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COMPLIMENTS OF

ALBERT C. RITCHIE

ATTORNEY GENERAL

ANNUAL REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

MARYLAND

1917

ALBERT C. RITCHIE
ATTORNEY GENERAL

ATTORNEYS GENERAL OF MARYLAND.

	Page
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 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. 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:—633-645 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.

The comparison shows that the State's legal work has cost the State $11,426.23 less under the Department of Law than under the old system. The Department of Law has thus saved the State practically one-third the former cost of its legal work.

SUMMARY OF LITIGATION COMPLETED IN 1917.

	Tried.	*Won.*	*Lost.*	*Sub-curia.*
Court of Appeals, Criminal cases.	10	6	0	4
Court of Appeals, Civil cases....	9	3	1	5
Lower Courts, Civil cases, not appealed.....	18	16	2	0
	37	25	3	9

CRIMINAL CASES TRIED IN THE COURT OF APPEALS.

January, April and October Terms, 1917.

Ten criminal appeals were tried during the year. Of these six have been decided, and the State won them all. The remaining four are still *sub-curia.* The cases follow:

Agricultural Society of Montgomery County vs. State. January Term, 1917. Appeal from Circuit Court for Montgomery County. Conviction of agricultural association for permitting betting on horse races without being licensed. This appeal raised the question of the validity of the statute authorizing the Circuit Court to grant licenses which would permit betting, but the Court of Appeals affirmed the judgment of guilty without deciding this question; because if the statute is valid, then the traverser was guilty, as he had no license, and if the statute is invalid, then the traverser was also guilty, because in this event all betting would be unlawful. 130 Md. 474. The Attorney General, Mr. Marbury and State's Attorney Bouie appeared for the State in the Court of Appeals.

Benjamin F. Crouse vs. State. January Term, 1917. Appeal from Circuit Court for Carroll County. Conviction for violation of anti-saloon law of Carroll County. This appeal in-

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 caso 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 privato 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 tho 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.

Tho 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 adjourment 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, apply 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.*

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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.*

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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.*

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.*

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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.*

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 deputy 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.*

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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.*

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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.*

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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.*

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.*

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.*

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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 release, 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.*

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 differont 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.*

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.*

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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.*

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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.*

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 automobiles 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.*

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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.*

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.*

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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*, after *presentment* and conviction, yet Section 12 of Article 52 of Bagby's Code, 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 any offense, crime or 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 Justices "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," etc.

It is my opinion that, under these provisions, police magistrates in Allegany County have jurisdiction to sentence prisoners, convicted by them of wife beating, to be whipped.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—POLICE MAGISTRATES, WRITS ISSUED BY, EXECUTION OF.

March 10, 1917.

William S. Powell, Esq.,
Justice of the Peace,
Salisbury, Md.

DEAR MR. POWELL: I beg to reply to your favor of March 6th, asking whether you, as a Justice of the Peace of Salisbury, who is not a police justice, can compel the Sheriff or the police to execute a writ for assault and battery.

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. 428, 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 enable 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. 87, 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, Procedure in Justice Cases, page 427.

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,
ALBERT C. RITCHIE, *Attorney General.*

CRIMINAL LAW—POOL ROOMS, MINERS IN.

February 1, 1917.

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

DEAR MR. JONES: I beg to reply to your favor of January 22nd, relative to the presence of minors 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.*

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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 R. 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 437 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 (Note);
37 Cyc. 550.

Section 437 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 ADVERTISEMENT.

March 12, 1917,

Charles R. 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 23, 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 23, 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.*

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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 Court 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 Court 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 4, 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.*

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CRIMINAL LAW—UNITED STATES FLAG ON MAGAZINE COVER.

June 5, 1917.

O. 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.*

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CRIMINAL LAW—UNITED STATES FLAG, NEWSPAPERS MAY PRINT.

March 26, 1917.

Bert. N. Garstin, Esq.,
Gen. Mrg., 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. 506, Sec. 69, 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.,
Prest. 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 48 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 $102,700, representing 48 cents, of which $75,500, or about 35½ 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 analagous 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 on 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. Trimble, 104 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.

Loose vs. State, 120 Wisc. 122;
Commonwealth vs. Phillips, 162 Mass. 162;
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. 43, Sects. 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. 506, 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.*

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EDUCATION—STATE SUPERINTENDENT TO EXPLAIN SCHOOL LAW AND DECIDE CONTROVERSIES.

July 2, 1917.

A. S. Leathering, 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 Shober 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 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, 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 grinding up in the mixing vat.

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

ELECTIONS—BALLOTS, DESTRUCTION OF.

May 7, 1917.

D. C. Higinbotham, Esq.,
Clerk, Board of Election Supervisors,
Ellicott 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 will suffice 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 reserve ballots, without destroying them.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—BALLOTS IN PRIMARIES, FORM AND MARKING.

August 24, 1917.

T. Hughlett 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 same sections as they formerly stood 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 B. 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 49 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 fac-simile 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 fac-simile of the ballot or form of ballot*, not simply divulging to someone what the arrangement of the groups will be.

If, as you suggest, 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 in the voting booth, this intent is not expressed in the law, further than to prohibit the publishing, advertising and circulating of a sample or fac-simile 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 49, "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 fac-simile 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.*

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ELECTIONS—BOOTHS, CONSTRUCTION OF.

June 5, 1917.

Henry A. Whitaker, Esq.,
Bel Air, Maryland.

DEAR MR. WHITAKER: I beg to reply to your favor 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 therein, shall be screened from the observation of others," etc.

I suppose that the object of this provision was to make impossible communication between adjoining booths, whether by speech, view, the passing of ballots or data, or in any other way.

If the requirement of a plank partition can, 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 objects 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.*

ELECTIONS—CANDIDATES, NOMINATION OF, BY PETITION, CONVENTION OR PRIMARY—PROHIBITION PARTY—PROGRESSIVE PARTY.

March 26, 1917.

Prohibition National Committee,
106 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 polls less than one per cent it can only nominate by petition.

Bagby's Code, Art. 33, Sections 41, 43 and 178.

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 go 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, 1917.

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 42, 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 nominee for each office to be filled. Section 45 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 47 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 4, 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 Judge of the Supreme Bench and Clerk of the Baltimore City Court, are to be filled by all the voters of Baltimore City, and also including Delegates to the Legislature and one Senator from the Fourth District, who, of course, will be voted for by Districts; and the question is whether nominations for the House of Delegates and for Senator from the Fourth District can be made by one 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 nominate, 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 primary 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 188 of the Election Law provides that "any vacancy which may exist in respect to any office, delegates to convention, or position named in this sub-title occurring after the returns have been canvassed and finally announced or *which may exist by reason of there being no candidate for the same in any such primary election* or otherwise, shall be filled as the rules and regulations of the governing bodies for the respective parties in the counties, city or State may now or shall hereafter provide."

This section covers the situation in St. Mary's County, and under it candidates for the offices in question may be designated by the State Central Committee for St. Mary's County.

The Court of Appeals has recognized this to be the proper construction of Section 188 of the Election Law in the cases of—

Usilton vs. Bramble, 117 Md. 10, 13-14;
Graham vs. Wellington, 121 Md. 656, 667-669.

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 Judge, 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 in 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.

Usilton 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.*

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ELECTIONS—PRIMARIES—CANDIDATES FOR JUDGE RESIDING IN SAME COUNTY.

September 6, 1917.

John L. Riley, Esq.,
Prest. 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,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—PRIMARIES—CHALLENGERS AND WATCHERS—EXPENSES OF CANDIDATES, BASIS OF—REMOVED VOTERS—NOMINATION CERTIFICATES, TIME FOR FILING—MINORS—NATURALIZATION.

August 24, 1917.

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

DEAR MR. HIGINBOTHAM: I received your favor of 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 (or the major portion thereof) up to 50,000 and $5.00 for each 1,000 (or 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* therefor."

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 therefor, 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 this question relates to any of the duties of the Board of Election Supervisors.

3. The fee of $25.00 which Section 184 of the Election Law provides must accompany certificates 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. 656.

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.*

ELECTIONS—PRIMARIES—"DECLINED" OR "INDEPENDENT" VOTER MAY AFFILIATE AT ANY REGISTRATION BEFORE PRIMARY.

September 10, 1917.

Hon. Board of Election Supervisors,
Ellicott 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 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 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. 186), 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 4, 1917, under Section 17-A (Act 1916, Chap. 569), 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.

August 24, 1917.

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 favor of August 23rd, in which you ask whether Mr. Gordon Tull, who filed his Certificate of Nomination for Associate Judge of the First Judical 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 184-A, 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—DEPOSIT BY CANDIDATE, RETURN OF, WHEN CANDIDATE WITHDRAWS.

August 24, 1917.

Robert H. McCauley, Esq.,
Counsel, Board of Election Supervisors,
Hagerstown, Maryland.

DEAR MR. MCCAULEY: I have your favor 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.*

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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 favor 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 Marlborough, 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.

1 Corpus Juris, pages 830-831.

In the present case, this presumption is, of course, in accordance with the facts. It would, therefore, seem that the acknowledgments are not insufficient because they do not expressly certify that they were made in the District.

Neither, in my opinion, does the fact, that the captions name 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. Schiefflin, 72 Pa. 106;
Roger vs. Pell, 62 N. Y. Supp. 92, 168 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 14, 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 21, 1917.

Winson 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 199B 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 circumstancs, 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—AFFILIATION, CHANGE OF, WHO MAY MAKE.

March 26, 1917.

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. Higinbothom, Esq.,
Clerk, Board of Supervisors of Elections,
Ellicott City, Maryland.

DEAR MR. HIGINBOTHOM: 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. 774 (Bagby's Code, Art. 33, Sec. 182), and the case of Murphy vs. Wachter, 126 Md. 563.

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,

ALBERT C. RITCHIE, *Attorney General.*

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ELECTIONS—REGISTRATION IN COUNTIES ON TUESDAY BEFORE PRIMARY—SUNDRY ADVICE AS TO.

(*The following letter was sent to the Supervisors of Elections in each of the counties:*)

August 14, 1917.

GENTLEMEN: I beg to call your Board's attention to the fact that by the Act of 1916, Chapter 569, codified as Section 17-A of Article 33 of Bagby's 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 COUNTIES ON TUESDAY BEFORE PRIMARY—MUST BE HELD EVEN IF NO PRIMARY CONTEST.

August 21, 1917.

R. Grome 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 4, 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 by 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 this 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 contests in that county on September 11th, 1917.

Very truly yours,

ALBERT C. RITCHIE, *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.*

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ELECTIONS—REGISTRATION—RIGHT OF, WHEN APPLICANT'S FATHER IS NATURALIZED.

October 13, 1917.

Messrs. Charles R. Hoke & Edgar C. Moser,
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.

Sub-division H 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. 4367.

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 ON REVISION DAY.

October 13, 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 9th, 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 EMPLOYEE HOLDING POSITION AWAY FROM HOME.

October 13, 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 Roads 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 Roads 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 Roads Commission elsewhere.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISOR, CANNOT BE CANDIDATE FOR COUNTY COMMISSIONER WHILE HOLDING OFFICE.

July 16, 1917.

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

DEAR MR. YOUNG: I beg to reply to 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 he cannot. 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 election; 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 *vel non* 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 re-counting 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,

ALBERT C. RITCHIE, *Attorney General.*

ELECTIONS—SUPERVISORS—NO RIGHT TO ADDITIONAL COMPENSATION FOR SERVICES IN RECOUNT.

October 5, 1917.

Henry A. 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-B 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-B, 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 $100, 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 $150," and Section 187 provides that for the performance of the duties imposed upon them by sub-title "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-B, under which the recount was had, is part of the sub-title "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 sub-title.

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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL MATTERS.

FISCAL—ABATEMENT AND ADJUSTMENT OF STATE CLAIMS—POWER OF COMPTROLLER.

March 1, 1917.

Hon. Hugh A. 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,
ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS, CHARITABLE—PER CAPITA SYSTEM—VALIDITY OF LEGISLATION.

June 5, 1917.

Hon. William J. Ogden,
Secretary, Board of State Aid & Charities,
405 Union 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

by the Act of 1916, Chapter 223, for the fiscal years beginning October 1, 1916, and October 1, 1917.

The per capita system is provided for by the Act of 1916, Chap. 705, Sec. 4-A of this Act providing that "all the monies appropriated to charitable institutions shall be paid to them on a per capita basis according to rates fixed by the Board of Public Works, which rates should represent the reasonable cost of rendering the services required of the said institutions to the persons under their care, and should be impartial, fair and uniform in the case of all institutions caring for persons of substantially the same class and under conditions approved by the Board of Public Works. And provided further, that the amount which may be earned by any institution in any one year shall not exceed the amount appropriated to it." This act was approved on April 18, 1916, and went into effect on June 1, 1916.

The question submitted to me relates to the application of this act to the appropriations made to charitable institutions for the fiscal years beginning October 1, 1916, and October 1, 1917. The only difficulty which I see as to this point arises from the fact that Chapter 223 of the Acts of 1916, which contains the appropriations to charitable institutions for these years, provides, in Section 3, page 460, that the sums thereby appropriated, which are *fixed* amounts, shall be paid in *equal quarterly instalments,* which would seem not to contemplate per capita payments; and this act was approved on May 4, 1916, something over two weeks after the per capita act itself was approved.

This, of course, raises the question whether Section 4-A of Chapter 705, providing the per capita system, has been impliedly repealed by the later Act, Chapter 223, which apparently contemplates the old system. This is a question of some doubt, and there is nothing more difficult to foretell than the view the court will hold upon a question of implied repeal like this. There may also be some question as to whether Section 4-A is sufficiently described in the title.

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, CONTINUING—NOT ABOLISHED IF CONSTITUTE CONTRACT—MARYLAND CALENDAR OF WILLS.

November 27, 1917.

Miss Nettie V. 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. 404, which directed a State subscription of $450 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 understand 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 complied 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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS—HOLLYWOOD HOME, USE AND APPLICATION OF ITS APPROPRIATION.

April 23, 1917.

Hon. Hugh A. 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. 223, are $500.00 for the fiscal year 1917 and $500.00 for the fiscal year 1918. I understand that the amount of these appropriations now unpaid is $687.50.

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, as the same fall due, 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 PRECEDING YEAR CANNOT BE CARRIED OVER—DIFFERENCE BETWEEN EXPENDITURES FOR CURRENT EXPENSES AND FOR PERMANENT INVESTMENT.

October 24, 1917.

Col. Harry J. 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 $4,320, of its telephone bill from July, 1916, to September, 1917, inc., amounting to $608.82, and of the cost of certain actuary work, amounting to $1,500.00. These items aggregate $6,428.82.

In my opinion, the cost of the actuary work, $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 $4,928.82, cannot be.

The Commission's appropriation for the fiscal year ending September 30, 1917, was made by the Act of 1916, Chap. 685, page 1568, 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 by 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 $4,-928.82, cover periods prior to October 1, 1917. They 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. 597, 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, consequeently, 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 1916, Chap. 597, 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 insurance carriers and the State Accident Fund, and thus paid back to the State. But, as already stated, *all* expenses are expressly required to be paid in the first instance *out of the Commission's appropriation,* and the reimbursements are not made to the Commission, but are made to the State Treasury. The Commission, therefore, is not authorized to use the moneys which are reimbursed to the State. The Commission can only use the moneys appropriated to it.

Moreover, while it may be true that the Commission will cost the State nothing, because the State will ultimately be reimbursed for all its expenses, yet if the 1917 deficit is made good, the funds in the State Treasury will necessarily be less, by the amount of the deficit so made good, than they would have been if the Commission had kept within its appropriation, and incurred no deficit; so that the State is necessarily the loser.

The $1500 actuary bill, however, appears to me to stand upon a different footing from the rent and telephone bills. I have conferred with the Commission's Auditor with respect to this bill, and I am advised by him that while the actuary's 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 analagous 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 $4,320 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. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS—STATE INDUSTRIAL ACCIDENT COMMISSION—POWER TO CHARGE 1917-1918 APPROPRIATION WITH COST OF PUBLISHING OPINIONS.

November 26, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of November 15th, asking my opinion upon the right of the State Industrial Accident Commission to charge its appropriation for the fiscal year beginning October 1, 1917, with the net cost of printing its opinions rendered during the period from November 1, 1914, to September 1, 1916.

A written contract for doing this work was entered into between the Commission and the printer on July 10, 1916, but I am informed by the Chairman of the Commission that this contract was superseded in certain particulars by subsequent oral agreement. The material provisions of the final agreement were that the printer was to print not less than 750 volumes of the opinions rendered during the above period, from November 1, 1914, to September 1, 1916, for which the Commission was to be charged $750, and was to be credited with sales made by the printer during the twelve months succeeding the date of issue.

I am advised that the printer published 800 volumes, which were issued and put on sale on September 30, 1916, and during the succeeding twelve months, ending September 30, 1917, the printer received $230 from sales. Thereupon, on or after October 1, 1917, he rendered the Commission a bill for $750, less $230, or $520.00.

The cricumstances of this case are peculiar. The opinions, in their published form, are of permanent value to the Commission and to the bar and the public which deal with the Commission; the Commission publishes its opinions, not annually, but whenever enough have been rendered to constitute a volume; and in the present case the amount of the Commission's obliga-

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 $520.00.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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FISCAL—APPROPRIATIONS—SYLVAN RETREAT, PAYMENT FOR PATIENTS.

October 22, 1917.

Col. Harry J. 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 net cost of maintenance of patients at Sylvan Retreat, Allegany County, during the years 1915 and 1916, the bill for 1915 being $5,609.38 and the bill for 1916 being $4,699.91.

By the Act of 1914, Chap. 778, 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 duly 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 $5,609.38.

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 $10,000 appropriation for 1915 was not credited 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 1914, Chap. 778, 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 $5,609.38 for 1915 patients should now be paid, as the Act of 1914, Chap. 778, 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 of the current fiscal year not otherwise appropriated.

In September, 1917, the Lunacy Commission also presented bills, approved by them, for the cost of patients at Sylvan Retreat during 1916, amounting to $4,699.91. As already stated, 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 223, 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 reverted, 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,

ALBERT C. RITCHIE, *Attorney General.*

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FISCAL—APPROPRIATIONS—UNEXPENDED BALANCE—PAYMENT WITHOUT VOUCHER, WHEN DISCRETIONARY WITH COMPTROLLER—REVERSION—STATE BOARD OF AGRICULTURE.

July 17, 1917.

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

DEAR MR. MCMULLEN: 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. 685, page 1574, 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 1, page 1564, 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, cannot 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 1560.

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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS, UNEXPENDED BALANCE—REVERSION OF.

October 13, 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. Zouck, 130 Md. 541.

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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS, UNEXPENDED BALANCES IN SUNDRY —REVERSION OF.

November 9, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of October 31st, in which you ask whether certain appropriations made by the General Assembly of 1916 reverted into the general treasury at the close of the fiscal year ending September 30, 1917.

Annapolis-Claiborne Ferry. Act 1916, Chap. 708. This act appropriated $50,000 for the purpose of providing a ferry boat and wharf facilities, and the Act does not confine the expenditure of this money to the fiscal year 1916-1917. The sum of $49,981.85 was unexpended on September 30, 1917. This balance should not be reverted.

Interment of Deceased Soldiers and Sailors. Act 1916, Chap. 90. 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 $1500, 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 $555 was unexpended on September 30, 1917.

By 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 *annually* applied to the burial expenses, and also from the fact that the Legislature could not possibly have intended the burial expenses to be paid to March 31, 1917, not 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. Any balance of those two sums which was not needed for such burial expenses during that period may now 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 of whom is required to endorse all certificates presented, in order to ascertain whether there are any outstanding 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 $555.00 balance, provided this does not make the total Union expenditures during the said period exceed $750.00, 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 $4,000 had 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 levy." 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. $500.00. This appropriation was made by the Act of 1916, Chap. 685, 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. 685, 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. 223, page 448 (9), The sum of $2,000 was appropriated to this institution for the fiscal year 1917. By Section 3, page 460, of the same Act this was required to be paid in equal quarterly instal- this Act $20,000 was appropriated for installing new boilers ments. 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. 4-A, 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 457 (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, $5,774.97 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 447 (7). The sum of $3,000 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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—APPROPRIATIONS—UNEXPENDED BALANCE, DOES NOT REVERT WHEN CONTRACTS OUTSTANDING—STATE ROADS COMMISSION.

November 16, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of November 14th.

By the Act of 1916, Chap. 685, page 1570, there was appropriated to the State Roads Commission, for the fiscal year ending September 30, 1917, the sum of $300,000, 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 $113,401.49, 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. Zouek'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 INSTEAD.

February 19, 1917.

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

DEAR MR. MCMULLEN: As requested by you, I have carefully considered the State's right to cancel 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. 681.
Treasury Relief Loan of 1916, Act 1916, Ch. 142.
State Roads Loan of 1914, Act 1914, Ch. 267.
State Omnibus Loan of 1914, Act 1914, 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. 411, 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, Sects. 31-34; Art. 31, Sects. 1-2; Art. 78-A; Art. 81, Sec. 194; Art. 95, Sects. 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.*

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FISCAL—BONDS—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 $900,000 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 $45,900, from December 21, 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 4 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 $45,900 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,

been deposited with the State's funds, at 2½ per cent. interest. There will be no interest adjustment on the bonds themselves, because interest on them does not begin until February 1, 1917, the day of delivery.

In my opinion, the $45,900 in question constitutes a payment by the successful bidder on account of the purchase price of the bonds. As such, it is retained by the State until the date of settlement, and if the purchase is then consummated, it is deducted from the total amount due the State, and the purchaser will pay the difference. If the purchaser does not consummate the purchase, then the deposit is retained by the State either as a forfeit or at least on account of compensation for any loss which the State may thereby suffer.

In either case, the deposit should be regarded as the State's money, just as a deposit on account of any purchase price is regarded; and being the State's money, the State is entitled to any interest which it bears, and the purchaser is not entitled to any allowance therefor.

I return you the letter from Messrs. Owen Daly & Company.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—WAR LOAN OF 1917, LEGALITY OF.

August 15, 1917.

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

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

> $500,000 part of "War Loan of 1917," dated August 15, 1917, 4% Bonds, $1,000 denomination, maturing August 15, 1918,—

which were awarded to the successful bidders at public sale on August 9, 1917, I beg to advise you as follows:

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.*

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FISCAL—BONDS—WAR LOAN OF 1917—DISCRETION OF EXECUTIVE COMMITTEE OF MARYLAND COUNCIL OF DEFENSE IN EXPENDING—PRISON FARM.

August 22, 1917.

Gen. Carl R. Gray,
Chairman, Maryland Council of Defense,
703 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 3; 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 issued.

The question presented is, what is the province 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 3 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-

cretion 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 such of said purposes as your Committee thus, in its discretion, selects.

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 confided 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 spent 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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—BONDS—WAR LOAN OF 1917—DISCRETION OF EXECUTIVE COMMITTEE OF MARYLAND COUNCIL OF DEFENSE IN EXPENDING—WATER SUPPLY AT HOUSE OF CORRECTION.

November 26, 1917.

L. R. Meekins, Esq.,
Secretary, Maryland Council of Defense,
703 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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—CLERKS OF CIRCUIT COURTS—ACCOUNTING FOR FEES.

April 25, 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 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, any failure to comply with this requirement for 30 days after the expiration of the year to result in vacating the office.

Answering your inquiry, I do not see how the Clerk can charge the State with the cost of record 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 would 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 year in excess of $3,000, because the compensation with which the Clerk has credited himself for the year is $3,221.66, and of this sum $221.66 is the amount which the Clerk now desires to charge against the State for the above office expenses, for which, he says, the county has already paid. To permit this would be to allow the Clerk $221.66 more than his constitutional salary of $3,000.

Inasmuch as the county has already paid this $221.66 to the Clerk, and as a charge now of 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,

ALBERT C. RITCHIE, *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 necessitates 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 Wicomico 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—CLERK OF CIRCUIT COURT OF WASHINGTON COUNTY —COST OF INDEXING LAND AND JUDGMENT RECORDS— OFFICE EXPENSES.

January 2, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of December 15th, 1916, in which you ask my opinion upon the validity of the Act of 1916, Chapter 26.

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 Judge, and that the County Commissioners are "author-

ized 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; any deficit created thereby to be provided for by levy of the County Commissioners as herein provided."

Article 15, Section 1 of the Constitution requires every Clerk of Court to pay over yearly to the State Treasurer the excess of his fees over the sum he is entitled to receive for salary "and for the expenses of his office." Article 3, Section 45 and Article 4, Section 26 of the Constitution also recognize the Clerk's right to pay compensation to deputies and office expenses out of the fees, and Bagby's Code, Art. 17, Sections 11, 13 and 16 recognize the same right.

It is thus clear that the Clerk's "office 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 salaries and office expenses have been paid.

Since the Constitution does not prescribe what shall constitute office expenses, it follows that the Legislature itself can do so.

> Cecil vs. County Commissioners, 121 Md. 696, 87 Atl. Rep. 1106.

This is what the Legislature has done by the Act of 1916, Chapter 26. The effect of that Act is, I think, to make the cost of the indexing one of 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 balance of $4,259.02 has been retained 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.*

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FISCAL—COMMON FREE SCHOOL FUND, ORIGIN AND DISTRIBUTION OF.

October 2, 1917.

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

DEAR MR. MCMULLEN: I received your favor of September 25th, in which you say that the object of your inquiry of September 14th was to ascertain why the counties of Allegany, Charles, Calvert and Garrett do not share in the Common Free School Fund shown in 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 pages 137 to 140 explains 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 inquiry, says on pages 137-138:

> "The first item consisted of an investment of $278,000 derived from taxes upon state bank stock, collected in the first instance in 1816, and yielding in 1914 an income of $6,000. 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 years

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 $21,400 in the name of Frederick County, to $4,300 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,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—LIBERTY BONDS, RIGHT OF BOARD OF FORESTRY TO INVEST IN.

June 5, 1917.

F. W. Besley, Esq.,
State Forester,
532 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, with accrued interest, made by the Act of 1912, Chap. 794 (Bagby's Code, Art. 39-A, Sec. 21), for the acquisition of a tract of land in Washington County on which is situated Old Fort Frederick, and also a balance of $14,000 remaining from the appropriation made by the Act of 1912, Chap. 749 (Bagby's Code, Art. 39-A, Sec. 20), and by the Act of 1914, Chap. 209, for the purchase of land along the Patapsco River.

The acts making these appropriations are so worded as to restrict their use to the purposes specifically designated in the acts. See Section 2 of Act 1912, Chapter 794, and Sections 7 and 12 of Act 1912, Chapter 749.

The State Board of Forestry has, therefore, no legal power to apply these funds to the purchase of Liberty Bonds.

In view of the provisions of the two acts, and also of the Act of 1906, Chap. 294, Sec. 15 (Bagby's Code, Art. 39-A, Sec. 15), I do not quite understand what right the Treasurer had to pay these funds over to your Board, except as they were needed for the purposes authorized, but your inquiry does not involve this question.

Very truly yours,

ALBERT C. RITCHIE, *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 OF AGRICULTURE—ATHLETIC GROUNDS.

February 10, 1917.

Samuel M. Shoemaker, Esq.,
President, Board of Trustees,
Maryland State College of Agriculture,
816 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 C. RITCHIE, *Attorney General.*

FISCAL—ROSEWOOD STATE TRAINING SCHOOL, DISPOSITION OF PATIENT'S SHARE IN ESTATE.

November 9, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of October 19th, in which you ask what disposition you should make of the sum of $378.94, which has been paid to you as the distributive share of Myrtle V. Beane, an inmate of the Rosewood State Training School, in the estate of a deceased relative.

This sum should be paid to the institution, for the maintenance of Miss Beane. See Sections 46, 46a, 46b and 3a of Article 59 of Bagby's Code, as amended by the Act of 1916, Chap. 566. None of the inmates of Rosewood are chargeable to any of the counties or to Baltimore City, so that the $100 referred to in Section 3a and 45 should not be deducted.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—SHERIFF OF ALLEGANY COUNTY—FINES, DISPOSITION OF.

February 1, 1917.

John R. 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. 437.

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 favor of December 21st, 1916, in which you ask my opinion upon the validity of the Act of 1914, Chap. 381, amending Section 377 of the Act of 1908, Chap. 495, pages 386 and 497.

This Act provides that the Sheriff of Baltimore County shall receive:

1. An annual salary of $3,000, to be paid in monthly instalments by the County Commissioners.

2. An annual allowance of $5,500 for the expenses of his office, to be paid in monthly instalments by the County Commissioners.

3. The annual sum of $300, for transferring prisoners to and from penal institutions.

The Act further provides that the Sheriff shall report his 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 vs. County Commissioners, 121 Md. 696, reported in full in 87 Atl. Rep. 1106, the Court of Appeals held that provisions in the Anne Arundel County statute, Act 1912, Chap. 23, similar to the above provisions, were valid.

The Sheriff cannot, however, receive more than $3,000 as his annual compensation, and he is, therefore, not entitled to retain any balance of the $5,500 allowed him for office expenses or of the $300 allowed him for transferring prisoners, which may remain over and above the expenditures actually made for these purposes.

The result is that the Sheriff may retain $3,000 out of the fees of his office for his annual salary (which amount he will,

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.*

FISCAL—SOMERSET COUNTY CLAM LAW, DISPOSITION OF FINES UNDER.

January 12, 1917.

Hon: Hugh A. 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 1884, Chap. 510, 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 20, 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. 648.
Green's Case, 120 Md. 681.

While the Conservation Commission has, of course, control over the Conservation Fund (Act 1916, Chap. 682, Sec. 9), 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 violations 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. 510, Sec. 4.

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

FISCAL—STATE'S ATTORNEY OF BALTIMORE CITY—OFFICE EXPENSES, COMPTROLLER MAY INQUIRE INTO.

February 19, 1917.

Hon. Hugh A. 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 any 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 9. The State's Attorney is, therefore, one of the officers who reports and accounts to the Comptroller, under Article 15, Section 1 of the Constitution. This section provides that the ex-

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. Broening's report for 1916.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

FISCAL—STATE ACCIDENT FUND—PAYMENT OF AWARDS FROM.

March 27, 1917,

J. Milton Reifsnider, Esq.,
Chairman, State Industrial Accident Commission,
Equitable Building,
Baltimore, Maryland.

DEAR MR. REIFSNIDER: 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 not clear.

Bagby's Code, Art. 101, Sections 16, 17, 20, 23, 24, 25, 27, 28, 37, 52, 64.

The prompt payment of awards to dependents is, however, extremely desirable, and the plan you propose will accomplish this, with no risk of impairing the State Accident Fund, unless something entirely unforseen happens to it while in your hands. The Comptroller and the Treasurer are, therefore, willing to advance your Commission the $5,000 to be used as above indicated, provided the members of your Commission will execute a bond, approved by me, for themselves and their successors in office, guaranteeing the repayment of the money whenever called upon.

I have prepared such a bond, which will, I think, fully protect the State, the Comptroller and the Treasurer from any possible loss, and the State Accident Fund from any possible impairment, by reason of the payment out of it of the sum in question. I enclose this bond to you, and if you will have it executed, with corporate surety, and send the same to the Comptroller, the money will be advanced on the proper requisitions being made for it.

Very truly yours,

ALBERT C. RITCHIE, *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 110 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 1900, Chap. 118. It was, however, incorporated under the name of the Maryland Title Insurance and Trust Company, by the Act of 1884, Chap. 425. By Section 4 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. 109, 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 85-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 Acts of 1892, Chap. 109."

The Act of 1896, Chap. 160, amended Sec. 85-E of the Act of 1892, Chap. 109, 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 $100,000 to be held "in trust as security for all the holders of policies or guarantees of said corporation"; and all said corporations, mentioned in the Act of 1892, "not transacting as part of its business the security or guarantee business," were required to transfer and assign, as theretofore, 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. 194, Sec. 98, further amended Section 85-E of the Act of 1892, Chapter 109, by authorizing such companies having a paid in capital stock of $100,000 or less, and not transacting the security or guarantee business, to deposit public stock or bonds to the amount in value of 10 per cent. of the paid in capital stock, but in no case less than $10,000. The Act of 1892 was amended in other of its features by the Act of 1908, Chap. 385, and the Act of 1910, Chap. 219, page 6, made certain changes in the law relative to trust companies. These amendments are not material to the present inquiry. The Act of 1892, as thus amended, is now codified in Bagby's Code, Art. 23, Sects. 106-116, inc., Sec. 85-E being now Section 110.

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. 85-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 $100,000 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, 1917.

Wilson L. Coudon, Esq.,
Deputy Insurance Commissioner,
Union Trust Building,
Baltimore, Maryland.

DEAR MR. COUDON: 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 56 of Article 11 of Bagby's Code, which the Court of Appeals said, in Marine Bank vs. Stirling, 115 Md. 90, 100, is required to be made.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

INSURANCE—LICENSES FOR FIRE INSURANCE COMPANIES IN WESTMINSTER.

May 23, 1917.

Messrs. Case & Crawford,
211 East Main Street,
Westminster, Maryland.

GENTLEMEN: I have your favor of May 21st.

Your inquiry really concerns the town of Westminster rather than the State, but inasmuch as I examined the question for the Insurance Commissioner sometime ago, I am glad to give you the conclusions I reached.

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, Chap. 416; Act 1910, Chap. 341, Sec. 225. Under this authority the town passed Ordinance No. 91, imposing an

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 147, does not apply to females employed by railroad and steamboat companies, for cleaning cars and boats or for office 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,
ALBERT C. RITCHIE, *Attorney General.*

LABOR—MINORS AT AMMUNITION PLANTS.

April 2, 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 Gathmann Ammunition Company located at Texas, Baltimore Coun-

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 precussion 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,

ALBERT C. RITCHIE, *Attorney General.*

LABOR—MINORS, PROHIBITED OCCUPATIONS.

February 9, 1917.

Charles J. Fox, Esq.,
Chairman, State Board of Labor & Statistics,
300 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 Klots Throwing 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 Klots Throwing 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 company is mistaken in this position. The Act of 1916, Chap. 222, Sec. 22, 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.*

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LABOR—OFFICE BOY FOR MOVING PICTURE CENSORS, AGE OF.

February 10, 1917.

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 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. You conduct a state office, and a boy over fourteen (Sec. 4) 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 $200 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. 415, and the Act of 1854, Chap. 149, 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-

ity. 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." Thereupon, 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 $2,590 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 it 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 3 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 the fees of his office, both as Commissioner of the Land Office and as Keeper of the Chancery Records, to the Comptroller, 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 its language and from the understanding of its 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 486-487.) 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 4 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 by 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 (as 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 430, 486-7, 566-7.

Files of Baltimore Sun, July 31, 1867, and August 7, 1867.

Therefore, both the Constitutions of 1864 and of 1867 very 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 42, 76-77), it appears that during the years 1865 and 1866 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 5 and 8; Art. 52, Sec. 4), and of this Act of 1874, all authorizing the Commissioner to retain fees, were codified as Sections 6, 9, 11 and 13 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 1900, Chap. 318, however, 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 by 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. 351, 369.
State vs. Mayhew, 2 Gill, 487, 497.
Baltimore vs. State, 15 Md. 376, 458, 476.
Cathedral vs. Manning, 72 Md. 130.
Lewin vs. Hewes, 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 office 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 Board of Public Works that, in 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 to the Comptroller for all of his fees and to pay the same to the Treasurer; and that no part of the same can lawfully be paid back to the Commissioner as compensation for the duties of his office.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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. 256, the Act of 1908, Chap. 91, page 170, and the Act of 1910, Chap. 39, page 430. 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 459, 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 430, and Act 1916, Chap. 223, page 459."

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

LICENSES.

(Excluding opinions on Conservation, Motor Vehicles and Insurance Licenses, which will be found under these respective headings.)

LICENSES—CIRCUS LICENSE REQUIRED IN EACH COUNTY.

November 10, 1917.

J. Clayton Kelly, Esq.,
Salisbury, Maryland.

DEAR MR. KELLY: Replying to your favor of November 7th, I beg to say that in my opinion the circus license required by Section 109 of Article 56 of Bagby's Code, as amended by the Act of 1916, Chap. 704, Sec. 109, 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. RITCHIE, *Attorney General.*

LICENSES—CONSTRUCTION COMPANIES.

April 13, 1917.

Adam Deupert, Esq.,
Clerk, Court of Common Pleas,
Baltimore, Maryland.

DEAR MR. DEUPERT: I have your favor of April 9th, enclosing letter from the Fenestra Construction Company, of Detroit, in which that company asks whether it is subject to a license tax under the laws of Maryland.

I understand from the company's letter that its business is to supply labor to erect steel sash. The company has no property, plant, materials or machinery, but simply solicits and accepts orders for furnishing labor for erecting steel sash.

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 to you.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—CONSTRUCTION COMPANIES.

June 11, 1917.

Allen C. Girdwood, Esq.,
Secretary, State Tax Commission,
504 Union Trust 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,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—DRUGGISTS, WHOLESALE—MAY SELL GRAIN ALCOHOL WITHOUT LIQUOR LICENSE.

May 21, 1917.

Edward B. Bruce Company,
419 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, like cologne, 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.*

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LICENSES—HAT CLEANING ESTABLISHMENT—SHOE SHINING PARLOR.

April 24, 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 atatched, 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 pair of foot rests should be regarded as one chair, so that if such a parlor contains more than two pair of foot rests 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, 1917.

E. Lee LeCompte, Esq.,
State Game Warden,
512 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 by the Act of 1914, Chap. 552, and in an opinion to Mr. Killian of August 29, 1916 (Atty. Gen.'s Opinions, Vol. 1, pages 41-43), I discussed certain provisions of this law.

Section 4 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 how the impression arose that $10.50 could be charged for the license, unless it be from the provision of Art. 36, Sec. 12 of Bagby's Code, that Clerks of Court may charge a fee of 50 cents for granting licenses. This, however, does not apply to licenses granted by Justices of the Peace under the Act of 1914, Chap. 552.

Mr. Hamill also desires to know to whom the fee should be paid by the Justice. Section 4 authorizes the Justice to retain 50 cents out of each license fee for his services, and provides that the balance, that is, $9.50, shall be paid over "to the Treasurer of Garrett County for the use of the county."

I return you Mr. Hamill's letter, and also a copy of this opinion, in case you wish to send it to Mr. Hamill.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—JUNK DEALERS.

August 6, 1917.

Joseph Lugry, Esq.,
719 E. Lexington Street,
Baltimore, Maryland.

DEAR SIR: I received your favor of July 23rd, in which you ask whether a peddler who uses a horse and wagon or a pushcart in buying junk, must take out a junk dealer's license under the Act of 1916, Chap. 704, Sec. 172, which provides that every person "dealing in junk" shall take out a license "for each place of business."

If a peddler buys junk, he is, of course, dealing in junk, and the law requires him to be licensed. It makes no difference whether he transacts business from a store, a wagon or a push cart. The Court of Appeals has decided that a wagon may be a place of business.

Salfner vs. State, 84 Md. 299, 303.

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

LICENSES—LIQUOR LICENSE FEES FOR SALES IN EXCESS OF A PINT.

April 23, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of April 12th, asking whether the law provides a resident wholesale liquor license for Prince George's County, which will authorize the sale of liquor in quantities over a pint.

I find no provision of law for a resident wholesale liquor license in Prince George's County, either in the local or in the general laws. The case is controlled by Bagby's 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. 236.

The cost of this license is based upon the amount of stock in trade, Bagby's Code, Art. 56, Sects. 61-71, plus any additional license fee that may be required by the Act of 1916, Chap. 594.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—BREWERIES, NOT APPLICABLE TO.

March 19, 1917.

George Hartman, Esq.,
State's Attorney,
Towson, Maryland.

DEAR MR. HARTMAN: I beg to reply to your favor of March 15th, in which you ask my opinion as to whether the Monumental Brewing Company must pay the $100 additional license fee imposed by the Act of 1916, Chap. 594, the constitutionality of which act was upheld by the Court of Appeals on February 2, 1917, in the case of Ruehl vs. State.

The Monumental Brewing Company is a Maryland corporation, operating a brewery in Baltimore County, where it pays the brewers' license fee of $1,500 provided for by the Act of 1916, Chap. 31, Sec. 3, page 59. The company's counsel advises me that the brewers' license is the only license the company has, and that while it sells both at retail and at wholesale, yet all sales are of its own manufactured product only and are only made from the place of manufacture, the brewery; and that such bottling as the company does is confined to its own product.

The fees provided by the Act of 1916, Chap. 594, are imposed upon saloons or restaurants, wholesale liquor dealers 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, 131 Mich. 398.
People vs. DeGroot, 111 Mich. 245.
Taylor vs. Vincent, 80 Tenn. 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. 3, 8, 11, 12, 9A, 9B, 9D, 9E, 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 licenses 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. 594.

I may add that this conclusion is in line with a decision rendered on February 23, 1917, by the Criminal Court of Baltimore, under the Baltimore City liquor laws, in the case of the G. B. S. Brewing Company.

I return you the letter you enclosed me from Mr. Eli Frank, Attorney for the Monumental Brewing Company.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—LIQUOR LICENSE FEES, INCREASE OF—DISPOSITION OF INCREASE.

March 26, 1917.

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

DEAR MR. SHAFFER: I beg to reply to your favor of March 22nd.

The additional license fees provided by the Act of 1916, Chap. 594, are to be disposed of exactly as the license fees existing before the Act was passed are disposed of; that is to say:

1. If the county receives a certain proportion of any of the fees referred to in the Act of 1916, under the law as it existed before the Act of 1916 was passed, the State receiving the balance, then the county will receive the same proportion of the additional license fee, the balance thereof being payable to the State.

2. If the county receives the whole of any of the fees referred to in the Act of 1916, under the law as it existed before the Act of 1916 was passed, then the county will receive the whole of the additional license fee.

3. If the State receives the whole of any of the fees referred to in the Act of 1916, under the law as it existed before the Act of 1916 was passed, then the State will receive the whole of the additional license fee.

I think that this will enable you to determine in each case whether the county and the State both share in the additional license fees, or whether the county receives all or the State receives all; but if it does not, and you wish me to advise you with respect to the disposition of any particular additional

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.*

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LICENSES—LIQUOR LICENSE FEES, INCREASE OF—DISPOSITION OF INCREASE IN HAVRE DE GRACE.

July 5, 1917.

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

DEAR MR. MCMULLEN: I beg to reply to your favor of July 3rd, asking whether certain liquor license fees collected by the Clerk of the Circuit Court for Harford County, and amounting for the last quarter to $3,000, belong to the State.

These fees were collected under the Act of 1916, Chap. 594, 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, Chap. 199.

While the title of the Act of 1916, Chap. 594, provides that the additional fees are to be paid "to the Treasurer of the State, for the general purposes of the State," Section 89-A of the Act provides that the additional fees "shall be disposed of as other license fees now provided by law for the issue 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 Ruehl vs. State, 130 Md. 188, the Court of Appeals, on February 2, 1917, held that the Act of 1916, Chap. 594, was valid, and that the additional fees were to be

disposed of in the same manner as other license fees were disposed of in the several counties, towns and villages, and that this, of course, depended upon the local laws.

The Act of 1916, Chap. 199, which provides for the disposition of license fees in Havre de Grace, provides in Section 192 that such fees are to be paid to the Clerk of the Circuit Court, and that the said Clerk shall pay over the same "to the Mayor and City Council of Havre de Grace, within thirty days after it has been received by him, without any abatement or deduction whatever."

Under the Act of 1916, Chap. 594, the additional fees are to be disposed of in the same way.

It follows that the additional fees in question do not belong to the State, but do belong to the Mayor and City Council of Havre de Grace.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LICENSES—MASTER ELECTRICIAN—ELECTRIC WIRING BUSINESS.

April 23, 1917.

John A. Stewart & Son,
204 W. Saratoga Street,
Baltimore, Maryland.

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

Your Master Electrician's license, required by Section 663*f* of the Baltimore City Charter, does not relieve you from the necessity of also procuring the license required by the Act of 1916, Chap. 704, Sec. 184, for firms which, among other things, accept orders for electric wiring. The former license is required for the privilege of engaging in the business of Master Electrician at all. The latter is required for the actual carrying on 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 customers select from his line of stock, is, in my opinion, a manufacturer, and as such is relieved by Bagby's Code, Art. 56, Sec. 38, from the necessity of taking out a traders' license.

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

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LICENSES—MOVING PICTURE THEATRES.

New Empire Theatre Co., Inc., *May 3, 1917.*
Frederick, Maryland.

GENTLEMEN: I beg to reply to your favor of May 2nd. Under the Act of 1916, Chap. 704, Sec. 165, the license required for moving picture theatres depends upon the price of admission—whether five cents or ten cents, or more, and upon the seating capacity. A license based upon a five cent admission does not authorize the charge of a ten cent admission for any performance. Such license authorizes five cent shows, but does not authorize ten cent shows. If your theatre charges ten cents for some of your seats, 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 TO CONDUCT PHARMACY.

August 6, 1917.

Curtis W. Long, Esq.,
State's Attorney,
Salisbury, Maryland.

DEAR MR. LONG: I beg to reply to your favor of August 2nd.

While the pharmacist's certificate required by Bagby's Code, Art. 43, Sections 178-191, cannot be issued to a corporation (Shehan vs. Tanenbaum, 121 Md. 283), yet I think there is no doubt that a corporation may own a pharmacy, provided the persons who conduct and have charge of the business possess pharmacist's certificates.

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

LICENSES—PLUMBERS—CERTIFICATES FOR PLUMBING WORK—SCOPE OF THE LAW.

November 20, 1917.

John Trainor, Esq.,
Pres., State Board of Plumbing Commissioners,
303 Builders Exchange Building,
Baltimore, Maryland.

DEAR MR. TRAINOR: I beg to reply to the inquiries contained in your letters of October 27th, November 1st and 16th.

1. You ask whether or not it is a violation of the state plumbing law for a person not qualified under the act to stock his store with plumbing goods, advertise himself as engaged in the plumbing business, etc. The answer may depend somewhat upon whether the accused is an employer only or a workman.

With respect to employers: Sec. 223 of Art. 43 of Bagby's Code makes guilty of a misdemeanor and imposes a fine upon employers, whether engaged in the plumbing business or not,

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 employee 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 employee 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.*

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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.*

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, *Altorney 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.*

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.*

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.*

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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.*

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:

(*a*) A horse-drawn vehicle going south on St. Paul Street (unpaved) 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. *Query*: Shall the automobile pass the horse-drawn vehicle on the left or on the right?

Section 163 of the Motor Vehicle Law (Act 1916, Chap. 687), 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 the vehicle overtaken is a horse-drawn vehicle (Attorney General's Opinions 1916, Vol. I, page 227), and substantially the same requirement is contained in Section 3 of Baltimore City Ordinance No. 139, approved June 4, 1908, which provides that "vehicles overtaking others shall, in passing, keep to the left."

The difficulty is occasioned by Section 1 of the same City Ordinance, which provides that "vehicles shall keep to the right of the center of all streets," because when the horse-drawn vehicle is practically in the middle of the street, obviously the automobile cannot pass it to the left and at the same time keep to the right of the center of the street.

I do not, however, regard Sections 1 and 3 of the City Ordinance as inconsistent with each other. They should be read together, and the result of reading them together is that the automobile must not only pass to the left of the horse-drawn vehicle, but it must also in so passing keep to the right of the center of the street.

This, I think, is the clear 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 center 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:

Rossberg vs. State, 111 Md. 394.

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 163 of the Motor Vehicle Law, which provides that the vehicle overtaken "shall promptly, upon signal, turn as far as reasonably 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 Ordinance, which provides that "vehicles moving slowly along streets having no car tracks shall keep as close as practicable to the kerb line on the right so as to allow faster moving vehicles free passage on the left." Under Art. VIII, Sec. 1 of the Ordinance the fine for violating Sec. 18 is from $1.00 to $10.00.

(*b*) A horse-drawn vehicle going east on Baltimore Street at the rate of three miles an hour and occupying the eastbound car tracks. An automobile immediately behind, likewise going east, but at the rate of six miles an hour. The automobile desires to pass the horse-drawn vehicle. *Query*: Shall the automobile pass the horse-drawn vehicle on the right or on the left?

This question is exactly the same as (*a*), 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 eastbound tracks. The answer, however, is the same as (*a*). 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 163. 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.

(*c*) 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 desires to pass the street car which at the time is moving slowly and has not just stopped or about to stop to take on or discharge passengers. (This statement is made to exclude 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 into or alight from the same.) *Query*: Shall the automobile pass the street car on the right or the left?

This question is the same as (*b*), except that the vehicle to be passed is a street car. I think that Section 3 of the City 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 street cars, then it would generally be impossible to pass the street car at all, because the automobile could 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 City Ordinance requires. Moreover, Section 20, as amended by Ordinance No. 561, approved February 3, 1915, 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 lighting 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 20. 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 (*c*) the automobile should pass the street car to the right.

(*d*) 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 while it is standing and the operator thereof has the same under control and is prepared to reduce its speed to a reasonable and proper rate in passing such standing street car. *Query*: Can the operator of the automobile lawfully pass the street car under such circumstances, and if so, on which side?

The automobile cannot pass the street car at all while the car is standing. Section 20 of the City Ordinance, as amended by Ordinance No. 561, approved February 3, 1915, expressly provides that "no vehicle shall pass any street car, going in the same direction as the vehicle, which has stopped for the purpose of allowing persons to enter into or alight from said car, but shall come to a halt at least three feet from the rear of said car." It is true that Section 150 of the Motor Vehicle Law provides that "in approaching or about to pass or passing a street car which has stopped or about to stop to receive or discharge passengers, the persons operating a motor vehicle or motor-cycle shall have the same under control and shall reduce its speed to a reasonable and proper rate." But Section 133 authorizes incorporated cities to prescribe reasonable traffic regulations applicable to all vehicles, and under this authority, as well as under the case of Rossberg vs. State, 111 Md. 394,

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.*

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MOTOR VEHICLES—SPEED, STATE LAW SUPERSEDES LOCAL LAWS.

May 11, 1917.

Austin 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 (*a*) the speed of motor vehicles; (*b*) the registration or licensing of motor vehicles and operators; (*c*) the taxation, registration fees, license fees, assessments and charges for the use of a motor vehicle on any public highway.

Acts 1916, Chap. 687, Sections 133 and 2, entitled "Repeal."

These subjects are covered by Sections 140-150, inc., 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 cities and 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

provides 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 make or enforce any local ordinance or regulation which shall change, alter or affect the speed limits prescribed by this sub-title."

The speed limits referred to in Section 133 are set forth in Section 149 of the State law, and Section 2, page 1605, of the State law repeals all laws and ordinances, and all parts of laws and ordinances inconsistent with the State law. The Town Ordinance of Chesapeake City prescribes a maximum rate of speed different from the rate of speed prescribed by Section 149 of the State law, and to this extent the Ordinance is clearly void.

I understand, however, that your principal concern is with the provisions of the Town Ordinance which require horns to be sounded at every crossing. You say that these provisions are being enforced in such a way as to constitute a "Horn Trap," and you consider that this situation should be ended.

In my opinion, the provisions of the Ordinance relating to the sounding of horns are void, as well as the provisions prescribing the maximum rate of speed. Passing the fact that the Ordinance provides for the arrest and conviction of the *automobile,* Section 148, sub-section 2 of the State law provides that "no person operating any motor vehicle shall make or cause to be made any unnecessary noise" with the bell, horn or signalling device, "or use the same except as a warning of danger"; that loud signalling devices must not be used between certain hours in cities and towns; and that "an adequate signalling device shall in all cases be sounded on approaching curves, tops of hills and intersecting highways in the open country where the operator's view is obstructed."

These provisions of the State law prohibit the sounding of horns in cities and towns "except as a warning of danger." Whenever and wherever the conditions are such that the horn should be sounded as a warning of danger, then the horn must be sounded. But when the conditions are such that there is no

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 2, page 1605 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 presecuted under the State law.

For example, Mr. Clifton C. Laws, President of the Board of Commissioners of Chesapeake City, states that there are two 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, sub-section 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, 1917.

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 1908, 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 1914, Chap. 785, 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 1914 did, however, repeal "all laws or parts of laws inconsistent" with it.

It can be urged with considerable force that the Act of 1914, ranking all detectives as lieutenants, repeals by implication the provisions of the Act of 1908, 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.*

POLICE BOARD OF BALTIMORE CITY—OFFICER DYING OF SUNSTROKE, ALLOWANCE TO WIDOW.

August 29, 1917.

James Lockhard, Esq.,
Asst. Secy., Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR MR. LOCKHARD: I beg to reply to your favor of August 21st.

I understand that on August 2nd, 1917, Officer Wm. Parker, while patrolling his beat, received a sunstroke, from the effects of which he died on the same day. You ask whether the Police Board is authorized to make any allowance to Officer Parker's widow and children, out of the Special Fund.

The only provision of law under which such an allowance could be made is Section 776-D of the Baltimore City Charter, which provides that the Board "shall have power, in its discretion, to pay to the widow of any member of said police force 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 re-marries. 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 McClenahan 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,

ALBERT C. RITCHIE, *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—REINSTATEMENT OF RESIGNED 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 20, 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 nine 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 745-D and 745-E of the Baltimore City Charter.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

POLICE BOARD OF BALTIMORE CITY—SPECIAL PENSION ACT.

August 29, 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 August 27th.

I understand that Andrea P. Caldwell was appointed a patrolman in 1875 and made a station house clerk in 1886. The latter was a four year appointment, and upon the expiration of Mr. Caldwell's third term, in 1898, he was not re-appointed. 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. 462, this was increased to $9.00

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. McClenahan, 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 McClenahan case, when they disposed of Meehan's case.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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POLICE BOARD OF BALTIMORE CITY—SPECIAL PENSION ACTS.

September 1, 1917.

Josiah A. Kinsey, Esq.,
Secretary, Board of Police Commissioners,
Court-House, Baltimore, Md.

DEAR MR. KINSEY: I beg to reply to your request that I advise the Police Board whether or not the Board, in view of the decision of the Court of Appeals in the McClenahan case, June 28, 1917, is justified in paying the increases provided by special acts in the amount of pensions allowed 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, this being one-half of a patrolman's salary at that time. The Act of 1892, Chapter 1 (Baltimore City Charter, Sec. 780), 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. 108, 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. 422, 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 Steindle, who was retired on October 19, 1899, with a pension of $6.00 per week. The Act of 1900, Chap. 243, increased this pension to $12. per week, and Steindle received this amount until September 1, 1916, when the Board refused to pay more than $10. per week. Steindle received $10. per week from September 1, 1916, until November 24, 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 McClenahan 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 McClenahan case.

I think it clear, however, from the decision in the McClenahan 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 Steindle 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 Steindle'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 McClenahan case have been upheld.

Very truly yours,

ALBERT C. RITCHIE, *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 favor 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 $2.50 per day when on actual duty, and to be provided with patrolman's equipment.

I understand that this special force will only be established in the event that the international situation should develop to be such that the public peace, in the opinion of the Police Board, will require the force.

Section 745 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 $2.50 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 service are within the Board's discretion, the compensation you have fixed is expressly authorized by the statute, and the power to appoint carries with it the power to equip, even if Section 749 of the Charter does not apply, as I think it does.

The Police Board is not required to select this force after the competitive examinations or from the graded lists provided for by Sections 745-A, etc., of the Baltimore City Charter, because those 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 expenses 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 McEvoy vs. Baltimore, 126 Md. 111, in which it is held that Sections 31 to 36 of the Charter do not apply to the Police Board. See also Thrift vs. Ammidon, 126 Md. 126.

This, however, is a question for the city authorities to decide.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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, Chap. 556, 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, 651 and 652 of Chapter 556 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.

R. 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 10th.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—HOUSE OF CORRECTION, AUTHORITY OF GRAND JURY TO VISIT.

April 23, 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 April 18th.

The authority of the Grand Jury of Anne Arundel County to visit the Maryland House of Correction comes from Section 650 of the Act of 1916, Chapter 556, which creates your Board. Section 650 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 said institutions within the jurisdiction of said Court." The House of Correction is, of course, within the jurisdiction of the Circuit 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 any 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.

R. 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 annulled 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.

Wear-Well Pants 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 adverse to convict labor or convict made goods, and then one year's notice must be given. (Clause 13.)

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.

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 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 prisoner; 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.*

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PRISON CONTROL, STATE BOARD OF—PRISONERS, TRANSFER OF.

October 13, 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 556, 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*

versa, "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,

ALBERT C. RITCHIE, *Attorney General.*

PRISON CONTROL, STATE BOARD OF—PRISONERS, TRANSFER OF LUNATIC PRISONERS TO ASYLUMS.

March 3, 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 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 1914, Chap. 401 (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, Chap. 556, Sec. 648 (amending Bagby's Code, Art. 27, Sec. 675, which codified the Act of 1890, 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 685, page 1568, 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. 556, Sec. 648, 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—REPORTING TO BOARD OF STATE AID AND CHARITIES.

June 2, 1917.

Hon. William J. Ogden,
Secretary, Board of State Aid and Charities,
405 Union Trust Building,
Baltimore, Maryland.

DEAR SIR: I beg to reply to your favor of May 31st, 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 1916, Chap. 556, Sec. 652, 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.

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 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. 91, 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,
ALBERT C. RITCHIE, *Attorney General.*

STATE ROADS COMMISSION—NEGLIGENCE IN CONSTRUCTION, NOT LIABLE FOR.

June 11, 1917.

Frank H. Zouck, Esq.,
Chairman, State Roads Commission,
Garrett Building, Baltimore, Md.

DEAR MR. ZOUCK: You referred 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., 126 Md. 643.

I return you herewith all of the papers on the subject which you left with me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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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.*

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STATE ROADS COMMISSION—RIGHT TO CHARGE FOR USES 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 $100 therefor.

I understand that the North Point Road either now is or 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 user of the public road, the railroad already has the necessary franchise, under Sections 278 and 314 of Article 23 of Bagby's Code, which authorize existing railroad companies to carry their tracks over public highways.

The only thing the railroad needs from your Commision, in order to build the overhead crossing, is the permit to do the work, which permit is required by Section 37-A of Article 91 of Bagby's Code. Under this section the work must be done to your Commission's satisfaction and the expense of replacing the highway must be paid by the railroad, but no charge is authorized to be made for the issuance of the permit, and the railroad cannot be limited as to the duration of its right to maintain the crossing.

While your Commission cannot charge for the issuance of the permit, it is possible that you may be able to charge for the railroad's use of the highway, as you do charge, I understand, for the use of hgihways by telegraph and telephone companies.

The right to make such charges where they already existed before the highway was taken over by the State, was upheld in the Postal Telegraph Cable Company cases, 123 Md. 73, and 127 Md. 243. The Court in these cases declined to say whether the Commission had power to impose such charges upon *new* 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, 1917.

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 estate should be imposed at the rate existing when the testator died, which was 2½ per cent., or at the rate now existing, which is 5 per cent.

The question is a rather difficult one, and not free from doubt.

The facts are these:

The testator died in 1898. The will, which was probated in 1899, gave a life estate to the testator's widow, with vested remainder to collaterals. At that time the collateral inheritance tax was 2½ per cent. In 1908 it was increased to 5 per cent. The situation at present is that the life estate has terminated, and the remaindermen 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 remaindermen are to take possession.

The tax is imposed upon the property "passing" or "transferred" (Bagby's Code, Art. 81, Sec. 120) 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 remaindermen. 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 2½ 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 133 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 *determination 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 *vest in possession.*" This seems to contemplate that the remainderman's tax is to be determined when the particular or life estate ends and when the remainder vests in possession, that is, when the remainderman *takes 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 *price exacted* by the State for the *privilege accorded* in permitting property so situate to be transmitted by will or by descent or distribution."

Fisher, Trustee, vs. State, 106 Md. 104, 120.
State vs. Dalrymple, 70 Md. 294, 299.
Tyson vs. State, 28 Md. 577, 587.

The tax is "on the *privilege* of succeeding to the inheritance or of becoming a beneficiary under the will."

Washington Hospital vs. Mealey, 121 Md. 274, 280.
Wingert vs. State, 129 Md. 28, 30.
Orr vs. Gilman, 183 U. S. 278.

The State can change the price or tax for this privilege whenever it sees fit to do so, and can make the change effective at whatever time it wishes.

Cahen vs. Brewster, 203 U. S. 543, 551.

The State has changed this 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.
Uterhart 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—APPORTIONMENT —WHEN PAYABLE—ANNUITIES.

October 30, 1917.

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

DEAR MR. PEACH: 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 "a life estate or interest for a term of years" given to one party, with the romainder 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, "from time to time 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 remaindermen, 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 remaindermen must pay should be determined by the Orphans' Court, and be then paid by the remaindermen. If the remaindermen 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,

ALBERT C. RITCHIE, *Attorney General.*

TAXATION—COLLATERAL INHERITANCE TAX—COMPUTATION OF—BASIS AND DEDUCTIONS.

Russell P. Smith, Esq., *September 17, 1917.*
Register of Wills,
Cambridge, Maryland.

DEAR MR. SMITH: I beg to reply to your favor of September 11th.

I understand that the late W. Lake 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 mortgages 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 of settlement of this 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 become 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 this tax be reduced by the costs of a sale which the parties agree among themselves to make. The appraisement, less the mortgages and the widow's one-seventh, is, in my opinion, the correct basis.

Very truly yours,

ALBERT C. RITCHIE, *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 125 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 PAID BY FOREIGN TO DOMESTIC ADMINISTRATOR.

November 19, 1917.

Harvey W. Shuck, Esq.,
Register of Wills,
Cumberland, Maryland.

DEAR MR. SHUCK: 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. Deffinbaugh, 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 $639.23 from his wife's estate. This money was paid by the foreign administrator of Mrs. Sills' estate to Mrs. Deffinbaugh, 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. Deffinbaugh, 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.*

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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 $500.00 and the distribution of a seal skin coat to be made to Mollie B. 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 19th, 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.*

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TAXATION—COLLATERAL INHERITANCE TAX—NON-RESIDENT DECEDENT—APPRAISAL, APPORTIONMENT, COLLECTION.

September 7, 1917.

William T. Bishop, Esq.,
Register of Wills,
Centreville, Maryland.

DEAR MR. BISHOP: I received your favor of August 13th, asking my opinion upon certain questions which have arisen in connection with real estate in Queen Anne's County formerly owned by Mary L. Holton. Please pardon my delay in answering it. The case is somewhat puzzling, and I have been delayed by a number of pressing matters.

I understand from you that Mary F. Holton was a resident of Pennsylvania, and that she died on February 2, 1914, owning a farm in Queen Anne's County. By her will she devised the farm to her nephew, William L. Holton, who was to pay to the niece of the testatrix the interest on $1,800 during her life, and upon her death, the farm was to belong to the nephew absolutely. The residue of the estate was given to the niece.

The testatrix appointed the nephew Executor of her estate, but the nephew renounced, and letters c. t. a. were granted to a resident of Pennsylvania. No administrator has been 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 $1,800 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 appraised value 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 is, I think, insufficient, because the nephew renounced as Executor. After carefully considering the whole situation, my advice would be to begin over again, and proceed as follows:

1. Have the Orphans' Court appoint an administrator under the Act of 1912, Chap. 146 (Bagby's Code, Vol. 3, Art. 93, Sec. 109-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. This 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 Bagby's Code.

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

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TAXATION—CORPORATIONS, DISSOLUTION OF—STATE TAXES.

July 24, 1917.

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

DEAR MR. MCMULLEN: Mr. Butler asked me yesterday to advise your Department whether a corporation can now be dissolved under decree of court before all taxes due the State have been paid and the Comptroller's certificate to that effect filed in court.

This was required by the Act of 1892, Chap. 399, codified in the Code of Public General Laws, 1904, as Section 390 of Article 23. The new corporation law of 1908, however, repealed this provision.

The present law relating to the dissolution of corporations is found in Bagby's Code, Art. 23, Sects. 76-81, inc., as amended by the Act of 1916, Chap. 596, Sects. 76 and 76-A. These provisions require a full list of the creditors to be filed in court, and this list should, of course, include the State if the State is a creditor for taxes.

If the corporation is dissolved, then the court appoints receivers to wind up its affairs, and the debts are to be paid

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.

April 5, 1917.

Hon. Thomas W. 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. 95, excepts electric 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 by them in this State.

Bagby's Code, Art. 81, Sec. 167, however, imposes a gross receipts tax of one per cent. upon the annual gross receipts or earnings of "all electric light companies," and one and one-half per cent. upon the annual gross receipts or earnings of "all electric, construction and gas companies," whether such companies are foreign or domestic, such tax only being imposed upon the gross receipts from business done in Maryland. This tax is assessed by the State Tax Commission, and corporations subject to it are required to report to that Commission, on or before April 15th each year, "their total receipts or revenues accruing from business done in this State for the year ending on the preceding" January 31st.

The Potomac Electric Power Company is subject to this 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 BORROW TO MEET.

January 8, 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 4th.

I understand that during the spring of 1916 the State Tax Commission directed the County Commissioners of Allegany County to provide the sum of $7,500 for re-assessment expenses, which sum was duly included in the county levy; and that on December 12, 1916, the Commission, at the request of the County Commissioners, passed an Order directing the County Commissioners to borrow $15,000, or so much thereof as might be necessary, for the re-assessment work in said county. The County Commissioners, however, are in doubt as to their legal power to borrow this money, their doubt being based entirely upon the local law of Allegany County contained in Chapters 323 and 502 of the Acts of 1902. You ask my opinion upon the question.

The Act of 1914, Chap. 841, and the Act of 1916, Chap. 629, providing for the general re-assessment of property throughout the State, were upheld by the Court of Appeals, on September 16, 1916, in the case of Leser et al. vs. Lowenstein et al. Sections 248, 250 and 251 of the latter act expressly require each county to appoint and pay the local assessors, and to pay all expenses incident to the re-assessment within such county, and to make the necessary levies therefor, under orders 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, 581.

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 by advertisement warn the public "of said deficiency, and the object of the proposed increased expenditure and the proposed loans occasioned thereby," and give taxpayers an opportunity to be heard.

In my opinion, these provisions of the local law of 1902 do not affect the legal power of the County Commissioners to borrow money to meet the expenses of the re-assessment, which the general re-assessment 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—Able-bodied Persons.

August 13, 1917.

William C. Beck, Esq.,
Buena Vista Spring Hotel,
Franklin Co., Pa.

Dear Mr. Beck: I beg to reply to your favor of August 9th.

Under the Compulsory Work Law, Act 1917, Chap. 33, Sec. 1, no one 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 "physically able to perform the work to which they are assigned."

My opinion upon your two 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,

Albert C. Ritchie, *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 any student, and consequently students who are attending Universities or Colleges are not required to register during vacation time, or at any other time during their attendance at such Universities or Colleges.

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

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COUNTY COMMISSIONERS—CHARLES COUNTY—TERM OF APPOINTEE TO FILL VACANCY.

July 10, 1917.

A. Posey, Esq.,
La Plata, Md.

DEAR MR. POSEY: I beg to reply to your favor of July 9th, asking whether the County Commissioner of Charles County appointed by the Governor to fill the vacancy in the Board caused by resignation, will hold office for the unexpired term.

You say that the term 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 3 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 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 resigned Commissioner.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

COUNTY COMMISSIONERS OF DORCHESTER COUNTY—CANNOT ACT OFFICIALLY AFTER TERMS EXPIRE.

November 24, 1917.

Hon. D. B. Prettyman,
Cambridge, Maryland.

DEAR MR. PRETTYMAN: I beg to reply to your favor of November 21st, in which you ask whether the two members of the Board of County Commissioners of Dorchester County, whose terms have expired, can continue to sit with the Board until the Board has finished reviewing the re-assessment work in their districts.

The two County Commissioners in question were elected at the general election in 1911, and they have now completed their term of office, because Section 105-1 of the Act of 1916, Chap. 429, provides that these two Commissioners "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 offically 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,

ALBERT C. RITCHIE, *Attorney General.*

COUNTY COMMISSIONERS—FREDERICK COUNTY—TERM OF APPOINTEE TO FILL VACANCY.

April 23, 1917.

D. Princeton Buckey, Esq.,
Frederick, Maryland.

DEAR MR. BUCKEY: I beg to reply to your favor of April 9th, asking whether, when the Governor fills a vacancy occurring in the County Commissioners for Frederick County, the appointee will hold for the unexpired term.

I understand that the only local law on the subject is the Act of 1894, Chap. 305. This Act provides for five County Commissioners for Frederick County, each of whom serves for a term of four years. This Act does not provide for filling vacancies, but Bagby's Code, Art. 25, Sec. 3, provides that in case of a vacancy in the office of county commissioner by death, 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 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 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.*

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COUNTY COMMISSIONERS—WASHINGTON COUNTY—POWER TO ACQUIRE TURNPIKE.

May 4, 1917.

Victor M. Cushwa, Esq.,
Hagerstown Bank,
Hagerstown, Maryland.

DEAR MR. CUSHWA: 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, 88-104.

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. 91, Sec. 35).

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

ELECTRICAL WIRES AND APPLIANCES—RULES GOVERNING.

May 21, 1917.

Joseph M. Zamoiski, Esq.,
State Board of Electrical Examiners,
512 Union Trust Bldg.,
Baltimore, Maryland.

DEAR MR. ZAMOISKI: 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, sub-section 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 both have jurisdiction over electrical wires and appliances in Baltimore City,—your Board acting 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 accuracy of meters, etc. Vol. 7 P. S. C. Rep., pp. 55-63. The law confers power upon the Commission to adopt these rules. Bagby's Code, Art. 23, Sects. 443, 445, etc.

The result is not 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, cover more or less of the same ground.

Until the subject is clarified by legislation, the only way to avoid conflict or duplication of authority, is by the City, your Board and the Public Service Commission co-operating as to the field of your respective duties.

Very truly yours,

ALBERT C. RITCHIE, *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-B, 15-H and 15-I of the Act of 1914, 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-B defines Roadside Trees as trees, of certain measurements, "that may be growing within the right-of-way of any public road." In my opinion, a turnpike road is a public road, within this definition, and, therefore, the Act of 1914 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 is in or upon a 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. 633, making Maryland Day, March 25th, a legal holiday, amended Section 9 of Article 13 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 so 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 9 of Article 13, so proclaims it. Inasmuch as the failure to include Maryland Day in Section 10 was doubtless an oversight, I should think it quite possible that the Governor, if appealed to, would proclaim the Monday following a legal holiday.

With kind regards, I am

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LEGISLATURE—QUALIFICATION OF MEMBERS—EACH HOUSE THE SOLE JUDGE—ACCEPTANCE OF OTHER OFFICES OR POSITIONS.

June 9, 1917.

Hon. Emerson C. Harrington,
Governor,
Annapolis, Md.

DEAR GOVERNOR HARRINGTON: As requested by you, I have carefully considered whether the members of the Legislature of 1916 who have since accepted other offices or positions, are qualified to sit in the extra session of the Legislature which is about to convene.

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. 525.
Warehouse Co. vs. Lumber Co., 118 Md. 149.
State vs. Jarrett, 17 Md. 309.
Spitzer vs. Martin, Daily Record, May 17, 1917.
26 L. R. A. (N. S.) 207-213.
39 Cyc. 696.

The provisions 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 1, Section 6: "Every person elected or appointed to any office of 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 my acting as ....."

Constitution, Article 3, 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 analagous provisions of the Constitution, and those provisions which are simply *employments*, and not within such provisions of the Constitution.

The Court of Appeals has held that "the most general distinction 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. 159), and that 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.)

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. 530.)

In applying these principles, the Court of Appeals has held that the following positions are *employments*, and not offices: School Commissioner (90 Md. 206); Superintendent of Public Instruction in Baltimore City (92 Md. 591); members of the Harford County Racing Commission (118 Md. 608); 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. 526; 109).

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 3, Section 11.

My opinion upon the case of each Senator and Delegate in question, is as follows:

Senate.

Frederick N. Zihlman, Allegany County. Mr. Zihlman is now a member of Congress. He is, in my opinion, disqualified from sitting in the extra session. Constitution, Article 3, Section 10.

W. Oscar Collier, Talbot County. 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, Sections 4 and 10. It is not an office, within the meaning of the Constitution, and Mr. Collier, in my opinion, is qualified to sit in the extra session.

William J. Ogden, Baltimore City. Mr. Ogden has accepted the position of Secretary to the Board of State Aids and Charities. This position is now provided for by the Act of 1916, Chapter 705, Section 5, amending Bagby's Code, Article 88-A, Section 5. It is not an office, within the meaning of the Constitution, and Mr. Ogden, in my opinion, is qualified to sit in the extra session.

George Arnold Frick, Baltimore City. Mr. Frick now holds the position of one of the Assistants in the Baltimore City Law Department. This position is not an office, within the meaning of the Constitution, and Mr. Frick, in my opinion, is qualified 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. 4, and by Bagby's Code, Art. 54, Sects. 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. 414, as amended by the Act of 1916, Chap. 713. 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, Calvert County. Mr. Jones is now the Assistant Superintendent of Public Buildings. This position is provided for by Bagby's Code, Art. 41, 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. Griebel, Baltimore City. Mr. Griebel is now an examiner and clerk to the State Industrial Accident Commission. This position is provided for by Bagby's Code, Art. 101, Sects. 5 and 7. It is not an office, within the meaning of the Constitution, and Mr. Griebel, 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.

R. Laurie 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 George's 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.

Conclusions.

To sum 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 EXTRA SESSION.

June 7, 1917.

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 your recess appointments to the coming extra session of the Legislature for confirmation, and yesterday I received a request from the Secretary of State for an opinion upon the same question.

The Constitution, Art. 2, Sec. 11, provides that "in case of any vacancy during the recess of the Senate, in any office which the Governor has the power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force *until the end of the next session of the Legislature,* or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the Senate *within thirty days after the next meeting of the Legislature.*"

In my opinion, the "next session of the Legislature" contemplated by this provision, is the next *regular* session. The Governor is expressly given thirty days after the meeting of the Legislature within which to make his recess nominations, and an extra session may very well not last this long. Indeed, Art. 3, Sec. 15 of the Constitution provides that an extra session "shall not continue longer than thirty days," so that the thirty day provision in Section 11 of Article 2 would be of no effect at all if applied to an extra session.

It is, therefore, my opinion that your recess appointments should not be sent for confirmation to the coming extra session of the Legislature. They should be sent to the regular session of 1918.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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.*

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LIQUOR LICENSE COMMISSIONERS—TRANSFER OF LICENSE.

December 7, 1917.

William Pepper Constable, Esq.,
Pres. Board of Liquor License Commissioners,
306 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,

the widow of the deceased (no administration having been taken out) executed the transfer, and your Board is now requested to make the transfer upon this authority, and to grant the transferee the usual permit to operate the saloon, pending a hearing upon the application.

I do not think that the transfer signed by the widow is valid to pass title to the license. The license passed to the estate of the deceased owner, and while Section 4 of Article 56 of Bagby's Code authorizes the widow "to carry on business" under the license for the residue of the term, yet the widow is not authorized to transfer the license. In my opinion, that can only be done by an administrator acting under proper order of court.

I return you the papers you left with me.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LIVE STOCK—LIABILITY OF OWNER OF DECEASED ANIMAL FOR FAILURE TO BURY.

October 3, 1917.

Samuel M. Shoemaker, Esq.,
Chairman, State Board of Agriculture,
Fidelity Building,
Baltimore, Md.

DEAR SIR: I beg to reply to the inquiry you made of me yesterday.

You submit the case of a person who owns hogs or other domestic animals which die of cholera, the owner not burying or burning the bodies as required by Bagby's Code, Art. 58, Sec. 19, but permitting the bodies to remain lying upon his land; and you ask whether such owner is liable in damages to his neighbor whose cattle become infected with cholera transmitted to them, through birds, flies or animals, from the dead carcasses.

If a person owns animals known by him to be infected with a contagious disease, such as cholera, he must use due and ordinary care to prevent that disease being transmitted to his neigh-

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 if, 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,

ALBERT C. RITCHIE, *Attorney General.*

LUNACY COMMISSION—MONTHLY REPORTS OF INSTITUTIONS TO.

April 4, 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; said report to be in such form and *at such time* as they may adopt, and to contain such statement of facts concerning the treatment of the insane, as they may require."

Section 25 makes "any officer or other person in charge of the insane or feeble-minded who may refuse to comply" with Section 24, guilty of a misdemeanor, and punishable by fine or imprisonment.

Your Commission is, therefore, authorized to prosecute criminally the officers of such institutions as do not comply with your requirement of rendering monthly reports.

Also, Section 21 requires the officers in charge of institutions under your Commission's supervision to furnish all information requested by your Commission, and any refusal to do so is made a misdemeanor, and subjects the officer so refusing to criminal prosecution.

I should think that a notification from you to the institutions in question that if they do not promptly make the required monthly reports, their officers will be subject to criminal prosecution, and will be actually prosecuted, would be quite sufficient to make the reports materialize.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

LUNACY COMMISSION—MAY DELEGATE DUTY TO EXAMINE INTO PRISONER'S SANITY.

November 24, 1917.

J. 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. 699, and Sec. 44 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 *vel non* upon the report of such examination made to it, then the Commission may do so, the Commission, however, being required, by Section 44, to decide this 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,

ALBERT C. RITCHIE, *Attorney General.*

MOVING PICTURE CENSORS—POWER OF, TO DISAPPROVE PICTURES TENDING TO DISCOURAGE RECRUITING.

Mrs. Marguerite E. Harrison, *April 18, 1917.*

Secretary, Board of Motion Picture Censors,
204 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 directly tend to discourage and prevent recruiting in the United States military and naval forces and in the National Guard, and that this fact is established by the actual experience of the recruiting officers. You ask whether your Board has the power to prohibit the exhibition of such pictures.

The Act of 1916, Chap. 209, gives your Board the power to reject such views as are sacrilegious, obscene and indecent, and if any of the pictures in question are, in the judgment of your Board, of this character, you can, of course, prohibit their exhibition. This may cover some of the pictures you have in mind.

Your Board is also given the power to reject such views as are "immoral, or such as tend, in the judgment of the Board, to debase or corrupt morals." What is moral, within the meaning of this language, depends, in my opinion, upon circumstances. I think that in the present crisis anything which discourages and prevents the recruiting which is absolutely essential to the national safety and defense, is contrary to the good morals of the community, and that your Board may regard motion pictures which, in your judgment, have this result, as immoral, within the meaning of the law.

I, therefore, advise you that whenever your Board, in the exercise of its judgment, decides that any motion picture discourages and prevents recruiting, you have the power to prohibit its exhibition, as immoral.

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. RITCHIE, *Attorney General.*

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PAROLE, ADVISORY BOARD OF—NO JURISDICTION OVER PERSON WHO HAS GIVEN BOND UNDER BASTARDY LAW.

July 13, 1917.

Charles D. Reid, Esq.,
President, Advisory Board of Parole,
Brown Arcade Building, Baltimore.

DEAR MR. REID: I beg to reply to your favor of July 9th, in which you ask whether your Board has power to review cases of persons convicted of bastardy, and who have given bond for the support of the child, under Bagby's Code, Art. 12.

The powers of your Board with respect to recommending conditional pardons or paroles to the Governor, are, of course, advisory only, but nevertheless the effect of sections 7c-7f 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 27, 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 24th, in which you state the case of a man who pleaded guilty to seven indictments for selling liquor unlawfully, 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.*

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PUBLIC SERVICE COMMISSION—FEES FOR CERTIFYING PAPERS AND INSPECTING METERS, COLLECTION OF.

March 7, 1917.

Hon. W. Cabell 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 31¾ 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 31¾ and 32.

The object of Section 10 of the Act of 1916, Chap. 560, exempting the Public Service Commission from that Act, was simply to authorize the Commission to continue to have its own counsel as theretofore, 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 so, 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,

ALBERT C. RITCHIE, *Attorney General.*

SHERIFF—EXECUTION SALE OF MORTGAGE AND MORTGAGE NOTES—ENDORSEMENT OF NOTES TO PURCHASER.

October 2, 1917.

Hon. Thomas F. McNulty,
Sheriff,
Court-House, Baltimore, Md.

DEAR MR. MCNULTY: Mr. William R. Duncan was sent to see me the other day by your office. He stated that he was the purchaser at an execution sale of a mortgage, and the promissory notes secured thereby, from the Mt. Holly Realty Company to Paul E. Lesh, administrator of Isaac H. Radford, and that you, as Sheriff, had executed to him a Deed conveying the mortgage, together with the promissory notes and the mortgagee's interest in the property.

Mr. Duncan 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 so doing. I do not think that there is any objection. On the contrary, since Mr. Duncan purchased the promissory notes at the execution sale, I think that it is quite proper for you to endorse the notes to him as his

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.*

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STATE INDUSTRIAL ACCIDENT COMMISSION—RELEASE BY EMPLOYEE, EFFECT OF—SUIT FOR BENEFIT OF STATE ACCIDENT FUND.

July 19, 1917.

Howard C. Hill, Esq.,
Secretary, State Industrial Accident Commission,
Equitable Building, Baltimore, Md.

DEAR MR. HILL: I beg to reply to your recent inquiry with reference to the Littleton Hall case.

I understand that on February 5th, 1915, Littleton Hall, employed by the C. R. Disharoon Company, which was insured in the State Accident Fund, was injured while unloading lumber for his employer as a result of jolting due to the shifting of a train of the New York, Philadelphia and Norfolk Railroad Company. On March 30, 1915, Hall filed a claim with the Commission, and an award was filed on April 24, 1915, allowing him $5.00 per week during the continuance of his disability, which award is still being paid. On August 14, 1915, Hall received $750.00 from the Railroad Company, the company being aware at that time that he was receiving an award from the State Accident Fund, and Hall in 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-

prived of this right, it can proceed in the name of the employer 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 * * * the State Accident Fund * * * 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 * * * less the employer's expenses and costs of action."

It seems clear from the file of the case you sent me, that the Railroad and the Disharoon 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, so that the Railroad Company was thereafter under no obligation to Hall, and under no obligation to pay him the $750.00, or 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 all the damages sustained by Hall, and barred his right to any

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. Rys. 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 58, 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 t[illegible] position that Hall was barred from receiving further com[illegible]n from the Fund after notice to the Fund of the rele[illegible]se, or [illegible]ether 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 58 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 58, for the benefit of the Fund.

If a suit of this kind is brought, and is successful, then the Fund, of course, could 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, because if the Court should hold 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 this 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 any 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 may enforce the liability for the benefit of the Fund, so that the suit should be brought in the name of C. R. Disharoon Company, for the use and benefit of the State Accident Fund. If the Commission decides to have this suit brought, the question of obtaining the consent of the Disharoon Company, if that be necessary, ought not to present much difficulty, and I will take it up at the time.

I return you your file of the case, and await your further instructions.

Very truly yours,

ALBERT C. RITCHIE, *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 $448.11. 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 $218.75, $228, $1.98 and $0.32. These sums aggregate $449.05, instead of $448.11. This discrepancy occurred a great many years ago, sometime earlier than 1827, and it is practically impossible to trace it. It is too small to make any difference.

Very truly yours,

ALBERT C. RITCHIE, *Attorney General.*

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