Md."

I note further that your Board communicated with the parties in question for the purpose of inquiring under whose

authority they were making said representations and for whom they were acting as agents, and I note their replies, in which both state that they are acting, not upon their own behalf, nor as holding themselves out as practicing the profession of undertaking in Baltimore City, but as agents for a licensed undertaker by the name of George J. Ruth, for whom they claim to work up new business.

I note further your reference to the sign of a certain Leroy L. Hedges, reading as follows:

"LEROY L. HEDGES,
WITH
E. Leroy Stiffler,
Funeral Director & Embalmer,"

and that you are advised that all of these parties, to wit, Kuchauckas, Libertini and Hedges, are only acting as agents and soliciting trade for different licensed undertakers, and claim that they do none of the practical work connected with the care, preparation, disposition or burial of the dead, and your inquiry as to whether they are holding themselves out as practicing the business of undertaking without a license, and thus violating the *Undertakers' License Laws of Maryland.*

I also note that you feel that such advertisements as these, although having the suffix of "Agent" and "With," would lead persons reading them to believe that these parties are duly authorized to act in the capacity of licensed undertakers.

I can find no authority in Maryland covering this particular situation, but my opinion is that the question must be determined by the facts surrounding each particular case.

I believe that if a party, not a duly licensed undertaker, desires to advertise himself as agent for a duly licensed undertaker by using the word "Agent" suffixed to his name, and adding also the name of the undertaker whose agent he proposes to be, he would not, by so doing, necessarily violate the *Undertakers' License Laws.* If, however, such a party has a place of business of his own, where he carries on the profession of an undertaker and acts as funeral director or embalmer, or has other employees to do this work for him, or if, in the lan-

guage of Section 237 of Article 43, Bagby's Code, he acts as the assistant or employee of a person, partnership or corporation engaged in the business of undertaking, with duties engaging him in the "care, preparation, disposition or burial of the dead," then he should take out a license, as, unquestionably in such cases, he would be actually practicing the business of undertaking, regardless of the manner in which he advertised himself.

In the cases which you present, Kuchauckas and Libertini have not indicated in their advertisements that they are agents of any particular undertaker, but simply attach to their own name the word "Agent," and then follow it immediately with the words "Funeral Director," etc. I feel that the effect of such advertising is calculated to mislead the public, and that such parties are actually, so far as the practical effect is concerned, holding themselves out as practicing the business of undertaking, within the prohibition of Section 240 of Article 43. They can, however, bring themselves within the provisions of the law by so modifying their advertisements through the addition thereto of the name of the undertaker whom they represent.

In reference to the case of Leroy L. Hedges, I feel that his advertisement is unquestionably misleading, and that therein he holds himself out as practicing the business of undertaking. Whether the words "Funeral Director and Embalmer" which follow the name of Mr. E. Leroy Stiffler, the licensed undertaker, are intended to apply to Stiffler or Hedges, the public is necessarily led to believe through the use of the word "With" that Hedges is himself an undertaker. A man associated in business with an undertaker is naturally presumed to be an undertaker, and not a butcher, grocer or a representative of any other business.

I would suggest that these parties be furnished with a copy of this opinion and be given an opportunity to bring themselves within the construction of the law which is herein outlined. If they refuse or fail to do so, your Board can then take such action as it may deem necessary.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES — HAWKERS AND PEDDLERS IN PRINCE GEORGE'S COUNTY—EXEMPTION.

April 29, 1920.

J. W. Walling, Esq.,
210 Fourth Street S. E.,
Washington, D. C.

MY DEAR SIR: The Chief Deputy Commissioner of Motor Vehicles has sent me your letter of April 23rd, in which you inquire whether or not it will be necessary, under the laws of this State, for you to secure any license other than the usual motor truck license to enable you to operate a motor truck line between Washington and Rock Point, Maryland, for the purpose of purchasing fish at Rock Point and transporting them to Washington, where they will be sold at wholesale in the markets. I presume Rock Point is in Prince George's County.

This is a matter upon which you should secure advice from private counsel, as it is contrary to the practice of this Department to give a ruling to any private individual. It does seem to me, however, that the business in which you propose to engage would not make you a hawker or peddler, and even if you are so classified, the local law of Prince George's County relating to the license required by such persons contains a special exception in favor of hawkers and peddlers of fish in their unpreserved and natural condition. No other license, therefore, would seem to be necessary.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—INTERSTATE COMMERCE.

April 29, 1920.

Mills, Knight & Godfrey,
Attorneys and Counsellors at Law,
Cleveland, Ohio.

GENTLEMEN: I have been requested to answer your letter of April 22nd, addressed to the Secretary of State.

As your factory is located in Ohio, and you do not propose to open an office in Maryland, but merely to send a traveling salesman into this State for the purpose of soliciting orders here for your goods, which orders, if confirmed at your home office, will be filled by direct shipment from your factory to your customers, I do not feel that it will be necessary for your firm to secure any license in Maryland. The business in which you propose to engage here is unquestionably interstate commerce, which cannot be regulated or controlled by local legislation.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—LIQUOR—WHOLESALE DEALERS—STATE LICENSE STILL NECESSARY.

May 6th, 1920.

Senator George Louis Eppler,
Cumberland, Md.

MY DEAR SENATOR: Yours of May 5th, in which you state that a client of yours in Allegany County, contemplating the sale of liquor to druggists who are entitled to purchase under the rules and regulations of the Internal Revenue Department, intends to apply to the Federal Government for a Federal license to engage in the wholesale whiskey business in Cumberland and the surrounding territory. You then ask whether or not, under such circumstances, it will be necessary for him to apply for or procure any State or county license from the State of Maryland or from Allegany County.

It has always been necessary for those engaged in the liquor traffic to secure a Federal license. The adoption of the Prohibition Amendment and the passage of the "National Prohibition Act" (the Volstead Act) only served to repeal by implication our Maryland laws in so far as the same were inconsistent and repugnant; otherwise, the Maryland law remained in full force and effect. At the time the Prohibition Amendment became operative I understand that the law effective in Allegany County required the taking out of a license by any one

expecting to engage in the wholesale whiskey business. This law never having been expressly repealed, is still binding upon any one expecting to engage in the wholesale liquor business in Allegany County, even though the range of that business has been very much circumscribed by national legislation.

It is, therefore, my opinion that your client must comply with the laws of the State applying to the particular business in which he now desires to engage which were effective in Allegany County when the Prohibition Amendment became operative.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADERS—APPLICATION FOR—HOW TO BE SIGNED.

May 6th, 1920.

Lawrence B. Towers, Esq.,
Clerk of the Circuit Court,
Denton, Maryland.

MY DEAR MR. TOWERS: I beg to reply to your letter of May 4th, in which you direct my attention to those sections of Article 56 of Bagby's Code relating to the trader's license, and then ask whether any person other than the owner of the business, or some one interested therein, can sign the necessary application for the license, make the affidavit thereto and procure said license. In other words, you desire to know whether it is necessary for the owner of the business to appear in your office in person and secure his license.

Section 39 of said Article provides that "when any person, body politic or corporate, shall propose to sell or barter * * * he shall apply to the Clerk of the Circuit Court for the county in which he proposes to carry on such selling or bartering."

Section 41 declares that "if it shall appear from the statement so made on oath (as required by Section 40) that the amount of the *applicant's stock in trade* does not or will not exceed one thousand dollars, the sum of twelve dollars shall be demanded," etc.

The standard determining the amount to be paid for the license is the value of the stock in trade, which means, of course, the stock in trade of the business for which the license is procured; but the statute refers to this same stock in trade as the applicant's stock in trade, and, therefore, it would appear that the applicant must be the owner of the business.

Section 40, which prescribes the manner of making the application for the license, was modified by the Act of 1916, which was evidently passed for the purpose of providing a fixed form which could be used alike by partnerships, individuals or corporations.

You will notice that one of the questions to be answered is "the average amount of stock of goods, wares and merchandise (not manufactured by you)." It is evident that this language is addressed to the applicant, and would not be suitable if the applicant was some person other than the owner or some one identified with the business in question.

I am, therefore, of the opinion that the application must be signed and the affidavit made either by the individual owner, a member of the partnership or some properly authorized official of a corporation. This conclusion would appear to be sound on principle, because if third parties are allowed to make these applications, the door is thereby opened for many improper practices on the part of unscrupulous persons. The real owner, who knows the facts, is not bound, whereas the applicant making an oath that the facts are true to the best of his knowledge and belief, may, without being guilty of any intentional wrongdoing, seriously misrepresent the facts and so prevent the State from securing the license fee to which it is entitled.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—GARAGE—FLOOR SPACE—STATUTE CONSTRUED.

Hon. E. Brooke Lee, May 7th, 1920.
State Comptroller,
Annapolis, Md.

DEAR MAJOR LEE: I wish to acknowledge your letter of May 4th, in which you set forth an exact copy of Chapter 294

of the Acts of 1920, providing for an increase of the license fees to be paid by garage keepers, and direct my attention to that portion of the Act which reads as follows:

"Garages containing not more than 166 square feet, $15.00.

"Those containing more than 1,600 square feet and not more than 2,000 square feet, etc., $20.00."

You then ask how the number 166 appearing in the first line quoted above should be construed by your office and others charged with the execution of this law.

There seems to be no decision in Maryland determining to what extent figures in statutes which appear to be erroneous may be changed or corrected by judicial construction. In the case of Manger vs. Board of Examiners, 90 Md. 659, however, it was decided that where the punctuation originally employed in the printing of two sentences in a statute rendered them unintelligible, the period used should be changed to a comma, and the capital letter as printed should be changed to a small letter. The basis of this conclusion was the desire of the Court to give some definite meaning to this ambiguous clause and make it harmonize with the general scheme of legislation of which it formed a part.

The general rule, as stated in 36 Cyc., 1126, is that "clerical errors in statutes in the use of numbers will be corrected by the Court whenever necessary to carry out the intention of the Legislature as gathered from the entire act."

It is manifest that the Legislature, by the passage of the Act above referred to, which is a re-enactment of Section 166 of Article 56 of the Code, intended to provide a general licensing scheme which would embrace all garages within the State of Maryland. If the figures actually used are allowed to stand, this plan would be defeated.

It is clear that instead of the numerals 166 the numerals 1,600 were intended to be used. As the figures 166 represent the number of the section to be amended, and the first figures of both this number and 1,600 are the same, the transposition of the two numbers could easily and unintentionally have occurred. It is apparent that the Legislature intended to create a minimum class of all garages having less than 1,600 square feet of space, and then to classify all other garages of

larger area. If the construction "1,600" is not adopted, a considerable group of garages would become immune from any licensing provision.

Section 166, as originally adopted in 1916, used the figures 1,600 where the figures 166 now appear. When it is observed that the only changes made by the Legislature of 1920 were the amounts which the different classes were required to pay, the conclusion would seem to be imperative that the Legislature, in the Act to which you refer, intended, in defining the floor area, to use the same figures which were followed in the Act amended.

I, therefore, rule that the figures 166 should be construed as meaning 1,600, and that the Act should be enforced accordingly.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—STATE BOARD OF EXAMINERS OF MOVING PICTURE OPERATORS—CONTROL FORM OF LICENSE ISSUED BY THEM.

May 8th, 1920.

Philip B. Perlman, Esq.,
Secretary of State,
Annapolis, Md.

MY DEAR MR. PERLMAN: In your letter of April 26th you enclosed a communication to you from S. S. Cassard, Sales Manager, Nicholas Power Company, Inc., containing a protest against the use by the State Board of Examiners of Moving Picture Operators on the licenses issued by said Board of a halftone cut of what appears to be the Baird Projector.

It also appears from the enclosed letter that the Moving Picture Operators of Local 181, of Baltimore, on April 19th, made a unanimous protest against such a use of this cut. You asked me to take whatever action I might deem advisable in the premises.

It would appear to be manifestly improper for any Stat Board or Commission to do any act which would tend to ades tise one company or one article to the detriment of its co

tors, but an examination of the law fails to disclose any provision declaring such a practice to be illegal.

Therefore, this department seems to lack power to act in the premises. The Board in question is appointed by the Governor and is responsible to him. I feel certain that if the matter is investigated and the charge made in the letter referred to is substantiated, a suggestion from the Governor that the objectionable practice be discontinued, would be promptly observed by the members of the Board.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—GARAGES—WHEN NECESSARY—WHEN TRADERS ALSO REQUIRED.

May 8, 1920.

Oliver D. Collins, Esq.,
Clerk of the Circuit Court,
Snow Hill, Md.

DEAR SIR: I beg to reply to your letter of May 2nd, in which you ask me to answer certain questions involving the proper construction of Section 166, Article 56 of the Code relating to the licenses required in connection with the operation of garages.

As to your first inquiry, I feel that all garages are required to procure a license where cars are kept solely for sale and not for hire or storage. Mr. Ritchie, my predecessor in office in reaching the same conclusion, used the following language:

"The only question in this connection arises because of the fact that while the first paragraph of Section 166 requires a license for garages 'for the hire, storage *or sale* of automobiles,' the succeeding paragraph defines a garage as meaning 'a place of storage for hire or a place where there is kept for hire any automobile,' etc., thus omitting from the definition garages where automobiles are kept for sale.

"I think, however, that the first paragraph of Section 166 controls as to the application of the section, and that the definition of the word 'garage' is not exclusive, and does not relieve garages where cars are kept solely for sale from the necessity of taking out a license."

As to your second inquiry, I would say that a garage license is a charge made for the privilege of operating a garage where automobiles are kept not only for sale, but also for hire, and are stored for hire. A trader's license grants the privilege of selling automobiles. I therefore feel that they are exclusive and that both licenses must be procured by the garage owner and dealer.

In the matter of your third inquiry, I feel that the necessity for procuring both licenses applies also to a dealer in automobiles who maintains a garage, but does not permit automobiles to be stored therein for pay or hire, using his garage solely for the purpose of storing his own cars, hired or sold by him.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—TRADERS—CIGARETTES—SODA FOUNTAINS—NEW RATES EFFECTIVE MAY 1, 1920.

May 11, 1920.

D. Saltz & Company,
Crisfield, Md.

GENTLEMEN: Your letter of April 30th, 1920. Chapter 504 of the Acts of 1920, provides that traders shall pay license fees as follows:

Where stock in trade will not exceed $1,000.....$15.00
Between $1,000 and $1,500.....$18.00
Between $1,500 and $2,500.....$20.00
Between $2,500 and $4,000.....$25.00

The Act also requires a license fee of $25.00 for cigarettes and $25.00 per fountain for soda fountains.

The Act provides that it shall take effect from the date of its passage, and having been approved April 9, 1920, it took effect on that date.

The new rates, therefore, are effective for a license for the year commencing May 1st, 1920.

No change was made in the amount of fees for traders' licenses except as above set forth.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—STAGE PLAYERS, VENTRILOQUISTS, TUMBLERS, ETC. —NO LICENSE REQUIRED WHEN SHOWING FOR AGRICULTURAL FAIR ASSOCIATIONS.

May 22, 1920.

Mr. D. J. Ward,
President, Wicomico Fair Association,
Salisbury, Md.

DEAR SIR: Your letter of May 14th, addressed to the Secretary of State, has been by him referred to this department for reply.

As I understand your letter, you inquire whether it will be necessary to pay for Midway shows or Carnivals given in connection with your Agricultural Fair to be held the last week in August of this year, or whether such shows will be exempted by reason of the fact that they are given in connection with the Agricultural Fair.

Sections 108, 109 and 110 of Article 56 of the Public General Laws as amended by Chapter 704 of the Acts of 1916, provide for licenses for stage players, ventriloquists, sleight-of-hand performers, rope dancers, tumblers and wire dancers, and for circus riders or equestrian performers, and for exhibit of animals or natural or artificial curiosities.

Section 165 of Article 56 as enacted by Chapter 704 of the Acts of 1916, provides for licenses for carnivals.

Section 117 of the above article provides as follows:

"Any agricultural fair association duly incorporated under the laws of the State may hold on its grounds one

annual exhibition not exceeding six days without the payment of any license to the State of Maryland, city or county where held; and any person or persons, association or organized company to whom said agricultural fair association shall grant the privilege to sell, barter, show, exhibit or in any way conduct any lawful business on the grounds of said agricultural association during any of its exhibitions shall in the manner and during the time of said exhibitions be exempt from the payment of any State, county or municipal license."

In view of the very broad language of this section, I am of the opinion that persons, associations or companies to whom your association may grant the privilege to conduct Midway shows or carnivals on your grounds during your annual exhibition will not be required to obtain any license, provided, of course, such annual exhibition will not exceed six days.

Answering your further inquiry, I would state that Section 117 above quoted, was not amended by the Legislature at the session of 1920.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—RESTAURANT—WHEN REQUIRED.

May 27, 1920.

Lloyd L. Shaffer, Esq.,
Clerk of the Circuit Court,
Cumberland, Md.

MY DEAR MR. SHAFFER: I wish to acknowledge the receipt of your recent letter, asking whether a restaurant license as required by Article 56, Section 162, Fourth Volume of the Code, must be secured in the three cases enumerated by you as follows:

First, a regular hotel where meals are served; second, a lunch room in connection with a pool room and billiard room, grocery, etc., where soup, sandwiches, coffee, meat, etc., are served, and third, a boarding house where meals are served only to regular boarders.

Formerly an "ordinary" license was required to be obtained by any person proposing to open an "ordinary" and maintain therein a prescribed number of beds, while it was necessary for any person planning to set up an oyster house, cook shop, victual house or lager beer saloon to secure an "oyster house" license. Both of these licenses were regarded as liquor licenses, and the provisions of the law requiring them were automatically nullified by the adoption of the prohibition amendment. There is, therefore, no conflict in license requirements affecting the various places mentioned in your inquiries and the only query is as to whether they are embraced within the phrase "restaurant or eating place" used in the Act. The question is by no means simple, and has given me considerable difficulty.

I find, however, that the terms "restaurant" and "eating place," just quoted, are practically synonymous. The Century Dictionary and Webster's Dictionary give no difference in meaning, and use the words interchangeably. The latter is perhaps more extensive than the former. A restaurant is commonly understood to be a place where food is served at fixed prices to all comers, and usually at all times. The expression "eating place" or "eating house" has been judicially construed. In Humburd against Crawford (Ia.), 105 N. W. 330, it was held that if one serves meals only in pursuance of previous arrangements, and therefore to particular individuals rather than to any one that might apply, his place was not an "eating house," but a private boarding establishment. Other decisions could be quoted to the same effect.

In the absence of express language clearly descriptive of the same, I do not believe the Legislature intended to require licenses of the many boarding houses in the State conducted usually for a limited number of regular patrons. This conclusion is further fortified by the provision of the Act itself, which fixes one license fee in cities or towns under 8,000 inhabitants and a much higher fee in cities or towns of 8,000 inhabitants or more. It is unimportant whether an establishment with a definite number of boarders is located in a large or small town, but the eating place serving the general public necessarily enjoys a more extensive patronage in the larger community. I, therefore, feel that a license must be obtained by hotels furnish-

ing meals since they accommodate the public generally. I also believe that a license is necessary for the lunch counter referred to in your second query. I assume that food is sold there to all who apply therefor and may be eaten on the premises if desired. This is an instance of an eating place, in contemplation of law, even though it would not be generally considered a restaurant. The situation is not altered by the operation in the same room of billiard and pool tables, for which business a special license is also necessary.

For the reasons set forth herein, I do not think that a license is required for a boarding house whose service is confined to a fixed number of regular boarders.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—SALES WITHOUT PROFIT—NO LICENSES NECESSARY.

May 28, 1920.

Ward B. Coe, Esq.,
1205 *Fidelity Building.*
Baltimore, Md.

MY DEAR SIR: In your letter of May 18th, you state that you represent a corporation which has installed a lunch room for the exclusive benefit of its employees, in which it sells luncheon, cigars and cigarettes to said employees. You further state that it does not sell for profit or at a profit, the price being fixed simply to cover cost, and you ask whether or not said corporation is required to take out in connection with the operation of said lunch room, a trader's license, a restaurant license or a cigarette license.

All of these licenses are required by provisions of law which are codified as part of Article 56 of the Code of Public General Laws of Maryland, and, therefore, would seem to be subject to the exception found in Section 5 of said Article. This section reads as follows: "Nothing in this Article shall be deemed to apply to persons who do not buy or sell with a view to profit in the prosecution of some regular trade or business."

The sales to which you refer in your letter are all made without a view to profit, and, therefore, I am of the opinion that none of the licenses mentioned in your letter are necessary.

In the case of the State vs. Eastern Social Club, 73 Md. 98, where there was an indictment for the sale of liquor without a license, the Court stated that "the fact that the sales were made without actual profit to the corporation is wholly immaterial and affords no grounds of defense to these proceedings," but the Statute upon which the indictment was founded was a local option measure applying only to Talbot County and was not, therefore, a part of Article 56 conferring upon the organization indicted the benefit of the exemption of Section 5 of that Article.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—NON-RESIDENTS SELLING FROM TRUCKS TO MERCHANTS ONLY—NO HAWKER'S AND PEDDLER'S LICENSE REQUIRED—TRADERS—WHEN NECESSARY.

June 11, 1920.

W. M. Elbrittain, Clerk,
Ferdinand C. Cooksey, Esq.,
State's Attorney,
La Pata, Md.

GENTLEMEN: I have your joint letter of May 26th, in which you state that several non-residents of Maryland pass through your county from time to time in motor trucks, selling goods to merchants, making immediate delivery thereof and collecting for the same at the time of sale. You ask whether it is necessary for these persons to secure a license, and, if any, what license.

The charge made for a hawker's and peddler's license is a comparatively large one, because a hawker or peddler carries his wares to the consumer, while the trader, whose trader's license costs much less, sells his goods from a fixed place of business. The hawker and peddler is in direct competition

with the trader. In the case which you mention, this condition does not exist. The non-residents referred to sell their goods only to merchants and not to private consumers. The Courts have held that a person engaged in such business is not a peddler, even though he makes the sale and delivery one transaction. In order to make such a one a peddler, *the sales must be made to consumers and not confined exclusively to dealers.* (St. Paul vs. Briggs, 88 N. W. 984.) In the case of State vs. Fetterer, Conn. 32 Atl. 394 it was held that a traveling salesman of a wholesale candy house who drove to different towns, dealing with retail stores only, and selling at wholesale prices, filling orders where possible from his wagon, and also booking orders for future delivery, was not a peddler. The Court here expressly stated that the filling of orders on the spot from the stock in the wagon did not affect the matter. Under these rulings, it would appear that the parties to whom you refer are not hawkers and peddlers and do not, therefore, require a hawker's and peddler's license.

Section 38 of Article 56, however, declares "that no person or corporation, other than the grower, maker or manufacturer, shall barter, sell or otherwise dispose of * * * any goods, etc., within this State without first obtaining a license, etc." Under this section, traders' licenses are required to be taken out by both wholesalers and retailers, the fee therefor to be determined by the average value of the applicant's stock in trade, and the decision of the Court of Appeals, in Salfner vs. State, 84 Md. 299, makes a wagon or other vehicle from which goods are sold a fixed place of business within the purview of the statute, the result being that a licensed trader of one county was required to procure a trader's license in every other county in which he undertook to sell goods from such a vehicle. I am, therefore, of the opinion that the parties to whom you refer must take out a trader's license in each county of the State in which they wish to operate.

The operation of Section 55 of Article 56 is, in my opinion, confined solely to representatives of non-resident corporations taking orders within the State, to be executed later, and does not extend to cases where sales and delivery are coincident.

You suggested in your letter that the sections of Article 56 relating to hawkers and peddlers did not contemplate the use of motor vehicles. I might add, for your information, that this difficulty was met by the passage of Chapter 600 of the Acts of 1920, effective June 1st, 1920, which amends Section 25 of Article 56 by including motor vehicles among the vehicles used in peddling, and fixing the license fee to be charged therefor at $300.00.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—RESTAURANT—WHEN REQUIRED—ONLY IN TOWNS AND CITIES.

June 30, 1920.

Thomas L. Dawson, Esq.,
State's Attorney,
Rockville, Md.

MY DEAR MR. DAWSON: Your letter of June 17th, calling my attention to the opinion of Mr. Marbury, Acting Attorney General, recorded in Volume 3 of the "Official Report and Opinions of the Attorney General," page 158, in which he construes Chapter 704, of the Acts of 1916, to apply only to restaurants and eating houses located in cities and towns of the State, and rules that the statute in question does not include restaurants and eating houses located in the open country. You then state that you entertain some doubt as to the correctness of this ruling and ask me for my views on the subject.

It seems to me that the statute in question must be treated as constituting a complete whole, and does not admit of a separation into two parts, the first requiring all restaurants and eating places to be licensed, and the second fixing the fees. In my judgment, the Legislature intended to impose the duty of taking out a license only upon restaurants and eating places located in towns and cities, the underlying reason being that the larger number of patrons in these centers of population would insure a larger business and justify the imposition of license requirements. The statute imposes a special tax, and

for this reason should be strictly construed. Consequently, I agree with the conclusions reached by Mr. Marbury, and believe that his ruling should be followed.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES — DOG — TAGS — DUTY OF CONSTABLE — ALIEN FRIENDS MAY POSSESS FIREARMS.

July 7, 1920.

J. J. Scotten, Esq.,
R. F. D. No. 2,
Aberdeen, Md.

DEAR SIR: I have been requested by the Secretary of State to answer your letter of June 28th, addressed to Governor Ritchie.

Your letter raises certain questions concerning the enforcement of the State-wide Dog Law, found in Sections 195-201, inclusive, of Article 81 of the Code, and I desire to reply thereto as follows:

1. The tag required by law must be affixed to a substantial collar to be furnished by the owner, which, with the tag attached, shall at all times be kept on the dog for which the license is issued, except when confined in the kennel or when hunting in charge of an attendant.

2. The law does not provide a method for disposing of the dogs that run at large without tags, but the owners of the dogs become amenable to the law imposing a penalty for the failure to secure a tag.

3. Owners cannot be compelled to provide tags; they may be fined or imprisoned, or suffer both penalties, in the discretion of the Court, for failure to do so.

4. It does not seem to be necessary, under the law, for you, as a Constable, to go to the homes of owners who fail to comply with the law and get into altercations with them, except to make arrests of the owner of any untagged dog, after being armed with a warrant.

5. If a Justice of the Peace persistently declines to act in proper cases involving a violation of this law, his conduct should be reported to the Governor.

6. It is illegal for alien *enemies* to have firearms in their possession (see President's Proclamation, dated April 6th, 1917), but I know of no law preventing either alien *friends* or unnaturalized persons from having firearms in their possession on the premises owned by them. Of course, they cannot violate the law prohibiting the carrying of concealed weapons. Such persons, it seems to me, may also hunt upon their own land and, with the proper consent, upon the land of others.

I am enclosing herewith copy of an opinion relating to the administration of the dog law sent by me, on March 6th, 1920, to the State's Attorney for Howard County.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—CHIROPRACTIC—STATE BOARD OF EXAMINERS.

July 8, 1920.

J. C. Hamberlin, Esq.,
126 W. Sixty-fifth Street,
New York.

MY DEAR SIR: I beg to reply to your letter of July 5th, addressed to my predecessor, Hon. Albert C. Ritchie.

The first statute, dealing with the practice of Chiropractic in Maryland, was Chapter 666 of the Acts of 1920, which will become effective in this State immediately after its publication. Under the provisions of this Act, a State Board of Chiropractic Examiners is established, from which Board a license must be secured before it shall become lawful to practice in this State. Provision is made for the holding of examinations and for issuing licenses to those who have already been engaged in the practice in this State. Section 14 of the Act provides that "persons licensed to practice Chiropractic under the laws of any other State having equivalent requirements of this Act may, in the discretion of the Board, be issued a license to practice in

this State without examination, upon payment of the fee of twenty-five dollars ($25.00), as herein provided."

Our Board has not been in existence a sufficiently long period of time to enable it to establish any standards or rules relating to the eligibility of practitioners from other States. I assume, however, that this work will be completed by the Board in the course of the next few months. I suggest that you write to J. Ralph John, Esq., 1513 Linden Avenue, President of the Board, who will give you any other information on the subject that you may desire.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADING STAMP COMPANY—ONLY ONE LICENSE REQUIRED FOR ENTIRE STATE.

July 22nd, 1920.

State Tax Commission,
Union Trust Building,
Baltimore, Md.

GENTLEMEN: I desire to acknowledge receipt of your letter of July 20th, in which you ask me whether Sperry Hutchinson, a foreign corporation doing business in various counties of this State and in the City of Baltimore, is required, by virtue of Section 173 of Article 56 of the Code, to pay a license for each county in which it does business, or whether a payment of $1,500.00 will suffice for the entire State.

The Legislature, in 1916, by comprehensive Act (Chapter 704), provided for licenses for various classes of traders, among others, trading stamp companies. This Act is codified as Sections 164 to 188, of Article 56 of the Code. In order to answer your question satisfactorily, I examined the entire Act, and find that wherever the Legislature intended traders to pay a license for each office, it said so in plain terms.

For example, Section 170 provides for a tax of $10.00 for each intelligence office or employment agency. Section 171 taxes laundries for each place of business; likewise, Section 172

taxes junk dealers for each place of business. Section 173, the section in question, is silent.

The fact that the Legislature in turn taxed each place of business in the preceding sections and failed to do so in Section 173, supplemented by the well-known principle of statutory construction that Acts providing for special taxes are to be strictly construed against the State, necessitates the conclusion that the payment of one tax by a trading stamp company will suffice for the entire State.

In arriving at this conclusion, I have not overlooked Section 39 of Article 56, which is not in conflict with the conclusion reached.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—BOARD OF CHIROPRACTIC EXAMINERS—DUTY OF CLERK OF SUPERIOR COURT OF BALTIMORE CITY TO RECORD.

July 24, 1920.

Stephen C. Little, Esq.,
Clerk Superior Court of Baltimore City,
Baltimore, Md.

MY DEAR MR. LITTLE: You asked me today whether it is necessary, under the new law, Chapter 666 of the Acts of 1920, regulating the practice of Chiropractic, to register in Baltimore licenses received from the State Board of Chiropractic Examiners, and, if so, in what Court of Baltimore City.

Section 9a of the Act requires every person who shall receive a license from the State Board of Chiropractic Examiners to "have it recorded in the office of the Recorder of Deeds of the county in which he resides," but there is no express provision in the Act requiring the recording of licenses issued to persons living in Baltimore City. I feel, however, that this is necessary. Under Section 13 of Article 1 of the Code the word "County" is required to be construed so as to include the City of Baltimore, unless such a construction would be unreasonable. In this case, it is most reasonable so to construe the term, be-

cause the general scope and purpose of the Act indicates clearly that it was the intention of the Legislature to make all of its provisions State-wide in their application.

I think, also, that it was intended that the recording should be done in your office. The language used in the Act indicates that these licenses were intended to be recorded in the same office where deeds are recorded; deeds in Baltimore City are recorded in your office; Chiropractice licenses should likewise, therefore, be recorded with you.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—DOG—MEANING OF TERM "LIVE STOCK."

July 27, 1920.

William L. Seabrook, Esq.,
Attorney for County Commissioners,
Westminster, Md.

MY DEAR MR. SEABROOK: Your letter of July 20th, asking my views as to the interpretation of the words "live stock" in the provisions of the Dog License Law relating to compensation from the license fund for the killing of or injury to live stock.

I have not been able to find any decisions under similar laws bearing directly on this point, but, in my judgment, the term is broad enough to cover all domestic animals useful for food, and kept within enclosures for that purpose. I agree with you that it does not include pets.

With kind personal regards,

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—DOG—CITY AND COUNTY CAN IMPOSE NO TAX.

July 28, 1920.

Franklin H. Smith, Esq.,
Town Clerk,
Capitol Heights, Md.

DEAR SIR: Your letter of July 20th, requesting my opinion as to the law in regard to the attack of a dog upon a child, and also asking whether the Mayor and City Council of Capitol Heights have a right to pass an Ordinance levying a tax upon all dogs within the corporate boundaries.

Under the provisions of Section 198 of Article 81 of the Code of Public General Laws, as enacted by Chapter 197 of the Acts of 1918, any person may kill any dog which he sees in the act of attacking human beings, whether or not such dog wears the license tag required by law.

No town or county can impose any tax upon dogs, as Section 195 of Article 81, enacted by the above statute, provides that the license or fee therein prescribed shall be the only license or tax required for the ownership or keeping of dogs. See Opinions of Attorney General, Volume 3, page 148.

The Public General Laws of Maryland are contained in four volumes, which constitute a codification of all public general laws down to and including 1918. The Acts of 1920 will shortly be issued. All of these books may be obtained from law book sellers. There has been no complete codification of public local laws since 1888.

I am not in a position to answer your questions with regard to Berryman Avenue, in Capitol Heights. I suggest that you apply to the State Roads Commission for information on this subject.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—STOCK BROKERS—NO LICENSE REQUIRED IN COUNTIES.

July 30, 1920.

Hon. E. Brooke Lee,
State Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: I beg to acknowledge your letter of July 28th, in which you enclose a communication from the Clerk of the Circuit Court for Washington County, in which he inquires whether a party desiring to sell stocks and bonds in Hagerstown must first secure a license.

Article 56, Section 15, of the Annotated Code of Maryland, requires that a license shall be procured by stock brokers of Baltimore City, but I have been unable to find any provision of the Maryland law requiring stock brokers proposing to conduct their business in the counties to take out a license.

I am returning herein Mr. Oswald's letter, as requested by you.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES — STATE BOARD OF ELECTRICAL EXAMINERS—UNDER WHAT NAME LICENSEE MAY TRADE — TRANSFER OF LICENSE—FEES.

August 10, 1920.

State Board of Electrical Examiners,
512 Union Trust Building,
Baltimore, Maryland.

GENTLEMEN: Your letter of July 30th, requesting information as to how you shall proceed in the case of C. E. Boyle, who has held a license as Master Electrician for a number of years in his own name, and who, you stated, has commenced to trade as a sole proprietor, under the name of the Acme Electric Company, came duly to hand.

You desire to know if you are authorized under Section 6 of Chapter 244 of the Acts of 1916—

1. To allow Mr. Boyle, under his license, to trade as the Acme Electrical Company, or any other name he may select later, provided he is the sole proprietor.

2. How you can ascertain whether or not he is the sole proprietor.

3. Whether the Acme Electric Company, as such, is required to take out a license and furnish a bond, or whether your Board can change the license held by Mr. Boyle to the Acme Electric Company, without charging a fee for the same.

4. Whether it would be proper for the Board to change the license held by Mr. Boyle to read "C. D. Boyle, trading as the Acme Electric Company," without charging any fee for the same, and generally to advise you how to issue licenses made out to a firm or corporation, and in whose name the bond should be taken, whether in the name of the firm, corporation or representative thereof.

In answer to your first inquiry, it is my opinion that Mr. Boyle is entitled, under his license, to use any trade name he may wish, provided he is the sole proprietor, and does not form a co-partnership or firm. The law uses the words "any person, firm or corporation," and the term firm refers to a group of persons (two or more), composing a partnership, taken collectively, and is the name or title under which the members of such partnership transact business. It is held to be synonymous with the term partnership.

As to your second inquiry, the only way you can ascertain that Mr. Boyle is the sole proprietor would be by inquiry, and, if you felt there was any doubt in the matter, investigation of the statements made by him.

Answering your third inquiry, I would say that it is not necessary for the Acme Electric Co., as such, to take out a license and furnish a bond. The bond, in any event, would have to be signed as a principal by the individual trading as the Acme Electric Company. I do not think that the license should be changed to the name of the Acme Electric Co., the reason for this being fully set forth in the answer to your first question.

As to your fourth question, I think it would be perfectly proper for your Board to change the license held by Mr. Boyle

as you suggest, and I do not believe that a fee should be charged for the same. As a matter of fact, I think, in cases such as this, such a method of issuing the licenses would be desirable, although it is not compulsory. When issuing a license to a firm or co-partnership, under the law, it should be in the firm name, to the member of the firm managing the electrical work. The bond, in such a case, should be in the names of all of the co-partners trading as (firm name), and signed by all of them. In the case of a corporation, the license should be issued in the name of the corporation, upon the application of the agent of the corporation managing the electrical work thereof, and the bond, in such case, must be made in the name of the corporation and signed with the corporate name, with the corporate seal attached.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—FISH LICENSE LAW OF WASHINGTON COUNTY—CONSTITUTIONAL—COMPACT OF 1785.

August 12, 1920.

George Henderson, Esq.,
Assistant State's Attorney,
Cumberland, Md.

MY DEAR SIR: In your recent letter you asked me to give you an expression of my views upon the validity of Chapter 683 of the Acts of 1920, requiring all non-residents of Washington County to secure, at a cost of $5.00, a county license to fish in the waters of Washington County, including the Potomac River. The law is so framed as to apply to all residents of this State, as well as residents of other States, living outside of Washington County.

It seems to be clearly established that a State may discriminate in favor of its own citizens and against non-residents by requiring the latter to take out a fishing license. This discrimination is justified by reason of the fact that ownership of fish and game rests in the State and not in the people. A State

may, therefore, confer an exclusive right of fishing or hunting upon its own citizens without infringing the provisions of the Federal Constitution guaranteeing equal privileges and immunities to the citizens of the various States.

26 L. R. A. (N. S.) 794, case note;
40 L. R. A. (N. S.) 285, case note;
41 L. R. A. (N. S.) 469, case note.

Of peculiar interest in Maryland also are the decisions which hold that a statute prohibiting the taking of oysters by non-residents of a State does not constitute an unlawful interference with interstate commerce. See State vs. Harrub, Ala. 15 L. R. A. 761. In Hess vs. Muir, 65 Md. 586, the Court of Appeals upheld a Maryland statute authorizing citizens of Maryland to hold not more than five acres of land under water for the purpose of bedding oysters, and declared that a non-resident of the State was incapacitated from holding either originally or by assignment under this statute. See also State vs. Tower, 84 Md. 444; Chambers vs. Church, R. I. 14, R. I. 398.

There is a grave question, however, whether the State possesses the same right to discriminate between its own citizens by compelling the citizens of certain portions of the State to take out fishing licenses not required of those living in other portions thereof. The right to do so has been expressly denied in Harper vs. Galloway, 26 L. R. A. (N. S.) 794; State vs. Higgins, S. C. 38 L. R. A. 561. On the contrary, there are other authorities sustaining the exercise of this right by the State.

State vs. Leavitt, Me. 26 L. R. A. (N. S.) 799;
Doughty vs. Conover, 42 N. J. L. 193;
Bittenhouse vs. Johnson, Wis. 32 L. R. A. 380.

The case of Hughes vs. Md. 87 Md. 298, held that a certain statute regulating fisheries was not unconstitutional because it discriminated in the owners and occupiers of shores. In view of the decisions and the reasoning of the Court, and the principles therein enunciated, I am inclined to believe that the Legislature of 1920 was within its constitutional powers when it passed Chapter 683, requiring the license law for Washington

as you suggest, and I do not believe that a fee should be charged for the same. As a matter of fact, I think, in cases such as this, such a method of issuing the licenses would be desirable, although it is not compulsory. When issuing a license to a firm or co-partnership, under the law, it should be in the firm name, to the member of the firm managing the electrical work. The bond, in such a case, should be in the names of all of the co-partners trading as (firm name), and signed by all of them. In the case of a corporation, the license should be issued in the name of the corporation, upon the application of the agent of the corporation managing the electrical work thereof, and the bond, in such case, must be made in the name of the corporation and signed with the corporate name, with the corporate seal attached.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—FISH LICENSE LAW OF WASHINGTON COUNTY—CONSTITUTIONAL—COMPACT OF 1785.

August 12, 1920.

George Henderson, Esq.,
Assistant State's Attorney,
Cumberland, Md.

MY DEAR SIR: In your recent letter you asked me to give you an expression of my views upon the validity of Chapter 683 of the Acts of 1920, requiring all non-residents of Washington County to secure, at a cost of $5.00, a county license to fish in the waters of Washington County, including the Potomac River. The law is so framed as to apply to all residents of this State, as well as residents of other States, living outside of Washington County.

It seems to be clearly established that a State may discriminate in favor of its own citizens and against non-residents by requiring the latter to take out a fishing license. This discrimination is justified by reason of the fact that ownership of fish and game rests in the State and not in the people. A State

may, therefore, confer an exclusive right of fishing or hunting upon its own citizens without infringing the provisions of the Federal Constitution guaranteeing equal privileges and immunities to the citizens of the various States.

26 L. R. A. (N. S.) 794, case note;
40 L. R. A. (N. S.) 285, case note;
41 L. R. A. (N. S.) 469, case note.

Of peculiar interest in Maryland also are the decisions which hold that a statute prohibiting the taking of oysters by non-residents of a State does not constitute an unlawful interference with interstate commerce. See State vs. Harrub, Ala. 15 L. R. A. 761. In Hess vs. Muir, 65 Md. 586, the Court of Appeals upheld a Maryland statute authorizing citizens of Maryland to hold not more than five acres of land under water for the purpose of bedding oysters, and declared that a non-resident of the State was incapacitated from holding either originally or by assignment under this statute. See also State vs. Tower, 84 Md. 444; Chambers vs. Church, R. I. 14, R. I. 398.

There is a grave question, however, whether the State possesses the same right to discriminate between its own citizens by compelling the citizens of certain portions of the State to take out fishing licenses not required of those living in other portions thereof. The right to do so has been expressly denied in Harper vs. Galloway, 26 L. R. A. (N. S.) 794; State vs. Higgins, S. C. 38 L. R. A. 561. On the contrary, there are other authorities sustaining the exercise of this right by the State.

State vs. Leavitt, Me. 26 L. R. A. (N. S.) 799;
Doughty vs. Conover, 42 N. J. L. 193;
Bittenhouse vs. Johnson, Wis. 32 L. R. A. 380.

The case of Hughes vs. Md. 87 Md. 298, held that a certain statute regulating fisheries was not unconstitutional because it discriminated in the owners and occupiers of shores. In view of the decisions and the reasoning of the Court, and the principles therein enunciated, I am inclined to believe that the Legislature of 1920 was within its constitutional powers when it passed Chapter 683, requiring the license law for Washington

County, and I, therefore, feel that I am unable to declare the Act to which you refer to be unconstitutional.

There is, however, a fatal objection to the validity of this law so far as it relates to the waters of the Potomac River. The question seems to have been settled in the case of State vs. Hoofman, 9 Md. 28. The defendant in that case had been indicted for fishing with gill nets in the Potomac River contrary to the Act of 1845, but the Court of Appeals held that the indictment was defective because it did not allege that the Act in question had received the assent of Virginia, as required by the compact of 1785 between that State and Maryland. Under this compact "all laws and regulations which may be necessary for the preservation of fish in the River Potomac shall be made with the mutual consent and approbation of both States." Chapter 583, referred to in your letter, declares in its titling that it is designed to "further protect the fish of Washington County, to provide a non-resident license and to prevent gigging in the waters of said county, including the Potomac River," and, therefore, seems to fall within the character of legislation contemplated by the compact which requires the mutual assent and approbation of the Legislatures of Maryland, Virginia and West Virginia to make it effective. In my judgment, therefore, the license may be required of non-residents desiring to fish in the waters of Washington County other than the Potomac River, but I feel it will be impossible to enforce this law so far as it applies to the Potomac River.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—NONE REQUIRED TO CATCH FISH AT OCEAN CITY, SMOKE AND SHIP THEM—TRAVELLING MEDICINE MAN—WHEN LICENSE NECESSARY.

August 14, 1920.

William H. Kerbin, Esq.,
State's Attorney,
Snow Hill, Md.

MY DEAR MR. KERBIN: Yours of August 7th. You asked if a license is required to authorize a resident of Maryland to

catch fish at Ocean City, smoke them and ship them out of the State; I know of no such license.

You also ask if a medicine man with a show, who secures a license in your county, can sell anywhere in the State, and have his license marked accordingly.

You did not definitely state what license has been issued to the party in question, but assuming that he has taken out a hawker's and peddler's license, I must advise you that he can only operate under it in the county in which it was issued. This question is answered by the express terms of Section 26 of Article 56 of the Code, which provides that "no such license (hawker's and peddler's) shall extend beyond the county in which it may be issued."

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—TRADERS—UNNECESSARY FOR SALES WITHOUT PROFIT.

September 3, 1920.

Edward H. Burke, Esq.,
Attorney, Board County Commissioners,
541 Calvert Building,
Baltimore, Md.

MY DEAR MR. BURKE: You state that you and Mr. Jenifer, State's Attorney for Balimore County, desire to know whether it is necessary for George D. Iverson to secure a license under the following circumstances:

Mr. Iverson purchases food products upon his personal credit, and distributes them among his employees at their original cost, the value of the stock of merchandise on hand averaging at all times less than $50.00. No capital is invested, because the receipts from the sale are taken in before the bill for the original purchase becomes due, and no effort is made to commercialize or to secure any profit whatever as a result of the transactions.

In the case of State vs. Easton Social Club, 73 Md. 98, where the club was indicted for selling liquor without a license,

Judge Alvey, in his opinion, stated that "the fact that the sales were made without actual profit to the corporation is wholly immaterial, and affords no ground of defense to these proceedings." See also Conococheague vs. State, 116 Md. 317. It will be noted, however, that both of the statutes upon which the indictment was founded in these cases, were local option measures applicable only to single counties. The license contemplated by your letter is a trader's license or some other license required by the general State law as codified in Article 56 of the Code. Section 5 of this Article seems to determine finally the question in which you are interested. It states that "nothing in this Article shall be deemed to apply to persons who do not buy or sell with a view to profit in the prosecution of some regular trade or business." A trader's license is the only license which might be required by Mr. Iverson. In view of the fact that he is not buying or selling with a view to profit in the transaction of a regular business, I am of the opinion that it is not necessary for him to secure this license.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—BOARD OF EXAMINING ENGINEERS—POWERS LIMITED TO ENGINEERS OF MACHINERY OPERATED BY STEAM.

September 9, 1920.

J. F. Rossiter, Esq.,
Secretary, Board of Examining Engineers,
Union Trust Building,
Baltimore, Md.

DEAR SIR: Your letter of August 31st.

As I understand your letter, you ask my opinion as to whether the Board of Examining Engineers has power to examine and license engineers using electric apparatus for hoisting materials in cases where a portable steam engine is generally used.

In my opinion, the Board has no such power. It is true that the language of Section 427 of Article 4 of the Public Local

Laws (Baltimore City Charter), providing that said Board shall have general supervision of all stationary engineers, and referring particularly to engineers in charge of any hoisting or portable plant of machinery, would seem in itself broad enough to cover the case of engineers in charge of electrical machinery as well as those in charge of machinery operated by steam.

Section 426, however, provides that the Board of Examining Engineers shall consist of "two engineers who have had not less than ten years practical experience in running steam engines, boilers and appliances pertaining to stationary or portable engines," and Section 429 provides that the Board "shall visit and inspect the running and management of all steam plants wherein the engines are required to be examined as hereinbefore provided, not less than once every six months," without making provision for the inspection of any plants other than steam plants. In view, therefore, of the provisions of these sections and of the fact that this Act was originally passed in 1892, before stationary or portable engines operated by electricity were in general use, I think it clear that the Legislature intended to limit the powers of this Board to the examination and licensing of engineers in charge of machinery operated by steam.

Very truly yours.

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—TRADERS—WHEN NECESSARY FOR CO-OPERATIVE BUYERS' ASSOCIATION.

September 16, 1920.

Preston B. Ray, Esq.,
Clerk, Circuit Court,
Rockville, Md.

MY DEAR SIR: Yours of September 9th, which has just come to my attention. You ask whether John Henderson, Esq., purchasing agent for the Montgomery County Farm Bureau, an unincorporated organization of your county, should take out a trader's license.

He acts as the agent of the members of the association in purchasing farm supplies on the co-operative plan. Neither Mr. Henderson nor the Association makes any profit from the distribution of the supplies to the members of the Association.

If Mr. Henderson merely acts as the purchasing agent for the members of the Association, buying for them and turning over to them the goods purchased, I do not believe that a trader's license is necessary, because a purchase by the agent is in contemplation of law, the purchase by his principal, the ultimate holder of the goods. If, however, the purchase is made in the name of the Association, which afterwards resells the goods to the individual members, involving first, a vesting of title in the Association and subsequently in the individual member to whom it is transferred, I feel that a license is necessary. Under such circumstances, Mr. Henderson is the agent of the group which has an existence distinct from that of its individual membership and probably includes in the price at which it distributes the supplies to its members such an increase as will cover the expenses incident to the prosecution of the activities of the organization. Of course no license is required in connection with buying and selling in the prosecution of any regular trade or business where there is no view to a profit. (See Article 56, Section 5, Volume 2 of the Code.)

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—STATE BOARD OF ELECTRICAL EXAMINERS—MASTER ELECTRICIANS—DUTY OF—RULES CONSTRUED—FEES.

October 4, 1920.

Mr. A. B. James, Secretary.
State Board of Electrical Examiners & Supervisors,
512 Union Trust Building,
Baltimore, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of September 8th, 1920, enclosing a copy of Chapter 244 of the Acts of 1906, a copy of the Rules and Regulations issued

by the State Board of Electrical Examiners and Supervisors of Maryland, and a card used to notify your Board that certain work is being done.

You ask me first whether the "Rules and Regulations" conflict with the Act providing for the Board.

I find no authority in the law for the licensing of "Restricted Master Electricians." Section 1 of the Act provides for a Board of Examiners and Supervisors "for the purpose of examining into the qualifications and capabilities of all persons who are engaged or desire to engage in the business of Master Electricians * * *." Section 4 states that the "said Board shall adopt such rules and regulations for the examination of "Master Electricians as herein defined and for the placing, installing and operating electrical wires * * *." The term "Master Electrician" is defined in Section 5 "as and including any and all persons, firms and corporations engaged in the business of, or holding themselves out to the public as engaged in the business of installing, erecting * * *."

The clear intent is to license "Master Electricians," to adopt rules for installation of electrical wiring, etc., and to see that all installations are made under the direction of "Master Electrician" presumably in keeping with the rules laid down by the Board.

It is, therefore, my opinion that the rules which relate to "Restricted Master Electricians" are not authorized by the law.

You next ask my opinion as to whether the Board may "issue restricted licenses such as Class A-B-C-D-E of Rule 2."

It is my opinion that the Board may not for the reasons already stated.

I think the card is within the power of your Board.

You ask finally whether, under Section 12 of the law, the Master Electrician must direct or supervise the work at the place where it is done. The law says that the work must be done "under the direction and supervision of a duly licensed Master Electrician." That would certainly imply some degree of personal oversight. Since the Master Electrician is responsible under his bond, we have here a guarantee that he will give the work that amount of attention which the circumstances re-

quire—sufficient to satisfy the responsible party that the work is being correctly performed. I cannot lay down a more definite standard.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—STATE BOARD OF ELECTRICAL EXAMINERS—ALL PERSONS WITH THREE YEARS' EXPERIENCE ENTITLED TO BE LICENSED WITHOUT EXAMINATION.

October 11, 1920.

Mr. A. B. James, Secty.,
State Board of Electrical Examiners & Supervisors,
512 *Union Trust Building,*
Baltimore, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of September 15, 1920.

You ask my opinion whether, under the provisions of Chapter 244 of the Acts of 1906, one who has been in the electrical business for three years prior to the passage of this Act, may be required to take the examination for a license as Master Electrician.

The law is explicit that "no person, firm or corporation who shall have been engaged in the electrical contracting business in the City of Baltimore for a period of three years prior to the passage of this Act, shall be required to take the examination."

There is no restriction of time limiting the application of this exception, so far as the date of application for a license is concerned. If at any time, a person, firm or corporation shall demonstrate to your Board that he or it had been engaged in the electrical contracting business in the City of Baltimore for a period of three years prior to the passage of the Act, no examination is required before the issuance of a license. I deem it expedient to call your attention to that other proviso contained in Section 6 of the Act, which reads as follows: "Nor shall any license be granted to any person who has not taken and subscribed an oath that he * * * has had at least three years actual experience as a Master Electrician * * * in such

class or classes of electrical business or work as *in the opinion of the Board,* shall have properly fitted the applicant for a license as Master Electrician."

A certain discretion is vested in your Board by this proviso, but in my judgment, it is limited to the establishment by you of general standards determining those classes of electrical business or work which shall be deemed by you to properly fit an applicant for a license. If any applicants shall subsequently make the necessary oath that he has had at least three years actual experience as a Master Electrician in any one of the classes previously designated by you, it will be your duty to issue him a license without examination.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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LICENSES—STATE BOARD OF ELECTRICAL EXAMINERS—ADDITIONAL REPRESENTATIVES OF CORPORATION LICENSED AS MASTER ELECTRICIAN—EXTRA FEES MAY BE CHARGED—DUTY OF MASTER ELECTRICIANS TO SUPERVISE.

October 21, 1920.

Mr. A. B. James, Secty.,
State Board of Electrical Examiners & Supervisors,
512 Union Trust Building,
Baltimore, Md.

MY DEAR SIR: I wish to acknowledge the receipt of your recent letter enclosing a copy of Chapter 244 of the Acts of 1906, and a card to notify your Board that certain work is being done, and in which you present for my consideration, several questions as follows:

1. May your Board charge a fee of $25.00 each for additional representatives of a corporation already licensed as Master Electricians?

The corporation under the law may clearly be licensed "provided the one managing the electrical work thereof meets cer-

tain conditions." The corporation so qualified could undoubtedly engage in the business of Master Electrician without additional fees. The law, however, contemplates that while the actual work need not be performed by one qualified as a Master Electrician, nevertheless its purpose is to guarantee to the public that all work of this serious nature shall be supervised by a Master Electrician. If, therefore, a corporation finds that in order to accomplish the direct supervision required, it has become necessary for it to employ and use in addition to the first representative who passed the examination, and qualified as a Master Electrician, one or more other persons fulfilling the same qualifications and passing, therefore, the examination contemplated by the Act, I see no reason why your Board should perform the services of giving the examination and issuing its authorization without compensation. The law seems to indicate that whenever the Board gives an examination and as a result thereof, authorizes the successful applicant to perform the duties of a Master Electrician, it should receive the sum of $25.00, and although it may not make this statement in direct terms, I think it is proper for you to make this additional charge for every additional representative examined by you.

2. Under the provisions of Section 12 of the law, must the Master Electrician direct or supervise the work at the place where it is done?

The Act states that work must be done "under the direction and supervision of a duly licensed Master Electrician." This stipulation certainly implies some degree of personal oversight. The Master Electrician is responsible under his bond, and a guarantee is thus furnished that the work will receive that degree of attention which the circumstances may require, but I am of the opinion that this work which deals with a dangerous agency, and which, therefore, must be performed with skill and accuracy, can only be supervised in a satisfactory sense by the personal presence of the supervising officer where the work itself is being installed.

I think the card enclosed is within the powers of your Board.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General*

LICENSES—LIQUOR—WARRANT AND VOUCHER FOR REFUND MAY BE ASSIGNED.

October 21, 1920.

Board of Liquor License Commissioners,
306 *Court House,*
Baltimore, Md.

GENTLEMEN: I beg to acknowledge your letter of October 20th, in which you inquire whether the warrants and vouchers authorized by Chapter 197 of the Acts of 1908, codified as Section 690-B of the Baltimore City Code to be issued by your Board for the refund of liquor license fees may be assigned by the licensee to whom they are originally issued, and whether such assignee, upon presenting said voucher and assignment when payable to the Clerk of the Court of Common Pleas, is entitled to receive such amount as may be payable thereon.

In the section referred to, the Board of Liquor License Commissioners is directed upon a compliance by the licensee with certain prerequisites to compute the amount of refund due said licensee and thereupon to execute duplicate vouchers therefor and also a warrant to the Clerk of the Court of Common Pleas, directing him to repay said refund as set forth in said vouchers. It is further ordered to deliver one of the vouchers and the warrant to the person entitled thereto, and to transmit the other voucher to the Clerk of the Court of Common Pleas.

Your question seems to be answered by the succeeding provision of the Act which reads as follows: "And the said clerk of the said Court of Common Pleas, upon the presentation and surrender to him of the said voucher and warrant given to the said petitioner (the licensee), shall pay to him or his *personal representatives or assigns*, the amount called for by such vouchers and warrant." This language clearly contemplates that the payment need not necessarily be made to the licensee himself, but also to his personal representatives in the case of his death or to his assigns in the event that he has seen fit to make a complete and proper transfer of the voucher and warrant issued to him by your Board. I do not believe that the Act is capable of any other construction.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

LICENSES—UNIFORM SMALL LOAN LAW—LICENSEE MAY ALSO TAKE MARKETABLE SECURITY.

December 11, 1920.

George W. Page, Esq.,
Bank Commissioner,
409-411 Union Trust Building,
Baltimore, Md.

MY DEAR MR. PAGE: In your letter of December 8th, you ask whether the taking of marketable security by a licensee under the Uniform Small Loan Law of Maryland, Chapter 88 of the Acts of 1918, to protect a loan of less than three hundred ($300) dollars, made by him, removes said loan from the class of petty loans contemplated by the Act. The question has arisen from this set of facts.

One of the licensees under the above mentioned statute, the Public Loan Company, made a loan of three hundred ($300) dollars, taking as security a second mortgage upon certain real estate in Baltimore City. Interest was charged at the rate of 3½ per centum per month as permitted by said law. Complaint has now been made to you concerning this charge, and you have been asked to request the company either to make restitution or subject itself to the revocation of its license. This request is based upon the contention that under the Act of 1918, the charging of interest at the rate of 3½ per centum can only be made where greater risk is incurred than is ordinarily involved in the lending of money by banks or other financial institutions. It is true that the preamble of Chapter 88 of the Acts of 1918 recites that "the business of lending small sums of money upon security that is not acceptable to ordinary financial institutions does and will exist" and that "in the conduct of such business greater risk is incurred than is ordinarily incident to lending money by banks, trust companies and other money lenders to whom marketable security is given," but I have been unable to find upon an examination of the entire act a single provision in any of its enacting clauses which refers to this feature or incorporates it therein.

The recitals quoted recognize the fact that the greater bulk of transactions in which the licensees will participate will be

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The recitals quoted recognize the fact that the greater bulk of transactions in which the licensees will participate will be

with persons unable to furnish marketable security, but the Legislature seemed to proceed on the theory that borrowers able to furnish such security would protect themselves by dealing with banks or individuals by whom the legal rate alone would be charged. At any rate, it did not eliminate from the operation of the Act, transactions accompanied by the furnishing of security or prohibit the licensee from demanding and receiving such protection of this character as might be available.

Section 14, after authorizing the charge by a licensee of interest at 3½ per centum per month prescribes certain restrictions but none of them relate to the taking of security.

Apparently if a licensee under the act is fortunate enough to be able to protect his loan by collateral, he is at liberty to do so. I am unable to find any legal sanction for the position that the taking of marketable security removes a loan not in excess of three hundred ($300) dollars from the class of loans covered by Chapter 88 of the Acts of 1918 or constitutes any infraction by a licensee of the requirements of the statute.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MILITARY.

EXEMPTION FROM JURY SERVICE—HONORARY MEMBERSHIP OF STATE MILITIA—TERMINATION OF SAME—PRESENT MEMBERSHIP.

Honorable Henry Duffy, May 22, 1920.
Associate Judge of Supreme Bench
of Baltimore City,
Baltimore, Md.

DEAR JUDGE DUFFY: Complying with your verbal request for an opinion regarding the exemption of certain honorary members of the State Militia from jury duty, I have made a careful examination of the Statutes bearing upon this subject. An examination of the History of the Militia in Maryland subsequent to the Mexican Border trouble in 1916, was necessary, and the time required to gather together the essential facts and data explains the apparent delay, on my part, in giving you my opinion.

In 1916, the Legislature passed a comprehensive Act (Chap. 311), repealing Article 65 of the Code, relating to the State Militia and re-enacting the same with many changes.

In Section 77 of Article 65, as re-enacted, it was provided that "every regiment or separate organization of the National Guard of this State, may receive and have as many *honorary members* as it has active and uniform members, on payment in advance by each person desiring to become such honorary member of not less than $10.00 per annum * * * and every such honorary member shall be entitled to receive a certificate of honorary membership of such Regiment or separate organization, to be signed by the commanding officer thereof or some other officer designated by him for that purpose and bearing the date of its issue, which certificate shall exempt the honorary member from petit jury duty for one year from the date of the issue of said certificate, provided the same be filed with the Clerk of the Superior Court of Baltimore City or the Clerk of the Circuit Court of any county before the drawing of the jury."

The meaning and effect of this Act can best be determined by a discussion, first, of the language chosen and the intention of the Legislature, and secondly, the resultant changes or modifications, if any, caused by the unusual and unprecedented circumstances arising out of the Mexican Border difficulty of 1916, and the War against the German Imperial Government declared by the duly constituted officers of the United States of America on April 6, 1917. These will be discussed in their order.

It will be observed that the *honorary member* is exempted from petit jury duty for one year from the date of the issue of the certificate, but this does not exempt him from serving on the Grand Jury, and further the certificate must be filed with the Clerk of the Court before the drawing of the jury. If, therefore, the honorary member fails to file his certificate before the jury is drawn, he waives his right to exemption.

It has been suggested that one member of the present jury who was unable to procure a certificate, tendered a payment of $10.00 and demanded exemption from jury duty. This tender of $10.00 does not satisfy the terms of the Statute. The payment of the yearly fee is not the only requirement. Clearly no man has an inherent and inalienable right to be an honorary member of the Militia. The Statute does not specifically state how the honorary members are to be chosen, and the silence of the Statute leads to the conclusion that the military organization itself or its commanding officer may, within reasonable limits, determine the eligibility for honorary membership. Moreover, the honorary membership is limited so as to be co-extensive with the active membership. It might very well happen that the active members of a regiment or of the entire militia might decrease as a result of expiration of enlistment, discharges of soldiers, or changes in tactical units. This would necessitate a reduction in the number of honorary members, and the fact that a man was an honorary member in 1919, would not mean that, by the tender of the payment of $10.00, he would become, *ipso facto*, an honorary member for 1920.

The revision of the Military law was made necessary by the contemplated passage of the National Defense Act which was approved June 3, 1916. Anticipating a call to the Federal

colors, provision was made for such an emergency. The 5th Maryland Regiment was called to service for border duty on June 19, 1916. This changed the status and allegiance of the regiment and placed it under the command of the President of the United States instead of the Governor of Maryland. The troops, as will be recalled, were mustered into the Federal service, the Articles of War read to them and they were transported to Eagle Pass, Texas. Sometime in February, 1917, the Maryland Militia returned, were mustered out of the Federal service and became State troops again.

On April 6th, 1917, war was declared against the German Imperial Government. Prior to the declaration of war, on March 25th, 1918, the 4th Maryland Regiment was called into the Federal service. On April 12, 1917, the 5th Maryland Infantry was called into Federal service, and the remaining units of the Maryland Militia were called into service on July 25, 1917. On August 5, 1917, the President of the United States by proclamation, *drafted* the entire active Maryland Militia into the Federal service by virtue of the authority given him by the National Defense Act.

As a result of this draft by the President, the State troops lost identity as such and became a part of the United States Army. They were again mustered into Federal service, the Articles of War read to them and they took the Federal oath of allegiance. From that date, they were completely under the control and command of the President of the United States and were soon thereafter, absorbed in the United States Army. After the Armistice was signed, officers and enlisted men of the Maryland National Guard received their discharge in the same manner as drafted men, volunteers, or men who were in the regular Army at the time of the outbreak of the war. This discharge was absolute, and the Maryland National Guard as such, ceased to exist. It would seem, therefore, that all honorary memberships based upon and corresponding to the active membership, which was thus brought to a final conclusion, were thereby automatically terminated and no man who was an honorary member of any of the Regiments which served in the World War can still claim Honorary Membership therein by continuity of tenure.

However, by virtue of the Act of 1917, Chapter 26, the Governor was authorized to recruit and organize, train and equip a body of armed troops within the State to be known as the Maryland State Guard. Its roster was limited to 1,000 officers and men. This regiment was popularly known as the Home Guard, but its official title was the Second Maryland Regiment. After the exigencies of the war were over, this Regiment in March, 1920, was also mustered out of service. During its existence, however, honorary members in number equivalent to its active members, could have been established, and such outstanding certificates of honorary membership should be honored by the courts for a period of one year from the date of issuance (which must of course, be earlier than March, 1920), for the purpose of excusing the holders thereof, from petit jury service. All such honorary memberships, however, necessarily end at the close of the year for which the existing certificates were issued.

After the signing of the Armistice, the General Staff of the United States Army, recognizing the necessity of a well trained militia, by an order issued on or about November 5th, 1919, requested the Governors of the different States, to reorganize the State Militia. It is proposed to follow a new system, as the United States Government will provide the entire equipment for the new State troops as fast as they are mustered into the Federal service. At this time, only one company known as Provisional Company A, of the 5th Maryland Regiment, has been recruited to its proper strength and mustered into the Federal service. Honorary membership is limited so as to be co-extensive with the active membership. With the exception of honorary members of the Second Maryland Regiment referred to above, the only honorary members entitled to exemption from jury duty are those who have become such since the recruiting of the Provisional Company A referred to above.

This opinion is not intended to determine the right of exemption of Honorary Members of the "Maryland National Guard Retired," authorized by Section 35 of Article 65, inasmuch as entirely different questions are presented in connection therewith.

If you will permit me to make a suggestion, I would advise that the jury clerks obtain from the Commanding Officers of all Maryland Regiments, a list of its Honorary Members and that this list be amended immediately before the drawing of the juries by consulting the records of the various Regiments.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MILITARY—MARYLAND COUNCIL OF DEFENSE—FINAL DISSOLUTION UPON TERMINATION OF WAR—FUNDS AND RECORDS—DISPOSITION OF.

Maryland Council of Defense,
Baltimore, Md.

June 30, 1920.

GENTLEMEN: Mr. Lynn R. Meekins, Secretary of your Council, recently called to see me, stating that the Council had some months ago completed all duties assigned to it by law, that one hundred thousand dollars of the one million dollar fund appropriated for the use of the Council was still unexpended in the hands of the State Treasurer, subject to the warrant of the Council, and that about ten thousand dollars received by the Council as salvage from the sale of property no longer needed still remained in its special bank account. He than asked me to advise the Council as to the course which it should now pursue with reference, first, to the funds mentioned; second, to certain papers and records in its possession, and third, to the further activities of the members.

The Maryland Council of Defense was created and its powers and duties defined by the Act of 1917, Chapter 24, approved June 27th, 1917. Section 1 of this Act declares "that the duration of office of said Council shall be the duration of the present war, and for such period of time thereafter as the Governor may deem necessary for the welfare of the State." Technically and from a strict legal standpoint the war is not yet over. The state of war with the Imperial German Government declared to exist by action of Congress in April, 1917, has never been officially terminated, and the authorities at Washington, with whom alone the power lies to make the declaration of peace, have been unable or unwilling to do so. Therefore, your Council

cannot accomplish a final dissolution, but must await the official termination of the war. In the meantime, my recommendation is that by a resolution you should determine that there is no further need of activity on the part of the Council, and that no more meetings be held unless the welfare and safety of the State so requires, and the Governor or your own chairman so orders.

Your resolution should also contain a direction to your Treasurer to return all moneys now in your hands to the State Treasurer, subject to the duty imposed upon your Commission by Chapter 92 of the Acts of 1920 hereinafter mentioned, to turn over to the War Records Commission any unexpended balance in its hands which has been set aside to pay for the work of collecting war records.

The one hundred thousand dollars standing to your credit in the hands of the Treasurer will remain where it is until the final dissolution of your Council. I am unable to find in the law any basis for a ruling that it will lapse either now or upon any definite date thereafter, so long as your Council has a legal existence.

By Chapter 92 of the Acts of 1920 the War Records Commission of Maryland was created, and it was made the duty of the Maryland Council of Defense to transfer all of its data, papers and documents of every description connected with the collection of the war records of Marylanders to said War Records Commission. * * * You should discharge this duty, and if there are any other records or documents held by you I would suggest that you deliver them to the Board of Public Works, the legal custodian of all State property not expressly placed under the control of some other officer or board.

In order to do so, and at the same time prevent a conflict in your minutes, you should rescind your resolution of February 18, 1920. By the action indicated above you will practically relieve the members of your Council from all further responsibility in the premises, and the only duty remaining unfulfilled will be the final dissolution of the Council, with the consent of the Governor after the final declaration of peace.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MILITARY—TROOP "A" ASSOCIATION OF BALTIMORE COUNTY—DISPOSITION OF FUNDS REMAINING IN TREASURY.

July 24, 1920.

Gen. Milton A. Reckord,
Adjutant General,
Annapolis, Md.

MY DEAR SIR: I desire to acknowledge receipt of your letter of the 21st instant, in which you request me to advise you concerning the proper disposition of a fund belonging to Troop "A" Association of Baltimore County.

It appears that this Association is a corporate body, having been duly incorporated March 18, 1904, under the laws of the State of Maryland, for the purpose of conducting and maintaining a social and military society, and for the ownership of such property as might be necessary therewith. It has never had any status whatever under the military laws of this State, and it appears that the adjutant's office never has had, and does not now have, any control whatsoever over the affairs and finances of the Association.

The fact that the Association was composed of members of former Troop A of the Maryland Cavalry National Guard, which unit has ceased to exist, does not change in any respect, the legal rights of the incorporated Association as the owner of its own property and funds.

I, therefore, beg to advise you that your office has no authority or control of any nature over the funds and property of this Association, and that it would be improper for your office to authorize the expenditure in any manner or for any purpose, of the funds belonging to the Association as requested in the letter of September 13, 1919, from R. L. G. Heslop, former Captain and Treasurer of the Association. The disposition of such funds is a matter which belongs exclusively to the membership of the incorporated Association. I am returning herein, as requested by you, all correspondence relating to this subject which was enclosed in your letter.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTION PICTURE CENSORS.

No Responsibility for Increased Insurance Premium on Property Adjoining Building Occupied by Board.

February 4th, 1920.

The Maryland State Board of Motion Picture Censors,
204 E. Lexington Street,
Baltimore, Md.

Dear Sir: I beg to acknowledge your letter of December 15th, with letter from the Chesapeake Electric Company to you under date of December 6th attached, in which the Chesapeake Electric Company states that it feels that your Board should be called upon to bear the additional expense caused by the increased rate of the fire insurance on the building occupied by the Chesapeake Electric Company, by reason of their property being adjacent to that occupied by you; and your inquiry as to your responsibility, if any, for such increased fire insurance on the property of the Chesapeake Electric Company.

I desire to advise you that I know of no law under which the Chesapeake Electric Company could hold your Board for an increased fire insurance on the property occupied by it, which may be adjacent to the building occupied by you.

Yours very truly,

Alexander Armstrong, *Attorney General.*

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Motion Picture Censors—Chairman of Board—Term of Office—Effect of Interim Appointment.

May 7th, 1920.

Mr. Charles E. Harper,
Chairman, State Board of Motion Picture Censors,
Baltimore, Md.

Dear Mr. Harper: In your conversation with me today, you asked me to give you an opinion as to when your term of

office expires, based upon certain facts stated to me orally; first, that you were appointed by Honorable Emerson C. Harrington, Governor of Maryland, as Chairman of the Maryland State Board of Motion Picture Censors, during May, 1916, for a period of one year; that your commission was dated May 30th, 1916, and that you qualified several days later. On the 19th day of July, 1917, Governor Harrington re-appointed you for a term of three years, or until "you shall be duly discharged therefrom."

This commission was issued to you by virtue of Chapter 209 of the Acts of 1916, entitled "An Act relating to motion picture films, reels or stereopticon views or slides: providing a system of examination, approval and regulation thereof, and of the banners, posters and other like advertising matter used in connection therewith; creating the Board of Censors; and providing penalties for the violation of this Act."

Sections 3 and 4 of the Act provide as follows: Sec. 3. "The Board shall consist of three residents and citizens of the State of Maryland, one of whom shall be a member of the political party polling the second highest vote at the last general election prior to their appointment, well qualified by education and experience to act as censors under this Act. One member of the Board shall be Chairman, one member shall be Vice-Chairman and one member shall be Secretary. They shall be appointed by the Governor, by and with the advice and consent of the Senate, for terms of three years. Those first appointed under this Act shall be appointed for three years, two years and one year, respectively; the respective terms to be designated by the Governor." Sec. 4. "A vacancy in the membership of the Board shall be filled for the unexpired term by the Governor. A vacancy shall not impair the right and duty of the remaining members to perform all the functions of the Board."

The purpose of these two sections is clear. The intention of the Legislature was to provide for a permanent Board, the term of one member of which should expire each year. Obviously, it was intended that the term of each member should begin and end on the same day and month, the only difference being in the calendar year. This is emphasized by Section 4

which provides that "a vacancy * * * shall be filled for the *unexpired* term by the Governor."

This method of keeping a permanent Board in office has been adopted frequently by the Maryland Legislature and the Congress of the United States. The frequent use of words to produce this result makes clear beyond doubt, the legislative intent.

The Constitution, Article 3, Section 31, provides that "no law passed by the General Assembly shall take effect until the first day of June next after the session at which it may be passed unless it is otherwise declared therein." By Article 14 of the Constitution (which was added by the Act of 1914, Chapter 673, ratified November 2, 1915). Section 31 of Article 3 was modified in important particulars (see Beall vs. State, 131 Md. 674). However, it is unnecessary to discuss the extent of this modification in this opinion, because the Act of 1916, Chapter 209, is silent as to the date when it is to go into effect, and, therefore, under both provisions of the Constitution above quoted, the Act went into effect on June 1, 1916.

The first commission issued to you by Governor Harrington is not before me, but I assume that it took effect June 1, 1916, therefore, your appointment for one year expired June 1, 1917, and your second appointment, although dated July 19, 1917, must be understood, for the purpose of computing its duration, as beginning June 1, 1917, and ending June 1, 1920. Of course, you continue in office until your successor qualifies, and if he qualifies subsequent to June 1, 1920, you remain in office until the date of his qualification.

The three years mentioned in your commission must be understood to mean, "for a term of three years beginning from the expiration of your first term," and any other construction would thwart the plain meaning of the Act. In other words, if Governor Harrington should have delayed your appointment until December 1, 1919, and then appointed you for a term of three years, your term of office would necessarily end on May 30, 1920, or when your successor was appointed and qualified.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTION PICTURE CENSORS—AMERICAN RED CROSS NOT EXEMPTED FROM CENSORSHIP—EXEMPTING PROVISION CONSTRUED.

May 11th, 1920.

Maryland State Board of Motion Pictures,
Baltimore, Md.
Attention Miss Presstman.

MY DEAR MISS PRESSTMAN: Your letter of May 4th, 1920. You inquire whether films belonging to the American Red Cross are exempted from censorship under Section 22 of Chapter 209 of the Acts of 1916, which provides as follows: "This Act does not apply to any exhibition of or use of films, reels or views for purely educational, charitable, fraternal or religious purposes by any religious association, fraternal society, library, museum, public school, private school, or institution of learning." You tell me that the Red Cross, while charging purely a nominal sum, covering cost of shipment and packing of films, leases films to theatres where they are used in the regular exhibitions by such theatres and in the same manner as any other commercial film.

You will note that the section quoted, refers first to the exhibition and use of films for four purposes; educational, charitable, fraternal and religious. It then designates the parties by whom that exhibition and use must be made, classifying them as religious, fraternal and educational (using a general term for "library, museum, public school, private school or institution of learning"). In the last list, the charitable organization is omitted, and since the Red Cross Society is not a religious association, fraternal society or one of the educational bodies mentioned, but belongs to that group which may be described generally as charitable organizations, it is not within the classes privileged under the Act.

Even if this provision of the law was not fatal, I do not believe that the Red Cross is itself exhibiting or using these films; it would seem to be supplying them to the theatres where they are exhibited and used. Nor do I think that the exhibition or use of these films is for purely educational, charitable, fraternal or religious purposes. On the contrary, their actual use by the

theatres in which they are exhibited would seem to be a commercial one, since it forms part of the program for which the regular admission fee is charged, and its presentation consumes a portion of the time usually allotted to a performance which would otherwise have to be filled at the expense of the theatre by a picture of another variety.

For the reasons above stated, I am of the opinion that the films, reels or views exhibited or used in this way, are not exempted from censorship under the law.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTION PICTURE CENSORS—PROJECTION ROOM MAY BE SUBLET WHEN NOT IN USE—INSPECTOR MAY ENTER BOOTH TO ASCERTAIN WHETHER FILM HAS BEEN APPROVED BY THE BOARD.

November 6, 1920.

Miss Marie Presstman,
Secty. State Board of Motion Picture Censors,
Baltimore, Md.

MY DEAR MISS PRESSTMAN: Replying to your recent verbal inquiry as to the following matters:

Can the Maryland State Board of Censors sublet its projection room during such hours as the room is not being used by the Board?

I find nothing in the law which forbids such action, and, therefore, see no objection to it.

Has an inspector of the Board the right to enter the booth where the film is actually located and being shown in order to ascertain from the marks on the film whether it has actually been approved by the Board?

I understand that it is impossible to be certain that the film has met with the approval of the Board without seeing the actual film. If this is correct, the question would seem to be covered by Section 14 of Article 26A of the Code of Public General Laws, (title, Moving Pictures), which provides:

"Any member or employee of the Board may enter any place where films, reels or views are exhibited, and such member or employee is hereby empowered and authorized to prevent the display or exhibition of any film, reel or view which has not been duly approved by the Board."

This section, in my opinion, authorizes any action on the part of the inspector which may be necessary for him to ascertain whether a film, reel or view, has or has not been duly approved by the Board, and if this can be ascertained only from an inspection of the film itself, he would have a right to inspect the actual film. If it would not be practicable for him to make this inspection without entering the booth, he would in my judgment, have a right to enter the booth for this purpose.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTION PICTURE CENSORS—RULES AND REGULATIONS OF BOARD UNENFORCEABLE—ADVERTISING MATTER—QUESTION OF FACT FOR COURT OR JURY.

December 10, 1920.

Miss Marie W. Presstman,
211 N. Calvert Street,
Baltimore, Md.

MY DEAR MISS PRESSTMAN: Your recent letter presented to me this problem:

Section 15 of Chapter 209 of the Acts of 1916, which created your Board and conferred its powers and defined its duties, reads as follows:

"No banner, poster or like advertising matter shall contain anything that is immoral or improper. A copy of such banner and poster shall be submitted to the Board."

Section 16 contains this language:

"This act shall be enforced by the Board. In carrying out and enforcing the purpose of this act it may adopt such reasonable rules as it may deem necessary. Such rules shall not be inconsistent with the laws of Maryland."

Pursuant to the authority vested in it by the section last quoted, your Board adopted certain rules and regulations, among them being one designed to control advertising matter used in connection with films approved by the Board. It reads:

"All scenes and captions condemned in the film are condemned in all posters, banners and like advertising matter. Fraudulent and misleading advertising is forbidden."

You wish to know whether the Board possesses the same control over posters as it has over films, and whether a person who has admittedly used any posters containing certain scenes which your Board had condemned and ordered to be stricken from films becomes thereby guilty of an infraction of law, and liable to be arrested and punished therefor.

Section 2 of the act declares it to be unlawful to exhibit or use any film, reel or view unless it has been approved by your Board, and Section 6 clothes the Board with the power to disapprove such films, etc., as are sacrilegious, obscene, indecent or immoral, or such as in its judgment would tend to debase or corrupt morals. Judge Duffy has held in the case of Selznick vs. Harper, 4 Report and Opinions of the Attorney General, 183, that when the action of the Board has not been captious, arbitrary or founded upon erroneous information and apparently constitutes a fair and reasonable exercise of the discretion vested in it, the courts will not set its order aside. See also In re Goldwyn Distributing Co., 265 Pa. 335.

No such discretionary power, however, is given your Board over banners, posters or other advertising matter. There is a direct prohibition of the use of any advertising matter which contains material that is immoral or improper, but the right to determine whether such advertising matter does, as a fact, contain anything that is immoral or improper is not placed by the act within your discretion, but is left open to be passed upon by the court before whom the charge for a violation of Section 15 is tried. Whilst you are clothed with the power to adopt reasonable rules, and I may add that the rule above quoted is, in my judgment, a reasonable one entirely consistent with the terms of the statute, nevertheless there is no provision in the act which declares that such rules shall have the force and effect of law, nor is there any provision requiring a compliance with

said rules or providing a penalty for a violation thereof. In my judgment, therefore, a party must not be convicted merely because he has violated your rules. The magistrate or court trying a party charged with the violation of Section 15 must determine for himself whether or not the picture, poster or other advertising matter used did, as a fact, contain material that was immoral or improper. It is the court's judgment and not that of the Board, expressed through its rules or in any other way, which must determine the matter.

It may be difficult to meet the requirements of proof, but I wish to suggest that where the operator of a moving picture house uses advertising matter which presents a scene which he knows has been eliminated from the picture itself by order of your Board, and a patron observing the advertisement is induced thereby to buy a ticket and enter the theater, the operator may render himself liable to a prosecution for obtaining money under false pretenses.

I wish to call your attention also to Ch. 704 of the Acts of 1920, which makes it a misdemeanor for any person or corporation with an intent to sell its service to use in an advertising poster any representation or statement of fact which is untrue or misleading, and which is known to be such by the person or corporation in question. I am not ruling that this latter law actually covers your case, but it is proper to consider it in connection therewith. Prosecutions by either of the methods indicated would involve indictment by the Grand Jury and trial in court, the power of the magistrate being limited, because of the penalties which could be imposed, to a preliminary hearing and commitment for the action of the Grand Jury.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES.

GOVERNMENT ROADS—TRANSPORTATION—FOR HIRE.

March 6th, 1920.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
St. Paul and Saratoga Sts.,
Baltimore, Md.

MY DEAR COL. BAUGHMAN: In your letter of February 27th you ask whether it is necessary for owners of bus lines operating in Maryland over roads constructed by the United States Government to pay the fees prescribed by Chapters 199 and 304 of the Acts of 1918.

You refer particularly to the road extending nine miles out of Washington, in the State of Maryland.

The acts referred to prescribe the license fees to be paid in connection with the operation of motor vehicles used respectively for transportation of passengers for hire, and the public transportation of merchandise or freight.

Both statutes are made applicable to motor vehicles operating "over State, State aid, improved county roads and streets and roads of incorporated towns or cities in the State of Maryland."

This language clearly does not include roads constructed by the Federal Government, and, therefore, it is my opinion that it is not necessary for the bus owners to whom you refer to pay the ordinary license fees, except as to that portion of the road which may happen to lie within the limits of an incorporated town or city in Maryland.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—TIRE CLASSIFICATION.

March 12, 1920.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Saratoga and St. Paul Streets,
Baltimore, Md.

MY DEAR COLONEL: Replying to your verbal inquiry about the tire which you submitted to me, I desire to inform you that in my judgment this tire is a solid tire with holes drilled through it. The question submitted is whether or not this tire should be classified as pneumatic or solid; if the former, it comes under Class A of Section 141 of the Motor Vehicle Law; if the latter, it would come under Class B or one of the other sections requiring a larger registration fee.

Under the law, in disputed cases, you have the power to determine in what class a motor vehicle belongs. The pneumatic tire provided for in Class A operates on a different physical principle than the solid tire in Class B.

The resiliency of a pneumatic tire is produced by the use of an inner tube filled with air compressed to the extent necessary to produce firmness and a limited increased compression of the air. The resiliency results from the pressure of the motor vehicle on the tire, compressing the air and the resistence of the air within the tube against further compression.

On the other hand, the tire submitted is a mere solid tire with holes drilled in it, and its resiliency is produced by the pressure of the motor vehicle on the tire, and the elasticity of the solid rubber which decreases its thickness by a partial closing of the holes. The tire certainly is not pneumatic, because the air is not held in the tire, but escapes from the outer edges.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—STATE POLICE POWER—GOVERNMENT ROADS.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
St. Paul and Saratoga Sts.,
Baltimore, Md.

March 18, 1920.

DEAR SIR: I acknowledge the receipt of your letter of March 9th, in which you desire to know whether Motorcycle Deputies and Special Deputies appointed by your Commission have authority to arrest the drivers of motor vehicles for violation of any of the provisions of our law when said motor vehicles are operating over that portion of the road which is maintained by the Federal Government, and under its control, with special reference to the conduit road out of Washington and that portion of the Rockville pike which has been taken over and has been maintained by the Federal Government.

State officers have full authority to execute criminal and civil processes on the tracts of land and roads acquired by the United States in the State of Maryland under the Act of 1892, Chapter 263, Bagby's Code, Article 96, Section 28, which provides that the State of Maryland retains concurrent jurisdiction with the United States in and over all real and personal property of the United States which has been or may hereafter be acquired for public purposes of the United States, and that such criminal or other processes as shall issue under the authority of the State of Maryland against any person or persons charged with crimes or misdemeanors committed within or without the limits of said lands may be executed therein in the same way and manner as if no jurisdiction had been ceded.

The Motorcycle Deputies and Special Deputies appointed by your Commission, therefore, would have authority to arrest the drivers of motor vehicles for violations of any of the provisions of our law, even though said motor vehicles are operating over that portion of the road which is maintained by the Federal Government, and under its control. Article 56, Section 140-B, of the Code of Public General Laws, provides for the enforcement of the provisions of the motor vehicle and traffic laws throughout the *entire* State.

This opinion must be read, however, in connection with one heretofore given by me to the effect that motor vehicles operated exclusively upon a road constructed and maintained by the Federal government, do not require Maryland license tags.

Very truly yours.

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—JUSTICES OF THE PEACE—DELEGATION OF POWERS.

March 19, 1920.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
St. Paul and Saratoga Sts.,
Baltimore, Md.

DEAR SIR: I beg to acknowledge your letter of the 11th inst., in which you enclose a copy of a letter from Mr. R. D. Lillie, a Justice of the Peace in Takoma Park, Maryland.

Mr. Lillie desires to know, in case a violator of the motor vehicle laws of Maryland is arrested and taken to the office of the justice of the peace, whether or not, in the absence of the justice from his office, any one in his employ or a member of his family is allowed by law to receive a deposit of collateral and allow the driver to go, the collateral being for the driver's appearance later.

The authority given to a justice of the peace by Sections 157 and 158 of Articles 56, Code of Public General Laws, to accept bonds with satisfactory surety or sureties, cash collateral or motor vehicles as bail for the appearance of a party apprehended for a violation of the motor vehicle laws cannot be delegated by him to a member of his family or some one in his employ or to any other person not specifically mentioned by law. 24 Cyc. 418.

This power of the magistrate is in the nature of a judicial function and must be exercised by him personally.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—MUNICIPALITIES—AUTHORITY TO IMPOSE LICENSE CHARGES, ETC.

March 20, 1920.

Leo Weinberg, Esq.,
Frederick, Md.

MY DEAR SIR: I wish to acknowledge the receipt of your letter of March 16th, in which you state that the Mayor and Council of Brunswick desire to adopt a License Ordinance, providing for the licensing of motor vehicles engaged in the transportation of passengers or goods for hire upon the corporation's streets and thoroughfares, and you then ask for my opinion upon the following proposition:

(1) Does the Motor Vehicle Law of the State prohibit such a regulation?

(2) Does the issuance of a license by the Automobile Commissioner prevent the collection of an additional fee by the Municipality?

(3) Does the granting of a permit by the Public Service Commission deny to the Municipality the right to make this change?

I think the answer must be "yes" to your first and second propositions. Section 133 of Article 56, Vol. 4 of the Code, being the first section in that portion of the article relating to "Motor Vehicles," declares that "the provisions of this sub-title are intended to be State-wide in their effect, and no city, county or other municipal sub-division of the State shall have the right * * * to require any registration or licensing of motor vehicles or operators thereof in addition to the registration and licensing herein prescribed, or impose upon the owner or operator of any motor vehicle any tax, registration fee, license fee, assessment or charge of any kind for the use of a motor vehicle upon any public highway or highways of this State," and then follows the provision that incorporated towns may prescribe and enforce reasonable traffic regulations applicable to all vehicular traffic, including motor vehicles, "provided such regulations do not involve *any charge of any kind for the use of their highways* other than reasonable charges for parking of vehicles with-

in space set aside exclusively for parking purposes in congested sections."

I think this law makes it perfectly clear that no municipality may require from the owner or operator of a motor vehicle any license in addition to the one issued by the State. The necessity of such a provision is obvious. If this rule did not prevail, a truck carrying merchandise from Baltimore to Cumberland might be required to secure a dozen or more permits or licenses before completing its journey.

In my judgment all local laws, ordinances or resolutions affecting the registration or licensing of motor vehicles and the operator thereof, as well as the taxation, registration fees, license fees, assessments and charges of every kind for the use of a motor vehicle upon any public highway or highways in this State existing at the time of the passage of the State Law above quoted, were superseded and repealed thereby, and can no longer be enforced, and any local law, ordinance or resolution which any county, city or town may hereafter pass upon any of said subjects, will be void and unenforceable.

As to your third inquiry, I would say that it is not the permit issued by the Public Service Commission to transport passengers or goods for hire which denies to a municipality the right to require an additional license and to charge therefor, but the provisions of the law above quoted.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—INTERSECTING ROADS.

March 31, 1920.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
St. Paul & Saratoga Streets,
Baltimore, Maryland.

DEAR SIR: I beg to acknowledge receipt of your letter of March 22nd, 1920, in which you state that some confusion

seems to exist as to the meaning of the phrase "intersecting roads" as used in Section 163 of the Automobile Law.

You state that your interpretation of it has been that it applies to any road that meets another road, whether there is a continuation of it on the other side of the road it meets or not.

You state that a number of accidents have occurred near the Circle on Charles Street Extended, where the avenue comes into Charles Street from the east, and that the contention invariably is that this is not an intersecting street by reason of the fact that there is no continuation of the avenue.

I desire to advise you that my opinion agrees with yours, that is to say, that where one street runs into another, such as is the case at Charles Street Extended, near the Circle, where the avenue from the east cuts into Charles Street, this is an intersecting road or street within the meaning of Section 163 of the Automobile Law.

It has been held in the case of Pittsburg vs. Clnley, 74 Pa. 259, that the point of intersection of two roads is the point where their middle lines intersect.

The word "intersecting" is an adjective modifying the noun "road" or "street," and means to pass through or across (referring to a line or surface) so as to lie on both sides of it with one point (or line) in common. The point (or line) of intersection is the point common to two lines on a line or surface (or a line common to two surfaces) which intersect; in other words, the locus corresponding to a given aggregate relation is the locus common to and contained in each of the loci corresponding to the several constituent relations respectively, or what is the same thing, it is the intersection of these loci.

For a full definition and explanation of the word "intersecting" you may refer to Murray's English Dictionary, or the Century Dictionary, both of which will bear you out in your interpretation of these words.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

Affirmed by the Court of Appeals of Maryland, Buckey vs. White, 111 Atl. 777.

MOTOR VEHICLES—FINES—JUSTICES OF THE PEACE.

April 29th, 1920.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
St. Paul & Saratoga Streets,
Baltimore, Maryland.

MY DEAR SIR: In answer to your letter of April 24th, in which you state that A. H. Dahler, for sometime a Justice of the Peace of Bladensburg, Maryland, has recently died without having paid to your department all fines for violations of the motor vehicle law imposed or collected by him, and asking what legal steps are necessary to expedite the collection of these fines, I beg to advise you as follows. Where no appeal has been entered, the Justice is responsible to your department for all fines imposed by him for violations of the motor vehicle law, unless, in lieu of payment, the party convicted served his sentence. The fact that payment on checks received by him in settlement of such fines was stopped and said checks were subsequently dishonored is no excuse or defense, because it is especially provided by Chapter 85 of the Acts of 1918, codified as Section 139 of Article 56 of Bagby's Code that any Justice of the Peace accepting checks, drafts or any other unsecured evidences of debt in payment of fines shall do so at his own risk.

Whenever a Justice of the Peace dies, then by the provisions of Sections 18 and 19 of Article 52 of the Code, it is made the duty of his administrator or any other person in whose hands his docket, notes, bonds, accounts and papers may be, to deliver within thirty days such accounts and papers to the Clerk of the Circuit Court for the county in which such Justice resides or to the Clerk of the Baltimore City Court in case he resides in the City of Baltimore, under a penalty of a fine of $200 or six months in jail, at the discretion of the Court.

In this case after the docket, books and papers of the late Justice have been filed with the Clerk of the Circuit Court for Prince George's County, it will be very easy to ascertain those cases in which fines were imposed or collected by the late Justice, but as to which no final accounting was ever made with

your department. In the same manner a record can be secured of all checks received by him in settlement of fines upon which payments were subsequently stopped.

By Section 341 of the Maryland Code of Public Local Laws of Prince George's County, each of the four Justices of said county are required to give bond to the State of Maryland, approved by the Clerk of the Circuit Court for Prince George's County, in the penalty of $500.00, upon the condition among others that he will truly and faithfully execute and perform, all and singular, the duties and obligations of the office of Justice of the Peace.

In my opinion, the failure of Justice Dahler to account fully to your department for all fines, which, under the provisions of existing law, he was bound to pay to your department, constitutes a breach of the condition of his bond, and therefore, unless you succeed in making a settlement of the matter with his administrator I think the proper course for you to pursue is to bring suit upon the bond.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—IDENTIFICATION MARKETS—IN TRANSIT TAGS.

May 14, 1920.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: You recently consulted me concerning the growing practice of using upon cars passing over the highways of Maryland, "In Transit" plates, issued by the State of Michigan, pointing out the disadvantages incident thereto, and asking for my views upon the legality thereof.

Section 13 of the Michigan automobile law provides that any motor vehicle sold by a manufacturer or dealer may be driven by a registered chauffeur on any of the highways of the State from the factory to the place of business or residence of the

purchaser. In such cases temporary number plates, good for five days after the purchase, are prescribed by the Secretary of State for the use of the manufacturer or dealer who delivers them to the driver of the car upon which they are required to be displayed. The manufacturer or dealer also furnishes a certificate establishing the date of purchase. Under this law each car of a fleet of cars about to start from the factory in Michigan to the place of business of the purchaser in another State is equipped with paste board tags bearing the same number (that of the manufacturer or dealer from whom the cars were bought), and in the following form:

OFFICIAL TRANSIT PERMIT.

1	No.....	M
9	(Insert manufacturer's or dealer's license number.)	I
2	Void after 5 days from date of sale and purchase.	C
0	Form approved by Secretary of State.	H

⋮

With no other distinctive tag whatever they have been passing in constantly increasing numbers over the State roads of Maryland. It is apparent at once that under this practice no car bears a marker by which it or its driver can be definitely identified, and evasion of both civil and criminal responsibility is greatly facilitated.

The section of the Maryland law (Article 56, Section 46 of the Code) relating to the rights of non-resident owners and operators, extends reciprocal courtesies of the road only to that non-resident "who shall have complied with the laws of the State *in which he resides*, requiring the registration of motor vehicles or licensing of operators thereof, and the display of identification or registration numbers of such vehicles, and who shall cause the identification number of *such State* in accordance with the provisions thereof, and *none other*," etc., to be displayed on his motor vehicle.

The operators of cars driven from the Michigan factories over our roads are, in nearly all cases, men sent out by the purchaser to drive them back to his place of business in this or other States, and such drivers are, therefore, very infrequently residents of the State of Michigan. All such non-residents of

Michigan are clearly debarred by the requirements of our Statute from availing themselves of the peculiar provisions of the Michigan law to secure free passage for themselves and their cars over the Maryland roads. There would seem to be no method of preventing residents of Michigan or of any other State possessing a similar law, who have complied with the requirements of their respective States, from passing over our highways without molestation. I am of the opinion, however, that all other persons indulging in the practice described by you, and having no other license tags whatever upon their cars, may be apprehended and punished for a violation of the Maryland law. The operator's card carried by the driver of the car should disclose at a glance the State of his residence.

In this connection it is important to emphasize that provision of Section 46 which declares that upon the conviction of a non-resident he shall thereafter be required to comply with all the provisions of our law relating to the registration of motor vehicles.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—TRAFFIC COURT—JURISDICTION.

June 11, 1920.

Edward M. Staylor, Esq.,
Presiding Justice of the Traffic Court,
2 E. Saratoga Street,
Baltimore, Md.

DEAR SIR: Your letter of June 5th, asking me to advise you with regard to the limits of jurisdiction of the Traffic Court in connection with the provisions of Sections 157 and 157A of Article 56 of the Code of Public General Laws as enacted by Chapter 407 of the Acts of 1920.

Section 159 of the above-mentioned article gives to the Traffic Court general jurisdiction of violations of the Motor Vehicle Laws of the State, subject to the limitations contained in that section. There is nothing in Chapter 407 of the Acts of 1920

which excepts from this general jurisdiction the offenses defined by that act, except in the last paragraph of Section 157, in which the alteration or forgery of a certificate or the use of such altered or forged certificate, knowing the same to have been altered or forged, is made a felony, triable in a court of criminal jurisdiction other than the Traffic Court.

In my opinion the Traffic Court has no jurisdiction in this last-mentioned class of cases, but has jurisdiction in cases of violations of every other provision of Sections 157 and 157A as enacted by Chapter 407 of the Acts of 1920. The fact that the violation of one and only one provision of these sections is excepted from the jurisdiction of the Traffic Court leads to the conclusion that the Legislature intended that Court to have jurisdiction of the violation of all of the other provisions of these sections.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—IDENTIFICATION MARKERS—MISDEMEANORS—JURISDICTION OF JUSTICES OF THE PEACE.

July 2, 1920.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Maryland.

DEAR COLONEL BAUGHMAN: In your letter of June 30th you call my attention to the fact that no penalty is specially provided in the act for violations of Section 142 of the Motor Vehicle Law relating to the disposition of registration markers after the transfer of ownership of a motor vehicle. You then ask me whether there is any method by which this section can be enforced and its transgressors punished.

There is no broad stipulation in the Motor Vehicle Law providing generally for punishments not otherwise prescribed, and if relief is to be found at all, it must be sought elsewhere.

The section in question makes the prohibited acts misdemeanors by declaring that "it shall be unlawful, etc." I feel

that any act prohibited by the strong language employed in this law clearly falls within the accepted definitions of a crime. Mr. Bishop in his "New Criminal Law," Volume 1, Section 237, says: "It is obvious that to prohibit a thing by statute is to bring it within the jurisdiction of the tribunals. Whence we see that when a statute forbids a thing affecting the public, but is silent as to any penalty, the doing of it is indictable at common law." The same doctrine is reaffirmed in Bishop's "Statutory Crimes," Sections 138-873. Violations of this law, passed for the protection of the public, are, therefore, indictable, in my judgment, at common law, and upon conviction may be punished by fine or imprisonment, or both, in the discretion of the court, subject only to the constitutional limitation against cruel and unusual punishments. Under Section 12 of Article 52 of Bagby's Code, a justice of the peace may also assume jurisdiction of such offenses, hear and determine them, and impose proper penalties, subject, of course, to the right of jury trial guaranteed therein, and the other restrictions of said act.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—CERTIFICATE OF TITLE—AFFIDAVITS BEFORE JUSTICES OF THE PEACE.

July 7, 1920.

Mr. J. Watson Thompson,
Justice of the Peace,
Cambridge, Md.

DEAR MR. THOMPSON: Hon. Philip B. Perlman, Secretary of State, has submitted to me the correspondence with reference to your controversy with the Motor Vehicle Commissioner. You say that the Motor Vehicle Commissioner is requiring an affidavit to be appended to applications for registration of title of motor vehicles, and that he has refused to accept affidavits signed by a justice of the peace.

Section 157 of Article 56 of the Code of Public General Laws, as enacted by Chapter 407 of the Acts of 1920 in re-

quiring certificates of title, and providing for applications therefor, requires the Commissioner of Motor Vehicles to use reasonable diligence in ascertaining whether or not the facts stated in such applications are true, and also requires the Commissioner to furnish blank forms for such applications.

In my judgment the Commissioner of Motor Vehicles may exercise broad discretion in the preparation of the blank forms mentioned above, and, with a view to ascertaining the truth of the statements made therein, may require that such applications shall be made under oath. I also think that, if the Commissioner of Motor Vehicles requires an oath, he should accept any oath which is made in conformity with the provisions of the Maryland law. In this State acknowledgments made before justices of the peace to be used out of the county must be accompanied by a certificate from the clerk of the court certifying to the "official character of the justice." The certificate does not certify to the genuineness of the signature of the justice. The two essentials necessary to make the deed valid are the signature of the justice and a certificate from the clerk to the effect that he is actually a justice, duly qualified. The same condition, it seems to me, should be sufficient in connection with the affidavit required by the Commissioner of Motor Vehicles, to wit: The signature of the justice and a certificate of the clerk as to his official character. In my judgment, it is not necessary that each oath be accompanied by a new certificate from the clerk, because the original certificate will be sufficient to apprise the Commissioner of Motor Vehicles of the official character of the justice in question, and as all of the applications are filed in the same office and with the same officer, the first notification should be sufficient. It perhaps would be better for a justice expecting to take affidavits to such applications to secure from the clerk of the Circuit Court of his county a certificate and send it, accompanied by a specimen signature, to the Commissioner of Motor Vehicles without appending it to any particular affidavit. This certificate can be filed with the Commissioner of Motor Vehicles, and will be official notice to him of the qualification of the justice in question to administer the oath.

I am enclosing herewith a form of certificate which I think will meet the requirements of the Statute.

I am informed that a number of affidavits signed by justices of the peace have already been filed without a certificate of the county clerk. So far as these are concerned, either the justice or the registrant of the motor vehicle may be required to file a certificate of the clerk of the county court showing that the justice had duly qualified when the oath was administered.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—TRANSPORTATION OF PASSENGERS—LICENSES.

July 9th, 1920.

Hon. Frederick N. Zihlman,
House of Representatives, U. S.,
Washington, D. C.

DEAR SIR: I beg to acknowledge your letter of June 25th, in which you inquire whether it is necessary for an automobile used for hire in the District of Columbia to have a "For Hire" automobile license to run from the District into Maryland, or whether an ordinary pleasure car license will be sufficient.

As there is no reciprocity between Maryland and the District of Columbia in matters of automobile licenses, the owner of a machine used for hire from the District into Maryland must take out a "For Hire" license in Maryland.

If, however, the machine is used only for pleasure purposes in Maryland and not for hire, then, of course, only a pleasure car license is necessary.

With kindest personal regards, I am

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—HEADLIGHTS.

July 9, 1920.

State Board of Motor Vehicle Headlight Inspectors,
Mount Royal Avenue and Cathedral Street,
Baltimore, Maryland.

GENTLEMEN: I beg to acknowledge your letter of June 21st, in which you tell me that your Board recently declined to accept the "Two-way Lamp" for inspection and test, because—

1. The device is manually operated, in violation of the ruling of the Headlight Board.

2. That the device contains clear glass, which is a violation of the Motor Vehicle Law.

3. That the agent for the Lexington car is selling the device without having had it approved by the Headlight Board, which is in contradiction to the Motor Vehicle Law.

You then ask me to determine whether the Board has the power to make such a ruling and base it upon the reasons stated.

I shall endeavor to reply to your inquiries in inverse order.

3. Your third reason is unsound, because it assumes the decision which you are called upon to make. Practically, the matter would work itself out in this way: The company could refrain from selling the lamp; if the lamp complies with the law, your Board must ultimately sanction its use, and the selling of it would thereupon be resumed legally and immediately.

2. In my judgment, you have misconstrued the meaning of the law in arriving at your second conclusion. In the third paragraph of Section 148 of the Motor Vehicle Law there is found this provision: "No motor vehicle of any kind shall, at any time, whether in use or not in use, be equipped with any lamp without any glass, or with a plain glass front behind which there is an electric bulb or other lighting device of a greater lighting capacity than four candle power, unless such bulb itself be so designed, constructed and used as to prevent glare." This sentence indicates that two classes of lamps are prohibited.

1. Those without any glass at all.

2. Those with a plain glass front behind which there is an electric bulb or other lighting device of a capacity greater than four candle power.

To this second class, however, the Act itself makes a clear and definite exception in favor of lamps with plain glass having behind them electric bulbs or devices of lighting capacity greater than four candle power *so designed, constructed and used as to prevent glare.*

The sentence under consideration, when taken in connection with the one immediately preceding, would seem to indicate—

1. That no bulb of greater capacity than thirty-two candle power may be used under any circumstances.

2. That bulbs between four candle power and thirty-two candle power capacity may be used behind any kind of glass, including plain glass, if so designed, constructed and used as to prevent glare.

3. That bulbs of not more than four candle power capacity may be used behind plain glass, even though not so shaded.

Your conclusion that the presence of plain glass *per se* renders the lamp illegal is, therefore, unsound. These matters having been definitely settled by the Legislature, your Board does not, in my judgment, possess the power to make any ruling contravening the express declaration of that body.

1. On the other hand, the Legislature clothed your Board with full power and authority to make, promulgate and enforce all reasonable regulations deemed by you to be necessary for the enforcement of the provisions of the Act prohibiting the use of glaring or dazzling headlights on the highways of this State, and where the Legislature has been silent on any such matters your Board would seem to have the right to adopt, promulgate and enforce reasonable regulations dealing therewith. Whether the rule against manually operated lamps is a reasonable one, whether the lamp is a manually operated lamp, and whether such lamp, containing, as it does, clear glass, possesses also a bulb so designed, constructed and used as to prevent glare, being substantially questions of fact, are not matters which I should be called upon to determine. If the proper authorities decide that your rule as to manually operated lamps

is a reasonable regulation, and the lamp in question belongs to the class prohibited by the rule, your action in refusing to accept it was, of course, correct.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—HEADLIGHTS—POWERS OF HEADLIGHT BOARD.

July 13, 1920.

State Board of Motor Vehicle Headlight Inspectors,
Cathedral Street and Mount Royal Avenue,
Baltimore, Md.

GENTLEMEN: I have examined the five rules designated "Headlight Regulations," adopted by your Board on June 30th, and I beg to advise you that, in my judgment, Rules 2 and 4 were legally adopted, but that Rules 1, 3 and 5 exceed the authority reposed in your Board by the law creating it. This Act states that your Board "is expressly charged with the enforcement of its provisions prohibiting the use of dazzling or glaring headlights on highways of this State, and shall have full authority to make, promulgate and enforce all reasonable regulations *to this end.*" The latter words would seem to indicate that your authority is limited to such matters as relate to the prevention of the use of dazzling or glaring headlights, and that you do not have broad powers to pass rules affecting generally the lamps which may be legally used by the State, and all other matters affecting the same.

The restrictions imposed upon the use of glaring and dazzling headlights are created not so much for the benefit of the car upon which they are placed, as of the other cars operating upon the highways. In your first rule, you undertake to require that all lamps shall have sufficient illuminating power for the operator of the motor vehicle to discern an object at not less than one hundred feet in front of said motor vehicle. This provision is primarily intended for the benefit of the car upon

which the lamps are attached. A law almost similar, except that it required discernment at not less than two hundred feet instead of one hundred feet, was recently repealed by the Legislature, and in lieu thereof the Legislature passed another law which requires that "every car shall be provided with lighting facilities of sufficient power and so adjusted and operated as to enable the driver to proceed with safety to himself and other users of the highway under all conditions of light, road and weather." In my judgment, a jury would be justified in acquitting the user of any lamp meeting these conditions, even though it failed to comply with your proposed new rules.

In the same way Rule 3, which requires that no electric head lamp shall use less than a 15 candle power electric bulb, may, under some circumstances, be in conflict with the law above quoted. This rule also was not passed for the purpose of preventing glaring or dazzling headlights.

Your Rule 5 declares that it shall be unlawful for any person to use any device or electric headlights on motor vehicles other than those on the list approved by your Board. I do not believe that your Board possesses the power to pass any such rule. The owner of a car might use headlights unapproved by your Board and yet complying with all of the provisions of the law itself. It would certainly be improper to arrest and fine a man under circumstances of this character. Rule 5 could probably be revised in a way to make it legal, but in its present form I cannot approve it.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—WEIGHT.

July 15, 1920.

Col. E. Austin Baughman,
Commissioner of Motor Vehicles,
St. Paul and Saratoga Streets,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: I have your letter of July 13th, in which you ask me to determine for you the proper

method of measuring tire width in applying the six hundred and fifty (650) pounds per inch provision contained in Section 149, sub-section 2, of the Motor Vehicle Law.

This provision stipulates that six hundred and fifty (650) pounds per inch of tire width may be carried on solid tire motor vehicles. The width of a tire at its point of contact with the road frequently differs very materially from its width at the point where it comes in close contact with the rim of the wheel. For example, a six-inch tire at the rim may only be 4½ or 5 inches in width when measured at the surface of the road.

The law unquestionably means tire width as determined at the point of contact with the road itself. It was passed to limit the concentration of weight upon the highways of the State, and the only method of fixing a maximum to be carried by an inch of road surface was to fix the maximum to be borne by each inch of tire touching the road. Therefore, the Legislature was only concerned with the weight carried by each inch of tire at its point of contact with the highway surface. The width at the rim is a matter with which State policy can have no concern.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—CERTIFICATE OF TITLE—LIENS.

July 20th, 1920.

E. Austin Baughman, Esq.,
Commissioner of Motor Vehicles,
Baltimore, Maryland.

DEAR SIR: Your communication of the 26th ultimo was duly received. The facts that you present are that the City Dye Works, a corporation, bought a Ford truck from the La Porte-Heinekamp Motor Company, payment for which was made part in cash and part by notes of the City Dye Works. The notes were then transferred to the Commercial Credit Com-

pany, which notified the maker that the sum of $128.00 must be paid on or before June 12th, otherwise the truck would be seized.

I take it, therefore, that the La Porte-Heinekamp Motor Company retained title to the truck under a conditional contract of sale and that the holder of the note expected to repossess the truck under the terms of said contract.

Upon receipt of notices from the Commercial Credit Company of its intention to seize the truck the City Dye Works borrowed from a certain Mr. Auld $128.00 and gave him the truck as a pledge and security for the loan. Thereafter, on June 23rd, 1920, the City Dye Works filed a certificate of registration of the title as provided for by Section 157 of the Motor Vehicle Laws, Acts of 1920, Chapter 407, but failed to state in the application the fact that Mr. Auld held the truck as security for the loan made by him. You desire to know whether or not the loan made by Mr. Auld as security for which he received the truck is an encumbrance which the owner should have set forth in his application for a certificate of title, and, if so, whether failure to set out this fact makes the representative of the company who procured the registration guilty of perjury.

Mr. Auld's lien, legally defined, would be known as a "particular lien," and constitutes a legal encumbrance, which entitles the lender to retain possession until the loan is paid, and, I believe, should have been set out in the application for registration of title if it was known to the party making the application. The failure, however, to set out the lien would not constitute perjury, as the law does not require that an affidavit shall be made nor an oath taken to the statements in the application. Consequently, failure to disclose a material fact in the application would not come within the Maryland statute defining perjury.

The law does provide, however, that any person knowingly making any false statements in his application for the ownership certificate shall be guilty of a misdemeanor, and also set out the punishments for such an offense.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

Motor Vehicles—Board of Motor Vehicles Headlight Inspection—Powers.

July 28, 1920.

State Board of Motor Vehicle Headlight Inspectors,
Mount Royal Avenue and Cathedral Street,
Baltimore, Maryland.

Gentlemen: In your recent letter you stated that at a meeting of your Board a representative of the Two-way Lamps appeared and argued that the Board should accept the said lamp for inspection and test, but that you came to the unanimous conclusion that you should not do so for the reason that "the device contains clear glass behind which there is an electric bulb which is not in itself so designed, constructed and used to prevent glare."

You asked in your letter for a decision as to whether your Board possesses the power to make such a ruling. It seems to me that the inquiry involves a general discussion of the powers and duties of the State Board of Motor Vehicle Headlight Inspection, established by the last Legislature. The subject is covered by Section 148 of the Motor Vehicle Law, and after an examination of the same I have come to the following conclusion: First, your Board is charged with the enforcement of the provisions of law prohibiting the use of glaring or dazzling headlights on the highways of this State; second, it is clothed with full power and authority to make, promulgate and enforce regulations designed to prohibit the use of glaring and dazzling headlights on the highways of the State. These regulations must at all times be within the general powers and limitations set out in the Act; third, these regulations must be reasonable and general; fourth, any person feeling himself aggrieved by reason of any such general regulation promulgated by your Board may apply to any Court of competent jurisdiction to have the enforcement of the same enjoined on the ground that such regulation is unreasonable, unlawful or in excess of the powers conferred upon you by the Act; fifth, questions of fact at issue in prosecutions for violations of the

general regulations prescribed by your Board are not to be determined by you, but by a Magistrate or a Court of competent jurisdiction; sixth, your Board may provide general rules for the inspection and test of headlights so far as it may be necessary to determine the glaring or dazzling qualities of said headlights or the absence of the same, which rules must, of course, be fair and reasonable, and should include the right to a hearing, test and inspection; eighth, under said rules, you may require all lamps to be submitted for examination and test, and if, upon said examination and test, your Board approves a lamp, I believe that a certificate of approval may be issued to the local distributor of said lamp; ninth, if your Board determines that any lamp fails to conform with the law as laid down in Section 148, it may decline to issue such certificate of approval; tenth, the failure of the distributor of any lamp to possess a certificate of approval from your Board will not *per se* convict the possessor, user or vendor of such lamp of a violation of the law, but said user will necessarily invite prosecution and must stand trial in the Criminal Courts. In such an action not only will the reasonableness *vel non* of the regulation complained of be before the Court, but also your finding of facts upon which your Board has prohibited the use of the lamp in question.

With regard to the specific question asked in your letter, I beg to say that from the statements made therein it would appear that you declined to inspect and test the Two-way Lamp submitted to you. If this be true, and the representative of said lamp was refused a fair opportunity to demonstrate the qualities of his lamp, I feel that you would not be justified in passing the ruling stated in your letter. If, however, after a reasonable test and inspection, and hearing, your Board was convinced that these lamps do not come within the provisions of the law, then I have no suggestions to offer on your findings of fact, and feel that you can decline to issue a certificate of approval as suggested in conclusion No. 9, set forth above.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—OPERATOR'S LICENSE—CHAUFFEURS.

July 29, 1920.

Saul Praeger, Esq.,
Attorney at Law,
Cumberland, Md.

MY DEAR MR. PRAEGER: Yours of July 28th, in which you ask whether a special license is required for a chauffeur by the Motor Vehicle Laws of Maryland.

I think the difficulty which you have in mind is answered by Section 144 of the law, which, after requiring the payment of $2.00 as a fee for an operator's license, stipulates that these provisions shall not apply to chauffeurs, but the latter shall be required to obtain an operator's license, renewable at the end of one year from the date of issue, paying therefor the sum of $3.00 per year.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—AUXILIARY ENGINES—IDENTIFICATION MARKERS.

July 31, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: Replying to your verbal inquiry as to whether or not certain corporations owning trucks may, under the present law, substitute auxiliary engines in cases of emergency for engines which have broken down, I herewith submit my opinion.

The Motor Vehicle Law contemplates complete identification of each car registered. The method adopted by your office for identification will necessarily fail unless the serial numbers on the motors remain unchanged and correspond with the motor number on the registration certificate. The substitution of a new motor necessarily involves a change in number.

In my judgment, the use of auxiliary motors is not prohibited under the Maryland law, provided the auxiliary motor is registered, as required by law, and has its own individual markers. The registrant must, therefore, when installing an auxiliary motor, substitute the markers issued to that particular motor on the motor car.

This, in my judgment, is the most practical solution to the question presented.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—WEIGHT.

August 13, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: Complying with your letter of August 10th, requesting an opinion construing Section 149, Sub-section 2, of the Motor Vehicle Law, as amended by Chapters 506 and 407 of the Acts of 1920, I submit herewith my opinion.

The clause which you ask me to construe reads as follows: "Nor shall any motor vehicle be so operated in which *the limit of load* per inch in width of tires shall exceed six hundred and fifty pounds, without the special permission of the State Roads Commission in the case of a road under its jurisdiction, or the permission of the city authorities in the case of a city street, or the permission of the county authorities in the case of a county highway." You directed my attention to the word "load," and asked me to determine for you whether this word means the weight of the burden carried in the motor vehicle, or whether it means the weight of the burden carried, plus the weight of the truck.

I have come to the conclusion that the Legislature meant the burden carried, and intended to exclude the weight of the truck. This view is sustained by the Century Dictionary, which defines "load" as follows: "A burden carried in a vehicle; that which

is carried; a burden laid upon or placed on anything or taken up for conveyance." The Courts of Maryland have uniformly determined that in arriving at the legislative intent words are to be given their plain, ordinary meaning.

Further on in the same sentence the law provides, "And no motor vehicle of which the weight of the truck and the load combined exceeds ten tons shall be operated on any highway of this State." Obviously, in the sentence last quoted, the word "load" means the burden carried in the motor truck. It is logical to assume that if the Legislature intended the word "load" in the sentence under consideration to include the weight of the truck as well as the burden carried, it would have said so in plain terms, as it did in the sentence last quoted.

As to the meaning of the phrase "per inch in width of tires," I have already given you my opinion construing these words and I deem it unnecessary to repeat here what I said in my former opinion.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—JURISDICTION OF COUNTY MAGISTRATES.

August 20, 1920.

Frank G. Pratt, Esq.,
Justice of the Peace,
Elkton, Md.

MY DEAR SIR: By virtue of the provisions of Chapter 321 of the Acts of 1916 the town of Elkton is given a Police Justice, whose jurisdiction "to try and determine all violations of the criminal laws" occurring in Elkton is made exclusive by the Act. This position is now held by Justice Scotten.

Chapter 85 of the Acts of 1918, Section 158, requires that any person taken into custody for a violation of the Motor Vehicle Law shall forthwith be taken, in the counties, before the nearest Justice of the Peace, Committing Magistrate or Police Justice. In view of this provision, you ask me in your recent letter what jurisdiction you, as a Justice of the Peace

of the Third District (Elkton) of Cecil County, may exercise over violations of the Motor Vehicle Law. The section of the Motor Vehicle Law referred to was passed for the purpose of expediting the administration of justice and conferring upon arrested travelers the right of a speedy trial before the nearest justice, so that they might, with as little delay as possible, proceed upon their way.

In furtherance of this purpose, I think the Act should be construed to mean any Justice of the Peace duly appointed and qualified who happens to be near at hand, not necessarily the nearest by actual measurement (Crighton against State, 115 Md. 430), but within easy and convenient reach and apparently the nearest in point of distance. This provision is general and must be given state-wide recognition, unless limited by the Act itself or by some subsequent local measure.

I have been able to discover no such restriction. On the contrary, the Act of 1918, above referred to, expressly repeals all acts and parts of acts inconsistent therewith or contrary thereto.

I am, therefore, of the opinion that the exclusive powers conferred upon the Police Justice of Elkton have been withdrawn so far as the Motor Vehicle Law is concerned, and if you happen to be the nearest Justice of the Peace, as that phrase is used in the Act, you may legally conduct hearings for violations of this law, and perform all other duties imposed upon Justices of the Peace by Section 158 thereof.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—DEALERS—CERTIFICATES OF TITLE.

August 26, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL: Section 157 of the Motor Vehicle Law, requiring the certificate of title to motor vehicles, contains

a proviso to the effect that no such certificates shall be required in the case of new motor vehicles sold by manufacturers to dealers, as the term "dealers" is defined in Section 134 of this Article. The term "dealer" as used in the Act includes all individuals, firms or corporations actively engaged in the business of buying, selling or exchanging motor vehicles and who have an established place of business.

In your letter of August 19th you call my attention to these provisions and ask me to inform you whether it will be necessary for cars to be titled by the dealer as soon as they are received from the manufacturer, or whether the dealer may resell them and require the application for title to be made by the purchaser.

It is perfectly clear, by reason of the proviso quoted above, that no certificates need be secured until new cars have been received by dealers from the manufacturers. The procedure thereafter would seem to be indicated by this provision appearing near the middle of Section 157 of the Motor Vehicle Law: "After the expiration of ninety days, it shall be unlawful and a misdemeanor, punishable by a fine of not less than five dollars nor more than one thousand dollars, for any person to operate in this State a motor vehicle under a Maryland registration number unless such certificate of title shall have been issued as herein provided." This is a very sweeping requirement and purchasers and dealers must comply with it alike. Of course, if a dealer receives a car into his show-room and finds it unnecessary to operate it for demonstration or other purposes over the highways of the State before selling the same, it will not be necessary for him to secure a certificate of title, and the application must be made by the purchaser.

If, however, the dealer has reason to operate the car under a Maryland registration number, the duty is at once imposed upon him to secure a certificate of title thereto. The opening sentence of Section 157, to the effect that no certificate of registration of any vehicle or registration markers therefor shall hereafter be issued unless the applicant shall, at the same time, secure an official certificate of title or present satisfactory evidence that such a certificate has been previously issued covering such motor vehicle furnishes an additional method for the

enforcement of the law, but was not intended to restrict its application.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—LIMIT OF GROSS WEIGHT.

Colonel E. Austin Baughman, August 26, 1920.
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I desire to acknowledge receipt of your letter of August 11th, 1920, in which you enclose a letter from Henry M. Lummis, Esq., of the Baltimore Bar, requesting an opinion from me as to the construction of certain sections of the Motor Vehicle Law.

Mr. Lummis concludes that it is necessary to read into Section 149 an *implied* exception as to cars registered and owned prior to the passage of the Act of 1920.

I do not agree with Mr. Lummis, and it is, therefore, proper for me to give you my reasons in some detail. It would create a very dangerous precedent to interpolate an implied exception in a legislative act where the language is clear, precise and absolute. I am convinced that an interpretation of the Motor Vehicle Law in exact accordance with its language will give effect to the true intent of the Legislature to a greater degree than any attempt to inject exceptions which may perhaps seem expedient for the time being.

Section 149, Sub-section 2, provides, in part, as follows: "And no motor vehicle of which the weight of the truck and load combined exceeds ten tons shall be operated on any highway of this State." The meaning of this sentence is clear. It cannot be misinterpreted. No motor vehicle whose gross weight is ten tons shall be operated on any highway in this State. This clause is the last clause of a long sentence, which consists of one hundred and twelve words. Apparently it was drafted with great care. It is full of exceptions, limitations and qualifications. The fourth clause, the one which I have quoted above, is absolute, without exception or limitation.

The first clause provides that no motor vehicle in excess of ninety inches in width, except traction engines, shall be operated on any highway in the State. The second clause provides that no traction engine in excess of one hundred inches shall be operated on any highway, nor shall any motor vehicle be so operated in which the limit of load per inch in width of tires shall exceed six hundred and fifty pounds, without the special permission of the State Roads Commission, in the case of a road under its jurisdiction, or the permission of the city authorities in the case of a city street, or the permission of the county authorities in the case of a county highway. After thus providing with the greatest particularity as to motor vehicles in excess of certain weights, the Legislature determined that no *motor vehicle* of which the weight of the truck and the load combined exceeds ten tons, under any circumstances, and with any exception whatever, shall be operated on any highway of this State. The Act of 1918 provided that the limit was fourteen tons. The Act of 1920 reduced the maximum limit to ten tons. In all other respects the two clauses are verbatim. In enacting the Act of 1920 the intention of the Legislature was simply to decrease the maximum combined load. This suggests itself to any one who is familiar with the enormous damage which was done to many of the roads of Maryland by the heavy trucks used by the United States Army during the period of hostility with Germany. The damage resulting from the use of trucks ran into millions and made some of the arteries of our road system almost impassable.

The letter which you enclosed to me suggests two arguments in conflict with this conclusion. First, attention is called to the next sentence of the Act, which reads as follows: "Except in the case of motor vehicles now owned and heretofore registered in this State, no certificate shall be granted for the registration of any motor vehicle having a rated carrying capacity of over five tons." It is argued that if a motor truck rated at seven tons, with seven-ton capacity, was registered and operated in 1917, it could have been re-registered and operated in 1919 and 1920, but that it could not be run on any highway of the State. It is true that such a truck cannot be run if its load is more than three tons, but there is nothing inconsistent in

this. The Legislature, in its wisdom, saw fit to permit a seven-ton truck to continue to run if purchased and registered prior to the act, because it did not care to render such a truck valueless, but the Legislature intended to limit the load of any truck over five tons so that the total weight did not exceed ten tons. A seven-ton truck with a seven-ton capacity might be of some value to its owner under the construction adopted by me. It could be used in the construction of roads for hauling dirt from a cut to a fill, provided it did not run over a highway. It could be used for hauling from one part of a quarry or mine to another. It could be registered subject to the limitations of the Act and could be used on the highways of the State, provided its gross weight was less than ten tons. It could be transported from this State to another State for the purpose of sale, and numerous other uses can be mentioned.

Again, it is argued that Section 141 is inconsistent with the view which I have adopted. Section 141, Class B, prescribed the registration fee as follows: "For each motor vehicle equipped with solid tires and having a rated carrying capacity of not more than ..... seven tons, $500.00." Since a truck with a rated capacity of seven tons could be used on the public highway, subject to the limitations set forth above, the Legislature thought it necessary to fix the registration fee of five hundred dollars ($500.00). There is nothing inconsistent in that.

In conclusion, let me say that I am convinced, in construing a legislative act, that I should not depart from the plain language of the act unless a departure is necessary and imperative to give effect to the true meaning of the Legislature. I do not find such a condition here. The Legislature intended to limit the combined weight of truck and load to ten tons. This limitation is absolute. After protecting the roads by this limitation, the Legislature permitted owners of trucks to continue to run them subject to this limitation, so that the utility of the truck should not be limited further than the preservation of the roads required. This is what the Legislature intended, and what it said.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—TRACTORS—REGISTRATION—CERTIFICATES OF TITLE.

September 10, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I desire to acknowledge receipt of your letter of September 4th, in which you request me to advise you as to whether it is necessary for farming tractors and traction engines to be titled.

Section 157 of the Motor Vehicle Law (Chapter 407 of the Acts of 1920), provides as follows: "No certificate of the registration of any vehicle or registration markers therefor, whether original issues or duplicates, shall hereafter be issued or furnished by the Commissioner of Motor Vehicles unless the applicant therefor shall at the same time make application for and be granted an official certificate of title of such motor vehicle, or shall present satisfactory evidence that such a certificate has been previously issued to the applicant covering such motor vehicle.

After providing for the issuance of certificates of ownership, the section further provides: "After the expiration of said ninety days, it shall be unlawful and a misdemeanor, punishable by a fine of not less than five dollars ($5.00) nor more than one thousand dollars ($1,000.00), for any person to operate in this State a motor vehicle under a *Maryland registration number* unless such certificate of title shall have been issued as herein provided."

Concerning the transfer of motor vehicles, the Act provides: "Beginning with the expiration of ninety days from the date upon which this Act becomes effective, and thereafter, it shall be unlawful and a misdemeanor, punishable by a fine of not less than five dollars ($5.00) nor more than one thousand dollars ($1,000.00), or by imprisonment for not more than ten (10) years, or both, for any one to sell or to purchase within the limits of this State *any motor vehicle registered* in Maryland after January 1, 1920, unless at the time of the delivery thereof there shall pass between the parties such certificate of title, with an assignment thereof in the form prescribed by the

Commissioner of Motor Vehicles." The Act, therefore, contemplates that the owner of such motor vehicles as are required to be registered must make application for and be granted an official certificate of the title of such motor vehicle. The provisions quoted above, naming the penalty for failure to comply with the law, limit the purview of the section to motor vehicles under *a Maryland registration number* in one place, and to *any motor vehicle registered in Maryland* after January 1st, in another place.

The Legislature, by Chapter 506 of the Acts of 1920, amended Section 141 of the Motor Vehicle Law, by adding the following exception to Class II, "this charge" (i. e., $25.00 for each tractor or traction engine), "shall not apply, nor shall registration tags be required to be displayed on a traction engine used for hauling on an unimproved road or for drawing or propelling agricultural or farming implements not designed for hauling purposes upon any highway."

It will be observed that the exemption referred to in the paragraph above does not include exemption from registration; it merely relieves the owners of such tractors or traction engines from the payment of the fee and the displaying of the registration tags. Section 140 of Article 56 of the Code (the Motor Vehicle Act), provides as follows: "Every owner of one or more vehicles, before the same shall be operated in this State and except as hereinafter otherwise provided, shall fill in and file with the Commissioner of Motor Vehicles, on a blank furnished by the Commissioner, an application for the registration of such motor vehicles, containing such information as shall be required by the Commissioner." The words "Motor Vehicle" include tractors and traction engines (Sec. 134). Section 140 provides also that "any person who fails to carry the certificate of registration provided for by this section * * * shall be deemed guilty of a misdemeanor, and shall, upon conviction, be subject to a fine of not less than $10.00 nor more than $100.00," etc., etc.

Inasmuch as owners of traction engines were exempted from displaying markers and the payment of the registration fee, but are not exempted from the requirement of Section 140 as to the certificate of registration, it follows, from the language

of Section 157, *supra,* that such owners must procure an official certificate of title. It is true that the owner cannot be prosecuted under Section 157 for failure to procure a certificate of title within 90 days after the Act became effective, because the section creating the misdemeanor limits it to motor vehicles *under a Maryland registration number,* and the law does not require the owners of tractors used for farming purposes to have a Maryland registration number, but if the tractor is sold or purchased, both the vendor and vendee are required to comply with Section 157, because as to transfers of motor vehicles the language includes *any motor vehicle registered in Maryland.* However, if the owner of the traction engine or tractor does not register same (and he cannot register same without a certificate of title), he violates Section 140, *supra.*

My opinion, therefore, is that the exemption contained in Class H of Section 141 in favor of owners of traction engines used for hauling on an unimproved road or for drawing or propelling agricultural or farming implements not designed for hauling on any highway, does not exempt the owner thereof from obtaining an official certificate of title as contemplated by Section 157, or a certificate of registration as contemplated by Sections 140 and 141.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—DEALER'S LICENSE.

September 28, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: In your letter of September 24th you stated that the Commercial Credit Company of Baltimore had requested you to issue a dealer's license. You request me to give you my opinion as to whether this corporation is entitled to such a license.

You did not state the functions and activities of this Company. Upon inquiry, I was told that the Commercial Credit Company loans money to dealers in automobiles and purchasers thereof, and secures itself by a chattel mortgage or other lien. In short, the Company is a finance company, which advances money, with automobiles as security. My opinion is based upon the facts above stated, and, if I am incorrect in these facts, kindly inform me and I will reconsider this opinion.

The Motor Vehicle Law of Maryland, Code, Article 56, Section 141, provides, in part, as follows: "Class D. Twenty-five dollars ($25.00) for the first two sets of registration tags or markers issued each *manufacturer or dealer* in motor vehicles other than motorcycles, and fifteen dollars ($15.00) for each additional set of registration tags issued such *manufacturer or dealer*. Such registration tags shall be interchangeable among the cars owned or used by such *manufacturer or dealer* during the current year in which issued. Three dollars ($3.00) per annum for each additional special set of registration tags issued each *manufacturer or dealer* in motor vehicles to be used only on new vehicles being brought under their own power from a factory to a dealer in this State, which special tags shall not be used in any other way. No such dealer's tags shall be used on any car engaged in transportation for hire or livery business."

Obviously, the Commercial Credit Company, under the facts above stated, is not a manufacturer. If this Company has any claim to dealer's tags, the claim would arise as dealer rather than manufacturer. Section 134 of the Motor Vehicle Law, entitled "Definitions," defines the word "dealer" as follows: "The term 'dealer' shall be taken to include all individuals, firms or corporations actively engaged in the business of buying, selling or exchanging motor vehicles, and who have an established place of business." In my judgment, this definition excludes the Commercial Credit Company. It does not buy machines, nor does it sell them, except as an adjunct to the finance business. The definition limits the term "dealer" to those who make a business of buying and selling. The Commercial Credit Company only sells such motor vehicles as are repossessed by it because of default in payments. This Com-

pany should rather be classed as a bank. It performs part of the functions of a bank or loan company; it is in no wise connected with the automobile industry; it sells credits. For these reasons, I do not think you are authorized to issue to the Commercial Credit Company a dealer's license.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—CORONERS—JURISDICTION—BALTIMORE CITY.

October 1, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of September 29, 1920, you requested me to give you my opinion as to whether or not the Governor can designate one of the Coroners to hold inquests in all cases of deaths in Baltimore City arising out of alleged violations of the Motor Vehicle Law. You indicated that it is your opinion that these cases require special knowledge of the Motor Vehicle Laws and that it would tend to greater efficiency in the administration of the law if one Coroner could be permitted to specialize in these cases.

The law governing Coroners will be found in the Baltimore City Charter (Revised Edition, 1915), Sections 294, 295 and 296. An examination of these sections reveals that it was the intention of the Legislature to designate one Coroner to each of the Police Districts of the City of Baltimore and one Coroner to be known as Coroner at Large, whose duty it is to substitute in place of any of the Coroners assigned to the Police Districts who may be prevented by illness or enforced absence from attending to his duty.

The sections referred to above clearly indicate that the Coroner assigned by the Governor to a particular district was intended to be given exclusive jurisdiction in that district, and to be charged with the duty of properly administering his duties in his particular district. Section 296 provides, in part, "that

the Coroner shall hold an inquest over every person found dead in his district in said city when the manner and cause of death shall not be already known as accidental, or in the course of nature." The Governor has no power to alter the plain intent of the Act. The entire scheme would be frustrated if one particular Coroner were assigned to investigating deaths arising out of alleged violations of the Motor Vehicle Law. The Legislature intended to distribute the work among the Coroners according to geographical lines. In their judgment, it seemed best to limit the jurisdiction of each Coroner to a Police District. Perhaps they had in mind that the Coroner would live or have his office near the particular Police District, or would keep in constant touch with the station house in that district, so that he could reach the scene of the accident or other emergency in a very short time. The Legislature may have contemplated that the Coroner would become familiar with the streets, the inhabitants and topography of the land of the particular district, and in other ways familiarize himself with the territory under his jurisdicition. At all events, the Legislature determined that the Coroner's jurisdicition should be all inclusive within a particular district.

In my judgment, therefore, the present law does not permit the assignment of a particular Coroner to hold inquests in cases of death arising from motor vehicle accidents. Legislation is required to give the Governor such power.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—WEIGHT OF TRAILERS AND SEMI-TRAILERS.

November 10, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
St. Paul and Saratoga Streets,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: I am herewith submitting my opinion in reply to your letter of November 5th. You enclose

me a copy of correspondence in connection with the registration of semi-trailers and the gross weight allowed when combined with a tractor. I thought it best to extend my opinion beyond the scope of your inquiry, which was limited to the semi-trailer. Section 149, Sub-section 2, of the Motor Vehicle Law, provides, in part, as follows: "And no motor vehicle of which the weight of the *truck and load* combined exceeds ten tons shall be operated on any highway of this State." The meaning of this sentence was explained in my letter of August 26th in so far as the single unit is concerned, but the question of tractor or semi-trailer was not considered by me at that time, and I did not render any opinion concerning them.

The question to be determined in this opinion depends upon the meaning of the phrase "truck and load combined." If the word "load" means the burden carried *in* the vehicle, then the tractor must be considered as a separate unit and its maximum capacity must be rated just the same as if it were an ordinary motor vehicle. If the word "load" means the burden transported or propelled by the vehicle, then the ten-ton carrying capacity would be the sum total of the burden resting on the vehicle and the burden propelled by it. In other words, does "load" mean the weight resting on the vehicle, or does it also refer to traction and propelling?

The Century Dictionary defines "load" as follows: "That which is carried; a burden laid on or placed in anything or taken up for conveyance." Perhaps this definition could be broadened to such an extent so as to include the weight of the trailer. However, a careful reading of Section 149 convinces me that the Legislature had in mind weight rather than traction. The Legislature provided that no motor vehicle shall be operated "in which the limit of load per inch in width of tire shall exceed six hundred and fifty pounds, without special permission of the State Roads Commission in the case of a road under its jurisdiction, or the permission of the city authorities in the case of a city street, or the permission of the county authorities in the case of a county highway." This prohibition is contained in the same sentence as the inhibition set forth above.

Apparently the Legislature knew of the existence of trailers, because Section 141 specially provides a fee for the registration of trailers. A $10.00 charge is made for trailers with a capacity of one ton or less, and $20.00 additional for each additional ton of carrying capacity or fraction thereof. It follows, from what has been said above, that the Legislature did not see fit to limit the combined weight of a train of two or more vehicles propelled by motor beyond the limitation of ten tons for each unit of the train. Therefore, in considering whether or not a train of such units violates the law, the test is whether or not any one of the units violates the law. If no one of the units violates the law, there is no provision restricting the combined weight beyond the unit weight. If there is a motor train of two vehicles, each unit weighing ten tons, no violation of the law has been committed, although the total weight is twenty tons. If, however, the first unit weighs twelve tons and the second unit weighs one ton, there is a violation of the law, because the first unit weighs twelve tons, although the combined weight of all eight wheels is only thirteen tons. The weight of a unit includes both the load and the weight of the vehicle.

Trailers are vehicles resting exclusively upon their own weight, which must be attached to and drawn by other vehicles possessing motive power. The semi-trailer, however, is so constructed as always to impose a portion of its weight upon the vehicle by which it is drawn. I am informed that the motor vehicle to which the semi-trailer is attached never carries an independent load, but merely furnishes support for the front end of the semi-trailer and provides the power by which the combination is propelled.

The question of the determination of the maximum load which may be borne by a semi-trailer is not free of difficulty. I think, however, it should be determined in the following manner: The semi-trailer itself possesses only two rear wheels. It is manifest that it cannot, by itself, perform any useful service, and that its construction contemplates that it shall be attached to and rest upon another vehicle possessing motive power, which vehicle we shall hereinafter designate as the tractor. It is only when this combination is made and the

rear wheels of the tractor become, as it were, the front wheels of the semi-trailer, bearing a part of the weight of the semi-trailer, that the semi-trailer becomes a vehicle capable of performing useful service. I feel, therefore, that the gross weight of ten tons prescribed by the law should be held to include the weight of the trailer, the weight of that portion of the tractor which rests upon its rear wheels and the weight of the load contained in the semi-trailer. I am informed that the weight resting upon the rear wheels of the tractor may be easily ascertained by running these wheels upon scales. Therefore, to determine the weight of load which may be carried in a semi-trailer, it is first necessary to add to the weight of the semi-trailer itself that portion of the weight of the tractor which rests upon the rear wheels thereof. The difference between this sum and the maximum weight allowed by law, ten tons, will represent the weight of load which may be carried in the semi-trailer.

Of course, this method of calculation is subject to the other provision of law which limits the weight of load per inch of tire surface to six hundred and fifty pounds.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—GOVERNMENT MACHINES—EXEMPTIONS FROM STATE LICENSE.

November 18, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: At different times since the passage of the Motor Vehicle Law of 1920 you have sent requests for opinions in reference to the status of motor vehicles owned by the United States Government in so far as registration and certificates of title are concerned. I have postponed determining these questions because I was very doubtful as to what the decision of the Supreme Court of the United States

would be in the case of William E. Johnson vs. State of Maryland.

On November 8th, 1920, the Supreme Court of the United States decided the Johnson case, which is known as No. 289, October Term, 1920. The transcript of the opinion has arrived, and I am, therefore, giving you my views on the various phases of the law, in the hope that they may be of some benefit in determining future questions which may arise, as well as those questions concerning which you have asked my opinion in the past.

I stated to you several times that the decision in the Johnson case could not be foretold with accuracy, and I am confirmed in my views to the extent that two of the Justices (Mr. Justice Pitney and Mr. Justice McReynolds) dissented from the opinion of the Court.

The Johnson case, as you will recall, was a test case to determine whether or not the State of Maryland can require chauffeurs, engaged in transporting the mail, to take out a State license. The Supreme Court answered this question in the negative, in the following language: "It seems to us that the immunity of the instruments of the United States from State control in the performance of their duties extends to a requirement that they desist from performance until they satisfy a State officer, upon examination, that they are competent for a necessary part of them and pay a fee for permission to go on. Such a requirement does not merely touch the Government servants remotely by a general rule of conduct; it lays hold of them in their specific attempt to obey orders and requires qualifications in addition to those that the Government has pronounced sufficient. It is the duty of the Department to employ persons competent for their work, and that duty, it must be presumed, has been performed."

As a result of this decision I have formulated certain conclusions which, I think, will be helpful to you in the administration of your Department, and which I hereby submit, as follows:

1. In so far as registration markers are concerned, a motor vehicle owned and operated by the Government of the United States, for Government purposes, need not bear a Maryland

registration tag. You are not required by law to issue such a tag for such a vehicle. You may decline to do so, except upon the payment of the usual fee, but the Government may dispense with the tag and operate its vehicle without Maryland registration markers.

2. This immunity extends only to vehicles which are used for Governmental purposes. If a Government machine is used for social or personal purposes, the Maryland law becomes immediately operative and registration tags are required.

3. The chauffeur of such a Government machine, while on official business for his Government, and acting within the scope of his employment, need not have a license to drive a motor vehicle. However, if the chauffeur drives a motor vehicle, Government owned or otherwise, on personal business and not in pursuance of business of the United States Government, he must have a license and is amenable to all of the laws of the State of Maryland regarding chauffeurs and operators.

4. In cases of violations of the traffic laws, including the rules of the road, by chauffeurs operating Government cars on Government business, I recommend that the name of the chauffeur be taken, and he be summoned to the proper court having jurisdiction over the trial of such violations for the trial of his case. If he fails to come a warrant should be issued for his arrest and he should be brought before the court by force, if necessary. His case should be prosecuted by you to the same extent, and no more, as that of any private citizen. The decision of the Supreme Court in no way gives exemption from arrest to Federal employees who violate traffic laws. If the Federal employee is able to show orders from his proper superior which necessitated a breaking of the laws, it may be that such authorization will constitute a good defense. However, that is a judicial matter, and the only thing that you are concerned with is the arrest and institution of the prosecution.

5. If, at the hearing it develops that the chauffeur was engaged in personal business he should be prosecuted to the same extent, and no more, as if he were a private citizen. If his driving was reckless (and he was not on official business for the United States Government) his license to drive may be revoked if he has an operator's license to drive a motor vehicle.

This would not prohibit him from subsequently driving a Government machine on Government business.

6. In so far as registration of title is concerned, the Government cannot be required to take out a title certificate for a car owned or operated by it, or to pay the title fee therefor. In all cases in which the Government requests a title you may, if you desire, issue the same upon the payment of the one dollar title fee. In all cases in which the title fee has already been paid for the registration of Government machines, you should return the dollar upon surrender of the title certificate. The Government, therefore, will have the option of paying the dollar and securing the additional protection for its machine, or if it declines to pay the dollar, it must be content with the protection rendered under the old law, and it cannot avail itself of the additional protection afforded by the titling of its vehicles.

In reference to the three Pierce-Arrow cars loaned to the President of the United States by the Pierce-Arrow Company, and used by him, my opinion is as follows: The title remains in the Pierce-Arrow Company. You state that the Pierce-Arrow Company considers this an advertisement for its car, and that, therefore, in your opinion it should be required to pay the usual registration fee. In my judgment the motive of the Pierce-Arrow Company is immaterial. If these cars are used by the President of the United States on governmental or official business, acting within the scope of the authority reposed in him by the Constitution and laws of the United States, the car in which he rides is exempt from the Maryland law in so far as the payment of any fees whatsoever are concerned. If, however, the President uses these cars for pleasure, entirely disconnected from his official business and not in the performance of a governmental function, his case must be determined by the same rules which govern any other Federal employee or office holder; that is to say, the chauffeur must be licensed; his cars must be titled; they must bear Maryland registration markers, and the same fee must be paid in each case as is required of the ordinary citizen. The true test, and the only test, is the function or duty which the motor car is performing on the

Maryland roads. If it is governmental, it is exempt; if not, it has no immunity.

You may think that the rules which I have laid down will be subject to great abuse. They may be abused, but not necessarily so. It seems to me that the Federal officials residing within the State of Maryland should be notified of this ruling. They should be given an opportunity to comply with its terms. Your men should be instructed in all cases to be on the lookout for the unauthorized use of cars by Federal officials. The apprehension and conviction of any violators will be a protection to the Federal Government as well as to the State Government. If Government chauffeurs are found driving cars on Sundays without proper credentials and markers, they should be arrested and should be required to prove that they are on Government business. If they are unable to do so appropriate penalties should be inflicted, and the United States Government should be notified.

Whenever possible, I would avoid summary arrests in cases of this kind. The powers of the Federal Government should be respected, and the immediate arrest of a man performing Federal duties by any of your officers might seriously inconvenience the Government.

Our department will be glad to co-operate with you in further defining your rights and powers in such cases.

This opinion is intended as an answer to your letter of October 25th, in re: Pierce-Arrow Company; your letter of October 7th, in re: United States Housing Corporation; your letter of August 22nd, in re: United States Shipping Board, Emergency Fleet Corporation; your letter of August 6th, in re: Motor Transport Corp.; your letter of November 10th, United States Shipping Board, in re: Dodge automobile transferred to Baltimore from Cleveland, and other verbal requests.

I shall send a copy of this opinion to each one of the Government officials who have requested a ruling on any of the questions embraced within this opinion.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

Motor Vehicles—Weights—Powers of Commissioner—Police Power.

November 19, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

Dear Sir: I desire to acknowledge receipt of your letter of November 15th, enclosing a letter from E. Allan Sauerwein, Jr., Esq., attorney for the Baltimore Automobile Dealers' Association, in which Mr. Sauerwein makes certain suggestions concerning my opinion to you of August 26, 1920, which construed Section 149, sub-section 2 of the Motor Vehicle Law. Mr. Sauerwein is in sympathy with the effect of the opinion, but denies its correctness in point of law.

Section 149, sub-section 2, provides in part as follows: "And no motor vehicle of which the weight of the truck and load combined exceeds ten tons shall be operated on any highway of the State." It is suggested that inasmuch as earlier statutes permitted a gross weight of fourteen tons, the Legislature had no power to deny the owners of trucks which were in use at the time of the passage of the Act of 1920 the right to use them to the extent permitted prior to that act. It is also suggested that there was a very general sentiment in favor of bringing a test case for the determination of this question.

It was pointed out in the opinion of August 23rd, that the purpose of this section of the Act of 1920 was to reduce the maximum limit to ten tons. The State highways are owned by the State of Maryland and perform a governmental function. The limitation thus referred to is manifestly directed to the promotion of the public safety and welfare, and its enactment, therefore, is within the police power of the State. There can be no doubt that the Legislature in the exercise of its power may reduce the maximum weight of trucks which are permitted to use the State highways. The Legislature cannot bargain away its police powers, and even if the Legislature passed a law permitting the truck and load to reach a maximum of fourteen tons, and further stated that the law was irrepealable, the following Legislature could repeal the law just as if the section making

it irrepealable was omitted. The owners of seven-ton trucks have no vested rights in the highways of the State. No contractual obligation is impaired, and they have not been deprived of the use of their property without due process of law; nor is the classification unreasonable or arbitrary.

I am, therefore, of the opinion that this section of the law as applied to motor trucks in operation prior to its passage is valid and effective. The question of its constitutionality was considered by me when the original opinion was written, and no authorities have been cited to me which would in any way weaken my former convictions.

It is also suggested that you, as Automobile Commissioner, by construing the law in a certain manner, which I will take up in a moment, may reduce license fees, and thereby obviate the necessity of a test case. It is suggested that inasmuch as Class B of Section 141 of the Motor Vehicle Law provides that the fee for the registration of motor vehicles equipped with solid tires varies from $20.00 for vehicles with a capacity of not more than one ton, to $500.00 for vehicles whose capacity is from six to seven tons, you, as Automobile Commissioner, may register a seven-ton truck as a three-ton truck, with a registration fee of only $60.00. The theory upon which you are requested to do this is that, inasmuch as I have ruled that a truck rated as seven tons can only carry a load of three tons, it is equitable to charge the owner of the truck the same license fee as a three-ton truck, because he is only permitted to carry the same load as a three-ton truck; or it is suggested that if the intention of the Legislature in fixing the registration fee was to base it upon the weight on the road (including truck and load) and not the revenue derived from the truck, then such a truck should pay no more than $150.00, because the weight of the truck with a three-ton load would be equal to the weight of a five-ton truck with a five-ton load.

Attention is also called to the fact that you have been given the power by Section 141 of the Motor Vehicle Law "*in disputed* cases to determine the classification in which any motor vehicle belongs under any other provisions of this sub-title." I have already ruled informally that the Legislature in giving you this power intended to limit it to *disputed cases*. This is

not a mere arbitrary authority. If you were permitted to rate a seven-ton truck as a three-ton truck where there can be no real dispute as to the rated carrying capacity of the truck, it would seem to follow that you could rate a three-ton truck as a seven-ton truck. Obviously what the Legislature intended was this: There might arise certain cases where a manufacturer would claim a larger carrying capacity for his truck than the capacity to which it was entitled, and a physical demonstration might show that the rated capacity was too high. Other cases might arise where the manufacturer would deliberately rate his truck too low, so that the purchaser of the truck would be able to place himself in a less expensive classification. In those cases, upon the request of any one interested, or upon your own initiative, you have a quasi judicial power to determine the correct rating. This power cannot be abused by you. The seven-ton trucks referred to throughout this opinion are trucks which have been rated by the manufacturer as seven-ton trucks; by the purchaser as seven-ton trucks, and have been licensed by you as such. The law has changed, but the rated capacity of the trucks has not. It would not serve any useful purpose to change the rated capacity of the trucks in order to change the effect of a Statute of the Legislature. In my judgment, you are bound by the legislative intent as expressed in the act; to do otherwise would be to sacrifice principle and law to avoid a test case. I cannot see my way clear to permit a construction to be placed upon the law which, in my judgment, would thwart the manifest intention of the Legislature.

It may be that the change in the act of the Legislature has worked hardship in individual cases. However, it is evident that the Legislature intended primarily to protect the State roads, which have been constructed at a cost of many millions of dollars. The recent destruction of the roads brought about by the heavy trucks which the United States Army employed in transporting chattels and food to the Cantonments during the war may have largely influenced the Legislature.

I see no reason to depart from my opinion of August 26, 1920. I desire to add, however, that you have no right to rate a seven-ton truck as a three-ton truck. The power of the Legislature over the State roads is sustained by a long line of de-

cisions here and elsewhere, and any deviation from the law in order to avoid the necessity of the trial of a test case would, in my judgment, be unjustifiable.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—COMMISSIONER—DUTIES OF—UNNECESSARY TO EXAMINE COURT RECORDS.

November 27, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: Yours of November 23rd. You desire an opinion whether, in the exercise of the duty imposed upon you by the recent act of the Legislature to issue certificates of title to motor vehicles, it is necessary for you to examine the records in the courts of Baltimore City and the counties. I do not think that the Legislature intended to impose any such arduous duty upon you. The law simply states that "the Commissioner shall use reasonable diligence in ascertaining whether or not the facts stated in said application for a certificate of title are true." You have required that all applications for certificates shall be supported by affidavit, and in the absence of any suspicious circumstances, I feel that you have thereby met the requirement to exercise reasonable diligence.

The records are available if it becomes necessary in special cases to make investigation, but it would scarcely have been contemplated that you should examine the records not only in Baltimore City, but in every county in the State before issuing your certificates. This would have required you to be represented by title experts in every jurisdiction in the State, and in the absence of any express directions to this effect I cannot believe that the Legislature had any such purpose in mind.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—CERTIFICATE OF TITLE—EXTRADITION.

November 29, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: In your letter of November 22nd you stated that a certain Clarence B. Wilson, who had secured a certificate of title for a 1917 Reo delivery truck, made affidavit that there was only one lien of $100.00 against the car, and that you now find that his affidavit was false, inasmuch as there were, at the time it was made, several liens against this car. You also stated that on November 3rd, the time of selling the car, he made oath that there were no liens whatsoever against the car, and thereupon the purchaser was allowed to take out title to the same. Wilson, therefore, appears to have obtained money under false pretenses. He is now living in Virginia, and you now wish to be advised as to the procedure proper to be followed in securing his conviction.

I think that you should present the facts to the office of the State's Attorney for Baltimore City, assuming, of course, that the false affidavit was made in Baltimore City, and that the money was obtained by fraud in Baltimore City. If my assumption is not correct, the facts should be presented to the State's Attorney for the County in which the crime was committed. Wilson should then be indicted by the Grand Jury for obtaining money under false pretenses, and for violation of Section 157 of the Motor Vehicle Law. I think it best to have Wilson indicted by the jury instead of having a warrant issued by a magistrate, as extradition will probably be necessary to bring him back to Maryland. You suggest that there might be some other method of bringing him back which is more expeditious than extradition; however, there is no other method. Of course, Wilson may waive extradition and come back voluntarily with the officer, but if he insists upon the legal formalities, there is no other means except formal extradition. Should he refuse to come back to Maryland, the Governor of Maryland will issue a warrant of requisition, which is then made the basis of ex-

MOTOR VEHICLES—CERTIFICATE OF TITLE—EXTRADITION.

November 29, 1920.

Colonel E. Austin Baughman,
Commissioner of Motor Vehicles,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: In your letter of November 22nd you stated that a certain Clarence B. Wilson, who had secured a certificate of title for a 1917 Reo delivery truck, made affidavit that there was only one lien of $100.00 against the car, and that you now find that his affidavit was false, inasmuch as there were, at the time it was made, several liens against this car. You also stated that on November 3rd, the time of selling the car, he made oath that there were no liens whatsoever against the car, and thereupon the purchaser was allowed to take out title to the same. Wilson, therefore, appears to have obtained money under false pretenses. He is now living in Virginia, and you now wish to be advised as to the procedure proper to be followed in securing his conviction.

I think that you should present the facts to the office of the State's Attorney for Baltimore City, assuming, of course, that the false affidavit was made in Baltimore City, and that the money was obtained by fraud in Baltimore City. If my assumption is not correct, the facts should be presented to the State's Attorney for the County in which the crime was committed. Wilson should then be indicted by the Grand Jury for obtaining money under false pretenses, and for violation of Section 157 of the Motor Vehicle Law. I think it best to have Wilson indicted by the jury instead of having a warrant issued by a magistrate, as extradition will probably be necessary to bring him back to Maryland. You suggest that there might be some other method of bringing him back which is more expeditious than extradition; however, there is no other method. Of course, Wilson may waive extradition and come back voluntarily with the officer, but if he insists upon the legal formalities, there is no other means except formal extradition. Should he refuse to come back to Maryland, the Governor of Maryland will issue a warrant of requisition, which is then made the basis of ex-

tradition proceedings before the Governor of the State in which the party charged is apprehended. If the Governor honors this requisition the traverser is delivered into the custody of an agent of the Governor of Maryland, and is then physically returned by the agent named by the Governor of Maryland in his requisition warrant.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

MOTOR VEHICLES—FINES—DISPOSITION THEREOF.

December 9, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: In your letter of December 8th you inquire whether the Clerk of the Circuit Court for Charles County may deduct 5% commission from a fine imposed for a violation of the motor vehicle law. The general law of the State authorizes this commission. Section 12 of Article 36 of the Code as re-enacted by Chapter 443 of the Acts of 1920 fixes fees to which clerks of the Circuit Courts are entitled, and contains this language:

> "For receiving and paying over all public money received from license, fine or otherwise, five per centum."

I note from the statement attached to your letter that after the deduction of five per cent. one half of the residue was paid by the clerk to the treasurer of the Law Library of Charles County. As heretofore outlined in a decision dealing with a similar disposition of a fine imposed by the Circuit Court of Cecil County for a violation of the motor vehicle law, I am of the opinion that you are entitled to all of this fine. I assume that you have taken the same view and have notified the clerk of the Court accordingly.

There appears to be no recent local legislation in favor of the Bar Association of Charles County which would affect my former ruling.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

Motor Vehicles—Transportation of Passengers—Proper Classification.

December 16, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

My Dear Colonel Baughman: Your letter of December 14th presented this problem: The Metropolitan Club of Washington has arranged for the operation of certain motor vehicles for the transportation of club members from the Metropolitan Club in the District of Columbia to the Chevy Chase Club in Maryland. The automobiles in question are used exclusively by club members, to whom a certain fee for the service is charged, which is not collected at the time, but added to their respective bills and paid at the time of the settlement thereof. The motor vehicles are registered in the name of the man by whom they are actually operated and to whom all fees collected in the manner indicated above are paid after deducting a small commission to the club. You ask me to determine the proper classification of this registration.

The private owner may transport members of his family, guests and friends, to whom no charge is made, as freely and frequently as he desires, under his Class A license. The motor vehicle law, however, in dealing with transportation of passengers for hire, reads as follows: "Class F, $1.20 per horse power or fraction thereof in the case of all motor vehicles operating for the purpose of *transporting persons for hire* upon any of the public highways of this State, other than motor vehicles operating on fixed schedules." The motor vehicles of the Metropolitan Club clearly belong to Class F. They are operated for the single purpose of transporting the members of the Metropolitan Club over the highways of the State. Under the terms of the license the licensee may transport for hire any persons whatsoever upon any of the highways of Maryland. The fact that he voluntarily limits his patrons to members of a single club, and only uses one highway, does not change the group under which the law requires him to be classified.

It is, therefore, my opinion that these particular motor vehicles should be placed in Class F.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—REVOCATION AND REINSTATEMENT OF LICENSE—STATE'S ATTORNEY—POWER TO NON PROS.

December 22, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of December 21st you state that a young man in Washington County was convicted by a justice of the peace of operating a motor vehicle while under the influence of intoxicants, that he appealed to the Circuit Court, and that this appeal has been non prossed by the State's Attorney of that county. Pending the appeal, the young man was required to return his license to operate his motorcycle. He now seeks to secure again his license. You ask what your course should be in the matter.

The State's Attorney may, in the exercise of his discretion, non pros any case upon his docket. In this case his action practically amounts to a reversal of the conviction. Thereupon the licensee became entitled to a return of his license so far as the particular criminal action was concerned.

Section 145 of the Motor Vehicle Law confers upon you and your assistants the right, "after due hearing, upon not less than three days' notice in writing, said notice to be sent by registered letter to the address given by the operator when applying for his license certificate, which shall constitute sufficient form of notice to suspend or revoke the operator's license issued to any person for any cause which you may deem sufficient." To justify the exercise of this discretionary power it is not necessary that there shall first be a conviction for a criminal offense. If you desire to proceed further in this matter you may, therefore, give the notice required and take such action thereafter as may

seem to you to be proper. From your action an appeal may be taken to the Circuit Court of the county where the party resides.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—STATE'S ATTORNEY—POWER TO STET.

December 22, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

DEAR COLONEL BAUGHMAN: In your letter of December 18th you ask whether the State's Attorney has the right to stet an appeal which has been taken to court from the Traffic Court.

With the consent of the court and the counsel for the traverser, the State's Attorney may stet any case appearing upon his dockets, including such an appeal as you describe.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—DEALER'S LICENSES.

December 22, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

MY DEAR MR. BAUGHMAN: I desire to acknowledge the receipt of your letter of December 15th, in which you enclose a letter from Mr. H. L. Rose, who applies for two sets of license tags under dealer's classification; that is to say, Classification D, Section 141 of the Motor Vehicle Act.

Mr. Rose in his letter states that he is an adjuster, representing practically seventy-two insurance companies; that as adjuster for insurance companies it is part of his duty to recover

stolen cars in Maryland and other States and return them to Baltimore. He stated that usually the identification markers are removed, and for that reason he should be permitted to use a dealer's tag. The right to use a dealer's tag must exist, if at all, by virtue of the language of Section 141, Class D, above quoted. This reads in part as follows: "Twenty-five dollars ($25.00) for the first two sets of registration tags or markers issued each manufacturer or dealer in motor vehicles other than motorcycles, and fifteen dollars ($15) for each additional set of registration tags issued such manufacturer or dealer."

Obviously an insurance adjuster is not a manufacturer of automobiles. The act itself defines the word "dealer" as follows: "Section 134 provides that the term 'dealer' should be taken to include all individuals, firms or corporations actively engaged in the business of buying, selling or exchanging motor vehicles, and who have an established place of business."

This definition excludes Mr. Rose on several grounds. First, he had no established place of business as contemplated by the definition. Secondly, he does not sell or exchange motor vehicles. His entire duty consists in transporting them as agent or adjuster for an insurance company.

It is therefore my opinion that you are correct in stating that Mr. Rose's application for two sets of dealer's license tags should be denied.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MOTOR VEHICLES—LICENSES.

December 23, 1920.

Colonel E. Austin Baughman,
Motor Vehicle Commissioner,
Baltimore, Md.

MY DEAR COLONEL BAUGHMAN: The American Taxicab Company, Inc., of Washington, has notified you that it expects to rent, for periods of time varying in length, to different individuals certain motor vehicles owned by it. Those automo-

biles, during the rental period, will be under the absolute control of the persons renting the same and will be stored by them in such public or private garages as they may select. In your recent letter you requested me to advise you how these cars should be licensed.

It is true that these automobiles are hired cars, but in my judgment they should not be licensed under Class F of the Motor Vehicle Law, which covers "Motor vehicles operating for the purpose of transporting persons for hire." This class contemplates that the owner or operator of a car should hire it now to one person and now to another at a fixed price for the purpose of transportation without relinquishing to the passenger at any time the control of the car. Under the terms of the lease made by the American Taxicab Company, Inc., however, the car will pass absolutely out of the possession of the owner and into the hands and under the control of the lessee. From the standpoint of our motor vehicle law the lessee will thereupon become the owner.

"Section 134 defines the term "owner" to "include any person, firm, association or corporation owning a motor vehicle or having the exclusive use thereof under contract or purchase, lease, hire or rental thereof or otherwise." The situation presented, therefore, seems to be covered by the express language of the act, and, in my judgment, each car must be licensed as if the temporary lessee was the actual owner thereof.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONERS.

VOLSTEAD ACT—NO POWER TO RETURN STOLEN WHISKEY RECOVERED FROM THIEF.

February 10, 1920.

Board of Police Commissioners,
Baltimore, Md.

DEAR SIRS: I have your letter of January 24th, 1920, requesting me to advise you whether or not the Police Department may deliver to the claimants thereof certain whiskey now in its custody which was taken by it in connection with the arrest of persons charged with the larceny of the same before the Prohibition Amendment became effective, the accused having been tried and the cases disposed of since that time.

Section 3, Title 11, of the "National Prohibition Act" provides that "no person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, *transport*, import, export, *deliver*, furnish or *possess* any intoxicating liquor, except as authorized in this act, and all the provisions of this act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented." The exceptions referred to in this section are liquor for non-beverage purposes, for medicinal purposes and wine for sacramental purposes.

By Section 25 of the same act it is provided that "it shall be unlawful to have or possess any liquor or property designed for the manufacture of liquor intended for use in violating this title or which has been so used, and no *property rights* shall exist in such liquor or property, etc."

It is also declared in Section 26 of the same act that "when the Commissioner, his assistants, inspectors or any officer of the law shall discover any person in the act of transporting, in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law."

In view of these provisions of the law, I see no way by which the Police Department can lawfully deliver the whiskey in its possession to the claimants.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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POLICE COMMISSIONERS OF BALTIMORE CITY—RATES OF PAY OF RETIRED MEMBERS OF FORCE—WHEN INCREASE BECOMES EFFECTIVE.

March 5, 1920.

Josiah A. Kinsey, Esq.,
Board of Police Commissioners,
Baltimore, Md.

DEAR SIR: Replying to your inquiry of even date as to the rates of pay of members of the Police Department on the retired list, and the date on which those rates of pay went into effect, I beg to say that in view of the very positive provisions of Sections 777 and 777-1 of the Baltimore City Charter (revised edition of 1915), I am of the opinion that such members of the Department as are now on the retired list are entitled to one half of the salaries provided for by Chapter 3, Acts of 1920, as the active members, and that the increase in the rates of pay of such retired members became effective on the same date as the increase in the pay of active members.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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POLICE COMMISSIONERS OF BALTIMORE CITY—EXAMINATION FOR SUPERINTENDENT OF POLICE SIGNAL AND TELEPHONE SERVICE—WHO MAY TAKE—HOW CONDUCTED—ELIGIBILITY LIST.

March 6, 1920.

Charles M. Thompson, Esq.,
Secty. Board of Police Examiners,
Baltimore, Md.

MY DEAR SIR: Your letter of March 4th quoting a letter to you from the Board of Police Commissioners of Baltimore

City with regard to Chapter 3 of the Acts of Assembly of 1920 providing for the appointment of two additional captains of police has just reached me. I note your request for a ruling as to examination for the position of captain to be superintendent of the Police Signal and Telephone Service. More specifically you ask:

> "(1) Shall a special examination be held for the sole benefit of Lieutenant Boone, and to the exclusion of all other members of the Department?
>
> "(2) If such a special examination shall be directed, shall it be conducted along the lines usually followed by this Board for promotions to the grade indicated, or shall it be of a technical nature, with special bearing on electricity and telephone service?
>
> "(3) We have an eligible list in force, as provided by law, and on which the name of Lieutenant Boone does not appear. Shall this list prevail with respect to the promotion indicated by the Board of Police Commissioners?"

Section 745-D of the Baltimore City Charter (1915 Revision) speaks in one place of a "graded list, to be made up for the grade or position * * *." This would seem to indicate an intention that there should be graded lists for special positions as well as for general grades in the service, and this, I think, was the intention of the law, although this interpretation might seem to be rendered somewhat doubtful by the expression "position of probation," which is also used in Section 745-D.

On the whole, I am of the opinion that:

(1) A special examination may be held for the purpose of making a graded list for the position of captain to be superintendent of the Police Signal and Telephone Service, and that all lieutenants would be entitled to take such examination.

(2) Such examination should be of a technical nature, with special bearing on qualifications for promotion to the *position* to be filled rather than along the lines usually followed for promotion to the *grade* indicated.

(3) The eligible list now in force for promotion to the grade of captain need not prevail with respect to promotion to the position of superintendent of the Police Signal and Telephone Service, but another list may be made up for that position alone,

even though, as a result of the special examination mentioned herein, that list should consist of only one name.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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POLICE COMMISSIONERS OF BALTIMORE CITY—VOLSTEAD ACT—RIGHT TO RETURN LIQUOR TO OWNER HOLDING FEDERAL PERMIT.

March 18, 1920.

Board of Police Commissioners,
Baltimore, Md.

GENTLEMEN: Mr. George L. Marburger, 2225 Wilkens Avenue, tells me that you have declined to turn over to him three quarts and one half pint of whiskey which is now in the property room of the Police Department, having been placed there in connection with a case now pending in the Circuit Court for Howard County.

Mr. Marburger informs me that you are not holding this whiskey to be used in evidence and would be ready to turn it over to him were it not for my opinion dated February 10th, advising you that intoxicating liquor should not be delivered by your Board to any one.

Mr. Marburger, however, has shown me a permit from the Federal Prohibition Director to move the whiskey in question. Such a permit seems to meet the difficulties suggested in my letter above referred to, and is, I think, a sufficient authorization under the National Prohibition Act for the delivery of the whiskey in question, and for its removal. I therefore rule that Mr. Marburger is entitled to receive from you the whiskey belonging to him now in your possession, and you may deliver the same to him without any infraction of law. This decision, of course, applies to all similar cases.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONERS OF BALTIMORE CITY—VOLSTEAD ACT —DUTY TO RETURN LIQUOR TO OWNER FROM WHOM POLICE IMPROPERLY TOOK IT.

April 1, 1920.

Board of Police Commissioners,
Baltimore, Md.

GENTLEMEN: Some weeks ago I wrote to you concerning your right to deliver whiskey to certain persons claiming to be the owners thereof.

My understanding of the facts in that case was that the whiskey had been stolen, was found in the possession of the thief by the Police Department, held by it until after the trial and conviction of the thief, and was then demanded by the owners.

In your letter of March 29th you enclose a communication from George L. Marburger, asking for the return to him of certain whiskey taken from his home by the Police Department on October 8th, 1919. I understand that the search was made because of certain difficulties in which Marburger had become involved, but no charges involving this whiskey were ever substantiated against him, and no prosecution was instituted. He has secured from the Federal Prohibition Director of Maryland a permit authorizing him to carry said whiskey from the Courthouse to his home, and in view of my former ruling, you now ask for a statement from me as to your duty in the premises.

I see no reason why Mr. Marburger should not be allowed to receive this whiskey. His original possession, which was legal, would have remained undisturbed except for the seizure by your representatives, which subsequent events have proven to have been improper. This taking, having been unjustified, must be considered as nugatory *ab initio*, the legal effect being that, in contemplation of law, the original possession remains unbroken.

In the former case the Police Department came properly in the possession of the liquor, and was in no way responsible for the loss of its custody by the owner. Here, however, it was the Police Department itself which violated the possessory right of the owner. I therefore feel that Mr. Marburger should be al-

lowed to take this whiskey, now in your storeroom, and under his permit to carry it back to his home.

I am returning herein Mr. Marburger's letter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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POLICE COMMISSIONERS OF BALTIMORE CITY—CHAPTER 677, ACTS OF 1920, CLASSIFYING TAXICABS, ETC., AS COMMON CARRIERS—LEGAL EFFECT OF.

May 22, 1920.

Board of Police Commissioners,
Baltimore, Md.

GENTLEMEN: Replying to your letter of May 10th, in which you request me to give you my opinion as to the effect upon the responsibilities and duties of the Board of Police Commissioners after June 1st, 1920, occasioned by Chapter 677 of the Acts of 1920, I herewith submit my opinion.

It will be noted at the outset that Chapter 677, supra, to be codified as Section 424A of Article 23 of the Code, does not change the law as to hackney carriages drawn by horses. It has reference only to taxicabs or other motor vehicles used in transportation of passengers within the State of Maryland.

Therefore, Sections 281, 282, 283, 284, 285, 286 and 287 remain unaltered in so far as hackney carriages drawn by horse or other animal power are concerned.

Section 281 is repealed by implication so far as motor vehicles are concerned. The power to determine and fix rates of fare is transferred to the Public Service Commission. Section 282 is also repealed in so far as motor vehicles are concerned.

Section 283 is not affected by Chapter 677 of the Acts of 1920 and remains in force as heretofore. Section 284 is repealed in so far as motor vehicles are concerned, but is in full force and effect as to vehicles drawn by horses. Sections 285 and 286 remain in full force and effect. Section 1 of Ordinance 139, approved June 4, 1908, is unaffected by the Act of 1920.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—NO BOND REQUIRED AS TREASURER OF SPECIAL FUND NOR AS TREASURER OF BOARD OF POLICE COMMISSIONERS.

June 9, 1920.

Josiah A. Kinsey, Esq.,
Secretary to Police Commissioner,
Court House,
Baltimore, Md.

DEAR SIR: Your letter of June 3rd. You call attention to the provisions of Section 776A of the Baltimore City Charter (1915 Revision) to the effect that the Board of Police Commissioners and their successors shall be trustees of the Special Fund of the Department, and the Treasurer of the Board shall be the Treasurer of the Special Fund, and shall, as such, execute and deliver to the Board a bond in the penal sum of $5,000, etc. You request my opinion as to whether this bond shall be furnished by the Police Commissioner, and if so, to whom it shall be furnished, in view of the provisions of Chapter 559 of the Acts of 1920, providing for the appointment of a single Commissioner instead of a board of three members.

The act to which reference is made contains the following provisions: "The said Police Commissioner shall have and exercise all the powers exercised by the Board of Police Commissioners of Baltimore City, and wherever the term or expression "Board of Police Commissioners" is used in any of the public local or public general laws of this State, such term or expression shall be construed as applying to the Police Commissioner created by this section."

It would seem that under the provisions of Section 776A the Board of Police Commissioners was accountable for the fund in question, and that the bond given by each commissioner for the faithful performance of his duties as provided by Section 740 of the Charter would have been liable in a suit by any person interested in the proper application of this fund. The object of the provision requiring the Treasurer to give bond to the Commissioners was evidently to furnish the Commissioners security in the event that they, by reason of their position as trustees

of the Special Fund, should be required to make good any default of the treasurer of that fund.

In my opinion, therefore, there is no reason why the Commissioner, who now exercises all the powers formerly exercised by the Board, and therefore, of course, all those exercised by any member of the Board, should give any bond as treasurer of the Special Fund in addition to that required of him as Commissioner as above set forth, inasmuch as that bond would be liable for any failure on his part to discharge any duties which devolve upon him as trustee or as treasurer of the Special Fund.

With regard to your verbal inquiry made to Mr. Spencer of this office on June 7th with reference to the question whether the requirement that the Treasurer of the Board of Police Commissioners shall give bond as such in the penalty of ten thousand dollars in addition to the bond for ten thousand dollars required of him as a member of the Board of Police Commissioners, applies to the single commissioner who has all the powers of the Board, I would say that in my opinion no such bond is required of the Commissioner. It is true that the bond formerly required of the Treasurer was to be given to the State of Maryland, and not to the Board of Police Commissioners, as in the case of the Treasurer of the Special Fund. The provision, however, contained in Chapter 559 of the Acts of 1920, to the effect that the Commissioner shall have and exercise all the powers exercised by the Board of Police Commissioners, and that wherever the term "Board of Police Commissioners" is used in any law that term shall be construed as applying to the Police Commissioner created by that act, does not, in my opinion, mean that every provision in the pre-existing law with regard to any member of the Board shall apply to the Commissioner so created. This being so, it seems clear that when the Legislature provided by Chapter 559 that the Commissioner shall enter into a bond in the penalty of ten thousand dollars conditioned for the faithful discharge of his duties as such Commissioner, the plain intent was that no other bond should be required of the Commissioner and that all the duties which might devolve upon him in any capacity should be within the condition of that bond.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—LICENSE OF BUSINESS OPERATED WITH PLACE OF PROSTITUTION—POWER TO REVOKE.

June 19, 1920.

Charles D. Gaither, Esq.,
Police Commissioner,
Baltimore, Md.

DEAR SIR: I beg to acknowledge receipt of your letter of the 8th instant, in which you enclose a copy of the recent Act of the Legislature, which provides for the revocation of the license of any business operated in connection with a place of prostitution or assignation. You state that you understand this law to mean that whenever you have reason to believe, as a result of your own investigation, or the written complaint of three or more citizens, that any person engaged in any business for which a license has been issued by the State or the City of Baltimore, is conducting that business in connection with a place of prostitution or assignation, you have the power to revoke such license, provided, however, that you first give a public hearing in the matter within fifteen days after your investigation of the above mentioned written complaint, and are satisfied, as a result of such hearing, that the person suspected or complained of is guilty. You further state that it is your understanding of the law that no license thus revoked may be reissued within a period of six months following the revocation, unless the application for a re-issue shall be approved by you, and that an appeal from your action may be taken to the Criminal Court of Baltimore City. You then ask me to advise you as to the correctness of your views in this matter.

I desire to say that my understanding of the law agrees entirely with your own. The law in question confers the power of revocation upon "the Board of Police Commissioners in and for the City of Baltimore," but the act substituting a single Police Commissioner for Baltimore City in place of three commissioners who formerly constituted the Board, expressly declares that "wherever the term or expression 'Board of Police Commissioners' is used in any of the public local or public general laws of this State, such term or expression shall be con-

strued as applying to the Police Commissioner created by this section." I think that under this language it is perfectly clear that you are clothed with full power to exercise the powers described in the act above referred to.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—VOLSTEAD ACT—NO DUTY OF POLICE TO ENFORCE—RIGHT OF FEDERAL PROHIBITION OFFICERS TO EMPLOY PERSONS WITH CRIMINAL RECORDS—EXTENT OF AUTHORITY OF FEDERAL AGENTS.

June 23, 1920.

Josiah A. Kinsey, Esq.,
Secretary to Police Commissioner,
Baltimore, Md.

MY DEAR SIR: I beg to reply to your recent letter referring to the arrest by the police of a certain August Julius, agent of the Government in the enforcement of the prohibition regulations, and asking me to advise you,

1. What right is vested in the Federal prohibition officers to employ persons possessing, as did Julius, criminal records?

2. What is the extent of the authority of such agents?

3. What are the responsibilities and duties of the members of the Baltimore Police Department in the enforcement of the Volstead Act?

I shall endeavor to answer these questions seriatim:

1. Section 2 of Title II of the National Prohibition Act (all sections of Title II, except Sections 1, 27, 37 and 38, becoming effective upon the date when the Eighteenth Amendment went into effect and constituting, therefore, the only peace time portions of the Act) imposes the duty of investigating and reporting violations of the Act upon "the Commissioner of Internal Revenue, his assistants, agents and inspectors," and Section 28 of Title II clothes the same parties with "all the power

and protection in the enforcement of the Act or any provision thereof which is conferred by law for the enforcement of existing laws relating to the manufacture or sale of intoxicating liquors under the laws of the United States." The Act nowhere prescribes qualifications for or fixes standards of character of the persons who may be employed as "assistants, agents and inspectors," and the matter of their selection would seem to rest entirely in the discretion of the Commissioner of Internal Revenue and his representatives. The sole inquiry in a case of this kind would be as to whether persons assuming to act for the Government had been regularly and legally appointed as "an assistant, agent or inspector" of the Commissioner of Internal Revenue.

2. Even the duly constituted officials of the Government, as above defined, have no authority to make arrests upon mere suspicion, but must first be armed with warrants or must arrest upon view. An arrest of any person discovered in the act of violating the Volstead Act may be made without warrant. State vs. Quinn (S. C.), 3 A. L. R. 1500. The same rule also applies to seizure. "A warrant to seize is required only in those instances where the seizure is assisted by a necessary search." The Government agents have no authority to make searches without warrants. State vs. Marxhausen (Mich.), 3 A. L. R. 1505.

3. This question is a most important one, involving a general inquiry into the duty of State officers in the enforcement of Federal Statutes.

It has been suggested that the oath of a policeman, taken upon the assumption of his duties and including the promise to support the Constitution of the United States, creates an obligation to become an active Federal enforcement officer, but the oath of the policeman is the Constitutional oath taken by every official in Maryland, and obviously imposes no responsibility upon those assuming it to make arrests and execute warrants. The support of the Constitution here contemplated is allegiance to its principles and loyalty to the Government founded upon it as demonstrated in the personal conduct of the official.

The duties of the Baltimore police, as particularly enumerated in Section 744 of the Revised Edition of the City Charter,

embrace no enforcement of Federal laws, but are confined to "all laws and ordinances of the Mayor and Council of Baltimore or any law of the State which may be properly enforceable by the police force."

The question must, therefore, be discussed generally. In Wyman's Administrative Law, Section 55, the statement is made that "the National Administration in the United States constitutes a complete system separate altogether from the State Administration. This is not indispensable in a Federal Government. In some such Governments the officers of the State do work for the federation. There is no such situation in the United States; indeed no officer of the State as an officer of his State has functions to perform for the United States by virtue of that position, so separate are these administrations in point of law." Similar statements of the law are given by other writers, and the principle seems generally to have been recognized that no official of the State or City has, by virtue of that position, duties to perform in behalf of the National Government, certainly in the absence of definite statutory direction."

Several decisions of the U. S. Supreme Court throw some light on the situation. In the case of Dallemagne vs. Moisan, 197 U. S. 169, an arrest of a French seaman had been made in San Francisco by the Chief of Police upon the requisition of the French Consul. A treaty between the United States and France provided for the arrest of seamen of the latter country by our local authorities at the request of French Consuls, but the statute enacted by Congress for the execution of the treaty directed that the application for arrest might be made "to any Court of Record of the United States or any Judge thereof, or to any Commissioner appointed under the laws of the United States," and because the request had not been made to or executed by any of the officials so designated, the Court declared the arrest to be illegal. In other words, an arrest voluntarily made by the Chief of Police was invalid because no statute of Congress clothed him with power to act in that capacity. In the same case, the Court states that "it has long been held that the power may be conferred upon a State officer as such to execute a duty imposed under an Act of Congress, and the officer *may* execute the same, unless its execution is prohibited

by the Constitution or legislation of the State." Citing Prigg vs. Penna., 16 Pet. 622; Robertson vs. Baldwin, 165 U. S. 275. These cases decide that a local official *may* perform such duties, when authorized by an Act of Congress so to do, but do not determine that he is under compulsion to do so.

It would appear, therefore, that Congress could enact a law authorizing a State officer to arrest persons violating Federal Statutes. Whether this can be done in connection with the enforcement of the Eighteenth Amendment, in view of its peculiar provisions, and whether a State officer would be bound to exercise such authority, are doubtful questions not necessary for me now to decide. Congress has not seen fit to confer or to attempt to confer any authority upon a State officer to enforce the provisions of the National Prohibition Act, commonly known as the Volstead Act, and, therefore, under the decisions above cited, no State official owes a duty as to its enforcement.

Since the recent decision of the Supreme Court this Act is now effective in Maryland and may be enforced in this State, but the duty of enforcement lies exclusively with the officials designated in the Act itself, and the policemen of Baltimore and all other State officials are under no compulsion to render aid therein.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—EXAMINATION OF PATROLMAN FOR RETIREMENT FOR PHYSICAL DISABILITY —CANNOT BE COMPELLED TO UNDERGO AN OPERATION.

July 10, 1920.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

DEAR GENERAL GAITHER: Replying to your inquiry in reference to the case of Patrolman Frederick Roesler, who has applied to you for an examination by the Police Physicians with a view of retiring on half pay on the ground that he is physi-

cally unfit to perform active duty, I submit herewith my opinion.

The facts as outlined in your several letters upon which this opinion is based are as follows: Patrolman Roesler was examined by the Police Physicians on April 26th, 1920, and was reported fit for active duty. The report states that Patrolman Roesler was suffering from varicose veins of the left thigh, resulting from unknown causes, and that although this condition is painful, the officer could be cured by an operation, and that otherwise he was in sound physical condition.

Your letter discloses that Patrolman Roesler had been previously advised by the Police Physicians that his condition was remedial and that in spite of this fact he refused to undergo the operation which the Police Surgeons advised and offered to perform without cost to the officer. Later the officer refused a second time to submit to the operation, alleging he did so on the advice of his physician. You also write that the patrolman is now on the sick list, and ask, if he cannot do police duty in his present condition and will not submit to an operation or resign from the force, whether the Board may place him on trial on the charge of inefficiency by reason of his physical condition, and dismiss him from the force, if the charge is sustained.

In a subsequent letter you inform me that the officer, at the time of the examination, gave the physicians to understand that Drs. Moore, Blades and Blake, who were employed by him, had advised him against an operation, but when questioned closely a second time he withdrew this statement and admitted that his own physician had not advised against an operation.

The real question involved is whether or not Patrolman Roesler, under the facts and circumstances outlined above, is entitled to share in the pension fund. If the facts justified his retirement without pension, there would be no legal question involved.

I requested information as to the manner of the operation and in reply I received the following information:

The operation consists in the removal of the superficial veins of the leg. It is serious to the same degree that all operations are serious, but it is not considered a dangerous operation. The

results are not always 100 per cent cured, but in most cases the operation has been justifiable. The surgeon also reports that it is necessary to take a general anæsthetic, and that the usual anæsthetic for such operation is ether. The patrolman's age is about forty-five years and favorable to a good result.

The surgeon also states that whether the officer wishes to remain on the force or return to private life does not affect the advisability of the operation, in that the officer ought to have his physical defect removed in order to prevent what is known as an "open leg," or ulcer, at any time.

I have been unable to find any decision which directly determines the question at issue. I have, however, discovered a number of decisions concerning the refusal of an injured workman to have an operation performed as a bar to compensation under the Workmen's Compensation Act. There is an analogy between these two classes of cases which is very helpful in arriving at a proper conclusion. The courts very generally agree that whether or not a workman who has been injured should submit to an operation in order to avoid serious consequences of the injury or permanent disability is a question of fact dependent upon the varying circumstances of the individual case. See L. R. A. 1916 A, page 338.

The Massachusetts Court held that if the workman is not to be subjected to unusual risks or danger arising out of the anæsthetic to be employed, or from the nature of the proposed operation, it is his duty to submit to it, if it fairly and reasonably appears that the result of such operation will be a real and substantial physical gain. Floecher vs. Fidelity and Deposit Company, 108 N. E. 1032.

The New Jersey Court has held that the refusal of an employee to submit to an operation cannot be said to be unreasonable where it appears that a risk of life is involved, although such risk is very slight. In this case, the peril of life was about 48 chances in 23,000. McNally vs. Hudson & M. R. Co., 95 Atl. 122.

Under the English Compensation Act, the cases generally hold that a workman will be denied compensation where he unreasonably refuses to undergo an operation of a minor char-

acter which would, in the opinion of medical men, restore his earning capacity.

From the authorities cited, it would seem clear that if the operation is trivial and one not attended by serious pain or a possibility of serious consequences, the patrolman must submit or forfeit his pension. Considering, therefore, the facts of this particular case, it would appear that the operation outlined is one which does involve great pain. There is a possibility of loss of life from the administering of ether to a man of forty-five years of age. There is always a possibility of fatal consequences when an anæsthetic is administered, if it is not purely local in its nature. When the anæsthetic does its work by acting on the heart, it must be admitted that there is at least a risk of life, although the risk may be slight.

For these reasons, the Police Commissioner cannot legally insist that Patrolman Roesler submit to an operation. In addition to the reasons outlined above, it must be remembered that the Police Pension Fund is composed in part of a sum not greater than two per cent of the semi-monthly pay, salary or compensation of each member of the force entitled to participate in the fund, which sum is deducted every pay day by the Police Commissioner. City Charter, Section 776B. To this extent the fund is an insurance fund rather than a pension fund.

My opinion, therefore, is that if Patrolman Roesler complies with all the conditions precedent to eligibility for a pension, and if he is entitled to a pension in all other respects, the mere fact that he declines to submit to the operation in question will not permit the Police Commissioner to bar him from the benefits of the pension.

As stated above, each case must be determined on its own particular facts, but I thought it proper to explain the law on the subject in the hope that this opinion might be applied to other cases which may arise in the future. Of course, if you desire my opinion on any particular state of facts which may hereafter arise I shall gladly give it to you.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—AUTOMOBILES NOT COVERED BY SECTION 23, ARTICLE 4, BALTIMORE CITY CODE—THIS SECTION NOT SUPERSEDED BY ORDINANCE 304 OF 1920.

July 22, 1920.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

MY DEAR SIR: In your letter of July 12th you first direct my attention to Section 23 of Article 4 of the Baltimore City Code of 1906, which reads as follows:

"If any owner or driver of any wagon, cart or other carriage shall place such wagon, cart or other carriage, or any horse, on any street, lane or alley of the city * * * so as to prevent the access of any other carriage to the curbstone in front of any building, against the consent of any owner or occupier of such building, or if such owner or owners, upon being required to move his cart, wagon or other carriage or horse * * * by the owner or occupier of such building, or by any police officer, shall refuse or neglect so to do immediately, he shall forfeit and pay for every such offense the sum of five dollars."

You then quote from Section 24 of Article 4 of the Code of 1906, as amended by Ordiance 304, approved May 24th, 1920, as follows:

"Excepting and unless otherwise provided in this article, no vehicle shall be permitted to stand for a longer time than actually necessary to take on or discharge passengers, freight or merchandise in front of the entrance to any residence or place of business, in any part of the city, over the objection of the owner or occupant, where signs prohibiting such standing of vehicles shall be erected."

You enclose certain correspondence from which it appears that persons have been in the habit of leaving their cars in front of certain residences on the east side of Charles Street, and that the owners of said residences have appealed to the police officers and have demanded the arrest of all such automobile drivers. You have been given an opinion in which the following contentions are made:

1. That section 23 does not include motor vehicles, because motor vehicles were not in existence at the time of the passage of Section 23.

2. That said Section 23 is in any event superseded by Ordinance 304,

and you ask my views concerning the soundness of these contentions.

First—I feel that the first conclusion is correct. The language of Section 23 of Article 4 does not include any general term under which automobiles could be embraced, and, therefore, in my judgment, must be limited in its application solely to "any wagon, cart or other carriage * * * or any horse," as designated in the section itself.

When this ordinance was originally adopted motor vehicles were unknown, and, therefore, could not have been intended by the City Council to have been embraced within its provisions. I understand that the ordinance was re-enacted in 1898 after the use of automobiles had become quite extensive, but the re-enactment was for other purposes and the Council saw fit to continue in force the same limited terms which had appeared in the ordinance. I therefore feel that Section 23 does not apply to automobiles.

Second—I do not agree with the second conclusion, and in my judgment Section 23 has not been superseded by Ordinance 304, but remains in force as fully as when passed. It applies, of course, only to the particular vehicles mentioned therein. The two sections are not inconsistent, and the situation, therefore, does not come within the rules which result in a repeal by implication.

It will be noted that the latter ordinance prohibits the standing of vehicles for a longer time than is actually necessary in front of the *entrance* of any residence or place of business where signs prohibiting such standing of vehicles shall be erected. If the owner of a building, therefore, does not wish a vehicle to stand in front of the *entrance*, he must erect a sign prohibiting such a practice. He may have no objection to vehicles standing elsewhere in front of his premises, even though access to his curb may be thereby prevented as contemplated by Section 23. If he does object thereto and the vehicle in question is

an automobile, he has no remedy, while if the vehicle comes within the mentioning of Section 23 as herein defined, he may avail himself of the remedy there prescribed. The prohibition of Section 23 is a very different prohibition from that contained in Section 25 as amended, and since the two do not present an irreconcilable conflict, I think both should stand and be interpreted and enforced together.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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POLICE COMMISSIONER OF BALTIMORE CITY—VOLSTEAD ACT—POLICE HAVE NO RIGHT TO ASSIST IN ENFORCEMENT.

August 5, 1920.

Charles D. Gaither, Esq.,
Police Commissioner,
Baltimore, Md.

MY DEAR GENERAL GAITHER: Some weeks ago, in response to an inquiry from you, I ruled that the police of Baltimore were under no legal compulsion to assist in the enforcement of the Volstead Act. Having thus been informed as to the *duties* of the police in this particular, you wrote to me asking whether, in the absence of any Federal Statute or State law authorizing or forbidding the police force of Baltimore City to enforce the Volstead Act, your Department may aid the United States authorities in the enforcement of that Act, provided that in the judgment of the Commissioner, the police should render such assistance.

The question is an exceedingly important one, and I have, therefore, taken some time to consider it.

As stated in my former opinion, quoting from Wyman's Administrative Law, Section 55, "the National Administration in the United States constitutes a complete system separate altogether from the State Administration, and no officer of the State, as an officer of the State, has functions to perform for the United States by virtue of that position." Each government maintains independent tribunals, supplies them with Judges

and other necessary enforcing officers, and prescribes and maintains separate and mutually exclusive legal systems. A State Court has no authority to hear and determine an offense against Federal Statutes, nor can a Federal Court pass upon violations of State laws. The Sheriff and his Deputies and the police of municipalities are charged with the duties of executing the laws of the State, while the United States (U. S. Rev. Stat. 788) has conferred upon its Marshals and their Deputies the same power in executing the laws of the United States as the Sheriff and his Deputies possess in their respective States. Each group of officials is, therefore, assigned to a special field of activity under the general scheme thus briefly referred to, and neither can perform any function in the sphere of the other, unless it be by special and express authorization.

Have any such powers in connection with the enforcement of the Volstead Act been conferred upon the police of Baltimore City?

The Act itself does not do so. Section 28, in dealing with the measure's enforcement, clothes with certain powers and protection, "the Commissioner, his assistants, agents and inspectors and all other officers of the United States whose duty it is to enforce criminal laws," and in Section 2 it is declared that Section 1014 of the Revised Statutes of the United States is made applicable in the enforcement of this Act. Section 1014, however, although referring to a number of State officials and authorizing them to arrest and imprison any one guilty of misdemeanor or offense against the United States, makes no reference whatever to policemen or similar officers. There is no other general Act of the United States conferring any such power. Some authorization from Congress, however, seems to be necessary to legalize the arrest of a Federal violator made by a State official. The Supreme Court of the United States in Robertson vs. Baldwin, 165 U. S. 278, declared that Congress is still at liberty to authorize judicial officers of the several States to exercise such power as is ordinarily given to officers of Courts not of record (this right had been questioned), including the power to arrest and commit for trial offenders against the laws of the United States. In the case of Prigg vs. Pennsylvania, 41 U. S. 539, authority had been given to State

magistrates to arrest fugitive slaves, and the Supreme Court says that, while a difference of opinion existed in different States as to whether the magistrates were *bound* to act under it, there was no doubt that State magistrates might, if they chose, exercise the authority, unless prohibited by State legislation. It is apparent, however, that the only power which the Court stated the magistrate might exercise in his discretion was that expressly conferred by Statute, and no other justification of his action in making the arrest was sought. The inference naturally is that no authority whatever to arrest or issue the warrant was possessed by the magistrate, except that expressly conferred by the Act itself. In Dallemagne vs. Moisan, 197 U. S. 169, an arrest by the chief of police of San Francisco was held to be illegal because the Act of Congress did not include that official among the parties authorized to make that particular kind of arrest. The Supreme Court also in Kurtz vs. Moffitt, 115 U. S. 500, after declaring that in the United States the line between civil and military jurisdiction had always been maintained, and that Congress had never conferred upon civil officers or magistrates, or private citizens, any power over offenders punishable only in a military tribunal, decided that a peace officer or private citizen had no authority, as such, and without the order or direction of a military officer, to arrest or detain a deserter from the Army of the United States. In the case of Bad Elk vs. U. S., 177 U. S. 530, an Indian policeman at the Pine Ridge Reservation had been killed by an Indian whom he attempted to arrest, and the Supreme Court decided that Indian policemen were not marshals or deputies within the meaning of the U. S. Rev. Stat. 788, referred to above, and that the officer in question had no authority to make the arrest without a warrant for a misdemeanor not committed in his presence.

Since the Federal system has no common law jurisdiction from which an implied authority might be derived, and since no express power has, by any Act of Congress, been conferred upon State officials in connection with the enforcement of the Volstead Act, I have come to the conclusion that, from the standpoint of Federal authorization, the police of Baltimore are totally lacking in authority to enforce that measure.

The Legislature of this State could have adopted the Volstead Act and made it a part of the State Law, but it declined to do so, and, therefore, neither from that source nor from any other legislative enactment of Maryland that I have been able to discover, have the police of Baltimore derived the right to make arrests for a violation of that measure. Their powers seem to be confined to an enforcement of the laws of Maryland and the Ordinances of Baltimore City, and I must, therefore, advise you that the police of Baltimore, as such, and by reason of their official position, possess no rights or powers with reference to the enforcement of the Volstead Act.

The Police are, of course, private citizens of the United States, and may exercise such powers in apprehending violators of Federal Statutes as are shared by them in common with all other citizens. I realize that occasions may frequently arise when members of the police force, or you, as their Chief, may deem it advisable to cooperate with the Federal authorities in the enforcement of the Volstead Act, and that, in this connection, the police, by reason of their experience and special training, may render peculiarly valuable service. There are many ways in which they can do so legally. For example, by securing and furnishing information, by assisting Federal officers in making arrests, by acting as special deputies or bailiffs upon appointment by a United States Marshal, to execute a particular process, and otherwise. I understand that it has been the practice in certain localities for members of the police force to make arrests and otherwise participate in the enforcement of the Volstead Act, but the fact that their acts have gone unchallenged is no proof of their validity. A guilty party, passing promptly into the custody of Federal authorities, would have nothing to gain except additional notoriety from an attack upon the legality of his original apprehension.

My final conclusion, therefore, is that the police of Baltimore City, do not, at this time, by virtue of their official position, possess the power to make legal arrests for violations of the Volstead Act or validly to execute Federal process issued by virtue of its provisions.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—RIGHT OF TO MAKE AND ENFORCE PARKING REGULATIONS—EXERCISABLE WHEN NOT IN CONFLICT WITH ORDINANCES.

August 16, 1920.

General Charles D. Gaither,
Police Commissioner,
Baltimore, Md.

MY DEAR GENERAL GAITHER: Replying to your letter of August 12th, 1920, requesting me to advise you whether, under the authority conferred by Ordinance No. 139, approved June 4, 1908, you may legally make and enforce special regulations forbidding the parking of vehicles, as suggested by the Board of Public Safety, on the south side of Lexington Street, between Guilford Avenue and Charles Street, and on the north side of Lexington Street, between Charles and Liberty Streets, I herewith submit my opinion.

I have carefully considered Ordinance No. 304, approved May 24, 1920, to which you referred.

This ordinance was submitted to me before it took final shape, and I then advised the insertion of the following paragraph, which was inserted: "It is hereby expressly provided that nothing in this Ordinance shall prevent the Board of Police Commissioners from making and enforcing such special regulations as said Board was authorized and empowered to make and enforce by Section 1 of Article 7 of Ordinance Number 139, passed and approved on the Fourth Day of June, in the year 1908, except in so far as such special regulations may directly conflict with the provisions of this Ordinance; and it is further expressly provided that nothing in this Ordinance shall be construed as repealing the Amendment to said Ordinance No. 139 as provided for in Ordinance No. 561 passed and approved February 3, 1915."

The obvious purpose of this paragraph was to prevent a repeal by implication of the powers given you in Ordinance No. 139. The latter Ordinance, however, definitely regulates traffic along either side of Lexington Street from Howard Street to

Charles Street, and provides that "no wagon, cart, motor vehicle or other vehicle or horse, mule or other animal shall be permitted to stand * * * for a longer period than two hours between 8 o'clock A. M. and 4.30 P. M., of any day, Sundays and Holidays excepted." The same Ordinance also provides that no "wagon, cart, motor vehicle, etc., etc., shall be permitted to stand for a longer time than may be reasonably necessary to take on or discharge passengers, freight or merchandise between the hours of 4.30 o'clock P. M. and 6.30 o'clock P. M. of any day, Sundays and Holidays excepted," along the north side of Lexington Street from Howard Street to Charles Street.

An examination of the Ordinance shows that the Mayor and City Council of Baltimore, with great precision and exactness, regulated traffic along a large number of streets, among them, Lexington Street from Charles to Howard Street as above set forth. The special regulation requested by the Board of Public Safety, in so far as it concerns Lexington Street from Charles Street to Liberty Street, is in direct conflict with Ordinance No. 304, and, therefore, cannot be legally made and enforced by you. You cannot, by a special regulation, prohibit what the Mayor and City Council in definite and precise language has permitted.

In so far as the south side of Lexington Street between Guilford Avenue and Charles Street is concerned, I find nothing in Ordinance No. 304 regulating the parking of vehicles. In my judgment, the saving paragraph quoted above, preserves your right to make such special regulations as the Board of Police Commissioners was authorized to make, by virtue of Section 1 of Article 7 of Ordinance No. 139. I am of the opinion that you may make the regulation requested by the Board of Public Safety as outlined in their letter to you, but suggest that you limit it *to certain hours*, so as to fully comply with Ordinance No. 139, *supra*. In my judgment, the prohibition against parking would not be too extensive as to time, if the forbidden time were between 9 o'clock A. M. and 6 o'clock P. M.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

POLICE COMMISSIONER OF BALTIMORE CITY—NO POWER TO REOPEN CASE OF POLICEMEN DISMISSED BY FORMER BOARD—CANNOT CONFER ORIGINAL APPOINTMENT.

August 21, 1920.

Josiah A. Kinsey, Esq.,
Secretary to the Police Commissioner,
Baltimore, Md.

MY DEAR SIR: In your letter of August 17th, you inquire whether the Governor of the State has the power to require the Police Commissioner of Baltimore City to reinstate on the Police Force a member who has been regularly tried and dismissed from the Department by a former Board of Police Commissioners, now succeeded by a single Commissioner, and to rehear the charge upon which such officer was tried.

At the same time you present, for my consideration, rulings from Alonzo L. Miles, Esq., and Judge Robert F. Stanton, given while acting as counsel to the Board of Police Commissioners, to the effect that, while the Board ordering the dismissal might authorize a rehearing, no subsequent Board had power to do so.

After an examination of the subject, I beg to advise you that I have arrived at the same conclusion. Section 745-F of the Baltimore City Charter provides that "all Police Officers, Officers of Police, Detectives, etc., may be removed by the Board of Police Commissioners for official misconduct or inefficiency, and then only after written charges preferred, specifying the time, place and character of such misconduct and inefficiency, and trial had before the Board of Police Commissioners after reasonable notice thereof."

It was evidently under this section that the dismissal referred to in your letter was made. This proceeding was clearly judicial in character (Mechem on Police Officers, Section 455) and while its regularity was reviewable by the Courts (Section 456), the determination itself of such a tribunal vested with the power of removal cannot be attacked in a collateral proceeding. 28 Cyc. 518. Such order of dismissal is, of course, subject to the right of an officer, if any error was committed, to apply to the Courts for a writ of mandamus for his restoration. Upshur against Ward, 94 Md. 783.

If the Board hearing the charge originally grants a rehearing, its action after such rehearing will be the final decision of the one body authorized to act in the premises. This right of review may perhaps be legally exercised, but no subsequent Board of Commissioners or single Commissioner clothed with the same general powers may disturb such a finding, because action of this character would practically constitute a reversal of the predecessor's decision and cause the proceeding to become an appeal, in contravention of the provisions of the City Charter, which repose the ultimate power in the Board hearing the charges originally.

By Section 745-E, the Commissioner is forbidden to appoint as a policeman any one who has been dismissed from the public service for delinquency or misconduct.

I am, therefore, of the opinion that the present commissioner has no authority to reopen the case of the member of the police force in question or to confer upon him an original appointment. In other words, his restoration to the police force by the action of the police commissioner is now legally impossible.

Of course, if the Police Commissioner does not under existing law possess such power, it cannot be conferred upon him by the Act of the Governor alone or exercised by the direction of the Governor, and I am sure that the Governor, when apprised of the legal status of the matter, will at once withdraw his request.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION.

All Checks Against State Accident Fund Must be Made Payable to Claimant—Order of Court on Appeal Becomes Order of Commission—Costs.

March 25, 1920.

James E. Green, Jr., Esq.,
Supt. State Accident Fund,
741 Equitable Bldg.,
Baltimore, Md.

Dear Mr. Green: In your letter of February 27th, you ask for my opinion upon the following questions:

(1) Will it be proper for the State Accident Fund to draw a check in favor of and deliver same to the counsel for the plaintiffs when the law expressly states that all checks must be payable to the claimants and no assignment of the same is permitted?

(2) Would it be proper for the State Accident Fund to pay compensation, even though judgment had been rendered against it, without an award being made by the State Industrial Accident Commission for the amount?

(3) What is the obligation of the State Accident Fund in the matter of Court costs?

These questions were presented by you in connection with the closing of the case of William Oliver Downton and others against the State Accident Fund. It had been agreed that this case, which was pending in the Circuit Court for Allegany County, should be settled, provided it could be done with a maximum liability to the State of $500.00. The Court subsequently entered a judgment for that amount in favor of the claimants against the State Accident Fund.

After an examination of the Act, which is codified as Article 101, title "Workmen's Compensation," I came to the conclusion that the Court lacked jurisdiction to enter a judgment in this form. When all disputes of fact and of law have been settled, the Act itself practically determines the compensation

which is to be allowed, and, in every case, compensation under the terms of the original award must be paid upon an installment basis. Upon an appeal from a decision of the State Accident Commission, the jury may determine any disputed question of fact and the Court may pass upon questions of law, but there is no provision in the Act which confers upon the Court the right to depart from the form of award required to be followed by the Commission itself. The Court must either affirm the original award or modify it but cannot direct the entry of a judgment for a lump sum.

Under the provisions of Section 51 of the Act, the *Commission* may allow compensation to be paid in a partial or total lump sum, but such a commutation lies wholly in the discretion of the Commission and from its action relative thereto no appeal lies. In any event, I think that such action of the Commission always presupposes the existence of an original award by installments as contemplated by the Act. If the parties were free to agree upon a basis of cash settlement, this plan would soon become a favorite method of procedure and both the letter and the spirit of the law would be violated. My feeling was that the proper form of judgment in the Allegany County Court was an order awarding weekly payments for such number of weeks as would cause the aggregate payments to exceed slightly the sum of $500.00. After the entry of such an order, application could be made in the usual manner to the Commission to have the award changed to a total lump sum, which, in this case, under agreement, could be done in the amount of $500.00. After reaching these conclusions, I took up the matter with counsel for the plaintiffs in Allegany County, and as a result an agreement has been reached according to which the judgment for $500.00 heretofore entered by the Court will be stricken out and the Court will pass an order modifying the original award of the Commission.

I now desire, in view of the above explanations, to answer specifically your questions.

First (1). Section 52 of the Act provides that no money payable under this Article shall, prior to issuance of warrant or voucher therefor, be capable of being assigned, charged or taken in execution or attachment. I feel that this means that

all money representing the whole or any part of any award made by the Commission or, upon appeal, by the Court, is intended to be paid to the claimants personally and directly. All checks, therefore, against the State Accident Fund, should be made payable to the claimants themselves though I see no reason why delivery of the same should not be made to the counsel for plaintiffs. You were in error, however, in stating in your question that the law expressly requires that all checks must be payable to the claimants. I find no such express provision in the Act.

Second (2). After a Court has acted upon an appeal from an order of the Industrial Accident Commission, the order passed by the Court becomes, *ipso facto*, the modified order of the Commission and takes the place of the order originally passed by the Commission. It is not necessary for the Commission to pass another order in the premises. In order that the record may be complete, it is made "the duty of the Clerk of the Court, to which a case is sent on appeal * * * to send to the Commission, a duly certified copy of the docket entries and judgment of the Court in each case heard and determined on appeal." (Section 59-A.)

Third (3). The obligations of the State Accident Fund with reference to Court costs are defined in Sections 56 and 57 of the Act. The latter section authorizes the Commission or Court before which any compensation proceedings are heard, to determine whether such proceedings were brought upon reasonable grounds, and if not, to assess the whole cost thereof, upon the party who has brought them. Section 56 after providing for an appeal, states "that if the decision of the Commission shall be changed or modified, the practice prevailing in civil cases as to the payment of costs and the fees of medical and other witnesses shall apply." This clearly means that if the decision of the Commission is not affirmed, and the State Accident Fund is the insurer, that Fund must pay the costs of the appeal.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE INDUSTRIAL ACCIDENT COMMISSION—NO JURISDICTION OVER SAILING VESSELS ON NAVIGABLE WATERS OF THE STATE.

May 26, 1920.

State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

GENTLEMEN: Replying to your letter of April 24th, in which you inquire with reference to the coverage on sailing vessels on the rivers and bays of this State under the Workmen's Compensation Act, Bagby's Code, Art. 101, I desire to inform you that I have received the opinion of the Supreme Court of the United States, delivered on May 17, 1920, concerning which I wrote you on May 22nd. The Supreme Court, in this case (Knickerbocker Ice Company vs. Stewart, No. 543, October Term, 1919) decided that the Workmen's Compensation Act does not apply to persons engaged in hazardous occupations on navigable waters, even though the commerce carried is intrastate.

The Court calls attention to Section 9 of the Judiciary Act of 1789, which grants to United States District Courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction * * * saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." The saving clause remained unchanged until the Statute of October 6, 1917, which added the following words: "And to claimants the rights and remedies under the Workmen's Compensation Law of any State."

In Southern Pacific Co. vs. Jensen, 244 U. S. 205, the Supreme Court determined that the New York Workmen's Compensation Act, when applied to maritime injuries, conflicts with the rules adopted by the Constitution, and to that extent is invalid.

In order to extend the Workmen's Compensation Act to maritime injuries, the Statute of October 6th, 1917, *supra*, was passed.

However, in the Knickerbocker case, *supra*, the Court determined that Congress cannot delegate its legislative powers to

the States, and that the power to make laws concerning injuries on navigable waters is, by its nature, undelegatable.

For these reasons, and the additional reason that the Maryland Workmen's Compensation Act gives exclusive jurisdiction to the State Industrial Accident Commission and withdraws from private controversies all actions by injured employees engaged in extra hazardous occupations, which is inconsistent with concurrent jurisdiction in admiralty, I must inform you that you have no jurisdiction over sailing vessels on *navigable* waters and bays of this State.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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STATE INDUSTRIAL ACCIDENT COMMISSION—NO JURISDICTION OVER NAVIGABLE WATERS—AWARDS MADE PRIOR TO DECISION OF SUPREME COURT—VALIDITY OF.

June 11th, 1920.

State Industrial Accident Commission,
Equitable Building,
Baltimore, Md.

GENTLEMEN: In reply to your letter of June 3rd, in which you request my opinion in reference to cases in which compensation or death benefits have been awarded to employees, or the dependents of employees, who were engaged in extra hazardous occupations within the admiralty jurisdiction of the United States, I submit herewith my opinion.

The compensation insurance companies and claimants universally accepted the jurisdiction of your Commission. Congress, by the Statute of October 6th, 1917, in terms, gave to claimants the rights and remedies under the Workmen's Compensation Law, even though the injury occurred on navigable waters. The Knickerbocker case, 543, October Term, 1919, determined that Congress did not have the Constitutional right to give this power. In so far as the award of compensation and death benefits in cases where the time for rehearing has passed, and

the time for appeal has passed, it is my opinion that insurance companies are required to pay the awards. I have reached this conclusion after careful consideration of all the equities, including the interest of the claimants, the insurance companies, the employees and the taxpayers of the State.

Public policy encourages this construction and the authorities sustain it. Any other construction would leave a large class of widows and orphans, who, because of the statute of limitations, would be without remedy. 15 Corpus Juris. 854, citing Thomas vs. Poole, 19 S. C. 323; Herndon vs. Poole, 18 S. C. 339.

The insurance companies may be protected by requiring the claimants in all cases in which the insurance companies may desire to deliver in escrow to the Commission appropriate releases and orders of satisfaction, to be delivered to the insurance companies when the award of the Commission has been fully complied with. If any of the companies should decline to comply with these awards, the statute gives suitable machinery to the Commission to enforce compliance.

This opinion is to cover the question in its broad aspect. I shall be very glad to give my opinion to you on any special cases which may arise.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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STATE INDUSTRIAL ACCIDENT COMMISSION — "PLACEMENT TRAINING" — WHEN SUCH EMPLOYEES ARE COVERED BY THE ACT.

June 16th, 1920.

The State Industrial Accident Commission,
Baltimore, Maryland.

DEAR SIRS: I desire to acknowledge receipt of your letter of the third ultimo, in which you enclose copy of a letter from the Federal Board for Vocational Education, raising certain questions in reference to the status of soldiers and sailors engaged in rehabilitation work. It is my understanding that

under the Rehabilitation Act the Federal Board for Vocational Education undertakes to educate and train, in some profession, trade or business, disabled soldiers and sailors by providing them with either "Institutional Training," or "Placement or Job Training," the first being the placing of men in some college, school or institution of learning, and the second method being that of placing them in jobs where they receive no wages from the employer, or, in some cases, a nominal or beginner's wage, paid by the employer, not as a wage, but voluntarily or as a mere gratuity. I understand that these men are in training as wards of the Government, and are not considered by the Board to be under contracts of employment, but are given, in both cases, $80.00 per month by the Government while in training, and, in cases of "Placement Training," are furnished with the tools necessary in their work.

The question now is, what is the status of these men under the Maryland Compensation Law in case they are injured while in "Placement Training"?

There is no doubt in my mind that, under "Placement Training," where the man receives no compensation, such men would not come under the Compensation Act.

Where, however, the man receives a nominal or beginner's wage, paid by the employer voluntarily or as a mere gratuity, the situation is somewhat more difficult. The fact that the employer makes such payments might be construed to constitute a contract of employment. This view, I understand, has been taken by others in interpreting this question. After giving the matter most careful consideration, however, I have come to the opposite conclusion, and I do not believe these men would come within our Compensation Act, unless a real contract of employment has been entered into voluntarily by the man under which there is a legal obligation upon the employer to pay wages.

The essential element necessary to bring employees within the Act is a contract of employment. This element, I believe, is lacking, even though a nominal or beginner's wage is paid, because such payments are not the result or a component part of a contract between the men and the employers, but are merely voluntary or gratuitous acts upon the part of the employers, which they are under no legal obligation to perform.

Besides this, the man is not a free agent, contracting for himself or upon his own responsibility, but is a ward of the Federal Board, being placed by that Board where he will receive certain training, and not for the purpose of employment or in an earning capacity.

Furthermore, the purpose of the Act is to secure real benefits to injured employees and at the same time provide a basis on which benefits may be computed and provision made for their payment from funds to be set aside, or through insurance, the premiums for which are based upon the amount of wages paid by the employer. Gratuitous or voluntary payments cannot be made a basis on which a fund could be set aside in advance to meet benefits, or premiums computed, nor would the benefits which might be allowed on such payments result in securing real compensation to such men, if injured.

Consequently, in view of the fact that the essential elements of a contract of employment appear to be lacking, the inclusion of such men as employees under the Act would, in my opinion, defeat its real intent and purpose.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE PURCHASING AGENT.

BALTIMORE POLICE DEPARTMENT—PEOPLE'S COURT—REGISTER OF WILLS—CORONERS—POLICE MAGISTRATES—ALL STATE OFFICERS OR AGENCIES.

November 27, 1920.

Albert H. Wehr, Esq.,
State Purchasing Agent,
100 West Fayette Street,
Baltimore, Md.

DEAR SIR: In your letter of November 9th, 1920, you request me to determine whether the following departments—Police Department of Baltimore City, People's Court of Baltimore City, Register of Wills of Baltimore City and in the counties, Coroners throughout the State and Police Justices of Baltimore City—are within the purview of Chapter 184 of the Acts of 1920, entitled "An Act to create the Central Purchasing Bureau," etc., etc.

In my opinion, each of the above is within the scope of Chapter 184 of the Acts of 1920. Section 3 of this Act provides, in part, as follows: "That * * * every State officer, board, department, commission and institution * * * shall purchase all materials and supplies, merchandise and articles of every description through or with the approval of the Central Purchasing Bureau."

It follows that an official or department does not come within the Act unless it is (1) a State (as distinguished from a county or municipal official or department); (2) it must be (a) an officer, (b) a board, (c) a department, (d) a commission, or (e) an institution. These words must be given their true, ordinary meaning, and where such an interpretation is given they are very inclusive. Tested by this interpretation, we shall consider each in the order set out by you in your letter.

(1) The *Police Department* is a State department. Its organization is provided for by Section 740 of the Revised Charter of Baltimore City, as amended by Chapter 559 of the Acts of 1920. The Police Commissioner is clearly a State officer. He helps in and directs the performance of one of the State's governmental activities. He takes the Constitutional oath of office. He gives bond to the State of Maryland. He is subject to removal by the Governor for official misconduct in the manner provided by law for civil officers (Act 1920, Ch. 559). He is appointed by the Governor and his appointment must be confirmed by the Senate. The duties of the Police Commissioner are set forth in Section 744 of the City Charter. An examination of this section convinces me that the Police Commissioner is a State officer and the department a State department.

(2) The People's Court is a tribunal consisting of five magistrates and a number of constables. It is not a court of record. The Justices do not sit *in banc*, but each individually tries his cases. Chapter 823 of the Acts of 1912, which created the People's Court, did not create a new court. It merely changed the manner of the compensation of the Justices of the Peace of Baltimore City and provided machinery by which litigants, where small amounts were involved, could have their cases passed upon by Justices of the Peace, to be selected from a larger number, because of their peculiar fitness for the proper hearing and adjudication of petty cases. (Levin vs. Hewes, 118 Md. 624, at p. 643.) Each magistrate is a State officer (Constitution, Art. IV, part VI, Secs. 42 and 43); and hence the People's Court is merely five State officers who perform their duties individually.

(3) Register of Wills are State officers by virtue of Art. IV, Part V, Section 41, of the State Constitution. (See also Code, Art. 93, Sec. 263, etc., seq.)

(4) Coroners are provided for by Constitution, Art. IV, part VII, Sec. 45. Their purpose and powers are those "now" (i. e., at the time of the adoption of the Constitution) or which may hereafter be fixed by law. Section 1 of Article 22 of the Code uses the words "office or coroner." The powers and duties set out in Article 22 are clearly State, rather than mu-

nicipal or county. In cases where the Sheriff is interested or nearly related to any of the parties, or otherwise disqualified to act, all process is directed to the Coroner. (Art. 22, Section 8.) True, the territorial limitation of jurisdiction is local, but the office is a State office. The common law function and purpose of the Coroner are well known and need not be repeated.

Police Magistrates are selected from the same group from which the People's Court justices are selected. They are State officers for the reasons set out in paragraph 2, *supra*.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE RACING COMMISSION.

RACES FOR MONEY STAKES—MUST BE LICENSED BY COMMISSION.

June 30, 1920.

Irvin J. Sullivan, Esq.,
1301 Fidelity Building,
Baltimore, Md.

MY DEAR SIR: In your letter of June 26th, you state that Harford Council, Knights of Columbus, desire to have some running and trotting races for money stakes in connection with a celebration which they are planning to hold at the fair ground in Bel Air on July 5th. The proceeds of the day, after the payment of expenses, will go to Harford Council, Knights of Columbus. You ask me whether or not permission to conduct these races must be procured, and, if so, to whom application should be made under the existing law.

Section 6 of Chapter 273 of the Acts of 1920 provides "that no association or corporation shall conduct any meeting within the State of Maryland whereat horse racing shall be permitted for any stake, purse or reward, unless such association or corporation shall be licensed by the Commission as hereinafter provided." The Commission referred to is the Maryland Racing Commission, established by the same Act. The Commission is to consist of three members, all of whom are to be appointed by the Governor. The Act took effect on June 1st, 1920, and it is provided that the term of office of each Commissioner shall begin within thirty days from the time the Act became operative. The Governor, however, has not yet announced the appointment of the members of this Commission, and it is, therefore, impossible for your Council to secure the only license which will legalize the racing which you desire to hold on next Monday.

I will, therefore, have to advise you that it would be unwise for you to attempt to hold these races.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

State Racing Commission—Term "Year" As Used in Act Construed to Be Calendar Year.

July 23, 1920.

J. Fred. Hayward, Esq.,
Secretary State Racing Commission,
Baltimore, Md.

My Dear Mr. Hayward: You asked me yesterday to define the year during which not more than one hundred days of racing, in the aggregate, may be allowed by your Commission. The Act creating the Commission became effective on June 1st, 1920, and it has been suggested that the yearly period for the purposes of the work of your Commission begins on June 1st and expires on May 31st. The other suggestion is that the year contemplated by the Act is the calendar year beginning January 1st, and ending December 31st.

I think the latter view is correct. Where the language of a statute on any subject is ambiguous, the intention of the Legislature must be ascertained from the four corners of the Act, and I, therefore, examined the entire measure with considerable care. I found several references to time, all of which seem to indicate that the calendar year was contemplated as the yearly period to be considered by the Commission in performing its duties.

In Section 4 it is provided that the Commission shall make an annual report to the Governor on or before the first day of January. In Section 7 it is required that any person, etc., desiring to conduct racing within the State of Maryland *during any calendar year* shall apply for a license to do so. The Racing Commission is then required, on or before the first day of March of each year, to award racing dates *within the current year,* said dates not to exceed one hundred days in the aggregate. In Section 12 it is provided that every person, etc., holding racing meets "shall, on or before the 20th day of December of each year return to the Commission a full statement of their receipts from all sources *during the calendar year.*" And in Section 14 the Commission is required to prepare and file with the State Auditor, before the 30th days of June and December of each year, a full statement of its receipts and

expenditures, etc. All of these provisions, when taken together, conclusively indicate, in my judgment, that the working year for the Racing Commission, as contemplated by the Act, begins on January 1st and ends on December 31st. The Commission is clothed with large discretionary powers as to the allowance of racing dates, and I do not believe it will be confronted with any serious difficulty in administering the law satisfactorily during the residue of the year 1920.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE RACING COMMISSION — PAYMENT OF LICENSE FEE BEFORE LICENSE IS ISSUED—PAYMENT TO BE MADE IN CASH—ONLY ONE LICENSE FOR EACH MEET.

September 10, 1920.

James F. Hayward, Esq.,
Secretary, Maryland Racing Commission,
1106 Fidelity Building,
Baltimore, Md.

MY DEAR SIR: I have your letter of September 8th, in which you ask the following questions:

Must the Racing Association pay the license fee of $6,000 per day for each day the meet covers in cash in advance of the issuance of the license?

Would it be legal for the Commission to issue more than one license for the same meet, thereby diminishing the amount of the initial payment?

Would it be legal for the Commission to accept part of the license fee in cash, taking a bond for the payment of the remainder, said balance to be paid before any racing is conducted on the days which the bond is intended to cover?

Chapter 273 of the Acts of 1920, which creates the Maryland Racing Commission, provides in Section 7 that any person or association desiring to conduct racing in Maryland shall

apply to said Commission for a license so to do, in which application there is required to be specified the days on which such racing is to be conducted. The Commission is then authorized to award dates for racing, and it is provided that no applicant shall be given a license to conduct racing for more than thirty days in one year, and that no applicant shall be licensed to hold more than two meets in any one year.

Section 8 of the Act stipulates that "each applicant desiring to hold races on the days or day awarded by the Comission shall, before the issuing of any license therefor, pay to the Commission a license fee of $6,000.00 for each day of any meeting for the conduct of races so licensed."

The procedure contemplated by the Act is, I think, as follows: The application for dates is made to the Commission. The Commission awards dates to the respective Associations, determining at the same time whether these dates shall be included in a single meet or divided into two meets. The Commission is then authorized and directed to issue a license to each applicant, authorizing the holding of racing upon the dates set apart for said applicant. The language used throughout the Act would seem to indicate that only one license for any particular meet can be issued.

Section 8 refers to the holding of racing on the *days or day* and requires the payment of a license fee before the issuing of any license therefor, which means license for said days or day. I am clearly of the opinion that the license fee for each one of the authorized days covered by the license must be paid in advance before said license can be issued. The language of the Act also indicates that this payment is to be made in cash. No provision for any other form of payment or settlement is contemplated, and it would therefore be improper, in my judgment, for the Commission to accept a bond or any other form of security as part of the license fee. It should not issue the license at all unless the entire license fee has been paid in cash. Any other construction of the law would soon involve the Commission in many controversies and become a source of litigation.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE ROADS COMMISSION.

INTERPRETATION OF ACT OF 1920, CHAPTER 508, CHARLES COUNTY ROAD LAWS.

June 29, 1920.

F. Stone Posey, Esq.,
Attorney at Law,
La Plata, Md.

DEAR SIR: Your letter of June 26th. You ask my opinion on behalf of the County Commissioners of Charles County as to whether or not Chapter 508 of the Acts of 1920 repeals by implication Chapter 217 of the Acts of 1910, and whether the first mentioned Act repealed by implication Section 160B of Chapter 126 of the Acts of 1918.

In my judgment, neither the Act of 1910 nor the Act of 1918 is repealed by the Act of 1920. It does not seem necessary to dwell at length on my reasons for this opinion, as, from the point of view of the County Commissioners, I should say that this question is of little, if any, particular importance, by reason of the fact that the Legislature has made no appropriation to the State Roads Commission for the purposes named in Chapter 217 of the Acts of 1920. That Act provided for funds to be furnished by the State Roads Commission to the several counties upon the application of such counties for the purpose of aiding them in the construction of roads. Chapter 126 of the Acts of 1918 provided for a levy for the use of the Roads Commissioners of Charles County of not less than $30,000, nor more than $40,000, $10,000 of which was to be used for building a certain lateral road in conjunction with an equal amount to be furnished by the State Roads Commission, the said road to cost $7,000 per mile, and the Act provided that if the State Roads Commission should not consent to build, or if it could not build, this road within the limitations specified, the Roads Commissioners should build it as a purely county road at an average cost of $3,500 per mile. Chapter 508 of

the Acts of 1920 provides for a bond issue for raising funds to be expended by the State Roads Commission for lateral and post roads, and provides for actual notice by the State Roads Commission to each county of the amount to be expended in that county, whereupon it becomes mandatory upon the County Commissioners to raise a sum equal to the amount so specified.

I learn from your letter that the sum to be so raised this year is $27,000, and you wish to know whether, in my opinion, it is necessary to raise $30,000 in addition to this sum, or whether $10,000 of the $30,000 provided as the minimum amount by the Act of 1918 may be applied in part payment of the $27,600 to be raised for lateral and post roads.

In my opinion, the former course must be taken, and the full sum of $30,000 must be raised in addition to the sum of $27,500, for, by reason of there being no appropriation for State aid to county roads, the State Roads Commission will be unable to furnish the sum specified in the Act of 1918; and I am also informed by the Chairman of the State Roads Commission that even if he had funds available for such purposes it would be impossible to build a road of the character required in the State Roads System for the sum of $7,000 per mile. The contingencies provided for by the Act of 1918 will, therefore, arise, and the course pointed out by the language of the Act must then be taken, that is, the Roads Commissioners of Charles County must build the road in question as a purely county road at an average cost of $3,500 per mile.

I have no doubt that the Roads Commissioners of Charles County will be able so to arrange matters with the State Roads Commission that the latter will be able to apply the funds raised for lateral and posts roads, or a part of such funds, in converting the road in question from a purely county road into a part of the lateral road system of the State, and I see no reason why the work of the County Roads Commissioners and the State Roads Commission should not be done in such close conjunction as to make these two operations practically one.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

STATE ROADS COMMISSION—ADVERTISING ON STATE ROADS—ERECTION OF SIGN POSTS CONTAINING ADVERTISEMENTS NOT PERMISSIBLE.

August 11, 1920.

John N. Mackall, Esq.,
Chairman, State Roads Commission,
Baltimore, Md.

MY DEAR MR. MACKALL: In your letter of July 29th you advise me that the State Roads Commission desires, if it can legally do so, to enter into a contract with a private corporation authorizing said corporation to erect along the highways of the State cast iron danger and direction signs, illuminated by day and night with a flickering acetylene flame, but carrying also the advertising matter of said corporation, which will provide the funds necessary for their erection. The Commission is directed by the Acts of 1912, Chapter 371, Section 32E, codified as Article 91, Section 37, to "erect suitable guide posts at convenient points along the State highways." By Section 151 of Article 38A of Volume 3 of the Code, it is made a misdemeanor to "paint, put or fix any advertising sign, notice or other writing or printed matter, other than notices posted in pursuance of law, on or to any stone, door, fence, stump, pole, building or other structure which is in or upon a public highway."

You inquire whether the erection of the proposed signs will constitute a violation of the penal statute just quoted. In other words, you wish to be informed whether the authorization desired to be extended by your Board to the corporation in question can be legally conferred and executed under the laws of the State.

In the first place, I feel that the proposed signs and the advertising matter to be attached thereto are clearly within the prohibition of the statute. The word "building" is itself a generic term, and the word "structure," which follows, is not an alternative thereto, but a general pharse to include all objects to which advertisements could be attached other than those specifically mentioned. Its meaning, as given in the Century Dictionary, is "that which is built or constructed, or, in a

wider sense, any production or piece of work artificially built up or composed by pieces joined together in some definite manner." If the proposed guide posts are not poles, they are certainly structures within the above definition. The Legislature evidently intended to promulgate a sweeping restriction against the use of advertising matter along the State highways, using the most comprehensive language it could discover to accomplish that purpose. It is difficult to think of any word that could have been added to render the meaning more positive and certain, and I am clearly of the opinion that the signs proposed are embraced within its terms. The suggestion that the penal statute relates only to objects in existence at the time of its passage cannot be sustained, because new buildings and advertising boards would thereby be exempted, and this could not have been contemplated by its framers.

It remains, then, to ascertain whether the State Roads Commission, by virtue of Section 37 of Article 91, possessed peculiar powers, which transcend the limitations imposed upon individuals by Section 151 of Article 39A.

The mandate of the Legislature concerning the erection of sign posts was pronounced in 1912, and although the discretion it conferred was unlimited, it must be assumed that it was intended to be exercised in accordance with the laws of the State then existent, or which might be passed thereafter. When the Legislature two years later prohibited the placing of advertisements along State highways it injected into the statute no express qualification of its absolute terms in favor of the State Roads Commission. I do not believe that such an exemption can be implied. In the case of C. & P. Telephone Co. vs. State Roads Commission, 132 Md. 201, the Court of Appeals said: "If the Legislature had intended to delegate to the Commission authority to impose charges upon telephone and telegraph companies for the use of the State roads in the maintenance and operation of their lines, it may be assumed with reasonable certainty that such an important purpose would have been definitely expressed or clearly implied and would not have been left to depend upon a strained construction of terms which are consistent with a design to reserve for the State itself the exclusive power to make and enforce such charges."

Transposing this language and applying it to the question at issue, may we not say that if the Legislature had intended to delegate to the Commission authority to authorize the placing of advertisements along the State highways, it may be assumed with reasonable certainty that such an important power would have been definitely expressed or clearly implied, and would not have been left to depend upon a strained construction of Section 151 of Article 39A of the Code, whose language is consistsent with a design on the part of the State to exclude advertising matter absolutely from the public highway. Indeed, the facts in the case presented to me are stronger than those considered by the Court of Appeals, because the Legislature, in this instance, has made a clear and positive declaration of the policy of the State.

The true test of a disputed principle is not what has been done or what is intended to be done, but what might have been done or may be done, if it be sanctioned. If your Commission possesses the authority to contract with one company in the manner contemplated, then if a single company had been unable to furnish the entire fund essential for the erection of guide posts, it could have also contracted with such other companies as might have been required to supply the aggregate amount needed for their erection, granting to each of said companies advertising space on the guide posts to be erected. In the same way the Commission, from time to time, might sanction the erection of guide posts or signs by other companies at the latter's expense. I do not believe that any such practices were ever contemplated. I feel that when the Legislature directed the State Roads Commission to erect suitable guide posts it intended that the work should be done at the expense of the State, and that when it forbade the attachment of advertising matter to objects along the State highways it meant that prohibition to be absolute. If these constructions are adopted, both statutes can be reconciled and made harmonious; any other construction creates a conflict which it is impossible to justify. I do not feel that it was ever desired by the Legislature that the State Roads Commission should become a partner with any corporation for the purpose of granting it an exclusive advertising privilege along the highways of the State, and of thereby

committing an act which the Legislature itself had elsewhere declared to be illegal.

I have not discussed a possible immunity from arrest and conviction which the Commission, representing a part of the sovereignty of the State, might claim, because I feel satisfied that you would be unwilling to exercise any authority founded alone upon such a negative basis. I realize that this ruling may for a time deprive the users of the State roads of much needed guide posts and signs. It is not the duty of administrative officers, however, to create or reframe laws, but to interpret and enforce them according to their true intent and purpose. On this subject the will of the people has been expressed by the Legislature, and that body is the only authority legally constituted to declare a modification or revocation thereof.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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STATE ROADS COMMISSION—RIGHT TO REMOVE SIGNS ERECTED ON STATE ROADS.

October 13, 1920.

John N. Mackall, Esq.,
Chairman, State Roads Commission,
Garrett Building,
Baltimore, Md.

DEAR SIR: I wish to acknowledge the receipt of your letter of the 6th inst., in which you ask my opinion whether, under the provisions of Section 15, Chapter 824, of the Acts of 1914, your Commission would be within its rights in removing signs erected over State roads in incorporated towns, built or being maintained by you, and where the municipal corporation has, by formal resolution or ordinance, a copy of which you enclose me, relinquished to the State of Maryland jurisdiction and control over the said highways, "so that such jurisdiction and control may hereafter be exercised by the State Roads Commission."

It seems to be the clear intent of the ordinance to relinquish to the State Roads Commission that degree of control over the road in question which it would have over other roads, reserving only to the municipal corporation its police power over the said road.

It is also clear that the State Roads Commission has the power to take over, improve and maintain such roads, and that thereupon such roads become State highways.

Section 15-I (it is evidently 15-I, and not 15, to which your letter refers) makes it unlawful to place signs in the way therein specified upon *public highways*, which expression would surely include *State highways*.

Section 37B of Article 91 of Bagby's Code gives to the members of the State Roads Commission and such of its employees and servants as are designated by it authority "to enforce all laws of this State relating to the State highways," as well as to arrest the violators of such laws.

It would, therefore, seem that the Commission is within its rights in removing signs upon such roads which have been placed there contrary to the provisions of Section 15-I of Chapter 824. It is, of course, obvious that the authority of the Commission would not extend beyond the curb line of such roads or to any part of the street not taken over by the Commission and relinquished to it by the municipal corporation.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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STATE ROADS COMMISSION—REBUILDING BRIDGE AND DAM IN WICOMICO COUNTY — CONTRACT CONSTRUED — NO DUTY ON COMMISSION.

October 29, 1920.

John N. Mackall, Esq.,
Chairman, State Roads Commission,
Baltimore, Md.

DEAR SIR: I desire to acknowledge receipt of your letter of July 13th, 1920, enclosing a letter dated February 17, 1920, from you to Frank H. Zouck, Esq., then Chairman of the State Roads Commission; a letter dated January 31st, 1920, from

Hooper S. Miles, of Salisbury, Md., to the Board of County Commissioners of Wicomico County, and copy of an agreement dated the 17th day of July, 1917, between said County Commissioners and Margaret L. Vanderbogart, with your inquiry as to whether or not the State Road Commission is under any obligation to rebuild the bridge and dam mentioned in said agreement, and maintain it in accordance therewith.

It is clear that the roadway in question was originally dedicated to the public by the former owner, S. Frank Toadvine, and that prior to the agreement of July 17, 1917, Mrs. Vanderbogart's only rights lay in adverse possession of the property in question, which rights would not run against the public in the case of a highway. (See Frank on Title, page 170.) Therefore, Mrs. Vanderbogart's entire rights are to be found in the contract of July 17, 1917, which obligated the County Commissioners of Wicomico County to build a certain road according to the plans prepared by the State Roads Commission, and also "to take over and maintain said bridge or millbreasts and mill dam at its own expense." The consideration for this agreement was five hundred dollars ($500) and the assumption of certain obligations.

This contract was duly fulfilled by the erection of the bridge and millbreasts and the bridge was later taken over by the State Roads Commission. There is nothing in the contract which in any way obligates the State Roads Commission to rebuild said bridge.

When the contract of the 17th of July, 1917, was entered into the bridge was not "in esse." Under the rule in Spencer's case, which has been adopted by our Court of Appeals as applying to both covenants in leases as well as covenants in agreements concerning land, when a covenant concerns a thing not "in esse," it does not bind the assignee of the covenantor unless it is so covenanted. See Lynn vs. Mt. Savage Iron Co., 34 Md. 603.

Dawson vs. R. R. Co., 107 Md. 87;
Whalen vs. Balto. & Ohio R. R. Co., 108 Md. 19.
Md. & Penn. R. Co. vs. Silver, 110 Md. 560;
Wood vs. Stehrer, 119 Md. 149;
Linthicum vs. W., B. & A. Elec. Road, 124 Md. 268.

The point may be raised, however, that although the agreement on the part of the County Commissioners to maintain the dam is not a covenant which runs with the land, nevertheless it is such an agreement as is referred to by the Court in the cases of Lynn vs. Mt. Savage Iron Co., at page 638, and Dawson vs. R. R. Co., at page 87, where the Court refers to restrictive covenants and agreements imposed on land conveyed by a vendor whereby benefits result to the land retained by the vendor.

The agreement in this case, however, that the dam be maintained by the County Commissioners at their expense is clearly distinguishable from the restrictive covenants and agreements imposed on the land by the vendor such as are found in the cases of Tulk vs. Moxhay, 2 Phil., and Newbold vs. Peabody Heights Co., 70 Md. 500, as the agreement in this case was a mere personal covenant between the County Commissioners and Mrs. Vanderbogart, and in addition to this, the State Roads Commission, the assignee of the County Commissioners, is not attempting to put the property to any use inconsistent with the use originally intended when the agreement was made. Consequently, the agreement on the part of the County Commissioners to maintain the dam is not such an agreement as a court of equity would enforce against the State Roads Commission as assignee of the County Commissioners.

In addition to the above, no reference is made to the successors or assigns of the County Commissioners as being in any way expected to perform the obligation assumed by the County Commissioners, and such was not in the minds of the parties at the time the agreement was entered into. Therefore, even though the County Commissioners may be liable to Mrs. Vanderbogart under the agreement of July 17, 1917, there is no liability on the part of the State Roads Commission to her.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION.

INTEREST ON STATE TAXES ON STOCK ASSESSMENTS OF ORDINARY BUSINESS CORPORATIONS WHERE PAYMENT DELAYED BY FAILURE OF STATE TAX COMMISSION TO FURNISH CERTIFICATE OF ASSESSMENT WITHIN STATUTORY PERIOD—NOT PAYABLE.

January 9, 1920.

Mr. Charles C. Wallace,
Secretary, State Tax Commission,
Baltimore, Md.

MY DEAR MR. WALLACE: I have your letter of January 8th, in which you raise the question of the legal propriety of charging interest on State taxes due from ordinary business corporations on their stock assessments and actually paid after the day from which, under the statute, interest would ordinarily run, the delay having been occasioned, however, by the failure of the State Tax Commission to furnish within the stipulated period its certificate of assessment, and through no fault of the corporation.

The late William Pinkney Whyte, while City Solicitor, rendered an opinion to the effect that the failure of the proper State authority to furnish a proper certificate of assessment of stock precluded the charge of interest and bailiff's fees in cases where the parties affected tendered the amount of their taxes within thirty (30) days (a reasonable time) after receipt of such a certificate. This construction of the law seems to me to be a just and reasonable one; it has formed the basis of a convenient administrative practice, applied and acquiesced in for almost twenty (20) years, and I find no provision in subsequent legislation necessitating any departure therefrom.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—FRANCHISE TAX ON FOREIGN CORPORATIONS—NOT PAYABLE WHERE CORPORATION DISSOLVED, ALTHOUGH LIABLE TO FEDERAL GOVERNMENT FOR TAX ON WHISKEY IN STORAGE.

February 4th, 1920.

Messrs. Weill & Oliver,
1418 Land Title Building,
Philadelphia, Pa.

DEAR SIRS: In your letter of January 27th you desire to know whether or not your client, the Gwynnbrook Distilling Company, which Company was dissolved on December 16th, 1919, by the Secretary of State of New Jersey, having sold its entire plant and real estate at public auction on July 21st, and subsequently all its accrued storage and warehouse charges and accrued State taxes, and having no further business to perform in the State of Maryland, is longer liable to the State of Maryland for its franchise tax for the privilege of doing business in this State, and whether the State would consider the Company as still doing business by reason of the fact that the Company still remains liable to the Federal Government for taxes on whiskey in the warehouses formerly owned by it, and is required by the Federal Government to give its approval to the release of such whiskey from bond.

The annual certificate is required to be filed and the franchise tax to be paid only by those foreign corporations which have a usual office or place of business in this State (Article 23, Section 93), or maintain an office and regularly exercise their franchises in this State (Article 23, Section 95).

Your Company has been dissolved; for ordinary business purposes it has ceased to exist; it no further maintains an office in this State, and is clearly, therefore, beyond the operation of our statutory regulations referred to above. The functions required to be performed by it in connection with the final disposition of the whiskey remaining in the warehouses formerly owned by it are purely formal and are not such business activities as would, within the purview of the statute, impose upon a foreign corporation the duty of paying a franchise tax.

There is nothing in our statutes requiring the return and cancellation of the authority of a non-resident corporation to do business in this State. It simply discontinues its business and pays no further franchise tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION — FRANCHISE TAX ON FOREIGN CORPORATION— HOW COMPUTED—METHOD OF OBTAINING REFUND— PROPERTY AND ASSETS IN MARYLAND FORM TRUE BASIS.

February 9th, 1920.

Alexander H. Preston, Esq.,
916 Munsey Building,
Baltimore, Md.

DEAR MR. PRESTON: I desire to reply to your recent communications concerning the co-related claims of three steel companies filed by you with the State Treasurer for a refund of certain moneys claimed by said companies to have been paid erroneously by them on account of their respective franchise taxes for the year 1917. As the three cases are exactly similar, I shall refer more particularly to the claim of the Bethlehem Steel Company. This Company, in its annual statement for 1917, reported the sum of $7,816,129.07 as representing its capital invested in Maryland. The tax assessed thereon and paid by the Company was $2,139.03.

According to the provisions of Article 23, Section 95 of the Code, the franchise tax to be imposed on a foreign corporation is to be calculated on the following basis: "The sum of $25.00 for every full $50,000 of capital employed by it in this State," amounting here to $250.00; "if the amount of such capital is more than $500,000 and not more than $5,000,000, then an additional amount equal to one-fortieth of one per cent on the excess," amounting here upon the $4,500,000 so taxable to $1,125.00; "and if more than $5,000,000, then an additional amount at the rate of $30.00 for every million of said last named excess," amounting here on the excess of $2,816,729.07

to $90.00. The aggregate tax calculated in this manner would have been $1,465.00. The difference between this sum and the $2,139.03 actually paid was evidently paid without legal compulsion and represents an amount which the State was not entitled to receive.

Your client claims, however, that a further error was committed when it reported in this connection all of its property and assets actually located in Maryland rather than that proportion of its stock capital which was employed in this State. The petition alleges that on this basis the correct amount of stock capital employed in Maryland should have been returned as $647,610.00, upon which basis the franchise tax would have been $286.90.

I do not agree with this contention. The law measures this tax by the *capital* employed by the corporation in this State, and in Article 23, Section 93, providing for the filing of an annual certificate by every foreign corporation, the Company is required in said petition to show "the amount of capital stock authorized and issued," and also "the amount of its capital employed in the State." The Act seems to draw a clear distinction between capital stock and capital, and in the use of the latter word there is no indication of any intention to confine its meaning to "stock capital." It was evidently intended to mean all the capital or assets in Maryland and used here. The schedule itself, quoted above, by the limited amounts imposed upon large bases, indicates that all the property in the State was to constitute the basis for determining the tax; otherwise, in nearly every case, the latter provisions would never become operative and in many instances the tax paid would be out of all proportion to the benefits received. For example, since the authorized capital stock of the Penn Mary Steel Company, one of your clients, is only $100,000, and the $11,000,000 or more of property employed in Maryland constitutes only 32 per cent of the total assets of the Company, your proposed method of determining the return would make the basis only $32,000 and the tax $25.00. In other words, a foreign corporation, employing in Maryland over $11,000,000, would only pay to the State, for the valuable privilege of exercising here its franchises, the niggardly sum of $25.00.

There is nothing in the law itself to suggest the propriety of your method, and, if adopted, the State would be absolutely powerless to check up and prove the correctness of the returns made to it by foreign corporations.

This is not a case of double taxation. You admit, in your letter of January 7, that two of the three elements of value incident to a busines corporation are the corporate assets and the franchise. By the terms of Section 97 of Article 23, every foreign corporation is made subject to taxation upon its real and personal property. The tax here under controversy is based upon the franchise of the Company for the purpose of doing business in this State, and the provisions of Article 23, Section 95, do not impose a second tax upon the tangible assets of the Company, but declare that the value of the *franchise* for taxation purposes shall be graded according to the amount of capital here employed in accordance with the schedule set forth therein. (U. S. Electric Power & Light Company vs. State, 79 Md. 71.)

The second claim made in your petitions would appear, therefore, to be unfounded in law and should not be allowed. Under the old system, in order to secure a refund of taxes, it was necessary to have the same authorized by the Legislature. Now, however, all appropriations are within the control of the Governor, and must be provided for by him in the budget biennially presented by him to the Legislature. See also, in this connection, Section 38, Article 3, of the Constitution.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FRANCHISE TAX ON FOREIGN CORPORATIONS—MINIMUM RATE PAYABLE, ALTHOUGH REPRESENTATIVE EQUIPS OWN OFFICE.

February 12, 1920.

Alex. P. Boyer, Esq.,
834 Park Avenue,
Baltimore, Md.

MY DEAR SIR: You state that you are the Baltimore representative of C. W. King & Company, a New York corporation,

engaged in the general brokerage business; that no capital of said Company is employed in Maryland, the office furniture having been provided by yourself. The business is here conducted by you in the name of said Company, and the name appears upon your office door. You ask whether, under the circumstances, your Company, being a foreign corporation, must pay the franchise tax.

Section 93 of Article 23 of the Code requires that every foreign corporation which has a usual office or place of business in this State shall, before doing business herein, file with the Secretary of State a certified copy of its charter, and a certificate, to be renewed annually, setting forth therein certain required information concerning said company. This section clearly covers your Company.

Section 95 provides that "every foreign corporation which maintains an office and regularly exercises its franchise in this State shall, at the time of filing its annual certificate, as above referred to, pay to the State Treasury, for the use of the State, a franchise tax at the rate of $25.00 for every full $50,000 of capital employed by it in this State up to $500,000, but in no case less than $25.00." I am clearly of the opinion that this section embraces your Company, and that it will be necessary for your Company to pay the State Treasurer the minimum tax of $25.00 provided therein.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—METHOD OF COMPUTING CASH VALUE OF ANNUITY FOR PURPOSES OF.

February 12, 1920.

Henry D. Blair, Esq.,
Attorney at Law,
213 Courtland Street,
Baltimore, Md.

DEAR SIR: I have your letter of January 31st in which you ask me to advise you as to the proper basis upon which the col-

lateral inheritance tax is computed in a case where the testatrix directed the payment to her sister during life of the weekly sum of $10.00, and where by agreement of counsel, an annuity was purchased for the sum of $3,900.00, which annuity will provide to the said sister the sum of $10.00 per week during her natural life.

I feel that the tax should be levied on that portion of the decedent's estate which is required to meet the bequest to the collateral. The gift to the sister, under the agreement, required the use of $3,900.00 permanently therefrom. Of course, this sum may be largely in excess of the amount which might have been required to fulfill the actual provisions of the will, in case of the early death of the sister, but it is nevertheless true that the sum of $3,900.00 has been finally appropriated to the benefit of the collateral. It is stated in 37 Cyc., page 1580, that "the value of an annuity or life estate is to be ascertained by calculating its probable duration according to the standard tables of mortality in use by actuaries, life insurance companies, and others." This is practically the exact method which has been followed in determining the present cash value of the sister's life estate.

My opinion therefore is that the collateral tax must be paid on the sum of $3,900.00.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FRANCHISE TAX ON FOREIGN CORPORATIONS—EDUCATIONAL INSTITUTIONS REQUIRED TO PAY, BUT REAL PROPERTY EXEMPT FROM TAXATION.

March 5th, 1920.

S. M. Butler, Esq.,
Treasurer & Manager,
Washington Missionary College,
Takoma Park, Washington, D. C.

MY DEAR SIR: I desire to reply to your letter of March 2d.

The law requiring foreign corporations to pay the annual franchise tax contains no exemptions in favor of educational institutions.

All foreign corporations are made subject to taxation upon their real and personal property, situated in this State, and under general exemptions, I find that buildings, furniture, equipments or libraries of incorporated educational or literary institutions are included.

Your college will, therefore, be required to pay the franchise tax, but if it owns real estate in Maryland, it will be exempted from the payment of taxes thereon.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—EXEMPTIONS FROM FRANCHISE TAX—MASONIC TEMPLE ASSOCIATION OF CUMBERLAND NOT EXEMPT.

Honorable E. Brooke Lee,
State Comptroller,
Annapolis, Md.

March 13, 1920.

MY DEAR MAJOR LEE: In a letter received from you several weeks ago, you state that the Masonic Temple Association of Cumberland has, for several years, resisted the payment of its franchise tax upon the ground that it is exempted therefrom by virtue of the provisions of Chapter 466 of the Acts of 1918, codified as Article 23, Section 88-D. The State Tax Commission had certified to your Department an assessment against the said Association, and you now ask for an opinion from me as to whether or not this action on the part of the said Tax Commission was proper and legal. I think that it was.

The Section above referred to provides that every business corporation *except charitable, benevolent and fraternal* institutions shall pay annually to the State Treasurer, an annual tax for its franchise. In my opinion, the Masonic Temple Association of Cumberland does not belong to any one of the exempted classes. It is a corporation formed under the general law of the State, and under its charter, possesses broad, general powers "to purchase, sell, mortgage, lease, improve and deal in real estate wheresoever situated and to construct, occupy, operate,

lease, rent, hire and manage buildings of any kind and description." It has an authorized capital stock of $50,000, the stock being distributed amongst members of the Masonic Fraternity or Masonic bodies composed of members of said fraternity. Non-members of said fraternity are however, not prohibited in any way by the certificate of incorporation from becoming shareholders. The Association leases its building to various branches of the Masonic Order in Cumberland and out of the rentals received therefrom, it pays the interest on its bonds, necessary repairs, electric light bills, janitor's salary and other operating expenses. The rents are so arranged as to provide approximately for the estimated expenses, and no dividends have ever been declared on its stock. There is however, no prohibition against the declaration of dividends either in the certificate of incorporation or in the by-laws.

In my judgment this Association is an ordinary business corporation, and its character is not changed by reason of the fact that its stock is owned by members of the Masonic Order or that its building is dedicated exclusively to the use of the various Masonic bodies. The Association itself is not a charitable, benevolent or a fraternal institution in the ordinary acceptation and meaning of those terms. It must be remembered that a corporation is a separate entity distinct from its stockholders, and that it is the ownership of property, not its control which determines the taxpayer. The present ownership of the stock of the Masonic Association of Cumberland lends no weight whatever to its claim for exemption. This ownership can change over night. The Association's true, legal character must be determined not from what it has done or is doing, but rather from what it may do. It must be judged not by the scope and nature of its present activities, but solely from the standpoint of the rights and privileges with which it has been clothed by its charter and which it may exercise at any time.

The case of the Appeal Tax Court against the Grand Lodge of Masons, 50 Md. 421, is not applicable to the matter under consideration. The Court of Appeals there decided that real estate owned by a benevolent or charitable institution was exempted from taxation to the extent of its exclusive use for purposes of the Order, but that taxes could be assessed against it

and collected to the extent that such property or any part of it was devoted to commercial purposes. The question of whether the holder of the title to the property, was a benevolent or charitable institution was not involved. The Masonic Lodges of Cumberland could have secured the benefit of the tax exemption if the title to their property had been placed in some branch or lodge of the Masonic Order. Probably for the purpose of securing some commercial or financial advantage, it did not adopt this plan, but formed the holding company known as the Masonic Temple Association of Cumberland. With the benefits thus secured, must be assumed also the disadvantages thereby entailed. One of these disadvantages is the payment of the taxes imposed by law upon business corporations, and in my judgment, the assessment against the Masonic Temple Association as certified to your Department by the State Tax Commission, is legal and proper and the franchise tax thereon is now due and owing by said Association.

I might add that some years ago, two organizations very similar to the Masonic Association of Cumberland appealed to the Baltimore City Court from the Appeal Tax Court of Baltimore City, claiming to bear a relationship to their respective orders very similar to that now existing between the Masonic Temple Association of Cumberland and the various Masonic bodies of that city and insisting that for this reason they were therefore exempt from taxation. These were the cases of the Royal Arcanum Building Company of Baltimore City vs. Mayor and City Council, and Conway W. Sams, Oscar Leser, William H. Brune, Judges of the Appeal Tax Court of Baltimore City, and the Zeta Club of Baltimore City (connected with the Improved Order of Heptasophs) against the same defendants.

Practically the same contentions were made that are now being pressed by the Masonic Temple Association of Cumberland, but in both cases the decision of the Appeal Tax Court of Baltimore City was affirmed and both plaintiff organizations have ever since regularly and without objection paid their taxes.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—PAYABLE UPON BEQUEST IN TRUST FOR CHARITABLE PURPOSES WHEN GRANTEE CERTAIN—PRECATORY TRUSTS.

March 19, 1920.

Honorable E. Brooke Lee,
State Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: In your letter of February 27th, you quote the following paragraph from the will of Julia M. Keedy, late of Washington County, deceased.

> "5. I give and bequeath to my two sons, Clarence Keedy and Richard D. Keedy, the sum of five hundred dollars, and request that two hundred dollars of this sum be spent by them for the benefit of the Sisters of Saint Joseph's School, and the balance, namely, three hundred dollars, to be spent by them for Masses and church purposes as to them shall seem best."

You then ask on behalf of John D. Hollyday, Register of Wills of Washington County, whether this bequest of $500.00 or any part of it, is liable for a Collateral Inheritance Tax.

In my judgment, the testatrix did not contemplate that her sons should have the power to determine whether they should retain personally the amount so given to them or dedicate it to the uses indicated. The discretion to be exercised by them involved only the manner in which her directions were to be fulfilled, and her bounty distributed to the designated beneficiaries. I feel, therefore, that Mrs. Keedy, by the use of the word "request," intended to establish a precatory trust. This trust, however, is clearly void for uncertainty, so far as the three hundred dollars is concerned, because there is no defined or ascertained beneficiary to ask for an enforcement thereof in a Court of Equity. Trinity M. E. Church vs. Baker, 91 Md. 540; Dashiell vs. Attorney General, 6 H. & J. 1. This portion of the bequest therefore lapses into the residuary estate of the testatrix and is not taxable.

The situation is different however, as to the remaining two hundred dollars. The Sisters of Saint Joseph's Academy constitute a class of persons which can be easily and definitely

determined. This portion of the trust is therefore valid and enforceable, and is subject to the Collateral Tax, provided, of course, that the total estate of the testatrix exceeds five hundred dollars.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FOREIGN CORPORATIONS—WIRELESS TELEGRAPH COMPANY EXEMPT FROM FRANCHISE TAX UNDER LAW EXEMPTING TELEGRAPH COMPANIES.

March 27, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

DEAR SIR: I beg to acknowledge the receipt of your communication of the 15th inst. in which you state that the Independent Wireless Telegraph Company, Incorporated, a company of the State of Delaware, has registered to do business in Maryland under the Foreign Corporation Law, which law, by Section 95, exempts telegraph companies from the payment of the franchise tax.

You desire me to advise you whether or not a wireless telegraph company is a telegraph company as contemplated by this section of the law.

The term telegraph is sufficiently broad and comprehensive to include any apparatus or adjustment of instruments for transmitting messages or other communications by means of electric currents and signals. Chesapeake & Potomac Telephone Company vs. B. & O. Telegraph Company, 66 Md. 391.

In the case of Attorney General vs. Edison Tel. Company, 6 Q. B. D. 244-249, it was held that any apparatus for transmitting messages by electric signals whether a wire is used or not comes within the definition of telegraph.

The transmission of messages by wireless is simply a modern method of telegraphing, and a wireless telegraph company is certainly a telegraph company as contemplated by our law.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—NOT PAYABLE BY REMAINDERMAN UNTIL DEATH OF LIFE TENANT, ALTHOUGH LATTER HAS CONVEYED HER INTEREST TO SUCH REMAINDERMAN.

April 1st, 1920.

Russell P. Smith, Esq.,
Register of Wills for Dorchester County,
Cambridge, Md.

MY DEAR SIR: I beg to reply to your letter of April 16th, in which you submit to me the following facts: A. died in 1903, devising his real estate to his widow during her natural life, and upon her death to B. Twelve years later, B. also died, leaving as his only heir at law, a niece, C., who thereby inherited the property of A., subject to the life estate therein of A.'s widow. A.'s widow subsequently sold her life interest to C., who is now the absolute owner of the property. You then ask me whether you should collect the collateral inheritance tax now before the death of the widow of A., and if not, when you should collect and upon what percentage basis.

Inasmuch as both B. and C. are collaterals of A., the testator, and upon the death of B., C. became the owner of all of B.'s right, title and interest in A.'s estate, the case may be considered, for our purposes, as if under the will A. had devised his real estate to his widow for life and upon her death to C. If the widow had then conveyed her life interest to C., the same question that you now present would have arisen. If the widow had held the property during her life and allowed it to pass to C. in due course upon her death, the collateral inheritance tax would have been payable "upon the clear value of the estate, at her death, and at the time the collateral beneficiary received the benefit of the bequest and devise under the will." Fisher vs. State, 106 Md. 121.

A conveyance by the widow of her life estate to a third party, X., would not have altered the situation. Upon the widow's death, X.'s interest would have terminated, the collateral C. would have taken and the tax would have become payable. It is evident, therefore, that the will created a life estate during which no tax was payable and a remainder interest in a

collateral, who, upon coming into possession of his estate, must at once pay "the price exacted by the State for the privilege of transmitting property by will in this manner to collaterals."

C., therefore, by virtue of her deed from the widow acquired, by purchase, the widow's life estate. She does not hold as a collateral under the will, but as the vendee of the widow during her life. Upon the death of the widow, all of C.'s rights acquired by deed will terminate, and immediately and for the first time the property will be transferred to and received by her as a collateral beneficiary. Then and not until then, will the collateral tax be payable and the basis upon which the tax must then be computed is the appraised valuation of the property upon the day of the widow's demise.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FRANCHISE TAX ON DOMESTIC CORPORATIONS—HOW COMPUTED WHERE NO RETURN IS MADE TO STATE TAX COMMISSION OF NUMBER OF SHARES OUTSTANDING.

April 2nd, 1920.

Vernon S. Bradley, Esq.,
Attorney at Law,
Cambridge, Md.

MY DEAR SIR: Yours of March 29th in which you state that you have been notified of the failure of The Home Finance Company to pay its franchise tax for the year 1919. You add that no stock in this company has ever been issued, and that those who had expected to be interested therein, have never availed themselves of the privileges conferred by their charter.

As you are probably well aware, under the provisions of Section 88-D of Article 23 of the Code, which provides for the payment of a franchise tax by domestic corporations, it is declared that unless a corporation shall file with the State Tax Commission on or before the first day of March in every year an affidavit showing the actual number of its outstanding shares as of the first of every preceding January, the entire authorized

capital stock shall be made the basis of the tax. I presume that no affidavit was filed by your company, and that it was, therefore, taxed accordingly.

The only penalties for the non-payment of the franchise tax which the law now seems to provide, are either a suit against a corporation, or its dissolution upon failure to pay. Your company has no assets and the State would not therefore, be justified in instituting a suit. Under the circumstances, you and your friends would welcome rather than oppose a dissolution. Your course in the matter will, therefore, have to be guided by the suggestions which I have made.

With kind personal regards, I am,

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—COLLATERAL INHERITANCE—ACT OF LEGISLATURE, EXEMPTING BEQUEST TO ERECT MONUMENT TO GENERAL LEE IN BALTIMORE CITY HELD UNCONSTITUTIONAL.

April 19, 1920.

Honorable Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: I have carefully considered your letter of April 14th, and the enclosure from Mr. Lowndes, in reference to Senate Bill No. 132. My reconsideration of this bill has confirmed my former conclusion, and I am transmitting herewith, the reasons for my decision.

The bill provides: "That so much of the proceeds of the sale of the property known as No. 12 E. Mt. Vernon Place, in the City of Baltimore, as shall be used for the placing of an equestrian statue of General Robert E. Lee in Druid Hill Park, City of Baltimore, in accordance with the provisions of the last will and testament of Elizabeth B. White, deceased, shall be exempt from the imposition and payment of the collateral inheritance tax, imposed by Sections 120 to 144 of Article 81 of the Code of Public General Laws of Maryland (Bagby's)."

This bill violates Article 15 of the Declaration of Rights, and Article 2, Section 33 of the Constitution of Maryland.

Article 15 provides in part that "every person in the State or person holding property therein, ought to contribute his proportion of public taxes for the support of the Government." In Baltimore City vs. Starr Church, 106 Md. 284, the Court says in speaking of Article 15, "this provision has, with slight but not material change of phraseology, been a part of the organic law of Maryland for considerably more than a century. Its predominant object is to provide, by a fixed enactment, equality in taxation, and to prevent, so far as possible, the burden of supporting the government from falling upon some individuals to the exclusion or exemption of others."

It is true that as an exception to the general rule of equality of taxation the Legislature has the power, within reasonable limits, to exempt certain species or classes of property from taxation where the public interests so require. However, in the instant case, the exemption was not to a species or a class of property, but to an individual. Moreover, the mere fact that the State is receiving a gift does not, in my opinion, warrant a departure from the organic law on the theory that it is a matter of public policy. My view is that public policy demands a strict adherence to the constitutional inhibitions, rather than a departure therefrom, even though the strict adherence to the constitution will deplete the fund to the extent of the inheritance tax. See Baltimore City vs. Starr Church, *supra*; Mayor and City Council vs. Cahill, 126 Md. 596.

Article 3, Section 33 of the Constitution of Maryland, provides that "the General Assembly shall pass no special law for any case for which provision has been made by an existing general law." The general law provides for the collection of inheritance taxes, and specifically exempts inheritances to certain classes of persons—that is, lineal descendants of the deceased. Bodies politic are not exempted; in fact, they are included in terms. Code, Article 81, Section 120. We, therefore, have a general law exempting a class. The instant case is not exempted by the exemption portion of the general statute. In order to procure a special exemption, this bill was passed.

The case of Young Men's Christian Association vs. Albert E. Parish, 154 Pac. 785, reported in L. R. A. 1916 D at 272, is very similar to the case at bar. The Court said: "A statute

which exempts property of the Young Men's Christian Association only to the extent such property is devoted to religious purposes must necessarily exclude the property of other organizations and associations devoting property to the same purposes. The operation and effect of the statute are limited to one of the organizations which compose a class, and is, therefore, special." The Act was declared unconstitutional.

We must not overlook the fact that the people of the entire State of Maryland are entitled to the benefits flowing from the inheritance tax. The Act in question is equivalent to an appropriation of an amount equal to the inheritance tax, to defray a part of the cost of erecting a statute in a public park owned by Baltimore City. To this extent it benefits the citizens of Baltimore rather than the citizens of the entire State. If a special Act such as this is permitted to stand, it would open the door to other special Acts, and it is difficult to say where the line should be drawn. Everyone who gives money to a hospital or public institution to benefit mankind performs a high public service, but it is obviously unfair to tax some and exempt other bequests.

Keeping in mind the fact that the law should be declared constitutional unless it clearly transcends the powers of the Legislature, I must nevertheless advise you that this law is unconstitutional.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION — COLLATERAL INHERITANCE—PAYABLE ON DIFFERENCE BETWEEN APPRAISED VALUE OF ASSETS AND VALUE AT WHICH TESTATOR DIRECTED THEIR SALE TO COLLATERAL.

Howard W. Jackson, Esq., May 20, 1920.
Register of Wills,
Baltimore, Md.

DEAR SIR: Your letter of May 12th, with reference to the estate of Samuel M. Robinson, deceased, together with copies of the will, inventories, account of sale and the first administration account of the Mercantile Trust & Deposit Company, executor.

You call attention to the provisions of item 8 of the will, wherein Herbert Robinson, brother of the testator, is given the privilege and right to buy a packing business conducted by the testator at one-half of its value, or if the privilege is not exercised is to receive one-half of the purchase money of said business when sold for its full value.

You also call attention to the fact that the Mercantile Trust and Deposit Company, executor and trustee under the will, sold the business to the said Herbert Robinson for $35,188.00, being one-half the appraised value of the assets of said business.

You request an opinion as to whether the collateral inheritance tax of 5% should be laid on the difference between the appraised value of these assets and the price at which the business was sold to the said Herbert Robinson.

In my opinion, this difference is subject to the tax. I can see no difference between such a provision as that contained in the will and a provision giving to a collateral the privilege of purchasing any asset of the estate at its full value, accompanied by a direct bequest of one-half of the purchase price to such collateral. In other words, the provisions of item 8 seem to me to amount to a bequest of an undivided one-half interest in the business in question or the proceeds of the sale thereof, and I am, therefore, of the opinion, as above stated, that the difference between the appraised value and the purchase price is subject to the collateral inheritance tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE WHERE DECEDENT, IN HIS LIFETIME, BY IRREVOCABLE DEED OF TRUST, WITH NO RESERVED POWERS, HAD CAUSED TITLE AND POSSESSION TO PASS TO TRUST COMPANY FOR DESIGNATED PURPOSE.

R. S. Opie, Esq.,
Assistant Secretary,
Safe Deposit & Trust Co.,
Baltimore, Md.

June 5, 1920.

DEAR SIR: Your letter of June 2nd. You state that Mr. William R. Wagner by deed dated March 24, 1920, transferred

certain property to your company in trust to pay the net income to him during his life and on his death to set aside, out of the principal, three funds aggregating $30,000, the interest on these funds to be paid to collaterals, and on their respective deaths, the funds to pass back into the balance of the principal of the estate which is to be held for the benefit of the wife and children of the deceased; that Mr. Wagner died on April 24, 1920, and the said funds, aggregating $30,000, have been set aside; and that no right of revocation was reserved by Mr. Wagner, who at the time he made the deed divested himself of the entire title to the trust fund. You request an opinion as to whether the collateral inheritance tax is payable upon the value of the life interests in the three funds held for collaterals as above mentioned.

Section 120 of Article 81 of the Code imposes the collateral tax upon all estates *passing* from any person *who may die seized and possessed thereof*, or any part or interest therein transferred by deed, will, etc., made or intended to *take effect* in possession *after the death* of the grantor, devisor, etc., in trust or otherwise. If the deed of trust to your company was an irrevocable instrument which became effective from the date of the grant, and irrespective of the death of the grantor, the source of the grant, for purposes of the collateral tax, is quite immaterial. The transitions in enjoyment occasioned by the happening of the various contingences of the trust, including the death of a beneficiary who may have been the original grantor, are not covered by the law referred to above. In the case you cite the estate did not pass from Mr. Wagner, dying seized and possessed thereof, nor was the estate transferred by deed intended to take effect in possession after his death, because during his life, by the execution of a deed of trust, effective *eo instanti*, he caused both the title and possession to pass irrevocably from himself to your trust company, establishing definitely by that act and at that time the rights of all parties in interest. See Opinions of Attorney General, Volume 1, page 259, Volume 4, page 149; Smith vs. State, Court of Appeals, April Term, 1919.

I, therefore, feel that none of the interests described in your letter are subject to the payment of a collateral inheritance tax.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—CHARLES COUNTY—TIME TO LEVY FOR LATERAL ROAD MONEY.

June 19th, 1920.

G. Stone Posey, Esq.,
Attorney for County Commissioners,
La Plata, Md.

MY DEAR MR. POSEY: Yours of June 18th.

You call my attention to Section 9 of Chapter 508 of the Acts of 1920 (the Lateral Road Bill), in which the County Commissioners of the several counties "are directed to levy State taxes for the year 1921 at 7/10 of a cent for each $100.00 of assessable property," and so on for succeeding years, to pay the interest and create a sinking fund for the bonds sold by the State under said law for road purposes.

You ask whether this item must be included in the levy about to be made by your Board of County Commissioners, or whether this action should be deferred until next year.

There will be only one levy made in your county during the year 1920, and as your Board is directed to make the first levy "for the year 1921," I am of the opinion that you should take no action in this matter until next year. The levy which your Board is about to make will be the levy for 1920.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION — ADMINISTRATOR'S COMMISSION — TAXABLE FOR COMMISSION UPON LIBERTY BONDS ALTHOUGH COMMISSION WAIVED.

July 1st, 1920.

Russell P. Smith, Esq.,
Register of Wills,
Cambridge, Md.

MY DEAR SIR: In your letter of June 23rd, you state that an estate recently settled in your Court included Liberty Loan Bonds to the appraised value of five thousand dollars ($5,000);

that the administrator waived all commission allowance and refused to pay the tax on commission as computed upon the appraised value of the Bonds and included as a part of the assets of the estate. He gave as his reason that under the laws of the National Government, Liberty Loan Bonds were absolutely exempt from all forms of taxation. You ask me whether this contention is sound or whether it is proper for the administrator to pay the full tax.

I am clearly of the opinion that the tax must be paid. The Liberty Bonds, like all other portions of the estate, constitute a basis for the allowance of commissions. If the administrator in question had desired his commissions, he would unquestionably have expected the commissions to be allowed to him, not only upon other portions of the estate, but upon the Liberty Bonds as well.

The tax in question is not levied as such upon the estate or any portion of it. After the commission has been fully determined, the tax is then laid upon the commission at the rate prescribed by law, and is paid, not by the estate itself, but in contemplation of law, by the administrator out of his commissions.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FEDERAL SALES TAX—WILL LIE UPON SUPPLIES PURCHASED BY STATE INSTITUTION.

July 1st, 1920.

Maryland State College,
Attention of H. C. Byrd, Esq.,
Assistant to President,
College Park, Md.

DEAR SIR: I beg to reply to your letter of some weeks ago, in which you ask me whether your institution should refuse to pay the Federal tax on supplies purchased by you, which tax is being added to the bills submitted by the manufacturers or dealers, who claim that they must pass the tax on either in the form of a tax or as a part of the price of the article sold. Your letter was mislaid or would have been answered sooner.

I assume you ask this question because State property is not subject to taxation by the National Government, but in my judgment this rule is not broad enough to include the case which you present. This is not a tax laid on property owned by the State, but is a tax which any purchaser is required to pay upon the acquisition of any of the property included in the taxable list. See Snyder vs. Bettman, 190 U. S. 249.

I know of no ruling rendering it illegal for the manufacturer or merchant to include in the price to the consumer such taxes as may be put upon them by the Government. This practice is being followed daily, many persons offering goods for sale in the belief that it is more convenient or more practicable to absorb the tax in the price asked. The only remedy which the consumer has, so far as I know, is to decline to purchase the goods, and if the goods are essential to him, it would seem to me that the tax must be paid even though the purchaser is one of the departments or institutions of the State.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION — ADMINISTRATOR'S COMMISSIONS — TAXABLE ACCORDING TO ACT OF 1916, CHAP. 559, WHEN ALLOWED AFTER JUNE 1ST, 1916.

July 14, 1920.

E. H. Burns, Esq.,
Register of Wills,
Easton, Md.

MY DEAR SIR: Your letter of July 13th inquiring whether the State tax on commissions should be imposed in accordance with the "new law," by which I assume you mean the Act of 1916, Chapter 559, in a case where letters were taken out four or five years ago.

The tax provided by this Act should be imposed upon all commissions allowed after June 1st, 1916, whether the testator or the intestate died previous to that date or not, or whether the letters were granted previous to that date or not. Opinions of the Attorney General, Volume 1, page 24.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—CHARGEABLE ON ALL LEGACIES WHEN GROSS VALUE OF ESTATE EXCEEDS $500.

July 16, 1920.

John D. Hollyday, Esq.,
Register of Wills,
Hagerstown, Md.

MY DEAR MR. HOLLYDAY: I wish to acknowledge receipt of your letter of July 3rd, in which you direct my attention to the opinion given by Mr. Ritchie and found in Reports and Opinions of the Attorney General, Volume I, page 258, to the effect that the collateral inheritance tax must be charged upon all properties passing to collaterals where the gross *estate* is valued at more than five hundred ($500.00) dollars.

You then state that former Attorney General, Isaac Lobe Strans, in an opinion dated July 26th, 1911, given to Col. Harry J. Hopkins of the Comptroller's office, stated that in his judgment, "if the property embraced within the residuary clause of the son's will is valued at a sum not less than five hundred ($500.00) dollars, and is in this State, said property is subject to the collateral inheritance tax," seeming to indicate that the collateral tax should only be imposed where the *net* estate is valued at more than five hundred ($500.00) dollars.

From the language used, it is not certain that Mr. Strans really meant to express such a view. I am clearly of the opinion, however, that the position taken by Mr. Ritchie is correct. The statute (Article 81, Section 120) states that, "*no estate* which may be valued at a less sum than five hundred ($500.00) dollars shall be subject to the tax imposed by this section." The word, "estate" as used in this sentence means the estate of the decedent, and in that connection the word "estate" embraces all of the assets of the decedent at the time of his death and never means the net value of the estate after the payment of all debts.

Another illustration of this use of the term "estate" is found in Article 93, Section 5, authorizing the allowance of commissions to executors and administrators which shall not be "under 2% nor exceeding 10% of the first $20,000 of the *estate* and on the balance of the *estate* not more than 2%."

Under this section, commissions are always allowed on the gross estate irrespective of the estate's indebtedness.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FRANCHISE TAX ON DOMESTIC CORPORATIONS—PAYABLE WITH PENALTY ALTHOUGH CORPORATION IS DISSOLVED UNDER ORDER OF COURT IN MARCH AND TAX NOT DUE UNTIL SEPTEMBER.

Hon. E. Brooks Lee,
Comptroller,
Annapolis, Md.

MY DEAR MAJOR LEE: I have carefully read the correspondence with the exhibits you enclosed in your letter of August 14th, and submit herewith my opinion.

It appears that by an order of the Circuit Court for Harford County the Indian Rock Flint Company was dissolved on the 17th day of March, 1920, and its assets thereupon passed into the hands of a receiver.

By virtue of the Act of 1918, Chapter 466, it was the duty of the Indian Rock Flint Company to file its report with the State Tax Commission, showing the actual number of its outstanding shares as of the first of January, 1920. The corporation having failed to file such a certificate prior to the first day of March, the entire authorized capital stock was taken as issued, as required by the Act of 1918. In addition to the franchise tax, a penalty was imposed by the State Tax Commission for failure to file the report prior to March 1st, 1920. This penalty is authorized by Section 174 of Article 81 of the Code.

The liability of the corporation for the payment of tax began on January 1st. Its liability for the payment of penalty commenced on March 1st. True, the tax is not payable until September 1st. The mere fact that the obligation had not matured on the date of dissolution does not relieve the corporation or its receiver from their legal obligation to pay the tax. Its assets are chargeable with the payment of the tax.

Accordingly, these claims should be properly filed in the Circuit Court for Harford County without delay. The receiver should also be notified of the ruling of this office, because, under certain circumstances, he may be personally liable for the payment of this tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—COLLATERAL INHERITANCE—NONE PAYABLE BY SURVIVOR ON INTEREST OF DECEASED JOINT TENANT.

September 3, 1920.

A. M. Patterson, Esq.,
Register of Wills of Frederick County,
Frederick, Md.

MY DEAR MR. PATTERSON: In your recent letter you ask whether the survivor of two brothers, holding real estate by joint tenancy, must pay to the State a collateral inheritance tax. A property held by joint tenancy becomes the absolute property of the survivor by reason of the terms of the original grant, being an incident to that character of tenancy. Each tenant possesses the right to become the exclusive owner of the property in case of survivorship, subject to the possibility of losing all interest therein in case he shall be the first to die.

The full ownership acquired by the survivor is not, therefore, an estate "made or intended to take effect in possession after the death of the grantor, bargainor, devisor or donor," as required by the collateral inheritance tax law, and consequently no collateral inheritance tax is due.

You also ask whether such a tax is payable in the case of joint deposits in bank held by collateral heirs. I assume that you are referring to deposits which are made in the names of several persons subject to the check of either and, upon the death of one, payable to the survivor. The same reason given above would apply also to this form of deposit. In my judgment, no tax is payable.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—EXEMPTIONS OF MANUFACTURERS IN BALTIMORE CITY—ORDINANCE NO. 462 CONSTRUED WITH REFERENCE TO ORDINANCE NO. 571—NECESSITY FOR FILING APPLICATION.

September 9, 1920.

State Tax Commission,
Union Trust Building,
Baltimore, Md.

GENTLEMEN: You request my opinion on the following facts: The Mayor and City Council of Baltimore City passed an Ordinance known as No. 571, approved February 13, 1915, exempting from taxation tools, machinery, manufacturing implements and engines of corporations, firms and individuals actually engaged in manufacturing within the City of Baltimore, provided that such persons, firms and corporations complied with the requirements of its provisions in furnishing true statements in making returns of such personal property for valuation and exemption. This ordinance was passed in pursuance of Chapter 528 of the Acts of 1904. Among other things this ordinance provided as follows: "That exemptions from taxation shall be and they are hereby granted to persons, firms, and corporations actually engaged in manufacturing within the City of Baltimore, such as are permitted by the provisions of said Act, and the Appeal Tax Court of Baltimore City shall allow such exemptions in all such assessments for the year 1915 as shall have been made on or before the first day of October, 1914, *and shall thereafter allow such exemptions from taxation in each and every year upon the assessments as shall thereafter be made in each and every year*, upon all mechanical tools, whether worked by hand or steam or other motive power, and any machinery, manufacturing apparatus or engines owned, as is required by said Act of 1914, Chapter 528," etc., etc.

Four years later, the Mayor and City Council passed Ordinance No. 462, approved March 6th, 1919, which added the following exemptions: raw material on hand, manufactured products in the hands of the manufacturer, bills receivable and business credits of every kind due the manufacturer." The

ordinance provided further as follows: "It shall be the duty of every person, firm or corporation entitled to an exemption under this ordinance to make application before the first day of September, 1919, to the Appeal Tax Court of Baltimore City, in writing, as may be required by said Appeal Tax Court, upon the blanks to be furnished by said Court."

You inform me that a number of corporations failed to request an exemption by virtue of Ordinance No. 462, *supra*, either relying upon the exemption already accorded them by Ordinance 571, *supra*, or because they did not know of the passage of Section 462. You request me to inform you whether the failure to claim exemption under Ordinance No. 462 deprives the taxpayer of the exemption afforded him by Ordinance 571.

The two ordinances are on the same general subject-matter. The latter ordinance is more inclusive than the earlier. The evident intention of the Mayor and City Council was to further encourage manufacturers by extending the nature of exempted property. Nowhere in the latter ordinance is found any language which would indicate an intent to deprive the taxpayer of the exemption afforded by the earlier statute. In fact, quite the contrary appears, because Section 2 provides as follows: "That this ordinance shall not be construed to repeal Ordinance No. 571 of February 13, 1915, in so far as said ordinance may be in conflict with the provisions of this ordinance." It follows logically that the taxpayer is entitled to all the exemption conferred by Ordinance 571, and that the purpose of Ordinance No. 462 was to give the taxpayer the right to a further exemption if he chose to avail himself of it.

The taxpayer in question did not avail himself of the additional exemption, and, therefore, is not entitled to the benefits of Ordinance No. 62, and cannot claim exemption for raw material on hand, manufactured products, bills receivable or business credits, but the taxpayer is entitled to the continuing exemption afforded him by Ordinance No. 571 on tools, machinery, manufacturing implements and engines.

The taxpayer at the present time, therefore, has the choice of claiming his continuing exemption under Ordinance No. 571 or his larger exemption afforded by Ordinance No. 462. The

two ordinances are concurrent and cumulative. The latter ordinance in no way deprives the taxpayer of his continuing exemption under the earlier ordinance.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—COLLATERAL INHERITANCE TAX—WHEN PROPERTY SHALL BE REGARDED IN MARYLAND—PROCEEDS FROM MORTGAGES ON REAL ESTATE IN OTHER STATES HELD BY RESIDENTS NOT TAXABLE.

September 24, 1920.

Howard W. Jackson, Esq.,
Register of Wills,
Baltimore, Md.

MY DEAR SIR: In your letter of September 2nd. you ask whether the State is entitled to a collateral inheritance tax from the estate of Elizabeth W. Joy, under the following circumstances: the gross estate amounts to $6,106.92, of which amount $750.00 was derived from sales of real estate in Maryland, and the balance of $5,356.92 from the sale of real estate and mortgages in Michigan. The Executors claim an allowance for expenses paid by them amounting to $1,047.25 of which $442.20 were expenses incurred in connection with the Ancillary Administration in Michigan, which included the payment to the State of Michigan of the Collateral Inheritance tax on the funds there collected. The net balance now to be distributed to the residuary legatees, who are collaterals, amounts to $5,060.16, and the executors claim that inasmuch as the inheritance tax has already been paid in Michigan on $5,356.92 which is more than the entire amount to be distributed in Maryland, the balance to be distributed in Maryland is not liable for any further tax.

The entire indebtedness of the estate amounts to $1,047.25, and if the amount paid in Michigan by way of expenses and collateral inheritance tax, $422.20, be deducted, there will be left a balance of $605.05 to be paid in Maryland. Assuming

that all of this indebtedness be paid from the $750.00 derived from the sale of Maryland real estate, there would still be left a balance of $144.95 which, in my judgment, is unquestionably liable to the collateral inheritance tax. Two other questions, however, arise. First, may the Executor pay out of the funds derived from the sale of Maryland real estate, all of the indebtedness of the estate which was unpaid in Maryland, to wit, the said sum of $605.05, which would practically exhaust the Maryland assets. It may be, that an Executor has the right to determine the particular fund, forming a portion of the personal estate of the decedent, out of which the indebtedness of the estate is to be paid, but I do not believe he has the right to devote to the payment of debts proceeds arising from the sale of real estate until the personal estate of the decedent has been fully exhausted. Dugan vs. Hollins, 11 Md. 41. Inasmuch as all of the Maryland estate consisted of real estate and a portion at least of the Michigan estate was personal property, having been derived from the sale of mortgages, I am of the opinion that the net proceeds of the Michigan personal estate must be applied to the payment of the indebtedness of the decedent in Maryland, before any portion of the $750.00 arising from the sale of real estate in Maryland can be used for that purpose. In this event, the entire $750.00 or so much of it as remains unused for the payment of debts, will be subject to a Collateral Inheritance tax.

Second. Will the net balance received as a result of the Ancillary Administration in Michigan be subject to the tax? I do not think so. A resident's real estate that is located in a foreign jurisdiction, is not taxable under the Collateral Inheritance tax law, and even though said real estate be sold, under the provisions of a will, the proceeds of said sale are equally exempt from the Collateral Inheritance tax in Maryland. State vs. Fusting, 134 Md. 349. In the case just cited, the Court stated that before the tax can be declared payable, the property must, in legal contemplation, be in this State at the date of the death of the decedent. In Helser vs. State, 128 Md. 228, it was determined that mortgages on Maryland real estate owned by a non-resident decedent, were within the State at the time of his death for Collateral tax purposes. This being true, it

must necessarily follow that mortgages covering real estate in other States owned by a Maryland decedent, are not within the State for the same purpose, and if they are not in the State for that purpose at the time of death, they can never be subjected to the tax. It, therefore, follows that the Michigan mortgages or the proceeds thereof, are not subject to the payment of the Collateral Inheriance Tax in Maryland.

Very truly yours,

ALEXANDER ARMSTONG, *Attorney General.*

TAXATION — COLLATERAL INHERITANCE — APPORTIONMENT WHERE LIFE TENANT IS GIVEN RIGHT TO USE CORPUS IF "NECESSARY," BUT WAIVES THIS RIGHT.

September 25, 1920.

Howard P. Jackson, Esq.,
Register of Wills,
Baltimore, Md.

MY DEAR MR. JACKSON: I have recently had brought to my attention, the will of Emma J. Green, wherein the estate of the testatrix is bequeathed to her sister, Annie E. Jackson, "to use only the income, without it was *absolutely* necessary for her comfort, to use the principal" with remainder over to nieces. The Orphans' Court has apportioned the collateral inheritance tax between Mrs. Jackson as life tenant and the nieces as remaindermen, but in view of the right conferred upon Mrs. Jackson to use the corpus of the estate in case of absolute necessity, you have insisted upon the payment at this time, of the full tax. I think your position in the matter is sound, and that, in view of the possible absorption of the whole or a part of the estate by the life tenant, the only safe course to pursue in order to protect the State was to demand the payment at this time of the entire tax.

However, Mrs. Jackson, the life tenant has now filed in the estate, a paper in which she relinquishes and surrenders all rights that she may have to the principal of the estate of Mrs. Green, reserving to herself only the right to the income arising therefrom during her life time. This waiver will have the effect

of making Mrs. Jackson the life tenant without any rights whatever as to the principal, and I now believe that it will be safe for you to receive from her that portion of the collateral inheritance tax assigned to her by the Orphans's Court. The remaindermen are now certain to receive the corpus of the estate unimpaired and the State is therefore fully protected as to the balance of the tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—COLLATERAL INHERITANCE TAX—NOT PAYABLE IN MARYLAND ON PROCEEDS FROM SALE OF RESIDENT'S REAL ESTATE IN OTHER STATES.

September 25, 1920.

J. Howard Pastorfield, Esq.,
Register of Wills,
Denton, Md.

MY DEAR SIR: In your letter of September 24th, you state that a testator whose will was probated in your county owned a large amount of real estate in West Virginia where Ancillary letters were granted to the executor. The beneficiaries under the Will are all collaterals, and it was the intention of the executor to bring the proceeds from the sale of the West Virginia real estate into Maryland, making his distribution in your Orphans' Court and paying to the State of Maryland, a collateral inheritance tax.

The State of West Virginia, however, has refused to exempt the estate from the payment of a collateral inheritance tax, and in view of the payment thus made in a foreign State, you inquire whether the State of Maryland can also impose a similar tax.

This question has been definitely settled in the recent case of State vs. Fusting, 134 Md. 349, in which the Court of Appeals decided that a resident's real estate located in a foreign jurisdiction is not subject to the payment of a collateral inheritance tax in Maryland, and that where such real estate is sold

under the provisions of a Will, the proceeds of such sale are equally exempt from the operation of the Maryland statute imposing a collateral inheritance tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

—

TAXATION—ASSESSMENT OF STOCKS AND BONDS OF RESIDENTS OF TOWN FOR PURPOSE OF TAXATION WHEN COUNTY HAS NOT FIXED VALUE—TOWN MAY ASSESS VALUE AND TAX FOR ITS SHARE.

September 29, 1920.

George B. Young, Esq.,
Corporation Clerk of Clear Spring,
Clear Spring, Md.

DEAR MR. YOUNG: In your letter of September 18th, you inquire whether the town of Clear Spring can collect a fifteen-cent tax on stocks and bonds which are owned by residents of your town, but are not included in the county assessment.

Section 214 of Article 81 of the Code declares that all bonds, certificates of indebtedness or evidences of debt issued by any public or private corporation incorporated in this State or elsewhere, shall be subject to valuation and assessment to the owners thereof in the county or city in which such owners may respectively reside, and they shall be assessed at their actual value in the market, and there shall be paid on such valuation thirty cents (and no more) on each one hundred dollars for county, city and municipal taxation, in such county or city of this State in which the owner may reside. A similar provision is also made with reference to the assessment and taxation of shares of stock in any company or corporation incorporated in Maryland or elsewhere, and owned by residents of this State. This provision of the law was construed in the case of the County Commissioners of Frederick County vs. The Mayor and Aldermen of Frederick, 88 Md. 655, in which it was held that where the owner of bonds or stock was a resident of both the county and city of Frederick, each jurisdiction was entitled

to one-half of said amount of thirty cents on each one hundred dollars, and each was authorized to levy and collect its proportion.

In Section 81 of Article 22 of the Code of Public Local Laws of Maryland, title "Washington County," the Commissioners of Clear Spring are authorized to cause an assessment to be made of all real and personal property within the corporate limits of said town, subject to assessment for county or State purposes, with the restriction that no such assessment shall exceed that made for State and county purposes. This section of the charter of Clear Spring clothes your Commissioners with the right to assess all property, real or personal, which, under the law, is assessable for State and county purposes, and, in my judgment, the right there conferred is not destroyed by the failure of the county assessing officer to act. If the county assessment had been made, it may not be exceeded by the Commissioners of Clear Spring. If no such assessment has been made, the Commissioners of Clear Spring are then at liberty to make an assessment according to their own best judgment as to the valuation of the property, subject to the limitation of the general law that the assessment shall not exceed the actual value in the market. In my judgment, therefore, your Commissioners may assess the stocks and bonds owned by residents of Clear Spring and may impose thereon and collect a tax amounting to fifteen cents on every hundred dollars of assessed valuation, and this right may be exercised even though the securities in question have not been assessed for county purposes.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—PAYABLE ON PROPERTY CONVEYED BY IRREVOCABLE DEED OF TRUST WHERE GRANTOR RESERVES POWER OF DISPOSITION BY WILL.

Howard P. Jackson, Esq., October 2, 1920.
Register of Wills,
Baltimore, Md.

MY DEAR MR. JACKSON: In the letter just received from you, you ask me to advise you whether or not a collateral inheritance tax should be collected under the following circumstances:

Dixon C. Walker executed a deed of trust under date of February 7th, 1920 to the Safe Deposit & Trust Company, which was to continue during his life without power of revocation within ten years following its execution, and with authority to dispose of the trust estate by his will, and, in default of such appointment, with direction to the Trust Company to distribute the same to his heirs under the laws of the State of Maryland.

Mr. Walker reserved to himself the annual income. He died testate on May 17th, 1919, and by a decree of the Circuit Court No. 2 of Baltimore City, passed in the case of the Safe Deposit & Trust Company, Trustee, against James J. Lindsay, Executor, and Others, the Trust Company was directed to distribute the trust estate to certain persons, all of whom are collaterals. I assume that these persons are the beneficiaries designated in Mr. Walker's will.

The Trust Company claims that the trust estate, which it is about to distribute, is not subject to a collateral inheritance tax. I do not concur in this view. The case of Smith vs. State, 134 Md. 473, upon which the Trust Company relies to sustain its contention, leads me to an opposite conclusion. In that case, the tax was held to be applicable to the trust property covered by a deed of trust in which the grantor reserved, "first, a power of revocation at any time after a specified period; second, a power of testamentary disposition; and third, that while she parted with the legal title, the beneficial use and enjoyment of the property was to continue in her down to the time of her death, and if she executed the power of testamentary disposition contained in the deed, any beneficial use or enjoyment of it would not accrue to anyone except herself until after her death." All of these conditions are satisfied in the trust instrument now being construed. The only difference in the facts is that in the Smith case the death of the grantor occurred after the date when revocation was possible. In the instant case the death occurred while revocation was impossible. I do not think this variation in the facts affects the result. So far as the beneficiaries are concerned, the gift to them by the will of Mr. Walker did not take effect in possession until his death. It was

impossible until his death to determine definitely who his beneficiaries would be.

I feel, therefore, that the case under consideration falls clearly within the following language used by the Court in the Smith case: "The purpose of the grantor was to retain a beneficial interest in herself throughout her life, disposing of it after her life by means of the reserved power of disposition, and that so far as the beneficiaries other than herself were concerned, it was not intended to take effect until after her death, and it therefore falls directly within the provisions of the Code, Art. 81, Section 120."

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—COLLATERAL INHERITANCE—HOW COMPUTED AND WHEN PAYABLE IN CASE OF LIFE ESTATE TO WIFE WITH REMAINDER TO COLLATERALS.

October 12th, 1920.

Mr. Rufus D. Bowland,
Elkton, Maryland,
Register of Wills.

DEAR SIR: I wish to acknowledge the receipt of your letter of October 2nd, in which you ask my opinion regarding the collateral inheritance tax upon a farm in Cecil County sold by a foreign executor under a power in a will duly recorded in your office by which the testator devised the residue of his estate, of which this farm is a part, to trustees to pay the income to his widow, and then at her death to pay the income and finally the trust *res* to various collaterals.

Clearly, that part of the estate in Maryland which comes to the widow is exempt from the tax under the express provisions of Section 120 of Article 81 of Bagby's Code. The remainder of the estate is subject to the tax. Section 134 of Article 81 of the Code lays down the method of assessing the tax. The Orphans' Court determines the value of the interest liable for the tax "by deducting from the whole value of the estate so

much thereof as shall be the value of the interest therein of any person who, under said Section 120, is exempt from said tax, and the residue thereof shall be the value of said interest upon which said tax is payable."

It is clear, therefore, that you are in error in charging the entire proceeds of the sale of the farm with the tax. The statute points the way for the proper determining of the amount the executor should pay.

The will and the letter of the Fidelity Trust Company are returned herewith.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—HOW COMPUTED AND WHEN PAYABLE IN CASE OF LIFE ESTATE TO WIFE WITH REMAINDER TO COLLATERALS.

OCTOBER 22, 1920.

Rufus D. Bowland, Esq.,
Register of Wills for Cecil County,
Elkton, Md.

MY DEAR SIR: I beg to acknowledge your letter of October 15th, in which you present the following additional questions in connection with the Hirst case, concerning which I recently sent to you an opinion:

Can the foreign executors sell the Maryland real estate and merge the proceeds of such sale into the whole estate as cash, as in the case of hotchpot in Pennsylvania, and then distribute said proceeds to lineals or collaterals?

How can you, as Register, know where the proceeds of the sale of the Maryland real estate are to go in order to fix the tax when the will of Mr. Hirst does not devise to his lineal any interest in said real estate?

Such questions cannot be answered apart from the facts of the case out of which they have arisen. My recollection of Mr. Hirst's will is that he created a trust out of his entire property, directing all of the income to be paid to his widow during her

lifetime, and upon her death the income was to be divided among collaterals. Provision was also made for the final distribution of the estate itself among collaterals. The collateral inheritance tax is not paid by a wife, who is regarded as a lineal, and, therefore, it seems to me that this is a case to which the provisions of Section 134 of Article 81, are directly applicable. In other words, the interest in remainder devised to the collaterals of Mr. Hirst is alone liable for the tax. It is now the duty of the Orphans' Court of your County to determine the value of such interest, which, under the Statute is to be reached by deducting from the present value of the farm the value of the life interest therein of the widow, and the residue is to be regarded as the value of that interest upon which the tax is payable. The tax thus ascertained is required to be paid within ninety days thereafter *by the person entitled to the estate subject to the tax*, while the Statute also provides that if the tax is not paid within the ninety days, the collateral shall, upon coming into possession of his interest, pay a tax on the whole value of the property. It appears, therefore, that the collateral can exercise a discretion of either paying within the ninety days the tax on the value of his own interest in the property as determined by the Orphans' Court, or by paying a tax on the value of the entire property upon coming into possession of his interest therein. No power seems to be given by the Statute to compel the payment of the collateral tax at this time. The wife, however, is entitled during her life time to the income from the entire estate without any deduction whatever for purposes of collateral inheritance taxation. It would, therefore, appear to be the duty of the executor to pay over at this time the entire proceeds from the sale of the farm to the trustee. The trustee will invest this money together with all other portions of the estate and pay the income therefrom to the widow during her life. Upon her death, a tax upon the entire $5,000 will at once become due to the State of Maryland from the collaterals. I would suggest, therefore, that a bill for this tax, made payable upon the death of the widow, be filed at this time with the trustee and the trustee must be relied upon to meet this obligation when it becomes due. This conclusion may seem to be an unfortunate one from the standpoint of the State, but it

is not possible for me to overcome an apparent deficiency in the law. There have been numerous cases within my own knowledge in which the State has been compelled to wait during a long period of years for the payment of a tax upon property passing under a will.

I have dealt with the matter solely from the standpoint of the terms of the will, assuming that the will will stand and its provisions be complied with. If the widow renounces the will, a different situation will at once be presented which must be dealt with at the time it arises.

Of course, if the legal representative of the purchaser fears that if the payment of the tax be deferred, some question may arise as to the validity of the title, he can insist that some arrangement be made for the payment of the tax at this time.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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TAXATION—FRANCHISE TAX ON FOREIGN CORPORATIONS—NO POWER IN STATE TAX COMMISSION TO EXTEND TIME FOR FILING RETURNS.

November 5, 1920.

Charles C. Wallace, Esq.,
Secretary, State Tax Commission,
Union Trust Building,
Baltimore, Md.

MY DEAR MR. WALLACE: Yours of November 3rd.

It appears that Mr. A. C. New, attorney, representing Weller-Lewis, Incorporated, called on you on March 1, 1920, suggesting that the local representative of said company was not in a position on that date to file the annual report to the State Tax Commission, and that you agreed to grant a few days extension for the filing of this report. It later appeared when the report was filed, that the authorized capital stock of the company was $50,000 of which only $6,000 was outstanding on January 1st. The franchise tax was imposed on the entire authorized capital stock, and Mr. New now asks that the bill be altered so that the

heritance tax: Josiah L. Johnston died in October, 1904, leaving a will in which he devised the residue of his estate to trustees for the benefit of his wife during her life, with power to his wife to dispose of the corpus of the trust fund by her will, and in default of such disposition the corpus of the trust was devised to the Johnston Hospital. Mrs. Johnston died in January, 1920, leaving a last will and testament in which she exercised the power of disposition over her husband's estate, bequeathing and devising all of such estate to collaterals. The question is whether the State is entitled to a collateral inheritance tax at the rate of 5%, which was the legal rate at the time of Mrs. Johnston's death, or only at the rate of 2½%, which was the rate prevailing when Mr. Johnston died in 1904.

In the case of Conner vs. Waring, 52 Md. 724, where the facts resemble closely the facts of the case now being considered, the Court of Appeals said: "But when the power was executed, by the will of the wife, the estates created thereby took effect in the same manner as if they had been created by the will which raised the power. The party taking under and by execution of the power took under the donor, and in like manner as if the power, and the instrument executing it, had been incorporated in one instrument." In the Conner case the gift was made to the wife direct for the rest of her life, and the reversion in the fee remained in the heirs at law of the testator until the power was exercised, whereas in the case before us the property was devised to trustees for the benefit of the life tenant, and the reversionary interest placed in the Johnston Hospital subject to the exercise of the testamentary power. These differences seem to me to be immaterial.

Treating the situation, therefore, as if the bequests made by Mrs. Johnston had actually been incorporated in the will of Mr. Johnston, what is the proper rate to be charged? This question has been answered by the Court of Appeals in State vs. Safe Deposit & Trust Company of Baltimore, 132 Md. 251. The testator died prior to the passage of the Act of 1908, Chapter 695, which increased the rate of the collateral inheritance tax from 2½% to 5%, leaving all of his property in trust for the benefit of his wife during her life and thereafter to nieces and a nephew. The wife died subsequent to 1908. The Court

held (using the language of the syllabus) that "Chapter 695 of the Acts of 1908, increasing the collateral inheritance tax, has no retroactive effect and should not be applied to the estate of remaindermen who take under a will executed prior to the Act, even though the estate in remainder did not actually vest and come into possession until after its passage."

It is my opinion, therefore, that the State is only entitled to collect from the Johnston estate the collateral inheritance tax at the rate of 2½%.

Yours very truly,

ALEXANDER ARMSTONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—POWER OF TESTAMENTARY DISPOSITION EXERCISED BY LIFE TENANT—DONEE TAKES UNDER WILL OF ORIGINAL TESTATOR—NO TAX WHERE PAID IN OTHER STATE AT TIME OF TESTATOR'S DEATH—CONTRA AS TO INCOME ACCRUING DURING LIFE OF LIFE TENANT—ALLOWABLE DEDUCTIONS—PREMIUMS ON GROUND RENTS—TITLE EXPENSES ON GROUND RENTS—SHRINKAGE IN BOND AND STOCK VALUES.

December 24, 1920.

Howard P. Jackson, Esq.,
Register of Wills,
Baltimore, Md.

MY DEAR MR. JACKSON: I desire to report that I have examined the papers relating to the estates of Benjamin I. Cohen and Ella Harper Cohen, recently received by you, and now desire to submit my conclusions relative to the amount of collateral inheritance tax due from said estates to the State of Maryland.

THE FACTS.

Benjamin I. Cohen died August 10th, 1910, in Oregon, leaving a last will and testament, in which he bequeathed and devised all of his estate to his wife, Ella Harper Cohen, for the term of her natural life, with full power and authority, during her life, to give away any portion of said estate and to sell, transfer, exchange or convey any part thereof, and also with

held (using the language of the syllabus) that "Chapter 695 of the Acts of 1908, increasing the collateral inheritance tax, has no retroactive effect and should not be applied to the estate of remaindermen who take under a will executed prior to the Act, even though the estate in remainder did not actually vest and come into possession until after its passage."

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Yours very truly,

ALEXANDER ARMSTONG, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE—POWER OF TESTAMENTARY DISPOSITION EXERCISED BY LIFE TENANT—DONEE TAKES UNDER WILL OF ORIGINAL TESTATOR—NO TAX WHERE PAID IN OTHER STATE AT TIME OF TESTATOR'S DEATH—CONTRA AS TO INCOME ACCRUING DURING LIFE OF LIFE TENANT—ALLOWABLE DEDUCTIONS—PREMIUMS ON GROUND RENTS—TITLE EXPENSES ON GROUND RENTS—SHRINKAGE IN BOND AND STOCK VALUES.

December 24, 1920.

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Register of Wills,
Baltimore, Md.

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full power to invest and reinvest any portion of the estate, pledge or mortgage the same and generally to exercise over the estate full powers of ownership without being in any way accountable to any person with reference thereto. The wife also in the exercise of her personal discretion was empowered to dispose by will of the whole or any portion of the estate. Mr. Cohen then devised to his sister, Eleanor S. Cohen, from and after the death of his said wife, all of his estate, of which his said wife might die seized and which she did not dispose of by her last will, and declared that this provision was to be given effect whether the property remained in its original form or was put into the form of new investments during the life of his wife.

The widow, Ella Harper Cohen, as executrix, administered the estate in Oregon, paying there the full amount of collateral inheritance tax required by the Oregon law. Subsequently certain property belonging to the estate and located in Oregon was sold, and the proceeds of the sale, amounting to about $82,000.00, were transmitted to certain attorneys in Baltimore for reinvestment. This money was invested, to the extent of about $22,000.00, in stocks and bonds and, to the extent of about $59,000.00, in redeemable ground rents, the securities being taken in the name of Ella Harper Cohen, the widow. Mrs. Cohen died on May 15th, 1920, leaving a will in which she made specific legacies aggregating $2,350 and devised the residue of her estate to her sister-in-law, Eleanor S. Cohen, who had been made the legatee in remainder under the will of her husband. Mrs. Cohen's will contains no reference to the testamentary power conferred upon her in Mr. Cohen's will, and no particular reference to the subject-matter over which the power could have been exercised. Her own personal estate exceeded the aggregate of the specific bequests contained in her will. The present value of the Benjamin I. Cohen estate as submitted to me may be analyzed as follows:

Original principal.	$82,700.00
Income saved.	11,016.88
Gains on investments.	750.01
	$94,466.89

from which the following deductions must be made:

Premiums paid on ground rent...	$2,447.42	
Title expense on ground rent.....	895.55	
Shrinkage in value on Liberty Loan Bonds, other bonds and stocks.....	10,016.25	
		13,359.22
making the present value of the estate.....		$81,107.67

It is contended in behalf of Eleanor S. Cohen, individually and as the executrix of the will of Ella Harper Cohen, that no collateral inheritance tax whatever is due the State of Maryland on any portion of said estate.

Legal Conclusions.

First: The bequests in the will of Benjamin I. Cohen to his wife, Ella Harper Cohen, during her life, followed by the broad powers to use, sell, convey and will the whole or any portion of the estate, did not make Mrs. Cohen the owner in fee of said property. If this result had followed, Mrs. Cohen at the time of her death, would have been the absolute owner of the property, and the residue of her estate, passing to her sister-in-law, would have been subject to the collateral inheritance tax. In my judgment, however, Mrs. Cohen received only a life estate with remainder vested in Eleanor S. Cohen, liable to be divested to the extent of the use and gifts by Mrs. Cohen during her life or of the testamentary dispositions made in her will. In the case of McClernan vs. McClernan, 73 Md. 283, the Court stated "that in construing precatory words there is a distinction drawn between cases where the will gives the first taker an estate for life only, and those where the gift is absolute and with superadded words," and although the power of the first taker to expend for her own use in that case was so general as to allow the exhaustion of the whole estate if she so desired, nevertheless the Court sustained a trust created by express language in behalf of others as to what might remain unexhausted at the life tenant's death. It appears to me that the same principle would apply to the case before me, and that although the

powers of the wife during her lifetime over the estate were practically unlimited, nevertheless the rights of Eleanor S. Cohen created by the will of Benjamin I. Cohen would have been enforceable as to any residue unexpended by Mrs. Cohen during her lifetime and undisposed of in her will.

Second: Did Eleanor S. Cohen take under the will of her brother as the residuary legatee named therein or as a result of the exercise of the power of testamentary disposition on the part of the widow? It appears to me that the determination of this question is really immaterial. The law of Oregon, which should control, is still the common law rule, that the intention to execute a power of appointment by will must appear by reference in the will to the power or to the subject of it, or from the fact that the will would be inoperative without the aid of the power. Mrs. Cohen died in Oregon and, therefore, although our statute is to the contrary (Article 93, Sec. 330 of Bagby's Code) it would seem that there was no exercise of the testamentary power by the widow and that Eleanor S. Cohen takes directly under the will of Benjamin I. Cohen. Even if the power is held to have been exercised, practically the same result is accomplished. It was decided in Connor vs. Waring, 52 Md. 724, that "When the power was executed by the will of the wife, the estates created thereby took effect in the same manner as if they had been created by the will which raised the power. The party taking under and by execution of the power took under the donor and in like manner as if the power and the instrument executing it had been incorporated in one instrument."

Third: In view of these conclusions, the situation must be treated as if Eleanor S. Cohen was a direct beneficiary in remainder under the will of her brother, subject to the life estate of his wife. When the property here in question was brought into Maryland, it came as the property of the widow for life and Eleanor S. Cohen in remainder, subject to the powers of the wife over the same, as heretofore outlined. The collateral inheritance tax due thereon from the estate of Benjamin I. Cohen had been fully paid in Oregon, and the effect of the death of the wife would simply be to terminate the life interest, leaving the legatee in remainder in complete enjoyment of the property.

Under such circumstances, no collateral inheritance tax was due, and I, therefore, rule that, as to the principal of the Benjamin I. Cohen estate now in Maryland and passing to Eleanor S. Cohen, no collateral inheritance tax whatever is due the State of Maryland. This conclusion is not altered by the fact that the property stands in the name of the widow, Ella Harper Cohen. Under the facts presented, a Court would, I think, declare that the property in her name was impressed with a trust in favor of Eleanor S. Cohen, and would require her proper representatives to make a transfer of the same to Eleanor S. Cohen.

Fourth: The papers disclose that there was in Maryland, at the time of the death of Mrs. Cohen, income saved to the amount of $11,016.88 which under her will passes to her sister-in-law, a collateral. Mr. Cohen's will expressly declares that all income from his estate is to be the absolute property of his wife. The law itself would have produced the same result. All income received during the lifetime of Mrs. Cohen unexpended by her and invested in her name became her absolute property, and can only pass to her sister-in-law under the terms of her will. It is clearly subject to the payment of the collateral inheritance tax unless certain deductions therefrom are permissible. I will consider those suggested in the order in which they have been presented:

a. *Premiums Paid on Ground Rents.*

I am informed that it has been the uniform practice of the Circuit Court and Circuit Court No. 2 of Baltimore City for a long period of years to require a trustee or other fiduciary to provide a sinking fund by deducting from the income an amount sufficient to make up the difference between the purchase price of a ground rent at a premium and the amount at which the tenant has a legal right to redeem at the expiration of five years from the date of the lease. This practice seems to be sustained by the authorities. In the case of Re Stevens, 12 L. R. A. (N. S.) 817, it is stated that the life tenant must neither be credited with an appreciation nor charged with a loss in the mere market value of the bond; but, apart from any speculative

change in the market value, there is from lapse of time an inherent and intrinsic change in the value of the security itself as it approaches maturity. It is this, and this only, with which the life tenant is to be charged. Similarly, in a ground rent there is a definite and fixed change of value as the date of redemption approaches, and I, therefore, feel that this credit of $2,447.42 should be allowed.

b. *Title Expense on Ground Rents.*

When property is sold under an order of Court for the purpose of converting it into cash and permitting a change of investment, all expenses incident to the sale are deducted from the purchase price and the residue becomes the lawful corpus to be reinvested. By analogy it would seem to me that, in purchasing ground rents, the expenditures for title examinations and guarantees, being designed to protect the corpus and, therefore, the remainderman's interest, to a greater extent than to safeguard the interest of the life tenant, should be borne by the estate and should not be deducted from the income of the life tenant or in any manner charged against the same. I have been informed that this is the practice followed in the administration of trusts in Baltimore City, and therefore it is not proper to allow the credit of $895.55 claimed under this item.

c. *Shrinkage in Value on Liberty Loan Bonds, Other Bonds and Stock.*

It is clear that where certain bonds or other securities constituting the corpus of the estate diminish in value because of changing market conditions and irrespective of the normal change due to the approach of maturity, the burden of this shrinkage does not fall upon the life tenant. Such a loss must fall upon the remainder interest, which is also entitled to receive the benefits of any advances in valuation. This principle is established by the New York case just cited. See also Whitridge vs. Williams, 71 Md. 105. No credit, therefore, should be allowed under this heading. I am, therefore, of the opinion that the sum of $8,569.46 is subject to the tax as income from the estate of Benjamin I. Cohen forming a part of the estate of

Ella Harper Cohen at the time of her death, provided that sum represents the value upon the death of Ella Harper Cohen of the investments in which said income was placed. Of course, if the income of that aggregate value was invested from time to time in securities which at the time of the death of Ella Harper Cohen had depreciated in value, this shrinkage is a permissible offset, and the tax would be collectible only upon the actual value of the securities at the time of the death. The income item just discussed is properly a part of the estate of Ella Harper Cohen, and not of Benjamin I. Cohen, as classified in the papers submitted to me. It is clear, of course, that all other property belonging to Mrs. Cohen at the time of her death and passing under her will to her sister-in-law, Eleanor S. Cohen, is subject to the payment of the collateral tax.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS.

NOTARY PUBLIC—MINOR—ELIGIBLE.

February 12, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

DEAR MR. PERLMAN: I have your letter of February 9th, in which you state that Julius P. Robinson, who is only nineteen years and four months old, desires to be appointed a notary public.

The authorities seem to determine that an infant is disqualified for appointment to any office where judgment, discretion and experience are essentially necessary for the proper discharge of its duties, but that he may hold an office that is purely ministerial. In this latter class is included the office of notary public. Harlan on Domestic Relations, page 102, Cyc., Vol. 29, page 1072.

It is true that every notary public is required to give a bond, and it might be suggested that infants would be rendered ineligible because of their inability to execute a binding obligation of this nature. The contrary rule is laid down, however, in 4 Am. and Eng. 626, where it is stated that "a bond required by law is treated as creating an exception to the rule respecting the disability of infants; in such case an infant may be bound as principal"; therefore, it would seem that as there are no restrictive provisions in the Maryland statutes, an infant is eligible in Maryland for appointment as a notary public. This ruling would also apply to women who may seek such appointments, inasmuch as the Act of 1918 declares that no distinction shall be drawn between male and female applicants.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—DISQUALIFICATION—HOLDING MORE THAN ONE OFFICE—STATE COMPTROLLER MAY NOT ACCEPT COMMISSION IN NATIONAL GUARD.

February 21, 1920.

Hon. E. Brooke Lee,
State Comptroller,
Annapolis, Md.

MY DEAR MAJOR: I beg to reply to your recent inquiry as to whether, while continuing to hold the office of Comptroller, you may legally accept a commission as Major in the Maryland National Guard, which is soon to be reorganized.

Article 35 of the Bill of Rights provides "that no person shall hold, at the same time, more than one office of profit created by the Constitution or laws of this State." In construing this section the Court of Appeals has drawn a distinction between "offices" and "employments," holding that only the former are covered by the constitutional prohibition. The difficulty, therefore, lies in determining in each case whether the position in question is, in legal contemplation, an "office." Various tests have been suggested, the most important seeming to be "the obligation to take the oath prescribed by law" (118 Md. 608); another is the issuing of a commission (126 Md. 157). When these elements are present the places in controversy have always been held to be "offices."

The Comptrollership is unquestionably an office, and in your case it is only necessary to decide whether or not the position of Major in the National Guard must be similarly classified. I feel that this inquiry must be answered in the affirmative. As Major you will receive a commission and be required to take the oath. It is true there are no decisions in this State involving military and naval offices, but it has been held elsewhere, that a paymaster is a public officer (83 Am. Dec. 69); that the place of Passed Assistant Surgeon is an office (95 U. S. 76), and that the positions of Colonel and Major of United States Volunteers during the Civil War were each a "lucrative office," within the meaning of the Indiana Constitution (19 Ind. 331; 20 Ind. 103).

Even if my conclusion was otherwise as to the constitutional status of the position of Major in the National Guard of the State, I would be unwilling, because of the great uncertainty involved, to advise you to accept it while continuing to act as Comptroller. The acceptance of one office automatically vacates any other office held at the same time by the same party (122 Md. 526), and, therefore, if the Court of Appeals should subsequently hold that the position of Major in the National Guard is an office within the meaning of the Constitution, the result would be a vacation of your Comptrollership and a possible invalidation of your acts while you continued to exercise its functions.

I feel, therefore, that you cannot accept at this time the position of Major in the National Guard without seriously jeopardizing your tenure of the more important office of Comptroller, to which the people recently elected you.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—STATE BOARD OF AGRICULTURE—NO POWER TO GRANT TOBACCO GROWERS' ASSOCIATION FREE USE OF PART OF STATE TOBACCO WAREHOUSE.

February 26, 1920.

Dr. A. F. Woods,
President State College of Agriculture,
Fidelity Building,
Baltimore, Md.

DEAR SIR: In your letter of February 20th, you state that the State Board of Agriculture, some months ago, granted permission to the Maryland Tobacco Growers' Association to use, without charge, for the purposes of their association, certain rooms in the State Tobacco Warehouses. As a result of a protest of the tobacco commission men of Baltimore, you now ask me to advise the Board whether, in extending the privilege referred to above, it acted within its powers.

The Maryland Tobacco Growers' Association was incorporated by Chapter 223 of the Acts of 1906. Its membership was open to all tobacco growers in the State for whose mutual benefit it was created, and one of the advantages contemplated was the development of a plan for the direct sale of tobacco by the grower to the retailer. A large number of growers never joined the Association, but sell their products to commission merchants. The members of the Association, however, in accordance with their original plan, send their products to the headquarters of the Association, now located, by permission of your Board, in the State Warehouses, where they are disposed of by direct sale to the manufacturer. The Association, therefore, appears to be a private corporation engaged in a commercial enterprise and functioning for the financial welfare of its members. I am unable to find any sanction in the law for an extension to such an organization of the gratuitous use of any part of the State's property. There is apparently no reason why this Association should be furnished with ample quarters, rent free, at the expense of the State, while the same privileges are denied to their business competitors and neighbors.

Your Board is clothed with authority and therefore charged with the duty to rent the tobacco warehouses of the State (Acts 1916, Chapter 309, Section 49). This, of course, means the warehouses and every part thereof, and while the rentals are to be upon such terms as your Board "may deem proper and beneficial to the State," the Board would not be permitted to exercise its discretion in an arbitrary and unreasonable fashion, but would be expected to secure for the State an income which is fairly commensurate with those received in the same neighborhood for the same character of property.

You suggest in your letter that Section 3 of the Act incorporating the Maryland Tobacco Growers' Association fixed its principal office at the Maryland Agricultural College, and that when the College was converted into a State institution the State Board of Agriculture was directed to discharge all obligations devolving upon the Board of the Maryland Agricultural College. This is correct; but the duty so imposed does not compel you, in the fulfillment of your obligations, to permit the Association to have its principal office at the College, to

grant to it, also, free selling quarters in the State's warehouses, where it may actively prosecute its commercial activities.

I am, therefore, of the opinion that the Board exceeded its authority when it granted to the Maryland Tobacco Growers' Association, under the circumstances and for the purposes mentioned in your letter, the right to occupy certain rooms in the State Tobacco Warehouses.

In accordance with your request, I am returning herewith your certified copy of the Charter and By-Laws of said Association.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — NOTARY PUBLIC—NOT DISQUALIFIED BY REMVOAL INTO DIFFERENT SECTION OF SAME COUNTY.

March 11, 1920.

Miss Hellen A. Roeder,
Mount Rainier, Md.

MY DEAR MISS ROEDER: I have your letter of March 8th, in which you state that you were recently appointed a Notary Public for Prince George's County, as residing at Upper Marlboro, but that, as a matter of fact, you now permanently reside at Mount Rainier, in Chillum District. You ask if you can legally perform your official duties as a Notary in the district in which you live by virtue of your appointment.

The Governor is authorized to appoint as Notaries Public for the State certain persons in his discretion, "to reside in such place or places as the Governor shall in and by their respective commissions designate."

Under the language quoted the appointments are made either for a county or Baltimore City, no lesser political sub-division being recognized. I assume, therefore, that your commission would designate you as a Notary Public for Prince George's County, and as Chillum District is in said county, it will be proper for you to perform your duties within said district.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—INTERSTATE EXTRADITION—PROCEDURE AS TO.

April 9th, 1920.

James W. Eckels, Esq.,
Attorney at Law,
Carlisle, Pa.

DEAR SIR: Your letter of the first inst. has been referred by the Secretary of State to this office.

Answering the inquiries therein contained, I beg to advise:

1. Extradition papers may be mailed to the Governor of this State, but an agent of another State must, of course, be sent to bring back the prisoner.

2. A person charged with statutory rape in another State can be extradited from this State.

3. I know of no contested case in this State in which the point has been raised whether a person can be extradited upon information, and inasmuch as the Federal statute requires indictment or affidavit, and the decisions in other jurisdictions are conflicting on the question of whether an information is sufficient, I would consider it advisable to secure an indictment or affidavit upon which the application for extradition should be based.

Yours very truly,
ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS—LEGISLATIVE ACT INCOMPLETE—REASONS FOR SUGGESTED ~~Veto~~ Veto.

April 21, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

MY DEAR MR. PERLMAN: I have carefully examined House Bill No. 759, which you handed to me at Annapolis yesterday afternoon, and regret to advise you that, in my judgment, the Governor should withhold his approval thereof, because of its incompleteness.

Its purpose is to create a special taxing area of the village of Forest Park, Montgomery County, but, unfortunately, Section 1, in attempting to define the land to be comprised therein, fails to do so by courses and distances or by any other definite language, and simply refers to "the sub-division in Montgomery County called Forest Park as per revised plat No. ....., recorded in Plat Book No. ....., one of the land records for Montgomery County." I understand that it was contemplated to file the plat in question with the bill and as a part thereof, but the plat disappeared, and the figures intended to refer to its place of record were inadvertently omitted.

In Section 2, which attempts to define a fiscal year for said taxing area, the dates when said year shall commence and end, respectively, are both left blank. Even though the plat of Forest Park might be definitely located and be permitted by the Court to be read in the bill, which is most unlikely, this latter defect could never be cured.

It is evident that, even if the bill became law, it would be incapable of adequate enforcement. Law suits would be inevitable, and it seems to me, therefore, that a veto of the measure at this time would save those interested in the bill from much embarrassment in the future.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS — APPOINTMENTS — SOURCE OF POWER TO APPOINT TO OFFICE — APPOINTMENT NOT A MINISTERIAL ACT—BOARD OF EXAMINERS AND SUPERVISORS OF INSTALLATION OF ELECTRICAL APPARATUS.

April 28, 1920.

Hon. Albert C. Ritchie,
State House,
Annapolis, Md.

MY DEAR GOVERNOR RITCHIE: In my conversation with you yesterday afternoon you directed my attention to Section 663A of the Charter of Baltimore City, Revised Edition, 1915.

This section creates the Board of Examiners and Supervisors of the Installation of Electrical Apparatus and Wiring for Baltimore City, which is made to consist of five persons. The members of this Board are required to be appointed by the Governor, "two from nominations made by the Electrical Contractors' Association of Maryland, one from nominations made by the Chief of the Municipal Electrical Inspectors of Baltimore City, one from nominations made by the Association of Fire Underwriters of Baltimore City, and one person residing in Baltimore City who shall be a practical journeyman electrician." It seems that it is now your duty to appoint the two members who are to be selected by you from nominations made by the Electrical Contractors' Association of Maryland. This Association has submitted to you only two names, giving you no opportunity to exercise any discretionary judgment, and you ask me to advise you as to your rights, as well as the duties of the Electrical Contractors' Association of Maryland, in the premises.

I find that in Cyc., Volume 29, page 1270, the rule relating to the Governor's power of appointment is laid down in the following language: "It is, however, clear that the power of appointment is not an executive power in the sense that it belongs to the Governor as a result of a grant to him in the Constitution of the executive power, in the absence of any provision of statute giving him power to appoint." It is clear, therefore, that no power of appointment belongs to you merely because under the Constitution you are clothed with the executive power of the State, and your source of appointive power must, therefore, be found either in some general provision of the Constitution or in the statute under which you propose to act. The Constitution of Maryland confers upon the Governor certain appointive powers in Section 10, Article 2, employing the following language: "He (the Governor) shall nominate, and by and with the consent of the Senate, appoint all civil and military officers of the State, whose appointment or election is not otherwise herein provided for, unless a different mode of appointment be prescribed by the law creating the office." This provision is interpreted in Baltimore vs. State, 15 Md. 376, and Scholle vs. State, 90 Md. 729.

In the latter case, the Court says this provision simply means "that the Governor shall have the power to fill all offices in the State, whether created by the Constitution or by Act of Assembly, unless otherwise provided by the one or the other. When, therefore, the Legislature has created an office by Act of Assembly, the Legislature can designate by whom and in what manner the person who is to fill the office is to be appointed." The Legislature having acted with reference to the matter now before me, the relative rights of yourself and the Electrical Contractors' Association of Maryland must be ascertained from the terms of the statute itself. I do not feel that the language employed therein contemplated stripping the Governor of all discretionary power and assigning to him the purely ministerial duty of naming whomsoever the various nominating agencies therein mentioned might propose.

This would seem to be in accord with the general principle on the subject, as indicated in 4 Corpus Juris, 1404 (Note). "The decisions of this and other Courts, State and Federal, as to the meaning of the word 'appointment,' and what constitutes an appointment under the law, are to the effect that the choice of the person to fill an office constitutes the essence of the appointment; that the selection must be the discretionary act of the officer or Board clothed with the power of appointment; that while he or it might listen to the recommendation or advice of others, yet the selection must finally be his or its act, *which has never been regarded or held to be ministerial.*" It is true that the language of the statute abridges to a certain extent the range of the Governor's selection, but it does not provide that the Governor shall appoint such persons as shall be designated by the various nominating agencies therein mentioned.

On the contrary, a certain discretionary power is left with him, because he is required to appoint "from" nominations submitted, indicating power of choice or selection. This construction is further emphasized by the fact that the statute, in referring to the appointment of "one" member in each case declares it shall be made from "nominations." This clearly indicates that the Chief of the Municipal Electrical Inspectors of Baltimore and the Association of Fire Underwriters of Baltimore City must each submit more than one name, although

only one is to be actually appointed. I think the same principle is applicable to the nominations made by the Electrical Contractors' Association of Maryland, and that they should submit a list of at least four persons from whom the Governor may make his appointment; otherwise, the said Association would actually make one or both of the appointments itself, so far as the actual selection is concerned. It would seem also to be true that the Governor may decline to act upon either or any of the names submitted, in which event it would be the duty of said Association to submit new nominations. This construction would seem to be supported by the discussion of a somewhat similar question in the case of Keyser vs. Upshur, 92 Md. 731.

I trust that the suggestions herein contained will assist you in dealing with the situation now before you, but it will, of course, be my pleasure to pass upon any other phase of the matter which you may call to my attention.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—INTERSTATE EXTRADITION—NO OBLIGATION ON GOVERNOR TO EXTRADITE IF REQUISITION PAPERS ARE NOT IN DUE FORM TO ESTABLISH CRIME.

May 3rd, 1920.

Hon. Albert C. Ritchie,
Governor of Maryland,
Annapolis, Md.

DEAR GOVERNOR RITCHIE: I beg to acknowledge receipt of your letter of April 23rd, enclosing letter from Kemp Littlepage, Esq., Prosecuting Attorney of Kanawha County, West Virginia, with reference to requisition made by the Governor of West Virginia upon you for the extradition of Samuel Weiner, which requisition you refused to grant. I note the statement in your letter that the copy of indictment attached to the requisition alleged a crime committed on a certain day in March, and that the evidence before you showed conclusively

that the accused had not been in West Virginia since the preceding January. I also note the statement of Mr. Littlepage that the West Virginia law provides that any day may be alleged in an indictment as long as it is not an impossible day; that such an indictment will be good, and that a different day may be proved at the trial.

In my opinion, you were quite right in refusing to honor the requisition, assuming, of course, that you had at the time no other facts before you than those stated in your letter. If the law of West Virginia is as stated by Mr. Littlepage, I should say that it is merely declaratory of the common law, according to which it is sufficient to lay the crime on any day previous to the finding of the indictment, and during the period within which the offense may be prosecuted, except, of course, when the time is of the essence of the offense itself. (22 Cyc., 313.)

The statutory law of West Virginia, however, cannot control the action of the Governor of another State upon whom requisition is made, any more than the common law in force in West Virginia could, in itself, control such action. Such provisions must, of course, be taken in connection with the provisions of the Constitution of the United States and of the Acts of Congress passed in pursuance thereof. These provisions were before the Supreme Court of the United States in the case of Hyatt vs. People, ex. rel. Corkran, 188 U. S. (47 U. S. Sup. Ct. Law Ed. 657), at p. 661. There requisition was sought from the Governor of New York by the Governor of Tennessee on the strength of a number of indictments which charged the crime of larceny and false pretenses on the 20th and 30th of April, the 8th day of May, and the 17th and 24th days of June, 1901. It was conceded that the accused was not in the State of Tennessee between May 1st, 1899, and July 1st, 1901, and that he was in that State on July 2nd, 1901. The Court there said (page 661): "In the case before us it is conceded that the relator was not in the State at the various times when it is alleged in the indictments crimes were committed, nor until eight days after the time when the last one is alleged to have been committed. That the prosecution on the trial of such an indictment need not prove with exactness the commission of the crime at the very time alleged in the indictment is imma-

terial. The indictments in this case named certain dates as the time when the crimes were committed, and where in a proceeding like this there is no proof, or offer of proof, to show that the crimes were in truth committed on some other day than those named in the indictments, and that the dates therein named were erroneously stated, it is sufficient for the party charged to show that he was not in the State at the times named in the indictments; and when those facts are proved so that there is no dispute in regard to them, and there is no claim of any error in the dates named in the indictments, the facts so proved are sufficient to show that the person was not in the State when the crimes were, if ever, committed."

I assume that, as the matter was presented to you, there was, as in the case cited, no proof or offer of proof to show that the crime was in truth committed on some other day than that named in the indictment, and that the date therein named was erroneously stated. If such proof should be furnished upon a subsequent application, and if it should be then shown that the accused was in the State of West Virginia on the day when the crime was actually committed, it seems to me that, according to the plain intimation given by the Court in the language above quoted, the requisition should be honored. It is well established, however, that there is no power in any Court to compel the Executive of a State to grant extradition. See Kentucky vs. Dennison, 24 How. 66.

I return herewith Mr. Littlepage's letter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—MARRIAGE—INFANCY—PENALTY FOR FALSE STATEMENTS IN SECURING LICENSE.

May 18, 1920.

Graham W. Duncan, Esq.,
Attorney at Law,
Beaufort, N. C.

MY DEAR SIR: Yours of May 14th.

The law of Maryland has long fixed twenty-one as the minimum age at which a marriage license may be procured by a

man, and sixteen as the minimum age at which a marriage license will be issued to a woman, without the consent of parent or guardian. If either party applying is under the age mentioned, it is necessary to have a written authorization from the parent or guardian. If, however, a license is actually issued to a party under the prescribed age, and the marriage occurs, the marriage is not declared void by the laws of the State.

You can readily see that it would be a very serious matter after a marriage has actually been entered into to nullify it upon any such grounds. Frequently licenses have been procured where one or both of the parties were under the proper age, and the marriage has been treated in all respects as if all conditions had been complied with. As a result of many abuses, the age limit of the girl was this year raised from 16 to 18, and it is now necessary to have one of the contracting parties apply in person for the license. A misrepresentation of the age would, in most instances, amount to perjury, and it is believed that this new requirement will reduce the number of hasty marriages of minors.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—DISQUALIFICATION TO HOLD MORE THAN ONE OFFICE—NOTARY PUBLIC AND EQUITY EXAMINER—MAY ACT AS SUPERVISOR OF ASSESSMENTS.

June 5, 1920.

Ernest Ray Jones, Esq.,
Supervisor of Assessments
for Garrett County,
Oakland, Md.

MY DEAR MR. JONES: I wish to acknowledge your letter of June 3rd, in which you refer to the position which you now hold, and calling my attention to Section 235 of Chapter 841 of the Acts of 1914, in which appears the sentence, "He (the Supervisor) shall hold no other public office of profit." You then ask whether, under this law, and while holding the posi-

tion of Supervisor of Assessments, you can also act as a Notary Public and equity examiner.

The Court of Appeals, in a number of cases, has passed upon questions somewhat similar, in which they have differentiated positions which are offices from those which are simply employments. Although the purpose of the Court's inquiry was somewhat different, nevertheless, it seems to me that the same reasoning would apply here, where it is necessary to determine what is a *public office* of profit. An office has been held to embrace "the performance by the incumbent of a public function delegated to him as a part of the sovereignty of the State" (126 Md. 159), and in determining whether a position is an office or not, the duty to take an oath of office "is considered in this State to be of the greatest importance." (122 Md. 531.)

Determined by these tests, I do not feel that either the position of Notary Public or that of equity examiner is a public office of profit, and I consider that you will be guilty of no impropriety in continuing to hold these positions.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—REFERENDUM—ACT MUST BE SUBMITTED TO VOTERS AS PASSED BY LEGISLATURE, EVEN THOUGH IT CONTAINS ERROR.

June 9th, 1920.

Harry Waldorf, Esq.,
Roads Engineer of ~~Carroll~~ Caroline *County,*
Denton, Md.

MY DEAR SIR: I have been requested to answer your letter of June 4th, addressed to Hon. Philip B. Perlman, Secretary of State, in which you refer to House Bill No. 572, Chapter 269, of the Acts of 1920, which, according to its title, authorizes and directs the County Commissioners of Caroline County to levy five thousand dollars ($5,000) for the repair of a certain road in Caroline County, but in the body of the bill fixes the amount to be levied for said purpose at four thousand dol-

lars ($4,000). Petitions are being circulated for a referendum on this measure, and you ask whether, in said petitions, the bill should be referred to exactly as it was passed, or whether a correction should be made of what you term the obvious error appearing therein.

It is not for the persons preparing or circulating the petitions for a referendum to pass upon Legislative errors, and they have no power to correct the same, even though the error may be an unquestioned one. The law bearing on the subject, as found in Section 16A of the Constitution, declares "that each petition shall contain the full text of the Act or part of the Act petitioned upon."

In my judgment, this means that the Act in question shall be reproduced exactly as it was passed by the Legislature. If the error is such an obvious one, it will not mislead the voters; but if the mistake raises a real question, it seems to me that the voters, when passing upon the measure, are entitled to know this fact, as well as all others affecting the matter.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS—MARYLAND TRAINING SCHOOL FOR BOYS—NOT LIABLE FOR THEFTS BY ESCAPED INMATES.

June 18th, 1920.

Leon C. Faulkner, Esq.,
Superintendent, Maryland Training School for Boys,
Loch Raven, Md.

DEAR SIR: Your letter of June 9th, enclosing bill of P. A. Gilland for various articles, which, as you inform me, are said to have been stolen from him by certain boys who escaped from your institution.

You are, of course, aware that no suit can be maintained against the Maryland Training School for Boys, as it is now a State institution, and I suppose, therefore, that you merely wish to know what your legal rights would be if the school were a private institution, and subject to suit, in order that you

may decide the question raised by the presentation of Mr. Gilland's bill, without reference to his right to sue.

In my opinion, a private institution of the same general character as the Maryland Training School for Boys would not be held to any greater degree of accountability for the torts committed by the inmates of that institution than the parents of such boys would be, if the boys were residing with their parents, and it is a general rule that a parent is not liable in damages for the torts of his minor child, even though the child lives with the parent, and is under his control, unless the acts were done by his authority, knowledge or consent, or were ratified by him, or were of benefit to him, or were done in connection with his business, or by reason of negligence on his part which made it possible for the child to cause the injury complained of and probable that child would do so. (21 Am. & Eng. Enc. of Law, page 1057; 29 Cyc., pages 1665 and 1666.) Unless, therefore, some circumstances exist which would bring this case within some of the exemptions above mentioned, I should say that your institution was not liable in the premises.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS — SALARY OF COUNTY OFFICER FIXED BY STATUTE — CANNOT BE INCREASED, SAVE BY LEGISLATURE.

June 18, 1920.

Virgill H. Pruitt, Esq.,
Deputy Treasurer of Worcester County,
Snow Hill, Md.

MY DEAR SIR: Further replying to your letter of June 4th, in which you state that the minimum salary for Deputy Treasurer of Worcester County is $1,000.00, and inquire whether a request for an increase would constitute a violation of law, and whether such increase could be granted.

Section 28 of Chapter 182 of the Acts of 1914 is as follows:

"And be it enacted, That the Treasurer shall appoint a deputy, who shall perform such duties as the said Treasurer

may require, and for whose official conduct said Treasurer shall be responsible, and who shall act in his stead and place in his absence, and said clerk shall be paid an annual salary of $1,000.00 by Worcester County."

It would seem clear, from the above, that the salary of $1,000.00 is not a minimum salary, but is the only salary which can be paid. In order, therefore, to increase the amount of this salary, the above-mentioned Act, by which the amount thereof is fixed, would have to be amended by the Legislature.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—WARRANT OF RESTITUTION—EXECUTED BY SHERIFF ON CERTIFICATE OF MAGISTRATE THAT TENANT HAS BEEN SUMMONED.

June 22, 1920.

Thomas F. McNulty, Esq.,
Sheriff of Baltimore City,
Baltimore, Md.

DEAR SIR: In reply to your letter of June 16th, 1920, in which you request me to give you my opinion as to whether or not the Sheriff of Baltimore City should execute a warrant of restitution directed to him, in a tenant holding over case, by a Justice of the Peace having civil jurisdiction or a Justice of the Peace of the People's Court, by virtue of Article 53, Section 4, of the Code, when the Sheriff does not know whether the tenant has been legally summoned because the original writ of summons was directed to a Constable instead of the Sheriff, I submit herewith my opinion.

Article 53, Section 2, provides for the issuing of a summons in tenant holding over cases, but does not state whether the summons should be directed to a Constable or to the Sheriff. It may, therefore, be directed to either.

The warrant of restitution must be issued to the Sheriff (Section 4, *supra*). The Justice should certify in the warrant that the tenant has been summoned, and if the present form of warrant used does not contain appropriate language certify-

ing that the tenant has been summoned, the form should be amended so as to apprise the Sheriff of the Constable's return.

In my judgment, if the Justice certifies in the warrant that the defendant has been duly summoned, the Sheriff could not be held in damages, if, in fact, the defendant had not been summoned by the Constable.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS — STATE BOARD OF CHIROPRACTIC EXAMINERS — CANNOT FUNCTION UNTIL LAW OFFICIALLY PUBLISHED.

July 2, 1920.

Hon. Philip B. Perlman,
Secretary of State,
Annapolis, Md.

MY DEAR MR. PERLMAN: Yours of June 30th. The new Act relating to the State Board of Chiropractic Examiners, in my judgment, cannot become effective until the law has been officially published. I would advise, therefore, that you direct an immediate publication of the law in such papers and with such frequency as you may deem advisable, securing from said papers certificate of publication, which should be filed for the purpose of evidencing the dates upon which the law itself became operative. Until this publication has been made officially, I do not believe that the State Board of Chiropractic Examiners can legally function.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—DENTISTRY—FALSE ADVERTISING STATEMENTS—FAILURE TO DISPLAY NAME OF PERSON LICENSED TO PRACTICE—PENALTIES FOR.

July 17, 1920.

Dr. F. F. Drew,
Secretary of State Board of Dental Examiners,
N. Howard Street,
Baltimore, Md.

DEAR SIR: Your letter of July 8th, asking my view of certain advertisements displayed by certain practitioners of dentistry.

In my opinion, the display of an advertisement containing statements to the effect that dentistry as practiced by a given person or at a given place is painless, when, in fact, it is not, is clearly misleading, and would, therefore, justify the cancellation of the registration and certificate of the practioner displaying such advertisement under the terms of Section 8 of the Dentistry Law (Acts of 1920, Chapter 481).

The display of a sign such as "Harvard Dental Parlors," without the name of any person licensed to practice dentistry appearing in connection with such sign, or the use of any other sign in which the name of a person licensed to practice dentistry did not appear, or any other failure of a person practicing dentistry to exhibit a sign on which his name appears, as provided in Section 1 of the law, would subject the person so practicing dentistry, without exhibiting his name in accordance with the provisions of that section, to a prosecution under Section 10 of the law. The practice of dentistry by a person who, instead of exhibiting his own name, as required by Section 1 of the law, exhibits some other name, there being no person of the name exhibited connected with the establishment, would subject the person so offending both to cancellation under the provisions of Section 8 and to prosecution under the provisions of Section 10.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—AUCTIONEERS IN BALTIMORE CITY—MUST BE RESIDENTS THEREOF.

July 30, 1920.

W. O. Anderson, Esq.,
Executive Secretary,
Annapolis, Md.

DEAR MR. ANDERSON: You state in your letter of July 28th that a resident of Baltimore County desires to be appointed by the Governor as auctioneer for Baltimore City. You ask whether this appointment can be legally made.

I have examined the provisions of the City Code of Baltimore City relating to this subject and have come to the conclusion that such an appointment would be invalid.

Section 240 of the City Code authorized the Governor to appoint as many auctioneers *in the City of Baltimore* as he may think proper. Section 264 provides that no auctioneer shall permit any person to sell any property of any description, under or by virtue of his license, unless the person so authorized is actually and *bona fide* a resident of Baltimore City at the time of such employment. If the law is careful enough to require even the employees of the auctioneer to be residents of Baltimore, it certainly must contemplate that the auctioneer himself shall be a resident of the city.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—POLICE JUSTICES—NEED NOT BE RESIDENTS OF DISTRICTS OVER WHICH THEY EXERCISE JURISDICTION—POLICE JUSTICE OF WILLIAMSPORT—APPOINTMENT OF.

September 3, 1920.

J. T. Tice, Esq.,
Justice of the Peace,
Williamsport, Md.

DEAR SIR: In your several letters to me you inquire about the legality of the designation of D. M. Tice, Esq., by the Bur-

gess and Commissioners of the City of Williamport as Police Justice of the City of Williamsport, and his right to continue to act in that capacity.

The facts as stated in your letter are as follows: That Justice D. M. Tice, formerly lived in the Williamsport Election District, which is the same district in which you now reside. This district is known numerically as District No. 2. By Chapter 160 of the Acts of 1920, a new election district was created and established in Washington County to be known as the Half-Way Election District or Election District No. 26 of Washington County. This district was formed of parts of other election districts among them Election District No. 2, the Williamsport District. The change in boundary lines resulted in Justice D. M. Tice becoming a resident of District No. 26, the Half-Way District, and a non-resident of District No. 2, the Williamsport District.

You state that after the Legislature adjourned, Justice D. M. Tice was appointed one of the Justices of the Peace of the Second or Williamsport District by Hon. Albert C. Ritchie, Governor. As a result of the change of boundary lines, Justice D. M. Tice, became a non-resident of the district for which he was appointed. I must determine, first, whether the Governor in appointing a Justice of the Peace for a particular district, has the power to select as his appointee, a resident of another district. The Constitution, Art. 4, Part 6, Section 42, provides as follows: "The Governor by and with the advice and consent of the Senate, shall appoint such number of Justices of the Peace * * * for the several Election Districts of the Counties and Wards of Baltimore City as are now or may hereafter be prescribed by law." You will note that the selection is not limited to residents of the district for which the magistrate is appointed. In the case of Levin vs. Hewes, 118 Md., page 625, the Court of Appeals determined that there is no constitutional requirement that Justices shall live or have their offices in the district or wards for which they are appointed, nor is there any prohibition upon appointments being made for a City or County at large. Judge Stockbridge, in Lewin vs. Hewes, *supra*, says in upholding the views set out above: "There is a period of forty-two years during which the people of this State have

acquiesced in and approved the interpretation so placed by the General Assembly upon the Constitution, and it is by universal acquiescence and approval that the meaning of the Constitution is established." See also Thomas, Procedure in Justice cases, Section 3.

Justice D. M. Tice was appointed for the Williamsport District and the change of boundaries did not of itself transfer his appointment to the Half-Way District, or in any other way effect his original appointment. The Act of 1920, Chapter 160, authorized the Governor to make appointments of Justices of the Peace for the new election district. The Governor could have appointed Justice D. M. Tice for the new district, but did not do so.

The second question is presented by the Act of 1906, Chap. 30, which provides in part as follows: "That annually, after each election and after the qualification of the officers elected, the Burgess shall, by and with the advice and consent of the said Commissioners of Williamsport, appoint one of the Justices of the Peace *in Williamsport* to act as a Police Justice of the said corporation."

Your letter indicates that you are of the opinion that the words "in Williamsport," underscored above, limit the selection by the Burgess and the Commissioners to Justices of the Peace who reside in the town of Williamsport. With this contention, I do not agree. The Legislature in passing the Act of 1906, must have known that the Governor had the right to select residents of Williamsport District, residing without the town and even residents of other districts as Justices of the Peace for the obvious reason that they had placed this same interpretation themselves upon the Constitution, and the people of the State have acquiesced in this construction for a period of forty-two years, Levin vs. Hewes, *supra*. Having this in mind, the Legislature must also have known that the Governor could and might fill all positions of Justices of the Peace for the Williamsport District with non-residents of the Williamsport District. There might accordingly, if your construction of the law is correct, be no one eligible to appointment by the Burgess and the Commissioners of Williamsport as Police Justice of the City of Williamsport. It is well settled that "Legislative enact-

ments are not to be defeated on account of mistakes, errors or omissions provided the intent of the Legislature can be collected from the whole statute." The words "in Williamsport" must, therefore, be construed to mean *for* Williamsport, and the word "Williamsport" can only be to mean the Williamsport District, because the Governor is not required to appoint a magistrate residing in the City of Williamsport, and his appointment when made is for the Election District of Williamsport and not for the City of Williamsport.

It is fair to assume that if the Legislature intended to limit the selection of the Police Magistrate for the town of Williamsport to residents of said town (assuming that the Legislature has such power) they would have done so in clear and unmistakeable language.

I must therefore inform you that if Justice D. M. Tice has all the other qualifications and requisites for designation as Police Justice of the town of Williamsport, he is not disqualified for the reasons to which you have called my attention.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—PRACTICING ACCOUNTANCY IN MARYLAND—NON-RESIDENT MAY ONLY BE LICENSED WHEN HE INTENDS TO PRACTICE IN MARYLAND.

October 1st, 1920.

Mr. James K. Eagan, C. P. A.,
Sec'y-Treas. Board of Examiners of Public Accountants,
818 Equitable Building,
Baltimore, Maryland.

DEAR SIR: I wish to acknowledge the receipt of your letter of the tenth ultimo., calling to my attention Chapter 330 of the Acts of 1916.

You ask my opinion first as to whether a certificate may be issued to an individual who is a non-resident of Maryland but who is professionally qualified.

It is my opinion that the law does not authorize a certificate to be issued to such person unless it further appears that he

"desires to practice the profession of accountancy in the State of Maryland." The language I have quoted from the law is sufficiently clear to require no other comment.

You ask next whether a certificate may be "issued to a non-resident if he expresses a desire to practice accounting in Maryland?"

Assuming that he meets the professional qualifications set forth in Section 6 of the Act, I believe that a certificate may be issued to such person, provided, of course, your Board is convinced of the good faith of his expression.

You ask finally "What evidence should the Board require of the non-resident's desire to practice accounting in the State of Maryland?"

I would say that this is a matter your Board may determine for itself under its authority to require "a written application in form to be prescribed by the said Board, with such information as the board may require as to the character and qualification of such applicant." It would be implied, of course, that the Board's requirement be *reasonable* and not arbitrary.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS—QUALIFICATION OF JURORS IN MARYLAND—CHANGE OF VENUE.

October 21, 1920.

Hon. James Damron,
Judge, Circuit Court,
Williamson, W. Va.

MY DEAR SIR: I very much regret that your letter of October 1st has not been more promptly answered, but our office has been so overwhelmed with work that it seemed to be impossible to give it the attention which it required.

The provisions of our law affecting the qualification and selection of jurors are codified in Article 51, Volume 1, of Bagby's Annotated Code. The essential features are as follows:

A juror must be twenty-five years of age and all persons under seventy years of age, all school masters and all delegates, coroners and constables during their continuance in office are exempt from service. The regular panel is selected by the Judge placing into a box two hundred names of residents of the county, from which he draws by lot forty-eight names. These names are given numbers. Ballots with corresponding numbers are then drawn from another box, the first twenty-three names so drawn constituting the Grand Jury, and the remaining twenty-five the petit jury. No property qualification is required by any juror, and the two hundred names originally placed in the box are selected from the poll books in the county.

It is provided that the several courts of the State shall at all times have power to direct talesmen to be summoned to serve on juries where, without such talesmen, there would not be twenty of the original panel, exclusive of the jury charged, from whom a jury can be formed, or may direct such talesmen to be summoned whenever, by challenging or otherwise, a sufficient number of jurors cannot be had to try the case, either civil or criminal.

There is no reference in the law to the residence of talesmen, but I have never known talesmen from other counties to be summoned.

In Maryland a change of venue is only allowed as a matter of course in criminal cases in which capital punishment may be imposed, and in such cases the change of venue may be granted upon motion of either the State or traverser.

Trusting that this information will satisfy your requirements, I am,

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—MARYLAND INDUSTRIAL SCHOOL FOR GIRLS—NOT REQUIRED TO SUBMIT ANNUAL REPORT TO BOARD OF STATE AID AND CHARITIES.

October 22, 1920.

Maryland Industrial School for Girls,
c/o Joseph N. Ulman, Esq.,
1419 *Fidelity Building,*
Baltimore, Md.

GENTLEMEN: You have orally requested me to inform you whether the law of this State makes it mandatory or proper for you to submit an annual report to the Board of State Aid and Charities. You left at my office a blank form prepared presumably by the Board of Aid and Charities, which you have been requested to fill out and return.

This report is apparently requested by virtue of the Code, Article 19, Sections 41 and 42. An examination of these sections leads to the conclusion that they refer to associations or incorporated institutions maintained for industrial, educational, medical, humane, military or charitable purposes. This might seem broad enough to include your institution, but the act limits its requirement to such institutions as secure any appropriation from the State Treasury under the provisions of an Act of the General Assembly *as long as said association or incorporation shall continue a beneficiary of the State.* This language read in connection with the various acts providing for the incorporation and management of the Maryland Industrial School leads to the conclusion that the sections of the Code referred to include only such institutions as receive State aid, but they do not include your institution, which is a State agency, charged with the care and training of white female minors committed thereto.

The Act of 1918, Ch. 303, provides for the continuance (under the supervision and control of the State of Maryland) of the work of the Maryland Industrial School for Girls, hereafter to be known as the Maryland Industrial Training School for Girls as a reformatory institution of the State of Maryland.

The Board of Managers of the Maryland Industrial Training School for Girls were authorized to exercise all the powers

and authorities heretofore conferred upon the managers of the Maryland Industrial School for Girls, formerly the Female House of Refuge, under Sections 593, 594 and 595 of Article 27 of the Code of Public General Laws, as fully and absolutely as if the same were repeated in the act.

By Section 593 the name of the Female House of Refuge was changed to the Maryland Industrial School for Girls, which was thereby fixed and established in perpetuity as the corporate name of the institution.

My opinion, therefore, is that, inasmuch as your corporation is a State agency, incorporated to carry out one of the sovereign functions of the State as an agency with the State, supported and maintained by the State, it does not come within the purview of the Code, Article 19, Sections 41 and 42, and accordingly, it is not required to fill out and send to the Board of State Aid and Charities the form submitted to me.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS—COUNSEL FEE FOR SPECIAL ATTORNEY FOR STATE'S ATTORNEY OF BALTIMORE COUNTY DEEMED PAYABLE.

October 28, 1920.

H. Courtenay Jenifer, Esq.,
State's Attorney for Baltimore County,
Towson, Md.

In re Bill of Isaac Lobe Straus.

DEAR MR. JENIFER: It appears from your recent letters that your predecessor, Mr. Hartman, employed during the last year of his term the Burns Detective Agency to do certain work for him in Baltimore County. A dispute having arisen over the charges made by the Agency, suit was entered against Mr. Hartman and the County Commissioners of Baltimore County. A verdict was finally returned in favor of the defendant.

Mr. Hartman was represented by Isaac Lobe Straus, and the County Commissioners by Mr. Burke, their regular counsel.

Mr. Straus had now presented to your office a bill for the services rendered by him, the amount of which is unquestionably reasonable, and you have presented it to me for my approval, stating that at this time you have sufficient funds to pay the account if it is legally proper for you to do so.

It appears from statements made by you in your letter that the State's Attorney of your county is authorized to pay from the fees received by him all the expenses of his office, and his own salary up to $3,000, and that the surplus is then turned over annually to the State. I assume that the incurring of the expenses of the office is a matter left entirely to the good judgment and discretion of the State's Attorney, and if Mr. Hartman's contract with Mr. Straus was within the scope of his authority and made in good faith, and the services rendered thereunder were necessary for the proper administration of his office and the protection of the revenue entrusted to his care, it would appear to me that the account rendered in pursuance thereof should be paid from the fees in the hands of the State's Attorney. All the conditions stipulated above seem to have been fulfilled. It can make no difference to the State whether the fee in this case was paid out of the funds in the hands of Mr. Hartman or from those in your hands as his successor, since Mr. Hartman paid a balance to the State at the end of his last year, and you assure me that you will in all probability do the same. I have, therefore, approved the bill of Mr. Straus.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—BUREAU OF WAR RISK INSURANCE—CERTAIN INFORMATION REGARDING STATE INSTITUTIONS AS REQUESTED BY IT.

November 17, 1920.

Bureau of War Risk Insurance,
Treasury Department,
Washington, D. C.

DEAR SIRS: On August 24th I received from your office a letter enclosing copy of (HR 8778) entitled "An Act to Amend

and Modify the War Risk Insurance Act," under which a regulation had been promulgated relative to ex-service men who are mentally incompetent and confined to public institutions, and requesting certain evidence in reference to the powers of the Chief Executive of the Crownsville State Hospital, Crownsville, Maryland, and the Spring Grove State Hospital, Catonsville, Maryland.

I desire to advise you that it has taken considerable time to obtain this information.

In reference to the Crownsville State Hospital, which is the name given it by the Act of 1912, its original name being Hospital for the Negro Insane of Maryland, the authority for the management of this hospital is found in Article 59, Sections 54 to 58, inclusive, of Bagby's Annotated Code, Volume 2. In Section 55 the Board of Managers is given power to

> "Make such by-laws, rules and regulations not inconsistent with law, as they may deem necessary and proper for the public welfare and the best interests of the institution and its inmates, and shall have the power to appoint the necessary officers, etc."

The by-laws, a copy of which I have before me, provide, under the "Duties of Secretary and Treasurer," in Section 7, as follows:

> "As the financial officer of the Board he shall give bond for the faithful performance of his trust in such sums and in such sureties as the Board may approve; he shall collect all moneys due the institution for board of patients or otherwise; shall receive, hold and disburse, under the direction of the Finance Committee, all moneys which may be granted by the Legislature or obtained from other sources for the use of the institution, and once in each year, on the second Tuesday in October, and as much oftener as may be required by the Board, he shall exhibit an account of his receipts and expenditures, with all vouchers therefor, for the examination of the Board."

In reference to the Spring Grove State Hospital specific authority is given in Sections 5 and 9 of Article 44 of the Code of Public General Laws, Bagby's Annotated Code, Volume 1. These sections I am herewith quoting for your information:

5. "They shall appoint one of their number as treasurer, who shall give bond for the faithful performance of his trust in such sum and in such sureties as the Comptroller of the State shall approve; they shall also appoint a superintendent, who shall be a well-educated physician, and, in addition, shall also appoint as many physicians, surgeons, apothecaries, stewards, matrons, nurses, servants and other officers for the administration and service of said hospital as they may deem necessary; all of whom shall hold their appointments at the pleasure of the board of managers."

9. "They may take and hold in trust for the State any grant or devise of land, or any donation or bequest of money or other personal property, to be applied to the maintenance of insane persons and the use of the Maryland Hospital for the Insane."

It is impossible for me to provide you with certified copies of the appointment of the officers of these institutions or of the bonds which they furnish, but if you will write to the superintendents I have no doubt that you can get this information without much trouble. The superintendent of the Crownsville State Hospital is Robert P. Winterode, and the superintendent of the Spring Grove State Hospital is J. Percy Wade, Catonsville, Maryland.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

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MISCELLANEOUS—UNIVERSITY OF MARYLAND—NO POWER TO CONDEMN PROPERTY.

November 19, 1920.

University of Maryland,
Att. S. M. Shoemaker, Esq.,
816 Fidelity Building,
Baltimore, Md.

DEAR SIR: I beg to acknowledge your recent letter, in which you inquire of me whether or not your Board has the

power to institute condemnation proceedings for the purpose of acquiring additional property.

There is nothing in the Statutes of Maryland which gives either the Maryland Agricultural College or the University of Maryland such power, and I find no such authorization in the Act of 1812, Chapter 159, under which the University of Maryland was chartered, or in the Supplementary Act of 1882, Chapter 88.

The right of eminent domain is a right peculiar to the sovereignty of the State, and is not acquired by public service corporations or State Institutions incorporated under the laws of the State unless specifically given to them. No such power was ever conferred upon either the Maryland Agricultural College or the University of Maryland.

Very truly yours,

ALEXANDER ARMSTRONG, *Attorney General.*

—

MISCELLANEOUS—LEGITIMACY OF CHILDREN—MARYLAND LAW AS TO.

December 7, 1920.

Peter B. Biggins, Esquire,
499 Williamson Building,
Edmonton, Alberta,
Canada.

DEAR SIR: Acknowledging your letter of November 20th, 1920, addressed to me at Annapolis, Maryland, you will find below the questions asked answered seriatim:

1. In order to constitute a valid marriage in Maryland a religious ceremony is necessary, the only exception being a marriage according to the Quaker ceremony.

2. In order to legitimatize a child born out of wedlock, a subsequent marriage of the parents is required, coupled with an acknowledgment of the child by the father.

3. A marriage in Alberta alone might not be a compliance with the Maryland law unless the other provision of an acknowledgment of the child by the father is complied with.

4. The ordinary rule is that a marriage valid where made is valid everywhere, and also that a child legitimate according to the law of his parents' domicile is legitimate everywhere. This is the reason I mentioned that it is possible a marriage in Alberta would alone be sufficient to make the child legitimate in Maryland, provided it was sufficient to render the child legitimate in Alberta.

However, there is a decision of the Court of Appeals of this State which makes impossible a definite statement as to this point, and, therefore, if it is desired to have the child competent to inherit property in this State, it would be safer to comply with the Maryland law, viz., valid marriage according to the laws of our State, and subsequent acknowledgment of the child by the father.

Very truly yours,
ALEXANDER ARMSTRONG, *Attorney General.*

MISCELLANEOUS—MARYLAND TRAINING SCHOOL FOR BOYS—NO POWER TO DEPRIVE ESCAPED INMATES OF MONEY EARNED WHILE AT LARGE.

December 24, 1920.

Maryland Training School for Boys,
Loch Raven, Md.

GENTLEMEN: I desire to acknowledge the receipt of your letter of December 10th in which you ask my opinion on the following facts.

Two inmates of your institution escaped; they enlisted in the Navy, through legal channels they were returned to your institution; the expenses of returning each of these boys were considerable, aggregating in the neighborhood of $200.00. When returned to your institution one of the boys had $51.18 on his person; the other had approximately $30.00. You request me to inform you whether or not you may impound this money and apply it toward the expenses to which the institution was put thereby, reducing the cost to the State.

This money was earned by the inmates while working for the United States Navy. It is their money. Your institution has no power to appropriate it. In addition to this, according to the laws of Maryland, every one is entitled to $100 exemption. These young men might want to use this money in order to protect their rights or to secure their release from your institution.

It is, therefore, my opinion that you should not take money from your inmates under such circumstances.

Yours very truly,

ALEXANDER ARMSTRONG, *Attorney General.*

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